

# ACTA POLITOLOGICA

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RECENZOVANÝ ČASOPIS | PEER-REVIEWED JOURNAL

2023 | Vol. 15 | No. 3 | ISSN 1803-8220

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GÉRYK, Jan; HALAMKA, Tomáš (2023). Direct Presidential Election in the Czech Republic: The Rise of Tribunes? *Acta Politologica*. Vol. 15, no. 3, pp. 4–30.

[https://doi.org/10.14712/1803-8220/23\\_2023](https://doi.org/10.14712/1803-8220/23_2023)

Published: 31/10/2023

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## Direct Presidential Election in the Czech Republic: The Rise of Tribunes?

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### Abstract:

*The debate about the direct election of the Czech president within the fields of political science and constitutional law has been almost unanimously sceptical about the introduction of the popular vote. This article offers a contrary perspective developed through theorising a potential tribune function of the Czech presidents. We investigate the workings of the original office of the Roman tribunate, the place of tribune function as a democratic element within the classical accounts of the mixed constitution, and its revival in modern political theory and political sociology. We argue that the popular vote increased the tribune potential of the Czech presidency to channel Czech democracy's discontent. If some major deficiencies of the direct vote are reformed, such as the polarising two-round electoral system, the president-tribune could constitute a popularly established check on MPs, the government, and other elites. In such a case, the introduction of the direct election could be viewed not as a systemic flaw but as an integrative feature strengthening the system of checks and balances.*

**Key words:** *Tribunate; Tribune Function; Czech President; Direct Election; Presidential Election; Mixed Government*

### Introduction

Evaluating 10 years of direct election of Czech presidents in a dedicated special issue provides a space for new perspectives. So far, the debate about popular presidential election has been dominated by political scientists and constitutional lawyers who are mostly sceptical that a directly elected president could play a positive role in the Czech constitutional and political system without a corresponding increase of governing presidential powers. Our paper, however, aims to offer a different viewpoint, stemming from the perspective of political theory and the history of political thought. In the classical works of political thought, we have identified a figure of a non-governing, directly elected official who has been praised (even by thinkers highly sceptical of direct democracy) for both his democratising and system-stabilising function: the tribune.

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Therefore, this article investigates the traditional Roman tribunate and its reception by major classical and early-modern political thinkers, followed by accounts of contemporary political sociology, which theorise what kind of political actors could adopt a tribune role in (late)modern politics. After this analysis, we will argue that in parliamentary regimes, the presidents are good candidates to take it up. We will emphasise especially the dual function of the tribunes as agents able to perceive and potentially harmonise the functional requirements of both the *people* (in the sense of *popolo* as opposed to the *elites*) and the existing political system (established by the constituent *People* in the foundational moment). This is the case also, and perhaps especially, of the Czech president, as we will argue in the second half of our text. We will also suggest that this theoretical perspective is, according to surveys of public opinion, in line with the popular Czech perception of the presidency.

On the other hand, a tribunate is not a perfect institution without any flaws. Many historical and contemporary examples have shown that the tribune figures can also behave in a manner damaging to particular groups of people and the political system as a whole, as the critics of (contemporary) populism frequently point out. However, these serious dangers, such as the polarising rhetoric and disregard for minorities, could in our opinion be reduced, and the beneficial potential of the tribune-like presidency fulfilled, by some particular constitutional and legal changes. Therefore, in the final part of the article, we hint that, for example, the existing two-round format of the Czech presidential election works as such a polarising element in society and that its change to a one-round alternative vote would be preferable for better functioning of a tribune-like presidency.

## **Czech Direct Presidential Election and Its Critiques**

Direct popular election of the President of the Republic was the subject matter of political discussions more or less from the beginning of the new democratic post-Communist regime in Czechoslovakia. However, what was typical for various proposals to elect the president directly was their tactical or situational – i.e., not system-oriented – rationale. For example, as early as December 1989, the popular election was (unsuccessfully) proposed by the Communists because they knew that a parliamentary election of their candidate would have provoked a new wave of strikes and demonstrations. Moreover, they wanted to take advantage of the fact that Václav Havel, as the candidate of the Civic Forum, was still relatively unknown in rural areas at that time, and so could increase the chance of a Communist candidate winning (Mlejnek, Šustrová 2010).<sup>2</sup>

Even with regards to the final implementation of the direct presidential election to the Czech constitutional system, the main impulse for it – besides the fact that the surveys showed a strong public inclination to the direct election – was the particular situation during the indirect parliamentary election in 2008. That year, the election atmosphere in the joint meeting of both chambers was very polarised. This stemmed, among other things,

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<sup>2</sup> The Civic Forum delegation refused the Communist proposal and wanted to elect the president by the established procedure under the Constitutional Act on the Czechoslovak Federation, that is, via parliamentary vote. The key role in the election was played by the federal (Communist) Prime Minister Marián Čalfa, who managed to persuade Communist deputies to vote for Havel in the Parliament (Mlejnek, Šustrová 2010). What is worth-noting in this context is that, a few years later, in 1992, Václav Havel - in his own (unsuccessful) proposal of the new Constitution – designed the presidency as elected by the popular vote, with “*political legitimacy independent from the parliament*” (Kopeček, Mlejnek 2013: 71).

from the fact that the deputies and senators approved that the vote would be made publicly rather than by secret ballot. The following pressure on some electors was accompanied by accusations of bribery and even signs of blackmail. Outraged by some particularly ugly moments, the public and the media intensified their appeals for the introduction of the direct election, which was eventually implemented in 2012 (Kopeček, Mlejnek 2013: 71).

The fact that the primary impulses for the introduction of the direct election were of a situational character and concerned the election itself, rather than the exercise of presidential powers, contributed to the absence of any widely accepted agreement about the possible changes of these powers in the Constitution. Thus, the changes in the constitutional articles determining presidential powers or accountability were so far only marginal.<sup>3</sup> Although directly elected, the president is not *politically* responsible to any constitutional body or authority. On the other hand, even though the president got a considerable *legitimacy advantage* by being elected by millions of voters (which makes him<sup>4</sup> more independent of the parliament and the government), his powers remain weak in the sense that we speak about *non-governing* powers (Brunclík, Kubát 2017: 57, 65).<sup>5</sup>

Many constitutional lawyers and political scientists consider this imbalance between the increased legitimacy and the lack of governing powers of the president to be harmful to the Czech parliamentary regime. According to Jan Kysela, we should start by asking what functions particular constitutional institutions should have. Only if we conclude that the president should have such systemically beneficial functions and powers that require stronger legitimacy should we look for particular means that would give him this legitimacy – for example, a direct election. Kysela's conclusion is that even though various presidential powers could be important for the political system, stronger legitimacy without appropriate corresponding powers is rather risky (Kysela 2015: 1030–1031). Petr Pithart is even more critical, claiming that the combination of strong legitimacy and weak powers is like *“semtex put into the grounds of our constitutional system”* – referring to a plastic explosive invented by Czechoslovak chemists –, since it tempts the president to demagogy and negativism (quoted in Brunclík, Kubát 2017: 115).

What is the logic behind this critique? The point is that increased legitimacy encourages the president to be active. However, if the president does not have constitutionally embedded powers that could channel this activity in a functional, systemically beneficial direction, there is a risk that he would use his energy (increased by the strong authorisation

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<sup>3</sup> The only change in the presidential powers was that the power to order *“that the criminal proceedings not be instituted or if it has been instituted, that it be discontinued”*, newly began to require countersignature of the Prime Minister (or a member of the government designated by him). As for the question of accountability, the presidential indemnity (the rule that the president *“may not be taken into detention, criminally prosecuted nor prosecuted for misdemeanours or other administrative offences”*) applies only when the president is *“in office”*, whereas previously it applied *“for life”*. Also, the president may be prosecuted at the Constitutional Court not only for high treason, but also for *“gross violation of the Constitution or other segment of the constitutional order”* (Constitutional Act No. 71/2012 Coll.; Kysela 2015: 1031).

<sup>4</sup> Our use of pronouns *his/him* follows the Czech/Czechoslovak context, where all hitherto selected presidents have been male. Also, the generic masculine language is used in legal texts.

<sup>5</sup> For most Central-European authors, the lack of strong governing powers of the president means that there is no shift from the parliamentary system to the semi-presidential one – even if the president is directly elected. Here, these authors follow the tradition set up by Maurice Duverger, for whom the criterion of *“quite considerable powers”* of the president is an essential part of defining semi-presidentialism (besides popular elections and the existence of the prime minister and ministers responsible to the parliament) (Brunclík, Kubát 2017: 19, 33).

by the people) in a way detrimental to the system. For example, the president could “do politics” in a mode of *active inaction*, whereby he deliberately does not exercise a particular power, even though he should. This could lead to serious political crises<sup>6</sup>, especially in the conditions of the president’s lack of responsibility to the parliament when the only available “penal” procedure is impeachment, which can be used, however, only in the gravest situations (Kudrna 2011: 12).

Moreover, although the constitutional law that introduced a direct election of the president into the Czech Constitution created a new reason for a constitutional charge against the president (gross violation of the Constitution), it made it considerably more difficult to file such a charge. Now, the consent of a three-fifths majority of the votes of present senators and the consent of a three-fifths majority of all deputies is required to proceed with this process. In contrast, only a simple majority in the Senate was needed before the amendment. This is considered particularly illogical by some authors. According to Pithart, it is evidence of the lack of a “*basic liberal instinct (distrust of the power and the powerful)*”. This instinct, if developed in Czech society, would recommend balancing a stronger presidential “mandate” by strengthening the oversight of him (Pithart 2014: 6).<sup>7</sup>

As we could see from the previous paragraphs, constitutional lawyers and political scientists – contrary to the majority of politicians, some journalists, and most of the public – are predominantly critical towards the introduction of direct election of the president, especially if it is combined with no proper changes in his powers and responsibility. According to Kysela, there is barely any “discussion” in expert circles since the advocates of the direct election were almost completely absent within the fields of political science and constitutional law (Kysela 2015: 1031). Nevertheless, such a discussion is needed, if only because changing the election system back to the indirect one would be nearly impossible. To take the possibility to elect the president back from the people after it was already introduced would be seen as much less legitimate than not to have introduced it at all. A return to the indirect election would remind many voters of a famous Bertolt Brecht’s satirical poem (“*Stating that the people/Had forfeited the confidence of the government/And could win it back only/ By redoubled effort. Would it not be easier/In that case for the government/To dissolve the people/And elect another?*” [Brecht 1997]). After all, the overwhelming majority of the Czech population still supports a direct election of the president. According to a survey conducted at the end of 2022, 82% of the Czech voters showed a positive attitude to the popular vote (Lidovky.cz 2022).

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<sup>6</sup> One crisis caused by such an *active inaction* happened in 2019 when President Miloš Zeman, the first to be elected directly, refused to recall Michal Šmarda a member of the government (the minister of culture), even though article 74 of the Czech Constitution states that “[t]he President of the Republic shall recall members of the government if the Prime Minister so proposes”, that is, the president *must* do it. Zeman also argued that the Constitution does not state a time limit in which he should recall a minister. However, the predominant interpretation is that if the Constitution does not set a time limit, the concerned parties should act “*without undue delay*” (Kudrna, Spěváčková 2019).

<sup>7</sup> From the liberal viewpoint of the checks and balances, this argument makes perfect sense. From the viewpoint of democratic legitimacy, we can, however, argue to the contrary. If the president has newly a much stronger democratic “authorization” by the popular vote (in elections with a very high voter turnout, as we can retrospectively consider), filing a charge against him should require more than a consent of a simple majority of the members of the parliamentary chamber into which its members are elected in elections with chronically low voter turnout.

With regard to these reasonings, our article aims to offer a hitherto missing perspective, one more favourable to the popular election of the president. Also, we offer a perspective of *political theory* rather than of *political science* or *constitutional law*. This disciplinary viewpoint has been sporadic in the expert debates so far, and it could be helpful in contemplating possible positives even in what has been criticised the most about the direct presidential election: the increase of popular legitimacy of the president while his powers are not elevated, and remain non-governing.

We will argue that this kind of president in the parliamentary system does not necessarily cause or deepen the regime's deformation (cf. Brunclík, Kubát 2017: 123) but introduces into the parliamentary system a figure that resembles an ancient political institution of the *tribune of the people*. As we will try to show, if we will deliberately understand the directly elected Czech president as playing the role of a *tribune*, we will be able to see his systemic functions in a more complex and balanced way. The very introduction of such a specific term (*president-tribune*) could itself be helpful not only for theorising the new constellation in the Czech constitutional/political system, but for legitimising the direct elections as well.

The reference to the *tribune of the people* has already been used a few times in relation to the Czech president, but only in passing (Kudrna, Hoferek 2016), in critical glosses in the press (Lipold 2023), or in somewhat simplified historical parallels (Holub 2022). Therefore, it is necessary to elaborate on what we understand by the *tribune function*. We will investigate classical authors such as Polybius or Cicero, who analysed and evaluated the functions of *the tribune of the people* in ancient Rome and, together with Niccolò Machiavelli in Renaissance Italy, understood the tribunes as a democratic element in the Roman mixed constitution. We will focus especially on the fact that the tribunes were important in defending the plebeians against oligarchic elements in the system, and explain why such a function is also needed today. Then, following the argument of the 20<sup>th</sup>-century political sociologist Georges Lavau, we will argue that the tribune function is also a stabilising one since it channels the class conflict into systemic structures and, therefore, legitimises the system.

## Tribunate in the Roman Republic

To analyse the tribune function, we should begin where the figure of the tribune was instituted at first – in the Roman republic. According to the account that Livy (59 BC – 17 AD) provides in the *Books from the Founding of the City*, the office of *tribunus plebis* was established as a result of conflict between patricians and plebeians<sup>8</sup> culminating in 495–493 BC, i.e., roughly 15 years after the expulsion of Roman kings and foundation of the Roman Republic (Livy *Ab Urbe.*: II). Many plebeians were burdened by massive debt and demanded state action to ease their situation. When their demands remained unheard despite the attempts by the dictator Valerius to solve the issue, a large portion of the plebeians left for *Mons Sacer* (the Sacred Mount). During this event, known as the secession of the people (*secessio plebis*), the armed plebeians fortified themselves but remained idle, which effectively paralysed the City (Livy *Ab Urbe.*: II 32). The Senate, composed entirely of patricians

<sup>8</sup> The origins of these social groups are not entirely clear. In any case, the patricians were for a long time a privileged social group. For example, the Senators could come from the patrician class only, even though the plebeians could be rich as well. Thus, the origin was more important than wealth with regards to access to political offices, especially during the Early Republic.

at that time, was forced to enter negotiations with the protesting plebeians and accept some of their proposals.

The key provision resulting from these negotiations was the establishment of plebeian tribunes, who would protect the plebeians from patricians abusing their power, especially from the transgressions by consuls<sup>9</sup> (Livy *Ab Urbe.*: II 33, Tellegen-Couperus 1993: 14). These tribunes, coming from the plebeian class itself, could both assist individual plebeians and serve as representatives of the plebs as a whole. In the Early Republic, the tribunes were not yet regular magistrates and only represented the plebeians, i.e., the most numerous yet still just a section of the Roman people (Lintott 1999: 43). Later, when the distinction between the patricians and plebeians began to dissipate, they became magistrates for the whole *Populus Romanus* (Tellegen-Couperus 1993: 42).

The tribunes possessed several significant competencies. Therefore, in order not to be hindered from their duties to the people, they were made inviolable. Their immunity stemmed from their *sacrosanctity*<sup>10</sup>, meaning that any physical harm or intervention impediment to tribunes' actions would be avengable by the plebeians (Lintott 1999: 43; Tellegen-Couperus 1993: 14).

The original fundamental power of the tribunes was *ius auxilii*, a power to assist an individual citizen threatened with injustice (Brennan 2014: 53). *Auxilium* allowed a tribune to perform a *de facto* ombudsman role and to protect the respective citizen against an act of magistrate perceived as oppressive (Mitchell 2001: 132). In this respect, the tribunes were, for example, essential in exercising the crucial civic right of *provocatio*, a theoretical legal guarantee (most importantly) against execution without trial. *Provocatio ad populum* was an individual citizen's appeal to the Roman people to have a final voice in deciding the case. *Provocatio* was conducted via the tribune and was therefore interchangeable with the appeal to the tribunes and vice versa (Lintott 1999: 43). To be able to offer the people this sort of assistance, the tribunes were available to the people on their benches in the *Forum Romanum* and the doors of the tribunes' own houses were always open to the people, both day and night (Lintott 1999: 116).

By extension, the tribunes gained the power to intercede, to protect the rights of Roman citizens against the perceived abuse by magistrates through the so-called *intercessio*. This substantial right empowered the tribunes to veto any action of the magistrate<sup>11</sup> against the individual as well as any official acts, including the decrees of the Senate (Brennan 2014: 53; Lintott 1999: 116; North 2006: 265; Tellegen-Couperus 1993: 14).

Apart from these "defensive" powers, the tribunes were also equipped with several "positive powers". They could convene and preside over the Plebeian Assembly (*Concilium Plebis*). Furthermore, the tribunes were entitled to propose bills to the Plebeian Assembly. If the Assembly agreed, the respective plebiscite was only binding for the plebeians. However, when the plebiscites became equivalent to *leges* (laws) in the third century BC, they

<sup>9</sup> Henrik Mouritsen (2017: 137) talks about the "policing" role of the tribunes: „holding former magistrates to account, particularly those who used their powers without consulting the Senate”.

<sup>10</sup> Valerie Warrior (2006: 123) defines *sacrosanctity* in the following way: “if a person laid violent hands on a tribune, he would be accursed (*sacer*) and could be killed or sacrificed to the gods with impunity, since his action was deemed to have harmed the gods. Killing the offender was a sacred duty and did not incur a penalty or bloodguilt.”

<sup>11</sup> The only exception was the dictator as the tribunal power of intervention could not be exercised against him.

became binding for all Roman citizens (Brennan 2014: 53, Kincl et al. 1997: 12; Lintott 1999: 114, Mouritsen 2017: 136; Tellegen-Couperus 1993: 14).

Moreover, the tribunes gradually gained competencies towards the Senate. “Originally, we are told, the tribunes watched proceedings in the Senate from the door and sought to block measures unwelcome to the plebs by obstructing the exit. Later they were permitted to sit and speak in the Senate, and to introduce subjects for discussion” (Lintott 1999: 115). Additionally, the tribunes also acquired the right to convene the Senate (North 2006: 265; Tellegen-Couperus 1993: 42), and they even occasionally acted as presidents of the Senate (Brennan 2014: 53).

As we can see, the powers of tribunes were considerable but also limited. First, the tribunes were elected by the Plebeian Assembly for only a one-year term.<sup>12</sup> Another significant limitation was the principle of collegiality (Mouritsen 2017: 139). As Livy indicates (*Ab Urbe.*: II 33), at first there were either two or five tribunes, while later their number was increased to ten. Importantly, the tribunes also use the power of *intercessio* mutually to veto each other’s proposals. Livy claims (*Ab Urbe.*: II 44, IV 48) that the Senate was able to exploit this principle and tried to ally with some tribunes to stop some actions of tribunes which were displeasing the senators.

Such a strategy was made easier in the Late Republic when many tribunes already belonged to the same landowning plebeio-patrician aristocracy as praetors and consuls (North 2006: 265). Moreover, these top magistracies were no longer prohibited to plebeians, so the former tribunes could advance their political careers in higher offices and climb the *cursus honorum*, the Roman political career ladder (Mouritsen 2017: 136–140). From the end of the second century, the retired tribunes became members of the Senate (Tellegen-Couperus 1993: 42). That provided an additional motivation for tribunes not to antagonise the Senators. Hence, the Senate usually had at least one friendly tribune available, who would supply his veto at the Senate’s call (Yakobson 2006: 392) or propose legislation with senatorial backing (North 2006: 265). Therefore, the seemingly overpowered tribunes were limited both institutionally and by actual political practice.

## Tribunate as a Democratic Element of Mixed Constitution

The office of the Roman tribunate became a matter of interest to several influential thinkers already in classical antiquity. For the sake of our argument, we will be concerned here with the accounts appreciating the tribunate as a democratic element of mixed constitution, i.e., as the vital component of the system of checks and balances within the constitutional system of the Roman Republic.

### *Polybius*

Such a position was elaborated as early as the second century BC by Greek historian Polybius (c. 200 BC – c. 118 BC). In his major work *The Histories*, Polybius drew on existing earlier Greek typologies of different types of constitutions<sup>13</sup> and classified the regime types

<sup>12</sup> The lack of sources makes it unclear whether there was any statute prohibiting re-election of the tribunes. However, there was at least a strong custom of such a prohibition as we could deduce from the fact that the attempt of Tiberius Gracchus to be re-elected (133 BC) was considered as unprecedented (Lewis 1913: c. 7).

<sup>13</sup> The arguably most notable were elaborated in Plato’s *Laws* and Aristotle’s *Politics*.



according to 1) the number of people in power (One, Few or Many), and whether 2) those in power rule lawfully for the benefit of the whole polis, or unlawfully for their own benefit at the expense of the interest of others.

According to Polybius' "cyclical theory", all of the "good" types of constitutions (monarchy, aristocracy, and democracy) necessarily degenerate in time into their corrupt versions (tyranny, oligarchy, and ochlocracy). In turn, the corrupt versions are nevertheless themselves dissolved by dissatisfied citizens establishing a different version of a lawful type of government: "*Kingship changes into its congenital vice — that is, into tyranny — and then it is the turn of aristocracy, after the dissolution of tyranny. Aristocracy necessarily degenerates into oligarchy, and when the general populace gets impassioned enough to seek redress for the crimes committed by their leaders, democracy is born. And in due course of time, once democracy turns to violating and breaking the law, mob-rule arises and completes the series.* (Polybius *Hist.*: VI 4). Then a capable individual leads the polis out of the mob rule, establishes monarchy and the full circle is finished.

Polybius called this sequence of regime changes *anacyclosis* and believed that it is a natural cycle happening in all political societies. However, he argued that the cycle of constant regime changes could be interrupted (or at least slowed down). The way to achieve a stable political regime leads through combining the three types of governments together into a *mixed constitution*. A properly mixed regime thus combines monarchy, aristocracy, and democracy together, so the concentration of power (be it in the hands of One, Few or Many), which breeds the oppression of other groups, is prevented. To achieve that, a mixed constitution must include institutions representing all three elements and maintain a system of checks and balances between these institutions (Polybius *Hist.*: VI).

Although not right from the beginning, the Roman Republic eventually succeeded in achieving a balanced constitution, according to Polybius. He believed that the three fundamental building blocks were "*used so equitably and appropriately in the ordering and arrangement of everything that even native Romans were hard put to say for sure whether their constitution was essentially aristocratic, democratic, or monarchic*" (VI 11).

Unfortunately, the complete analysis of the Roman political system conducted by Polybius did not survive. Still, the existing passages reveal that the Roman tribunes, who were "*obliged always to carry out the people's decisions and to defer to their wishes*" (VI 16), were an essential element in the mixture. Polybius observed that, unlike the other magistrates, they were not subordinate to either consuls (VI 16) or even dictators (III 87). And "*most importantly, if one of the tribunes of the people uses his veto, not only can the Senate not complete its deliberations, but it is not allowed even to meet or assemble at all*" (VI 16). The tribunes thus serve as a democratic check on the aristocratic Senate, which cannot disregard the people's opinions.

### **Cicero**

A similar line of thought is also present in the work of Marcus Tullius Cicero (106 BC – 43 BC). Cicero to a large extent followed Polybius regarding the superiority of a mixed constitution to the unmixed types (Cicero *De rep.*: I 43, 68), and similarly indicates that any commonwealth "*not equitable towards all orders of the state*" cannot last for long (*De rep.*: II 62). There must be "*enough power in the hands of the magistrates and enough authority in the judgment of the aristocrats and enough freedom in the people,*" (*De rep.*: II 57).

The Roman Republic corrected the danger of overpowered monarchs (the reason the Roman kingdom eventually degraded into tyranny and had to be replaced). However, after its foundation, the Republic still did not guarantee enough power to the people. In Cicero's view, the critical reform, which amended this disbalance, was the establishment of the tribunate (*De Leg.*: III 24-25).

According to Cicero, the tribunate is a truly popular institution that "*people have created on their own behalf as aid against violence*" (Cicero *De leg.*: III 9). Aside from lending assistance, the tribunes were also supposed to serve as a counterweight to the authority of the Senate, to conduct business with the Senate, and to "*bring to the plebs whatever shall be useful*" (*De rep.*: II 58; *De leg.*: III 10, 15). To assert these competencies, Cicero approves that the tribunes (unlike the typical Roman magistrates) not be subordinate to consuls and endorses their sacrosanctity (*De leg.*: III 9-10).

On the other hand, Cicero also raises concerns regarding the tribunate, especially regarding how some tribunes have conducted their offices. In the third book of his dialogue *On the Laws*, Cicero voices these concerns through the figure of his brother Quintus Tullius Cicero, whom Marcus engages with in a fictional conversation. Quintus mounts a heavy attack against the tribunate, calling it "*a great evil*" born out of civil strife, which tends to breed further civil strife and that under Gaius Gracchus "*overturn the entire structure of the commonwealth with disasters*" (*De leg.*: III 17–22).

Marcus Tullius Cicero then first admits that Quintus offered a brilliant understanding of the faults of the tribunate and agrees on the wrongdoings of several individual Roman tribunes. However, Marcus then conducts an interesting defence of the office, claiming that its benefits outweigh the faults of the tribunate. Quite importantly, the tribunate appeases the people and provides them with a political voice. Leaderless, people's discontent might turn into savage and uncontrolled violence, while a leader, acting at his own risk, could make it calmer (III 23). "*When the Senate yielded this power to the plebeians, the weapons were put down, the sedition was calmed, moderation was discovered, [...] and that was the single source of salvation for the state*" because "*the ruling order of society is not subject to hatred, and the plebeians on their own account create no dangerous struggles*" (III 24).

Similarly, in the dialogue *On the Commonwealth*, Cicero criticises the way certain tribunes conducted their office. He is particularly troubled by the danger of political polarisation threatening the unity (*concordia*) of the people (here in the sense of the whole *Populus Romanus*). Cicero illustrates such "irresponsible" conduct of the tribunate through Tiberius Gracchus, who "*divided one people into two parts*" (*De rep.*: I 31). However, the positives of the tribunate again outweigh the negatives. Cicero claims that the Romans were far worse off when the tribunate was abolished during the rule of the decemvirate. Without the tribunes, the aristocrats controlled the entire commonwealth and "*there was no right of appeal to the people left against execution or whipping*" (II 62). All in all, Cicero claimed he "*had troubles with the power of the tribunes but no quarrel with the tribunate itself*" (*De leg.*: III 25).

### **Machiavelli**

Perhaps an even more vocal advocate of the importance of the tribunate within the Roman republican constitution was Niccolò Machiavelli (1469 – 1527). While also a proponent of a mixed constitution, Machiavelli, unlike Cicero, did not base his theory around the ideal of

the unity of its different parts but rather on a notion of their political struggle. If properly institutionalised and entrenched in the political system, Machiavelli claimed, political conflict could become not a downfall but a driving force of a state's greatness: "*While in every republic there are two conflicting factions, that of the people and that of the nobles, it is in this conflict that all laws favourable to freedom have their origin*" (Machiavelli *Disc.*: I 4).

According to Machiavelli (*Princ.*: 9; *Disc.*: I 4), there are two principal groups within each state: *the great (grandi)* and *the people (popolo)*<sup>14</sup>. These two groups differ in their respective political cultures and goals: "*The common people want to be neither governed nor oppressed*" (*Princ.*: 9), while *grandi* strive to dominate *popolo* (*Disc.*: I 4). Machiavelli describes these two groups with the word *umori* (humours) and uses a then common organic metaphor: as the human body needs a proper balance of its four humours (blood, phlegm, black bile, and yellow bile) (Atkinson 2008: 190), so the state requires a proper mixture of its own elements. To stay healthy, the body politic should utilise the energy of its humours and must be ordered appropriately to prevent one humour from overbalancing the other.

However, neither the Roman Kingdom nor the Early Republic possessed such a balance. After the expulsion of the kings, the Republic "*only came to be mixed only of two qualities out of the three*" necessary parts of the mixed constitution (Machiavelli *Disc.*: I 4). It remained only to give a place to the popular government while retaining monarchical (consuls) and aristocratic (Senate) elements. The lack of a democratic part of the mix was especially dangerous because it is precisely the popular component, according to Machiavelli, that is the best guardian of liberty of the self-governing republic. "*The guard of anything should be delegated to those who have the least desire to usurp it,*" i.e., the *popolo* rather than the dominance-desiring *grandi* (I 5).

Machiavelli believed that the institution pivotal in fighting off the insolence of the nobility in ancient Rome was the tribunate (I 3–6, 50, III 11). The tribunate provided the plebeians protection from patrician domination and offered the plebeians an office representing their own interests. That is not only important because a multitude without a head is useless and cannot properly articulate its demands (I 44) but also because the institution of tribunate became a legally recognised part of the constitution, meaning that the plebeians could defend themselves within existing institutions and were not forced to resort to extra-legal and violent means. Thanks to that, from the Tarquins to the Gracchi, which was more than three hundred years, the tumults of Rome rarely engendered exile and very rarely blood (I 4), the features of the destructive type of political conflict typical for the Late Republic.

Machiavelli did not claim that the tribunate was a flawless institution. However, its power was necessary and curtailed through the principle of collegiality, when some of the tribunes often helped the Senate. Without the tribunate, "*one would not have been able to place a check on the ambition of the nobility, which would have corrupted that republic a long time before it did corrupt itself*" (III 11).

Finally, Machiavelli also claimed that not only the tribunes but magistrates in general should be elected popularly. "*A prudent man should never flee the popular judgement in particular things concerning distributions of ranks and dignities*" (I 47). In choosing magistrates, the popular election is preferable because it facilitates an open debate in which people can freely point out and examine the candidates' weak traits. As such, people err less in selecting suitable candidates than either the prince (III 34) or the few (I 47).

<sup>14</sup> Their equivalent in ancient Rome being the patricians (*grandi*) and plebeians (*popolo*).

## Revival of Tribune in Contemporary Political Theory

The task of the previous chapter was to illustrate that the classical political thinkers did not consider the tribunate as an anti-systemic flaw in the institutional setup of the Republic but rather as a crucial element of the system of checks and balances. However, we were hitherto mostly concerned with theorising a mixed constitution as being composed of elements empowering different strata of society. In contrast, in the contemporary world, the existing systems of separation of powers are no longer tied to the principle of balancing different social classes. Modern constitutions work with the functional division of power, where all branches of government (executive, legislative and judiciary) derive their power from what used to be the unmixed democratic element – *the people*.

Nevertheless, the logic behind the mixed government did not disappear with the downfall of aristocratic society. For example, early modern thinkers such as James Harrington and John Adams talked about the existence of “natural aristocracy” composed not of nobility distinguished by birth but of one of merit (Harrington 1992; Adams 2002). Amongst the American Founding Fathers existed great optimism that the elected representatives would compose such intellectual *optimates* capable of more enlightened decision-making than a democratic popular assembly. James Madison states in *The Federalist Papers* that their “enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice” (*Fed.* No. 10). Decision-making done through the representatives was considered superior to the one done in direct democracy.

Yet, the optimistic visions of representative democracy have been increasingly challenged since then. Instead, the question of whether the elected representatives should be viewed as oligarchs – rather than democrats or aristocrats of merit – rises in prominence. Also, political parties (as traditional institutions of representative democracy and the links between the people and parliamentary legislative bodies) should ideally be considered democratic elements in a political system, but this is definitely not a rule. As already the so-called elite theorists such as Robert Michels (1915) claimed, *any* political organisation becomes oligarchic sooner or later, i.e., controlled by an elite with its own interests (especially maintaining power) that differ from the interests of the voters. Furthermore, political parties in power could have connections to other oligarchies – the business elites – that are trying to push through their interests with the help of the parties. Finally, as Robert Katz and Peter Mair argue, political parties become the so-called cartel parties, which means that they increasingly become the agents of the state rather than the agents of civil society. The political parties depend more and more on the state subsidies for electoral votes, the competition among them is limited, and the goals of politics in general become rather self-referential and technocratic (Katz, Mair 1995: 15–19).

It is also worth noting that social development (technological, geopolitical, economical) constantly creates groups of people who feel excluded and underrepresented even in democratic systems. For example, economic globalisation newly “dealt the cards” and left whole groups of people unheard, for instance, when whole industries were moved abroad, seeking cheaper labour forces. This resulted in the emergence of the discourse about the cleavage between winners and losers of globalisation (Misik 2020: 19–22). Therefore, there are still groups of people who seek articulation of their voice outside the traditional elite circles. So, the tribune role can be functional not only within the framework of mixed government.

Within contemporary political theory, the position criticising the oligarchic elements in (late)modern politics is articulated, for example, by the theorist of radical democracy John McCormick. Returning to Machiavelli's theory of conflict between the *popolo* and the *grandi*, McCormick believes that the wealthy in modern democracies possess a disproportionately great influence on the workings of the government (McCormick 2011: 170). As "*Machiavelli pointed out centuries earlier, magistrates and the wealthy have patented advantages over the control of information in 'free' environments that permit unequal resources to develop among citizens, advantages that enable them to set the agenda of public opinion*" (McCormick 2011: 179). McCormick even goes as far as saying that with political representation serving the elites rather than the people, elections cannot serve as an adequate mechanism of elite control.

In the American context, he criticises the Founding Fathers that "*they failed to provide a formal institutional equivalent of the tribunate*" (McCormick 2011: 179) and suggests that to counter the domination of modern *grandi*, a contemporary version of tribunate should be created (McCormick 2011: c. 7). The People's Tribune proposed by McCormick would possess modified tribune powers – for example, a limited number of vetoes – and consist of 51 U.S. citizens selected every year by lottery (one citizen per state, plus one for Washington, D.C.) from households that earn less than a set limit. Such a Tribune would generate "*a connection between politics and institutionalized social differences*" and thus "*make social differences visible*" in a kind of corporatist way (Dingeldey 2021: 74, 77). As Philip Dingeldey argues, a constitutionally embedded Tribune "*that checks public office holders in the name of the 'common people'*" would be beneficial for the system since it would weaken demand for populist politicians or political parties (Dingeldey 2021: 80).

Indeed, in the practice of the political systems in which the equivalent of the *tribune of the people* is not institutionalised as such, we could see that the role of defending the people against the elites and assuming the *tribune function* is appropriated by various non-governing actors. As assumed above, this role is quite often taken by non-governing political parties, particularly by those lacking a potential to be a part of governing coalitions (because of their more or less anti-systemic character). We should emphasise, however, that not every party that defends the people against the elites should be considered as adopting the *tribune function*. The extremist parties that strive to overthrow the system *in toto* cannot be labelled as tribune ones since the tribune actors eventually tend to direct the conflict between social groups via established institutional channels. In other words, tribune parties/actors are in the end parts of the system.

Such is the theory by Georges Lavau, the author who developed the notion of *tribune function* with regard to non-governing political parties. Lavau argues that even anti-systemic, but non-revolutionary political parties consider the functional requirements of both the groups they represent *and* the political system. In their case, the dynamic between a party and the political system is twofold. On the one hand, the system must – in order to avoid threats to its stability – offer the under-privileged groups the means of protecting themselves against itself. On the other hand, the actors (parties) that would otherwise be determined to reject the system and its norms in fact contribute to maintaining certain elements of the system (Lavau 1969: 34, 39, 37). Thus, if the anti-systemic parties do indeed latently fulfil the tribune function, it says about them that they: 1) have ceased to be revolutionary; 2) are strong enough in order not to be outlawed or repressed by the system and

are still able to hinder its functioning; and 3) have “enough authority over the groups they claim to represent to prevent them from engaging in ‘savage’ actions” (Lavau 1969: 39).

In particular, Lavau focused on the French Communist Party (*Parti communiste français*, PCF), especially from the end of the Second World War into the 1970s. Lavau claimed that despite the lack of governing potential, the PCF acted as the *tribune of the people* in a systemically-useful manner. It was “a large and centralized force” that diverted “waves of discontent and the class struggle toward the safer ground of legal political conflict” (Lavau 1977: 93). This echoes the above-described function of Roman tribunes who also stood “between the people and the Senate” (Machiavelli *Disc.*: I 3) and helped to channel potentially chaotic popular uproar. In other words, their function contributed to the creation of “a specific public space that is defined by the institutionalisation of a class conflict” (Bíba 2011: 232).<sup>15</sup>

Using the example of the PCF, Lavau describes such an institutionalisation by pointing out that the party has not encouraged direct action or rebellion since 1936. “By placing its elected members and officials at the head of protest marches, demonstrations, and processions, it can marshal them, control them, and make sure that the affair does not degenerate into violence,” writes Lavau, adding that the party particularly “shies away from improvisation and spontaneity” (Lavau 1977: 103). In this sense, the PCF was the party of the system since it also did not demand the abrogation of the Fifth Republic (1958) nor did it object to the representative system, the political neutrality of the Civil Service, or the independence of the judicial branch (Lavau 1977: 98).<sup>16</sup>

Commenting on the role of the PCF during the French student-worker uprisings in May 1968, philosopher Jacques Rancière called the party “an ambiguous intermediary body”. As such, the PCF played “the role of a conservative force” at a time of crisis by protecting the working class “from the contagion of revolt” and collaborating with the government. On the other hand, in normal times, “it continued to maintain its possibility, by maintaining the theoretical credibility and affective attractiveness of the Marxist revolutionary paradigm” (Rancière 2020: 22). This fits Lavau’s statement that despite its contribution to the repression of the revolt of 1968, the PCF maintained the sympathy of its clientele, presenting itself as “the tireless champion of the ‘little man’” that enjoys a unique “presence among the ‘masses’” (Lavau 1977: 103). This presence among the masses and the articulation of their voice against the elites, but within the systemic structure, which is understood as legitimate, is one of the main features of the *tribune function*. According to Lavau, it is again beneficial to the system itself since the tribune’s activity of defence and (controlled) protest “has often served as a ‘warning light’ and has compelled governments and administrators to examine more closely the social consequences of their policies” (Lavau 1977: 104).

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<sup>15</sup> It is useful to specify that “class conflict” is not the most accurate term for our analysis as we are concerned not only with the traditional struggle between workers and the owners of the means of production in the Marxist sense, but primarily with more general conflict between *grandi* and *popolo*. Such a conflict can be articulated in rather vague ways, for example, as it is known from the slogan of Occupy Wall Street movement which says: “We are the 99%”.

<sup>16</sup> By this stance, the PCF was criticised by various groups on the radical Left, sometimes grouped under the label *gauchiste*. For the *gauchistes*, the PCF collaborates with the system, “defuses the real class issues and tries to channel them toward fruitless electoral battles for vaguely reformist programs and broad ‘leftist’ electoral coalitions” (Lavau 1977: 88).

## **Tribune Function and Czech Presidents**

As we could see in the previous modern examples, there are various ways to include a tribune function in a political system. The party system in the United States is bipartisan, meaning that both relevant parties have governing potential. Also, the president is a governing figure as the single head of the executive. Therefore, the tribune function would have to be institutionalised by creating a special body similar to McCormick's proposal. In France, as in a country with a semi-presidential political system, the president has a considerable governing role, even though the executive is dual. So, the tribune function could most probably be appropriated by a large, non-governing political party operating in a multi-party system. Yet, assuming a tribune function by a political party is not the best solution since the tribune tendency of a large parliamentary party and its frequent hesitance to govern reduce the number of coalition options and could potentially cause a deadlock.

Parliamentary systems, however, offer a third way. In countries where the presidents are non-governing and directly elected, there is no need to constitute a special Tribunate. Also, a demand for a tribune party could be potentially weakened since the tribune role (the key component of which is rhetoric and influence, rather than real power) could be played by another actor: the president. Therefore, in the rest of this article, we will theorise a tribune function through the example of the Czech president. Could the directly elected Czech president be viewed as a certain kind of tribune, and would that be in any way potentially beneficial for Czech politics? Let us consider the former question first.

### ***Tribune-like Powers of Czech Presidents***

Any direct comparison between the offices of Roman tribunes and the Czech president is necessarily only a simplification and approximation since the two political systems framing these offices as well as their respective historical contexts are substantially different and separated by more than 2000 years. However, nearly all framers of constitutions and designers of institutions traditionally contemplate historical parallels. Political thought usually features at least some historical inspiration and a degree of abstraction. Moreover, we understand the tribune function as something that could appear in every society in which there is a basic cleavage between the elites and the groups of people who perceive themselves as lacking a voice in the system.

In the following lines, we will, therefore, try to determine whether the Czech president might be thought of as an agent suitable to perform a tribune role of defending the people against the abuse of power by the elites and other state institutions. As the first part of this task, we will look at whether the president actually has legal powers corresponding to that of the tribune of the people. For the purposes of our argument, let us focus mostly on the "defending" powers. As we have mentioned, the Roman tribune could defend both individual plebeians and the whole plebeian class at large. Can the Czech president do both as well?

Regarding the protection of individual citizens, we should note that a modern liberal state – which considers individual rights as primary values – has developed various institutions that fulfil such a task: in the Czech case, mainly the Constitutional court, but also the office of the Ombudsman (the Public Defender of Rights). The Constitutional Court most frequently decides in cases of individual constitutional complaints against final decisions or other encroachments by public authorities infringing constitutionally guaranteed

fundamental rights and basic freedoms (The Constitution of the Czech Republic: Art. 87 par. 1 d)). The Ombudsman, for example, helps individuals in case of a perceived misconduct by public authorities and institutions, provides methodical help for people suffering from discrimination and releases reports about this issue, and carries out investigations in the facilities where people are restricted in their freedom (Cf. Act No. 349/1999 Coll. on the Public Defender of Rights).

With these two institutions in place, it is logical that the president has only residual powers in this field, such as granting pardons, commuting sentences imposed by courts, and ordering that a criminal record be expunged. With a need of the Prime Minister's countersignature, he could also order that a criminal proceeding not be instituted or, if it has been instituted, that it be discontinued, and has the right to issue amnesties, which we consider as something between individual and collective defence (The Constitution of the Czech Republic: Art. 62 g), 63 par. 1 j), k)).

As for legal powers of protection of the people as a whole, the Czech president, just as the Roman tribunes, is equipped with veto power. In the words of the Constitution, he *"has the right to return to Parliament acts it has adopted, with the exception of constitutional acts"* (The Constitution of the Czech Republic: Art. 62 h)). In the Czech case, the veto is not particularly strong since the absolute majority in the Chamber of Deputies can overrule it. But we can remember from our previous explanation that even the veto of the Roman tribunes was not as strong as it looked since it was conditioned by the principle of collegiality and the option of a mutual veto. Besides the veto, the Czech president may submit a petition before the Constitutional court *"proposing the annulment of a statute, or individual provisions thereof"* or proposing adjudging the conformity of an international treaty with a constitutional act (Constitutional Court Act: § 64, § 71a).

Regarding the right of legislative initiative, the Roman tribunes gradually gained the right to propose bills to the Assembly. The Czech president does not possess such a direct power.<sup>17</sup> Still, he has *"the right to take part in the meetings of both chambers of Parliament, as well as those of their committees and commissions"* in which he *"shall be given the opportunity to speak whenever he requests"*. Moreover, he has *"the right to take part in the meetings of the government"* (The Constitution of the Czech Republic: Art. 64).

However, the Czech presidents have not used these powers frequently. Instead, they have the potential to resort to different available options of how to protect the people. These options are mostly non-legal, i.e., political, and rhetorical, which distinguishes presidential means to protect the people from that of the Constitutional Court and the Ombudsman – institutions limited (especially in case of the Constitutional Court) in presenting their political opinions and typically lacking the mobilising potential for people who are not suffering from the concrete violation of law. So, the president's discursive power and the ability to shape the political agenda is a significant additional value in his role in defending the people. Performing this role, setting the agenda, and a capability to divert the attention to a different set of problems than those discussed in parliament is substantially supported by extensive media coverage of all his actions. Thus, the president is a very suitable candidate to take up the role of a figure that listens to the people's demands and articulates them towards the parliamentary political elite.

To sum up, both the Roman tribunes and Czech presidents possess means to protect the *popolo* against the *grandi*. Yet, since the legal means of protecting the people are in mod-

<sup>17</sup> Until 1992, the Czechoslovak president possessed legislative initiative, but did not possess a veto power.



ern liberal states mostly in hands of different actors, the Czech president's position is strong especially in the symbolic, discursive area beyond the mere text of the Constitution. Besides the extensive media coverage of his statements and actions, the presidential practice of visits to various regions in the country is frequent as well. We will focus on this symbolic and rhetorical dimension of the president's tribune role in the following subchapter.

### ***Tribune Function as Institutionalised Populism?***

The presence among the people in town squares and in cultural community centres throughout the country is a traditional feature of the democratic Czech presidency. A visit of the head of the state to a large town as well as to a smaller municipality is an event that usually attracts even those who do not vote in the elections. When the candidates running for the presidential office in 2023 were asked to evaluate the work of the retiring president, Miloš Zeman, the majority mentioned his frequent visits to the regions and meeting with citizens as what they valued positively about his two-term, 10-year presidency (Radiožurnál 2023). After his electoral victory, the new president, Petr Pavel, declared his intention to continue in this tradition. He added that he would first visit the regions where the social and economic problems are the most serious. In a tribune-like manner, he also stated that the president should not be "*an untouchable person on a pedestal*" but "*a person that people can stop by and maybe complain to*" (iDnes 2023). In this sense, if sufficiently responsive to the problems of the citizens, the president with a strong electoral legitimacy could be able to channel and even amplify the voice of the people and serve as a helpful feedback tool for the government.

The issue of the defence of what Lavau called "the little man", however, seems to be more complicated if we try to elaborate more on who exactly this *little man* is. In Machiavelli's understanding, the tribune was the representative of the *popolo* as opposed to the *grandi*, the people as opposed to the elites. Exactly this framing was set by the president Miloš Zeman right after the first direct election in 2013 and also in his inaugural address. There, he said that he would be, on the one hand, "*the president of all citizens, regardless of their political views*", but, on the other hand, (in a country with 10.5 million inhabitants) "*the voice of the lower 10 million non-privileged citizens*" (Zeman 2013). However, some of his later statements echoed, for example, traditional anti-Roma (Romea.tv 2017) or transphobic (Novinky.cz 2021) prejudices, and indicated that "the lower 10 million" is not such a homogeneous group. It should be noted that in pluralist, late-modern societies, the tribune figures often tend to defend only *the majority of the popolo*, not *popolo as the whole*.<sup>18</sup>

Lavau noted already in the PCF case that the party was careful "*not to offend popular prejudices*" and tried to avoid issues such as women's liberation, drugs, migrant workers, or prison conditions (Lavau 1977: 105). In fact, one specific aspect of contemporary tribune-populist discourse is that it tries to construct a notion of the alliance of minorities and the elites that poses a threat to the way of life of the "silent majority" of the people. "Progressive neoliberalism," as philosopher Nancy Fraser calls it, is "*an alliance of mainstream currents of new social movements (feminism, anti-racism, multiculturalism, and LGBTQ rights), on the one side, and high-end 'symbolic' and service-based business sectors (Wall*

<sup>18</sup> In the above-mentioned statement echoing anti-Roma prejudices, Zeman also opposes any affirmative action policies and says that "*human rights are not only the rights of minority, but also the rights of majority*" (Romea.tv 2017).

*Street, Silicon Valley, and Hollywood), on the other*". It is precisely this mix that "was rejected in toto by Trump's voters" (Fraser 2017). Here, the *grandi* that the tribune-politicians defend the *popolo* against are not so much elected politicians but rather a specific kind of liberal and often transnational entities such as the European Union, liberal media networks, or transnational non-governmental organisations (especially those connected to business elites, for example, George Soros).

According to sociologist Ondřej Císař, these examples show that the idea of channelling the voices of the discontented by an actor (institutionally) embedded in the establishment – for example, by the president-tribune – could be a false hope and even counterproductive since it could contribute to "the vulgarisation of the mainstream". Císař argues that it could be less dangerous for the system to have 5-10% of extremists in parliament than if their vocabulary is appropriated by mainstream politicians in order to keep extremists out of parliament by competing for their voters (Císař, Houda 2016). As for the president-tribune, we should remind ourselves of the fact that the less his *powers* are governing ones, the more he would try to set a tone in the political *discourse*. Thus, this "vulgarisation of the mainstream" – appropriating some elements of the extremist discourse, even in milder ("brownish") form, to avoid the danger of potentially direct actions – is indeed maybe the riskiest issue in having directly elected president-tribune seeking for the votes of various parts of the electorate, including the extreme ones.

In the course of Miloš Zeman's presidency, this tendency manifested noticeably in 2015, when the traditional commemorations of the Velvet Revolution on November 17<sup>th</sup> were affected by the social atmosphere reflecting the large number of (mainly Muslim) migrants coming to Europe that year. Moreover, the large terrorist attacks in France committed by people with connections to ISIS happened just a few days before the anniversary. In this atmosphere, Zeman made a speech at a demonstration convened jointly by his supporters and by the anti-immigration group called *Blok proti islámu* (*Bloc against Islam*). "In a free society, everyone has a right to express his opinion. Also, in a truly free society, the opposite opinion cannot be silenced and marked by various labels or even insults such as 'extremists', 'xenophobes', 'Islamophobes', 'racists', or 'fascists,'" said Zeman. "Equally, shouting is not an argument. Shouting is an expression of fascists. Shouting is an expression of a herd that assembled here last year," added the president (Aktuálně.cz 2015) with reference to the situation when hundreds of his opponents were shouting and whistling during his 2014 memorial speech.

### **Dual Role of the Czech President-Tribune**

A Czech president is, however, still limited in potential overt support of the anti-systemic forces and could, in our opinion, play, at most, a role similar to the PCF in France described by Lavau. Despite the above-mentioned excesses, Zeman did not cross the line from *tribune-populism* to *populism-extremism* and, for example, stepped back in the face of potentially violent action or distanced himself from far-right extremists.<sup>19</sup> Moreover, we argue that despite the tribune-like tendency of a directly elected president to take sides in a conflict between the people (as *popolo*) and the elites and defend "the little man", the position of

<sup>19</sup> For example, Zeman was always critical towards far-right extremists associated in *Dělnická strana sociální spravedlnosti* (Workers' Party of Social Justice) (Novinky.cz 2016), however this critique sometimes seemed to be attacking a strawman since DSSS is only a marginal party that poses no threat to the Czech political system.

the president remains at the same time “above the parties”. Thus, we can speak about a dual role of the directly elected Czech president who is, on the one hand, the tribune of the *people* (in the sense of “the lower 10 million”) and, on the other hand, the tribune of the *People* (in the sense of the sovereign, the constituting entity). So, the Czech president should in his dual role consider what Lavau (1969) called functional requirements of both the represented groups and the political system.

The presidential role of the tribune of the *People* has deep historical roots in the Czech context. Both founding figures of Czechoslovak democracies – Tomáš Garrigue Masaryk after 1918 and Václav Havel after 1989 – became presidents right after the establishment of a new regime. Thus, the president is perceived as playing a role of *the guardian of the constitution* (in the sense of an act of establishing the existing order, i.e., not in the sense of the text of the highest law, which has not such a sacrosanct character in the Czech Republic<sup>20</sup> as, for example, in the United States).

As Jan Kysela notes in the article about indirectly elected presidents, the idea of the Czechoslovak/Czech (democratic) presidency is traditionally that of a bearer of *authority*, not *power* (Kysela 2008: 235). Here, Kysela recalls the distinction between *authority* and *power* made by Hannah Arendt. According to her, what “*those in authority constantly augment is the foundation. [...] Authority, in contradistinction to power (potestas), had its roots in the past*” (Arendt 1969: 122). As it is widely recognised, the connection of Czech presidents to authority is also related to their seat being the Prague Castle, a historical seat of Czech kings and a “*main symbol of stability and security*” in the country (Kopeček, Mlejnek 2013: 36). We should note, however, that the authority of Czech presidents does not have monarchic or aristocratic, but democratic roots. Contrary to ancient Rome, where the bearer of authority was the Senate (Arendt 1969: 122), originally an aristocratic institution representing the patricians, the democratic Czechoslovak/Czech presidency originated in popular uprisings of 1918 and 1989. Thus, even indirectly elected presidents, especially Masaryk and Havel, acted in various moments as tribunes, criticising the oligarchic structures of political parties and trying to establish a direct connection between the president and “his” people.<sup>21</sup>

Such a role of the guardian of the constitution connected directly to the people was attributed also to the president of the interwar Weimar Republic by the legal scholar Carl Schmitt. Contrary to courts that protected the rights in the written constitution, the Weimar president guarded not the text but the constitution as “*a concrete social and po-*

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<sup>20</sup> The Constitution of the Czech Republic has been in force since January 1<sup>st</sup>, 1993, which is a day when the independent Czech Republic has been established after the split of Czechoslovakia. However, the split was rather a matter of an elite deal between prime ministers of the federal republics Václav Klaus (Czech) and Vladimír Mečiar (Slovak) and the majority of the Czech population opposed it at that time. So, the introduction of the Constitution is connected with the date of a not particularly popular event. Even nowadays, practically nobody celebrates January 1<sup>st</sup> as an important national holiday, especially compared to October 28<sup>th</sup> (the establishment of Czechoslovakia in 1918) and November 17<sup>th</sup>.

<sup>21</sup> In other words, they tried to use their *authority* in *power* struggles. Václav Havel, for example, turned directly to the citizens in his speech in 1991. In the situation of a divided atmosphere in legislative bodies that were unable to solve the problems of the federal organisation of the country, Havel said: “*I have no choice but to turn with a plea for your help directly to you. [...] I was elected by your representatives from your will and I have, therefore, a sense of responsibility not only to them, but especially to you. I appeal to you that you would – in order to save our country from chaos, in the interest of democracy and all the ideals in the name of which you had risen up against totalitarian power two years ago – more loudly than up to now express your desire to live soon in a reasonably and fairly organized, prosperous country and to help our arguing parliaments to find a way from the dead end into which they had got*” (Havel 2021).

*litical ordering*” (Vinx 2015: 41); i.e., he was the tribune of the founding People that gave the political regime its concrete substance. But there is a crucial difference between the Czech and Weimar presidency since the Weimar president had not only *authority* but also considerable *powers* to defend the concrete order. Article 48, paragraph 2 of the Weimar Constitution gave him the possibility “*to take dictatorial measures to protect public security*”, including using armed force and suspending various civil rights (Vinx 2015: 43). Here, we can argue that the Czech president is closer to the idea of tribune-presidency, since we have characterised a president-tribune as a non-governing one. The Weimar presidency was further away from this idea since it included not only tribune but also dictatorial (in the Roman sense of the word) functions.

Going back to the Czech context, it is important to note that the Czech public does not usually call for the powers of the president to be extended in order to have such a strong position as the Weimar one had. However, surveys show that the opposite way of weakening his position to become a mere figurehead president is not a preferred alternative either (CVVM 2020). Therefore, we could argue that the Czech public prefers the presidency to be tribune-like with all its ambiguities. Miloš Brunclík and Michal Kubát present surveys according to which there is a persistent preference for popular direct election of the Czech president. At the same time, people prefer a non-partisan president considerably more than a partisan one. Also, the Czech public wants an active president who deals with political questions but whose constitutional power should not be extended (Brunclík, Kubát 2017: 77-79). On the example of Václav Klaus, Brunclík and Kubát show that even presidents themselves adapted to this public demand. Klaus started as a partisan president but ended up as one who accepted the requirement to be “above parties” (even though in his case it also happened because of the disputes with “his” Civic Democratic Party (*Občanská demokratická strana*, ODS) (Brunclík, Kubát 2017: 91).

Taking this public notion of the presidency into account, we could see that the president with increased legitimacy does not have to have proportionately increased powers since the current arrangement corresponds to the demanded tribune function. We can summarise the idea of the president-tribune that emerges from the Czech surveys in the following way: the president defends the people against the elites and often criticises the government, but does it from the position of authority and without seeking governing powers. This distinguishes him from the parliamentary opposition that lacks such authority and wants to govern. At the same time, this makes the president a representative of the People as the whole with reference to the People as the founding sovereign.

If a directly elected president manages to play this dual role of the tribune of the people / tribune of the People, he could successfully connect himself to all the three forms of the people in relation to the constitution as Andreas Kalyvas describes them in his interpretation of Schmitt’s constitutional theory. According to Kalyvas, the first (*a people above the constitution*) “*refers to the extraordinary, instituting moment of democratic founding*”, the second (*a people within the constitution*) refers to the constituted power, “*to the moment of normal, procedural, everyday institutionalized politics*”, and the third (*a people next to the constitution*) denotes moments of “*spontaneous forms of popular mobilization and informal direct participatory intervention*” (Kalyvas 2000: 1530). In the Czech context, the historically rooted authority of the president represents the first moment, his position in the constitutional system that makes him an institutionalised, not an extra-constitutional actor represents the second, and his increased legitimacy by a direct election that brings

him closer to “the little man” represents the third. In sum, the president is able to uniquely channel the discontent of the people in an institutionalised way while still having in mind a concrete social and political ordering set up by the founding sovereign.

## Discussion and Proposals

In previous chapters, we have discussed several advantages and disadvantages of the Czech president understood as a president-tribune. On one hand, following Polybius, Cicero, Machiavelli, and Lavau, we argued that the tribune function could not only defend the interests of the people (*popolo*) against the elites, but also stabilise the system by channelling the conflict between them into the constitutional framework. This appeases the voices that might otherwise want to overthrow the system *in toto* in an extra-constitutional, revolutionary manner. On the other hand, the existence of the tribune figure in the system also has its risks, among others the vulgarisation of the mainstream, which could be harmful to liberal democracy. A tribune figure can also take sides within, and thus polarises the *popolo* itself, for example, when his rhetoric sets the so-called “silent majority” against minorities in a populist way.

Despite these risks, we still advocate the promises of the presence of the directly elected president-tribune figure in the Czech parliamentary system. First, because its function is not only stabilising. As we have shown, the tribune figure could really work as a democratic element within the system of political checks and balances, defend “the little man” against oligarchic pressures, and amplify the voice of ordinary people beyond partisan particularities. Second, we argue that the above-mentioned risks and disadvantages could be mitigated by an improvement of the institutional setup, which has some deficiencies regarding the proper (systemically beneficial) functioning of a tribune-like president in the Czech context. Let us now focus on how these possible institutional changes might look, should our theoretical perspective of a tribune-like Czech presidency be accepted, and provided that we formulate these suggestions not as authoritative proposals, but rather as starting points for further discussions.

First, we argue that what is important is not only the process of election itself but already the nomination process of candidates. In the current Czech constitutional regulation, one must acquire the signatures of 20 deputies or 10 senators to become a presidential candidate. However, if a potential candidate would like to choose a way of non-parliamentary nomination, the process is considerably more difficult, and the signatures of 50,000 citizens are needed. These provisions suggest that the Czech deputies and senators, who accepted the constitutional amendment introducing a direct election, gave an advantage to “parliamentary candidates” and did not want the president to play a tribune role that, in our view, could be far more probably fulfilled by the “citizens’ candidate” emerging outside party oligarchies.

Yet, as the previous elections showed, both directly elected Czech presidents – Miloš Zeman and Petr Pavel – won the election as citizens’ candidates nominated and campaigning without organisational support of any parliamentary political party despite the nomination advantage of parliamentary candidates. Considering the popularity of non-partisan presidential candidates and their better suitability for taking up the tribune role, we propose that the parliament should lose its part in the nomination process and every presidential candidate should acquire 50,000 citizens’ signatures to take part in the election. Such a

nomination process would be even more democratic than a nomination process for the elections to the Chamber of Deputies (lower house), where it is controlled by political parties (or sometimes only by their inner circles). After all, this is also why the Parliament could be considered an oligarchic structure.

As for the number of citizens' signatures, we are aware that the Czech number is among the highest *per capita* among countries with popular presidential elections (Hřebejk 2011: 167–168)<sup>22</sup>, but we consider this to be rational. A higher number requires stronger participatory activity of the citizens before the election, which could lead to a better familiarity of the voters with the candidates' ideas. Also, stricter nomination conditions could result in fewer candidates, which would fit better with our second proposal – the introduction of the alternative voting system instead of the current two-round one.

We have identified the rhetorical dividing of society as among the main dangers posed by the president playing a tribune role. As we could see in certain acts of Miloš Zeman, this danger is strengthened when the president does not only defend common people against the abuse of power by the elites, but tries to disgrace whole groups of the population, for example, certain journalists, activists, and intellectuals labelled by their opponents as the “Prague café” (*pražská kavárna*) crowd. Polarising discourse of a similar kind was problematic during every presidential campaign since 2013, and, to a notable extent, set an important political cleavage for the following years. However, since the most intense rhetoric emerged each time between the first and the second round, the issue of polarisation is not an argument against the popular election as such but rather against its two-round electoral system.

The argument for the introduction of the existing two-round system – with the first two candidates advancing to the second round, if no one achieves an absolute majority in the first one – was its simplicity and the fact that Czech voters are acquainted with it since they vote into the Senate in the same way (Kudrna 2011: 23). But it is one thing to have the two-round system in the Senate elections in which the polarising effect manifests itself only on the level of small voting districts and is, therefore, neutralised on the level of the country, and another thing to apply it in the presidential election where the whole country is the one large voting district. Therefore, we share the view of constitutional lawyer Marek Antoš, who recommends electing the president by the so-called alternative or preferential voting, in which the voters rank the candidates on a ballot according to their preferences and in which the winner is known after one round by a special recounting method.<sup>23</sup> According to Antoš, such a system prevents artificial cleavages resulting from the campaign before the second round since it is not necessary to focus on one candidate that the voters are firmly for or strongly against (Antoš, Procházková 2018).

In our opinion, the change of the voting system is crucial since the president-tribune should be a democratic element that stands up for the *popolo* against the *grandi*, not someone who strongly divides the *popolo* itself. Alternative voting and other similar variations<sup>24</sup>

<sup>22</sup> In the European Union, only Lithuania has stricter numbers *per capita* (20 000 citizens' signatures in a country with 2.8 million inhabitants). In absolute numbers, the highest number of citizens' signatures is required in Poland (100 000, but in a country with the population of nearly 38 million) (Hřebejk 2011: 168)

<sup>23</sup> Giovanni Sartori defines the alternative vote as a “*preferential' voting system within single-member districts that requires every elector to number all the candidates in order of preference. The candidates with fewest first preferences are eliminated and preferences are redistributed until an absolute majority winner emerges*” (Sartori 1994: 5-6). Modifications are possible, however, in which it is not necessary to number all the candidates.

<sup>24</sup> Apart from the alternative vote, several other voting systems causing a lesser polarisation effect could be

are more likely to generate a president who will be active in defending the interests of “the little man” but also acceptable to various groups which the *popolo* consists of. This is primarily because ranked voting encourages more consensual behaviour as the candidates need to appear acceptable to as many people as possible. Therefore, the stark polarisation typical especially for the period in between the first and second round of the election could be avoided or at least minimised.

Besides these two main proposals, we sketch a few more open suggestions that could possibly increase the tribune-like potential of the Czech presidency. First, it is possible to think about making the presidential veto more powerful, for example, by requiring an absolute majority not only in the Chamber of Deputies but also in the Senate to override the veto. On the other hand, this could be harmful for the efficiency of government. Second, we could consider the possibility of removing the president from office by a popular vote, which could be considered an alternative to the procedure of impeachment before the Constitutional Court. This provision could solve the issue of the lack of responsibility of the president to other constitutional bodies by making him responsible directly to the people. It would, however, also introduce another polarising yes/no vote into the system, which could eventually be even more damaging than the criticised two-round vote. Third, we could propose that the president could be elected for one term only. This limitation could be beneficial for playing the tribune role in a productive way since the president-tribune would have less time to be influenced by the oligarchic structures within the (political) system, and also would not lead a (potentially polarising) campaign during the final part of his first term. But these considerations exceed the scope of this article, and we leave them for future research and discussions.

## Conclusion

The purpose of this article was to engage in the debate about direct presidential election in the Czech Republic, which has been dominated by voices critical of it. Contrary to the prevailing position, our aim was to offer a new perspective from which the direct election of the president would not seem so harmful to the Czech political system, especially while having in mind a large voter turnout in this type of election. We searched for arguments in the history of political thought and argued that this legitimising viewpoint could be built around the figure of the tribune. We argued that this figure could be not only found as a democratising element in traditional mixed constitutions, but also used in modern liberal democracies in which all power is derived from the people. Even in these societies, the division between the *popolo* and *grandi* persists and should be taken into account.

The tribune function, traceable to the times of Early Roman Republic, has been appreciated by authors in various historical eras for its ability to defend the people against the arbitrary interference of powerful individuals and for channelling political conflict into the constitutional framework and thus preventing substantial destabilisation of the political system. We have argued that in contemporary parliamentary regimes, the directly elected president is a suitable figure to take up the tribune function (especially its political, i.e., non-legal, elements). The process of direct election is important for performing the tribune role since the president derives his legitimacy from the people rather than from a “*grandi*-controlled” institution to which he would be grateful for his election.

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considered, for example Borda count or supplementary vote (Chytilek, Šedo, Lebeda, Čaloud 2009: 158-170).

Although attributing the tribune function to the Czech president is not risk-free and dangers of harmful forms of populism have traditionally been attributed to tribune-like political actors, the above-mentioned beneficial functions can outweigh the negatives. Moreover, the potential risks could be limited by particular institutional and social constellations. In the Czech context, the president has relatively weak and non-governing powers limited by several constitutional checks. Culturally, the risk of a potential turn from *tribune-populism* to *populism-extremism* is mitigated by the historical tradition of presidents being the important actors during the constituent moments of the republic. This links the Czech presidential office to the political system and to the People as a whole, not only to the people as *popolo*.

Finally, several constitutional improvements could be devised in order to further minimise the risks. At the end of our article, we have outlined some of them. However, our aim was not to offer any authoritative policy recommendations but to theorise a tribune role of the president, which can be employed not only for the legitimisation of direct elections but also applied as a guiding framework in constitutional engineering.

## ABBREVIATIONS:

### Cicero

*De Leg.*

*De rep.*

*De Legibus*

*De re publica*

### Hamilton, Madison, Jay

*Fed.*

*The Federalist Papers*

### Livy

*Ab Urbe.*

*Ab Urbe Condita Libri*

### Polybios

*Hist.*

*Historíai (Ἱστορίαι)*

### Machiavelli

*Disc.*

*Princ.*

*Discorsi sopra la prima deca di Tito Livio*

*Il Principe*



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