Challenge and Change: Perspectives on Central Europe

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The River Vlatava runs through the Disneyesque city of Prague.

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by Professor Jayne Barnard

Last spring, thirteen journalists from Czechoslovakia visited Marshall - Wythe's Institute of Bill of Rights Law to study the traditions of free press and the First Amendment. Whatever inspiration they may have received from us, at least one of them provided inspiration in return. In a conversation over lunch, Lucie Weissova, a thirty-five-year-old reporter and commentator at Czechoslovak Radio, opened my eyes to the magnitude of the challenges facing Central Europe. (During the trip which I am about to describe, I learned that Czechs and Slovaks do *not* wish to be confused with their less-liberated neighbors—Albanians, Bulgarians and Romanians—*those* countries, we were told, comprise "Eastern Europe." Czechoslovakia, along with Hungary and Poland, is in "Central Europe.")

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Lucie asked simply what courses I teach. "Corporations, Bankruptcy and Securities Regulation," I replied. Frequently, this answer brings a glaze to the eyes of the listener, followed by a quick shift to other venues. In Lucie's case, it brought a wide-eyed and genuinely enthusiastic response. "We don't have any of those things in our country," she said, and immediately peppered with me questions about how such things work in the U.S. I knew right then that I wanted to know much more about her country and others in the Communist Economic Bloc—not only about their efforts toward personal and political freedom, but especially rights afforded to workers; and (in both countries) as to how, if at all, the claims of pre-nationalization property owners should be honored and how to encourage foreign investment without selling out the national patrimony.

• We met with the statute drafters and technocrats, frantically trying to keep up with emerging national policy.

• Finally, we met young entrepreneurs trying with great frustration to figure out how to make the new system work for them.

Of particular interest to me were my discussions concerning legal education in this rapidly-changing environment. When I asked a Ministry of Finance official in Hungary how the dramatic changes were being transmitted to a new generation of lawyers, he allowed as how that was a "question with a value of a million dollars." Then he described how Ministry officials were moonlighting several evenings a week at the local law school, trying to keep the students up to date on emerging changes. The regular law faculty, accustomed to delivering their lectures from approved materials provided to them by the government, were still waiting to be told what to say. In Czechoslovakia, an official sighed that an entire generation of scholars had been lost to this tradition of government control; only a handful of them were competent to teach free market issues at the university level.

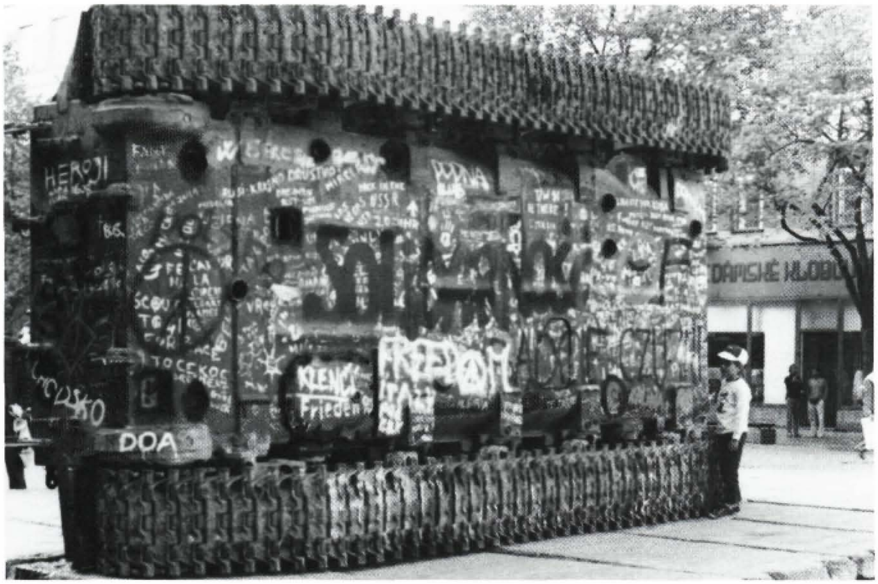
Curricular materials are scarce at every level. Lucie Weissova, with whom I had a warm reunion in Prague, said her daughter had been required to buy some books this summer for the fourth grade, but then advised not to read them because they contained inappropriate dogma. New books, with new dogma, have not yet been printed. An economist from the Czech Academy of Sciences said he had spent much of his spare time this spring painstakingly translating Samuelson's *Economics*, so that college students at the Charles University could learn some western economic theory this fall. When one of my American colleagues asked (uncharitably, I must say) if Samuelson wasn't obsolete, the tired economist could only shrug his shoulders.

Major challenges face these countries in their efforts to privatize enterprise and lure foreign capital—they have no accountants, so valuation is a problem. They are just now beginning to train young brokers, to pitch securities which don't yet exist. Telecommunications is a crippling handicap in many areas. (The Poles have selected the former Communist Party headquarters as the site of the Warsaw Stock Exchange, scheduled to open in January, not for the exquisite irony it affords, but because it has working telephones.) Management skills are scarce, and are largely held by former Communist Party members who ironically may be the biggest beneficiaries of the new economic order. Some of them have already engaged, without benefit of legislation, in a Central European form of management buyout, ruefully known to observers as "spontaneous privatization."

Many of the practitioners in our delegation came to Central Europe hoping to identify "the best country" for their clients to invest in. Most of them returned home quite cautious about the many unknowns yet facing all three countries. Hungary faces major problems repaying its $20 billion foreign debt. Czechoslovakia, debt-free but moving cautiously, doesn't expect to get around to tax reform until 1993. Poland, moving more urgently, may be losing the political unity necessary to effectuate the changes which this impoverished country will have to undergo. Lech Walesa is already playing the spoiler. Little wonder that many of my colleagues intend to advise their clients to keep their hands on their wallets a bit longer.

I am hardly competent, based upon a two-week visit, to predict the likelihood of success of the Central European experiment in what has come to be called "de-etatization" (the end of state control). I can say that this transition may be imperiled by some of the economic advice leaders of these countries are receiving and, apparently, embracing. This is no time for utopian theorists to impose their views on countries in crisis. As for the questions with which I began this trip—what will corporate governance look like in post-privatization Central Europe—the answers are a long way off.

Flowers, photos, and letters comprise a people's monument to Czech patriots killed during Prague Spring.



Three days after it was installed in Wenceslaus Square, this overturned Russian tank, a memento of the non-velvet revolution, was covered with First Amendment expression.

about what legal mechanisms these countries would choose to facilitate the anticipated transition from a command to a market economy.

In starting from scratch, which models would they follow? When they privatized their state-owned companies, what would be the rights of shareholders? What would be the structure of corporate law—would they adopt national legislation or proceed regionally, as in the United States? Would they encourage worker participation in corporate governance, as West Germany does, or adopt the American ESOP model? Would they create a strictly-regulated stock market or a more flexible system? Emphasize merit regulation or disclosure? How would they choose and why?

My opportunity to find out came shortly thereafter, when I received an invitation from Person to Person International, a private "citizen diplomacy" group which sponsors professional study missions around the world. This invitation had been sent to securities practitioners and professors affiliated with the Business Law Section of the American Bar Association, and the trip proposed would include meetings with economic policy makers, government officials, bankers, lawyers, and scholars in Hungary, Czechoslovakia and Poland.

The idea was not that we would serve as "consultants" or that we would advise these people on how to reform their economies. Scores of Americans, many of them ideologues and most of them with a profit motive, had already rushed to Central Europe with that in mind. Rather, our delegation would gather information from the best possible sources, and then bring it back to this country to share with our clients and students. The opportunity, though not ideally-timed (the trip caused me to miss the first week of classes), was irresistible.

Our thirty-two member delegation, headed by the solicitor of the Securities and Exchange Commission and the chair-elect of the ABA Business Law Section, left for Budapest on August 18 and returned from Warsaw on August 31. In the interim, our schedule was busy with meetings:

• We met with the newly-appointed (and first) chairman of the Hungarian Securities and Exchange Commission and the man who will soon become his counterpart in Poland, as soon as the government there can pass enabling legislation, which is expected to occur before year's end.

• We met with the visionary Hungarian banker who two years ago anticipated the need for a Central European stock exchange, and persuaded the state-owned bank's governors to put up the initial funding, making the Budapest Stock Exchange, which opened in June, the first Communist-subsidized stock exchange in the world. As of August, only one stock was listed on the exchange, but, equipped with five telephone lines and a bank of computers, it is open and accepting trades several hours a week.

• We met with former high government officials, removed by the democratic leaders and recently recycled into high-paying jobs for western banks and consulting firms attempting to establish a beachhead in Central Europe. These men had valuable contacts, language skills, and expertise to offer their new capitalist employers. No one we met, of course, acknowledged that he or she had ever been a member of the Communist Party.

• We met with lawyers and "legal advisors" (a less prestigious title), whose work until recently was wholly in the service of the state, now entering into joint ventures with western law firms, soliciting clients, and earnestly learning the art of negotiation on behalf of private interests.

• We met with the economists who are choosing in each country the path between "shock therapy" and a more moderate transition. We were treated to their heated debates: (in Czechoslovakia) as to whether every citizen should be given or sold shares in the soon-to-be privatized state enterprises to reflect their "investment" in these properties over the last forty-five years; (in Poland) as to whether there should be special ownership