

RESCUING PRAGUE'S PAST: A SURVEY OF LEGISLATIVE ATTEMPTS AT ARCHITECTURAL AND HISTORICAL PRESERVATION IN PRAGUE, CZECH REPUBLIC

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I. INTRODUCTION

Almost alone among European capitals, the Czech city of Prague largely escaped the ravages of World War II, and now stands as perhaps Europe's largest architectural and historical preservation site.¹ The center of Prague is a "solid-five-square-mile treasure"² of ancient churches topped with golden spires, picturesque town squares, and a splendid mixture of Art Nouveau, Baroque, and Romanesque buildings.³ *Stověžatá Praha*, the "City of a Hundred Towers,"⁴ is considered by many to be the most beautiful capital in Europe.

Today, however, the historic buildings and sites of Prague are in danger due to decades of neglect and pollution under the Communist government. Further, since the "Velvet Revolution" in November 1989,⁵ the rush to a

* J.D., 1996. The author would like to thank his former students and colleagues at Maticnf Gymnázium in Ostrava, Czech Republic, where he taught English from 1991 to 1993.

¹ William Echikson, *Restoring the Grandeur of Prague*, CHRISTIAN SCI. MONITOR, September 4, 1986, at 18.

² *Id.*

³ *Id.*

⁴ Jan Pokorný, *New Building in the Historic Environment*, ARCHITECTURAL CONSERVATION IN THE CZECH AND SLOVAK REPUBLICS (1993). Prague is also often referred to as "The City of Hundred Spires," "Golden Prague," and "Art Treasury of Europe." See, e.g., Jíří DOLEŽAL & IVAN DOLEŽAL, PRAGUE (1991); Vladimír Denkstein, *Introduction*, in PRAGUE 7 (Vladimír Denkstein & Jíří Kotalk eds., Vladimír Vařecha trans., 1979).

⁵ In November 1989, the Communist Party leadership in Czechoslovakia resigned en masse, opening the door to the formation of the country's first non-communist government in 41 years. BERNARD WHEATON & ZDENĚK KAVAN, THE VELVET REVOLUTION: CZECHOSLOVAKIA, 1988-1991 81 (1992). This event is commonly called the "Velvet Revolution" because the mass demonstrations that prompted the Communist government's collapse and the subsequent transition of power were almost entirely peaceful and bloodless. JAMES DE CANDOLE, CZECHOSLOVAKIA: TOO VELVET A REVOLUTION? 5 (1991). The revolution was capped by the election of dissident playwright Václav Havel as President of

market economy and the return of private property rights have added new pressures and concerns for those interested in preserving Prague's architectural heritage.⁶

The impact of privatization and property restitution has been varied.⁷ Previously, seventy percent of the nation's monuments and historic buildings were state property.⁸ Now many of these properties are being returned to private owners who have obvious interests in the property. However, these properties are also now "vulnerable to the whims of their owners,"⁹ who may ineptly or inaptly change the appearance or function of the buildings.

While the historic buildings of Prague remain vitally important to the Czech nation's—and the world's—cultural heritage, the legal, political, and economic environments affecting the buildings' well-being have changed drastically in recent years. Several historic preservation organizations, including the Prague Heritage Fund and the New York-based World Monuments Fund, have centered their recent efforts in Prague.¹⁰ John Stubbs, Program Director of the World Monuments Fund, asserts that "the challenge of preserving and presenting the patrimony of culturally rich countries like the Czech Republic is the challenge of our time."¹¹

Czech governments have passed a myriad of legislation aimed at preserving the historic buildings of Prague.¹² Czech legislation highlighted

Czechoslovakia in December 1989. Wheaton & Kavan, *supra* note 5, at 110. Numerous sources offer a complete discussion of the events in Czechoslovakia in 1989. See, e.g., JOHN F. N. BRADLEY, *CZECHOSLOVAKIA'S VELVET REVOLUTION: A POLITICAL ANALYSIS* (1992); BERNARD WHEATON & ZDENĚK KAVAN, *THE VELVET REVOLUTION: CZECHOSLOVAKIA, 1988-1991* (1992).

⁶ Kenneth Powell, *And Now for a Softly-Softly Revolution*, THE INDEPENDENT, May 18, 1994, at 20.

⁷ Tonya Cook, *Czechoslovakia: Tourist Industry Cries Out For Cash Despite Boom*, Inter Press Service, Oct. 15, 1992, available in LEXIS, News Library, CURNWS File.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Prague Heritage Fund: "Rebuilding Ideal for Europe"*-The Times, CTK National News Wire, June 3, 1994; Christine Temin, *Noble Purpose*, BOSTON GLOBE, Feb. 27, 1994, at 12.

¹¹ Temin, *supra* note 10, at 12.

¹² On January 1, 1993, Czechoslovakia dissolved, the two republics separated, and the independent Czech Republic and Republic of Slovakia were legally established. This note concentrates on Prague, Czech Republic; discussions of preservation legislation effective in Slovakia are omitted. Most of the legislation discussed in this article was enacted while the Czech Socialist Republic and the Slovak Socialist Republic were federated as Czechoslovakia. Under this federal system of government, cultural matters, including architectural and historic

in this Note includes the Act Concerning Cultural Monuments of 1958,¹³ the 1976 Building Act,¹⁴ the Act for State Care of Monuments in 1987,¹⁵ and the 1992 Amendments to these acts.¹⁶ The purpose of this Note is twofold: to trace the legislative development of architectural preservation law in Prague over the past half century, and to assess where that legislation has left Prague's architectural heritage today.

II. HISTORICAL BACKGROUND

A. Prague's Architectural Heritage

Czechs have every reason to be interested in legal protection for the historic buildings of Prague. The first and most obvious reason is the unique architectural heritage represented by Prague's buildings, many of which are considered to be the best specimens in Europe.¹⁷ In the majestic capital of the Czech Republic, a city of 1.2 million inhabitants,¹⁸ "ten centuries of buildings . . . stand "harmoniously together,"¹⁹ displaying an amazing array of architectural styles. Apart from ancient Gothic and Baroque buildings, the city is rich in Art Nouveau, Cubist, Modernist, and Functionalist style buildings,²⁰ many of which were designed and built in the early 1900s.²¹ Among these buildings wind the cobbled streets of *Staré Město* (The Old Town), which is connected to *Malá Strana* (The Lower Town) by the unparalleled beauty of the 14th century Charles IV bridge and its thirty-one

preservation, were officially within the exclusive jurisdictions of the separate republics. Thus, the acts discussed herein were enacted separately by a Czech legislative body. Generally, however, the acts enacted in the two republics were very similar or even identical in content.

¹³ zákon č. 22/1958 Sbírka zákonů [Sb.], translated in 19 Bulletin of Czechoslovak Law 139 (1980).

¹⁴ zákon č. 50/1976 Sb., translated in 25 Bulletin of Czechoslovak Law 13 (trans. Dr. Ivo Dvořák) (1986).

¹⁵ zákon č. 20/1987 Sb., translated in 27 Bulletin of Czechoslovak Law 45 (trans. Dr. Ivo Dvořák) (1988).

¹⁶ zákon č. 242/1992 Sb.

¹⁷ Echikson, *supra* note 1, at 18.

¹⁸ This figure is as of 1990. *Country Profile: Czech Republic*, KCWD/KALEIDOSCOPE, June 17, 1994, available in LEXIS, World Library, COUPRF File.

¹⁹ *Czechs on the Restoration List*, THE ECONOMIST, January 3, 1987, at 68.

²⁰ Powell, *supra* note 6, at 20; MILAN ŠIMEK & JAROSLAV DEWETTER, CULTURAL POLICY IN CZECHOSLOVAKIA 24 (1970).

²¹ THE ARCHITECTURAL ASSOCIATION (London), CZECH FUNCTIONALISM 8 (1987).

statues.²² In all, there are 1,431 buildings and sites registered as historic monuments in Prague.²³

Prague Castle overlooks the city from the hillside of *Hradčany*. This huge castle, the oldest sections of which date back to the 11th century,²⁴ has been described as "Versailles, Westminster Abbey, and the Smithsonian all in one,"²⁵ for the castle has long been the "seat of the country's government as well as the center of Czech religious and artistic life."²⁶

Understandably, Prague Castle and the city's hundreds of other ancient buildings are the source of great pride for many Czechs and the impetus for much of the local interest in architecture and its preservation.²⁷ Architecture and design have long been closely associated with the Czech nation.²⁸ Czech Modernism, popular in Europe in the 1930s,²⁹ found its roots in the romantic and nationalist styles of the early 1900s and was influenced by Cubism.³⁰ The Czech architects' new "international style" of this period became a symbol of national identity, offering the world a confident image of the young Czechoslovak state.³¹

Native Czechs are not the exclusive admirers of Prague's buildings and Czech architecture. Foreign visitors—architecture experts and novices alike—have long been drawn to experience Prague's charm and walk its streets with the ghosts of Mozart and Kafka. Since the revolution in 1989, waves of foreign tourists have poured into the Czech Republic, most of whom visit only Prague.³²

²² Echikson, *supra* note 1, at 18.

²³ ECONOMIST, *supra* note 19, at 68. See also MILAN ŠIMEK & JAROSLAV DEWETTER, CULTURAL POLICY IN CZECHOSLOVAKIA 45 (1970).

²⁴ Temin, *supra* note 10, at 12. See also BRIAN KNOX, THE ARCHITECTURE OF PRAGUE AND BOHEMIA 19 (1962).

²⁵ Temin, *supra* note 10, at 12.

²⁶ *Id.*

²⁷ Pokorný, *supra* note 4, at 21.

²⁸ Powell, *supra* note 6, at 20.

²⁹ *Id.*

³⁰ *Id.*

³¹ THE ARCHITECTURAL ASSOCIATION, *supra* note 21, at 9.

³² Vlasta Štěpová, *Tourism, Czech Castles, and the Parador Concept*, ARCHITECTURAL CONSERVATION IN THE CZECH AND SLOVAK REPUBLICS (1993). In 1993, 90% of the 50 to 60 million visitors to the Czech Republic and Slovakia spent their entire stay in Prague. Deloris Ament, *Bright, Well-Researched Videos Show Environmental Extremes*, SEATTLE TIMES, July 24, 1994, at K6.

B. Trouble for Prague's Historic Buildings

Unfortunately there are now as many reasons to be concerned about Prague's historic buildings as there are reasons to be impressed by them. Prague's monuments have been engaged in a battle for survival for decades. Certainly, the simple passage of time explains much of the deterioration. But a number of more disturbing causes have contributed greatly to the accelerated decay of Prague's cultural heritage.

A major cause of deterioration over the past half century is the widespread burning of brown coal.³³ As the most important commodity in the Czech mining industry,³⁴ cheap brown coal has driven the nation's unrelenting industrialization since the 1940s³⁵ and still supplies sixty percent of the country's total energy.³⁶ Czech brown coal is of very poor quality, with a high sulfur and heavy metal content.³⁷ Its use in plants and factories produces enormous air pollution, particularly near Prague where it is the primary source of energy for many state-operated thermal power plants.³⁸ Further, Prague is situated in a deep valley, taking on smoke and fumes from steel plants as far away as Western Germany.³⁹ Adding to this pall are aging coal-fired stoves, the most common means of heating private homes and apartment buildings in the Czech Republic.⁴⁰ Thankfully, Prague's air pollution is not as severe today as it was during the 1960s and 1970s, but as recently as 1993 the environmental organization Greenpeace rated Prague the second most polluted city in Europe.⁴¹

A direct result of this pollution is acid rain which speeds the erosion of Prague's monuments⁴² and coats its buildings in soot. Certainly, most

³³ ECONOMIST, *supra* note 19, at 68.

³⁴ *Czech Republic*, MINING ANNUAL REVIEW, July, 1993, at 219.

³⁵ R. Dennis Hayes, *Ravaged Republics: Tragic Pollution in Czech and Slovak Republics*, DISCOVER, March, 1993, at 3.

³⁶ *Id.*

³⁷ MINING ANNUAL REVIEW, *supra* note 34, at 219.

³⁸ *Id.*

³⁹ Echikson, *supra* note 1, at 18.

⁴⁰ *Id.*

⁴¹ Prague ranked second behind Athens. Marianne Curphey, *Prague's New Bed of Thorns*, THE TIMES (London), September 16, 1993.

⁴² The acid rain consists of airborne sulfuric acid emitted from coal-burning industries. Prague is certainly not the only European city struggling with this problem. The historic cities in the "Dirty Triangle"—the area formed by the coal belt of the Czech Republic, eastern Germany, and the Silesian district of southern Poland—include Kraków, Poland, and Hradec

Czechs are primarily concerned with the alarming effect this pollution has on their health, but the pollution's impact on Prague's historic monuments corresponds with the dire effects it has on people's health. For example, due to the air pollution and accumulated grime, many of the Charles Bridge's famed statues have been moved into air-conditioned museums and replaced on the Bridge by concrete copies.⁴³ Coal dust is visible on statues and cathedrals as well as on Prague's drab Communist-built apartment buildings, as the "dirty smoke has democratically painted black streaks on everything."⁴⁴

Political and economic factors also played a role in speeding the deterioration of Prague's cultural heritage. In the 1950s, Czechoslovakia's Communist government directed the national economy toward rapid industrialization, spending heavily on industrial plants and huge factories.⁴⁵ One Czech described the government's policies in the 1950s this way:

We had to live under various five-year plans. The bright future lay in industrializing as fast as possible. This way we would exploit all natural resources and gain mastery over nature. The technology was often out of date, but we were after short-term benefits—there was no thought of the future environmental consequences.⁴⁶

During this time priority was given solely to new large-scale construction, particularly prefabricated high-rise apartment buildings which went up by the hundreds in a ring around Prague.⁴⁷ Authorities simply ignored the sagging historic buildings in the city's center.⁴⁸

Královo, Czech Republic. Jon Thompson, *East Europe's Dark Dawn: The Iron Curtain Rises to Reveal a Land Tarnished by Pollution*, NATIONAL GEOGRAPHIC, June 1991, at 44-47. See also John Daniszewski, *Amid Poland's Slag Heaps and Sulfurous Air, A Glimpse of Hope*, LOS ANGELES TIMES, July 11, 1993, at 22 (efforts to reduce pollution helping Kraków's victimized historic architecture).

⁴³ Echikson, *supra* note 1, at 18.

⁴⁴ Margaret Kriz, *Where Communism's Most Enduring Legacy is Environmental Degradation on an Epic Scale*, NAT'L J., December 5, 1992, at 2790.

⁴⁵ SHARON L. WOLCHIK, CZECHOSLOVAKIA IN TRANSITION: POLITICS, ECONOMICS & SOCIETY 23 (1991).

⁴⁶ Thompson, *supra* note 42, at 63.

⁴⁷ Echikson, *supra* note 1, at 18.

⁴⁸ *Id.*

Communist leaders tried to reorient Czechoslovakia's cultural life toward the Soviet Bloc and away from Europe, subordinating all culture to political ends.⁴⁹ Obviously, this policy was directly at odds with the preservation of Europe's architectural treasures. Marxism-Leninism was the official ideology and private property rights were extremely limited.⁵⁰ As a result, the natural economic bases providing the means for the preservation of monuments—individual autonomy and economic self-interest—ceased to exist.⁵¹ Moreover, churches and religious buildings, “the best representatives of the millennia of architectural progress,”⁵² were completely neglected because religion was discouraged and restricted in Communist Czechoslovakia.⁵³

The poor quality of building materials and the manner in which they were used on preservation projects added further to the decay. In 1980, paint imported from Finland was used to whitewash buildings near Prague's grandest crossroads, *Václavské náměstí* (Wenceslas Square).⁵⁴ Due to a lack of technical expertise, the buildings were in need of repainting only one year later.⁵⁵

Even the greatest of the city's monuments did not escape such harsh treatment. Parts of Prague Castle were subjected to a “Communist-style make-over worse than neglect: Linoleum was laid over parquet, walls of laminated cabinets were shoved next to Renaissance armoires, ceilings were covered with acoustic tile, and air-conditioning ducts were smashed through priceless boiserie.”⁵⁶ Eliška Fučíková, curator of Prague Castle, says that when the Communists attempted restorations, particularly as they did in

⁴⁹ WOLCHIK, *supra* note 45, at 285.

⁵⁰ GEORGE E. GLOS, CZECHOSLOVAK PRIVATE INTERNATIONAL LAW 12-13 (1983). In discussing rules on immovable property, Dr. Glos explains that “in Communist Czechoslovakia land is owned exclusively by the State.” *Id.* “Czechoslovak authorities [had] not bothered to remove the registration of titleholders from the land records, since the actual use of the land [was] fully controlled by the State.” *Id.*, n.35.

⁵¹ Eliška Fučíková, *The Need for Institutions for Historic Preservation in the ČSFR*, ARCHITECTURAL CONSERVATION IN THE CZECH AND SLOVAK REPUBLICS (1993).

⁵² Josef Štulc, *The Current and Future Prospects for Conserving the Architectural Heritage in the Czech Republic*, ARCHITECTURAL CONSERVATION IN THE CZECH AND SLOVAK REPUBLICS (1993).

⁵³ *Id.*

⁵⁴ ECONOMIST, *supra* note 19, at 68.

⁵⁵ *Id.*

⁵⁶ Temin, *supra* note 10, at 12. “Boiserie” is sculptured paneling, especially that of French architecture in the 18th century. RANDOM HOUSE DICTIONARY 234 (2d ed. 1987).

rooms used for state occasions, they simply "glopped gold paint over everything."⁵⁷

As this damage to the architectural gems of Prague increased, economic and political concerns began to weigh on the Communist authorities.⁵⁸ By 1986, an estimated eighty percent of the city's registered monuments needed work.⁵⁹ To keep wealthy Western tourists interested in Prague, some effort at renovation was necessary.⁶⁰ More importantly, Czechoslovakia's aging leaders needed to appear concerned about the environmental damage produced by their full-throttle industrialization policy, and they wanted to portray themselves as "faithful guardians of the country's heritage."⁶¹

Thus, the Czechoslovak Ministry of Culture began to direct increased funding toward stemming the decay of Prague's historic districts.⁶² Restoration efforts during the 1980s faced huge hurdles: there were chronic shortages of high quality materials and great difficulty in finding skilled workers who were willing to undertake historic renovation work.⁶³ After decades of government emphasis on large-scale building projects, craftsmen skilled in traditional methods were in short supply and new students were not interested in training for renovation work.⁶⁴ Dr. Josef Štulc, Director of the State Institute for the Care of Monuments, says the shortage of skilled workers was partly caused by the artificially-designed economic indicators of the centrally planned economy: "Instead of considering the volume of work and skills invested, the sheer quantities of the materials consumed was all that was relevant. No wonder the traditional professions of bricklayer, carpenter and plasterer were replaced by those of concrete placer and assemblage worker."⁶⁵

On top of all of these problems, the nature of Prague's immense and varied cultural wealth made renovation work difficult and inordinately time-consuming. Comprehensive studies had to be done on buildings before work

⁵⁷ Fučková jokes that she now encourages people to smoke in the state rooms "to make a patina on the gilding." Temin, *supra* note 10, at 12.

⁵⁸ Echikson, *supra* note 1, at 18.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* See also *ECONOMIST*, *supra* note 19, at 68 (main difficulty was finding skilled workers in a country of nominally full employment).

⁶⁴ *ECONOMIST*, *supra* note 19, at 68.

⁶⁵ Štulc, *supra* note 52, at 63.

could begin.⁶⁶ As Ivan Sperling, director of the Prague Center for Memorial Restoration in 1986, explained: "Often what looks like a Baroque church turns out to have Gothic walls and a Romanesque foundation. It takes time to figure out how we should renovate it."⁶⁷

C. After the Velvet Revolution

The renovation attempts of the 1980s made little progress, allowing neglect and pollution to continue their slow destruction of Prague's buildings up to the revolution of November 1989. The rebirth of democracy in the Czech Republic has radically changed the social, political, and economic factors affecting the well-being of Prague's cultural buildings and monuments.⁶⁸ Since the revolution, however, the new Czech government has concentrated the majority of its efforts on rebuilding a democratic political system and making the transition to a market economy.⁶⁹ These priorities have left little time for new architectural preservation laws appropriate to Prague's new political and economic environment.

Ironically, one of the new problems facing Prague's historic buildings is tourism. The steady flow of foreign sightseers visiting Prague Castle and other historic monuments has been overwhelming. In 1992 (before Czechoslovakia separated into two separate countries), a record eighty-three million visitors came to Czechoslovakia, a twenty-five percent increase from 1991, and nearly three times that of 1989.⁷⁰ Four years after the revolution, Prague became the most popular tourist destination in the world.⁷¹ This influx of visitors is straining the limits of Prague's infrastructure and causing overcrowding in the city's historic district, prompting some concerned suggestions of a "tourism levy or some form of advanced booking to ration

⁶⁶ Echikson, *supra* note 1, at 18.

⁶⁷ *Id.*

⁶⁸ *European Monuments Forum in London Addresses Preservation Concerns*, WMF NEWS (World Monuments Fund, New York, NY), Winter 1991, at 2.

⁶⁹ For a brief discussion of the major issues that faced Czechoslovakia's new leaders after 1989, see WOLCHIK, *supra* note 45, at 50-57.

⁷⁰ Gerard Davies, *Popular Prague's Pressing Problem*, THE TIMES (London), June 3, 1993.

⁷¹ *Id.* Not all of the "tourists" leave—an estimated thirty thousand expatriate Americans are currently living in Prague. Steve Bergsman, *Changes in Travel Challenge Czechs*, HOTEL & MOTEL MGMT., Jan. 10, 1994, at 8.

the number of tourists visiting the more precious sites in Prague."⁷²

Thanks to the return of state-owned buildings to private owners, many of Prague's buildings have been greatly improved in the past four years. Hundreds of Prague's buildings are being repainted and renovated for the first time in decades. Unfortunately, however, the Czech legal system does nothing to encourage this restoration,⁷³ and most of the renovations have been financed through foreign investment under long-term leases.⁷⁴ Moreover, in the rush to remake the center of Prague after four decades of stagnation, many of the renovations on historic buildings have been unauthorized and some buildings are being renovated in questionable ways. Zdeněk Lukes, an art historian at Prague Castle, says many buildings have become "'stage architecture' with their facades preserved but everything else gutted, because developers don't mind paying the ridiculously low fines for this desecration."⁷⁵ Illegally renovating, or even destroying, an historic building in Prague will cost a developer as little as \$3,000, with no further consequences.⁷⁶

Current Czech law also lacks any kind of tax incentives for restoration and preservation,⁷⁷ and it is not clear whether even the fragile protections given to historic buildings by the Communist government will survive, as there is growing pressure to tear down and redevelop Prague's older buildings in the name of economic development.⁷⁸

III. LEGAL BACKGROUND

The legal history of preservation law in Prague dates back to the Middle Ages.⁷⁹ The first buildings granted legal protection were those belonging to the Catholic Church: Papal edicts issued in 1462 and 1474, on the territory of what is now the Czech Republic, prohibited the "destruction and damaging of old architectural structures, marbles, urns, inscriptions and

⁷² Roger Boyes, *Prince Calls on Czechs to Save Prague Heritage*, THE TIMES (London), June 6, 1994.

⁷³ Temin, *supra* note 10, at 12.

⁷⁴ Cook, *supra* note 7 (quoting Daša Havlová).

⁷⁵ Temin, *supra* note 10, at 12.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Powell, *supra* note 6, at 20.

⁷⁹ JUDr. Dušan Lesaj & JUDr. Ján Svák, *State Care of Monuments*, 27 BULL. OF CZECHOSLOVAK LAW 7, 8 (1988).

ornamentation in churches."⁸⁰ The first laws providing for professional care of historic buildings were enacted in the 19th century. In 1850, a decree from the Austro-Hungarian Empire established a Central Commission for the Preservation and Study of Monuments, thereby creating a group responsible for the care of historic monuments in Prague and surrounding Bohemian towns.⁸¹

This foundation for historic preservation law was in place when Czechoslovakia was established as an independent state on October 28, 1918.⁸² The newly-formed Czechoslovak National Committee, then the supreme legislative body, promptly issued a decree in 1918 placing all artistic and historic monuments under the Czechoslovak National Committee's protection.⁸³ Despite several completed drafts, however, this Czechoslovak legislature never passed a comprehensive act dealing specifically with the protection of cultural monuments.⁸⁴ Protection for Prague's buildings was ensured only through the existing regulations of various state agencies.⁸⁵

The Munich Agreement, signed in September 1938, ended the First Czechoslovak Republic and began the occupation of Czech territory by Hitler's Nazi forces.⁸⁶ Troops of the Third Reich marched into Prague on March 15, 1939, and the city remained under Nazi occupation for almost all of World War II.⁸⁷ During the occupation, many of Czechoslovakia's cultural monuments were stolen or removed.⁸⁸ Although Czechoslovakia emerged from the war "more politically confused and disorganized than devastated,"⁸⁹ some 3,014 buildings were destroyed and about 10,000

⁸⁰ *Id.*

⁸¹ *Id.* This Commission began compiling a list of the monuments throughout Bohemia. By 1937, the list had grown to 50 volumes and was cataloged by districts. Fučková, *supra* note 51, at 79.

⁸² JOHN F. BRADLEY, *CZECHOSLOVAKIA: A SHORT HISTORY* 147 (1971).

⁸³ František Sieglar, *Care of Cultural Monuments Under Czechoslovak Legal Regulations*, 19 BULL. OF CZECHOSLOVAK LAW 62 (1980).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ At a conference in Munich on September 29, 1938, leaders from the four European powers—Great Britain, France, Italy, and Germany—agreed that Czechoslovakia would cede the Sudetenland region to Hitler on September 30, 1938. See generally VĚRA OLIVOVÁ, *THE DOOMED DEMOCRACY* (1972), for a complete discussion of the Munich Agreement.

⁸⁷ JOHN F. N. BRADLEY, *POLITICS IN CZECHOSLOVAKIA 1945-1990* 4 (1991).

⁸⁸ JUDr. Dušan Lesaj & JUDr. Ján Svák, *supra* note 79, at 8.

⁸⁹ JOHN F. N. BRADLEY, *supra* note 87, at 3.

damaged.⁹⁰

After Prague's liberation in 1945, the Czechoslovak government again set up a national agency to oversee the nation's historic buildings and sites by passing the 1946 Act Concerning the National Cultural Commissions for the Administration of State Cultural Property.⁹¹ This act created two commissions—one in Prague with jurisdiction over the Czech-speaking regions of Bohemia and Moravia, and one in Bratislava with authority in Slovakia.⁹² The commissions were granted official state control of historic sites and monuments for which the state already had legal title.⁹³ Examples of such property included "castles, forts, country manors, urban palaces with adjacent parks and game preserves, and movables of artistic, historical or scientific value."⁹⁴

In February of 1948, the Czechoslovak Communist Party gained complete control of the government and quickly set about transforming the nation's economic development, political structure, and social organization along the Stalinist model.⁹⁵ The vast majority of land in Czechoslovakia immediately became national property.⁹⁶ Historic buildings that had been owned and maintained by royal families for ages were suddenly the property of the Czechoslovak Socialist Republic.⁹⁷ The National Commissions established in 1946 were abolished in 1951, and the authority for state care of monuments was transferred to the Czechoslovak Ministry of Education, Science and Art.⁹⁸

Communist Czechoslovakia's first legislative attempt to directly address the protection of cultural monuments was Act No. 22, passed by the National Assembly of the Czechoslovak Republic in 1958.⁹⁹

⁹⁰ *Id.*

⁹¹ zákon č. 137/1946 Sb.; Siegler, *supra* note 83, at 62.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*, at 62-63.

⁹⁵ WOLCHIK, *supra* note 45, at 20.

⁹⁶ *Id.*, at 22.

⁹⁷ In January 1969, Czechoslovakia officially became a federated state, consisting of the Czech Socialist Republic and the Slovak Socialist Republic. From 1948 to 1969 the Czechoslovak Socialist Republic existed as a unitary state. The division of Czechoslovakia into two federated republics was an attempt to "satisfy Slovak aspirations for parity in the state" while maintaining centralized control over state security and economic planning." WOLCHIK, *supra* note 45, at 62.

⁹⁸ Siegler, *supra* note 83, at 63.

⁹⁹ *Id.*

A. Act No. 22, Concerning Cultural Monuments (1958)

Act No. 22 went into effect on April 17, 1958.¹⁰⁰ The purpose of Act No. 22, as stated in its opening section, was "to govern the protection of cultural monuments . . . [and] their utilization and care . . . because of their cultural-political importance."¹⁰¹ This section declared the state as the monuments' protector,¹⁰² but added that it was the "civic duty of every individual to assist in the protection of monuments."¹⁰³

Section two of the Act broadly defined "a monument" for purposes of the statute:

[1] A monument is a cultural value which documents the historical development of society, its art, technology, science and other areas of human work and life, or the preserved historical environment of human settlements and architectural conglomerations, or an object which relates to outstanding personalities and events of history and culture.

[2] A monument is also a set or conglomeration of cultural values, some of which may not be monuments.

[3] In case of doubt, a thing shall be considered to be a monument until a decision has been issued in this respect by the executive body of the competent regional national committee, which shall request prior to its decision the opinion of the State Institute for Care and Protection of Monuments and Nature [Section 19].¹⁰⁴

¹⁰⁰ zákon č. 22/1958 Sb. The Act consisted of 28 sections, divided into the following five parts: Part 1: Introductory provisions; Part 2: Protection and care of monuments; Part 3: Special provisions regarding exploration and excavations of archeological monuments; Part 4: Monument protection agencies; and Part 5: Final provisions. For purposes of this paper any discussion of the legislation concerning archeology has been omitted. The variety and age of Prague's buildings, however, often result in combined preservation-archeology projects. See *supra* text accompanying notes 66-67.

¹⁰¹ zákon č. 22/1958 § 1(1) Sb.

¹⁰² zákon č. 22/1958 § 1(2) Sb.

¹⁰³ *Id.*

¹⁰⁴ zákon č. 22/1958 § 2 Sb.

The remaining bulk of the Act created an agency to control the preservation work,¹⁰⁵ provided for proper maintenance for registered historic buildings,¹⁰⁶ and outlined the permitted uses of monuments.¹⁰⁷

The Act created an agency known as the State Institute for the Protection of Monuments and Nature [hereinafter "the Institute"].¹⁰⁸ This specialized organization, a branch of the Ministry of Education and Culture,¹⁰⁹ was ultimately responsible for the comprehensive care of monuments. The Institute's duties ranged from the "study, survey, documentation, and . . . popularization of the monuments"¹¹⁰ to the "exceptionally important tasks of conservation, reconstruction and cultural utilization"¹¹¹ of historic Czech buildings and sites. The Institute delegated its tasks to regional National Committees,¹¹² which carried out the Institute's policies in their respective regions. The Act stated that a National Committee could place the owner of a monument under a duty to preserve a building in good condition.¹¹³ Moreover, a monument could only be used in a manner which was "in keeping with the principles of protection of monuments and which correspond[ed] to the character and technical condition of the monument,"¹¹⁴ and a National Committee could control the use of a monument by stipulating that it could not be used in a particular manner.¹¹⁵

Act No. 22 also provided for some monuments to receive a heightened level of protection. Those buildings which formed "the most important component of the cultural wealth of the nation"¹¹⁶ could be proclaimed "national cultural monuments,"¹¹⁷ and would be subjected to increased

¹⁰⁵ zákon č. 22/1958 § 19(1) Sb.

¹⁰⁶ zákon č. 22/1958 § 8(1) Sb.

¹⁰⁷ zákon č. 22/1958 § 10(1) Sb.

¹⁰⁸ zákon č. 22/1958 § 19(1) Sb.

¹⁰⁹ *Id.*

¹¹⁰ zákon č. 22/1958 § 19(2) Sb.

¹¹¹ *Id.*

¹¹² National Committees were locally elected groups responsible for administration of cultural activities within their respective regions. ŠIMEK & DEWETTER, *supra* note 20, at 32. See zákon č. 127/1982 Sb. (detailed legislative outline of the structure and competence of the National Committees).

¹¹³ zákon č. 22/1958 § 8(1) Sb.

¹¹⁴ zákon č. 22/1958 § 10(1) Sb.

¹¹⁵ *Id.*

¹¹⁶ zákon č. 22/1958 § 3 Sb.

¹¹⁷ *Id.*

protection which is spelled out in later sections of the law.¹¹⁸

Not surprisingly, the historic districts of Prague were given special consideration under Act No. 22. The Act proclaimed the city center of Prague a "historical reservation,"¹¹⁹ and provided that the restrictions put on building activity in Prague would be determined jointly by the Minister of Education and Culture and the Minister-Chairman of the State Committee for Construction.¹²⁰ Thus, the extensive bureaucratic controls laid out in the Act did not apply to Prague.

Despite the enactment of the broad 1958 law, the condition of some of Prague's older buildings deteriorated in the 1950s and 1960s to the point of becoming public hazards.¹²¹ The government often responded by simply closing historic buildings to the public and hiding them under scaffolding for years, without workers ever being seen at the location.¹²² A handful of renovation projects that were started on some of Prague's historic buildings dragged on for years without any signs of progress.¹²³

The primary problem with the 1958 Act was that it gave individual citizens no incentive to take an interest in historic preservation. Certainly this problem was as much a reflection of the dominant socialist ideology as of the specific provisions of Act No. 22. Registered historic buildings were subject to the "ubiquitous phenomenon of collective responsibility,"¹²⁴ which left no one responsible for specific buildings. The Communist leadership simply took possession of the nation's oldest and culturally most valuable buildings and did nothing more with them. Few of the government's attempts at renovation in the 1950s were worthwhile because these projects were primarily politically motivated activities. As Josef Štulc, Director of the State Institute for the Care of Historic Monuments, explains:

¹¹⁸ *Id.*

¹¹⁹ zákon č. 22/1958 § 4(2) Sb.

¹²⁰ *Id.*

¹²¹ In one reported incident from the mid-1950s, two Czech women were killed by plaster that fell from an old building while waiting at a Prague tram stop. *ECONOMIST*, *supra* note 19, at 68.

¹²² *Id.*

¹²³ One example is the huge Týn Church, a major landmark in Prague's Old Town Square. Restoration work on the church began in 1972. By 1986, only half of one spire had been cleaned. Echikson, *supra* note 1, at 18.

¹²⁴ Štulc, *supra* note 52, at 62.

State funds were spent lavishly on reconstruction of what was called "revolutionary heritage items and Communist movement monuments" (more likely than not without any architectural value whatsoever), or alternately, funds were concentrated on a few selected and unnecessarily ambitious projects which received publicity and were very lucrative for the project teams and contractor. Thereby, the state created the appearances of taking all necessary care of the nation's cultural heritage.¹²⁵

Thus, it followed that the majority of Prague's cultural heritage was left to crumble under the vague protections of the 1958 Act.

This situation continued until 1976, when new legislation was enacted that primarily addressed the problem of the ever-present construction and renovation projects in and around Prague. Act No. 50 Concerning Zoning and the Building Rules [hereinafter "the Building Act"] was intended to improve the management of capital construction and rebuilding in Czechoslovakia.¹²⁶

B. Act. No. 50, The Building Act (1976)

The Building Act,¹²⁷ enacted in 1976, consists of two main categories of provisions covering the "entire sphere of territorial planning":¹²⁸ 1) zoning and 2) building rules and building permits.

The zoning provisions heralded a "pronounced change"¹²⁹ in the procedure to be used in making zoning decisions. The scope of parties allowed to participate in zoning hearings was now increased to include individuals and organizations whose rights were affected by a construction or renovation

¹²⁵ *Id.*

¹²⁶ Juraj Ďurovčik, *The Act Concerning Zoning and Building Rules*, 25 BULL. OF CZECHOSLOVAK LAW 1 (1986).

¹²⁷ zákon č. 50/176 § 145 Sb. Act No. 50 passed on April 27, 1976, and became effective on October 1, 1976. This extensive act did not exclusively address historic monuments the way the 1958 Act did, but many of the provisions of the Building Act were clearly drafted with cultural monuments in mind. This law has since been amended, but is otherwise still generally good law in the Czech Republic today. See discussion *infra* part III. D.

¹²⁸ Ďurovčik, *supra* note 126, at 1.

¹²⁹ *Id.*, at 5.

project.¹³⁰ The intent of this provision was to provide public notice of large-scale building projects (e.g., construction of power lines).¹³¹ Previously, local interests were not represented at zoning hearings and a property owner whose historic building would be adversely affected by a construction project or renovation had no opportunity to raise objections to zoning proposals.¹³² The Act also lays out numerous procedures for state building inspections,¹³³ the removal of buildings,¹³⁴ and extensive building permit proceedings.¹³⁵

Several provisions of Act No. 50 directly affect historic buildings and monuments. Section 21(1)(a) states that drafts of zoning plans must be reviewed by the regional National Committee which governs the affected territory, and the plans must be "agreed upon by the affected state administration agencies."¹³⁶ The Act requires building permits for all maintenance work on a cultural monument,¹³⁷ and applicants for building permits must first seek the opinion of "the competent organ of the State Agency for Care of Cultural Monuments"¹³⁸ and adhere to any conditions that agency may set.¹³⁹

The Building Act also introduces fines for non-compliance with its provisions. For citizens' offenses a penalty ranging from 2,000 to 20,000 Czech crowns is imposed for carrying out work without a permit on protected territory or in a protected zone.¹⁴⁰ A variety of fines are possible for violations by an organization—a penalty of up to 200,000 crowns could be imposed if the organization fails to maintain a historic monument in good order; up to 500,000 crowns if an organization demolishes a building without a permit from the relevant authority; and up to 1,000,000 crowns if an organization carries out renovations at variance with their permit, or if the organization lets their building become a public hazard or otherwise fails to

¹³⁰ *Id.*, at 5.

¹³¹ *Id.*, at 5.

¹³² *Id.*, at 5.

¹³³ zákon č. 50/1976 § 81(1) Sb.

¹³⁴ zákon č. 50/1976 § 88 Sb.

¹³⁵ zákon č. 50/1976 § 66-70 Sb.

¹³⁶ zákon č. 50/1976 § 21(2) Sb.

¹³⁷ zákon č. 50/1976 § 55(1) Sb.

¹³⁸ zákon č. 50/1976 § 57(4) Sb.

¹³⁹ zákon č. 50/1976 § 66 Sb.

¹⁴⁰ zákon č. 50/1976 § 105 Sb.

carry out essential safety measures.¹⁴¹

Perhaps the most useful part of the Building Act for architectural preservation purposes is Part Six, entitled "Protection of Special Interests."¹⁴² Sections 126 and 127 of Part Six bind building agencies making building permit decisions to issue decisions "only in agreement with and/or consent of"¹⁴³ the Institute for State Care of Monuments, and Section 126(2) reserves the Institute's right to issue an independent decision concerning a building permit.¹⁴⁴ This section was intended to ensure that the agency charged with protecting monuments would be part of any final building permit decisions.¹⁴⁵

Despite the 1976 legislation, by the late 1970s it was apparent that the country's historic preservation efforts and applicable legislation were insufficient, as Prague's buildings continued their slow crumble. Dissatisfaction with the 1958 and 1976 legislation was widespread. Even the Communist authorities seemed to concede: in 1980, JUDr. František Siegler (an official at the Ministry of Culture) wrote that because state care of monuments had "undergone pronounced qualitative and organizational changes"¹⁴⁶ since 1958, guiding principles for a new Act Concerning State Care of Monuments were necessary, and these principles were approved by the Czech National Council in 1979.¹⁴⁷ In a 1987 article discussing preservation legislation, JUDr. Dušan Lesaj and JUDr. Ján Svák, officials in the Law Institute of the Slovak Ministry of Justice, wrote that the current legislation was insufficient because it:

... did not create sufficient conditions for integrating cultural monuments into present-day life ... did not sufficiently differentiate between cultural monuments from the viewpoint of their importance ... did not create the conditions for building up an effective network of professionally-staffed organizations of state care of monuments ... [and] did not provide for effective sanctions against

¹⁴¹ zákon č. 50/1976 § 106 Sb.

¹⁴² Part Six is made up of three sections, zákon č. 50/1976 § 125-127 Sb.

¹⁴³ zákon č. 50/1976 § 126(1-2) Sb.

¹⁴⁴ *Id.*

¹⁴⁵ Ďurovčík, *supra* note 126, at 10.

¹⁴⁶ Siegler, *supra* note 83, at 70.

¹⁴⁷ *Id.*

individuals and organizations violating legal provisions protecting cultural monuments.¹⁴⁸

Thus, the new Act No. 20 Concerning State Care of Monuments was drafted to address these issues, and hopefully to rescue Prague's crumbling buildings.

C. Act No. 20, Concerning State Care of Monuments (1987)

Act No. 20 went into effect on the first day of 1988,¹⁴⁹ and completely and explicitly superseded the 1958 legislation.¹⁵⁰ The purpose of the new legislation was stated in heavily political language:

[1] The State shall protect cultural monuments as an integral part of the cultural heritage of the people . . . and as the irreplaceable treasure of the socialist state. The purpose of the present Act is to create all-around conditions for the continuing deepening of the political-organizational, cultural, and educational role of the state in taking care of cultural monuments . . . thereby contribut[ing] to the further advance of socialist society.¹⁵¹

The Act also contained a new statutory definition of what a cultural monument is, and how this determination is made:

[1] The Ministry of Culture of the Czech Socialist Republic shall designate as cultural monuments under the present Act . . . objects, and/or their sets, which:

- a) are important documents of the historical development, way of life and environment of society . . . because of their revolutionary, historical, artistic,

¹⁴⁸ JUDr. Dušan Lesaj & Ján Svák, *supra* note 79, at 8-9.

¹⁴⁹ zákon č. 20/1987 § 47 Sb.

¹⁵⁰ zákon č. 20/1987 § 46 Sb. Similar to the 1958 law which it replaces, Act No. 20 of 1987 is divided into five parts: Part 1: Fundamental Provisions; Part 2: Care for Cultural Monuments; Part 3: Archeological Research and Finds; Part 4: Agencies and Organizations of State Care of Monuments; and Part 5: Measures Against Breaches of Obligations.

¹⁵¹ zákon č. 20/1987 § 1(1) Sb.

scientific and technical value,
 b) directly relate to important personalities and
 historic events.¹⁵²

The Act particularly stressed the universal duty of all citizens to protect cultural monuments, "even if they are not the owners of cultural monuments."¹⁵³ Section 9(3) affirms the public's "constitutional duty to protect and consolidate socialist ownership . . . as the source of the well-being of the working people and the wealth and strength of the country."¹⁵⁴

Other provisions of Act No. 20 detail the procedures to be followed during restoration of cultural monuments and expand the powers of the State over those contained in the 1958 Act. National Committees are afforded the option of buying cultural monuments for the State, and owners intending to sell an historic building first have to offer the building to the regional National Committee.¹⁵⁵ Section 16(1) also allows for National Committees to provide a financial contribution to an owner of a cultural monument if the owner is unable to afford an ordered renovation.¹⁵⁶

Like the 1976 Building Law, this Act also relies on fines to promote compliance with its provisions. Section 35(1-2) provides for fines to be charged against an organization of between 100,000 crowns and 500,000 crowns for violations of maintenance duties under the Act.¹⁵⁷ Fines for an individual transgressor could be set between 1,000 crowns and 5,000 crowns.¹⁵⁸

Like the 1976 Building Law, the 1987 Act Concerning the State Care of Monuments was intended to correct the shortcomings of the 1958 Act and stop what was rapidly becoming the ruin of Prague's historic center. "Chronic negligence in preventive maintenance"¹⁵⁹ had caused the decay

¹⁵² zákon č. 20/1987 § 2(1) Sb.

¹⁵³ zákon č. 20/1987 § 9(3) Sb.

¹⁵⁴ This duty stems from Article 35 of the Constitution of the Czechoslovak Socialist Republic. *Id.*; Ústavní zákon ČSFR Art. 35; see JUDr. Dušan Lesaj & JUDr. Ján Svák, *supra* note 79, at 11.

¹⁵⁵ zákon č. 20/1987 § 13(1) Sb.

¹⁵⁶ This allowance is to be given only "in especially warranted cases." zákon č. 20/1987 § 16(1) Sb.

¹⁵⁷ zákon č. 20/1987 § 35(1-2) Sb.

¹⁵⁸ zákon č. 20/1987 § 39 Sb.

¹⁵⁹ Štulc, *supra* note 52, at 62.

of an estimated 3,500 historic buildings from 1958 to 1988.¹⁶⁰ The situation had become alarming. The 1987 Act's approach to this crisis was to focus provisions more directly towards individual and organizational owners of historic buildings and to lay out the procedures for maintenance of historic buildings in greater detail. Consequently, the 1987 Act contained nearly twice the number of sections as the 1958 Act. Unfortunately, however, these additional provisions did not result in addition protection for, or action on behalf of, Prague's cultural monuments. The national bureaucracy overseeing Prague's historic preservation had grown comfortable with its inefficiency and ineffectiveness and lacked the funds to properly renovate Prague's historic buildings had it wanted to do so. Thus, the result was continued government indifference to historic preservation in Prague, and there were no private preservation organizations in Czechoslovakia to make up for this lack of government action. This situation continued up until the revolution of 1989.

D. Act No. 242, The Amendments (1992)

Following the revolution, the first legislation dealing with architectural and historic preservation was the brief Act No. 242 of 1992, which went into effect June 1, 1992.¹⁶¹ The Act represents a departure from previous attempts at preservation legislation: rather than a broad act that lays out new definitions and procedures, Act No. 242 is a collection of seven amendments that supplement particular sections of previous acts, specifically the 1987 Act Concerning State Care of Monuments and the 1976 Building Law.¹⁶²

The purpose of two of Act No. 242's amendments is simply to raise the fines contained in the 1987 Act.¹⁶³ Since many of the current renovations in Prague are being funded by wealthy foreigners, preservation law needed a more realistic deterrent to building permit violators than fines starting at 1,000 crowns, or approximately thirty U.S. dollars. Thus, Sections 6 and 7 of Act No. 242 raise the fines against individual violators from 1,000 crowns to 10,000 crowns (approx. \$300) and from 5,000 crowns (approx. \$170) to 50,000 crowns (approx. \$1700), respectively, depending on the severity of

¹⁶⁰ *Id.*

¹⁶¹ zákon č. 242/1992 Sb.

¹⁶² Preamble to zákon č. 242/1992 Sb.

¹⁶³ zákon č. 242/1992 §§ 6-7 Sb.

the violation.¹⁶⁴ Act No. 242 also states that restoration can be undertaken with the authorization of the Czech Ministry of Culture,¹⁶⁵ thereby asserting the Ministry of Culture's control of who can renovate historic buildings as well as what renovation can be done.

IV. ANALYSIS

Legislative attempts at architectural and historical preservation in Prague since 1958 have not been very successful. Although the Act Concerning Cultural Monuments is no longer the law in the Czech Republic, the basic principles and broad terms laid out in 1958 are still largely intact and applicable today. The whole of central Prague is still designated as a national monument.¹⁶⁶ By law, the state is still obligated to protect cultural monuments, and a large national bureaucracy retains control over the whole preservation and renovation procedure.¹⁶⁷ This legislative legacy has many shortcomings—a lack of incentives to preserve, a lack of funding, an inefficient national bureaucracy, and almost no public involvement in historic preservation. Thankfully, these problems can now be addressed in a radically different and much more favorable environment than in Communist Czechoslovakia.

In fairness, it must be pointed out that the Communists did attempt to address some of these problems, as evidenced in the more focused approaches of the Building Act of 1976 and the Act Concerning State Care of Monuments of 1987. The 1976 Act in particular was enacted in response to the many disruptive and seemingly never-completed large-scale construction projects undertaken in and around Prague between the 1950s and 1970s. The introduction of fines for violations of the 1976 Act was also a first step toward providing some incentive for builders to take an interest in historic preservation by penalizing those who ignored historic preservation concerns. Unfortunately, these tentative attempts at reforming what was essentially an inadequate preservation framework had little effect and the Communists' efforts remained a failure until the revolution in 1989.

The return of private property rights has largely corrected the problem of

¹⁶⁴ zákon č. 242/1992 §§ 6-7 Sb.

¹⁶⁵ zákon č. 242/1992 § 1 Sb.

¹⁶⁶ *Urban Development in Prague*, THE FINANCIAL TIMES (East European Markets), March 6, 1992.

¹⁶⁷ Cook, *supra* note 7.

the lack of incentives. Thousands of buildings in Prague have been returned to their previous owners through the official policy of restitution.¹⁶⁸ Private owners, now motivated by both personal attachment to historic buildings and economic self-interest have assumed on the responsibility for renovating and maintaining their property.

Perhaps the best current legislative prospect to further encourage these renovations is the introduction of preservation-based tax incentives. In the United States, the federal government has provided tax incentives for the "rehabilitation"¹⁶⁹ of historic buildings since 1976. This "rehabilitation tax credit" has been modified several times since its inception, but currently amounts to twenty percent of the total cost of rehabilitating a historic building.¹⁷⁰ This tax credit has been an effective incentive for investors, as over 23,000 historic buildings have been rehabilitated in the United States since 1976.¹⁷¹ Currently, there are no tax incentives in the Czech Republic to promote architectural or historic preservation.¹⁷²

Another important consideration for Czech legislators is finding a way to involve the public in historic preservation. Historic preservation in the Czech Republic has always been controlled by large bureaucratic national government institutions. The 1976 Building Act initiated a slight shift toward more local involvement by including local property owners in zoning

¹⁶⁸ In 1990, the Czechoslovak Federal Assembly approved a policy of restitution that allowed previous owners to reclaim property that had been confiscated by the government between 1955 and 1959. This policy was considered a key step in the larger process of economic privatization. See WHEATON & KAVAN, *supra* note 5, at 159; Mary Hockaday, *Prague to Return Confiscated Properties*, THE INDEPENDENT, Oct. 3, 1990, at 13.

¹⁶⁹ Pub. L. No. 94-455, 2124, 90 Stat. 1520, 1916-19 (1976). "Rehabilitation" is defined as "the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values." H. Ward Jandl, *Preservation Tax Incentives in the United States*, ARCHITECTURAL CONSERVATION IN THE CZECH AND SLOVAK REPUBLICS (1993), at 39.

¹⁷⁰ Pub. L. No. 97-34, 212(a), 95 Stat. 172, 235-36 (1981); *id.* at 38.

¹⁷¹ Jandl, *supra* note 169, at 37. Jandl reports that over 80% of the investors indicated that without the tax credit they would not have attempted the rehabilitation. *Id.* at 41.

¹⁷² Drafting has begun on a new Czech tax code that will seek to help individual owners and institutions care for monuments. Advisors from the International Monetary Fund and the European Community are assisting in this effort. Jiff Marek, *Writing Tax Law for the Czech and Slovak Republic*, ARCHITECTURAL CONSERVATION IN THE CZECH AND SLOVAK REPUBLICS (1993).

decisions, but nearly all the decisions regarding Prague's historical preservation have come down from a large national bureaucracy. The Czech government now needs to help establish and encourage the development of private organizations that will promote the public's interest in historic preservation.

Some efforts are now being made to foster public-private partnerships and create a new non-profit sector, which could become a strong funding source for historic preservation as it has in the United States and Great Britain.¹⁷³ The long tradition of large federal agency control over historic preservation, however, will likely be difficult to break. According to Jan Kaigl, an engineer and architect at the Ministry of Culture, the Ministry of Culture still contends that the best protector of monuments is the state.¹⁷⁴ The current tax structure is once again a problem: Czechs can not claim much in the way of tax deductions for contributions to non-profit organizations, and the non-profit groups themselves are currently "heavily taxed."¹⁷⁵

Efforts like these—tax incentives to help renovation projects and non-profit organizations—are in tune with the current trend of historic preservation law in the United States, where the main goal of legislation is to provide a "stimulus and leadership"¹⁷⁶ for private sector involvement. By developing strong public involvement, a Czech legislature will no longer need to mandate a vague universal duty on its citizens to care for its historic monuments. The Czech experience with historic preservation legislation has shown that acts laying out broad definitions and elaborate procedures are not helpful. Rather, the lessons of the past half century of architectural preservation law in Prague suggest that Prague's heritage perhaps can be better protected with preservation tax incentives.

Accomplishing the goals of historic preservation through legislation, however, is certainly difficult and unpredictable. Miroslav Masák, the head architect working on the renovation of Prague Castle, argues that the validity of such legislation will be relative,¹⁷⁷ because "the inimitable character of the monument zones is not in fact compatible with the universality of

¹⁷³ Fučíková, *supra* note 51, at 79; Laurie Beckleman, *The American Model*, ARCHITECTURAL CONSERVATION IN THE CZECH AND SLOVAK REPUBLICS (1993), at 75.

¹⁷⁴ Cook, *supra* note 7.

¹⁷⁵ Temin, *supra* note 10, at 12.

¹⁷⁶ Marilyn Phelan, *A Synopsis of the Laws Protecting Our Cultural Heritage*, 28 NEW ENG. L. REV. 63, 107 (1993).

¹⁷⁷ Miroslav Masák, *How to Build in the Historic Environment*, ARCHITECTURAL CONSERVATION IN THE CZECH AND SLOVAK REPUBLICS (1993), at 27.

decrees and regulations."¹⁷⁸ Simply declaring a building a protected monument does not make it one. Enacting appropriate legislation to encourage the preservation of Prague's unique architectural heritage will likely be difficult, but this task is well worth the effort.

V. CONCLUSION

The Velvet Revolution brought good news for those interested in Prague's architectural heritage. Since 1989, the damaging pollution Prague suffered under for forty years has begun to diminish in severity.¹⁷⁹ Prague's history and architecture are attracting record numbers of tourists, making the preservation of these priceless monuments a part of the city's economy. Perhaps of greatest importance is that government ideology is no longer in direct conflict with the concept of historic preservation for Prague's architectural treasures.

Prague probably will not see more historic preservation legislation like the pre-1989 Acts. In the newly democratic Czech Republic, attempts at controlling the influence of economics in a free market and channelling the interests and good will of private citizens will better serve the ends of historic preservation. The proper legislative approach for protecting the enduring historic buildings of Prague is to gradually craft pragmatic laws adapting to the new economic, social, and political environment that best serve the buildings' long-term survival. With this type of careful legislative attention, Prague's cultural heritage should survive for centuries on.

¹⁷⁸ *Id.* at 27.

¹⁷⁹ Several coal-burning power plants in northern Bohemia have been closed and others have had new filters installed. Daniszewski, *supra* note 42, at 22. As a result, sulfurous emissions have been reduced by 20% since 1990. *Id.*

