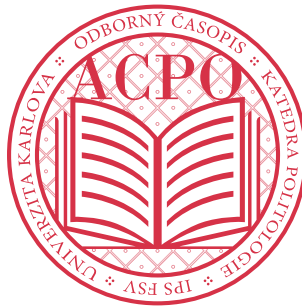


ACTA POLITOLOGICA

www.acpo.cz

RECENZOVANÝ ČASOPIS | PEER-REVIEWED JOURNAL

2022 | Vol. 14 | No. 1 | ISSN 1803-8220



KOSAŘ, David; VYHNÁNEK, Ladislav (2021). *The Constitution of Czechia. A Contextual Analysis*. Oxford: Hart Publishing, 256 pp. ISBN 978-1-5099-2053-2.

RECENZE MILOŠE BRUNCLÍKA
REVIEW FROM MILOŠ BRUNCLÍK

https://doi.org/10.14712/1803-8220/5_2022

Published: 28/01/2022

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The aim of this review is to attract scholarly attention to this inspirational and well-written book, which is definitely worth reading. Even though the book has a couple of weak points, these are significantly outweighed by its strengths. I shall discuss the latter first; the former are debated in the second part of the review.

What are the positives of the book? First and in general, the book has definitely fulfilled its aim to make an accessible introduction to the study of the Czech constitution. The book is a part of the series titled *Constitutional Systems of the World*. The key rationale behind this series lies in the argument that whereas “*constitutional texts for practically every country in the world are now available on the internet [...] texts, which enable one to understand the true context, purpose, interpretation and incidents of a constitutional system are much harder to locate, and are often extremely detailed and descriptive...*” (Bloomsbury n.d.). Thus, if the above statement is read as a major requirement for the book, David Kosař and Ladislav Vyhnánek did a good job.

This book is not new in addressing the issue of the Czech constitution. However, it is significantly different than other usual (and useful) analyses of the constitution (e.g., Gerloch, Hřebejk, Zoubek 1998; Klíma 2005; Pavlíček and Hřebejk 1998; Pavlíček et al. 2015; Sládeček et al. 2016) which are often too detailed, descriptive, and not easily accessible for readers outside legal science. David Kosař and Ladislav Vyhnánek did not analyze the Czech constitution through a purely legal/constitutional perspective. Instead, they deliberately sought to overcome such a single-perspective, and the Czech constitution is debated in historical, political and sociological contexts. This way of reasoning is well expressed in chapter 5, where the

authors deal with the president and government of the Czech Republic. As the authors argue: “*To attain a better understanding of this arrangement [the executive – note by the author], one must dig deeper than the basic structures and competences as they are laid down by the Constitution*” (p. 104). This approach shall definitely help readers better understand the origins, nature, strong and weak points of this document as well as other issues that the book touches upon.

What I especially appreciate is that the authors occasionally draw from and refer to political science literature. The political science perspective enriches the authors’ account of numerous themes, notably the president, government, party system and the like. This point is well illustrated in chapter 4, on the Czech parliament, where authors debate the result of parliamentary elections and its consequences. Furthermore, in chapter 5 the authors analyze the intra-executive relations (and conflicts) and illustrate the complicated relationship between the president and government. The strained relations between the two parts of the executive were exacerbated by the introduction of the direct popular election of the president in 2012. The change is difficult to justify. The authors rightly argue that, even though the Czech Republic is a parliamentary regime, the president was emboldened to be more assertive and showed his ability to capitalize on the relative weakness of the government. Such arguments and conclusions can be reached only if authors pay attention to (mostly political) factors that lie beyond the constitutional text and laws.

Second, and connected to the previous point, the book might be attractive not only to interested students and scholars within legal science, but also to readers from other academic disciplines, notably political

science. In other words, the book is easy to read and follow for a wide range of readers without compromising its academic merits. After all, the accessibility of the book is one of the key ideas of the *Constitutional Systems of the World* series. The book is well structured, readers can easily find the topic of their interest (facilitated by the index).

Third, the book is a very good introduction of the Czech constitutional system. It touches upon a number of issues, not only the constitution as such, but its origins, character, major branches of the constitutional system, but also local government, human rights, constitutional changes, constitutional identity, the debate on dangers of democratic backsliding in the Czech Republic and many more. The authors were successful in sailing between Scylla (covering a wide range of issues with a potential risk of loss of coherence of the book) and Charybdis (keeping the book brief with a potential risk of too many simplifications and omissions). In other words, despite the relative brevity of the book (some 212 pages), the authors averted both risks and succeeded in providing a systemic, coherent and contextual perspective on the Czech constitutional systems. One could hardly find any important and relevant problem that would remain completely missing from the book. What readers may also welcome is that the authors address the currently highly relevant issue of how the Czech government reacted to the Covid-19 pandemic and how it issued a number of resolutions that were successfully challenged before administrative courts and even the Constitutional Court (p. 122).

Of course, those who look for more details on particular issues might be disappointed, but the overall design and length of the book did not allow the authors to elaborate more on particular issues. On the other hand, they provide a list of further readings for each chapter.

Fourth, the book is especially strong and convincing in those themes that are concerned with the Czech courts, notably the Constitutional Court. Not only that the chapter on the judiciary in the Czech Republic is the most voluminous, but also the authors' argumentation is profound. They refer to numerous judgements of the Constitutional Court and get back to the cases in other chapters of the book, and the authors debate battles with the Supreme Court and Supreme Administrative Court. The authors also show the dynamics of the system of the courts since the fall of the Communist regime in 1989 against the backdrop of the turnover of judges, many of them being (former) Communist party members who nonetheless remained in their positions. In this particular topic, authors provide concrete numbers and statistics regarding the justices. Also, the authors made a good point saying that there are two areas of presidential competences, and both areas moved in different directions. In the first area, where the presidential competences are under supervision of the Supreme Administrative Court of the Constitutional Court, the presidential discretion and de facto power was limited by the courts. However, in the second area of competences, where the courts could not curb the presidential greed for power, "*the Presidents have used their political strength to stretch their constitutional powers to or even beyond their limits*" (p. 115).

As for the weaknesses of the book, these are rather formal. First, the authors do not refer to literature frequently. A number of claims, arguments, and statements are expressed without providing references to resources. Sometimes, long paragraphs or even pages do not include any references. I think readers would appreciate a much more frequent referencing. This weak point is at least partly compensated for by a list of literature at the end of the chapter. This literature is designed as a list of further readings

for those who want to learn more on the issue. Still, the list of readings could have been expanded.

Second, the book would deserve more precision in theoretical (conceptual) and methodological terms. Also, on page 6, the authors pose a number of (even rhetorical rather than research) questions, such as “*Are the Czech constitutional values rooted deeply enough to withstand a real earthquake? Will Czechia follow the path that Hungary and Poland now seem to be taking?...*” The authors assert that their book “*attempts to answer some of these questions*” (p. 6). Hence, the readers are left uncertain as far as the major aims and research questions are concerned. The book would benefit greatly from a set of clearly formulated research questions, and more elaborated conceptual framework which would allow the authors to sharpen their final arguments and conclusions. The authors subscribe to “*sociological understanding of constitutionalism that also incorporates narratives, informal institutions and political context*” (p. 7). Unfortunately, these key concepts are not further discussed and presented. Readers unfamiliar with sociological constitutionalism may be in urgent need of understanding this term much better. At least the authors refer to authors such as Paul Blokker and Chris Thornhill (2017). The concept of sociological constitutionalism is partly exemplified on page 10, when the authors debate the role of the Catholic Church in the Czech Republic. The concept is present throughout the book, but rather implicitly. For example, informal institutions are not applied as a theoretical concept. Still, when the authors debate the pluralist character of the Czech constitution and source of the Czech constitutional law, they devote special attention to constitutional conventions that can be treated as informal institutions (see Helmke and Levitsky 2004). Only incidentally, I appreciate that the authors discuss the role of constitutional

conventions in the Czech constitutional/political system. These informal rules have been largely neglected by the Czech scholarly literature, even though the constitutional conventions are emerging rules that seem to grow in importance and affect the operation of the Czech constitutional system (see Brunclík 2021).

Third, readers may welcome more empirical data or examples to illustrate numerous arguments and claims made by the authors. This is not to say that there is no data at all. Occasionally, the authors provide concrete numbers or examples to support their arguments. For example, on pages 147-8 they show concrete numbers of Communist-era judges to illustrate problems the Czech court system has been facing. However, similar data which might make the authors’ arguments stronger is missing from many other parts of the book. For instance, it would be fine to learn more on the legislative activity of the Senate, activities of the president, etc. On the other hand, the brevity (considered as one of the strengths of the book) might be compromised by the above requirements.

Fourth, the authors occasionally make useful comparisons of the Czech case with foreign countries to illustrate particular issues in a context (e.g., on page 101, the authors make a short comparative overview as regards the scope of immunity and indemnity). Again, it would be more than appreciated if comparisons were made on a systematic basis.

Finally, and less importantly, some of the claims made by the authors might be viewed as imprecise. For example, on page 121 the authors write that the proposals to introduce some elements of rationalized parliamentarism, including the constructive vote of no confidence, “*never got past the rhetorical stage*”. However, the Nečas government submitted a constitutional bill designed to incorporate the constructive vote of no confidence, and this proposal was

debated in the Chamber of Deputies in 2012 (Vládní návrh 2012). These imperfections are rather rare.

All in all, David Kosař and Ladislav Vyhnaněk have written a very good book which might be used as a textbook and a good source of scholarship for those who are interested in the Czech constitutional as well

as political system.

I think it is a book which readers will repeatedly return to, refer to and cite from. The arguments and conclusions presented by the authors are well founded. Hence, the book may become the authoritative introductory monograph on the Czech constitution designed for non-Czech readers.

Miloš Brunclík¹

REFERENCES:

- BLOKKER, Paul; THORNHILL, Chris eds. (2017). *Sociological Constitutionalism*. Cambridge: Cambridge University Press.
- BLOOMSBURY. N.d. Constitutional Systems of the World. [online; cit. 2022-01-20]. Available from WWW: <<https://www.bloomsbury.com/us/series/constitutional-systems-of-the-world/>>.
- BRUNCLÍK, Miloš (2021). Three-Fold Gap: Researching Constitutional Conventions in the Czech Republic: A Review Article. *Czech Journal of Political Science*. Vol. 28, no. 1, pp. 20-36. <https://doi.org/10.5817/PC2021-1-20>.
- GERLOCH, Aleš; HŘEBEJK, Jiří; ZOUBEK, Vladimír (1999). *Ústavní systém ČR – základy českého ústavního práva*. Praha: Prospektrum.
- HELMKE, Gretchen; LEVITSKY, Steven (2004). Informal Institutions and Comparative Politics: A Research Agenda. *Perspective of Politics*. Vol. 2, no. 4, pp. 725–40. <https://doi.org/10.1017/S1537592704040472>.
- KLÍMA, Karel et al. (2005). *Komentář k Ústavě a Listině*. Plzeň: Aleš Čeněk.
- PAVLÍČEK, Václav et al. (2015). *Ústavní právo a státověda. Díl 2, Ústavní právo České republiky*. Praha: Linde.
- PAVLÍČEK, Václav; HŘEBEJK, Jiří (1998). *Ústava a ústavní řád České republiky. Komentář. 1. díl: Ústavní systém*. Praha: Linde.
- SLÁDEČEK, Vladimír et al. (2016). *Ústava České republiky. Komentář*. Praha: C.H. Beck (2nd edition).
- VLÁDNÍ NÁVRH (2012). Návrh ústavního zákona, kterým se mění ústavní zákon č. 1/1993 Sb., Ústava České republiky, ve znění pozdějších ústavních zákonů, Sněmovní tisk č. 668/0 [online; cit. 2022-01-20]. Available from WWW: <<http://www.psp.cz/sqw/text/tiskt.sqw?O=6&CT=668&CT1=0>>.

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