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Rule of Law between the Scylla of Imported Patterns and the Charybdis of Actual Realisation

(The Experience of Lithuania)

Abstract. Nations of Central and Eastern Europe in the near past have all faced the same dilemma: how can they manage international encouragement to adopt atlantic patterns in promise of ready-made routes with immediate success, in a way also promoting the paths of organic development, relying on own resources and potentialities that can only be gained from tradition? Or, otherwise speaking, is it feasible at all to rush forward by rapidly learning all the responses others elaborated elsewhere at a past time? Or are they expected themselves to become Sisyphus bearing his own way, at the price of suffering and bitter disillusionment? The question was not raised by each country individually in the region as not much time was left for pondering in the rapid drift of events. Anyhow, cost-free solutions adopted from without may easily lead to adverse results, far away from expectations for the time being. The principles of free market, democracy and parliamentarism–with rule of law and human rights in the background–are usually believed to offer a kind of panacea curing the basic ills in the contemporary world. Generalised experience notwithstanding, social science has to be given the chance to record–if found so–that the same staff may not work at some places where it has just recently been transplanted as it is used to work amidst its natural surrounding in the western hemisphera, not with the same cost/benefit ratio at the least. For that reason, scholarship in Central and Eastern Europe is growingly aware of the fact that what it can provide is by far not marginal feedback but the very first testing and teasing proof on social embeddedness of some ideas and ideals, deservedly fundamental for the atlantic world. Realistically speaking, not even western social development is separable from the economic reserves of the development actually run. Or, operation of any societal complexity requires resources in both social organisation and material production.

Keywords: transition, rule of law, Lithuania, open society, social balance, *ius* and *lex*, rights and duties

Having recovered from the trauma of surviving Soviet imperial socialism and compelled to open up new ways in independent state-building in parallel with the readjustment of what is left as local legal arrangement to common European standards, nations of Central and Eastern Europe all have faced the

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same dilemma: how can they manage international encouragement to adopt foreign patterns in promise of ready-made routes with immediate success, in a way also promoting the paths of organic development, relying on own resources and potentialities that can only be gained from tradition? Is it feasible at all to rush forward by rapidly learning all the responses others elaborated elsewhere at a past time? Or are they expected themselves to become Sisyphus bearing his own way, at the price of suffering and bitter disillusionment? The question was not raised by each country individually as not much time was left for pondering in the rapid drift of events. Anyhow, cost-free solutions adopted from without may easily lead to adverse results far away from expectations. By the time of awakening, however, posterior wisdom may show that there is an alternative always available, even if its practicability is not clear to those affected at the urgently given moment.

One and a half decades after the collapse of the Soviet empire we fully realise now how painful the fact is that each country embarking on dramatic changes was completely left in isolation to face its national renewal programme, drifted by accidental circumstances. Neither the consciousness nor the organisational framework of the mutual dependence of those concerned was strong enough, and Moscow as the focus was this time substituted by another centre of power, even less interested in the target countries which were just awakening either in self-esteem or as a potential counterpole.[1] In consequence, each country had to embark upon separate efforts at reform, channelled by so-called open society agencies;[2] however, as we all know, improvisation is not likely to outcome products worth of consolidation.

The early and total failure of the Hungarian efforts at coming to terms with the past[3] was only one among a few shocking episodes. This alone might have made us realise that we should not have attempted to respond to a considerably universal challenge just on our own, and perhaps a genuine transnational co-

[1] Cf. Varga, Cs.: Amerikai önbizalom, orosz katasztrófa: Kudarcot vallott keresztes-hadjárat? [American self-confidence, Russian catastrophe: failed crusade?]. *PoLísz*, 2002–2003, No. 68, 18–28.

[2] See e.g. Cohen, St.: *Failed Crusade: America and the Tragedy of Post-communist Russia*. New York, 2000 and–as a by-admission–Holmes, St.: Transitology. *London Review of Books*, vol. 23. 2001/8. 32–35.

[3] Cf. e.g. from Varga, Cs.: *Transition to Rule of Law: On the Democratic Transformation in Hungary*. Budapest, 1995. Part on Coming to Terms with the Past, 119–155. [Philosophiae Iuris.] and *Coming to Terms with the Past under the Rule of Law: The German Model*. Budapest, 1994. [Windsor Klub.] as well as A »gyökeresen gonosz« a jog mérlegén [»Radical evil« on trial]. *Magyar Jog*, vol. 49. 2002/6. 332–337.

operation might have evolved, had not been our initiative in Hungary too early, even pioneering.

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A Lithuanian theoretical response[4] will be overviewed in the following. It is certainly not the earliest one as its the author may have learned from the experience of others.[5] Yet it is remarkably rational and systematic. For he reconsiders ancient wisdoms in the light of our days' ideals, and draws historical lessons from his Lithuanian case study by responding to the shared failures of our global new world.

The ideal of rule of law–formulated also in the preamble of the Constitution of Lithuania (1992) after she has returned to the path of independent state-building by 1990[6]–indicates a recognition according to which the unlimitedness of observing any law in a *Rechtsstaat* can be restricted by the value-centredness of a *rule of law*, which value shall be fully implemented by the principle of intervention of a *Sozialrechtsstaat* when care for "strengthening those socially weak

[4] Vaišvila, A.: *Teisinės valstybės koncepcija lietuvoje* [The Lithuanian approach to rule of law]. Vilnius, 2000. [with abstracts: Law-governed State and its Problems of the Formation in Lithuania: The Outline of State Ideology. 611–631. and Правовое государство и проблеми его становления в Литве: Поиски государственной идеологии. 632–635.]. Cf. also from Vaišvila, A.: *Conception of the State Ruled by Law in Lithuania.* (Summary of the Research Report Presented for Habilitation.) Vilnius, 2001. [The Law University of Lithuania.] as well as–in multiplication–Rechtspersonalismus (Zusammenfassung)., Die Rechtsaxiomatik oder das Modell der vier Axiome als inhaltliche Grundlage des Rechtspersonalismus., Die geometrische Formel des Rechtes als des mehrstelligen Prädikats. and Das Recht als Prozess (als das Werden). Chairholder for legal philosophy at the Faculty of Jurisprudence of the Law University of Vilnius, Professor Alfonsas Vaišvila has authored a number of books covering ranges of topics spanning from Lithuanian history of ideas (including philosophy and logic) via social compromise, liberalism, tolerance, democracy and state of law to statism as well as crime control.

[5] As a summary of the debates in Poland, see Wronkowska, Sł. (red.) *Polskie dyskusje o państwie prawa: Zarys koncepcji państwa prawnego w polskiej literaturze politicznej i prawnej* [Polish discussions on the state of law: summary of the concepts of the state of law in the Polish political and legal literature]. Warszawa, 1995. Also cf. Varga, Cs. (ed.) *Kiáltás gyakorlatiasságért a jogállami átmenetben* [A call for practicality in the transition to rule of law]. Budapest, 1998. [A Windsor Klub könyvei II.]

[6] "The Lithuanian nation strives for an open, just and harmonious civil society and a state ruled by law." The expression 'state of law' was first used in Lithuanian literature by M. Cimkauskas (1922) and described historically and systemically by M. Römeris–Teisinės valstybės organizacija. In: *Lietuvos universitetas: 1927–1928 mokslo metais*. Kaunas, 1928. 6–31.–, followed by contemporaries as P. Leonas and others.

and weakening the strong"[7] is at stake. Looking back in history, Lithuanians may now realise that their ancestors in the 16th to 17th centuries[8] had already separated–in their search for a "well-organised" and "organic" state–law [*ius*] from the laws [*lex*] and demanded law to be right (by serving everyone's good with sound reason), moreover, that the presumed original freedom which may have led to their first integrative social contract could not entitle to anarchy but only prepare for balancing. The Lithuanian Statutes (1529, 1566 and 1588) ensured an extremely all-covering rule of law for the nobility. This was even further restricted by the Polish *liberum veto*.[9] After all, the disintegration of the ruler's power and responsibility could only result in either the tyranny of nobles (as beneficiaries) against everyone or the coming of foreigners to rule (free of any limitation whatsoever) with at least some promise of order. Well, as known from history, both alternatives did subsequently materialise in Lithuania.

Reconsideration is imperative for all concerned, only if in order to avoid the traps of the past. One has to be careful to escape the temptation of any kind of dogmatism–foremost that of absolutising universalisation–, even if some of the issues now crop up in global proportions, as a consequence of the new role assumed by the American foreign policy after the cold war and the Soviet might are over. The early 20th-century Lithuanian classic of public law already emphasised that the rule of law is hardly more than a specifically disciplined ethos, only conceivable as the direction of a constantly renewing ambition: it never arrives at completion for "it cannot be answered once and for all".[10] Or, it is not even an external pattern to be simply followed and implemented, for it is not of the kind to presume the mechanically "obedient execution or imitation" of requirements once stipulated by others.[11] This is all the more remarkable now when the course of globalisation, maximising the rule by rule of law and human rights with a growing disregard to other considerations and values, is about to tumble on disintegrating contradictions and dysfunctions. While eliminating certain threats to human rights, the state ruled by law–writes the author–originates new ones immediately, which are inherent in the notion of human rights itself,[12] that is, in their abstract conceptualisation, totally insensitive

[7] Stein, E. *Staatsrecht*. 14., völlig neu bearb. Auflage. Tübingen, 1993.

[8] E.g. J. Chondzinskis, A. Goštautas, M. Lietuvis, P. Roizijus, A. Rotundas, L. Sapiega, P. Skarga, A. Volanas.

[9] Cf. Konopczyński, L.: *Le liberum veto: Étude sur le développement du principe majoritaire*. Paris et Varsovie, 1930. [Institut d'Études slaves de l'Université de Paris: Bibliothèque polonaise II.].

[10] Römeris: *op. cit.* 6.

[11] Vaišvila: *op. cit.* (2001), 11.

[12] *Ibid.* 6.

to their own social (pre)conditions, ways of operation and consequences in the short as well as the long run.

The author inquires into the conditions of reaching *states of genuine balance* upon the basis of reciprocity between law and social solidarity, on the one hand, as well as between (with regards to the openness of social order) full social consent and (with regards to the openness of law and order) the inseparable unity of rights and duties, on the other. He reminds that just as the downfall of the first (1572–1795) and the second (1918–1926) republic of Lithuania was due to the over-limitation of the sovereign, exposing the country to external despotism, what happens today is the liberalisation of anti-sociality through the restriction of the executive power with reference to abstract human rights.[13]

Preliminary to raising any issue relating to the rule of law is the assessment of the state of actual social conditions. For the author, the acknowledgement of the priority of human person with inborn rights, taken as the source of his autonomy, as well as overwhelming social co-operation based on contracts and mutual concessions and the social majority's active and organised participation are of utmost importance. In contrast, what reality shows now is rather legal statism and exclusivity of the dominance of formal law. Even rule of law is mostly conceived of as formal institutionalisation, mere dictate of the law [lex]. However, until the Lithuanian Constitution (§ 109, Section 3) provides for the judges to proceed "exclusively according to the laws"–instead of laws "and law [ius]" as he claims–, no genuine division of powers can be achieved.

Functionally, law is based upon the unity of subjective rights and legal duties. Rights cannot be but relative, otherwise they degenerate into aggressive privileges. This mutual dependence arises as part of the natural order from the natural state of humankind, open to exchange equivalent services. Such an interconnection is not made by the state. All that the state can do is to make statements about. Law [ius] in a democratic society can therefore only be built on a legal conception not reduced to mere laws [lex]. In a democratic society only such claims can be posited as law that are in compliance with human rights, express social agreement and formulate as legal imperatives only provisions whose realisation is also guaranteed by the state's instruments (i.e., to the extent of the state's economic capacity and approval by citizens) (ch. 4).

Or, the state is not in a position to met out justice or punish, moreover, it is not even the state to deprive anyone of his/her freedom, At the most, all a state does is to officially establish the new status of the rights of a person when it gets diminished by his/her own action of rejecting the fulfilment of certain duties. Consequently, neither capital punishment, nor its possible abolishment

[13] *Ibid.* 12.

is within the state's but exclusively within the perpetrator's discretion. Anyone who kills, by negating the right to life of others, deprives himself of his right to his own life. The act of the Lithuanian Constitutional Court–argues the author–, having decided for the abolishment on December 9, 1998, declaring § 105 of the Lithuanian Criminal Code to be unconstitutional, can only be construed in that it either denied its citizens their natural right to equality in reciprocity or pardoned for the future in general terms on a non-legal basis (unauthorised by citizens, yet normatively). Moreover, not even the failure of regulation can result in breaking up the necessary balance between rights and duties or in impunishment, because otherwise criminal aggression would be encouraged. Therefore the formal, exhaustive and exclusive statutory definition of crimes needs to be complemented by the availability of judicial–casual–correction.[14] Entering the 21st century, the author perceives that the absolute prohibition of analogy in criminal law may have fairly been motivated by past experience of totalitarianism, on the one hand. On the other, he generalises from the data of 20th-century international criminal practice, Anglo–American jurisprudence and continental penalising trends that the actual boundaries of today's formally absolute prohibition are becoming increasingly flexible under contemporary well-balanced rule of law conditions (ch. 5).[15]

According to his vision, the prevalence of capital concentration with the split of society to the rich and the poor has been generating a sui generis type of authoritarianism-cum-totalitarianism under the guise of total liberalism. Situations come about by threatening effects in terms of which enlarging groups of addressees will have to practically resign of their rights and legal rights-protection on the command of biological survival. The present degree of actual poverty and defencelessness in Lithuania is already about to genuinely erode the predisposition of the state. The shameful fact that only 40 to 42 per cent of the officially known criminal acts are actually prosecuted against can only mean that the other 60 to 58 per cent of national sovereignty on the field of crime control is lost. However, this other part must not benefit the criminals–as is the case today– but the victims, either by providing them efficient protection or by giving them back the right to protect themselves against crime at least to a viable extent. It is

[14] For case-law can only counterbalance the fact actualised by a specific case that legislation cannot be exhaustive, by ensuring the universality of implementation of the basic principles of criminal law. *Ibid.* 23.

[15] Arnold, J.: Prinzipien und Grundsätze im deutschen Strafrecht und im Entwurf des Allgemeinen Teils des Litauischen Strafgesetzbuches. *Jurisprudencija* [Vilnius], vol. 9. 1998/1. 62–74., in particular–using the expression '*fließend*' when surveying the German practice of *Analogieverbot*–on 68.

little wonder if in situations like this, citizens' traditional confidence in the state is withdrawn, only to be replaced, instead, either in their own hands or in powers beyond this world. In 1996, only 25 per cent of the Lithuanian population claimed they trusted their own Parliament yet 74 per cent claimed they trusted the Catholic Church. After many decades of Soviet occupation, it is tragic to recall that there was a time when power in Lithuania was seized by foreigners with promise of order they provided against the tyranny of Lithuanian nobles. Anyway, Lithuanian officials ascertain that their justice system is hardly sufficiently operable today. A criminal environment can be effective enough to deter injured parties and witnesses from taking part in the administration of justice. Law is not a protective power any more. Legal proceeding may have lost any sense. Criminals have in fact extended their control over law and order, practically depriving society of the chance of legal protection, degrading citizens to growingly becoming partners themselves to the very aggression criminals are used to commit against them. It is the aggression by criminal asociality that gets eventually supported by the abstract protection of human rights.

Is it possible that after a totalitarian past, democracy will only arrive later on, when the present mixture of liberalism-cum-authoritarianism will have been left behind? Is there any logic of history in that the former lack of freedom is now compensated by immoderate, even asocial libertinism?[16] What are the symptomatic indicators here? According to the author, the weakness of a middle-class in substantiation of democracy, the miserable state of economy, the lack of chance for any genuine civil initiative, the feeble self-assertivity of the populace (e.g., when all personal bank-savings of Soviet times were frozen by the Parliament once and for all on July 19, 1995, by a posterior unilateral statutory modification of the conditions of fulfilment of contractual obligations laid down in § 471 of the Lithuanian Civil Code), the want of high state officials' respect for the law (e.g., when the president of the republic or the Seym may fail to observe their formal duties without any legal consequences, or the state elite defines ad hoc measures when own remuneration is at stake), as well as the undisturbed misappropriation of public property (through commercial banks and companies with a state share) are among the first to be considered.

Rule of law is hardly imaginable without proper social and psychological, ideological and constitutional foundations. As to the current political experience in Lithuania, it calls for a stronger presidency as well as for a parliament with more effectivity in balancing. For what the constitutionalist Römeris wrote about parliamentocracy as a mere theoretical potentiality three quarters of a century ago had by now become everyday reality, until the last election in October 2000

[16] For the term, cf. Meyer, F. S.: Libertarianism and Libertinism? *National Review*, 1969.

brake the continuation of communists' domination. In fact, pursuant to § 72, Sections 2–3, of the Constitution, any bill can be–even repeatedly and without the slightest alteration–passed by absolute majority, despite any veto of the president of the state. So, nine protests by president Brazauskas could be constitutionally ignored in 1997 without paying the least attention to his motifs. As to historical antecedents, § 51 Section 2 of their Constitution of 1928 followed the American model by providing for a qualified two-third majority in case a bill had been vetoed against. As fairly recalled, president Roosevelt interposed official veto 631 times until the New Deal could be implemented, moreover, Lithuania herself was in favour of a strong presidency both in far-away and recent past.[17] The population still trusts significantly more even a weak president than a Parliament formed by random circumstances and, as the case may be, sometimes tragically exposed to the play of mere chance. This is clearly indicated by the contrasted support through varying periods and circumstances notwithstanding:

president *Algirdas Brazauskas*		**Parliament**
December 1993	60,0 %	34,0 %
June 1996	20,0 %	14,0 %
president *Valdas Adamkus*		**Parliament**
June 1998	71,2 %	12,7 %
December 1998	76,4 %	13,4 %

Thus, there is a contradiction that can barely be eliminated by means of mere rhetoric: while the country is actually ruled by a power of a rather low esteem,

[17] De-stabilisation efforts were also made in 1922, at the dawn of the young republic, under the pretext of stabilising the legal status of Parliament.

The partisan movement *Žalioji rinktinė*, continuing the fight against the Soviet occupying powers in Eastern Lithuania, declared in 1945: "We want a presidential republic, similar to the one of the United States of America, with a powerful president." [*V. Kuročkos apklausos protokolas* (archive manuscript). 15.]–The World Congress of Lithuanian Lawyers declared on May 24–31, 1992: "Exclusively a strong presidency can ensure the stability of social processes, block the way to chaos and neutralise the destructivity of those thirsting for revenge, in order to become the buttress of the further development of democracy." [Kaganas, I.: *Lietuvos Respublikos valdymo forma–Lietuvos valstybingumo teisinės problemos: Pirmojo pasaulio leituvių teisininkų kongreso straipsnių ir tezių rinkinys*. Vilnius, 1993. 7.]–It was President Algirdas Brazauskas who took a stand when his vetos were ignored, in that "To be able to operate efficiently, the President should also be given more power, following the introduction of the democratic pattern of governance." [*Lietuvos rytas*, 1997. February 14.]

the power preponderably trusted by the nation is without almost any sensible competence (ch. 8, para 2).[18]

Or, the exclusive way to, standard and criterion of a "well-organised" and "organic" state now are on the final analysis nothing but the "maintenance of comprehensive balance" in each field of the entire social, political and legal set-up as the exclusively available guarantee of political stability, social equality and legal reciprocity.[19]

This is the reason why the author developed his theory of so-called *legal personalism,* based on the axiomatics of the geometrical formula of law taken as a compound predicate. I avail just to mention some of its fundamental tenets. Accordingly, the equivalence in reciprocity of social relations is the pre-requisite of any *open society.* It follows therefrom that "subjective right is not the property of the individual but, as a compound predicate, is a relation established for the mutual protection of the interests of all persons concerned." Consequently, on the ground of the reciprocity having come about with the "unity of rights and duties", the individual is, depending upon his/her deeds, always in balance with his/her own respective rights and duties, because "by fulfilling or rejecting the latter, he has the former recognised, legalised or annihilated" automatically. And, indeed, there is no other way, for "Rights without obligations are nothing but downright privileges, while duties without rights can only stand for sheer violence."[20]

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[18] Vaišvila: *op. cit.* (2001), 32–36.

[19] Also see from Vaišvila: Место наказания в правовом государстве [Mesto nakazaniia v pravovom gossudarstve; The place of punishment in a state of law]. In: *Проблеми вдосконаления законодавства та практика його застосування з урахуванням прогнозу злочинности* [Problemi vdoskonaleniia zakonodavstva ta praktika iogo zastoczvaniia z urakhuvanniam prognozu zlotsinnosti]. 1. Луганськ [Lugansk], 1999. 44–49. [Вісник Луганського інституту внутрішніх справ МВС України.] and Социальное правовое государство: Приобретамая и теряемая реальность [Sotsialnoe pravovoe gossudarstvo: Priobretamaia i teriaemaia realnost'; The social state of law]. In: *Конституционно-правовое проблемы формирования социального правового государства: Материалы международной конференции* [Konstitutsionno-pravovoe problemi formirovaniia sotsial'nogo pravovogo gossudarstva: Materiali mezhdunarodnoi konferentsii]. Минск [Minsk], 2000. 24–28.

[20] "Die Äquivalenz der Austausche […ist…] die Einheit von Rechten (der Erlaubnis) und Pflichten (dem Gebot) zu bestimmen […:…] die Menschenrechte werden nach der Erfüllung oder der Verzicht der entsprechenden Pflichten erworben, legalisiert oder verloren." "Das subjektive Recht ist nicht die Eigenschaft des Individuums, es ist ein mehrstelliges Prädikat bzw. das Verhältnis, das für den gegenseitigen Schutz der Interessen der Personen geschaffen ist." "Das Recht ohne Pflicht gleicht einen Privilegien, die Pflicht ohne Recht ist bloße Gewalt."

The oeuvre herewith presented is not a cry for help but the manifestation of a responsible scholarship gradually realising its own strength and independence. It is rewarding to learn that the same ethos that, after the Soviet regime is bygone, can introduce Western trends as desirable patterns to be followed with natural ease, also indicates the need for new foundations, by building up–having left behind its earlier forms rooted in Bolshevik ideology–own world-view consequently. This is exactly what the oeuvre just surveyed did. Having overviewed the mostly pattern-following and more or less promising or dis-appointing results of Lithuanian domestic development spanning over nearly one and a half decades as givens of their history, it assessed them monographically. His very approach presumed sound scepticism as pre-requisite to any responsibly constructive thought, subjecting any result to scrutiny, omitting reliance on either clearly personal [*ad hominem*] or exclusively authoritarian [*ad autoritatem*] reasons in their evaluation.

It would be a shock if the arrogance of force could define again itself in the guise of the renewed ideology of "So much the worse for the facts"–this time at the overture to the 21st century. It is a fact notwithstanding that ideas and constructions that stream towards us from overseas are expected to get rooted in a soil poor in resources, targeting a disintegrated society with distorted morals, in which only reliance to individual surviving strategies proves to be exclusively adequate a personal response amidst an economy fallen prey to the stronger and professionally only preoccupied with the exhaustion of national property.

According to the creed of many, the principles of free market, democracy and parliamentarism (with rule of law and human rights in the background) offer a kind of panacea curing all the ills in the world. Still, social science should be given the chance to record–if found so–that the same staff may not work here as it is used to work there amidst its natural surrounding; not with the same cost/benefit ratio at the least. Social science is open for ideas to both receive in test and reject upon criticism. Moreover, scholarship in Central and Eastern Europe is growingly aware of the fact that what it can provide is by far not marginal feedback but the very first testing and teasing proof on social embeddedness of ideas and ideals exported. For whatever we think of the cultural anthropological preconditions of such guiding stars of modernity and of the scientific verifiability of the concept of man they postulate,[21] Western

[21] If the presuppositions of democracy are not provable, only tradition axiomatically taken from the credo of Enlightenment can be the case. Cf. Frivaldszky, J.: Gondolatok az emberi jogok radikális szemléletéből fakadó problémákról [Thoughts on problems arising from the radical approach to human rights]. In: Frivaldszky, J. (ed.) *Egy európai alkotmány felé: A nizzai Alapvető Jogok Chartája és a Konvent* [Towards a European constitution: the

social development (with the ideocracy of Dworkin, Habermas and Rawls, in terms of which values are just a random function of supporting majority and rights are made one of the gratuitous accessories of any human existence) is by no means separable from the economic reserves of such a development. Or, operation of any societal complexity requires resources in both social organisation and material production. In the Atlantic world, presently they seem they are available either through economic reproduction or by using up reserves. Consequently, if it proves to be too wasteful or costly, less powerful regions of the world may encounter problems of financing, for they are in want of reserves.

Scholarly sensitivity to issues like this has developed in the western world as well,[22] even if not yet transcending local self-analysis. Until now, scholars have failed to address either other regions or their ideals' very preconditions. This is why the issues raised above are still questions–on and for us. This is why they shall have to be tackled at least by those concerned.

Charter of Fundamental Rights and the European Convention on Human Rights]. Budapest, 2003. 63–74. [Agóra II.].

[22] Cf. e.g. Holmes, St. & Sunstein, C. R.: *The Cost of Rights: Why Liberty Defends on Taxes*. New York, 1999. as well as, by Posner, R. A.: *The Economics of Justice*. Cambridge (Mass.), 1983. and *Economic Analysis of Law*. New York, 1998. As an outlook, see also Sajó, A. (ed.) *Western Rights? Post-communist Application.* The Hague, 1996.