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**LIBERAL HUMANISM ABANDONED:
THE PARADOX OF THE POST-COMMUNIST CZECH REPUBLIC**

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I have long been fascinated by the widespread phenomenon of the "other" -- the inability of many people to lead meaningful lives in the absence of a perceived antagonist to their way of life. This is certainly true of many Czechs . . . Prague human rights activist.¹

Only the legal prerequisites have been created, nothing more. Rita Klimova, former dissident and Czech Ambassador to the United States.

* * * * *

In their literature, culture and early twentieth-century politics, the Czech people have a history of emphasizing moral virtue, tolerance, and respect for human dignity and freedom. Tomas Masaryk, the first President of Czechoslovakia, answered the "Czech Question" with reference to the Czech Reformation and the liberal humanism of Jan Hus, and founded a nation state that protected the rights of minorities. Vaclav Havel and the Charter 77 dissidents later challenged the communist government to honor the commitments set forth in the Helsinki Final Act and, once in power, enacted sweeping constitutional reforms. Sadly, there is a growing chasm in Czech society between pre-revolution aspirations and post-revolution reality. The Czech Republic is infected with the destructive kind of nationalism found in other parts of East Central Europe, and now is characterized by a xenophobic citizenship law and violence against Roma. Will the Czechs ultimately honor their legacy of liberal humanism? The answer will speak volumes on the compatibility of nationalism and constitutional liberalism in the heart of the European continent.

* * * * *

In the first year or two of this decade, when the Velvet Revolution was all shiny and new, it seemed that nothing could go wrong in the Central European state of Czechoslovakia. More than twenty years after the commencement of the brutal Soviet crackdown of 1968, the country had loosened the grip of its communist rulers with nary a shot fired or voice raised, except in celebration. Timothy Garton Ash and other witnesses from the West viewed the rapid, peaceful transition of November 1989 as the culmination of twenty years of dissident activism. One commentator went so far as to suggest that the individual acts of conscience undertaken by the Charter 77 dissidents constituted “immensely practical blueprints for the subversion of a system based on intellectual pretense and falsehood.”² This conclusion, though premature, was not outrageous. For if one could have imagined the utter collapse of communism in East Central Europe (and some did, but far fewer than the number that now claim to have done so), then based on its record of liberal democracy in the inter-war period and more recent human rights activism, it was not such a great leap to imagine that Czechoslovakia would evolve into the preeminent model of constitutional liberalism in the region.

Even without Franz Kafka to remind us of its dark and often perplexing nature, Czechoslovakia would be intrinsically interesting. Its history is replete with shifting boundaries and peoples, rising and falling empires, cultural wealth and ethnic rivalry. During this decade, of course, the country has been in the throes of a remarkable economic, political and social transition. In observing these events, my focus was transfixed on a rather simple (and in retrospect, simplistic) proposition: that the legacies of Tomas Garrigue Masaryk, the first President of Czechoslovakia and an influential exponent of Czech nationalism and humanism, and the Charter 77 movement, based as it was on the principles of human dignity and freedom expressed in the Helsinki Final Act, would serve as catalysts to transform Czechoslovakia from a rigid dictatorship into an open, diverse, multi-ethnic society where the rule of law would govern its internal affairs and secure freedom for all of its peoples.

This was not an entirely specious proposition. Admittedly, Masaryk’s time had come and gone long before the communists arrived on the scene. The dissidents, moreover, were small in number; there had never been many more than a thousand members of Charter 77. But Masaryk’s liberal humanist philosophy had antecedents in 700 years of Czech literary history that emphasized moral virtue. More recently, Alexander Dubcek and the other leaders of the Prague Spring espoused “communism with a human face.” From the dissident ranks of the 1970s and 1980s came many who would wield great influence in the new Czech and Slovak Republic -- Petr Pithart, Jan Carnogursky, Rita Klimova, Jiri Dienstbier, and of course Vaclav Havel. Once in power, the new government of the Republic promptly enacted a series of constitutional and legal reforms that suggested this transformative process was well underway. On the surface, it was a rather auspicious beginning to a new era.

However, there were at the same time clear indications that, from a political and social perspective, broader trends and attitudes in Czech society would not so easily accommodate the underlying ideals and modes of behavior that are essential for these legal principles to thrive. Some were rather blatant markers, like the rise in violence, “skinhead” demonstrations and discrimination against the Roma. Other signals were more subtle, such as the declining participation in public affairs of intellectuals and former dissidents, the reluctance of key political leaders to support an emerging civil society, and the interpretative shadings in certain judicial rulings. In considering the significance of these trends, it is useful to recognize that Czech history contains less appetizing legacies than those of Masaryk and the Chartists. During the middle of this century, for example, Czech behavior was starkly inhumane in the imprisonment of Roma under brutal conditions and the expulsion of millions of Germans from the Sudetenland.

If these interwoven threads of history appear muddled, if they leave you ambivalent about the true nature of the Czech national character and the post-communist environment, then you are getting it just about right. Ambivalence, however, does not seem to be the typical reaction within the Czech Republic, where essentially there seem to be two camps: those who congratulate themselves on the phenomenal job they have done in building a market economy and a democracy, and those who wring their hands and proclaim that Czech society has succumbed utterly to rampant materialism, xenophobia, violence and intolerance. At least Czechs have an opinion. More disturbingly, outside the small world of human rights activists and NGO observers, those in the United States and the West largely appear oblivious to these developments. With the notable exception of collective hand-wringing over the tragedy of our gross mishandling of events in the former Yugoslavia, pundits and politicians alike seem fairly pleased simply to acknowledge that we have won the Cold War and most assuredly are ready to concentrate full-time on the business of leading the global economy into the twenty-first century.

While there is increasing focus on the poor state of Havel's health (and by implication or explication, that of the Czech Republic), Havel himself remains a compelling figure and most of his supporters have remained loyal. It is not often that a poet/philosopher/dissident/ex-political prisoner grows up to be king (or a reasonable proximity thereof). Though many have come to believe he should step down both for the good of the country and his own welfare, no one seems willing or able to imagine who might replace him as President. Zdenek Urbanek, an early Chartist and long-time friend of Havel, believes that Havel “has been the 'main force' that keeps Czech democracy going, the 'glue' that holds it together. Nothing less.”³ Those who bother to think of the Czechs do so principally in the context of the events of 1989, and apply a romantic gloss on their impressions of the country. This image is fortified by the postcard vantages of the Charles Bridge and Prague Castle shown on network television when correspondents report of the torrent of American university students who have come to sip Bohemian pilsner in the Old Town cafes.

The post-communist Czech experience is far more important than these fading images might suggest. In both its history and its present affairs, it evinces a striking example of a state that has struggled, and largely failed, to sustain the principles of constitutional liberalism amidst a climate of petulant nationalist impulses. Indeed, I believe that the Czech legacies of liberal humanist philosophy and human rights advocacy have been squandered. While it has not been engulfed in genocidal warfare, I would suggest that on the basis of events of the past decade we ought to regard its leaders with a large measure of opprobrium. A genuine understanding of this experience is critical to answering the larger, underlying question: can nationalism and constitutional liberalism coexist quiescently on the European continent?

CZECH LEGACIES

We may regard much of modern Czech history through the prism of nationalism. The core of Czech identity has long been based upon the common indicia of national identity -- especially language and literature -- but was clarified by successive generations of Czechs largely by reference to those who did not share this identity. Masaryk developed a working philosophy based on liberal humanist traditions to bolster the campaign for independence from the Hapsburg empire. Eduard Benes resisted communism in the name of Czech autonomy and self-preservation, but history will also remember him for expelling Germans from the Sudetenland. Czech democratic socialists contributed to the stunning communist electoral victory in 1946 by reinterpreting/rejecting the “Western” ideals of Jan Hus and Masaryk, and by “creating a Czech self-conception that was expressly socialist and culturally oriented toward the Slavic east.”⁴ During the 1990s, we have seen Czechs define their identity, in part, by excluding Slovaks and Roma from their society. As I hope to make clear, in each case the treatment of minorities can be seen as the defining element in appraising the achievement -- or lack thereof -- of Czech constitutional liberalism.

Historian George Schopflin has characterized East Central Europe generally as “politically backward,” but he acknowledges that “industrialization and the existence of a native entrepreneurial class...make Czechoslovakian politics substantially more open and flexible than other East European polities.”⁵ In fact, a strain of liberal idealism runs through the early modern history of Czechoslovakia. The founder of the first Republic in the 1920, Tomas Garrigue Masaryk, was a champion of intellectual freedom, as well as a harsh critic of the leading repressive authorities of his time: the Hapsburg Austro-Hungarian Empire and the Roman Catholic Church. In supporting the awakening of a Czech national consciousness and the drive for Czech independence in the late nineteenth century, Masaryk emphasized two themes. First, that Czech history must be interpreted properly to understand the significance of the past and the potential of the Czech people, for “historical memory remains inseparable from the substance of nationhood.”⁶ Second, that the moral strictures found in Czech literature dating from the medieval period, and especially the ecumenical humanism espoused by Bohemian martyr Jan Hus and the Hussites during the fifteenth century Czech

Reformation, were the constant anchors of Czech history which provided an appropriate context for contemporary Czech politics. Masaryk devoted much of his life to answering the "Czech Question" -- the search for the meaning of Czech history -- and in so doing he referred to the nineteenth century Czech national revival as "our Second Reformation,"⁷ barely seeking to disguise his religious characterization of the Czech Question in a thinly veiled reference to the Hussites. Jan Hus embodied man's highest ethical ideals in Masaryk's view, and he attempted to link these ideals irrevocably to the Czech people: we are moral; therefore, we are Czech.

Admittedly, full participation in the new democracy was limited in practice by the overarching influence of various Czech elites⁸ but the Czech Republic between the Wars largely reflected Masaryk's sense of history and morality. Czech nationalism emerged as a more destructive force⁹ however, as the ethnic rivalry between Germans and Czechs reached its zenith shortly after Masaryk's death. In repayment for the Nazi confiscation of territory in 1939, Prime Minister Benes distinguished himself following World War II by deporting close to three million Sudeten Germans in 1945 and 1946, nearly all of whose private property was expropriated without compensation. Many of these ethnic Germans had antecedents who had farmed their lands for over 700 years; many remained loyal to, and were prepared to fight for, Czechoslovakia. In the words of a U.S. House of Representatives report, the conditions of the mass expulsion were such that it could not be considered "humane or orderly."¹⁰ Inhumane perhaps, but not so surprising if we consider that Kamil Krofta, Czech foreign minister under Benes, characterized Germans as not having "the same vital interest" in the state as the Czechs.

A half century of communist rule nearly ruined a once vibrant Czech economy, but its deleterious effect on Czech society may have been even greater in its fostering of the "absence of history" or *nehistoricnost*. In their desperation to extinguish nationalist fires, the communists continued what the Nazis began in destroying the intellectual community, and systematically suppressing the historic traditions of East Central Europe. Thus, after 1948 the Czech historical memory was modified beyond recognition, and then diminished altogether. The infamous Czech Question no longer involved consideration of Czechs and Germans, or even Czechs and Slovaks, and it certainly had nothing to do with Tomas Masaryk's liberal humanism, as those subjects that were outside the scope of the officially sanctioned propaganda message simply dropped from public discourse. For Czechs, this denial of history undermined the very identity fostered by Masaryk in his effort to link Czech nationalism, Czech independence and Czech history.

Fast forward through the first few decades after the Soviet takeover. We now know that although the Soviets were their own worst enemy, indigenous forces operating within the various states of East Central Europe played a meaningful role in undermining the communist system and in affecting the nature and outcome of the transformation. Soviet rule after 1968 was especially harsh in Czechoslovakia, and in

response, an indigenous force took the form of a document and a corollary movement known as Charter 77. In contrast to the Polish trade union movement, Charter 77 had no economic agenda, never encompassed more than 1,300 signatories, and was limited to urban intellectuals, Christians and idealistic socialists drummed out of the communist party. Its relatively limited purpose was to advocate compliance by the Czechoslovak government with the documented obligations set forth in the various international human rights conventions and the 1975 Helsinki Final Act. It never posed a direct challenge to the regime, but for over a decade it remained at the forefront “of an authentic campaign for fundamental political, civil, economic, cultural and national rights.”¹¹ In the tradition of Masaryk, Havel believed in living the truth; he hoped fervently that the Chartists could forge a moral climate of genuine social tolerance that would characterize the Czech people irrespective of the eventual success or failure of the movement itself. Havel was not alone in this belief, as many activists expressed their hope that the people of Czechoslovakia were being prepared for the post-communist world so that “when change at last becomes possible...one will then be ready to act.”¹²

LIBERAL HUMANISM, CONSTITUTIONAL LIBERALISM

Masaryk dismissed classic liberalism as incompatible with humanism.¹³ Yet the ethical foundations of humanism -- that humans are rational beings with a great capacity for truth, and whose dignity and worth have preeminent value -- find their ultimate political expression in the doctrine of constitutional liberalism. This doctrine is usually, though not always, established in democracies¹⁴ and is most prominently associated with seventeenth and eighteenth century figures, including English and French philosophers such as Thomas Hobbes, John Locke, and Baron de Montesquieu, as well as American statesmen like Thomas Jefferson and James Madison.

At its core, constitutional liberalism recognizes that all persons have basic rights (so-called “natural” or, to employ Jefferson’s term, “inalienable”) including the right to be free from government oppression, the right to own and utilize private property, the right to express political views freely, and the right to worship in the manner in which they may choose. In order to secure these rights, written constitutions explicitly place limits on the extent of government activity and structure the government in separate branches so as to “check and balance” the respective powers of the executive, legislative and judicial functions. Principles of constitutional liberalism are the basis for the Magna Charta, the American Declaration of Independence, the Constitution of the United States and especially its Bill of Rights, and the Helsinki Final Act.

The connection between the philosophy of humanism and the politics of constitutional liberalism is readily apparent. Respect for human dignity dictates that all members of society are entitled to heavy doses of individual liberty so that they might realize their full potential; liberty in turn is secured by limiting government power. In evaluating the extent to which the Czech government (and, more broadly, Czech

society) adheres to these principles and values, we can engage in a normative analysis that includes examination of the following: are basic civil liberties guaranteed under law; are limitations on government power established under law; do accused persons receive due process under law; are persons afforded equal protection under the law? More broadly, is Czech society one in which all persons have access to educational and economic opportunities, the right to legal redress for grievances, and the ability to participate meaningfully in politics and other areas of public life?

THE POST-COMMUNIST RECORD IN THE CZECH REPUBLIC

Institutionalizing the Rule of Law. Beginning in early 1990 the Czechoslovak Federal Assembly approved a series of laws that purport to guarantee freedom of association, freedom of assembly, the right to petition, freedom of the press, and freedom to travel. The Federal Assembly buttressed these new laws by adopting on January 9, 1991 a bill of rights known as the “Charter of Fundamental Rights and Freedoms.” The Charter provides that international human rights treaty provisions are fully binding and take precedence over any other law. The Charter protects freedom of speech, movement, thought, conscience and religious conviction, and guarantees a host of economic, social and cultural rights. In addition, the Charter designates a Constitutional Court as the entity charged with protecting the basic rights and freedoms included in the Charter itself; this Court was established by the Federal Assembly the following month.

These statutes are important and yet the foundation of constitutional liberalism rests not only on the law itself, but on the structure and integrity of government institutions and officials. Most prominently, a capable independent judiciary, and a system of checks and balances among the political branches of government, are vital to preventing abuse by those who wield power publicly and privately. With respect to the court system, there has been an ongoing problem of developing a sufficient number of competent judges in the wake of the resignations and purges of the early 1990s. This is evident in decisions rendered by lower court judges. In June 1997, for example, a judge in Hradec Kralove refused to apply sanctions under laws covering racially motivated attacks in a case involving Czech skinheads and Roma, since assailant and victim were both of the same “Indo-European” race.¹⁵ Fortunately, the Czech Supreme Court struck down the ruling on appeal, but clearly minorities cannot yet rely fully on the Czech court system for protection.

Lustration. The effort to ferret out suspected collaborators with the Czechoslovak StB, the former communist state security police,¹⁶ has failed to comport with fundamental principle of due process. The *lustrace*, or purification, as the vetting process is known, was supported in principle by Havel and by most of the candidates for election to the Federal Assembly in 1990. On January 18, 1991, the

Assembly adopted a resolution calling for the vetting of all deputies by a special parliamentary commission. The Commission identified as collaborators twelve members of the Assembly and called for their resignations, though none complied voluntarily. The Assembly then passed a sweeping statute authorizing further review of records and categorization of collaborators; collaborators are precluded from serving in the federal or republican governments, the army, the police, the court system, the Academy of Sciences, or in senior positions in the media, universities or state-owned businesses. In its first formulation, the law would have labeled persons as collaborators solely on the basis of secret files which they could not see, and even in the existing version the accused bear the burden of proving their innocence. Havel expressed reservations on the basis of the law's implicit presumption of guilt, but signed it into effect. Exacerbating the situation, over Havel's veto the effective period of the lustration statute was extended until the end of the year 2000, and a related law was enacted that allows any citizen to review StB records to determine the identity of alleged collaborators who may have disclosed information about them to the communist authorities.

One will search in vain to find evidence of procedural fairness in connection with these inquiries. The problems begin with the fact that unreliable informant records form the basis of guilt. Exculpation becomes difficult, if not impossible when access to information and witnesses is limited. Supporters of the law contend, rightly, that it is difficult to summon confidence in newly democratic institutions if they are run by *apparatchiks*. But in a society in which collective guilt is so widespread that, to use Havel's phrase, even the greengrocers were complicitous, how is one to determine suitability for office or further government service? The lustration process is profoundly disturbing, and not only because of the individual impact of unfounded or unfair charges, for they belie the residual wounds inflicted upon the collective psyche of an entire nation by the communist system. If the accused has committed a crime or otherwise engaged in human rights violations, then public censure and punishment should follow, but the evidence must be convincing -- a name in a file is hardly tantamount to complicity -- and the accused must be permitted to adequately defend themselves; any less demanding procedures will only serve to substantiate charges that the reformers are no better than those who came before them. Czechs simply must come to terms with the past half-century and find a way to heal themselves without destroying their fellow survivors. Havel recognizes that the vetting process is at odds with the new national purpose, that it flagrantly violates the ideal of due process under the law, and that it can be employed by the communists to destroy their enemies with innuendo and suggestion. An eyebrow is raised, a reference is leaked, a conversation is mischaracterized, and a reputation and life are ruined; this amounts to a validation, not a repudiation, of the past.

Treatment of Roma and other Ethnic Minorities. The resurgence throughout East Central Europe of ethnic nationalism in the aftermath of communism is a widely recognized phenomenon. Masaryk's tenure made clear that nationalism in and of itself is not necessarily incompatible with constitutional liberalism or democracy, but it can be if it is accompanied by hostility toward minority groups in society. Surveys conducted after 1989 have found an alarmingly high degree of antagonism toward indigenous ethnic minorities as well as toward the people of neighboring states.¹⁷ East Europeans, including Czechs, openly express hostility with respect to their minority populations. For example, the Freedom House survey found that "nationalist interests" outweighed former security force members and former communists as the greatest threat to democratic reform in Czechoslovakia. Fully 85% of respondents would prefer not to have any Roma living in their neighborhood, while 87% of Czechoslovaks said that Roma behave in a manner that "provokes hostility." This attitude is embodied in a disgraceful proposal to build a wall separating 300 Roma from middle-class Czechs in the Bohemian city of Usti nad Labem, which some citizens have characterized as a necessary "measure of social hygiene."

While the Charter incorporates much of the substance and spirit of those provisions on minority rights contained in the Czechoslovak Constitution of 1920, including supposed equality between the national, ethnic and religious minorities and the remainder of the citizenry, this has not precluded widespread discrimination and violence against the Roma, Vietnamese and other immigrants. For example, there is overt discrimination in access to housing, jobs and other commercial opportunities; Roma unemployment rates hover around 70%. Although language and cultural factors play a role, educational opportunities are limited as well; unofficial Czech Ministry of Education estimates suggest that more than 60% of Roma children are taken from public schools at an early age to be placed in schools for the mentally handicapped and socially maladjusted.¹⁸

Although the acts of violence are committed by private parties, the Czech government often is complicitous. Czech officials signal, in ways subtle or not, their tolerance of attacks by failing to identify and aggressively prosecute offenders. When criminal charges are brought against skinheads, judges often mete out inconsequential sentences that fail to deter others, and civil sanctions are unavailable. This harsh reality has been recognized by the Canadian government which, on the basis of fear of violence and discrimination, granted asylum to more than thirty Czech Roma in the first three months of 1998 alone. In concluding that the applicants were legitimate refugees, the Canadian Immigration and Refugee Board clearly places blame on the Czech government, noting that it would be unreasonable for Czech Roma to "have sought or now seek the protection of their home authorities and that such protection would not be forthcoming."¹⁹

It is important to be clear about the extent of the problem. The violence is widespread, and it is not limited to taunts and scuffles. Well over one thousand attacks have been documented by the European Center for the Rights of Roma, homes have been firebombed, and between 20 and 35 persons have been killed in racially motivated violence since 1989, including in February of this year a 26-year-old mother.²⁰ The violence is not perpetrated exclusively against Roma; an Afghan student and Congolese physician have been attacked as well. Some Roma seek to emigrate to Canada, the United States and Belgium; others have begun to engage in retaliatory violence. Ironically, when they do so they face Czech judges who take a dim view of such retaliatory measures. Laws designed to protect Roma and other minorities have been turned on their head to charge Roma who, in a case in Breclav, attacked skinheads and, in another case in Louny, insulted a group of Czech police officers.²¹

Citizenship. The 1992 Czech Citizenship Act is notoriously discriminatory in practice, and appears to be racially motivated. Enacted ostensibly to answer nationality questions in the context of state succession, the law ignores established principles of international law and, in so doing, serves to deny citizenship and establish statelessness for large numbers of Roma who are lifelong and long-term residents of Bohemia and Moravia. Unlike the Slovaks, the Czech Republic adopted a restrictive law that gave citizenship to a limited category of Czech residents: those who were considered 'Czechs' under the communist era citizenship laws that were enacted to regulate one's internal status in the Czechoslovak federation. The Czech government reasoned that, since there is no continuity of the Czechoslovak state, there is no continuity of legal obligations owed by the newly independent Czech Republic to any of those persons who happened to have been permanent residents on the territory over which it now had sovereignty.

Thus, rather than using as its critical test permanent residency or domicile in the Czech Republic on January 1, 1993, the law determines the initial body of citizens by relying on the 1968-69 internal definition which equated citizenship with place of birth (or, if born after introduction of the law, the parental place of birth). The law works to exclude substantial numbers of Roma and other minorities from Czech citizenship, because most of them either emigrated themselves, or are descendants of those who emigrated, from Slovakia after World War II. Roma and many others with genuine links to the Czech Republic (e.g., all those now deemed to be "Slovaks" who reside permanently in the Czech Republic) are thereby denied citizenship, and may acquire it only by meeting certain narrowly defined qualifying conditions: first, they must prove that they have been domiciled in the Czech Republic for at least two years prior to 1993; second, they must have a clean criminal record for five years; third, they must obtain a "release" from Slovak authorities to prove that they are not Slovak citizens; and fourth, they must pay fees to the authorities.²²

Without citizenship, although protected theoretically by international human rights treaties, a person is not entitled to the rights and benefits enjoyed by citizens. Non-citizens are disenfranchised from voting or holding office, for example, and are unable to receive restitution or compensation for confiscated property. On a more subjective, but not necessarily inconsequential level, those excluded from citizenship are denied the associational advantages -- what Rogers Brubaker calls the "enduring personal status"²³ -- that fall to citizens. Although some transient Roma have been granted "permanent resident" status in the Czech Republic, those denied citizenship can be deported from the Republic, or prevented from re-entering the Republic if they depart voluntarily. And although reform legislation was proposed in 1998 and introduced in 1999, it remains to be seen whether it will be enacted in any meaningful form.

Civil Society. Lurking precipitously in the shadows is, as Sir Ralf Dahrendorf has called it, "the great task of civil society."²⁴ The breadth and complexity of this topic is beyond the scope of this essay, but I will venture to add a few thoughts to a subject that has been the focus of extensive debate within the Czech Republic during the past few years. Havel and Klaus have themselves become synonymous with very distinct perspectives as to the nature and importance of civil society. Havel places extraordinary importance upon the development of an extensive network of non-profit organizations on the American model, be they educational, service or religious in orientation. Havel regards civil society as a way for citizens to participate in the public affairs, to develop a sense of pride in their community and connection to their state, and significantly to protect "various minority needs that a representative democracy cannot."²⁵ Klaus, no longer Prime Minister but still holding forth as Chair of the Czech Chamber of Deputies, has not even acknowledged the propriety of the term "civil society," believing instead that a representative democracy will preserve the rights of all,²⁶ that there is no special value attributable to community non-profit organizations, and that indirect participation in government via the ballot box is adequate connection enough between the governing and the governed. In public debates with Havel, Klaus has appeared particularly wary of the notion of civil society to the extent that it connotes a formal intermediary that would facilitate communication between the government and the citizenry.

SOME THOUGHTS ON CZECH SOCIETY

So is there a paradox that lies deep within the soul of the Czech Republic? Do Czechs hold dear those liberal humanist core values that form an integral part of its literary tradition and that were relied upon by Masaryk in raising Czech national identity? Is the Czech state committed to upholding those fundamental rights and liberties set forth in the Helsinki Final Act? If so, what accounts for the series of public and private acts that have betrayed these values and principles on a number of levels? Is it possible to reconcile the legacies of Masaryk and the Chartists with the

disappointing Czech human rights record of the past few years? And what are we to make of the apparent inability of many of its leaders to even admit that such a dark side exists within their country? I am not a sociologist, I am not Czech; I have not been a dissident. If you listen carefully to those who are, however, some constant themes about the nature of Czech society begin to emerge.

The Character of the Czech People. Some have told me there is no such paradox. Czechs, they say, generally have always been far more concerned with raising their standard of living so that they can live like their bourgeois German cousins -- driving BMWs, drinking fine wine, wearing Italian suits, traveling to Paris -- than with assuring that the rights of every resident are assiduously protected. Moreover, they say, the Chartists and their ilk always represented but a tiny group of disgraced communists and flighty intellectuals, and their passion for human rights was, if not purely opportunistic, at least not contagious within broader Czech society. At best, Charter 77 was a Prague institution with no influence and little recognition in the countryside.

Czech historians and commentators, such as Jan Patočka and Karel Capek, long have raised questions about the inherent character of the Czech people, describing “defects,” “fatal flaws” and “selfishness” as stemming from the prolonged subjugation of the Czech people since the Battle of White Mountain in 1620. It is today a society which appears unwilling to examine its past, denying complicity or culpability for unpleasant or awkward episodes in its history, like the pogroms against Jews after World War I, the expulsion of Germans after World War II, and the violence and discrimination against Roma today. It is a society that sees itself as a victim, according to Charter signatory and writer Jan Urban. “In the best tradition of Czech escapism, it is always either the mystical forces of history or an almighty and irresistible ‘them’ that is to blame -- never inaction or collaboration. Though such reasoning is not unknown elsewhere, the 10 million Czechs constitute what is probably the largest nation in the world that regards itself as small and powerless.”²⁷

The dissident culture was, and remains, an element in Czech society that has the spirit and the credentials to spark a sense of individual responsibility that lies at the heart of any such conversion in thinking. Dissidents took substantial risks and endured hardship for a cause; dissidents accepted a measure of individual responsibility. Moreover, there was a substantial increase in participation in dissident activity in the years immediately prior to the Velvet Revolution, in which tens of thousands signed petitions asking for religious freedom, for the release of political prisoners and generally to protest the Husak regime. To a large degree, this activist spirit has withered away; with the significant exception of Havel, few of the old dissidents remain active in politics.²⁸ After the elation of revolution, many tired of politics and are content to live out their lives without confrontation or controversy. After the lustration controversy, many in the media and the public at large viewed the group as discredited, one in which former communists played a leading role. Almost by

definition, dissidents are well suited to challenge authority, but most seem ill suited to wield it. As for the ideals of Charter 77, Ladislav Hejdanek, one of the original Charter signatories and twice a spokesman, has sounded a despondent note. "I hoped that the political, moral and social importance of Charter 77 would grow. Now it transpires that the consensus of people who signed Charter 77 has disappeared. Charter 77 signatories now say things which are totally unacceptable, in fact quite shocking to anyone who signed the Charter in good faith."²⁹

The Czech tendency to blame or stigmatize the "Others" in society again leads one to question the ethical and moral foundations of society, and raises the ever present question of nationalism. Masaryk's success as President in maintaining a liberal democracy in the inter-war period when neighboring multi-ethnic societies all were abandoning this course under nationalist pressures has been attributed to his ability to subjugate nationalism to liberal democratic institutions. Masaryk relied on "ideological conditioning by the national sentiment which united the Czech people and was in turn associated with democratic institutions for which nineteenth-century Czechs had fought."³⁰ This has not proven to be a sustainable formula. The East Central European tradition of defining the group by virtue of its common culture and values enables one to claim to be supportive of equal rights for all, but only so long as "all" means all those members of the privileged group who share the same characteristics. The cultural theory of nationalism, if interpreted in this manner to deny citizenship and its concomitant legal rights and privileges, is incompatible with the tenets of liberal constitutionalism. Whatever may be intended by the phrase "rule of law," it must at least mean that persons cannot be treated in a discriminatory manner simply because, by virtue of ethnicity or language, they are deemed not to have the same "vital interest" in the Republic.

Lack of Effective Leadership. The measure of Czech leadership is integral to an understanding of the Czech experience. Despite his success in molding a nation sensitive to minority rights, Masaryk failed to resolve the greatest quandary of his time: that presented by the large German minority. "Even with the extraordinary influence which [Masaryk] had on the thinking of the Czech people, he was unable to convince the majority...to stop viewing the Germans as defeated enemies and the Czechs as masters who could take full advantage of their superior position.... He preached reconciliation but failed to bring his goodwill and ideas to any realisation. The participation of the Germans in government did not mean much if there were no practical results."³¹ This characterization is all too reminiscent of Havel, the reigning philosopher-king, who may be seen to be equally moral, equally exhortatious, and yet equally ineffective as a political leader.

Havel's evident depth of courage and conviction have proved insufficient to sustain more broadly the ideals of the Charter 77 movement. If there is due process, it does not apply fully to former communists without influential friends in the new government. If there is equal protection, it is equal only for those who are not dark-skinned. Through all this, Havel has not been silent, but he has not been terribly effective either. He is not a traditional politician, and was unable to build on the base of support and the immense power of ideas of the Chartist movement to make the Civic Forum into a credible parliamentary force. Lacking a sophisticated grasp of economics, he allowed Klaus to dictate a course of events focused obsessively on economic reform. Unwittingly, he contributed to the breakup of the Czech and Slovak federation by serving as a foil for Meciar's vituperative rhetoric. Petr Pithart, Havel's fellow dissident and former prime minister, contends rightly that Havel fell into a habit of excessive moralizing disconnected to governing. "Havel ought to demonstrate the importance of properly functioning institutions, and of respect for the rules of the game, the constitution and the legal system. He ought to explain that the moral climate in the society should be viewed and judged above all through this institutional prism."³²

The late Czech Ambassador to the United States, Rita Klimova, recognized the vacuum created by the collapse of the human rights movement as a political and intellectual force. We met twice in 1992, the second time after Havel had resigned as President. In expressing her anguish over Czech and Slovak developments, she emphasized the imperative of forging a viable political party with a platform that integrated economic reforms with the human rights agenda. "Havel has said to me, 'my heart was always on the left.' At first, he did not see the link between economic freedom and political and social tolerance. He did not realize how explosive the opposition can be if the economic reforms do not succeed. He understands now that he needs to work with Klaus. They need each other." Even by this stage, history had moved on; a unique opportunity had been lost.

Homo Sovieticus. If the Czech shortcomings cannot be ascribed wholly to fatal character flaws nor to insufficient leadership, they must be laid at the doorstep of history. If there can be no satisfactory reconciliation among diverting historic trends, then the paradox must be attributed to a degree of political and economic retardation stemming from the historic concentration of power among foreign monarchs, state bureaucrats and the military, or most recently, to the communists. This backwardness, relative to the West, was capitalized upon, reinforced and made far worse by the Soviets, who traumatized Czech society and may have destroyed forever those ethical and moral values that had helped to form Czech identity. The past half century has seen the Czech economy stagnate, the emigration and decline of intellectuals and the merchant class, and the systematic extinction of Czech history -- the very history that Masaryk used to connect nationalist aspirations to morality, pluralism and tolerance.

More than a decade ago, Milan Hauner posited that, despite this suppression of historical memory, the Czech Question lived on in the resurgence of interest among Czech intellectuals in Masaryk and the Germans; the Czech Question had morphed into the question of the right to have a history.³³ The evidence of this decade suggests that the Soviets succeeded in creating the ultimate paradox: the denial of Czech history simultaneously reinforced those negative tendencies within the populace to respond by acting on their more destructive, nationalist impulses, while removing those positive vestiges of liberal humanism from collective memory that might restrain those impulses.

CONCLUSION

For constitutional liberalism to thrive, governments must adopt policies that foster pluralism, limit military authority, establish universal education, and expand and protect private property rights. The West should not be so presumptuous as to imagine that it could take on such critical tasks for the Czech people, but we should press Prime Minister Milos Zeman and the Czech government to reform their laws and take other actions that would enhance the level of protection of, and tolerance for, Roma and other minorities. One test may well be whether the Czech cabinet shrinks from a vote taken on May 26, 1999 that condemned Usti officials in connection with the planned “Roma wall.” Thus far, the Czechs have shown no propensity to modify their behavior in response to the limited criticism leveled against them by multilateral organizations. Indeed, Havel’s standing has been useful in blunting much of it. If the Czechs seek admission to the European Union, Brussels should evaluate the decisions and practices of the Czech government under the Maastricht economic and political criteria. The Czech record then could prove damaging.

Having said that, we must recognize that even if Zeman were more than an unconstructed socialist and Klaus more than a demagogue waiting for a second chance at power, the conditions of freedom associated with constitutional liberalism cannot be dictated by government. Social and political forces are far stronger than mere laws; history is replete with examples of laws that were altered or ignored because the people willed it to be so. Constitutional liberalism clearly requires broad economic opportunity and entrepreneurialism, military neutrality, an educated populace, and a public spirited polity. What is sufficient to sustain constitutional liberalism in a post-totalitarian environment, in summary, is a mass conversion of the perspectives, thought processes, and lives of thousands of ordinary citizens.

Adam Michnik, in suggesting that the people of East Central Europe have only begun the work of cementing a Western political and legal tradition, has characterized the challenge as one of “institutionalizing freedom.”³⁴ Universal educational and economic opportunities are vital, but they are simply means to an end, that end being to develop a citizenry who are fair minded, who will stop at nothing to participate in public affairs, “citizens who hold their ideas...at the deepest level, at the level that

religion is held, where beliefs and identity are the same.”³⁵ This sort of mass conversion cannot be imposed from above; it must resonate from below. It can be sparked by a genuine revival of Czech intellectuals and intellectualism, of Czech literary tradition and historical memory. It can be developed by a leader who is willing and able to take political risks on behalf of the principles of constitutional liberalism. It will, under the best circumstances, take a generation or more for these ideas and ideals to resonate at the level where beliefs and identity are the same.³⁶

If the Czech people seek to rediscover their shared past, they will find it a source of strength and identity. In so doing, they can build a collective confidence that the “Others” will not dilute the integrity of their nation or sabotage the workings of their democratic state. My hope for the Czechs is simply this: that gradually they will come to recognize, as Americans finally have in the second half of this century, that each of us is diminished unless and until all people in our midst are free -- free from fear, free from harassment or persecution, free from discrimination, free from violence or the threat thereof. Until that time there will be a role, if not for Charter 77, then for the successors in spirit to its legacy. The mission is the same as it ever was: to challenge the government, and the people, of the Czech Republic to honor the commitments made in Helsinki.

NOTES

1. Michael Luhan, “Nobody can profit from the mistreatment of the ‘Other’,” *The Prague Post* (April 15, 1998).
2. Andrew Nagorski, “The Intellectual Roots of Eastern Europe's Upheaval,” *SAIS Review* 89, (Summer/Fall 1990) 90.
3. Paul Berman, “The Philosopher-King is Mortal,” *The New York Times Magazine* (May 11, 1997), 47.
4. Bradley F. Abrams, “Reflections on the ‘Elegant Takeover’ of Czechoslovakia,” presented at East European Studies seminar, Woodrow Wilson International Center for Scholars (March 19, 1998) and summarized in May-June 1998 report.
5. George Schopflin, “The Political Traditions of Eastern Europe,” 119 *Daedalus* (Winter 1990) 55.
6. Milan Hauner, “The Meaning of Czech History: Masaryk versus Pekar,” in *T.G. Masaryk (1850-1937), Statesman and Cultural Force* (London: Macmillan Press, 1990).
7. Hauner, 27. See also Rene Welleck (ed.), *The Meaning of Czech History by Tomas G. Masaryk* (Chapel Hill, N.C.: University of North Carolina Press, 1974), which contains translated excerpts from Masaryk's *Cesak otazka* (The Czech Question) and other essays.
8. Victor S. Mamatey and Radomir Luza, *A History of the Czechoslovak Republic 1914-1948* (Princeton: Princeton University Press, 1973).

9. See also Z.A.B. Zeman, "Czechoslovakia between the Wars: Democracy on Trial," in John Morrison (ed.), *The Czech and Slovak Experience* (New York: St. Martin's Press, 1992).
10. Expellees and Refugees of German Ethnic Origin, Report of a special subcommittee of the Judiciary Committee, U.S. House of Representatives, Washington, D.C. (March 24, 1950).
11. Janusz Bugajski, *Charter 77's Decade of Dissent* (New York: Praeger Publishers, with The Center for Strategic and International Studies, Washington, 1987).
12. H. Gordon Skilling, "Independent Currents in Czechoslovakia," *Problems of Communism* 49 (January/February 1985). Yet another observer predicted optimistically that "the solid philosophical base prepared by Havel" should help to contain ethnic and other tensions in the post-communist Czechoslovakia. See Nagorski, 100.
13. "Liberalism in its essence is a philosophical rationalism which . . . rejects the religious and ethical meaning of life and culture." *Ceska otazka*, 325-26, cited in Roman Szporluk, *The Political Thought of Thomas G. Masaryk* (Boulder, Colo.: East European Monographs, 1981).
14. Fareed Zakaria, "The Rise of Illiberal Democracy," *Foreign Affairs* (November/December 1997).
15. Czech Republic Country Report on Human Rights Practices for 1997 (Washington: U.S. Department of State, January 30, 1998).
16. See Petr Janyska and Jan Kavan, "The Screening Act: Anti-Communist or Anti-Democratic?," *East European Reporter* (January/February 1992) 59; Lawrence Weschler, "The Velvet Purge: The Trials of Jan Kavan," *The New Yorker* (October 1992); Jirina Siklova, "Lustration or the Czech Way of Screening," *5 East European Constitutional Review* (Winter 1996) 57.
17. *Democracy, Economic Reform, Western Assistance in Czechoslovakia, Hungary & Poland Comparative Survey* (New York: Freedom House and the American Jewish Committee, April 1991). *The Pulse of Europe Survey* (Washington: Times Mirror Center for The People & The Press, September 16, 1991), together with the World Report, *Los Angeles Times* (September 17, 1991) and other supporting materials.
18. Jane Perlez, "Boxed In by Bias, Czech Gypsies Look to Canada," *The New York Times* (August 31, 1997).
19. Lila Sarick, "Gypsies Real Refugees Immigration Body Finds," *The Globe & Mail* (April 24, 1998).
20. Peter S. Green, "As Czech Skinheads Escalate Attacks, Gypsies Start to Put Up a Fight," *International Herald Tribune* (March 18, 1998).
21. Perhaps reflecting their propensity for denial, the Czech Republic and Slovakia were the only states that declined to send representatives to a March 1997 conference on the Roma situation; their absence was "noted with regret." *Prevention of Violence and Discrimination Against Roma in Central and Eastern Europe* (Princeton: Project on Ethnic Relations, March 21-22, 1997).
22. International authorities have criticized the law, though not as vehemently as deserved. *The Czech and Slovak Citizenship Laws and the Problem of Statelessness* (New York: Office of the United Nations High Commissioner for Refugees, February 1996). *Report of the Experts of the Council of Europe on the citizenship laws of the Czech Republic and Slovakia and their implementation* (Strasbourg: Council of Europe, 2 April 1996).

23. William Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, Mass.: Harvard University Press, 1992).
24. Ralf Dahrendorf, *Reflections on the Revolution in Europe* (New York: Random House, 1990).
25. From an exchange aired on Czech television, 25 May 1994, reprinted in Vaclav Havel, Vaclav Klaus & Petr Pithart, "Civil Society After Communism, Rival Visions," 7:1 *Journal of Democracy* 12 (January 1996).
26. When Klaus speaks of representative democracy as if it were a panacea that will necessarily protect individual rights, I wonder if he has observed that some democracies conspicuously lack a liberal order. Examples of such states in East Central Europe include Albania, Belarus, Romania and Slovakia.
27. Jan Urban, "Robin Hood and his Merry Band 20 Years Later," *Transition* (21 February 1997).
28. See Jiri Pehe, "Reshaping Dissident Ideals for Post-Communist Times," *Transition* (21 February 1997); Alena Hromadkova, "Whatever Happened to Charter 77," *East European Reporter* (January/February 1992).
29. Ladislav Hejdanek, "Democracy without opposition is nonsense," *East European Reporter* (Autumn/Winter 1990).
30. Robin Okey, *Eastern Europe, 1740-1985* (Minneapolis: University of Minnesota Press, 2d ed., 1989).
31. Fred Hahn, "Masaryk and the Germans," in *T.G. Masaryk (1850-1937), Statesman and Cultural Force* (London: Macmillan Press, 1990).
32. Petr Pithart, commentary from Vaclav Havel, Vaclav Klaus & Petr Pithart, "Civil Society After Communism, Rival Visions" 7:1 *Journal of Democracy* 12 (January 1996).
33. Hauner, 25.
34. Adam Michnik, "The Two Faces of Eastern Europe," *The New Republic* (November 12, 1990).
35. Berman, 37.
36. Havel has appeared to be ever mindful of the Czech legacy of liberal humanism, and of the challenge of altering Czech political culture with respect to minority rights. "We need to begin a serious discussion about the character of the democracy that we wish to cultivate -- its roots, spirit and direction ... [t]he vision that I am speaking of must stem from a clear recognition of the moral and spiritual precepts upon which our young democracy rests." From a speech delivered on 28 October 1994, the occasion of the state holiday of the Czech Republic, reprinted in Vaclav Havel, Vaclav Klaus & Petr Pithart, "Civil Society After Communism, Rival Visions," 7:1 *Journal of Democracy* 12 (January 1996).