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Constitutional Proposals Unveiled: A Detailed Study of Unrealised Drafts in Czechoslovakia

Introduction

Throughout its seventy-five-year existence, Czechoslovakia¹ enacted four constitutions: in 1918, 1920, 1948, and 1960. These were complemented by other significant constitutional texts, including the initial constitutional provision that marked the establishment of the Czechoslovak state on 28 October 1918, and the ‘Little Constitution’, which led to the federalisation of Czechoslovakia in 1969 while preserving the revised 1960 constitution. In Slovakia, the 1939 and 1992 constitutions hold particular significance. In the lead-up to Czechoslovakia’s dissolution, the Czech Republic adopted its constitution in 1992. These constitutional advancements, unrealised proposals, and visionary concepts constitute the foundation of our research.

However, several entities submitted elaborate proposals for new constitutions during this time. All the unrealised constitutional proposals from more than seventy years of Czechoslovak constitutional history were recently presented to the Czech professional public in two publications by the authors of the Brno and Bratislava law faculties.² Some of them were given a separate entry in volume XIX of the

¹ The Czechoslovak state was proclaimed on 28 October 1918. It was initially referred to as the *Czechoslovak Realm*, while the name *Czechoslovak Republic* became official on 13 November 1918. Following the Munich Agreement in 1938, the state adopted the name *Czecho-Slovak Republic*, and the term *Second Republic* is also used in historical literature. In March 1939, Slovakia and Carpathian Ukraine declared independence, while the historical Czech lands were occupied by Nazi Germany and transformed into the *Protectorate of Bohemia and Moravia*. Later in 1939, the Czechoslovak exile movement began to assert that the Munich settlement was null and void, relying more on civil than constitutional legal arguments. After the Second World War, the country reverted to the name *Czechoslovak Republic*, and the period before the 1948 constitution is often referred to as the *Third Republic*. On 11 July 1960, the state was renamed the *Czechoslovak Socialist Republic*. As of 1 January 1969, it became a federation of the *Czech Socialist Republic* and the *Slovak Socialist Republic*. In March 1990, the name was changed to *Czechoslovak Federative Republic*, and in April 1990 to the *Czech and Slovak Federative Republic*.

² K. Schelle, J. Beňa, J. Tauchen *et al.*, *Ústava a ústavní systém meziválečného Československa*, Ostrava 2020, p. 931; *eidem*, *Ústava a ústavní systém socialistického Československa*, vol. 2, Ostrava 2022, pp. 631,

Encyclopaedia of Czech Legal History.³ Several of these constitutional drafts were found in archival fonds that have not yet been fully explored, either in the National Archives, the Archives of the Chamber of Deputies, or the Office of the President of the Republic. However, many were also found in the yellowed pages of now-completely forgotten newspapers and magazines. This article, thus, introduces these never-realised constitutional proposals to a foreign audience for the first time. It contributes to a richer understanding of history, politics, and society in the Czech lands and Slovakia. The study of unrealised constitutional proposals not only illuminates the spectrum of legal and political ideas that shaped the historical trajectory of a state, but also reveals alternative paths of development, enhancing our understanding of constitutional legitimacy, state identity, and the fragility of political consensus.

The interwar Czechoslovak Republic represented the initial attempt by the Czech and Slovak peoples to actualise their state-law aspirations within a modern state framework. The prevailing international circumstances, particularly during the 1930s, coupled with the frequently unreasonable and morally questionable policies pursued by Czech political representatives towards other nationalities, resulted in the relatively swift establishment of Czechoslovak statehood within the European context of that era, which lasted merely twenty years.

The unimplemented propositions of the institutions involved may offer a fresh perspective not only on the legal intricacies of this era and on the public administration of the First Republic, but mainly on the political landscape, which was far from the idealised harmony often portrayed in contemporary historical literature. Despite the contradictions stemming from these propositions, an impartial evaluation of First Republic Czechoslovak constitutionalism compared to other regions heavily influenced by fascism in Europe indicates that the Czechoslovak Republic during the interwar period was among the most democratic states globally. Consequently, it presents numerous contemporary lessons, both negative and positive.

Throughout the First and Second Czechoslovak Republics and the immediate post-war period, numerous individual proposals were presented to amend the 1920 Constitution or to formulate a new one. For the sake of brevity, this article exclusively addresses comprehensive proposals for a new constitution, omitting consideration of partial amendment proposals because of spatial constraints.

Our article integrates careful archival research with historical-legal analysis to elucidate the reasons behind the failure of numerous constitutional proposals and to consider their potential ramifications on Czechoslovakia's political, legal, and constitutional framework.⁴ This approach furnishes a comprehensive perspective on

606; some constitutional drafts are also found in the document series J. Grónský, *Komentované dokumenty k ústavním dějinám Československa* (vol. 1: 1914–1945, vol. 2: 1945–1960, vol. 3: 1960–1989, vol. 4: 1989–1992), Praha 2005–2007, pp. 584, 510, 441, 649.

³ *Encyklopedie českých právních dějin*, vol. 19: *U–Ú*, eds. K. Schelle, J. Tauchen, Plzeň 2020, p. 806.

⁴ Naturally, a broader spectrum of political and ideological concepts concerning the constitutional arrangement of Czechoslovakia existed, including various individual or minority visions. However, this article focuses exclusively on those constitutional drafts that were formulated as coherent texts with

the constitutional advancements and political discourse that have profoundly shaped the trajectory of Czechoslovakia and, subsequently, the Czech Republic.

From a theoretical standpoint, this analysis is informed by modern constitutional theory, particularly the concepts of constitutionalism as a process rather than a static document, and the role of counterfactual constitutional imaginaries in shaping political identity. The article engages with the notion that constitutional proposals – even those never enacted – can function as expressions of competing visions of sovereignty, legitimacy, and collective self-understanding. These dynamics are particularly evident in multinational or transitional states, where constitutional design is not only a legal act but a reflection of contested statehood.

1. Constitutional proposals from the interwar period (1918–1938)

1.1. Slovak and Ruthenian Constitutional Proposals

The positions of Slovakia and Ruthenia within the new Czechoslovak state were notably distinct, underscored by significant political agreements. The Pittsburgh Agreement, Cleveland Agreement, Washington Agreement, and Martin Declaration all played pivotal roles in supporting Slovakia's position. On the other hand, Ruthenia was integrated through an international treaty facilitated by the Rusyn emigration to the United States, marking a crucial turning point in its history.⁵ The new state was connected with the idea of a Czechoslovak nation, derogatorily termed Czechoslovakism (primarily in Slovak wartime propaganda⁶). Although largely fictitious, this concept was constitutionally sanctioned, limiting the formulation of Slovak constitutional propositions.

In May 1921, the Slovak People's Party advocated for increased autonomy,⁷ a testament to their unwavering spirit. Three proposals for constitutional amendments followed, each one a step towards their goal. Ferdinand Juriga's proposal, published in the *Slovenské ľudové noviny* on 10 June 1921, aimed to make Czechoslovakia a confederation, a bold move towards Slovak self-governance.⁸ On 19 June 1921, deputy Ľudevít Labay published a more legally thorough proposal in the daily *Slovák*. Crucial matters were to be handled by a joint assembly in Prague consisting of Slovak

at least a theoretical potential for political realisation or public debate. Fragmentary proclamations, informal manifestos, or marginal expressions without systemic structure or legal articulation are not included, as they do not meet the criteria of constitutional proposals in the proper sense of the term.

⁵ L. Lipscher, *Verfassung und politische Verwaltung in der Tschechoslowakei, 1918–1939*, München 1979, p. 15.

⁶ E. Broklová, *Češi a Slováci 1918–1938*, "Sociologický časopis" 1995, no. 1, pp. 34–35.

⁷ J. Rychlík, *Češi a Slováci ve 20. století*, Zv. 1: *Česko-slovenské vztahy 1914–1945*, Bratislava 1997, p. 104.

⁸ *Ibid.*, pp. 104–105.

Provincial Assembly members. One-third of the ministers were to be Slovaks, and the president, elected indirectly, would alternate between a Czech and a Slovak.⁹

The third proposal, by Vojtech Tuka, was announced in February 1921 and elaborated in the daily *Slovák* from 24 June to 8 July 1921.¹⁰ Tuka called for a union of two fraternal nations, with Slovakia having its government, parliament, and judiciary. Shared responsibilities included foreign affairs, national debt, customs, and more. Tuka's detailed draft law proposed a Charter of the Czechoslovak Union Republic, envisioning two nation-states with their constitutions and shared functions. However, Tuka's proposal was controversial, seen as serving Hungarian interests,¹¹ and was met with disappointment as Slovak representatives rejected it.¹²

The Slovak People's Party initially worked with the Czechoslovak People's Party, which moderated Slovak activism. In November 1921, Slovaks left the joint parliamentary faction, signalling a shift in their political strategy. In January 1922, the Slovak People's Party initiated a legislative process based on Labay's proposal.¹³ This was a significant step towards advocating increased autonomy, demonstrating the party's commitment to its political agenda. However, Juriga's proposal needed to be revised, and Tuka's was seen as a tool for the Hungarian absorption of Slovakia. Labay's proposal was slightly expanded to bring in Ruthenia's position but remained promotional rather than practical. It suggested broad self-government for Slovakia and Ruthenia within the Czechoslovak Republic. Still, it was never discussed,¹⁴ highlighting the challenges faced by the Slovak representatives in their pursuit of increased autonomy.

In May 1930, the Slovak People's Party submitted a second proposal attributed to Karol Mederly.¹⁵ This concise proposal extended constitutional guarantees granted to Ruthenia to Slovakia, proposing broad autonomy while maintaining the state's unity.¹⁶ However, Czech political parties ignored it.¹⁷

Ruthenian proposals during the First Czechoslovak Republic aimed to implement constitutional guarantees of autonomy but remained limited at sub-constitutional levels.¹⁸ Thus, no Slovak or Ruthenian proposals resulted in a fundamental transformation of the Czechoslovak constitutional order before the Munich Agreement.

⁹ L. Labay, *Návrh zákona o zemskej autonomii Slovenska*, "Slovák" 1921, no. 137, pp. 1–2.

¹⁰ V. Tuka, *Autonomia Slovenska*, "Slovák" 1921, no. 28, p. 1; *idem*, *Autonomia Slovenska*, "Slovák" 1921, no. 29, p. 1; *idem*, *Návrh zákona o samospráve Slovenska*, "Slovák" 1921, no. 141, pp. 1–2; *idem*, *Návrh zákona o samospráve Slovenska*, "Slovák" 1921, no. 142, pp. 1–2; *idem*, *Návrh zákona o samospráve Slovenska*, "Slovák" 1921, no. 143, pp. 1–2; *idem*, *Návrh zákona o samospráve Slovenska*, "Slovák" 1921, no. 144, pp. 1–2; *idem*, *Návrh zákona o samospráve Slovenska*, "Slovák" 1921, no. 146, p. 2.

¹¹ Z. Peška, *Poznámky k návrhům slovenských autonomistů na změnu ústavy*, "Národnostní obzor" 1932, no. 2, p. 101.

¹² J. Rotnágl, *Češi a Slováci: vzpomínky a úvahy nad dopisy a zápisky z let 1907–1918*, Praha 1945, p. 264.

¹³ L. Cabada, *Český stranický systém 1890–1939*, Plzeň 2000, p. 78.

¹⁴ K. Schelle, J. Beňa, J. Tauchen *et al.*, *Ústava a ústavní systém...*, Ostrava 2020, pp. 400–401.

¹⁵ *Ibid.*, p. 402.

¹⁶ E. Broklová, *Československá demokracie: politický systém ČSR 1918–1938*, Praha 1992, p. 123.

¹⁷ J. Rychlík, *Češi a Slováci ve 20. Století...*, p. 122.

¹⁸ M. Dudová, *Ústavní návrhy na autonomii Podkarpatské Rusi (1920–1930)* [in:] *Encyklopedie českých právních dějin...*, vol. 19, pp. 501–505.

1.2. German constitutional proposals

German political representation faced initial rejection,¹⁹ and later, dissatisfaction arose with the constitutional system introduced by the Constitution of 29 February 1920.²⁰ This dissatisfaction stemmed from the fact that national minorities were not represented in the first National Assembly (1918–1920), thus lacking influence over the Constitution. Many viewed the Constitution as an *imposed*, a term that encapsulates their perception of its illegitimacy.²¹

German parties consistently proposed amending the 1920 Constitution during the First Czechoslovak Republic. However, the most notable attempt at a comprehensive new constitution was the Draft Principles for the Revision of the Constitutional Charter of the Czechoslovak Republic, drafted in December 1932 by Fritz Sander,²² a constitutional law professor at the German Law School in Prague. Sander's proposal was intended for discussion at the German Law Days in June 1933 but was unfortunately postponed.

Sander's proposal presented a clear vision²³ for a federation or federal state.²⁴ Legislative power was to be divided between an Imperial Council and state assemblies. The Imperial Council, consisting of 150 members elected for four years, would hold full legislative power and issue framework laws. Czechoslovakia was divided into national registers, with seats corresponding to national composition. Only uniform national lists of candidates could be submitted, and the council was divided into six national *curiae* to safeguard minorities from majority decisions. Voting in the council was to be conducted by political parties representing nations and political interests.

An Estates' Assembly was to include representatives of essential professions appointed by professional corporations. The President of the Republic was to be elected for four years, and the presidency would rotate every third term to a citizen

¹⁹ On the state-law status of the German minority in Czechoslovakia, see: O. Kolář, *Státoprávní postavení německé menšiny v ČSR (1918–1938)* [in:] *Encyklopedie českých právních dějin*, vol. 16: *Správa veřejná–Suché*, eds. K. Schelle, J. Tauchen, Plzeň 2019, pp. 393–398; an overview of the state-law ideas of German political parties in interwar Czechoslovakia is given by L. Novotný, *Státoprávní představy německých politických stran v meziválečném Československu (přehled)* [in:] *Encyklopedie českých právních dějin...*, vol. 16, pp. 511–515.

²⁰ N. Nedelsky, *Defining the Sovereign Community*, Philadelphia 2012, p. 74.

²¹ For more details on the issue of the status of the German minority in interwar Czechoslovakia and its state-law requirements, see: J. Kuklík, R. Petráš, *Minorities and law in Czechoslovakia 1918–1992*, Praha 2017, pp. 55–137; R. Petráš, *Menšiny v meziválečném Československu: právní postavení národnostních menšin v první Československé republice a jejich mezinárodněprávní ochrana*, Praha 2009, pp. 165–194, 332–344. On the matter of the *imposed* constitution, see D. Kolumber, *Das Münchner Abkommen*, "Beiträge zur Rechtsgeschichte Österreichs" 2022, no. 2, p. 359.

²² For details of the life and work of Fritz Sander, see: J. Tauchen, *Fritz Sander* [in:] *Encyklopedie českých právních dějin*, vol. 25: *Biografie právníků S–Ž*, eds. K. Schelle, J. Tauchen, O. Horák, D. Kolumber, Plzeň 2024, pp. 32–34.

²³ Sander's proposal was published in print as *Vorschläge für eine Revision der Verfassungsurkunde der Tschechoslowakischen Republik*, Reichenberg 1933, p. 107.

²⁴ Sander's other works dealing with the revision of the constitutional situation in Czechoslovakia include *Das Problem der Demokratie*, Brünn 1934, p. 144.

from the German or Hungarian *register*. The President and a proportionally divided government would hold executive power, not requiring a vote of confidence from the Imperial Council or Estates Chamber. The Reich and Estates elected a supervisory committee overseeing the President and the Government.

The Czechoslovak Republic was to be divided into separate national lands: Czech, German, Ruthenian, Slovak, and Hungarian. Provincial assemblies would handle cultural and economic interests. Executive power in the states was vested in a Land Government. Officials from the relevant nationality register, including the provincial gendarmerie and police, would staff courts and offices in each country. Sander's proposal listed national minorities' rights (educational, cultural, and language rights) but assumed an undemocratic organisation based on the nationality principle, rejecting some democratic principles; this was unacceptable to Czech political representation. In the 1930s, Sander's proposal²⁵ was reviewed and reacted to by experts in newspapers and specialist journals, but mainly in a negative light (Emil Hácha, Jiří Hoetzel, and Franz Adler).

Despite his mixed reception, Sander's role²⁶ in 1938 as a mediator between the Czechoslovak government and the Sudeten German party on Czech-German relations was a testament to his influence and diplomatic skills.

2. Constitutional proposals from the period of the Second Republic (1938–1939)

The transformation of the Czechoslovak state logically led to consideration of the adoption of an entirely new constitution. As reported by most of the media at the time, the relevant work should have been started in October 1938, but the constitutional law experts contacted never agreed to participate. The periodicals of the time even agreed in principle on the proposed constitution's description while under presentation.²⁷

The initial details regarding the draft of the new constitution were made public on 21 October 1938, by the daily newspaper *Venkov*, which announced the formation of a political and professional preparatory commission.²⁸ Subsequently, *Národní listy* reported on the preliminary content of the new constitution, which was expected to

²⁵ For more on Fritz Sander's proposal, see: E. Broklová, *Právní cesta sudetských Němců 1933. Návrhy Fritze Sandera na reformu československé ústavy* [in:] *Československé právo a právní věda v meziválečném období (1918–1938) a jejich místo ve střední Evropě*, eds. K. Malý, L. Soukup, Praha 2010, pp. 515–556.

²⁶ It was an attempt to resolve the difficult situation into which the Czechoslovak state found itself at the end of the 1930s. The Nationality Statute was supposed to be a major reform of minority policy and was supposed to concern not only the German minority but also all other minorities and their legal status, issues of language law, education, state administration, and social security. However, it did not envisage a fundamental revision of the constitutional legal situation in Czechoslovakia. For more on this, see: J. Kuklík, J. Němeček, *Od národního státu ke státu národnosti? Národnostní statut a snahy o řešení menšinové otázky v Československu v roce 1938*, Praha 2013, p. 450.

²⁷ K. Schelle, J. Beňa, J. Tauchen *et al.*, *Ústava a ústavní system...*, Ostrava 2020, p. 416.

²⁸ *Ibid.*

be outlined in rough form.²⁹ The proposed constitution entailed modifications to the president's authority, granting the president the power of veto and emergency powers for maintaining order. The president was tasked with overseeing the government's functioning, serving as representative of the state, and maintaining the balance of power. The government would include a president, a deputy, three joint ministers (foreign affairs, defence, and finance), eight Czech-Moravian ministers, five Slovak ministers, and three Ruthenian ministers. It was planned that the ministries would undergo reorganisation, and the Czech-Moravian cabinet members would administer their responsibilities within the framework of the historical territories and in agreement with the Slovak and Ruthenian representatives at the national level. Each minister would have state secretaries to manage additional central administrative offices. The constitution proposed the establishment of four legislatures: a 140-member Bohemian-Moravian parliament, a fifty-member Slovak parliament, a ten-member Ruthenian parliament, and a national parliament consisting of 200 members (comprising members from the three sub-parliaments). To mitigate majoritarianism, a second chamber of the parliament, the Senate, was to be instituted with the right of suspensive veto against resolutions of the joint parliament. The Senate would be composed of eight senators from each of the three parts of the republic, totalling 24 senators. The provincial assemblies would elect two-thirds of the senators, and the president would appoint one-third. The president could decide in a dispute between the joint parliament and the Senate. The electoral system was also slated for significant changes, with the introduction of a majority voting system and direct elections aimed at reducing the role of political parties and strengthening the position of individual candidates. The Supreme Court, the Supreme Administrative Court, and the Supreme Military Court were to be retained, with at least one based in Bratislava.³⁰

In late October 1938, Slovak Prime Minister Jozef Tiso dismissed the proposals, contending that they were contrary to the principle of three equal subjects.³¹ Subsequently, in November 1938, the Slovak people presented the theses of a new constitution, advocating the transformation of the Czechoslovak Republic into a federal state. This proposal entailed the adoption of four constitutions: federal, Czech-Moravian, Slovak, and Ruthenian. The common constitution was to delineate common issues and precisely designate the governing bodies. In contrast, the federal constitution explicitly stipulated that all other matters fell within the purview of the federal states and were to be regulated by the state constitutions. Emphasising the right to self-determination of the Czechs, Slovaks, and Ruthenians, the new constitution emphasised that the Republic was a federal state. It was envisioned as an international, military, and economic entity with provisions for a unified foreign policy, joint embassies, a shared army, finance, a single currency, and a customs regime. The

²⁹ *Ibid.*, pp. 416–417.

³⁰ For a detailed discussion, see: D. Kolumber, *Československá ústava 1938* [in:] *Sborník konference: Mezinárodní vědecká konference oblasti práva a právních věd – Právní ROZPRÁVY 2014*, Hradec Králové 2014, pp. 357–358.

³¹ K. Schelle, J. Beňa, J. Tauchen *et al.*, *Ústava a ústavní system...*, Ostrava 2020, p. 417.

proposal outlined the establishment of joint authorities, including a federal president elected by the Federal Parliament, a federal government comprising ministers of joint departments (foreign affairs, defence, and finance) and representatives of the state governments, and a federal parliament composed of delegates from a Province Council. The parliament was to consist of 120 to 160 members, with safeguards in place to prevent majoritarianism through a four-fifths majority veto. Additionally, the proposal included provisions for a mutual central bank, Supreme Court, and Supreme Administrative Court, with judges appointed by the federal president based on the proposal of the state governments. The proposal also outlined a separate tax system in the individual provinces, proportional representation of the various nations in the authorities, and the organisation of the army and the financial guard (Customs and Revenue Guard) to ensure that representatives of different nations would serve in their respective territories under their own officers.³²

In December 1938, however, members of Hlinka's Slovak People's Party merely confined themselves to criticism of the contemporary situation,³³ describing the republic as a federal state of three unequal nations, in which Czech superiority was reflected, especially in the fact that the Czech parliament and government also performed the functions of the central parliament and government. They implied that the unitary state had left matters of local importance only in its eastern parts to local parliaments and governments, which was not in keeping with the contemporary conception and was then to be explicitly addressed in the new constitution.³⁴ At the end of the year, the President of the Republic, Emil Hácha, commented on adopting the new constitution, advocating its adoption after the consolidation and calming of the overall situation.³⁵

In February 1939, a draft of the Estates' Constitution by Ladislav Švejcar also emerged.³⁶ It appears that this was not just a republication of an earlier draft, but rather a reflection of the ideas of a social group that supported the contemporary concept of the Estates' State. This concept was being implemented elsewhere in Europe, particularly in fascist Italy and Portugal. The Italian legal system had a significant influence during this period of Czechoslovak history.³⁷

The Constitutional Enabling Act (No. 330/1938 Coll.) authorised the President to issue decrees with the force of constitutional law. However, expert public opinion held that issuing a new constitution in its entirety by this method was not permissible. They did acknowledge, however, that partial amendments to the constitutional charter

³² For more detail, see: O. Pokorný, *Nová ústava, "Nástup"* 1938, no. 8, pp. 75–76.

³³ In this context, it is possible to draw attention to the problematic conditions of the Czechs in Slovakia. For more detail, see: T. Procházka, *The Second Republic: The Disintegration of Post-Munich Czechoslovakia (October 1938 – March 1939)*, Boulder 1981, p. 62.

³⁴ O. Pokorný, *Musíme bojovat' dálej, "Nástup"* 1938, no. 10, pp. 98–99.

³⁵ K. Schelle, J. Beňa, J. Tauchen *et al.*, *Ústava a ústavní system...*, Ostrava 2020, p. 418.

³⁶ *Ibid.*, p. 420.

³⁷ On the parallels between the legal development of the Second Republic and Fascist Italy, see: D. Kolumber, *Aspetti giuridici della autoritaria democrazia cecoslovacca alla luce dello sviluppo dell'Italia fascista*, "Scientia Nobilitat Studies" 2015, no. 1, pp. 4–18.

could be made using decrees.³⁸ It was emphasised that the National Assembly should adopt the new constitution. However, because of post-Munich developments, the Assembly needed to restore its legitimacy through elections because it had become a limbless torso after losing the presence of many deputies and senators, particularly those from Ruthenia.³⁹ Unfortunately, elections to the national legislature were never held because of turbulent developments at the beginning of 1939. As a result, the National Assembly was dissolved on 21 March 1939,⁴⁰ and further considerations of a new Czecho-Slovak constitution became irrelevant.

3. Draft Constitution of the Protectorate of Bohemia and Moravia (1939–1945)

In connection with the autonomist efforts of Slovak political representatives and the proclamation of an independent Slovak state, the President of the Second Republic, Emil Hácha, requested an audience with Adolf Hitler in Berlin on 14 March 1939. However, no negotiations on the future of the Czech lands took place, and Hácha was informed that they would be occupied by German troops the following day. On 16 March 1939, the Protectorate of Bohemia and Moravia was proclaimed, the legal basis of which was the decree of the Führer and the Reich Chancellor on the Protectorate of Bohemia and Moravia.⁴¹ Public administration and law during the Protectorate were based on the principle of the double track. A distinction had to be made between the imperial (German, occupation) and autonomous (Czech) authorities and administration, which in some areas was wholly abolished and in others operated entirely under the control of the imperial one. The Czech Parliament no longer met after December 1938, and based on the Constitutional Enabling Act, legislative power belonged to the government and the president.⁴² Hitler's decree did not directly abrogate the Czechoslovak Constitution of 1920, but those provisions which contradicted the meaning of the German Reich's assumption of protection were no longer valid.

³⁸ J. Krejčí, *Moc vládní a výkonná jako ústavodárce a zákonodárce* [in: *Sborník prací k počtě šedesátých narozenin Františka Weyra*, ed. K. Engliš, Brno 1939, p. 151.

³⁹ D. Kolumber, *Projekce pomnichovského vývoje na složení československého Národního shromáždění* [in: *Češi a Němci v meziválečném Československu*, ed. J. Tauchen, Ostrava 2013, pp. 167–169.

⁴⁰ K. Schelle, J. Beňa, J. Tauchen et al., *Ústava a ústavní system...*, Ostrava 2020, p. 421.

⁴¹ Erlaß des Führers und Reichskanzlers über das Protektorat Böhmen und Mähren vom 16. März 1939 (RGBl. I., p. 485).

⁴² On the state-legal characteristics of the autonomous and occupation administration, see in particular the works of Pavel Maršálek: *Pod ochranou hákového kříže: nacistický okupační režim v českých zemích 1939–1945*, Praha 2012; *Protektorát Čechy a Morava: státoprávní a politické aspekty nacistického okupačního režimu v českých zemích, 1939–1945*, Praha 2002; *Veřejná správa Protektorátu Čechy a Morava v letech 1939–1945*, Praha 1999. See also, for example: J. Tauchen, *Das Protektorat Böhmen und Mähren und seine Rechtsordnung (1939–1945)*, "Beiträge zur Rechtsgeschichte Österreichs" 2020, no. 2, pp. 260–268.

The proposal to amend the 1920 constitution was drafted by Jan Malypetr, former Speaker of the Chamber of Deputies of the National Assembly, and sent to State President Emil Hácha at the end of April 1939. It consisted of 102 paragraphs. The draft was limited to retaining the existing structure of the separation of powers and changing only what was contrary to Hitler's decree of 16 March 1939. However, President Emil Hácha was well aware of political realities after meeting with Hitler and did not deal with the proposal, as evidenced by a note in the file dated 24 May 1939: 'Mr President gave no order'.⁴³

Malypetr's proposal thus testifies to a certain naivety of Czech political circles, which thought that the Protectorate's proclaimed autonomy would be respected. However, the opposite was true, and the autonomy often emphasised by the Nazis was only on paper.

Malypetr stated at the beginning of the draft of the Protectorate Constitution that 'the Protectorate of Bohemia and Moravia belongs to the territory of the Reich and comes under its protection, and that territorially the Protectorate forms a territorial unit and a single customs territory with the Reich, but politically the Protectorate retains a certain state independence within the Reich'. Legislative power was to be exercised for the entire territory of the Protectorate by a unicameral National Assembly of 120 members. Malypetr is silent on the conditions for exercising the mandate of a member of the National Assembly, as well as on its powers and the method of its constitution. He does not refer to a particular law. It was precisely the determination of the powers and their delimitation concerning the imperial authorities that was the crucial question. The term of office of the National Assembly was to be five years. Bills were to come either from the government or from the National Assembly.

Malypetr's draft constitution shows his need for more awareness and practicality. Surprisingly, he does not consider the involvement of the Reich authorities in the legislative process, despite being aware of Hitler's decree and the initial intervention of the occupation authorities in the autonomous legislature. His proposal suggests the constitutional enshrinement of enabling legislation. According to his proposal, the National Assembly could empower the Government, by a majority of its members, for a certain period to modify, amend, or supplement laws or take measures that would typically require a law via decrees co-signed by the President of the State. Additionally, with a three-fourths majority of all its members, the National Assembly could authorise the President of the State, for a specified period, to amend or supplement the constitutional charter of the Protectorate by decree, based on the unanimous proposal of the Government. Malypetr entrusted executive power to the state president and the government. The State President of the Protectorate was to be elected by the National Assembly for five years.

⁴³ Archiv kanceláře prezidenta republiky [Archive of the Office of the President of the Republic], fond Kancelář prezidenta republiky (KPR) [Office of the President of the Republic (KPR)], carton 223, no. 1288, D 3612/39.

The final part of Malypetr's proposal concerned the enshrinement of rights, freedoms, and civic duties. The following principles were explicitly regulated: equality, liberty of person and property, freedom of the home, freedom of the press, the right of assembly and association, the right of petition, confidentiality of letters, freedom of learning and conscience, and freedom of speech. Once again, one cannot but repeat the naivety of the author of this constitutional proposal because the occupiers could never have agreed to its wording, as subsequent developments made abundantly clear.⁴⁴

4. Constitutional proposals from the post-war period (1945–1948)

After the Second World War ended, a reconstruction of the Czechoslovak constitutional system on entirely new foundations was necessary. Although the 1920 Constitution was still formally in force,⁴⁵ the system of state institutions underwent significant changes. In 1946, the Constituent National Assembly was elected as a unicameral legislative body. It was established based on the last democratic elections, and its main task was to adopt the new Constitution of Czechoslovakia. The National Assembly set up a preparatory Commission of Experts to draft the text of the new constitution. This commission began to work intensively, and after the Communists took power in February 1948, the basis for adopting the constitution became the Communist draft, which was mainly written by Vladimír Procházka, a professor at Prague Law School. The Parliament adopted Procházka's draft in May 1948, today referred to as the "Constitution of 9 May."

In 1946–1948, however, there were clashes of opinion between the various political parties, especially a conflict of democratic and communist concepts. Nevertheless, almost every political party had its own idea of the form the new constitution should take.⁴⁶ Not all of these proposals were sufficiently developed, however. They differed mainly on the position of Slovakia within the Czechoslovak state and the powers of the Slovak authorities. The most precise and comprehensive constitutional proposal was presented by the National Socialist Party, whose author was Vladimír Kubeš, then Dean of the Faculty of Law of Masaryk University in Brno. For this reason, we will deal with this proposal in more detail.

Since Kubeš was also a legal philosopher, in addition to the paragraphed text of the new constitution, he also set out the philosophical basis of the new constitution,

⁴⁴ Jan Malypetr's constitutional proposal was published in K. Schelle, J. Beňa, J. Tauchen *et al.*, *Ústava a ústavní system...*, Ostrava 2020, pp. 859–870.

⁴⁵ G. Brunner, M. Hofmann, P. Holländer, *Verfassungsgerichtsbarkeit in der Tschechischen Republik*, Baden-Baden 2001, p. 161

⁴⁶ The proposals of individual political parties are printed in K. Schelle, J. Beňa, J. Tauchen *et al.*, *Ústava a ústavní system...*, vol. 2, Ostrava 2022, pp. 220–312. Charakteristika jednotlivých návrhů viz Z. Ryšavý, *Ústavní návrhy (1946–1948)* [in:] *Encyklopedie českých právních dějin...*, vol. 19, pp. 524–526; and K. Schelle, J. Beňa, J. Tauchen *et al.*, *Ústava a ústavní system...*, vol. 1, Ostrava 2022, pp. 319–331.

which he had been working on intensively since the end of the war.⁴⁷ In his draft of the new constitution, Kubeš based his proposal on the constitutional system under the 1920 Constitution, with the central ideas being a national, separate, independent, and unified state and the concept of political democracy. According to Kubeš, only a constitution underpinned by a unified ideological foundation (as with the Austrian Civil Code of 1811, that is, a solid piece of legislation based on modern natural law doctrine) had a chance to succeed. Marxism rejected this and considered the appropriate philosophical basis for a new constitution to be a tiered system of ideas, with the concept of humanity at its apex.

In his proposal,⁴⁸ Kubeš departed from the 1920 Constitution regarding legislative power and entrusted it to a unicameral National Assembly of 300 deputies and three provincial assemblies (Czech, Moravian-Silesian, and Slovak). He, therefore, based his proposal on the provincial system, which implemented the principles of federalism. The legislative competence of the provincial assemblies included, for example, health care, education, social welfare, transport, construction, and agriculture.

Executive power was vested in the President of the Republic, the Government, and the provincial governments. The President of the Republic could be a citizen over thirty-five years of age elected by the National Assembly for a seven-year term, which was quite a long term. The position of the President of the Republic was constructed as essentially representative only. The President of the Republic appointed the Prime Minister. If the prime minister were Czech, his first deputy would have to be Slovak, and vice versa. The executive power in the individual countries was headed by provincial governments, which were to be based in the capitals of the individual countries (Prague, Brno, or Bratislava).

Following the post-war administrative structure, internal state administration and self-government were to be exercised by district and local national committees. As representative bodies, they were to be elected by the people for four-year terms.

The Constitutional Court was to decide on the conformity of laws with constitutional rules and the conformity of provincial laws with regulations. It was also competent to deal with individual constitutional complaints from natural or legal persons if they claimed that the state had infringed their constitutionally guaranteed rights and freedoms. Therefore, the Constitutional Court and its powers were constructed differently and much more broadly than in the period of the first Czechoslovak Republic when the court's functioning was very problematic.

Kubeš's proposal also included a catalogue of fundamental rights and freedoms.⁴⁹

⁴⁷ V. Kubeš, *Filosofický základ nové ústavy*, "Vědecká ročenka právnické fakulty Masarykovy university v Brně" 1947, no. 1, pp. 86–107.

⁴⁸ Kubeš's draft constitution was published in 1947 under the title V. Kubeš, *O novou ústavu*, Praha 1948, p. 140.

⁴⁹ Kubeš writes in detail about his draft constitution in his memoirs: V. Kubeš, J. Tauchen, ... *a chtěl bych to všechno znovu. Filozofické vypořádání s pesimistickým světovým názorem*, Brno 2022, pp. 125–135; see also: the work of V. Kubeš, *Dějiny myšlení o státu a právu ve 20. století se zřetelem k Moravě a zvláště Brnu*, Díl první, Brno 1995, pp. 51–153.

5. Constitutional proposals from the socialist period (1948–1989)

Towards the end of the 1950s, the leadership of the Communist Party of Czechoslovakia concluded that, as in the Soviet Union, socialism had already been established in Czechoslovakia, and according to the legal theory of the time, it was necessary to adapt the constitutional situation to this, that is, to issue a new constitution. This took place on 11 July 1960. It was hastily prepared within half a year without any extensive analysis of the functioning of the existing state system or foreign legal arrangements.

In Czechoslovakia, the 1960s represented a gradual reversal of the existing policy. In 1968, democratisation efforts resulted in the concept of 'socialism with a human face', which openly opposed centralisation, the bureaucratic way of running the state, and the lack of democratic elements in the management of the party and the state. At the same time, a discussion on a new state structure for Czechoslovakia was initiated, as Slovak political groups had long considered the current situation unsatisfactory.

It follows from the very nature of the totalitarian regime that was socialist Czechoslovakia that no proposals for a new constitution were drafted or submitted, as they would have had no chance of being adopted. On the contrary, such efforts could have been perceived as anti-state acts. The only exception to this is the proposal for a tri-federation in 1968. In addition to the national demands of the Slovaks, the idea of a three-member federation consisting of three countries – Czech, Moravian-Silesian, and Slovak – began to spread slowly in Moravia and Silesia from late March and early April 1968. This was a reaction to the abolition of the regional system in 1948 and the centralisation of the state. In the spring of 1968, a tri-federation began to gain tens of thousands of supporters in Moravia, who united in the newly formed Society for Moravia and Silesia. Initially, this brought together mainly intellectuals and artists from Moravia and Silesia, but later, it became a mass organisation. However, the idea of creating a tri-federation was also taken up by local administration and Communist Party officials in South Moravia.

The South Moravian Regional National Committee (KNV) created a working group to draft a proposal on state and territorial organization.⁵⁰ The working group consisted of two types of members: representatives of the South Moravian KNV and experts, among whom were Vladimír Kubeš, as well as former professors of the closed Masaryk University Faculty of Law, Hynek Bulín, František Čáda, and Jaroslav Pošvář. The working group presented and developed three alternatives: alternative I – a three-part state-law arrangement of the future federation (ensuring the equal status of Moravia and Silesia); alternative II – a provincial system; and alternative III – a two-part (dualistic) arrangement.

The most developed alternative was the first, which was also considered the baseline alternative and is the focus of our attention here. It was based on creating three separate state units, each with its legislative assembly (about 100 members), a body

⁵⁰ The proposal for a model of a tripartite federation is reprinted in K. Schelle, J. Beňa, J. Tauchen *et al.*, *Ústava a ústavní system...*, vol. 2, Ostrava 2022, pp. 452–462.

acting as head of state, a government, and a supreme court. Alternative I considered the most appropriate administrative division to be the abolition of regional and national committees and direct management of the district national committees by the state unit's government (two-stage procedure). All three state units were to conclude a state treaty on creating a federation, including the possibility of unilateral withdrawal from this state union. Within the federation, legislative power would then be exercised by two chambers: the first chamber of the legislature with 300 deputies and the second chamber of the parliament with 150 deputies, to which each state unit would delegate 50 deputies. Both chambers would elect a federal head of state to appoint the federal government. Two Secretaries of State from states other than the Chief Minister were to be appointed in each ministry. On the proposal of the federal head of state, the two chambers of the federation were to establish a federal supreme court, a supreme military court, and a constitutional court of the federation to examine whether the federal laws and the laws of the various state units were according to the constitution of the federation.

In 1968, the concept of a trialist state in Moravia, especially in Brno, gained considerable support among its inhabitants. Still, despite the appearance of success at the time, the efforts of the Moravian movement ended in complete failure. The dualist conception of the organisation of the state, which was enshrined in the constitutional law of the Czechoslovak Federation of October 1968, prevailed. This is sometimes also referred to as the "small constitution", as it was in force at the same time as the 1960 constitution, which it modified significantly.⁵¹

From 1987, a new socialist constitution was being prepared. The draft constitution was approved by the Presidium of the Central Committee of the Communist Party of Czechoslovakia on 4 May 1987, and a working commission and a commission of the National Front of the Czechoslovak Socialist Party were created. Deputy Prime Minister Karol Laco headed the working commission.⁵² In November 1988, a 153-member Commission of the Communist Party of Czechoslovakia and the National Front of the Czechoslovak Socialist Republic for the preparation of the new Constitution of the Czechoslovak Socialist Republic was elected, headed by the General Secretary of the Communist Party of Czechoslovakia, Miloš Jakeš. In January 1989, a twenty-member working group was formed under the leadership of Marian Čalfa. The constitution was to be adopted after the 1990 Congress of the Communist Party of Czechoslovakia and was conceived as a triune constitution for Czechoslovakia, the Czech Republic,

⁵¹ For details on the proposal for a trialist state structure, see: J. Tauchen, *Vladimír Kubeš a jeho podíl na přípravě trialistické koncepce uspořádání státu v roce 1968* [in:] *Pocta Janu Svatoňovi k 70. narozeninám*, eds. J. Benák, J. Filip, V. Šimíček, Brno 2022, pp. 101–118; V. Goněc, *K jihomoravským projektům federalizace. O širším ideovém a politickém pozadí návrhů tzv. Trializace* [in:] *Pokus o reformu v roce 1968. Historicko-politologické pohledy*, Banská Bystrica 1999, pp. 16–179; *idem*, *Od zmařeného ústavy ke zmařenému ústavnímu zákonu* [in:] *Proměny evropského právního myšlení: k odkazu profesora Vladimíra Kubeše*, ed. T. Machalová, Brno 2009, pp. 68–77; J. Pernes, *Pod moravskou orlicí, aneb dějiny moravanství*, Brno 1996, pp. 204–205.

⁵² J. Žatkuliak, *Ústavní návrh tzv. trojjediné ústavy ČSSR, ČSR a SSR (80. léta 20. století)* [in:] *Encyklopedie českých právních dějin...*, vol. 19, pp. 565–588.

and Slovakia. The constitution was not to glorify the leading role of the Communist Party, which was considered an objective reality in the theory of the time, and the changes were primarily to affect the catalogue of fundamental rights, which was to take into account the development of a socialist society. The constitution provided for a constitutional judiciary at the federation level and the two republics.⁵³ The adoption of the new constitution was to be dealt with by a unique constitutional law, and the two national councils agreed to the procedure in October 1989 but revoked their decision in December 1989 and rejected the idea of a new triune constitution.⁵⁴

6. Constitutional proposals from 1989–1992

A non-communist constitution began to be drafted before 1989, mainly in opposition to the intended triune socialist constitution. The principal author of the non-communist proposal was Pavel Rychetský, who discussed the proposal with several experts, especially in the wake of discussions on the concept of the new constitution conducted by university lecturers who had to leave the Prague Faculty of Law after 1969 (Zdeněk Jičínský, František Šámalík, Václav Pavlíček, Vladimír Mikule, and Petr Pithart). In December 1989, the Civic Forum published a draft of a new constitution (without attribution) to glorify the essential elements of a democratic, social, and legal state with respect for civil rights and freedoms. Regarding relations within the federation and the republics, the draft was based mainly on the existing arrangements, although it envisaged the adoption of the republics' constitutions.⁵⁵

The continued existence of the socialist constitution was unsustainable. It was subjected to frequent revisions. At the same time, it was decided to adopt a new federal constitution. At a joint meeting of the House of People and the House of Nations of the Federal Assembly on 18 September 1990, a Commission of Deputies was set up to prepare the new Constitution of the federation, consisting of delegates from the federal and republican parliaments. The principle of proportional representation was applied in the composition of this Commission of Deputies. Alexander Dubček, chairperson of the Federal Assembly, was elected chairman of the commission, and Dagmar Burešová and František Mikloško were elected vice-chairpersons. The election of the presiding officers of the national councils as vice-chairmen of the Commission for the Preparation of the New Constitution and the representation of their deputies in the commission were intended to enable coordinated progress of the work on preparing the Federal Constitution and the republican constitutions. The Presidium of the Federal Assembly appointed a Commission of Experts as a working body of the Commission of Deputies, to which it appointed eighteen leading experts in constitutional law and state organization. The chairman of the Commission of Experts

⁵³ J. Grónský, *Komentované dokumenty...*, vol. 3: 1960–1989, Praha 2007, pp. 390–391.

⁵⁴ V. Pavlíček, *Ústavní právo a státověda*, II. díl: *Ústavní právo České republiky*, Praha 2011, p. 285.

⁵⁵ J. Grónský, *Komentované dokumenty...*, vol. 4: 1989–1992, Praha 2007, pp. 45–47.

was Marián Posluch. The timetable for the work envisaged that the draft federal constitution would be prepared so that a first reading would take place in October 1991 and a second reading a month later. The Commission of Deputies met eight times to prepare the new Federal Constitution. In the first three meetings, held in 1990, the draft Charter of Fundamental Rights and Freedoms was discussed. At the next meetings in 1991, the basic problems of preparing the new Constitution and the drafts of its chapters prepared by the Commission of Experts were discussed. The main obstacle encountered by the Commission of Deputies was that the issues of the state structure (the division of powers between the Federation and the Republics and the status of Moravia and Silesia) were not resolved and that negotiations on them were also held at the level of representatives of political parties and movements and among the Presidencies of the National Councils, that is, outside the Commission of Deputies. The expectation that the membership of the national councils' members and their chairpersons in the Commission of Deputies would facilitate the solution of the state structure was not fulfilled because the MPs and officials of the national councils could not compensate for the lack of consensus of the chairs of the national councils. The drafts of the individual chapters of the constitution, in which the Commission of Experts often included variant solutions, were critically examined by the Commission of Deputies, and recommendations for further action were made to the experts. In addition, during the drafting process, the federal parliament discussed some proposals that had a basis in the draft being prepared, or, conversely, some of the proposals discussed influenced the content of the draft constitution. At the end of August 1991, the Commission of Experts completed drafting the Federal Constitution, except for the division of powers between the Federation and the Republics. This draft was circulated in September 1991 to the Commission of Deputies' members, the Federal Assembly's deputy groupings, and some political parties not represented in the Federal Assembly. From November 1991 to January 1992, meetings were held by an ad hoc committee of Commission of Deputies members, the Commission of Experts, and some members of the so-called Political Bureau (chairpersons of parliamentary parties). The results of the work of the Commission of Deputies were used to exercise the legislative initiative of the deputies by proposing an amendment to the Constitutional Act of the Czechoslovak Federation. In this parliamentary proposal to amend the small constitution, it was recommended that at least three titles of constitutional law concerning the legislative, presidential, and executive powers be amended. However, the motion did not pass the House of Nations, falling three votes short of acceptance. A conciliation meeting ensued, which resulted in fairly insubstantial proposals for amendments that were agreed upon by the Joint Conciliation Committee. However, neither the Committee nor the Political Bureau could reach a consensus on the major points of concern. Therefore, on a re-vote (3 March 1992), the proposal was again adopted only by the House of Peoples but not in the House of Nations. The previous unsuccessful negotiations of the Presidencies of the National Councils indirectly influenced these voting results. Thus, in April 1992, a working draft version of the entire Federal Constitution was prepared, except for the chapter on the division of powers between the federation and the republics. Of the

envisaged constitution, the Charter of Fundamental Rights and Freedoms (adopted on 9 January 1991) was adopted in the interim, as were the constitutional arrangements for the judiciary at the federal level (adopted on 27 February 1991), the judiciary and the prosecutor's office (adopted on 16 July 1991), and, finally, referendums (adopted on 18 July 1991). Otherwise, the work on the federal constitution was unsuccessful, which was explained by the similar situation in Hungary and Poland, where new constitutions were also not adopted, but mainly by the absence of agreement on the principles of the state system. Although it was envisaged that work would continue on a new constitution in April 1992, the elections in June 1992 eventually led to the dissolution of the federation. A new federal constitution was, thus, never adopted.⁵⁶ In addition, proposals by, for example, the Movement for Self-Governing Democracy – Society for Moravia and Silesia (1990), President Havel (March 1991), the Moravian National Party (March 1991), the Republicans (May 1991), and the Czech Socialist Party (July 1991) were still being discussed between 1990 and 1992.⁵⁷

From August 1990, a new Czech constitution was in the process of preparation. The Presidium of the Czech National Council established a permanent commission of the Presidium of the Czech National Council for preparing the Constitution of the Czech Republic. In July 1991, a group of experts submitted the first version of the draft Constitution of the Czech Republic, which the permanent commission of the Presidency did not consider. Interestingly, the draft was based on the Czech affiliation to the federation,⁵⁸ which was a variant proposal that the head of the republic should not be a functionary of the National Council, but the Prime Minister. However, the fear of transferring this concept to Slovakia prevented its implementation.⁵⁹ A qualitatively completely different constitution was prepared after the summer of 1992 when it was clear that the federation would cease to exist. Still, the relevant commissions took into account the 1991 proposal. The new constitution was prepared by committees of the Czech National Council Presidency, which was composed according to the proportional representation of the parliamentary parties and by a Government Committee, and the result was the Constitution of the Czech Republic, adopted on 16 December 1992.⁶⁰

Between 1990 and June 1992, nine drafts of the Slovak Constitution were prepared by individual parliamentary political parties and by the Joint Commission of the Slovak National Council and the Slovak Government. One draft did not envisage the existence of a federation. The other drafts primarily contemplated unions with other states or the conclusion of a state treaty with the Czech Republic. To unify these proposals, in June 1991, the Presidium of the Slovak National Council established the Commission to prepare a joint draft Constitution of the Slovak Republic. This joint draft was

⁵⁶ P. Polakovič, *Ústavní návrhy politických stran (1990–1992)* [in:] *Encyklopedie českých právních dějin...*, vol. 19, pp. 596–601.

⁵⁷ *Ibid.*, pp. 598–600.

⁵⁸ V. Pavlíček, *Ústavní právo a státopěda...*, II. díl, pp. 285–286.

⁵⁹ J. Filip, *Příprava Ústavy ČR v období do voleb 1992* [in:] *Pocta Prof. JUDr. Václavu Pavlíčkovi, CSc. k 70. narozeninám*, eds. V. Jiráková, R. Suchánek, Praha 2004, pp. 299–301.

⁶⁰ P. Polakovič, *Ústavní návrhy politických stran...*, p. 601.

submitted for public discussion in December 1991. Its fundamental shortcoming was that it was drafted in essential parts in alternatives and did not give an unambiguous answer to whether it should be a draft constitution of a member state of the federation or a constitution of an independent state. Although the results of this public debate, which attracted 670 submissions, were developed by experts and submitted to the Presidency of the Slovak National Council in March 1992, they remained essentially unused in the following period. After the elections in June 1992, a new commission was established under the leadership of Milan Čič. In July 1992, the Čič Commission submitted a new constitutional proposal. Then, it was submitted as a government proposal to the Slovak National Council, which adopted it on 1 September 1992.⁶¹

Conclusions

During the interwar period, the Czechoslovak Republic was one of the most democratic countries in the world.⁶² Interwar Czechoslovakia was a unitary state but simultaneously faced a significant problem: a fundamental contradiction. The introduction of the theory of Czechoslovakism, that is, the idea of a unified Czechoslovak nation, was necessary to gain international recognition for the new state. However, concerning practical domestic politics, this theory proved difficult to sustain in the long term, as illustrated by the constitutional proposals concerning the status of Slovakia, Ruthenia, and German-inhabited territories. Shortly after establishing the mutual state, dissenting voices began to be heard from these parts of the republic; they were often responsible for suggesting complex projects for a new state-law arrangement.

Although some proposals for the federalisation of Czechoslovakia or for its transformation into a federal state in which these minorities would be guaranteed autonomy were put forward by individual national minorities, Czech political circles were never willing openly to discuss them and never agreed to any change in the constitutional situation. Czech leaders did not discuss their minorities until 1938 when the Czech Germans were already radicalised and under the influence of Nazi Germany. By then, however, it was too late.

In particular, the constitutional proposals of the Second Republic demonstrate the intense efforts of many politicians at the time to resolve an essentially intractable situation. However, these efforts were lost in the shadow of the growing fascism of the political scene and the separatist tendencies of Slovak and Ruthenian nationalists. These secessionist tendencies, combined with German world interests and the passive acquiescence of Western governments, destroyed the remnants of pre-Munich democracy in just a few months. The adoption of the Enabling Act in December 1938

⁶¹ N. Petranská Rolková, *Ústava Slovenskej republiky a jej dvadsaťpäť rokov (1992–2017)*, Bratislava 2017, pp. 31–63.

⁶² M. Cabo Villaverde, *La posibilidad de una isla: Checoslovaquia como contraejemplo de la crisis de la democracia en entreguerras*, "Revista da Faculdade de Letras: História" 2020, vol. 10, no. 1, pp. 130–152.

removed the vestiges of constitutionalism and created a situation that led to the incorporation of the Czech lands into the Third Reich, the creation of a puppet Slovak state, and the facilitation of the occupation of Ruthenia by fascist Hungary.

After the end of the Second World War, however, constitutional conditions did not return to pre-war conditions. Although a new constitution was intensively drafted and several proposals were made, the communist one prevailed after the communist takeover in 1948. In the forty years of socialism, only 1968 allowed a completely different state system to be freely discussed. But Soviet tanks ended this discussion.

In the second half of the 1980s, the communist regime's leaders began to realise the unsustainability of the constitutional situation, the foundations of which had been laid by the 1960 constitution, and began to prepare a new socialist constitution. However, political developments were more rapid, and work on them was not completed.

Following the social and political changes made after November 1989, a new constitution had to be adopted. The overwhelming number of proposals documents an almost opaque pluralism of opinions, but also the hopelessness of efforts to achieve an optimal state-law structure. The contradictory ideas about the future state-law form of Czechoslovakia indicate the impossibility of finding a compromise and, simultaneously, a fair solution to the state-law relationship between the Czech and Slovak nations. However, none of this was heard in the ultimate solution. This final solution, however, was no longer a common Czechoslovak (or Czech-Slovak) state but rather its dissolution. The Slovak parliament issued its own Slovak constitution, thus foreshadowing further developments that ended with the division of the federation.

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Summary

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Constitutional Proposals Unveiled: A Detailed Study of Unrealised Drafts in Czechoslovakia

This article discusses the compelling history of unrealised constitutional plans in Czechoslovakia, from its establishment in 1918 to its dissolution in 1992. Through careful scrutiny of primary documents and historical sources, the study reveals unrealised plans and visionary concepts that played a crucial role in shaping the political and legal framework of the Czechoslovak state. The focus is on pivotal periods and contexts in which these proposals were introduced, aiming to uncover the underlying reasons for their failure or neglect. This research provides valuable insights into the intellectual currents and political discourse that influenced Czechoslovak society, shedding light on significant moments that had the potential to alter the country's trajectory but that remained confined to the realm of theoretical propositions. The constitutional drafts presented offer an interesting glimpse into the path the Czechoslovak Republic could have taken, emphasising the intricate relationship between politics and law in a tumultuous era.

Keywords: Czechoslovak Republic, Czechia, Slovakia, constitutional development, constitution, constitutional proposals, politics and law.

Streszczenie

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Ujawnienie konstytucyjnych planów – szczegółowe studium niezrealizowanych projektów w Czechosłowacji

Artykuł zagłębia się w pasjonującą historię niezrealizowanych planów konstytucyjnych w Czechosłowacji, od jej powstania w 1918 r. do jej rozwiązania w 1992 r. Poprzez skrupulatną analizę dokumentów źródłowych i źródeł historycznych badanie ujawnia niezrealizowane plany i wizjonerskie koncepcje, które odegrały kluczową rolę w kształtowaniu polityczno-prawnych ram państwa czechosłowackiego. Skupia się na kluczowych okresach i kontekstach, w których te propozycje zostały przedstawione, mając na celu odkrycie podstawowych przyczyn ich niepowodzenia bądź rezygnacji z nich. Badania te dostarczają cennych spostrzeżeń na temat prądów intelektualnych i dyskursu politycznego, mających wpływ na społeczeństwo czechosłowackie, rzucając światło na znaczące momenty, które miały potencjał zmiany krajowej trajektorii, ale pozostały ograniczone do sfery teoretycznych propozycji. Przedstawione projekty konstytucyjne oferują fascynujące spojrzenie na ścieżkę, którą mogła obrać Republika Czechosłowacka, podkreślając zawiły związek między polityką a prawem w burzliwej epoce.

Słowa kluczowe: Republika Czechosłowacka, Czechy, Słowacja, rozwój konstytucyjny, konstytucja, propozycje konstytucyjne, polityka i prawo.