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Abstract

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ESSAYS

CZECH CONSTITUTIONAL DEMOCRACY: FOCUS ON THE CZECH DUAL EXECUTIVE POWER AND THE FUTURE SENATE

*Jack Van Doren**
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INTRODUCTION

The main focus of this Essay is the potential dynamic tension in the Czech dual executive power. The Czech presidency, presently occupied by the former dissident Vaclav Havel, is commonly perceived in the Czech Republic as a weak presidency. If it is true that President Havel's office can justifiably be described as weak, is this due to Constitutional restraints on the presidency, or is it a function of the personality of the current occupant of the presidency? This Essay also discusses the implications of the November 15-16, 1996 Senate elections on the Czech democracy.

I. *HISTORICAL BACKDROP*

Historically, the Czechs and Slovaks stand alone among the Slavic nations in having had direct experience in democratic self-government prior to World War II.[1] The Czechs and Slovaks have characteristically been ruled by foreign empires, described by one writer as alien, ruthless, and oppressive dictatorships.[2] Prior to World War I, the Austrian Hapsburgs, an externally

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1. *See* STEPHEN BORSODY, THE TRAGEDY OF CENTRAL EUROPE, NAZI AND SOVIET CONQUEST AND AFTERMATH 54 (1980); CZECHOSLOVAKIA, A COUNTRY STUDY xix (Richard F. Nyrop ed., 1982) [hereinafter Nyrop] (stating that between world wars I and II Czechoslovakia was most democratic, libertarian, and tolerant society in Central Europe).

2. *See* Nyrop, *supra* note 1, at xix.

based autocracy, ruled the territory of the Czech Republic for a continuous period of more than three centuries from the sixteenth century[3] until the collapse of the war torn Hapsburg Empire in 1918. After the Industrial Revolution, what is now the Czech Republic became the center of the Austro-Hungarian industrial empire.[4]

During the nineteenth century, the latter period of the Austro-Hungarian Empire, the cultural groundwork was laid for the forthcoming Czech and Slovak state through a national revival of Czech language and culture.[5] Thus, upon the defeat of the Austro-Hungarian Empire in World War I, the Czechs and Slovaks formed a nation state, known as Czechoslovakia.[6] The Constitution of 1920 formalized the relationship,[7] setting the stage for an interwar period of democracy and market-oriented development. Thus, between the two world wars, the new, independent state of Czechoslovakia had gained the well-deserved reputation as the showcase of democracy in Slavic Europe under the strong and steady leadership of President Tomas Garrigue Masaryk.[8] The Czechoslovakian democracy, during the interwar period, was one of the most developed countries in Eastern Europe and possessed an industry that was world renowned for superior quality goods.[9] This scenario was interrupted in 1938,[10] following the now infamous Munich meeting, in which part of Czechoslovakia was ceded to Germany. In 1939, Hitler's Germany annexed Czechoslovakia.[11] Following this were the calamitous

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3. *See id.* at 3. The Czech Bohemian Kingdom is described as being part of the Austrian half of the Hapsburg Empire from 1526. *Id.*

4. *See* Carol M. Welu, *The Czech Republic Goes Its Own Way*, LEGAL TIMES, April 12, 1993, at 32-33 (stating that three-fourths of Austro-Hungarian Empire's industry is in what is now Czech Republic).

5. *See* Nyrop, *supra* note 1, at 21-22.

6. *See* Roberta Barbieri, *Czechoslovakia's Movement Toward a New Constitution: The Challenge of Establishing a Democratic Multinational State*, 13 N.Y.L. SCH. J. INT'L. & COMP. L. 99, 102-04 (1992).

7. *See id.* at 104; MILTON ANDREW, TWELVE LEADING CONSTITUTIONS 5-38 (1931) (providing text of 1920 Constitution).

8. *See* H. GORDON SKILLING, T.G. MASARYK 172 (1994) (stating that Masaryk returned to Czech lands and was elected President in 1918); OTTO ULC, THE JUDGE IN A COMMUNIST STATE, A VIEW FROM WITHIN XII (1972).

9. *See* Heather Weibel, *Avenues for Investment in the Former Czechoslovakia: Privatization and the Historical Development of the New Commercial Code*, 18 DELAWARE J. OF CORP. L. 889, 890 (1993).

10. *See* Nyrop, *supra* note 1, at xix.

11. *See id.* at 3.

years of German-Nazi occupation during World War II.

Six years later, in 1945, Germany lost World War II and Russian troops liberated Czechoslovakia from the Germans in the East. U.S. troops liberated the country from the West as far as Plzen.[12] When independent statehood was restored in 1945, there was a short lived revival of democratic rule. From 1945 to 1948, Communist political forces formed a strong power base in the Czech Government.[13] Communists gained control of the Government, Prime Ministry, by winning thirty-eight percent of the popular vote in a 1946 election.[14] The final push for power in 1948 assumed the form of a coup d'etat.[15] In 1948, the Communist takeover brought a Communist dictatorship to power.[16] Moscow, an outside power, encouraged and underwrote the dictatorship and forcibly reimposed it in 1968.[17]

The Communists subsequently ruled for more than forty-one years from 1948 to 1989. In the 1960s, the Dubček regime attempted a liberalization, known as the Prague Spring, which Moscow found unacceptable. Consequently, Moscow restored socialist solidarity with Russian tanks in 1968.[18] Following the Prague Spring, passive resistance may have increased. It was observed that workers did only the absolute minimum of work to avoid dismissal, while absenteeism and alcoholism were rampant.[19]

In 1977, a protest petition signed by numerous dissidents appeared and became known as the Charter 77.[20] Vaclav Havel and others led a protest which began only as a demand for greater freedom, but gave rise to the "Velvet Revolution." The Velvet Revolution was a startling, almost incredibly peaceful transfer of power from the ruling Communists to liberal democrats. In the beginning of the 1990s, free and open elections were held, and a multiparty Parliament was elected in which

12. *See id.* at 208.
13. *Id.* at 3.
14. *See id.* at 46, 47.
15. *Id.* at 210.
16. *See id.* at xix, 210.
17. *Id.* at xix-xxi.
18. *Id.* at xx, xxi.
19. *See id.* at xxii, xxv (explaining that people received wages, not for work, but for going to work).
20. *See id.* at xxii-xxiii, 235 (stating that several hundred citizens who signed Charter 77 were subject to severe reprisals).

Vaclav Klaus came to power as Prime Minister. Prime Minister Klaus came to power[21] on a platform of radical free-market reforms modeled after the policies of British Prime Minister Margaret Thatcher. The Parliament selected Vaclav Havel as President.

In 1992, difficulties between Czechs and Slovaks came to the fore. What followed was the "Velvet Divorce", the division of Czechoslovakia into two separate and independent states, effective January 1, 1993.[22] There are strong historical reasons for the incompatibility of the Czechs and Slovaks: different religions such as Roman Catholic Slovaks and iconoclastic Czechs, the contrast of heavily industrialized Czech lands contrasted with a largely agrarian Slovakia, and Slovak grievances over Czech dominance, paternalism, and feelings of superiority.[23] Nonetheless, a majority of the Slovaks did not want the separation.[24] President Havel made valiant attempts to mediate the dispute, which ultimately failed as the Czechs and Slovaks formed independent states. President Havel sought, unsuccessfully, to circumvent a Parliament which became committed to separation, by trying to obtain power to call a referendum on the separation issue.[25] When it became clear that these reconciliation efforts would not be successful, Havel resigned as President, refusing to preside over the dismemberment of Czechoslovakia.[26]

After the split between the Czechs and Slovaks, the Czechs found themselves needing a new Constitution. The drafters of the Czech Constitution used the Czechoslovakian 1920 Constitution as a model.[27] The U.S. Constitution was reportedly the model for the 1920 Constitution.[28] The current Czech Constitution, adopted in 1992, is at first blush a reassuring document. For example, the protection of property rights and the general

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21. *See* Welu, *supra* note 4, at 33 (stating that Vaclav Klaus is among most conservative leaders in Eastern Europe).

22. *Id.* at 32.

23. *See* Barbieri, *supra* note 6, at 101, 102, 105, 107.

24. *See id.* at 121 (discussing poll indicating that only 19% of Slovaks wanted separation).

25. *Id.* at 119.

26. *See id.* at 123.

27. *See* Vojtech Cepl, *Constitutional Reform in the Czech Republic*, 28 U.S.F. L. REV. 29, 32 (1993).

28. *See* Nyrop, *supra* note 1, at 28, 158 (indicating that Masaryk modelled 1920 Constitution on U.S. Constitution).

democratic nature of the Constitution may reassure potential Western investors. The Constitution also offers a broad spectrum of human rights guarantees, and it is admirably concise. There is, however, a potential for dissonance and conflict built into the Czech Constitution in the composition of a dual executive. This Essay does not mean to suggest that the capacity for dissonance and conflict is peculiar to the Czech democracy. Taking the U.S. Constitution as an example, the democratic ideas of separation of powers and checks and balances necessarily involves the potentiality of conflict and deadlock.

II. *PROVISIONS FOR PRESIDENCY AND PARLIAMENT*

The Czech Constitution of 1992 established a dual executive within a parliamentary system. While the president is the designated official to appoint the prime minister, the ultimate authority for the selection rests with the House of Deputies, which can accept or reject the president's choice. The president's power to dismiss the prime minister arises only if there is first a vote which indicates lack of confidence in the House of Deputies.

The constitutional provisions which create the dual executive do so by providing a series of powers which require the joint approval of the president and the prime minister. Thus, there results a dual executive with the president as head of state and the prime minister as head of the government. The drafters of the Czech Constitution apparently wanted to establish a dual executive in which both the president and prime minister would be armed with powerful weapons to influence, but not dictate, significant parts of legislation and public policy. Due to the shared distribution of executive powers, there is a troubling potential for deadlock.

The 1992 Czech Constitution also sets up a bicameral legislature, but due to political maneuvering and intrigue, the necessary implementation to elect and put in place the upper house, or Senate, did not occur until the end of 1995. The final creation of the Senate after the November 15-16, 1996 elections is a fitting resolution of the problem of the missing Senate which was raising disturbing questions about the rule of law in the Czech Republic.

III. *IS THE CZECH PRESIDENCY WEAK?*

The Czech presidency is perceived in the Czech Republic to lack effective power. Czech students indicated in papers and orally that they considered the presidency of the Czech Republic weak. On the other hand, President Havel often seems to outsiders to be a model president. He is better known outside the Czech Republic than Vaclav Klaus, the Prime Minister, who actually has wielded the most effective power in the Czech Republic in the day-to-day running of the country. Abroad, President Havel projects an abiding mantel of moral authority and legitimacy. The situation at home, however, seems quite different. He is widely regarded as an ineffectual person who is unable to translate his policies into government action. To some Czechs, President Havel appears to be whistling in the wind, moralizing in a vacuum. Thus, the Czechs, pragmatic and practical, tend to see President Havel's attempts at moral arbitration, often without noticeable effect, as worthy of derision if not contempt. Commentators, however, perceive presidential power as "significant."[29] Suggesting that there is a happy resolution and sufficient power in the executive, one commentator concludes that the executive power is well balanced between the president and the government.[30]

The situation is that the current Czech president is perceived as weak internally, but as possessing adequate or even substantial powers. This raises the following question: Is the weakness inherent in the constitutional powers of the presidency or is it due to the role that the current president assigns himself and, thus, a function of his particular personality, or both?

IV. *THE CZECH PRESIDENCY—EVOLUTION*

A. *Summary*

For perspective, we turn to the Czech Constitution of 1920, to compare or contrast the powers of the presidency. The presidency in the 1920 Constitution did not contain as many powers as the U.S. presidency,[31] but afforded more power to the presi-

29. *See* Cepl, *supra* note 27, at 33.

30. *See* George E. Glos, *The Constitution of the Czech Republic of 1992*, 21 HASTINGS CONST. L.Q. 1049, 1053 (1994).

31. ÚST. ZÁK. ČSFR (Constitutional Charter of the Czechoslovak Republic) [hereinafter 1920 Constitution].

dent than the 1992 Constitution. According to the 1920 Constitution, the president was to be elected by the National Assembly, comprised of both houses of Parliament.[32] Tomas Masaryk, the first President, had substantially greater constitutional power than the power granted to presidents in the 1992 Constitution. The main constitutional advantage that Masaryk possessed was the power to appoint and dismiss ministers at will[33] and the right to dissolve Parliament except during the last six months of the presidential term.[34] Similar to the 1992 Constitution, the 1920 Constitution allowed the Parliament to vote the Government out with a vote of no confidence[35] and allowed the President to then select a new Government.[36] President Havel then, cannot dismiss ministers unless the Parliament passes a vote of no confidence. The House of Deputies must then approve the president's choice of prime minister.

While presidential acts may require a co-signature from the appropriate government official in both the 1920 and 1992 Constitutions, there is a major difference; the ministers in Masaryk's Government served at his pleasure, while in the present Government the ministers, proposed by the prime minister and only formally appointed by the president, serve at the pleasure of the prime minister. In other words, President Masaryk had the power to make and break governments, a power the current president does not have.

Under the 1992 Czech Constitution, the president of the Czech Republic is elected by the Parliament for a five-year term and may be re-elected only once.[37] In rejecting the idea of a popularly elected president, the Constitution of the Czech Republic differs from most others in Eastern Europe.[38] Vaclav Klaus, who was the Prime Minister at the time of the Constitution's drafting, argued that a popularly elected president would create an undesirable imbalance of power because the president

32. *Id.* arts. 38, 56.

33. *See* 1920 Constitution art. 64(7) (empowering President to appoint, dismiss, and fix number of ministers).

34. *See id.* art. 31(1)-(2).

35. *Id.* art. 75.

36. *Id.* art. 78.

37. *See* ÚSTAVA ČR (Constitution of the Czech Republic) arts. 54(2), 55 (1992).

38. *See* Cepl, *supra* note 27, at 33; *see, e.g.*, Romanian Constitution of 1991, art. 81 (providing for popularly elected president).

would be too powerful.[39] Therefore, it may be deemed misleading to maintain, as at least one commentator does, that the provisions concerning executive power are similar in the two Czech Constitutions of 1920 and 1992.[40]

B. *Executive Power under the 1992 Constitution Compared to the 1920 Constitution*

1. Appointment of Ministers

Under the 1992 Constitution, the president appoints and recalls the prime minister and the government and convenes the Chamber of Deputies or lower house.[41] The president may recall Parliament only after the Chamber of Deputies initiates such action by failing to pass a measure which the government has publicly declared it considers a matter of confidence or passing a no-confidence vote "by a majority of more than one-half of all the deputies."[42] Thus, the Czech president does not have the unfettered power to appoint and dismiss ministers at his discretion, or the power to dissolve Parliament on his own, which Masaryk possessed from the 1920 Constitution. Subject to approval by the Chamber of Deputies, the president appoints the prime minister.[43] The president appoints and recalls the other ministers but only upon the proposal of the prime minister.[44] President Masaryk had the power to appoint and dismiss the Prime Minister and other ministers. In the 1992 Constitution, however, the Chamber of Deputies or its chairman has the virtual power to select the prime minister. Thus, while the president in the first instance makes the appointment, if the Chamber of Deputies fails to approve the president's choice of prime minister after two attempts, the president must appoint the prime minister proposed by the chairman of the Chamber of Deputies.[45]

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39. *See* Cepl, *supra* note 27, at 33.

40. *See* Glos, *supra* note 30, at 1053.

41. ÚSTAVA ČR (Constitution of the Czech Republic) art. 62(a)-(b) [hereinafter 1992 Constitution].

42. *Id.* arts. 35(1)(b), 72. To initiate a no-confidence vote, the Chamber of Deputies must submit a petition signed by at least 50 of its members. *Id.*

43. *Id.* arts. 68(2)-(4).

44. *Id.* arts. 68(2), 68(5).

45. *Id.* art. 68(4).

2. Other Presidential Powers

While the president's powers in the 1992 Constitution appear sweeping, in most cases they require the concurrence of another source, most often the prime minister. The Constitution of 1992 provides, "[d]ecisions by the President of the Republic made in accordance with Paragraphs (1) and (2) require for their validity the cosignature of the Prime Minister or another member of the government entrusted by him."[46] In other words, the president's hands can be effectively tied in the exercise of all the powers enumerated in Article 63 if the prime minister chooses to tie them. While there is a similar provision in the 1920 Constitution requiring a minister's approval for the executive decisions of Masaryk, the effect of the provision is different. For if Masaryk did not get approval for some program of his by a relevant ministry official, he could dismiss the minister or the government. Again, President Havel has no such power.

Presidential power to appoint and promote generals,[47] to appoint judges,[48] and to grant amnesty,[49] require the concurrence of the prime minister.[50] The president, as head of state, represents the Czech Republic to the international community, but the power to conclude and ratify international treaties, is a concurrent power,[51] as is the president's power as "supreme commander of the armed forces."[52] The president appears to have impressive powers of judicial intervention as well, such as issuance of pardons, reduction of and preemption of penalties, discontinuance of criminal proceedings, and nullification of punishments.[53]

The President does not have a veto but can refer a bill back

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46. *Id.* art. 63(3).

47. *Id.* art. 63(1)(g).

48. *Id.* art. 63(1)(i).

49. *Id.* art. 63(1)(j).

50. *Id.* art. 63.

51. *Id.* art. 63(1)(a)-(b).

52. *Id.* art. 63 (1)(c). The president's power to choose members of the Constitutional Court under Article 62(e) is subject to the approval of the Senate under Article 84(2). *Id.* The president appoints the two top officers of the Supreme Control Office and the members of the Banking Council of the Czech National Bank on the proposal of the Chamber of Deputies. *Id.* arts. 62 (j)-(k), 97(2). The president has the exclusive power to appoint the chairman and deputy chairman of the Supreme Court. *Id.* art. 62(f).

53. *Id.* art. 62(g).

to the House if he or she disagrees with the bill. A majority of all members of the House rather than a majority of members present is then required for passage.[54] This provision could take on more significance where, as now, the Prime Minister has a coalition government which can produce fragile alliances and where one or two votes can be decisive.

3. Prime Minister as Seat of Power

The real substance of executive power appears to reside in the prime minister and his ministers. The prime minister organizes the activity of the government, chairs its meetings, acts on its behalf, and carries out the duties entrusted by the Constitution and law.[55] The 1992 Constitution states, "the government is the supreme organ of executive power[56] [and] the government consists of the Prime Minister, deputy prime ministers and ministers."[57]

4. Review

Another way to view the executive powers under the 1992 Czech Constitution is to recognize the ambiguities, which are presumably deliberate, surrounding the president's role and powers and the built-in tensions *vis à vis* the role and powers of the prime minister. In fact, as noted at the outset, there is a dual executive in the Czech Republic at the present time, one which contrasts sharply with the U.S. executive branch and also with that of France, where the French president has more extensive formal powers and has been directly elected since the early 1960s.

V. *WEAK PRESIDENCY OR MEEK PRESIDENT?*

The dual executive is particularly relevant to an assessment of the Czech perception of a weak presidency and to show potential for constitutional power struggles. For some observers, however, any critique of the inadequacies of the 1992 Constitution and constitutionalism in the Czech Republic raises a serious question about the role of the country's leading public personal-

54. *Id.* art. 50(2).
55. *Id.* art. 77(1).
56. *Id.* art. 67(1).
57. *Id.* art. 67(2).

ity, President Vaclav Havel. The drafters did not intend to create a strong president. The president is not directly elected, the prime minister has the power to second-guess many important presidential decisions, and the real power to dismiss Parliament and appoint ministers is not in presidential hands.

Suppose, for example, that Vaclav Klaus were to become president, and the unlikely event that President Havel were to become prime minister. Would we see a stronger presidency and a weaker government, in the sense of the prime minister and his ministers? Would the presidency assume a more prominent stance if a modern day Masaryk were to become president? It is possible that a person more attuned to what support is necessary to achieve political results might have secured a presidency with more unfettered power. Specifically, is the failure of the Constitution to provide for a more powerful president attributable to the personal failing of President Havel himself? President Havel's detractors have argued that his lack of political acumen is to blame for what they consider an excessively constrained or "weak" presidency. Masaryk, for example, obtained a more powerful presidency, no doubt resulting from the fact that he was considered comparable to a George Washington in his stature and influence.[58] It is difficult even to refute the argument that one more pragmatic than President Havel might have obtained more powers for the presidency. If Klaus had aspired to the presidency would it have been stronger? Who can confidently say no?

The personal factor should not be overlooked. The way the presidency evolves often reflects the principles and predilections of the most popular or highly respected figure in the land at the time the constitution is drafted. Masaryk, for example, was described later as a figure of prestige and authority which placed him above attacks. The people saw him as a liberator, an indispensable man who insured the unity of the state and the continuity of his policy.[59] Besides having greater power by virtue of the 1920 Constitution, Masaryk exercised great power because of the force of his personality, his perception of his role, his ability

58. *See* EDWARD NEWMAN, MASARYK, 192 (1960) (stating that Masaryk was thought of as father of his country).

59. *See* WILLIAM MARTIN, STATESMEN OF THE WAR IN RETROSPECT, 1918-1928 279-80 (1970).

and inclination to do so, and the people's need for him to do so.[60] Masaryk guided day-to-day policy so that everything that was done bore his touch.[61] Masaryk heavily influenced some of the ministers who served under him.[62]

President Havel does not share the view that the president ought to be a partisan politician. He views the presidency as a position of moral authority with powers and prerogatives that should be exercised to help guarantee continuity.[63] President Havel has settled into a relatively apolitical role of mediator, moral arbitrator, and honest broker. The 1992 Czech Constitution does not clearly prescribe such a role, nor does it effectively bar a president bent on running the political show from taking a more active, assertive, or outright partisan approach if he or she is so inclined. Notwithstanding President Havel's own personal hands-off presidential style, there is sufficient grist for the mill in Articles 54 to 66 of Chapter Three[64] of the 1992 Czech Constitution to permit a more active and ambitious politician to maneuver against the government or at least to induce a kind of governmental paralysis.

A popular, charismatic president, even one indirectly elected such as Masaryk, could always use the high visibility of

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60. *See* NEWMAN, *supra* note 58, at 195 (explaining that integrity and leadership, rather than official powers were source of strength of Masaryk's power).

61. *Id.* at 199-200.

62. *Id.* at 195.

63. There is ample precedent in Europe for an indirectly elected president or hereditary monarch to act as official head of state while being constitutionally constrained from interfering in the daily affairs of government. One has only to look next door. Indeed, the president of the Federal Republic of Germany plays a considerably smaller constitutional role than his Czech counterpart. In the German system, the president, also indirectly elected, is eclipsed by the chancellor to a far greater degree than the Czech president. On the contrary, President Havel has a much higher profile abroad than Prime Minister Vaclav Klaus, and, even on the domestic scene, the president is hardly less visible than the prime minister. To take another example, the British parliamentary system has reduced Queen Elizabeth II, the official head of state, to a figurehead with ceremonial and symbolic functions but no real positive or negative political power.

That was the case in the United States when George Washington rejected an invitation to become a constitutional monarch and later refused to stand for a third term. It was also the case in France when Charles de Gaulle successfully staged a popular referendum to allow for the direct election of the president in 1962. Finally, it is the case today in the Czech Republic where Vaclav Havel has settled into a constitutional role aloof from party politics (de Gaulle also spurned political parties) and above the political fray.

64. 1992 Constitution, *supra* note 41, arts. 54-66.

the presidency and the power inherent in the office to manipulate the symbols of state and nation. In this event, it might be the prime minister whose hands were tied, either rubber stamping the president's decisions or risking public denunciation by the president for obstructing constitutional processes. It is possible, however, that the passive-role precedent established by President Havel will prevail, at least for a time.

VI. *THE SENATE*

The 1920 Constitution provided for a bicameral legislature, consisting of a Chamber of Deputies and a Senate.[65] Provisions were made for the Czech Senate in the 1992 Czech Constitution,[66] but due to political bickering, implementation of the Senate was delayed for more than three years. The voting power of the soon to be elected Senate is comparable to the Senate of the 1920 Constitution.[67] Until the elections on November 15-16, 1996, the Chamber of Deputies continued to exercise the powers of the Senate. With its seating, the Senate will exercise its own powers.[68] On February 21, 1996, the House of Deputies determined that the location of the new Senate would be in three historic Mala Strana palaces.[69]

Senators must be eligible to vote and be over forty years old.[70] The Senate is to be composed of eighty-one members, elected for six-year terms.[71] One-third of the senators are to be elected every two years.[72] The Senate selects its own chairman and vice chairman.[73]

A. *Senate Legislative Power*

After passage, the House of Deputies is required to send

65. *See* ANDREW, *supra* note 7, at 9-10.

66. 1992 Constitution, *supra* note 41, art. 15(2).

67. *See id.* art. 44. In the 1920 Constitution, the Senate had some greater legislative clout. Article 44 provided that if three-fourths of the Senate rejected a bill, passage required three-fifths of the Chamber. *Id.*

68. *See New Parliament to Meet by End of June*, CTK National News Wire, Mar. 11, 1996 (discussing Senate elections).

69. Tomas Kellner, *Senate Will Have Its Home In a Trio of Historic Mala Strana Palaces*, PRAGUE POST, Feb. 26, 1996.

70. 1992 Constitution, *supra* note 41, art. 19(2).

71. *Id.* art. 16(2).

72. *Id.* art. 16(2).

73. *Id.* art. 29(2).

bills to the Senate.[74] The Senate has thirty days to accept, reject, or amend such a bill.[75] Upon return of a bill, the House can repass the bill by a simple majority of the total number of House members.[76] An international treaty is passed in the same manner as a legislative bill.[77] The Senate is empowered to act in the event the Chamber of Deputies is dissolved with respect to matters of some urgency.[78] Apparently, government, including the prime minister and other ministers, must make these legislative measures submitted to the Senate.[79] In other situations, senators generally offer legislative bills.[80]

If the Senate passes a measure, it can become law only if the House of Deputies concurs.[81] As a rule, the Senate can pass a measure by a majority of the senators present.[82] The Constitution provides that a simple majority of all senators and House members is required to declare war or to sanction the presence of foreign troops into Czech hands.[83] Armed forces may be sent out of the country only with the approval of both chambers.[84] The Senate's concurrence is required for certain categories of law including general election laws, rules of procedure in the Senate, and laws concerning interaction of the two bodies.[85]

B. *Other Senatorial Powers*

The Senate has a role in the enactment of constitutional amendments.[86] It also has an important role in the selection of the president, in that the Chamber and the Senate select the president[87] by simple majority.[88] It is noteworthy that if the presidency becomes vacant at a time when the House of Deputies is

74. *Id.* art. 45.
75. *Id.* art. 46(1)-(2).
76. *Id.* art. 47(1).
77. *Id.* art. 49.
78. *Id.* art. 33(1). Certain exceptions are made regarding Senate empowerment. *Id.* art. 33(2).
79. *Id.* art. 33(3), (4).
80. *Id.* art. 41(2).
81. *Id.* art. 33(5).
82. *Id.* art. 39(2).
83. *Id.* art. 39(3).
84. *Id.* art. 43(2).
85. *Id.* art. 40.
86. *Id.* art. 39(4).
87. *Id.* art. 54(2).
88. *Id.* art. 58(2).

dissolved, the chairman of the Senate becomes the president.[89] Another interesting provision that will soon be rendered ineffectual stipulates that the House cannot be dissolved while it exercises the functions of the Senate.[90] Another important provision is that the presidential power to select constitutional court members requires Senate approval.[91]

C. *Appraisal of Senate's Powers*

It is axiomatic that whoever has power can abuse it. The Senate is relatively weak compared to the U.S. Senate. Its main function might be to delay, because a simple majority of House members may override a rejection by the Senate of a bill. The House could refer a bill to the Senate passed with only a majority of those present. Because of the delicate balance in the House due to a coalition Government, this could serve to defeat a bill in today's political climate. Commentators have pointed out that the presence of the Senate can help prevent erratic behavior in the House.[92] Moreover, it has been argued that giving traditional presidential powers to the Senate could curtail presidential power.[93]

VII. *PROJECTIONS FOR SUCCESS OF THE 1992 CONSTITUTION*

If history is any guide, democratic institutions have a greater chance of succeeding in the Czech Republic than in any other Eastern or Central European Country. The era viewed most positively in the Czech Republic was that of the First Republic between 1918 and 1938, according to a poll before the 1968 invasion.[94] Somehow there is a collective memory of a liberal-democratic political culture. It has been suggested, for example, that the ideas of President Masaryk extended beyond his tenure in the First Republic, inspiring those involved in the Prague Spring, the dissident movement in the late seventies and early eighties,

89. *Id.* art. 66.
90. *Id.* art. 106(2)-(3).
91. *Id.* art. 84(2).
92. *See* Cepl, *supra* note 27, at 34.
93. *Id.* at 34; *New Parliament to Meet by End of June*, CTK National News Wire, Mar. 11, 1996.
94. *See* Nyrop, *supra* note 1, at 72 (stating that political pluralism was also favored).

and extending to the democratic revolution in 1989.[95] These ideas included democracy, pluralism, and freedom of expression.[96] Moreover, there is a legacy of skilled labor, developed infrastructure, and industrial tradition.[97] Democratization in the 1960s culminated in the Prague Spring of 1968 when only Soviet armed intervention could reverse the liberalizing moves of the Dubček regime.[98] Later, the Charter 77 movement echoed this collective memory of things past. There is also some memory of individual enterprise during the inter-war period, though perhaps only the older generation remembers it.

The Czechs' cultural orientation has traditionally been one facing West.[99] There is, however, a history of tolerance for considerable deviation from the norm in dress and personal expression. At the same time, there is a strong tendency toward conformity, clannishness, and a sense of family privacy. Toleration is limited; it has not extended to Gypsies, Sudetenland Germans,[100] Jews,[101] or Hungarians. All of them have at one point or another been expelled or threatened with expulsion, and all have been victims of discrimination at the hands of the Czechoslovakian majority.

Czech political culture is a product of longtime domination, first by Austria and then by the Soviet Union. It is asserted, for example, that the communist culture gave rise to a split in personality, a set of inner conflicts in which one said one thing and thought another. There was perhaps a self-debasement involved in this process.[102] The face people offered to officials and their

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95. *See* SKILLING, *supra* note 8, at 177 (explaining that subconscious thread of continuity in these events provided by received thought of Masaryk).

96. *Id.* at 177-78.

97. *See* Sergio Salani & Jerry Sloan, *An Overview of Legal and Financing Aspects for Doing Business in Hungary, Poland and the Czech Republic*, 9 TEMPLE INT'L AND COMP. L. J. 27, 29 (1995). The Czech Republic is deemed attractive for investment because of its strong industrial base, low wages, large educated labor force, in addition to its democratic tradition and past economic successes. *See* Wiebel, *supra* note 9, at 919.

98. *See* Nyrop, *supra* note 1, at 158 (explaining that in 1980s there was memory of political freedom and economic prosperity).

99. *See id.* at 72 (discussing Western European cultural tradition).

100. Tomas Poledna, *Ownership and Economic Structure in Former Czechoslovakia*, 21 INT'L BUS. LAWYER 331 (1993). Citizens of German ancestry were expelled from Czechoslovakia in 1945 and their property was taken. *Id.*

101. *See* SKILLING, *supra* note 8, at 81-93. In the early twentieth century anti-Semiticism pervaded Czech political and public life. *Id.* at 87.

102. *See* Nathalie Gagnere, *The Return of God and the Challenge of Democracy: The Catholic Church in Central Eastern Europe*, 35 J. CHURCH AND STATE 859, 865 (1993) (quot-

real face were often different. A variation on this theme is the survival technique offered in the Czech classic Good Soldier Svejk, where a sly, crafty, clever interior is masked by a meek exterior in which one pretends to be docile and compliant, but in fact undermines the foreign authority at every turn. The Czechs are torn between retooling for a fast moving capitalist oriented future and a tendency to lapse into the more passive habits of the past.

CONCLUSION

The Czech presidency created under the 1992 Constitution is indeed weaker than the presidency established in the 1920 Constitution under which Masaryk exercised the powers of the presidency. Today, effective power rests mainly with the prime minister. The Havel Presidency, however, is a reminder that the exercise of power is not only a function of constitutional language, but also of personal inclinations including attitudes toward power itself, moral convictions, and the temperament of a particular incumbent. President Havel has sought to remain above the fray. The position President Havel has carved out within the new political system is more personal than constitutional; it has no counterpart in Czech tradition. There are two causes of presidential disability in the Czech Republic. One is found in the constitution itself, the other in the temperament of the high-minded man who occupies the office.

It is probable that the perception of the many Czechs is correct, that President Havel is not interested in the details of day-to-day administration or in the mundane matters of policy implementation. President Havel apparently did not fight for a strong presidency when the new constitution was being drafted even though his unmatched popularity and stature gave him a golden opportunity to do so. Nonetheless, there is sufficient ambiguity in the actual language of the constitution to give a popular president ample room to maneuver against a prime minister.

In our view, the real reason for the extreme restraint which has become the hallmark of the Havel presidency is a personal idea of what the proper role of a president ought to be. An equally charismatic president whose approach to politics empha-

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ing Vaclav Havel). Persons in such societies have experienced apathy, intolerance, widespread alcoholism, corruption, lies, and crimes. *Id.* at 865.

sized power over moral persuasion, for example President Havel's opposite, could undoubtedly have played a more assertive role in governing the country than President Havel has chosen to do.

As the famous first holder of his high office, President Havel is establishing a precedent which will make it difficult for his successors to do more with the office than he has done. Lacking President Havel's stature, it is almost certain that they will, in fact, do less.

The belated seating of the new Senate will fulfill the original intent of the Constitution. The Senate could provide a safeguard against erratic actions of the House, at least by means of deliberation and delay which might allow public opinion to come into play. Given the recent history of authoritarian rule in Czechoslovakia prior to 1989, the presence of the Senate as a safeguard against arbitrary government can only be salutary for the future of Czech democracy.