
Beyond Arrogance and Subordination to the “System”: On Public Intellectual, Power, Morality, and Law

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An appeal to public intellectual should have special resonance in Eastern and in Central Europe—a part of the world where former dissident writers and intellectuals have become presidents, ministers, and chairs of parliaments, and lawyers once persecuted for opposition to regimes have become chairs of constitutional courts and tribunals.¹ As a matter of fact, Eastern and Central Europe have produced many great intellectuals, as evidenced by a quick check of the birthplaces of Nobel Prize winners. It is also a place where a distinctive social class, the intelligentsia, was considered to have a particular mission to govern the souls and spirits of nations in the name of Freedom and Justice. Where better then to debate the role of intellectuals in answering the big questions concerning democracy and freedom, and indeed in moving the world in that direction!

History demands that we debate the role and commitment of public intellectuals more critically. Unfortunately, our skepticism is fed by our experiences, which initially consist of great hopes for the public engagement and political commitment of intellectuals, followed by a disenchantment with them, sometimes leading to a backlash of blatant populism. There have been examples, and unfortunately not rare examples, of even the greatest intellectuals engaging in political opportunism as fellow travelers or as bystanders, justifying their stance as “the necessary costs of progress,” or even worse, engaging in support of totalitarian regimes. All of these roles of the intellectual—the publicly engaged, the political opportunist, the fellow traveler, and the bystander—have had pivotal impacts on the tasks performed in lawmaking and law application. They have had a direct effect on people’s lives. Thus, we experienced the public intellectual as a

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¹ The second is rarer than the first; nevertheless, in Poland and elsewhere, there were lawyers, mostly university professors, who were once persecuted but later nominated for and even chosen for high positions.

collaborator of criminal regimes in the name of progress, and some lawyers, who in the name of modernity have not only opposed but, on the contrary, have also supported the transformation of law into a cruel implementation of progress, at great costs to those who were most vulnerable.²

With regard to these various disappointments, one can only ask oneself: what went wrong? Why is it that public engagement does not prevent populist backlash? When intellectuals support totalitarian regimes, becoming political opportunists, the question becomes even more pertinent. We ask why intellectuals, who should know better, could be blind to atrocities, even to genocide, not because they were lacking in *civil courage*, but in the very name of progress.

On the other hand, Eastern and Central Europe—especially Central Europe—was a place where another ideal of the intellectuals’ role in society was cultivated. This ideal was incorporated in the German *Bildungsbuergertum* model. Initially, it expressed a deep contempt toward politics as a “dirty affair” and was based on the postulate that an intellectual was a special being concerned with higher issues of culture and science, above the entangled medley of concessions and compromises of which politics is composed, and most certainly not involved in the struggle for power. Such an attitude inhibits an engagement in policymaking, an activity not identical with politics, but nevertheless, overlapping. This attitude was answered with the contempt of politicians as directly expressed by Bismarck in his famous exclamation: *Hunderttausend Professoren, Vaterland, Du bist verloren!* (A hundred thousand professors—“Fatherland”—you are lost!) It is certainly clear what this prominent politician thought about the practical value of theoretical knowledge.

This very brief outline of the place of an intellectual, but especially of a lawyer, is based on the regional experiences of Central and Eastern Europe, where there has been a temptation to fulfill a vision of progress without regard to human costs or without suggesting that there are systemic forces, although of doubtful ontology, that work on society without the aid of human agents.

In the brief remainder of my comments, I will try to reflect on the temptation public intellectuals face if they believe too strongly in an unproblematic concept of progress as an ideal of

² In the Editorial Note published in Vol. 1, 2001, of the *Law and Society Review*, the work of Gregory Massell on law as an instrument of social change in Soviet Central Asia was mentioned. This important, and slightly forgotten, research illustrates the social consequences of a progressive policy; that is, the consequences for Muslim women of the Soviet policy of modernization. Even if we are sympathetic to the introduction of civil law instead of the traditional Muslim law, and to the liberation of Muslim women, we should not overlook the consequences for women that such a policy brought about, described by the author of this research—the deprivation of the protection given them (Sanders 2001:5).

social justice, in contrast to pitfalls they encounter when they believe too strongly in the distinctive place of law as a systemic force, separated from morality and not connected to political power. Maybe it would help us understand the aforementioned backlash, and even the deep disappointment with public intellectuals after the collapse of totalitarian regimes. I will end this short article by commenting on the important advice inherent in Kitty Calavita's Presidential Address to the Law and Society Association and on some ideas expressed by public intellectuals in East-Central Europe.

We must debate whether there is arrogance in the temptation to make history work according to intellectuals' vision of progress, notwithstanding the possible suffering of people.

One can find examples of intellectual arrogance in the name of progress across time and space, and across disciplines. In medicine, one result was a slight modification or concealment of the minor results of experiments in order to create a desired medication to help those suffering during pregnancy. Unfortunately, the results were physically deformed children. In history, facts have been falsified or reinterpreted in order to prove the development of progressive forces. In social sciences, it leads to the support of one in-vogue idea after another in accord with the dominant paradigm, e.g., Marxism against economic liberalism, or of efficient rationalism against other approaches.

The current approach is then broadcast to scientific audiences on whatever the current wavelength to which they are tuned. In law, as illustrated in the often-cited classical work of Gregory Massell, this approach deprived local communities, and especially women, of traditional indigenous law protection, leading to enormous suffering and even rape—all on the altar of progress. Considering these facts, one should not forget that all of these engaged scientists were not just discussing their ideas within the scientific community, but acting on the lives of real people. Their activities were possible because of the power relations in which they were entangled, or by which they were used. In the countries that are experiencing liberalization and democratization of their political systems after the collapse of totalitarianism, the public engagement of intellectuals, and their coming to power, was initially greatly applauded. However, in the same societies, disappointment grew when the public intellectuals became public officials and tried to implement their "truths" on the real society, especially if the "truths" were not understandable to people, not rooted in their daily life experiences, and were informed by theories and worldviews not necessarily compatible with the risks and challenges caused by the collapse of the former system.

At the same time, these societies also confronted the special excuse produced by the followers of the belief that "it's the sys-

tem, not the individual” who fails. According to those who follow this theory, the system acts according to its own rules, and makes people—especially those playing systemic roles of state officials, judges, and public prosecutors—into marionettes. It is thus possible to argue that it was the “system” that made people spy, accuse, persecute, and it was the system, not the judges or public prosecutors, that deprived people of their property and took all their savings, and it was the system that made the economy collapse. In a debate about the place of the people within the system, the possible links between public legal officials and political power are not discussed, nor are the profits that power gives its functionaries.

How then to avoid the traps waiting for the public intellectual?—the trap of intellectual arrogance that makes us believe that we can dictate social policy and promote social justice according to our theories and visions, and the trap that consists of a proposition that there is a lack of a link between law, as a systemic force or as a system of its own, and power.

It is a great question, and certainly it could not be tackled in this brief comment; however, some public intellectuals in East-Central Europe did attempt to answer such questions before the collapse of the former system. They postulated that culture and tradition matter for law, and they put distinctive limitations on the activities of public intellectuals, especially if the culture and tradition appeals to human rights as “a higher law” (Havel et al. 1985:81–89). These propositions, that culture and tradition matter in legal reasoning, make us think more about the past, investigate past laws and values connected with them, carry on research on the past verdicts of our supreme courts or constitutional tribunals as important limits on the visions of social, progressive change as protection against some of the possible harmful effects of scientific theories on people. Western European experiences contribute strongly to the formation of such a peculiar sensitivity toward the importance of culture and tradition as a shield against arrogance. Other limitations are stressed by Kitty Calavita, who represents another kind of sensitivity that grew in different political and social contexts and that was informed by different experiences. These limitations suggest the possibility of constant control of social policy, informed by scientific truths and the democratic process. Taken together, these ideas from Eastern and Central Europe and those presented by Kitty Calavita, certainly open the way for another great debate.

References

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