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Common Sense and the Rule of Law: Returning Voegelin to Central Europe

Martin Palouš

*Athanatoi thnétoi thnétoi athanatoi, zóntes ton
ekeinón thanaton, ton de ekeinón bion tethneóntes
(Mortals are immortals and immortals are mortals, the
one living the others' death and dying the others' life)
-- Heraclitus¹*

THE “IMMORTALIZATION” OF A PHILOSOPHER

An elementary fact in the history of thought is the emergence of philosophical schools around prominent thinkers. The disciples of a Master strived to preserve his work for the future, to carry through his basic intention and to continue in the implementation of the task pursued, but unattained by him in his lifetime. Nevertheless, there is another elementary fact in the history of thought. Such schools did not last usually more than one generation. After some time, the most talented disciples started seeing through the limitations of the standpoint from which their teacher approached philosophical problems and realized the unattainability of the tasks he had set for himself. At a certain moment in time, they concluded that it was not possible to continue on the road marked out by him; that they were finding themselves at a new crossroads where they had to make new decisions, to unveil the open questions and issues behind all the answers the Master's philosophical “teaching” contained. By paradox, this moment of destruction of the teacher's legacy, however, does not necessarily mean its absolute end, its retreat from the human world and its fall into oblivion. On the contrary, it is exactly here where we can find the key to his potential immortality, and this is the third elementary fact in the history of thought. Only when overcome and problematized, when—to use a figure of speech—struck from the heavens to the earth, does the philosopher gain his place in the dialogue engaged in by great, “immortal” thinkers across the borders of civilizations and centuries.

¹ Heraclitus, B62, trans. in John Burnet, *Early Greek Philosophy* (London: Adam and Charles Black, 1892), 138.

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To guess at this point in time what place in the overall spiritual context of the twentieth century will belong to Eric Voegelin (1901–1984), whether it will be namely he who will be given credit for the fundamental shift in the sphere of political thinking—as his disciples and followers seem to believe—would in my opinion be somewhat precipitate. At the same time, however, let it be stated that it is to their credit that the open-ended process of Voegelin’s possible immortalization has started. Voegelin is undoubtedly one of those contemporary thinkers who—probably against their will and despite their own warning that philosophy will not allow itself to be closed into any systematic philosophical teaching—did create a kind of philosophical school. During his academic career in the United States and later in Germany, Voegelin influenced decisively a significant group of philosophers, theologians, political scientists, cultural anthropologists, etc.—now finding themselves at the summit of their professional careers—who are convinced that the principal task of their own work is to keep Voegelin’s philosophical legacy alive. They publish the collected works of Eric Voegelin, organize Voegelin conferences and write studies or even whole monographs on him. They founded the Eric Voegelin Society, which has held since 1985 its annual meetings as a part of the annual conventions of the American Political Science Association.

All this demonstrates more than clearly that Voegelin was indeed an exceptionally successful and influential teacher, and that his legacy represents a very powerful inspiration. In the course of years, a global network of Voegelinians has been created, a chain of people as if united by a single philosophical will, sharing Voegelin’s fundamental conviction that it is still Plato, Aristotle and other classical thinkers who should teach us what is (and what is not) philosophy; and that it is philosophy in this classical sense that remains at the moment of contemporary European crisis as the single most important weapon to be used “in defense of civilization.” The aim which these contemporary Platonists (a kind of Platonic Academy operating in the post-modern environment of today’s globalizing world) strive for seems to be guided by a single intention: to initiate a Renaissance of classical political thought, to rediscover the liberating power of classical political ideas, to retrieve the dimension of philosophical dialogue for our current political discourse.

Nevertheless, time and tide wait for no man. First-generation Voegelinians have already reached their “acme,” and one might pose the question of the further fate of their project. What will become of Voegelin’s legacy in the long-term perspective, from the point of view

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of the dialogue of mankind across the borders of civilizations and centuries?² Despite all the disciples' endeavor to disseminate the ideas of their Master, the "Voegelinian Revolution" in political thought, as announced in 1982 in a book of the same name by Ellis Sandoz,² one of the most prominent American followers of Voegelin and today apparently the main guardian of the Voegelin legacy, seems yet to be completed. It is realistic and fair to admit that Voegelin's influence on the current mainstream political thought remains limited. This state is illustrated by texts on Voegelinian themes produced, presenting almost exclusively a positive, i.e. accordant interpretation of Voegelin's teaching. The fact that Voegelin is still usually presented in the role of great guru and unrivaled Master in matters of thought demonstrates that the destructive, critical phase of work on his philosophical legacy—the true test of his actual greatness and key phase of the process of his "immortalization"—has not yet arisen, and if it has, then it is evidently still at a very timid, initial stage. Where will the Voegelinian debate and research be, let us say, thirty years from now? Can we imagine that? Will Voegelin still be recognized as a great, truly "revolutionary" philosopher of the period at the great turn of history as his immediate disciples believe? Or, will this image be whittled by the passage of time, and Voegelin "only" remembered as one of those educated Central Europeans, born at a tragic time, uprooted from their domestic environment, living their lives on the periphery of the big world, leaving behind only faded photographs, collected volumes of their works, and gradually disappearing traces of their personal struggles, which were heroic and that is why respectable, but did not make a real difference from the point of view of the universal history of the spirit?

ANAMNESIS

Raising all these hardly answerable questions, I am aware of my serious limitations as far as my possible contribution to the on-going Voegelinian debate. To clarify my perspective, I must depart from my own personal anamnesis. I will begin in socialist Czechoslovakia in the 1980s when my own introduction to the world of Western philosophy and my first encounters with Eric Voegelin's thought took place. Then I will focus on the radical change brought by the Velvet Revolution of 1989 that has reopened our society kept closed for more

² Elis Sandoz: *The Voegelinian Revolution: A Biographical Introduction* (Baton Rouge, LA: Louisiana State University Press, 1981).

than four decades and offered to all its members an opportunity to take part in the political process of rebuilding democracy. In the light of new experience, I have been forced to reexamine my approaches to and my reading of the fundamental problems of classical political philosophy, and finally, enabled to start communicating with the international Platonic Academy of Voegelinians.

I ran across the name of Eric Voegelin for the first time in the early 1980s, in the meetings of “Kampademia,” a small group of friends who got together with a bold, and somewhat quixotic intention to “revive” the tradition of Socratic/Platonic thought in the midst of a “small” Czech society stricken in the second half of the twentieth century by the totalitarian plague. Our common teacher was Jan Patočka, one of the last students of Edmund Husserl and undoubtedly the greatest Czech philosopher of the twentieth century. He decided to take a bold, genuinely Socratic step toward the end of his life. Almost seventy years old, he became one of the first three spokespersons of Charter 77 and died only two months after the Charter’s original declaration on January 1, 1977 due to a heart attack he suffered after a series of prolonged police interrogations. Patočka’s phenomenological research of the “natural world of human existence” (Husserl’s *Lebenswelt*)³ and especially his philosophy of history—elaborated step by step in his private lectures in 1970 and finally sketched in the form of six “heretical essays”⁴—represented one of the principal points of departure and maybe the most frequent topic of our disputes and conversations. Through Patočka and under his guidance, we were all introduced not only to the basic ideas of phenomenology formulated by his great teacher, but also studied and discussed the works of many other contemporary philosophers and political thinkers: for instance, Hannah Arendt, Eugen Fink, Martin Heidegger, Karl Jaspers, Emanuel Levinas, Paul Ricoeur, Leo Strauss, and last but not least Eric Voegelin. I remember well lively exchanges after the presentations of Pavel Bratinka who gave us the introduction to “New Science of Politics,” or Zdenek Neubauer who talked about the “Voegelinian Revolution,” inspired by the above-mentioned book by Ellis Sandoz. I also made my own contributions to this debate, being the lucky one in our group and having in my private holdings the first four volumes of *Order and History*. I

³ Jan Patočka, *Přirozený svět jako filosofický problém* [*The Natural World as a Philosophical Problem*], in *Fenomenologické spisy I* (Praha: Oikoymenh, 1996), 127–261.

⁴ Jan Patočka: *Kacířské eseje o filosofii dějin*, in *Péče o duši III* (Praha: Oikoymenh, 2002), 11–144; *Heretical Essays in the Philosophy of History*, ed. James Dodd, trans. E. Kohák (Chicago: Open Court, 1996).

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received them thanks to the Jan Hus Foundation that not only sent us many books in the 1980s, but also sponsored the visits in Prague of dozens of renowned Western scholars (including Charles Taylor, Roger Scruton, David Levy, Jurgen Habermas, Ernst Tugendhat, Richard Rorty, Norman Podhoretz, Paul Ricoeur, Jacques Derrida, Jean-Pierre Vernant, Jean-François Lyotard, Emmanuel LeRoy Ladurie, Andre Glucksman, Alain Finkelkraut and Pierre-Jean Labarriere) to give lectures and to challenge our naïve and sometimes uninformed enthusiasm for philosophy that was conceived by Patočka as “*new possibilities of life in that shaken situation*”⁵ by their professionalism and expertise.⁶

How then did the thought of Voegelin fit into our “academic” context at that time? What were we searching for in our on-going dialogue(s)? What were the main questions we were occupied with during the last years of European communism? Some of our seminars from 1983–1984 were recorded, transcribed and published.⁷ I re-read them recently when I was collecting all necessary background materials for this piece. With all the reservations and doubts that such a “recherche du temps perdu” can raise twenty years later, it was, indeed, an interesting reading. To characterize the inquisitive atmosphere of our seminars and the fundamental aim of our “philosophizing,” I can use the blunt formulation used as the title of one of the chapters of Voegelin’s *Autobiographical Reflections*, “Why Philosophize? To Recapture Reality!”⁸ We all would have subscribed to Voegelin’s blunt statement that the motivations of his work arose “from the political situation”:

Anybody with an informed and reflective mind who lives in the twentieth century since the end of the First World War, as I did, finds himself hemmed in, if not oppressed, from all sides by a flood of ideological language—meaning thereby the language symbols that pretend to be concepts, but in fact are unanalyzed *topoi* or topics. Moreover, anybody who is exposed to this dominant climate of opinion has to cope with the problem that language is a social phenomenon. He cannot deal with the users of ideological language as partners in a discussion, but he has to make them the object of investigation. There is no community of language with the representatives of the dominant ideologies. Hence, the community of language that he himself wants to use to

⁵ Jan Patočka: *Heretical Essays in the Philosophy of History*, 41.

⁶ The Prague activities of Jan Hus Foundation in Prague are described in Barbara Day, *The Velvet Philosophers* (London: Claridge Press, 2000).

⁷ T. Korder, *Voegelin & Patočka: výběr záznamů průběhu bytového filosofického semináře paralelní kultury v Československu* (Purley: Athenaeum–Rozmluvy, 1988).

⁸ Eric Voegelin: *Autobiographical Reflections, Revised Edition with Glossary*, ed. Ellis Sandoz (Columbia, MO: University of Missouri Press, 2012), 118.

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criticize the users of ideological language must first be discovered and, if necessary, established.⁹

We certainly were not resisting only “a flood of ideological language,” but also its political incarnation in the form of an “advanced totalitarian regime.”¹⁰ This regime tried desperately to preserve its power in the changing international environment in Europe—influenced first by the so-called “Helsinki process,” and since 1985, by the policies of “perestroika” of the new Soviet leader Mikhail Gorbachev—and in this context, to destroy our “parallel polis,” founded by the declaration of Charter 77, by all available means. No matter how complicated and sometimes even dramatic the circumstances might have been, we were trying to do in our regular “academic” meetings what Voegelin suggested in the above quoted passage: to discover, and if necessary to establish an alternative “community of language” in order to understand ourselves and our current situation in the world; in order to find again and explore our place on the spiritual map of emerging global mankind and to connect our personal stories—in which we all have fallen, to a great extent thanks to the influence of Patočka, for philosophy—with philosophy of history.

The reason why I threw myself into the study of Voegelin’s “Order and History” was clear and simple: I was struck from the first pages by the power of his arguments and found the way he worked with the classical texts and ideas congenial with and complementary to the style of philosophical work of our teacher. Both Patočka and Voegelin pursued their own philosophical projects by summoning up all their education and spiritual strength. They both formulated their big questions and proceeded—methodologically and step by step—on the original paths of their thought that ran quite close to each other and, indeed, were at the same time, thanks to their unusual seriousness and existential urgency, “lying,” in the words of Parmenides, “far from the beaten paths of humans.”¹¹ Nonetheless, as genuine philosophers, they both were excellent interpreters of the history of ideas, true guardians of the authenticity and integrity of philosophical language, originating in the efforts of concrete men and women of the past to articulate their finite experiences of encounter with the

⁹ Voegelin: *Autobiographical Reflections*, 118.

¹⁰ Václav Havel: *Stories and totalitarianism*, in *Open Letters, Selected Writings 1965-1990*, ed. P. Wilson (New York: Knopf, 1991), 328-50.

¹¹ Parmenides, “On Nature,” in *Die Fragmente der Vorsokratiker*, ed. Hermann Diels 2 bd. (Berlin: Weidmannsche Buchhandlung, 1906), B1.

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transcendent source of order within their concrete historical societies. Under their guidance, we were being introduced to a philosophy that was not a metaphysical doctrine consisting of true propositions about eternal and unmovable Being, but a way of life, a kind of movement of human existence, whose aim was to “live in truth,” to keep open the possibility of human life to “escape one’s own ignorance.”¹² In other words, both Patocka and Voegelin were able to open, even for a layman or dilettante like me, the forgotten and largely unnoticed layers of the Western spiritual tradition. They helped me to rediscover the meaning of basic concepts and symbols used in philosophical discourse. They shook me out of the shell of my presumed certainties to realize the metaphysical depth under the surface of facts and data that had to be explored and known by anyone who wished to understand and to articulate meaningfully our concrete situation within the universal horizon of human history.

Reexamining the contributions I made in our seminars from 1983–1984, I certainly cannot have any illusions about their quality or even the originality of their message. On the contrary, their language betrays not only the lack of skill and experience of the contributor, but the power of Baconian “Idols of the Market Place”—the case when “the ill and unfit choice of words wonderfully obstructs the understanding”¹³—no matter how strong my desire to overcome them or at least get them under control. There is one thing, however, that should not be overlooked here and that bears witness: what is and what is not the true philosophy. Being inspired and taught by genuine philosophers like Patocka or Voegelin, we were invited—despite all flaws, imperfections and evident amateurism of our academic conversations and in the context that was determined by our current political existence in Central Europe—to the society of classical thinkers like Socrates, Plato and Aristotle and many others. Thanks to this apprenticeship, we could participate, in our own way, using our modest resources and capabilities, in the never-ending dialogue of mankind initiated in ancient Greece and other centers of the civilized world many centuries ago. The Socratic appeal to care not so much about “money and honor and reputation” but rather about “wisdom and truth and the greatest improvement of the soul”¹⁴ meant in the interpretation of Patocka or Voegelin much more than a superficial invitation to take up moral philosophy caricatured by Hegel in his *Lectures on the History of Philosophy*:

¹² Aristotle, *Metaphysics*, I.982b19–20 (*dia to feugein tén agnaian efilosofésan*).

¹³ Francis Bacon, *The New Organon* (New York: The Liberal Arts Press, 1960), 49.

¹⁴ Plato, *Apology*, 30a–30b.

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Because Socrates in this way gave rise to moral philosophy, all succeeding babblers about morality and popular philosophy constituted him their patron and object of adoration, and made him into a cloak which should cover all false philosophy. As he treated it, it was undoubtedly popular; and what contributed to make it such was that his death gave him the never-failing interest derived from innocent suffering.¹⁵

What was clearly at stake here for us was the future identity of Europe's "heart," the power of great ideas and symbols of the past to be mobilized in the concrete situation of our "polis" that was finding itself in the 1980s in one of its worst crises.

The Velvet Revolution in November 1989 brought a radical change into our world. Thanks to the collapse of communism, Central Europe reemerged as an active player in the field of international relations and her fragmentation in the decades of the Cold War's "frozen" system of national societies had been offered a new opportunity: to set out on a journey from totalitarianism to democracy. The new situation terminated for obvious reasons the existence of the dissidents' "parallel polis" and brought a new challenge to what I have always considered the most important part of my public engagement: to assist the rebirth of classical political ideas in our current context and to enhance with their help our capacity of understanding. Our philosophical "Kampademia" still exists, holding its regular quarterly "conventions." Nonetheless, its original pathos of resistance is lost irretrievably, and our aging conversations are taking place in a climate of ideas that is not so much conducive to the "remembrance of things past" but rather to realize again and again the dangerously growing "gap between past and future."

The new social and political context shaped by the newly gained freedom could not let my reading of Voegelin go untouched. On the one hand, I have had the chance to become acquainted with the activities of a global network of Voegelinians and have benefited greatly from it. I have gained an opportunity to study Voegelin's "Opera Omnia" volume after volume, to read the abundance of the secondary Voegelinian literature, to participate in the on-going Voegelinian dialogue within a group of distinguished scholars, and to present my own insights, comments and eventual "discoveries" at the regular annual meetings of the Eric Voegelin society. On the other hand, being pushed forward in the irreversible historical

¹⁵ Georg Wilhelm Friedrich Hegel, *Lectures on the History of Philosophy*, trans. E.S. Haldane (London: Routledge & Kegan Paul Ltd., repr. 1955), 388.

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time—growing older and becoming more and more perplexed not only by all the difficulties of our own transition to democracy, but by all the intricacies of the New World Order emerging from the ruins of the Old One—I had to realize that my perception of political ideas has also been changing. I had to admit that in the current situation I am simply unable to read Voegelin in the way I had originally; that I have some difficulties with my original understanding of the Voegelinian project aiming at the “defense of civilization”; that in spite of the indisputable fact that it is among Voegelinians where one can find a living political thought today, there is something problematic, at least from my own point of view, in the prevailing focus and style of the current Voegelinian research.

Struggling with my personal loss of direction, I have started looking for a new point of departure. Surprisingly, I did not find it in the realm of ideas, among Voegelin’s fascinating insights into their history, that made him without any doubt one of the greatest philosophers of the twentieth century, but in his *Autobiographical Reflections*, that could be published only thanks to the persistence of Ellis Sandoz, one of his most talented students and undoubtedly the most influential herald of the “Voegelinian revolution.” Voegelin’s escape from Central Europe and his encounter with American “common sense” have led me to raise the following questions: Is it not here, in Central Europe where Voegelin’s anabasis—that began in the 1930s when totalitarianism, once characterized by him as a “*cadaveric poison*” released by Western civilization and now “*spreading its infection through the body of humanity*,”¹⁶ was on the rise—must come to its end? Is not this potential homecoming—rather than all these efforts to summarize the results of Voegelin’s Herculean “search for order,” all attempts to compare or confront them with the products of other philosophical schools and traditions—that represents the biggest challenge for Voegelinian legacy at the beginning of the twenty-first century? Is it not amid singular, passing human matters, and eventually not only in Central Europe, where we should be looking for Voegelin’s proverbial Rhodos and where the question of the potential immortality of his teaching must be tested?

My plan as far as the rest of this essay is concerned is as follows: In section III, I will reflect on Voegelin’s encounter with pragmatism in American philosophy and will try, using the example of William James, to answer the question, why the “pluralistic view”—an integral

¹⁶ Voegelin, *The Origins of Totalitarianism*, in *The Collected Works of Eric Voegelin, vol. 12 Published Essays, 1966-1985*, ed. Sandoz (Columbia, MO: University of Missouri Press, 1990), 15.

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part of American “common sense,” that rejects the “monistic” epistemology of neo-Kantian provenance but lacks the historical depth that would stem from the connection of this “school of thought” with any established European tradition—could inspire Voegelin to rediscover the lost treasure of classical philosophy, tragically absent in the contemporary European political discourse. In section IV, I will depart from a concrete, almost technical problem Voegelin was confronted with during his sixteen-year-long teaching experience at the Louisiana State University in Baton Rouge: to explain the nature of law to his American students. I will argue that it is the Voegelinian jurisprudence informed by classical political philosophy and influenced by the American tradition of “common sense” that should inspire the Central European search for new identity in the world after “11/9” (11/9/1989—the fall of Berlin Wall) and “9/11” (9/11/2001—the terrorist attack of Al Qaeda in the United States).

ESCAPE FROM CENTRAL EUROPE AND DISCOVERY OF AMERICAN COMMON SENSE

Let us depart from the known facts of Voegelin’s biography. Born on January 3, 1901, in Cologne in Germany in 1910, he moved with his parents to Vienna. This is where Voegelin received his education—first at the Gymnasium and then at the University of Vienna where he studied political science at the Faculty of Law with Hans Kelsen. International events led to a radical change of the Viennese scene during Voegelin’s studies. At the time of the monarchy, Vienna had the relatively liberal, cosmopolitan atmosphere of a world metropolis. Defeat in the First World War, however, resulted in the disintegration of the Austro-Hungarian Empire and in the emergence from its ruins in 1918 of a republic, albeit one lacking the free republican spirit. The liberalism typical of the Viennese imperial era was replaced by petit bourgeois narrow-mindedness and grievances over historical injustice. Instead of the cosmopolitan tolerance typical of the “world of yesterday” of the former rulers of Central Europe (described so persuasively from a Jewish perspective in Stefan Zweig’s autobiography), there arose small Austrian chauvinism, xenophobia, ideologically motivated encounters of antagonistic social classes and general spiritual decline and loss of direction. There were, of course, deeper reasons for this transformation; it was not merely the hangover of military defeat resulting in the retreat from the position of power, but also the omen of deep spiritual and social crisis which in the post-war period started to engulf the whole European continent, culminating in the assumption of power by totalitarian political

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movements and resulting in another world war. It was namely this shift that framed Voegelin's political experience and the elementary existential point of departure of his philosophy.

The academic environment—and Voegelin moved around almost exclusively in that environment—was, of course, relatively more resistant to the general decline. Reading about the way in which he planned his academic training, all the names of the people who taught him, all the places where he studied and the different disciplines, one cannot but be amazed by all the possibilities which were available to a young scholar, by the quality of contemporary spiritual life, and by the criteria of university education in Austria of those days, a country politically and spiritually in decline. Nevertheless, the “decline of the West,” as clearly implied in Voegelin's reflection, was felt not only as a political problem, but was becoming increasingly apparent in the intellectual milieu, too. Maybe that is one reason why Voegelin's intellectual striving was so inseparably linked with private seminars held within a circle of friends calling itself “Geistkreis.” The group included, for instance, Alfred Schütz, with whom Voegelin exchanged a written discussion of Husserl's phenomenology, as well as a few others whom Voegelin later met again in American exile. “Geistkreis” was nothing more than a group of young enthusiasts who discussed everything that aroused their inquisitive minds, yet the mere existence and mission of the group reflected the shifts occurring in the world of Austrian academia, inconspicuously at first, but later moving slowly the center of authentic intellectual life into the private sphere, still free from any manipulation by the state.

Even though Voegelin received the core of his education from an impressive line of German and Austrian professors who introduced him to the world of European learning, a major influence in Voegelin's academic maturing was apparently his trip to the United States in 1924–1925. As a Laura Spellman Rockefeller Fellow, Voegelin was given his first opportunity to become acquainted with the American university environment and compare it with his hitherto European experience. The encounter with America became his destiny. This is where he encountered “common sense,” which “spoiled” him, according to his own words, to such a degree that from that time onwards he was no longer able to exist non-problematically in Central Europe and within the framework of her venerable and cultivated philosophical traditions. Whereas the European discussion of political and social phenomena turned round in the vicious circle of contending philosophies and schools (mainly of neo-Kantian provenance) and de facto neglected the increasingly gloomy

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contemporary political situation, the American manner of political thinking was quite different. It did not lean primarily on one or another philosophical school and tradition but let itself be inspired by concrete political events, namely the foundation of the American republic, the adoption of its Constitution, which from that time onwards became the source of the “good life” of American citizens and whose further development and protection were generally perceived as the basic guarantee of freedom and human dignity. In brief, America presented itself to Voegelin as an amazing synthesis of classical thought, which he had striven in vain to restore in his Central European environment, and of the best components of the Christian tradition which European Modernism, in his view, was also desperately lacking. The pragmatism of William James and John Dewey, the philosophy of George Santayana, Whitehead’s lectures at Harvard University, and also solid American theory of law or government, which consciously abstained from the attainment of heights of philosophy—all that had such a strong impact on Voegelin that he returned to Europe (to use his own expression) a changed man, unable to exist further in the increasingly restricted, increasingly narrowing, increasingly philosophically sterile European environment.

Voegelin’s philosophical diagnosis of the crisis of European civilization in the twentieth century turned him into an open, uncompromising critic of emerging totalitarian movements and especially of national-socialist policy. His reputation in this respect, however, placed him at the time of the Austrian Anschluss in immediate jeopardy. If it was originally his conversion to Anglo-Saxon “common sense,” that made Voegelin, to quote his own words, “unfit for further existence in Central Europe,” it was the German Nazis with their project of “the Thousand Years Reich” that forced him to leave Vienna and become an exile. In March 1938, he fled under rather dramatic circumstances to Switzerland, and from there after a short time he departed for the United States.

Why did American “common sense” alienate Voegelin not only from contemporary European politics, but also from a certain tradition of European political thought which became dominant in the last three centuries, i.e., in the modern period of European history? Why was it in the United States of America—in a democratic republic of the “New World” which took upon herself more than once in the twentieth century the burden of the defense of Western civilization against the totalitarian barbarity that originated on the “old

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continent”—where Voegelin rediscovered the liberating power of classical, i.e., pre-modern political thought?

To answer these questions, let us look briefly at the way in which the problem of “common sense” is approached by one of the great figures of American “pragmatism,” William James. In his lectures of 1906–1907 (published in 1907 under the title *Pragmatism: A New Name for Some Old Ways of Thinking*), James stated clearly what he understood as “common sense”: “*our fundamental ways of thinking,*” discovered already by “*exceedingly remote ancestors, which have been able to preserve themselves throughout the experience of all subsequent times,*” used till now and forming “one great stage of equilibrium in the human mind’s development.”¹⁷

The fundamental philosophical question analyzed by James was the problem of noesis, the problem of knowledge and knowing: What does it mean to know something? What kind of relationship is established between “knower” and “things to be known”? What ontology is commensurate with the world in which man is able to live as a rational being? Can the classical philosophers, who for the first time formulated the great ontological questions and discovered the fundamental ideas of our Western thought, help us in our efforts to understand better our contemporary situation and improve our capacity to use our own “common sense”? According to James, there are two alternative approaches to the problem of noesis: monism, which corresponds to the perennial philosophical quest for the world’s unity, or pluralism. In his lecture “The One and the Many” James says:

The *great monistic denkmittel* for a hundred years has been the notion of *the one Knower*. The many exist only as objects for his thought—exist in his dream, as it were; and *as he knows* them, they have one purpose, form one system, tell one tale for him. This notion of *an all-enveloping noetic unity* in things is the sublimest achievement of intellectualist philosophy.¹⁸

The hypothesis of the universe’s “oneness,” the hypothesis of one world consisting of things seen by an omniscient knower “as forming one single systematic fact,” the hypothesis of the actual world being present to the senses of a human spectator always within the finite horizon of his mortality, but “complete eternally,” has important implications. Its discovery and

¹⁷ William James, *Pragmatism: A new Name for Some Old Ways of Thinking* (New York: Longmans, Green & Co., 1907), 170.

¹⁸ James, *Pragmatism*, 145.

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conscious acceptance signal a genuine revolution in the historical process of human self-understanding. From this moment on, any theory of knowledge, any plausible answer to all concrete questions emerging from the fact that man is endowed with the capacity of reasoning—that he is able to distinguish in his own noetic activities between pure reason (dealing with matters of truth and untruth), ethical, i.e., practical reason (working primarily with the distinction between good and bad) and aesthetic reason (attributing the qualities of beautiful and ugly to the things in the human world)—has no other choice but simply to take the “monistic” hypothesis into consideration. The “knowing” man must get rid of everything that does not comply with it. He has to leave, as if forced by its coercive power, his pre-critical past behind and enter into a new universalistic era dominated and wholly permeated by his modern “science.” In short: the necessary consequence of the “Copernican turn” made in European history by Immanuel Kant is the birth of the modern European spirit with its progressivist understanding of human history. The most important implication of this was the ontological degradation or even conscious denial of all human knowledge that had previously helped man to orient himself in the world: his “common sense.”

The stance of pragmatic American philosophers must be seen as a gentle and thoughtful rejection not of the value of Kantian arguments, which were praised highly by William James, but of that absoluteness with which the monistic philosophy was presented. Against the ontological hypothesis which enthrones the one Knower “conceived either as an Absolute or as an Ultimate,” the pragmatists raise “the counterhypothesis that the widest field of knowledge that ever was or will be still contains some ignorance.... Some bits of information always may escape”:

This is the hypothesis of *noetic pluralism*, which monists consider so absurd. Since we are bound to treat it as respectfully as noetic monism, until the facts shall have tipped the beam, we find that our pragmatism, though originally nothing but method, has forced us to be friendly to the pluralistic view. It may be, that some parts of the world are connected so loosely with some other parts as to be strung along by nothing but the copula *and*. They might even come and go without those other parts suffering any internal change. This pluralistic view, of a world of *additive* constitution, is one that pragmatism is unable to rule out from serious consideration. But this view leads one to the farther hypothesis that the actual world, instead of being complete “eternally,” as the monists assure us, may be eternally incomplete, and at all times subject to addition or liable to loss.¹⁹

¹⁹ James, *Pragmatism*, 165–66.

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When we adopt a pluralistic view of the world, several fundamental things will change. First, we will lose from our sight the systematic, i.e., static conception of noesis, seen by the one omniscient knower, consisting of individual pieces, the validity of which has been “scientifically” tested and which are assembled into a coherent, i.e., non-contradictory whole. Instead, we will tend to focus more on the problem of noesis as a process, on the dynamic aspects of the life of the mind we are part of, in spite of our finite bodily existence. We will start discovering the temporal dimensions of the fundamentally human situation which was discovered first by Socrates and two generations later philosophically analyzed by Aristotle, who defined humans as those who do not possess the divine knowledge of the One Knower but are always striving to escape their ignorance they are aware of, because “by nature (they) desire to know.”²⁰

Our minds thus grow in spots; and like grease-spots, the spots spread. But we let them spread as little as possible: we keep unaltered as much of our old knowledge, many of our old prejudices and beliefs, as we can. We patch and tinker more than we renew. The novelty soaks in; it stains the ancient mass; but it is also tinged by what absorbs it. Our past apperceives and co-operates; and in the new equilibrium in which each step forward in the process of learning terminates, it happens relatively seldom that the new fact is added raw. More usually it is embedded cooked, as one might say, or stewed down in the sauce of the old.²¹

This figurative description of the process within which human knowledge is acquired, grows and is altered in the course of time, clearly implies an utterly different, much more positive attitude of the “pragmatist” towards “common sense” than was the position of monism. At the same time, pragmatism has an incomparably higher appreciation for the singular facts given in the immediate experience of individual human beings, living in the presence of the known past, but open towards the unknown future. In short: pragmatism as a noetic stance is much more embedded in the concreteness of human life than in the abstract generalities apprehended by those who subscribe to a “monistic” school of thought. It simply respects the fundamental fact of our noesis, that the bulk of our knowledge is inherited from our ancestors, from our family or tribe, from the society, culture and civilization we were born into. At the same time, however, pragmatism is ready to test the truths that we received from

²⁰ Aristotle, *Metaphysics*, 980a21: “pantes anthrópoi tou eidenai oregontai fysei” (All men by nature desire to know).

²¹ James, *Pragmatism*, 168–69.

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the past and believe in, against the changing realities of our life, against all these challenges we are exposed to as free human beings, who had no choice but to act on their own, to use their own capacity of judgment and to make, at the right time, the right decisions.

In this regard, the distinction made by James between the use of “common sense” in practical talk—as man’s “gumption” and “good judgment” and in philosophy which understands by “common sense” the “use of certain intellectual forms and categories” inherited from the past—is not as great as it might look from his own distinctions and definitions.²² Pragmatists are indeed sincerely interested and want to explore what “our fundamental ways of thinking” are “which have been able to preserve themselves throughout the experience of all subsequent times”—as customs or habits of thought, as our beliefs—because they are well aware that without these discoveries, sometimes of our “exceedingly remote ancestors,” our capacity for good judgment and good action would be seriously damaged or even utterly paralyzed. Truth as the supreme noetic category and “good” as the basic orientation point of our practical life, come in the pragmatic perspective together again, bridging the gap between them and other “*transcendentalia*” (*esse, verum, bonum, pulchrum*), which opened in Western civilization with the advent of the Modern Age.

Truth is *one species of good*, and not, as it is usually supposed, a category distinct from good, and coordinate with it. *The true is the name of whatever proves itself to be good, in the way of belief and good, too, for definite, assignable reasons.*²³

‘What would be better for us to believe?’ This sounds very like a definition of truth. It comes very near to saying ‘what we *ought* to believe’: and in *that* definition none of you would find any oddity. Ought we ever not to believe what it is *better for us* to believe? And can we then keep the notion of what is better for us, and what is true for us, permanently apart?²⁴

To sum up in the context of analysis: It is this shift from the “monistic” perspective, which has long dominated modern European thought, to the point of view adopted by American pragmatism, that can heal, according to Voegelin, our contemporary spiritual disease. It is so because the move from monism toward pragmatism opens the door again to classical political

²² James, *Pragmatism*, 171.

²³ James, *Pragmatism*, 75–76.

²⁴ James, *Pragmatism*, 77.

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thought, which can help to restore the impaired balance of the European political mind. From the pragmatic perspective, one can rediscover under the conditions of modernity the classical Socratic question concerning the human good and making humans “give an account” of their lives and care about “the greatest improvement of the soul,” to repeat once more the above-quoted passage from Plato’s “Apology.” One can recapture for contemporary use the meaning of the classical concept of politics as a form of life of free human beings, the meaning of the classical concept of law, the only ruler capable of making all citizens equal, the meaning and scope of natural rights which are inalienable because they are not the product of human activity but have been established by God.

All this explains why “pragmatism” is a genuine American philosophy and why it is a pragmatic attitude that characterizes more than anything else the frame of the American political mind. But more than that: It is my conviction that it was the rediscovery and new “pragmatic” reading of Aristotle and of the other classical political philosophers by American “founding fathers” that served as one of the major spiritual inspirations for the American Revolution.

Whereas the fundamental orientation of Voegelin’s philosophy remained the same as in his Viennese period, the political circumstances of his work—Voegelin became an American citizen already in 1944—dramatically changed. The United States, according to Voegelin, was the only country which could save politically the threatened Western civilization and whose reality at the same time offered a solution for that civilization’s spiritual rebirth. Whereas residence in crisis-stricken Central Europe called for an existence of a more Socratic type, life in America made him adopt a Platonic perspective, trying to explore the phenomenon of the crises of European civilization in its full scope and with all ontological implications and penetrate to the very heart of contemporary problems. In order to understand the blind alley in which mankind was finding itself in the middle of the twentieth century, and to help to cure the illness destroying the European spirit, Voegelin was ready to study the vast amount of material belonging to the discarded spiritual heritage—both European and non-European—using not only all the instruments he brought with him to America from his Central European past, but also the American inspiration of “common sense” which served him as a beam of light in the Dark Times of European civilization. His task, however, was enormous. Not being designed as a regular academic project, but rather as an emergency operation in

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defense of civilization, it can evoke in the mind of a pessimist the memory of eternal punishment of mythical king Sisyphos, or at least—in the mind of a more optimistic observer—one of the legendary heroic labors of Heracles.

Relentlessly and earnestly, Voegelin tried to battle his way through the whole history of mankind and finish his work on the new science of politics—on the new philosophy of history—the central theme of which is the never-ending struggle within human society between the forces of order and disorder. What we see, however, when we examine the results of his efforts, is not the hero returning victorious from his battles, but an excellent, profound philosopher whose results are endowed with power to generate insights. But alas, when they are built into an opus, they seem to be disintegrating in the author's hands. Voegelin returns humbly, again and again, to his point of departure and tries to embrace the accumulated material mastered with unparalleled “bravura” into his grandiose thought-construction. Instead of the originally planned history of political ideas, he produces a study of the relation between history and order. But even this project he does not finish. The never-ending search for order is increasingly interrupted by the classical philosophical theme of preparation for death and meditation aimed beyond the sphere of ephemeral human affairs.

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Let us go through Voegelin's intellectual biography once more again with special focus on the question of the law. It is my contention that it is exactly here, where the need to reflect on Voegelin's life experience and “return” Voegelin to Central Europe is indeed topical. It is the realm of jurisprudence that Voegelinian ideas should be studied and possibly “applied” in the first place if Central Europeans want to understand better their totalitarian past, reexamine their historical identity and vision of the world, and reformulate their political programs for the transition from the twentieth to the twenty-first century.

Voegelin studied law at the University of Vienna under Hans Kelsen, who was undoubtedly one of the most important European jurists of the twentieth century and, as the author of *Pure Theory of Law*, the founder of a school of legal thought of enormous influence, especially in Central Europe.²⁵ Sharing with Voegelin the fate of political refugee,

²⁵ In the Czech Republic, Kelsen's students (František Weyr, Ota Weiberger, Václav Chytil, Vladimír Kubeš, Zdeněk Neubauer, Karel English, Jaroslav Kaláb, Jaroslav Krejčí, Josef Kepert, Adolf Procházka, Jaromír Sedláček, just to name the most accomplished ones among them) formed the so-called “Brno School of Theory of Law” (Brněnská škola právní

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Kelsen also spent the second half of his life in America, but intellectually their paths diverged. Voegelin, however, never committed real “parricide” and did not fully abandon his great teacher, who represented for him the end of a certain European tradition, a tradition that had to be properly understood within its own historical context and limits. This is, however, exactly the reason why, according to Voegelin, it is Kelsen’s “pure theory of law” where we should start the search for the way out of the current impasse; where we should start testing our capacity to understand our own situation as far as the idea of law and its place in human society is concerned; where we should be looking for “a point of departure for an advancement towards the reconstruction of a complete political science.”²⁶

From the American perspective, wrote Voegelin in a small article published in 1927 with the aim of introducing Kelsen’s *Allgemeine Staatslehre* to the American public,²⁷ the least comprehensible trait of Kelsen’s legal thought is its foundations in neo-Kantian positivistic logic. In his basic arguments Kelsen departs from the Marburg School of Simmel and Windelband. What determines the character of data we are primarily dealing with in the realm of law—be it legal codes or statutes, procedural rules, case-law, etc.—is according to him not their material content, but a form in which they are given, their specific *a priori*, in Kantian terminology, antecedent to all forms of experience. Before studying or eventually constructing any positive legal system one must be aware of the fundamental distinction between the “original categories” of *Sein* (being, Existence, referring to the realm of what is) and *Sollen* (ought, Essence, referring to the realm of what should be). This point of departure becomes clearer when we move from the ontological to the epistemological level: The distinction between *Sein* and *Sollen* is translated into the distinction between the causal method of natural sciences (studying the causal relations between existent things), and the normative method applied in cultural sciences (dealing with all various aspects of cultural objectification).

The basic aim of Kelsen’s “pure theory” is to approach the law strictly as a positively given normative system, i.e., as a structured, hierarchically (top-down) organized and

teorie). Its influence is still remarkable and has a profound effect on our current post-communist jurisprudence and constitutional discussion.

²⁶ Voegelin, “Pure Theory of Law and of State,” in *The Collected Works of Eric Voegelin, vol. 7: Published Essays, 1922-1928*, trans. M.J. Hanak, eds. Thomas W. Heilke and John Von Heyking (Columbia, MO: University of Missouri Press, 2003), 98.

²⁷ Voegelin, “Kelsen’s Pure Theory of Law,” in *The Collected Works of Eric Voegelin, vol. 7: Published Essays, 1922-1928*, 182-91.

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complete whole, composed of elementary legal rules (maxims) derived from the basic norm (*Die Grundnorm*), the first and supreme legal maxim, articulating the primordial will of the sovereign, i.e., the state. The simplest analytical element of this system, the norm, must have a clear formal structure corresponding to the normative a priori of *Sollen*. The norm, *Rechtsatz*, must be, explains Voegelin to his American readers,

composed of two parts: The first contains a statement concerning unqualified human behavior, the second makes a statement concerning the coercive behavior (*Zwangsakt*) of the state official. The complete rule is a hypothesis making the coercive behavior of the state official dependent on the previous occurrence of the behaviors and events stated in the first part of the rule.²⁸

Consequentially, Kelsen's concept of the state, laid down and developed in his *Staatslehre*, also departs from the neo-Kantian paradigm. The state is fully identified with its law. It is conceived as a materialization of the will of a concrete human society to erect the protective walls of legal order around all manifold forms of its life. The state should not be built, justified, explained as a shelter of its national, i.e., religious, cultural or linguistic identity, but only as the sole source of its law and the guarantor of its sovereignty. According to Kelsen, the theory of the state has to cope first with the question of its origin and its position within international society under international law; then it proceeds to its basic law, the state constitution, whose task is to provide the overall composition or anatomy of the state body; then to the state organs performing their diverse functions in the process of creation of norms and their enforcement; then to all concrete forms and procedures of how the principle of "Rechtstaat" is realized in all diverse relations between the citizens and the state and between the citizens themselves.

From the beginning, however, it is evident that the above-indicated reduction of legal orders to "a system of postulates in the realm of *Sollen*"²⁹—that can indeed, as Voegelin pointed out, "*surprise the American lawyer who is accustomed to a wealth of rights, duties, privileges, powers, liabilities, and disabilities*"³⁰—was problematic and in a way self-defeating. No matter how purified Kelsen's theory could be from any non-normative content and from any remnants of state doctrines originating in natural law, it never could be fully dissociated

²⁸ Voegelin, "Kelsen's Pure Theory of Law," 185.

²⁹ Voegelin, "Kelsen's Pure Theory of Law," 184.

³⁰ Voegelin, "Kelsen's Pure Theory of Law," 185.

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from the reality of human society it was supposed to form and order. The legal theories of his predecessors—German jurists such as von Gierke, Laband, Gerber or Jellinek—reflected the rise of Bismarck to power and went along with his ambition to unify Germany and to rebuild it as a modern constitutional federal state. For Kelsen, the main point of reference was the reality of dismemberment of the Austro-Hungarian Empire, defeated in the Great War 1914-1918. His “pure theory of law” based on the categorical distinction between *Sein* and *Sollen*, pretending to isolate normative legal order from any undesirable interference of the supreme echelons of “naturally ordered” human society, simply could not remain isolated from the real events happening in the human world. Can one imagine a better illustration of the fundamental problem of the neo-Kantian foundations of Kelsen’s legal doctrine than the fact that Kelsen, who had been asked to draft the new Austrian Constitution and proceeded as much as possible in conformity with the principles of his “pure theory,” had to see his finished magnum opus changed profoundly by the empirical, historically determined Austrian political reality?

Nonetheless, no matter whether the result of the genesis of the Austrian constitution was “pure” or rather “tainted,” in 1927, Voegelin still speaks about it in unambiguously positive terms. He evaluates Kelsen’s practical achievements not only as “the most important event in the modern history of constitutions from the point of view of legal technique,” but “with its background of the pure theory of law,” as “a remarkable contribution to the development of democracy.”³¹

He concludes his article with a kind of summary of Kelsen’s position that does not seem to be showing any sign of the approaching spiritual crisis:

By transferring the legal system into an ideal realm of meanings and reducing it to an instrument, Kelsen destroys any undue respect for existing legal institutions. The content of law is shown to be what it is: not an eternal, sacred order, but a compromise of battling forces—and this content may be changed every day by the chosen representatives of the people according to the wishes of their constituencies without fear of endangering a divine law.³²

No state entity hides behind the law and issues the legal rules; every rule can be traced back to its origin in a definite governmental agency, which again is but a part in the machinery set up for turning out legal rules in accordance with the desires of different

³¹ Voegelin, “Kelsen’s Pure Theory of Law,” 190.

³² Voegelin, “Kelsen’s Pure Theory of Law,” 190.

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social groups. The pure theory of law thus signifies not only an important progress in legal analysis and technique, but also a development from the half-absolutistic philosophy of the German empire towards the spirit of the new democracy.³³

“The spirit of the new democracy,” however, prevailing in the years after World War I, did not have a long duration in Europe. The totalitarian movements seized power first in Italy and then in Germany, and in both countries a profound change of form of government took place by means of constitutional amendments, i.e., in the continuity of the existing legal order. Austria was first transformed from a democratic republic into an authoritarian state and a couple of years later annexed to Germany. Both Kelsen and Voegelin had to escape from Central Europe and found new homes in America. Kelsen devoted his time to the new international law initiated by the creation of the United Nations. Voegelin focused on the history of political ideas and tried to elaborate the foundations of his “new science of politics.” He returned to the fundamental questions concerning the nature of the law and jurisprudence in his courses taught at the Louisiana State University from 1954 to 1957.

The historical events that took place in the world during the three decades that passed between the publication of Voegelin’s article about Kelsen in 1927 and the appearance of an above-mentioned mimeographed “temporary edition exclusively for the use of students registered in Voegelin’s course on the nature of the law”³⁴ in 1957 changed substantively the situation of mankind, and consequently, influenced his thought heavily.

The world after Auschwitz could not, as it was plainly stated by Karl Jaspers, become the same again as it had been before the German Reich started implementing its hegemonic plans and waged war upon anyone who dared to oppose them—in the end upon the whole world of Western, i.e., Judeo-Christian civilization. The unprecedented crimes against humanity committed by the Nazi regime that showed total disrespect for elementary human compassion and the absence of “common sense” had a mobilizing effect and catalyzed a strong international response. As Voegelin put it in his famous review of Hannah Arendt’s “Origins of Totalitarianism”:

³³ Voegelin, “Kelsen’s Pure Theory of Law,” 191.

³⁴ Robert Anthony Pascal, James Lee Babin, and John William Corrington, eds., “Introduction,” *The Collected Works of Eric Voegelin, vol. 27: The Nature of the Law and Related Legal Writings* (Baton Rouge, LA: Louisiana State University Press, 1991), xiii.

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What no religious founder, no philosopher, no imperial conqueror of the past has achieved—to create a community of mankind by creating a common concern for all men—has now been realized through the community of suffering under the earth wide expansion of Western foulness.³⁵

But what happened after the war was also far from satisfactory. On the one hand, the main war criminals were tried before the International Court of Justice and a new international organization of the United Nations was created with the intention to eliminate wars and to enhance peaceful relations among all nations of the world. The problem, however, was that the Soviet Union, one of the winners of the war, was one of the main disseminators of the totalitarian disease. The new internationalism under the aegis of the United Nations—raising hopes in many people that mankind was finally finding itself on the way to the realization of Kant’s old project of “perpetual peace”—was simply not based on a realistic assessment of the emerging international situation because it did not reflect at all its crucial aspect: the Soviet threat. For a political realist like George Kennan, who was the first to make this point in his famous long telegram from the American Embassy in Moscow, and who was later assigned to formulate the basic principles of US postwar foreign policy, the right response to the emerging challenge was not a utopian belief in the persuasive power of Kantian ideals, but a very clear message to be sent to the Soviet enemies of American values and Western civilization: the policy of “containment.” The result was what was realistically achievable, i.e., a “bipolar political architecture” in Europe with the following implication for Europeans: her Western inhabitants enjoying freedom and gradually progressing from the painful postwar reconstruction towards prosperity under the American security umbrella; her Eastern nations (including a large part of what used to be Central Europe) being deprived of freedom and united with the Soviet Union “forever,” as one of the favorite ideological slogans of totalitarian rulers went, sentenced to life in the totalitarian prison under Soviet domination.

In short: observing the international developments in the 1950s, when Voegelin was teaching in Baton Rouge, there was only one evident conclusion if one did not want to abandon the requirements of “common sense”: World War II did not bring the solution to the world crisis caused by the emergence of totalitarianism. Soviet communism was not a partner for the countries of the Free World to be appeased and invited to participate at the

³⁵ Voegelin, “The Origins of Totalitarianism,” in *The Collected Works of Eric Voegelin, vol. 11: Published Essays, 1953-1965*, ed. Sandoz (Columbia, MO: University of Missouri Press, 2000), 15.

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dialogue concerning the new world order, the dialogue of mankind that has been constituted “through the community of suffering under the earth wide expansion of Western foulness.” On the contrary, the rise of the Soviet Union to the position of world power was an ominous sign, demonstrating how challenging it was going to be to protect the spiritual foundations of Western civilization for the future.

In 1924 Voegelin was a young, talented and well-educated man, whose basic aim was to build a bridge between his Central European background and the newly discovered American experience, and who still could believe optimistically that the Great War of 1914–1918 gave a historical opportunity to “the spirit of the new democracy.” Thirty years later, he was already an accomplished and respected scholar in the field of political science and philosophy, whose own life experience demonstrated clearly the depth of the current spiritual and political crisis of European humanity; a classicist par excellence whose fundamental objective was to reexamine the richness of classical political ideas and symbols of the past and bring them back to life, to start with their help a new chapter in the dialogue of mankind. He was in the middle of a successful academic career in America and discovered in the United States a “promised land” of pluralistic common sense practiced in American politics and jurisprudence. Moreso, being confronted with various aspects of life in his new home, it was here that Voegelin gained, according to his own words, “an understanding ... of the plurality of human possibilities realized in various civilizations, as an immediate experience, an experience *vécue*.”³⁶ It was exactly his enlarged understanding of American common sense that opened before him a vast field of the never-ending search for order as it unfolds and exists in human history. When he distributed the mimeographed synopsis of his course among his students—“Voegelin’s only comprehensive and systematic text on law”—he already had an articulate knowledge of both method and objective in his own research. As it is stated clearly in the editor’s introduction to Volume 27 of Voegelin’s *Collected Works*:

It is a product of the mature Voegelin. He wrote it at a time when he had settled upon the necessity of abandoning his original plan of writing a history of political ideas, published “The New Science of Politics”, and the first three volumes of “Order and History”, and taught the course of jurisprudence four years. He had to come to realize that ideas do not have a history, that only people do, and that their history consists of their successes and failures in the differentiation of their noetic and pneumatic experience of life under God. For the same reason, he had to come to realize that law

³⁶ Voegelin: *Autobiographical Reflections*, 60.

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cannot have a history apart from the history of the society whose order it articulates, and that its essence, or nature, is the structure of the society whose law it is.³⁷

The way in which Voegelin opened his inquiry into the nature of the law had to be surprising for an average American student unprepared for philosophical arguments and accustomed to standard pragmatic American jurisprudence, where the meaning and content of all concepts were perceived primarily in relation to their ability to organize the thought of practicing lawyers. What makes the law the law, what is its essence, in spite of the fact that there is “a plurality of legal orders accepted as valid in a corresponding plurality of societies”?³⁸ In order to answer this question, however, we are not advised to start directly comparing different laws and legal systems, but depart from the phenomena of law, as they are given in our daily, pre-analytical experience, as they exist in the world in which we live and understand ourselves with the help of our “common sense.”

Voegelin starts his quest accepting for the moment Kelsen’s view that the law is a system, “an aggregate of rules,” enforced in a concrete historical society, but characterized by their timeless validity. Observing how a legal system functions, we see immediately that the validity of its rules does not stay the same but rather “comes and goes,” appears and disappears in time. The legal order is not a static system but rather an entity that finds itself in the permanent process of change. It obviously cannot change all its parts at once. When we say, “it changes,” it necessarily means that its own “essence” is of a “historical” nature; that “there is always, from one change to another, an unchanged corpus of rules, sufficiently large to retain the identity of the order.”³⁹

Formerly valid rules (rules that have been derogated or abrogated by new ones) and rules that are going to be valid (rules *de lege ferenda*) simply cannot be treated as invalid rules without further qualification, argues Voegelin. The identity of legal order, the source of validity of its norms, is inseparably connected with the fundamental fact that it has not only its presence as “an aggregate of rules” but also its past and its future.

The temporal character of legal order becomes even more obvious when we raise the question of its validity not *in abstracto*, but in the context of a concrete legal action, let us say

³⁷ Pascal, Babin, and Corrington, “Introduction,” *The Collected Works of Eric Voegelin*, vol. 27, xiii.

³⁸ Voegelin, *The Nature of the Law*, 7.

³⁹ Voegelin, *The Nature of the Law*, 12.

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a concrete decision of some court. “The court decision is the point at which the law becomes valid for the concrete case.” If we started from the law as “an aggregate of valid norms” and had to cope with the problem of its change, here we would be confronted with the problem that reminds one of the paradoxes of Zeno:

If we remember the aura of uncertainty that surrounds every serious litigation, we must admit that we never know what the aggregate of valid rules is as long as the court has not handed down its decision in the concrete case. Once the court has reached its decision, the particular aggregate whose validity has become complete with the decision, and thereby incorporates the decision itself, already belongs to the past. If therefore, validity is “of essence of the law” and if every aggregate of rules in the series called legal order belongs either to the past in which it is no longer valid or to a future in which it is not yet valid in the decisive concrete case, then “the law” seems to have disappeared altogether from the realm of existents.⁴⁰

So, what is the law? Just to sum up once more Voegelin’s answer to his American students: The law cannot be conceived as a separate entity. It must be always analyzed and understood in the context of social order. The attention that is usually paid only to the content of norms or eventually to their practical use in concrete situations should be directed also, and maybe primarily, to those structures within which the law is given to us on the pre-analytical level of our experience. The law in the sense of the aggregate of valid rules that has come into existence in the process of lawmaking defined and regulated by the highest, i.e., constitutional norms, must be reconnected with the pre-analytical understanding of the law within a concrete historical society that is being ordered by the law; a society that respects and guards the law as the very substance of its order, as its fundamental value and *conditio sine qua non* of its own existence.

Such a reconnection between the law and the pre-analytical experiential basis in the context of which the law is originally given opens a new field of inquiry and generates a new set of questions. If the above mentioned Zenonic argument brings to our attention the temporality of the law—the fact that it is not primarily a static aggregate of norms but a process whose fundamental objective is to order a society and to make its individual members free and equal—the emphasis on the phenomenological approach in the field of jurisprudence points to the problem to be singled out in Voegelin’s examination: “the equivocal use of ‘the

⁴⁰ Voegelin, *The Nature of the Law*, 16-17.

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law’ in the sense of valid rules made by organs of government and ‘the law’ that somehow pervades the existence of man in society.”⁴¹

What is preserved in this pale equivocation of our everyday language is the profound insight, rarely to be found in contemporary legal theory, that “the law” is the substance of order in all realms of being. As a matter of fact, the ancient civilizations usually have in their language, a term that signifies the ordering substance pervading the hierarchy of being, from God, through the world and society, to every single man. Such terms are the Egyptian *maat*, the Chinese *tao*, the Greek *nomos*, and the Latin *lex*.⁴²

One does not need to keep going in the train of thought well known to Voegelin’s reader, which only demonstrates the central message of his jurisprudential course: to realize that one cannot inquire into the nature of the law without being able to raise the fundamental questions concerning Western history that can be formulated only by means of Western philosophy. I have no way of knowing how Voegelin’s American students reacted to this turn from the realm of experience they could examine with the help of the American brand of “common sense” to the vast area of ontological problems that can be identified within the open field of the universal history of mankind. Nonetheless, what is evident is that their teacher was a genuine philosopher who did not want to miss a single opportunity to challenge the way in which people he had some business with become used to perceiving and understanding their “matters,” to shake them out of their shells; to lure them from the *terra firma* of their alleged commonsensical certainties to the depths that open by virtue of fundamental philosophical questions; to tell them that they should “care for their souls”, i.e., not to have opinions only, but to seek true knowledge if they wanted to act prudently, to serve the “common good” of their societies and to keep them open and free.

Looking back on what has happened in and with Central Europe in the past fifteen years, one must admit, first of all, that the situation has gotten much more complicated, the impact of the collapse of Communism being much wider and farther reaching than it looked in the heyday of the revolutions that set the whole region on the path of democratization. We certainly need to accept the “rule of law” as the main principle to rebuild our states and the whole region to complete our return from our Babylonian captivity to Europe—to reintegrate

⁴¹ Voegelin, *The Nature of the Law*, 24.

⁴² Voegelin, *The Nature of the Law*, 24.

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ourselves into the transatlantic community of open societies, respecting unalienable human rights and freedoms, allowing our economies to be regulated by market forces and not by governments, and accepting the culture and form of democratic government. We certainly need “common sense” to overcome or at least to reconcile ourselves with all these unfortunate Central European traditions—dying hard and changing slowly—that caused us both many troubles and individual suffering in the past century. We desperately need it to make the right choices here and now on the current historical crossroads, in the context of new threats to the Western freedom that global mankind is confronted with at the beginning of the new millennium. However, to absorb and “metabolize” the novelty of our situation we need a renaissance of classical philosophy in Central Europe, as it is gravely needed in the rest of the world. We need to listen attentively and to respond to that call that is connected with the great Central European philosophers of the twentieth century such as Jan Patočka and Eric Voegelin. Their greatness and their potential immortalization is based on the fact that they both were classicists who understood the message that is conveyed in the fragment of Heraclitus that is used as epigraph in this essay: mortals are immortals and immortals are mortals. How should we understand this cryptic statement? What does it mean? It turns our attention to the middle term between mortality and immortality. It does not turn us away from our transient political matters. It just reminds us, just as old Socrates did, that we should care first for something that is more important than “the greatest amount of money and honor and reputation”: “wisdom and truth and the greatest possible improvement of the soul.” Whether this message with which he himself failed, when tried by the Athenians, is persuasive enough to be taken seriously by a sufficient number of Central Europeans, still remains to be seen. But it is certain that if it were missed altogether and fell only on deaf ears, our hope for freedom and all the efforts to reintroduce democracy to our region after the collapse of Communism in 1989 would be in vain.