Chalenge and Change: Perspectives on Central Europe

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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.”)

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...
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vestment without selling out the
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● We met with the statute draft­
ers and technocrats, frantically try­
ing to keep up with emerging na­
tional policy.

● Finally, we met young entre­
preneurs trying with great frustra­
tion 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 schol­
ars had been lost to this tradition of
government control; only a hand­
ful 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 be­
cause 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 col­
lege students at the Charles Univer­
sity could learn some western eco­


complimentary currency for their clients to invest
in. Most of them returned home
quite cautious about the many un­
knowns yet facing all three coun­
tries. Hungary faces major prob­
lems repaying its $20 billion for­
eign 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 politi­
cal 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 col­
leagues intend to advise their cli­
ents 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 imper­
iled by some of the economic ad­
ice leaders of these countries are
receiving and, apparently, embrac­
ing. This is no time for utopian
theorists to impose their views on
countries in crisis. As for the ques­
tions 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.
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 policymakers, 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