Dissidents of law: on the 1989 velvet revolutions, legitimations, fictions of legality and contemporary version of the social contract


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Abstract

The problem of legitimacy and legality is one of the key issues of modern thought and nowhere more intensely debated than in the countries of the former Soviet bloc. Under the communist system, symbols of modern government had been supplemented and changed in order to serve the totalitarian domination of the Party and all spheres of life, including law, were subsumed within this framework of ideological legitimation. Following the anti-communist revolutions of 1989, former communist societies started the historically unprecedented process of transformation from the totalitarian into liberal democratic society, a transformation which has produced much soul-searching and heated debate. In this book, the author sets out to prove that concern with legitimacy belongs neither exclusively to the legal system nor to a political system separated and distanced from the legal system. The topic of legitimacy and legitimation is inseparable from legality and every legitimation eventually looks for its transformation into legal legality. At the same time, the author claims, legitimacy is not an issue internal to law, for it emerges rather from the tension and difference between positive law and its social environment. The author uses different theoretical approaches to the problem of legitimation, mainly the social systems and post-structural theories. Another important topic analyzed in this book is the role of legal theory in analysis of the legitimacy of legal rational political domination, specifically as it arises in the development of the legal and political systems of post-communist societies. This leads to the main argument of the book, which might be summarised as a new understanding of the social contract: that the social contract requires that the legitimacy of any system of law and political domination must be constantly re-negotiated. This process is the unconditional responsibility of those living, or wishing to live, under the contemporary liberal democratic rule of law. The extraordinary force of this responsibility is manifested principally in the strategy of dissent.

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