The 1989 revolutions against communism fundamentally changed both the legal systems and legal scholarship in all former Soviet bloc countries. The rule of law and human rights strategies played an enormous role in the whole process of post-communist social, political, and legal transformation.

In this paper, I will focus on developments and trends in Czech legal theory since 1989 and their close connection with the constitutional and legal transformation of post-communist Czech society. My main goal is to show how the character of the revolutionary changes and the strong emphasis on rule-of-law principles have gradually changed Czech legal scholarship. This change involves the establishment of an 'ethical legal positivism', in contrast to the former socialist legalism, which reflects the ethical and political foundations of the post-1989 liberal democratic system - the liberal democratic Rechtsstaat. I describe this new kind of legal scholarship as legalism with a human face because one of its main tasks has been to introduce the concept of human rights and the universality of human values into the theory of the rule of law.

The transformation of Czech legal theory was initiated by the political, constitutional, and legal changes after the 1989 Velvet Revolution, but other significant influences were the conceptual and paradigmatic frameworks developed since 1945 by theories of 'ethical legalism' within the framework of the liberal democratic rule of law. It is important, therefore, that we analyze the process of adapting contemporary theories of the liberal democratic rule of law and emphasise the fact that ethical legalism was also introduced as part of the revival of the Brno school of legal normativism, which was very influential before the Second World War, but banned by communist ideology and jurisprudence, and later developed into an analytical theory of legal and social institutions.

LEGALIST REVOLUTIONS?

Revolutions generally have a destructive effect on the existing political and legal order. They define their goals in opposition to this order and foster political rupture and discontinuity. They condemn existing politics and law and seek
legitimacy by introducing 'higher laws' of historical justice, human nature, and universal morality into political and social reality.

Arguments based on natural rights and justice have played a significant role in all modern revolutionary events, and the 1989 revolutions against the communist regimes were no exception. In spite of these 'natural' features, the human rights strategy was also formed to a significant extent against the background of the legalist attitude towards the rule of law and constitutional protection of individual and collective rights and freedoms. The legalist legitimation of human rights and freedoms and the democratic rule of law represent a very important, although not the only or supreme legitimation framework of the revolutionary changes.

The legalist legitimation framework, which typically builds on the principle of the persistence and rule of law, was especially significant in two countries, in which the revolutionary changes started and developed during the process of political negotiations and round-table talks. In Poland and Hungary the communist governments and the opposition negotiated a series of gradual political and legal changes. It was necessary to formulate rules and procedures for such a complicated process and, consequently, the fiction of a legal revolution - a revolution limited by the existing communist constitutional and legal framework - emerged. Its main purpose was to help to dismantle the communist system and establish a liberal democratic system based on the rule of law by peaceful means.

The constitution of the fiction of a legal revolution was generally supported by both parties to the round-table talks. At one conference in the middle of 1989, the Hungarian communist minister of justice and legal scholar Kálmán Kulcsár defined three key words of the Hungarian political transformation: rule of law, constitutionalism, and human rights.2

The legalist attitude towards the revolutionary changes in Hungary later resulted in the persistence of the communist constitution of 1948 and its complex amendment. Provisions constituting the one-party system and the principles of communist power were replaced by provisions protecting traditional human rights and principles of the democratic rule of law. Legitimation of the old constitution under the new political conditions is therefore an attempt to 'square the circle'.3 The principle of the rule of law (and the legal legitimacy of political power coincides with that principle) was to be established, but its establishment was ruled by the fiction that this system had already been in exis-

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