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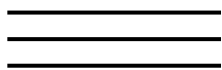
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# BARNABÁS LENKOVICS



## PROPERTY – LAW – HUMANITY



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## Author's Foreword to the English Translation



**WHEN ONE PICKS UP A BOOK**, usually they are interested in two things: who is the author and what is the book about? So let me start with a brief personal introduction. I was born into a peasant family in one of Europe's eastern periphery countries, Hungary, and within that, one of the poorest north-eastern counties, in the middle of the darkest years of the communist totalitarian dictatorship (1948–1953), in 1950. The nationalisation and collectivisation of private property took away the little (4 hectares) of land (in 1960) that we had been able to live on with hard work, albeit poorly. My “experience” as a 10-year-old child became one of the main questions of my life: what was wrong with this small private property? Why was it taken away from us? In 1968, the year of the introduction of *market socialism*, I graduated from high school and – after a year of compulsory military service in 1969 – began my university (law) studies. My thinking was shaped by the crushing of the Hungarian Revolution in 1956, the invasion of Czechoslovakia in 1968 and the Polish military dictatorship in 1981, which gave little chance to *humanist socialism*, freedom and democracy. However, the Hungarian *new economic mechanism*, growing into a “second economy”, proved in black and white the superiority of private work in private ownership over socialist (state) ownership and the planned economy. The personality-developing and freedom-enhancing effect of *small private ownership* is anchored in my childhood experience and has always been at odds with the dogmas of “scientific socialism”. I graduated *summa cum laude* and started teaching at the Department of Civil Law, Faculty of Law and Political Sciences, Eötvös Loránd University, where my specific research topic was *property*. I have also taught and researched the full range of *private law* (the law of private autonomy). In 1992 I defended *my Candidate's dissertation*

(now: PhD) at the Hungarian Academy of Sciences on the subject of “Change of Regime in Property Law”. In 1999, I *habilitated* at the university with a thesis entitled “The Socialisation and Privatisation of Property”. I became a university professor in 2000. In 2001, I was elected *Ombudsman* for 6 years by the Hungarian Parliament. In 2007, I was elected as a *constitutional judge* for 9 years. I finished my public law–public life career as *President* of the Constitutional Court in 2016. During my work, I became more familiar with universal human rights and fundamental constitutional rights in Hungary. From 1996 to 2018, until my retirement, I taught at the Széchenyi István University of Győr, where I was involved in the founding of the Faculty of Law and the Civil Law Department as Head of Department. Currently, as *professor emeritus*, I am writing more, making a “thought inventory” and editing three volumes of my older and newer writings: *People and Property* (2013); *People and Law* (2018); *People and Humanity* (2023). Thus came the title of this selection: *Property – Law – Humanity*.

The book titles also mark the evolution and broadening of my scientific thinking, which is necessary because our world is facing new and increasingly serious challenges, and new questions need new answers. How does property shape people and society in a global world? How do universal human rights norms work in isolation and neutralised from moral and religious norms? How far has the fulfilment of individual humanity and universal humanity, the process of becoming human, the development of human civilisation, progressed and where is it going? In terms of genre, these writings are complex *academic memoirs*, essays rather than works of jurisprudence in the narrow sense. I specifically aimed to make my writing readable, understandable and thought-provoking for everyone.

I try to combine my 70 years of experience with the knowledge I have learned from books and further thought. I continue to broaden my thinking – with a holistic approach – towards other social sciences (history, philosophy, psychology, ethology, economics, sociology) and even natural sciences and their interconnections. For the sake of my two adult children and four grandchildren, as well as for the sake of future generations, I pay special attention to sustainable development, its natural and social requirements; the paradigm shift expected in the 21st century; the positive and negative effects of globalisation; the



now global distribution and chances of redistribution (adjustment) of tangible and intangible assets (material and intellectual property rights). Drawing on my knowledge of civil and human rights law, I seek to raise awareness of the fundamental principles and values that are important for individuals and human society, and for their protection and defence. And this is the point where my dear colleagues and friends started to think that some of the writings in my three books could be useful and thought-provoking for foreign readers. Dialogue, the exchange of ideas, is mutually enriching, it can resolve disputes, tension and prevent conflicts.

Hungary is in a special position: it has historical experience of both socialism and capitalism; of dictatorships and democracies; of public and private property; of “socialist legality” and the rule of law; of market socialism and the social market economy; the loss and recovery of national sovereignty, its value and responsibilities; the development and transitions of fundamental constitutional rights and human rights; the ideal of the rule of law and the programme for its realisation. So we Hungarians can be in possession of special, exceptional knowledge and skills that can be of use to other nations and countries, not just on the periphery of Europe, but anywhere in the global world; not just today, but tomorrow. With this in mind, I have tried to select and compile this volume from my writings and thoughts to date. I humbly hope that my book will benefit others (many). This has been my motto as a teacher for 45 years: to be of service to others (not just my students), to be of benefit to people.

Budapest, 2024.

Barnabás Lenkovics



# Lector's Foreword



PROF. DR. LAJOS VÉKÁS

THE CENTRAL IDEA IN THE FIRST PART of Barnabás Lenkovics' book of essays can best be expressed under the title "*the human being in a society in transition*". Transition is not to be understood in historical-philosophical terms; the phrase here refers to a specific period and a specific geographical region: to the post-socialist countries after decades of state capitalism and dictatorship. This is why the first half of the book focuses on property. In the society called socialism, people were deprived of their property, most of the means of production were owned by the state. The first task of the transition in the economic field was how to achieve an efficient and fair redistribution of nationalised productive assets, in other words how to create a viable property system. The post-socialist countries faced an almost impossible task. Both economics and law were uncertain, but policy had to act. Various forms of privatisation were being experimented with in the post-socialist countries. Domestic capital was not available, and therefore most state property ended up in foreign hands. The different privatisation methods did not change this. And because privatisation took place in a short period of time, all state assets were privatised within a decade, the process inevitably resulted in a horrific loss.

The second focus of the volume is *on family* studies. The timeliness of this topic is not limited to post-socialist countries, as the traditional family faces challenges worldwide. The author's clear starting point is that the family is a value for human society. He formulates the values of the family on the basis of a traditional Christian philosophy and Christian moral. From this starting point, he assesses

the developments of recent decades. He clearly concludes that the traditional values of the family must be saved: “We need to believe in the power of our values, our values to keep us alive.” According to Lenkovics, the serious crisis of marriage and family in the European civilization shall be stopped also with effective legal protection and other governmental measures, because “there is no equal alternative to monogamous marriage between a man and woman, and family with children.” However, “the facts that there are alternative forms of partnership and cohabitation [...] cannot be ignored.” His views on marriage and family are reflected in his opinion on life of foetus.

As a whole, the volume gives a *comprehensive picture* of Lenkovics’ views. The reader is presented with the understandings of a profound thinker: about man, property, family, society – in the rapidly changing conditions of the late 20th and early 21st centuries.



# Reform of Social Property Rights<sup>1</sup>



Social property rights?

**1. IT IS HISTORICAL EXPERIENCE** that extraordinary social changes always inevitably entail a change in the property regime. Extraordinary social changes (wars, revolutions, radical reforms) always aim, directly or indirectly, at changing the system of *appropriation* and redistribution (*property* system) of material goods available to societies. And if it succeeds, even partially, it necessarily entails a change in the legal regulation of the fundamental property relations, the system of *property law*. For just as the provision of material goods is of no value to a man held in bondage, it is also true the other way round: freedom is very precarious if its solid material foundations are not guaranteed by law.

In recent years, Hungary has been undergoing extraordinary social changes (which are consubstantial with those in other so-called socialist countries). The system of appropriation and redistribution, hitherto called socialist and based on social ownership, has become dysfunctional, and has brought the country to the brink of economic disaster. From this fact, it is not difficult to conclude that the property system to date and the property rights system on which it is based need radical overhaul. However, we face extreme difficulties in the concrete modalities. The situation is illustrated by the fact that while fundamental changes in constitutional law, human, civil rights and personality rights are being implemented through national dialogue and public agreement in a matter of months, weeks or even days, the issue of property reform is stalled, as if we have hit an impenetrable wall. The right to vote, the right of association and assembly, freedom

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<sup>1</sup> Published as Lenkovics, B. (1990) 'A társadalmi tulajdonjog reformja', *Valóság*, 33(7), pp. 1-14.

of speech and of the press are easy to demand and easy to satisfy compared to the difficulty of reclaiming the right acquired in a distorted, dysfunctional system of appropriation and redistribution, of voluntarily renouncing such a right. It is easy to declare a republic, but it is almost impossible to establish market rents and meat prices. And if the change of political system is not followed by a change of property rights in line with it, this will necessarily jeopardise the achievements of the political structure.

**2. AS REGARDS THE CONCRETE WAYS OF PROPERTY REFORM,** the economic literature of our time is characterised by an endless wealth of ideas. There are as many authors as there are solutions, and most of them claims to be “the only salvation”. Most of the authors give a thorough argument to prove the uselessness of the others’ proposals (and even their own, from a year or two earlier). In this connection, Tamás Sárközy wrote as early as in 1982: “...at the present moment, jurisprudence has no other choice but to try to summarize for itself, as the common result of many economic opinions, the basis on which it then builds the legal solution.”<sup>2</sup> This effort has not been very successful since then. In the process of ownership reform, partial legal solutions have been and are still being developed (self-managed companies, company law, transformation law, etc.), which, with the possible exception of one company law, have failed or have been heavily criticised. The explanation is that a comprehensive concept of property reform, supported by the majority of society, has not emerged in jurisprudence and legislation, nor in the underlying economics. The role and responsibility of arbiter on such a crucial issue should fall to politics, but there is “temporarily” complete chaos: conflicting reformist tendencies have been battling with strongly opposing conservative forces. The result of these opinions is a stalemate of unpredictable duration. The solution in this situation can be expected from “completely impartial” science.

It is this demand of the situation that János Kornai, with his “commitment” and responsibility to impartiality, has fulfilled, who was the first to outline a comprehensive concept of property reform within the

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2 Sárközy, T. (1982) ‘Állami tulajdonjog – vállalati tulajdonjog’, *Jogtudományi Közlemény*, 37(5), p. 345.

whole problem of economic transition.<sup>3</sup> He built his system from elements that have been tried and tested elsewhere. But the main question about his concept (as with all other concepts) is: how applicable is it here and now? This is the main issue, because when a concept (any concept) is “legitimised”, it becomes a rule of behaviour, a social ordering principle, a systemic force that determines the superstructure. Because law is by its very nature stability-seeking, static, and rigid. Putting a good concept into law can go a long way to improving the whole social system. And the property rights system to date provides many examples of the opposite: a flawed property rights system can distort the entire system of the national economy and the society it is based on for decades.

**3. TO FIND THE MOST APPLICABLE PROPERTY REGIME** here and now, to navigate the jungle of countless theoretical proposals with certainty, it is first necessary to (re)clarify some basic theoretical concepts. The property rights system, which has become inoperable, has not only created chaotic conditions in the economy and economics, but has also shaped, distorted and blurred scientific thinking and the basic concepts of property theory. The most obvious example of this is the concept of *property* and the related notion of *ownership*. These terms are used in a million different senses, for social relations that are not consubstantial, and often even explicitly contradictory, not only in everyday language (political, journalistic), but also in economic and legal literature. The most striking and confusing mistake is the systematic confusion or synonymisation of the concepts of *property* and *property rights*, property relations and property rights relationships. In everyday life, this is not a problem, but in science it makes it impossible to achieve theoretical clarity and thus to create systems free of internal contradictions.

Legal education is also clear about the content of the concepts of property and property rights and the distinction between them. *Property* is a concept used in the economic (material) sense, with the meaning of *appropriation*, i.e. the acquisition, appropriation of goods, participation in goods. It is an abstract umbrella term that encompasses

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3 Kornai, J. (1989) *Indulatos röpirat a gazdasági átmenet ügyében*. Budapest: HVG Rt.

all forms of acquisition, whether in the context of any legal title or even in the context of a non-legally regulated social relationship. With the concept of property used in this sense, ownership has no independent meaning, since property as appropriation does not denote a dormant state, but a process. This process of appropriation takes place in a society organised as a state, in a system of complex and complicated social-productive relations. However, on the one hand, not all social relations of appropriation require legal regulation, and on the other hand, not all legally regulated appropriation relations can be considered property rights relationships. Which of the infinite range of relations of appropriation is regulated by law, which by *property law* and which by other areas or branches of law (e.g. contract law, labour law, tax law, social security, social benefits law, etc.) is determined by the historical-ideological-political circumstances of the time, or more precisely by public consensus or the will of the legislator.<sup>4</sup> The wealth available to society can therefore be appropriated by a very large number of people under a very wide range of titles. The legislator selects a specific appropriation relationship from the range of legally settled property relations and regulates it (and only it) as property rights. In legal terms, only the subject of this appropriation relationship can be considered the *owner*, i.e. the subject of the property rights relationship. As a legal relationship with an absolute structure, ownership gives the owner, as the holder of rights, a highly protected legal position and a wide range of substantive rights. The owner has *full and exclusive* legal power over the objects of their property, within the limits of the law and the rights of others. In particular, they have the right of *possession*, *use* (utilisation) and collect benefits, and the right to *dispose* (i.e. to “concede the possession or the use of the thing or the right to collect the benefits of the thing to another person, to provide it as security or encumber it in another way, and to transfer his property rights to another person or to discontinue his property rights”).<sup>5</sup> Compared to property rights, ownership encompasses the partial rights of possession–use–disposition

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4 For more details see Sárándi, I. (1984) *Polgári jog, III. Tulajdonjog*. Budapest: Tankönyvkiadó. pp. 7–23.

5 Sections 98, 99 and 112 of the Civil Code. The same is expressed in classic beauty in Section 431 of the Private Law Bill (1928).



(but is sometimes used only in the same sense as disposition, which is confusing), i.e. property rights denote a state of rest, a status, a legal position, whereas ownership denotes dynamism, action, the exercise of rights arising from the position of owner. Only *one of* these rights is the right to collect the benefits, i.e. *to obtain* the goods derived from the property right, and this right exists as long as the property right itself (its subject or object) exists. However, other persons can also acquire the owner's property, the benefits of property rights. This is done either at the will of the owner, with their unilateral authorisation or on the basis of a contract with them (lease, usufructuary lease, use, loan, etc.), or by the payment of a public charge established by law (tax deduction and redistribution). These possibilities of appropriation are therefore a function of property rights, secondary relations of appropriation, in relation to which property rights have a *primary, determining* role. Therefore, it does matter which appropriation relations we classify (call) property rights relationships – and which appropriators become owners. This is why the question of how many people and who will become owners in the reform of social property rights is such an important and fundamental political issue. Appropriation based on property rights is the strongest legal appropriation, which necessarily precedes and determines all the other appropriation relations based on it, and ultimately the whole system of social appropriation relations. This explains why the ultimate driving force and the central problem of these extraordinary social changes is to change the property rights system.

This little digression – a review of the “curriculum”, a re-clarification of some basic concepts – will hopefully help us to explore the ultimate causes of socio-economic inability, to properly select the myriad of property reform ideas and to draw a new (at least here and now new) property rights system.

**4. SO THE FIRST QUESTION WE ARE LOOKING TO ANSWER IS** what is the ultimate cause of the current socio-economic inability to move forward. From a strictly legal-technical point of view, the answer can be summed up in a single sentence: the *conception of social property and property rights in the same sense*, the theoretical, legislative and practical fusion and blurring of the two. In slightly more detail, this

means the following. The solution to the fundamental contradiction of the (capitalist) social system based on private property, the contradiction between labour and capital, the contradiction between *social* production and *individual* appropriation, was sought by the societies which built themselves on Marxist ideology and called themselves socialist, by replacing the separate private owners with the whole of society in a position of property rights which gave them full and exclusive power. In this way, the harmony of social production and social appropriation seemed to be restored, and all forms of participation in goods were transformed into *participation as owners*, into the collection of the benefits of property rights. But the theory is one thing, and the way it is put into practice is another. In reality, members of socialist society ceased to be private owners, but never became “social” owners. Of course, the property rights confiscated from countless private owners and then concentrated have not disappeared, but have been transformed. But not into social property rights, but into state, or more precisely *party-state* property rights. The explanation for this “derailment” lies in the structure of property rights relationships. We have already mentioned that property rights relationships are legal relationships with an *absolute structure*. Its specificity is that its subject, the owner, has a right vis-à-vis everyone, or conversely, everyone has an obligation vis-à-vis him: they are obliged to respect the rights of the owner and to refrain from infringing or interfering with the exercise of the owner’s rights. The theoretical problem is already insoluble: if everyone is equally entitled as a subject of social property rights, who are the obligors? In practice, however, this was not the real problem, but the fact that no one became truly entitled, but everyone remained “outsiders”, i.e. obligated, just as they were under the private property regime. For the law did not place society in the position of the rightful owner of social property, but the *state* in its name and on its behalf. This has created a state of split consciousness, in which individuals were subject to property rights as citizens, but as members of society they were outside it. Moreover, as citizens, they could not exercise property rights directly, but only indirectly, through the system of state bodies (councils, parliament, government, ministries, etc.). Thus, owner’s decisions were so “far away” from them that their influence on these was by definition negligible. This situation was further aggravated by the

party-state nature of the state, the “democratic” *centralism* within the party, i.e. the dictatorial political system. In this system, the powers of property (economic power as a whole), which were taken away from private property owners, were concentrated indirectly in the hands of the central organs of the state, and directly in the hands of the party’s ruling party leadership, or in extreme cases, its generalissimo (conductor). Economic power concentrated in this way and to this extent, coupled with equally concentrated political power, has resulted in a total dictatorship in the hands of a narrow group. *Social ownership has turned into its own opposite*: it has deprived almost the whole of society of all property rights, excluded it from the control of national property. Not only have some members of society not become owners, *legal subjects*, not only have they remained outsiders, “obligated”, but in many respects they have been degraded again *to the status of legal objects* (for example, if they are paid a fraction of the price of their labour through “wage management”, if they are subjected to forced labour, forced relocation, if they can even be sentenced to death for sabotage, blackmail, etc.).

## 5. THIS VERSION OF SOCIAL PROPERTY RIGHTS IN PRACTICE

is therefore neither social nor property rights. It is not social, because it is not exercised (rather, suffered) by society, and it is not property rights, because although it implies full and exclusive power over property, it is political (public) power and not owners’ (private) power. It lacks the two major *limits* of classical property law, the limit of the *law* and the rights of *others*. The law, because the laws are made by the state, which is the exerciser of property rights, in its own interest (not by the will of the people), and the limitation of the rights of others, because it has deprived everyone else of similar rights. (The state has not only “over-nationalised” the means of production, but has also imposed irrational limits on consumer goods, on personal property.) Property relations thus rendered “unlimited” are inevitably characterised by waste, parasitism, irrational political prestige decisions, inefficiency, the scrounging of an army of apparatchiks abusing their power, the inability to innovate and compete, the overlooking of responsibility, insensitivity to the damage caused by wrong decisions and, ultimately, bankruptcy and extinction.

The question is whether the softening of the property dictatorship and the *decentralisation of ownership* powers to varying degrees and levels will change all this. It does not change the substance in any way, for at least two important reasons. One reason is that society (in the person of individual members) does not become the owner. Owner's decisions are still made on behalf of (instead of) society by the holders of public power; perhaps not by a narrow elite, but by *sharing* it among an increasing number of people, and the means of coercion *within* power are softening (expectation and bargaining instead of command, etc.). The second reason is that those who exercise the rights of owners, up and down the social property ladder, are invariably incapable of acting as real owners, and neither legal nor economic rationality can set limits to their uncontrolled power. For the people's economy as a whole, the decisions taken during the period of decentralisation were just as disastrous as those taken during the period of strict centralisation. This *non-owner* approach necessarily permeates the forms of group ownership (cooperatives, associations, social organisations) constructed in the image and likeness of the common property right.

**6. IF THE SYSTEM OF SOCIAL APPROPRIATION** and redistribution based on social property rights suffers from such serious deficiencies and has such serious consequences, then very serious conclusions must be drawn from this in the process of radical social transformation, in the construction of a "new" property rights system.

- The aim should not be to exclude individual members of society as much as possible from ownership, to limit their property rights as much as possible, but the opposite: to make as many individuals as possible and as much as possible owners.

- In the social "distribution" of property rights, equality should be sought, but the guiding measure should be utility for the benefit of society.

- In order to reduce the inevitable wealth disparities, to improve social equality and to meet public needs, communities of all sizes must share in the wealth of private owners. The modalities and especially the extent of this share (social appropriation) are determined by the democratic consensus of the free owners – the law.

– Social appropriation should preferably not be based on social ownership. Any community share in wealth must come predominantly from the public charges paid by the owners, i.e. from the benefits of individual property rights. Public charges can be voluntary or imposed by the will of the majority.

– If the nature (community nature, territorial scope, strategic importance, etc.) of a subject-matter does exceptionally require community ownership, it must be regulated under strict legal conditions: (a) there must be a consistent separation between the functions of public authority and those of owners; (b) direct participation by society in ownership decisions and control must be ensured wherever possible; (c) where direct participation cannot be ensured, the operation of the person or organisation exercising the right of ownership must be open to public scrutiny and public access; (d) the liability of organisations or even persons exercising public ownership must be enforced if they have made wrong decisions or abused their rights.

### New forms of property?

Let us now look at the proposals for property reform in the light of what has been said so far. It cannot be our aim to provide a comprehensive evaluation of the extremely rich literature, nor to analyse in detail the individual views. This is not only because of the limitation in scope, but also because of the time constraints, as new ideas and political and scientific debates are born almost daily. In addition, the developments so far have been excellently analysed historically, and the different views are grouped and contrasted by László Lengyel,<sup>6</sup> and the staff of Financial Research Plc.<sup>7</sup> We use their groupings as the basis for our analysis, but again emphasise the strict legal approach.

**1. SOCIAL INSTITUTIONAL PROPERTY.** This group includes proposals to *socialise* public property, which has hitherto been of a state-administrative–public-power nature, by distributing public

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6 Lengyel, L. (1989) *Végkifejlet*. Budapest: Közgazdasági és Jogi Könyvkiadó. pp. 153–185.

7 Matolcsy, Gy. (1988) 'Változatok a tulajdonreformra' in Lengyel, L. (ed.) *A tulajdon reformja, 1988*. [Budapest]: Pénzügykutató Rt., pp. 107–127.

property in the form of “shareholding” among certain public institutions. This would remove the fiction of the unity and indivisibility of state ownership, and place the exercise of ownership in the hands of truly “collectively owned” *organisations*. Such organisations include pension funds, schools, universities, hospitals, etc. But these organisations are not consubstantial. A distinction should be made between pension funds (and other social security funds, social benefit funds) and schools, universities, hospitals, etc. Institutions in the former group – for the sake of simplicity, let’s call them all pension funds – are organised on a contractual (obligation) rather than a property basis. A pension fund is nothing more than a set of a large number of long-term *insurance contracts*, the purpose of which is to spread the risks, losses and burdens of certain assets across a community of policyholders in order to ensure their long-term financial security. Each insured person is obliged to pay a regular contribution in exchange for which he or she will be entitled to certain benefits (sick pay, assistance, pension, etc.), also under predefined conditions. The acquisition of such benefits (assets) is therefore not derived from social property (these are not state pension benefits!), but the acquisition of assets paid for and accumulated in instalments from one’s own assets under an insurance contract, and later also in instalments. It does not change this legal substance if such institutions are created by force from above, instead of self-organisation from below. The members of the risk community are in a contractual relationship with each other, not with a board of directors independent of them. To “administer” the large number of legal relationships, collect premiums, manage the money collected and make payments, there is of course a need for an apparatus, an organisation that acts as a legal entity in the interest of and on behalf of the insured. In the *management of payments*, it must ensure that value is preserved and, like a prudent steward, that value is increased. It can buy bonds, shares, real estate, etc. in the course of that, and if it has managed the funds well, it will be able to collect less for the same amount of services, or make more or higher payments with the same fees, or even make payments to people who were unable to pay through no fault of their own. It depends on the humanity, or if you prefer, *the social commitment of the insured*. But the main thing is the (contractual) will of the community of the insured: they pay out of their

assets to (possibly) get back and share with others, but the business, the profit-making, the management goal is not the decisive factor. Not even if such an organisation and its assets are “nationalised”, run as a public authority and the fees collected as a tax. This is at best a distortion of the original point, to turn the self-sufficient insured into subjects under “state” care. Even if the current method of state care, the “budgetary link”, were to be replaced by another method, the method of share ownership from the state trust fund, the distortion, the nationalisation of such funds, would still remain. Only now the system would be dependent on the economy through public (or maybe private) asset management organisations instead of the budget. The vulnerability of the insured would remain unchanged if not worsened! Instead of direct or indirect nationalisation of social security, including the pension system, it would be sufficient for the insured to regain real ownership of their own assets (their accumulated contributions). Giving them even *more* property rights would have *fewer* results: the economy, the social security system or both would be damaged.<sup>8</sup>

Schools, universities, hospitals and other similar public institutions differ from the previous group of institutions in that they are already fully funded by the state budget. The services they provide are public services, i.e. they are in principle free of charge for everyone, and are financed as public expenditure, by the budget from *public taxes*. The taxes are paid by the owners as a *public charge* on their income, as the maintenance and operation of such institutions is in the public interest of the owners. The use of services, even if it is on an individual basis, is overall a public consumption, the satisfaction of which is the essential function of such institutions. Giving them a radically different function, the property rights of productive assets and capital, would damage both the economy and the performance of their basic function.<sup>9</sup> (The situation is partly different in the case of private schools, etc., but we will not deal with them here.)

**2. SELF-GOVERNING PROPERTY.** This solution for the exercise of state ownership has so far failed in all its variants (see Yugoslavian

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<sup>8</sup> Matolcsy, Gy. (1988) pp. 113–117.

<sup>9</sup> For details, see Matolcsy, Gy. (1988).

associated workers' basic organisations, Hungarian company councils, workers' assemblies). The reason for the failure lies in a fundamental mistake. Of course, it is true that any organisation created by its *owners*, or real owners, is by nature *self-governing*, but it is by no means necessary that an *organisation with the right to self-govern* should also be, or at least behave as if it were, an owner. While preserving the unified and indivisible state ownership, experimenting with self-administered forms of ownership was doomed to failure. The question now is whether, in the course of the property reform, these organisations can and should be classified as *real owners*, i.e. whether state ownership should be allocated to these organisations by law. The answer is a firm no. First, because the solution is unfair for several reasons. It would gift the property of the whole nation to a minority of corporate workers, i.e. deprive society of its existing property without "recompense". However, it would also lead to an unfair distribution between the collectives involved, depending on whether they are *good or bad* companies. On the other hand, because although the solution would result in ownership on paper, these organisations would not behave like real owners, for a very simple reason. Particularly because they are *not* created *naturally*.

In the Hungarian economy, there is scope for self-directed ownership organisations to emerge naturally. These are companies and genuine cooperatives, in which the ownership and working element are combined in the persons of the members. The members pool *their own property* (group property), to which they then add their labour. In this way, the property interests of owners and the wage interests of employees interact closely: the two interests balance each other out.

If this balance is upset, it immediately becomes clear which interest is stronger: the owner's. The member considers his/her share of the common property as his/her own property, and strives to preserve and increase it. It is therefore possible to limit his or her income in order to preserve or increase the assets brought in, but not to "use up" the working common property (except, of course, by reducing the share capital or by the member leaving). This natural (and hard) *ownership interest barrier* is absent in the case of artificially created (from state ownership) forms of self-management ownership, which then leads



to a number of other serious dysfunctions.<sup>10</sup> Exceptionally, however, natural creation is also possible here, if the state enterprise collective is transformed into a cooperative or a “group-owning” company under the rules of the Transformation Act. In this case, *employees* can buy the company’s assets *from their own assets*, creating a true form of self-management. This process can and should be encouraged with payment incentives, loans, etc., but in no way should it be made compulsory or national wealth be distributed or plundered free of charge, to whatever extent and in whatever scope.

The emphatic “no” to the artificial creation of the self-management form of ownership applies even more strongly to its two sub-variants, so-called *managerial self-management* and *corporate cross-ownership*. In the first case, if we were to install ownership up to a certain level in the corporate management, we would be creating a new capitalist class, as a late negative mirror image of nationalisation, which is not only legally but also politically and morally absurd. If, on the other hand, they were allowed to exercise self-management (quasi-ownership) powers without ownership, this would be a step backwards from the forms of worker-participatory self-management of 1985, and would preserve the economic (and thus political) power of the leading layer of a defunct system, and would not solve the problem of the lack of owners.

In practice, *cross-ownership* has taken many different forms: the head office owns its units transformed into a company, the independent units are mutually owned by each other, several companies are mutually owned by each other, the company created by the company buys its founder, etc. Most of the time these forms are accompanied by suspicion, sometimes public indignation, because in most cases they represent a more sophisticated, disguised form of the previous version, the “managerial self-management”, i.e. a *sham* transformation. They simultaneously remove state ownership and workers’ self-management (the possibility of external and internal – albeit not always effective – control), without, however, being subject to hard-interested external ownership. The subsequent “free robbery” is limited only by

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10 Matolcsy, Gy. (1988) pp. 118–120.

the restraint (?) of the leaders and the fear of prison, and failure, bankruptcy, at most, endangers their leading position but not their wealth.

Thus, the only cross-ownership options that can be used in property reform are those in which the state's ownership interests remain intact or are replaced by new, real owners for a "realistic consideration", or in which workers are given the opportunity to "convert" their self-management rights into real ownership.

**3. STATE PROPERTY.** It is no coincidence that all the authors' concepts of property reform include state ownership. *Nowhere* is it possible to completely eliminate the state as an owner from the economy (in fact, it has *never* been possible). So the task is to find the right scale and form. This is a very difficult task everywhere, but it is even more difficult for Hungary. There has never been a historical example of such an economy-wide "retreat" from such centralised state ownership (nor of nationalisation on the scale and in the manner of Stalinism). Eliminating the elements of public power from the economy that have been inherited from the past and have now become an obstacle will therefore be a long and difficult process. Stages in this process in the legal field include deregulation to remove bureaucratic obstacles, a constitutional rule recognising the equal status of private property in the field of property law, new lower-level legislation (e.g. on securities, private enterprise) and amendments (e.g. the Land Law), the law protecting state property and the establishment of the State Property Agency, etc. This long and arduous process must be governed strictly by *economic rationality* (the laws of the market, the economy), both in its duration and in the individual steps it has taken and will take. In a new environment, in a market economy based on real property relations, rationality is no longer an "ideological" requirement, but a hard economic imperative. (Just as Italian, French and British etc. public ownership is forced by the private ownership environment there to behave like a real owner.) Establishment of real state ownership organisations (i.e. those representing the state, quasi "personifying" it), liberation of property relations (abolition of the "feudal" constraints of unity and indivisibility on the one hand, and the dismantling of the limits of private property on the other), and the guarantee of equality of forms of property, and the movement that has been set in motion on

this basis, are encouraging signs that the so-called socialist sector is capable of adapting to the new constraints in a lawful order, without any haste or hurry, and *without any political campaign*. The first condition for this adaptation is the “fiscal link”, i.e. the cutting off of loss financing in the system of non-ownership-based diversion and redistribution, which means not only the withdrawal of direct subsidies but also the loss of indirect benefits, tax, credit, investment, customs and foreign exchange benefits. Genuine “equalisation” with other forms of property leads to hard selection. A significant proportion of public ownership becomes uncompetitive and dies out due to its bureaucratic nature (cumbersome, costly, etc.) in the absence of subsidies, i.e. it takes shape and *becomes private*. In this – hopefully growing – proportion, the forced adaptation of state property is therefore tantamount to its dissolution, i.e. its transformation. (This is where the most careful attention should be paid to “*value preservation*”!) The theoretical debate on the further operation of the share of assets that remain in state ownership for reasons of economic rationality or overriding public interest, and on the methods of ownership, can continue, with the aim of finding the most appropriate *forms*. What must be carefully observed in all forms is the strict separation of administrative-authority functions from owner-manager functions, and the effective implementation of *public* visibility and control, as opposed to *public* organisations with a purely proprietary function.

**4. MUNICIPAL PROPERTY.** This form could also be seen as a sub-variant of the former state–public ownership, where ownership rights are exercised by a local public body. This would not be a great improvement on the previous situation, as it could be achieved on the basis of uniformity and indivisibility. But it can also be seen as a form of private co-ownership by the inhabitants (autonomous owners) of a given municipality or town, differing at most in function from other forms of private co-ownership. If municipal property is considered to be “bottom-up”, a small community property compared to the overall social collective, then the legal regime should regulate it on the model of *associative private property* closer to individuals. Thus, by analogy with company law, the amount and method of the “members” financial contribution, the main ownership body, its functioning, the executive

officer(s), the committee supervising the management should be regulated (the principles in a new Act on Local Governments, but the details mostly at local level!). It also follows that genuine municipal ownership is more likely to emerge in smaller municipalities (communes, small towns); however, the extent and type of municipal ownership at various levels should be determined by local needs rather than administrative requirements. Municipal property may be indivisible (forest, pasture, roads and squares, etc.), but in principle it must be marketable in the same way as other property. The municipality may receive a grant or a loan from the state (this can be reciprocal – in principle), but this is not “care”; the municipality is not dependent on the state! The autonomous municipal property depends on its autonomous citizens, their work is its ultimate source, they run it in their own interest, to meet their community needs, to the extent of their needs and the will of the community. If this form of ownership is (re) established and consolidated, it may be possible to entrust them with the management of the securities of the national wealth, but first they must learn to stand on their own (real ownership) feet. This learning process can be usefully assisted by the historical precedents that have provided a solid legal framework for municipal property and the management of small and large communities over the centuries. Examples include the Székely village laws, the town and county statutes, the institutions of communal public property (forest, pasture and mountain estates), and the offices of magistrates, jurors, village landlords, etc. The violent implementation of artificial, so-called socialist forms of communal property has destroyed these ancient, natural forms of small communal property, causing enormous destruction in the property consciousness, in the owner’s mentality, in the organic intertwining of private and public property, in the individual and communal forms of existence that gave birth to, sustained and transmitted such forms of property. The historical antecedents of municipal property took centuries to develop and only a few decades to destroy. Their relatively rapid revival can only be hoped for if the underlying solid private property relations are quickly established. And this is urgent because it is local government ownership that can best and most equitably solve the problem of community care for individuals.

**5. PERSONAL SOCIAL PROPERTY.** This form of property was created by Tibor Liska from the intersection of private and social property. The socialist enterprise system he devised is, in the words of László Lengyel, “more market-oriented than capitalism, transcending the restrictive monopolies of private, group and state ownership”.<sup>11</sup> The question is, however, what is meant by a *restrictive* monopoly of ownership, and whether all of them must necessarily *be* transgressed, and if so, *whether it is possible to* transgress ownership limits at all, in the context of the international economic property order. Let me refer here again to the specific features of property rights relationships: their structure of absolute entitlement, their exclusion of outsiders and obligation to refrain, the owner’s right of disposal, etc. The so-called personal social property does not have these characteristics, or only partially, and therefore *cannot* be classified as *property rights* (to that extent, its social, rather than personal, character predominates). Of course, it allows the acquisition of rights, to this extent it can be called a property relationship in the economic-material sense, but in the legal sense such relationships are of a contractual nature: they can be terminated immediately in case of non-performance or higher commitments. Property rights give the owner a more stable position, a longer-term interest and security, a right of free disposal. This may be a “restrictive monopoly” for non-owners, but it is a value for existing and future owners that has not been replaced by anything else in human history. Consequently, the concept of personal social property can be used in the property reform insofar as it *creates a real property right* (the tenant, contract operator buys the thing, business or plant – i.e. leasing or, in English, “hire purchase” arrangement). Even without this, it can be used to manage and operate state, municipal and some group properties more efficiently, as it has been done so far, but it does not contribute to the reform of the property regime.

**6. PRIVATE PROPERTY.** Paraphrasing a quote by Marx, one could say – with some exaggeration – that the history of humanity is nothing but the history of struggles *for private property* or *against private property*. The victors declared it sometimes sacred and inviolable, sometimes to

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<sup>11</sup> Lengyel, L. (1989) p. 174.

be totally exterminated. Private property has emerged at one time as the source of all good and wealth, and at another as the cause of all evil and misery. If we were to try to draw some sort of conclusion about the relationship between humanity and private property, it would go something like this: we can't live *with it or without it*. This is despite the fact that the "simple" solution to the dilemma was already discovered by Rousseau: "The social condition is not beneficial to people, only to the extent that everyone has something and no one has too much."<sup>12</sup> So all we have to do is agree on how much is "something" and how everyone can have access to it, and how much is "too much" that no one can have access to in any way. As the social changes we are experiencing can be seen as a kind of *post-embourgeoisement*, the idea of Rousseau can be seen as a principle of property reform. All the more so, since the "something for everyone" part of the idea is about the liberation of feudal state and cooperative property relations, and about the freedom of private property, while the "too much for everyone" part is about the restriction and social bondage of private property. Now applying this principle *to the privatisation of state property* in particular, two important conclusions emerge.

1. Any solution that makes public property accessible to a wide range of people, and makes it available for private ownership, is acceptable and should be supported. This includes, on the one hand, the sale of small commercial, catering, manufacturing and service businesses and, on the other hand, the issue and distribution of employee shares and people's shares.

2. Any solution that allows some people to acquire and retain too much property (and thus economic and political power) is unacceptable. This would include the restoration of the old capitalists and landlords, as well as any form of resuscitation of the power of the "new elite" disguised as property reform.

Parliamentary "common agreement" is needed to define the specific extent of the state assets that cannot be privatised, to establish the legal guarantees and social obligations that are essential for privatisation.

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<sup>12</sup> Quoted by Köpeczi, B. (1986) *A francia felvilágosodás*. Budapest: Gondolat. p. 167.

The principle of “something for everyone”, the mass, society-wide spread of “small-scale ownership”, naturally applies to the state-style cooperative sector. So a “new land division” in agricultural cooperatives (and by extension in all other cooperatives) is inevitable. Adding, however, that this does not necessarily mean a distribution “in kind”, the point is to *personalise the property rights*.

For it is this very characteristic of private property, its “personalisation”, that places it *before* or, if you prefer, *above* all other forms of property. Historically, it was this “personalised” form of property that first emerged, this was protected by and served as the basis for the absolute property structure which, to this day, can only be applied *purely and fully* to this form. In the case of private property, it is obvious to everyone who is entitled to it, and it is also obvious that everyone is under an obligation against it. It is clear who has the right to dispose and decide, but also who bears the responsibility. It is also clear who is entitled to the benefits of ownership, but also who bears the damage to the property. For the owner, it goes without saying that being an owner means not only rights but also obligations, risks and responsibilities.

This explains why there is a growing belief worldwide that the only *real* owner is the private owner, known personally, and that the legally purest and economically most efficient form of ownership is *private ownership*. In the light of this, let us now look at what this could mean for the process of property reform in Hungary, for the transformation of the property rights system.

Dual or plural property rights system?

**1. MY ANSWER — ALTHOUGH SURPRISING AT FIRST SIGHT —** is short and to the point: neither. I propose a *homogeneous, uniform property regime*. At first glance, this answer is surprising because the extremely diverse and contested concepts of property reform all agree on one thing: they all want a mixed-ownership economy. The only difference is that while Kornai proposes a *dual* economy with full liberalisation of private property and limitation of the negative features of state ownership,<sup>13</sup> all other authors propose a *plural* ownership

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13 Kornai, J. (1989) p. 49.

model with an economy based on a diversity of ownership forms.<sup>14</sup> However, the difference between a homogeneous ownership system and a mixed-ownership economic system is really only apparent at first glance. If we think back to the basic concepts discussed in the introduction of the study, and to the clarification of their content, and distinguish between the economic (material) concept of property on the one hand and the legal concept on the other, the difference can at least be reconciled. For we have seen that the acquisition of wealth in society can take many different forms, with many different titles. Only one of these is the appropriation based on the right of *ownership*, but we have also seen that this is not only one of many, but the most important appropriation relation, fundamental to the other appropriation relations, and *determining* their system and extent. This prominent role is essentially explained by the personal nature and immediacy of ownership. For the ultimate source and acquirer of all goods is the individual, the concrete personality. The needs that motivate the production of goods are essentially *personal needs*. The most direct and also the fairest way of satisfying personal needs (because it is most proportional to individual performance) is the appropriation of property based on *personal property* and the *personal work* connected with it. As well as providing the greatest *incentive for* individual excellence, it also offers the greatest *personal freedom*. Of course, only in a society that recognises this kind of direct appropriation based on private property, and gives it constitutional and legal protection. In socialism, the opposite has so far been true. The lack of incentive and a sense of freedom explains the “inefficiency” of these societies, the collapse of their economic and consequently their political systems.

**2. BUT THE SITUATION IS NOT HOPELESS.** “The crisis itself is not only a phase of the period, but its overall essence, Marx teaches us... that crises have functions in the economy: they serve to clean up technologies, enterprises, institutions that have outlived themselves.”<sup>15</sup> This “cleaning up” is now taking place, inter alia, in a wide range of

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<sup>14</sup> Lengyel, L. (1989) p. 183. and Matolcsy, Gy. (1988) p. 124.

<sup>15</sup> Bródy, A. (1983) ‘A társadalmi folyamatok idősükségletéről’, *Társadalomkutatás*, 1(3), pp. 39–40.



property-ownership relations and in the property rights system. In doing so, particular care must be taken to ensure that the impersonal, “simulated” property rights constructions of the past are not replaced by *new*, artificially created, still *unreal* property rights constructions. Indeed, János Kornai is not alone in his opinion that “enough with the *simulation*”.<sup>16</sup> Let us stop experimenting with solutions that have already failed (decentralisation, self-administration), with those that can only be created administratively from above in the specific Hungarian context (pension funds, institutional ownership), or with the former power elite’s attempts to acquire property (managerial ownership, cross-ownership). Let us not legally classify either the worker or the board members as owners, not consider public officials as managers, not confuse the lease or usufructuary lease contract with the acquisition of property, social benefits with the collection of benefits from ownership, etc. We don’t need to invent new forms of property, to create fictitious owners; it is enough to remove the barriers to the only real, natural form of property, private property: it will build its own “new” property system. The only obstacle, or more precisely, factor causing delay, is the lack of private capital. But there is plenty of time in history, and private property has worked wonders even in the short periods following major economic collapses (for example, Hungarian agriculture between 1945–1947 and 1957–1959). It is therefore worth waiting for private ownership, giving it a chance and security.

It depends on the owner’s right to dispose *whether* and in what forms he *associates with* other owners, how much of his property he consumes, how much he saves, how much he uses, invests, to whom he *transfers* the exercise of his rights, to what extent and for what consideration. The *constructions of legal relations* based on the original model of natural property rights, which are derived from it and depend directly or indirectly on the disposition of the owners, can be considered as different forms of property (*plural forms of property*), but the system based on *the basic legal relation* remains a *homogeneous, uniform property system*. We “only” have to make sure that we do not introduce “alien” elements into the system, or put unnecessary obstacles in the way of its development and operation. “Once certain

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16 Kornai, J. (1989) p. 34.

barriers to private activity are removed, the private sector will start to grow spontaneously, with individual businesses sprouting up like mushrooms in the forest after the rain. ...There is no temptation or coercion needed for people to choose this way of life."<sup>17</sup> Only a clean, natural environment – we can add, to stick with the analogy. The process can and should be encouraged, but it is unnecessary to rush it: private property systems have proved faster and more adaptable than social property systems all over the world.

**3. FINALLY, IT IS NECESSARY TO EXAMINE** what the unitary property regime means in relation to state ownership, and whether this form of ownership can be incorporated into the unitary regime. The answer is obviously yes, if we consider that this form works in the developed Western market economies, but obviously not, if we consider that this form has become virtually unworkable in all the so-called socialist countries. One of the reasons for the distinction between functioning and non-functioning state ownership is obvious: functioning is functioning in a naturally *evolved* private property environment, and non-functioning is non-functioning in a social property environment *imposed* by force. Behind this immediate cause, therefore, lies a deeper explanation that goes beyond property rights: the inseparable unity of the *economy and politics, the property regime and the political regime*. The dictatorial social and property regime is historically unviable. In positive terms, this means that the social appropriation of wealth – public ownership – is only possible in a democratic system. From a property rights perspective, this is democracy: *property democracy*. Public ownership of a certain share of the wealth available to society (taxes) is based on the democratic consensus of free owners. In this approach, the state and other forms of public property (municipal, social organisation, association, foundation, etc.) are also created and operated by the owners in their own interest and of their own free will. Organisations or persons are set up specifically for this purpose, to manage public property, and they are monitored and, if necessary, held to account. Public property thus conceived is not

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17 Kornai, J. (1990) 'A tulajdonformák és a koordinációs mechanizmusok affinitása: A reformszocializmus néhány tapasztalata', *Valóság*, 33(1), p. 4.

alienated from its creators, it is not impersonal. The smaller the community, the less impersonal it tends to be; the larger the community, the more care must be taken to ensure that this does not happen. This requires a new way of thinking and strict legal (organisational, operational) guarantees. In the new way of thinking, *public* property is also a kind of (the largest) “*social private property*”: its main organ is free election, where the cornerstone of the *parties*’ programmes and the voters’ choices is precisely the appropriation-distribution of wealth (public-private sector relations; tax system; social benefits; public consumption: education, health, culture; public spending; administration, military, etc.). The use and management of state property is constantly supervised by the parliament and its bodies (the Court of Auditors, the Property Agency), but they have no say in the “operational management”. In this “unified” system, there is, and can be, no substantive difference between public and private finances, between public enterprises and private enterprises, between public property and private property. Within the economy, the share of the two sectors may vary from era to era and from society to society. The proportion of public property depends to a large extent on the human and moral qualities of the members of society, the degree of solidarity, the effectiveness of the social ideal or, as in our case, the “dominant” ideology. Changing the proportions outside the public will, “consciously” or even violently, leads to political failure.

If our assumption that this “new” Hungarian state cannot be identified with the former party-state is correct, then state property cannot be the same as the former state property. In the new political and renewing economic environment, state and other forms of community property will therefore increasingly function as an integral part of a homogeneous, unitary property system. The economy as a whole will remain essentially dual for a relatively long time, with the private sector gradually expanding and the share of the public sector gradually declining. *Within* both sectors and *between* the two sectors, ownership constructions and forms of ownership that were previously unknown (at least in our country) are emerging, and the *fundamentally uniform* system is evolving into a diverse, flexible, plural system as a result of natural self-evolution. In this process, the owners themselves select and choose between the different forms of ownership, according to the

market and needs. Together with Sándor Kopátsy, we emphasise that “...in the development of appropriate property relations, one should not stick to any fictitious model, but be content with breaking down artificial deformations and opening the way to spontaneous development. It also requires much reflection and even more courage, and does not tolerate timid procrastination.”<sup>18</sup> János Kornai’s *Pamphlet* may be *impulsive* (although I would describe it as more *restrained* in the light of the escalating political and politicised academic debates), but his proposals are both prudent and courageous, and are in perfect harmony with the principles of property law reform set out in this paper, the requirements for the establishment of a new, naturally based, unified and harmonious property law system. In this system, the individual who has been deprived of the right of property, of the right of appropriation and disposal of property, and who is thus almost completely disenfranchised in every other respect, regains his rights as a real or *natural owner*, his property, and with it his whole personality, his free humanity. And the decision-making (choice) rights granted by ownership are compensated by ownership risk and liability. Property rights therefore not only entitle, but also impose an obligation; not only liberate owners, but also make them responsible.

In the developed Western market economies, there is talk of *expanding* capital ownership in the context of the growing “employee share purchase programme”. This is the way to make as many, if not all, members of society as possible property owners. The reform of social property law has the same aim, but the approach is different. We have to *get back to* the individual members of society, to the individual human being, from an over-extended, over-stretched social ownership.

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18 Kopátsy, S. (1990) ‘Mire tanít a modern társadalmak tulajdonosi struktúrája? (What does the ownership structure of modern societies teach us?)’, *Valóság*, 33 (1), p. 28.

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## Second Economy – Second Property<sup>1</sup>



“... the decisive role in the disintegration of communism was played by the small people, peasants and workers who created the second economy.”

(Iván Szelényi)

**SHADOW ECONOMY, “BLACK ECONOMY”** also exists in capitalist economies, but there as an “illegal” economy it is a real problem for the tax office, or possibly the immigration office. In terms of its ownership and contractual relations, the shadow economy is no different from the capitalist economy as a whole, and its existence does not pose a problem for the functioning of the large economy. The situation is different with the second economy under socialism. Although it operated legally in its main areas, *its private property* base and *market* relations meant that it always had problems of “fitting in” with the socialist economy (in parallel, linked to it, and even integrated into it), not to mention problems of fitting in in terms of ideology. The first institutionalised form, also referred to as a model, was the *backyard farm* of the peasants in the cooperative. Originally, it was based on the right to *use land around the house*, and its subject was the family, living together. If the family collectively owned the permitted amount of personal land (0.6 hectares), they were no longer entitled to use the land for backyard farming. From 1967, with the extension of personal land ownership, it was counted per member, so a family’s backyard farm could reach the size of a former peasant “dwarf” or smallholding (2–3

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<sup>1</sup> Property regime change. Candidate’s thesis 1991. Excerpt

hectares). The function of the backyard farm has always been multi-functional. Initially, like the land property given to members for co-operative use but registered in their names, it served a political tactic to promote collectivisation, in addition to providing bare subsistence through self-provision. In the first half of the 1960s, with income being unrealistically low in cooperatives, its role as a supplementary income provider (more than half of the peasantry's income), which it could realise through commodity production, became increasingly important. In turn, the ever-expanding commodity production of backyard farms ensured not only the maintenance of agricultural production after forced collectivisation, but also the ever-improving quality of food supply in the country, and the involvement of non-cooperative women and old people in production. In the field of labour-intensive, inefficient crops, it relieved the cooperatives, thus increasing their "large-scale" potential and results.

The perception of backyard farms varied and fluctuated according to their functions. Imre Seres, professor of agricultural law, thought that "backyard farms should be like small auxiliary economic units of the cooperative farm", which are the source of cooperative property in many respects, especially in the field of animal husbandry.<sup>2</sup> (It should be noted that the state purchase prices, which made the income per unit of labour time in the backyard 1/3 that of the large farm, made the backyard farms a source not only of cooperative but also of state property.) However, Ferenc Donáth, an agricultural politician, pointed out that the peasants who were forced to join "concentrated their attention and labour on the remaining backyard farms, ... and permanently sought to develop them. They tried to subordinate the common economy to the interests of backyard production."<sup>3</sup> The relationship between the backyard and the large farm was explored in the most depth by Pál Juhász, an agricultural sociologist. He pointed out that even before 1945 "in Hungarian agriculture there were two types of farm organisation: the farm system of the large estate and its servants,

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2 Seres, I. (1968) *A mezőgazdasági termelőségvetkezeti tulajdonjog*. Budapest: Akadémiai Kiadó, p. 390.

3 Donáth, F. (1977) *Reform és forradalom. A magyar mezőgazdaság strukturális átalakulása 1945–1975*. Budapest: Akadémiai Kiadó. p. 141.



and the system of peasant farms in villages with a differentiated society. Land distribution, followed by the organisation of the cooperatives, unified the civil rights and ownership situation of the agricultural population.” In other words, the producer cooperatives took over the role of the former large estates, while the backyard farms combined the right of former servants to use the land as part of their remuneration and the commodity-producing function of the former peasant farms. Juhász denies that economic policy has, at least consciously, done anything to support this sector (except by “pardoning” it), or that the so-called integrating role of large farms has contributed to the undisputed economic success of these small farms. Since the late 1960s, smallholdings have developed in increasing numbers on the basis of personal land ownership, forced into conditions and sizes similar to those of the household. By the mid-1980s, the 650,000 backyard farms were joined by almost 800,000 smallholdings of industrial workers and intellectuals. The nearly 1.5 million smallholder farming households included 4.5 million inhabitants, 42% of the country’s population. In addition to these, around 700,000 families were engaged in agricultural activities in the garden or weekend plot of their house, so that almost two thirds of the population were connected to this – and to the land. Small-scale production accounted for 33.5% of total agricultural production on 12 % of the cultivated land and, remarkably, increased by 34.4% between 1970 and 1985.<sup>4</sup> These facts are extremely significant in themselves, but when combined with the population and occupation data before and after 1945, they provide a basis for conclusions that should not be ignored when shaping the future of the country, including its property regime. As a cautionary example, we cite the – regrettably ignored – thoughts of Péter Veres from 1948, who warned already then that “to produce wheat for export in Central Europe is national suicide”, and therefore Hungary’s “only excuse is to switch from extensive and export-oriented grain production to inland farming to the limit of possibility.” And in the even then heated debate between large and small farms, he pointed out that “small farms are particularly favoured for fruit, vegetables, grapes, dry gardening, irrigated

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4 Juhász, P. (1982) ‘Agrárpiac, kisüzem, nagyüzem’, *Medvetánc*, 2(1), p. 118. and p. 124.

horticulture, but above all for small livestock farming.”<sup>5</sup> 40 years later, professor Tibor Palánkai, an economist, almost had to rediscover and re-emphasise that “the rationality of particular forms of ownership depends on *the nature of the different activities*. The modern economy is based on a diversity of activities. Some of the productive activities are individual .... These are best exploited to the maximum extent for society under individual ownership.” This is why he also points out that “it would be a mistake to emphasise a hierarchy between different forms of ownership... For individual production, individual property is the ‘most advanced’ framework.”<sup>6</sup> Professor Katalin Falusné Szikra, an economist, went even further and openly stated that “small-scale production – in contrast to the older conception (Lenin’s conception – L.B.) – does not always and everywhere give birth to capitalism in a society based on private property, but only where and when this is suitable for the productive forces. In agriculture, for example, the technical revolution of our time has meant that in many advanced capitalist countries small-scale production has just pushed back capitalism. There has been a significant reduction in outside work and an increase in the proportion of the owner’s own work, with small family-based farms again dominating much of agriculture.”<sup>7</sup> There are of course many components to this process, in addition to the revolution in small machines: rehabilitation of the village and the natural way of life, attracting a clean environment, preserving a “family base”, perhaps providing a minimum subsistence, etc.; for us, the most important aspect of all: the impact on property relations.

The undeniable results of small-scale agricultural production have played an important role in the licensing and rapid expansion of socially and privately owned small businesses in industry, commerce and services. Some have also referred to the new forms as “the backyard of industry” and indeed some of the same reasons as in agriculture at the time were involved in their authorisation: to create opportunities

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5 Veres, P. (1948) *A paraszti jövőndő*. Budapest: Sarló Kiadó, p. 32 and pp. 110-111.

6 Palánkai, T. (1984) ‘Tulajdon, gazdálkodás, szervezeti rendszer’, *Közgazdasági Szemle*, 31(4), pp. 446–448.

7 Falusné Szikra, K. (1986) *A kistulajdon helyzete és jövője*. Budapest: Közgazdasági és Jogi Könyvkiadó, p. 250. footnote 53.

for more efficient work and higher incomes; to take over activities that were loss-making in the large-scale sector, to create the small-scale background that was missing in the over-centralised state and cooperative sector; to meet the growing needs of the population and to provide better quality, etc. In fact, the 1985 Party Congress, perhaps in order to “explain” or accept the greater than expected success of small enterprises, did not fail to stress that “the majority of auxiliary and complementary economic activities, small enterprises and economic working communities are gradually being integrated into the system of socialist management, contributing to the results of the enterprises.”<sup>8</sup> Since the party-state had no other choice, this is not surprising, but rather that small businesses flourished in the “socialist enclosure” just as they had in the shadow of the large organisations of the most advanced capitalist countries, only perhaps in greater numbers and in more varied forms, and more resourcefully in less favourable conditions. Including small-scale agriculture, by the end of 1984 it was estimated that between 70 and 80% of workers, 95% of agricultural manual workers, 30 to 35% of the intellectuals and 40 to 50% of pensioners were employed in the various sectors of the second economy, and that this sector alone accounted for one fifth of national income and economic growth.<sup>9</sup> It is not possible here to describe the characteristics and evolution of each form, but a brief reference is made to the socialist property system and its impact on each form of property.

Small-scale industry and private trade, the two surviving types of private property, were also given the opportunity to *lease* state-owned and cooperatively owned parts of plants (industrial and service departments), as well as commercial and catering outlets, and other forms of contractual cooperation without strings attached. This created a mixture of social and private means of production and assets, a peculiarly socialist mixed ownership, which was unthinkable for decades. The same mixing has resulted in contractual forms of operation in relation to social property and the private property of the operators.

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8 'A Magyar Szocialista Munkáspárt XIII. Kongresszusa a gazdasági életéről' (1985) *Közgazdasági Szemle*, 32(6), p. 668.

9 Markó, I. (1986) *A kisgazdaságok hazánkban*. [Budapest]: Kossuth Könyvkiadó, p. 15.

Such “investment opportunities” for private and personal property in public and cooperative property can be seen as a significant step towards sector-neutral company law. Another important step in the same direction has been the emergence and mass diffusion of small group enterprises. This was made possible by the revival of an ancient private law institution, the civil law partnership. The fate of the civil law partnership in socialism deserves a separate study, since it was latent, present under the surface in all market-like reforms of the organisational or contractual system, in practice it always preceded the socialist codification of the law on associations, but its real vitality could only unfold from 1982, in the “heyday” of socialist forms of small business. Even in 1981, the jurist András Sajó clearly perceived the unworthy position of the civil law partnership when he referred to it as a “conceptual crypt” which equally covered “the community of life, the music band Omega and the Bartók string quartet.”<sup>10</sup> A few years later, reformist lawyers István Csillag and László Lengyel had a different opinion: “If it was true of Russian critical realism that all its great authors came out of ‘Gogol’s Overcoat’, then this abundance of possibilities is also characteristic of the provisions of the Civil Code, which came into force in 1960, on civil law partnership. This type of contract, as one of the first forms of trade, has always been suitable for the creation of autonomous partnerships.<sup>11</sup> Even then, the legislature’s approach was characterised by the fact that it made the limited existence of the civil law partnership for decades under this name almost impossible by discriminatory tax legislation, while at the same time it multiplied like a mushroom under its socialist name as an economic working community. (It is characteristic, for example, that in the Soviet Union not only the terms “civil” and “partnership” were avoided even in the 1980s, but not even the adjective “economic” was used: only “individual labour activity” was allowed, within a very narrow range. Other similar “Newspeak” expressions can be found in Orwell.) Independent economic working communities were initially formed with

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10 Sajó, A. (1981) ‘Polgári jogunk nehézségeiről, jogszociológiai nézőpontból’, *Állam- és Jogtudomány*, 24(2), p. 281.

11 Csillag, I., Lengyel, L. (1985) *Vállalkozás, állam, társadalom*. Budapest: Közgazdasági és Jogi Könyvkiadó, p. 228.

minimal capital, more for the pooling of “intellectual capital” (e.g. design offices), but this was less due to a lack of personal capital than to a routine caution. However, for the successful ones, the growth of corporate wealth – i.e. private property – was not lost, and soon the question arose: “what to do with the small businesses that have grown large?”<sup>12</sup> At the time, even István Siklaky, who asked the question, recommended social ownership, but in return for the business being handed over to the socialist sector, the small entrepreneur would have received an annuity on the capital value of the business, through the introduction of an “annuity coupon”. In order to preserve the personal participation and freedom of action of the former owner, he proposed the socialist enterprise model of Tibor Liska, so that the entrepreneur would continue to run the business as a personal social owner. (He disapproved of becoming a cooperation, but did not want to forbid it.) Falusné was also of the opinion that “the private ownership of medium-sized or even large companies, whether individual or corporate, is totally incompatible with our social order”, but she also considered the return of private property to the economy to be so socially important and beneficial that she warned that “the transition should in no way be some kind of forced nationalisation or ‘cooperativisation’, but a solution that also provides benefits for the former small owner. First and foremost, the opportunity to develop their knowledge and skills to a higher level, but also financial compensation.” She also did not recommend a specific size limit, only that “if it reaches a critical limit, its ownership form will have to change. Here we should think of something like the transformation of a private enterprise into a group form of small ownership, or its integration into or association with a large enterprise, e.g. its transformation into an intra-corporate economic working group or a small cooperative. In this case, the new collective owner would provide for the compensation of the former owner and the remuneration of the transferred capital.”<sup>13</sup> From the proposals, however, it seems that Falusné considered a small enterprise of about ten to be the “critical limit”, which was at the time legally allowed again

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12 Siklaky, I. (1985) ‘Mi legyen a nagyra nőtt kisvállalkozásokkal?’, *Tervegazdasági Fórum*, 1(2), pp. 114–115.

13 Falusné Szikra, K. (1986) p. 174. and pp. 252–253.

in small industry. However, the small entrepreneurs themselves were not at all keen on a change of ownership, especially in the direction of nationalisation. Therefore, they either stayed within the 30-strong limit of the economic working group (self-limitation) or became a small cooperative. This change in form was not dangerous for them because the small cooperative form introduced in 1981 was a true cooperative, essentially a co-operative private ownership of members, as opposed to the group-organisational ownership of large cooperatives, which by then had become completely rigid and impersonalized. The most striking difference was the *ability to divide* assets in the event of the dissolution of a small cooperative. Legal, especially financial, regulation, which was even less able to break the shackles of “socialisation” than scientific thinking, attempted to regulate the assets of small co-operatives on the model of large cooperatives, which provoked a storm of protest and opposition. The best soon reached the 100-person mark and their wealth grew at an astonishing rate not seen in the socialist sector for a long time. Their needs for change of scale and ownership, like those of small industry, private trade and businesses that outgrew the narrow confines of the economic working community, were finally met by the 1988 Companies Act.

Mention should also be made of the role of enterprise economic working groups and cooperative sectoral groups in the property system. Despite the fact that these forms of enterprise were created and operated as “internal enterprises”, not on their own property basis, but within the framework of the two major forms of social property, state and cooperative ownership, they contributed to the change in the socialist property system as a whole at least as much as traditional private sector enterprises. These, although they have operated with much more controversy, obstacles, disputes and regulatory rigidities due to their organisational integration, have demonstrated all the advantages of the group small business enterprise, operating under civil law autonomy, in market, contractual relations, as well as the other forms based on private ownership. However, in the case of the enterprise economic working group and the cooperative section, performance-based selection, organisation, disciplined and intensive work, thrift, greater efficiency and income-generating capacity have already been triggered by this relatively autonomous separation, which can

hardly be called quasi-ownership. However, precisely because of their “internal” nature, they have highlighted very sharply the lack of the same advantages in terms of parent companies and parent co-operatives, state and co-operative ownership. Despite a campaign to transfer the benefits and values of “second job” internal enterprises to full-time, company-wide management, companies by definition proved to be incapable of doing so. The operational (ownership) shortcomings of state ownership – and of cooperative ownership modelled on it – became increasingly apparent.

The same can be said, in summary, about the second economy as a whole in relation to the first economy. The very existence of the second economy – its emergence, its stubbornness, its expansion and consolidation – is a striking proof of society’s rejection of the first economy on the one hand, and its acceptance of a market economy based on private property on the other. After the years of harsh dictatorship and the foundations of socialism were laid, the process began by salvaging the remnants of a shattered private economy, with farming continuing on “pocket-book” sized backyard plots rather than narrow “belt parcels”. In the supposedly successful “sharecropping” campaign of the 1960s, peasants received a third of the value of their own labour on “their” land – but they were drawn in by the sheer necessity of subsistence and the proximity of their own property, with the possibility of reclaiming it. The share of new value added was similar or even worse in other sectors of the economy. Despite all the strict threats and sanctions to meet real needs, there was black labour (moonlighting, dabbling) both during and beyond the main working hours. Shortages in the supply to the public, first in quantity and then in quality, have been increasingly made up for by the second economy. After self-sufficiency, commodity production became the dominant feature, and capital accumulation was needed to expand it. The second economy offered more chances to achieve and maintain an acceptable standard of living, but the additional investment – in assets and labour – required more stable legal positions and organisational forms. Because of the inertia of the state economy, the authorities have always given in under duress, always belatedly and reluctantly. In the end, in order to save itself, it tried the impossible, to “integrate” the private sector into the socialist sector, or at least to adopt its methods. Instead, the vast

majority of society began to treat the socialist sector as secondary to the positions they had already built up in the second economy, treating the main job they retained there as a guarantee of a living wage and social benefits. Professor Elemér Hankiss, a sociologist and political scientist, spoke as early as in 1984 not only of a second economy, but also of a second society, which was emerging in all spheres outside the economy.<sup>14</sup> He also points out that, unlike the other spheres of society, the second economy, by being legalised, albeit by force, has become organically integrated with the first economy. But this is the point that turned the tide. The “social performance” of the second economy showed an indisputable superiority over the first. The “integration” had an unintended result, the walls of the “socialist enclosure” came down, and the market conditions of bourgeois property started to ferment socialist property. Society, with the weapon of private property and the second economy that grew out of it, defeated the first economy, which was huge in size, by not confronting it, not fighting it, not destroying it, but competing with it, surrounding it, supplementing it, carving itself into its gaps, building and enriching it; if it did the same thing, it did it much better. Promising social freedom, it provided the individual with directly tangible, if not total, freedom. The other promised prosperity, but this one created it. The other promised security, this one provided it. However, even if it was a peaceful struggle, it was not without sacrifice, as our “struggles for freedom” usually are. This explains why the assessment of second economy was characterised by a mixture of voices of doubt, compassion and appreciation. “Would this duality really be freedom?” asked István Kemény, and then he replied, “Rather, it would be a struggle for freedom. A battle fought in particularly difficult conditions. First of all, working 40 hours in the formal economy and 20–30 hours in the hidden economy means working 60–70 hours a week. But anyone who works that much is not a free person. He or she is a prisoner. A slave to work.”<sup>15</sup> It is interesting that Tibor Liska consistently described the full-time state

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14 Hankiss, E. (1984) ‘“Másodiktársadalom”? Kísérlet egy fogalom meghatározására és egy valóságtartalom leírására’, *Valóság*, 27(11), pp. 25–44.

15 Quoted by Lengyel, L. (1989) *Végkifejlet*. Budapest: Közgazdasági és Jogi Könyvkiadó, pp. 74–75.



employment relationship as “wage slavery” in which man has less capital value or even property value than “his ancient predecessor who was a talking tool for sale.”<sup>16</sup> In this double slavery, in the excesses of the state and self-exploitation, very many people have used up their life energy in half a lifetime. Iván Szelényi, continuing his motto, says of them that “the real heroes of the fight against communism are these anonymous people who sacrificed their lives not in pursuit of great political ideals, but in the struggle for decent life opportunities and a somewhat greater autonomy. They didn’t die on the gallows or in prison, but paid the price of 12–16 hour working days at the age of 50, from heart thrombosis, liver or lung cancer. The ‘Socialist entrepreneurs’ wanted to erect a monument to them.”<sup>17</sup> More optimistically, the benefits were emphasised by economist Sándor Kopátsy, who highlighted the importance of the opportunity to change lifestyle. “As much as it is obvious that those who earn more spend more, the correlation between those who want to spend more and those who want to spend more is lost.” He therefore saw the second economy as a school for shaping consciousness, “which can correct the distortions of consciousness that are the consequence of an era in which we promised that they would not have to take care of themselves because that was the task of society, and the great advantage of socialism is that they can work less and less and more comfortably, because they can catch up with the economically more advanced countries.”<sup>18</sup> The second economy proves that this society did not fall for the perverse doctrine, but was well aware of the elementary duty of every man to help himself, to create for himself and his family material security and prosperity through his own work and its results (property). That is to say, he behaved as European citizens have behaved for centuries, and about which Adam Smith wrote that “the constant unanimous effort of the people to improve their condition, which is the chief source of public, national, and individual well-being, is generally a force powerful

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16 Liska, T. (1990) ‘A munkapiaci reform vállalkozási koncepciójának kiterjesztési lehetőségei a keleti átalakulásban’, *Valóság*, 33(11), p. 5.

17 Szelényi, I. (1990) ‘Új osztály, állam, politika’, *Replika*, 1(2), p. 80.

18 Kopátsy, S. (1986) ‘A legfőbb érték az ember’, *Tervgazdasági Fórum*, 2(3), pp. 107–108.

enough to secure the natural course of economic development even against the most capricious errors of government and the greatest defects of administration.”<sup>19</sup> The situation of the citizens of the socialist countries was even more serious, since they had to bear not only the burden of the government’s recklessness and its serious mistakes in the use of wealth, but also the meaningless limits of their consumption efforts and personal property. The Hungarian second economy proved that the “unanimous and constant effort” of the people was indeed *a powerful force* and could indeed impose the order of *natural economic development*. In other words, in the rigid, hierarchical, monopoly- and privilege-laden socialist property system, *bourgeois property* (not yet private property!) developed through the efforts of the people just as much as it had in the feudal property system of the time, and it also broke it up. Marx qualified capitalist private property as the negation of feudal property, and the social property of the means of production as the negation of capitalist private property (the negation of negation). How would he now classify the *second property* that has grown out of the second economy on the soil of socialist property? As a denial of the denial of denial? Leaving the puzzle to the philosophers, we see that *this* second property and *that* civil property are one and the same: the purpose of the individual’s self-realisation, his freedom, and at the same time his material, property basis. In this sense, bourgeois property is a negation not only of feudal property, but of *any* form of property and mode of production that oppresses the individual as owner, as a person seeking autonomy. And the conclusion follows naturally: the suppression of individuality, the suppression of the desire and aspirations for property and freedom, is an essential feature of both feudal and socialist property. And for the same reason, the fall of both was inevitable.

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19 Smith, A. (1959) *A nemzetek gazdasága, e gazdaság természetének és okainak vizsgálata*. Budapest: Akadémiai Kiadó, p. 383.

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# Socialisation and Privatisation of Property<sup>1</sup>

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## A SPECTRE IS HAUNTING CENTRAL AND EASTERN EUROPE, THE SPECTRE OF 18TH-19TH CENTURY SAVAGE CAPITALISM!

I want to use this paraphrase of the famous opening line of the Communist Manifesto to illustrate the changes that took place in our region in the last decade of the 20th century. In a world that has been turned upside down – and, in fact, turned upside down several times in the 20th century – it is not easy to find one’s way around and to see clearly. Behind the ideological war of the bipolar world system, fought sometimes militarily and sometimes politically, was essentially the competition between the *planned economy based on socialised property* and the *market economy based on private property*. This contest is now over, and – as Ákos Navratil<sup>2</sup> predicted as early as 1905 – *history has proven in favour of private property*. (At least according to the current state of the “match” – seen in historical perspective!) The question is, however, whether this private property is the same as it was half a century ago, or a century ago? Or was it partly as a result of the organic internal development of Western societies, and partly as a result of the competition with socialism, and as a result of this competition, that it itself was significantly transformed, democratised, “socialised”, so to speak? In addition, the question is whether this was the only major contest between public and private

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<sup>1</sup> This paper is an edited version of the habilitation lecture given on 22 March 1999. Published: *Liber amicorum : studia L. Vékás dedicata : ünnepi dolgozatok Vékás Lajos hatvanadik születésnapjára és egyetemi oktatói működésének harmincötödik évfordulójára* (1990). Budapest: ELTE ÁJK Polgári Jogi Tanszék, pp. 177–194.

<sup>2</sup> Navratil, Á. (1905) *A gazdasági élet és a jogi rend: adalék a másodlagos gazdasági jelenségek elméletéhez*. Budapest: Pallas Nyomda.

property that has now been finally decided, or whether it was just one round of a historic contest that has been preceded by several rounds and will be followed by others? The competition between socialised property and private property in world systems has naturally taken place within the social, economic and legal systems of individual countries. Thus, looking back at the history of Hungary over the last half century, from the perspective of our subject, we can say that it is “*the history of the struggle against and for private property*”, in other words, “*the history of the struggle for the socialisation and then the privatisation of property*”.

The fundamental dilemma of the socialisation and privatisation of property will, of course, be pondered by a horde of researchers around the world, as it has been in the past, in the future. Here and now, in this brief discussion, I cannot do more than outline the trajectory of property development over less than three centuries, its main stages, its deviations from and returns to the trend line, and possibly its likely future direction of development. To develop this line of thought in more detail naturally requires years of research.

The European Enlightenment, natural philosophy and natural law began a process in which first *private property* and then the *social property* that denied it were re-politicised, *ideologised*, and even mystified, ascribing to them a magical power. The starting point for the whole process is the *civilisation* that followed the great geographical discoveries, colonialism and the development of world trade, and the development and consolidation of *bourgeois property* in the more advanced feudal states of Western Europe. This social stratum and this form of property could not be integrated into the feudal social and property structure that had prevailed until then. In fact, the bourgeoisie, with the support of other oppressed social strata, ruthlessly, and often in bloody revolutions and civil wars, smashed the feudal social and property system and created a new socio-economic order that gave them *great freedom*, especially in the disposal of their property. Behind this well-known fact, it is worth examining the reason for the consistency, determination and sometimes murderous fury of the bourgeoisie (and its allies). This reason is to be found in the common essential feature of feudal, and even previous slave-holding societies. And this reason is nothing other

than a system of *personal dependence, subordination* and *vulnerability*. You could say it is a general state of servitude. The defence of *personal liberty* and *personal property* is thus the elemental force behind the bourgeois revolutions. István Bibó<sup>3</sup> called this revolution “*the only revolution of human dignity*”, which must take place at some point in any period of social or economic development in order to speak of democracy. The demand for personal freedom was naturally most strongly expressed in the lowest, most oppressed, but also the largest strata of society – the serfs, the bourgeoisie and the ever-increasing number of workers – but it also existed, with varying degrees of intensity, in the middle and higher levels of the hierarchy (the Hungarian lower and middle nobility and the more enlightened representatives of the aristocracy are examples). This *need for personal freedom* also extended to property relations, which were also hierarchical, subject to public and private law constraints. Under the new social conditions, the feudal system of property could no longer provide either the security of existence of the individual, the security of farming, or the legal security that was indispensable for these. The *liberation of property* and the *liberation of the citizen, of man*, were thus formulated in such a close, inseparable unity that for most authors they were synonymous, they meant the same thing. Indeed, since many great thinkers identified freedom with life (recognizing only free life as “human” life) and free life with the ultimate goal of all human beings, human happiness, the concept of property was often used as a synonym for life and happiness. For example, according to Locke<sup>4</sup>: “(...) their lives, liberties and estates, which I call by the general name, property”. According to Diderot<sup>5</sup>: “Human nature and property strive towards the same goal: to liberate man; and freedom leads the individual and society to the greatest happiness imaginable”. In economics, a new science more complex than

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3 Bibó, I. (1986) ‘Az európai társadalomfejlődés értelme’ in Bibó, I. *Válogatott tanulmányok. 3. kötet 1971-1979*. Budapest: Magvető Kiadó, pp. 5–123.

4 Locke, J. (1986) *Értekezés a polgári kormányzat igazi eredetéről, hatásköréről és céljáról*. Budapest: Gondolat Kiadó.

5 Diderot, D. (1975) ‘Egy filozófus irattárcájából kiszökött töredékek. (1772)’ in Ludassy, M. (ed.) *A francia felvilágosodás morálfilozófiája – válogatás*. Budapest: Gondolat Kiadó.

philosophy, Adam Smith<sup>6</sup> put it this way: “The property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable”.

The great ideas of the Enlightenment were formulated as the most important tenets of *constitutions and civil codes*, but they also underwent a not insignificant *change*. *Articles I and II of the Declaration of the Rights of Man and of the Citizen* of the French Civil Revolution still faithfully reflect the most important requirements and achievements of civilisation: “Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.” “The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.” And *Article XVII* adds, in order to protect property: “Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid.” There is a clear difference between the wording at the beginning of the declaration, which is based on natural law, and the wording at the end, which is based on positive law. At the centre of the former was still (in accordance with the ideas of the Enlightenment and natural law thinking) the real, living human being, in his physical and spiritual unity, with his desire and aspiration for freedom and property, his need for democracy and for material and legal security. In a system of *free property – free citizen – free society*, which builds on and mutually presupposes each other, there is no difference between man and man, citizen and citizen, and freedom presupposes *not only property but also equality*. The *equality of citizens as property owners* is indispensable for property to be able to fulfil its role as the main limit of state power and of all other (personal) powers. And as *Locke* emphasized, the main limit to power is the property of citizens, the economic and material power embodied in it. It is obvious from this that if property is concentrated in the hands of a few, especially those in power, while the masses are being dispossessed, then we can no longer speak of freedom, either for the individual without property or for society as a whole.

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6 Smith, A. (1959) *A nemzetek gazdagsága, e gazdagság természetének és okainak vizsgálata*. Budapest: Akadémiai Kiadó, p. 172.



However, this philosophical and at the same time human-centred conception of property is undergoing a *conceptual narrowing and a substantive change* as a result of its *transcription and legalisation*.

Property rights traditionally grant *full legal power* (*plena potestas*) over a specific thing, the *object of ownership*. While an essential element of this concept of property is the free provision, first of all, of the *exercise of partial rights* (possession, use, taking, alienation, encumbrance, etc.), this does not extend to man's need for freedom, happiness and well-being in all other relations. However, an even more important substantive difference is that the constitutional guarantee and legal protection of the right to property applies *only to property rights already acquired*, regardless of their subject, object, magnitude (size), method of acquisition, purpose of use, rationality, etc. This phenomenon is known as the legal abstraction of property, and conceptual generalisation and abstraction have been a characteristic feature of legal thought and regulation since ancient times. As a result, the owner, from a *human being*, becomes a person with rights, a *legal subject*, including legal persons and even the state itself, as the strongest organisational power. The infinitely varied *subject-matter* of the right to property is united in the equally abstract and neutral concept of the "thing", and *the freedom of property and of the owner consists in the free exercise of the partial rights* that constitute the content of property, the free establishment of legal relations. Here there is no longer any question of social equality of property, of equal conditions and opportunities for access to property, of equalising – at least relatively – the size of the property acquired. The great civil law codes that have served as a model to this day have faithfully reflected this narrow, legalistic conception of property. "The right of property is the most complete right to the enjoyment of goods, to the disposal of them" (Code Civil § 544). "Property is the liberty whereby a man may dispose of the substance of a thing and its uses according to his convenience, and may exclude all others from it" (Austrian Civil Code § 354). "The owner of a thing may do with it as he pleases and may exclude any interference by others" (BGB § 903). If we add to this the peculiarity of large-scale property, that it increases itself through its reproduction, and through its economic dominance it is able to

eliminate small property, we have what András Sajó<sup>7</sup>, discussing the difficulties of our civil law, called the “Matthew effect” of civil law, quoting the Evangelist: “Whoever has will be given more, and they will have an abundance. Whoever does not have, even what they have will be taken from them” (Matthew 13:12). Alongside freedom, the slogan of equality as *equality before the law* has been realised and has turned out to be not only an empty slogan, but also an increase in inequality. This was rightly mocked by Anatole France, with his oft-quoted thought: “The sublime equality of laws forbids rich and poor alike to lie under bridges, beg in the streets and steal bread.”

No wonder, then, that the masses of society deprived of property, *excluded from it, or receiving less than the necessary share of property* for freedom, life, and well-being, and of course the social scientists, immediately became aware of the difference between the *original* claims (the *dreams*, so to speak) and *reality*. It is also understandable that the social strata that have gained access to genuinely private property, and rapidly increasing private property, have been branded as thieves, liars and cheats. After all, the original ideas, slogans and declarations were still alive in the public consciousness, and although they were not implemented, they have not lost their validity. Adam Smith’s<sup>8</sup> warning that “no society can surely be flourishing or happy, of which the far greater part of the members are poor and miserable” was well known – along with many others – by the Hungarian Miklós Wes-selényi:<sup>9</sup> “Poverty bears the seeds of oppression, and impoverishment is followed by bondage.”

But bourgeois society no longer wanted to sink back into a general state of slavery! The social disadvantage, and even the growing danger, of civil property regulated as private property has thus become obvious in a very short time. Partly as a result of feudal differences of person and wealth, and thus *the transfer of personal and property dependency relations to private property*, and partly as a result of the “dog-eat-dog” nature of free competition for the *large fortunes acquired in the original*

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7 Sajó, A. (1981) ‘Polgári jogunk nehézségeiről, jogszociológiai nézőpontból’, *Állam- és Jogtudomány*, 24(2), pp. 263–283.

8 Smith, A. (1959) (fn. 6)

9 Lukácsy, S. (1988) *Nemzeti Olvasókönyv*. Budapest: Gondolat Kiadó, pp. 169–173.

*accumulation of capital, extreme property* and consequent *social inequalities* developed. Jean-Paul Marat<sup>10</sup>, when guilds were banned as early as 1791 on the grounds of economic freedom and workers were forbidden to organise to defend their interests (Le Chapelier law), said bitterly: “What have we gained by destroying the aristocracy of the nobles if we have replaced it with the aristocracy of the rich?” This question has been asked in increasing numbers, *en masse*, seeing and experiencing that birth privileges now live on as property privileges. In Bibó’s formulation, “born dominions” were replaced by born “dominions of wealth”, whereas the task was *not to change dominion*, but to *abolish* the phenomenon and the possibility of domination.

The one great revolution of human dignity was therefore *bound to continue*, but now on the ground of freedom won against the distorted private property and the rule of private owners. As István Bibó<sup>11</sup> rightly pointed out: “So it is the *second phase of a single process*”. However, he also stressed that “in the established system of freedom, there is the possibility of a second transformation, possibly *protracted but peaceful*”. But others, especially of their own age, saw it differently or were less patient.

The tamest of the thinkers who criticised and condemned the established conditions were the *utopians*<sup>12</sup>. The societies they recommended were typically based on morality, human virtues, puritan simplicity and human equality. Utopians mostly thought in terms of small human-scale communities (most often village communities), and proposed *the joint production* and *equal distribution* of the goods essential for subsistence, which, if it raised the question of property at all, meant *the joint ownership of land*. Although there is no doubt that the broad masses of the people – the peasantry, the petit bourgeoisie and the growing industrial working class – were not concerned with longing for an *ideal future*, but rather with making the present they lived in bearable for them, a future they imagined based on their own work and the security of their own property, they did identify with the

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10 Köpeczi, B. (1986): *A francia felvilágosodás*. Budapest: Gondolat Kiadó, pp. 169–173.

11 Bibó, I. (1986) See footnote 3.

12 Bibó, I. (1986) See footnote 10.

utopias at one point: this point was *the denial and rejection of the social order of the time*. And it was the same point with which the communists later identified, even though they rejected utopian social organisation programmes in all other respects.

In their manifesto, the cultivators of *so-called scientific socialism* proposed a drastic but very practical programme: the *violent* overthrow of all previous social orders and the elevation of the proletariat, the only class capable of leadership, to the status of a ruling class, i.e. the introduction of a *proletarian dictatorship*, followed by the centralisation of capital and land ownership in state hands. Not only were they deadly serious about their programme, but they also tried – in literally the same way – to deliver it. Marxism, and even more so its further developed, Leninist, Stalinist, Maoist versions, are vivid examples of how the noblest human goal becomes nothing if pursued by inhuman means. For the main reason for the failure of Marxism lies not in its content, but in its method, in the assumption underlying the method. And this is *the theory of class struggle*, and even the assumption of a continuous escalation of class struggle. The class-struggle concept of Marxism in fact incited *class hatred*, proclaimed historical revenge for the sins not only of capitalism but of all exploitative societies before it, and thus unleashed the murderous fury of slave revolts and peasant revolts on those 20th century societies in which it was able to triumph precisely because of the failure of bourgeois democratic transformation. István Bibó considered the most serious mistake of the communists to be precisely this “*deeply motivated attitude*”, which forced permanent revolution both where and when it had no realistic chance and no social justification for existence. The communists may have abolished the hated regimes of the past, but they did not abolish the hatred and the phenomenon of domination itself, but they built a type of domination that was increasingly hated by many, a *total communist dictatorship*.

Apart from the carefree and blind revolutionism, the second, and later decisive, own goal of communism was the *excessive emphasis on economic factors*, especially the almost *superstitious fear* of private property, and the consequent imposition of uncompetitive forms of social property and planned economy at any cost, even when its inoperability was already obvious. Even the most violent dictatorial

rule can be exercised for a long time if it is based on a solid economic foundation and has sufficient material strength, but if the economy weakens, its structure falls apart and the material strength runs out, the dictatorial rule that is built on it will also weaken (soften) and then fall apart.

The first striking feature of the *socialisation* of property by the communists is that it was achieved *through nationalisation*, i.e. that the *socialist state* became the *subject of* social property rights for the bulk of the means of production. Following the socialist nationalisations, a *homogenised, uniform and indivisible* state ‘property mass’ of unprecedented size and proportion emerged, which for decades weighed on the economy and society as a monolithic block. For decades, this type of state ownership has not been dismantled and regulated in a sufficiently differentiated manner, neither in terms of subject matter, substance nor content. And the reason for this rigidity is very obvious, namely the traditional, absolute-negative structure of private property rights. The state has used the traditional and abstract *structure of individual private property rights* as a legal expression of its own ownership. As a consequence, the only person – in the civil law sense – in the position of rightful owner of the property called society was the socialist state, to which all outsiders, i.e. every single member of *society*, were placed in a *position of obligation*. This obligation also traditionally implies an obligation to *recognise* ownership, *to tolerate* the exercise of rights by the owner and to *refrain* from any interference, in other words, *the exclusionary nature of* classical private property. The representation of socialized property as state property has thus turned the idea of socialisation completely *upside down: it has turned* the whole of *society not into the holder of property but into the obligor of state property*. By claiming true equality of ownership, it did *not include* individual members of society in the right to property, but on the contrary, *excluded* the whole of society. The *legalisation of social property as state property* is thus eerily similar to the *conceptual narrowing and substantive transformation* we have already seen in the ideology and legalisation of civil property as private property. But the social risks and disadvantages of the solution became even more serious. Then society was divided into a minority of owners and a majority of those without property,

and a struggle began between them – mostly fought by political and legal means, but sometimes also with weapons – for the equality of property and a fairer social distribution. In this struggle, both sides tried to use the state on their side. Now there was an equality of the dispossessed throughout society, and a gap between the state and society. More precisely, the dispossessed were now in a position of *dependence and vulnerability*, not to the landlords or the capitalists, but to the state, and society was subordinated to state power to an unprecedented extent. Marx and Engels described the capitalist state as an “ideal universal capitalist”, even though capitalist state ownership within the economy – especially in their time – was not of decisive importance. But they did not warn that the *socialist state*, as the sole owner of the means of production, would be the *real ideal universal capitalist*. This (and here too we can say the difference between dream and reality) was only realised late and only by a few, and of course their opinion could not be made public. István Bibó dared to admit that “the Marxist schema created in us an exaggerated expectation, and gave us the *illusion* that the taking of the means of production into public ownership would in itself eliminate exploitation. That is not the case. ...nationalisation is not a socialist achievement if it is done by socialists, but in the direction of a greater concentration of power. (...) The state harbours the possibility of the most intense repression, the *possibility of a fearful repression that goes many times beyond private property*.” Well, the socialist states have taken advantage of this opportunity without exception. By means of the political power acquired by force, they have also concentrated, by force, the economic power of ownership in a single hand, and have thus achieved a total power over society, including the private life of each individual, which is unprecedented in history. *Locke’s* teaching that “the great chief end of man putting themselves under government is the preservation of their property” was clearly confirmed. Where this does not exist, there is no material strength to resist power, to overthrow authoritarianism. In other words, a *person without property is not just poor, but also completely vulnerable and disenfranchised*. The socialist state has consistently endeavoured to ensure that its citizens *have no* private property, and that they are not allowed to own even the most basic consumer goods, and that they have only the

*minimum – personal – property.* Tibor Liska<sup>13</sup> openly described the restriction of wages to what is really necessary to survive as “*state wage slavery*”. The arbitrary disposal of property naturally extended beyond its diversion and centralisation. The state, ignoring the most elementary economic laws and the interests of society, *could use* its property as a true private owner, at its discretion, i.e. for *its own purposes of power, to extend and strengthen its rule*. Although the most prominent exponents of socialist property theory have made great efforts to elaborate *the inclusive nature of* socialist state ownership (e.g. in the field of workplace democracy, and later in the field of corporate autonomy), the participation of society in state ownership decisions has never been achieved. Miklós Világhy<sup>14</sup> saw well that socialist *social property and socialist democracy* are mutually conditional, inseparable concepts. But socialist democracy was democracy to exactly the same extent that state property is socialised property. With the nationalisation carried out by the methods of the state of proletarian dictatorship, the socialisation of property not only began, but was also completed. The division of social property (economic) power between the individual members of society, *autonomous individuals and autonomous organisations of* individuals, i.e. the “democratisation” of social property, and the elaboration of the legal forms for this, never took place. The decisive reason for this is that the state’s legal personality as a property right has always been able to legitimise the economic power of the state, and this has provided the material strength to maintain political power.

However, as a result of the ideologically and politically motivated, but economically and legally *irrational over-nationalisation*, state property rights and their sub-legal rights, in terms of subject, subject matter and content, have been so faded, fragmented and dispersed that we could no longer speak of property rights in the *original sense of the word*. [On this phenomenon, András Sajó<sup>15</sup> wrote that “*diffuse*

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13 Liska, T. 'A munkapiaci reform vállalkozói koncepciójának kiterjesztési lehetőségei a keleti átalakulásban', *Valóság*, 33(11), pp. 1-17.

14 Világhy, M. (1978) *Gazdaságpolitika és polgári jog*. Budapest: Akadémiai Kiadó.

15 Sajó, A. (1989) 'Diffúz jogosultságok ügynököt keresnek, avagy a szocialista gazdaságban működő cégnek a tulajdoni jogosultságok szempontjából való elemzése', *Állam- és Jogtudomány*, 24(2), pp. 263-283.

*entitlements* are looking for an agent”, and János Kornai<sup>16</sup> wrote that “state property *has become 100% impersonal*”]. This was manifested in particular in the extreme difficulty of taking ownership decisions, the total lack of responsibility for decisions, the inability to adapt and innovate, the disappearance of a strong ownership interest in the preservation and accumulation of wealth, wastefulness and, at the same time, the permanent lack of investment assets, etc. To sum up, we can say that state property became legally *unmanageable (unreformable)* in terms of subject matter, object and content, and disintegrated of its own accord, with the result that the political power that was built upon it also disintegrated.

In the whole process, of course, *private property* played a huge role as an “internal competitor” to state property, which was in the process of being *reborn and strengthened*. The few remaining fragments of private property that were almost completely eradicated were kept alive for the sake of certain public needs or for political tactics. These included, until the mid-1960s, some small-scale repair and maintenance services, private trade in underserved areas, and backyard farming in agriculture. The latter was the starting point for the growth of private property from 1967 onwards, with the authorisation of personal land ownership and smallholdings (as an element of the new economic mechanism). The income earned here supplemented the unrealistically low incomes from producer cooperatives, improved the food supply in villages and towns through commodity production, involved women and old people in production, relieved the burden on large socialist farms in the field of labour-intensive, inefficient crops, thus increasing their results and success, etc. Nearly half of the population was involved in backyard and auxiliary farms, which produced *33.5% of all agricultural products on 12% of the cultivated land*. Although the state has also “exploited” this economic sector through a system of fixed price public procurement, its undeniable achievements have played an important role in the licensing and rapid expansion of *small businesses* in industry, commerce and services. From 1982 onwards, *civil law partnerships, economic cooperatives, small cooperatives, and*

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16 Kornai, J. (1989) *Indulatos röpirat a gazdasági átmenet ügyében*. Budapest: HVG Rt.



within the socialist sector (as a specific mixture of social ownership and private ownership), the *enterprise economic cooperatives* and co-operative *specialised groups* proliferated like mushrooms, and the system of *contract operation, shop leasing and plant leasing* spread rapidly, especially in the commercial and service sectors. The reasons for and results of small enterprises were the same as in agriculture: they created the possibility of more efficient work and higher incomes; they also generated profits in activities that had previously been loss-making on a large scale; they created the small-scale backdrop for the over-centralised state and cooperative sector; they expanded the choice and improved the quality of the supply of public needs, etc.<sup>17</sup> By the mid-1980s, it was estimated that 70–80% of the working class, 95% of agricultural manual workers, 30–35% of intellectuals and 40–50% of pensioners worked in the second economy, which accounted for 20% of national income and was the sole source of economic growth. In 1985–86, prominent authors were already discussed “what to do with small businesses that have grown big”<sup>18</sup>? The *second economy*, which at first had only filled the gaps in the socialist economy, was now infiltrating and gradually encircling the first economy. The underlying *second property*, private property, gradually grew stronger, became more and more widespread and, with its undeniable superiority, enforced more and more *political and legal concessions* in order to grow. It has always been clear that the nostalgic desire of former private owners to regain their lost property has never ceased. However, with the emergence, persistence and growth of the second economy, with the social sacrifice for the new private property, it also became clear that the reformed social property and the planned economy based on it were finally rejected by the whole society, which opted instead for private property and market economy based on its own work – and with it its own free choice, but also its own responsibility and risk. This choice preceded by years – and necessarily led to – the first free elections in the political sense. More specifically, in

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17 Lenkovics, B. (1991) *Tulajdonjogi rendszerváltozás. Kandidátusi értekezés.* Kézirat. pp. 168–181.

18 Falusné Szikra, K. (1986) *A kistulajdon helyzete és jövője.* Budapest: Közgazdasági és Jogi Könyvkiadó.

terms of property rights, this meant that society in the *second economy* had already begun to *privatise property* that had been *socialised* before when there was no sign of this at the level of politics and ideology. In *terms of property theory*, it was a *revolution* and a revolution with more and greater human sacrifice than the later political regime change. Working 40 hours a week in the wage exploiting formal economy, and then another 40 hours a week in the self-exploiting second economy, many people have paid with their health and even their lives. For my part, I share the opinion of Iván Szelényi<sup>19</sup>, who says that “the real heroes of the fight against communism are these anonymous people who sacrificed their lives not in pursuit of great political ideals, but in the struggle for decent life opportunities and a somewhat greater autonomy. They didn’t die on the gallows or in prison, but paid the price of 12-16 hour working days...”. Within the socialist system of property, socialised by force, the second economy has thus developed real bourgeois property just as much as it did in the feudal system of property, and it has also stretched it. Therefore, we can now say that bourgeois property is a negation not only of feudal property, but also of any other form of property and mode of production which oppresses man in his quest for material independence and personal freedom.

The *denial of social property and the affirmation of civil property*, however, did not provide a concrete answer to the equally historically important question of what should be the fate of the still *legally* existing, unitary and indivisible state property and the equally not insignificant cooperative property. Both leading politicians and academics have often said that the privatisation of this huge amount of wealth has never been done anywhere in history, so there is no example or model to follow. Perhaps this, however, explains the imaginative and improvisational character of scientific thinking, which has led to an almost infinite number of variations on the transformation of social property, especially by the young reformist-economist generation. In response to such proposals, János Kornai said that “this is just a special *Capital game*”, because it is not children playing with play money, but grown-up people playing with state money. However, from corporate self-ownership, from the asset management centres known as the

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19 Szelényi, I. (1990) ‘Új osztály, állam, politika’, *Replika*, 1(2), pp. 72-83.

“mailbox company” and from the cross-ownership organisational variations of the broken-down large corporations, a very real ownership structure – what David Stark<sup>20</sup> calls “*recombinant*” – has emerged, which, on the one hand, became completely opaque and uncontrollable by the state as owner, and, on the other hand, already at the stage of so-called spontaneous privatisation, predetermined the whole process of subsequent privatisation, which was supposed to be supervised and controlled by the state. First of all during the phase of spontaneous privatisation (between 1986 and 1990), but also afterwards, the personal network of the so-called *positional capital*, the state, party and corporate leaders, including their relations with their Western capitalist partners and domestic capital owners, was of enormous importance. This positional capital-owning layer became the real winners of the Hungarian privatisation process and constitutes – perhaps we can now say – the *new Hungarian national bourgeoisie*. We do not have precise data on their number, the size of their holdings, their share in total national wealth or even their share in total working capital. However, it is clear that, contrary to the noble objective of the 1990 *National Renewal Programme*<sup>21</sup>, broad sections of society have either not become property owners at all through privatisation, or have not acquired the level of property that could provide a solid material basis and guarantee for citizenship and civil liberty. The question of property therefore remained a fundamental issue, and, after the consolidation of the new political system, the most important one. In other words, *we are roughly* where truly civilized societies were *a hundred or two hundred years ago*: at the problem of *correcting the* distorted private property structure, of a fairer social distribution and *equalisation* – i.e. a certain degree of *socialisation* – of property rights! Nevertheless, the privatisation process as a whole, with its successes and failures, both at home and abroad, is said to be successful and efficient. At least in relation to the scale and complexity of the task, and without any

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20 Stark, D. (1994b) 'Új módon összekapcsolódott régi rendszerelemek: rekombináns tulajdon a kelet-európai kapitalizmusban II.', *Közgazdasági Szemle*. 41(12), pp. 1053-1069.

21 Magyar Köztársaság Kormánya (1990) *A nemzeti megújulás programja: A Köztársaság első három éve*. Budapest: PLKV.

historical benchmark. Naturally, the losers of privatisation have a very different view. The overwhelming majority of society in the second economy has already expressed a strong desire for private property, a sense of the responsibility that private property entails and a willingness to make huge sacrifices for it. Hungarian privatisation may have been successful in some respects, but its most serious flaw is that it has failed to satisfy the desire for ownership of broad sections of society, and thus failed to harness the enormous human resources and reserves that lay in the efforts and sacrifices of those same groups. Of course, history always has time to fill in the gaps and correct the mistakes. The task now remains to establish a *property structure* that will ensure long-term social peace and *balanced* economic and social development.

Even if there were no examples of the dismantling (privatisation) of the over-nationalised (socialised) property structure, there are examples of a socially just and economically viable property structure, which can serve as a model. Such a model is nowadays the property system of the most developed Western countries.

It is well known that, in contrast to the revolutionary nature of Marxism, more moderate tendencies within the workers' movement had already been gaining strength since the mid-19th century, which tried to improve their situation by legal means on the basis of the freedom they had won. From our point of view, the essential common feature of these trends is that they did not demand the confiscation of private property and the abolition of the private property regime, their aim was not the socialisation of property, but "only" a fairer and more equitable distribution of income. The political and economic struggle at first was naturally for a more equitable distribution of the income resulting from the combination of capital and labour property, or, more simply, to curb unscrupulous exploitation and profiteering. However, by the end of the century, the unequal struggle had escalated social tensions to the point where they became unbearable not only for the broad masses, but also a source of resentment and rejection among the ruling classes and the political-power elite. Just as the ideas of the Enlightenment were born and spread in the declining period of feudalism, and natural law thought became a force that shaped society, so now, as a sign of the crisis and decline of capitalism, *social ideas* have spread

and social *legislation* has reshaped society. An important feature of this, however, was that it did not dismantle the private property foundations of the economy and society, and sought to achieve its goals *not by equalising property but by relatively equalising incomes*, and by protecting and supporting the weak and the destitute.

In this process, *Pope Leo XIII's* encyclical "*Rerum Novarum*"<sup>22</sup> played a major role, which not only had a formative power in its time (1891), but also has an impact today through the Christian-democratic-Christian-social political currents (hence its name as the "magna charta" of Catholic social teaching). The Pope, criticising capitalists with a harshness that puts Marxists to shame, stressed that: "If we turn not to things external and material, the *first thing* of all to secure is to save unfortunate working people from the cruelty of men of greed, who use human beings as mere instruments for money-making." At the same time, it rejects in the strongest terms the class struggle and the socialist proposal to abolish private property, which would only disintegrate society and, by removing the incentive which stimulates the talent and industry of individuals, would only lead to an equality of misery. It demanded for the workers not only the mere maintenance of subsistence, but also the possibility of accumulation and thus of rising to citizenship, by means of an income and, through it, a share in private property. The advocates of *Rerum Novarum*, and later of social ideas and social legislation, thus partly reinforced the original foundations of free private property-free citizen-free society, but on the other hand – looking ahead to the 20th century – they tried to *complete and repair* its fragmenting superstructural elements, which were threatening to collapse. While firmly rejecting the Marxist illusion of full equality, they demanded that the state reduce intolerable inequality to some extent.

However, the idea of the "*social state*", which developed at the turn of the 19th and 20th centuries, was already beset with serious problems at the moment of its birth. The first of these problems is that "certain degree", the drawing of the appropriate line between an *already fair* equalisation and an inequality that *still* provides *sufficient*

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22 Leó XIII (1891) *A társadalom keresztény alapjai: Rerum novarum: XIII. Leó pápa körlevele a munkások helyzetéről*. Budapest: KDNP.

incentive. The other problem is the question of method: how the state should meet the expectations placed on it, how far it can go as a public power and a body of force in its choice of methods. While social legislation has progressively and increasingly advanced, especially in the fields of labour law, competition law and certain social security benefits, no one had a ready recipe for the limits of state intervention, i.e. the boundaries of its extent and methods. Concerns were of course voiced by those who had long been familiar with the nature of state power, and the proposals of Rerum Novarum concerning the role of the state were criticised even from within the church. Those who rejected state intervention feared that if the state was given free rein, it would sooner or later take over everything, stifle all individual initiative, restrict even Christian charity for its own charitable ends, and create a total power structure in which individual freedom would no longer exist. But the voices of dissent were soon drowned out by the desire of the masses for state care on the one hand, and the state's unbridled desire for unlimited power on the other. The process of fascistisation that has taken place, more or less, throughout Europe can be explained by a variety of direct causes. From our point of view, the most important feature of the whole process is that in this period of organic European social development without socialist revolution, *there was no need to abolish private property*, total nationalisation of all private property was unnecessary, the *total state* was able to socialise formally preserved private property without it. In the *Italian corporatist system*<sup>23</sup>, *corporate property* was created and managed by a parity council with representatives of employers, employees and the state. Although corporate ownership in principle achieved the integrated unity of the company, the trade union and the state, in practice both capital and labour ownership were dominated by the state. *Mussolini* was as proud to declare, as the Communist Party General Secretaries later did in their congress reports, that: "Three quarters of industry and agriculture in the Italian economy is in the hands of the state!" *Hitler* could have said the same without a corporatist system, since Germany had the strongest tradition of state involvement in

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23 Csillag, I., Lengyel, L. (1985) *Vállalkozás, állam, társadalom*. Budapest: Közgazdasági és Jogi Könyvkiadó.

Europe. Scholars of German fascism<sup>24</sup> agree that “... the author of *Mein Kampf* did not have to say anything that had not already been said, not by people on the verge of lunatic extremism, but by the eminent intellectuals of the time.” In his work *Der geschlossene Handelsstaat* (The Closed Commercial State), Johan Gotlieb *Fichte* already in 1800 contradicted everything that Adam Smith had taught less than a quarter of a century earlier. “Only the state can unite the indefinite quantity of men into a unified whole, the totality”, he wrote in his work, which was republished in 1920. At the time of the First World War, Friedrich *Neumann*, the left-liberal developer of the ambitious concept of *Mitteleuropa* (Central Europe), had already written: “The closed commercial state, Fichte’s bold dream, was, thanks to fate and popular aspiration, self-fulfilled during the war. ...We need a *controlled economy* based on the experience of war..., the German economy is developing *state socialism* or *national socialism*, the ‘controlled economy’... It is our freedom and our expression.” At the same time, *Oswald Spengler’s The Decline of the West* (published in 1917) was a reconstruction of 19th century views: “The Prussian socialist state is the people as a whole, and in contrast to its absolute sovereignty, both the bourgeoisie and the proletariat are only parts, minorities, which must serve the community. Every worker and every entrepreneur is ultimately a bureaucrat.” Well, this is the intellectual context in which the historic *Weimar Constitution’s* thesis on the social bondage of property was formulated: “Property obliges (Das Eigentum verpflichtet). Its use must also serve the welfare of the community.” (§ 153) It was not difficult to “develop” this constitutional provision, which could also be seen as the culmination of social legislation, in a national socialist direction. *Hedemann* went so far as to classify private property as “service property”, while *Würdinger* considered property rights to be nothing more than “a resource given to an individual for the purpose of his public interest activities”.<sup>25</sup> *Private property* has thus been transformed from a substantive right under private law into an obligation

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24 Berend T., I. (1983) *Válságos évtizedek. Közép- és Kelet-Európa a két világháború között*. Budapest: Gondolat Kiadó, pp. 179–181.

25 Szladits, K. (1937) *A tulajdonjog újabb módosulásai. Különlenyomat*. Budapest: Magyar Királyi Állami Nyomda.

*under public law*, and the market economy has been transformed from the scope of private law and commercial law into the scope of a fully publicised *economic law*. To sum up, although the fascist totalitarian dictatorships – unlike the communist totalitarian dictatorships – did not in principle appropriate private property, they did in practice *empty it and overburden it* with public law obligations to such an extent that they too achieved the total socialisation of property.

However, the *formal difference* between the two types of socialisation, which may *seem* insignificant during the existence of dictatorships, can be seen as a very important difference at the moment of their fall. With the historical defeat of the fascist socio-economic establishment, private property and the market economy *immediately and automatically regained their original content*, and their internal driving forces were given new impetus. The pace of post-war reconstruction and economic recovery surprised everyone, the world talked of *German, Italian, then Japanese, etc. miracles*. The explanation for these miracles is probably simple. In the most developed Western European countries, the re-privatisation of property, i.e. the rehabilitation of private property, did not mean a return to the concept of private property and private property order of the 18th and 19th centuries, but to *the socially bound concept of private property* at the turn of the 19th and 20th centuries, as originally expressed in the Weimar Constitution. The task then (although it is still a challenge, and no small one) was to strike the right balance between the freedom of private property and the social charge. In social market economies, it is now a well-established constitutional principle that *the freedom of private property must not infringe the principle of equality (specifically the right to social security)*, and that *the extent and method of social equalisation must not infringe the right to property*. The practical application of the principle is ensured by the institutional system and functioning of *constitutional courts* and the *social market economy*. The essence of this, as we have seen, is *not the equalisation of property rights through the imposition of public power, but the legal transformation of the income distribution system* in favour of the owners of labour, the working classes.

Thus, after half a century of delays, distortions and dead-ends, with heavy sacrifices, social thought and social legislation in the



Western countries bore fruit in the 1950s and 1960s. This was first and foremost and directly felt in the area of personal property, in the expansion of consumption, first in quantity and then in quality, and through this in the improvement of the quality of life of society as a whole. This improvement extended from daily necessities to consumer durables, and then to apartments, houses, cars and holiday homes. The expansion of private property on a societal scale in the hands of individuals at a certain point of *quantitative growth* then brought a *qualitative change*.<sup>26</sup> While maintaining a stable high level of consumption, the accumulation of surplus income has started. This accumulation was first used for longer-term personal and family financial security through the institutions of *life, health and pension insurance*. These *institutions*, as asset managers, then *capitalised*, i.e. channelled back into the economy, the income savings of individuals and families. In doing so, they have both further stimulated already fast-growing economies, thanks to the driving force of private wealth creation, and, if only indirectly, *turned savers into owners of capital*. And the further expansion of the scope for accumulation has also directly enabled income holders to invest their savings *themselves*. *Small individual and family businesses*, the *creation of simpler companies* and the *purchase of shares* in operating companies have become a mass phenomenon. For those who do not want to take risks and invest directly, there are various specialised *investment funds*, *asset management companies* and, as a concentrated capital market, the *stock exchange*. Thus, while leaving the private property order intact, *the conscious transformation of the income distribution order has set in motion a process* which, in the most socially developed countries, has already led to a result which no one had foreseen or hoped for: *property has been socialised to a considerable extent on a private property basis, by market economy methods, free of any constraints*. This rate is generally estimated at 40–60%, but the process is not yet over. The process is further reinforced today by the fact that, alongside money capital, *human capital*, the “*knowledge capital*”, which is always personal and in principle a given in each individual, but which needs to be developed to the right level, has become

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26 Kopátsy, S. (1990) ‘Mire tanít a modern társadalmak tulajdonosi struktúrája’, *Valóság*, 33(1), pp. 16–28.

more valuable. Investing and operating money requires an increasingly skilled and valuable workforce, which further skews the *income distribution in favour of labour*. In the whole process, both the communist and fascist ideology of the “exploited proletarian” and with it the socialisation of property, has virtually disappeared. And this is no small achievement, as non-violence is perhaps the greatest aspiration of all people living today.

But anyone who thinks that solving this *one* problem solves *all the* problems of property is wrong. We know that in most of the world – including Hungary today – even this one problem has not been solved. But property is already under attack again, not only because of the “side-effect” of man’s domination over man, but also because of man’s characteristic of *unlimited domination and violence over nature*. And the original and ultimate essence of property is precisely the *appropriation by man of the goods of nature*. Clearly, it cannot be eliminated, but *finding the right scale and sustainable balance* is in the vital interest of all of us. Perhaps the historical experience of balancing privatisation and socialisation, hopefully with less and less fighting and less and less human – and natural – sacrifice, can also help to find this right balance and equilibrium.

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# Property, Freedom, Security<sup>1</sup>



**EVERY NATION IS PROUD OF ITS OWN HISTORY**, of the religious, cultural, scientific and artistic values, national traditions and folk customs it has accumulated and preserved. Increasingly, the most valuable elements of the natural and built environment of each country are being declared World Heritage sites and are considered a common treasure for all mankind.

I believe that we need to think in the same way about fundamental freedoms and human rights enshrined in international treaties and national constitutions. We must also regard these as essential values that have crystallised in the civilisational development of individual nations and of humanity as a whole. They can also be considered objects of world heritage, not tangible but intangible (spiritual, sacred), cultural values shared by all humanity. The fundamental values enshrined in international documents and the constitutions of democratic states must be cherished and preserved with the same care as the values of our natural and built environment, so that we can pass them on to future generations. If we can reach a consensus on these basic values – at least on the so-called ‘human rights minima’ as a first step, and then, step by step, on more and more fundamental freedoms and human rights – then – and only then – can we live in peace and security, as individuals, in our families, in our villages, in our cities, in our countries, in regions across national borders, in Europe, in other continents, in our whole globalizing world.

The majority of fundamental freedoms and human rights, also as fundamental constitutional rights, are still declarative in nature, a broad framework of legal abstraction that provides a way to preserve,

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<sup>1</sup> Speech at the International Conference of the Armenian Constitutional Court in Yerevan, 2 October 2008 – Excerpt

gradually renew and modernise national cultural and legal traditions, religious and popular traditions. It is the right of each national legislature, and its responsibility to the international community, to decide how detailed the broad regulatory framework is to be, how, at what pace and to what extent it harmonises this detailed, enforceable content with European and universally applicable public international law standards. Implementation that is too fast, too forced, too violent is just as damaging as unjustified delays or backlogs.

Hungary, for example, probably as a counteraction to forty years of communist dictatorship, immediately and fully, so to speak “unrestrictedly”, granted its citizens classical freedoms at the time of the regime change (1989) (this was the period of the so-called “democratic rage”). But the culture and responsibility of living in freedom did not exist then and is only slowly developing. Today, it is still common for some people to abuse their own freedom to the detriment of the freedoms and rights of others, to claim rights without fulfilling the conditions of their obligations or respecting the limits to the exercise of those rights. One of the most difficult tasks of all the institutions of a democratic state governed by the rule of law, and in particular of the Constitutional Court, is now to define the conditions and limits of freedom, to raise awareness and affirm the obligations and responsibilities that go with it, in order to protect the freedom of others and of society as a whole.

The most serious of these problems in Hungary are in the area of so-called second generation human rights: economic, social and cultural rights. We did not want a radical setback (“shock therapy”) in this area compared to the period of the paternalistic, socialist state that looked after everyone. That is why our laws still promise more than the democratic rule of law can deliver, given the carrying capacity of the national economy. The Constitutional Court’s most difficult task at present is therefore to reconcile real economic and financial opportunities with health, education, social and cultural rights. The difficulty of the task is illustrated by the fact that while nine tenths of the Hungarian population valued freedom more highly than social security at the time of the fall of communism, today the ratio is the reverse. This reversal of value preferences is neither a Hungarian nor a “post-communist” peculiarity, but a world phenomenon. Today, world poverty

is increasingly seen as the most serious human rights problem. This global and national problem is rapidly being joined by another serious problem, the threat of global-scale degradation and destruction of the natural environment, climate change and climate catastrophe. International exchanges of experience, learning about each other's problems, work and opinions, and the mutual benefit of experience, are a great help in solving problems that arise in the practical implementation of freedoms and social rights. Countries that come from similar historical backgrounds and therefore face similar problems can learn a lot from each other.

One of these serious – if not the most serious – of our common historical problems is the problem of the transition from a socialist planned economy based on social property to a market economy based on private property. Until the change of regime, the full benefit (yield, profit) of the huge mass of property operated as state property was the cover for social security (state paternalism), but now the same expenditure on social, health, education, culture, sport, etc. can only be covered by the revenue from the public charges on private property. Since the latter amount of income and its redistribution by the state is significantly less than the amount available to the socialist state, the possibility of actually exercising and enforcing the same rights is reduced in direct proportion to the reduction of financing possibilities. The most difficult task for the constitutional courts and political elites of the post-communist states is precisely how to constitutionally manage this process of reduction and find a new, internationally and socially acceptable balance.

Section 13(1) of the Hungarian Constitution, like international human rights instruments and the Constitutional Treaty of the European Union, states that “the Republic of Hungary shall guarantee the right to property”. Paragraph (2) of the same Section adds, as a normal continuation, that “expropriation of property may be carried out only exceptionally and in the public interest, in cases and in the manner provided by law, with full, unconditional and immediate compensation”. The Hungarian Constitutional Court, interpreting this rule, stated on the one hand that the constitutional protection of property does not guarantee anyone access to property (the guarantee of acquisition of property), and even in the case of expropriation in the public interest,

the guarantee of preservation, but only guarantees the value of the property taken, and on the other hand it also stated that the Hungarian Constitution protects property rights as the traditional material basis of individual autonomy of action [(Decision 64/1993 (XII. 22.) of the Constitutional Court).] The autonomy of individual action is nothing other than the freedom of the individual, i.e. in Hungary, the right to property is still regarded as a material precondition and guarantee of individual freedoms. It is therefore worth taking a closer look at the historical antecedents of this traditional interdependence of property and freedom. Another reason for looking back and drawing historical lessons is that the problem of the social distribution of property rights has not been solved, and we have no constitutional answer to it. At the same time, inequalities in property rights and the ‘unlimited’ desire of individuals to own property are now also being addressed in a global context, both as a source of tension within society and between nations, and as a tension between human society and the natural environment around it (see also the problem of sustainable development and world poverty).

(Several essays in this volume deal with the relationship between property and freedom, such as “Reform of Social Property Rights”, “Socialisation and Privatisation of Property”, “Our Human Right: the Right to Property”, “Requiem for the Prudent Steward”).





# Our Human Right: the Right to Property!<sup>1</sup>

## (Outline of a problem)



**1. THE TITLE OF MY LECTURE** and the title of my essay, which is intended as a tribute to my well-deservedly celebrated colleague and friend, is in fact a reflection: it is a response to the question posed in the title of one of his essays: is property right a human right?<sup>2</sup> The author's own answer is no: "The right to property, because it ... presupposes the legislator, cannot be truly established as a human right." With his characteristic tolerance, however, he opens a loophole: "although there is a rational core to this aspiration as recognition of one's own work." I, taking advantage of this inspiring mandate, will try to come up with the opposite (a definite yes) answer, in a festive thought-bundle. However, in this case, no and yes do not cancel each other out. For in the world of law – here on this earth – both positions can be argued and defended, and the truth – the only saving truth – is (as Ferenc Deák also affirmed) in heaven.

**2. PÉTER SZIGETI TOOK TWO APPROACHES** to the scientific question he posed.

- a) "Is there a human rights conceptual basis from which the right to property as a human right follows?"
- b) "The same can be said, conversely, whether there is an explanation of property – the institution of property or the right to property – that has a human rights explanatory power?"

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1 Takács, P. (ed.) (2017) *Unitas multiplex: Ünnepi tanulmányok Szigeti Péter 65. születésnapjára*. Budapest: Gondolat Kiadó; Győr: Széchenyi István University Deák Ferenc Faculty of Law, pp. 227–238.

2 Szigeti, P. (2009) 'Emberi jogunk-e a tulajdonjog? Némely problémák vázlata', *Állam- és Jogtudomány*, 50(3), pp. 399–416.

It seeks to answer the two-way but consubstantial fundamental question in three relations: I. *natural rights* – human rights; II. *human rights* – *constitutional rights*; and III. *constitutional rights* – *fundamental constitutional rights*. In the three relations, as in concentric circles, moving from the widest field towards the centre, the hard core, he reaches (returns to) the *substantive right* quality of property rights, the protection of which is excellently resolved without elevating them to the rank of human rights. In none of these relations can he find a kind of “universal content” that would justify the human rights status of property rights. As for the traditional content elements of property rights, they can be, should be and actually are restricted, just as e.g. freedom of contract is. Consequently, property rights are neither a fundamental constitutional right nor a universal human right. Multi-level regulation causes more legal problems – interpretation and enforcement confusion – than it solves, and is therefore unnecessary. Nevertheless, the author’s practical and permissive conclusion is: “It is not what colour the cat is, it is whether it can catch the mouse.” So that a national legal system can *effectively enforce property protection*, either as a *substantive right* or as a *fundamental right*, “or, if not, that it can be enforced as a *human right* in international legal institutions, in the EU or in the Strasbourg ECtHR”.

**3. FOR A TEACHER AND RESEARCHER** of private law, and later a defender of human rights (ombudsman, constitutional judge), this conclusion is more than reassuring; it is also flattering. On the one hand, because it does valorise one of the most important and richest private substantive rights, the right of property status (if it is asserted and protected), and on the other hand, because it attributes to it, even in the case of its formal “promotion”, its elevation to the rank of human rights, the same weight and significance that it has had as a *substantive right* in private law (through private law in the economy and society) for centuries. In this “interpretation”, there is no essential difference between the function and purpose of the *property right* as a statutory *substantive right* and the *right to property* as a *fundamental constitutional right*. However, if we start from the fact that major international institutions (UN, EU) considered it important and necessary to elevate the right to property to the status of a human rights norm, and then

constitutions of nation states transposed it into national legal systems as a fundamental right, placing it at the top of national legal systems with other human rights, then this has more than a symbolic gesture value. Perhaps if we look behind (or beyond) the *property right* historically and with the help of other disciplines, and examine the function and purpose of *property* as a *social institution*, taking into account the natural, economic and social (societal) environment of the 21st century, we can better understand the justification for the classification of the right to property as a human right, and even find an appropriate basis for thought and explanation of property.

**4. TO DO THIS, HOWEVER,** we have to go back to the original source of property, to its original meaning, which in our European (Judeo-Christian) culture is the Book of Genesis.<sup>3</sup> “Then God said, Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock... So God created mankind in his own image, in the image of God he created them; male and female he created them. God blessed them and said to them, Be fruitful and increase in number; fill the earth and subdue it. Rule over the fish in the sea and the birds in the sky and over every living creature that moves on the ground.” In a lecture, the late Chief Rabbi Joseph Schweizer said that this was a translation error that had influenced the whole of human civilization in the wrong direction. The words “rule”, “reign” in the ancient language have several meanings, another meaning is “I leave it to you to *take care of* it, you are now *responsible for it*”. Just as a good ruler must take care of his subjects, he is responsible for them. Taken together with man’s God-likeness, his creaturely (human) dignity, “subdue” and “rule” means to preserve the work of the Creator, to enjoy the fruits of the laborious and responsible work of creation. But man, in violation of the law, ate of the fruit of the tree of knowledge, desiring to continue creation, making the world man-faced. Therefore God has made man’s work more difficult: “Cursed is the ground because of you; through painful toil you will eat food from it all the days of your life. ... By the sweat of your brow you will eat your food until you return to the ground, since from it you

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3 Biblia. Ószövetség. Mózes első könyve, 1, 26-28.

were taken..."<sup>4</sup> Man's dominion over nature, whether derived from a correct interpretation or from a misunderstanding, has come at a high price: the laborious work of producing the goods necessary for his mere subsistence.

**5. CREATIVE AND PRODUCTIVE WORK** is thus inseparable from the essence of human beings, the physical and mental endowments, the personality of man, from the moment of his creation (or becoming man). It is no wonder that one's own work has been given a corresponding status in human thinking. I would like to cite just a few authoritative examples.

Let's start with *Thomas Hobbes*: "... Again, every sovereign ought to cause justice to be taught, which, consisting in taking from no man what is his, is as much as to say, to cause men to be taught not to deprive their neighbours, by violence or fraud, of anything which by the sovereign authority is theirs. Of things held in propriety, those that are dearest to a man are his own life and limbs; and in the next degree, in most men, those that concern conjugal affection; and after them riches and means of living. Therefore the people are to be taught to abstain from violence to one another's person by private revenges, from violation of conjugal honour, and from forcible rapine and fraudulent surreption of one another's goods."<sup>5</sup>

Let's continue with *John Locke*, who is quoted at length by *Péter Szigeti* in his study: "Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but

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4 Biblia. Ószövetség. Mózes első könyve, 3, 17-19.

5 Hobbes, T. (1999) *Leviatán vagy Az egyházi és világi állam formája és hatalma. 1. kötet*. Budapest: Kossuth Kiadó, p. 345.

he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.”<sup>6</sup>

*Adam Smith* originally wrote this about the same thing: “The property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of a poor man lies in the strength and dexterity of his hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper, without injury to his neighbour, is a plain violation of this most sacred property.”<sup>7</sup>

Pope *Leo XIII* wrote in his encyclical “*Rerum Novarum*”: “... For God has granted the earth to mankind in general ... no part of it was assigned to any one in particular, and that the limits of private possession have been left to be fixed by man’s own industry, and by the laws of individual races. ... Those who do not possess the soil contribute their labor; hence, it may truly be said that all human subsistence is derived either from labor on one’s own land, or from some toil, some calling, ... Now, when man thus turns the activity of his mind and the strength of his body toward procuring the fruits of nature, by such act he makes his own that portion of nature’s field which he cultivates – that portion on which he leaves, as it were, the impress of his personality; and it cannot but be just that he should possess that portion as his very own, and have a right to hold it without any one being justified in violating that right.”<sup>8</sup>

As a curiosity, here is a thought by *Péter Veres* from 1947: “The land of the small landowner is therefore not a movable capital asset, but only a means of subsistence. Its only advantage is that (...) he can find work on his own land and produce his own bread. It is a great thing, the greatest thing on earth, because it gives man the greatest individual freedom, and that is why the peasant is so attached to his land, to the death. He is right: the highest life is the life of the free small landowner.”<sup>9</sup>

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6 Locke, J. (1986) *Értekezés a polgári kormányzat igazi eredetéről, hatásköréről és céljáról* Budapest: Gondolat Kiadó, p. 104; quoted by Szigeti, P. (2009) p. 402.

7 Smith, A. (1959) *A nemzetek gazdagsága, e gazdagság természetének és okainak vizsgálata*. Budapest: Akadémiai Kiadó, p. 172.

8 Leó XIII (1991) *A társadalom keresztény alapjai: Rerum novarum: XIII. Leó pápa körlevele a munkások helyzetéről*. Budapest: KDNP. pp. 15–16.

9 Veres, P. (1948) *A paraszti jövőendő*. Budapest: Sarló Kiadó, p. 86.

These – and similar – biblically rooted and therefore biblically inspired ideas have for centuries formed the solid intellectual basis of property, have themselves become almost “sacred texts”, have shaped the way of thinking, values and life of individuals, and have thus shaped human society. That is, they acted as normative forces, moral imperatives or at least as attractive objectives for the organisation of society, until they were swept away and subjugated by larger forces (the industrial revolution, capitalism, communism). But with the substantial change of circumstances, has this solid, great and valuable basis of thought lost its “validity” – can it lose it at all? In order to answer this “legal” question, let us then take a look at the subjective legal representation, the reflection of the ownership of man.

**6. THE VALUATION OF PROPERTY RIGHTS** has a beautiful history and tradition in Hungarian legal literature. Let’s start with *József Hajnóczy*<sup>10</sup>: “Everyone is free to improve his situation and increase his wealth as he sees fit, by permitted and fair means. I consider these to be natural rules that belong to every individual and that cannot be changed by law, but they must be made law in order to increase patriotism. ... It is well known that those who own land in their own right cultivate the land better than those who do not own land. Besides, the many small pieces of land, each with its own owner, are cultivated with more effort than the large tracts of land belonging to one owner. ... Experience has shown that more work is done by one non-slaving worker than by two slaving ones. ... private property must be held sacred, and no one must be deprived of it involuntarily.”

The Hungarian advocate of the Enlightenment was followed by the greats of civilisation, and we are only taking a sample of their thoughts.<sup>11</sup> *Ferenc Kölcsey*: “... Not by anything else, but by a common interest that binds the members of society equally to the homeland; and this interest is only two words: *liberty and property*.” *Ferenc Deák*:

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10 Hajnóczy, J. (1966) ‘A magyar országgyűlésen javaslandó törvények’ in Beér, J., Csizmadia, A. *Történelmünk a jogalkotás tükrében: sarkalatos honi törvényeinkből, 1001-1949*. Budapest: Gondolat Kiadó, pp. 617–626.

11 Source: Lukácsy, S. (1988) *Nemzeti Olvasókönyv*. Budapest: Gondolat Kiadó, pp. 256–257.

“Diligence has two powerful springs: *freedom and property*. Two great instincts give the citizen strength and enthusiasm in the defence of his country, and these two instincts are liberty and property. Only two forces bind a people securely to their country and their law, and these two magic forces are liberty and property.” *István Széchenyi*: “Let every Hungarian own property under the shield of the law...” *Mihály Táncsics*: “No obstacle can be thought of which free human strength and perseverance cannot overcome, if it knows that it sweats and labours for itself and its own...”

I found similarly valuable ideas in the footnotes of *Gyula Eörsi*’s candidate’s thesis<sup>12</sup>. *Ignác Frank*: “... every man has a certain measure of freedom; and in our country man can never be cattle, ... but the freedom of every man is not equal” (Vol. I, p. 70, fn. 5.). *Ágost Pulszky*: “private property is a necessary consequence and requirement of the development of individuality” (Vol. I, p. 330, fn. 3).

**7. THE CONCEPTUAL UNITY** and development of liberty, property and human personality (individuality) has been summarised in the science of civil law and in textbook literature, which I have carried forward. “*Property rights* as a substantive right is a *legal institution of paramount importance in civil law* (private law), *the property rights relationship is the basic legal relationship of property relations* governed by civil law. ... the most primordial and most natural aspiration of the individual human being is to secure his subsistence, to create for himself and his family a secure existence, material security. ... It is on the basis of material security, created by one’s own efforts and protected by the law, that man feels truly free. This *natural human need* is recognised and given legal expression by the institution of *property rights*.”<sup>13</sup>

The property rights relationship has had a decisive influence on civil law as a whole, becoming the model for many other fundamental legal institutions.

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12 Eörsi, Gy. (1951) *A tulajdonjog fejlődése: a kapitalizmus tulajdonjoga I-II*. Budapest: Jogi Könyvkiadó.

13 Lenkovics, B. (2008) *Magyar polgári jog. Dologi jog*. Budapest: Eötvös József Könyvkiadó, pp. 59–60.

“Some of the more important examples are:

- a) the abstract notion of a *legal subject* (‘a person is one who is or may become an owner’) was born through the abstraction of the position of entitlement to property, the ‘*capacity of owner*’ of man;
- b) *legal capacity* is essentially a generalisation of the *capacity to contract* for property, covering any substantive rights and entitlements;
- c) the most important content of property, the *free disposal* of it (the ‘freedom’ of property), appears in many other areas of civil law in a separate, named form: freedom of *enterprise*; freedom of *association*; freedom of *contract*; freedom of *testamentary disposition*; etc.;
- d) the structure and protection of *personality rights* follows the model of property rights (absolute nature; free self-determination)
- e) the fundamental legal relations of *intellectual creations* have also grown out of the soil of property rights, the intellectual product of the ‘creative personality’ is his own, just as man in general owns the other things he has produced, created, mastered (‘intellectual property’).<sup>14</sup>

László Sólyom also pointed out the importance of property rights beyond all this, in his seminal study: “Classical civil law could be representative of the liberal system because it found *in abstract property rights* the ‘rewriting key’ by means of which the whole of private law could be perfectly integrated into the liberal model of society. In the sphere of ‘bourgeois society’, *this* property was the material guarantee and internal guarantee of freedom and autonomy. (The external guarantee was the state assigned to secure property and the classical constitutions.)<sup>15</sup> Although Sólyom was exploring the possibility of a new “rewriting key”, the personality rights, he did not give up this role of abstract property rights – also as a human right and a fundamental constitutional right – (as we will see later). He was right to do so, since,

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14 Lenkovics, B. (2008) p. 60.

15 Sólyom, L. (1984) ‘Polgárjog és polgári jog. (A személyiségi jogok lehetőségei)’, *Jogtudományi Közlöny* 39(12), pp. 663–669.



as the earlier classical literary quotations show, man's most intrinsic property today is still his personality, and the absolute-negative structure of the general personality relation, its exclusive content and the freedom of self-determination are also rooted in the right of property. What is really important is that both "rewriting keys" have had a fertilizing effect in the world of human rights and fundamental constitutional rights, leaving the world of private law, and continue to have a human and social shaping effect to this day. Both must therefore be protected and enforced at both the substantive and the fundamental rights level, seeking to reinforce each other rather than to negate or weaken them.

**8. THE ROLE AND OBLIGATIONS OF THE STATE** have been reassessed and expanded in the field of two-tier, even multi-tier, and at the same time increasingly differentiated legal protection, while its ultimate essence and purpose has probably not changed. As already described by *Aristotle*: "Political science spends most of its pains on making the citizens to be of a certain character, viz. good and capable of noble acts. ... For the good man judges in every instance correctly, and in every instance the notion conveyed to his mind is the true one."<sup>16</sup> What a complexity and what an abstraction: all the particular and all the concrete values and virtues that are really important, whether for the state or for the individual, can be read from it! Thus, property acquired (created) by one's own labour, i.e. by honest means, the freedom to prosper, the freedom of security of existence, the free evolution and development of human personality and individuality, are the individual and state obligation. And especially the individual and social need for a fair distribution of property rights and the freedoms that go with them.

It was obvious from the beginning that, regardless of how it was acquired, too much property could be a legal instrument not only of ownership but also of domination over people. It is no coincidence, then, that already in the Age of Enlightenment, the restriction of property appeared and was valorised among the main obligations of the state,

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16 Arisztotelész (1987) *Nikomakhoszi etika*. Budapest: Európa Könyvkiadó, p. 23 and p. 67.

alongside the protection and safeguarding of property. Already *Thomas Hobbes* wrote in *Leviathan* that the state must set the limits of property rights, and above all it must prevent sovereignty from being divided into branches of power. If this happens, the state is doomed to failure.<sup>17</sup> This also applies, of course, to ownership, economic and financial “branches of power”. And *John Locke* put it simply, “... government has no other end than the protection of property”, by which he naturally meant property acquired by personal labour. The obligation to protect such property can also be read in the “minimal state” programme of social contract theories, which is the main obligation of the state. This was extended to the functions of the social state to protect its own work and the working man, thanks to *Rerum Novarum*, among other things: “If we turn not to things external and material, the first thing of all to secure is to save unfortunate working people from the cruelty of men of greed, who use human beings as mere instruments for money-making.”<sup>18</sup>

**9. THERE HAVE BEEN TIMES** when the state has exceeded this “first task” (Italian corporative state, German national socialist state, Soviet socialist-style state experiments), always ending up in total dictatorships. Today, however, in the “wage-labour society” following the end of the bipolar world system (but not “history”), in the age of “global wage slavery”, to put it more bluntly, it seems to be underperforming this most important task once again. But finding a sustainable balance (the old name for it: the golden mean) remains a challenge. In the economic, financial (budgetary) and social fields, we are now waiting for a miracle from a “redistributive” state that is neither minimal nor maximal. The miracle of having a democratic rule of law, a welfare constitutional state and a social constitutional state, preferably at the same time, and also meeting the requirements of social justice and natural sustainability, not only for the benefit of present generations but also for the benefit of future generations. It would be a miracle if everything could be done together and at the same time, because the

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17 Hobbes, T. (1999) *Leviatán vagy Az egyházi és világi állam formája és hatalma. 1. kötet*. Budapest: Kossuth Kiadó, pp. 214–216, pp. 332–333, p. 346.

18 Leó XIII (1991) p. 47.

state has not been able to perform smaller and less complex tasks flawlessly and completely. Of course, hope must never be abandoned and this new, complex and contradictory set of tasks should be maintained and even strengthened, at least as a declared public and social objective. As to whether it makes sense (or whether it is allowed) to attribute normative force to fundamental objectives, well, history warns us to be very cautious in this respect. A norm can be enforced, it allows the use of coercion, which – in its scale, means and methods – is dangerous, as history has shown. The social contract of reasoned, equal and co-ordinated, free and responsible owners, the “proprietary democracy” resulting from the rule of law, has so far been able to prevent, mitigate or at least subsequently avert this danger. If and where such democracy exists. For it to exist, a humanizing property right is essential, as is the declaration of the right to property as a human right.

**10. AS WE COME TO THE END** of our reflection, if I ask again Professor Szigeti’s question: is property right a human right? – I hope my firm answer has been outlined: yes! Because it still makes sense and is useful. It has a personal and social motivating factor, even a driving force, which it would be a pity to let go. We cannot hope for the vitality of the river water whose source we are draining! Man is not only an appropriator of natural goods, like other grazers or predators, but also a contributor to the pool of goods, through his own labour, creativity and productivity. In this way, he not only creates his material security of existence, his relative freedom from nature, but also develops his own personality and social freedom. All these together give man his rank, his human dignity, that is to say, an explanation of the institution of property and of the right to property that has human rights weight and scope.

And it can be derived the other way round; the human right to property also follows from the “mother right” of human dignity. The right to human dignity is, in other words, the general personality right, the freedom of self-expression and self-determination; and the *traditional material* precondition (basis) and guarantee of *individual autonomy of action* is property.<sup>19</sup> The human right–property right

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19 Decision 64/1993 (XII. 22.) of the Constitutional Court, Hungary

conceptual pair is thus back and forth, at least on the level of abstract norms. The real big question is, of course, if in the concrete reality the institution of property rights is dysfunctional, because/or it is severely distorted (with dysfunctional side effects), is this a sufficient reason to give up, to abandon it for good? Of course: no! Just as we cannot give up reason, justice or fairness just because the imperfect man does not live by them. Just as we cannot give up the right to life because man invented the weapon of mass destruction and the gas chamber. On the contrary, they have greatly inspired the standardisation of the rights to life and human dignity, the strengthening of their protection, and the expansion of the range of instruments of legal protection.

The situation is similar with property rights. Just because it is constantly seeking to transform itself from domination over things to domination over people, and is now even “evolving” into a “world domination” institutional system, it must not be abandoned, but held in check, and put on the right track. One of the means of achieving this, in the case of large properties – following the Weimar constitution – is the social binding of property, the ability to impose public obligations on it, or as the second sentence of Article XIII(1) of the Hungarian Fundamental Law puts it: “Property shall entail social responsibility”. Another tool is to protect small properties, to promote their formation, support them and ensure their survival. This is how *Ernst Schumacher* sees the private property of the working owner, which “promotes creativity”, is “natural and healthy”, “small-scale”, “personal and local”. He says: “I have no doubt that it is possible to give a new direction to technological development, a direction that shall lead it back to the real needs of man, and that also means: *to the actual size of man*. Man is small, and, therefore, small is beautiful. To go for gigantism is to go for self-destruction”.<sup>20</sup>

At the same time, *István Bibó* held a similar view: “... a distinction is made between real property, which brings a man into direct contact with an object capable of increasing his freedom, be it a piece of land which he cultivates, a house in which he lives, a tool or a workshop which he uses, and property which, with its enormous size, cannot

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20 Schumacher, E.F. (1988) *A kicsi szép: tanulmányok egy emberközpontú közgazdaságtanról*. Budapest: Közgazdasági és Jogi Könyvkiadó, p. 163 and p. 270.

be grasped by the agency of a single man; and property in this case does not mean a relation between a man and an object, but the relation of power of a man in relation to other men... Therein lies the fraud of the defenders of property.” “In fact, the solution is not to be found in the nationalisation of property, nor necessarily in its collectivisation, but in the dissolution and humanisation of property relations...”<sup>21</sup> To generalise: law must not be adapted to (interpreted for) processes and institutions that are confronting and dehumanising man, but it must be used to stop and reverse them, to rebuild them back to man (the human).

**11. I KNOW, OF COURSE, THAT IT IS EASIER** to say it in theory than to put it into practice. The state, society and the individual – in spite of the constraints – have room for manoeuvre, autonomy and can even make good decisions. For example, the first phrase of Article O of the Fundamental Law of Hungary states: “Everyone shall be responsible for him- or herself” (i.e. for their human quality, personality, livelihood, well-being, their family, etc.) The first sentence of Article XIII(1) can be linked to this: “Everyone shall have the right to property and inheritance”, which are both substantive and fundamental rights, the latter being – due to their rich content and historical development – both first and second generation rights.

At the same time, as *Péter Szigeti* writes<sup>22</sup>, Decision 64/1993 of the Constitutional Court not only defined the constitutional function of property (“the traditional material basis of individual autonomy of action”), but also dissolved and extended it in relation to the civil law concept of property: “Constitutional protection must follow the changing role of property in a way that allows it to perform the same protective function. Thus, when it comes to the protection of individual autonomy, the protection of fundamental rights extends to economic rights which have taken over the role of property, as well as to rights based on public law (e.g. social security claims).” We could call this the new constitutional function of property. This reclassification is

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21 Bibó, I. (1986) ‘Az európai társadalomfejlődés értelme’ in Bibó, I. *Válogatott tanulmányok. 3. kötet 1971-1979*. Budapest: Magvető Könyvkiadó, pp. 69–70.

22 Bibó, I. (1986) p. 412.

of particular theoretical and practical importance in relation to the right to social security.<sup>23</sup> The protection of social security entitlements similar to property would strengthen their constitutional protection without substantially limiting the political space of the welfare state, depending on economic and financial possibilities. In any case, the second part of Article O) continues with the responsibility of self-care: ‘...(everyone) shall be obliged to contribute to the performance of state and community tasks according to his or her abilities and possibilities’. This is a general obligation of social solidarity tailored to the individual. Article XIX adds to this: “Hungary shall strive to provide social security to all of its citizens.” Although this does not give any concrete measures or amounts, the state has a constitutional obligation to strive for financial (supply) security. If a constitutional court (e.g. the German one) sets a minimum subsistence level, it does so because of the inviolability of human dignity. In our case, the same could be interpreted as a defence of the material basis of individual autonomy of action, i.e. the right to property.

It can be seen that both the individual and the community of individuals, society, on the one hand, and property on the other, have a wide margin of manoeuvre in their traditional (individual autonomy of action) and new (social solidarity) functions, but the human rights status and quality of property itself cannot be questioned (or, in other words, it can be strongly defended and justified). It’s up to us to decide how much of each of these functions we actually use, to what extent and in what way.

**12. FINALLY, LET ME CONCLUDE WITH A QUESTION**, as a gesture to open a loophole (or even too big a loophole) to *Péter Szigeti*’s legitimate question and negative answer. Is property right a human right on a global scale? Can the right to property be guaranteed for 8-10 billion people on earth, whether in its traditional (self-care) or new (solidarity) function? Especially where and when – to refer back to John Locke – there are no longer enough natural goods (the environment) of good

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23 Juhász, G. (2009) ‘Gazdasági globalizáció, a jóléti államok modernizációja és a szociális jogok alkotmányos védelme’, *Állam- és Jogtudomány*, 50(3), pp. 307–327.

quality left, not even for mere subsistence. The question is therefore not only raised at the Hungarian (nation-state) level, but rather at the international (universal) human rights level. If the answer here is yes, it requires a completely new distribution or redistribution of wealth (and rights) at the global level, which implies a completely new global world order. This will not be easy to achieve, given that today, under the pressure of global economic and financial interests, “the reduction of state involvement, the reduction of welfare entitlements, the eclipse of the idea of social solidarity and the promotion of self-care have become the main focus of political agendas. ... In the social policy literature, this process of self-harm is somewhat euphemistically referred to as a welfare paradigm shift, an adaptation or recalibration of the welfare state.”<sup>24</sup> This welfare state problem is compounded by the widening and deepening of the global social divide, the threat of climate catastrophe and the international migration crisis (population movements), all of which are closely interlinked. The situation is not hopeless; perhaps it can be improved by redefining human rights, the rights to work and property. Work and property have been there in the past and will be there in the future for all mankind, if we just take notice and take it seriously. “For the greatest disenfranchisement a man can suffer is when he has no chance to provide for himself and to secure his livelihood.”<sup>25</sup> The universal purpose of property, the right of ownership for all, was and is intended to prevent this mass disenfranchisement.

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24 Juhász, G. (2009) p. 319. and p. 321.

25 Schumacher, E.F. (1988) p. 224.

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- ≡ Hobbes, T. (1999) *Leviatán vagy Az egyházi és világi állam formája és hatalma. 1. kötet*. Budapest: Kossuth Kiadó.
- ≡ Juhász, G. (2009) 'Gazdasági globalizáció, a jóléti államok modernizációja és a szociális jogok alkotmányos védelme', *Állam- és Jogtudomány*, 50(3), pp. 307-327.
- ≡ Lenkovics, B. (2008) *Magyar polgári jog. Dologi jog*. Budapest: Eötvös József Könyvkiadó.
- ≡ Leó XIII (1991) *A társadalom keresztény alapjai: Rerum novarum: XIII. Leó pápa körlevele a munkások helyzetéről*. Budapest: KDNP.
- ≡ Locke, J. (1986) *Értekezés a polgári kormányzat igazi eredetéről, hatásköréről és céljáról*. Budapest: Gondolat Kiadó.
- ≡ Lukácsy, S. (1988) *Nemzeti olvasókönyv*. Budapest: Gondolat Kiadó.
- ≡ Schumacher, E.F. (1988) *A kicsi szép: tanulmányok egy emberközpontú közgazdaságtanról*. Budapest: Közgazdasági és Jogi Könyvkiadó.
- ≡ Smith, A. (1959) *A nemzetek gazdagsága, e gazdagság természetének és okainak vizsgálata*. Budapest: Akadémiai Kiadó.
- ≡ Sólyom, L. (1984) 'Polgárjog és polgári jog. (A személyiségi jogok lehetőségei)', *Jogtudományi Közöny*, 39(12), pp. 663-669.
- ≡ Szigeti, P. (2009) 'Emberi jogunk-e a tulajdonjog? Némely problémák vázlata', *Állam- és Jogtudomány*, 50(3), pp. 399-416.
- ≡ Takács, Péter (ed.) (2017) *Unitas multiplex: Ünnepi tanulmányok Szigeti Péter 65. születésnapjára (Unitas multiplex: Festive Studies for the 65th Birthday of Péter Szigeti)*. Budapest: Gondolat Kiadó; Győr: Széchenyi István University Deák Ferenc Faculty of Law, pp. 227-238.
- ≡ Veres, P. (1948) *A paraszti jövőendő*. Budapest: Sarló Kiadó.





# Requiem for the Prudent Steward<sup>1</sup>

(In memory of Károly Szladits,  
born 150 years ago)



## 1. The prudent steward: a measure of human type and behaviour

**THE GREATEST LIFESTYLE** (way of being, paradigm) shift in the history of man and mankind so far was the *Neolithic* (agricultural) revolution. About 10,000 years ago, man changed from a *natural* way of life (hunting, fishing, gathering) living in and with nature (more than two million years) to a way of life as a crop – livestock producer, settler and steward. It has taken a piece of nature, a part of the living world, and brought it *under its control*. This was “sanctioned” by the Bible: “Then God said, Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock... (Genesis 1:26). Man, therefore, cultivated, *worked and took care of* the land (Genesis 2:15), not as a servant or labourer, but by his labour as his own, and this *natural possession* was recognized by the rest of his community. Man cultivated his property, his property cultivated man. Ownership was not only a right, but also a duty, an effort, a burden, a risk and a responsibility. To mitigate all this, he had to manage well, and even better, to become a *prudent steward* as a private owner. He worked *with the sweat of his brow* not only for himself, but also for his children, his wife and his family. The

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<sup>1</sup> Delivered at the festive online conference of the SZE DFK Doctoral School on 10 December 2021.

*family farm* has become the basic unit of farming. In ten thousand years, a new type of man has evolved, the *prudent steward and dutiful family guardian*. This became the *image of man*, the model, the recommended model of the law as a means of regulating human behaviour, as a system of norms, which was developing in parallel. The ancestral model remained the *top model until the industrial revolution*, but was seen as the enemy of the capitalist (free-market) market economy and later the socialist planned economy. Both needed *a mass of good proletarians*, not prudent stewards. Today, our *post-industrial* age, which we do not yet know where *it is going(?)*, has raised the question of the need for *a model change* (a new paradigm change) on a global scale, and we are beginning to look for the answer. However, it will not be easy to find better than the prudent steward, to construct a new image of man. A *prudent steward* is also a *good man, a good husband and a good father*.

The legal forerunner of the prudent steward as a standard of conduct and as the ideal of the good man is the *bonus et diligens pater familias* in Roman law. "The *culpa levis* is a slight, minor degree of negligence, the degree of which is also objective, but is less serious than the *culpa lata*: the diligence of the *bonus et diligens pater familias* i.e. the diligent and careful father of the family (the diligence of the *prudent steward* according to the former Hungarian law)."<sup>2</sup> In this textbook interpretation, the family father is seen as a good and caring *husband and father*, who works and farms to *provide for* his family and its security.

Károly Szladits wrote in a similar vein in 1941: "Negligence is usually measured by a *tangible, objective* yardstick. We speak of the diligence of the good family father (*bonus paterfamilias*), following the example of Roman law; more recently, we refer to the *decent man* as the standard of diligence (or the *good* man who is duly attentive to the interests of others). The care of the decent man is in fact a symbolic concept of value, applied to different situations in life (decent tradesman, decent carrier, etc.); it is the social perception of the care and exertion that can be reasonably expected of the *average man* in a *given* situation, without interfering with the normal course of life and

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2 Földi, A., Hamza, G. (1996) *A római jog története és intézményei*. Budapest: Tankönyvkiadó. p. 428.

the necessary freedom of action of the individual. Failure to exercise this care is average negligence at fault (*culpa in abstracto*).<sup>3</sup>

However, this decent, upright man also appears in a different context, in a broader sense, in his work, from which the image of *man and society* in classical Hungarian private law emerges.<sup>4</sup> “There are two main circles of life relations in which man is predominantly a *private entity* in relation to other private entities: the *private economy* and *family life*. These are the main subjects of private law; private law is essentially *property* and *family law*. ... The function of *private property law* is, first of all, to define the range of material goods which are subject to the dominion of the *economic subject* (emphasis by me, L.B.) and to secure this dominion against the interference of others. This is the broader *order of property*, the so-called *right in rem*. A further function of private law is to ensure to the *economic subject* (emphasis by me, L.B.) the cooperation of *other economic subjects* (emphasis by me, L.B.), the ‘services’ of other economies which are necessary for the continuation of economic activity. This right of private services is known as the so-called *law of obligations*. These two sets of rules are complemented by the special property regime between family members, the *family property law*, and the *law of succession* which determines the fate of the property in the event of the death of the *economic subject* (emphasis by me, L.B.).”<sup>5</sup> All these make the world of private law as a complete system, where everything is in its place, on one condition: if it is applied in a private economic order.

## 2. On the private economic order

“AN INDISPENSABLE PREREQUISITE of the private economic order is the order of private property, which gives the *individual economic subject* (emphasis by me, L.B.) control over the factors of production. ...

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3 Szladits, K. (1937) *A tulajdonjog újabb módosulásai*. Különlenyomat. Budapest: M. Kir. Áll. Ny.p. 365.

4 Lenkovics, B. (2009) ‘A magánjog ember- és társadalomképe’ in Kisfaludi, A. (ed.) *Liber amicorum: studia L. Vékás dedicata, 2009: ünnepi dolgozatok Vékás Lajos tiszteletére*. Budapest: ELTE ÁJK Polgári Jogi Tansz., pp. 197-208.

5 Szladits, K. (1937) pp. 21–22.

In today's moral and economic factors, this system ensures the fullest development of human individuality and thus the progress of mankind. And this private economic order is predominantly based on private law. In this way, private law appears as one of the pillars of human civilisation today."<sup>6</sup> This is the most virtuous hymn to private property, private enterprise and private law I have ever read. This praise is really about being a prudent steward. The private law (the law) protects the property of the steward, created by his individuality and his utmost effort, physical and mental, through his diligent work, and at the same time guarantees to the objects of his property (land, workshop, shop, business, enterprise, etc.) that he is a prudent steward of them. The steward's property and the owner of *the property* are two sides of the same coin. There is also an emphasis on the fact that control over the factors of production is *not* granted to *some* (a few), but to the *individual* – which in law means to *each individual* – as a possibility. And the fact that private law is one of the pillars of human civilisation, in today's current formulation, is that one of the three pillars of "European civilisation" (as part of the European Union) – alongside Greek philosophy and Christianity – is Roman private law, and its central figure, its human image, is the *bonus et diligens pater familias*, in Hungarian law *the prudent steward*. We know well that the prudent steward can be a real (flesh and blood) person, but much more an *ideal*, in the world of private law (and today: law) – in Szladits' words – a *guiding ideal*, a *legal concept*, towards which we must strive even if we never reach it, or even if we temporarily move away from it. It is like the guiding ideal of *justice*: "law and justice are always in the same relation as ideal and reality. The notion of the ideal includes its unattainability: it is like a rainbow that keeps running away from us, even though we are moving towards it."<sup>7</sup> The ideals (like the prudent steward), the symbols are *not fictions*, they can be the solid foundations of human lives and human constructions (constructs like the legal system). Elemér Hankiss wrote about this: "It may turn out that castles in the air built from symbols are real castles after all. And sometimes even stronger than fortifications built of stone. It may turn out that the forms and shapes created by the

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6 Szladits, K. (1937) p. 31.

7 Szladits, K. (1937) p. 40.

human spirit, though fragile and perishable, are more important than we now believe, want to believe, dare to believe. ... To create something out of nothing, (...) to build a world of freedom, reason and dignity in a silent and empty universe: this, I believe, was a work worthy of a man. A real human adventure.”<sup>8</sup>

### 3. On the subject of the private economy

**DURING THE TURKISH OCCUPATION**, Hungary became a country of stone fortresses, which were then razed to the ground by the liberating – occupying – new foreign empire. These stones, evoking the past, are now tourist attractions. But what about our “castles in the air”, built from great ideas and more permanent than stone castles? I will briefly mention just a few of them in connection with the concept of a prudent steward. First of all, József Hajnóczy, a member of the Society of Freedom and Equality, a martyr of Hungarian civilisation, who wrote as early as 1790: “Everyone is free to improve his situation and increase his wealth as he sees fit, by permitted and fair means. I consider these to be natural rules that belong to every individual and that cannot be changed by law, but they must be made law in order to increase patriotism. (...) It is well known that those who own land in their own right cultivate the land better than those who do not own land. Besides, the many small pieces of land, each with its own *owner* (emphasis by me, L.B.), are cultivated with more effort than the large tracts of land belonging to one owner. ... (...) Experience has shown that more work is done by one non-slaving worker than by two slaving ones. (...) Everybody knows that treasury assets are the worst managed. If they become full citizens of the country by landed property, they will defend to the hilt the laws under which they have acquired it.”<sup>9</sup> Hajnóczy’s ideas from the reform assemblies of the 19th century through

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8 Hankiss, E. (2014) *Emberi kaland: egy civilizáció-elmélet vázlatja*. Budapest: Helikon Kiadó, pp. 411–412.

9 Hajnóczy, J. (1996) ‘A Magyar országgyűlésen javaslandó törvények lényege’ in Beér, J., Csizmadia, A. *Történelmünk a jogalkotás tükrében: sarkalatos honi törvényeinkből, 1001-1949*. Budapest: Gondolat Kiadó, pp. 617–626.

the entire 20th century still ring true today. Count István Széchenyi, the greatest Hungarian, in 1830, in the fourth chapter of his book *Hitel* (Credit), wrote that “The *Hungarian steward* today (in the absence of credit and free civil property – note by me, L.B.) cannot bring his fields to the highest flourishing”. He concluded with a warning that is still relevant today: “But let us end the section with this well-meant little advice, that each one, if he wishes to bear the name of a *practical prudent steward* (emphasis by me, L.B.) worthily, should spend less than his income”.<sup>10</sup> Two years later, in the foreword to *Stádium* (Stage), he wrote: “Give civic life to all the people of Hungary! this is what I am fully convinced that in 1832, for our country, is not only not premature, but almost too late. But it would certainly have been better to have radically reformed our constitution in 1792.”<sup>11</sup> This sentence could be seen as a rehabilitation of Hajnóczy. One of the nine bills of the *Stádium* is about the “*Ius proprietatis*”, the creation of free civil property, because “There is no obstacle that human perseverance cannot overcome, when the workers toil for themselves and their own; but the servant, always sweating for others, is aroused even before the smallest difficulties. (...) because he worked *on his own property* and for himself – he worked such miracles that it has become an honestly acknowledged truth among thinkers that *it is not the quantity of the people that makes a region prosper, but the quality of the people*.”<sup>12</sup> It is as if the lines of Dániel Berzsenyi’s poem „A magyarokhoz” (“To the Hungarians”) (1807) were quoted in this thought: “It is not a multitude, but a free people and a free soul that do wondrous things”, on the solid foundation of their own property, of free civil property. Because property also requires learning and knowledge, expertise and hard work, care and responsibility, honour and integrity. Because not only does man cultivate his property, his property cultivates man. The multiplicity of people who own property requires and results in a “multiplicity of cultivated people”. The free owners, the multitude of prudent stewards, form a free and prosperous society.

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10 Széchenyi, I. (1979) *Hitel*. [Budapest] Közgazdasági- és Jogi Könyvkiadó. pp. 76–107.

11 Széchenyi, I: (1984) *Stádium*. Budapest, Közgazdasági. és Jogi Könyvkiadó. p. 29.

12 Széchenyi, I: (1984) pp. 114–115.

## 4. Freedom and property

AT THE FIRST REFORM CONGRESS (1832–1836), ideas like these and others were used to prove that the question of property was not merely a matter of private law, that the “liberation” of property from feudal ties on the one hand, and the liberation of man and society on the other, were inseparable. The question of private property and the private economy is therefore also a question of public law and even of the constitution. The two main values of civilising societies, freedom and property, are also the two main driving forces motivating the individual (the citizen). In their role as a fundamental social value, they are the conditions for social peace, balanced development and “progress”. Because what is the best way to promote them? According to Kölcsey, “not by anything else, but by a common interest that binds the members of society equally to the homeland. And this interest is just two words: freedom and property.”<sup>13</sup> Ferenc Deák interpreted it this way in 1840: “Diligence has two powerful springs: *freedom and property*. Two great instincts give the citizen strength and enthusiasm in the defence of his country, and these two instincts are liberty and property. Only two forces bind a people securely to their country and their law, and these two magic forces are liberty and property. The law of eternal redemption which the legislature has now enacted has laid the first foundation of the blissful public blessings of liberty and property, and from this foundation the better future of our country will surely rise. This law increases the number of free citizens who own property; only by them is the country strong, for liberty, shared with others, does not lose its value, but gains in strength and increases in security.”<sup>14</sup>

However, the practical realisation of noble ideals in the European periphery of the belated civilisation (Hungary) was very slow and stalled several times. Mass property redistribution on a social scale only took place in 1945, in the context of the land reform, with the land distribution. Its importance was highly appreciated by the politicians of the time, but ignored by the communists from 1948. Imre

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13 Lukácsy, S. (1988) *Nemzeti olvasókönyv*. Budapest: Gondolat Kiadó p. 256.

14 Lukácsy, S. (1988)

Kovács, a politician of the peasant party, put it this way: “With the land reform, political power was also transferred to the people. They also parceled out political power.”<sup>15</sup> Anna Kéthly assessed the significance of land reform in an even broader sense: “We have a new occupation, the workers want to take over this country for good. Social and political equality in social democracy must be complemented by equality of economic conditions. Just as slavery was an anachronism in the 19th century, so any kind or form of serfdom or economic slavery is out of date.”<sup>16</sup> A veritable “theology” of small property, created and maintained by one’s own labour, which establishes the freedom of the individual and his family, was written by Péter Veres: “The land of the small landowner is therefore not a movable capital asset, but only a means of subsistence. Its only advantage is that (...) he can find work on his own land and produce his own bread. It is a great thing, the greatest thing on earth, because it gives man the greatest individual freedom, and that is why the peasant is so attached to his land, to the death. He is right: the highest life is the life of the free small landowner.” After all, “it is not the people for farming, it is farming for the people”.<sup>17</sup> But the communists had it the other way round. Although in 1945, for tactical reasons, they were still supporting land distribution, but as soon as their total dictatorship was established, they did not recognise anything in the economy (following Lenin’s doctrine), which was *private*; the prudent steward was put on the kulak list, who, as a class enemy, had to be made economically and politically impossible, but could also be physically destroyed. This process ended in 1960–63 with the forced collectivisation of agriculture, which made everyone a servant instead of a peasant–citizen and a prudent steward. Along with property, freedom has gone. In the large farms, in industrial agriculture, most of the former farmers became redundant people, free labourers, while the forced industrialisation and urbanisation – how coincidental – needed them. Not only the land, but also the village, and later the motherland (the homeland), did not have enough good,

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15 Balogh, S. (ed) (1980) *Földet, köztársaságot, állami iskolát. Viták a magyar parlamentben 1944–1948*. Budapest: Gondolat Kiadó. p. 117.

16 Kéthly, A. (1945) *A kereskedő a demokráciában*. Budapest: [Justus Pál]. p. 5.

17 Veres, P. (1948) *A paraszti jövő*. Budapest: Sarló Kiadó. p. 86. and p. 91.



devoted stewards. Second and third generation offspring have been flowing as “human power” to the Western countries of the European Union and the rest of the world. Without private property, it became their freedom.

## 5. Property and family

**THE CONSCIOUS PROCESS** of deliberate *expropriation* under socialism, and then spontaneous (market-based) *expropriation* under capitalism, social *mobility* (forced *stratification*), has not only harmed individual people, but also the natural building blocks of society as a large community, the family. In agricultural societies in general, for about ten thousand years, but also in the Hungarian national economy for a thousand years, the basic unit of the economy was the *family farm*. Successive generations have been brought up to work together, to cooperate and to support each other, and this has had an impact on socialisation. Trust in each other within the family has been translated into social trust capital, and family solidarity into social solidarity. If they collapse, society could collapse too. Let us also say that marriage and the family are also a *community of love* based on nature, which tames and shapes people into better, more humane human beings. In the event of a crisis, however, the predatory, aggressive nature of man is strengthened again, gestures of love are again replaced by gestures of violence.<sup>18</sup> In his best-selling book, Francis Fukuyama identifies the three main causes of “The Great Disruption” as the crisis of marriage and the family, the lack or decline of social trust capital, and the spread of aggression and crime.<sup>19</sup> As the historical backlash of enforced, total collectivism, now the destructive effects of unbridled and selfish individualism must be faced, or human (or more precisely, Western) society will fall apart into atoms. But it could also be a rivalry between the *egocentric* self-image of the West and the *sociocentric* self-image of

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18 Bibó, I. (1986) ‘Az európai társadalomfejlődés értelme’ in Bibó, I. *Válogatott tanulmányok. 3. kötet*. Budapest: Magvető Kiadó. pp. 44–45.

19 Fukuyama, F. (2000) *A Nagy Szétbomlás: az emberi természet és a társadalmi rend újjászervezése*. Budapest: Európa. pp. 47–90.

the East, which could even end in a clash of civilisations.<sup>20</sup> The above ideas illustrate the risks of experimenting with people and society in the name of a dominant ideology, and how social sciences, and especially economics and law, should think in a broader context and over a longer time horizon. If it is true that great disintegration must be followed by great reconstruction, that even a house in ruins can be rebuilt, then something of the family and the family-based private economic order can still be salvaged and recycled.

## 6. Embourgeoisement and the expansion of public law

ISTVÁN BIBÓ INTERPRETED the bourgeois revolution as “liberation from the oppressive domination of born rank”, and the socialist revolution as “liberation from the oppressive domination of born wealth”, and regarded it as two phases of a single process.<sup>21</sup> The essence of both is the fulfilment of *human dignity*, the transformation of man from a state of humiliating servitude to a general state of freedom. This state is the state of *being a citizen*, the basis and guarantee of which is *free civil property*, as the *main limit to power* (whether the power of the total state or the power of the overwhelming economic–financial factors of domination). Strong democracies emerged where a broad (majority) wealthy bourgeoisie could make laws to restrain, limit, socially and justly counteract “oppressive rulers”. It started with fair and *proportionate public taxation*, continued with *the social obligations of property* and reached *the social responsibility of property* (but it must continue: *the environmental responsibility of property* and the requirement of a *sustainable property regime*). Szladits called all this the requirement of “being in the public interest”, in short, taking account of *public views*.<sup>22</sup> The private property and private economic order of his conception, the property of the citizen (including the prudent steward) met the requirements of the time, and even the environmental and

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20 Kovács, J. (2007) *Bioetikai kérdések a pszichiátriában és a pszichoterápiában*. Budapest: Medicina. p. 80.

21 Bibó, I. (1986) p. 51.

22 Szladits, K. (1937)

sustainability requirements of today. Simply because that economy and farming were human-scale and people-centred, fitting into the natural and social environment in which it operated. It was in keeping with “the action of a man”, the diligence of the *bonus et diligens pater familias*, the prudent steward, the security of himself and his family. The individual (family) farm did not pose an oppressive threat of domination over the citizens and other farmers who had equal rights and co-ownership, and therefore there was no need to subject this *small property* to public law, to overburden it with public obligations, to empty it, or even to confiscate or requisition it. Károly Szladits was well aware of the new threats to classical private law and its view of man and society. He was familiar with the effects of *crisis legislation* following the First World War and the 1929–33 world economic crisis, and the “intrusion” of public law into private law. He knew about Soviet-style socialisation and *planned economy*, which he rejected, just as he rejected the *economic legal* theory of German national socialism, which was also fashionable in Hungary. He saw in all this the danger of a complete denationalisation of private law and the end of private life and private autonomy. At the same time, partly bowing his head to the facts of a changing world and partly seeking to correct the errors and shortcomings of private law as the “bible of selfishness”, he himself acknowledged and even urged the need to *ethicise and socialise* private law. He wrote with a moderate willingness to compromise: “The relations of private economy and family life are also interwoven with public law. The extent to which these relations of life are governed by public law and private law, varies according to the different stages of human development, and is closely related to the forms of social management and family life”.<sup>23</sup> From the wording, it would seem that Szladits gave wide latitude to the expansion of the state and public law at the expense of private life and private law. Elsewhere, however, he is more specific, clearly seeking a kind of balance, a “golden mean”: “Social management always consists of bringing together individual and public (collective) modes of management. Even the most extreme public slavery imaginable (communism) would not be possible without the recognition of a certain individual (consumption) sphere

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23 Szladits, K. (1938–41) p. 23.

of property within which the individual is free to dispose. However, at a higher level of culture, there is hardly any extreme individual management that does not combine economic forces for certain common purposes (public finances)".<sup>24</sup> From this formulation, it is clear that Szladits saw communism as a collective slavery, compared to which the higher degree of culture is a private economy that is not extremely individualistic, whose inequalities are corrected by means of socially and ethically motivated communal redistribution. In this conception, "public finances" serve precisely to maintain, reinforce and supplement private finances, not to replace them. This is the precursor of the redistributive welfare state. Szladits thus protected and guarded human personality, the small family community and private economy from excessive collectivisation, from being absorbed and dissolved into it, and what necessarily goes with it, from the total domination of the public law and public power over the individual. "In public management, the individual is considered as an organ of the community. The right of public management is therefore always essentially a public right. Private property rights can only exist in the context of individual or private management".<sup>25</sup> In which, as we have already quoted, it is the individuals who control the factors of production, not the other way round. In this conception, *the economic subject*, as the image of private law, represents the millions of stewards, individually, within the family, in association or in partnership with each other, the dominant majority of society, and at the same time it determines the image of society.

## 7. The state of play

**IT IS THE *PRUDENT STEWARD***, the private image of man and society at Szladits, which first began to decay thanks to the communist type of man imposed on us by the external military repressive power, the planned economy and total dictatorship. And then, it disintegrated as a result of the process of change of rule imposed on us by the same

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<sup>24</sup> Szladits, R. (1938-41) p. 30.

<sup>25</sup> Szladits, R. (1938-41)

external economic–financial institutions of domination, called regime change; the globalisation of the human, economic and social model; to the point that it hardly exists at the moment, and there is not even the slightest hope of its mass restoration. What has emerged instead is *a mass of wage-working consumers* concentrated in cities, in now transnational corporate empires (finally and completely cut off from the natural basis of work and farming). On the one hand a *wage-work society*, on the other a *consumer society*. Man (regardless of his race, gender, colour, religion) is not part of the global mass production processes organised without his participation as a single economic subject, but as a single *human resource* that can be exchanged for another at any time. To avoid this, he works for less than the real value, but to consume more, he mortgages his assets and his labour (his life) for loans. For his present prosperity – mostly just a little ‘better’ – he sacrifices not only his ancestral reserves but also his future, not marrying, not having children, taking away or diminishing the choices of future generations. He is also capable of self-destruction to feel good minute by minute (*be happy*). Wasteful, *hedonistic man*, “*feel good*” *society*; irresponsible, unsustainable present, hopeless future drifting into disaster. A depressing, burnt-out, hopeless view of man and society.

## 8. The private law skansen

**PEOPLE LIKE TO GO TO SKANSENS NOWADAYS.** They like to see how it was possible to live and prosper in a poorer, simpler but more natural way, healthier in body and soul, in harmony with the community and with nature – and therefore happier. And they do not want to give up hope that this is not impossible in the future. After all, the light of the past can also illuminate the path of the future. Maybe our future was there in our past, we just did not realise it. We were distracted by ideologies that may have been proclaimed redemptive, but turned out to be mass destruction. One can also learn to redesign if one has left the beaten track for an unpaved one. For some, this may be a *skansen-romanticism*, even a historical anachronism, but for others it is a path to sustainable development, a condition of natural

and socio-economic balance. The most modern (not momentary profit-minded, broker-driven) thinkers, the proponents of eco-philosophy and eco-economics, see the solution to our most serious problems again in the individual and in small human-scale and human-centred local communities, in individual and family farming, in natural, healthy small-scale property that promotes human creativity. “People organised in small units take better care of their own piece of land or other natural resources than anonymous corporations or governments on a whim of grandiosity. (...) Alongside the family, work and the relationships created by work are the true foundation of society. If the foundations are sick, how can society be healthy?”<sup>26</sup> The essence of this new way of thinking was summed up by Ernst Schumacher, referring to Mahatma Gandhi: “production by the masses, rather than mass production (...) people can be themselves only in small comprehensible groups. Therefore we must learn to think in terms of an articulated structure that can cope with a multiplicity of small-scale units”.<sup>27</sup> In the context of the codification of private law, Artúr Meszlény formulated the same thing more than a century ago: “... we are aware that *when we work for the conservation of units of property, we are, by the economic laws of the distribution of property, advocating for the predominantly small units of property*, enhancing their capacity to perform, easing their burden, increasing their credibility. The smaller the assets, the more work is involved in relative terms: in keeping small assets together, we are protecting the fruits of work”.<sup>28</sup> Through the protection of one’s own property, acquired by one’s own labour, Meszlény also placed the protection of the worker-owner (such as a prudent steward) at the centre of private law, and at the same time defined the focus of the state’s private law-political obligations. His programme could even be a programme of sustainable development and, within that, of *sustainable private law*, which is not only topical but also forward-looking.

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26 Schumacher, E.F. (1988) *A kicsi szép: tanulmányok egy emberközpontú közgazdaságtanról*. Budapest: Közgazdasági és Jogi Könyvkiadó. pp. 35–36.

27 Schumacher, E.F. (1988) p. 76.

28 Meszlény, A. (1917) *A polgári törvénykönyv szocializálása*. Budapest: Franklin Nyomda. p. 17.

## 9. Sectional structures

**THE ARTICULATED STRUCTURE** of small-scale units must be true of the property structure, the economic structure, the settlement structure, and even democracy and the social market economy as a whole. The key – which can be applied to all structural elements in general – is Bibó's idea of *real property*, which *can be grasped by the agency of a single person*. Larger sizes than that result in domination not of things, but of people.<sup>29</sup> At the centre of the elements of the articulated structure remains the individual, who is the *prudent steward* of his own life and of the “factors of production”. *Human scale* can never be obsolete, no matter what technological, industrial, social, multinational or global forces attack or threaten it. We can and should think *globally*, but we must always act *locally*. Péter Veres has already suggested: “It is the duty of governments to organise this small-scale production in every way, with sales, credit, machinery, tractor stations, cooperatives, vocational schools and model farms, so that it can compete with the most advanced large farms. And it can be. If large machines are not suitable for small production, small machines must be produced (...) The main thing is to make more people feel free”.<sup>30</sup> It was as if the idea of Péter Veres was continued or quoted 30 years later by Ernst Schumacher, now in a broader context, from an ecological and sustainability perspective: “I have no doubt that it is possible to give a new direction to technological development, a direction that shall lead it back to the real needs of man, and that also means: *to the actual size of man*. Man is small, and, therefore, small is beautiful. To go for gigantism is to go for self-destruction”.<sup>31</sup> And technology – and all the achievements of the modern age – must serve man and living nature. Thus, for example, it is precisely technical and technological progress that has nowadays developed small machines in all areas of farming that make small-scale, personal and family, natural and humane farming possible again. The *personal development and freedom-enhancing* effects of these are irreplaceable.

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29 Bibó, I. (1986) p. 69.

30 Veres, P. (1948) pp. 90–91.

31 Schumacher, E.F. (1988) pp. 163–164.

## 10. Rebuilding society

**THE PRESERVATION OF HUMAN SCALE**, including the preservation of small communities that develop people's personality and strengthen their identity, is not only a socio-economic but also a natural-biological imperative. From individual selfishness "Perhaps the most important way out is to *rebuild societies from small communities*. In these communities... reciprocity can be constantly monitored, and the members of the community are thus constantly ennobling each other spiritually. They are fighting for shared ideals and can become the ideal building blocks of a larger social organisation, a nation."<sup>32</sup> It requires less selfishness and more cooperation, less rivalry and more collaboration, less win-lose and more win-win games, in marriages, families, local and workplace communities, property relations, management and socio-political life.

The image of a man who works for himself and his family, who takes care of his subsistence goods in harmony with nature, who establishes mutually beneficial relationships with the members of his family and the small communities where he lives and works, based on cooperation and not selfishness – a *bonus et diligens pater familias*, the *prudent steward* – is thus re-emerging as the type of man of the future. This was, is and can continue to be the image of private law, and it is from these people that a new, sustainable image of society will be built. Our future was in our past, we just did not realise it. The new Civil Code, if it preserves the living memory of the prudent steward, may appear to be a skansen of private law, but if it does not, it would disappear, it would become empty. The oversized organisations of transnational monopoly capitalism (TMC) – which we might call *global, even planetary* capitalism – and its institutions, too remote and uncontrollable from the individual, are already breaking down the framework of national public rights and with them the framework of nations, while national private rights are ignored. Just as the individual, the small person and his or her *adequate small property, small business*, individual or family smallholding, or even daily life, is not a significant

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32 Freund, T. (2005) 'Az önzés és az elmagányosodott ember', *Magyar Szemle*, 14(3), pp. 113–131.



item for them. And private law is *the law of everyday life, the law of the little people*.<sup>33</sup> We would do well, therefore, to stick to classical private law, like a prudent steward to his land, his workshop, his business, his enterprise, and to its vision of man and society. After all, we are not talking here about private law per se, but about our private autonomy, our daily life, our work as our most sacred and inviolable possession, our family, our well-being, our personal identity, our freedom, protected by it. So we are not arguing for private law per se, but for its subject, the individual. So that it does not become the *subject of global public law*, so that its human dignity is not violated, destroyed. So let us want and dare to be prudent stewards, good stewards of our lives, our vocation, our science, our personality and our humanity, our country, our Earth. Therefore, let us preserve the memory of Károly Szladits and the prudent steward, the decent and good man!

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33 Asztalos, L. (1987) *Polgári jogi alaptan*. Budapest: Akadémiai Kiadó. p. 13.

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# Global Property – Global Power



*'Discover is seeing what everybody  
has seen, and thinking what nobody  
else has thought.'*

*(Albert Szentgyörgyi)*

**IN ADAPTING THE LEGENDARY THOUGHT** of *Albert Szentgyörgyi* from the world of science to the gravest problems of social sciences today: everybody sees the foreshadows of a global disaster, but almost nobody thinks that this is actually the process considered as social 'developing' turning on itself, i.e. turning around.

## Globalization and development

**MOST OF THE PHENOMENA OF GLOBALIZATION** have overrun the opportunities of control by humans, since it is neither human-scaled, nor human-centred, but it has a compulsion to grow and is profit-oriented. Namely, chasing after giant magnitudes getting further from humans – as it had already been established by *Schumacher* in 1971 – is a passion for self-destruction.<sup>1</sup> The furthest only a few got to in thinking is that although globalization has its disadvantages, it has far more advantages. Therefore, whoever stay out globalization, misses out. Albeit, the 'more' advantage had now become fiction, especially if incorporated in a broader context and looking further ahead. Globalization – which serves the interests of a narrow but very wealthy economic and financial elite primarily, and secondarily the interests

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<sup>1</sup> Schumacher, E.F. (1991) *A kicsi szép: tanulmányok egy emberközpontú közgazdaságtanról*. Budapest: Közgazdasági és Jogi Könyvkiadó. p. 164.

of the richest countries – has more and bigger risks than advantages by now. If according to the orthodox economic scientific approach – and the political, legal, sociological, etc. scientific approach determined by it – ‘development’ shall mean everything that is growth, then it is obvious that more lending (more debt), more investment, more production and more consumption mean development. However, if all these are unsustainable because it causes more overpopulation more damage to the environment, more poverty, more natural disasters and more humanitarian disasters and human defenselessness, then it had drained its advantages until now, and it no longer can be considered as development. There are only few philosophers who research and<sup>2</sup> search for the ways of the ‘non-growth-based development’. This process is progressing too slow compared to the pace and extent the disadvantages and risks of globalization are growing, although the new (unorthodox) thinking has started half a decade ago already, if calculated from the report of the Club of Rome (1968).

### **‘Think globally, act locally!’**

**THE FIRST HALF OF THE WELL-KNOWN SLOGAN** of environmentalists and the ‘anti-global’ movements may be understood also as ‘make use of the advantages of globalization’ (these do not necessarily mean the compulsive growth!), while the second half may be understood as ‘prevent and avert the disadvantages and risks of globalization locally, in your own environment and lifestyle’. The two together set the requirement that you should not break away from nature and the individual, and in particular you should never turn against the natural foundations of life, including the conditions of life which may be called human. But to whom do these requirements apply to, on what levels, and what tasks and specific action programmes do these requirements mean, being aware of the new challenges and risks of today?

For several millennia and today as well people are living in social communities which formed states, therefore the primary obligation

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2 Keserű, B.A. (2016) *Szellemi tulajdonjogok a fenntartható fejlődés szolgálatában*. PhD thesis. Győr: SzE DFK. pp. 24–101.

of the states is to not adopt acts which conflict the laws of nature or which let the natural foundations of life get ruined. The states shall not establish and shall not operate institutions which – along the lines of their distorted interests – can manipulate the masses and can gain power over the people, and which therefore can treat individuals and the masses formed by them as objects and can sink them into modern-day slavery (wage-worker and debt slavery), thereby infringe their human dignity. In addition to the national states, these requirements naturally extend to the intergovernmental and international organizations as well, since the global financial institutions rule the small and medium national states as well. It is public knowledge that by now, more than one third of the hundred strongest economic powers of the world are not states but transnational company groups, i.e. institutionalized ownership. The ‘world dominance of corporations’ – which had been forecast by *Korten* (1999) – is near.<sup>3</sup> For this reason, individuals – each and every individual – have a special task both globally and within the states as well. According to famous Hungarian ecophilosopher *Ervin László* (2002), ‘you can change the world’, if you change yourself!<sup>4</sup> Of course, this shall be understood to include ‘each’ of the more than seven billion individuals who live under marketing and advertising pressure and media power, and it is a giant task. If due to their conflicting interests, the institutions (i.e. the leaders) of transnational monocapitalism (TMC) and the national states and the institutions thereof (i.e. the leaders thereof) do not want to make our world sustainable, then the freedom of the individual is – in theory – determined in this regard. Subjected to external forces, moreover, despite external forces, anyone may think what (so far) no one has thought of yet, although everybody sees it: the dangers of the global natural and social disaster, and anyone may take apart in averting these.

I want to illustrate my introductory thought through the current state of one single fundamental economic and social institution, the institution of property, taking a brief look back at the historical antecedents thereof and looking at the great questions of the future.

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3 Korten, D.C. (1999) *Tőkések társaságok világhuralma*. Budapest: Kapu Kiadó.

4 László, E. (2002) *Meg tudod változtatni a világot*. Budapest: Magyar Könyvklub. pp. 72–76

## System of property

**ONE OF THE FUNDAMENTAL** – if not the most fundamental – question of the development of human civilization is the system of division of the goods which ensure the subsistence – and together therewith the preservation of the species – of humans (as the set of goods: the assets), which is also known as system of property. Put simply, the main question today remains to be the diversification of proprietary rights, i.e. the extent and proportion of the social division of wealth and poverty. The majority of the theories for the improvement of man and society is based on the criticism of the given division of assets or system of property and offered a programme for the improvement thereof and tried to implement its programme, often through brutal violence. In course of its history, the European civilization has experimented especially much with the implementation of programmes (ideologies) aimed at the establishment and sustaining of systems for the division of assets and property.<sup>5</sup> All three supporting pillars of this civilization contains the effort to create the correct equilibrium as a crucial issue. This civilization has been trying to enforce the virtues of dignity, justice and fairness since and based on the Greek philosophy, including the teachings of *Aristotle*. Since the Roman private right, it has been trying to make as many of its free citizens as possible free private owners, in order to allow the summary of these to create a free civil society. Based on Christian ethics, it tries to socialize the selfish private property, elevate it to the level of ethics, and burden it with obligations and social responsibility. Over more than two millennia, the system of values of fundamental freedoms and human rights had developed on these bases, and the institutional system of the democratic rule of law – which in terms of ethics is also known as social rule of law, or in the material sense, the welfare rule of law – was established on these bases. The system of division of assets and property of the European national states (and starting therefrom, a lot of other countries of the world) was and is being formed – often correcting severe

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<sup>5</sup> Lenkovics, B. (2013) *Ember és tulajdon*. Budapest: Dialóg Campus Kiadó. pp. 236–262.

distortions as well at the same time – along the lines of these fundamental ideas and the fundamental values which arose from them.

## System of assets

**THE BASIS OF SOCIAL ORDER** is the rule of law, and the content thereof – in particular the values – are formalized by the constitution. The Hungarian constitution – in accordance with the international human rights documents and the constitutions of other nations – ensures the right to property for everybody, also emphasizing that property entails responsibility (Article XIII). Property is the main category of private law in the legal system, and within that the rights in rem. The social distribution of the proprietary rights and other rights in rem fundamentally determines the distribution of assets and the system of assets of the society. It is generally accepted textbook principle that according to the briefest and most concise definition: ‘Rights in rem: the law of the system of assets.’<sup>6</sup> The broad concept which was created as a result of a high level of abstraction (‘rights in rem’) exists with and in various specific content and forms in each and every national state, as well as in terms of location and time. Traditionally, it is part of private law (civil law) everywhere, and within that it regulates the fundamental legal relationships of property law (in the static state thereof). Their legal importance and significance are indicated by that – based on Roman law roots – rights in rem are included in the civil codes in separate parts (books). Primarily, this field of law reflects and determines the already established system of assets, which is formed by the type of economy, the dominant economic ideas and ideologies, as well as the political powers. However, by law and subject to the intention of the legislator, rights in rem form an instrument capable of adjusting, modifying the prevailing system of assets, and – in extreme cases, rights in rem are also capable of completely reestablishing the system of assets. Historical examples (in particular the Fascist and the Communist totalitarian dictatorships) prove that the system of assets newly established along the lines of new ideas and by new powers will definitively be different than the

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6 Lenkovics, B. (1995) *A dologi jog vázlatáa*. Budapest: Eötvös József Könyvkiadó. p. 13.

one preceding it, and there is no certainty that it will be better as well. However, certain elements of the tried and tested and well-functioning system of values may be rediscovered and restored.

Simultaneously with the fundamental questions of the rights in rem construed in national states frameworks and within the national legal systems, the main question of today emerges in a new dimension: how does the global system of assets develop, and what is the role – if any – of the global rights in rem – as the law of the global system of assets – in it.

With regard to the global system of division of assets, the facts (which everybody can see) have been well-known for a long time. Twenty percent of the total population of Earth owns eighty percent of the total assets, and within that, less than one percent disposes of more than half of the total assets (according to the newest announcement of international aid organization Oxfam scheduled for the World Economic Forum in Davos: 26 natural persons identifiable by name). One percent of the population of Earth is wealthier than the remaining 99 percent. Compared to the European and universal human rights value system, this distribution of assets is obviously unjust, inequitable, moreover, unfair as well, it goes against the establishment and functioning of civil society and the democratic rule of law, and it is socially and morally unsustainable. At the same time, nature is also unable to endure the flaunting luxury and wasteful consumption typical for the world of the wealthy, as well as the production and trade serving the above, with that the environmental conditions of human life and the future generations are the ones which and who suffer. The current type of economy and the global institutional system thereof, the system of assets is therefore is unsustainable in respect of both the society and nature. But what may be the main reason behind the troubles, which nobody has thought of yet, or at least only a few are thinking of? Since the base legal relationship of rights in rem is the proprietary right, we will examine that closer.

The essence of property There are countless theory about property as social phenomenon; according to the most recognized ones, property, in respect of its origin is the occupation (taking the possession, putting under human control) and cultivation of a plot of land (or other natural object), and making it one's own through the human work added thereto, i.e. the acquisition of the land, the crop and the produce. In abstracting this, in the broader sense property



is the acquisition of nature by man. This is the common key point of the approach to property of Rousseau, Hobbes, Locke and Smith,<sup>7</sup> the era of Enlightenment, moral philosophy, economic sciences and of the legal sciences as well. These philosophers appreciated the man, his personality, his physical and intellectual working capacity, diligence and knowledge, so that it was justified for man to claim the results of these at his own. This constituted and still constitutes the natural law foundation of proprietary rights – as civil substantive right – and the right to property as constitutional fundamental right and human right. Because it is fair, equitable and just this way. It shall be emphasized as well that originally, the proprietary right of man to his own person and his proprietary right to the object created (made) as a result of his personal work had not been separated from one another. However, in the ranking order, working ability has priority in terms of that it is the source of all the other (in rem) properties of man (the person performing work), therefore the working ability is his most sacred and untouchable property!<sup>8</sup> The joint interpretation of the proprietary right to the person and the object proved to be suitable for laying the foundation of the freedom of man, i.e. the dignity of man, so that he could become a citizen – and not a slave or serf anymore – and he could be a subject at law exclusively and not a legal subject anymore. The freedom of proprietary right of objects (assets) as the material foundation, condition precedent and guarantee – but simultaneously also the right rate, limit and responsibility – of the personal freedom of could have been conceivable in this sense (any exclusively in terms of this joint interpretation).

## Property and power

**HOWEVER, SOCIAL REALITY** – and consequently the history of mankind as well – developed differently. The material proprietary right to objects, especially the proprietary right to large fortunes had been overtaken by the ‘man and his object’ relation, the original extent

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7 Lenkovics, B. (2018) *Ember és jog*. Budapest: Dialóg Campus Kiadó. pp. 299–303.

8 Lenkovics, B. (2018) p. 300.

of property, and it burst the frameworks of human personality, human scale and human-orientedness, and owing to its excessive size and the power accompanying it, it became an instrument to rule over other people, masses, entire societies and the states. Albeit its true purpose would have been the abolition of the power (the slave-owning, feudalistic power) phenomenon. The castellans were replaced by factory owners, and the feudalistic privileges at birth were replaced by the privileges of great fortunes. The human personality, the personal working ability and willingness of man became marketable (labour market) commodities. Whatever can be sold or purchased in the market is a legal object not a subject of law. Thus, the working power ('human power') was reduced to an economic science concept, and consequently it became a legal concept, while the concepts of work and property separated from each other and then turned on each other and commenced a contest which lasted for centuries. Having become objectified and materialized, the concept of property narrowed down to the proprietary rights of private law, to the ownership of the abstract 'object', which ensures exclusive rights to the owner entitled thereto, along with excluding everybody else from those, moreover, obliging them to tolerance and refrainment. In this manner, especially the large properties had again become instruments of indirect (economic, financial) rule and economic, financial and political power over the man, the people excluded from the property, instead of becoming the instrument to free (grant citizenship to) the masses. This is the reason why we are hearing every more frequently about the expressions of 'wage slavery' and 'debt slavery' again today. However, nowadays, we do not or hardly hear the concepts of 'capital' or 'capitalist' linked to property. Instead, faceless and impersonal institutions are operating, such as multinational or transnational company groups, institutional investors, IMF, GATT, stock exchanges and brokers trading derivative proprietary rights, offshore owners, managements exercising proprietary rights, etc. However, the impersonal, unclear, unidentifiable presence of the (diffuse) property dispersed among them is experienced directly on a daily basis, everybody sees and experiences its power, and still almost nobody considers the dangers and excessive importance of this global phenomenon. However, here on the Eastern periphery of Europe, we – as the survivors of the 'realistic' Socialism,

i.e. the socialized property system and state planned economy – have the duty to think about it. Since the two gravest mistakes of the Socialist social property were the impersonality thereof (the proprietary rights were dispersed in the organizational system of the one-party state),<sup>9</sup> and that Socialist social property provided the economic foundation of and legitimized the totalitarian dictatorship and the political power. This is why *Tibor Liska* (1990) had reason to call this system ‘state wage slavery’.<sup>10</sup> These two grave mistakes – impersonality and the legitimation of the totalitarian economic power – is especially characteristic for global property as well, the power of which is formally lawful, only the methods of power are cleverer and sophisticated. But the key points of the Communist ‘state’ and the global ‘market’ wage slavery and debt slavery are the one and the same: the infringement of human dignity and freedom.

### The socialisation of property

THE LATEST STAGE OF THE DEVELOPMENT of property shall therefore be highlighted and emphasized on the road to the globalization of the institution of property. This direct antecedent is the social-scale (in reality, national state-scale) institutionalization of property. We could also call it ‘socialisation’, if the Communist dictatorships hadn’t discredited this concept already. Moreover, they fraudulently called ‘nationalization’ socialisation, which in fact resulted in the nationalization of the entire society, instead of the socialisation of property, and the entire society remained an outsider in respect of the states as the sole owner, society was excluded from the property. Based on the Western European examples, it is therefore more accurate to address it as the ‘socialisation’ of property (but even that shall not exceed the extent as it had been overused by the German National Socialism. The root cause of socialisation is actually the failure

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9 Sajó, A. (1989) ‘Diffúz jogosultságok ügynököt keresnek’, *Állam- és Jogtudomány*, 24(2), p. 38.

10 Liska, T. (1990) ‘A munkapiaci reform vállalkozási koncepciójának kiterjesztési lehetőségei a keleti átalakulásban’, *Valóság*, 33(11), p. 4.

of the division and humanization of property, i.e. the widespread social diversification and relatively equal dispersing of property. In other words, the distortion of the civil property system, the model of the free private property – free citizen – free society. One of the fundamental achievements of the great European theoretical trend of embourgeoisement, i.e. equality before the law (also known as equal rights) was not followed by the realization of material (i.e. property, ownership) equality. The achievement of the first element of the great triple motto – freedom – was not followed by the realization of the second – i.e. equality – but having skipped over the step thereof, the third one – solidarity – was emphasized instead, first on religious ethical basis (*Rerum novarum*),<sup>11</sup> and then on ideological basis (National Socialist, racial, as well as Communistic proletariat solidarity), and even later on the bases of human legality (humanitarian). At the expense of in no way small efforts and sacrifices, the extreme equality theories tamed down to become ‘social equal opportunities’ as objective and the human and constitutional fundamental right to ‘social security’. Subject to the historical development, the elements and extents of are versatile in every national state, however, the key institutions thereof are the same: free public education (popular education, elementary school), public health, health insurance scheme (medical care and provision of medicines), pension system, pension insurance scheme (caring for the elderly) and the system of social assistance. The state is obliged to raise the financial (material) instruments required for the institutional establishment, maintenance and development of these; the states is obliged (motivated) to do so by the general, equal and secret right to vote, the political institutional system of popular democracy (now: democratic rule of law). These equal opportunity and social security institutions – as the civilizationrelated achievements of Christian Europe – are called social solidarity institutions. The moral (humanitarian) interpretation of these is also possible, however, in reality, these are the results of the battle between capital (property) and

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11 Leo XIII (1891) *Rerum Novarum: Encyclical of Pope Leo XIII on Capital and Labor* [Online]. Available at: [https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf\\_l-xiii\\_enc\\_15051891\\_rerum-novarum.html](https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html) (Accessed: 20 October 2023).

workforce (property) spanning over several centuries, more generally, the rivalry of Capitalism and Socialism (the cold and active wars of the bipolar world order), as well as the already mentioned socialisation and elevation to ethical level of the – from our viewpoint – selfish and unscrupulous private property. Their instruments lead from the general and proportional taxation – through the social constraints of property – to the widespread redistributive instruments of the democratic rule of law. The key points of these are taking from the proceeds of private property in favour of the public, and the more fair and equitable redistribution thereof as public property (public funds). Thus, through the institutions of social solidarity, those who themselves are not owners at all of who are only working ability owners and the contribution taken from them is less than the share received and enjoyed by them may also get a share from the proceeds of all the properties which exist in the social community concerned. The security and other advantages of the institutional systems are the achievement of the simultaneous and consecutive cooperation of multiple generations. The balancing of rights and obligations, the redistribution, the fairness and equitableness, extents and criteria of the taking and the allocation are among the most acute of political issues everywhere and always, regardless of whether the distribution system concerned is need-based, merit-based or substantive (institutionalist). In respect of their final substance, all social solidarity shares are therefore direct property (not directly ownership) shares. Therefore, it is no accident either that the European Court of Human Rights and the national constitutional courts – by virtue of interpretation – extended the ‘right to property’ – as human rights, as well as constitutional fundamental right – to the such cases of sharing the goods. From this viewpoint, there is no difference between the two cases where the owner citizen saves from his goods and accumulated for the education of his children, for the doctor and medicine in case of illness, for his life in old age or in the event or any other unexpected hardship (for example, unemployment), and where for the same cases and expenditures, based on his civic (statutory) duty, he pays taxes and contributions to a financial fund, from which he then may get a share. However, from another viewpoint, there are significant differences between the two cases: the first are the freedom and responsibility of the selfproviding owner citizen, and

the second are the obligation of the paternalistic state and the right of the citizen. In the first case, property has an individual (individual and familial) function, while in the second case, the social function is given larger emphasis. The first case is the traditional function of property, while the second case is the modern age and the most recent (current) function of property. Obviously, the two do not exclude each other, one may prevail while supplementing the other, in which case the extent and proportion of the two functions will be the especially significant political issue.

### **The social function of property**

**THE MOST IMPORTANT LESSON** to be learned from the new function of property – as social institution – is that all the goods which are available to society have social function, partially regardless of the persons among whom and the manner (to which extent and in what proportions) in which the proprietary rights related to all goods are distributed. This lesson is not new, it had already appeared during the era of European Enlightenment and embourgeoisement, on moral philosophical and religious ethical basis. According to Locke, ‘the Earth, and all inferior Creatures be common to all Men’. Meanwhile, *Pope Leo XIII* wrote the following in *Rerum novarum* (1891): ‘...for God has granted the earth to mankind in general... no part of it was assigned to any one in particular, and that the limits of private possession have been left to be fixed by man’s own industry, and by the laws of individual races.’ From such thoughts<sup>12</sup> both the social and the universal (in today’s expression: global) function of the goods may be understood. However, this requires that two important circumstances are emphasized. Firstly, when these thoughts were formulated, the total population of the Earth was less than one billion, and compared to human production and consumption, the availability of natural resources was unlimited. Secondly, it was only at the expense of grievous struggles spanning over multiple centuries (economic and political battles of interests, revolutions and wars, sometimes mass human casualties) that

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12 Lenkovics, B. (2018) pp. 300–301.

the institutions (state and legal institutions) of the European nations established the current institutional system of the ‘division of possession’, i.e. the current social solidarity (redistributive) institutional system of distribution of proprietary rights, assets and goods, which is relatively balanced – although unsustainable on the longer term – in respect of the wide wealthy middle class, and which is social solidarity-based (redistributive) in respect of the poorer ethnic groups. The primary – but certainly one of the most important and hardest – question of global property is whether through a so-called ‘giant leap’, this multiple-century European development phase can be left out in referring to the universal function of goods and the universality of the human right to property in respect of – by now – seven billion people, on two thirds of the Earth, i.e. in the poor and in the even poorer countries? Is direct transition from the half familial, national, tribal, half feudalistic civilizations to social market economy and democratic rule of law possible?

### **The global function of property**

**AT LEAST UNTIL NOW**, historical ‘giant leaps’ (from the ancient community to capitalism, from feudalism to Communism) have not been very successful. Similarly, it would make no sense to think in terms of global utopias, to build a global phalanstery, where the rich give up their possessions to public property voluntarily, and where they join the order of work, so that they could distribute the goods jointly as well. A global proletarian revolution has no chance either, which would require global Communism, and where everybody is working according to his abilities, and where everybody gets a share according to his needs as well. Due to the large-scale objective and subjective differences of people, both in abilities and needs, this has not been successful so far, and afterwards it would be even less successful (on a global scale) due to the huge natural, social, cultural, religious, etc. differences. For this reason, the global extension of the protective shield of the social solidarity institutional systems – which are established and sustained in national state frameworks and as a result of the co-operation of multiple generations – would not be advisable either. The

sensitive equilibrium of these is difficult to sustain even in each national state, and the global straining thereof on the expenditure side would deplete these systems within a very short period of time, and their collapse would take down even the strongest of national economies with them, together with the democratic political institutional system of such national economies. Put simply, for objective reasons as well, there would be too few contributors (the contribution) and too much beneficiaries (the expenditure). The poor world would not be pulled out of poverty (including their overpopulation and environmental problems as well), but instead it would drag the richer world into poverty too, which would have unpredictable economic, social and political consequences. Moreover, the provision of rights in large numbers without the fulfilment of preliminary obligations raises serious questions regarding fairness as well. Therefore, instead of the strategy of some kind of giant leap, the tactic of small civilizational steps would be feasible, while making use of the historical experience of the European civilizational development, but also taking into account the new challenges and constraints arising from the risks of the global disaster (the criteria of sustainability). Following *Mahatma Gandhi*, *Schumacher* (1991) called these small steps and gradualness ‘intermediate technology’.<sup>13</sup> They wanted producing masses rather than mass production, especially when the immediate adoption of the latest techniques and the most efficient technologies would cause mass unemployment and thereby exclusion from property and work, as well as poverty. In the world of robotization, producing property and ever-expanding consumption and trade, this thought may serve as general guidance even today. But what is happening with the social solidarity institutions which fulfil the new functions of property? Primarily for material reasons, it is impossible to mechanically copy the most developed systems of these established in the richest countries in the so-called developing (in fact poor) world (i.e. in at least two thirds of the countries of the world), thus these cannot be developed into global institutional systems. Accordingly, it would be unnecessary to start solving the global problems by turning the UN General Assembly into a global

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13 Schumacher, E.F. (1991) *A kicsi szép: tanulmányok egy emberközpontú közgazdaságtanról*. Budapest: Közgazdasági és Jogi Könyvkiadó. p. 158.



parliament, and the operation of the UN specialized agencies into a world government. The principle of division of powers shall however be extended to the global proprietary power as well. The principles of small steps and gradualness may be applied in this respect as well. The UN General Assembly shall discuss the global problems – separately and in connection with one another as well – more intensively than before (more frequently and profoundly). In the same way as we could already see it in respect of environmental protection at the world conferences in Stockholm, Rio de Janeiro and Johannesburg, and most recently in Paris. Even if a global public education system, a global health insurance system, a global pension insurance system or a global social benefits system cannot be established (yet), the structure and functioning of the specialized agencies (UNESCO, WHO, ILO, UNICEF, FAO) can be developed in this direction gradually. However, the main objective should not be expansion of themselves but rather supporting the establishment and maintenance of such institutions in the national states, with taking into consideration the local circumstances, capabilities and opportunities, and making use of the best experiences. The global redistribution of goods shall be started by supporting the establishment of the social solidarity institutional systems in the developing (poor) countries. Afterwards, the most support will still have to be used to lessen the remaining imbalances, in particular the extreme imbalances. Education and training shall be supported first.

## **The global domination**

**ON THIS INTERNATIONAL LEVEL**, the detection and containment of the interests and global domination efforts of the global property (transnational economic and financial) institutions (moreover, institutional systems) – which are functioning stronger and more organized – seem like an especially difficult task. Such large international conventions and institutions such as the GATT, the WTO, the IMF, the World Bank, the UNCITRAL and the UNIDROIT, etc. have also contributed to the establishment of the current distorted system of distribution of income and assets. Usually, only the successes of the above institutions are ever mentioned, and their role in causing the global risks and

distortions are hardly ever brought up.<sup>14</sup> In addition to these global institutions, the process of distortion was caused, moreover, supported by the neoliberal Washington Doctrine as well, in particular the holy trinity of ‘liberalization, privatization, deregulation’.<sup>15</sup> Similarly to globalization, these had and have advantages, as well as obvious disadvantages. Some go as far as calling our time ‘usury civilization’, the domination of credit money (from the other side: debt money), which of course must be overcome, while its negative effects should be corrected. In the 21st century, the functioning of the local and national state property, the economic participation of the states, and in particular planned economy are still not in the interest of the capital (by now: global capital), not even the actions of the ‘developing states’ or even the welfare state, if it is accompanied by the increased redistributive power of the state. The same way maintaining the restrictive power of the strong national states is not in the interest of the global property, neither are the increasing and institutionalization of global redistribution. Meanwhile, the danger of the bipolar world order and Communism – which kept the global capital at bay and forced it to make concessions – has ceased. Nevertheless, it should be understood that the dangers of global disasters (overpopulation, global migration, world poverty, climate disaster) jointly cause a much bigger emergency than the danger of Communism at its time. Although there is no longer danger that the selfish private properties, and in particular the large properties of global extent, would be nationalized (socialized) by dictatorships of the proletariat, however, it was replaced by the need and necessity for the more fair redistribution of goods, in particular on the level of the poor national states, as well as on the global level. The expansion and deepening of global poverty, and even the relative impoverishment in the wealthier countries following the financial-economic crisis – on the volitional basis of popular democracy – keep the social expectation for the redistribution of goods constantly on the agenda

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14 Tóth, B. (2013) ‘A jog és a gazdaság megváltozó viszonyrendszere’, *Európai Jog*, 13(5), p. 9.

15 Mellár, T. (2007) ‘A liberális gazdasági doktrína tündöklése és ...?’, *Polgári Szemle*, 3(11). [Online]. Available at: <https://polgariszemle.hu/archivum/38-2007-november-3-evfolyam-11-szam/223-a-liberalis-gazdasagi-doktrina-tuendoeklese-es> (Accessed: 20 October 2023).

and strengthen it. Despite the neoliberal economic policy turnaround at the end of the 20th century – even in the countries with the most liberal market economies, on European and global average as well – the rate of state redistribution has increased, especially after the 2008 worldwide financial crisis. At the same time, over the last decade, the number of Dollar millionaires of the world has doubled. The need for the taking (acquisition) and redistribution of the goods (allocation to the poor) by the state is getting increasingly stronger, and we may call this the modern age need for socialisation of property, but by now it is dependent on the social solidarity institutions which by now have taken over the traditional functions of private property. The novelty of this in the 21st century is that – having crossed the national states frameworks – is emerged on global level and on the global scale as well. This is nothing other than the ever-increasing demand for the global acquisition, socialisation – i.e. the fairer distribution and redistribution – of the global goods.

### Struggle for the public goods

**THERE WERE EXAMPLES** for a similar phenomenon in the history of mankind, during the era of colonization and the half a millennium thereafter. However, back then the political battles and bloody wars were fought for the territorial division and then redivision of the world, which actually meant the occupation, i.e. acquisition, distribution and then redistribution of the natural assets of the Earth. The colonial freedom wars and the emergence of hundreds of independent national states put an end to this process. Of course, the acquisition of the natural assets did not cease, moreover, the extent thereof increased significantly, however, the methods of the acquisition changes: conquering wars were replaced by the establishment and operation of economic – financial – legal instruments and institutions. Some consider these as the new instruments and methods of the continuing colonization.<sup>16</sup> In this case, it is logical that the fight

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16 Tóth, B. (2013) 'A jog és a gazdaság megváltozó viszonyrendszere', *Európai Jog*, 13(5), p. 9.

against the new kind of colonization, the instruments and methods of the ‘new colonial freedom war’ are changing and transforming as well. These new instruments could very well become the instruments and methods of the global acquisition and redistribution, distribution and redistribution of goods, while setting global equal opportunities and global social security as objectives. Meanwhile, the global migration (which a lot of people think is an irregular invasion) may be considered as a new method, which is a peculiar struggle for the social goods and for a bigger share from those. Using the input-output calculation, the largest crowd seek where they are given the most benefits in return for the least (or possible no) obligations. In addition to this pursuit raising the same severe global fairness problem as the excessive share of the ‘recolonizing’ wealthy countries and the wealthiest elite of the world from the goods (distorted extra share), the main problems still is that the quantity of the goods redistributed through the social solidarity institutions is tailored to the needs of the individual national states, is severely limited and it is different in each national states, however, until now it has adjusted to the size, ability to pay and the political willingness of the national states. Consequently, the national states institutions have no global ability to pay, either separately or jointly, or they have hardly any compared to the needs. Thus, this means that global redistribution may be established, operated and expanded based primarily on the social charging of the large globalized properties, while also emphasizing that global property entails global social commitments, restrictions and responsibility. However, the traditional principle of proportional taxation may be applied to this as well, calling it ‘globally proportional taxation’ in accordance with its 21st century requirement. Taking into account the global redistribution of the social assets, we could refer to – although knowing that there is no such thing – global social rule of law (world state), which would not even be pure fiction considering the universality of human rights. In connection with this, it is becoming more pressing day by day to – with regards to the global ownership power as well – think about the principle and the methods and instruments of practical implementation of division of powers, including the system of checks and balances, and the establishment of the institutions and instruments thereof.

## Territorial rights

**HOWEVER, EVEN FOR HUMANITARIAN REASONS**, one should not get removed from reality. The fundamental freedoms abstracted on the highest level and the human rights may be universal, however, to the most part material *goods* are not universal but are attached to places and persons, states and the citizens thereof. The majority of the proceeds of the globalized property goes to the private account of individual persons, thereby increasing their extreme wealth. Distinction may also be made among the rights declared to be universal:

- a) non-territorial,
- b) partially territorial and
- c) territorial rights.<sup>17</sup>

The majority of the fundamental freedoms referred to also as first-generation rights (freedom of thought, freedom of expression and press, the freedom of political and trade union association, freedom of belief and religion, etc.) is rather non-territorial, however, the right to vote and to stand for election are already bound to a state, i.e. they are partially territorial. In respect of these, the key criterion is that the state refrains from violating these rights. However, those second (and further) generation(s) of human rights – economic, social, cultural, environmental, equal opportunity, etc. rights – the enforcement of which requires material assets and state participation are largely bound to the territory concerned. The citizens may demand these from their own states, or conversely, these rights impose obligations on the national states, but only in respect of their own citizens. The right which would oblige the national state globally, in respect of all inhabitants of the Earth is rare, exceptional and temporary. Thus, it is limited by the material performance, regarding which there are significant civilizational, historical, traditional and cultural differences among the national states, in the field of the fulfilment of civil obligations essential to financing (extent, types) rather than the rights. On a global scale, the European national states – due to their common Christian roots – are leading in the undertaking

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<sup>17</sup> Andrásy, Gy. (2018) 'Az emberi jogok terület szerinti', *In Medias Res*, 7(1), pp. 35-39.

and fulfilment of obligations. It is no accident that the majority of global migration is aimed at Europe. However, the ability to undertake social solidarity is finite in respect of not only the European national states but the European Union as well, i.e. it is territorial per continent, too. Compared to the global population, the population of Europe has already overextended itself in terms of both its economic performance and social undertaking (which is otherwise exemplary), and burdening it even further is unconceivable without severe political risks.

## Different solutions

**BASED ON ALL OF THE ABOVE** – having briefly touched upon the problem of the globalization of property and the difficulties of the global redistribution of goods – it shall be also considered whether there is any (are) other solution(s) for averting or managing economic, social and environmental risks, in the interest of sustainable development. I heard the following thought from Ervin László during one of his lectures: *‘our future was in our past, we just did not notice it and passed by it.’* In terms of its content, this thought is the same as Schumacher’s (1991) ecological economy explained in his book titled ‘Small Is Beautiful’, the key point of which is the encouragement and support of human-scale and environmentally friendly solutions, in particular in the field of agriculture, especially in respect of the basic legal relationships and the formation of the property relations. And this covers the second half of the well known slogan of environmentalists and the anti-global movements: act locally! Anything multinational, transnational or global is the deathly adversary of everything that is personal (familial) and local, furthermore, these are far from being in the same league, and those who have dominance play according to unfair rules, since they are the ones dictating, moreover, writing more often than not the rules. In order to handle the cases with lack of balance, the ‘principle of protecting the weaker party’ emerged and worked in law (for example in the field of protection of workers and then in consumer protection). In the field of agricultural and proprietary relations, a similar process has started through the support of the micro, small and medium enterprises and the appearance of micro-credits, which should be given more emphasis and the process should

be accelerated. All this would mean the re-reduction, *the diversification* of the structure of agriculture and simultaneously the structure of property. According to the proposal of *István Bibó* (1986), this would be the undoing and humanization of the property relations.<sup>18</sup> According to the ecological-economy proposal of Schumacher (1991), the same would mean making the agricultural and proprietary relations human-scaled, the adjustment thereof to the size of man.<sup>19</sup> Man is small, and 'small is beautiful!' The same scientific development that had chased agriculture towards the large organizations and mass quantities for centuries has by now developed the most state-of-the-art instruments of individual work again. Therefore, in terms of agriculture locality means that all production, processing, trading and service activities which can be carried out locally (as well) should be carried out locally. Adjustment to the local needs also means versatile and various orders, as well as the satisfaction of individual needs (tastes). Of course, all of this means the conscious diversification of the settlement structure as well, thus there is a way back from the dead-end of excessive urbanization. The conscious formation (restoration) of the small private ownership structure

- ≡ would restore the freedom (and the
- ≡ responsibility as well) of the owner,
- ≡ would restore the original (natural) function of property, the unit of property and work,
- ≡ would restore the dignity of work and of the worker,
- ≡ would restore the equal opportunities and co-ordination of the contracting parties, the self-esteem of the individual and the appreciation of the individual by the community, etc.

The human scale of agriculture and the agriculture being human-oriented would reinforce the institutions of marriage and family, the local community, economic and civil associations, the self-management, self-government, and through these, the local, national (social) democracy. Those who are able to manage their own lives responsibly will decide more independently and responsibly in the matters of the

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18 Bibó, I. (1986) 'Az európai társadalomfejlődés értelme' in Bibó, I. Válogatott tanulmányok. 3. kötet 1971-1979. Budapest: Magvető Kiadó. pp. 5–123.

19 Schumacher, E.F. (1991)

community as well, and the same applies to their own 'environmental' matters, too. A responsibly farming person does not break away from nature and the environmental conditions of his life and farming. The humane economy and property unit is also environmentally friendly. Therefore, the principle of locality does not simply mean the dispersion of property and the more even social distribution of property, but owing to its widespread and spill-over effects, it is much more than that. It would mean the ending and at least the partial reversal, correction of a developmental process which has become unsustainable.

### **Man as co-owner**

**THE HISTORICAL ROLE** (and the spread and in this context, the success) of Marxism had been greatly aided by the fact that the individual, the society and science as well fell under the spell of the industrial revolution, the bigger and bigger factories and the industrial armies. In contrast, the Socialist states did not restore the co-owner power of the individuals as 'ideal total capitalist' but established the state economy power of these over the individual (with the help of the nationalization of property and the totalitarian 'proletariat' dictatorship). Let us not embellish things, global capital, the transnational monocapitalism rules over the masses (including the individuals) in the same way, only its methods are more cunning and sophisticated, as well as lawful owing to its lobbyists, but its methods are not fair. It pleads the ideas of rule of law and human rights, but it allocates only that much from the material assets which is enough to avoid mass death from starvation and global slave uprising. In the 21st century, capital exploits a mass of people as never before, and to the extent never seen before. Is use this strong and maybe excessive language only to give greater weight to the correction of unsustainability, the requirement of sustainability, thinking human-centered again, as well as the laws of nature, and the right to life of nature, including humans.

In order to prove my good intention, I admit that the fragmentation of all large properties and turning them back into small-scaled properties would be neither necessary, not possible today either. However, the establishment of the actual co-owner (and not the fake 'social'



owner!) status of individuals could be ensured in the large properties as well, its legal opportunities have been available for a long time (see: forms of common private ownerships, companies limited by shares, employee co-ownership programmes, control participation rights, share certificates, etc.). Owing to the social democracies, these opportunities have emerged by the mid-20th century, however, as a result of the neoliberal changeover, these opportunities vanished or declined. Namely, these opportunities were in our past just as the small property did, but we passed by these, too. Let's notice and use them.

### To become more

**AND FINALLY** – before you branded me as ‘materialist’, moreover, ‘Marxist’ – it should not be forgotten either that man does not live by bread alone! In addition to the material assets of subsistence, the man needs intangible assets as well, since then man is an intellectual and spiritual being as well. The spiritual, intellectual and cultural needs of the man shall be satisfied the same as his material needs. Furthermore, the abundance of intangible assets can actually be expanded without limits, and nobody will be poorer through the distribution and redistribution of intangible assets, however, enrichment may be achieved by anybody through them. (Here we do not refer to the world of ‘intellectual property’, which in following the model of material – i.e. in rem – property, has become materialized and globalized itself, and by now it contributes almost half to the distorted distribution of assets!) The true quality of man depends not on his things but on his accumulated incorporeal assets. As Saint Pope John Paul II explained it: *‘culture is the great educator of people, which teaches us to become ‘more’ within the community’*,<sup>20</sup> and not to have ‘more’ in the material (in rem, possession) sense. Thus, we do not live to have more but to be more! Naturally, ‘being more’ also means that we should be ‘better’. We must rethink our world constantly so that we can make the world – including the man – better.

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20 János Pál II (2005) *Emlékezet és azonosság: beszélgetések az ezredfordulón.* (Memory and Identity: conversations at the turn of the millennium). Budapest: Európa Könyvkiadó. p. 90.

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# Global Redistribution of Wealth<sup>1</sup>



Abstractions are fine, but I think  
people also have to breathe air  
and eat bread.” (Hermann Hesse<sup>2</sup>)

**1. TOGETHER WITH PÉTER PACZOLAY**, we are members of the generation that was born and raised (socialised) under socialism, and then experienced the failure of this system of ideas as a historical experiment. But this experiment was an experiment on humans and involved heavy human sacrifice. Instead of formal equality of rights, it promised real and full social (material) equality, as the poetic soul had already sensed in the 19th century: “When all men lift the horn of plenty in one happy equality”, and “when all men have an equal station at the table of justice” (Petőfi, Sándor: *The Poets of the Nineteenth Century*). To this end, it made everyone equally (socially) owned at the abstract level of law and shared the wealth with everyone within the framework of state paternalism and depending on the performance of the socialist planned economy. True, not abundantly, but poorly, but relatively equally (even if there were “more equal”). From another point of view, of course, this meant that it confiscated (requisitioned) private property from everyone, eliminated the self-regulating mechanisms of the market, i.e. deprived its citizens of the freedom of property and management, the freedom of contract, and, in sum, social (political) freedom. In this way, it switched off the individual incentives and

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1 Originally published in: Fejes, Zs., Török, B. (eds.) (2016) *Suum Cuique. Ünnepi tanulmányok Paczolay Péter 60. születésnapja tiszteletére*. Szeged: Pólay Elemér Foundation. pp. 572–586.

2 Hesse, H. (2012) *Az üveggyönggyjáték: Josef Knecht Magister Ludi életrajzának kísérlete, valamint Knecht hátrahagyott írásai*. Budapest: Cartaphilus. p. 362.

economic interests that had previously acted as a driving force and social organizing force in bourgeois societies. A bipolar world system of who beats who in a contest (ideological, political, military and economic) has proved to be a fatal mistake. In 1989–90, socialism as a world system collapsed, and it seemed as if the world had become “unipolar” once and for all. In fact, the victorious pole could even believe that history was over (F. Fukuyama), that we no longer needed to worry, that humanity had (once again and again) invented the only saving ideal (ideology), which promises a perfect economic and social order, with unlimited production-growth and expansion of consumption. That will be the greatest possible happiness for the greatest possible number of people (J. Bentham)! This illusion seems to be dissipating in a much shorter time than the socialist world order needed.

**2. “THE PRESENT IS ROOTED IN THE PAST”**, as Csaba Varga<sup>3</sup> recently stated in a study, especially if we look at the present as the cause of past causes. The situation is not so simple, however, if we look at the great idea of “liberty, equality” within the law itself, from 1789 to the present day. It seems as if the conjunction “or” between them creates a constant choice and irreconcilable opposition, as if they can only prevail “more or less” at the expense of each other (in capitalism, freedom more and equality less, in socialism the reverse). But with the conjunction “and”, the aim should be to balance them, or at least to constantly strive for their sustainable co-enforcement in the long term.

The rivalry between the two members of the conceptual pair can also be seen as an area of competition in the bipolar world system. The two horrific wars of the 20th century, both equally inhuman, and the totalitarian ideology, especially the so-called Auschwitz syndrome, have strongly inspired the revaluation and development of human rights, the creation of universal legal norms that prevent the repetition of atrocities and guarantee the peaceful coexistence (more than coexistence) of all humanity. As the preamble to the UN Universal Declaration of Human Rights (1948) hopefully put it, “... recognition

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3 Varga, Cs. (2015) ‘Eszményből bálvány? A jogállamiság és színeváltozásai’ in Gárdos-Orosz, F., Szenté Z. (eds.) (2015) *Jog és politika határán: Alkotmányvíváskodás Magyarországon 2010 után*. Budapest: HVGOrac, MTA TK. p. 261.

of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” What is remarkable is the order and the interdependence of the elements of the list: equal dignity and inalienable equality of rights for every human being, then on this basis and afterwards freedom and justice, with peace as the result. The change of order, even if not conscious, is remarkable, and even more so if it was conscious, because it is an admission of the failure of two centuries of social development. Originally, the order (freedom, then equality) was reversed.

The great thinkers of the Enlightenment and civilisation started from work, from the value-creating (creative and productive) man. “The property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable.”<sup>4</sup> It is his own property, created by his own labour, that sets man free, makes him a citizen, and a community of free citizens constitutes a free society. Free citizens are those who are equal and co-ordinate, freely contracting with one another, shaping the content of their legal relationship, their substantive rights and the obligations they assume, according to dispositive rules. In this context, the freedom of work and property ensures free human life and gives man dignity, a general, unconditional and equal legal capacity, the rank of *person* and then of *personality*, which is innate and inalienable. This view of man and society in the world of law here in Europe is nothing other than the rehabilitation and modern adaptation of the “bonus et diligens pater familias”, an abstract legal representation. He is the ideal of a decent, rational and responsible man, who is concerned about the financial security of himself and his family. The same image of man has been abstracted in Hungarian law as the “prudent steward”, whose “diligence” has become a general standard of conduct.

If this view of man and society was the result of such an embedded, natural and organic development of law, was there something wrong with it? Why has this race of people come to the brink of extinction, and why has the social image it has created become distorted? Has

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4 Smith, A. (1959) *A nemzetek gazdasága, e gazdaság természetének és okainak vizsgálata*. Budapest: Akadémiai Kiadó. p. 172.

the change of order at a high level of legal abstraction remedied the problem? Let's take a closer look at what this change has brought!

**3. INEQUALITY WAS (AND, LET'S NOT FORGET, STILL IS)** the congenital defect, the inborn and growing handicap of the human and social vision of freedom "and" equality. There is also a "legal reason" for this, namely the document of the French Civil Revolution, the Declaration of the Rights of Man and of the Citizen, namely its Article XVII: "Since the *right to property* is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid." The civilising – in fact, capitalising – Europe emphasised only the first clause of this multiply complex sentence ("*the right to property is inviolable and sacred*"), and allowed, even encouraged, it to prevail as an economic and social organising force. This is nothing less than a historical example of legal abstraction, even though the two most essential and "most human" presuppositions of the original formulation have been left out: *man* himself (i.e. each individual man) and his most sacred and inviolable possession, his *labour power*. Under capitalism, man as labour has been transformed from a subject of property rights into a factor of production, a commodity on the labour market, i.e. a legal object. And the (economic) laws of the market are cruel (in this case: inhuman). If the supply of a commodity is too high, its market value falls. And the owners who buy this commodity get it at less than its real value, i.e. they acquire a human surplus value. This increases their wealth, increases the size of their property, allows them to buy more labour, which makes them even richer, and so on. Feudalism was followed by capitalism, and the lords of the manor were replaced by the factory lords.

The essence of private property remained, at the level of legal abstraction, the full private power of an owner over a thing (*plena potestas*), but in socio-economic reality, property rights have been transformed into the domination of people by large private owners alongside things, in essence. The inheritance of oversized private estates also inherited great wealth disparities and the wealth privileges that went with them, replacing feudal birthright privileges with those that went with "innate" wealth. The feudal lords were succeeded by

owners of capital; there was a change of rule, but the phenomenon of rule by the few over the many did not disappear, but was reproduced in an expanded form. Instead of a general state of freedom, the freedom of a few, the freedom of the privileged wealthy, was created. No wonder that one after the other ideas of equality were born, from utopian and scientific socialism to Italian corporatism, German national socialism and the socialist world system.<sup>5</sup> The historical emphasis has shifted from the freedom of the few to the real (material) equality of the many. With Bibó's words: "So it is the second phase of a single process".<sup>6</sup>

**4. HOWEVER, MOST OF THE EGALITARIAN IDEOLOGIES** that served as the ideological basis and the means of implementing the second phase – Italian corporatism, German national socialism, Stalinist-maoist communisms – ended in total dictatorships. The decisive reason for this was the concentration of economic power (material power) and political (public) power in a single hand, the state. The historical lesson is to separate the two, to create a balance of power between them, and to work together for the benefit of each individual and the common good.

Accordingly, the development of European society, the economy and the law have also produced humane ideas and ways of doing things. Following the publication of the papal encyclical *Rerum Novarum* (1891), a veritable wave of social legislation was launched, first in defence of the dignity of women and children, and then of work and workers in general. The evolution from freedom of private property to the social bonding of property is best illustrated by contrasting the Roman private law rule of the German Civil Code with the 20th century solution of the Weimar Constitution. "The owner of a thing may, without infringing the law or the rights of others, do with it as he pleases and exclude any interference by others" (BGB § 903). "Property is guaranteed by the Constitution; its content and limits are defined by law. Property obliges. Its use must also serve the welfare of

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5 Lenkovics, B. (2013) *Ember és tulajdon*. Budapest: Dialóg Campus Kiadó. p. 236–262.

6 Bibó, I. (1986) 'Az európai társadalomfejlődés értelme' in Bibó, I. *Válogatott tanulmányok. 3. kötet 1971-1979*. Budapest: Magvető Kiadó.

the community” (Weimar Constitution, § 153). Less than a quarter of a century has passed between the two legal documents, yet they separate and reconcile real historical eras, or at least open up the chance and possibility of reconciliation.

This organic and peaceful process of development was blocked for half a century by fascism on the one hand and the birth of the Soviet system and its consolidation into a world system on the other. Article 17 of the United Nations Universal Declaration of Human Rights (UDHR), paragraph 1 of which states that “Everyone has the right to own property alone as well as in association with others”, may also be interpreted as an imprint of this retreat. At first glance, ‘*alone*’ represents the old world, and ‘*in association with*’ the new world in the evolution of property relations. However, ‘in association with’ is a very broad abstraction, and can mean old agrarian communities, towns and cities, associations and cooperatives as well as commercial companies, including large international joint-stock companies. And of course it can mean the state property of democratic nation states as well as the social property created by the “nationalisation” of communist dictatorships. At most, it could be said that the latter were created in violation of the Convention, since Article 17(2) states that “No one shall be arbitrarily deprived of his property.” However, it was only after 1989–90 that this violation was brought to the tribunal of history, and the various countries remedied it in very different ways (reprivatisation, privatisation with bonuses, partial compensation, etc.). However, this could be the subject of a separate paper. What is more closely related to our present reflection is Article 22 of the UDHR: “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” It is nothing less than a compromise and generous promise of the otherwise rival *socialist West* and *socialist East*. The building and maintenance of large social solidarity institutions providing social security (public education, pensions, health care, etc.) can be ensured by social market economies (welfare states) as well as by socially owned planned economies. There is competition on the range of instruments and rates within the broad



framework of “social security”, as well as on the rights specifically mentioned in Articles 23–27. The right to work (Article 23), the right to rest (Article 24), the right to an adequate standard of living [Article 25(1)], especially for mothers and children [Article 25(2)], the right to education (Article 26) and the right to culture (Article 27) are all interpreted in the force field of the bipolar world system, in a historical and geopolitical context. To sum up, and in agreement with Erzsébet Szalai, “... the greatest self-correction, the creation of a short era of welfare capitalism, was forced upon capitalism by two enormous external challenges: the rage of fascism on the one hand, and the ideological pressure of the Soviet empire proclaiming collectivism on the other.”<sup>7</sup>

**5. THE HELSINKI FINAL ACT**, signed on 1 August 1975, and the so-called Helsinki process that preceded and followed it, should be mentioned as an important stage in the process of socialising capitalism, or in other words, of socially taming wild capitalism. This is usually referred to as a “détente” compared to the previous three decades of tense confrontation between the capitalist and socialist world systems, local wars and the Cold War arms race. The 400-page final document covered three main areas. The first is the creation and institutional protection of European security, because human life cannot be lived under threat. The second was on cooperation in the fields of economy, science, technology and environment. The third issue, the most important for our topic, was cooperation on humanitarian and other issues, in particular fundamental freedoms and mutual respect for human rights. Formal European and national institutions, as well as non-governmental organisations (NGOs), civil society organisations and movements have been set up to monitor, control and promote the implementation of the Helsinki commitments. The scope and concept of human rights provided support and cover for the new generations growing up in the socialist countries, for alternative movements and then for democratic opposition organisations. The developed and wealthy Western democracies were more concerned with the so-called

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<sup>7</sup> Szalai, E. (2012) *Globális válság, magyar válság, alternatívák*. [Budapest]: L'Harmattan Kiadó. p. 143.

first-generation civil and political freedoms of the Eastern countries, while the so-called socialist countries emphasised their own advantage in the field of second-generation economic, social and cultural rights.

This new rivalry has brought positive results for the development of European society. In the West, the idea of the social market economy and its constitutional, welfare state model continued to grow, while in the East, the civil society “small circles” of freedom, the precursors of the “democratic rule of law”, grew stronger and stronger. But for this particular competition, it should also be noted that the competitors were not in the same “weight group”, nor was the sport exactly the same. In the West, where a broad, wealthy middle class makes up the majority of society, people are materially freer, there is more civil and political freedom, democracy is stronger, and there is less need for social welfare and redistribution of wealth by the rule of law. On the periphery of Europe, in the East, in the Soviet-style socialist countries, the situation is in every respect the opposite. The majority of society is poor, dependent on state paternalism in return for which (social security) it gives more to the state, which restricts freedom.

The rivalry between the two world systems and the “Helsinki process” also had a beneficial effect, which was later shown by having paved the way for relatively peaceful regime changes in the socialist countries in 1989–90. This peaceful transition was also suggested by the so-called convergence theories. In a narrower sense, it only predicted that as a result of the scientific–technological revolution and economic cooperation, the differences between capitalism and socialism would gradually disappear, and the free market economy and the redistributive planned economy would merge. In a broader sense, however, convergence also implied the perspective of equalising (first generation) fundamental freedoms and (second generation, social) human rights, and raising them to an equally high standard.

This was also the hope implied by the United Nations when it rewrote the Universal Declaration of Human Rights (1948) in two separate documents in 1966, which were expanded and came into force in 1976 as a universal extension of the Helsinki process. Thus, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, separated from each other, but overlapping in textual terms and united in content (values),

symbolise the ideological divergence of the bipolar world system, but also its intention to converge. This intention on the part of Hungary was manifested only in 1986, when the two Conventions were promulgated simultaneously by legislative decree. While by then the country was on the brink of collapse in terms of economic performance, it was generous in extending fundamental freedoms and human rights. It was as if it was trying to compensate for the reduction in material opportunities by increasing rights. A seemingly cheap trick, it could be used to create great joy and political success by diverting attention from economic (material) processes. This trick was soon exposed, however, because it became clear how expensive it was to actually enforce rights, how much material and financial backing was needed, preferably from national wealth, and not from international debt as in the 1970s and 1980s. Looking ahead to 2010 (the fall of the ‘social-liberal coalition’ and the first two-thirds victory of the bourgeois right), not only did privatisation and regime change have more and more losers, but the number of the enlightened and politically disillusioned masses of society also grew.

**6. IN THE CONTEXT OF THE “EVOLUTION OF HUMAN RIGHTS”,** it is necessary to at least touch upon another very important economic phenomenon with global implications, namely the neoliberal turn in the world economy. When, by the 1980s, the state’s economic involvement in the Western capitalist market economies was approaching 40%, due in no small part to the expansion of second-generation human rights and the consolidation of the socialist world system, the (global) world of capitalists was in a veritable panic. To what extent can capital still be burdened with public charges, can its social commitment be enhanced, and to what extent can its social responsibility be increased? Capital has never liked to pay taxes, nor to take care of others; it is used to rule, not being ruled. The neo-liberal set of rules was developed by experts from the IMF and the World Bank and spread around the world as the “Washington Consensus”.<sup>8</sup> The essence of the proposed

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8 Mellár, T. (2007) ‘A liberális gazdasági doktrína tündöklése és ...?’, *Polgári Szemle* 3(11). [Online]. Available at: <https://polgariszemle.hu/archivum/38-2007-november-3-evfolyam-11-szam/223-a-liberalis-gazdasagi-doktrina-tuendoeklese-es> (Accessed: 20 October 2023).

programme – which was also offered to the catching-up countries, including the post-socialist “regime-change” countries, which lagged behind in economic development – can be summarised in the neo-liberal trinity of “liberalisation, deregulation, privatisation”. The essence of liberalisation is marketisation, including the internal market and especially the opening up of external markets, not only in the economy but everywhere outside it, including in the bastions of social rights and equal opportunities such as the major solidarity institutions, public education, health care and pensions. Deregulation is the obligation to remove the legal barriers of nation states to global economic and financial (investor) interests. Privatisation is the transfer of public property (state, local government and other social (community, institutional) property) to private ownership “at any price”, as quickly as possible. Two decades of experience show that no country has been able to successfully modernise and catch up by following these programme proposals.<sup>9</sup> What they have achieved is a loss of sovereignty for nation states, a weakening of their capacity for self-defence, a reduction in their material and financial capacity and, as an unintended side-effect, a decline in the effective enjoyment of human rights. As a result, many nation-states in Africa, the Middle East and Central Asia have effectively disintegrated, replaced by misery, chaos and aggression, with tens of millions of people fleeing to the North and West, to the rich and socially “developed” countries. But the global economy also has a vital interest in local security and a strong nation state. This is the paradox of globalisation.<sup>10</sup> Nevertheless, “It is too early to bury neoliberalism. ... It forces everyone into a world of global competition, drives peoples into economic warfare against each other, and adapts social relations to the market model, transforming the individual, who must now see himself as an enterprise. For three decades, this system of rules has dominated public policy...”<sup>11</sup> Pessimistic logic might say, “... the logic of capital becomes so dominant over other ‘logics of life’ that

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9 Stiglitz, J.E. (2003) *A globalizáció és visszavágásai*. Budapest: Napvilág Kiadó. p. 273.

10 Rodrik, D. (2014) *A globalizáció paradoxona: demokrácia és a világgazdaság jövője*. Budapest: Corvina Kiadó. p. 390.

11 Dardot, P., Laval, C. (2013) *A globálrezon: a neoliberalizmus múltja és jelene*. Budapest: EgyKettő Kiadó, 2013. p. 5.

it devours its own conditions of existence”.<sup>12</sup> And we Hungarians are particularly sad to see that we have barely escaped from forty years of ideological bondage before we have succumbed to another dominant ideology, which has brought the two decades of regime change to a failure, pushed the country to the brink of collapse and shaken the faith of many in fundamental freedoms and human rights. Let’s come back to these.

**7. AS A RESULT OF THE PROCESSES** outlined above, we should not be surprised if authoritative figures – non-lawyers – warn in a very pessimistic way: “It is no longer only the soul of Europe and the world that must be saved, but also the work of the Creator, the earth that sustains and nourishes the life of every human being and living creature. This cannot be replaced by a flood of non-binding human rights rhetoric.”<sup>13</sup>

The book just published includes the Charter of a United Europe, collected as the legacy of Robert Schuman. The first three points are:

“1. Europe is the cradle and guardian of democracy.

2. Democracy owes its existence to Christianity. It was born on the day when it became man’s mission to achieve the dignity of the human person through individual freedom, respect for the rights of all and the practice of brotherly love in his eternal life. Never before Christ were such thoughts expressed.

3. The soul of Europe must be revived.”<sup>14</sup>

At the same time, Robert Schuman was well aware that “Continents and peoples are more interdependent than ever, both in the production and in the sale of goods, through the exchange of scientific research results and the exchange of indispensable labour and means of production. The economy is inevitably becoming a global economy. It follows from this interdependence that the prosperity or adversity of one people cannot leave others indifferent.”<sup>15</sup>

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12 Szalai, E. (2012) p. 141.

13 Lejeune, R. (2015) *Politika és életszentség: Robert Schuman, Európa atyja*. Budapest: Magyar Máltai Szeretetszolgálat. p. 6.

14 Lejeune, R. (2015) p. 309.

15 Lejeune, R. (2015) p. 311.

But in another paper we can read this: “The *homo globalisticus* is one day *the centre of civilisation*, at whose mercy the great systems of production and the media compete, the next day *a pariah* whose formal liberties do not prevent his social decline or even his total social annihilation.”<sup>16</sup>

And the title of an interview with ethologist Vilmos Csányi in 2015 is already astonishing: “7.5 billion people are unnatural”. In the interview, he points out that “... we would need to stabilise the population at around one and a half to two billion to ensure that the benefits of hi-tech are still sustainable, while not destroying the biosphere”.<sup>17</sup> It should be noted that by 2023, there are more than 8 billion people on Earth.

Closely related and historically very noteworthy is the evolution of the Earth’s population, linked to the main developmental node of human rights. At the time of the Declaration of the French Civil Revolution, there were around half a billion people on Earth. This number has doubled in a century. At the time of the UN’s UDHR, there were around three billion people on Earth; today there are more than 8 billion. There are only estimates of when this will stabilise at between 8–14 billion, possibly rising to 25 billion. Another fact is that infant deaths per 1,000 live births have fallen from 100 to less than 10 in the last century, and life expectancy has risen from 50 to over 80. At the same time, it is important to point out that in Euro-Atlantic civilisation, as the world becomes overpopulated, the population is shrinking, more people are dying than are being born, the population is ageing, and social reproduction is at a minus.

And finally, the most important fact related to all these facts – and to our topic, the material coverage of human rights: “A single bus could fit 62 super-rich people with a combined wealth equivalent to half the world’s population, 3.5 billion people,” according to the latest (2016) figures published by international aid agency Oxfam, in time for the World Economic Forum in Davos. In other comparisons, 1 percent of

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16 Kiss, E. (2015) ‘Hiányzó lényeglátás – túlfejlesztett magabiztosság – intézményes demokrácia’, *Új Egyenlítő*, 3(10), pp. 10–15.

17 Orosz, I. (2015) ‘Csányi Vilmos: “A 7 és fél milliárd ember természetellenes”’, *Magyar Narancs*, pp. 41–44.

the world's population is more affluent than the remaining 99 percent. Inequality has been rising for years, with the wealth of the richest jumping 44 per cent in the last five years to \$1.76 trillion, while the wealth of the world's poorest half has fallen by 41 per cent, while the population has grown by 400 million.”<sup>18</sup>

**8. ACCORDING TO ALBERT EINSTEIN**, “problems cannot be solved with the same mind set that created them”. To the global scale problems outlined above – overpopulation, extreme wealth inequality – add the threat of climate catastrophe, which is closely linked to both. The ecological footprint of humanity has become too large, and by the middle of the year we will have consumed the natural resources available throughout the year and still capable of renewal. Thus, in the second half of the year, we are already using up, and to a greater extent wasting, the next year's wealth, and looking ahead, the natural conditions for future generations. Taken together, these three problems threaten to make what we have hitherto considered progress unsustainable, and their combined effect threatens a global collapse on a scale that is incomparable to the combined devastation of the two world wars and countless local wars of the 20th century. The barbarous acts of the two world wars, in revolt of conscience, inspired humanity in retrospect to create the United Nations and universal human rights “if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression.” Half of humanity now seems to be drifting in this direction because of the three main problems. Is this really drift, or is it the result of conscious and deliberate human action? Whether we consider the process of unsustainability *as an* external (natural) or internal (human) *force majeure*, it is better not to react afterwards, but to prevent and avert the impending disaster. (As the recent Paris “climate summit” tried to do.) Of course, this would require identifying the mindset that caused the problem in the first place, so that we can then change it. Of course, every individual has his own way of thinking, but it is guided, like public thought and politics, by the dominant ideas of each historical age, especially if they are the only dominant ideas, because they consider themselves the victors, the only saviours. Such

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18 Heti Világgazdaság, 23 January 2016.

is the economics of the private property-based market economy, which, with its utilitarianism and competitive orientation, produces fewer and fewer, but richer winners and a growing mass of poorer and poorer losers. The ‘mainstream’ in economics is also a formidable force, the force of dogma, and the development of dogma is one of the ‘deadly sins’ of civilised humanity. “Such a doctrine, elevated to an all-embracing religion, gives its supporters the subjective satisfaction of secure knowledge bearing the stamp of revelation. All facts contradicting it are denied, ignored or, more frequently, *repressed*, (...) thrust into the subconscious. (...) But indoctrination begins to have satanic effects only when it unites vast human conglomerates, whole continents, even the whole of humanity in a single, or erroneous, evil creed.”<sup>19</sup>

But as if there were hope, more and more “alternative economists” are using new thinking, a different approach, embedded in a broader social (global) context. An overview of these is given in the study by László Csaba.<sup>20</sup> For my part, here and now, I would only mention the book by Thomas Piketty,<sup>21</sup> who, according to László Csaba, “rejects what is at the heart of mainstream economics, that it is a mere analytical technique. He warns that without a *conscious choice of values*, there will be enormous tensions.” I see this “new” conscious choice of values as a return from abstract, value-neutral mathematical economics to the human-scale and human-centred, nature-friendly economics I encountered in Ernst Schumacher. His book<sup>22</sup> was a bestseller in its day, and although it never became a social agenda anywhere, his alternative (eco) thinking was a fertilising influence.

**9. THE QUESTION ARISES:** has alternative thinking – the conscious choice of values instead of value neutrality – already emerged in the field of jurisprudence? Or is the neoliberal mainstream dominating jurisprudence? Lawyers like to do “social engineering” (Roscoe Pound),

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19 Lorenz, K. (1988) *A civilizált emberiség 8 halálos bűne*. Sopron: IKVA Kiadó. pp. 102/75–81.

20 Csaba, L. (2015) ‘Közgazdasági unortodoxia vagy heterodoxia?’, *Jogtudományi Közlöny*, 70(9), pp. 415–420.

21 Piketty, T. (2015) *A tőke a 21. században*. [Budapest]: Kossuth Kiadó. p. 704.

22 Schumacher, E.F. (1988) *A kicsi szép: tanulmányok egy emberközpontú közgazdaságtanról*. Budapest: Közgazdasági és Jogi Könyvkiadó. p. 304.



to create a well-constructed society, to construct a state organisation, to arrange people's everyday life and its functioning without conflict. The law seeks security (stability), it provides security for its followers: it distinguishes between the just and the unjust. Good law is just, since "we call those acts just that tend to produce and preserve happiness and its components for the political society."<sup>23</sup> But as far as the global distribution of wealth and with it all other wealth is concerned, it is grossly and manifestly unjust, and as it becomes more unequal, it becomes more unjust. So the question is, is there a global right, and if so, how could it have allowed this injustice, or perhaps brought it about itself? But if the law did not bring it about, how can it tolerate it? The issue is timely because the UN human rights documents are beginning to be called the Universal Human Rights Law, also known as the Global Constitution. The ideal values that can be read in these documents relate to global reality as theology relates to geology: heaven and earth. But according to John Rawls: "Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust."<sup>24</sup> These are tough words, and their author does not know any compromise solution: "Being first virtues of human activities, truth and justice are uncompromising."<sup>25</sup> But a lawyer of any standing would surely try to excuse and explain: it is global economic and financial power factors that have an "irresistible force" on law. And besides, it is the nation states and nation-state legal systems, at the top of which are the constitutions, which are obliged to fulfil, enforce and protect human rights! Nation-state lawyers, on the other hand, may counter that international (supranational) law – in accordance with the will and interests of the global economic and financial powers – has eliminated the instruments of self-defence of national rights, weakened their capacity to act, and drains the intellectual and material resources of their capacity to perform (brain drain; profit drain). The end result

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23 Arisztotelész (1987) *Nikomakhoszi etika*. Budapest: Európa Könyvkiadó. p. 123.

24 Rawls, J. (1997) *Az igazságosság elmélete*. Budapest: Osiris Kiadó. p. 21.

25 Rawls, J. (1997) p. 22.

is well described in Benedek Tóth's study: "The enormous economic development in the Western countries, however, has given the poorer and more backward countries a role in the international division of labour as producers of food and raw materials, which in fact preserves the pre-World War II colonial situation. While economic development in Western countries has led to greater and greater prosperity, the gap between developed and underdeveloped countries has widened."<sup>26</sup> David C. Korten also described the world domination of capitalist corporations well,<sup>27</sup> but for a time the world saw this as progress and welcomed it. The "revolt of the facts" has now changed this attitude. Today, one third of the world's 100 most powerful economies are not states but transnational capitalist corporations. These can dominate the majority of small and medium-sized national economies; just as supranational law, serving their interests, dominates nation-state legal systems. "Even the EU legal system cannot fully avert the 'siege' of the global economy, although it has certainly alleviated it considerably for a long time."<sup>28</sup> However, the EU itself has significantly reduced the economic regulatory instruments of the Member States, while protecting the basic economic freedoms that globalisation requires. No one had taken into account that the 'free movement' of capital, labour, goods and services could have very different effects in different countries, with significant *advantages* in the centre and serious *disadvantages* in the periphery. However, the effective enforcement of human rights is constantly held to account by the "rights" institutions in the Member States in *equal measure*.

**10. TO SUM UP**, the global economic and financial system is already in place, and the organisational and legal institutions to serve its interests are functioning effectively, but there is no global society, no global state to cover and protect it, and no global system of checks and balances. The overwhelming majority of abstract human rights entitle the individual vis-à-vis his or her own nation-state, obliging the nation-state to act and fulfil towards the individual, while global

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26 Tóth, B. (2013) 'A jog és a gazdaság megváltozó', *Európai Jog*, 13(5), pp. 1–16.

27 Korten, D.C. (1996) *Tőkéss Társaságok világhuralma*. Budapest: Kapu Kiadó. p. 451.

28 Tóth, B. (2013) p. 11.

economic freedom curbs, restricts and diminishes the nation-state's capacity to fulfil, and even its willingness to do so. The global social divide, overpopulation and the combined effects of climate catastrophe have made the global distribution of material and immaterial goods (including human rights) unbearably unjust for billions of people. Injustice, of course, has accompanied humanity throughout its development, and its attempts at redress are the main nodes of historical progress, usually at a high price. But injustice on this scale, affecting so many people, has never been seen before in history. "The world is in crisis. It is not the result of the arbitrary actions of a few individuals – political and economic leaders or terrorists. This situation did not happen yesterday. The roots of today's crisis run deep and are rooted in the way our economic and social system is built and functions. We have entrusted our fate – and even our health and well-being – to the free market. The market-based economic and welfare system has brought unparalleled wealth and luxury to some, while increasing neglect and misery to the masses. But this mechanism is getting out of control."<sup>29</sup>

This diagnosis is very true and almost common knowledge. In my view, so is therapy. The restriction, i.e. *socialisation*, of the free market and *capital*, the re-balancing of the *social market economy*, now on a global scale. To this end, it is essential to restore the sovereignty of the *nation state* as a *welfare state under the rule of law*, and to strengthen its responsibility and the capacity to deliver. This is also a global interest, even if it seems paradoxical.

In the end, this therapy is nothing more than a global redistribution of wealth. The global economic system and the global legal system that creates and operates it must also be rethought and modified to this end. Better to do this voluntarily in a forward-looking way than to build from the ruins after a global slave revolt. Global migration is the first warning sign.

So to solve global problems, we need a new way of thinking compared to the way of thinking that created them. In our world of extreme materialisation, pleasure and utilitarianism, a change of values

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<sup>29</sup> László, E. (2022) *Meg tudod változtatni a világot*. Budapest: Magyar Könyvklub. p. 19.

is now needed. The goal should not be to have more, but to be more.<sup>30</sup> With sustainable development and a more equitable distribution of wealth, “Earth provides enough to satisfy every man’s need, but not for every man’s greed”.<sup>31</sup> Material goods cannot be dispensed with by the necessity of subsistence, but, since they are finite in quantity, what is necessary of them could also be sufficient. On the other hand, the range of intangible goods – knowledge, culture, spiritual and moral values – and the extent to which they can be consumed can be expanded almost without limit, making each individual more valuable, richer in his or her humanity. It is as such ideological, spiritual goods that fundamental freedoms and human rights were originally born. Mankind, with universal conventions, has more than once given its word to abide by them: *pacta sunt servanda*! Every right is worth as much as it is respected. It is true that circumstances have changed significantly – and not for the better. That’s what *clausula rebus sic stantibus* is for! The content of the original pledge must be adapted to the new circumstances, in the spirit of corrective justice. In the adjustment process, the new global order of wealth distribution and the effective redistribution of rights are inseparable.

Yesterday’s future – today’s present – is not what we expected. Let’s try not only to anticipate tomorrow’s future, but also to create it. Our future is in our past, we just need to see it.

**IN CLOSING**, here is an optimistic “Message from a better future”: “And most importantly, we have learned that we choose our future: we have not sunk into a quagmire of misery and violence, but have created a peaceful and sustainable world.”<sup>32</sup>

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30 János Pál II (2010) ‘Redemptor Hominis Enciklika, 1979’ in Vereb, J.M. (ed.) *Min-den napra egy gondolat: napi meditációk a nagy pápa imádságaiból és írásaiból Jerome Vereb atya szerkesztésében*. Budapest: J LX Kiadó. p. 38.

31 Schumacher, E.F. (1991) p. 32.

32 László, E. (2002) p. 103.

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# Convergence in the Gap<sup>1</sup>



**1. IN THE INFINITE FLOW OF TIME**, every human generation lives through “historical times”, but this is particularly true for the generations of the 20th century, including those born between 1945 and 1975. This generation has lived through the dismantling of capitalism, the laying of the foundations of socialism, the building of an advanced socialist society, its dismantling, the rebuilding of capitalism, and now (in the wake of the 2008–2009 global crisis) its dismantling, or re-socialisation. If we didn’t feel like lab mice, subjected to painful and always unsuccessful experiments, we might laugh about it. Perhaps there is no other way to look at it than with wise old serenity. After all, we remember the jokes of our youth that defied the dictatorship: “Existing socialism is the longest detour from capitalism to capitalism”. Or: “Capitalism has come to the brink, but socialism is one step ahead of it.” And now we could go on: “But capitalism is catching up fast!” We could say – to paraphrase another failed theory (more like a wish) – *convergence* at the bottom of the abyss. And we also got to see – how lucky we are (?) – that this is not a joke; this is reality, this is our life. Should we cry or laugh? A bit of this, a bit of that, both healthy and very human. And then, once we have had a good cry and a good laugh, we can start again – we are great at starting again anyway, that is what our whole history is about – because now we have to reinvent Hungary, and even more so, we have to reinvent the new Europe, the new global world! As both the sufferers of our failures and as the originators of them, with our ‘historical’ experience and knowledge, we can perhaps help our children and grandchildren to do so, in the hope that they will still need and accept this help.

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1 Originally published in Bihari, M., Patyi, A. (eds.) (2010) *Ünnepi kötet Szalay Gyula tiszteletére, 65. születésnapjára*. Győr: Széchenyi István University. pp. 385–390.

**2. FIRST OF ALL, WE MUST REFLECT DEEPLY** on why we believed (because we believed!) that the crisis of socialism could be cured by capitalism with its periodic crises. But we did not believe before that “the worst socialism is better than the best capitalism!” But then, in 1989–90 and afterwards, why did we believe that “the worst capitalism is better than the best socialism?” Are we “evolving” from crisis to crisis, from dead end to dead end? Can we stop and turn back from our latest dead end? Instead of now patching and folding, reforming the capitalist property–economic–social system again and again (as not so long ago with did with the socialist planned economy), the capitalist system that has proven repeatedly unsustainable in several respects (morally, socially, culturally and naturally), can we finally embark on the path of (perhaps “the”) sustainable development? What is more, a sustainable Hungary on its own development path? What could we possibly do to gain a competitive advantage, to become an example to follow, instead of always “catching up” with others, following the example of others? From behind others, we cannot see the road ahead, nor even the gaping chasm. We could start to think about this (now that at least the idea is free), either under the pretext of the global financial crisis, or because of our specifically Hungarian (debt) crisis, but mostly in the context of the two, and in the perspective of the lessons of the past century or two.

**3. THERE WAS (AND STILL IS?)** a European ideal of a free civil society based on the free property of citizens. The free and equal owners, as equal and co-equal parties, were free to contract with each other to regulate their relations between themselves, and thus also between society and the state. Compared to the previous (slaveholding, feudal) ages, to the general state of subjugation, dependence, *servitude*, the bourgeois revolution (which Bibó called “the only revolution of human dignity”) promised a general state of *freedom*, complemented and completed by *the equality* and *fraternity* of all men. But the idea of equality has been distorted into a serious inequality, and instead of fraternity, a series of struggles for and against private property (strikes, revolts, revolutions, civil wars, colonial and world wars) has been launched, which continue to this day. In the absence of equality and fraternity, freedom remained an illusion and the privilege of the few, and in the eyes of the “penniless” masses it seemed (as it still seems) a lie.



The new ideas ('isms': Marxism, Leninism, Stalinism, Maoism, corporatism, Nazism), which were meant to correct and replace the idea of bourgeois society, were distorted into bloody terror, total dictatorships, in comparison to which wild capitalism, more or less tamed here and there, seemed attractive again. However, in a world that has gone from a bipolar to a unipolar (or, in civilisational terms, multipolar) world system, the inherent defects of capitalism and its socio-economic crisis symptoms have reappeared. So there is no new crisis, only the continuation of the old one: the most despicable human qualities of greed, avarice, unscrupulous selfishness, the lust for money and power as the main "driving forces" (or as Keynes called it in 1930: "our gods for a little while longer") are causing deepening inequality and disunity (now on a global scale), and the old and new crisis symptoms are appearing (e.g. antiglobalism, international terrorism). There are old methods of symptomatic treatment (state intervention) and newer ones (environmental and nature conservation restrictions), but they all have the same basic feature: they do not eliminate the root causes. Their scale is only ever sufficient to postpone social – economic – environmental catastrophe, collapse, not to solve the underlying problems.

**4. HUNGARY, "WHOM FROM OLD ILL FATE HAS TORN"** (a line from our national anthem), has once again had no (historical) luck: it has evolved from a crisis of Soviet-style socialism ("out of the frying pan into the fire") into a crisis of American-style capitalism. So what do we do? Let's come to our senses! – our fathers – our grandfathers – would say, if they were still alive.

There are historical examples of people coming to their senses. Auschwitz is known to have been a major inspiration for the adoption of the UN Declaration of Human Rights. Since then, awareness of the most fundamental values – fundamental freedoms and human rights – enshrined therein (and in subsequent documents) and considered to be universal, has been raised with varying degrees of intensity, their will has been stalled and their actual action has sometimes and in places been paused or even not even begun.

Hungary was able to find itself in the 2–3 years following the Second World War, a historical cataclysm that was many times greater than the

current one. Let's quote some thoughts from 1945 (when Hungary had to be invented). A thought from Anna Kéthly: "We profess democracy in the triple unity of this concept. We are convinced that in defining democracy in the 20th century, the social, political and economic elements can only be considered together. All are important and indispensable. Civic democracy in the 19th century meant social and political democracy. The social democracy of the 20th century is complete and unified only by the economic element. Social and political equality in social democracy must be complemented by equality of economic conditions. Just as slavery was an anachronism in the 19th century, so any kind or form of serfdom or economic slavery is out of date." Anna Kéthly used the term "economic slavery" in 1945, stressing that it was already out of date. And today? Another contemporary thinker is Péter Veres: A quote from his book *The Peasant Future*: "Freedom always, everywhere for man, for the individual, wherever and as long as possible. After all, it is not the people for farming, it is farming for the people." In the same spirit, he argued in favour of the tiny "belt parcels", perhaps sensing the advent of large-scale farming, of forced collectivisation, saying: "The small farmer finds work on his own land and produces his own bread. It is a great thing, the greatest thing on earth, because it gives man the greatest individual freedom, and that is why the peasant is so attached to his land, to the death. He is right. The highest life is the life of the free small landowner." These are contemporary thoughts, but both are well worth pondering. Anna Kéthly also added that an iron worker in Csepel, as a good skilled worker, earns twice as much as a grocer in Kőbánya. The latter has more uncertain income and half the income. Yet, in an existential sense, he considers himself a superior man, because he is free and the other is a wage-earner. Today, when almost all of society is wage-earner (the "wage labour society"), how do we stand in "existential terms"? As for Péter Veres, where has this "small landowner" freedom gone, this noble Hungarian peasant who clung to his freedom, created by his own labour and founded by his own property, to the death? It was deliberately "liquidated" in the name of communist ideology. Can it be resurrected in a global world, or afterwards? Is his memory at least still alive? Let's keep alive the spirit of our great-grandfathers, grandfathers and fathers, because our sustainable future, our survival, may depend on it.

**5. THE SPIRIT OF OUR FOREFATHERS** is nothing less than the 250-year-old Lockean model and ideal: free private property, free citizen, free society. Is this dream and hope of European civilisation gone for good? Is it really the world domination of global and multinational corporations (David C. Korten), over whom there is no state and therefore no legal control? Who buy the national economic and political power elites by the pound? Who only assert their own *freedom*, but shirk their obligations of *justice* and *solidarity* (“social commitment”)? If there were a real European Union, which would give equal weight to the triple idea of “freedom, justice, solidarity” (if it has already put aside the idea of “freedom, equality, fraternity”). If we had a world state, and a world government, with a world finance minister and a world social affairs minister to deal with world poverty, and somehow try to reconcile the two: world profit and world poverty. One of the great cancers of our time is world poverty. The other is the destruction and using up of nature. One is the result of the exploitation of man, the other of the exploitation of nature. The two together are the problem of *unsustainable development*, the unsustainability of a technical, industrial, consumer society. In this double squeeze we must now and again invent Hungary! Are we resourceful enough for that?

**6. AT A TIME WHEN ERNST SCHUMACHER** (in the 1970s) was arguing that “Small is Beautiful” and recommending natural and healthy production on a human scale, promoting creativity, as opposed to oversized capitalist corporations, in Hungary there were similar proposals against over-nationalised and over-collectivised *social property*, against planned economy. According to István Bibó, “In fact, the solution is not to be found in the nationalization of property, and not necessarily in its collectivization, but in the dissolution and humanization of property relations, which means that the most important thing is not to nationalize property into a single bureaucracy, but to distribute it as widely as possible, either in the form of effective distribution or in the form of the distribution of the control over property, which again means nothing other than, in practice, the so-called workers’ self-government, which is nothing other than a form of self-government applied to economic life.” All this, of course, because not only in political life, but also in economic life, “the task is not

a simple change of domination, but the abolition of the phenomenon of domination". It is unfortunate that neither the spontaneously organised workers' councils of 1956 nor the workers' self-governments of Bibó – apart from a belated and imperfect attempt at self-governing state enterprise in 1985 – have been given a historic chance to prove themselves. Even more regrettably, the dismantling and humanisation of property relations did not become a social programme in 1989–90, nor did the Workers' Ownership Programme, adopted from the West, receive sufficient political support.

A similar fate befell Tibor Liska's socialist ("socialiska") concept of entrepreneurship, which would have given (and given back) the status of owner and thus of citizen, of *co-owner*, to the individual, i.e. the only real, the most natural owner, entrusting him with the management of his "*personal social property*", personalising the otherwise completely impersonalised collective forms of property. His concept was rejected, despite the fact that his business experiments (in Szentes, Kaposvár and Szécsény) proved its viability.

**7. YET THE PROPOSALS OF BIBÓ AND LISKA**, and many, many like-minded contemporaries, were not in vain. If not the "more", the "less" was allowed by political power, sometimes under duress. First the backyard farms and then, following their success, the auxiliary smallholdings were strengthened and led to the legalisation of "small businesses". The entrepreneurs, small businessmen, small business owners of Hungary in the small business era (1980s) succeeded in creating their own market economy, the second economy, in the second shift, in contrast to the first, planned economy sector. Iván Szelényi rightly wrote that the reason why the number of invalids and premature deaths is so high is that the 8 hours of public, cooperative work are accompanied by 6–8 hours of private work. And it has achieved a level of self-exploitation that has ruined a whole generation. But just as in the age of the first Hungarian civilization, in the age of Kölcsey and Deák ("freedom and property"), so again, the great driving force, the road to civilization, to the new liberation, was one of own property, own work and individual freedom based on it.

**8. HOWEVER, THIS SPIRIT, ENTHUSIASM** and momentum did not continue after 1989–90. Neither in agriculture, nor in industry, nor in commerce, it is this Hungarian re-civilising, second-home-grown farming class that has taken over and continues to run the big estates. But the even bigger multinational and global capital has bought out this country and this whole region. By dismantling our aspirations for individual and national autonomy, it has plunged us into a dead end of unsustainable development. What hope do we have now? It is said that Hungary has excellent economic and geographic potential. The two great rivers, the Danube and the Tisza, the Carpathian basin water resources (even in the face of desertification) enable us to produce, 65% of our territory is arable land, and this country can support 20 million people. How can it be that despite this, we are shrinking, three out of 10 million are destitute, three are poor or in danger of becoming poor. Something is very wrong here. Is there hope in the sense that the old desire for property, as a guarantee of freedom, still exists? Is there still this kind of “millennial dream”, like the hunger for land in 1945, that although there were no horses, the peasant, the man and his wife and the child took the plough horns, and they ploughed the land because they ploughed their own. And by the autumn of 1945, Hungary was the only country in Europe without famine – thanks to land reform. Imre Kovács, a popular writer and peasant politician, said at the time that “by parcelling up the land, the large estates, we have parcelled up political power.” What did the democratic transformation in 1990 parcel out and among whom? The privatisation was *spontaneous* from 1986 onwards and the winners were not the Hungarian people but the *comprador bourgeoisie* and foreign capital, made up of members of the communist party elite. Can real freedom, real equality of opportunity, real solidarity be guaranteed by the mere declaration of fundamental constitutional rights and the command of the law? Can an individual (family, society) be forced (coerced) into self-care in the absence of self-care capacity (own property cover)?

**9. LET ME CONCLUDE** on an optimistic note by saying that at the end of David C. Korten’s book, *The People’s Earth Declaration*, adopted by NGOs in 1992, at the same time as the signing of the Rio Convention on Biological Diversity, a balanced vision of society and people, natural,

simple, living in harmony with their fellow human beings, nature, society and the state, emerges. The key concepts are: simplicity, love, peace, respect for life. The fundamental question: can consumerism and the wage labour society be overcome? The proposed solution is multi-activity, which means multi-disciplinary (and ever expanding and changing) skills and work, with multiple occupations simultaneously and in parallel. The Internet can help. So the benefits of a global world could be linked to old and traditional values, to people's physical and mental health, to their capacity for self-care and to their freedom. The ability to care for oneself gives dignity, and freedom means real equality (of rights and opportunities) for people. If someone does not take advantage of them, it is their own fault, if the opportunity is otherwise there.

If the faith and inspiring force of the great figures of 19th century civilisation, Ferenc Kölcsey, István Széchenyi and Ferenc Deák, the vision of Anna Kéthly and Péter Veres, the thoughts of István Bibó and the imagination of Tibor Liska, had a fertilising effect on Hungary in the crisis of that time, there are new ideas and new proposals now. In our own way, we are all trying to find answers to the big questions, or to evoke answers that others have already formulated at other times, in similar times of crisis. It is our common task and responsibility to start thinking very intensively about the Hungary of the 21st century, about a sustainable Hungary, about a Hungary that is attractive and liveable for future generations. What we are trying to build is a democratic state based on the rule of law and a social market economy, in order to find harmony and balance through a joint effort, to save, in the traditional sense, what can still be saved from the morality of our grandfathers and fathers, from the love of work, from the desire for and the attachment to property created by our own work, from the ability to struggle. We old people tell our children and grandchildren all this, so that they at least know about it, and remember that when life forces them to do it, they will know that there was, is and always will be a solution. We “just” have to fight, sometimes with ourselves, but always for ourselves, our children, our grandchildren, our nation. And to trust in ourselves, in our knowledge based on the life experience of our fathers and grandfathers, in our national heritage.

# Crises, Human Rights and Legal Challenges



**I AM A MEMBER OF AN UNLUCKY GENERATION:** after having witnessed the fall of socialism – a monumental historical experiment, an ideology rooted in the concept of equality –, we embraced private ownership and market economy with great expectations only to see these high hopes start to evaporate. Although I have touched upon the subject in a previous article<sup>1</sup> already, I did not think even then that the situation would escalate to the extent seen these days. In the aftermath of the global financial and economic crisis, we are now facing a referred to, a migrant crisis; even the term ‘crisis’ is sometimes substituted by ‘impasse’.

**1. RESOLVING THE SERIES OF CRISES** of our times is not a task for my contemporaries or myself; it will have to be tackled by future generations. Even so, I am deeply concerned: aren’t we, the elderly, responsible for the failures of history? Could we have done more to predict and prevent the crises? After all, just as the history of socialist planned economy can be described as a series of crises and reforms, so can capitalist market economy be explained as a sequence of distortions and adjustments. The older generations, therefore, have ample experience in the field of reforms and adjustments. At present, however, in addition to global social inequality and impoverishment, we need to reckon with two additional crisis aggravating factors: the threat of a climate change disaster and overpopulation in the poorest countries of the world. In terms of magnitude and severity, the crisis

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1 Lenkovics, B. (2010) ‘Konvergencia a szakadéokban’ in Bihari, M., Patyi, A. (eds.) *Ünnepi kötet Szalay Gyula tiszteletére, 65. születésnapjára*. Győr: Universitas-Győr Kft.

situation arising as a combined result of the three factors appears to be more devastating than any other – whether socialist or capitalist – economic, financial or comprehensive ideological crisis we have seen. The reforms, adjustments and corrections implemented thus far are insufficient to address the situation. This new crisis calls for new solutions. As Albert Einstein put it, *“Problems cannot be solved with the same mindset that created them”*.

The title of this paper is intended to reflect on this momentous era. Once we separate the two members of the adjectival phrase ‘human rights’, it becomes evident that the challenges are twofold: we need to face both human and legal challenges before channelling them back to the economic and financial fundamentals; indeed, the triggers of the crisis are rooted in the exploitation of natural resources, growth and profit-driven production, artificially induced consumption and the unfair distribution of goods.

A presentation at a recent conference began with the presenter’s assertion that, in view of the pervasive relativism of our times, there is a need to redefine even the most natural and most obvious institutions of mankind, such as marriage and the family. We ought to return to the natural foundations of life, for abandoning them or challenging the course of nature will ultimately turn us against ourselves. As a typical symptom of seeking a way out of the crisis, this need for a paradigm shift has increasingly come to the surface in recent times in various contexts. The Fundamental Law of Hungary offers a broad framework, a possibility and an opportunity for seeking a way out (finding – or sometimes, returning to – the right path) in that it proclaims that the nation and the family provide the fundamental framework for community, and in doing so, it rehabilitates such fundamental values as loyalty, faith and love. It restores respect for work and intellectual achievements by proclaiming that they constitute the strength of a community and the self-esteem of every human being. By declaring the obligation of helping the vulnerable and the poor, it protects the institutions of the rule of law and social solidarity, as well as the results they have achieved so far. Summarising centuries of market economy experiences, it pledges to ensure the conditions of fair economic competition only, to act against the abuse of a dominant economic position



and to protect the rights of consumers. (National Avowal of Faith and Article M).

The real question, however, is whether this new-old approach and attitude have emerged and taken hold in mentality, especially in the most affected areas such as social sciences, economics and legal sciences. This question was in the focus of my analysis and the economic and legal papers and studies outlined below are intended to give an insight into my findings.

**2. IN HIS STUDY ENTITLED ‘Banks vs. the Fundamental Law’,** *László Vértesi* stresses<sup>2</sup> the need to reconsider a number of basic concepts, such as market economy, corporate social responsibility, freedom to conduct business, freedom and purity of economic competition, consumer protection, protection of the weaker party, state intervention and the sharing of public dues. Although these are basic concepts and basic categories, their content, justification, tools and levels should be redefined. The author also refers to the sentence quoted from the National Avowal above: *“We proclaim that we are duty-bound to help the vulnerable and the poor”*. What is the origin of this creed? Is it linked to capitalism or socialism? Is it related to market economy or to state-directed planned economy? Is it accompanied only by individual diversity, selfishness, enrichment, race, competition and profits or social responsibility, solidarity, equality and equalisation as well? Similarly, we could enumerate several articles and numerous institutions of the Fundamental Law and analyse them from the aspect of the required paradigm shift.

In his study entitled ‘Unorthodoxy or Heterodoxy in Economics’, *László Csaba* also searches for new answers to a new set of questions.<sup>3</sup> The adjective ‘unorthodox’ has been frequently cited in recent years in conjunction with government policy and a number of relevant legal acts and legal solutions. In economics, Laszlo Csaba carries this forward by tracing the concept further back in time to different

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2 Vértesi, L. (2013) ‘Bankok vs. Alaptörvény’, *Jogelméleti Szemle*, 2013(3), pp. 123–130.

3 Csaba, L. (2015) ‘Közgazdasági unortodoxia vagy heterodoxia’, *Jogtudományi Közlöny*, 70(9), pp. 415–420.

authors. For example, no one called *Mahatma Gandhi's* or *Ernst Schumacher's* ecological economics or the nature-friendly economics of Buddhism 'unorthodox'; they were referred to as alternative economics. That notwithstanding, these thinkers were considered to be eccentrics at their time in any event. Such unorthodox – anti-mainstream – economic theories, however, started to gain ground in the wake of the 2008–2009 financial crisis and the resulting economic and social global crisis. Instead of holding fast to the remains of a fossilised way of thinking driven by liberal dogmas, *Joseph Stiglitz* emphasises flexible government policy governed by common sense. In his book 'Irrational exuberance', *Robert Shiller* writes about the end of the reign of the stock exchange; *Daron Acemoglu* and *James Robinson*, in turn, contemplate the origins of power, welfare and poverty. The Polish researcher *Grzegorz W. Kolodko* also addresses similar questions in his book 'Megatrends', while *Thomas Piketty*, the celebrity economist of the day, discusses economic relations from an entirely different angle than traditional liberal textbooks in 'Capital in the 21st century'. From the latter book, Laszlo Csaba underpins one particular thought, namely, that from a historical point of view, the development of the United States is exceptional and cannot be generalised, even though it has been held up as an exemplary model of the Washington doctrine worldwide.<sup>4</sup> As regards its analysis on the distribution of wealth, Piketty proves that inequalities rise continuously without the state's redistribution, which calls for increasing state intervention. By contrast, the withdrawal of the state, the ideology of the minimal state and non-intervention from the government, as fundamental principles, have all strengthened along the lines of the boost given to neo-liberalism by Reagan and Thatcher. And if the market, left to its own devices, exacerbates these financial inequalities further, democratic capitalism, just like in the period following World War I, will be called into question. And as we know from post-WWI history, excessive inequality leads to fascism and communism.

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4 On this, see Mellar, T. (2007) 'A liberális gazdasági doktrína tündöklése és ...?', *Polgári szemle*, 3(11) [Online]. Available at: <https://polgariszemle.hu/archivum/38-2007-november-3-evfolyam-11-szam/223-a-liberalis-gazdasagi-doktrina-tuendoeklese-es> (Accessed: 20 October 2023).

**3. INDEED, THESE NEW OR UNORTHODOX** economic views warn of enormous threats. In this regard, it is extremely interesting that economic science worldwide is miles ahead of what is still being taught at universities, even though a series of non-traditional approaches are now at hand. Why is this such a thought-provoking fact? Once we project it onto the law, it becomes obvious. If due to the distorted operation of enormous institutional systems worldwide extreme gaps open up between the poor world and the rich world in both a moral and a social sense, and all this takes place ‘legally’, in the framework of institutions created, maintained and operated by the law, should we continue to maintain the legal system that created and operates these institutions? To put it more bluntly, is it not true that the main culprit is the legal system that creates and grants a status to such institutions, guaranteeing, protecting and maintaining their privileges? Is it not law that acts as the obstacle to change? Behind the mask of fossilised legal dogmas, is it not the rigid, dogmatic – globalised – interpretation of the law that causes the doom of the world? In this sense, it is an enormous task and challenge to define the concept of the law itself and to channel it back to social sciences in order to ensure that it is not self-contained or self-serving, and it does not depart from new trends in demography, sociology, moral philosophy or economics. The law needs to keep up with these trends; it should integrate the latest results of other social sciences into its own conceptual system and institutions and change in line with them. Good jurisprudence and good law are one step ahead of the world at all times; they act as a driving force, generating the required changes themselves. By contrast, saddled with its rigid institutions and systems that had been adjusted to global economic and financial interests, today’s law lags far behind.

It is especially difficult to keep in step – or rather, drive the changes – in private law or in property law, but it is also far from being an easy issue in the dogmas of constitutional law, in the institutions of economic constitutionality or, in an even broader sense, in the area of second-generation human rights. Reorganisation, austerity, repossession, retrenchment and the likes are extremely frequently used terms these days, indicating that, although by the end of the 20th century the system of human rights reached a level where economic, social and cultural human rights are universally guaranteed to all mankind, the 21st century began to dismantle the system and revoke the very same rights. Suffice it

just to refer to the world of work and labour law to illustrate the status of workers, especially in developing countries. As *David C. Korten* pointed out in his book 'When Corporations Rule the World', while a skilled worker at a US car manufacturer makes 30 dollars an hour, a worker in the Philippines gets 30 cents for doing the same job.<sup>5</sup> There is a hundredfold difference between 30 cents and 30 dollars. Yet we proclaim that human dignity is inherent to every human being, and every person has an equal and unimpeachable right to human dignity. Every person is ranked equal. How do you reconcile these ideals with a hundredfold difference in material goods? What will happen if, standing up for his dignity and demanding his rights, the worker in the Philippines decides to move to the place where he can make 30 dollars an hour? This is precisely what we see today in the context of a global-scale migration.

**4. THE DISPROPORTIONS AND INJUSTICE** prevailing in the distribution of material goods are just as obvious in the financial sphere. In his article entitled 'Kiút a káoszból? A pénzügyi piacok jogának dilemmái (A Way Out of Chaos? Legal Dilemmas in Financial Markets)', *Imre Forgács* called attention to the fact that the meltdown can be attributed, to a significant degree, to inadequate prudential law instruments, poor credit rating activity and to the 'financial weapons of mass destruction', i.e. nearly unregulated derivative securities. The consequences, to this day, are borne by taxpayers worldwide.<sup>6</sup> In other words, although the default of Goldman Sachs takes place in the United States, it drives 3 million people in Hungary into poverty or, as the Hungarians say, removes the roof from over their heads. And today, as demonstrated by the migrant situation, this expression can be also interpreted in the literal sense. It is the source of severe tensions, for example, that the legislative and legal enforcement bodies of nations are becoming increasingly unfit to regulate and control a digitalised, globally operating international financial system. Some experts believe that besides new legislation and supranational institutions, there is also a need for a new legal theory for finances. For that, we should take the specificities of

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5 Korten, D.C. (1996) *Tőkes társaságok világhuralma*. Budapest: Kapu Kiadó.

6 Forgács, I. (2015) 'Kiút a káoszból? A pénzügyi piacok jogának dilemmái', *Jogtudományi Közöny*, 70(1), pp. 27–36.

financial markets and the controversies of existing regulations as a starting point. It was 20 years ago when I first read that an immense amount of free money supply was enveloping the global market and the network of electronic stock exchanges like a swarm of bees, 24 hours a day. Just by the click of a mouse, enormous amounts of money can be transferred across the globe, from emerging regions to Asia and then onward to Europe. And this activity resembles that of a swarm of bees because anywhere the bees can spot a blooming meadow – i.e. profits, earnings, yields –, they buzz around, suck the nectar out of the flowers and then move on. This makes stock traders and their clients richer and the areas deprived of the badly needed nectar of income even poorer. In line with the simile often applied in civil law, I call this a global Matthew effect in reference to the Bible; namely, *“Whoever has will be given more, and they will have an abundance. Whoever does not have, even what they have will be taken from them”* (Matthew 13:12). In its broader sense, including the industrial and service capital system as well, the functioning of this global financial institutional system is based on the axiom that the rich get richer and they will be in abundance. But where does this richness come from? The recently published World Bank Report is a good example: 1 per cent of the total population of the world owns 50 per cent of the total wealth of the world. Previously, Forbes Magazine referred to a rate of 20/80; i.e. that 20 per cent of the world’s population owned 80 per cent of global wealth. In fact, the two ratios do not exclude each other; at most, within 20/80 1/50 is just another, even more extreme ratio. And the book by Thomas Piketty also reveals that the richest persons of the world will continue to get richer – by over 10 per cent annually – in recessions; i.e. at times when economic growth stagnates or even declines. Thus, the wealth of the richest grows 10 per cent faster than the average growth of capital or material goods. This could not be possible without the global functioning of legal institutions and organisation systems that allow this to happen.

The book by *Dani Rodrik*, ‘The Globalization Paradox’,<sup>7</sup> describes the process that we had taught to be development in the past

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7 Rodrik, D. (2014) *A globalizáció paradoxona*. Budapest: Corvina Kiadó. p. 389. and similarly, Tóth, B. (2013) ‘A jog és a gazdaság megváltozó viszonyrendszere’, *Európai Jog*, 13(5), pp. 1-16.

– the establishment of WTO, UNCITRAL, UNIDROIT, GATT, IMF and similar regulatory powers – on the basis of a new approach. In order to facilitate the movement of capital and global production, international agreements obliged signatory states to dismantle in their national legislation such barriers to international capital and trade that are deemed dominant relative to their position: customs duties, duties, contributions, conservation and environmental conditions, occupational health and other social burdens unwelcome by capital in view of their ability to reduce profits. In order to join the mainstream of this development – and because they tend to believe in new ideologies and the mainstream in any event –, nation states readily sign these agreements and dismantle and rescind in their national legislation the instruments, conditions and guarantees that serve their protection. By doing so, they reinforce an impersonal, multinational, transnational and global institutional system, while in terms of their immune system and protection mechanism, nation states and national legislation weaken. And this is how it is possible for the rich to get richer and the poor to get poorer.

And those getting richer do not take responsibility for what becomes of those getting poorer: impoverishment, wage slavery, debt slavery. This is the real weapon of mass destruction: divorced from reality, an artificial market of construed derivative products has emerged. An apt example is the foreign currency-based consumer loan contract as a financial product. Eight hundred thousand such contracts have been concluded in Hungary, of which four to five hundred thousand families have effectively lost ten, fifteen or twenty years of their lives, for these lives are now consumed by trying to find a way to pay back the loan that has, in the meantime, ballooned to become a multiple of the initial principal amount.

**5. IN HER ARTICLE ON THE OVERHAUL** of the financial supervision system of the European Union and on the Banking Union, *Lorina Buda* notes: “*Since the EU was unprepared for crisis management, the initial financial crisis has since become a crisis of the real economy and a political crisis*”.<sup>8</sup> The author, at this point, referred to the 2008 financial

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8 Buda, L. (2015) ‘Az európai unió pénzügyi felügyeleti rendszerének átalakulása és a bankunió létrehozásának bemutatása’, *Pro Publico Bono*, 2015/2, pp. 114-122.

crisis rather than the current migrant crisis. From this statement, at best, we may draw one general conclusion: that the EU is unprepared for any crisis. For the future, the EU envisages a type of integration – a federation growing out of the foundation of an idolised European Union common market. This is eerily similar to the socialist doctrine frequently cited at the time; namely, that we are progressing toward the advanced stage of socialism and ultimately, communism, through continuous, linear development. Finally it became clear that this was nothing more than botched human experimentation. In any event, socialism was not prepared for addressing bankruptcy precisely because of the delusion that it progresses on a straight path of unbroken development toward the only possible future, communism.

In the article, the author also refers to *Jean Pisany-Ferry's* 'impossible trinity' such as: (1) no-coresponsibility for the default of private firms (2) no-monetary financing rule; i.e. the rescue of private firms and banks from public funds is prohibited, (3) bank-sovereign financial interdependence. The problem is that the third criterion cannot be reconciled with the previous two. If there is interdependence between the state and the financial sector, then the state will be forced to intervene – for instance, in order to rescue foreign currency debtors –, for social impoverishment and the loss of homes would impose such an enormous social burden on the state that it would not be able to withstand. This is why it has no option but intervene and pass some of it on to the banking sector that put this product on the market in the first place.

Pursuant to Article 125 of the TFEU, "the Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State". Similarly, a Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State. Therefore, neither the European Central Bank nor the national central banks are allowed to purchase debt securities; however, some signs of easing this prohibition have already materialised. The European Central Bank may now purchase sovereign Member State bonds. *"One of the causes of the financial crisis was the absence of a body*

*that monitors macro-level risks. There was no one to call attention to the risks arising from collective behaviour*".<sup>9</sup> In the summary, *Lorina Buda* concludes that "the crisis management performed across the European Union points far beyond the crisis, in that it actively shapes the long-term future of the EU. The crisis management measures implemented so far have launched institutional reforms, without which the crisis would have brought down the entire Union like a house of cards. With this, however, they set the development of integration on a path that is far from being completed, and that remains in progress long after the end of the crisis. Obviously, this assumes the existence of a common goal shared by all EU Member States or by at least members of the euro area. This goal, however, is yet to be defined clearly".<sup>10</sup> Attempts at crisis management at the level of the European Union are also informative. The financial crisis of Cyprus comes to mind as another apt example for the erosion of tight principles: Cyprus was the first country to choose a path different from the previously seen recapitalisation of banks (i.e. when distressed banks were bailed out using public funds). Among other things, this may have been in an effort to prevent absurdities, as seen in the case in the United States, where bail-out funds went towards CEO bonuses and the CEO, in turn, ended up pushing the bank into bankruptcy. This, justifiably so, spurred general outrage and ultimately prompted a turnaround. For the first time, it was shareholders who lost the value of their stock. Accordingly, it is shareholders that bear the risk of a bank default and should that prove to be insufficient, deposit holders become second-round risk bearers. In other words, not only investors, but deposit holders as well, face the risk. It should be noted that the ratio of non-resident deposit holders at Cypriot banks was in the range of 30 to 60 per cent. The default of brokerage firms and small banks gave rise to similar questions in Hungary. What can deposit holders do? The National Deposit Insurance Fund provides compensation for losses up to HUF 30 million. In reality, risk is being distributed between the individual members of the sector. Ultimately, all small deposit holders of financially sound banks will bear the losses arising from the compensation

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<sup>9</sup> Buda, L. (2015) p. 116.

<sup>10</sup> Buda, L. (2015) p. 122.



paid to the depositors of bankrupt banks. Investors, on the other hand, do not enjoy such a high level of protection; as they have taken higher risks, they should bear bigger losses. Accordingly, the Investor Protection Fund compensates investors up to EUR 20,000 (around HUF 6 million). What happens, then, if a bank also acts as an investor, while the investment firm or brokerage firm also collects deposits? The system needs to be rearranged, for neither the supervisory authority, nor legal regulations can prevent such entanglements and the efficiency of supervision is insufficient to prevent a meltdown in time. At times like this, are aggrieved investors worthy of being afforded the same protection as depositors? But how many of them? Only one institution or all of them? How should we define the eligible entities? Is it discriminative or not? Is it positive or negative discrimination? So many new questions, so few new answers.

**6. A CONSTITUTIONAL COURT DECISION** on the referendum about the early retirement of men at 40 [No. 28/2015 (IX. 24.)] is also related to the protection of public funds: Article N of the Fundamental Law stipulates the constitutional requirement of balanced budget management. The negative experiences of the 20 years following the political transition demanded a strict stipulation of a constitutional fiscal barrier in the Fundamental Law. Pursuant to Paragraph (3), in performing their duties, the Constitutional Court, courts, local governments and other state organs shall be obliged to respect the principle of balanced budget management. They cannot allow any steps to be taken that would lead to – or even threaten with – a potential domino effect-like crumbling of the fiscal balance.

The constitutional court cases outlined below are intended to illustrate the crisis symptoms and basic categories mentioned so far, along with the responses given. One such case concerns the so-called savings cooperative integration [Constitutional Court Decision No. 20/2014 (VII. 3.)]. The financial sector is one segment of the economic system as a major sub-system of society and the producer of material goods. The financial sector finances the economy and is often referred to as the driver of the economy. Financial stability, therefore, is clearly a prerequisite for economic stability. At the same time, through global multinational and transnational bank networks, even a remote crisis spills

over to the Hungarian banking and financial system despite all forts to avoid just such situations. According to many experts, Hungary fell victim to over-banking and over-internationalisation. The excessive nationalisation of the socialist era was followed by over-privatisation, and at present, in the spirit of a historical search for balance, efforts are aimed at finding the right proportions and sizes and correcting all “excesses”. One such segment is the savings cooperative sector within the financial system as a sub-system of the economy. At about 10–15 per cent, it has a fairly moderate share within the financial system. Its role, however, is far more important in offering financial services to the inhabitants of villages and in providing funds to regional micro, small and medium-sized enterprises, especially those in the agricultural sector. There is a clear economic policy and social policy intention on the part of the government that the government tries to implement through legislation, and while it should be the task of the executive branch and its real tool would be a government measure, the government cannot ensure this without formulating the relevant legislation. Thus, in essence, the executive branch requests a tool from the legislative branch and uses this tool to craft the relevant regulations, provided that it enjoys supermajority on laws requiring a two-thirds majority.

The current adjustments in the state’s role in economy can be explained by the latest historical pressures exerted on nation states to seek techniques and tactics of self-defence against the symptoms of the global crisis.

**7. AT THIS POINT**, another item should be mentioned in relation to the global crisis. Ethology professor *Vilmos Csányi* brings into focus the problem of the ecological footprint in his article entitled ‘7.5 Billion People are Anti-Green’.<sup>11</sup> In 2015, in the period between 1 January and 13 August, mankind consumed the entire stock of renewable goods that should have lasted for the whole year. Whatever we consume from 14 August to 31 December, we take it away from next year, leaving little for future generations. According to scientists’ calculations, at the average living standard of general welfare societies, the Earth – the

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11 Orosz, I. (2015) ‘Csányi Vilmos: „A 7 és fél milliárd ember természetellenes”’, *Magyar Narancs*, 2015. június 20.

provider of the ecological resources required for life – is capable of supporting 2.5 billion people. With a world population of 7.5 billion, our living standards should be a half, a third or a quarter of our existing standards; instead of lavish consumption and luxury, we should pursue a thrifty, restrained and natural lifestyle. This goes against all economics that measure the level of development of a country in GDP, national income, per capita consumption, production growth, retail indices and the likes (used today as indicators of development).

There is, however, a different kind of calculation: the Happy Planet Index. The notion of having such an index derives from one of the poorest countries on Earth: Bhutan. The gap between GDP and the level of happiness is aptly illustrated by the saying: ‘In an underdeveloped country, don’t drink the water; in a developed country, don’t breathe the air’. The Happy Planet Index is designed to resolve this conflict by including values other than economic indicators in the calculation, such as pure drinking water, unpolluted air, uncontaminated soil, healthy crops and meat products, fresh vegetables and fruit, family and social support networks or small communities supporting the individual. Instead of welfare, it gauges wellbeing, the conditions of which are still in place in many poor countries. At the same time, the ten best scoring countries in 2013 were welfare states (such as Denmark, Norway, Sweden, Finland, Switzerland, etc.) that succeeded in striking a sustainable balance between industrial (civilisational) richness and natural abundance. To connect the concept of sustainability to the global social gap mentioned above – that is unsustainable in the economic, financial, social and moral sense alike –, evidently, the threat of a climate change disaster (which is partly attributable to overpopulation) and the migration of the so-called climate refugees greatly contribute to the process. As water is depleted, pastures are destroyed by drought and the few remaining forests are logged, deprived of their living conditions, hundreds of thousands, millions of people abandon their homes just like at the times of great migrations.

**8. THE QUESTION ARISES:** why do most of these people seek help from Christian Europe? Why is it Europe that has the most developed social care systems and major social solidarity institutions in place? And once they are here, why does the host country need to reckon

with an increased threat of terror? Why cannot they integrate? In extremely complex situations, it is often the simplest questions that provide the easiest answers, be it about climate change, social impoverishment or migration. Besides granting rights, integration should be subject to strict conditions: refugee rights should be coupled with obligations toward the nation state and laws should be observed and upheld. Otherwise, the prophecy of *Samuel P. Huntington*– ‘the clash of civilisations – may become a reality.<sup>12</sup> Reaching the welfare state founded on the rule of law, the citizen of a poor country will try to cash the cheque made out to him in the name of human rights and the rule of law. The question is: who should cover the required funds? After two centuries of development, Europe has accumulated a sufficient amount of reserves to cover – and guarantee for future generations (i.e. its own children and grandchildren) – the welfare state and the rule of law. Can it guarantee the same for the same number – or even a greater number – of immigrants, Or will the reserves be depleted in a matter of years, while its performance and the returns thereon fall far behind the previous level? How will it replenish the reserves? These are the enormous human rights and legal challenges of our times, especially with respect to crisis manager nation states.

**9. PURSUANT TO CONSTITUTIONAL COURT DECISION** No. 8/2014 (III.20.), the principle of *clausula rebus sic stantibus* is a constitutional tool for crisis management. The state brings laws to intervene in private contracts *en masse*, with the same conditions as provided under Section 241 of the old Civil Code: in the case of ‘significant and unanticipated changes’ and grave breaches of interests. The court can restore this balance of interests and balance of values if the parties themselves proved to be unable to restore it through contract amendments. The legislative branch is also entitled to do so via normative instruments, i.e. laws. Based on the principle of fair contracting, individual judges may intervene in specific contracts when the balance of interests is upset. In the case of a large number of contracts, this intervention will be carried out by legislature via normative tools.

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12 Huntington, S.P. (2006) *A civilizációk összecsapása és a világrend átalakulása*. Budapest: Európa Könyvkiadó.

Constitutional Court Decision No. 34/2014 (XI. 14.) is also referred to as the foreign currency decision. The background of this case is that even the Curia's confirmed in its uniformity decision that the third branch of the government cannot address this severe problem – that involves a multitude of contracts – through resolving the dispute between two parties. The magnitude of the problem calls for normative intervention. It should be noted that the Constitutional Court had already laid the foundations for this work in its Decision No. 32/1991 (VI. 6.), which involved the same conceptual considerations in relation to housing loans granted under the interest subsidy scheme of the OTP.

Behind foreign currency-based consumer loan contracts – which seemingly had private law implications only –, numerous circumstances outside of the realm of private law (or law itself) played a decisive role:

- ≡ large amounts of liquidity in rich, net saver countries, a lending pressure in money markets on the side of the multinational banking sector;
- ≡ strong, partly induced credit demand in poor countries;
- ≡ central bank interventions, exchange rate and interest rate policy measures, fluctuating cross rates;
- ≡ government interventions in the exchange rate of the national currency for the purpose of restricting or expanding imports or exports;
- ≡ government interventions in the money market for the purpose of downsizing the budget (elimination of interest subsidy schemes aimed at social purposes);
- ≡ global financial crisis, a steep appreciation of 'safe-haven currencies';
- ≡ depreciation of the national currency as the financial crisis spilled over.

Mention should also be made of marketing and advertising pressures exerted by the government and the banking sector, which steered hundreds of thousands of (irresponsible) borrowers toward irresistibly cheap loans even without sufficient coverage. The loans, which were denominated in foreign currency but disbursed in forint, were repaid by debtors in forint, but the amount was converted on the basis of the exchange rate

of the relevant foreign currency. The back office operations (banking business technology) involved in the back and forth conversions of banks' foreign currency liquidity to forint and forint liquidity to foreign currency became so complicated that even bank officials and agents failed to fully understand them, let alone debtors. If even banks' risk analysts (risk managers) were unable to grasp the magnitude of the exchange rate risk, how could the same be expected of (often uneducated) debtors unexperienced in speculative transactions? In the context of circumstances of similar magnitude, can we still talk about consensus between parties on equal footing, bestowed with the same rights (consistency of thoroughly considered intentions), contracts that respect the balance of interest between the parties, the balance of values between service and consideration and deliver the expected win-win situation? Or were these contracts based on a gamble which could only result in one winner and one loser? In light of the dominant position of the government and the financial sphere, the abuse of public office and the abuse of economic/financial position, can we still talk about private law, and if yes, to what extent? Answers should be found to these severe questions in order to prevent the same situation from happening again and to ensure that we are not caught by similar, unexpected surprises in future.

**10. IN CONCLUSION, LET US CONSIDER** a scenario that aptly illustrates all of the above. When an important part of a car malfunctions and it is proven to be caused by the manufacturing error of a major car manufacturer, millions of cars are recalled in order to replace the faulty part. Similarly, foreign currency based loans were also looked upon as a product; a theretofore unknown financial product involving, in the legal sense, an atypical or unaccustomed, extraordinary contractual solution. No one could really understand the magnitude of the risk taken, even if they signed the risk disclosure document. It took five years to come to grips with the risk of the transaction, when both the outstanding principal and the monthly instalment amount doubled. Agents sold these contracts, as financial products, to customers in exchange for commission; consequently, they had a vested interest in selling as many contracts as possible. Thousands of lawyers worked on formulating the wording of these contracts and put their stamps on the final result. Notaries public drew up official, public documents registering mortgages on homes and

any other valuable real estate as collateral. The entire legal community participated in the promotion of a product that remained somewhat obscure even for financial experts. All of these circumstances had been considered as the legislator made its decision that was subsequently examined and approved by the Constitutional Court in the Decision mentioned above. From a different angle, we might say that the emerging situation required immediate government intervention. Since the third branch of the government was unfit to address a problem that affected such a multitude of people and the government was unable to move forward without the supporting legislation, a series of legal acts had to be formulated as swiftly as possible. As most things that are done too fast, this effort inevitably entailed numerous errors, gaps and contradictions; even so, the situation had to be tackled immediately. When a child loses a parent, for example, they must be assigned a temporary guardian and a depositary must be appointed to manage their assets. This is obviously a life situation requiring immediate attention. The same is true in the financial sector when a massive pile of hundreds of thousands of contracts is affected, and the same happens to the legislative tool in public law. And it was on the basis of constitutional law dogma that the Constitutional Court needed to proclaim that extraordinary solutions are constitutionally acceptable in emergencies requiring immediate intervention. Paragraph (2) of Article M) of the Fundamental Law proved to be a good foundation for this.

These examples aptly illustrate the economic, social and environmental crises and the human rights and legal challenges affecting our everyday lives today. The combination of the global social gap, overpopulation-induced migration and the threat of a climate change disaster spawned an emergency of global scale. We search for crisis management tools both at the national and at the international level but an extremely protracted process is ahead of us, in which future generations will need to take on the greatest and most difficult task. They will have to find a way to sustainable development, a more liveable life and their own happiness by learning from the mistakes of the past and the present. Learning from our own failures and passing on our experiences we might be able to help them lay the foundations of a more reasonable and more fair (global) world order and assist in the redistribution of goods and rights accordingly.

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# The concept and understanding of marriage and family<sup>1</sup>



## 1. Value priorities

**PEOPLE LIVE THEIR LIVES** according to their own set of values. We still sometimes hear that: “Family comes first for me”, or “Marriage is sacred!” As long as we hear such things, there is nothing wrong with people, because they have – written in their hearts – basic moral values that inspire good and inhibit evil. The values that an individual holds reveal his or her individuality, the values of his or her personality, his or her humanity. What is good is when the value priorities of individuals make up the values of a family, a local community and the larger, national, religious, civilisational, cultural or even global community. The family is the primary arena for the formation, preservation and transmission of individual and community values. Family members, especially spouses, also shape each other’s personalities as they shape themselves. However, it is of paramount importance to educate children, to pass on family traditions and positive values to successive generations. It is the following of behavioural patterns that is most powerful, resulting in the real ‘*imprinting*’ of values, which is why leading by example is so important. Human behaviour is regulated by norms. Norms are very diverse. The legal norms select the more important values from other norms, linking them to the possibility of enforcement, to the public power of the state. This is why the value of legal norms is particularly important, as the legal order is also

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<sup>1</sup> Originally published Lenkovics, B. (2021) ‘A házasság és a család fogalma és értelmezése’, *Jog – Állam – Politika* 13(2), pp. 3–28.

a value system. While the law is “bottom-up”, drawing on the ingrained moral norms, the values of individuals and their communities, on the one hand, and the values of the legal system, on the other, are in sync and interpenetrate each other. The building blocks of the legal value system are the legal principles, the basic principles of each branch of law, area of law, legal institutions (e.g. equality of women and men, freedom to marry, protection of motherhood, the best interests of the child, etc.). If the basic principles and legal values of the law are good and stable, then the laws themselves are good and stable, and the legal system as a whole is good and stable. If the legal system is stable, the values of a society will be stable. To this end, the most important legal principles and fundamental values of individual branches of law (such as family law) have been taken over by national constitutions and elevated to constitutional status. Thus, these are now at the top of the legal system, enshrining in constitutional norms the most important values and social priorities along which the community in question wishes to live its life, organise and operate its state. Constitutional values have more recently been called national or constitutional identity. Similar legal developments have taken place simultaneously at international (universal) and European (EU) level. In 1948, “the family of mankind” also codified the now universal fundamental values by which it intends to live its life in the future. The Universal Declaration of Human Rights sets out the value priorities of all humanity, and is considered by many – not coincidentally – to be a universal constitution. Its provisions are embodied in national constitutions through a rule of reference, its values are spelled out by national legislators in concrete norms, and its values are implemented in everyday life by administrative and judicial forums. Individual value priorities return to the individual person as human rights and fundamental constitutional rights, having undergone such an evolutionary path. To illustrate with a single example: the freedom to marry and to choose a partner, the equality of men and women (also as spouses) is a fundamental principle of family law, a substantive right of the parties, but also a fundamental constitutional right, an EU and universal human right and fundamental freedom.

The situation is different if the legal order is “top-down”, i.e. if the basic norms are dictated by the dominant powers over people – the

property, economic, financial and political powers that serve them – and thus also determine the value of the law. This was the law of communist totalitarian dictatorships, but let's stay with a current example. The basic values of a capitalist competitive economy are "liberalisation, deregulation, privatisation", its fundamental freedoms are the "free movement" of capital, labour, goods and services. This competitive economy and the 'competitive' social model built on it produces few winners and many losers. If the cohesive family, a local community or a nation-state resists, it is at a disadvantage. Such *selection* not only fails to enhance the survival prospects of the human species, but significantly destroys them. "The destructive fallacy of utilitarianism can be defined as the substitution of means for ends." Property, management, money were originally means of subsistence, of security of existence, then they became ends in themselves and finally means of domination. Today money is an absolute value, there is no upper limit to its possession. The rich want to outdo each other, the poor "live in fear of being left behind, of further impoverishment". Both are the most crucial factors undermining the health, marriage, family and social peace of modern man (Lorenz 30–31<sup>2</sup>).

## 2. Constitutional value priorities

IN DRAFTING HUNGARY'S FUNDAMENTAL LAW, the constitutional authority has had ample and clear sources of inspiration. On the one hand, there were the international and European human rights documents, which could be referred to by a single general rule and made part of the constitution. However, mechanical copying is not the ideal solution. There are historical, cultural and material (financial, budgetary) conditions for the exercise of fundamental rights. The lack of capacity to deliver turns fundamental rights into empty words and discredits the Constitution. This means that the effective enjoyment of human rights differs between developed and rich countries and between developing and poor countries. This is the sad reality. And that is why we must constantly strive to create equal opportunities between

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2 Lorenz, K. (1988) *A civilizált emberiség nyolc halálos bűne*. Sopron: IKVA.

countries, both at European and global level. On the other hand, we have had the achievements of our historical constitution, but which ones, in concrete terms, will emerge from the case-by-case decisions of the Constitutional Court, over a longer period of time. Thirdly, there was the twenty years of constitutional court practice of the 1989 “regime-changing” provisional constitution, the content of the so-called “interpreted constitution” and the accumulated experience behind it. This is particularly true of the constitutional value and protection of marriage and the family. These institutions feature prominently in international and European human rights documents, *in abstracto* in a uniform and clear wording, while *in concreto* they exist in very diverse forms in the individual states. Marriage and the family were in all three of our previous written constitutions (1949, 1972 and 1989), and they had a clear constitutional court practice. By exploiting all this to a high degree of abstraction, they could be formulated in such a way as to be able to preserve traditional values while being flexible enough to accommodate new values. As international, European and Hungarian social values evolve and change, these changes also affect the values and some of the fundamental values of the constitution and the legal system. Their organic evolution and development requires active adaptation. New values can only be accepted if they are integrated into the old ones, so that they do not behave “like the elephant in the china shop”. Organic fit is also a condition for the survival and viability of the value system, a sign and proof of vitality. However, new phenomena that only appear to be of value must not be allowed to be pushed and manipulated. Even seemingly small individual concessions can, taken as a whole, destroy a previously solid set of values, can lead to a “*slippery slope*” of fundamental values, and as we know, there is no stopping on such a slope.

### 3. General values, general clauses

INTERNATIONAL AND EUROPEAN HUMAN RIGHTS documents, as well as national constitutions, are formulated at the highest possible levels of legal abstraction. It follows from this fact that fundamental freedoms and human rights, as fundamental constitutional values

and fundamental rights, are expressed in the most comprehensive and general concepts, in framework norms, in the so-called general clauses. These include a very wide range of very mixed, sometimes conflicting, life circumstances. The court decides on a case-by-case basis which new relationships are covered by the general statutory definition and what is excluded. Thus, it is only over a longer period of time, through a series of judicial precedents, that the specific content of the general clause is drawn out. For this reason, the admissibility of general clauses has long been debated in jurisprudence, first because of the “danger of judicial arbitrariness”, and more recently because of the requirement of “legal certainty” and predictability derived from the rule of law. Since constitutions in general, including the Hungarian Fundamental Law, are full of general clauses, and the Constitutional Court is the “supreme body for the protection of the Fundamental Law”, which has the right of interpretation that is binding for all (*erga omnes*), it has taken a stand on the aforementioned jurisprudential debate on several occasions for very practical reasons. In its Decision 847/B/1996 AB, for example, the Constitutional Court stated that “legislators must issue a legislative text that meets the requirements of clarity”. In its Decision 55/2001 (XI. 29.) AB, it emphasised that in certain cases it is not the detailed but the general, framework-like regulation that promotes legal certainty. This line of thought was continued by Decision 801/B/2002.AB: “General clauses are therefore of importance in private law precisely from the point of view of legal certainty with regard to the life situations they cover. A typical example of this is the general clause of ‘good morals’, which is able to accommodate the current common moral conception.” The most interesting and important conclusion for our topic is that of the Constitutional Court: “Since the values of the Constitution and the moral norms of society are known to all, parties to a contract which is manifestly contrary to these cannot claim that the content of the challenged norm is unclear or uncertain.” According to this, just as everyone is expected to know the promulgated law, and therefore no one can plead ignorance of the law, so everyone must know the values of the Constitution and adapt their behaviour to them, and no one can plead ignorance of the values of the Constitution. Moving up one more step of abstraction, the same can be said of the values of fundamental freedoms and human rights

(also as constitutional rights) at the beginning of the 21st century. The specific meaning and content of general, overarching concepts and institutions with constitutional values (such as marriage and the family) can be found in the interpretative decisions of the Constitutional Court and in “constitutional” laws. A chaotic, meticulous regulation of these, covering every conceivable case, would not fit into the constitution for reasons of scope alone, and such regulation would not be possible or even appropriate. To sum up our reflection, we can therefore say that legal concepts that carry fundamental constitutional values must be general, comprehensive, flexible and framework-like in nature. Most of these are not “created” by the constitution, but “recognised” as already existing, protected as its own (Schanda – Varga 79<sup>3</sup>). The “interpretative supremacy” in these matters naturally belongs to the constitutional power, but in the “constitutional recesses” the Constitutional Court also has a special role as the main defender of constitutionality and constitutional values. Neither the slow erosion, relativisation, emptying out, nor the denial or destruction of the fundamental values worthy of constitutional protection (“eternal”, timeless) of society, the state and the constitutional values that mediate them all, can be allowed. And if there is tension between certain values and the changed circumstances, and the extension of the values to the new life situations cannot be ensured through interpretation, then, and only then, is it possible to change the circumstances, to guide them, to adjust them to the basic values and value system. This extreme case can be called value rescue, the consolidation of a broken value system. All this can be seen as a natural or organic development of constitutional values, but in a broader context it can also be seen as an evolution of civilisation.

#### 4. Marriage as a fundamental value

**THERE ARE THREE MAJOR TURNING POINTS** in a person’s life: birth, marriage and death. The first and the third are – typically – not

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3 Schanda, B. (2020) ‘Házasság és család az alkotmányjogban’ in Csink, L., Schanda, B., Varga, Zs. (eds.) *A magyar közjog alapintézményei*. Budapest: Pázmány Press, pp. 681-701.

decided by them, but are shaped by natural and social circumstances, largely independent of them, and by the decisions of others. The only really important decision one can make for their own destiny is to get married. One should therefore consider this decision carefully. It is no coincidence that this is taking longer and longer for more and more young people, the age of marriage is postponed and many young people are finding it harder and harder to get married. Konrad Lorenz says: “It is enough to remember this obvious and simple requirement when choosing a mate: the girl must be decent – and the boy no less so” (Lorenz 60<sup>4</sup>). If we add to marriage a lifelong commitment and the decision to have children and start a family, the decision becomes even more difficult, the weight, risk and responsibility of the decision increases, but its value also increases proportionally. In this logical line of thought, we can say that the greatest value of a person’s life is to marry and have a family. This is the fulfilment of one’s and their spouse’s personality and humanity, which they can pass on to their offspring, and bequeath to their children. In this interpretation, the statement that “marriage is a fundamental value” is beyond dispute. If we subtract from this the idea of having a child together, which is not the aim of all marriages (especially at an older age), then the assessment is not so clear-cut, but still the vast majority of people believe that marriage is a fundamental value (Kopp-Skrabski 27<sup>5</sup>). This is explained by the biblically rooted, yet very human, belief that “it is not good for man to be alone”, and that is why man seeks a mate. The relationship between a couple – typically marriage – is an extremely important part of the private sphere, and the rights to freedom, security and privacy are also fundamental values. Therefore, the state is not indifferent to the way its citizens conduct their private lives (Schanda 686<sup>6</sup>). The “search for a mate” is at the same time the search for individual happiness; the fate-transforming decision of “choosing a mate” was at the top of the individual value hierarchy even before law, under natural conditions (in prehistoric times), and it is still there today, even outside law and

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4 Lorenz, K. (1988)

5 Kopp, M., Skrabski, Á. (2020) *A boldogságkeresés útjai és útvesztői : az érett személyiségtől a kiegyensúlyozott párkapcsolatig*. Budapest: KINCS: L'Harmattan.

6 Schanda, B. (2020) p. 686.

independently of law. In this sense, we are talking about the demand for “law-free privacy”, which is the hard core of “*privacy*”. On the other hand, since the time when man lived in a legally ordered society and the fact of marriage could have legal effects, rights and obligations, we have been saying that “marriage is the most personal of public affairs”, especially when children and other family members are involved. Again, this shows that the fact of marriage is a fundamental value in itself, for the social community, and therefore a fundamental constitutional value. The physical and spiritual unity of the spouses, the harmony of married life, also has a health-protecting function. People in harmonious marriages are healthier and live longer. Its spill-over effect is important and valuable for the wider community of relatives, the workplace, the local community of residence, and even the whole social community (Kopp-Skrabski 120 and 161<sup>7</sup>). Even if we can agree that marriage is a fundamental value, it does not mean that we can agree on the concept of marriage and that everyone understands marriage in the same way.

## 5. The concept of marriage

**IN THE MOST GENERAL SENSE**, marriage is a relationship. Two people, traditionally and typically a woman and a man, form a human couple. However, a couple can be extremely diverse, if only because each member of the couple is an individual, their identity is unique, one-off and unrepeatable, which means that their relationship is the same, i.e. there are as many different types of relationships as there are couples. So we need to narrow the field if we want to define which relationships can be considered marriages. You can specify formal and content criteria for the narrowing. Formal terms are the rites, rituals, acts and declarations that vary from people, times, cultures and religions, which make it clear to all members of the wider community that a given pair of people are spouses. This formal diversity has been simplified to the point where two parties, a woman and a man, declare before an official (the registrar) that they are unanimously

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7 Kopp, M., Skrabski, Á. (2020) p. 120., p. 161.



consenting to marry each other, this fact is entered in the public register and signed by the parties and their witnesses. The resulting marriage as a form can then be filled with whatever content the parties wish. Therefore, it is almost impossible to prescribe content conditions, but rather to outline, presume and recommend them, the fulfilment of which can be examined later. A “formal” marriage can be a sham, a pretence, a deception of the other party or the community, and can be seriously abused. Formal or sham marriage masks some other real purpose, usually to obtain a benefit that the parties (often only one of them) would not have without the marriage. In spite of the difficulties, this is why both science and the substantive law are trying to define the substantive conditions (criteria) of marriage, at least in an exemplary way. The substance of a genuine marriage – a *meaningful* marriage, valued by the community – is the benefits and *goods* that are fundamental values for both parties and the community. But from the infinite abundance of goods, which should the law single out as the most important ones to define (identify) real marriage in general, while distinguishing it from the non-genuine? According to legal philosopher *Javier Hervada*, it is enough to look at the three *bona* of Saint Augustine. These three are *bonum proles* (the good of children), *bonum fidei* (the good of fidelity and unity) and *bonum sacramenti* (the good of indissolubility, in profane terms “till death do us apart”). These “medieval” concepts can be filled with 21st century content, so that they are still suitable for the identification of a real marriage (Hársfai 161<sup>8</sup>). We mention only the most important content elements that are most suitable for identification:

a) *the union*, alliance, “fusion” of *two autonomous personalities*, the mutual enrichment of each other’s personality. This community is “significantly more than the two partners separately. And this community cannot be owned, one can only be part of it. One who wants to possess their partner and the relationship is unfit for a community of life and can only create a community of interests (Kopp-Skrabski 128–129<sup>9</sup>).

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8 Hársfai, K. (2020) ‘A természeti törvény és a házasság Javier Hervada jogfilozófiájában’ in Fridvalszky, J., Tussay, Á. (eds.) *A Természetjog Napja II.: konferenciatanulmányok*. Budapest: Pázmány Press, pp. 159–170.

9 Kopp, M., Skrabski, Á. (2020)

b) *the unity of body and soul*. “The legal bond unites spouses through natural capacity. It unites the will and unites the natural faculties that characterise sexuality. It is important to stress that it merges what was already destined to be merged. Masculinity and femininity were brought into being through creation or as a consequence of nature to unite” (Hársfai 165<sup>10</sup>). The biblical basis for this idea is well known: “and they twain shall be one flesh” (Genesis 2:24 and Matthew 19:4–6<sup>11</sup>). Its origin lies in the natural law that a new human individual can only be created by the union of a female and a male gamete, hence marriage is the union of the body and soul (genes and psyche) of a woman and a man.

c) *unity of purpose*. “It means sharing in the fate of the other, sharing in their personal history. They have common goals, common lives, common histories” (Hársfai 166<sup>12</sup>).

d) *a community of life and love*. This element of content is already found in the definitions of Iustinian and Modestine, and later Vatican Council II used it to describe modern marriage (Hársfai 166). It is certainly more and different than a mere community of interest. “From ancient times, it was common to enter into marriage contracts for economic or political reasons. Rulers strengthened political alliances with family ties. The wealthy hoped for even more wealth through the marriage union” (Kopp–Skrabski 12<sup>13</sup>). The basis of our Christian culture is sacrificial love, which is selfless and not selfish, not profit-seeking. The altruism is of course mutual, with each party putting the other’s interests first and receiving and hoping for the same in return. It is also the basis for mutual loyalty and support for each other.

e) *mutual commitment and obligations*. Perseverance with each other in good times and bad, in sickness and in health, for richer or poorer. The answer to this question can only be a clear and unequivocal “I do”. It is a promise that lasts until death, a promise and hope of indissolubility.

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10 Hársfai, K. (2020) p. 165.

11 Biblia. Ószövetség. Mózes első könyve, 2, 24.; Biblia. Újszövetség Máté evangéliuma, 19, 4–6.

12 Hársfai, K. (2020) p. 166.

13 Kopp, M., Skrabski, Á. (2020) p. 12.

Compared to philosophical and theological high ground, law, even if it is an abstract norm, must be closer to reality. For a marriage to be formally valid, the law can only impose a number and quality of substantive conditions that the majority of those intending to marry can meet. Examples include loyalty, cooperation and support obligations. These – the minimum content elements of the marital community – are individually also characteristic, broad framework norms, general clauses, which the couples themselves can interpret and concretise, and within and beyond these they can fill their own marriage with content. A breach of a substantive obligation will only be examined by the court if one of the parties asserts a claim based on it. Depending on the severity and nature of the infringement, it may be accompanied by a legal penalty, which – in principle – has a preventive effect. In order to illustrate the difficulty of defining the substantive conditions, I will highlight one of the most beautiful and valuable, but also the most difficult and therefore the most controversial element, that of marital fidelity.

## 6. The concept of marital fidelity

**‘FIDELITY’ WAS ONCE ONE OF THE MOST PRECIOUS** human virtues. It means commitment and perseverance to someone and something. It has been part of the text of solemn oaths and vows, and is still part of the church “wedding”, the “sacrament” of marriage. But the word given, the promise made to others, was also “holy”. Dishonesty, perjury, apostasy were all capital (i.e. deadly) sins on the same level. Fidelity is part of the principle of *pacta sunt servanda*, which is a fundamental principle of contract law, not only in private law obligations but also in public international law. Many therefore also see it as a core value of civilisation. Fidelity is also part of social *trust capital*, an indicator measured in the same way as, but often more valuable than, gross national product or national income. Patriotism and *attachment to one’s homeland* – defending it even at the cost of one’s life – also included fidelity. With such a huge “value-background”, fidelity became the content of marriage as *conjugal fidelity*, which naturally extended to marriage as a natural, social and legal institution (marital

fidelity). Yet – or perhaps because of this – many people dispute its place in the law and even talk about it in the past tense. Whereas, at a much lower level on the value scale, we often see it in the everyday consumer world. Loyalty has become a marketing tool in the market for products and services. Many service providers include a “loyalty period” in their general terms and conditions, “loyalty statements” are signed, and customers in supermarkets collect “loyalty points” on their “loyalty cards”, which they can then use to get some kind of benefit. But it is all just a business calculation to increase traffic, and it is certain that the service providers (sellers) always get the better deal. This is nothing other than the conceptual relativisation that we also observe in law, the devaluation of a fundamental value, i.e. a loss of value. The same can be said of the concept of marriage itself, which is devaluing, losing value, as we extend the concept of marriage to more and more forms of relationships. Society, the legislature and the constitutional authority must remain faithful to marriage as a fundamental value.

In connection with the notion of marital fidelity, the institution of *monogamous marriage* should also be mentioned, which has led to the appreciation of fidelity. Marriage and family existed even before written history, when paternity was not important and children were only considered to be descended from a common mother (matriarchy). “But it also seems to be beyond doubt that at a very early stage of the development of society there were forms which only became dominant in a later social order” (Nizsalovszky 25–26<sup>14</sup>). Thus, there were also examples of the monogamy of man and woman as a parental couple. This, even if at first an exception, “may have been of great importance in making both parents aware of and strengthening the blood bond; and the awareness of the blood bond developed instincts which became the source of views for the development of mankind, including the invention of the prohibition of incest.” This prohibition – and indirectly the monogamous couple relationship – was reinforced by the recognition that the children of a woman brought (stolen, bought) from a foreign tribe were healthier, more beautiful and smarter than those of a domestic relative. Besides the genetic reason, another reason for monogamy was the agricultural revolution, the emergence of private

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14 Nizsalovszky, E. (1963) *A család jogi rendjének alapjai*. Budapest: Akadémiai Kiadó.

property, its exclusivity and inheritance. The power of ownership was extended to the wife and children of the male owner, and a father-owning society, male domination, was established. Just over half a century ago, this began to be replaced by the equality of man and woman, also known as husband and wife, the legal and social equality of the two sexes. However, the two main reasons for monogamy remain: the prohibition of incest and the exclusivity of family status. “Man is not by nature monogamous, but the laws of states at a higher stage of social development generally make it impossible for one to live with two persons in a legally recognised conjugal relationship at the same time. This rule is bilateral and applies to both spouses” (Nizsalovszky 275<sup>15</sup>). And so long as monogamy is justified, so long will marital fidelity remain a fundamental value. And the justification for monogamy is very strong. “Joseph Daniel Unwin found, from his study of outstanding historical civilizations and dozens of tribes, that advanced cultures were based on communities of monogamous relationships, while cultures that provided a broader framework for sexuality were in decline or remained underdeveloped” (Gallai 15<sup>16</sup>).

## 7. Alternative relationships

According to a malicious (or realistic?) view, a non-monogamous person by nature plays out the strict rule of monogamy not by living in marriage with two persons at the same time, but by marrying more than two persons in succession over time. In fact, they do not marry at all because it is difficult, lengthy and expensive to break free from the bonds of marriage, but rather enter into a looser relationship, even several at the same time, because it can be easily and unilaterally broken at any time. Still others argue that women have taken emancipation too far by rejecting marriage itself, in addition to rejecting male domination. These claims are probably over-generalisations. Men are more reluctant to marry, or at most to enter into a civil partnership. (Behold, another late, distorted

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15 Nizsalovszky, E. (1963) p. 275.

16 Gallai, S. (2019) 'A családpolitika helye a demográfiai válsággal küzdő Európában' in *Európai családpolitikai kitekintő*. Budapest: KINCS, pp. 15-28.

manifestation of male domination!) The real reason is rather selfish individualism, a lack of ability and willingness to commit. Three typical elements of individual selfishness are: a) I am for myself; b) the world is for me; c) you are for me. Individually, none of these elements are compatible with a commitment to marriage, but the three together certainly exclude it. However, it is reassuring to note that “87.3 percent of Hungarians considered marriage to be the best way of life even at the turn of the millennium. ...76.7 percent of young people approved of couples living in a cohabiting relationship for some time before marriage” (Kopp–Skrabski 27<sup>17</sup>). Some people see the establishment of a cohabiting relationship as a modern version of “engagement”, a kind of “active promise of marriage”. By analogy: a “preliminary contract” between the parties that they will later enter into a marriage, i.e. a final contract. Others see cohabitation as “trial marriages” which, if successful, can be consolidated into a real marriage. But it may also be perpetuated as a *de facto* partnership. They can also confirm this themselves by registering in a notarial *register*, in the hope of personal and material benefits. However, once they freely and consciously reject marriage, they cannot claim equal treatment with spouses. The same applies to same-sex life partners, although under Hungarian law they cannot marry, but can instead have a *de facto* cohabiting relationship or a *registered partnership*. An important question is then whether alternative marriages can be created, and how long can the number of alternative forms of relationships be multiplied? “It is a big mistake to think, says Hervada, that in our time, just as culture is man-made, so is marriage. Many people think that marriage can take as many forms as man can create, and that every culture can create a model of marriage. On the contrary, marriage is not an invention of man, but an institution of natural law” (Hársfai 160<sup>18</sup>). In general, the purity and clarity of concepts, such as the concept of marriage, is a value in itself, the relativisation and confusion of which leads to “value confusion”, to loss of value. So the fact that the legislator favours, legally protects and actually supports the traditional marriage model is not a manifestation of homophobia, but rather a matter of value choice and value saving (Schanda 686).

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17 Kopp, M., Skrabski, Á. (2020) p. 27.

18 Hársfai, K. (2020) p. 160.

## 8. Marriage as interpreted by the Constitutional Court

AS THE EARLIER CONSTITUTIONAL TEXTS (1949, 1972, 1989) referred to “marriage and the family” together, as in international human rights instruments, the Constitutional Court often interpreted them together. However, it is also clear from these that it had a different view of marriage. In its later decisions it cited and confirmed its earlier interpretations; our starting point being Decision 154/2008 (XII. 17.) AB: “Article 15 of the Constitution, when it states that the Republic of Hungary shall protect the institution of marriage and the family, does not merely declare a state aim and a state duty, but establishes an objective obligation to protect the institution.” An earlier decision on this protection has already stated: “No substantive right can be based on this provision, since it constitutes the State’s duty to protect marriage and the family: the State’s aim to protect the institution of marriage and the family by means of legislation” [Decision 7/2006 (II. 22.) AB of the Constitutional Court]. This obligation to protect is enshrined in the Constitution by taking both the concept of marriage and the family as given, without establishing specific rights for spouses and families, and without imposing specific, named means of protection and obligations on the state. Decision 14/1995 (III. 13.) interpreted Article 15 of the Constitution “in accordance with the social perception” and stated that “marriage typically aims at the birth and upbringing of children in a family, in addition to being a framework for the spouses to live in mutual care and support. (...) The institution of marriage is also constitutionally protected by the state in order to facilitate the establishment of a family with children for both spouses. This explains why Article 15 of the Constitution mentions the two objects of protection together.” The argument implicitly listed the most important common-sense virtues of marriage: starting a family and having children, mutual care and support. The Constitutional Court was aware of both the homosexual marriage movements and the crisis caused by the growing number of divorces, and in response to these it stated: “However, this is not a reason for the law to depart from the legal concept of marriage which has always existed in the tradition leading to the present state of affairs, and which is common in modern law and in line with the concept of marriage in public consciousness and in the vernacular. In

the context of today's constitutions and the provisions on marriage and the family, the Hungarian Constitution also values and protects marriage between a man and a woman." Thus, according to the interpretation of the Constitutional Court, the difference in sex of the spouses is a conceptual element of marriage. Decision 37/2002 (IX. 4.) AB reiterated that: "Both heterosexual and homosexual orientation are part of the essence of human dignity, and there must be exceptional reasons for separating them and not treating the dignity of the persons concerned equally. One example is discrimination against homosexual orientation in relation to the right to marriage." This position has been consistently maintained by the Constitutional Court in subsequent decisions. Its position on the marriage of a man and a woman is in line with the provisions of the most important international human rights conventions, which also recognise marriage as a union of a man and a woman (Article 16 of the UN Universal Declaration of Human Rights; Article 23 of the International Covenant on Civil and Political Rights; Article 12 of the European Convention on Human Rights). And the European Court of Human Rights has stressed that the regulation of the right to marry is a competence of the states parties to the ECHR. "The restriction that same-sex couples may not marry cannot be regarded as a restriction on the essential content of the right guaranteed by Article 12 ECHR." However, the Hungarian Constitutional Court also acknowledged that "in recent decades, many countries around the world have assessed that the legislature must also react to social changes." It pointed out that some countries have already recognised the freedom to marry for homosexuals, while others have created a separate registered partnership for them, taking care to distinguish it from marriage. This is what happened in Hungary. This follows from the fact that: "According to the reasoning in the decisions of the Constitutional Court, it follows from the constitutional protection of the institution of marriage that even sociological changes cannot justify a reassessment of the traditional understanding of the institution of marriage" (Villám 388<sup>19</sup>).

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19 Villám, K. (2018) 'A család Alaptörvényen alapuló védelme' in Szeibert, O. (ed.) *Család és családtagok: Jogági tükröződések*. Budapest: ELTE Eötvös Kiadó, pp. 371-389.



More specifically, “The obligation of the State in guaranteeing the right to marry is primarily and as a minimum to create the conditions and legal framework for marriage and family formation. Consequently, the legislator may not abolish the institution of marriage, may not make it impossible to marry, and must also determine the possible conditions and obstacles to marriage with extreme caution” [Decision 22/1992 (IV. 10.) AB]. Furthermore, “the state may not create a legal situation that puts married couples at an overall disadvantage compared to unmarried persons or couples. In addition to this, the fact that the Republic of Hungary protects the institution of marriage implies a positive attitude, activism and support. However, no constitutional upper limit (maximum extent) of the protection of the institution of marriage and the family by the state can be established, nor is this a constitutional issue. The State, within the limits of its possibilities and within the framework of the Constitution, is relatively free to decide what <marriage and family policy> it will pursue and what legal instruments it will use to that end.” In connection with this, the Constitutional Court also dealt with the legal regulation of the ever increasing number of alternative partnerships, stating that “from the Constitution, it is not the ‘sole’ (exclusive) protection of the marital bond as a form of cohabitation, but rather the ‘special’ (*constitutional* level) protection of marriage can be derived, i.e. the Constitution does not exclude the legislative protection of other *couple relationships* than marriage. The legislator, taking into account the need for legal order in the various types of relationships, has the possibility to recognise and protect other forms of cohabitation than marriage. It is at the discretion of the legislator to decide whether to recognise certain forms of partnership in law and to assess the need for and the extent of protection. The legislator therefore has the option of defining the rights and obligations of registered partners and the couples living in *de facto* cohabitation of shorter or longer duration, or of a more or less close relationship, on the one hand, and those of spouses on the other, in different ways and to different extents.” This framework of interpretation by the Constitutional Court has had a significant impact on the drafting of the new provisions of the Fundamental Law on marriage and family, the Family Protection Act and the Family Law Book of the new Civil Code and their

content concerning marriage. Fukuyama saw it right: “A rational system of norms does not evolve automatically (...) Social order will not simply be reconstituted through the decentralized interactions of individuals and communities; it will also need to be reconstructed through public policy. This means both action and inaction on the part of government” (Fukuyama 364–365<sup>20</sup>).

## 9. The concept of family

**IF THE CONCEPT OF MARRIAGE** is difficult to define, the concept of family is even more difficult. For the family, it is even more true that there are as many types as there are families. They are not even subject to any formal requirements, and there are no public registers. And their content is even more diverse and varied than that of marriages. That is why, according to many, it cannot be forced into the “Procrustean bed” of the law. Of course, the fact that the concept of family is not defined does not mean that its meaning is not “given”, as it is a natural and social institution that has existed since ancient times and is known to everyone, since most people are born and live their lives in families. It is *trivial*, and what is self-evident need not be dealt with by the law. Yet when this institution, which holds fundamental values for both the individual and society, is in crisis or under attack and needs to be protected, the need to define the concept of family becomes compelling. The legislator is forced to select which small communities and human relationships it wishes to protect and support as families – from the budget, i.e. from the community’s money, i.e. by society – and which are excluded from this circle, without this selection being discriminatory. The key issue here, as in general when defining the scope of legislation, is the formation of a *homogeneous group*. What we said about marriage is also true of the family, namely that one cannot call any small community a family, which some people, for their own self-interest, call it. The legislator must also prevent possible abuses of the concept of family. It is even more difficult to

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20 Fukuyama, F. (2000) *A Nagy Szétbomlás: az emberi természet és a társadalmi rend újjászervezése*. Budapest: Európa.

prevent the “erosion” of the family institution. Just as the erosion of topsoil and the depletion and destruction of other natural resources threaten the conditions of human existence, so the erosion and disintegration of the family threatens social existence, threatening the disintegration of society. The unity, stability and harmony of the family, its trust capital and internal solidarity are also a source of strength for social existence. Despite all rumours to the contrary, humans are social beings. Freedom is not freedom *from society*, but freedom *in society*. And the main arena for this is the family, the unfolding of autonomous personality *in the family*, not separation from or confrontation with the family. The most monstrous, cunning enemies of society are those who assassinate marriage and the family, often claiming their own human rights. The most dangerous are those who turn children against their parents, grandparents, family, generations X, Y, Z, etc. against each other. So far, only the false prophets of the totalitarian communist ideas of the twentieth century (national socialism, communism) have dared to do this. It is feared that in our century, the exaggeration of individualism will also be distorted into a totalitarian ideal. But destroying tradition is also a “mortal sin”. “The evolution of a human culture shows several remarkable analogies to the phyletic evolution of species. The *cumulative tradition* at the root of all culture evolution rests on essentially new achievements, (...) open to mankind a hitherto nonexistent possibility of spreading and transmitting individually acquired knowledge. (...) generational hatred is related to national hatred. Normally, the period of physiological *neophilia* is followed by a revival of love of tradition; (...) Hate makes people not only blind and deaf but incredibly stupid. (...) culture can be snuffed out like a candle” (Lorenz 61–74). I therefore quote Mária Kopp in agreement: “It is clear that the breakdown of families is leading to a serious demographic and health situation, the disappearance of the social safety net and threatens the very existence of society. Today, then, those who do the greatest service to humanity, those who defend justice, are those who strive to defend the institution of the family” (Kopp–Skrabski 165<sup>21</sup>).

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21 Kopp, M., Skrabski, Á. (2020) p. 165.

## 10. Contents of the family

IT IS TRUE THAT THE LAW cannot create happy families, nor can it force anyone into any kind of family life. Most of the norms *within* each specific family are *extra-legal* norms. “Norms governing the behavior of both men and women with respect to families changed dramatically after the 1960s in ways that ended up hurting the interests of children: men abandoned families, women conceived children out of wedlock, and couples divorced for what were often superficial and self-indulgent reasons. The interests of parents and the interests of their children frequently conflict” (Fukuyama 364<sup>22</sup>). As a matter of principle, one can also expect rational people to correct what they have done wrong. “Both nature and rationality ultimately support the development of the ordinary virtues like honesty, reliability, and reciprocity, that constitute the basis for social capital” (Fukuyama 363<sup>23</sup>). Law, on the other hand, is better able to incorporate good and proven norms within the family, family values, into legal norms, to recommend and encourage them, to reward their followers, to avert threats to families, to prevent violations and to sanction their commission, by making use of the results of research in other disciplines (sociology, demography, psychology, pedagogy, etc.). Let’s highlight some of the most important values of the family and take a closer look at one or two aspects of them.

The greatest asset of the family and society is *the child*. The best interest of the child (in the Hungarian legal language, “best interest above all else”) is to grow up in a harmonious family. This means that the child is surrounded by the love of his or her parents (and grandparents), and therefore has absolute trust in them and feels safe. “How does the *capacity for trust* develop within the family, how does the family contribute to reducing hostility? Perhaps the most important basic concept in modern psychology is the concept of *primordial trust*. The human personality, the human being at birth, is biologically, but especially psychologically, extremely immature. So the environment that surrounds the newborn baby, but also the

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22 Fukuyama, F. (2000) p. 364.

23 Fukuyama, F. (2000) p. 363.

developing foetus in the womb, is incredibly important both biologically and psychologically. The first period, the first three years of mother–child or father–child relationship, is crucial for the development of this certain state of primordial trust. What is the state of primordial trust? Total self-surrender between mother and child and father and child, as the father is equally important in the development process. This direct and complete alignment provides a solid basis for personal development. A person with primordial trust has the courage to build long-term relationships, usually daring to approach others with openness and trust” (Kopp–Skrabski 94<sup>24</sup>). Specifically, to get married, start a family, have children. In other words, children’s primordial trust is also the basis for good marriages and happy families later on.

Family is a *community of love*. “Love is a kind of investment in others that ties their fate to our own and can make their problems more important to us than our own” (Ranschburg 202<sup>25</sup>). This is not only true for Christians, but for all the great world religions, and even for atheists. According to Erich Fromm, this common denominator is possible because love is the answer to the question of human existence. “Man is gifted with reason; he is *life being aware of itself*; he has awareness of himself, of his fellow man, of his past, and of the possibilities of his future. This awareness of himself as a separate entity, the awareness of his own short lifespan, of the fact that without his will he is born and against his will he dies, (...), of his helplessness before the forces of nature and of society, all this makes his separate, disunited existence an unbearable prison. He would become insane could he not liberate himself from this prison and reach out, unite himself in some form or other with men, with the world outside.” What is the most appropriate form and method of escape? Creative work – non-personal; orgiastic dissolution (alcohol, drugs, sex) – temporary and destructive; conformism – pseudo-unity. “The full answer lies in the achievement of interpersonal union, of fusion with another person, *in love*. This desire for interpersonal fusion is the most powerful striving in man. It is the most fundamental passion, it is the force

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24 Kopp, M., Skrabski, Á. (2020) p. 94.

25 Ranschburg, J. (2011) *Érzelmek iskolája*. [Budapest]: Saxum.

which keeps the human race together, the clan, the family, society. The failure to achieve it means insanity or destruction—self-destruction or destruction of others. Without love, humanity could not exist for a day” (Fromm 17 and 29<sup>26</sup>). Therefore, the real disaster would be if one could no longer love. According to Konrad Lorenz, one of the eight deadly sins of civilised mankind is “entropy of feeling”. “This ‘emotional entropy’ seems to threaten particularly those pleasures and pains that are inherent in our social ties, ties between married partners and children, between parents, relations, and friends.” (Lorenz 42<sup>27</sup>). Jesus knew this, it is no coincidence that the hard core of Christian faith is *love of neighbour*, that Christian Europe is a *civilisation of love*. And the school and practice of love is the *family*, where we can experience that the greatest joy is to give and receive love, to love others and to be loved by them.

The two main components within the family love community are *maternal and paternal love*. In order to understand a child’s shift from mother to father, “we must consider the essential differences in quality between motherly and fatherly love. Motherly love by its very nature is unconditional. Mother loves the newborn infant because it is her child, not because the child has fulfilled any specific condition, or lived up to any specific expectation. ... Unconditional love corresponds to one of the deepest longings, not only of the child, but of every human being. ... Fatherly love is conditional love. ... it has to be deserved, ... it can be lost.” In the nature of fatherly love lies the fact that “obedience becomes the main virtue, that disobedience is the main sin. ... The mother’s and the father’s attitudes toward the child correspond to the child’s own needs. The infant needs mother’s unconditional love and care physiologically as well as psychically. The child, after six, begins to need father’s love, his authority and guidance. ... Eventually, the mature person has come to the point where he is his own mother and his own father. He has, as it were, a motherly and a fatherly conscience” (Fromm 57–61<sup>28</sup>). A mother’s love accepts, nurtures and forgives, provides security. A father’s love

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26 Fromm, E. (1993) *A szeretet művészete*. Budapest: Háttér.

27 Lorenz, K. (1988)

28 Fromm, E. (1993) pp. 57–61.

gives tasks, holds to account and disciplines, rewards or punishes, but is always just. The two loves balance each other, the child becomes a balanced adult.

In connection with the above ideas and the family, the concepts of *motherhood* and *fatherhood* should be mentioned separately as fundamental values. The traditional or natural family socialises the daughter child to motherhood and the son child to fatherhood. It is also the guarantee of new marriages and families, of successive generations, of the survival of society. In the last half century, both institutions have come under severe attack in ‘modern’ Western societies, both have lost much of their value, fatherhood is almost disappearing. Men do not want to marry, at most they want to be cohabitants; they do not want children, they do not stand their ground as partners, husbands or fathers, often because they do not have a role model to follow. In many countries, the majority of children are now growing up in fatherless families or not with their own fathers. Research into the problem of the “*fatherless society*” is a new field of study in the science of psychology. “American research shows that a father’s prolonged absence from the family can have quite dangerous consequences, especially for the father’s son. (...) It is an undoubted fact that the absence of one parent hinders the healthy course of socialization” (Ranschburg 176<sup>29</sup>). Of course, this problem has demographic, sociological, economic, political, etc. implications. The assessment of the two institutions has been greatly strained by the mass influx of Muslim immigrants and illegal migrants in Europe. The Islamic religion and laws value family, motherhood and fatherhood radically differently from the West, and the socialisation of children is also completely different. In the longer term, this will not lead to population replacement, but to population exchange. Which also leads to the exchange of legal values (Pokol 196<sup>30</sup>). This is in fact the “strange death of host nations and of Europe” (Murray 210–224<sup>31</sup>).

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29 Ranschburg, J. (2011) p. 176.

30 Pokol, B. (2011) *Európa végnapjai: a demográfiai összeroppanás következményei*. Budapest: Kairosz.

31 Murray, D. (2018) *Európa furcsa halála: bevándorlás, identitás, iszlám: mit tartogat számunkra a jövő?* 4. kiad. Pécs: Alexandra.

The situation is not so tragic when it comes to motherhood. Motherhood is valued and treated as a priority, promoted and protected by law, in line with the moral perception of society and indeed of humanity as a whole. Article 25(2) UDHR states: “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, receive the same social protection.” This universal norm, which has determined the content of all subsequent human rights documents on motherhood and children, is as much a civilisational advance as the declaration of the equality and inviolability of human dignity. Article 10(2) of the International Covenant on Economic, Social and Cultural Rights is a little more specific: “Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.” In Hungarian law, in addition to maternity leave, this is the case of the “pregnancy confinement benefit” introduced in 1919. I would also mention Article 33 of the Charter of Fundamental Rights of the European Union: ‘(1) The family shall enjoy legal, economic and social protection. (2) To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.’ The same is further specified in Article 8(1)–(5) of the European Social Charter. The detailed rules of Hungarian national law are fully in line with international and European law. So if women do not want to get married and start a family, if they do not want to have children, if they do not want to become mothers, then the law is not to blame. Rather, it is in the distorted rhetoric, propaganda and aggressive communication of the egalitarian movement. Brutal slogans such as “woman is not a domestic servant”, “woman is not a child-bearing machine”, “woman is not a breeding animal”, “woman is not a slave to her child”, etc., have an incredibly destructive effect (Pokol 173<sup>32</sup>). To protect marriage, the family, women and children, the antidote must also be found. I refer again to the problem of socialising little girls for motherhood.

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32 Pokol, B. (2011) p. 173.



## 11. The family as interpreted by the Constitutional Court

This topic has been covered to a large extent in Section 8, given that the previous constitutions protected the institution of “marriage and the family” together, interconnectedly, with respect to each other. In fact, the so-called “nuclear family” (spouses plus children) is still typical and a model. However, the fact remains that not all marriages are entered into with the intention of starting a family, and even if they are, not all marriages result in children. On the other hand, it is still a fact that many children are born out of wedlock (in a cohabitation or to a single mother, or adopted by a single person) and this creates a family. On the one hand, children born in and out of marriage should be given the same protection, and on the other hand, it is in the best interests of all children to grow up in a family, regardless of the type of relationship their parents have chosen. Children should not be discriminated against on these grounds. Accordingly, the Constitutional Court already stated in 1996 in a case concerning the right of minor children to use their own home that “the constitutional protection of the family applies not only to the family based on marriage, but also to family life in the sociological sense. (...) This means that the right to housing of families in the traditional sense, but not based on a marriage bond, and of minor children living in such families, must be taken into account in the same way as the ‘right to housing’ of a minor child living with a spouse” [Decision 1097/B/1993. AB]. This “social sensitivity”, based on Article 25(2) UDHR, has been consistently maintained by the Constitutional Court. Decision 43/2012 (XII. 20.) AB annulled Article 7 of the Act on the Protection of Families (Act CCXI of 2011 – Family Protection Act), because it defined the concept of family too narrowly, and recognised only the marriage of a man and a woman as the basis of a family. This rule defined the family as a system of relationships which is the emotional and economic community of natural persons, based on the marriage of a man and a woman, the parent–child relationship (direct kinship) or guardianship by the adoptive parents. It does not follow from the Fundamental Law, however, that lasting emotional and economic communities based on mutual care and with the same purpose (for example, cohabitants who care for and raise each other’s children, cohabitants of different sexes who do not have children together or who

cannot have children together due to other circumstances, widows, grandparents raising their grandchildren, persons caring for the children of their siblings or other relatives) are not subject to the same obligation of the state to protect institutions. If the legislator wishes to establish rights and obligations for families, it cannot withdraw rights from persons who wish to start a family without marriage, in other long-term emotional and economic relationships, or reduce the existing level of protection of the form of relationship. Furthermore, the obligation to protect marriage and the family as an institution must not lead to any direct or indirect discrimination against children on the grounds that their parents are bringing them up in a marriage or in another type of living arrangement.

This Constitutional Court ruling has a particular aftermath. Section 7 of the Family Protection Act is still “empty”, and the legislator has not yet created a definition of family corresponding to the subheading above it (*The origin of family status*). However, as a constituent power, the Fourth Amendment to the Constitution added the concept of family to Article L(1), which originally read: “Hungary shall protect the institution of marriage as the union of a man and a woman established by voluntary decision, and the family as the basis of the survival of the nation.” In this compound sentence, the conjunction “and” separated family from marriage, allowing for a broader interpretation. It was completed with “Family ties shall be based on marriage or the relationship between parents and children.” The latest addition defines who the parent is: “The mother shall be a woman; the father shall be a man.” This brought together the classical, traditional, natural (natural law) concept of the family in the Fundamental Law. Some argue that “the drafter was consciously seeking a break” with the previous practice of the Constitutional Court. “It is as if the concept of family in the Fundamental Law has opened a door to the past. Do we really have to cross it?” It is not impossible, if we assume that our future was there in our past, we just did not realise it and we passed it by, we went from the right path to a new path, which we now see is a dead end. But we could also say that: “The concept of the fundamental family that existed before the codified definition was the result of an organic evolution, and the direction of that evolution was in line with trends in Europe. This organic development was halted and reversed

by the fourth amendment. The constitutionalist saw the future and, frightened, fled to the past, as if it could not remember why we had made the great journey so far – but in this backward-looking way, society does not seem to want to follow it. (...) it is only up to the constitutionalist to repair the rupture it has caused by repealing the concept of family or by opening it up” (Pásztor 391–408<sup>33</sup>). I believe that this gap can be bridged with the right interpretation of the law, and that the narrowing definition of the Fundamental Law and the broader – more socially sensitive – interpretation of the Constitutional Court can be brought into line. The key is the conjunction “or” and the parent–child relationship, which can arise not only in marriage. In what other relationships is a matter of interpretation. It is no coincidence that the Fundamental Law specifically mentions support for having children in Article L(2). Many people can have children in many different ways, in a partnership or even as a single person, which creates a family, and this is also in the best interests of the child. There is no stopping the organic development (evolution) of the family and the concept of family.

## 12. The values of the Fundamental Law on the family

**HUNGARY’S FUNDAMENTAL LAW** is original in structure and content, and differs from both the previous (1949, 1972, 1989) Hungarian charter constitutions and the written constitutions of other European nations, which follow broadly the same pattern. It is neither our aim nor our task in this study to provide a comprehensive and detailed assessment of the entire Fundamental Law, so we will only examine in more detail the provisions on marriage and the family indicated in the title. The institution of marriage and the family appears in the Constitution at three levels. First in a preamble of 26 declarations called the National Avowal. The family is directly mentioned in Declaration 12, linked to the nation: “We hold that the family and the nation constitute

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33 Pásztor, E. (2018) 'Jöttünk, láttunk, visszamennénk? Gondolatok az alapjogi családfogalom jelentőségéről' in Szeibert, O. (ed.) *Család és családtagok: Jogági tükröződések*. Budapest: ELTE Eötvös Kiadó, pp. 391-408.

the principal framework of our coexistence, and that our fundamental cohesive values are loyalty, faith and love.” If the term “society” is used instead of “nation”, the first half of the sentence is identical to the first half of Article 16(3) of the UN UDHR: “The family is the natural and fundamental unit of society.” Man is born into a family, or his birth creates a family, he is brought up in it, he is socialised to family life, then he himself marries and starts a family, has a child to pass on his life and his humanity to it, and finally dies as a member of a family. A nation (society) is made up of families and the individuals who live in them. Families exist in the nation (society), the nation (society) exists in families. They need each other’s mutual support and protection, which is mediated and realised by the state as a constitutional state governed by the rule of law and as a public authority. This protection must also extend to the core values of loyalty, faith and love that hold the two communities, family and nation, together. These are not legal categories, especially according to the “advocates” of secularisation and the neutrality of the state. But under our Fundamental Law – if they were not before – they have now become fundamental constitutional values. “I affirm, I confess, that the rule of law is a value-bearing category. Its realisation for the benefit of society is not a matter of choice, but of necessity. Its fundamental values cannot be changed by the will of the majority, because their value-character is independent of it. (...) The aim of man, of a group of people living in a social relationship, is to create, grasp and utilize values in life, in order to maintain, complete and enrich the individual and society” (Zlinszky 4–5<sup>34</sup>). I have already talked about loyalty/fidelity in Section 6 and love in Section 10. As for faith, here and now I will just briefly say that it is the faith of the European Judeo-Christian civilisation, and Christianity is also referred to in several provisions of the Fundamental Law. However, in Declaration 12 there is no prefix before it; one can also believe in many other fundamental values, great ideas and ideologies (goodness, humanity, decency, justice, science, human rights, secularisation, evolution, etc.). The essence of faith is the search for the right path and the hope of finding it. That’s why it is important for every person to have

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34 Zlinszky, J. (2005) *Az Alkotmány értéktartalma és a mai politika*. Budapest: Szent István Társulat.

faith. You can believe in marriage, in fidelity to your spouse, in family and in the power of love. Several other declarations and core values of the National Avowal are also indirectly linked to the family and the nation. For example, Declaration 11: “We hold that individual freedom can only be complete in cooperation with others.” The school of mutual cooperation is marriage and family. Declaration 15: “We hold that the common goal of citizens and the State is to achieve the highest possible measure of well-being, safety, order, justice and liberty.” The family’s goals are typically the same.

At the second level (FOUNDATION), the institution of marriage and the family as an object of state protection and support is presented in Article L. I already mentioned this in Section II. Here I only mention the new 3rd sentence of paragraph (1): “The mother shall be a woman; the father shall be a man.” It is in fact a preventive defence against the further forced expansion of gender ideology and sexual identity and its now rather negative, destructive effects. The concept of ‘gender’ implies that all sexual orientations – heterosexual, lesbian, gay, bisexual, transgender, intersex, asexual and queer – are equivalent and that society should accept this. Its aim is to transcend “compulsory heterosexuality” and create a new human being, free to choose and live out his or her sexual identity – regardless of biological sex. Opposition to gender mainstreaming is discrimination and can therefore be prosecuted (Kuby 13<sup>35</sup>). It is not a theory per se, a minority opinion that is dangerous, but the imposition of it on the majority. It is essentially an attempted assassination against man as a natural (biological, living) being, against his innate and inalienable gift, against his masculinity and femininity, and thus indirectly against the institution of marriage and the family. And since “the family is the natural and fundamental constituent element of society”, it is also an attempt to assassinate society. The attack forces people to defend themselves. Although there would be no need for a “permanent revolution” in this area either, for professional revolutionaries, let alone a war of the sexes and generations against each other. Today, “psychiatric literature considers homosexuality to be an expression of an alternative lifestyle, a healthy variant of human sexuality, not a disease. (...) as a result of

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35 Kuby, G. (2008) *A nemek forradalma*. Budapest: Kairosz.

the influence of the social environment, illnesses arise in one society which do not exist in another... man is a social being, both his healthy personality and his psychiatric disorder are shaped by cultural influences” (Kovács 4 and 74–75<sup>36</sup>). “Biologically, humans are divided into males and females. A male *Homo sapiens* is one who has one X chromosome and one Y chromosome; a female is one with two Xs. But ‘man’ and woman’ name social, not biological, categories. (...) So-called ‘masculine’ and ‘feminine’ qualities are inter-subjective and undergo constant changes. ...during the last century gender roles have undergone a tremendous revolution. More and more societies today not only give men and women equal legal status, political rights and economic opportunities, (...). Though the gender gap is still significant, events have been moving at a breathtaking speed. (...) These dramatic changes are precisely what makes the history of gender so bewildering” (Harari 2015. 140–149<sup>37</sup>). “Genderism” is therefore the “overspinning” of militant *feminism*. “The very justifiable attempt to establish the equality of the woman subordinate to the man has led European civilization to an evolutionary dead end, and its biological foundations are being destroyed at an accelerating rate” (Pokol 174<sup>38</sup>). Let us conclude with Mária Kopp, who can be called a genderist, but not an extreme liberal. “Women who have children are subject to extreme psychological and social overload in today’s Hungary. (...) From kindergarten onwards, subjects and programmes should be introduced at all ages to prepare children for responsible and committed peer relationships, communication and conflict resolution. (...) The aim of gender studies is to analyse, using objective methods, how to ensure the best quality of life, the healthiest and most meaningful life for both women and men in the new challenges of the 21st century. Consequently, there is currently a greater need for *familism* than for *feminism*. The familist worldview focuses on the unity and harmony of the family, man, woman and children, in order to find solutions to the difficulties caused by changing roles. This new approach also protects fathers involved in childcare

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36 Kovács, J. (2007) *Bioetikai kérdések a pszichiátriában és a pszichoterápiában*. Budapest: Medicina.

37 Harari, Y.N. (2020) *Sapiens: [az emberiség rövid története]*. Budapest: Animus.

38 Pokol, B. (2011) p. 174.

from the obsession with traditional male roles” (Kopp–Skrabski 69 and 100<sup>39</sup>). I think that this familist view of gender – as opposed to the overblown version – is tolerable. All the more so because: “Many cultures, from China to Southern Europe to Latin America, promote what is called “familism,” that is, the elevation of family and kinship ties above other sorts of social obligations” (Fukuyama 60<sup>40</sup>). This is a higher level of social capital, which is a great asset and competitive advantage. In contrast, the West first reduced extended families to “nuclear” families, which were better suited to the living conditions of industrial societies, and then “The Great Disruption has put even the nuclear family into a long-term decline and consequently has jeopardized the family’s core reproductive function.” (Fukuyama 61<sup>41</sup>). It is therefore time for the Great Reconstruction, for the institutional defence and strengthening of marriage and the family.

The third level of the Fundamental Law, where marriage and the family appear, is the section on “Freedom and Responsibility”, with detailed rules on political freedoms and human rights. Their content is essentially the same as that of international and European human rights documents. I will therefore highlight just a few specific solutions. “Everyone shall have the right to have his or her private and family life, home, ... respected. Exercising the right to freedom of expression and assembly shall not impair the private and family life and home of others.” [Article VI(1)]. This restriction also protects politicians’ private and family life and their homes. Article XV guarantees equality before the law, specifically the equal rights of women and men. The equal rights of spouses are guaranteed by the Law on the Protection of Families and are detailed in the Family Law Book of the Civil Code. Article XVI declares the right of children to protection and care. This was supplemented by the fourth amendment: “Hungary shall protect the right of children to a self-identity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country.” The addition removes the danger of

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39 Kopp, M., Skrabski, Á. (2020) p. 69; p. 100.

40 Fukuyama, F. (2000)

41 Fukuyama, F. (2000) p. 61.

genderism discussed above and links the content of education back to Declarations 1 and 5 of the National Avowal and the content of Article R(4). In principle, this does not affect the right of parents to choose the upbringing of their children (para 2), although defines its constitutional frameworks. Parents' duty of care includes the education of their children (para 3), which is a new constitutional obligation. Paragraph 4 is also a noteworthy innovation: "Adult children shall be obliged to take care of their parents if they are in need." There is obviously a serious reason and a moral purpose for making this obligation constitutional, and it also strengthens family unity. Article XVIII is about the prohibition of child labour and the protection of young people and parents at work. Article XIX(1) states: "Hungary shall strive to provide social security to all of its citizens." The *ambition* does not guarantee means and measures, which also depend on the current performance of the economy, the budgetary possibilities and the political will of the public, which is taking shape in a representative democracy. However, universal, equal and secret suffrage guarantees an effective aspiration. The second sentence of paragraph (1), however, promises an important added value for the family: "Every Hungarian citizen shall be entitled to assistance in the event of maternity, illness, invalidity, disability, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by an Act." The rest is up to the laws and the legislature – within the constitutional framework, of course. Another important provision in Article XXII that supports families is that "Hungary shall strive to ensure decent housing conditions and access to public services for everyone." There are many forms of support for the construction, purchase, renovation and modernisation of family homes. Lastly, Article XXX(2) adds to the obligation of proportionate taxation by stating that "For persons raising children, the extent of their contribution to covering common needs must be determined while taking the costs of raising children into consideration". This provision in the Fundamental Law is the constitutional basis for many tax and contribution benefits and exemptions in the family support system.

To sum up, Hungary's Fundamental Law has a strong set of values, a national and constitutional identity, a conception of man, a model of marriage and family, which it provides a solid constitutional basis



and framework to protect and promote. On the basis of these, the Fundamental Law can clearly be qualified as family-friendly, and its family-friendliness is supported by both jurisprudence and other relating fields of science. But this alone is not enough: the framework must be filled with content, the possibilities must be turned into reality. To do this, the state, those exercising public authority, local authorities, churches and other civil society organisations, economic players, especially employers, and people, especially women and men of marriageable age, must be family-friendly. We can call this family friendship *a social consensus*, but we can also call it a *public will*, or, in pathetic terms, *the will of the people*. It is much more important how the institution of marriage and the family is represented and valued in these than what and how it is represented in law. For the source of power – including the source of the constitutional and legislative power – is the people, as all our written constitutions have so far stated, and as Article B(3) of the Fundamental Law states: “The source of public power shall be the people.” This is continued as usual in paragraph (4): “The power shall be exercised by the people through elected representatives or, in exceptional cases, directly.” If people and society value the institution of marriage and the family, why do they do less of it? why not more? This is what science needs to measure and help public authorities to bring the desired and actual value levels into sync. This synchronisation would in fact mean the fulfilment of the state’s duty to protect institutions, the effective protection of marriage and the family by society and the state.

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# Family as a Value<sup>1</sup>



“My father believed in  
the gold of the ring”  
(Dusán and Zorán  
Sztevanovity)

## 1. Crisis and protection of the family

**IT IS NOW A WELL-KNOWN FACT** that marriage and the family are in crisis in Hungary. Young people are not getting married, not having children. Our society is ageing, our population is shrinking, our civilisation is threatened with extinction. The question is whether the problem should be tackled through targeted population policies or immigration. The latter may lead to population replacement in the short term, but in the longer term to population exchange, essentially a civilisation exchange. Hungary has chosen the former path. This is in line with the provision of Article 16(3) of the UN UDHR: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Accordingly, Hungary’s Fundamental Law states in Declaration 12 of the National Avowal that “the family and the nation constitute the principal framework of our coexistence, and that our fundamental cohesive values are loyalty, faith and love”. Article L(1) states on this basis that “Hungary shall protect the institution of marriage as the union of one man and one woman established by voluntary decision, and the family as the basis of the survival of the

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<sup>1</sup> Originally published in Varga, R., Mázi, A. (eds.) (2022) *10 éves az Alaptörvény: “Szövetség a múlt, a jelen és a jövő magyarjai között”: ünnepi tanulmányok*. Budapest: Magyar Közlöny Lap- és Könyvkiadó. pp. 213–221.

nation. Family ties shall be based on marriage or the relationship between parents and children. The mother shall be a woman; the father shall be a man.” Paragraph (2) specifically emphasises that “Hungary shall support the commitment to have children”. It is clear from all this that marriage, family and childbearing are fundamental values (human rights and constitutional), and that their crisis is also a crisis of values. And where there is a breakdown in values, there is chaos. But as human beings, “it is our destiny to transform chaos into order.” Because “when basic axioms of faith are challenged, the foundation shakes and the walls crumble.”<sup>2</sup> When the “natural and fundamental constituent element” of society collapses, society itself collapses. The protection of marriage and the family as fundamental values is therefore a protection of people and society, or in other words, legitimate self-defence.

## 2. On the origin of fundamental values

**MAN IS A LIVING BEING**, part of the living world, his right to life is guaranteed by a delicate (fragile) system of natural laws. Therefore, man’s primary, *fundamental human duty* is to respect the natural foundations and laws of life. Man is not the master and creator of nature, but its caretaker and responsible. He cannot override the laws of nature, cannot replace them with his own laws of selfish interest, cannot imagine himself as God (*Homo Deus*).<sup>3</sup> The sustainability and transmission of human life, including the right to life and dignity, has been and still is guaranteed by two powerful natural (biological) laws: the instinct of *subsistence* (survival) and the instinct of *species maintenance* (procreation, transmission of the life that has been given). The evolutionary form of this was the development in prehistoric times of a monogamous living relationship between a woman and a man (as a *human couple*, as a *married couple* and as a *parent couple*), their loyalty to each other, their mutual and selfless support of each

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2 Peterson, J.B. (2021) *Túl a renden: újabb 12 szabály az élethez*. Budapest: 21. Század Kiadó. p. 86., p. 131. and pp. 258–259.

3 Harari, Y.N. (2018) *Homo Deus*. Budapest: Animus Kiadó.

other, the creation of a cohesive family by the procreation and care of genetically healthy offspring.<sup>4</sup> In *ancient human* communities, the supreme law (for the sustenance and preservation of the species) was that “food must be shared!”<sup>5</sup> This could only work and did work for hundreds of thousands of years, until the end of the hunter-gatherer lifestyle, in a climate of trust and mutual solidarity within the whole community. The core values of such a long evolutionary development (trust, solidarity, selflessness and gratitude, solidarity and loyalty, etc.) are written in man’s genes (in the words of natural law scholars: in his heart).<sup>6</sup> The views of man as inherently selfish, evil, a “ravening ape” need to be reassessed.<sup>7</sup> We have become better and we are better than we thought we were, but of course we can still be better, just not worse!

### 3. The value of human goodness

**HUMAN GOODNESS** is our highest value, synonymous with *humanity*, in the language of law, *human dignity*, which is at the top of the hierarchy of human rights, at the top of the value system. To be a good man is to be a humane man, to be worthy of human rank. It is first and foremost a *fundamental human duty*, and by extension a *fundamental human right*. Becoming a good human being is a process of becoming a human being, a goal in life and a daily programme at the same time. In how many families is it said daily: be a good child and...: do not harm this; do not take that; give this; say thank you; etc. And how many people do we remember as being good people? The primary arena for the betterment of man, for his socialization into goodness, has been and remains marriage and the family. Education in the family, education

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4 Nizsalovszky, E. (1963) *A család jogi rendjének alapjai*. Budapest: Akadémiai Kiadó. pp. 25–26. and p. 275.

5 Michel, K., Schaik, C. van (2019) *Az ember három természete: A Biblia evolucionista olvasata*. Budapest: Typotex. p. 62.

6 Waldstein, W. (2012) *A szívébe írva: a természetjog mint az emberi társadalom alapja*. Budapest: Szent István Társulat.

7 Bregman, R. (2020) *Emberiség: mégis jobbak lennénk, mint hittük?* Budapest: HVG Kiv. pp. 51–54. and p. 76.

for family life, is at the same time education for community, not *ego-centric*, but *sociocentric* education. In an age and environment of *selfish individualism*, this is a very difficult task, and there is no substitute for the role of the family. A great responsibility lies with parents, who have “a prior right to choose the kind of education that shall be given to their children” [Art. 26(3) UDHR and Art. XVI(2) of the Fundamental Law]. The good man in Greek philosophy is the *virtuous man*, in Roman law the *bonus et diligens pater familias*, in Hungarian private law the *prudent steward*. They share a common core virtue of *integrity*. Good morals framed the law even before Christianity (*contra bonos mores principle*). On top of all this was built the religion of self-sacrificing love and European Christian civilisation. It is from this set of values that the values of “liberty, equality, fraternity” of civilisation grew and continue to live on today as the basis of the European Union’s values of “freedom, justice, solidarity”. The latter makes Europe very attractive in the poorer world. According to János Zlinszky, “social solidarity in the language of Christians is love of one’s neighbour.”<sup>8</sup> The primary medium for learning both, for making them a reality, is the family as a *community of love*. Church and state, law and faith have many similar values and purposes in common. Within the family, there is no secularisation, and basic values and norms can be based on religious prescriptions as well as law and morality. Human dignity is inviolable even if we derive it from the God-likeness of created man, and even if we regard it as a legal abstraction (human construction) of our humanity. Both church and state have the common goal of improving man, enhancing and protecting humanity. Only while the state tries to achieve this by means of *external coercion*, by means of law (constitution, human rights, laws), the Church tries to act by means of the inner, spiritual power of *active love*. “For every gesture of violence, there is a stronger gesture of love, arising from active love, which can disarm that gesture of violence.”<sup>9</sup> The most difficult commandments

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8 Zlinszky, J. (2005) *Az Alkotmány értéktartalma és a mai politika*. Budapest: Szent István Társulat. pp. 4–5.; Zlinszky, J. (2007) *Közéleti és jogászai etika a gyakorlatban*. Budapest: Szent István Társulat. p. 291.

9 Bibó, I. (1986) ‘Az európai társadalomfejlődés értelme’ in Bibó, I. *Válogatott tanulmányok. 3. kötet 1971-1979*. Budapest: Magvető Kiadó. pp. 44–45

of love – “turn to them the other cheek also”; “if a stone was thrown at you, repay it with bread” – are also primarily practised in the family. To fulfil it, we need not only rights, virtues and ideals, but also strong faith!

#### 4. Castles of ideas

**EUROPE IS A CONTINENT OF CASTLES** (citadels, fortresses, strongholds, fortress churches), whose ruins show how their builders tried to protect the lives, freedom, culture, faith and religion of their populations.<sup>10</sup> Castles can be built not only of stone, but also of ideas, of our basic values of civilisation, which, even if *they seem to be built on a foundation of straw*, are sometimes more permanent than stone castles. Without these, man cannot exist and cannot survive; they are the ultimate safeguards of his humanity, the guarantees of his civilization. Even if some traditional ideals seem like fiction – such as monogamous marriage, fidelity, the harmonious family, the community of love, solidarity –, if we believe in them, they can slowly but surely become reality in ever greater proportions. The test of ideas is the experience of their becoming reality. Experience becomes real knowledge, knowledge becomes community beliefs, beliefs become faith. Faith is a need of the soul, a transcendence of bodily needs, a rising above the world of instincts. This is the real “human adventure”,<sup>11</sup> the great game of becoming human. To “love out” the evil from man, to “ennoble” man, in pursuit of the ideals that better man, since nobility obliges us, and obliges us to humanity. We also know from János Arany: “The greatest goal, here, in this earthly existence, is to be a Man at all times, in all circumstances” (Domokos napra (For the name day of Domokos)). The “men of the 20th century” are Mother Teresa and Albert Schweitzer, not victorious warlords or all-powerful dictators. The latter are the main evils, who are also dangerous because they have also pursued ideas, but *ideas of mass destruction*, or ideas of humanity, but *with*

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10 Hankiss, E. (2014) *Emberi kaland: egy civilizáció-elmélet vázlata*. [Budapest]: Helikon Kiadó. p. 411.

11 Hankiss (2014) pp. 409-412.

*inhuman means and methods.* There are many historical examples that prove that even the most noble ideals, fundamental values and, more recently, certain human rights can be distorted by man, turned back on man. Accordingly, there are ideas that preserve and enhance value, but there can also be ideas that destroy and erode value. So we need to think carefully and thoroughly about the ideas we use to build our castles.

## 5. From values to rights

ORIGINALLY, THE SOURCE OF LAW was the behaviour of each person accepted, approved and then followed by the rest of the community. Behaviour followed by many has become habit, habit has become the norm expected of all, customary law. This was also the case with marriage and family law. With the spread of literacy and the birth of nation-states, unwritten and diverse customary laws *were channelled and systematised* by the great codes, which also *canonised*<sup>12</sup> the great ideals and fundamental values of their time. The fundamental values, written into codes, became fundamental rights, legal principles, legal concepts, normative forces. The great codes of personal freedom, family life and family management, the civil codes, have laid down a multitude of principles of law, jurisdiction and legal institutions at the highest level. To mention just the most important: the principles of equality and subordination; general, equal and absolute capacity; protection of property; freedom of contract and the binding force of a contract; freedom of testamentary disposition and the right of succession. This private law promised a paradigm shift in socio-economic life: from *verticality to horizontality*, from top-down to bottom-up organisation, from orders to rights, from slavery to freedom, with the responsibility that goes with it. This promise (as an ideal) has not been fully realised. Wealth disparities have persisted and even grown, and are still growing, which both hinders and distorts progress. As a result of centuries of struggle, the socialisation and ethicalisation

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12 Vékás, L. (2014) 'Magánjogi kodifikáció kultúrtörténeti tükrében', *Magyar Tudomány*, 176(1), pp. 80-89.



of private property, the principle of proportional public taxation, the social constraints of property and the principle of social responsibility of property have brought and hopefully will bring about significant changes. These changes were channelled and canonised as achievements and fundamental values of classical private law, with universal validity, by the UN UDHR of 1948 and the two great Conventions of 1966. The fundamental freedoms and human rights enshrined in these documents have been transposed as core values into European and EU documents, as well as into national constitutions as fundamental constitutional rights. Now comes their correct interpretation and implementation, their undistorted enforcement. The essence of this is still to prevent or reduce the phenomenon of domination of the people, which inevitably goes hand in hand with great wealth, great property and great money.<sup>13</sup>

## 6. The value of family

**THE PHENOMENON OF DOMINATION**, the domination of man over other men, was brought about by the greatest paradigm shift in human history, the agricultural revolution, the emergence of settlement and private property. The domestication, cultivation and breeding of plants and animals domesticated man himself. Taking possession of a piece of nature, working it and making it one's own, transformed not only man's way of being (way of life) but also his psyche: he changed from a way of *being* to a way of *possessing*.<sup>14</sup> The essence of possession is the *control* of the thing possessed, the essence of property is the complete and exclusive *power* over the thing. This mentality extended beyond the objects of property to those excluded from it: directly to the spouse and children (as male and paternal authority), and within the family, female domination was replaced by male domination as the power of ownership. In industrial society, family has ceased to be the basic unit of management, but as a household, as a small consumer community, it

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13 Bibó, I. (1986) p. 93.

14 Fromm, E. (1994) *Birtokolni vagy létezni?: egy új társadalom alapvetése*. Budapest: Akadémiai Kiadó. pp. 74–75.

has survived and has an impact on production. In principle, freed from the oppressive burden of possession and the mentality of ownership, the way was opened to the true freedom, equality and co-dependence of the spouses. The natural, evolutionary development of marriage and the family can now resume from where it was interrupted or distorted by the agricultural revolution and the private property spirit. The family, as a fundamental human and social value, must be rebuilt on its original – and still solid – foundations of natural law (monogamy and loyalty, ancestral trust and mutual solidarity, support and sacrificial love, honour and integrity, goodness and humanity), rather than further destroyed by tearing up its foundations. I give one example of the reconstruction of values within the family, and their importance; one that can be generalised to other values: the value of *primordial* trust. “What is the state of primordial trust? Total self-surrender between mother and child, and father and child, because the father (I interject: as one half of a human couple as *married couple and parent couple!*) is just as important in the developmental process. This direct and complete alignment provides a solid basis for personal development.” “The first period, the first three years of mother–child or father–child relationship, is crucial for the development of this certain state of primordial trust.”<sup>15</sup> As a first step in the development of primordial trust, the practice of *kangarooing*, the repositioning of newborn babies (especially premature babies) on the mother’s (father’s) body, has recently been reintroduced in obstetrics, so that the skin contact, the body warmth, the parental heartbeat can soothe the baby after the trauma of birth. But not only can a newborn trust its parents, they can also trust each other. The mother in her husband, in the father of her child, that he will protect and defend them, that he will take care of them. The father can also trust his wife that the child is his, and that she will care for and raise him as a good mother. Marital fidelity and mutual support are the basis of the parents’ primordial trust, and total self-surrender is also a source of trust between them. Parents and their children can rely on the solidarity and support

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15 Kopp, M., Skrabski, Á. (2020) *A boldogságkeresés útjai és útvesztői : az érett személyiségtől a kiegyensúlyozott párkapcsolatig*. Budapest: KINCS : L'Harmattan. p. 94.

of grandparents, extended family and extended relatives across generations. Families can rely on the protection and support of society and the state as a whole, and on a *family-friendly* workplace and home community. Primordial trust thus becomes a community-social web of trust, a cohesive and sustaining force. In science, this is also called *social capital*, which is often more valuable than monetary capital. According to Francis Fukuyama, the crisis of marriage and the family, the breakdown of trust and the spread of aggression, violence and crime are three of the main symptoms of the *great disruption*.<sup>16</sup> Such an *expansion of* the family as a value, and of the many fundamental values it carries, has been halted and even reversed in industrial society. Capital needed (needs) more and cheaper wage labour, women in work, two-earner nuclear families. “The Great Disruption has put even the nuclear family into a long-term decline and consequently has jeopardized the family’s core reproductive function.”<sup>17</sup> This process of disruption is reinforced today by movements that attack even heterosexual relationships – the only solid natural basis of the family that has been preserved to this day – and break society down into atoms. This attack is also in the interests of transnational monopoly capitalism (TMC), the now global economic-financial dominant powers, who need a mass of dependent people, i.e. producing and consuming individuals at their mercy, at the intellectual level of the most impressionable young adolescents. They want to confuse their consciousness with their views on sexual identity and minority rights, create a chaos of values in society, and then fish in the confusion.

## 7. Purpose of the values

**BUT HUMAN RIGHTS ARE NOT MEANT** to create chaos and anarchy, that is not their purpose. The improper (devious, fraudulent) exercise of rights, the abuse of rights is prohibited! Fundamental freedoms must not be distorted into liberties that offend the majority.

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16 Fukuyama, F. (2000) *A Nagy Szétbomlás: az emberi természet és a társadalmi rend újjászervezése*. Budapest: Európa. pp. 47–90.

17 Fukuyama, F. (2000) p. 61.

All this can be derived from Articles 29 and 30 of the UN UDHR. Article 29(1) states: “Everyone has duties to the community in which alone the free and full development of his personality is possible.” Such communities are the family and the nation. Individual freedom should be understood not as freedom *from family* and *society*, but as freedom *within family* and *society*. Article 29(2) states: “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” But all minorities are subject to such restrictions, which is the order and values of a democratic society. Human rights are defended by the rule of law against all kinds of tyranny, extortion, violence, whether by majority or minority, and even against the fraudulent, misleading, deceptive, abusive and even ostensible exercise of rights. It should be remembered that the dictatorships of the 20th century often began with the political-movement repression of a violent minority, continued with a coup and ended with massive human sacrifices. That is why the UN UDHR was born in 1948 and states in Article 29(3): “These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.” Finally, Article 30 specifically emphasises the interpretation of the text: “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.” The Declaration proclaims the equal rights of men and women to the freedom to marry and to found a family [Article 16(1) and (2)]. It declares that the family is the “natural and fundamental” constituent element of society and as such “is entitled to protection by society and the State” against actions and acts aimed at their destruction (even before they have a result!). In view of the deepening crisis, the level of protection of marriage and the family achieved so far cannot be reduced, but can and should be increased! Article 25(2) also enshrines as a fundamental value the ancient natural law that “motherhood and childhood are entitled to special care and assistance”. *Motherhood* is the most essential and precious element of *womanhood*, just as *fatherhood* is the most essential and precious

element of *manhood*. (*Femininity* and *masculinity*, which vary from age to age and are often distorted, are not fundamental values by comparison!)<sup>18</sup> Both motherhood and fatherhood have lost a lot of their value, and their place in the hierarchy of values needs to be restored. The lack of fathers in the family and even the problem of a *fatherless society* are new areas of research in the science of psychology, as is the different nature and the balancing importance of *maternal love* and *paternal love*.<sup>19</sup> The ideas and actions of the *gender revolution*, the permanent revolution, then the virtual war, and finally the abolition of gender, are aimed at destroying these fundamental values, in violation of the purposes and principles of the United Nations, including the values of our Fundamental Law. Responsible thinkers realised long ago that just as we need *culturalism* rather than militant *nationalism*, we need *family* rather than militant *feminism* and *genderism*.<sup>20</sup>

A human civilization that allows or acts to destroy or erode its values, to destroy some of its fundamental values, is a self-destructive civilization that builds a culture of death, as has been the case in some European civilizations.<sup>21</sup> It is in the vital interest of sustainable social development and future generations that such civilisational self-destruction is not repeated. Our fundamental human rights and constitutional values must be interpreted, enforced and defended accordingly, including, first and foremost, the life-continuing, child-bearing marriage of women and men (ensuring social reproduction) and the family that educates (socialises) them to respect fundamental values. We have to believe in our values, in the power of our values to hold us together. As in “My Father believed in the gold of the ring”, “And I believe, believe, believe in my Father”!

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18 Harari, Y.N. (2020) *Sapiens: [az emberiség rövid története]*. Budapest: Animus. pp. 136–149.

19 Fromm, E. (1993) *A szeretet művészete*. Budapest: Háttér. pp. 57–61; Kopp, M., Skrabski, Á. (2020) p. 63.; Ranschburg, J. (2011) *Érzelmek iskolája*. [Budapest]: Saxum. p. 202.

20 Fukuyama, F. (2000) p. 60.; Kopp, M., Skrabski, Á. (2020) p. 69.

21 Gallai, S. (2019) ‘A családpolitika helye a demográfiai válsággal küzdő Európában’ in *Európai családpolitikai kitekintő*. Budapest: KINCS, pp. 15–28.

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# Crisis or Evolution?



**ACCORDING TO THE AUTHOR**, the serious crisis of marriage and family in the European (Western) civilization shall be stopped with effective legal protection and government measures. Since the root causes are complex, the protection shall also be the same. The natural and social side of man shall also be taken into account. The phenomenon of domination shall also be eliminated both within marriage and family. The level of the current legal protection cannot be reduced, it can only be increased. The priority (constitutional) protection of traditional marriage and family as natural and fundamental values is not discriminatory.

## 1. Crisis of marriage and family

**IN HIS PAPER ON THE SITUATION** in Poland regarding the crisis of marriage and family, Professor Marek Andrzejewski mentioned the two concepts of *crisis* and *evolution*. The abovementioned paper was written within the framework of the 'Protection of family in the legal system' research project coordinated by the Ferenc Mádl Institute of Comparative Law. In addition to family law professors from Hungary and Poland, their peers from the Czech Republic, Slovakia, Serbia, Croatia, and Slovenia also took part in the research and prepared a so-called 'country report' for a comparative analysis. Are the symptoms and causes of the crisis the same, and how have the legal instruments for crisis management evolved from country to country? What common lessons can be drawn for the future? What are the most important similarities and possible differences between the crisis management practices of Western and Central European countries? Many other questions and answers can be explored from

the country reports. I consider the most important, or fundamental, question to be the one posed in the title of this paper. This question is also important from the viewpoint that many other answers depend on it; therefore, I believe that this question is worthy of a study in itself. Although, according to the rule of formal logic, the answer can be either crisis or evolution, with a compromise solution of 'crisis in some ways, and evolution in others', I give my own answer in advance: crisis.

In the countries that belong to the European (Western, Jewish-Christian) cultural circle, the crisis of marriage and family, in essence *the lack of social reproduction*, has reached a point where a red line must be drawn and it must be said *so far and no further!* Otherwise, these people will become extinct, its civilisational achievements will be destroyed, and its culture (including the culture of human rights) will fade into the mists of history. Since Europe is building a civilisation of 'freedom, justice, solidarity', and, according to the Christians, it is a civilisation of 'love and peace', the consequences of this crisis would be disastrous, with the effects limited to not just Europe. The changes that have led to this situation cannot be called evolutionary development or any development at all. The essence of evolution is not just change, but the acquisition or preservation of the ability to survive, and consequently the qualitative improvement *to become a better human being*.<sup>1</sup> The process of becoming human may be complete in the biological sense, but the process of *becoming a good human being, a better human being, and a more humane human being* is not yet complete and can never be complete in the individual, national, civilisational, or global sense. The essential and primary condition for this evolution is the survival and reproduction of humans. However, the *crisis of man*, especially the crisis of the white human race, is at the root of the crisis of marriage and family, which in turn is at the root of *the reproduction crisis*. The *crisis of man* is in fact a *crisis of values*, or a crisis of the hierarchy of values. As an intended(?) or unintended(?) side effect, the 'value neutralisation' of society and the state has resulted

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1 Bregman, R. (2020) *Emberiség: mégis jobbak lennénk, mint hittük?* Budapest: HVG Kv. pp. 319–334.



in *people with no value* at the bottom of the value hierarchy, with their fundamental values questioned, destroyed, or existing only ‘on paper’. This has become the fate of marriage and family,<sup>2</sup> and with them loyalty, selfless love, respect, mutual solidarity and support, trust and gratitude, commitment, having children, being there for others, sacrifice, and so on. The crisis of marriage and family cannot be managed with the current thinking and attitudes about these values. Crisis management requires the preservation, rescue, and rehabilitation of the fundamental values. This is not impossible because many people share these values and set goals (e.g., happy marriage, big family), but later they are diverted by other goals and act contrary to their original goals, moving further and further away from them. This is a well-known paradox that can be resolved, even though it is not an easy task as the resolution of paradoxes is usually very difficult.

## 2. A contradictory world

**NOWADAYS, YOUNG PEOPLE POSTPONE** marriage or avoid it altogether, and, in many cases, they prefer the looser partnership type, cohabitation, over marriage. They do not have children, or have only one child. Furthermore, married couples divorce too easily, and their child is usually brought up without a father, etc. This is the typical marriage and family model. While this was not their original plan, the need to pursue their own careers and livelihoods, the need for freedom, travel, and pleasure, and so many other such values and goals push their marriage and family, and ultimately their lives, into the background and then into crisis. They look for happiness, but lose their way.<sup>3</sup> They are not alone, and this is not the only wrong turn in today’s world, *the world of paradoxes*.

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2 Fukuyama, F. (2000) *A Nagy Szétbomlás: az emberi természet és a társadalmi rend újjászervezése*. Budapest: Európa. p. 31., p. 47., pp. 59–60.

3 Kopp, M., Skrabski, Á. (2020) *A boldogságkeresés útjai és útvesztői: az érett személyiségtől a kiegyensúlyozott párkapcsolatig*. Budapest: KINCS: L’Harmattan. pp. 145–165.

The whole world is facing a *population (human reproduction) problem*. In the smaller but rich parts of the world, depopulation is causing increasingly serious problems (economic, social, and environmental), while in the larger but poorer parts, *overpopulation* is causing these problems. The two problems should be solved simultaneously, but separately. Global population migration – as it would contribute to overpopulation of the earth, where there are no more freely occupied territories – is not a solution, and it would only make the problem more serious. The ecological footprint of humanity is growing every year, and the present generation is rapidly consuming (wasting, even destroying) the natural foundations, resources, choices, and opportunities of the future generations. The solution to the problem is not intentional depopulation. The *World Inequality Report* issued annually by Oxfam International shows that the superrich people are rapidly growing in number and increasing their wealth while exploiting billions of people and nature and driving more than half of the world's population into poverty. Our world is morally, socially, and environmentally unsustainable. Production and consumption (unnecessary, superfluous, useless, and harmful), driven by compulsive growth, overburden the natural environment, accelerate climate change, cause increasingly severe climate disasters, endanger human life and the whole living world, and make hundreds of millions of people homeless, which is clearly unacceptable and unsustainable. These serious, paradoxical problems caused by man are unworthy of man as a *rational and moral being*, and violate the requirement of *humanity* and the *right to human dignity*. These problems do not receive the attention they deserve in science, politics, and international public life, and, therefore, are not prioritised in the daily lives of individuals. In contrast, other issues, such as *sexual identity*, receive disproportionate attention. Violent minority movements and organisations attack and destroy the traditional and natural institution of marriage and family, a crisis that is at the root of the population problem and which, of course, has deeper historical causes. These problems can only be solved if we try to manage them in their proper place, in proportion to their weight and importance. This requires a new way of thinking, because the crisis of marriage and family cannot be solved by the same thinking that caused or contributed to the problem in the first place.

### 3. The complexity of the approach

**IF AN EFFECT** (negative social symptom) has more than one cause, they must first be examined individually and then in their totality including their interactions (to make the *correct diagnosis*); subsequently, the correct therapy can be considered – in a consultative manner with the involvement of several specialists and co-disciplines and combination of knowledge.

Therefore, legal science should be opened up and its thinking base must be broadened so that it gains a social scientific and even a general scientific nature.<sup>4</sup> It is true that we are talking about the need for an interdisciplinary approach to a complex, longstanding problem, but since jurisprudence is a closed system in itself, it tends to be constantly narrowing. It analyses its own concepts and examines them under a magnifying glass and then under a microscope until it becomes lost in its own problems. As an instrument of power, jurisprudence considers itself to be a big player in its own circle, but it is a pity that this circle is too small.

If, for example, marriage and family are in crisis, and we treat this only as a legal problem, although it is not primarily a legal problem, then solutions to this problem with any number of legal instruments will not be enough. All the essential causes of the problem should be identified and addressed appropriately. This must be managed in a holistic approach: if a person has multiple diseases and multiple causes, it is not enough to treat just one disease, cause, or symptom; the sickness must be treated as a whole (in its complexity).

If the crisis of marriage and family is understood as a symptom of disease of man and society, then the essential causes must be identified, investigated, and treated together. To heal the crisis of marriage and family, we can use the law as a *means* of regulating human behaviour. However, applying the human rights, family, or constitutional law research viewpoint and approaches alone is not enough; the ‘consultation’ and involvement of all ‘human sciences’ (natural and social sciences, including biology, human ethology, psychology, sociology, and economics) is needed.

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4 Pokol, B. (2015) ‘A jogtudomány társadalomtudományosodása (és így perspektívus létrejötte)’, *Jogelméleti Szemle*, 2015(2), pp. 106-130.

#### 4. The natural side of man

**MAN IS A BIOPSYCHOSOCIAL BEING**,<sup>5</sup> a unity of physical, mental, and spiritual capabilities, in this evolutionary order. None of these aspects can be ignored, considered alone, or over-dimensioned. Marriage and family have an *inborn* natural side (original, genetic, physical and spiritual, biological): the instinct and motivating force of subsistence and procreation. For these purposes, a *union of two people*, that is, a *monogamous relationship* between a man and a woman, had developed within the ancient herd community. Survival and transmission of life are possible only when the couple is together and united; it is easier and healthier when the couple also forms a physical and spiritual unity. The pair then becomes *parents* and forms a family with their offspring.

The *family* was originally a consumption-oriented community leading a hunter-gatherer lifestyle with their main natural and moral law being that 'food must be shared'.<sup>6</sup> Later, with the *Neolithic* revolution and *paradigm shift*, the family became the basic unit of farming with an emphasis on agriculture and settlement. Later, with the Neolithic revolution and paradigm shift, the family became the basic unit of *farming* with an emphasis on settlement and consequently marriage. Marriage and family, as living organisms, have their own natural evolutionary development, which is nothing but active adaptation to the changing natural and life-sustaining conditions. However, two closely related problems have arisen. One of the problems is that humans have domesticated not only plants and animals, but also themselves by not only experiencing, learning and mastering, and accumulating knowledge of the laws of nature, but also shaping and changing them to suit their own impulses. It is said that 'what a man thinks is mostly wrong, but what he knows is true'.<sup>7</sup> The experienced laws of nature are permanent, and the conceived laws of man are fleeting. Although man

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5 Kovács, J. (2007) *Bioetikai kérdések a pszichiátriában és a pszichoterápiában*. Budapest: Medicina., p. 122.

6 Michel, K., Schaik, C. van (2019) *Az ember három természete: A Biblia evolucionista olvasata*. Budapest: Typotex. p. 62.

7 Lorenz, K. (1988) *A civilizált emberiség nyolc halálos bűne*. Sopron: IKVA. p.75.

is originally a natural being, while following his self conceived laws, he is constantly distanced from nature and, in no small measure, even turned against it. As if he could create his own world, he begins to see himself as a god (*homo deus?*).<sup>8</sup> Instead of protecting and caring for the nature that was entrusted to man by creation, mankind, which currently totals 7.5 billion, is not only using, but also destroying nature for the sake of its own world. His actions are unacceptable, unsustainable, and suicidal, both rationally and morally, according to common sense and moral (natural or divine) law as well. If a species, in this case man, exhausts its own resources, ruins its living conditions, and destroys whatever sustains its natural environment, it will also become extinct. Therefore, the natural side of man must also be carefully protected as part of nature conservation, and this is aided by the recently emerging evolutionary and complex scientific approach whose arrival is deliberate and not accidental.

## 5. The social side of man

**THE EVOLUTIONARY DEVELOPMENT** of marriage and family has a man-made social side in addition to the natural side; this side *was created* by man, adapting to changes in social circumstances (religions, ideologies, beliefs, political powers, farming methods, technologies, market laws, fashion, etc.). It can be said that they are purely human creations produced by humans according to their own interests, and always far fewer than those who are forced *to adapt* to them. If adaptation to social conditions is successful, regardless of whether it was voluntary, enthusiastic, or under pressure, these creations act as an unavoidable force (*vis-maior*) on the lives of individuals, just like the forces of nature. They can act as vitalising forces, *as ideals and beliefs*, objectives, and guides, or as experienced and proven *fundamental values*; on the other hand, they can also cause human and social disasters, as *dogmas of mass-destructive ideologies*. For example, the 20th century was a disastrous century in this respect, dominated by

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<sup>8</sup> Harari, Y.N. (2018) *Homo deus: [a holnap rövid története]*. Budapest: Animus. p. 27.

man-made dogmas (e.g., fascist and communist). ‘The power of dogma can be truly satanic only if it unites very large masses, whole continents, or even the mankind in a single evil misconception’.<sup>9</sup> I think this kind of dogma is today’s *open society*, which is nothing more than the created idea of a society falling apart, disintegrating into atoms due to total individual selfishness. Despite such rumours, man is a community being. Man is no longer a creation of an *indigenous community*, but still belongs to the community. He is a member of a family, a nation, a cultural community or civilisation (e.g., European), and the great family of humanity, or the *human civilisation*, and if he is sufficiently educated, he can strongly resist mass-destructive dogmas. As a valuable person who is rich in knowledge and in spirit, he is able to enrich his immediate and distant communities (e.g., his family, his nation, and humanity) and can resist the power of satanic dogma as well.

## 6. The phenomenon of dominance

**MAN HAS SHIFTED** from an existential mode of *being* to an existential mode of *possession* with the agricultural revolution, which is the greatest paradigm shift of humanity so far.<sup>10</sup> According to the law, the essence of possession is the domination of things (goods) that are possessed and owned. The possessed goods constitute wealth. The exclusionary rights holder of all *wealth* is the *owner*.

The law recognised and protected the institution of private property against all outsiders. The essence of ownership rights as property status rights is *full and exclusive legal power* over property. However, the extent and value of possession and ownership can vary from one individual to another; consequently, the degree of dominance and power of each person can vary as well. This inequality has differentiated and later hierarchised property and the economic and political organisation of society. People without property or without sufficient property were placed in a dependent and vulnerable position to

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<sup>9</sup> Lorenz (1988) p. 81.

<sup>10</sup> Fromm, E., 1994. *Birtokolni vagy létezni?: egy új társadalom alapvetése*. Budapest: Akadémiai Kiadó. p. 25.

owners. Old *win-win* social games began to be displaced by new *win-lose* games. Property and the economic and social order built on it, and the hierarchical order of domination have always penetrated people's life relations, including the internal (intimate) relations of marriage and family. The agricultural revolution and settlement led to family farming and the establishment of private property. Private property and inheritance led to paternal power, which took over matriarchy. The emerging *male domination*, supported by private property power, was different in character from the previous female domination. Marriage also *became a win-lose game*. The industrial revolution abolished small private property, and the communist revolution abolished large private property, but the 10,000-year-old flywheel of male domination within the family continued to turn for two or three centuries. Today, the family has ceased to be the basic unit of economic management, but family households as a consumer community remain important in the consumer society. However, in this situation, there is no need for paternal or maternal power or male or female domination. In fact, now is the time for real equality between men and women, for free marriage based on strong attraction, for mutual loyalty and support, for starting a family with joint offspring, and for a renewed winner – takes – all game.

## 7. The liberation of man

**THE INTOLERABLE LEGAL AND MATERIAL** (wealth) inequality has given rise to great ideas of equality throughout history (early Christianity, utopian socialism, scientific socialism, national socialism, communism). The mottos of civil enlightenment were 'liberty, equality, and fraternity'. The great codes of private law codified the emancipation of man (abolition of slavery, emancipation of serfs) and the social freedom of man (equality before the law, universal equality of rights, the principle of equality and coordination, horizontality), while transforming marriage and family relations as well. Movements and struggles were started for women's liberation, equality between women and men, and equality between spouses, in order to ensure freedom of marriage. Civil marriage became a contractual obligation between two parties, which

can be freely contracted or dissolved. Legal relief had an incentive effect: the number of divorces began to rise, which had a negative effect on the number of marriages but encouraged the establishment of civil partnerships. Followers of a lasting and meaningful marriage, in the analogy of a 'sacramental' religious marriage, wanted more: a lifelong commitment, a *life union*, and a 'covenant marriage' with moral rights and obligations towards each other and the children. This excludes the ownership sense of the spouses, possession, or dominion over the other spouse, which is the most common cause of divorce. The equality experiment of socialism also failed because it practiced total domination based on state ownership when it should have eliminated the phenomenon of domination. The guarantee of real equality of rights of spouses in their relationship was characterised by the abolition of domination, effective equal sharing of the burden, and mutual support.

## 8. The liberation of children

**THE ISSUE OF LIBERATION OF CHILDREN**, which is also the liberation of the future generation, has shifted focus from paternal authority or parental domination to the protection of children's rights and unilateral parental obligations towards the child. The principle of the best interests of the child has been transformed from an international public law norm into a national principle of family law. However, a unilateral overemphasis on children's rights, the severity of militant guardianship (e.g., against immigrant parents in some Scandinavian countries), or child tyranny are not in the interests of parents or the child. The 'single mother' model has become a social phenomenon and a legal concept. In many European countries and the USA, the majority of children are born out of wedlock or are placed with the mother in divorce and grow up without a father. The problem of the 'fatherless child' has emerged as a modern psychological syndrome, and, more generally, the problem of a 'fatherless society'<sup>11</sup> is developing in the absence of paternal love.

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11 Fromm, E. (1993) *A szeretet művészete*. Budapest: Háttér. pp. 57–60; Kopp, M., Skrabski, Á. (2020) pp. 62–63; Ranschburg, J. (2011) *Érzelmek iskolája*. [Budapest]: Saxum. p. 176.



The conditional, task-giving, performance-monitoring, strict, and disciplining, but always fair fatherly love is lacking, even though it is needed to balance the unconditional, forgiving, accepting, reassuring, and consoling love of mothers. Both forms of love are necessary for the child to grow into a mature adult with a sound mind. In other words, it is necessary for the child to learn that they have not only rights but also duties and responsibilities. Family law and judicial practice have realised this, which is why they no longer banish the divorced fathers from the family, but this does very little to address the social and psychological gravity of the problem. The lack of earned paternal and maternal prestige leads to a lack of respect for parents, which in turn leads to a lack of respect for marriage and family as fundamental values, which again leads to a general lack of prestige and respect and, thus, to a lack of respect for fundamental values, resulting in a general crisis of values.

## 9. The problem of legal reflection

**THE QUESTION OF THE RELATIONSHIP BETWEEN THE ECONOMIC BASIS AND THE SOCIAL STRUCTURE** was one of the greatest debates of Marxist jurisprudence: does the economy determine the law or does the law determine the economy, and what transitional solutions can be imagined between the two extremes in time and space? The legal theory aspect of the question is the problem of the *source of law*: is the law *built from below*, evolving from social relations, or does it guide society *from above as a state command*, an instrument of political power? Is the state ruled by society, by the *will of the people*, or does the *state rule society*? I do not intend to answer these evergreen questions here and now, but I have raised them against the backdrop of the crisis of marriage and family as a toolbox for legal protection. The legal debates here are very similar. If the changes in marriage and family relations were an evolutionary developmental symptom, then the law would have no other task than to follow and reflect these changes. However, if the changes are a symptom of a crisis, they must be stopped and reversed, and the two institutions should be consciously protected and supported. Since the time of *civil*

*marriage*, the natural and social evolution of marriage and family has been followed, mapped, and reflected in law, which has evolved and changed and continues to change. However, for nearly two thousand years before that time, marriage was dominated by canon law, which considered marriage as a sacrament and an indissoluble institution. In effect, it 'sanctioned' the effects (including the negative effects) of the agricultural revolution. In this respect, as we have seen, the paradigm shift was established by civil enlightenment, which promoted the ideas of 'liberty, equality, fraternity', and the institutionalisation of civil marriage, which considered marriage as a contract between two free people, one man and one woman, with equal rights, which could be dissolved as well. Initially, the *principle of fault* dominated the dissolution process, which turned it into a war between the parties, with the result that all parties became losers. This was followed by the *principle of dissolution*, which is more peaceful than the former as long as one party does not object to the divorce. The easiest, quickest, and cheapest way of dissolution is by an *agreement of the parties*, with *two 'nos'* for the marriage instead of *two 'yeses'*. In such cases of dissolution, there is no need for a church or a court, with the registrar sufficient in many countries. However, if a marriage was at first sacred and indissoluble, and then became a civil contractual bond, why should it be concluded at all as it is just a piece of paper! Thus, the alternative forms of cohabitation and partnership without marriage have begun to grow in popularity. Strangely, people living in such relationships have begun to claim the rights of spouses, albeit without the spousal obligations. Because of political, sociological, and demographic facts and reasons, the law has constantly yielded to the growing social expectations, with the result that the man-woman partnership has been elevated to the status of marriage in terms of its essential elements. The concept of the so-called 'sociological family' has gained ground, with the prohibition of discrimination against children born out of wedlock playing a major role. The conscious and deliberate rejection of marriage and the resultant family and the choice of looser forms of partnership instead were not valued as legal facts. Cohabitation has been placed in a homogeneous group with marriage and family, whereas treating non-equals as equals can be discriminatory as well. On the other hand, it led to a further progressive erosion of traditional

marriage and family as fundamental social and legal values. Moreover, legal generosity has not solved the crisis of marriage and family or the lack of social reproduction, but, as an unintended side effect, it has exacerbated these problems. The problem has been compounded by the growing number of alternative forms of relationships and cohabitation that have been claiming marriage and family status, especially for same-sex couples. In recent times, the global population migration and the reception of illegal migrants are contributing to this problem: superficially, as a replacement for a declining labour force, a little more profoundly, as a replacement for a decreasing population, and more profoundly and in the longer term, as a problem of ‘population exchange’ and even ‘civilisation exchange’. Here again, we come to our initial question: is this the latest stage in the evolutionary development of marriage and family, or is the crisis already so deep that a remedy cannot be postponed? My answer is the same: because of the crisis of marriage and family, we have reached the red line of ‘so far and no further’ in legal regulation as well, which shall not be crossed.

## 10. Social diversity

**THE EVOLUTIONARY DEVELOPMENT IN NATURE**, in the world of creatures, means that a species in danger becomes capable of adapting to changing natural conditions in order to survive. Replacing the endangered species with an alien ũ, especially an ‘invasive’ species, is not survival or evolutionary development, but rather an acceleration of the extinction of the threatened species. In the case of humans, the issue is much more complicated; since ‘all humans are brothers and sisters’ in a global sense, all humanity is one big family. From the point of view of the threat of the climate catastrophe, the survival of the whole humanity in the ‘natural’ sense is also questionable. Moreover, in addition to natural conditions, man-made social conditions (cultural, religious, political, economic, and social) have also been substantially transformed, and among these, there may be shocks, collapses, and disasters to adapt to, or escape from. In addition to *biodiversity*, humans as a species are also characterised by *social* (cultural, religious, political, economic, social) *diversity*. The most serious issue of the global

versus local debate is the preservation or elimination of this diversity, in the latter case, the homogenisation of the diversity and variety of the human species for the sake of survival. I acknowledge the importance of the principle of preservation. The preservation and maintenance of biodiversity is important for the conservation and maintenance of the natural foundations of life. The diversity and variety of our world is a source of beauty and an element of genetic richness, but it is also key to evolutionary progress. It provides choices for survival. This is also true for social diversity, which can not only be preserved, but also expanded and enriched in order to increase the chances of survival and the range of choices. Only one thing is forbidden, the use of violent means or methods by whatever name they are called such as war, 'democracy export', 'spreading of true faith', 'gender ideology', or 'sexual identity revolution'. The principles of freedom and responsibility, thus combined and interlinked, must also be applied in the field of marriage and family protection.

## 11. Our basic social values

**MARRIAGE AND FAMILY**, freedom of marriage, equality between women and men, having children, and starting a family are no longer just natural, biological (genetic), and psychological values, but *fundamental social values as well*. They are universal human rights in the legal world and fundamental constitutional rights in national constitutions. They are valuable for human beings and therefore worthy of protection for the benefit of society and the state. The monogamous marriage of a woman and a man, based on mutual fidelity and support, and the family as a community built on love may be seen as fiction,<sup>12</sup> but they are in fact attractive, stimulating, and value-enhancing objectives and fundamental values that improve human beings. They should be defended and protected from all value-destroying, value-relativising ideas, movements, and activities. Marriage and family have a *protective function for the physical and*

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12 Hankiss, E. (2014) *Emberi kaland: egy civilizáció-elmélet vázlatja*. [Budapest]: Helikon Kiadó. pp. 405–412.

*mental health* of both women and men. This is particularly true for children whose best interest is to grow up in a harmonious family. Marriage and family, alongside faith, are the greatest sources of strength for surviving crises. They could also be resources for surviving the crisis of the two institutions. Family policy and legal protection, the family-friendly society, and the state should help in this endeavour.

## 12. The non-derogation principle

THE PRINCIPLE OF *NON-DEROGATION*<sup>13</sup> was elaborated as a principle of environmental protection, especially nature protection, just half a century ago. This means that the achieved level of legal protection of nature cannot be reduced, but can only be increased. The protection of the natural foundations of life *would protect the right to life of wildlife* if it were a legal entity, and it would have a subjective or fundamental right. Because of the absence of these rights, the legislature prohibits man from destructive activities that destroy and endanger protected species of plants and animals and those that are under threat of extinction. Economic (investment) and social (job creation) policy objectives do not enjoy benefits over nature conservation. Economic growth, which damages or endangers nature, is no longer considered a development. The direction, pace, and scale of such development are unsustainable. The *requirement of sustainability* protects the *right to life of wildlife*, including the protection of *human beings' right to life*, which should be interpreted in conjunction with their *right to dignity*. If the natural basis of life is destroyed, the *human being will* perish along with it, which is the greatest violation of dignity, whereas human dignity is an inviolable fundamental right and value. It cannot be said that the principle of non-derogation is already fully applied in environmental and nature conservation practices, but at least it exists as a guiding principle in that area. What is the situation if a race of people is endangered? If the European white race is threatened with extinction, it should be declared as a protected

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13 28/1994. ABh.

species. Since the natural basis and traditional social framework for having children is marriage and family, or the union of a woman and a man (*as a human and parent couple*), this should be protected and encouraged by means of subsidies. The level of legal protection of marriage and family should achieve that level from where it cannot be reduced, but only increased. Any human behaviour, movement, or action that further destroys, violates, or endangers the natural and fundamental institution of marriage and family as a value that requires increased protection must be prohibited. Such ideologies, movements, and activities are unsustainable from the viewpoint of social reproduction. The ideas and actions of selfish *individualism*, which destroy society and family, are unacceptable. No human right can be interpreted in a way that would destroy, or even endanger, marriage and family.

### 13. Purpose of rights

***THE ABUSE OF RIGHTS*** is a common problem of the too direct and concrete application of the general and too abstract norms of human rights. For example, emancipation of women should not go against the law of nature, that is, it should not be aimed at the total (biological) equalisation<sup>14</sup> of the two sexes and the elimination of gender. There is no need for a permanent revolution or war against men<sup>15</sup> in the women's movement, in which both parents and children and, indeed, the institution of marriage and family and social reproduction would be losers. The demand for the right of 'free' interoperability between the sexes, as well as its implicitly forced acceptance by the majority and its teaching to incapacitated children, is nothing other than a distorted interpretation of freedom of expression as *unrestrained individualism*.

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14 Pokol, B. (2011) *Európa végnapjai: a demográfiai összeroppanás következményei*. Budapest: Kairosz. pp. 188–195.

15 Murray, D. (2020) *A tömegek tébolya: áldozatok a politikai korrektség oltárán?* Pécs: Alexandra. pp. 136–143.

This is similar to the idea of an open society, but this ‘open to all – sexual – orientation’ represents a disintegrating, mentally disturbed, drifting personality. It is an evolutionary deception, or as Pope Francis called it an ‘anthropological impasse’. Freedom is not boundless and unlimited; it is forbidden to abuse it at the expense of others. The freedom of an individual is freedom within the *family* and *society*, and not freedom *from the family and society*. *Solidarity* (which also means marital, family, and social solidarity) is the *freedom for the family* and society from the viewpoint of Christian *benevolence*.<sup>16</sup> Man needs faith and experiential knowledge that keeps him and his personality on the right path. Just as the basic freedom and human rights of adult men and women are not purposeless and unlimited, the rights of children are also not unlimited and unbound. Nor can a child treat the parent in an inhuman way and humiliate, torture, or enslave them. The table has turned and it is time to free parents from the ‘child rule’, otherwise no one will have children at all. Thus, there are no unlimited rights, just as there is no unlimited power. The source of rights is the fulfilment of obligations: the obligation of husband towards the wife and vice versa, parent to child, child to parent, etc. According to this view, the freedom of the individual and the personality of man, thereby humanity, which is usually represented as concentric circles, can only unfold and be fulfilled in the communities. As Article 29(1) of the UN’s Universal Declaration of Human Rights (UDHR) stipulates, ‘[e]veryone has duties to the community in which alone the free and full development of his personality is possible’. Thus, it is not the *egocentric* vision of man and society that prevails, but the original, traditional, community, and sociocentric vision of man and society. According to this view, a person’s worth is measured by what he is, and not what he has. We do not live to have more, but *to be more*,<sup>17</sup> and thereby to enrich others in terms of values, spirit, knowledge, and integrity.

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16 Zlinszky, J. (2007) *Közéleti és jogászai etika a gyakorlatban*. Budapest: Szent István Társulat. p. 20.

17 Vereb, J.M. (ed.) (2010) *Minden napra egy gondolat: napi meditációk a nagy pápa imádságaiból és írásaiból Jerome Vereb atya szerkesztésében*. Budapest: JLX. p. 38. and p. 365.

## 14. The value of monogamy

**MAN WAS ORIGINALLY OF POLYGAMOUS INCLINATION** (traces of which are noticeable even today), but in the evolutionary process over hundreds of thousands of years, man has become monogamous, or at least adopted it by exercising the virtues of prudence and temperance. If we consider the question of polygamy or monogamy from an evolutionary perspective over a long period of time, it can be seen that it is not a recent one, with its roots going back to prehistoric times. We know little about these times, and a wide range of conclusions can be drawn from archaeological records, which can be neither proved nor disproved. Consequently, our thoughts and statements are *presumptions*, which are well known in law, i.e., probabilities, which we consider to be real. To confirm our presumptions, we usually reflect on the past based on empirical knowledge of later times, which may also carry doubts. Nevertheless, the gravity of the problem (the crisis of heterosexual, monogamous marriage and family that is built on it, plus its exposure to increasing attacks) and its continuing aggravation force us to reflect on the issue to see if any thought can bring us closer to the problem and help us find the right solution. In the sciences, the assumptions, intuitions, and imagination of scientists often play a major role. They see what everyone else can see, but at the same time think about such things in a way that others cannot. For more than two million years, prehistoric and Neanderthal men lived as *community creatures*: in a community of women and men, in a community of children and property, and in and as part of nature. *Mutual cooperation* ensured the vitality, survival, and evolutionary development of the community. This situation presumes *win-win games* in relations within the community. Man's original natural inclination was polygamy, and monogamy was considered a deviant behaviour. The sexual attraction (dominance) of women and the linking of children to their mothers resulted in a *matrilineal* society and, *female domination* (*matriarchy*) within it. This female domination did not threaten but rather strengthened community cooperation and resulted in *win-win games*. However, as a result of biological developments over a long period of time, the *monogamous male-female pair relations* developed and became the rule. There are many reasons for this, of which at



least three can be highlighted as being highly probable. The first is that, in addition to, and sometimes instead of, the casual and instinctive sexual relationships, more enduring sympathetic relationships developed, driven by strong mutual attraction and permanent bonds (today we can say that the ‘chemistry of love’ developed and operated between some couples). Second, in such relationships, the presumption of paternity was narrowed to the permanent male partner, who became more devoted to the care of his own child and the mother, his wife (even at the expense of his own maintenance, as the family law – as a natural law – still requires both parents to do today). The third reason, as mentioned by Professor Nizsalovszky in his book from 1963,<sup>18</sup> was that in the case of children born from a relationship with two identifiable parents, incest and the risk of giving birth to genetically defective offspring could be excluded. Other reasons and causes of monogamy may have included mutual sexual loyalty, increased *support* for each other, and mutual trust, which spilled over to other monogamous couples in the community and to the whole community. Consequently, it reinforced the sense of belonging, mutual cooperation, and community solidarity, eventually contributing to the win-win game.

It is interesting that Plato, in Book III of his work *State*, believed that ‘the taking of wives, marriage and the procreation of children should be made public property’, and in Book V, he proposed a so-called ‘community of women and children’ in the order of guards to ‘prevent discord’. Arguing with his master, Aristotle wrote in *Politics* that

they care at least for that which has the most masters: everyone cares most of his own, and less for the common, or only so far as he is concerned, and because they think that he is cared for by someone else, they prefer to forget him [...] For there are two essential conditions in men which testify to care and love: property and affection; only neither of these can be found in such citizens.<sup>19</sup>

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18 Nizsalovszky, E. (1963) *A család jogi rendjének alapjai*. Budapest: Akadémiai Kiadó. pp. 25–26.

19 Arisztotelész (1984) *Politika*. 2nd edition. Budapest: Gondolat. p. 38. and p. 40.

This empirical knowledge was confirmed by the failure of the historical experiment of communism, or by the dissolution of the hippie communes in the second half of the 20th century. Therefore, monogamy originally emerged as a *win-win couple relationship*, the result of the natural evolutionary development of man, even before the advent of private property and the agricultural revolution. It was not only an institution and means for joint procreation by a man and woman, but also a tool for the survival of the social community. It was also a vehicle of values that served to improve man and community. Article 16(3) of the UN UDHR acknowledges that '[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State'. It is also clear when reading paragraphs (1) and (2) that we are talking essentially about a monogamous marriage between a man and a woman, and a family complete with children. The UN UDHR is a universal norm that encapsulates the fundamental values of mankind, which are protected by Articles 29 and 30 against any abuse.

## 15. Are there any alternatives?

**ACCORDING TO MY PERSONAL POINT OF VIEW**, there is no equal alternative to monogamous marriage between a man and woman, and family with children. However, the facts that there are alternative forms of *partnership and cohabitation*, and that the concept of *having children* has also been broadened by the possibilities of adoption, fostering, and *human reproduction procedures* cannot be ignored. The spread of alternative forms of relationships is a way out of the crisis of marriage and family. However, since the fault lies not in marriage and family, but in the person who marries and has a family, alternative forms of relationships also exhibit the same symptoms of crisis as marriage and family. If a marriage breaks down, the parties behave like consumers in a consumerist society: they do not fix it but throw it away and buy another. This is an unacceptable waste. A person, even a bad spouse, is more valuable than anything. Even if they are incorrigible, they cannot be thrown away, especially if they have a child together. The situation is similar for alternative relationships like cohabitation; they can also carry important values from the viewpoint

of society and can be legally protected and (despite the differences) supported. Encouraging and rewarding a more serious and responsible marriage will not result in discrimination and cannot be classified as homophobia. The essence is in the legal recognition of the differences in the chosen life situations, and in the *legal distancing* between the different forms of relationships. The legal representation of an original difference (otherness) is not discrimination; on the contrary, treating those who are different as identical can be considered discriminative.

## 16. Summary

**MARRIAGE AND FAMILY ARE ESSENTIAL** for social reproduction; they are traditional, well-established means of *population replacement* in ageing and declining societies, as well as overpopulated ones, and, therefore, need to be strengthened, rehabilitated, rebuilt, and better protected. The mass admission of illegal migrants from foreign civilisations will not result in population replacement, but in *population exchange*, and ultimately *civilisation exchange*. Unsurprisingly, that population would be the winner, which appreciates marriage, family, having children, fatherhood, and motherhood. This would lead to the decline and fall of a great European, Western, or Christian civilisation, leading to the ‘strange death of Europe’.<sup>20</sup> Those who repair and save their marriage and family can repair and save their nation and Europe as well. What needs saving is not only marriage and family, or the population and culture of Europe, but also the soul of Europe and European man. ‘All European states have been shaped by Christian civilisation. It is precisely this European soul that shall be resurrected’, according to Robert Schuman.<sup>21</sup> According to Popes Paul VI and John Paul II, Europe is building a civilisation of love.<sup>22</sup> The European Union

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20 Murray, D. (2018) *Európa furcsa halála: bevándorlás, identitás, iszlám: mit tartogat számunkra a jövő?* 4th edition. Pécs: Alexandra. pp. 5–11.

21 Lejeune, R. (2015) *Politika és életszentség: Robert Schuman, Európa atyja*. Budapest: Magyar Máltai Szeretetszolgálat. p. 249.

22 Vereb, J.M. (ed.) (2010) p. 174. and p. 194.

acknowledges the principles of *freedom, justice, and solidarity*. Solidarity is called benevolence by Christians. Europe is a forerunner of universal (global) solidarity, which is a model and guide for humanity. Solidarity starts with win-win games in the family and radiates to national, European, and global levels. Global capital and the domination of the global financial market are not at the heart of globalisation, profit maximisation, and utilitarianism, which should not be the main guiding ideals. There is no need for a war of nations or a clash of civilisations. Instead of racism and chauvinism, we must talk about *culturalism*, as national cultures enrich the diversity of our world. We also need *familism* rather than militant feminism, genderism, sexual revolutionism, and the war of the sexes.<sup>23</sup> The common essence of family is the *community of love*, i.e., a community that holds its members together and keeps them united. Becoming a human being begins at birth, but a person's humanity and personality are formed in the family, a community of love, and then continues in their marriage and family. This is an unbroken chain of generations, a circular development on an ever-higher level, which can never end and can never be completed. It is a miracle and a gift of life, participation in which can contribute personally to the preservation and development of marriage and family.

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23 Kopp, M., Skrabski, Á. (2020) p. 66.

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# The Protection of the Family



## 1. Extent and delimitation of the topic

ONE OF THE JOINT RESEARCH TOPICS of the Eastern European Professors' Network is the "Protection of the Family in Law." The designation of this research topic can already be regarded as a delimitation in itself, since it refers only to the grounds and optimal means of legal protection. However, if we omit this restriction on the law (when discussing "Protection of the Family"), it immediately becomes apparent how much broader the research topic is. The protection of the family dates back to the beginning of human evolution (to prehistoric times), and its toolbox originates in the natural laws that long preceded the establishment of the state and the law. In addition to law, this broad field of research can also be explored via many other disciplines (biology and ethology, generally speaking, but especially human ethology, psychology, sociology, anthropology, and cultural anthropology). Among them, we can find not only social sciences but also natural sciences. All of these are sub-fields of "science," and their common denominator is that their subject is mankind, i.e., they are the *human sciences*. In its ultimate essence, "the goal of the acquisition of all human knowledge is the better self-knowledge of the man."<sup>1</sup> It is, therefore, expedient and useful if these research results are utilized by jurisprudence. In this sense, I try to broaden the thinking base of jurisprudence in this complex topic and to "social-scientificize," or more generally to "scientificize" the jurisprudence, in order to avoid the accusation of "one-track

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<sup>1</sup> Lorenz, K. (1988) *A civilizált emberiség nyolc halálos bűne*. Sopron: IKVA. p. 93.

thinking.”<sup>2</sup> This is a difficult field and an unusual methodological experiment, owing to its diversified complexity. For example, “ethology analyzes human behavior as a subject of the functioning of a particular system. ... The analysis of the organic system that is the basis of human social behavior is the most difficult and at the same time the boldest task, because this system is far the most complex on Earth”.<sup>3</sup> However, the leading examples of *bio-economics* (in the harmonization of natural laws and economic principles) and *behavioral economics* (in the harmonization of the material and intangible, spiritual needs of man) prove that it is not impossible to accomplish the task. Man is a *natural and social creature*, living in these two systems, in their subsystems, and in their reciprocal interactions. As such, people marry and start a family, causing natural and social crises, including physical and mental crises that are both internal (self-conflicts) and external (one’s marriage partner and family), for the purpose of creating future generations.

After these introductory remarks, it can be stated that the *protection of the family* is one of the oldest natural and moral laws, the extension of *legitimate self-defense* of descendants to the co-genitor, to the wider family and relatives, and even to the entire human community formed by families (regardless of the size of these communities and what we name them: genus, tribe, tribal alliance, people, nation, etc.). Self-defense, offspring protection, family protection, and community protection are all manifestations of the survival instinct in the biological sense. Based on this, humans — like all other living organisms in general — must survive and, being mortal, reproduce the inherited genes so that their parent’s essence can continue in the lives of their descendants and their offspring’s descendants (and so on). That is the reason a person establishes a heterosexual relationship, starts a family, tries to create security for it, and protects one’s family even at the cost of the life of the attacker, and, in extreme cases, at the cost of his/her own life. In comparison, it is a bagatelle sacrifice if a person has to limit his/her own hedonism for self-defense. If family protection as self-defense is successful and families survive, then not

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2 Pokol, B. (2015) ‘A jogtudomány társadalomtudományosodása (és így perspektivikus létrejötte)’, *Jogelméleti Szemle*, 2015/2, pp. 126–127.

3 Lorenz, K. (1988) pp. 11–12.



only are parents' genes reproduced but also wider communities and society are preserved. "While it may seem foolish to emphasize something that is so obvious, social capital cannot exist without people, and Western societies simply do not create enough people to sustain themselves."<sup>4</sup> Therefore, if necessary, the whole community must protect every single member and every family, since these are the constituent parts and the basic and natural units of the community. All of this is really quite natural (in the language of the law: evident) to the extent that we should not even have to question it. This would be true if marriage and family worked hand-in-hand with this natural law. However, it appears that modern marriage and the family are no longer working as they once did; indeed, such institutions are in crisis in Europe and wider Western civilization. Europe, as a continent and a civilization, is the only one in which the overall population is declining and aging.<sup>5</sup> For more than half a century, willingness to marry has been on the decline, a large proportion of marriages have fallen apart, couples have not had children, have been unable to have children, or have had fewer children than planned. Generally speaking, selfishness and violence have been ruining families. As a result of the population decline, white people (belonging to Western or European Christian culture) are in danger of extinction in the foreseeable future. (Meanwhile, man puts plant and animal species at the same risk under increased protection!) The self-defense reflexes of marriage and family do not work or are insufficient. The collapse of marriage and the family — in addition to crime and loss of trust — is one of the main causes of the "Great Disintegration."<sup>6</sup> Conscious and voluntary intervention is therefore needed to protect social reproduction, marriage, and the family as a dual effort of both the law and society. However, since law is — in its ultimate essence — a human rule of conduct that is accompanied by the *external* coercive public power of the state, this intervention also raises a number of difficult questions. When, for which reasons, for which purposes, and by

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4 Fukuyama, F. (2000) *A Nagy Szétbomlás: az emberi természet és a társadalmi rend újjászervezése*. Budapest: Európa. p. 62.

5 Gallai, S. (2019) 'A családpolitika helye a demográfiai válsággal küzdő Európában' in *Európai családpolitikai kitekintő*. Budapest: KINCS, p. 16.

6 Fukuyama, F. (2000) pp. 59–72.

which means must there be interventions? This study attempts to contribute to solving the crisis of marriage and the family via methodical approach. For the correct answers, we need to identify the root causes of the crisis with scientific rigor, elucidate the goals to be accomplished by tackling the crisis, and select the most appropriate and sufficient legal instruments to achieve them. In addition, we must not forget that we have internal controlling norms (natural and moral laws), and it is good that they pull in the direction of resolving the crisis.

## 2. Human and legal starting point

**THE STARTING POINT OF LEGAL RESEARCH** cannot be other than man, since we research the crisis of the two natural and indispensable institutions of human existence, marriage and the family, which we wish to protect by means of law, for the sake of man. It is true here as well — which I have claimed for a long time — that the law is for humans, and not the humans for law. Therefore, we must talk about the first part of the highest legal definitions — “rights of humans,” “human rights,” “human dignity,” i.e., about humans themselves. Philosophers generally agree that humans have emerged from the animal kingdom as the “crown of creation,” either as a creature of God or as a result of evolutionary development. The views of other living creatures are not yet known on this issue, although the views of native species already extinct by humans as invasive species in particular could be very remarkable. That said, while it seems likely that humanity as whole will survive for the foreseeable future, there are some groups of people at risk of extinction. From the point of view of the destruction of the *natural foundations of life* on Earth by humans, the danger of a climate catastrophe resulting in our eventual extinction has reached the overpopulated human species nowadays. Overpopulation is discussed by Konrad Lorenz as the first of the eight deadly sins of civilized humanity because it is also the cause of several other catastrophic dangers (destruction of living space, frostbite of emotions, and genetic decline).<sup>7</sup> The population explosion, therefore,

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<sup>7</sup> Lorenz, K. (1988) pp. 18–20.

has also diverted attention for some time from the other extremity, depopulation. I mention this mainly to show that it is not enough to deal with the crisis of marriage and family of certain groups of people and to protect and support these institutions legally; it also needs to be known that human life is threatened by other, even more serious dangers that need to be urgently and effectively addressed. Second, I mention it because I think that the institutions of marriage and family are also part of the *natural foundations of human life*. Although they became a part of the system of legal regulation (the legal system) and therefore became *legal institutions and social institutions*, they did not cease to be a natural phenomenon, a natural principle, and they could not be intentionally torn from their natural foundations without their destruction. As humans are primarily natural (biological, biophysical, biochemical, psychosomatic, etc.) beings, they are subject to the laws of nature as such. The majority of our most serious *human problems* (such as the danger of a climate catastrophe) stem precisely from the fact that man has been too far removed from nature, torn from it, and even confronted with it, to the point that he now imagines himself not as part of nature but as its master. “The general and rapid alienation from living nature is largely responsible for the aesthetic and moral roughness of civilized man.”<sup>8</sup> Man is already playing “god” (*Homo Deus*,” as YN Harari calls him in one of his books), wanting to force his own human laws on nature instead of adapting (as other living beings) to the laws of nature (see: evolution). As one of the contemporary *human aspirations*, this distorted phenomenon also affects the institutions of marriage and the family and some people want to “re-create” these as well. This is not surprising because “man” is an extremely complex, intricate creature. According to the evolutionary biologist and historian couple, Kai Michel and Carel van Schaik, man has *three natures*. The first is our “*natural nature*.”

The first nature embraces our innate feelings, reactions, and preferences. These have evolved over hundreds of thousands of years and have proven their effectiveness in the daily lives of small numbers of hunter-gatherer groups. (...) Inclinations such as love between parents and their children,

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8 Lorenz, K. (1988) p. 25.

a sense of justice, outrage over injustice and inequality, and a sense of duty to others after accepting a gift or help belong to this first nature.<sup>9</sup>

The second nature is our “*cultural nature*,” which includes the components of propriety, politeness and good manners, morals and customs, the arts and religions, and “civilization” in the broadest sense. The *third nature* centers on our “*rational nature*.” It includes the basic rules, practices, and institutions to which we conform consciously, relying on our intellect.<sup>10</sup> The three natures of man act simultaneously, partially overlapping with each other; their effect is optimal and positive when combined, but they can sometimes be confused with each other. An example of the interaction and overlap between these natures is the rule of family law (third nature), according to which providing support for minor children takes precedence over the parent’s own needs. Aside from legal implications, certain actions related to the family are also required by morality (second nature), and are the command of nature (first nature). Due to such overlap, conflict may arise if, in the same way as marriage between a man and a woman (first nature), people of the same sex can marry (third nature) with the permission of the law. In the latter case, the second nature (morality and culture) can shift toward the first or third nature. Our premise regarding the legal regulation and protection of marriage and family is that none of the parts of human nature can be ignored or overemphasized. Therefore, neither the legal regulation (third nature), which is closed to itself, nor the first nature is free from internal contradictions and seems very rational.

A similar explanation expressing the complex and intricate nature of man can be found in the bioethical-psychologist József Kovács. According to him, man is a “*biopsychosocial*” being as a result of his combined *physical* (somatic, genetic), *spiritual* (mental), and *communal* (social, social) talents. “Evolutionary psychology and psychopathology assume that human beings are not only a somatic but also a mental product of Darwinian natural selection: our mental characteristics essentially served for the adaptation in the ancient environment in

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9 Michel, K., Schaik, C. van (2019) *Az ember három természete: A Biblia evolucionista olvasata*. Budapest: Typotex. p. 28.

10 Michel, K., Schaik, C. van (2019) p. 29.

which 99% of human evolution took place.” Regarding modern life, Kovács stated that we live in

a completely different environment than the one to which we have adapted, which means that we are not mentally ill, but our modern environment is not created in accordance with the psychological needs of man. (...) Man (...) is maladapted to his current environment. We could also say that man has domesticated himself and lives in a kind of self-created zoo, which is comfortable and safe compared to the ancient environment, but it does not enable the complete behavioural repertoire of the species under its natural conditions, and therefore neither psychic satisfaction nor happiness under natural conditions.<sup>11</sup>

Maybe that is the reason why more and more people desire to return to nature. Could it be that as this is their native environment they feel truly happy there? Perhaps this is the reason why the so-called “happiness index,” which valorizes natural values (e.g., clean air and drinking water, healthy soil and food, peace and quiet, marriage and family, kinship, and friendships) has recently been calculated in addition to/instead of GDP indicators. “Scientists have only just begun to research the history of happiness in the past few years, and we are still developing the initial hypotheses and looking for the right research methods. (...) I think this is the biggest white spot in the assessment of our history. We should start to fill it out.”<sup>12</sup> Thus, there is some evidence that a harmonious marriage, a peaceful and safe family environment, provides the greatest happiness for both parents and children.<sup>13</sup> However, both institutions are in crisis, and their protection and support are needed. Even though people now have many rights (“human rights”), they do not seem to be happier as a result. On the contrary, they tend to lose confidence in the law. Although

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11 Kovács, J. (2007) *Bioetikai kérdések a pszichiátriában és a pszichoterápiában*. Budapest: Medicina. pp. 121–122.

12 Harari, Y.N. (2020) *Sapiens: [az emberiség rövid története]*. Budapest: Animus. p. 352.

13 Kopp, M., Skrabski, Á. (2020) *A boldogságkeresés útjai és útvesztői: az érett személyiségtől a kiegyensúlyozott párkapcsolatig*. Budapest: KINCS: L'Harmattan. pp. 145–165.

it is not certain whether the fault is in the law the decline in public confidence in legal institutions should be stopped and general faith in their efficacy restored. Let us begin by taking a closer look at the universal human rights standards that serve as the starting point for our research, i.e., the legal protection of the family. These are set out in the United Nations 1948 “Universal Declaration of Human Rights” (hereinafter, UDHR). It should be noted that while the 1789 French “Declaration of the Rights of Man and of the Citizen,” which served as the model for the UDHR, declared that “men are born and remain free and equal in rights” (Article I), “the law must be the same for all,” and “all citizens are equal in its eyes” (Article VI), it did not specifically mention the equality of men and women, including the equality of spouses, nor did it comment on marriage or the family. However, these general declarations were suitable for the organization of the women’s emancipation movements to liberate women from male domination and to achieve equal rights for women (e.g., equal access to universities, entry into professions, state-public participation, voting rights, etc.). The struggle of the labor movements against the rule of capital for higher wages, social security, and social (material) equality also expanded protections of workers’ families, especially children of employees and the emancipation of working women. The results of these struggles — more than two centuries later — are already reflected in the text of the UDHR (in which the former bipolar world system also played a role).

According to point 5 of the Preamble of the UDHR, “the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.” This is also mentioned in Article 22 of the UDHR, although in a general way:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality.

Such rights will be further enumerated by the United Nations International Covenant on Economic, Social, and Cultural Rights of 1966. The text speaks of individuals as members of society, but the fact is that the vast majority of people live in a family (especially children), and the right to social security is typically related to the family. In this sense, we have to mention Article 23(3): “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.” Here I also would like to mention that this idea has already appeared in *Rerum Novarum*, the encyclic of Pope Leo XIII of 1891:

A worker, if he lives reasonably, and if his salary is sufficient to support himself, his wife, and his children decently, will spare money and attain what nature itself urges him to keep, in addition to the necessary expenditures, something from which he can make a modest fortune over time.<sup>14</sup>

However, it is well known that wages have always been adapted to the principles of the labor market rather than to the circumstances of the worker’s family (number of children, housing conditions, degree of poverty). That is the reason it has become necessary to link employment with the ever-expanding toolbox of “social legislation,” social protection (health and pension insurance, family allowances, free public education, maternity and childcare allowances, social benefits, etc.). These are regulated in Article 25(1)–(2):

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control. Motherhood and

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14 Leo XIII (1891) *Rerum Novarum: Encyclical of Pope Leo XIII on Capital and Labor* [Online]. Available at: [https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf\\_l-xiii\\_enc\\_15051891\\_rerum-novarum.html](https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html) (Accessed: 20 October 2023). point 35.

childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

With this background regulation, especially if these rules prevail in practical life, it is already possible and worthwhile to get married, start a family, and have a child (children). This makes the *three paragraphs of Article 16 of the UDHR*, which is most closely related to our subject, more comprehensible and interpretable:

- 1) Men and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- 2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- 3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

It is obvious from these norms that marriage and the family are global (universal) fundamental human rights values; marriage, the choice of partner and the foundation of family (having children) have risen to the rank of fundamental freedoms. In addition, in accordance with the first nature of man, self-evident basic truths and natural laws can be read from them: marriage and, in the same way, the foundation of family requires a man and a woman; the spouses are equal parties; the family as a “small” community is a “natural” and “essential” component — or “cell,” according to the well-known synonym — of society as a “large” community. If this cell becomes ill or dies, so does the society. Therefore, if necessary, we must protect health and integrity; to cure and rehabilitate if it has symptoms of illness (crisis). Protection is primarily a social matter, but should it prove insufficient the state is also obliged to protect the family, by using public means, rewards, subsidies, or prohibitions.

Many people regard the Universal Declaration of Human Rights and the whole expanded system of fundamental freedoms and human rights as the Magna Carta of mankind; the peak of the development of human civilization. Others consider this system of fundamental rights and legal values as a universal (universal, global)



constitution of . It is important — as the 3<sup>rd</sup> declaration states — that “human rights should be protected by the rule of law.” Therefore, “Member States have pledged themselves to achieve (...) the promotion of universal respect for and observance of human rights and fundamental freedoms” (6<sup>th</sup> declaration) and “strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction” (8<sup>th</sup> declaration). Considering this, the sole question is why such an almost perfect system does not work as intended — why do struggles such as marriages and families with symptoms of crisis persist? This is neither the first nor the only case in which there is a large discrepancy between the solution considered legally ideal and the social reality. Thus, the goal is precisely to bring the reality — in which there is always room for improvement — and the ideal. The real problem is when reality moves in a direction different from the objective or when it moves away from it instead of approaching it. This is a problem with marriage and the family as well: they seem to develop in other directions (alternative forms of relationships, same-sex marriage), but their stability and reproductive function deteriorate. The causes can be found in the law itself (in its unrealistic or irrational expectations), in the natural and socio-economic-cultural environment that determines the law (which is constantly changing while the law is often static and rigid), and of course in the person him or herself, who is both a natural and a social being. Man is not yet perfect in his humanity; therefore, his constructed rules and expectations are likewise imperfect. However, a ray of hope in a crucial world is to see the fundamental human rights values of the universal constitution of humanity as milestones, compasses, and right alignment points that show the proper direction and bring us closer to ideal solutions. Compared to these, we can measure crises, look for their causes, and find the means of solving them.

### 3. The historical roots of the crisis of marriage and the family

**I INTENTIONALLY DO NOT TALK** about the “*beginning*” of the crisis of marriage and family, since it cannot be determined by scientific precision, partly because we do not even know from what point in history we can talk about *marriage* between a man and a woman. “Man has been living for 2.5 million years from collecting plants and hunting animals that lived and reproduced without his intervention.”<sup>15</sup> We do not have any factual information about this prehistoric time. However, scientific assumptions are permissible. “For hunter-gatherers, the relationship between men and women was pretty much still balanced. Although the man dominated to some degree, if the woman was dissatisfied with her husband’s abuse of power she could return to her family at any time or change husbands. The bondage to the partner was not necessarily exclusive. Although there were monogamous relationships, it was not a common practice for a woman to be bound to a man for her entire life. A woman could have different partners; one after the other or even at the same time. Such promiscuity did not meet obstacles because paternity could not be established. Contact with more men served the interests of the woman since a network of potential fathers could be built in this way, all of whom felt responsible for their partner.<sup>16</sup> Of course, it has to be added that they felt responsible for all children in the community. “All of this changed about 10,000 years ago, when homo sapiens began to devote almost all of his time and energy to manipulating the lives of some animal and plant species. (...) It was a revolution in the human way of life — the agricultural revolution.”<sup>17</sup>

The Neolithic revolution broke with one of the fundamental laws of human coexistence that has prevailed in the everyday life for many thousands of years — with the rule that food must be shared. The new idea of property undermined the solidarity of prehistoric man. Everything which had been a common good until then — food provided by nature — had become

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15 Harari, Y.N. (2020) p. 81.

16 Michel, K., Schaik, C. van (2019) p. 64.

17 Harari, Y.N. (2020) p. 81.

monopolized at one blow. That was the real scandal! It is not enough that a daily, vital activity — the collection of fruit — will be banned; it will even be treated as a crime. We still feel the aftermath of this scandal.<sup>18</sup>

This, perhaps the greatest *paradigm shift* in the history of mankind, has also transformed man himself, his family, and society as a whole. The selection, domestication, and production of animal and plant species made man greatly independent from the whims of nature; it enabled him to stand on his own two feet through his own work. Until then, nature had dominated man and we had had to invest in social relationships — mutual help, cooperation, and solidarity had worked as a kind of life insurance. Nowadays, “people are no longer so interdependent; they can better neglect their social relationships. The path they stated to move on was a one-way street, which led to a world that was getting richer financially but becoming increasingly poorer socially and emotionally.” As community relationships faded, family relationships became more valuable and tighter. In addition to passing on life, men also had to inherit private property. The boys stayed to work the farms with their fathers within the family unit. They had to find and bring a woman to the house from the outside, and these girls were endowed. “In the forming of the patriarchy, women become commercial goods and property. (...) The first victims of the shift were women.”<sup>19</sup> At the same time, “where reserve management is successful, the population jumps. Competition is becoming dominant and social disparities are growing. Hierarchies and forms of dominance evolve.”<sup>20</sup> This is also true for marriage and family relationships. The wife comes under the power of her husband, the children come under paternal power, and their liberation — if at all — will be the result of struggles of many centuries and even millennia. I will mention just one example of this:

The patriarchal world is raising female fidelity to the rank of a norm.

(...) When women become male property, their power must be regained.

However, this power is mainly based on sexual attraction. (...) After being

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18 Michel, K., Schaik, C. van (2019) p. 62.

19 Michel, K., Schaik, C. van (2019) p. 63.

20 Michel, K., Schaik, C. van (2019) p. 63.

expelled from Paradise, Eve must get dressed to hide her charms under a dress. ... In farming societies, it is mainly women who have to dress morally.<sup>21</sup>

Nowadays, its “aftermath” is the debate over the dress of immigrant Muslim women in many Western European countries. According to this (according to the evolutionary reading of the Bible), original sin was nothing more than the agricultural revolution, the consumption of the forbidden fruit of the tree of knowledge, the punishment of which is the expulsion from the Garden of Eden, the natural form of life. The three main consequences are

the issue of torturous labour, the difficulty of accepting property, and finally the embarrassing fact of the subordination of women — three burning problems which humans have struggled with since we transitioned to a settled lifestyle. In this respect, the situation has not changed much in the last ten thousand years.<sup>22</sup>

Another important circumstance — from the point of view of its current, daily relevance, and of our topic — has to be mentioned.

The measure of the evolutionary success of a species is also the number of copies of its DNA. If no more copies of DNA remain, the species will become extinct. (...) If a species makes a lot of copies of DNA, it is a success and the species thrives. This is the essence of the agricultural revolution: the ability to survive even in worse conditions. At the same time, it is a trap because the growth of the population has burned the bridges behind humanity. (...) There is no return. The trap is closed.<sup>23</sup>

Clearly, there is no return to the Garden of Eden. However, the mitigation and remedy of the negative effects of property are not hopeless. One of these negatives is the extension of one’s “ownership spirit” to

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21 Michel, K., Schaik, C. van (2019) p. 65.

22 Michel, K., Schaik, C. van (2019) p. 71.

23 Harari, Y.N. (2020) p. 89.

friends, to the love partner, to health, travel, artefacts, God, and to one's own self. (...) The greatest pleasure lies perhaps not in the control of material things, but in the control of living entities. In a patriarchal society, even the poorest man himself owned his wife, children, and possessions, and he could imagine himself to be their absolute master. It is definitely true of this type of society that a great number of offspring is the only way to own people without being forced to work or invest capital to do so. Considering that the burden of this must be borne by the woman, it can hardly be denied that raising offspring is a process of gross exploitation of women. However, the mother has also a kind of property: her child when he/she is still small. It is a vicious circle: men exploit their wives, women exploit their children, growing men join their fathers and exploit women. The male rule in the patriarchal system lasted for about six to seven millennia, and even if it began to disintegrate, it did not disappear, especially in poor countries and the lower classes of society.<sup>24</sup>

In conclusion, we wanted to illustrate that the origins of the crisis of marriage essentially coincide with the emergence of monogamous marriage in today's sense, which was a consequence of the development of private property, agriculture, settlement, and patriarchal society. However, the fault did not and does not lie in monogamy. It is quite the contrary! "Societies that are based on stable families, monogamy, loyalty, and responsibility can mostly expand and prosper. Societies that are sexually more permissive, that accept short relationships, easy divorce and family relationships are more unstable and doomed to decline."<sup>25</sup> Man, his mode of existence based on possession and his desire for domination over other people is the real problem, which is still the ruin of countless marriages. Therefore, we briefly review the changes in the ownership-economic order and the related characteristics of marriage and family related to historical ages. After that, we will turn to the crisis symptoms of the 20<sup>th</sup> century, their causes and tendencies, and crisis management by the state.

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24 Fromm, E., (1994) *Birtokolni vagy létezni?: egy új társadalom alapvetése*. Budapest: Akadémiai Kiadó. pp. 74–75.

25 Gallai, S. (2019) p. 16.

#### 4. Schematic images of marriage and family

**“BELLA GERANT ALII, TU FELIX AUSTRIA NUBE!”** Let others go to war, you get married, and happy Austria! This motto of Habsburg House, aimed at the construction and survival of the empire, is part of history education in Hungary and in the successor states of the Habsburg Empire. Its principals have also been practiced in other European royal houses as the Hungarian kings married their daughters to the royal families of other countries while their sons married the daughters of foreign sovereigns. We can say that the royal houses of Europe formed a large, common family. “Blood kinship” — as in prehistoric times — meant a strong bond and, although it did not completely rule out it reduced the chances of war. However, the main function of royal marriages was the acquisition and/or maintenance of the status of the monarch, including the inherent power and the dominion over territories and people. This attitude pervaded the entire vertical feudal hierarchy. It was forbidden to marry “below one’s rank” or it was allowed only with the prior permission of the overlord. This guaranteed the preservation of the given status and the associated birth privileges at all stages of the hierarchy, and therefore the maintenance of the feudal social order as a whole. This also resulted in it being almost impossible for the serfs to change of their status, at least through marriage. The system also involved the church since the institution of “holy marriage” was governed by ecclesiastical law. What God bound together man could not dissolve (it could only be invalidated by the church with a very complicated and cumbersome procedure). The practice of marriages of the appropriate order and rank, aligned with the hierarchy of power and wealth, was deeply ingrained in European culture, although there was no *caste system* there. Although feudal birthrights were replaced by the inherited privileges of great wealth (“lords of fortresses” are “lords of factories”), it was not suitable to marry “below one’s rank” in capitalism either. “Capital married with capital” and “factory married with factory,” and even “land married with land” in connection with peasants, which aimed at preserving and strengthening the property status occupied in the order of ownership and economy.<sup>26</sup> The late

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26 Kopp, M., Skrabski, Á. (2020) p. 12.

embourgeoisement was the specialty of the Hungarian “feudal capitalism” — the impoverished nobleman (gentry) married the daughter of the rich manufacturer, or the rich manufacturer (in a less hazardous way) first bought a “baronial rank” and then married according to his rank. It was exceptional — as in the tale of the prince with the snow white horse — that the bank manager came with a “fairy tale car” to ask for the hand of the poor typewriter. The mutually reinforcing institutions of civil society, civil property, and civil marriage had already been harshly criticized and considered to be liquidated by Marx and Engels in the Communist Manifesto:

What is the basis of the current, civil family? Capital, private acquisition. In its fully developed form, this family exists only for the bourgeoisie, but its supplements are the forced familylessness of the proletariat and public prostitution. The bourgeois family naturally ceases with the cessation of this supplement, and both disappear with the disappearance of capital.<sup>27</sup>

However, what replaces the family with a change in the means of production into social property?

Wage labour and the proletariat is also disappearing. Prostitution is disappearing and monogamy, instead of disappearing, will finally become a reality — for men too. In any case, the situation of men is changing a lot. But the situation of women, the situation of every woman is also going through a significant change. With the public ownership of the means of production, the monogamous family is no longer an economic unit of society. Private households are transforming into social activities. The care and education of children are becoming a public affair.<sup>28</sup>

Since the means of production did not become the property of the society but of the state, the workers became “wage slaves of the state” instead of the wage slaves of capital. Neither wage labor nor the proletariat

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27 Marx, K., Engels, F. (1965) *A Kommunista Párt kiáltványa*. Budapest: Kossuth Kiadó. p. 63.

28 Engels, F. (1977) ‘A család, a magántulajdon és az állam eredete’ in Recski, Á. (ed.) *Marx Engels válogatott művei, 3. kötet*. [Budapest]: Kossuth Kiadó, p. 497.

has disappeared. Moreover, a mass of women became wage workers in order to ensure a “two wage earners” family model for a mere subsistence. On the other hand, the monogamous family was no longer an economic unit of society. However, if it could have remained, it would have been able to perform miracles, just as in Western European countries. The incessant pursuit of people to create a greater degree of livelihood security and well-being for themselves, their families, their children, and their grandchildren is an incredibly powerful impetus that results in rapid and wide socio-economic development. Socialism turned off this driving force, as it limited the material scope and extent of personal (consumer) property. While it hypocritically proclaimed that “the greatest value in socialism is man,” in Hungary, “unusual” socialism was built. In 1968, it introduced a “new economic mechanism” (regulated market economy) and allowed the “backyard” family farms in agriculture, which was extended to industry and services in 1982. This system was nicknamed “Fridge Socialism” and “Goulash Communism” by the Orthodox Communists. This was the last impulse of the right to private autonomy, of private law, whose — according to Károly Szladits — “main subjects are *private economy* and *family life*; private law is essentially *property law* and *family law*.”<sup>29</sup> The family and the family economy (today micro, small, and medium-sized enterprises) are the main arenas for the socialization of future generations: they educate the populace in the matters of work, cooperation, mutual support, solidarity, and even selfless love. All of these are socially useful fundamental values beyond the law. This was destroyed by the totalitarian state of the proletarian dictatorship with tectonic destruction. The conscious transformation of social-economic-property relations resulted in (to put it mildly) large-scale “social mobility,” which tore apart the ties of marriage, family, relatives, village community, civil society, and the “social safety net” that are so highly valued today. In lieu of self-care, *state paternalism* was introduced, whereby whoever is cared for by the state does not require family care. This kind of great collectivism, however, has strengthened egocentric selfishness, which loosens the bond of marriage and disintegrates the family. It

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29 Szladits, K. (ed.) (1938-1941) *Magyar magánjog 1. köt. Általános rész, személyi jogok*. Budapest: Grill Kiadó. p. 21.



is a historical rarity that marriage and the family have been equally affected in parallel to the development of industrial society coupled with the growth of capitalism from free-competitive wild capitalism to the more structured social market economy and welfare state. In the economic struggle of the bipolar world system, the socialist states, as “communal” (ideological) capital owners,<sup>30</sup> fought with capitalist big capital and its liberal states, but their common essence was that both needed a mass of “free” (i.e., freely exploitable) wage workers — proletarians. Therefore, both expelled peasants from their lands; assaulted large numbers of weaker citizens, family farmers, and small entrepreneurs; moved to industrial cities; and crowded the masses of wage workers into rental housing. It is not a coincidence that these were referred to as “wage barracks,” while their inhabitants were called “industrial armies” and “wage slaves” because of their low wages. Konrad Lorenz wrote about “farms of human livestock” saying:

The caged chicken factory can rightly be regarded as animal torture and a cultural scandal. However, it is considered perfectly acceptable to do similar things with humans, even though these are the humans who cannot tolerate such inhumane treatment in the truest sense of the word. As a result of the human evolution, man could not bear to be one of millions of individuals who are completely similar, anonymous, and interchangeable. Only one way remains to maintain the self-respect of the inhabitant of the farms of human livestock, namely, to banish the similar companions of his suffering from his consciousness, and to rigidly distance himself from them.<sup>31</sup>

As a consolation — and to cover up material poverty — the equality of all people, the freedom of individual self-determination, the dignity of the individual, and the abundance of human rights were increasingly stressed on both poles of the world system. However, the shift of emphasis was “too good”: although it may be an unintended outcome, it has also assaulted the relationship, the small communities, and marriage

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30 Bibó, I. (1986) ‘Az európai társadalomfejlődés értelme’ in Bibó, I. *Válogatott tanulmányok. 3. kötet 1971-1979*. Budapest: Magvető Kiadó, p. 67.

31 Lorenz, K. (1988) pp. 26–27.

and the family that functioned as a major source of happiness for the individual.<sup>32</sup> “

It is clearly seen that the fragmentation of families leads to a serious demographic and health situation, to the disappearance of the social safety net and to the threat of the very existence of the society. Nowadays, those who work to protect the institution of the family do the greatest service to humanity and protect the truth.<sup>33</sup>

## 5. Individual selfishness and the world of selfishness

THE ESSENCE OF SCIENTIFIC THINKING is to try to condense reality into concepts. This is especially true in the social sciences (philosophy, ethics, sociology, economics, and law). If the concept and the reality are the same, the concept is true; if they are different, the concept is false. Moreover, the ever-changing reality may later deviate from the originally true concept, which could, therefore, become false. In this case, the (legal) concept must be adapted to the changed reality to ensure that the concept remains true. However, law has a very important feature: nowadays, the only source of law is the State as a public power. Therefore, the law itself is a power: a set of coercive rules prevailing in the State. It is suitable to align reality with its own concepts, thereby preserving its “truth.” This shaping of reality can take two forms: it prevents reality from changing in the wrong direction or it hinders the change in the right direction. Later, we will apply these ideas to the concepts of marriage and family, but first we will analyze the key concept that mostly covers the reality of our modern world, which is *individual freedom*. If we use synonyms instead of the indicated concept (i.e., the noun “freedom” the difference between the concept and the reality immediately emerges: *individual selfishness*. Here, the root of the tension between the two also lies in the concept of private property, which decisively determines the entire economic and social order. Private property is a self-contradictory, Janus-faced

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32 Kopp, M., Skrabski, Á. (2020) pp. 145–165.

33 Kopp, M., Skrabski, Á. (2020) p. 165.

concept (a legal institution and a socio-economic institution): on the one hand, it has the effect of increasing wealth, developing personality, and increasing individual freedom, while on the other hand, it provides a sole and exclusive legal power over the subjects of property and — through them — over other people, thereby reducing and/or violating the individual freedom of others. This duality began with farming and early human settlements, which exploded after, the “agricultural revolution.” It continued and was strengthened by the Industrial Revolution, and has become extreme in our contemporary world of global capital and a global market. It is not a wonder, since all people long for freedom, that we see a desire for *wealth*, and then *power*, neither of which have an upper limit. The *ethnicization and socialization* of law, i.e., the education of capital for social responsibility, tries to limit the pursuit of domination, but has had only moderate success thus far. In particular, there are the so-called “first-generation human rights” — the fundamental freedoms belonging mostly to individuals, both as human beings and as citizens. The preamble to the Charter of Fundamental Rights of the European Union also states that the Union “places the individual at the heart of its activities.” However, the value of each individual can vary dramatically and it can deviate significantly among cultures and civilizations.

The concept of personal me used in India and Japan is *sociocentric*. It is less individualized, much more family oriented ... than protestant personal me in Northern Europe, which is much more *egocentric* (emphasis added by me: B.L.). From the point of view of the Eastern sociocentric concept of personal me, the Western, egocentric concept of personal me is alienated, anti-social, and naive. However, from the point of view of the Western, egocentric concept of personal me, the Eastern, sociocentric concept of personal me is not individualized, undeveloped, too dependent on others and immature<sup>34</sup>

It is obvious which concept is more useful for the family as a community, but it can be questionable as to which is more economically efficient. Ernst Schumacher, an eco-economist, quotes the opinion of Keynes (from 1930):

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34 Kovács, J. (2007) p. 80.

For at least another hundred years, we have to convince ourselves and everyone that the good is evil and the evil is good because evil is useful while good is not. Let greed, usury, and suspicion be our gods for some time, because only they can lead us out of the tunnel of economic need into the light.<sup>35</sup>

Envy, greed, unscrupulous selfishness, and dishonesty can undoubtedly bring great financial advantage and economic development in the short term. However, if — in the longer term and in other contexts — egocentric, individual selfishness disrupts marriage and family, tears apart the network of social trust, and — as we see nowadays — pushes the entire “Western” civilization to the brink of demographic collapse, then the balance tilts towards harm.

However, people soon realized that there were serious problems with a culture of unbridled individualism in which, in some sense, breaking the rules remained the only rule. (...) A society that resolutely and consistently destroys norms and rules in the name of enhancing individual freedom will become increasingly disorganized, atomized, and isolated, and will be unable to achieve common goals, perform common tasks.<sup>36</sup>

According to the brain researcher Tamás Freund, it is a biological truth that trust, reciprocity, and cooperation remain the basis of social existence. Selfishness, on the other hand, is an evolutionary impasse, and selfish individuals and species are doomed to extinction. Therefore, it is essential that selfishness should remain hidden, and therefore be disguised. This is not too difficult because individual selfishness has three spectacular elements: a) I am for myself; b) the world is for me; and c) You are for me too! Marriages, families, and societies in which individual selfishness rules are unsustainable. Perhaps the most important way out is to rebuild societies/cultures from small communities characterized by trust and cooperation. “Reciprocity can be constantly monitored; the members of the community thus ennoble each other in spirit.” Therefore, “*not only families* but also the workplace,

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35 Schumacher, E.F. (1988) *A kicsi szép: tanulmányok egy emberközpontú közgazdaságtanról*. Budapest: Közgazdasági és Jogi Könyvkiadó. p. 22.

36 Fukuyama, F. (2000) pp. 30–31.

church, professional communities, and other civil organizations need to be further developed.”<sup>37</sup> It must be added that

selfishness is not only manifested in the exploitation of our fellow human beings but also leads to the ecological destruction of our Earth. (...) Small communities, exemplary families, and historic churches still play a key role in actively shaping our spiritual environment and bringing more love and the power of a cooperative spirit into our smaller and larger social communities instead of selfishness.<sup>38</sup>

## 6. Protection of families – protection of society

From following this train of thought we can conclude that the basis of social existence cannot be individual selfishness but rather social and community solidarity. Here in Europe in the Judeo-Christian cultural circle, this is rooted in one of the greatest biblical commandments, that of neighborly love. However, forced industrialization and urbanization resulting in the huddling of crowds in big cities, also contradicts this. “Our neighbour love has been diluted so much by the mass of our neighbours that are too close that it can no longer be detected at all.”<sup>39</sup> However, the European Union still shares the fundamental principles of “freedom, justice, and solidarity.” János Zlinszky wrote about this: “Christianity calls solidarity neighbour love.”<sup>40</sup> The primary field for learning (socializing) love and solidarity is the natural and fundamental component of society and the family. It is therefore in the fundamental interest of the society to protect the family. At the same time, it is at least to the same extent in the interest of the family to protect the solidarity-based (and not selfish) society. If one of them becomes sick, the other too becomes ill. The illness of the family — as we have tried to demonstrate so far — is mostly a kind of “addiction”:

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37 Freund, T. (2005) ‘Az önzés és az elmagányosodott ember’, *Magyar Szemle*, 14(3), pp. 113-131.

38 Freund, T. (2005)

39 Lorenz, K. (1988) p. 19.

40 Zlinszky, J. (2007) *Közéleti és jogászai etika a gyakorlatban*. Budapest: Szent István Társulat. p. 20.

the integrity and health of the family depends on the nature, integrity, health, and vitality of the social environment around it. Socio-economic dysfunctions are earthquake-like paradigm shifts that induce large-scale changes in the lives and internal relations of couples and families. Stable, harmonious marriages and stable, peaceful families require or would require harmonious, stable, and peaceful social conditions. This has never occurred in the history of mankind, but we must continue to pursue such conditions.

The novelty in the crisis of marriage and the family is its extent and the foreseeable danger of the demographic collapse of society. We also need to measure and develop its defense toolbox, for which we need to know the causes of the major crises. According to my point of view, the main reason for this is the *general crisis of values* that pervade society. This is ingrained in the internal relations of marriage and the family, which seriously affects the two fundamental (even universal) values: marriage and the family. However, the demographic collapse primarily threatens Europe, which would be the destruction of a large civilization, the “strange death of Europe,” according to the title of Douglas Murray’s book. One of the main reasons for this is a kind of “*historical fatigue*” (*Geschichtsmüde*) that characterizes Europe. Psychologists are diagnosing such a disorder (called “burn out”) with increased frequency. Since the Enlightenment, Europe has “produced” a series of ideas that redeem man and society, leading to revolutions and wars. Specifically, the two world wars in the 20<sup>th</sup> century resulted in enormous devastation and suffering and caused severe disappointment, disillusion, and fatigue. “The more popular the philosophical and political ideas are, the more devastation they leave. (...) The fascist dream, like his cousin, communism, wanted to respond to the serious problems of the age, (...) but the devastation left behind them was horrible.”<sup>41</sup> Both political ideas also destroyed the remaining faith of Europeans, culminating in the launch of secularization. However, “the religion of the continent has provided one of the major — if not most — energies for centuries.”<sup>42</sup> With the loss of faith, confidence in fixed values also vanished.

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41 Murray, D. (2018) *Európa furcsa halála: bevándorlás, identitás, iszlám: mit tartogat számunkra a jövő?* 4. kiad. Pécs: Alexandra. pp. 214–216.

42 Murray, D. (2018) p. 207.

The point is to question everything and never get anywhere; the destruction of ideas is perhaps precisely because we are afraid of where they may lead. (...) If there are any ideas left at all, it is precisely that the ideas represent the problem. (...) If there is still certainty left, it is the doubt about the certainties.<sup>43</sup>

Contemporary psychologists also often face this problem. This is the phenomenon and mental illness of *anomie*: the hopelessness felt due to the loosening and disintegration of social norms and the lack of new norms, which is no longer a rare state of total *hopelessness*.<sup>44</sup> We should not be surprised if this has overtaken the *idea of human rights*.

The post-war culture of human rights pretends (or their fans pretend) to be a religion itself and, as such, introduces a secularized version of the Christian consciousness. (...) But it is a religion that is never certain of itself, since it does not have safe points. The language is tell-tale. As the language of human rights became more grandiose and more self-deceptive, it became increasingly clear that this system was unable to fulfil its original function. The feeling of such a visible fall and the loss of the safe points is not only disquieting for both the individual and society, but also emotionally exhausting.<sup>45</sup>

Emotional exhaustion, fatigue, anxiety, hopelessness, fear, depression, and panic disorders are all symptoms of *anomie and burnout*. This is a depressing snapshot of our present and a dark vision for the future. However, even Murray says that there is a ray of hope. “Still, many people are looking for something certain in their lives. Religions, politics, and personal relationships are among the few things that constitute something solid in chaos.”<sup>46</sup> This thought is similar to the hope of a “great reconstruction”: “the return to religiosity takes a milder, more decentralized form in which religious faith is not so much an expression of a dogma as a reflection of the community’s existing norms and desire for order”.<sup>47</sup> Together with many others, I also consider

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43 Murray, D. (2018) pp. 221–222.

44 Kopp, M., Skrabski, Á. (2020) p. 125.

45 Murray, D. (2018) p. 211.

46 Murray, D. (2018) p. 222.

47 Fukuyama, F. (2000) p. 371.

marriage and family to be recurring fixed values and certainty in the lives of pathfinders. In European religions, and even in the values of most of the world religions, marriage and family are sacred things and fixed points. Most of the very close and important personal relationships are related to marriage, family, and kinship, which are part of the capital of trust, a source of happiness. They are worthy of rescue and protection, as well as the soul of Europe since marriage and the family are common treasures of the European community of values. As Robert Schuman wrote, the European Community

cannot remain just a common economic and technical community; it must be given a soul, it must be stimulated by the context of its history, its responsibility for the present and the future, a policy for the human idea. (...) Every European state has been shaped by Christian civilization into what it is. It is precisely this European soul that must be resurrected".<sup>48</sup> Is this still possible? Yes, if – in agreement with ecophilophist László Ervin – we realize that "our future was there in our past, we just didn't notice it and went past it."

It is true that our daily reality is not the same as our tomorrow imagined today. Many of our values have been lost and many of our ideals have not become a reality. However, we still have values that can be salvaged from our rich heritage, such as those related to marriage and the family. We can change the world and we can save our values if we change ourselves.

If we want to be part of the huge flood that is lifting humanity out of crisis and is driving it towards a positive future, we need to change ourselves. Everything else follows from this. There will be no need to tell us how to think and what to do: we will realize this ourselves. We become more mature and better individuals.<sup>49</sup>

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48 Lejeune, R. (2015) *Politika és életszentség: Robert Schuman, Európa atyja*. Budapest: Magyar Máltai Szeretetszolgálat. p. 245. and p. 249.

49 László, E. (2002) *Meg tudod változtatni a világot*. Budapest: Magyar Könyvklub. p. 91.



## 7. Crises of values and definitions

**IF WE TRANSCRIBE CORE VALUES** into law, our aim is to become permanent and follow the norms. As a result of this, values become legal concepts. Legal concepts must be defined and their exact and correct content and meaning determined. For this, the concepts need to be analyzed and interpreted. This is performed by complementing and helping each other and by jurisprudence and law enforcement. There are well-known types of legal interpretation: grammatical, logical, historical, taxonomic, and *correctness*. The latter is aimed at exploring the correct content, i.e., the value content of law, and at comparing the legislation with the basic principles of law (most recently with human rights and constitutional fundamental rights) and reconciling them with their value content. The more general or abstract the law is, the more correct or deemed to be correct interpretation can be read from a given legal concept. The situation is aggravated by selfish individualism, which favors individual value priorities (there are as many types of interpretation as there are people) and, in conjunction with it, general value relativism, which overexpands and disperses the original content of legal concepts as core values with reference to the freedom of more and more interpretations. I would like to briefly illustrate this with the concepts of marriage, maternity, and family.

The origin of *marriage* goes back to the obscure prehistoric times, and it can be assumed that there had already been a shift from promiscuity to monogamous relationships in primitive societies (small communities) for the sake of genetic integrity and health of offspring. This was reinforced by the agricultural revolution and the development of private property, as we have already seen. The role of husband and father, the inheritance of genes, and personal ownership of property have been overestimated, and, at the same time, the roles of wife, mother, and woman have been re-evaluated to the detriment of the female sex. However, feminist movements for the *liberation of women* were organized only after the Industrial Revolution, which was completed in the second half of the 20<sup>th</sup> century. Whether women have achieved their most important goals and the justification for their militancy nowadays has already been highly debated. However, women and men are now partners and not opponents or enemies. Due

to the concentration, centralization, subsequent socialization and nationalization, and finally multinational and transnational privatization and globalization of capital, the family economy as the basis of the private economy almost disappeared, its importance and proportion decreased significantly, the basis of the existence of patriarchy ceased, and the family became a group of wage workers and a consumer community. In the “two wage earners” family model, it is an obsolescent question to ask, “Who is the master at the house?” However, this does not mean that the rivalry ends, but rather the match is “doubtful.” In the case of large masses, the weight of inheritance has also decreased and the genetic identity of the descendants is not as important as it once was (e.g., in “mosaic families”). In proportion to this, the strength of the monogamous *marriage bond* also decreased. This can be illustrated by the well-known public opinion that marriage is “just a paper”; it is not needed, the essence is the emotional community and *de facto coexistence*. At the same time, paradoxically, the looser, non-committed, *alternative forms of relationship* that rival marriage almost invariably claim the status and legal effects of marriage, especially its benefits (rights). Is it a crisis, or is it the developmental phase of the evolutionary process of marriage as a legal institution that was reached in the 21st century? We will return to this question. The situation is similar to the legal concept and the legal institution of *maternity*. Pregnancy and maternity are a long-recognized and valued status and legal state with associated benefits. At the same time, the principle of “there is only one mother whose identity is certain” is no longer the same: we can speak about even five or six mothers, partly due to frequent (multiple) divorces and remarriages, and partly due to the increasing number of human reproductive procedures. At the same time, paradoxically, an increasing proportion of women (wives, unmarried partners) are unable (for biological reasons) or consciously do not want (for mental or rational reasons) to have children. The social and legal value of maternity has declined. One of the most important reasons for this are the slogans of feminist movements interpreting maternity as an extension of women’s inequality, such as “a woman is not a domestic worker,” “a woman is not a slave to her own child,” “a woman is not a breeding animal,” “a woman is not a parent machine,” etc.

The very commendable effort to create equality for a woman subject to man has led European civilization to an evolutionary impasse, and its biological foundations are destroyed at an accelerating pace. (...) The main reason for the demographic collapse is the change in the role of women and the relegation of the role of maternity to the background, which has been moving towards total rejection for an increasing number of women in the recent decades”.<sup>50</sup> According to the professor, it was a mistake to interpret *emancipation* as *equality* in all areas of life, and to raise the biologically established role of women and the consequent natural difference from men as a social problem.<sup>51</sup>

This suicidal strategy, which seems to win here, loses in the long run.<sup>52</sup> The described impairment (devaluation) of marriage and maternity naturally have a serious influence on the concept and institution of the *family* as well. As we have seen, industrialization — either capitalist or socialist — destroyed the multi-generational large family while social mobility loosened marriage and reduced the willingness to have children. We have shifted from the nuclear family model (a married couple with one child) to the single-parent family model and even to personal career-building singleness, which is again only a manifestation of selfish individualism. A sign of the devaluation of marriage and family is the *incongruence*, i.e. the divergence of marital status and actual life situation (e.g., despite being married on paper, the parties actually live separately and even have a new partner and a child originating from him/her), which has become increasingly common in the last half century. Successive “polygamy” is also a kind of promiscuity, almost as if we had returned to prehistoric communities. What the future holds remains unclear. Will there be an “evolutionary regression” or will we reach a kind of dead end from which we recognize the need to retreat? How this will be experienced by future generations, children whose utmost interest would be a harmonious and stable marriage of their parents and a family community that provides security.

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50 Pokol, B. (2011) *Európa végnapjai: a demográfiai összeroppanás következményei*. Budapest: Kairosz. pp. 172–174. and p. 185.

51 Pokol, B. (2011) p. 188.

52 Pokol, B. (2011) p. 189.

## **8. The toolkit of the protection of marriage and the family**

**IF THE CAUSES OF THE CRISIS** of marriage and family are extremely diverse and different, it is clear that the tools for their protection can only be the same. It is the primary task and duty of the current policy to select the most appropriate instruments for each crisis symptom. A comprehensive social policy program, in particular the population policy program and family and child protection, should be prioritized as key issues in the election programs of all political parties. Economic policy, social policy, taxation, and budget policy, and even individual policies (education and health policies) must be adjusted to support these goals. Quality programming requires a scientific basis. To achieve this end, research in individual disciplines, including disciplines more closely related to marriage and the family (e.g., statistics and demography, family sociology, relationship psychology, household economics, pediatrics, pedagogy, etc.) must be coordinated and its research results integrated and embedded in social programs. The implementation of the programs requires specific objectives that must be ranked, financed, managed, and monitored. It is good if this is done within the administrative sphere by a strongly professional and versatile educated apparatus with complex experiential knowledge. This should also serve as a political decision-making tool and guidance for future legislation. Family protection objectives and specific programs need to be translated into law, more specifically into the relevant branches of law within the legal system, in order to create a coordinated, uncontroversial subsystem of family protection law. This also requires a high degree of complexity and the ability to think in a broad context from the “family protection lawyers,” which induces (continuous) training in this direction. However, the effectiveness of the best professional bureaucracy is also undermined by tracking patterns of behavior in the opposite direction, especially in relationships between parents and children, friends, and co-workers. For example, children of divorced parents are more likely to get divorced themselves than those whose parents have lived their lives together in honesty and fidelity, simply because such children “get used” to divorce, and “regard the

divorce of their parent as natural.”<sup>53</sup> People have to be raised to recognize and understand the benefits of marriage, starting a family (having children), maternity and paternity, and family life. The best terrain for this “socialization” process is the family with mother, father, and grandparents as role models illustrating positive patterns of behavior that can be followed. The principles of education and core values (patience, peace, forgiveness, fidelity, mutual support, and selfless love) preserve the lives of families as well as the personality and humanity of the family members and society as a whole in an orderly channel, provided that modern information and communication tools do not exert a destructive effect in the opposite direction (which has unfortunately numerous examples, especially in the programs of commercial television and in the virtual world of the Internet). We are still searching for or trying to develop the civil and state means to protect marriage, family, and children against such negative influences. It will not be easy; there is a high prevalence of destroyers nowadays in many forms, including those who are fighting with the weapon of human rights, insidiously reversing their meaning and purpose.

## **9. The legal dilemmas of the protection of marriage and the family**

My dear professor, Imre Sárándi, always began his family law lectures with the pessimistic sentence: “Where family law begins, family ends!” This sentence has double meaning. On the one hand, he pointed out that court statistics show that nearly half of civil lawsuits are family lawsuits, divorce proceedings, and their ancillary lawsuits, i.e., proceedings in connection with spousal maintenance, child support, right of tenancy of the common house, distribution of community property, placement of the child, visitation rights, etc. These signify the end of marriage and family and settle and close conflicts around divorce. On the other hand, the sentence also suggests that we do not

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53 Cseh-Szombathy, L. (2000) ‘Állandóság és biztonság a családban’, *Vigilia*, 65(8), p. 590.

need law in the pre-divorce phases, i.e., in betrothal, in contracting marriage, in matters of internal content of marriage, and in the intimate sphere of the family. (Humorously, in marriage and the family, the law is like an elephant in a China shop; it's better not to let it in!) The relations between spouses and family members belong to a kind of "private sphere without law," an area of private autonomy where there is only a little room for general social norms, where almost exclusively the will or agreement of the parties is the governing norm. This means that the parties, spouses, and family members can shape their relationships independently of each other. Therefore, many representatives of the legal literature and the legislation considered that the law of marriage should contain only the formal, procedural, registrational rules, validity conditions, and grounds for invalidity, which are the most important for society, while only the dissolution of marriage and its related issues require more detailed regulation due to the further fate of the common children and the common property. There are at least two important reasons for this. First, marital and family relationships have been freed from the "bondage of private property"; from the male and father (ownership) power of the *bonus et diligens pater familias* inherited from Roman law" Second, compared to strictly moral ecclesiastical law, state regulation regarded marriage as a contract in which the parties are equal and subordinate, free to shape the content of their personal and property relations on the basis of *dispositive* regulation. However, traditions have a very strong power; male and paternal power is deeply ingrained in European and individual national cultures; e.g., in Hungary, many wives still call their husbands "my lord." The law did not have a sufficient response to the case where the *pater familias* was neither a bonus (benevolent) nor diligent (careful). Domestic violence, violence against children, or the squandering of family property are not new phenomena. The emancipation movements and later the defenders of children's rights justly and rightly demanded more detailed legal regulations and later law enforcement. Women's rights, especially maternal rights and children's rights, have been occupied prominent place in international human rights instruments, national constitutions, and at the level of national legislation. With regard to the nature of the norms, there are *imperative* orders, in particular

prohibitive norms (criminal offenses and misdemeanors); *mandatory* norms, from which the parties cannot deviate even with equal will (only for the benefit of the woman or children, e.g., in labor law or in child support and placement questions); and *dispositive* rules that can be set aside by the parties and replaced by a consensus between them (e.g., matrimonial property matters). Among rules relating to family support, recommendatory and indirect incentive norms as the legal conditions for benefits are common. The application of norms imposing obligations and their enforcement by public authorities is a particularly sensitive issue nowadays. According to the common saying, one cannot love someone or demand loyalty by order, but their absence can be imputable to the breaker of the norm and can be sanctioned. The same is true of the obligation of mutual support between spouses: it cannot be enforced, but its failure can be sanctioned. The situation is different with regard to the responsibilities of the parents and the rights of the children, where the regulation is much more detailed and the sanctions more differentiated. A separate area of legal dilemmas is the tolerance, recognition, and support, or, conversely, the prohibition or sanctioning of atypical marriages, alternative forms of cohabitation, and family compared to good (according to the legal terminology: typical, ideal) marriages. How long should the state and law in this area be *value-neutral* or indifferent, and where is the limit of *deviance*? Where is there a possibility of positive discrimination and, on the other hand, where does state intervention and legal regulation contravene the prohibition of discrimination? The first and most difficult issue is the legal definition of marriage and family and the narrowing or extension of these notions. A separate dilemma is to whether to connect the two concepts or to interpret and treat them separately. When is the too narrow definition discriminatory against people living in excluded life relations, and when does the too broad definition itself mean an impetus towards alternative and atypical life relationships, and when does it further destroy typical and traditional relationships and family life? Do changes in social customs or the will and values of the legislature (majority, politics) shape (and create) law and, which is motivated by which? These are difficult legal dilemmas and questions that must be answered.

## 10. The perspective of marriage and the family

ACCORDING TO THE MOST PESSIMISTIC PREDICTIONS, marriage and the family – at least in Western civilization – have no future. This is clearly an unacceptable perspective. If the family is invariably the natural and fundamental constituent (unity, cell) of society and it has no future, then the whole of society does not have a future either, since if the constituent elements of something disintegrate, the whole system collapses. This is true even if we call the disintegrating society an “open society.” Similarly, an “open marriage” is not in fact a marriage, it is a specific contract, a consensus of at most two (or more involved) persons relating to their personal relations and the settlement of their cohabitation. According to the other overly optimistic prediction, we can expect the renewal, renaissance, and prosperity of marriage and family because people will only now be freed from the previous oppressive religious moral and civic property interest pressures and burdens. The truth on this question falls somewhere between the two extreme positions, and the question of which pole the balance tongue tilts toward depends on what and how successful the solutions we find are in dealing with the crisis. Legal instruments alone are insufficient tools for success. It is also necessary to rehabilitate and respect natural laws, as well as to renew and protect moral values. Significant material coverage is required to expand and apply the family protection toolkit. If it is successful, we also need social recognition and unanimous support. This is also the case in Hungary; Hungarian people are the most family oriented in Europe.<sup>54</sup> Children already need to be socialized for marriage and starting a family, for maternity and paternity, and its most effective means are good examples of a harmonious marriage. i.e., a family that creates peace and security in which children can thrive. As man is not only a rational but also a moral and even spiritual creature. Marriage is more than just an agreement based on a reasonable balance of interests: it is a moral and spiritual *alliance*. That is the new worldwide attempt of *covenant marriage* (or “marriage alliance”), which is about the lifelong *commitment* of the parties. It is

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54 Gergely-Baka, I. (2021) 'A magyarok a legcsaládcentrikusabbak Európában', *Képmás Magazin*, 2021/3, pp. 44-45.



nothing more than a moral and spiritual reinforcement, an appreciation of the legal concept of marriage and family. This is reflected in the solemn framework of marriage, which emphasizes not only the public law and social significance but also the transition from individual to federal (cohabitation) status, which brings about the *unity* of a “couple of people.” Just as each person is sole, single, and unrepeatable, so too the commitment between two people creates an alliance that is also singular and unique. Spouses are complementary to each other; this community cannot be owned and people can only become a part of it.<sup>55</sup> Such marriage and family have a physical and mental “health-protecting” function and impact for both children and their parents.

In the relationship between two people and then between parents and children, the essence of marriage and family is life commitment, unconditional trust, and devotion. Whoever is able to have such a relationship has at least embarked on the path that leads to self-fulfilment, self-realization, and a positive quality of life. (...) The role of family and marriage has never been as important as in modern society from the point of view of the quality of life, balance, and tolerable social atmosphere of the individual and of the next generation.<sup>56</sup>

Law — family law and constitutional law — cannot be without an image of humans and society as a goal and value. Within the law, special emphasis is placed on the image of the marriage and family model and the need for institutional protection. The original meaning and content of concepts and institutions must be restored and preserved. Only treatment and protection as a priority, in accordance with social perception, will give the institution of marriage and family a new rank and perspective. There is room for “competition” between legal systems only in terms of a sustainable image of human and society and a sustainable and maintainable model of marriage and family, and not in connection with their destruction. The same applies to the oversupply of extramarital partnerships (also called alternatives to marriage), and their competition with each other and with marriage. We cannot,

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<sup>55</sup> Kopp, M., Skrabski, Á. (2020) pp. 18-19.

<sup>56</sup> Kopp, M., Skrabski, Á. (2020) pp. 120-122.

for example, demand the same or even more rights for both heterosexual and same-sex partners than spouses with less commitment and responsibility and with a looser and more disruptive set of values.

Marriage and family are natural and universal institutions that already existed before the law and would probably exist without it. However, it is no coincidence that both have become part of the law and a fundamental legal value. Law, as a powerful normative tool, is capable of protecting and supporting the institutions of marriage and family, which, like law itself, is for man. Therefore, we have to watch out for marriage and family as much as possible, and, if needed, even beyond our strength. After all, if we manage to save marriage and the family, we will save man, humanity, and “human” society. In order to achieve this, we have natural and moral laws coupled with human rights and constitutional foundations. The rest depends on us.

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# Incursions of Dominance



THE TITLE OF MY ARTICLE was inspired by István Bibó<sup>1</sup>, who, in his search for *the meaning of European social development* and in reviewing the history of Europe, came up with the idea that “the ever newer *incursions of dominance* appearing after revolutionary reforms are necessary developments of history, and to struggle against them is in vain.” When I read the term, I thought of negative things: oppression, exploitation, abuse, repression, coercion, subjugation, colonialism, etc. The world was and is full of all these, so it is worth reflecting on this phenomenon. Incursion of dominance can take place in the relationship between two people, in marriage and the family, in the world of work, in the relationship between employer and employee, in dominant economic relations, in politics or even in the world of science and culture, ideas and media. For the majority of society, it makes almost no difference whether the *rulers* are the capitalist group, the political elite, or the communist party elite called socialist. The reason why it makes “almost” no difference is that the socialist state (*party state*) combined its public political power with its state (people’s) property power (economic power) to exercise total dictatorship over society as a whole, using *inhuman* means and methods. The German national socialist state did the same. And the goals, national socialism and international communism, did not sanction these means and methods. However, in other European countries, such as England and then the Federal Republic of Germany, parliamentary democracy, with legislation reflecting the will of the people, was able to contain and socialise capitalism, and even to some extent – especially in contrast to communism – to make capitalism, the private property-based market economy, attractive. In

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1 Bibó, I. (1986) ‘Az európai társadalomfejlődés értelme’ in Bibó, I. *Válogatott tanulmányok. 3. kötet 1971-1979*. Budapest: Magvető Kiadó, p. 93.

other words, by ‘communising’ capital property – and with it all other *bourgeois* and *private* property – Marxism has scored a huge own goal.<sup>2</sup> Because it has not abolished the domination of individual people over other people, but has increased it to the extreme, exercising total dictatorship. The “socialist revolution” was only a change of domination, but not the abolition of exploitation and the incursion of dominance.<sup>3</sup>

The idea of incursion of dominance is extremely inspiring (like all excellent ideas). It is possible to put this in a broader context and over a longer time span, and to show its spill-over effects beyond the capital-labour dichotomy. The starting point of the incursion of dominance is probably the agricultural revolution, the establishment of *property and ownership, the domination of one’s own property and full legal power*. Besides the main effect of settlement and farming, this is an *unintended side effect of private property*. Many say the balance of the main effect is not positive; the side effects are certainly negative. What kind of medicine is it that makes you more ill than it cures? Or if a food nourishes you but also poisons you? Something saves your life, only to kill you afterwards? Private property has developed man’s personality (creativity, diligence, sense of duty, responsibility, honesty, integrity, etc.), but in many ways it has also distorted it. Ownership and domination have become the nature and soul of man.

In a narrow sense, Sándor Kopátsy linked the social phenomenon of the *domination of property* to the *narrowest cross-section* of the time, explaining it by the same. By this he meant the goods, objects of property, means of production and factors that essentially determined the face of a historical period, because there were always few of them. These include slave property, land property, capital property, and most recently intellectual property.<sup>4</sup> Thus, the incursion of proprietary dominance existed before capital ownership (including the ideal of the socialist state as a single-owner “all-capital” state) and had a decisive influence on the development of society. Ownership changed hands, but the phenomenon of domination remained unchanged.

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2 Bibó, I. (1986) p. 55.

3 Bibó, I. (1986) p. 67 and p. 93.

4 Kopátsy, S. (2013) *Történelemszemléletem: társadalomfejlődési elemzések*. [Szentendre]: Vincze Papírmerítő Műhely. pp. 225–235.

As for the extension of the notion of incursion of dominance, this can be applied, for example, to the problem of the *ecological footprint*, the domination of man over nature. It can also be extended to *male-female relationships*, female domination and male domination, patriarchy replacing matriarchy. In all three cases, intellectual property domination, domination over nature and gender domination, the main question is the same: why has incursion of dominance been and is still being established, and now, and especially in the near and distant future, how and where will it continue? In the evolutionary development of man and human society, what kind of change of dominance, or perhaps a paradigm shift, are we now facing?

Most of those who expected a miracle from the new century at the end of the 19th century were sorely disappointed. The 19th century – which actually began in 1789 with the Declaration of the Rights of Man and of the Citizen and lasted until 1914, the outbreak of the Great War – was a *century of civilisation*. The social weight and share of the *wealthy bourgeoisie* (Besitzbürgertum), which acquired property and prospered through their own labour, and the growing number of *educated bourgeoisie* (Bildungsbürgertum), which also benefited from compulsory education, increased significantly. The *freedom-enhancing and character-developing* effects of wealth and education were massively felt and made their way. Compared with the previous conditions of servitude and subordination, the most important principles of social order became the principles of *equality and co-ordination*, the *principle of universal, equal and unconditional capacity* of each individual to *exercise rights*, codified in the great private codes. From the triple slogan of civilisation and the bourgeois revolutions, *freedom and equality* were simultaneously launched from the same starting point towards a common goal, the inherent and inalienable *dignity of all human beings*. But *fraternity*, with the neglect of the churches and European Christian values, the separation of church and state, and the overly broad and strict interpretation of secularisation, has been left behind; and thus, equality, in comparison with freedom, has also suffered a delay. But liberty–equality–fraternity are the pillars of a full-fledged civilisation, the “three legs” of *civil society*: if any of them is short, or even more so if it is missing, there goes its stability. The imbalance was caused by the ‘*fundamental freedom*’ of *private property*, especially its *incursion of*

*dominance on society and the state, especially capital property*, which is considered private regardless of its size. But – especially after the publication of the papal encyclical *Rerum Novarum* in 1891 – *the ethicisation and socialisation of private law* accelerated. Through democratic, parliamentary channels, a veritable *wave of social legislation* has been set in motion to *protect, empower and genuinely equalize* (or at least equalize the opportunities of) workers, women, the sick and the poor. This process was halted, however, by the outbreak of World War I, which was driven by economic (capital ownership) and nation-state conflicts. And the grossly unjust peace treaties that ended the war programmed World War II. The 20th century as a whole and in retrospect was a disastrous century. The world was divided, with the pole of *freedom* (the Western, capitalist world system) and the pole of *equality* (the Eastern, Russian-Soviet communism, and later the socialist world system) fighting a series of local and regional (in today's terms: *proxy*) wars. Since the beginning of the century, science and technology have produced many miracles, but man seems to have changed nothing, in fact: “when man was so debased he sought to murder for pleasure, not just to comply with orders” (Miklós Radnóti: Töredék (Fragment)). It invented and imposed new ideas that appeared to be saviour and humane on the insane (demented) masses, by inhuman means and methods. The false prophets, instead of sacrificing themselves, their lives for the people, sacrificed millions of people for themselves and their ideals, their ambitions for empire, for countries, for *domination* over people. They imagined themselves to be gods, so they denied God and persecuted the Christian church of sacrificial love, desecrating the religion of men, priests and believers, and in the process lost their own souls. The soulless man is capable of truly inhuman acts. He who has no soul has no sorrow of soul, for he has no remorse of sin, and even celebrates and glorifies himself by counting his sins as glorious deeds. No wonder such people – from Western and Eastern Europe – are now suffering from severe mental disorders such as burnout, depression and panic disorder. These were not helped by the wave of regime change in 1989/90, the apparently “unipolar” world – in fact, it made it worse! *Without a political, ideological and economic counterweight*, the now global ownership of capital seems to have once again taken a heavier hold on the world (based on the false principle



of “winner takes all”). The *free flow of capital* (in fact, the freedom of exploitation, of the wage slavery and of the credit slavery) has become a European and, to some extent, a global principle, and *capital*, in the form of *global money*, is now a social and world-organising force. According to Douglas Murray<sup>5</sup> this is “the strange death of Europe” and the question is, can the soul of Europe be saved, will there be a resurrection? According to Francis Fukuyama<sup>6</sup>, this is “The Great Disruption” of the entire Western civilization, also called Christian, and the question is, will it be followed by a “Great Rebuilding”? These issues have only been further complicated by the global financial crisis of 2008–2010, the threat of climate catastrophe, the Covid pandemic, the onset of global population migration and the growing threat of a *Third World War* (fought not only with weapons but also with economic and financial sanctions) and its escalation into a nuclear war. The *global mind* (Vilmos Csányi)<sup>7</sup> does not have the capacity to simultaneously and collectively respond to and deal with these issues, nor the common morality of humanity, nor the international institutional system, nor the power to force peaceful solutions that may be found. In what is in fact a *multipolar world*, creating these is politically much harder, but technologically (by interconnecting thinking brains) easier. According to the evolutionary law of becoming human, man must never give up and must find new responses to new challenges that ensure the survival of living nature and a sustainable economy and society, including man. This is the commandment of life. It has one great opponent: suicide. People have a tendency to it, they also have symptoms. Suicide is not only the extinction of one’s own life, but also the denial of heterosexual marriage, of childbearing and thus of social reproduction, the destruction of living nature, the further, unsustainable expansion of production and consumption in the interests of capital, and another world war (nuclear war). If the serious problems of our time are *caused by root causes*, they need to be identified and remedied or eliminated.

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5 Murray, D. (2018) *Európa furcsa halála: bevándorlás, identitás, iszlám: mit tartogat számunkra a jövő?* 4. kiad. Pécs: Alexandra. pp. 210–218.

6 Fukuyama, F. (2000) *A Nagy Szétbomlás: az emberi természet és a társadalmi rend újjászervezése*. Budapest: Európa. pp. 47–90.

7 Csányi, V. (2018) *A globális elme: elmélkedések a világról*. [Budapest]: Libri Kiadó. pp. 20–21.

It will be very difficult, because we are faced with a multitude of *causal chains*, which, moreover, interweave. Therefore, a *multidisciplinary* approach and a *holistic* approach are needed, otherwise we will get bogged down in the details and not find any overall solution. Without a comprehensive solution, the 21st century could not even begin. Although many see 1989/90, the collapse of the socialist world system, as the beginning of a new century, it is – at least so far, for the first quarter of it – a continuation of the old, with new, apocalyptic catastrophes.

So, if we were to look for and try to find the one, or at least *one of the main*, causes of all our old and new troubles, I think it would most probably be *the existential form of possession* and the *phenomenon of domination* that goes with it. Today, every individual feels himself to be *a ruler*, even an autocrat, first and foremost over his own personality, with many human rights and fundamental freedoms, but with no obligations or responsibilities to anyone, and with everyone else obliged to him, and everyone else responsible to him and for him. His religious faith is in the neoliberal trinity: 1. I am for myself; 2. the world is for me; 3. you are for me! The *selfish individual* thus extends his domination to everyone else, treating the other as his own servant, while insisting that he himself is no one's servant, serves no one, is not obliged to sacrifice for anyone. Just as the capital-owning individual seeks to escape the public burdens, social obligations and social responsibilities of property, so his servant, the egocentric, self-centred man, seeks to ignore the universal norm of Article 29(1) of the UN UDHR: "Everyone has duties to the community in which alone the free and full development of his personality is possible." And human communities have been built and maintained from time immemorial on the basis of *equality and fraternity*. Paradoxically, the *welfare states governed by the rule of law, on the basis of equal opportunities*, has pampered people in terms of both rights and freedoms and material goods, and has so far asked for almost nothing in return. So let us not be surprised if *selfish individualism has taken over* our world, nor if everyone gets more selfishness in return for their selfishness. "You reap what you sow", and "Sow the wind and reap the whirlwind"! A series of catastrophic storms are battering our world, but they may be just the prelude to the real storm. If this is the case, damage prevention and repair measures must be taken very quickly. They require

common sense, calm prudence, cooperation and collaboration, selfless, sociocentric individuals, including mutual sacrifice, all the things, the ancient core values, that are in short supply today, because we have squandered them, eroded them, destroyed them, degraded them, discarded them like the junk of the past, or simply let them go and forgotten. Wrong value choices, value confusion, general *value crisis and lack of values* lead to a state of *total hopelessness*, sickness of the soul, a sick soul sickens the body, the consciousness of sickness makes it difficult to think rationally, but it also gives us a chance to rethink the really important questions of life, to set a new order of priorities, to reassess our current value system, our priorities, to rehabilitate our undeservedly destroyed and neglected values. We have to realise that what is new is not necessarily good in itself, or even better than the old; that what captivates does not liberate. Quantitative growth does not always go hand in hand with qualitative improvement. Having more does not make us more or better ourselves. What is free for us is not necessarily useful. The domination of the world by selfish individualism may be a new change of domination, but it is not the same as the abolition of the phenomenon of domination.

It would be good to know how we got here, how and why the *phenomenon of domination* has so taken hold of us, why it continues to overwhelm us, human communities and individuals, how it has so permeated the personality and everyday life of the individual, of most people. The eminent jurist, scientist and politician István Bibó had already sought and partly found the answer, namely *in the social institution of property* and the *legal institution of sacred and inviolable private property*. In his major study “The Meaning of European Social Development”, already cited, he deals at length with the concept of property and the conceptual confusion surrounding it, and tries to clear up this confusion and clarify the concept of *property*. He distinguishes *between real property and pseudo-property*: the former is the direct relationship between a person (the legal subject, the owner) and a thing (the object of rights), which has the effect of *enriching personality and freedom*; the latter is the oversized *mammoth property* that is a means of power over other people, whether it is capitalist private property or socialist state property. The classification of real property and unreal property in the same concept is the *fraud* by the defenders of property

(Bibó 69). The same conclusion was reached – quite independently of Bibó and on different grounds – by the ecological economist Ernst Schumacher and the psychologist Erich Fromm, both blaming law and lawyers for the fraud, the conceptual homogenisation.

Schumacher says: “As regards private property the first and most basic distinction is between (a) property that is an aid to creative work and (b) property that is an alternative to it. There is something natural and healthy about the former – the private property of the working proprietor; and there is something unnatural and unhealthy about the latter – the private property of the passive owner who lives parasitically on the work of others.”<sup>8</sup> He adds that the first property is small-scale, personal and local, does not generate large private wealth, and its social benefits are extraordinary. The problem of size is therefore crucial to the issue of private property. As we move towards the medium size, “the connection between ownership and work already becomes attenuated.”<sup>9</sup> When it comes to large corporations, “private ownership is a fiction.” Agreeing with R. H. Tawney, he writes: “Such property may be called passive property, or property for acquisition, for exploitation, or for power... To the lawyer the first is, of course, as fully property as the second”<sup>10</sup>, whereas private ownership is a *fiction* in the case of a large corporation. I do not say this in defence of lawyers, but in the world of law, fiction, the acceptance of a knowingly untrue statement of fact as true, is known and exceptionally used when it can help to solve a problem or deal with a situation. In other words, if it has a positive effect, if it is of benefit, if it is for the benefit of man. But the pursuit of gigantic dimensions – in Bibó’s study, *mammoth possessions* – is a passion for *self-destruction*. Therefore, it is a necessity “to give a new direction to technological development, a direction that shall lead it back to the real needs of man, and that also means: *to the actual size of man*. Man is small, and, therefore, small is beautiful.”<sup>11</sup> Today, fifty years later, in the name of protecting living nature and the

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8 Schumacher, E.F. (1988) *A kicsi szép: tanulmányok egy emberközpontú közgazdaságtanról*. Budapest: Közgazdasági és Jogi Könyvkiadó. p. 270.

9 Schumacher, E.F. (1988) p. 271.

10 Schumacher, E.F. (1988) p. 273.

11 Schumacher, E.F. (1988) p. 163.

human being in it, this idea would be about sustainable development without growth.

Erich Fromm approaches the same question from the side of the human psyche, based on his experiential knowledge of psychoanalysis. “Our judgments are extremely biased because we live in a society that rests on private property, profit, and power as the pillars of its existence. To acquire, to own, and to make a profit are the sacred and unalienable rights of the individual in the industrial society. (...) The principle is: ‘Where and how my property was acquired or what I do with it is nobody’s business but my own; as long as I do not violate the law, my right is unrestricted and absolute.’ This kind of property may be called *private* property (from Latin *privare*, ‘to deprive of’), because the person or persons who own it are its sole masters, with full power to deprive others of its user or enjoyment.”<sup>12</sup> These norms of property in society also determine the character of its individuals, of each person (*social character*). The overwhelming majority own nothing in terms of capital goods, yet they feel and can feel themselves owners, perhaps because the greatest pleasure is not in the material things, but in the domination of living beings, especially other people<sup>13</sup>. But more on that a little later.

As property grows in size, concentration and centralisation, so does the scale, concentration and centralisation of *ownership power*, which allows for the domination of thousands, millions, even billions of people on a global scale, without a visible empire and total political dictatorship. “In fact, the solution is not to be found in the nationalisation of property, nor necessarily in its collectivisation, but in the *dissolution and humanisation of property relations*”, Bibó<sup>14</sup> wrote and proposed in relation to socialist state property. In other words, the fight is not against the institution of property, but against the creation of what are now global hubs of *domination* called – falsely or fraudulently – property. A review of the development of European society might suggest that “the ever newer *incursions of dominance* appearing

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12 Fromm, E., (1994) *Birtokolni vagy létezni?: egy új társadalom alapvetése*. Budapest: Akadémiai Kiadó. p. 73.

13 Fromm, E., (1994) p. 74.

14 Bibó, I. (1986) p. 70.

after revolutionary reforms are necessary developments of history, and to struggle against them is in vain; (...) Nevertheless, a remedy must be found for this state of affairs. The task is not a simple *change of regime*, but the elimination of the *phenomenon of dominance*.” Without this, “political mass hysteria will become common and extremely dangerous, driving people to the ideology of violence as an ultimate desperate act.”<sup>15</sup> This same idea was articulated in the third declaration of the Preamble to the UN UDHR: “Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.” Tyranny and oppression, subjugation and domination can be created and institutionalised not only on the basis of ideological–political–public power, but also on the basis of private property. Bibó adds: “with the clear articulation of the program on social freedom, humanity cannot rest until it finds the correct organisational forms, the *moral impulses* under which this program of freedom can be realised without the *incursion of dominance*.” Bibó was a true democrat. Even during the Communist dictatorship, he was unafraid to say that “modern democracy aims at the elimination of the concept of dominance, the phenomenon of dominance. The moral requirement of modern democracy is *equal human dignity*, which means that under the banner of the freedom program, every person has the right to express their dissatisfaction with the minority governance and their intention to participate in its removal.”<sup>16</sup> Choosing a different minority, however, merely offers a chance – but by no means a guarantee – against the further incursion of dominance. If the incursion of dominance (any type of dominance, whether it stems from the public state authority, capital ownership, or even a civil movement) is humiliating, it is also an affront to dignity, which is not permissible! Thus, the respect for equal human dignity – not just the dignity of others, but the unconditional respect for everyone’s own human dignity – must become a *moral impulse*. With this, the prohibition of violating human dignity would become a prohibition against the *incursion of dominance*. This prohibition would thus be inscribed as a *principle of natural law* into

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15 Bibó, I. (1986) p. 93.

16 Bibó, I. (1986) pp. 94–96.

the “heart of humanity”, becoming an essential part of human nature. Now, in the early 21st century, the incursion of dominance shows itself to be human nature again and again; reversing it would have to involve a *paradigm shift*. But what would be the *opposite* of dominance, of dominance incursion? Service, self-sacrificing love, *solidarity, mutual co-operation and support*. Being humane to one another, *being a blessing* to one another. Is this possible? To answer this question, it is worth studying in depth the biggest paradigm shift in human history so far, the transition from a hunter–gatherer to a settled and agricultural way of life, especially the emergence of *private property and monogamous marriage and family*, and their impact on human personality and social community. For this review, we need to call not only on legal scholars, but also on evolutionary biologists, ethologists, historians and psychologists, and then, as lawyers (the “engineers of society”), to give our own opinions and find solutions, from which politicians must draw up a social action programme (programmes) and offer it to the electorate.

According to the science of modern evolutionary psychology, man is a *biopsychosocial being*<sup>17</sup>, his personality is formed by the interaction of his *physical*, mental and conscious endowments, natural and social determinants. This ‘interaction’, however, seems simple in description, but in reality it is a very complex and struggling process. The body tries to satisfy its own needs and desires, the soul tries to set a measure for them, the mind tries to control both, to bring them into harmony. Harmony of body, mind and spirit is a prerequisite and guarantee of an adult, whole and healthy personality. A lack of harmony, or a breakdown in harmony, results in mental disturbance, of which there has never been a shortage, and every age has had and continues to have its own mental disturbances. “Evolutionary psychiatry adds an important element to today’s widely accepted biopsychosocial model, the evolutionary perspective, which gives new meaning to many psychopathological phenomena and thus allows a deeper understanding of mental functioning. While today’s biological psychiatry only investigates the pathomechanism of certain mental

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17 Kovács, J. (2007) *Bioetikai kérdések a pszichiátriában és a pszichoterápiában*. Budapest: Medicina. p. 122.

disorders (e.g. how depression develops, by what biochemical mechanisms), the evolutionary approach asks about the aetiology, the cause. This seems essential because, since many psychiatric symptoms are in fact unwarranted but normal defensive reactions, the underlying biochemical processes are probably normal. [...] Pathological panic in a non-hazardous situation is biologically the same as normal panic in a hazardous situation.”<sup>18</sup> So if there are more and more “panic patients” today, it is a sign that our age, our natural and social environment is becoming more and more dangerous for humans. The reasons for this must therefore be explored. The causes may be external, external to man, but some of them (perhaps most of them) are internal to man, which of course has further evolutionary, genetic, human–ethological, cultural–anthropological, etc. causes, which need to be scientifically researched and analysed. As in medicine, it is not enough to react to a symptom, the sick person must be cured as a whole.

The inner gifts and determinations in man are also called man’s nature. According to Michel Kai and Carel van Schaik<sup>19</sup>, man has (at least) three natures. Man’s *first nature* “consists of innate feelings, reactions, and preferences”. These have been genetically fixed over hundreds of thousands of years, and have been efficient in the lifestyle of hunter–gatherer groups, adapted to the ecological and social environment. Included here are such tendencies as love between parents and children, a sense of justice, indignation at injustice and inequality, horror of incest and infanticide, fear of the unknown, a desire for recognition, public esteem and respect, a feeling of gratitude to others for accepting gifts or help, jealousy, disgust, and belief in the supernatural. With the new, settled way of life, new habits, conventions and mentalities have developed. They are cultural products, they have to be learned and if they work, they have to be passed on. The *second nature of man* is our cultural nature, morals and habits, religion as a cultural product, decency, politeness, manners, *civility*. The *third nature of man* is rationality. Basic rules, practices and institutions to which we consciously adhere. These three natures sometimes come

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<sup>18</sup> Kovács, J. (2007) pp. 121–123.

<sup>19</sup> Michel, K., Schaik, C. van (2019) *Az ember három természete: A Biblia evolucionista olvasata*. Budapest: Typotex. pp. 28–29.



into conflict and war with each other. In particular, the more volatile second and third with the first, which is much older and therefore more stable. “With the Neolithic Revolution, processes were set in motion that radically transformed human society.”<sup>20</sup> The food that was gathered and hunted was replaced by food that was grown and bred, and no longer had to be shared. “Free time” ceased, work on the land and around the animals became continuous; theft appeared as a crime, private property had to be protected; the amount of food has increased, but its variety has narrowed; the growing population was threatened by famine and epidemics; matriarchy was replaced by *patriarchy*, women became commodities and property. The “for sale” girls were used for alliances between families or as commodities. The first victims of the paradigm shift, of the *incursion* of possessive and proprietary *domination* on a piece of nature, were therefore women. “The patriarchal world is raising female fidelity to the rank of a norm, whereas sexuality limited to one man is purely a cultural obligation, not a biological determination.”<sup>21</sup> The three main problems that people have been struggling with since they moved to a settled lifestyle, are painstaking work, the recognition of private property, and the embarrassing fact of women’s subordination. “In this respect, the situation has not changed much in 10,000 years.”<sup>22</sup>

A similar view is expressed by Yuval Noah Harari in his book “*Sapiens*”, who says that the agricultural revolution (p. 79) is history’s biggest fraud (p. 81). For 2.5 million years, humans lived by gathering plants and hunting animals, and that all changed just 10,000 years ago. “Rather than heralding a new era of easy living, the Agricultural Revolution left farmers with lives generally more difficult and less satisfying than those of foragers” (p. 83). It has resulted in a population explosion and pampered elites. According to him, it was not so much humans who domesticated the few plant and animal species, but rather they *domesticated Homo sapiens*. “This is the essence of the Agricultural Revolution: the ability to keep more people alive under worse

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20 Michel, K., Schaik, C. van (2019) pp. 62–63.

21 Michel, K., Schaik, C. van (2019) pp. 64–65.

22 Michel, K., Schaik, C. van (2019) p. 71.

conditions”<sup>23</sup> (p. 86). Private property (abundance, scarcity or lack of it) has hierarchised human society. “Different societies adopt different kinds of imagined hierarchies. ... One hierarchy, however, has been of supreme importance in all known human societies: the hierarchy of gender. People everywhere have divided themselves into men and women. And almost everywhere men have got the better deal, at least since the Agricultural Revolution.”<sup>24</sup> Even men who have no private property anyway.

“How can people feel like owners of property when they haven’t any property to speak of?” Erich Fromm posed in his book, “To Have or to Be?”. “Perhaps the greatest enjoyment is not so much in owning material things but in owning living beings. In a patriarchal society even the most miserable of men in the poorest of classes can be an owner of property – in his relationship to his wife, his children, his animals, over whom he can feel he is the absolute master. At least for the man in a patriarchal society, having many children is the only way to own persons without needing to work to attain ownership, and without capital investment. Considering that the whole burden of childbearing is the woman’s, it can hardly be denied that the production of children in a patriarchal society is a matter of crude exploitation of women. In turn, however, the mothers have their own form of ownership, that of the children when they are small. The circle is endless and vicious: the husband exploits the wife, she exploits the small children, and the adolescent males soon join the elder men in exploiting the women, and so on. The male hegemony in a patriarchal order has lasted roughly six or seven millennia and still prevails in the poorest countries or among the poorest classes of society. Emancipation of women, children, and adolescents seems to take place when and to the degree that a society’s standard of living rises.”<sup>25</sup> Several important conclusions can already be drawn from this and from the reflections so far.

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23 Harari, Y.N. (2020) *Sapiens: [az emberiség rövid története]*. Budapest: Animus. p. 79., p. 81., p. 83., p. 86.

24 Harari, Y.N. (2020) p. 136.

25 Fromm, E. (1994) pp. 74–75.

- a) It is the wealthiest countries where the highest level of emancipation, legal equality, and protection of rights for women, children, and youth has been achieved. Presumably, this is because these countries require less proprietorial dominance, less struggle and aggression for mere survival.
- b) In the world's poorest countries and social strata, "overpopulation," male dominance, and, even today, the subjugation of women (wives and mothers) and children are prevalent.
- c) With global migration originating from overpopulated countries, a "population transfer" and the consequent "civilisation transfer", patriarchal systems and male dominance may yet return to the Western world.
- d) The total (biological) "equalisation" of genders fails to resolve this severe issue; on the contrary, it exacerbates it, complicating its solution.
- e) The solution to the problem is to end the phenomenon of domination, or at least to keep it at a manageable level, starting with a "redesign" of the traditional male–female marriage and family, and the male role in it, with a role without dominance incursion.

The roles played within marriages and families between men and women, husbands and wives, fathers and mothers, have undergone enormous changes in the last 100–200 years. We have not yet reached a point of equilibrium, however, and indeed, the pace of change continues to be frantic. These changes are in part positive and in part negative. Positive, if they lead to equality of women and men before the law, full social equality, equal rights for both sexes within marriage. Negative, if they lead to a war of the sexes, the abolition of the male sex (or both sexes), the biological equalisation of the sexes. Negative changes can have unforeseeable consequences both for individual personalities (human nature) and for society, potentially causing a "clash of civilisations." That said, the positive aspects of these changes need to be stabilized, universalized, and supplemented with further changes. To evaluate these changes correctly as positive or negative, we must also consider the underlying reasons, the role shifts that have occurred in socio-economic life, and the everyday lives of individuals and families. The *Industrial Revolution* significantly transformed the

agrarian nature and structure of the economy, and has diminished the *agricultural nature of man*. Today, the *family farm* is no longer a fundamental, defining, and formative element of the national economy in the agriculture, industry, or service sectors. Even the *national economy* itself has been integrated into the global economy, which is dominated by the giant companies of transnational monopolistic capitalism (TMC). This represents a global *incursion of dominance* on national economies (and also national legal systems, national constitutions, and even universal human rights). Labour performed on one's own property has been replaced by outside labour (wage labour), with external workers labouring on someone else's property, creating a society of *wage labourers*. Men (as husbands and fathers) are no longer the sole providers or heads of families. The *bonus et diligens pater familias*, the "good and caring patriarch" known from Roman law, and with it the Hungarian *prudent steward*, were abstracted into legal concepts and general standards of conduct. Their role in the family needs to be thoroughly rethought. The socio-economic role of women has also changed to a similar extent, as they have been integrated into the wage labour society. In the *two-earner family model* that has become dominant, they are as much breadwinners as husbands. However, they have significantly less time and energy left for family, child-rearing and household management, so there is an increased need for men (husbands and fathers) to be involved in these areas. Thus, these significant alterations in external circumstances *reshape* the internal relationships between spouses and within families. The change in the division of labour and burdens between the sexes and in all other roles have become new research subjects in several scientific fields, including family law, sociology, psychology, economics, and human ecology. *Gender studies* specifically focus on these changes and this area of study. While the word "sex" denotes *biological sex*, easily and clearly defined, "gender" denotes *social sex*, which is more complex and variable, dependent on time, space, and upbringing. Biological sex is universally recognised as genetically determined within the natural world, while social concepts of gender, *masculinity* and *femininity*, are exclusively human social phenomena, dependent on time and place. "It includes the qualities that characterise our behaviour as a result of changes in social and cultural traditions and roles, which are instilled

in us from birth by our environment, and which largely determine our behaviour.”<sup>26</sup> It is pointless and harmful to blame and condemn the male sex exclusively for all harms suffered by women – even in a historical perspective. This largely explains why men do not wish to form long-term commitments, to marry or to have children. In an *increasingly fatherless* society, it would be important to make these a more attractive proposition for men, as it was before, but in a different way. “Once family and dealing with children also become important within the male value system, it will liberate man from worrying exclusively about their workplace and social status. In this spirit, the popular Hungarian slogan ‘Change diapers to live a longer life!’ should very much be taken to heart by men.”<sup>27</sup> “The objective of the epidemiological branch of gender studies is to analyse, through objective methods, how the best quality of life, as well as the healthiest and most meaningful ways of living can be ensured for both women and men amidst the new challenges of the 21st century. Consequently, there is currently a greater need for *familism* than for *feminism*.”<sup>28</sup> “This is likely the most important issue of our times. It is at least as essential as the social question raised at the end of the 19th century, which, regrettably, Christianity allowed Marxism to answer. Such is the issue of gender today; hence if we leave the matter exclusively to representatives of other interpretations, the consequences will likely be similar.”<sup>29</sup> The redesign of the *male-female relationship* and the strengthening of the *family* are tasks of paramount importance, as they are the *natural and fundamental constitutive elements* of a society to be *rebuilt* from small communities, a democratic community without dominance. Since even the smallest community consists of sovereign individuals, we need to further explore – to better understand – the dominant nature of the individual, the tendency to dominate the others.

Here, however, let us make a remark: just as there is a good man and a bad man, so in principle there can be a good dominance and a bad

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26 Kopp, M., Skrabski, Á. (2020) *A boldogságkeresés útjai és útvesztői: az érett személyiségtől a kiegyensúlyozott párkapcsolatig*. Budapest: KINCS: L'Harmattan. p. 58.

27 Kopp, M., Skrabski, Á. (2020) p. 62.

28 Kopp, M., Skrabski, Á. (2020) p. 69.

29 Kopp, M., Skrabski, Á. (2020) p. 70.

dominance, a good ruler and a bad ruler. Good domination is rather *service, sacrificial love, blessing* for the one(s) dominated. The name of such a ruler is “put in prayer” (like that of Jesus Christ, who *vincit, regnat, imperat*). There were and are very few of them. Therefore, when we talk about domination, we tend to use it in a negative sense: tyrannical, oppressive, exploitative, coercive, violent, etc. It is bad, although it could be good, and should be good; then it would be *human* (or *divine* rather than human?). In the opinion of many, the dominant nature of man is the fault, or at least the mistake, of the Creator. It may be a congenital defect of man, but it may also be the result of the wiles of the Evil One (Satan).

Péter Popper commences his inquiries with the Biblical narrative of creation. “Then God said, ‘Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground.’ So God created mankind in his own image, in the image of God he created them; male and female he created them. God blessed them and said to them, “Be fruitful and increase in number; fill the earth and subdue it. Rule over the fish in the sea and the birds in the sky and over every living creature that moves on the ground.” (Genesis 1:26-28). And also: “God saw all that he had made, and it was very good.” (Genesis 1:31). In Péter Popper’s interpretation: “Behold the blissful beginning. Man became the lord of the entire created world, of all living beings, except for other people. Man was not given power over his fellow man. Man cannot rule over man. And with this, we have come to Satan’s principal temptation of love. Sadly, the motto ‘Man is not property!’ is not inscribed in human hearts. ... Satan despises freedom! He despises all forms of freedom, favouring only subjugation, dependency, and slavery. He also despises relationships of freedom, equality, and symmetry.”<sup>30</sup> Humans exercise Biblical authority to rule through the societal institutions of possession and property. The essence of possession is *dominance* over the possessed entity, and the essence of property is absolute and exclusive *legal authority* over the subject of property rights. Humans,

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30 Popper, P. (2002) 666: *a sátán a XXI. században: modern ezoterikus tanítások a gonoszról és a sötét szurdokáról*. [Budapest]: Saxum. pp. 69–71.

*interpreting these broadly*, have extended their dominion and power over other humans as well. This would explain why “most deadly conflicts are motivated by acquisition and possession. Strangely enough, it seems that in human relations, the impulses and instincts of acquisition and possession have been humanised the least.”<sup>31</sup> Nevertheless, as Popper writes in *The Scripture. The Old Testament*: – “Power over people is reserved by God for Himself. Therefore (...) any kind of physical, material, political, spiritual-emotional ownership or exercise of human power over another human is forbidden and blasphemous.”<sup>32</sup> This applies to both male and female dominance within a marriage or a family. Instead, the goal should be *unity between men and women*: “That is why a man leaves his father and mother and is united to his wife, and they become one flesh.” (Genesis 2:24). This unity precludes the incursion of dominance over the other party, and this unity should benevolently permeate family life and, through it, radiate throughout the entire social community. Even if this would not completely erase the phenomenon of dominance, the currently unbearable oppressive incursion of dominance could be reduced, at least to a tolerable level. Like István Bibó, Erich Fromm harbours no illusions: “With the slow collapse of the old-fashioned, patriarchal type of ownership of persons, wherein will the average and the poorer citizens of the fully developed industrial societies now find fulfilment of their passion for acquiring, keeping, and increasing property? The answer lies in extending the area of ownership to include friends, lovers, health, travel, art objects, God, one’s own ego. Persons are transformed into things; their relations to each other assume the character of ownership. ‘*Individualism*’, which in its positive sense means liberation from social chains, means, in the negative sense, ‘*self-ownership*’, the right – and the duty – to invest one’s energy in the success of one’s own person. Our ego is the most important object of our property feeling”.<sup>33</sup> However, this negative appraisal is justified only against the type of selfish individualism that prevails at others’ expense. Non-selfish individualism

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31 Popper, P. (2002) p. 82.

32 Popper, P. (2004) *Az Írás: az Ószövetség a Teremtés könyvétől Malakiás prófétaig*. [Budapest]: Saxum. p. 35.

33 Fromm, E., (1994) p. 75.

(self-ownership) that enriches the value of one's self, enriches one's personality, motivates others, and thus promotes a greater degree of freedom and prosperity within the community (the family and the society), can be not only tolerable but outright beneficial. Such a development and actualisation of personality is generally a laborious, contentious process, feasible only through much sacrifice, self-denial, and *self-control*. This can also delineate a possible route for diverting the phenomenon of dominance as self-possession in a more positive direction, transforming it into a force for good. It is not a novel solution. The Lord advised something similar to Cain, whose selfish jealousy had driven him to a fratricidal rage: "If you do what is right, will you not be accepted? But if you do not do what is right, sin is crouching at your door; it desires to have you, *but you must rule over it*." (Genesis 4:7). Ruling over sin, and thus over selfishness, is the condition and program of becoming human. It is up to each individual to decide how far they will go in implementing this programme. And because man is weak and fallible, many people fail on this path, or don't even start. But we must go, get up and keep going, because that is the human imperative. So, what is the meaning and the correct interpretation of the Creator's command to "rule over" the creatures of the Earth in the Book of Genesis? To answer this, three sub-questions must first be addressed: *over what, why, and how should you rule?* On nature, not on other people. Rule to preserve it, to enhance and improve it. Rulers should demonstrate caring, shielding, and protective love towards their subjects. Under such rulership, living nature becomes a blessing for humans. Otherwise, the selfish and evil man becomes a curse to nature and, in turn, to human society. What more can we wish for in the end than, on the one hand, the abolition of domination over other people and, on the other hand, the success of self-control, of the domination over sin, in order to continue becoming human.



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# Saving Family Values<sup>1</sup>



## 1. Relationships and legal relationships in the family

AMONG FAMILY LAW ACADEMICS and researchers there is an old legal adage: *Where family law begins, family ends!* There is something of sadness – a sadness at the failure of a marriage and, in a sense, of a family – that radiates from this thought. It also reflects something of the fact that half of all private lawsuits are divorce suits or ancillary actions. And it also contains a warning: the law should treat family relationships with particular sensitivity! We are talking about the fragile *living conditions* of vulnerable people. Here is a thought – which I heard from my friend András Kőrös, a family law judge – which goes like this: *Family law is the most intimate part of private law!* For example, family litigation is often an exception to the *principle of public access* to the proceedings. It must also be dealt with by the legislature and by all other legal procedures (e.g. notarial, guardianship), in addition to litigation, accordingly. The family is a repository of *sensitive data*, one of the most closed *spheres of secrecy*, a hard core of *privacy* and *private life*, in many respects *lawless*. People who get married do not think primarily that they are entering into a *legal relationship*, but that, because they love each other, are in love with each other, they are joining their lives together, that they want to live with each other, that they want to spend the rest of their lives together. When spouses

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*have a child*, they do so not to establish a parent–child relationship and to acquire and exercise parental rights, but because they want a child together, from each other, who is the fruit of their love, in whom both of their personalities can continue. They live their lives together according to their own set of values, and share common goals and efforts to achieve them. Their lives are now their *married life* and their *family life*, a *private matter* for the two of them, a forbidden zone for unauthorised intruders, and, as a rule, for outside public authorities, legislators and law enforcers. At the same time, this private matter is also the “*most personal public matter*”, because the peace and harmony of the family, its values and its success, the achievement of their goals, are also mostly in the interest of the community. Having children also ensures the reproduction of the community; the child becomes not only a member of the family, but also a member of the larger communities surrounding the family. The joy of parents is also the joy of the community, as are their worries, problems and sorrows, if the community is a cohesive one. As they say, “joy is doubled by sharing, sorrow is halved by sharing”. This is why it is most difficult to distinguish between *private and public relations* in the area of marriage and family life, since small family communities are part of the larger social community and are interdependent. They form unity while preserving and respecting each other’s interests. There is no doubt that the privacy of spouses and family members needs strict, absolute–negative legal protection against intrusive, harassing, harmful and unauthorised interference by outsiders. It is, however, highly debatable to what extent legislative *selection* – even if it is helpful, encouraging or supportive – should “reach into” the internal relations of marriage and the family, and which of these should be included in the scope of legal regulation. And regulation, even if it is necessary and useful, should – as a strict general rule – be as *dispositive* as possible. Married life and family life are a typical medium of *self-regulation* for self-actualising family members who are developing their personalities. The *theory of personality rights* has organised these rights *into concentric circles*. The innermost circle includes not only the *identity* of the personality but also the marital and family life, the hard core of *privacy*. From there, one opens a doorway to the world, participates in the life of other communities, manifests to outsiders, giving insight into one’s own personality

and the life of one's family, but all the while preserving and maintaining freedom of self-determination and providing a path of retreat, the possibility of closing the doorway. At least in a legal sense. The key to both opening and closing is in the hands of the individual, but if he or she is married or in a family, then his or her spouse and the family as a *democratic* community are also *key*. They decide when to exclude or allow the law into their lives. They can set wider or narrower boundaries for their private and family life. Accordingly, the *living relationships* between family members are not all *legal relationships*. In this matter, they themselves are primarily *selective*, with their own rules having the force of law *in their internal relations*. Then comes the legislator, who can regulate the situations it selects, which are deemed to be the most important from the point of view of the public interest, and finally the judge (other law enforcers), who can interpret and apply the usually broad general clauses on a case-by-case basis. If the *legal relationships* between family members are diverse, then the '*lawless*' *living conditions* are even more diverse and even broader. Among them, the most important may be *legal facts*. They may have a legal effect that shapes, modifies or terminates a legal relationship, i.e. they may have legal *relevance*. Examples include *fidelity and infidelity, trust and loss of trust, anger and forgiveness, feelings of belonging and alienation, gratitude and ingratitude, gestures of violence or law, rudeness, aggression, etc.* These are the concrete *values* of marriage and family, both positive and negative. The norms of custom, *morality* or *religion* (prohibitive, permissive or encouraging) also respond to these. But the law *selects* from the many different and diverse multitude of life circumstances, and transcribes the positive elements (behaviours considered as models, exemplary) into law, and considers them *norms*, basic social values, *ordering principles, to be followed*. They are also recognised, respected, protected, reinforced and defended by all other norms (custom, convention, morality, religion) within the limits and boundaries of the society in which they operate. The negative elements, however, are prohibited, prevented and sanctioned. We can also call positive "family norms", which develop human personality, the *constituent* elements of *humanity*, because only humane people (*good people, decent people*) can make good marriages, live exemplary married lives, and create good families and good societies. I would

like to highlight humanity, and some of its essential elements, in the multitude of marriage and family relations (not only legal relations), in order to show their positive ‘spill-over’ effect on society as a whole and their importance. Let’s call them the content values carried by the family, or *family values* for short. These values are the *unity of man and woman*, their *loyalty* to each other, their unconditional *trust* in each other, their mutual *support* for each other, their *commitment* to their *child* and to *parenting*, their *motherly and fatherly love*, their *selflessness* and sacrifice for each other, the *cohesion* of the family, and their mutual help for each other. The set of these values constitutes the value system of *familism*, which takes precedence over all other values. These treasures are like the *family silverware*, or like the *family jewellery*, which is treasured and carefully preserved for generations, and stored away for *difficult, often emergency times*. Valuable (time-tested) and enduring family values are a guarantee of survival in times of crisis. Saving and preserving them is in the vital interest of the individual, the family, the small community and the large social community (state, nation). Let’s first take a look at some of the more important ones individually.

### ***1.1. The union of man and woman***

**THE RIGHT OF ASSOCIATION** is known in public law as the freedom to form a non-governmental (social) *organisation – association, trade union, political party* – and in private law as freedom of *association (company formation)* as part of freedom of contract. These are *public interest or private interest* organisations, but equally communities of interest. In psychology, however, the concept of the *union of persons* has a different, much more important meaning. To the problem of existence, the “full answer lies in the achievement of interpersonal union, of fusion with another person, *in love*. This desire for interpersonal fusion is the most powerful striving in man. It is the most fundamental passion, it is the force which keeps the human race together, the clan, the family, society. (...) Without love, humanity could not exist for a day”.<sup>2</sup> In fact, man, divided into two sexes, was created to be united. The starting point of

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2 Fromm, E. (1993) *A szeretet művészete*. Budapest: Háttér. p. 29.

our existence as human beings is the union of man and woman, i.e. the union of persons based on *love, marriage*. In legal terms, this means that marriage *is a contract*, a union, a fusion of *two autonomous personalities*, a complement and mutual enrichment of each other's personalities. A human couple – a married couple – together is thus “significantly more than the two partners separately. And this community cannot be owned, one can only be part of it. One who wants to possess their partner and the relationship is unfit for a community of life and can only create a community of interests.”<sup>3</sup> Put differently and more simply: unity and *cooperation* lead to success and prosperity, discord and strife lead to defeat and destruction. This has been the experience of *homo sapiens*, but perhaps he has not yet been able to express it in this way.

### 1.2. *Two are one body and one soul*

**THE UNION AND FUSION** of man and woman unites the will, the ends and their means, and also unites the natural faculties that characterise sexuality. The biblical basis for this idea is well known: “That is why a man leaves his father and mother and is united to his wife, and they become one flesh.” (Genesis 2:24 and Matthew 19:4–6). This is added and elevated to the theological level by St. Paul the Apostle: “This is a profound mystery – but I am talking about Christ and the church” (Eph. 5:31–32). Elsewhere he also says: “But whoever is united with the Lord is one with him in spirit” (1 Corinthians 6:17). The members of the Church, therefore, become one body and one soul with Christ and with each other. In sacramental marriage this is not only true theologically. “Therefore what God has joined together, let no one separate” (Mark 10:9). This is reinforced by the natural law that a new human individual can only be created by the union of a female and a male gamete, which implies that a *sacramental* (or ideal) marriage is also the union of the body (genes) and soul of a woman and a man.<sup>4</sup>

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3 Kopp, M., Skrabski, Á. (2020) *A boldogságkeresés útjai és útvesztői: az érett személyiségtől a kiegyensúlyozott párkapcsolatig*. Budapest: KINCS: L'Harmattan. pp. 128–129.

4 Hársfai, K. (2020) 'A természeti törvény és a házasság Javier Hervada jogfilozófiájában' in Fridvalszky, J., Tussay, Á. (eds.) *A Természetjog Napja II.: konferenciatanulmányok*. Budapest: Pázmány Press, p. 165.

### 1.3. *Community of life and love*

**THIS IS THE TRANSCENDENCE** of *commonality of interest*, the *overcoming* of property and/or personal interests, which has characterised marriages from antiquity to the present day. Our whole Christian culture is based on sacrificial love, which is selfless and not selfish, not profit-seeking. Marriage of convenience is the existential mode of *possession*, the communion of life and love is the communion of *existence*. In the former, the parties *want to get more* through each other, in the latter *they want to become more* through each other. This altruism is of course reciprocal, each party putting the other's personality, the enrichment of his or her humanity, first, and receiving and hoping for the same in return. Each party finds its true self in the other. Each *party* becomes *one* with and a *whole* in the other.

### 1.4. *Total commitment*

**A LIFELONG MUTUAL** and total commitment to each other. Perseverance with each other in good times and bad, in sickness and in health, for richer or poorer. The answer to this question can only be a clear and unequivocal "I do". It is a promise that lasts until death, a promise and hope of indissolubility. "From the standpoint of creation, eros directs man towards marriage, a bond that is *unique and definitive*. In this way and only in this way is its inner purpose fulfilled. The monogamy of marriage corresponds to the monotheistic image of God" (Pope Benedict XVI: *Deus caritas est* (encyclical)).

### 1.5. *Monogamy*

**"MAN IS NOT BY NATURE MONOGAMOUS**, but the laws of states at a higher stage of social development generally make it impossible for one to live with two persons in a legally recognised conjugal relationship at the same time. This rule is bilateral and applies to both spouses".<sup>5</sup> But what could have caused the change in the originally

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<sup>5</sup> Nizsalovszky, E. (1963) *A család jogi rendjének alapjai*. Budapest: Akadémiai Kiadó. pp. 25–26. and p. 275.



natural polygamous tendency and the legal prohibition of bigamy (especially polygamy) today? The first reason is biological: sexual attraction, mutual feelings of sympathy, the “chemistry of love”. The second is a social one, which is answered by the debate between Plato and Aristotle. The former believed that a community of children and women would promote unity, as everyone would say “this is mine” to the same thing. The latter, however, pointed out that “they care least about what has the most owners: everyone cares most about their own, less about the common, or only as far as it is theirs, and because they think it is already being cared for by someone else, they tend to forget about it.”<sup>6</sup> The third reason is medical: the awareness of the consanguinity (genetic) link has contributed to the development of the *incest ban* for the evolution of humanity. Thus, the already existing *natural* monogamy was later reinforced by the *social* institution of private property, the need for security in the inheritance of wealth. Historical experience has confirmed and even strengthened monogamy in every respect. “Joseph Daniel Unwin found, from his study of outstanding historical civilizations and dozens of tribes, that advanced cultures were based on communities of monogamous relationships, while cultures that provided a broader framework for sexuality were in decline or remained underdeveloped.”<sup>7</sup>

## 2. Becoming, being, and remaining human

“AND THE GREATEST GOAL, here, in this earthly existence, Is to be a Man at all times, in all circumstances.” These are two lines from János Arany’s poem ‘*Domokos napra*’ (*For the name day of Domokos*), and there is no more succinct and meaningful way to define one’s purpose of life. To achieve the goal of *being human*, it is a prerequisite to *become human* and to *remain human* in all circumstances. But it’s not just any kind of person one has to become, and it’s not just

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6 Lukácsi, T. (2010) *Hermész szobra a fában: Arisztotelész és álmainak állama*. Budapest: Gondolat. p. 77.

7 Gallai, S. (2019) ‘A családpolitika helye a demográfiai válsággal küzdő Európában’ in *Európai családpolitikai kitekintő*. Budapest: KINCS, p. 15.

any kind of person one has to remain. One has to become and remain a *good person*. According to Aristotle, "... the government of the state takes the greatest care to make the citizens something, namely *good*, and to enable them to do the *moral good*. ... For the *good man* judges in every instance correctly, and in every instance the notion conveyed to his mind is the true one. ... the good man alone is entitled to honour."<sup>8</sup> According to Konrad Lorenz, this should also be the main consideration when *choosing a mate* before marriage: "It is enough to remember this obvious and simple requirement when choosing a mate: the girl must be *decent* – and the boy no less so."<sup>9</sup> However, the primary stage, the elementary and high school of our birth as human beings, of our becoming good and decent human beings, of the *fulfilment of our humanity*, is not the good state, but the good and decent family. The main goal of every such family is to "*make a good man*" out of its children and grandchildren, to *raise good and decent people*. Human goodness, the good man, is in every child, like, according to Aristotle, the statue of Hermes in the trunk of an olive tree<sup>10</sup>, or the statue of David in a block of marble according to Michelangelo; only the excess has to be carved off. (Of course, this is *an artistic task*, and not every "woodcarving" or "stone-carving" parent is a great artist!) A *good and decent man* is also called a *humane man*, and the goodness and decency of all mankind so far achieved is *humanity*, the violation of which is a crime against *humanity*. The humanity of individuals and of humanity can be infinitely extended, improved, perfected towards the artistic level, the process of *becoming human* is not and can never be over. If we look at human history and look around our 21st century world, there is plenty of cause for despair. But we cannot give up hope and purpose. "Is this a person or a monster?" – we ask when confronted with a brutal, shall we say *inhuman* act. According to Aristotle, the most serious threat to a man without virtues is *re-animalization*.<sup>11</sup> As Miklós Radnóti, the martyr poet of Hungarian fascism, wrote: "I have lived in an age when man was

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8 Arisztotelész (1987) *Nikomakhoszi etika*. 2nd edition. Budapest: Európa Könyvkiadó. p. 23., p. 67. and p. 104.

9 Lorenz, K. (1988) *A civilizált emberiség nyolc halálos bűne*. Sopron: IKVA. p. 60.

10 Lukácsi, T. (2010) p. 80.

11 Arisztotelész (1987) p. 179.

so vile that he killed willingly, with lust, not by command.” One who is born a man and has started on the path to becoming a man can no longer be a predatory beast, not even *an apex predator*, no longer a *ravening ape* (Rudger Bregman)<sup>12</sup>, nor a *mad ape* (Albert Szent-Györgyi)<sup>13</sup>, man cannot be the *wolf of man* (*Homo homini lupus est*: Thomas Hobbes)<sup>14</sup>. He must domesticate, *ennoble* and *tame* himself, his family members, his neighbours, his brothers and sisters in the broadest sense, the great family of humanity. This is proven by the brutal wars that are still going on, in which the humanity of man is a sure loser, even on the side of the “winner”. Instead of *taming*, we could say *humanising*, but *taming* is better. It is not by chance that Jesus called *meekness* one of the eight blessings. “*Blessed are the meek, for they shall inherit the earth.*” (Matthew 5:5.) The savage, the aggressive, the violent – both within and outside the family – strip themselves of their humanity, disrespect their own dignity, that of their family members and that of others; the warring destroy each other and endanger the world, the very existence of humanity on earth. Here, too, we must admit that *warring husbands and wives, parents and children, often even brothers and sisters, who kill each other* “only” verbally, sometimes even physically, in their daily lives, are also *warring*. It is very likely that *family peace* is not only a “natural and fundamental component” of social peace, but also of *world peace*! *Justice and fairness* are the means of peace according to law, and *love* is the unanimous means of peace according to our faith and the various religions.

### 3. The supreme law

**IN ONE OF THE BEST-SELLING BOOKS** of recent years, historian Kai Michel and fellow evolutionary biologist Carel van Schaik write: “The Neolithic Revolution broke with a *fundamental law* of human

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12 Bregman, R. (2020) *Emberiség: mégis jobbak lennénk, mint hittük?* Budapest: HVG Kv. p. 52.

13 Szent-Györgyi, A. (1983) *Válogatott tanulmányok*. Budapest: Gondolat. pp. 237–270.

14 Bregman, R. (2020)

coexistence that had governed everyday life for thousands of years – the rule that *food must be shared* (emphasis by me, L.B.). The newfound idea of property has undermined the solidarity of primitive man. What had been a common good – food from nature – was suddenly monopolized. With the Neolithic Revolution, processes were set in motion that radically transformed human society. ...hunter-gatherers, lacking the means to accumulate reserves, had to invest in social relationships. With mutual assistance, they could survive emergencies. Cooperation was everything, *solidarity* was the life insurance.”<sup>15</sup> As far as settlement and the transition to agriculture (crop and livestock farming) is concerned, it was indeed the biggest *paradigm shift* in the history of mankind (so far). But as for the break with one of the fundamental laws of human coexistence, the sharing of goods and communal solidarity, it could never be complete. One of the main questions of history has always been the choice between *selfishness and alienation* on the one hand, or *cooperation and solidarity* on the other. The same question in other forms: is *individualism* or *collectivism*, *egoism* or *altruism*, *egocentric* or *sociocentric view of man and society* dominating human, family and social, small or large community coexistence? Instead of the dominance of one, what proportion of the two (*selfishness and altruism*) would be most appropriate? The main question is no longer who is responsible for themselves, or whether private property should bear public burdens, have social obligations, or be subject to social responsibility, but in what proportion and to what extent it should be compulsory. At the stage of social development reached so far, in the consumer society, the social market economy and the welfare state, social security and equal opportunities for all can only be ensured through the sharing, social and broad *redistribution* of wealth. So the supreme law today is still that *wealth must be shared*. Not just food, but *material and immaterial* (intellectual, cultural) goods in general, preferably fairly and equitably. This is the purpose of the great social *solidarity institutions* (free and compulsory education, health care, pensions, social care and support systems, etc.). However, it should also be stressed in this context that the family remains the primary arena

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15 Michel, K., Schaik, C. van (2019) *Az ember három természete: A Biblia evolucionista olvasata*. Budapest: Typotex. p. 62.

for the sharing and redistribution of wealth, community cooperation and solidarity. Family members, relatives are obliged to provide for each other, spouses are obliged to support each other. Parents, re-writing natural law into human law, even at the expense of their own maintenance, have a duty to care for their children. Children who have reached the age of majority are obliged to look after their parents, grandparents and, exceptionally, their minor siblings. These are all human rights, constitutional and legal norms derived *from the supreme (natural) law* of sharing food and goods, but they can also be derived from *the commandment of selfless and sacrificial love*.

#### 4. The greatest commandment

ACCORDING TO JÁNOS ZLINSZKY<sup>16</sup>, “Christianity calls solidarity *love of neighbour*”. When a Pharisee, an expert in the law, wanted to tempt Jesus and asked him: “Teacher, which is the greatest commandment in the Law? – Jesus replied: Love the Lord your God with all your heart and with all your soul and with all your mind. This is the first and greatest commandment. And the second is like it: Love thy neighbour as thyself. All the Law and the Prophets hang on these two commandments.” (Matthew 22:34-40). The building and running of large social solidarity institutions (or one could say *charity institutions*, such as charity homes, hospitals, schools) is the greatest civilisational achievement of Christian Europe, an example for all humanity, a great attraction for global migrants. That is why Paul VI said, and Pope John Paul II often voiced, that Europe *is building a civilisation of love*.<sup>17</sup> To this end, we must – as Robert Schuman wanted – *save and revive the soul of Europe*.<sup>18</sup> Part of this civilization is also that “*gestures*

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16 Zlinszky, J. (2007) *Közéleti és jogászai etika a gyakorlatban*. Budapest: Szent István Társulat. p. 20.

17 Vereb, J.M. (ed.) (2010) *Minden napra egy gondolat: napi meditációk a nagy pápa imádságaiból és írásaiból Jerome Vereb atya szerkesztésében*. Budapest: JLX. p. 174 and p. 194.

18 Lejeune, R. (2015) *Politika és életszentség: Robert Schuman, Európa atyja*. Budapest: Magyar Máltai Szeretetszolgálat. p. 249.

*of violence must be replaced by gestures of love*”, as István Bibó<sup>19</sup> put it. “Repay with bread”, “turn the other cheek”, overcome evil not with something worse, but with good, with the power of love. Break the otherwise endless chains of evil, malice, anger, hatred, revenge, warfare. This is the most difficult commandment of love, of which the family is the true workshop, school and training ground. The priceless values of the family as a *community of love* are the love and affection of man and woman as husband and wife for each other, the love of parents for their children, the love of grandparents for grandchildren, the love of children and grandchildren for their parents and grandparents. Separate mention should also be made of the different and balancing *love of father and mother*.

A father’s love is a strict, conditional, tasking, demanding and disciplining love that must be earned or it can be lost. A mother’s love is unconditional, devoted, accepting and welcoming, tolerant and forgiving. These two kinds of love complement, balance and limit each other. It is in the best interests of children, a universal human right, to be raised in a complete and harmonious family, to receive the love of both parents and to be able to accept and reciprocate it, and to pass it on in their own families. The different kinds of, but united, *parental love* are the prerequisites for children to become mature adults who can control themselves, limit the evil in themselves, forgive others, balance themselves, live a harmonious marriage and a peaceful family life. The *right to live in a family* has itself “grown up” along with children; and the right to *a family* is a universal human right for all people. One example is the desperate struggle of *infertile couples* to have *their own child together* and thus their own *complete family*.<sup>20</sup> The family as a *community of love* is, by virtue of its universality, a fundamental component not only of a society, but also of *the civilisation of love* as a whole, the “family of humanity” [Article 16(3) UDHR]. In the European civilization, also called Christian, the love of a *stern father* and a *merciful mother* has

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19 Bibó, I. (1986) *Válogatott tanulmányok. 3. kötet 1971-1979*. Budapest: Magvető Kiadó. pp. 44–45.

20 Lovászi, L.G., Szoboszlai-Kiss, K. (2021) ‘A mesterséges megtermékenyítésről mint az élethez való jog lehetőségéről és az ebből származó etikai dilemmákról’, *Jog Állam Politika*, 8(2), pp. 61-96.

risen above man, to the rank of religion, to raise man above himself. This also explains Mary's *divine motherhood*, the *cult of Mary*, the multitude of Marian shrines, and the fact that many countries call themselves *the country of Mary* (including Hungary, since the will of King Stephen).

## 5. Gratitude and trust

**“EXPECT GOOD IN RETURN FOR GOOD”**, says the popular saying, which is an ancient, even *prehistoric* wisdom based on experience. Already in the hunter–gatherer horde community, *sharing* food was obligatory, for which *gratitude* and, if the occasion arose, *reciprocation* were due. The system of sharing–gratitude–reciprocation could only work on *the basis of* strong *trust* between community members. This system of give–take–thank–return was *not market-based*, but it was not entirely altruistic either. Reciprocity was *a moral imperative*, and *justice* demanded it. The community as a whole monitored the functioning of the system, keeping a strict record of the “performance” of each individual, thus developing the humanity and morality of each other. It was worth *being loyal* to a well-functioning community, sticking to it even in times of difficulty, and persevering with it. *Selfishness*, on the other hand, was life-threatening, and led to *ostracism*. The human qualities that are useful and positive (valuable, moral) for the coexistence and survival of the community have thus *been part of human nature* since prehistoric times, and – although they have been eroded by private property, then by the market and the competitive economy, by wage labour and the profit motive – they are still there in the depths of the soul. In the higher stages of moral *ennoblement*, man has also realized that “it is better to give than to receive”, that is, it is better to inspire a feeling of gratitude in others than to owe gratitude to others. The value of a person can be measured with the total amount of gratitude felt towards them by others. In other words, one is only as good as he or she is of use to others. In the plain language of the law, it is better to be a creditor than a debtor. But cooperation is also encouraged by the ancient saying “today for me, tomorrow for you”, if we continue this way: “today I have, so I help you; but I know that

if tomorrow it is you who have, you will help me too. I trust you, so I hope so.” These positive human qualities are still fundamental values, principles of individual and family conduct, value systems, social community ordering principles, norms governing human behaviour, even if they are not enshrined in law. At their root is the ancient law of nature, the supreme law of the hunter–gatherer way of life – as we have seen, still in force today –, the law of sharing food, moral goods and experiential knowledge. It is the law of mutual cooperation, in today’s terms, the law of *social community solidarity*, which has operated on the basis of gratitude and trust, justice and fairness for more than two million years. It’s written into the human genes (hardware) and that’s in no small part why it still works today. Private owners’ selfishness, greed, envy, voracity, avarice, and other sins mean that the system needs the strength of *faith, hope, and love of neighbour* to work. Today, human goodness and the basic values of humanity cannot be left to nature, but need the power of human laws and divine commandments. Because if the organizing principles and fundamental values that hold people together and hold communities together do not work, then the community (the family, the nation, Christian Europe, the global human community) will disintegrate, atomize, turn against itself and each other, and be destroyed.

*The role and importance* of a core value, *trust*, should be highlighted. The trust between spouses, family members, contracting parties, members of a company, business partners, political actors, is translated *into* social *trust capital*, in other words *social capital*, which is one of the most important guarantees for the functioning of the economy and society. But its “place of birth” is the family, its time of birth is the birth of the child, and its source is the *primordial trust* that develops between the infant and the mother, and then between the child and the father. Mária Kopp and Árpád Skrabski write about this: “How does the *capacity for trust* develop within the family, how does the family contribute to reducing hostility? Perhaps the most important basic concept in modern psychology is the concept of *primordial trust*. The first period, the first three years of mother–child or father–child relationship, is crucial for the development of this certain state of primordial trust. What is the state of primordial trust? Total self-surrender between mother and child and father and child, as the



father is equally important in the development process. This direct and complete alignment provides a solid basis for personal development. A person with primordial trust has the courage to build long-term relationships, usually daring to approach others with openness and trust.”<sup>21</sup> The greatest asset of the family and society is *the child*. The best interest of the child (in the Hungarian legal language, “best interest above all else”) is to grow up in a complete and harmonious family. This means that in such a family, the child is surrounded by the love of his parents (and grandparents), and therefore has absolute trust in them and feels safe. The opposite is also clear from what has been said: the lack or loss of trust makes a person incapable of lasting commitment (marrying, having children); he or she dissolves the marriage, breaks up the family. Unreliability also causes serious disruptions outside the family, in the world of work, in economic life, in contractual transactions, in politics, in the whole of social life in general, in the whole of the human world. Francis Fukuyama sees the lack or decline of *social trust capital* as one of the main causes of The Great Disruption<sup>22</sup> that he describes, and this is no longer a problem of the USA, but of the “Christian West” as a whole. The other two causes of The Great Disruption are the spread of violence and crime, and the breakdown of the family institution. These three main causes are interrelated and stimulate each other. Stopping and reversing the self-expanding process of decay should start with saving and strengthening the source of primordial trust, marriage and family, and continue with a major rebuilding on that basis. But this *also* requires attachment to marriage and family, in other words, *fidelity*.

## 6. Loyalty

**LIKE TRUST, LOYALTY IS** a regulating principle in relations between people, but especially between spouses and family members, and is also, in general terms, a social regulating principle. According to the

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<sup>21</sup> Kopp, M., Skrabski, Á. (2020) p. 94.

<sup>22</sup> Fukuyama, F. (2000) *A Nagy Szétbomlás: az emberi természet és a társadalmi rend újjászervezése*. Budapest: Európa. pp. 47–90.

National Avowal of our Fundamental Law, “We hold that the family and the nation constitute the principal framework of our coexistence, and that our fundamental cohesive values are *loyalty, faith and love*.” Loyalty may have existed in primitive societies, in the period of polygamy and matriarchy, as *loyalty to the community* that protects and supports the individual. However, it gained great importance as *marital fidelity* in the relationship between a man and a woman, with the development of *monogamous marriage*, primarily to ensure the security of procreation and avoid incest. It was further enhanced by the spread of private property and the family economy, the inheritance of property, and the security of inheritance of property and the material and birth privileges involved. The division of labour and the exchange of goods, the establishment of companies and contractual exchanges cannot work without trust and loyalty. Just as the essence of monogamous marriage is fidelity to each other, mutual support for each other, promotion of each other’s interests (even altruistically), and standing by each other in good times and bad, in sickness and in health, in riches and in poverty, so there is a generalised *principle of contractual fidelity, pacta sunt servanda*. According to the doctrine of classical Hungarian private law, the essence of a contract (like the “marriage contract”) is “faithful regard for the interests of the other party”, which, if mutual, makes the contract a *win-win game*, since this is the original interest and will of both parties. There are risks and losses in any long-term commitment (including “marriage for life”), but these must be dealt with in a spirit of *contractual fairness, clausula rebus sic stantibus* not by immediately ending the relationship. Today loyalty to work, vocation, oath, local community, country, faith, constitution, service, word, promise, etc. is expected or required. Loyalty is also built on in the “consumer” society, with loyalty points and apparent discounts during loyalty periods being used as advertising and marketing tools to increase sales and profits. But loyalty itself is a category without commercial benefit. The “buy, use, throw away, replace for a new” *consumer mentality* is in fact an erosion (dilution, relativisation) of loyalty, which is damaging to the wasteful and unsustainable economy, but also damaging to marital and family relationships. It would be good to restore the status of *loyalty as a virtue*, to take its weight and importance seriously. *Faith and loyalty* stem from a common source; ‘my faithful husband’ and ‘my

faithful wife’ also mean my loyal husband or wife. It would be good to return to strong and lasting relationships based on loyalty and trust, to family communities, and to family values in general, instead of loose and temporary partnerships without children. As did the prodigal son who squandered his father’s inheritance, but who, in the joy of his conversion, was welcomed back by his father with a motherly, joyful and forgiving love.

## 7. Good man, good husband, good father, prudent steward

ROMAN PRIVATE LAW is the cultural heritage of European civilisation and a pillar of the European Union (alongside Greek philosophy and Christian morality). But the big and open question is: what kind of heir the European Union is to this heritage, to human virtues, to the ideal of the good and dutiful family guardian, to the commandment of love? In the words of Károly Szladits, these have been *guiding ideas* for thousands of years<sup>23</sup>; but are they still *guiding ideas* today, and if not, can they be again? If so, and they have only been weakened (relativised), how can we reaffirm them? To what extent has Europe preserved and to what extent has it squandered its civilisational heritage, its fundamental values; and what it has squandered, why and how did it? What other new “values” has it exchanged these for, and has the exchange been beneficial? The fact that an idea or ideal is not fully (100%) realised is not necessarily the fault of the idea, but rather of the person trying to realise it: they have misunderstood or misinterpreted something in bad faith, or they have chosen the wrong method or unacceptable means to achieve it, or they have not made enough effort to achieve it. Suffice it to refer here and now to the ideals of monogamous marriage, of conjugal fidelity and trust, of community of love and of a harmonious family. Szladits likened the idea of *justice* to the North Star: the goal is not to reach it, but for it to point the way to our goals on earth, sailing on the open ocean, even at night. According to Elemér Hankiss, even if ideas seem to be fictions, humanity cannot exist and

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23 Szladits, K. (ed.) (1938-1941) *Magyar magánjog 1. köt. Általános rész, személyi jogok*. Budapest: Grill Kiadó. p. 38.

survive without them. The constructs of human consciousness are ideas “which have no counterpart in the material world, but which nevertheless enable us to deal with this material world”. “It may turn out that castles in the air built from symbols are real castles after all. And sometimes even stronger than fortifications built of stone.” “To build constellations out of symbols, to build a world of freedom, reason and dignity in a silent and empty universe: this, I believe, was a work worthy of a man. A real human adventure.”<sup>24</sup> The construct of Roman private law, its fictional, symbolic and ideal *man*, was the good and diligent father of the family, the *bonus et diligens pater familias*. The same in classical Hungarian private law is the *prudent steward* or, more generally, the *decent man*, the *honest man*, in the language of Christians the *good man*, and in Aristotle’s language even the *virtuous man*. In other words, there is no *shortage of human ideals* in European culture and civilisation. But what has prevented them from happening? The two fundamental institutions of the same Roman private law, namely *property and possession*, or *dominion and power* that are their essence. The domination and ownership of slaves, land, and then capital (as now intellectual property and “digtech”) differentiated and hierarchised human society. Dominion and power over things and goods extended to other persons, including people, and within the family to the wife and children (power of the husband and father). A struggle began for the liberation of man, on the one hand for a fair (relatively equal) distribution of property rights, on the other for equality before the law, and then for full equality of rights, which has now reached – by overstretching the concept of equality – biological equality, the abolition of gender, the demand for full equality of all human beings. This is no longer necessary to realise the ideal of a *good father*, a *good mother* or a *good human being*. What is necessary – *solidarity, love, loyalty, trust, gentleness and peace* – is also sufficient. In a wage-worker and consumer society, the family is no longer the basic unit of the national economy, but a *consumer community*. In the two-earner family model, the *good and caring family mother* has indeed become an equal partner, with equal rights, *with the good and diligent family father* – in

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24 Hankiss, E. (2014) *Emberi kaland: egy civilizáció-elmélet vázlatja*. [Budapest]: Helikon Kiadó. pp. 409–412.

*abstracto*. One could say that a social model of the “new” *ideal human couple* has been born, or at least can be born. There is no longer any need for matriarchy or patriarchy, neither party will tolerate female domination or male domination. Neither spouse is the owner of the other, nor are the parents the owners of their child. Never before has there been such a chance for real, non-formal equality between men and women. Now we have to learn to do this, to seize the opportunity, to use it properly. The diversity of relationships within the family provides a way, an opportunity and a chance to do this. The task must start with a fair and equitable sharing of the burden within the family, balancing tasks and responsibilities. Of course, this needs to be discussed in detail, agreed on a couple-by-couple, family-by-family and social level. The instrument of agreement is *democracy*, inherited and learned from ancient Greek civilisation. Another fundamental question about democracy as a political idea is how we use it, how we use it in the family and in society.

## 8. Family democracy

**IF THERE IS FAMILY LAW** – why not family democracy? And there is; as it is, different for each couple and family. The participants are the wife and husband, their children and grandchildren, depending on their age and maturity, the spouses’ parents (in-laws), grandparents and siblings (brothers-in-law), but also members of the extended family or close family friends. In everyday married and family life, there are countless small (everyday) and, when they arise, big and serious issues that need to be discussed and decided in order to make a marriage and a family work. Spouses and family members *have to get used to each other (polish)*, which means sacrifices, changes and alterations, conflicts and their resolution. *It is also a democratic discourse*, on issues such as education and training, choice of profession and vocation, choice of workplace and shared residence, housing (renting or buying), cars, holidays or work abroad, income and expenditure, borrowing, education of children, religious and moral values, political views, etc. The issues within the family are surrounded by the issues and concerns of the external communities surrounding the family (the

condominium, the family business, the municipality as a local community, the country, Europe and humanity as a global community), which *influence* family decisions. But the converse is also true, if not to the same extent as the former: the infinite number of marital and family discourses and decisions also influence and shape the fate of the country, Europe and the world. The decisions of individual *households*, for example, have overall *public finance*, fiscal and therefore economic significance. The same, or something similar, can be said about many other important issues. So, if it is true that “the family is the natural and fundamental group unit of society”, as stated in Article 16(3) of the UNCRC, then it is also true that *family democracy is the natural and fundamental group unit of social democracy*. The culture of democratic *debate*, respect and consideration for the minority, respect and enforcement of majority decisions, all start in the family and *radiate* from there. The family support system must therefore also include support for and development of family democracy. The very essence of the rule of law, the *system of limits and balances*, is born in the family – in a not easy, even very difficult learning process – and is transferred from there – also as a result of a not easy and simple learning process – into social practice.

## 9. Basic duties

**PURSUANT TO ARTICLE 29(1) UDHR:** “Everyone has duties to the community in which alone the free and full development of his personality is possible.” It is a declaration of great richness, profound meaning and significance, despite – or rather because – it is formulated at the highest level of generality, of legal abstraction. It is in fact a very broad, wide-open general clause, which is filled from time to time and on a case-by-case basis by the legislative (constitutional and law-making) powers (forums) and the law-enforcement bodies (courts, authorities) of the nation state with concrete content. Suffice it to refer again to the public obligations and social responsibilities of the *owners*, compulsory *elementary education*, compulsory *vaccinations and screening tests* to protect public health, the obligation to pay pension contributions and to acquire length of service, the linking of certain social

benefits to employment or other obligations. New questions are always arising: should everyone receive a minimum income as a basic right or only in exchange for fulfilling an obligation (e.g. public work); should immigrants have only basic rights or also obligations towards the host community; should a social benefit in general be a basic right or a *purchased right* linked to the fulfilment of obligations? These questions are also difficult to answer adequately in the area of *material goods*, given budgetary constraints. For *intangible* (ideational, cultural, moral, religious) *goods*, the situation is even more difficult, for other reasons. There, individual freedom is given greater emphasis. But this freedom is not freedom *from the community*, but freedom *in the community*. The individual first *receives* something from the community (culture, education, health, security), and in return has to *give* something back. This has been the price of being in the community for millions of years. And the elementary and high school of being in community with obligations is also marriage and family. Marriage and starting a family are also commonly understood as a *lasting commitment*, something that newer generations, brought up on the basis of *individual freedom*, are less and less able and willing to make. This is the main reason for the lack of social reproduction (depopulation) and the decline in the propensity to marry and start a family. So there is a great responsibility on the part of today's young people, but also on the part of the state, which encourages and supports marriage and family formation.

## 10. Covenant of life

COMPARED TO THE ECCLESIASTICAL *sacramental* marriage (indissoluble, voidable only exceptionally), the *civil*, essentially *contractual* marriage has changed significantly: it is easier to contract, but also to dissolve (first on the more difficult grounds of *fault*, then on the increasingly easier grounds of *breakdown*). This simplification has continued with the widespread spread and legal recognition of *de facto* cohabiting relationships without marriage. Instead of a *legal* definition of the family, the *sociological* concept of the family was born, and then it too fell into crisis. The drive to tackle the crisis has intensified on the part of the state (the constitutional and the legislative power),

society and couples who marry. The former defined and favoured the traditional heterosexual marriage between a man and a woman and the family that would be formed by having children, while the idea of *covenant marriage* was raised among those who wanted to marry in order to strengthen the commitment and content of their own marriage. This would be confirmed by a (mainly moral) contract on *personal law* covering all other relevant matters, instead of or in addition to the *matrimonial property contract*. This contract is essentially about loyalty, trust, mutual support, shared and agreed core values, conflict prevention and avoidance, and, if divorce does occur, about conducting it humanely and resolving its ancillary issues fairly and justly. But law is not omnipotent, as we already know. In some US states (e.g. Arizona, Arkansas, Louisiana), where laws on covenant marriage have been enacted, less than 1% of married couples have chosen this route, but even these have not proved to be more durable than others. And the reverse is also true: there are a fair number of well-functioning, long-lasting and sustainable marriages among non-covenant marriages. In other words, like all essential things in life, it depends on the humanity of the participants, mutual respect and the enforcement of fundamental values. Settling the diverse internal relations of marriage and the family along the lines of fundamental values and principles is a private matter for the parties. However, long-established traditional values and normative principles can be enshrined in laws, constitutions and international human rights conventions to *guide* parties in *self-regulation*. This is part of the protection of marriage and family by society and the state, which both institutions need and deserve. They are worthy, because both are sacrifices of love, without which society will fall apart and disintegrate into atoms. While the diversity and variety of marital and family relationships is as valuable to society as *biodiversity* is to nature, there are core values that must be upheld in every marriage and family because they are a source of values that radiate to society as a whole, and are also core values of society as a whole. Without these values, the family, and society, too, will – according to the law of the chain reaction of nuclear fission – disintegrate into atoms and be destroyed. Let us call these the fundamental *values that have sustained* our honed values so far *in the evolutionary and civilizational development of man*. Just as *water, air, sunlight and fertile soil*



are vital values in nature, in their absence or through human pollution, life on earth is dying out. The fundamental principle of the protection of the natural environment is the *non derogation principle*, according to which the level of protection provided by the law and achieved so far cannot be reduced, but only increased. The time has come for the same principle to become a fundamental principle for the protection of marriage and the family. Let us not give in to the temptation of extreme and selfish individualism. Let us not allow the derogation of our fundamental values, the squandering of “family silver”, the destruction of our family ideals and values. “It is clear that the breakdown of families is leading to a serious demographic and health situation, the disappearance of the social safety net and threatens the very existence of society. Today, then, those who do the greatest service to humanity, those who defend justice, are those who strive to defend the institution of the family.”<sup>25</sup> The overwhelming majority of people believe that a good marriage and a harmonious family are the greatest source of our values, our humanity and our happiness, and that nothing else can replace them. Saving, rehabilitating of family values and averting their crisis does not only serve to improve social reproduction, but much more than that: it is about stopping and reversing the general social crisis of values, and outlining the contours of a new, sustainable vision of man and society. Putting love at the top of the value hierarchy is the main direction of the new paradigm shift. And the basis of love is marriage and family.

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25 Kopp, M., Skrabski, Á. (2020) p. 165.

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# The Value of the Family – in a Time of a General Crisis of Values<sup>1</sup>

(The value of faith and love)



“But it was precisely in Europe that Christianity received its most historically influential cultural and intellectual form, and it therefore remains intertwined with Europe in a special way”<sup>2</sup>

**I MUST SAY UP FRONT** that I am not writing a narrowly conceived traditional jurisprudential essay. We have another brutal war raging in our neighbourhood, with weapons, hatred, violence, and we are terrified that the world will fall into it. We have no words, no institutions, no means against the destruction of war, in favour of peace. Perhaps because all around us in the world there are wars not only over material interests, but also over the interpretation and dissemination of fundamental concepts, moral values, beliefs, faiths, ideals, visions, and their enforcement, and these too are waged with anger, hatred, verbal and virtual wars, and these too often turn into real, murderous anger and war. Religious wars, political struggles, violent movements foment hatred, fear and terror, but these are not things that can be lived with

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2 Benedek XVI (2021) *Benedek Európája: a kultúrák válságában*. Budapest: Magyar Máltai Szeretetszolgálat. p. 28.

for long. After all, Hobbes would have been right, “all against all” and “man is the wolf of man”? Is that the value of thousands of years of civilisational progress and the standards achieved so far? Where is the role and responsibility of law, in particular the universally valid fundamental freedoms and human rights, in this? Why it is weak, why it is not able to prevent violence, to protect people from violence, even from violent law itself, if necessary. Hasn’t the law become too presumptuous? If it alone proves to be insufficient and weak, why not call upon greater forces (natural, divine, moral) outside the law, beyond the law? For it is proud and vain, as is the man who makes law and believes in law. This is not very wise. But a wise man learns at his own expense; while a fool never learns, not even at the expense of others. I would like to address some of these questions in my writing, and in doing so, launch a new, unconventional way of thinking together. Because problems cannot be solved with the same mind set that created them.

I read it recently in Douglas Murray’s best-selling book on *the strange death of Europe*: “Yet despite having lost our story we are still here. And we still live among the actual debris of that faith. Few people among the crowds flowing through Paris flock to Notre-Dame to pray, but yet it is there. [Here I should interject that they are currently rebuilding the cathedral, because it burned down!] Westminster Abbey and Cologne Cathedral may still dominate the places in which they stand, and though they have ceased to be places of pilgrimage they still signify something, though we do not know exactly what. (...) And of course the glorious debris we live among is not only physical but also moral and imaginative.”<sup>3</sup> As a lawyer, the question immediately arose in me: does this “glorious debris” of our faith (still) exist in law? And as a lawyer trained to favour precise definitions, I immediately challenge myself: but we do not even know what faith is! Finally, as a wise elder, I riposte: well, do we even know what law is? Both have a large library of literature, but there is no single answer to either question. What we do know, however, is the common thread between those two concepts, which is that both aim to *improve* and *elevate* humankind, to aid the progression of civilisation in its journey towards *humane*

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3 Murray, D. (2018) *Európa furcsa halála: bevándorlás, identitás, iszlám: mit tartogat számunkra a jövő?* 4. kiad. Pécs: Alexandra. p. 210.

*humanity*. Both share this common goal, which makes it all the more unfortunate if they end up hindering each other in achieving this goal, or if they fight each other instead of cooperating to achieve it. Another common thread is that both faith and law are systems of core values, behavioural norms, and organising principles, although their methods are different: the norms of faith are written in the human heart, and attempt to act from *within* (to encourage good deeds and deter evil), while the law operates from *without*, using the coercive power of the government. Moral law (*good morals*) provide a solid foundation and framework for law, from wherein morals and law can *work together*. Looking at the current flood of constitutional *fundamental rights* and *human rights*, does the Christian value system of faith and morals still exist, or is law (once again) only preoccupied with its own values, as were the atheistic National Socialist or Communist systems of law? After the fall of atheistic *Communism* in our country, in the current age of *selfish individualism*, the following question should keep arising in every individual again and again: Do I have faith? Do I have core values to live my life by, taking my destiny in my own hands? The same question arises on a societal level: do we still have common fundamental values, guidelines to help us organise and operate our society and our state? The universally valid fundamental freedoms and human rights claim this role and even the belief in them, but what motivated these *universal* norms, what is the history behind them? In the Fundamental Law of Hungary, the National Avowal gives us more precise answers to our questions. (Declaration 1): “We are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of *Christian Europe* one thousand years ago.” (Declaration 12): “We hold that the *family and the nation* constitute the principal framework of our coexistence, and that our fundamental cohesive values are *loyalty, faith and love*.” These – the *values* I have *highlighted* – immediately raise new questions. Is Europe still Christian? Is this foundation still solid? Is there still loyalty in marriage, in the family, in the nation? Do we still have faith, do we still believe in anything, in anyone? Do we still know what it means to love someone, or what the power of love is capable of? Let’s try to explore, or at least to touch upon, the concepts of *Christianity, faith and love*, looking for answers to our questions. Even the very name of our *Fundamental Law*

expresses that it wishes to be the *foundation* of our personal lives and our communal (familial, societal) coexistence. Only solid foundations can support strong walls, only solid foundations and walls can support a roof over our head. Such a house will protect us from rain, storms and even hurricane-force winds, it will protect us from the cold and heat, and its full pantry and cellar will provide security in times of need. If the foundation cracks and sinks, the walls crack, the roof crumbles, the house leaks, and there goes safety. Therefore, the foundations must be maintained, its integrity preserved, its defects corrected and its weak points strengthened in time. Strengthening the personal and community value base is also about protecting individual core values and the value system as a whole. The protection of values is really the protection of human life, of humane life. In a time of a general crisis of values, especially *after a value destruction* – as in the forest after a felling – a “coppice” can and should be grown from the still intact roots. In the same way, the house of our life and our communal coexistence (the homeland, the nation) can and must be rebuilt on the solid, strengthened and corrected value foundations of today, while modernising it to meet the needs of today’s generation and even of future generations, providing them with a livable life and a sustainable society. This is the purpose of the values of our Fundamental Law, the values of Christianity, faith and love.

One can live without faith in God, without faithfulness and without love; one can vegetate in a biological sense like other living organisms, but that is not a life worthy of man. To live a life of humanity and dignity, one must have faith; there must be a God whose image one bears, to whom one compares oneself, and to whose judgement one wants to measure up. Someone who sets standards for one’s life, especially when the individual is incapable of practising the virtue of *temperance* (*temperantia*). But even if a person has no faith, or his faith is weak, it is good to have a God; it will make no harm, but can be a source of strength, meaning, values and dignity for his life. Most human ethologists agree that “the capacity for religious faith may have played an essential evolutionary role in the formation of communities,” in the ability for humans to become humane. “Among the genes regulating a group of neurotransmitters affecting human motivation and pleasure, one, the VMA2 gene, was found to occur much more frequently in

those inclined towards spirituality than in those less so inclined. The media latched onto these findings and began talking about the ‘God gene’. (...) naturally, this gene does not actually provide any evidence whatsoever concerning the existence or non-existence of God. All this shows is that there are *genetic reasons* for certain individuals to be more receptive to the concept of a transcendent world that is beyond them and surpasses them.” The human constructive urge drives us to “build religion from spirituality.” And how do others respond to this? “Naturally, when a religious community is formed, with its own rules, ideas, and unique culture, even those less inclined toward spirituality can be swept up by this culture, resulting in the establishment of a religion operating with well-formed, social technologies.”<sup>4</sup> The world’s most famous geneticist, Francis S. Collins, responsible for the mapping of the human genome, has a similar view. “The scientific and spiritual worldviews both have much to offer. Both provide differing but complementary ways of answering the greatest of the world’s questions, and both can coexist happily within the mind of an intellectually inquisitive person living in the twenty-first century. (...) science alone is not enough to answer all the important questions. Even Albert Einstein saw the poverty of a purely naturalistic worldview. Choosing his words carefully, he wrote: “*Science without religion is lame, religion without science is blind.*”<sup>5</sup> “I hope you are reassured by the potential for harmony between faith and science. (...) science can be a form of worship. Indeed, believers should seek to be in the forefront among those chasing after new knowledge. Science is not threatened by God; it is enhanced. God is most certainly not threatened by science. (...) let us together seek to reclaim the solid ground of an intellectually and spiritually satisfying synthesis of all great truths.”<sup>6</sup> Let us now project the viewpoints of the human ethologist and the medical geneticist onto state and legal science. This is particularly justified, as legal professionals have a tendency of *social engineering*, tend to envision

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4 Csányi, V. (2018) *A globális elme: elmélkedések a világról*. [Budapest]: Libri Kiadó. pp. 137–139.

5 Collins, F.S. (2018) *Isten ábécéje: egy tudós érvei a hit mellett*. Budapest: Akadémiai Kiadó. pp. 246–247.

6 Collins, F.S. (2018) p. 249. and p. 253.

themselves as engineers of society, constructors *par excellence* of state and social circumstances (and relationships between people). Yet none among them have ever constructed a perfect state, a perfect society, or a perfect system of law. And why not? Because the constructors themselves are imperfect, as are the people who create the state and society. A religious command may prescribe “*be perfect, therefore, as your heavenly Father is perfect,*” or “*be blameless and pure, so you may appear before the judgment seat of Christ,*” but these only *obligate one to strive*, as does the general moral command to *strive for the good*. The explanation is that the strictness of moral law and the love that forgives foreseeable law-breaking both act to steer people onto the path of God. That which is above humanity (faith and love) elevates humanity and brings it closer to God; that which is beneath humanity (“predatory” evil and violence) drags humanity downwards. When treading on a slippery slope, it is easier to slide down than to climb up. The path of faith and love is straight, and leads upwards. As a pilgrim’s song says: “The path of God is a certain path, Only in Him I trust, His holy Word is a well of pure water, Which refreshes and nourishes me” (Evangelical Hymnal, 352)

Just as man, settled and converted to agriculture, began to *ennoble* the plants he grew and the animals he bred, so he began to *ennoble himself* morally, to *improve himself*. For this he needed God and the divine laws, to be written in his heart and to be believed from within: to prompt him to moral good and to deter him from moral evil. That is why Kant, the philosopher, could say that two things awe him most, ‘the starry sky above me and the moral law within me’. Already the primitive man tried – and ever since, man has been trying – to be more pure and valuable, externally and internally: to do good to others, to win their gratitude, to create a sense of gratitude in many – to be a blessing to others. Because each person is worth as much as he or she is of use to others, as much as the sum of the gratitude that others radiate towards him or her. All this must be believed and hoped for, prayed for, and asked for God’s power and help; with a strong spirit and a pure heart, with active love, man’s *good-mindedness must be increased and strengthened*. The task of faith and law is no different today, and no easier: to educate man to be a more humane man, a *good man*, to humanize and spiritualize him. To be able to select, to choose between



good and evil; between what is allowed and what is not; between useful and useless, harmless and harmful; between goodwill and ill-will; between evil and love; between altruism and selfishness (altruism and egoism); between constructive and destructive behaviour, between building and destruction; between honesty and devious twisting and turning; between true and false, truth and lies; between win-win, win-lose and lose-lose games; between animalism and humanity; between humanity and divinity. All this in the knowledge of what Saint Augustine said: “God has given us more to do than we are able to do.” At least without God, individually and occasionally, the tasks are beyond our strength – but by working together, across generations, as humanity, now on a global scale, we can have a common task and agenda. One always has to raise the bar a little bit higher to get higher, to rise above oneself. This is the project of becoming human, the real challenge, the most worthy human task, the essential content of human dignity. It is not the highest peaks of the Himalayas, but rather the peaks of humanness and humanity that the masses must reach. Because the “greatest goal, here, in this earthly existence, is to be a Man at all times, in all circumstances” (János Arany: Domokos napra (For the name day of Domokos)). We have to believe that all this is possible, through faith and with God’s help, and we have to work to make our dream a reality.

Let us now approach love after faith. The crisis of *marriage* and the institution of the *family* based on it, especially since they are both *communities of love*, has been the subject of research in many disciplines (demography, sociology, law, biology, human ethology, psychology, etc.) for more than half a century. The diversity of disciplines in *human and social sciences* is itself an indication that, in general, there is also a crisis of the fundamental (now constitutional) values of man and human society, of *loyalty, faith and love*. As both individuals and society live and organise their lives around *fundamental values and principles*, the crisis of these can be seen as part of a *general crisis of values*. In each discipline, research is conceptualised in its own way, approached from different perspectives and often comes to different conclusions. As an example, it is sufficient to refer to the heterosexual, monogamous marriage of *a man and a woman* and, in contrast, to *same-sex* partnerships (marriage), its social overvaluation and legal

recognition. The question is judged differently by biologists, demographers, ethologists, sociologists and psychologists, but how should it be judged by lawyers and politicians? Some see this as a threat of catastrophe, others as a new evolutionary step forward. There are similarly stark contrasts between *gender ideology* and the main claims of the feminist and sexual identity movements. The *diversity and pluralism* of beliefs, opinions and scientific views are of great value if, combined with broad debate and *discourse*, they promote choice, democratic majority decision-making, the search for the right directions and paths, the development of a sustainable vision of man and society, and the construction of common principles and institutions to organise them. However, the diametrically opposed, mutually contradictory evaluations are based on conflicting, contradictory value systems, which leads to a lack of generally accepted social ordering principles or causes value confusion, value chaos. In this chaos, without fixed landmarks, without “beacons of light”, neither the individual nor society can find its way, cannot find its way, and will lose its way: it drifts into further crises and runs aground. But perhaps an even greater danger is when a scientific view elevates itself into an ideology, then becomes rigid in its own dogmas and seeks to become autocratic. We know this from the period of total dictatorship of so-called scientific socialism. It would be nice to know what is the main – if not the only – cause of all this: the chaos of values, or the tyranny of a value. Indeed, addressing the general crisis of values as a cause would be greatly facilitated by knowing the root cause (and other causes). Many see the process of *secularisation* from the 17th century to the present day, the separation of churches and state, the negation of Christian faith and values, the secularisation of state and law as the main cause. In fact, as a consequence of secularisation, we can mention the *desacralisation* of things and social institutions previously considered sacred and holy, as a specific reason. Their political roots go back to Western Europe, to the Age of Enlightenment, when the state ownership of church property and the dissolution of monastic orders – using “Eastern” violence – began. In the 20th century, it became clear that atheist states and their ideas are capable of enormous destruction, the destruction of others and even of themselves, the destruction of their former traditional

Christian values.<sup>7</sup> “Erasing the past for good” – such ideas and militant movements are still being born and organised today. Europe is tired of it, exhausted, burnt out, its soul is seriously damaged, which is no wonder, because where “God is dead”, all ideologies are “born dead”, but they can spread death, destroy, build a “culture of death”. “Reason’ and ‘*rationalism*’ had led men to do the most unreasonable and irrational things. It had been just another system used by men to control other men.”<sup>8</sup> The *godless* man has become *inhuman* and *un-loving*. Sadly, it is possible that this process will continue, repeat or worsen throughout the 21st century. It is therefore worth reflecting on this phenomenon as one of the possible, but perhaps the main, causes of the general crisis of values, and to save Christianity, faith, love and, with all this, the human soul.

“Europe has the highest ratio of secular population in the world, and it is the only continent where the population is declining. It appears that secularisation and the advancement of a materialistic worldview have dangerously devalued families, and have reduced fertility to such an extent that the net population loss of European societies has become alarming.”<sup>9</sup> It is a huge paradox here in our European civilisation, also called Christian, where marriage has been a “sacrament” and children a “blessing” for nearly two millennia. It is as if by the middle of the 20th century – as a result of the two “inhuman” world wars – the soul of Europe had died, as if Europe had become faithless and soulless, unholy and damned. That is why Robert Schuman, the father of Europe, could say in 1953 what he could say today: “All European states have been made what they are by Christian civilisation. It is precisely this European spirit that must be revived (...) To free ourselves from hatred and fear, and to relearn Christian brotherhood after so long division, the idea of a reconciled, united and strong Europe must now be the watchword of young generations of young people who want to serve humanity.”<sup>10</sup> The thought of Joseph Ratzinger (then car-

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7 Bolberitz, P. (2014) ‘Szekularizáció és szekularizmus’, *Korunk*, 25(5), pp. 58–62.

8 Murray, D. (2018) p. 217.

9 Gallai, S. (2019) ‘A családpolitika helye a demográfiai válsággal küzdő Európában’ in *Európai családpolitikai kitekintő*. Budapest: KINCS, p. 16.

10 Lejeune, R. (2015) *Politika és életszentség: Robert Schuman, Európa atyja*. Budapest: Magyar Máltai Szeretetszolgálat. p. 249.

dinal) also applies to the person of Robert Schuman and to this idea: “Based on those who see us slowly moving forward towards God, the buried memory of God, written in the heart of every human being, is awakening more and more in the depths of our being. Familiarity with God gives us back our vision: and if we live it, it bears witness to God’s righteousness.”<sup>11</sup> And this truth is nothing other than *love for our neighbour*, because what God really wants from us: “That we may be loving people, for then we shall be made in His image.” Then we will have real human dignity. “I think that is the real drama of history, that the many opposing fronts can be reduced to this single formula: *yes or no to love*.”<sup>12</sup> The question of *fraternity* and *love for one’s neighbour* is therefore a question of European civilisation and, in our global world, of human civilisation as a whole. *Fraternity* was originally the third of the triple slogans of European civilisation, but, probably as a ‘religious’ category and as such a matter for the churches, it took a back seat to freedom and equality. Without it, however, neither the liberal idea of freedom nor the communist idea of equality was realized in a *fraternal spirit*, not in the spirit of *love for one’s neighbour* – quite the opposite. The road to the realisation of great ideas, to the exclusion of faith, religion and churches, was lined with hatred, revenge, bloody revolutions and civil wars. Despite this historical experience, I have not found in the founding treaty of the European Union any reference to the Christian past and values, nor any words of brotherhood or love to *achieve a united European spirit*. In the name of *secularisation*, *solidarity* is often used instead of fraternity, and this is then clarified in the Charter of Fundamental Rights of the European Union: “Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, *freedom, equality and solidarity*”. But to do this, we need to know and emphasise that: “Christianity calls solidarity love of neighbour.”<sup>13</sup> Solidarity presupposes at least one other person (e.g. a spouse), and even more so smaller and

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11 Benedek XVI (2021) p. 93.

12 Benedek XVI (2022) *A föld sója: kereszténység és Katolikus Egyház az ezredfordulón: Joseph Ratzinger bíboros és Peter Seewald beszélgetése*. Budapest: Magyar Máltai Szeretetszolgálat. p. 311.

13 Zlinszky, J. (2007) *Közéleti és jogászai etika a gyakorlatban*. Budapest: Szent István Társulat. p. 20.

larger communities (family, local community, nation, church). It is not an individual category. But the Charter of Fundamental Rights states that the Union “places the individual at the heart of its activities.” The vast majority of individuals, however, are fundamentally *selfish*, made so by private property, then by the competitive economy, the “free” market, and now global capitalism, which seeks “unipolar world domination” over people. It is fortunate that the European Union has acceded to the European Convention on Human Rights (Rome, 1950), which in turn took into account “the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948”. It already speaks of “the human family” in its preamble and states in Article 1, sentence 2: “They are endowed with reason and conscience and should act towards one another in a spirit of *brotherhood*.” The main value of the family is that it is a *community of love* in solidarity with one another, and the “brotherly spirit” is really *brotherly love*. It is from the family, i.e. from solidarity-based communities of love, that the *solidarity-based society*, social solidarity, and its major institutional systems are built: the public education system, the public health care system, the pension system, the social care system. Solidary families and solidary societies can be expected to act towards each other in a fraternal spirit (brotherly love). It is from such families and societies of such people that we can hope to “pour out love, to show love for our neighbour, to transform the whole of human civilisation *into a civilisation of love*.”<sup>14</sup> Christian Europe must be at the forefront of this transformation and must set an example for the global world, since the second most important commandment in the Ten Commandments is that of love of neighbour (in the language of the Union, solidarity), which is inseparable from the first, the love of God, the only Lord of man. Its core and guarantee is the family community of love. “The family is fundamental to what Pope Paul VI called the ‘*civilisation of love*,’ (...) the family is the *centre and the heart* of the civilisation of love. And civilisation itself ultimately is nothing but ‘the humanisation of the world’”.<sup>15</sup> In the age of globalisation, this means building a dis-

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14 Vereb, J.M. (ed.) (2010) *Minden napra egy gondolat: napi meditációk a nagy pápa imádságaiból és írásaiból* Jerome Vereb atya szerkesztésében. Budapest: J LX. p. 174.

15 Vereb, J.M. (ed.) (2010) pp. 194–195.

tinctive, global system of solidary (loving) institutions, or expanding and developing the specialised institution system of the UN designed to perform such functions. This could be served by a *quasi-world government* and a *redistributive world financial system* tied to this function, not by global capital and its profit-making, the interests of a few super-rich world companies and their equally super-rich owners, and the further extreme enrichment of the “poor world” and nature, which is becoming increasingly intolerable.

What has been said illustrates how great and how different is the value of faith and its supreme commandment in human relations, love of neighbour. The unbeliever, the man who loses God, no matter how rich and powerful he may be, becomes dehumanized, soulless, unable to love another man, unable to accept love from another (because it would oblige him to gratitude, to love in return), and at the same time capable of inhuman acts. If this great value – the love of God and of one’s neighbour, the two supreme (religious and moral) commandments – is denied or ignored by people as a social ordering principle, then the multitude of other religious and moral values that follow from it, the system of Christian values, are denied or ignored, and then the individual person and society as a whole *are also desecrated*. In the absence of a coherent system of values, there is a general crisis of values and lack of values, the denial, discrediting and weakening of the old values; and in their place the confusion of a flood of new “values” constructed by bad faith people, dangerous to man and society. And then the foundations of human society are shaken. “Under such circumstances, chaos emerges. (...) It is our destiny to transform chaos into order. (...) making what is – and what was – clear and fully comprehended can only protect us.”<sup>16</sup>

The vocation of Christianity in the never-ending process of becoming human is to form and shape (to constantly improve) the lovable human being that is capable of love, the *good human being*, in the image and likeness of the *good God, the God who loves man*. In this sense, then, the quality of the *good man, the man who loves his fellow man*, is the content of *human dignity*. At least since he has ‘eaten from the tree

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16 Peterson, J.B. (2021) *Túl a renden: újabb 12 szabály az élethez*. Budapest: 21. Század Kiadó. p. 131. and p. 259.

of knowledge', i.e. he can distinguish between *right and wrong* and use his free will to *choose the good*. In other words, Christianity is not the requisite of the "Dark Ages", not the opium of an ignorant people. The 20th century was more of a "dark age" in a spiritual sense; fascism and communism were more like opium. In Europe, Christianity "shaped the ideals of the good sovereign, the good noble, the good knight, the good citizen, and the prudent steward. (...) that each could both provide and receive something, and so to allow even those of low social status a modicum of self-respect. (...) This worldview could not only justify the existing power differentials and the glaring contradictions of the available social opportunities, but also made it possible to form a critique or – to use an anachronistic phrase – a revolutionary critique of these powers."<sup>17</sup> In addition to its key values of brotherhood and loving thy neighbour, the Christian system adopted two human ideals from the preceding European culture: the ideal of the *virtuous man* from Greek philosophy, and the ideal of the *bonus et diligens pater familias* from Roman civil law. In Hungarian civil law, the *prudent steward* became the equivalent of the *good* and caring patriarch, whom Károly Szladits called both a *decent man* and a *good man*.<sup>18</sup> These three human ideals – the virtuous man, the good and caring patriarch, and the good man (the image of God) have become closely interconnected during the development of European society, and the three together remain relevant today. Greek philosophy, Roman law and Christian morality are the foundational pillars of the European Union. "It would be wise to accept this as historical fact, to take it more seriously than we have so far, and to apply it in practice as well."<sup>19</sup>

The preservation of values, the rehabilitation of values, is also very important because their absence not only causes disorder and chaos, but – agreeing with Murray – can also lead to the strange death of Europe. It threw out its old beliefs and experimented instead with

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17 Bibó, I. (1986) 'Az európai társadalomfejlődés értelme' in Bibó, I. *Válogatott tanulmányok. 3. kötet 1971-1979*. Budapest: Magvető Kiadó, pp. 31–32.

18 Szladits, K. (ed.) (1938-1941) *Magyar magánjog I. köt. Általános rész, személyi jogok*. Budapest: Grill Kiadó. p. 365.

19 Lenkovics, B. (2022) 'Jó emberek jó állama' in Erdős, Cs., Orbán, B., Smuk, P. (eds.) *Gubernatio, constitutio, communitas: ünnepi írások a 65 éves Stumpf István tiszteletére*. Budapest: Századvég, p. 238.

new ideas that it thought would save man, “philosophies that could be made into totalistic political visions. (...) The fascist dream, like its communist cousin, began as a sincere effort to answer the severe problems of the age... But it is also easier than it has ever been to feel a fear not only of these ideologies but of any ideologies. (...) The point is to question everything and never get anywhere; the destruction of ideas is perhaps precisely because we are afraid of where they might lead.”<sup>20</sup> In the 20th century, the “mad” ideas maddened entire societies, led to world wars, bloody revolutions, civil wars, regional wars, in which “when man was so debased he sought to murder for pleasure, not just to comply with orders” (Miklós Radnóti: Töredék (Fragment)). Man has been stripped of himself, of his humanity, that is, of his “good humanity”, of his civilization, and has sunk deep below the level of *humanity* he had achieved up to that time. The restoration, preservation and dissemination of these would have been the vocation of human rights (1948), under the protection of legality and the rule of law. “The post-war culture of human rights pretends (or its adherents pretend) to be a religion itself, and as such introduces a secularised version of Christian consciousness. But it is a religion that is never sure of itself, because it does not have its certainties. The language is revealing. As the language of human rights became more and more grandiose and self-serving, it became increasingly clear that this system was not capable of fulfilling its original purpose.”<sup>21</sup> At least not on its own, the *legal force* is not enough. In addition, since then, new demented ideas have been born and are still being born, partly on the basis of human rights, but also abusing them, and are still being enthusiastically promoted by demented, “brainwashed” masses: gender ideology, LGBTQ movement, BLM movement, WOKE-kulture, Cancel-kulture, militant feminism, political correctness. Once again, we are living in the midst of “the madness of crowds”<sup>22</sup>, and we dare not even think about where this could lead. Even today, it is possible that in the

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20 Murray, D. (2018) *Európa furcsa halála: bevándorlás, identitás, iszlám: mit tartogat számunkra a jövő?* 4. kiad. Pécs: Alexandra. p. 214–221.

21 Murray, D. (2018) p. 211.

22 Murray, D. (2020) *A tömegek tébolya: áldozatok a politikai korrektség oltárán?* Pécs: Alexandra. p. 7.



maddened crowd, some are asking Pilate to release Jesus, but because of the madness, the crowd's voice is repeatedly shouting "*Crucify him!*" The common feature of the new ideals is the same: they have nothing to do with God or with love for one's neighbour, and they interpret fraternity *as a forced uniformity*, in fact as a uniformity of masses of *selfish* individuals. Such people are incapable of forming communities, and even dismantle existing communities – the family, the nation, the nation-state, society – into atoms. They demand solidarity and support in return for the risk of damage. Whoever does not understand and exercise his individual freedom as freedom *in the community and for the community*, the family, the nation, society, but on the contrary, as freedom *from the community*, the family, society, is capable of enormous destruction, (value) destruction around him. Love is not like this. Love respects the dignity and personality of the other person, it serves the good of the other person, preserves his or her individuality, and at the same time builds communities, human societies, out of people who love each other.

Man is, despite all rumours and objectives to the contrary, a community being. Whether he himself is confronted with his community, if he isolates himself, or if he is ostracised by his community (because of his anti-community behaviour), he is in great danger. Isolation causes anxiety, fear, shame and guilt. "The deepest need of man, then, is the need to overcome his separateness, to leave the prison of his aloneness."<sup>23</sup> The fundamental psychological (spiritual) question of being human is thus the choice between *being separate* or being *one* with another person, a community. "The full answer lies in the achievement of interpersonal union, of fusion with another person, *in love*. This desire for interpersonal fusion is the most powerful striving in man. It is the most fundamental passion, it is the force which keeps the human race together, the clan, the family, society. The failure to achieve it means insanity or destruction—self-destruction or destruction of others. Without love, humanity could not exist for a day."<sup>24</sup> "(...) mature love is union under the condition of preserving one's integrity, one's individuality. Love is *an active power in man*; a power which breaks through

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23 Fromm, E. (1993) *A szeretet művészete*. Budapest: Háttér. pp. 17–18.

24 Fromm, E. (1993) p. 29.

the walls which separate man from his fellow men, which unites him with others; love makes him overcome the sense of isolation and separateness, yet it permits him to be himself, to retain his integrity. In love the paradox occurs that two beings become one and yet remain two.”<sup>25</sup> “Let the other fly, but lend your wings if need there be” (Éva Szabó: Szerelem (Love)). In man – in believers and non-believers –, hunger and desire for love is an ancient and communal, natural need, a natural (biological, genetic) endowment, an imprint of millions of years. In a biblical translation: a divine power. The commandment “love thy neighbour” expresses “with exceptional brevity the *principle of reciprocity*, that is, that each should treat the other as he would like to be treated.”<sup>26</sup> In all parts of the world, in all world religions and non-religious moral systems, we find this *golden rule*, which is thus universally valid. Just as the religion of love, European Christianity, and the Catholic Church consider themselves universal, especially if we consider brotherly love itself to be universal. “The most fundamental kind of love, which underlies all types of love, is *brotherly love*. By this I mean the sense of responsibility, care, respect, knowledge of any other human being, the wish to further his life. This is the kind of love the Bible speaks of when it says: love thy neighbor as thyself. Brotherly love is love for all human beings; it is characterised by its very lack of exclusiveness. If I have developed the capacity for love, then I cannot help loving my brothers. In brotherly love there is the experience of union with all men, of human solidarity, of human atonement. Brotherly love is based on the experience that we all are one.”<sup>27</sup> Therefore, the *right to love* is a fundamental, indeed *the* fundamental human right, a formative force for personality and societal structure; a superhuman power, so to speak. It is not a vacant, contrived abstraction but a communal value grounded in millennia of experiential knowledge, a *generalised ideal* derived from the effectiveness and utility of gestures of love. It is an intrinsic motivational force that could be encouraged and amplified, with external support

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25 Fromm, E. (1993) p. 32.

26 Michel, K., Schaik, C. van (2019) *Az ember három természete: A Biblia evolucionista olvasata*. Budapest: Typotex. p. 155.

27 Fromm, E. (1993) p. 64.

and the power of the law. As love has the capacity to elevate people, it is both understandable and justified that humans have recognised love as a *divine force*, and respect it as such. Through love, humans can reach God, and God can, in turn, reach humans. Love functions reciprocally, as tangible acts, as an abstract concept, and even as a societal organising principle; love is a *win-win* game.

For the followers of Christ, the God of the religion of love is himself love incarnate: *Deus caritas est*. This is the title of the first encyclical (2005) of the recently deceased Pope Benedict XVI. Thus, where love is present as a fundamental value and a social organising principle within a country's constitution, God will also be present there. Let us therefore review this encyclical in greater detail. The Pope took the title, which expresses the essence of Christian faith and religion, from the First Epistle of John: "God is love. Whoever lives in love lives in God, and God in them" (1 John 4:16). These words declare "the Christian *image of God* and the resultant *image of humanity* and of *human destiny* with singular clarity." This remains true despite the word *love* having many different meanings in different languages, or even within a single language. "We speak of a love of country, a love of one's profession, love between friends, a love of work, love between parents and children, love between siblings and relatives, a love of one's neighbour, and the love of God. Among these diverse meanings, the love of a man and a woman stands out, with an inseparable interplay between the body and the soul, and the promise of enduring happiness. This is understood to be the *archetype* of love, beside which every other form of love pales." The Greeks called this kind of love *eros*. The love between friends was called *philia*. Christian love was *agapé*. It is this *agapé* that tempers the preceding two types of love, especially *eros*, at times when it degrades rather than uplifts mankind. The Song of Solomon in the Old Testament provides practical guidance for elevation and purification. The love that elevates and purifies *seeks to become definitive* in two senses: exclusivity – "this one person only" – and also in the sense of "eternity". Behold, the *sanctity of monogamous marriage till death do us part*. In this, *eros* and *agapé* "can never be completely separated." *Eros* is the ascending, covetous love ever seeking the happiness of the other: caring, self-sacrificing, living for the other. Symbolically,

the same love and strong desire permeate the relationship between God and His creation, humankind, as well as between Christ and His Church. This mutual love “may certainly be called eros, yet it is also totally agapé”; it is *a love that forgives*, a unity created by love, “a unity in which both God and man remain themselves and yet become fully one. St. Paul’s puts it this way, ‘He who is united to the Lord becomes one spirit with him.’” (1 Cor 6:17). Similarly, humans become “whole” in the unity of man and woman. “That is why a man leaves his father and mother and is united to his wife, and they become one flesh.” (Genesis 2:24) Two important conclusions follow: “First, eros, is somehow rooted in man’s very nature. The second: from the standpoint of creation, eros directs man towards marriage, a bond that is unique and definitive. The monogamy of marriage corresponds to the monotheistic image of God.”

The real novelty of the New Testament, however, is the person of Christ, his total *self-surrender*, his sacrifice of death on the cross. “He gave his body and blood to his disciples as new manna”. The communion of Holy Communion, the *Eucharist*, is the mystery of the sacrament: “it lifts me out of myself and into myself, while at the same time it draws me into unity with other Christians. *We become one body*, we become one fused being. Love of God and love of neighbour are now truly united: the incarnate God draws us all into himself.” Jesus identifies himself with those in need: the hungry, the thirsty, the stranger, the naked, the sick and the prisoner. “Whatever you did for one of the least of these brothers and sisters of mine, you did for me” (Matthew 25:40). Love of God and love of neighbour are merged. Christ gave his followers such simple tasks, but also a programme for life: to feed the hungry; to give drink to the thirsty; to welcome the stranger; to clothe the naked; to look after the sick; to visit the prisoner (Matthew 25:35–36). Yet selfishness makes it so difficult to achieve this in our everyday lives. Knowing the living God is the way to love, practicing acts of love is the way to God. “I love my fellow human beings whom I cannot like at first sight, or even know at all, for God’s sake. His friend is my friend. Behind what is visible on the surface, I can see that inside he is waiting for a gesture of love – a turning towards him”. Love must then give itself, love grows by love, transforming us into a community that overcomes our separations and makes us one, so that

in the end “God may be all in all” (1 Corinthians 15:28). The Father in His Son wants to form all humanity into one family. “All the activity of the Church is an expression of love which seeks the universal good of man.” And I would add, for which the Universal Declaration of Human Rights was born: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of *all members of the human family* is the foundation of freedom, justice and peace in the world.” Universal love and universal rights have one purpose: the betterment of man, peace instead of violence. The encyclical *Deus caritas est* also outlines the institutional system of this *charity* (charity homes for the elderly, orphans, disabled people, charity hospitals, schools, aid organisations), which not only relieves the State – to a greater or lesser extent – of its burden, but also, through its capacity for *personal devotion*, sets a positive, humane example: a convincing example of the power of *active charity*. This point – or rather broad band – is where the state and the church cannot be separated, where they are bound to cooperate in a meaningful and reasonable way. And it is not only in the interest of raising the standard of care, but also, far beyond that, in the interest of the *goodness of people* (human goodness), of a *good state*, and of a *good society*.

For the humanity of good people, for the salvation of families and for the good state, as István Bibó recommended, *we must replace the gestures of violence with active gestures of love*. In his search for “the meaning of European social development”, he discovered that the “real ferment” was Christianity. Christians *are followers of Christ*, so he was concerned first and foremost with his person. He realized that Christ could “bring about manifestations of closeness to life, of understanding of the simplest things in life, of tenderness to the human” that were beyond time and space. “He also has very significant, almost unforgettable, simple thoughts on the power of gentleness, the futility of anger, the intrinsic kinship and harmlessness of anger, the death struggle, killing, and he has not only sentences but also parables on these.” “His gestures, such as whoever slaps you on your right cheek, turn the other to him also, are not at all the gestures of a clumsy man; on the contrary, they are among the disarming gestures before which senseless aggression suddenly realizes its own senselessness.” It was through the power of gentleness that Jesus

was able to do greater things than he could have achieved through aggression.<sup>28</sup> “The Christian response to the convulsions of violence, fear and hatred is to place active love at the centre. Active love as the force that can dissolve all human convulsions, that can destroy all violence, that can disarm, is the force most often found in the parables and deeds of Christ. (...) basic Christian prescriptions: If a stone was thrown at you, repay it with bread; He who takes up the sword perishes by the sword; For every gesture of violence, there is a stronger gesture of love, arising from active love, which can disarm that gesture of violence.” This does not mean, of course, that we should “passively endure being stoned, but rather that we should find the gesture which arouses shame in the assailant over his own actions.” If we are unable to find such a gesture, “we have no choice but to defend those entrusted to us to the best of our ability, even using violence as a last resort, if no other means are available.” This would be the case of *counter-violence*, applied in *exceptional cases in legitimate defence situations*, as a *last resort*. “When facing a destructive enemy, it is better to fight than to do nothing. And against an intolerable tyranny, it is better to rebel than to do nothing”.<sup>29</sup> There can be intolerable tyranny in the family, in the state or in an external oppression. A gesture of love can be most effective at disarming violence within the family, and possibly in a school environment. However, with reference to the war that is still going on, it can be said, in general and with universal validity, that “the love of arms must be replaced, at last, by the love of love”, as Christ did, and thus saved the world. A world that is still *dominated by the love of power* and not *the power of love*.

There also exists (known) gestures of love that can be effective against a state oppressing its citizens, or against a foreign (e.g. colonising) power oppressing the state. Mahatma Gandhi was a Hindu, but he was also well versed in Buddhism and the Christian teachings on the power of love. Against a foreign oppressive power operating through gestures of violence, Mahatma Gandhi successfully – though not without sacrifice – applied gestures of love in the form of “non-violent resistance” and “non-cooperation”. Using the *weapon of love*,

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28 Bibó, I. (1986) pp. 18–21.

29 Bibó, I. (1986) pp. 44–46.

he convinced the world and rallied it to his and his country's side, overcoming the much stronger colonial power. "It may be long before the law of love will be recognised in international affairs," he wrote in 1919, after World War I. "The world is slowly waking up to the fact that violence has failed to resolve conflicts between nations or between people." In 1920 he continued: "It is my firm opinion that Europe to-day represents not the spirit of God or Christianity, but the spirit of Satan. (...) Europe is to-day only nominally Christian. In reality, it is worshipping Mammon. It is easier for a camel to pass through the eye of a needle than for a rich man to enter the Kingdom. Thus really spoke Jesus Christ. His so-called followers measure their moral progress by their material possession. (...) the much vaunted advance of science had added not an inch to the moral stature of Europe. The last war however has shown, as nothing else has, the Satanic nature of the civilization, that dominates Europe to-day. Every canon of public morality has been broken by the victors in the name of virtue."<sup>30</sup> Europe, and Hungary in it, has an empirical knowledge of Gandhi's truth, which was further reinforced by World War II, the rule of the "Soviet empire" and communist dictatorships, and the series of regional wars that continue today. And the whole world could finally learn non-violence from him: "Non-violence is therefore in its active form goodwill towards all life. *It is pure love*. I read it in the Hindu scriptures, in the Bible, in the Quran. Non-violence is a perfect state. It is a goal towards which all mankind moves naturally though unconsciously. Man does not become divine when he personifies innocence in himself. Only then does he become truly man. (...) Therefore though I realise more than ever how far I am from that goal, for me the Law of complete Love is the law of my being. Each time I fail, my effort shall be all the more determined for my failure."<sup>31</sup> Ervin Baktay writes in the foreword to the Gandhi book: "Every single point of Gandhi's creed is in accordance with the law of Christ. And that is why Gandhi is not an exotic, distant someone, but one for all of us, for all of humanity – the only clear intention, the only open-eyed guidance, the only encouraging word and

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30 Gandhi, M.K. (1998) *Az erkölcsiség vallása*. [Budapest]: Farkas L. I. p. 57. and p. 100.

31 Gandhi, M.K. (1998) pp. 63–64.

the only certainty that comes true in our dark, chaotic present.”<sup>32</sup> What and as much as Gandhi learned from Christ, Europe, the West and the world could learn from Gandhi.

To sum up, we can say with certainty that *the law of love* is the supreme law of our Christian faith, which is at the same time a natural (biological and psychological, physical and spiritual) necessity, a natural law, a religious and moral commandment. The *law of love* is universally valid, independent of time and space. Love is not the privilege, nor the exclusive duty, of faith, of the Church, of religions, of believers in God. The law of love is also the *supreme moral law and core value of familial and social life*, and is an obligation of all states, whether they be solidary and redistributive states, democratic states, or social *constitutional states*. It is obligatory even if it is not written in man-made law, since it is written in the heart of man. It cannot be an *imperative and binding* legal norm, as it cannot be enforced. Love conceptually excludes coercion, but it does not exclude the imposition of certain specific *love-obligations* as *legal obligations*. But love, as a whole and *in general*, can be the declared intention of the Constitution, part of the constitutional value framework of our coexistence. The Apostle Paul’s *hymn of love* is the most beautiful and comprehensive summary of the concept of love. In his encyclical *Deus caritas es*, Pope Benedict XVI says it only in a symbolic sense: “This hymn must be the Magna Carta of all ecclesial service; it sums up all the reflections on love which I have offered throughout this Encyclical Letter. Practical activity will always be insufficient, unless it visibly expresses a love for man, a love nourished by an encounter with Christ. My deep personal sharing in the needs and sufferings of others becomes a sharing of my very self with them: if my gift is not to prove a source of humiliation, I must give to others not only something that is my own, but my very self; I must be personally present in my gift. This proper way of serving others also leads to humility.” Marriage and the family are also the elementary and high school of love, the training ground of love. I have written separately about the family as a community of love, the love of man and woman, the love of husband and wife for each other as spouses and parents for their children, the love of mother and father, the love and

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32 Gandhi, M.K. (1998) p. 19.



respect of children for their parents, loyalty and trust, unity and togetherness, mutual support and selflessness (Saving Family Values).

To conclude my outline of Christianity, faith and love, here is the “Magna Carta of love”, the Apostle Paul’s hymn of love, in full:

“If I speak with the tongues of men and of angels, But have not love, I am become a booming brass or a clanging cymbal. And if I have power of prophecy and know all secret and all knowledge, and if I have all faith, so that I move mountains, but have not love, I am nothing. And if I give away piecemeal all that I have, and if I sacrifice my body, so that I may glory [on good grounds] but have not love, I profit nothing. Love is long-suffering, full of kindness is love, love envieth not, makes no display, is not puffed up, does not masquerade, seeketh not her own, is not easily provoked, does not bear malice, rejoiceth not in injustice, but rejoiceth in truth, covereth all things, believeth all things, hopeth all things, endureth all things. Charity never ceaseth-- whether there be prophecies, they shall be done away, whether there be tongues, they shall cease, Now remaineth faith, hope, love--these three, but the greatest among them is love.” (1 Corinthians 13:1–8)

Today, in an increasingly faithless and hopeless Europe, the most serious question is: will the three remain? If faith were to remain, hope would remain with it, because: “Now faith is confidence in what we hope for and assurance about what we do not see” (Hebrews 11:1). This is why disbelief also brings with it a sense of hopelessness (*anomie*). Perhaps if the third, the greatest, love, can be protected, preserved and activated, then faith and hope will remain. To practice more and more gestures of love towards one another, to love and to be loved, this is the greatest gift of life for all people – believers and non-believers alike. Because it is a gift from God. Jesus’ self-sacrificing love is the greatest example of this, and therefore the most difficult to follow. But it is not impossible to follow. Not everyone has to be a saint, not everyone can be “Mother Teresa”. It is possible to love in small ways, in seemingly small gestures, in the communities of family, friends, colleagues, neighbours, churches, in the wider or narrower community. It is possible to “live in love”. Many small acts of love can go a long way, can fill our whole lives. To serve others with patience, without envy and without anger, to be a blessing to others, to inspire in them a sense of gratitude, to redeem our small world with love: this is what we must believe and hope for.

As Endre Ady writes in his poem *Karácsony* (*Christmas*): “No other religion, Nothing, but merely this: Adore God Almighty, In loving others persist... Christmas legend, if it Really could come true, Perfect, pure happiness Would be in the world, too.” The “world” has already been saved by Christ. We only need to accept this saviour love, to believe and hope in its power. To cling to this love as to a last straw: “hope lives forever if every last straw is FROM THAT MANGER” (Gáspár Nagy: *Jegyezvén szalmaszállal* (*Written with a straw*)). Our poetry, our entire national culture – like our history and statehood – is steeped in Christianity, and carries with it the fundamental values of faith and love. Our culture is a crucial part of *our national identity*. Christianity, faith and love have also become part of *our constitutional identity* by being enshrined in the Fundamental Law. This kind of return to Christian roots, to the God of love, to the path of faith and love, to non-violence, through strong Christian and national identities, could also lead to the return of *Europe’s Christian identity*, to the resurrection of Europe’s soul, to its salvation. This is Europe’s truly valuable and attractive *identity*, an example to the whole world. This is the hope that the 21st century will be the century of love!

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# A Good State of Good People<sup>1</sup>



**THE HUMAN SCIENCES** seek ways and means of improving the imperfect man, so that there may be more and more *good men*, sound in body and soul, rich in knowledge and integrity. *Political science* is looking for ways to improve the state, to make it better and more of a *good state*, in its organisation and functioning, in its culture and values. Good people try (endeavour, strive) to create, maintain and run a good state. Good states are also trying (endeavour, striving) to make their citizens good people. As already Aristotle wrote it: “...political science spends most of its pains on making the citizens to be of a certain character, viz. good and capable of noble acts. (...) For the good man judges in every instance correctly, and in every instance the notion conveyed to his mind is the true one.”<sup>2</sup> Goodness and virtue therefore, are the prime attributes of a good person, which is accompanied by justice, rationality, moderation, and the other core virtues. It is the multitude of virtuous, good people who make a good society, and a good state, by choosing good leaders.

It is not merely the state-structured society that attempts to shape its citizens into good (better people); every smaller community within the society endeavours to do the same, for the benefit of both the individual and the community. This is especially and primarily true for the family, which is the smallest *natural and fundamental* unit of society. This is why the family has the right to *protection by* both society and the state [Article 16(3) UDHR]. Parents want to raise their

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1 Erdős, Cs.; Orbán, B.; Smuk, P. (eds.) (2022) *Gubernatio, Constitutio, Communitas – Ünnepi írások a 65 éves Stumpf István tiszteletére*. Budapest: Századvég Kiadó. pp. 235–244.

2 Arisztotelész (1987) *Nikomakhoszi etika*. 2nd edition. Budapest: Európa Könyvkiadó. p. 23. and p. 67.

children to be good people, and because the surest, most effective means of education is by example, they must first become good people themselves. All this presupposes harmonious marital and family relations and even *a community of love*. Members of the community must “love the bad out of each other, love the good into each other.” Love is the most ancient means of educating to be a good human being, the result of the evolutionary process of becoming human. “It is the force which keeps the human race together, the clan, the family, society. The failure to achieve it means insanity or destruction – self-destruction or destruction of others. Without love, humanity could not exist for a day”.<sup>3</sup> This serious statement raises the question of what is the original nature of man: goodness or evil? This is a question that jurisprudence in its narrowest sense does not even ask itself, leaving it to philosophy, theology, psychology, biology, human ethology, etc. I am asking this question – so no one should regard my writing as jurisprudence in the traditional sense.

According to the response by an evolutionary biologist and historian, in prehistoric times, for thousands (millions?) of years, one of the basic laws of the foraging-hunting caveman community was that “food must be shared.”<sup>4</sup> This primitive human *solidarity* was the insurance of survival in everyday life, but especially in emergencies. Sharing was rewarded first with a sense of gratitude and then with a reciprocal sharing. Mutual cooperation in a small community was easy to monitor, with community members *ennobling* each other.<sup>5</sup> Selfishness lead to ostracism, which was tantamount to a death penalty. It can be said, therefore, that the original nature of the prehistoric man as an *apex predator* was still “evil”, but the primordial nature of *homo sapiens*, which emerged from the animal kingdom, was already “good”; that is, they had selfless love and mutual support for one another. But the debate about man’s inherently good or evil nature has not abated. Thomas Hobbes’ oft-quoted ideas have led many to believe that life

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3 Fromm, E. (1993) *A szeretet művészete*. Budapest: Háttér. p. 29.

4 Michel, K., Schaik, C. van (2019) *Az ember három természete: A Biblia evolucionista olvasata*. Budapest: Typotex. p. 62.

5 Freund, T. (2005) ‘Az önzés és az elmagányosodott ember’, *Magyar Szemle*, 14(3), pp. 113-131.

is *bellum omnium contra omnes*, and that *homo homini lupus est*. The reason is people's *fear* of each other and of death. Anarchy and violence can “fortunately” be controlled if all people give up their freedom and leave the need for security to a sole ruler (*Leviathan*). This doctrine has provided the philosophical basis for many dictators.<sup>6</sup>

Charles Darwin's theory of evolution was no better: survival requires a relentless struggle, which involves constant fight, pain and suffering. The race that *has the selfish gene* (as quoted by Bregman from Richard Dawkins' 1976 bestseller) has a better chance, so “let us try to teach generosity and altruism, (...) because we are born selfish”.<sup>7</sup> All we know for sure<sup>8</sup> is that *homo sapiens* populated the Earth, and the other species of humans are extinct. What was the reason for this extinction, we don't know. It may be due to *assimilation* (mixing and blending of species). But it is also possible that the competition for resources “has turned into violence and genocide.” We have no precise knowledge of prehistoric times, but at most we *have presumptions*: we assert something and accept it as true until proven otherwise. One could say – looking at the wars of the 20th and even 21st century – that man is inherently a *ravening ape*, which (who) is also evil. But we can also say that human beings are inherently good, tolerant and peaceful, *selfless and compassionate*. It's clear which opinion is in humanity's best interest. Either way, the former must be restrained, and the latter must be encouraged (taught).

Restraining and encouragement are also understood in historical terms. This is the history of human civilisation, including the history of the *European civilisation* closest to us, which we call Christianity, or more broadly Judeo-Christian culture. To quote István Bibó: “The social-organizing clergy, in the post-Cluny reform period, increasingly set out to create a very extensive social organization by means of a multiplicity of privileges and letters patent, in the spirit of an ever more extensive literacy, and tried to imbue the most diverse relations

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6 Bregman, R. (2020) *Emberiség: mégis jobbak lennénk, mint hittük?* Budapest: HVG Kv. p. 52.

7 Bregman, R. (2020) p. 58.

8 Harari, Y.N. (2020) *Sapiens: [az emberiség rövid története]*. Budapest: Animus. p. 27. and p. 29.

of society with some elements of vocation, of mutuality. It shaped the ideals of *the good sovereign, the good noble, the good knight, the good citizen, and the prudent steward* (emphasis by me, L.B.). (...) that each could both provide and receive something, and so to allow even those of low social status a modicum of self-respect. (...) This worldview could not only justify the existing power differentials and the glaring contradictions of the available social opportunities, but also made it possible to form a critique or – to use an anachronistic phrase – a revolutionary critique of these powers.” If the king’s position was a duty that he had to fulfil, and that of the feudal lord, the lord of the manor, the knight, too, then this also meant the possibility of criticism of the king, the feudal lord, the lord of the manor, the knight, who did not fulfil his duty, and this was in fact the starting point of the future revolutions. It was from this Christian fiefdom outlook that the revolutions of the early Middle Ages emerged.”<sup>9</sup> That is why the Middle Ages cannot be labelled “dark” in general.

The medieval Christian approach, however, may have adopted at least two human ideals from pre-Christian European culture: the ideal of the *virtuous man* from Greek philosophy, and the ideal of the *bonus et diligens pater familias* from Roman private law (the equivalent of which in classical Hungarian private law became the *prudent steward*, whom Szladits called both *the decent man* and the *good man*<sup>10</sup>). The ideal of the virtuous man, the good and dutiful family guardian (also known as the prudent steward) and the good man *have thus been intertwined* in the development of European society and are still relevant today: Greek philosophy, Roman private law and Christian morality as sources of values are the pillars of the European Union. It would be wise to accept this as historical fact, to take it more seriously than we have so far, and to apply it in practice as well. Especially because Europe – and the EU as part of it – is facing a general crisis of values and this could lead to *its strange death*. It threw away its old beliefs and became enthusiastic about new redemptive ideas, “philosophies that

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9 Bibó, I. (1986) ‘Az európai társadalomfejlődés értelme’ in Bibó, I. *Válogatott tanulmányok. 3. kötet 1971-1979*. Budapest: Magvető Kiadó, pp. 31–32.

10 Szladits, K. (ed.) (1938-1941) *Magyar magánjog 1. köt. Általános rész, személyi jogok*. Budapest: Grill Kiadó. p. 365.



could be made into totalistic political visions (...) The fascist dream, like its communist cousin, began as a sincere effort to answer the severe problems of the age... But it is also easier than it has ever been to feel a fear not only of these ideologies but of any ideologies. (...) The point is to question everything and never get anywhere; the destruction of ideas is perhaps precisely because we are afraid of where they might lead.”<sup>11</sup>

The madness of crowds in the 20th century led to two terrible world wars and a series of devastating local wars. Man has outgrown himself, that is, his “good manhood”; humanity has outgrown its civilisation, the level of humanity it had reached up to that point. Restoring these was the mission of human rights (1948). “The post-war culture of human rights pretends (or its adherents pretend) to be a religion itself, and as such introduces a secularised version of Christian consciousness. (...) But it is a religion that is never sure of itself, because it does not have its certainties. The language is revealing. As the language of human rights became more and more grandiose and self-serving, it became increasingly clear that this system was not capable of fulfilling its original purpose.”<sup>12</sup> The South Slavic war at the end of the 20th century, then the Syrian war, and now the war in Ukraine, are signs that we are still living “in the madness of crowds”.<sup>13</sup> There is no shortage of new ideologies that will save people; but good old virtuous people, good fathers and prudent stewards as ideals and role models to follow are missing. Albert Schweitzer and Mother Teresa, two ideals and role models in a century – this is a rare exception, not the rule. Fortunately, there are still many good people like them – if not saints – today. They are people of active love, whose main virtue is selfless support for those in need. Institutionalised on a societal scale, we call it solidarity. The guiding ideals of the European Union are *freedom, justice and solidarity*. Solidarity, in Christian language,

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11 Murray, D. (2018) *Európa furcsa halála: bevándorlás, identitás, iszlám: mit tartogat számunkra a jövő?* 4. kiad. Pécs: Alexandra. p. 214–221.

12 Murray, D. (2018) p. 211

13 Murray, D. (2020) *A tömegek tébolya: áldozatok a politikai korrektségek oltárán?* Pécs: Alexandra. p. 7.

is *love of neighbour*.<sup>14</sup> That is why Pope John Paul II, quoting his predecessor Paul VI, often said that Europe *is a civilisation of love*.<sup>15</sup> The following of Christ, the religion and practice of sacrificial love, is capable of “pour out love, to show love for our neighbour, to transform the whole of human civilisation into a civilisation of love.” “Man, made in the image and likeness of God, who received the world from the hand of his Creator, has also undertaken the task of fashioning it in his own image and likeness. It is from the fulfilment of this task that civilisation is born, which is ultimately nothing less than *the humanisation of the world*.” The civilisation of love, of solidarity with our neighbours, is Europe’s greatest historical and cultural achievement, and its attraction in an era of global migration.

Institutionalised social solidarity (compulsory “popular education”, public health care, pensions, social security) is the result of mass democracy, universal, equal and secret suffrage, alongside Christianity. Which, again, goes back to Christianity, the equality of all human beings before God, their divine dignity, that is, their equal human dignity. Somehow, this is what Robert Schuman, the founding father of the European Union, meant when he said that “democracy will either be Christian or it will not be. An anti-Christian democracy will be a parody which will sink into tyranny or into anarchy”.<sup>16</sup> Since then, many paraphrases of this idea have been born and circulated. Europe will either be Christian or it will not be! The 21st century will either be the century of love or it will not be! These are words to inspire thought and action. We could say, “a good state will be a state of good people, or it will not be”! Without selfless love and political integrity, a good state cannot be created and cannot function.

However, if our world is dominated by *selfishness and individualism* (selfish individualism), the chances of a good state are much slimmer. In Hungary, this manifested in the form of the neoliberal triple slogan,

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14 Zlinszky, J. (2007) *Közéleti és jogászai etika a gyakorlatban*. Budapest: Szent István Társulat. p. 20. and p. 291.

15 Vereb, J.M. (ed.) (2010) *Minden napra egy gondolat: napi meditációk a nagy pápa imádságaiból és írásaiból Jerome Vereb atya szerkesztésében*. Budapest: JLX. p. 174. and pp. 194–195.

16 Lejeune, R. (2015) *Politika és életszentség: Robert Schuman, Európa atyja*. Budapest: Magyar Máltai Szeretetszolgálat. p. 244.

the so-called Washington Doctrine, which was so much talked about during the years of regime change: *deregulation, liberalisation, privatisation*. All three paved the way for the “world domination of capitalist corporations”, removing social obstacles to a capitalist, unipolar world. The four fundamental freedoms of the European Union have a similar function: the *free movement of* capital, labour, goods and services is not a win-win game. There are winners, but there are also losers. As usual: few winners, many more losers. The losers are those who did not want this kind of regime change, this kind of Europe and this kind of global world. Not a neoliberal state and not neoliberal public policy, but rather a Christian state and Christian democracy, social solidarity with security and a *social constitutional state*. However, under the spell of the private property-based market economy and *consumer society*, and under the pressure of political correctness, their will was characteristically not even formulated, and thus not given a political chance. Wherever Christian democracy still exists for historical reasons, it is under strong attack and losing.

Self-centred individualism also has a triple slogan, which takes over and takes everything: 1. I am for myself. 2. The world is for me. 3. You are for me too. “As people soon discovered, there were serious problems with a culture of unbridled individualism, where the breaking of rules becomes, in a sense, the only remaining rule. (...) A society dedicated to the constant upending of norms and rules in the name of increasing individual freedom of choice will find itself increasing disorganized, atomized, isolated, and incapable of carrying out common goals and tasks.”<sup>17</sup> And common challenges are coming at us like a tsunami from many directions: climate catastrophe, overpopulation, global population migration, social and cultural breakdown, escalating wars. The idea of community solidarity – also as love of one’s neighbour – must therefore be redefined as a powerful counterforce, and the project of becoming a good human being, and with it a good state and a good society, must be relaunched and accelerated. Starting from the institution of marriage and the family as the smallest *community of love* in society, the triple slogan of the programme could be: 1. I am for you. 2. We are

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17 Fukuyama, F. (2000) *A Nagy Szétbomlás: az emberi természet és a társadalmi rend újjászervezése*. Budapest: Európa. pp. 30–31.

for our children. 3. Our family is for society, society is for our family. And a good state helps and protects us in all three respects.

The process of *becoming a man* – which in my view is *becoming a good man* – is like the development of the good state, in its latest version the *rule of law*: it is both a statement of fact and a programme. Both are improving, but we know that they will never be perfect. But that doesn't mean giving up, because that, as we know from experience, is the *wrong thing* to do, a setback in the process. To improve man, the strength of weak and fallible man is not enough; *it requires strength above man*. This is what faith, religion and the churches are for, and the state must work with them towards a common goal. The *good man* is a *joint project of churches and state*! The tools and methods may differ, as appropriate. The state tries to use the *external and objective normative* instrument of law, the church tries to use the *internal and subjective* method of the *soul and conscience*. For example, the Catholic hymnbook "Hosanna" lists the *seven cardinal sins* for the examination of conscience before confession (adding that "these may not always be mortal sins in themselves, but they are the roots of many serious sins"): 1. pride; 2. greed; 3. lust; 4. envy; 5. gluttony; 6. anger; 7. slothfulness to do good. These are "everyday" sins, and most people – as repeat offenders – commit several of them every day. But then do they make sense, and what is it? I see at least two: 1. the "sinful man" *realizes* that he needs God's mercy and grace, even *salvatory love*, and this realization brings him closer to God and to his fellow men; 2. the enumeration of the cardinal sins is a "people-educating tool", a means of becoming a better man, of human betterment. Overcoming these is also an important human goal, which we will never achieve, but which we must keep working towards, because it is the right direction to take on the journey of human life. They were also depicted in frescoes in medieval churches, so that the illiterate faithful would look at them and see them, find them repulsive and refrain from them. What tools of popular education do we have today (?) for the betterment of man? In a global, post-industrial, infocommunication, secularised world, what is the common goal, the right direction and the right way to reach it?

Unlike the seven cardinal sins, the "*seven cardinal virtues*" are nowhere listed. By *contrario* logical deduction, these could be the opposite of the seven cardinal sins: 1. humility; 2. giving (sharing the goods); 3.

purity (chastity); 4. rejoicing in the success of others; 5. temperance (fasting); 6. patience (tolerance); 7. active goodness (good deeds). Because of their Hungarian connection, it is enough to mention Saint Martin and Saint Elisabeth as examples. They are the *good people*, saints and role models often depicted in the frescoes of European Catholic churches and the stained glass windows of cathedrals. In Levoča, the exterior wall of the 14th century Town Hall features allegorical frescoes of *civic virtues*, again with an obvious ethno-educational purpose: 1. Temperantia (temperance, self-control); 2. Prudentia (wisdom, prudence, carefulness); 3. Fortitudo (strength, courage); 4. Patientia (patience, perseverance); 5. Justitia (justice, goodness, fairness). We don't know how many citizens of Levoča have become better people because of them, but none of them have become worse, that's for sure. Are there already similar ethno-educational apps available for download on smart phones? Is there demand for them? Because if not, it should be awakened as a "human need", and even stimulated by market methods. There is no danger of overconsumption and unsustainable development of these *ideological, spiritual goods*.

However, the problem of overconsumption of material goods, the growth of the *ecological footprint*, the problem of *unsustainable* development is a very real and rapidly growing threat. According to Konrad Lorenz, "The general, fast-spreading alienation from nature can largely be blamed on the increasing aesthetic and ethical vulgarity that characterizes civilized mankind."<sup>18</sup> The main reason is overpopulation and *the overcrowding* of life. Providing so many people with housing, food, clothing and all other consumer goods is increasingly beyond the carrying capacity of the Earth and living nature. I will give only one negative example of satisfying the mass needs of the masses. "Because of the commercial consideration that mass-produced building parts are cheaper, and also because of fashion, that leveler of all things, on all town outskirts in all civilized countries, mass dwellings are springing up by the thousands. Indistinguishable from each other except by numbers, and unworthy of the name 'houses,' they are at best batteries for 'utility people,' to use an expression analogous to the term 'utility animals.' Keeping hens in batteries is rightly looked upon as cruelty to

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18 Lorenz, K. (1988) *A civilizált emberiség nyolc halálos bűne*. Sopron: IKVA. p. 25.

animals and a disgrace to civilization, but nobody objects to a similar confinement of humans, even though man can stand this literally inhuman treatment even less than animals. (...) A man is not (...) constructed phylogenetically in such a way that he can bear being an anonymous and interchangeable element among millions of absolutely similar others.”<sup>19</sup> Animal protection, especially the regulation of livestock farming, the so-called *animal welfare legislation*, can be understood as a manifestation of *human kindness*. However, *legislation on human welfare* seems to be lagging behind. This is just one example of the futility of the churches and the state, even if they join forces, in their efforts to develop the good man, if the material living conditions that are in contrast are constantly destroying it. If these living conditions are shaped by momentary gains and profit motives, rather than by the dignity (breed character) and natural needs of man, the integrity of his genes, his physical and mental health, then it is to be feared that the result will not be a good man, but an *inhuman man*. Perhaps, thanks to this technique, some kind of *bionic being*, interchangeable *human-robot*, human-imitation? Is the “brave new world” still science fiction or reality? I think it would be better, after all, not to give up hope, but to keep working on developing the *good man*. To save both nature and the people in it. This is the primary task and defining characteristic of a *good state* today.

After a felling or a forest fire, new shoots sprout from the roots that remain intact, reviving the forest. It is also known as *coppice*. Europe, *burnt out* in the fires of the world wars that had started in it, sought to *erase* its own past, including its traditional values, with mindless zeal, on the basis of its new ideas. Now it is looking around, huddled in one place on the smoking ruins, searching for direction and purpose, its place and role in the world, its obligations to its own *identity* and to its citizens. It imagines itself *as a community of values*, but it cannot find its values. Instead, it tries to import foreign and fake valuables, glass beads, which it used to export itself. But the fires that still flare up here and there should be extinguished, the forest floor irrigated so that the roots that remain intact can sprout, so that traditional values can grow again, so that civilisation can revive and bear fruit again, so that it can benefit man. “All European states have been made what they are by

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19 Lorenz, K. (1988) p. 27.

Christian civilisation. It is precisely this European spirit that must be revived (...) To free ourselves from hatred, from fear, and to relearn Christian brotherhood after so long a division..." (Robert Schuman)<sup>20</sup> Christian *brotherhood* is the hard core of *good humanity* in European civilisation. Good men, as good citizens, form for themselves a *good state*, not over themselves to rule them, but to serve them, to promote their goodness. And the same applies to the European Union. Good states of good people make a good Union and a good world.

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20 Lejeune, R. (2015) p. 238–249.

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# Non Derogation Principle



## 1. Creating an era

LET ME SAY AT THE OUTSET that I do not intend my writing to be a 'proper' jurisprudential publication, but rather an illustration of an 'unconventional' way of thinking that I believe is not only possible, but desirable in our increasingly complex and confusing world. We are living in an era of crisis for fundamental values. Our values, along which we have lived our lives and organised our social life, are relativised, because they are consciously relativised (eroded, derogated) either by well-intentioned people or by evil, malicious people. The result of human *goodwill or ill will* is the same in this case: *a general crisis of values*. The process is like the *erosion of topsoil*; and our survival may depend on maintaining and protecting its productive (life-giving) force. So we need to rethink our whole system of values, the principles that govern our lives and our society. Which of our values should be saved, protected and preserved? Which should be abandoned and replaced by new values? I am exploring this topic along a new – originally environmental – principle.

Looking back over almost a millennium, it can be objectively stated that the Hungarian Constitutional Court's Decision 28/1994 (V. 20.) opened a new era in the interpretation and enforcement of the right to a *healthy environment* as a third generation constitutional fundamental right. Section 18 of the Constitution in force at the time stated in broad general terms: "The Republic of Hungary recognizes and enforces the right of everyone to a healthy environment." From this, the Constitutional Court interpreted in *an activist* way the most important principle of environmental protection and nature conservation, the

*non derogation principle*, that the state *may not reduce the level of nature protection provided by law!* At a minimum, this means that the state is obliged to *maintain and preserve* the conservation *status quo*. But the principle – with the familiar logical conclusion of a *contrario* – also means that the level of protection achieved so far can (*only*) be *increased and strengthened* by the state. In its decision, the Constitutional Court also explained other essential elements of the principle. To enforce the right to a healthy environment, the state is obliged to set up and operate specific *institutions* (e.g. a system of specialised authorities, national parks, nature reserves, gene banks, etc.). This is called *the institutional protection* of the right. As for the substance of the protection of the right to a healthy environment, it is the *protection of the natural foundations of life*. This naturally extends to *human life as a value*, which also includes *ensuring the living conditions of future generations*. As a third-generation fundamental right: it is both *an objective of the state and a task*, i.e. a duty. This means more than the milder formulations of “acknowledges”, “protects”, “supports”, “respects”, etc., used so far. It is an active, hands-on, action-oriented obligation, the institutional protection side of which is the decisive factor. The new, more stringent state obligation and responsibility stems from the fact that the right to a healthy environment is most closely linked to the right to life, which is the greatest value that the state is obliged to protect unconditionally and under all circumstances. The state’s obligation to maintain the natural basis of human life could therefore have been derived from Section 54(1) even without Section 18: “In the Republic of Hungary, every human being has an innate right to life and human dignity, which may not be arbitrarily deprived.” The right to life and the right to dignity are to be understood together. Life is a precondition for dignity, and endangering life endangers dignity. This leads to my logical conclusion: damaging or even endangering living nature violates the right to human dignity; or in other words, damaging or endangering nature is not worthy of man as a living being with consciousness and soul, an integral part of the living world! Not even, and especially not, if man imagines himself to be the master of the living world – most recently its creator<sup>1</sup>. Pompousness, conceit,

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1 Harari, Y.N. (2018) *Homo deus: [a holnap rövid története]*. Budapest: Animus. p. 65.

self-indulgent possessiveness, ostentatious wealth, the lust for domination – these are all feeble human sins, not human virtues. They do not enrich man's humanity and dignity, but threaten it along with the natural foundations of life.

A further specificity of the right to a healthy environment, argues the reasoning of the Constitutional Court's decision, is that its subject could in fact be "humanity" and "nature". This is the reason why some environmentalist, nature conservationist, animal protectionist, etc. movements, and even scientific publications, call for the "rights" of endangered plant and animal species, their individuals, natural habitats, special natural formations (forests, swamps, caves, mountains, etc.). Others talk about *the rights of future generations* yet unborn. They may not be legal entities, but they may have a *legal representative* who can act in their interests – in fact, to protect the life and health of the people, including the generations living today. Another peculiarity is that a large part of environmental and natural assets are *finite*, and their damage and destruction is *irreversible*. Hence the increased stringency of their protection, on the one hand, and the fact that ex post liability for damages is less appropriate than *preventive* measures taken by public authorities to protect them, on the other. This is why one of the basic environmental principles is *the principle of prevention*, and there can be no stepping back to the principle of the *polluter pays* (the two principles can be applied together, complementing each other). Similarly, the State's freedom to apply other legal instruments and to establish and operate institutional protection (creation, reorganisation or abolition of specialised authorities; establishment and modification of powers and competences, etc.) is relative. Environmental degradation, restriction and endangerment cannot be allowed in these areas either. Once a level of protection has been reached, it is only conceivable to go backwards in very exceptional cases, when there is room for limiting other substantive fundamental rights. The restriction of a fundamental right of a subject in order to enforce another substantive fundamental right of a subject may only be allowed if it is *necessary and proportionate*, i.e. if there is a compelling reason and the harm caused is less than the benefit gained. This *balancing act* is often extremely difficult, as economic, investment, land development, job creation, social, etc. interests

clash with environmental protection – but not impossible, or even if it seems so, it is inevitable. The strength of the *non derogation principle* could sometimes override the principle of the protection of *acquired rights*, the *protection of legitimate expectations*. The strength of the principle was further increased and clarified by some subsequent decisions of the Constitutional Court. For example, in Decision 27/1995 (V. 15.), the Court stated that “The economic interest of the builder is not sufficient to reduce the level of protection.” An individual exemption from an environmental prohibition cannot be granted by a public authority on the grounds that an environmentally friendly solution would be “too expensive” for the builder. It has become a *constitutional requirement* in spatial planning that environmental objectives on the one hand, and development objectives on the other, are weighed equally in decision-making. Decision 14/1998 (V. 8.) of the Constitutional Court also emphasised that “sectoral concepts do not take precedence over environmental interests.” Compared to the previous four decades of socialist industrialisation and the state planned economy, and then to the push of foreign capital, this approach to values can be seen as a huge turnaround. It was and still is of epochal importance to this day. The notion of *unsustainable development* and the *threat of climate catastrophe* have not only retroactively justified the epoch-making nature and rigour of the *non derogation principle* but have also updated and reassessed its weight and relevance: it is needed today more than it was yesterday, as we shall see, for several reasons.

## 2. Enforcing the principle

**WHEN ACT II OF 1976** on the Protection of the Human Environment was published – a pioneering law in its time and legal context – Professor Miklós Világhy, my head of department, called me as a young assistant professor and said: “This is something new. You’re the youngest member of the Department. It will be your topic!” Thanks to this assignment, I became an *environmentalist*, and as a result of my work on the subject, I wrote a comprehensive study on the borderline

between environmental protection and civil law.<sup>2</sup> Later – together with so many others – I also participated in the Danube movement, and as one of its founders (together with László Sólyom and eleven others) I tried to organise the Danube Circle into a national environmental association, but without success. With such a legal and activist background, I became Parliamentary Commissioner for Citizens' Rights (Ombudsman) in 2001, and I put a lot of emphasis on environmental protection. I was already familiar with the *non derogation principle* constitutional court decision and the legal and extra-legal arguments in favour of the principle. As an ombudsman, I used these arguments to oppose the construction of a military air defence radar station to protect Zengő Hill (OBH Report No 3631/2003). Anti-aircraft radars are deployed on high mountains all over the world, for understandable reasons, and their purpose is airspace security–military security–life safety, and ultimately the protection of human life. In a similar logical chain, the aim of protecting the Zengő Hill *Peony of Banat* (*Paeonia banatica*) was to protect the *natural habitat* of a highly protected species–biodiversity–wildlife–the natural basis of life–the protection of *human life*, including the living conditions and choices of *future generations*. Hungary is also bound by international human rights and environmental conventions – both legal instruments – to protect human life. The decision dilemma was based on the guidance and adherence to the *non derogation principle*: “The Ombudsman has found that the proposed installation and operation of the facility on Zengő Hill would reduce the level of protection afforded to the nature reserve by the legislation.” Since then, thanks to advances in ground and satellite radar technology, airspace security has been guaranteed in other ways.

A decade later, as a rapporteur constitutional judge, my name was attached to Decision 16/2015 (VI. 5.) of the Constitutional Court, which declared the unconstitutionality of a law not yet promulgated on the basis of the principle of *non derogation*. On 28 April 2015, the Parliament adopted the law “amending certain laws related to the management of state land assets”, which would have given the National Land Fund asset

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2 Lenkovics, B. (1980) 'A környezetszennyező magatartások polgári jogi szankciói' in Asztalos, L., Gönczöl, K. (eds.) *Felelősség és szankció a jogban*. Budapest: Közgazdasági és Jogi Könyvkiadó, pp. 317–339.

management responsibilities instead of the National Park Directorates in certain cases. According to the President of the Republic as the petitioner and the Constitutional Court, this solution would have reduced the level of protection provided by the legislation. "There is a risk that efficient management will become the primary concern at the expense of conservation. ... The fact that certain pre-existing and clearly identifiable powers granted by legislation are absent from the regulatory environment, leaving certain tasks unperformed, results in a reduction in the level of legal protection, even if this *only* risks causing a deterioration of the state of nature." It seems that the principle of *non derogation* has been interpreted in an expansive way, i.e. tightened up.

Recognition and acknowledgement of the fact of *unsustainable development*, and the imminent threat and severe symptoms of *climate catastrophe* experienced on a daily basis, justify a further tightening and broadening of the principle. Because what is it really about? What is on the one hand an increased protection of nature and wildlife, is on the other hand a limitation of man's control over nature and wildlife. The source of domination over things, including natural goods, is the legal institution of *property and possession*, with absolute and exclusive legal domination (against everyone) being their first *sub-entitlement*. As such, it is a prerequisite for further sub-entitlements, namely that of *use, collecting benefits, exploitation and free disposal*. The limitation of human dominion over nature is therefore essentially a limitation of property and possession. People have been trying to do this for hundreds, perhaps thousands of years, without success. On the other hand, the *extension of domination* to new territories and their natural goods, and then to the people (slaves, serfs, vassals, wage-workers, human resources and consumers, etc.) by the mediation of things, has proved much more successful, precisely with the help of law as a tool. Property is still sacrosanct, a fundamental constitutional and human right. But at least it is no longer unlimited, partly for *humanitarian and social* reasons, partly for *natural* reasons. One of the fundamental principles of the latter is the *non derogation principle*. Other important principles include the *principles of foresight and impact assessment; the precautionary principle; the one who benefits bears the cost; the principle of 'polluter pays'; the principle of institutional protection; etc.* Of course, what is needed here is not more principles, but more effective protection.

### 3. Extending the principle

**JUST AS HUMAN DOMINATION** has extended from things, from natural goods, to other human beings, so protection must extend from living nature *to living society* and its natural constituent elements that sustain man, especially marriages and families and their members. In other words, the principle of *non derogation* should be extended not only to the protection of nature, the natural basis of life, the living environment and, indirectly, human life, but also to the protection of fundamental social values rooted in nature, certain fundamental freedoms and human rights, fundamental constitutional rights, guiding ideals and legal principles. To today's legal values, which have guided people's lives since time immemorial, and have organised the life of societies and the way they live together in communities. The expected effects of abstract ideas and ideologies, concepts of freedom and interpretations of law, both the new and the most recently promulgated, should be considered from a generational perspective, and their dangers and value-destroying damage should be prevented and averted. Some of these are *artificial, human (volitional) constructs*, of which we have no practical, experiential knowledge, but they can be used as the latest means of domination over others. Examples include the irrational demand, methods and practice of *political correctness*, the restriction and suppression of others' freedom of thought, opinion and expression, which is in fact *a suppression of democratic discourse and criticism*. The *pc* would uniformise the multipolar world, human thinking, along its rigid dogmas, making the infinitely diverse human personality monochromatic. Due to a similar threat, the covertly violent push of *gender ideology* and *LGBTQ movements*, the seemingly "soft" bullying of minorities against the majority must be stopped. We are familiar with such social phenomena from decades of communist totalitarian dictatorship. Not only the atomic bomb, the power of dogma<sup>3</sup> can also act as a weapon of mass destruction, leaving deep scars in people's minds and souls that are difficult or never heal. Like the idea and practice of Nazism in the German people, the impact of

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3 Lorenz, K. (1988) *A civilizált emberiség nyolc halálos bűne*. Sopron: IKVA. pp. 75–81.

which they/we still cannot exactly measure, to find the adequate cure. What will be the consequences of today's aggressive ideas of violence in fifty, one hundred or two hundred years? A similar question can be asked about the devious, deceitful, deceptive idea of the *open society*, which was formulated in opposition to the closed communist totalitarian dictatorships. The communist pole of the bipolar world order has since collapsed, but the idea is alive and well, now in connection with the mass resettlement and failed integration of illegal migrants, which threatens to bring about a *population exchange*, or even a complete *change of civilisation* or civilisational *decline*. The great question of the West is also whether it is right to place individual freedom at the top of the human rights hierarchy and at the centre of the European Union's activities, if it has now been *distorted into selfish individualism*, disintegrating marriage and the family, and indirectly the whole of society as communities of solidarity?

The limit to the exercise of every freedom is the infringement of the freedom of others, and the freedom to interpret and exercise every right is limited to the boundaries of the rights of others. It is also forbidden to abuse any fundamental freedom or human right, and it is forbidden to commit an act of lawlessness under the pretext of legality. An egocentric, subjective interpretation of the law must not be imposed on the majority under the guise of minority rights. It is forbidden to stifle dissent, to intimidate its representatives by branding them as homophobic, racist or segregationist. The number of human rights shysters, magicians and *sorcerers* is growing, and the *Marios* are feeling more and more humiliated. We know from Thomas Mann that this will not end well. It is also a prelude to a kind of "fascism", even if it is a *liberal fascism*. (In his 1936 poem "Világosítsd föl" ("Enlighten it"), Hungarian poet Attila József envisioned *fascist communism*, which came to pass!) The abusers of fundamental freedoms and human rights are the grandchildren of grandfathers who lived in total dictatorships, the children of fathers used to soft dictatorships, who have not learned from the past and are therefore prone to commit the same mistakes and crimes. They are the prophets of today's global usurper capitalism, in fact its well-paid agents, professional movers and permanent revolutionaries. They are the *drug dealers* of the new abstract ideologies, divorced from nature and common sense, the disseminators of the latest *mass*



*drugging ideas*. Such ideas are born at the same rapid pace and in as many variations as *party drugs*. Is it enough to fight them with their own weapons? If we expose them, make them impossible, discredit them, humiliate them, degrade them, ostracise them, condemn them to virtual stake death, character assassination? We need to be different from them. Let's not allow our core values to be destroyed (*non derogation*). Let's defend them, one by one, through rigorous and consistent reasoning, step by step, in the knowledge of the timeless and enduring sustainable values of our past, looking to the future, especially future generations. Let us not allow the Ten Commandments or the cross, the symbol of sacrificial love, to be taken down from the walls of public school classrooms. We can fight against the wilful (arbitrary–tyrannical) value-revisionists (relativists) with empirical, solid knowledge. Without fear, trusting in the power of natural laws, in the values that are born with us and cannot be alienated from us, in common sense and human normality.

Today, we still have plenty of values to be protected and already protected, and we cannot even count or “inventory” our wealth. The legal instruments and institutions for the protection of values are also expanding. Environmental protection, nature conservation and the protection of wildlife are at the forefront and exemplary in this field. We have monuments, we have national cultural heritage, we even have world heritage. Our libraries, museums and galleries are full of treasures. We have music and literature, art and science. We have Nobel laureates and otherwise “world-shaking” Hungarians. We have faith and we have religions, full of moral values, of commandments and prohibitions that mark out the right path for man. We have a history and a historic constitution, a Fundamental Law and good laws that provide a “framework of values” for our lives. We know the human virtues, the golden mean; we can have a humane philosophy of life. We have something to build our humanity, to build and fulfil our personality and ourselves, to pass on our values to our children. We call this *tradition*, the passing on of *our traditional values*. That is why our values must be protected at the very least, but also, if possible, further enhanced, so that there is something to pass on, and children and future generations are needed so that there are people – the successors of our lives – to whom we can pass on our values and our humanity.

#### 4. Family as a natural asset

**THE CRISIS OF MARRIAGE** and the family in the *Western, developed, rich, Christian* world is leading to an ageing and shrinking population, and social reproduction is not guaranteed. If the European white race is threatened with extinction, it should be declared a highly protected species. As the natural basis and traditional social framework for childbearing is the marriage and family formation of a woman and a man (as a *human couple, a married couple* and as a *parent couple*), this should be protected and supported. Man's being male and female (which is not identical with *the changing notions of masculinity and femininity*) are fulfilled in *fatherhood and motherhood*. These are also the *innate and inalienable* fundamental rights of man, the components of his humanity and dignity. *Under the non derogation principle*, the level of legal protection for the marriage and family of a man and a woman that has been achieved so far cannot be reduced, only increased. As with other protected species, any behaviour, movement or action that damages, pollutes, destroys, violates or even merely endangers the *natural and fundamental* institution of marriage and the family as a highly protected value should be prohibited. Such ideologies, movements and activities are unsustainable from the point of view of social reproduction, and are offensive to the personality and dignity of some people who value traditional marriage and family because they are degrading and demeaning. The ideals and actions of selfish individualism, which dismantles society and the family into atoms, are therefore in many ways unlawful and therefore unacceptable. No human right can be interpreted as designed to destroy, let alone leading to the destruction of, traditional, natural marriage and family.

If we look at the problem from an evolutionary perspective and on a large time scale, it is not a new problem, with roots going back to prehistoric times.<sup>4</sup> Little is known about these times, and the archaeological evidence suggests a range of conclusions that can neither be proved nor disproved, whether true or false. Therefore, our thoughts and

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<sup>4</sup> Harari, Y.N. (2020) *Sapiens: [az emberiség rövid története]*. Budapest: Animus. p. 17–30.

statements are – in legal terms – *presumptions*, i.e. probabilities, which we take as reality until proven otherwise. To confirm our presumptions, we often project back into the past the empirical knowledge of later times, which also carries doubts. The seriousness of the problem and the fact that it is getting worse and worse still forces us to think, and every thought can help us to get closer to a solution. The reason for new ways of thinking and approaching a problem is that it cannot be solved with the same thinking that created the problem, even if it was based on exact facts in its time. In science, the scientist's intuition and imagination often play a big role. He sees what everyone else sees, but he is thinking about something that no one else is thinking about.

For more than two million years, prehistoric and caveman man lived as a *communal* being, in a herd community: a community of women and men, a community of children and a community of property. His natural inclination was *polygamy*, compared to which *monogamy* was considered deviance. The sexual attraction (dominance) of women and the linking of children's descent to mothers resulted in a *matriarchal* society (then a horde of only 150–200 people) and within it, female domination (*matriarchy*). However, in addition to, and later in place of, the occasional instinctive sexual relationships, more lasting sympathetic relationships developed, followed by strong mutual attraction and permanent pair bonds. They may have provided an opportunity to reveal that, compared to the *joint* children, the man cares for *his own* child and the mother of his child differently, more devotedly, even at the expense of his own maintenance as husband and father. In addition, knowing the father – and therefore both parents – prevented *incest*, the birth of genetically defective offspring. Monogamy may therefore have been the result of man's natural evolutionary development, even before the advent of private property and the agricultural revolution. What is undeniable, however, is the fact that settlement, crop and livestock farming, private property and family farming consolidated and made monogamous marriage exclusive. From the hunter-gatherer way of life, i.e. from the existential way of *being* in nature, man has moved to the existential way of *possession*. The essence of possession is *dominion*, the essence of private property is total and exclusive *power*, both over objects and things worked by man. The man who did the productive work became the owner of the land and property. Thus,

the wife and children dependent on the owner–husband and father (husband power, father power) and then other people without property (slaves, vassals, indentured servants) were brought within the scope of domination and power. Women were the biggest losers in the transformation (paradigm shift), with male domination (*patriarchy*) replacing female domination. The phenomenon of male domination was not changed by the industrial revolution and capitalist private property, nor even by the socialist revolution, which only brought a change of domination, but did not abolish the phenomenon of proprietary domination, and in fact exercised it as a total dictatorship. At the same time, mothers and children are increasingly cared for not by husbands and fathers, but by employers and the social constitutional state. The family, as a two-earner consumer community, neither needs nor tolerates female domination nor male domination. The time has come for men and women to enjoy real equality, to marry freely on the basis of strong affection, to be mutually faithful and selfless in supporting each other, and to found a harmonious family with joint offspring.

## 5. Family as a legal value

**THE NATURAL AND SOCIAL** evolutionary development of marriage and the family has been continuously followed, mapped and reflected in the law, which itself has evolved, changed and continues to change today. For nearly two thousand years, marriage was dominated by canon law, which considered it a sacrament and indissoluble. In doing so, *it was* in effect *sanctifying* the effects (including the negative effects) of the agricultural revolution. The paradigm shift in this area was the civilisation of the ideals of *liberty, equality and fraternity*, the institutionalisation of *civil marriage*, which regarded marriage as a *contract* between two free people, one *man* and one *woman*, with equal rights and co-equal rights, which could not only be entered into but also dissolved. At first, dissolution was dominated by the *principle of fault*, which turned divorce into a war between the parties, with all participants losing on it. This was followed by the *principle of breakdown*, which is more peaceful than the former as long as one party does not object to the divorce. The simplest, quickest and cheapest way to

divorce is the *agreement of the parties* – where they both say ‘I don’t’ instead of ‘I do’ to marriage. If the parties are essentially dissolving their own marriage in such a case, there is no need for a court; (in many countries) a registrar is sufficient. But if the bond of holy and indissoluble marriage is thus loosened, why should it be made at all? It’s just a piece of paper! The number and proportion of non-marital, *alternative* forms of cohabitation, relationships and partnerships has also started to rise. Strangely, however, the people living in them began to claim the rights of spouses, without the spousal obligations that go with them. The law – for obvious political reasons, but also taking into account the sociological and demographic facts of the family – has constantly yielded to the growing social expectations, with the result that the man-woman cohabitation has, in its essential elements, been elevated to the status of marriage. The concept of the *sociological family* was also introduced, in which the prohibition of discrimination against children born out of wedlock played a major role. The conscious and wilful rejection of marriage and the family based on it, and the choice of a looser form of marriage as a legal fact, was hardly assessed. Cohabitations are essentially “lumped together in a homogeneous group” with marriage and the family, although treating non-equals as equals can also be discriminatory. On the other hand, this has led to a further gradual erosion of traditional marriage and family as fundamental social and legal values. Moreover, legal generosity has not solved the crisis of marriage and the family, nor the lack of social reproduction, but has, as an unintended side effect, increased them. The problem has been compounded by the fact that newer and newer forms of couples and cohabitation have expressed a need for marriage and family status, especially for same-sex couples. Finally, and most recently, there is the onset of global population migration, the question of the reception of illegal migrants, on the surface as a replacement of the missing labour force, more profoundly as a replacement of a dwindling population (lack of social reproduction), but even more profoundly and in the longer term as a problem of *population exchange*, even *civilisation exchange*. Is this the latest stage in the *evolution* of marriage and the family, or a deep *crisis* whose solution cannot be postponed? In terms of legislation, we have reached the red line of ‘*so far and no further*’, which is forbidden to cross. Legal protection of marriage and the

family can only be increased and strengthened from now on. Family protection is also social protection, protection of cultural identity and protection of civilisation.

## 6. The natural foundation of life and family

AS WE HAVE SEEN in the introduction, the Hungarian Constitutional Court has held that the institutional protection of the right to a *healthy* (biological, natural) *environment* is essentially *the protection of the natural foundations of life*. According to Article 16(3) of the UN Universal Declaration of Human Rights: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Just as the natural basis of life is a healthy environment, the natural basis of society is a healthy (harmonious) family. If we combine these two human rights, the right to a healthy environment and the right to a family, and their protection, the protection of the environment and the protection of the family, they overlap almost completely in content; they are essentially the same. The *natural family* is part of the natural basis of life, so the institutional protection of the family is also the protection of *the natural basis of life*. Just as the individual human being as a *living being* is part of the *living* (biological, natural) *world*, so is the family and the human community of the society made up of families. If man, family or society *breaks away from* the natural foundations of life, or even turns against it and destroys it, it is itself that is being destroyed. Without roots there is no life on earth. The Earth nourishes man and is rich enough to satisfy the basic subsistence needs of all men, but not rich enough to satisfy the greed, the desire for enrichment and domination of all men. Subsistence and species survival are natural needs, whereas the pursuit of wealth, abundance and pleasure is a socio-economic construct, cultural and rational, and therefore a matter of will. The great question of the virtue of *temperance*. Satisfying basic needs or moderate prosperity and social security, or excessive wealth and unsustainable waste: which will people choose? The protection and preservation of the environment, the natural basis of life and the natural and fundamental element of society, the family, or its pollution, damage,

destruction and with it the destruction of life? These are also the great questions of *peace or war, construction or destruction, life or death*. Is humanity now capable of making responsible choices? On the basis of *rationality*, reason, knowledge (*prudence*), these should not be questions. So why do people choose evil over good? Because that's his nature – so the saying goes. But what is the nature of man?

## 7. The nature of man

**A BEST-SELLING BOOK** by a pair of evolutionary biologists and historians (Kai Michel and Carel van Schaik) argues that *humans have three natures*. “The *first nature* consists of innate feelings, reactions, and preferences. They have evolved over hundreds of thousands of years and have proven their effectiveness... Included in this first nature are such tendencies as love between parents and their children, a sense of justice, ...horror of incest and infanticide, a sense of duty to others after receiving a gift or help, jealousy, disgust, and last but not least our religious consciousness.” *Our second nature* is our “cultural nature”, which can be many and varied, including morals, customs and religions, decency, politeness and manners, etc. The *third nature* is called rational nature: common sense rules, established practices, social institutions.<sup>5</sup> These three natures sometimes contradict each other, but at the same time they interact. I think there are a few other natures of man, and a lot depends on which one prevails.

For example, Mária Kopp and Árpád Skrabski write: “Sexuality has the capacity to elevate humanity into the transcendental realm, but it also has the potential to reduce it to a bestial state.”<sup>6</sup> *Animality or humanity*: which is man's true nature, or the stronger, more dominant one? This is the most ancient dilemma in the process of becoming human, of becoming more and more human, which is still going on

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5 Michel, K., Schaik, C. van (2019) *Az ember három természete: A Biblia evolucionista olvasata*. Budapest: Typotex. pp. 28–29.

6 Kopp, M., Skrabski, Á. (2020) *A boldogságkeresés útjai és útvesztői: az érett személyiségtől a kiegyensúlyozott párkapcsolatig*. Budapest: KINCS: L'Harmattan. p. 158.

today and never ends, where the greatest danger that threatens man is *(re)bestialization*. Who knows for sure if the *revolution of biological sex and sexuality* is not a *counter-revolution*? Is not the sexual liberation of man a new kind of *slavery to instincts and addictions*? There were times here on this earth when man's "faith in falsehoods drove him to corruption, his life was ruled by raving self-deceptions" (Radnóti Miklós: *Töredék* (Fragment); 1944). It is feared that there are and will be such times – who knows when and how long they will last, and how can we prevent them, if at all?

Man could have lived happily in the Garden of Eden (in harmony with nature), but he picked from the tree of knowledge and switched to a productive, farming lifestyle to provide for himself and his family with his own labour (the sweat of his brow). He has moved from an existential mode of *being* to an existential mode of *possession*, and in so doing has unleashed the phenomenon of *domination* on the world, nature and society. It did not make his life easier, but it did create a lot of rivalry and rebellion, fighting and warfare around him, which caused immense destruction. This has now become unsustainable. The question is, is there a way out and where is it? Existence or possession – which nature dominates man?

The supreme law of hunter-gatherer primitive society was that "food must be shared." The primitive society was a mutually supportive, *solidary* community, not for selfish ends, but not entirely altruistic either. The Neolithic Revolution transformed this into a self-caring, self-sufficient, private community, privately owned, *excluding* all from the owner's wealth. *Common or private*, solidarity or exclusion, or an optimal mix of the two? Which is more human nature? It is still the most serious issue in politics, economics and law. Social solidarity in Christian Europe is now institutionalised in huge redistributive systems (public education, public health care, pensions, social security and equal opportunities). This is so attractive to global migrants. Extended solidarity in Christian language is the *love of neighbour*, which is Europe's greatest civilisational value.<sup>7</sup>

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<sup>7</sup> Zlinszky, J. (2007) *Közéleti és jogászai etika a gyakorlatban*. Budapest: Szent István Társulat. p. 20.



The former dilemma continues beyond material goods, whether man is a *selfless*, giving, helping, loving being (as Christianity strives to mould him into), or an unscrupulously *selfish*, individualistic, alienating being. Is the human soul or nature *altruistic or egoistic* or, in the language of psychology, *sociocentric or egocentric*?<sup>8</sup> The former is the guarantee of cooperation, of unity, of joint effort, ultimately of survival, the latter is the cause of rivalry, conflict, fighting and warfare, destruction. *Homo homini lupus est and bellum omnium contra omnes*, or mutual cooperation and *sacrificial love*? Are people inherently good or bad? We have to believe that we are better than we thought we were, but especially that we can be better than we were<sup>9</sup>.

We have already mentioned the original *polygamous* nature of man living in the community of women, men, children and property, which has evolved into a *monogamous* nature as a result of evolutionary development. Later, *bigamy* became a crime. However, many married people have sexual relations outside marriage at the same time, and many people have several marriages in succession. What is this if not a mixture, a partial overlapping of the two natures of man? Yet “pure” monogamy is associated with values such as *fidelity, trust, mutual support*, equality of rights and burden-sharing (the principle of half and half). It is a shame to jeopardise these. In the Western world, the crisis of traditional marriage is not to be solved by deconstruction.

Among human natures, the choice of the good, the better, requires *strength and self-control, fortitude and temperance*, virtues and faith. Man’s attention, will, desires and actions must be directed, redirected and transformed towards the good, and then he will be capable of miracles. He must be assisted in this by faith, morality, law, the system of values accumulated in all these, the level of which cannot be reduced, only increased. In this sense, the *non derogation principle* is the most general and valuable principle of value preservation, value saving, value protection and value enhancement. Human nature can only be developed in the main direction of *humaneness and humanity*.

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8 Kovács, J. (2007) *Bioetikai kérdések a pszichiátriában és a pszichoterápiában*. Budapest: Medicina. p. 80.

9 Bregman, R. (2020) *Emberiség: mégis jobbak lennénk, mint hittük?* Budapest: HVG Kiv. pp. 331–334.

## 8. The value of humanity

AS JÁNOS ARANY WROTE in his poem “Domokos napra” (“For the name day of Domokos”): “The greatest goal, here, in this earthly existence, Is to be a Man at all times, in all circumstances.” *To be a man* is to become human, and then to remain human through trials and tribulations. Married life and family life, especially having and upbringing children, are the stage of becoming human and a series of small and large tests of our humanity. Reflecting on the crisis of marriage and the family, I came to the idea that the fundamental problem is not with these two *natural and social* institutions, but with people who do not want to marry and have children. So what is the fundamental problem with this man? If the institution of marriage and the family are fundamental human (personal) and social values, at the top of the hierarchy of individual and social values, and yet man is turned away from them (because he is seduced by lesser values, even worthlessness, and can resist everything but temptation), then man’s crisis is really *a crisis of values*. It is not a crisis of fundamental values(!), but *a crisis of human value choice*. Masses choose the broad path of abundance, of buying and consuming, of travel, of entertainment, of the pursuit and gorging of pleasure at any cost, and few choose the narrow path of virtues – of strength, courage, wisdom and moderation – and of sacrificial love and responsibility for others. The path of physical pleasure is still more tempting and easier than the path of the soul and spirit, than the path of humanity. Many are drifting with the masses on the path of selfish individualism, instead of love of neighbour, respect for ancestors, respect for God and man (other man and their own humanity). It is nothing less than *a separation*, a separation from natural and divine law, from the moral good, and a separation from the well-established and proven human laws, from the fundamental values of human civilization.

Separation is the most difficult period of a person’s life: growing up, separating from parents, searching and finding one’s own way, realising one’s personality, living one’s own life. This is good, if this life is more (more meaningful, more valuable) and better (freer, happier) than the life of his parents or predecessors. But what if this new way, this life lived according to one’s own values, is a wrong way, a dead end, if it is empty and worthless, if it is full of addiction and bondage,

anxiety and unhappiness? Does the man who has broken away have the strength to see his own error, to stop and turn back, to hear the word of warning, to repent as a prodigal son, to accept and repay the love that is taking him back (even if the father's love is selfless and does not expect gratitude in return)? Marriage and the family are a *community of love*, an elementary school of humanity and love, in which the rigour of *paternal love* and the gentleness of *maternal love* complement and balance each other<sup>10</sup>, and *parental love* is reciprocated by *filial love* and affection. Choosing marriage and family is a *choice of values*, of love and community, of giving up individual selfishness. Or does one's own pride, and even more one's weakness, drive one further down the path of "the madness of crowds"<sup>11</sup> (Douglas Murray), into the mire of destruction? Separation should really be only a separation from the mistakes of the ancestors, a correction of the mistakes, which is nothing other than the betterment of the generation that is separating. It is the evolutionary path of becoming human, the development of man, and it is also the evolutionary path of the Christian faith and of European civilisation. The path of living nature, according to our faith, is the path of God, which must lead to a common goal: to becoming a human person; according to Greek philosophy, to becoming a *virtuous person*; according to Christianity, to becoming a *good person*; according to the essence of human rights, to *humanity*, unconditional respect for *one's own dignity (human existence, humanity) and that of others*. There is no other way to go. We cannot, we must not deviate from this path. We must *continue* along this path, or to put it another way, this is the road that *must and can* be taken. Only this can be called progress.

## 9. The civilisational value of love

**MARRIAGE AND FAMILY** are also the primary microcosm, school and training ground for sacrificial (Christian) love, selfless help and mutual support, solidarity: *love* (be faithful to and support) your *spouse*,

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10 Fromm, E. (1993) *A szeretet művészete*. Budapest: Háttér. pp. 57–63.

11 Murray, D. (2020) *A tömegek tébolya: áldozatok a politikai korrektség oltárán?* Pécs: Alexandra. pp. 7–19.

love (care for and educate) your child, love (respect) your father and mother. According to the law (order) of nature, a woman and a man form a human couple, a couple that is both a married couple and a parental couple. They form a family with their children, and a multi-generational extended family with their parents (grandparents). Family as a primary and fundamental value is at the heart of *familism*. The extended families form a clan, the clans form *a nation*. Today, the nation is no longer an exclusionary and conquering *community*, no longer a dominant one, but a community of *solidarity* based on culture, common history and values, *a social community of love for one's neighbour*. This is the essence of *culturalism replacing nationalism*. A community of civilisations is a community of *cultural nations* with common historical roots and similar values. The *European civilisational community* (the *civilisation of love*, according to Christians), together with the other great civilisational communities of the world, forms the global community of *human civilisation*, the *great family* of all humanity. This building on each other, building together, is only possible on the basis of common denominators, mutual recognition and respect for the same fundamental values, and their effective implementation. In universal human rights documents and in all the great religions of the world, these *common denominators* are there, we just have to read them, *interpret* them, harmonise them, *interpret* them together: unconditional respect for life; cooperation instead of selfishness; peace instead of wars (peacefulness instead of bellicosity); humanity and assistance; freedom and responsibility. And in this line – which could go on and on – there is now *the protection of the natural foundations of life* and the *fundamental principle of non derogation!* The acceptance and implementation of these common values is the key and essential condition for the sustainability and survival of our globalised world. It won't be easy, because until now the world, people's thinking and actions have been dominated by other values and concepts: struggle and victory; conquest and domination; interest and profit; wealth and envy; selfish egocentrism; greed and hedonism; etc., etc. All this has to be given up and abandoned – we have no other choice. Good values must be defended, enhanced and strengthened; false values must be exposed and ignored. Either good wins or evil does. We either survive or we die out. Protecting the natural foundations of human life and

averting climate catastrophe is an elementary condition for our survival and the preservation of our humanity (the two together). This will force us to change the way we think about our values, to reassess and redefine our core values. Our values, which are essential for the survival and sustainability of *social life*, for the preservation of human civilisation and *humanity*, must be given increased protection. This can be facilitated by the ground-breaking requirement of the *non derogation principle* for both the natural and the social environment.

## 10. The value framework of life

**WHEN WE VISIT A GALLERY**, we see that the precious paintings are in precious frames worthy of them. Sometimes we get the feeling that the frame is more valuable than the picture inside. (The “abstract paintings” are no longer paintings, but “compositions” – and they are framed in worthless frames, or have no frames at all, but that’s too far an association!) To use another analogy: in public finances, as in private ones, the main *constraint on* spending is the *financial framework*. In our consumption-dependent world, this *measure as a value* is also relativised. Both the welfare state and the mass of private households are prone to *overspending*. That is, they spend more than their income – they have no savings, no reserves, in fact! As they (also) spend on credit, they accumulate debt, which they leave to their descendants, burdening their future. And this problem is accumulating over generations, threatening financial, economic, social and environmental disaster and collapse.

Just as good housewives, good finance ministers and good governments should know and respect the framework and limits of household *management*, so should every human being know and respect the elementary rules, laws and limits, the fundamental values of leading a life, and all these together: *the value framework of life*. What is the thought, the word, the will and the deed that one can afford to do, on the basis of one’s personal qualities, skills and abilities, training and integrity, also with regard to the “receiving side”. Doing so in a way that does not break the framework of values, without exhausting his own possibilities completely, leaving room for other possibilities later on. Just as

one cannot transcend one's own shadow, one should not try to transcend the value frame of life. The boundaries and limits of values can be derived from faith, morals, common sense, honour, justice, fairness, good customs, traditions, shared beliefs, science, even good law, the law that carries values. Together, these values constitute *the system of principles that governs* human life and social coexistence, and together they constitute the level and standard of *human civilisation*. The quality of individual *humaneness* and that of *humanity* of our species as a whole, achieved so far, of which nothing should be given up, compared to which nothing should be regressed, set back, relapsed. *Non derogation principle!*

*Law and its system* as a whole is only one part of the system of social ordering principles, but it has a special and important role because of the public power constraints attached to it. History has shown that public power and law can be abused severely, sometimes brutally. Therefore, it makes a difference what kind of right we are talking about and what kind of public power we are talking about. The ratio between public and private law, between prohibiting and commanding, or recommending and permitting, is not the same. I prefer private law because it is full of *dispositive* rules allowing parties to deviate to some extent, and wide open *framework norms*, general clauses. But private freedom, *private autonomy*, is not unlimited either. It is also framed by fundamental *principles, guiding ideals*, evaluative and interpretative aspects outside the law, above the law, such as *reasonableness, justice and fairness* (in private law: *morality*). In fact, they *rule the law*, and the *rule of law* protects man against the rule of other men, that is, against the tyranny of the tyrant who disregards values. And this is not only a fundamental function of private law, but also of *law*, public law and human rights.

And if we also ask whether there is a framework of core values, the answer is yes, and this too is made up of several elements. Such are the laws of nature, which man cannot rewrite or abrogate. Such are the divine laws, the pure, essentially moral values of the faiths of men, the great world religions. And so are the experienced, tested scientific truths, the great discoveries of the human mind. The latter includes the previous two. As Einstein used to say: "Science without religion is lame, religion without science is blind." The recognised laws of nature,

the values of faith and science are also known together as *culture*, or human civilisation. Károly Szladits *spoke about the cultural traditions of humanity*. It is also forbidden to damage, break or break out of even the most basic *frames and barriers*, as it is unreasonable, damaging and irresponsible. Freedom and security, human happiness, must be found and lived within them. It is also to *avoid the tyranny of values*, which of course would be nothing other than *the tyranny of the people* who interpret and enforce values, turning values back on themselves, against other people. The framework and content of values is for man, not against man. A limit of values protects us from falling off the cliff.

One of the greatest desires of every human being is to be happy. However, the practice of “studying happiness” as a branch of human sciences is still very new. “Scholars began to study the history of happiness only a few years ago, and we are still formulating initial hypotheses and searching for appropriate research methods.” “This is the biggest lacuna in our understanding of history. We had better start filling it.”<sup>12</sup> This is what Mária Kopp and her husband Árpád Skrabski worked on. “True happiness, as defined by Aristotle, is not merely a mood or a state, but rather a constant striving. It is our shared values and virtues that differentiate humans from the animal kingdom, and it is these values which can make us happy, such as wisdom, knowledge, courage, love, humanity, justice, temperance, spirituality, and transcendent experiences. The search for the purpose and meaning of life is the true essence of happiness. If we consider this to be the most important thing, then even if we lose everything (our material goods or our health), we can still live a complete, harmonious, ‘healthy’ life.”<sup>13</sup> The *value of values*, the value of *happiness*, is therefore priceless. The principle of non derogation applies in particular to priceless values!

To sum up my thoughts: what does the *non derogation principle* teach and what can it be used for? The protection of *the natural foundations* of human life – the elements of living nature that are essential for human life – cannot be reduced, but can and should be increased. In the same way, there are also *natural and fundamental* elements of human social life, in other words, *fundamental values and ordering*

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<sup>12</sup> Harari, Y.N. (2020) p. 352.

<sup>13</sup> Kopp, M., Skrabski, Á. (2020) p. 12.

*principles*, whose protection and level of protection cannot be reduced, but can be increased, and even should be increased. It is forbidden to destroy, erode, relativise or *derogate* them. Like natural resources, they are *social resources* that help individuals – and our species as a whole – on the path to humanity, to becoming human, to becoming better human beings. The “prohibition of war” as a way and means of conflict resolution must be extended to them; instead, peaceful dispute resolution is needed! *The gestures of love instead of the gestures of violence*, as István Bibó recommended<sup>14</sup> and as befits a civilisation with Christian roots, Europe.

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14 Bibó, I. (1986) pp. 44–45.



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# On the right to life of the foetus<sup>1</sup>



RECENTLY, THANKS TO TELEVISION, the whole world witnessed two superpowers joining forces to save two whales trapped in the ice. No one has spared the massive millions of dollars to do this, because whales, like many other species of animals and plants, and many other species of wildlife, are threatened with extinction. In more civilised countries, it takes a whole book (see “Red Book”) to list the protected species. Laws threaten strict penalties for anyone who breaks the eggs of a protected bird or tears the flower of a protected plant. Man is the one who exterminates species and man is the one who rushes to their defence. But who protects man from man? Can man protect himself from himself? First the horror of nuclear war threatened man with destruction through hatred and selfishness, today the threat of a global ecological catastrophe is stronger. Although none of the threats are immediate and only possible, humans have already taken significant steps to prevent and avert them. At the same time, mass murder is being committed daily and worldwide, directly and in reality, by means of artificial abortions. The foetus is not listed as a protected species in any red book, and its destruction is almost always “legalised” by law. At worst, it is not even a law (an expression of the public will!), but merely an administrative regulation.

Gábor Jobbágyi’s anxious thoughts<sup>2</sup> and similar fearful concerns cannot be disagreed with. However, it is possible and necessary to approach foetal protection from other perspectives, to explore newer and newer contexts, in order to find the best possible solution for

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1 Originally published Lenkovics, B. (1990) ‘A magzat élethez való jogáról’, *Magyar Tudomány*, 35(1), pp. 162-166.

2 Jobbágyi, G. (1990) ‘Magzatvédelem – embervédelem’, *Magyar Tudomány*, 35(1), pp. 138-146.

everyone. A different approach, a different context is the aim of this contribution.

Let's first look behind the legislation. Jobbágyi sees the abortion issue and birth control as "at the heart of population policy". I *don't think this is the main reason for* the population decline. This is also just a consequence, the reasons for which we need to look deeper. I see the main cause in the breakdown (or, more pessimistically, disintegration) of the *moral order of society*. While the child was a "blessing", a gift from God, it was immoral (sin) not to accept it. Under the autocracy of scientific atheism, the situation changed, despite the lofty proclamation that the greatest value in socialism was man.

The product of forty years of re-education, the communist type of man is morally impoverished. Hungary was not the only country where human values such as marital fidelity, parental and filial love, family and kinship cohesion, etc., have faded away, but it was only here that confident promises were made to replace them with higher values. Instead, we are now talking about a general crisis of values and the balloon of socialist morality is immediately reduced to nothing if the choice is between material well-being (or just being better) and carrying a foetus to term.

But can we blame the members of society for this distorted value system, in which often ephemeral, even superfluous material goods supplant the permanent human values that are the solid basis of life? Hardly, since socialism as a "higher society" promised workers ever-increasing material prosperity. (No shortage of promises today!) But because the range of material goods needed for prosperity is not expanding as much as desired, it is obvious to reduce the number of "consumers". Of course, no one dares to openly accept the inhuman principle of "living less, but better", but the individual decisions not to have a child, or even to destroy the unborn foetus that is not accepted, objectively reveal the social realisation of this principle. The flaw, of course, is that despite fewer children, we are living worse and worse. At the same time, it would be one-sided and unfair to place the responsibility solely on the shoulders of individuals who do not have children. Society only has the right to make demands on the individual if it is able to provide the individual with adequate support. (One for all, all for one.) Let us think here of the unrealistic deterioration, even

impossibility, of the financial conditions of families with one or two or even more children, of the ever-widening poverty, of the deficiencies of state care for children, of support for the severely disadvantaged, of education and health care in general, and above all of the chronic, objectively anti-family housing shortage in terms of quantity and quality, of the distorted settlement structure, etc., etc. The list is by no means exhaustive, of course, but it is ample to illustrate that this society is increasingly failing to provide adequate and sufficient support for family formation and childbearing, in other words, it is failing to fulfil its moral obligations to the individual. In addition, it is indulgent and permissive in its own failings in allowing the widespread use of abortion. I do not claim – as Jobbágyi does – that the health government’s aim is to “contribute to national austerity”, because there is a more serious, more complex problem.

For the breakdown of moral values overturns even the most rational mathematical economic logic, and would very likely overturn even the most rigorous legal solution. Without going into a deeper analysis of the relationship between law and morality, we can state as an empirical fact that only those legal norms that are in sync with the moral norms of a given society can expect to be followed voluntarily on a mass scale. The legal prohibition of a behaviour can only be successful if society has already condemned it morally. Of course, the law also has an effect on morality, but this usually proves to be a minor feedback effect. And the human and social risks of illegal surgery are several times higher than those of legal surgery. That is why the solution to the truly serious social problem of induced abortion should not start with legal-administrative prohibition and persecution. First of all, we need to improve the moral values of society, we need to rebuild the foundations that have been laid, and then we can build a legal toolbox.

Now, as far as the legal qualification is concerned, artificial abortion is not a human right, but a *personal right of the mother who makes the decision*. Human rights are general and universal, while personal rights are specific, linked to a particular person. The strongest human right is the right to life – including the right to life of the unborn human being – which is protected by the highest legal standards, international conventions and our domestic laws. The right

to take human life, neither as a human right nor as a personal right, cannot exist anywhere in the world (the civilized world). The only exceptional legal possibility is the death penalty, but this is a right of the state, preceded by a judicial procedure with safeguards; this is where the death penalty still exists. Because the tendency in more civilised countries is to abolish this exceptional but “inhuman” possibility. And if the law is humane to even the most vicious criminals, how much more so must it be to the most innocent human beings in existence, the foetus of the womb! In this sense, any law, statute or regulation that permits an abortion is equally unlawful, because it violates the right to life. To illustrate this line of thought, let me refer to the Hungarian Civil Code. The law protects the whole of the personality and all its rights, including life, within the framework of the so-called “general right of personality” (Section 75(1)), and then also specifically names the more important elements of this right, such as physical integrity, health, human dignity, etc. These rights apply from the moment of conception (Section 9), on condition, however, that the person is born alive. Would this mean that since the condition does not occur – precisely because of the induced abortion – the foetus is legally completely unprotected, i.e. free to be destroyed? This is so blatantly nonsense that it would not even need to be refuted if ... If a low-level, administrative government decree did not say so outright. Well, almost openly, because there are limits in the regulation, but they are so loose that abortion is possible almost without restrictions. This is why the legality of this regulation must be legally challenged, so as not to reinforce the misconception that the right to life of the foetus is not only a practical but also a legal free-for-all.

Civil law protects people not only during their life, but also after their death, in the context of the protection of rights of the deceased. How could it not protect a man already conceived and therefore alive, even if he is in the foetal stage of his existence! This is clearly demonstrated by Section 10 of the Civil Code, when, calling the foetus a “child”, it states that “a guardian shall be appointed (!) for the unborn child before it is born, if this is necessary to protect its rights, especially if there is a conflict of interest between the child and its legal representative”. The law does not limit the rights of the unborn child to property rights! It would be absurd for the law to protect his property

rights as a beneficiary of a life insurance policy or as the beneficiary of an inheritance, but to forget his fundamental human right, the right to life! It is therefore obvious that under the Civil Code, a *guardian would have to be appointed* for the foetus before the termination of the pregnancy. But abortion regulation and practice ignores this.

It is also an obvious (ancient) principle of law that if the creation of a substantive right depends on a condition (in our case, a live birth), “while the condition is pending, neither party may do anything to impair or frustrate the right of the other party in the event of the condition being fulfilled or not fulfilled”. The failure of a condition cannot be claimed by a person who is responsible for causing it. It is true that the Civil Code has placed these principles of law in the general part of the law of obligations in the absence of a general part on legal transactions (Section 229), but they can also be clearly applied to the legal relationship between a pregnant woman and her foetus by analogy and in the spirit of the principles formulated in Section 3. To be more precise, they could only be applied, but the abortion decree completely ignores the principle of harmony between individual and social interest, the requirements of socialist coexistence and the principle of mutual cooperation.

Our Constitution protects the family, pays special attention to the interests of young people and guarantees equal rights for men and women. The Family Law Act gives parents (even separated parents; see Section 72) equal rights in relation to the child, even in “trivial” matters (compared to the question of life or death) such as naming, career choice, etc. How is it possible that in the number one and most important issue, the fateful issue for the unborn foetus, the *father has no right*? And let’s not forget the other members of the family, since it would be in the personal interest of the living child to have a sibling, the grandparents to have a (new) grandchild, etc. Their interests are lost, as are those of the larger community, society (the nation).

This may occur because the principles of sublime law, international conventions protecting human rights, constitutional and civil law and family law principles are outside the (narrow) scope of the abortion regulation (as a norm of a technical nature of health administration). It recognises only one right, the right of the pregnant woman to an artificial abortion, and thus, as an “absolute” right, makes her the

master of life and death. Even here, it ignores the rule of Section 75(3) of the Civil Code, more precisely the obligation to take into account the social interest. Because it is true that requesting such surgery or consenting to it, despite the risks, does not violate the personal rights of the pregnant woman; provided that the consent does not harm or endanger the interests of society! The only virtue of the regulation is that it is at least consistent in ignoring basic legal rules.

In conclusion, I would like to stress that, despite what has been said, I would not myself advocate a total ban on abortion. I consider the three cases proposed by Gábor Jobbágyi to be compatible with my thinking so far. In the first case, where the birth endangers the life of the mother, two identical rights, the right to life of the mother and the right to life of the foetus, compete and the mother's right is the stronger. The law cannot force anyone to sacrifice their life for the sake of another person. Fortunately, such extraordinary human sacrifices do happen in life, but to make them a legal norm would be an illusion. If the pregnancy is the result of a criminal act, the termination of the pregnancy is carried out in the context of avoiding the undesirable effects of the criminal act, the mother's decision is secondary to the legal assessment. The serious harm to the foetus is a legal fact that diminishes its own "human" right and intensifies the mother's (and society's) disinterest. However, the legalisation of other cases mentioned (and those not mentioned) in the decree is, in my opinion, also impermissible. It is another question as to *what means* society and the law should use to prevent and punish abortions that are thus "forced into illegality". Like Jobbágyi, I oppose severe, retributive punishment and approve of socially responsible *information*, education and counter-propaganda, and I reiterate *the importance of rebuilding society's moral values*. A moral value system in which it is once again a natural, one might say elementary human duty, even to accept an otherwise unwanted pregnancy and to carry a foetus to term, and in which such an undertaking is publicly respected, by which is meant the recognition and substantial financial and moral support of society. Only in such a moral value system can the right to life of the foetus be realised and Article 6 of the International Covenant on Civil and Political Rights be interpreted in favour of the foetus. According to this, "Every human being has the inherent right to life. This right shall be protected by



law. No one shall be arbitrarily deprived of his life.” The right to life of the foetus means the recognition that the foetus is also a human being, that its “birth” is the moment of conception, that the law must protect its right to life, and that the foetus cannot be deprived of its life arbitrarily – i.e. at the request of the pregnant woman, with a nod of the head from the state. Paragraph 4 of the said Article of the Covenant states: “Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.” When we speak of the right to life of foetuses condemned to abortion (death), we ask for nothing more “on their behalf” than that they be considered at least condemned to death, and that society grant them amnesty and pregnant women grant individual pardon.

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# My (tele)vision<sup>1</sup>



1. **“WHAT, IN THIS WORLD,** is our task? To struggle, according to our strength, for noble goals.”

The possibility of paraphrasing the Hungarian poet Vörösmarty’s poem is self-evident: what is the task of television (and other media) in the world? To struggle, according to their strength, for noble goals. Since television is for the viewers (and not the other way round!), we must fight for the humanity, the upliftment, the human quality of the viewers. So that they may make man a better man, and a better world, which man creates for himself, in which he lives his life, and which he leaves to his children and grandchildren.

2. **MAKING OUR WORLD,** our innermost world and the world that surrounds us, sustainable, preservable and transferable is (still) our job. (As Attila József wrote in his poem “A Dunánál” (“And settling at long last the price of thought, This is our task, and none too short its lease.”). The concept of “sustainable development” is typically used in the field of environmental protection, although even there it is not used in the same way as its importance. We already know that the industrial–consumer society of barely 2–300 years, which has now become utilitarian and hedonistic to the extreme, is unsustainable. We are aware of the physical, chemical, biological, etc. pollutants and hazards that threaten the natural foundations of human life, and we can measure them in precise units and predict their impact. We know that we are building mountains out of waste that will never decompose, that we are also squandering nature’s non-renewable wealth, that we need money and more money, and that we are slowly

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1 Originally published: Heltai, P. (ed.) (2007) *A mi televíziónk*. Budapest: Média-világ Kft. pp. 318–322.

willing to do anything for more money. The possession of wealth, its ever-increasing production and consumption, and the pursuit that goes with it, drain us of the joy of existence, the ability to contemplate the wonder of life. In addition, the flaunting luxury of the few creates a mass desire for enrichment that can never be satisfied on a mass scale, the price of which is poverty and misery for many. The threat of natural disaster from global climate change and the threat of social and moral disaster from world poverty come from the same source. Our world today is therefore socially and morally unsustainable. Moreover, if we are not able to grasp all these dangers individually and collectively, to process them rationally, to reassess our attitudes and values, and to act differently (according to the new requirements), then our world today is also intellectually and culturally unsustainable.

**3. IF AND TO THE EXTENT** that economic, social, moral, intellectual and cultural unsustainability is a fact, or at least an imminent threat, how much of a role can the most influential tool, television, “which also influences public thinking, public taste, culture and public discourse”, play in this? The question is rhetorical, the answer is prosaic: huge. It is much bigger than those responsible for shaping television today think, if they think at all. I will illustrate my point with a single example.

As an ombudsman, in 2003, at the request of the National Council of Radio and Television as the media authority, I expressed my position<sup>2</sup> on the so-called “reality show” programmes in the context of Section 3(2) of Act I of 1996, which states that “The broadcaster shall respect the constitutional order of the Republic of Hungary, and its activities shall not violate human rights...”. My position, which I will now recall in substance, was then completely ineffective and without response.

**4. THE HARD CORE OF HUMAN RIGHTS**, the inviolable source of all other rights, is the right to human dignity. This right is the abstract legal expression of man’s “humanity”, the human dignity to which

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<sup>2</sup> See OBH Report No 4247/2003

everyone is entitled. Human dignity and human personhood are synonymous, and both must be respected by all. Lack of respect, i.e. behaviour that violates human dignity and personality, can be infinitely diverse, and international conventions and our domestic laws only explicitly mention and prohibit the most serious ones. These are slavery, trafficking in human beings, especially women, girls and children, trafficking in human organs and tissues, prostitution, especially child prostitution, etc., i.e. cases where the human being is treated not as a legal subject but an object of law, a commodity. From this point of view, the abolition of slavery and the emancipation of the serfs were the greatest turning points in the civilisational development of mankind as a whole. Further gross violations of human dignity include torture, unlawful detention, coercion, inhuman, degrading and humiliating practices and treatment.

**5. THE ABOVE BEHAVIOURS**, which offend human dignity and personality and are explicitly prohibited, are present in reality shows, especially in their crude, extreme, etc. versions, to a greater or lesser extent, individually or even collectively. Their characters offer their entire physical–spiritual–moral being, their most intimate physical–spiritual gifts, even their relationships, in exchange for ‘stardom’ and extra remuneration (or just the chance of it). The very selection of actors in the “human market” is humiliating, and the content of the contracts they are given is legal nonsense. Ostensibly as equal and co-equal parties, they surrender themselves completely to the terms and instructions of the producer, give unrestricted authorization for use, waive all their fundamental rights, including their right to remedy (legal protection). They also accept the producer’s disclaimers, e.g. in case of possible physical, psychological or social disadvantages. The presentation of programmes produced under such circumstances as “reality” also conveys a serious message (not just a programme): that human dignity is not an inviolable value, but can be restricted or violated at any time without consequences in exchange for material or other benefits; that man as a whole or in some aspects of his personality can be freely given and taken; that man is at the mercy of an organisation or person with superior power over him; that man is a commodity in the media market.

**6. ALL THIS IS INCOMPATIBLE** with the constitutional order, human rights and the social responsibility that is incumbent on every institution, organisation or individual that shapes people and society. Nor is “voluntary” (even mass) application and consent an excuse. Would the mass media not be aware of the sophisticated techniques of manipulation, distortion, twisting, misrepresentation, reversal, etc., which were used so “successfully” by the totalitarian dictatorships of the 20th century to shape and re-educate the consciousness of the individual and society? They should be aware of the dangers of this today! Totalitarianism is not the prerogative of political dictatorships. Equally, there is a huge responsibility for each individual, whether actor or spectator (consumer, “customer”) in this market.

**7. THE IMPLEMENTATION** of constitutional order and human rights values is also a matter of socialisation for the individual. Its success depends on the extent to which constitutional values, the most important of which is absolute respect for and inviolability of human dignity and personality, are incorporated and anchored in the development of the individual personality. The protection of children and the physical, mental and moral development of future generations are of paramount importance for socialisation. This is, of course, primarily the responsibility of parents, and secondarily – together with parents – of education and training institutions. However, the institution of marriage and the family has been in crisis for a long time for a variety of reasons, the school system is searching for itself in terms of content and methodology, and the influence of the media, and thus its destructive effect, is “infiltrating” both. The family and the school are therefore not able to exert the necessary counteracting effect, even together.

**8. THERE IS STILL A CHANCE**, the “legitimate self-defence” of the adult human being, the individual, if he has become consciously and willingly capable of it. Looking around our world, it seems that this chance, this ability, is given to only a few, and their number is dwindling. Just as our utilitarian, possessive, consumerist mentality has made us massively, increasingly vulnerable to a wide variety of environmental harms, pollution, damage and dangers, the same can be said of intellectual pollution, consciousness damage, moral harms, cultural

waste production, etc. We have already begun to take action and protect ourselves against the production, import, distribution, consumption and extra profits from “junk food” to protect our physical health. But when do we start to defend the educated man, the man of culture, the decent man, the selfless “good man”, the human quality, that is, human dignity and human personality? The production, import, distribution and consumption of “media garbage” and the extra profit from all this is a threat to our health, our mental, spiritual and moral health and well-being, but we have not yet (sufficiently) realised this.

**9. OUR MATERIAL GOODS** are more feared from environmental harm than our immaterial, ideal goods, which is all the more incomprehensible because while the former have never been and will never be “enough” due to human greed and avarice (and this is a source of serious conflicts between people, classes, nations and civilisations), the latter are already available to us in inexhaustible abundance and can be expanded indefinite ways. Through the expanded reproduction, distribution and mass, abundant consumption of cultural, ideational goods, neither the natural, nor the social, nor the civilizational balance is upset. No one becomes poorer, and everyone can become rich without limitation, without doing so at the expense of others, and can enrich others without being left with less.

**10. “THAT IS ALL”**, then, that my television, the television of the future, could do to strengthen, improve and develop civil society – and, of course, the individual people who make it up – by promoting the expanded reproduction, social distribution and mass and abundant consumption of real, lasting values, cultural and ideological goods. But this is not feasible today, using market principles and methods. This is a much more difficult task and its solution is much more important than what we should leave to the market. It is a public task, a “public service”; its implementation is a public obligation, which should be publicly funded. The return, the payback is guaranteed, and it is called: our humane future.





# Person, Personality, Creative Person<sup>1</sup>



“To be a man, to be good and useful,  
in the company of other good men, – would  
be the easiest way of getting on,  
after all, instead of a lot of mental reasoning.  
And perhaps, with arm in arm, among good  
friends, it is best done.”<sup>2</sup>  
(Károly Szladits)

**1. THIRTY-FIVE YEARS** in “the Department” with colleagues and friends is a long time, more than a lifetime, even by historical standards, and worth looking back on. In particular, because the first half of this period is the period of socialism, the second half the period of capitalism after the change of regime. Based on what ideologies, what did one promise and what did the other promise? What was the promise and how was it delivered? What role has law played in promises and their realisation and implementation? How can it be that, despite the fine ideals and the generous promises, a large part of society has been severely disappointed in both in a short space of time? Let us first look at socialism from this point of view.

The socialism that our generation experienced was no longer identified with the total dictatorship of the 1950s and its strictly collectivised and centralised planned economy.

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1 A toast to Gábor Faludi on his 65th birthday. Originally published in Grad-Gyenge, A., Kabai E., Menghárd A. (eds) (2018) *Liber amicorum studia G. Faludi dedicata: ünnepi tanulmányok Faludi Gábor 65. születésnapja tiszteletére* Budapest: ELTE Eötvös Kiadó. pp. 254–263.

2 Takács, P. (2018) ‘Szladits Károly levelei Somló Bódoghoz’, *Iustum Aequum Salutare*, 14(3), pp. 273–323.

1968 saw the beginning of a peculiarly Hungarian experiment in “market socialism”, with the autonomy of the enterprise (cooperative) giving way to “autonomous structures” (Gyula Eörsi) of property relations, and science rehabilitating “commodity relations” (Miklós Világhy), the economic driving force of surplus performance and the associated profit motive. The revival of small industry and private trade began in 1975 with a specific system of small businesses and shops, which continued in 1982 with the “era of economic workers’ cooperatives” and the widespread proliferation of socialist forms of small business. Also thanks to the right to switch to the new economic mechanism, a strong “second economy” was built up, which had an impact on the first (socialist sector) economy and the system of political superstructure. In 1985, the dogmatic socialist ideology reached (unfortunately too late) the idea of the self-governing, self-managing state enterprise, the creation of the unity of capital and labour ownership, the restoration of the (with the expression used by Tibor Liska) “personal social ownership” (in other words, co-ownership) of each individual and thus of his or her human dignity. The private property-based second economy and the personalised social property-based first economy also induced the need for a genuine political democracy based not on “socialism” but on the equal dignity and farmer–entrepreneur–ownership of all people. This process, which was not merely theoretical, contributed a great deal to the need for regime change in Hungary, without denying that there were external, global political, international economic and financial reasons for it. However, the internal (domestic) process also had a significant and fermenting effect on the Soviet camp as a whole.

**2. IN THE PROCESS DESCRIBED ABOVE**, classical (Hungarian) private law played a significant role, as did the preservation of the unity of “socialist civil law”, the rescue of its basic legal institutions (property, contract, enterprise, intellectual property) and its complete rehabilitation. In agreement with Szladits, I have always maintained, and still maintain, that “an indispensable prerequisite of the private economic order is the order of private property, which gives the individual economic subject control over

the factors of production”.<sup>3</sup> Not for a handful, not for a few, but for every single person. The emergence of a second economy and the moves towards “personal social property” (Tibor Liska) could have met this requirement. The process was apparently spontaneous, it passed through historical stages of prohibition and toleration to the threshold of support; but due to excessive indebtedness and truly spontaneous privatisation, it could not cross it; it was not given a historical chance to complete.

The dogmas of the socialist ideology were replaced by the neo-liberal dogmas of the “Washington Doctrine” (privatisation, deregulation and liberalisation), and the state-owned planned economy was replaced not by the order of private property and private enterprise proposed by Szladits, but by the order of multinational and then transnational monopoly capitalism (TMC). The majority of people have “evolved” from state wage slavery to global wage slavery and debt slavery, which of course cannot even be called progress in a benign sense. Hundreds of thousands of our citizens have emigrated, fled – now, as a historical curiosity: from freedom – to the same place, the West, where at least wages are “more equal”. In terms of social equality and inequality, we have not gone back to the 19th century, but rather to the 18th century, and this is not helped by the constant chanting of the fine ideals of equal rights and equal dignity. The root cause of our problems, therefore, remains the same after the era of socialism as it has always been: the lack of social justice, the emergence and deepening of a grossly unjust inequality of wealth, which is again faithfully reflected by the (constantly growing) distance between the prevailing ideologies, ideas and dogmas and the values of the law that expresses them, on the one hand, and between social reality, on the other.

**3. IF WE DO NOT WANT TO DRIFT** into a social catastrophe because of the widening and deepening economic, social and cultural divide, we have to start all over again, rethinking everything around equality and justice. I would like to offer a taste of this rethinking through some of the concepts and legal institutions of property law and personal law.

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3 Szladits, K. (ed.) (1938-1941) *Magyar magánjog 1. köt. Általános rész, személyi jogok*. Budapest: Grill Kiadó. p. 33.

One of the main promises of the socialist ideal against the ideology of civilisation, against the serious inequalities of the individual private property and market economy system of the established capitalism, was to create real, material and just equality, and with it real (popular, socialist) democracy, instead of formal equality of rights. The basic means of this would have been the socialisation of property and management, the construction of a (new) quality of social ownership of man. Instead, however, a system of state property and state planning was built up, of which people did not become the subjects in the individual sense, and even more so remained the objects of it than in previous ages. We know the results of the experiment on several generations of human beings, the destruction and human suffering caused. We know what was promised and how it was actually delivered. But the road to the gates of hell is paved with good intentions! But it would be good to know more about the causes of failure, so that future generations do not make the same mistakes. I will try to put some of the manifestations of equality under the magnifying glass for a reason, in case we might discover some details that we missed without the magnifying glass.

One of the main reasons for the failure of the socialist experiment is that it promised more and more than it was able to deliver, both in the constitution and in law. It proclaimed the ideal socio-economic system as real ("real socialism"), and the sometimes brutally violent and always depressingly poor reality as ideal. The idea of György Lukács has become a catchphrase: even the worst socialism is better than the best capitalism. In a biblical and poetic analogy: we can stop, because Canaan is already here! In the language of the law, all this could be described as fiction: everyone knew that the truth was quite different, but the fiction of socialism was binding on everyone thanks to socialist law. Fiction, however, is a lie in the language of ordinary people, and a (just!) human society cannot be built on a lie, even with legal coercion.

But the world of law and people is more complex and complicated than this seemingly simple truth. I will try to illustrate this with some examples of personal law from my teaching practice.

**4. WHEN I SPOKE AS A UNIVERSITY LECTURER** on the protection of the human person, I used to ask a question: how many people are present? My listeners looked around and estimated the number of

people present. Then came the next question: and how many personalities are present? They immediately understood the difference, that this is no longer a purely mathematical set, that the term personality has a value, and that the more personalities, the more types and the more value. This value content cannot be mathematically added up or fairly (equally) distributed. However, the totality of values can be perceived both individually and in terms of smaller or larger communities (a group, a crowd, a whole society) and can be measured by certain statistical indicators (e.g. education, skills, language skills, literacy, culture, etc.). The existence, or more precisely the absence, of certain human, personal values (reputation, honour, integrity, courage, sacrifice) is only perceivable, but more difficult to measure. Legally, however, the value of human personality can be protected in its entirety, as a whole. Indeed, this value content can be abstracted in the legal concept of “personality”, abstracted from the concrete personality (personalities). This is both an advantage and a danger of legal abstraction. So while in lay language we do not use the term “personality” for everyone, and can even distinguish between specific personalities, the law unifies and homogenises. This differentiation is well illustrated by the definition of personality in *the Interpretative Dictionary of the Hungarian Language*: “A person of some significance or interest.” “Individuality.” “A valuable, conscious individual serving and approaching values and moral standards.” As it is almost synonymous, it is worth quoting the definition of “individuality”: “The totality of spiritual, mental, character qualities which distinguish one person from all others.” “Interesting, engaging, likeable, colourful personality; strong, outstanding, remarkable, a leader.” “A person who stands out from ordinary people because of his or her individual qualities; a person with a rich, colourful soul; a personality.” Compared to the neutrality of the person (legal subject), personality and individuality are therefore also concepts with nuances and values. “Rights for nuance”, Gyula Illyés asked the legislator, and if we are benevolent (and why should we not be!), we can say that the abstracted legal concept of “personality”, as a broad framework norm (general clause) with rich content, contains all these many nuances and values, can be read from it and can be legally protected. Even so, and even though we know full well that there can be significant, real differences between specific personalities in terms

of their content and value. In view of the completeness, one might say the infinite richness of the general (abstract) personality right, it can therefore be said of each individual personality without exception that the right protects more than it actually (in concreto) contains. Looking to the future, the law kind of gives credit for the enrichment and fulfilment of the personality, its “self-realisation”.

The law is to the human personality what a good teacher is to the development of the personality of the aspiring student, who values his performance a little more, so as to put him in a position of needing to prove; to demonstrate afterwards that he deserved a good, excellent rating. It's an incentive to learn more, to study hard, to perform even better. This is what a good parent does, giving their child praise and acknowledgment 95% of the time, so that the child accepts and observes reprimands in the remaining 5%. Managers and employers are also taught to give recognition and praise to their employees whenever possible, because it is the best incentive to perform better.

The assumption is that positive motivation is embedded in the personality, motivating from within to do good, discouraging bad. In the words of the Apostle Paul, it is written, somewhat pathetically, in the heart of man and from that moment on it acts as a natural law. Eörsi called this the “internal effect” of the law, in particular as regards the educative effect (special and general preventive effect) of liability rules. In our case, the law is addressed to every single human person: if you want to be a personality, here I give you the opportunity. The law trusts in man, hopes that every human being will want to develop into a personality, that he will use his freedom of self-determination and self-expression properly and responsibly.

But what about the reality? Doesn't the law deceive itself? Is every human being, every human person, motivated by the law, striving to enrich his or her personality, to fulfil his or her potential, to improve his or her human quality? Or, on the contrary, because the law gives them the fullness of personality, they no longer have to struggle for it, and thus lose their motivation? I will leave the rhetorical question open here, but I will anticipate the answer by saying that, one way or another, the law cannot give up, and for the answer to be positive, the law alone is not enough.

**5. THE QUESTIONS** “how many people?” and “how many personalities?” could be paraphrased as a continuation of the question: how many personalities are present? and of these, how many are creative personalities? The juxtaposition, comparison and delimitation of this pair of concepts – personality and creative personality – is perhaps even more difficult than that of person and personality. After all, every human being has an intellect, is capable of thinking, is capable of some kind of intellectual activity. However, creative intellectual activity is considered to be a higher order of intellectual activity that exceeds and surpasses the average (especially below average). To a certain extent – depending on their (innate) talents, skills, learned abilities, willingness and efforts, etc. – all human beings are creative, they recognize problems and seek solutions to them; they consume and produce physical and mental goods, they strive for something more, something better. At this point, the distinction between personality and creative personality opens up: both “more” and “better” imply something of added value, creation suggests a higher quality. It reflects the individuality of the creator and the originality of the work. For centuries, the superiority, uniqueness and originality of an intellectual creation, the individual, original character of an author’s work, has been a scientific and specific legal criterion; it meant the legal recognition of a new value, a qualification of the creation as a legal value. Literary, scientific, artistic “creation” as a legal qualification gave a status to the work as well as to the creator. But this status was not for everyone. It had to be earned not only by innate talent, but also by a high level of hard work: by learning, acquiring and accumulating knowledge, by cultivating and educating oneself, by acquiring and perfecting skills and abilities, in short, by enriching, developing and perfecting the personality, so as to become a creative personality and enrich others. First to receive and acquire intangible goods, then to accumulate them, and then to grow from them. Value added to intellectual goods presupposes value added to the personality of the creator, the enrichment of others presupposes the enrichment of the creator. The increase in the number of creative personalities presupposes a nurturing environment, a multitude of educated human beings, a society of versatile and educated people. As Albert Szent-Györgyi said in a television interview: the two most important

things to live for are new knowledge and the creation of new beauty. That is, science and art.

Science and art, combined and expanded: this is culture. The importance of culture was defined by John Paul II as follows: "It is thanks to culture that man lives a truly human life. [...] Culture is a specific way of being and being human. [...] It is through culture that man becomes man. [...] A nation is a large family of people, bound together by various ties, but above all by culture. A nation exists *through* and *in* its culture. That is why culture is a great educator of people, teaching us to become 'more' within the community."<sup>4</sup>

Certainly we have many other values, such as decency, justice, sacrificial love, solidarity, etc., which are worth living for, worth being human, but there is no doubt that culture, science and art have a prominent place among them. Even if we are talking about their creation, but also if we are talking about their reception, because in both cases we are talking about the human quality, about man becoming a better man. Therefore, it makes a big difference what the law classifies, what it accepts as intellectual creation, what it grants intellectual property rights over.

**6. A PERSON IS A LEGAL SUBJECT;** not a legal object, not a thing. Man is a natural person, a legal subject and not an object of law, and cannot become one under any circumstances! Human personality is a higher legal value, an absolute right that everyone must respect. These are imperative orders that must be applied unconditionally. Do these trivial truths, basic legal values, always prevail in the human marketplace of intellectual property media? The question is worth further exploring in the light of the legal protection of personality.

Every person has a general personality right, and there are certain named personality rights. They are also granted to creators, who have, in addition to these, specific named moral rights. Both human personality and authorship are protected in the context of an absolute–negative legal relationship, which implies a high legal value, a highly protected legal position. With this construction, the legal order provides

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4 János Pál II (2005) *Emlékezet és azonosság: beszélgetések az ezredfordulón*. Budapest: Európa Könyvkiadó. pp. 188–190.



an enhanced legal status to personality – personality rights are status rights. Even in the static state of their rights, right holders can feel protected and secure in their personal and individual freedom. The model of regulation was the statics of property law, the most important property status right, the absolute–negative structure of property law. Just as the right to property leaves it up to the owner to decide how to exercise his right to property and how to use his freedom of ownership, so the right to personality leaves it up to the individual to decide how to exercise his rights to personality and how to use his freedom of personality (self-determination). Just as the right to property as an abstract human right and a fundamental constitutional right (the right to property) is equally enjoyed by the rich and the poor, and even by the penniless, so protection of personality does not distinguish between the degree and value of the personality of each individual. In other words, both give and protect more under the status right than what is actually given in concreto. In both cases, the abstraction is *bona fide*, presuming that the right-holder will exercise his freedom by developing his own humanity and respecting the dignity of others.

But let us now ask the question: what do the right-holders use their legal status, their absolute right, for in reality? How are these used, and how are these actually enforced? It is worth briefly drawing a parallel with the partial rights of material property.

The human personality, the creative human being, as the holder of immaterial, intellectual property, is entitled to the right of undisturbed possession, to a state of right and possession free from interference. They can also enjoy and use their goods for their own benefit – although this is not the exclusive purpose of these goods, but also their communal use, their knowledge and reception by others, their incorporation into the personality of others. The use can be free of charge or for consideration. In the former case, the possibility of access and exploitation is in principle unlimited, which is socially very advantageous, but it can be materially disadvantageous for the individual, especially the creator, since he or she receives no reward beyond recognition, gratitude and respect. Exploitation for consideration is that which is materially advantageous for the individual, especially the creator, but socially disadvantageous, because only those who can pay for it have access to intellectual goods, and their use is

limited; and the more valuable the goods, the more limited. Reconciling the valuable private interest of individuals, especially creators, with the (social) public interest of wide free access is an evergreen task of intellectual property law, and in today's global world of intellectual property rights it is more relevant and difficult than ever. It is estimated that the distribution of all the world's (tangible and intangible) goods is increasingly determined by intellectual property rights, now accounting for more than 1/3 of the world's wealth.<sup>5</sup> We know, because we see every day, that the global distribution of wealth has become seriously distorted and unsustainable, and intellectual property rights are playing an increasing role in this. The existing and functioning intellectual property law and its institutional system encourages the process in which more and more individuals (creative personalities) try to reclassify more and more objects of law (works, inventions, creations) from the public domain into the world of status rights with an absolute-negative structure, to squeeze them into the public domain, obviously with the aim of asserting individual private interests and ensuring the collection of benefits. If the process of development from feudalism to capitalism, from the world of birth and property privileges and prerogatives to civil society, could be described as a development from status rights to the world of contracts, now in the world of intellectual goods the opposite seems to be happening: instead of a balance of interests between equal and co-equal parties, there is an elementary tendency towards the world of status rights. But the long-standing danger of status rights is also well known: the exclusivity of entitlement is also exclusionary towards all outsiders. "Condensed negative obligation", as Grosschmid described property rights, imposes on outsiders the obligations of recognition, toleration, abstention, without entitlements. And the exclusion – or even the involuntary exclusion – of large masses, poor people, countries, even whole continents from the proper enjoyment of intellectual goods, leads to an intellectual and cultural decline, which can in no way be called progress. On the contrary, the danger of cultural divide, of regression, will increase if the Matthew effect, which has long been known in property law ("whoever

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5 Keserű, B.A. (2019) *A fenntartható fejlődés hatása a szellemi tulajdon-védelem rendszerére*. Budapest: Dialóg Campus Kiadó. pp. 87–118.

has will be given more, and they will have an abundance. Whoever does not have, even what they have will be taken from them”; Matthew 13:12), is increasingly applied in the world of intangible goods, intellectual property rights. The actual disadvantages, the dangers of negative effects, now outweigh the weight of the arguments for the necessity and benefits of moving from the rights of “intellectual works” to “intellectual property” rights. It is still true that “intellectual property provides the return on investment for research and development, investment in high-tech sectors and cultural industries, and the expenditure needed for marketing and to boost consumer confidence. Intellectual property creates a temporary monopoly and grants the right to exclusive exploitation, use and enjoyment”. These arguments, intended by Wikipedia for public consumption, are clearly dictated by the interest of investor capital, but lack the socially bound, socially responsible, public service aspects of property that have been known for a century (though not always operational) in the case of material property. If the ever-expanding relations of intellectual property are indeed becoming more and more closely integrated into the relations of production and circulation of material goods, if they are increasingly shaping the (national and global) distribution of wealth, then it is time to extend to them the already familiar and ever-widening range of instruments for the public interest restriction of material property and for social responsibility.

**7. ONE OF THE MOST DIFFICULT TASKS** of jurisprudence, and especially of law enforcement, is to find and enforce the boundary between the exercise of a right (in our case, intellectual property) and the abuse of that right. Human ingenuity, with its thousands of shades of bad faith, guile and deceit, has always made it difficult to do so in the case of traditional substantive rights; but it has been even more difficult in the case of certain substantive rights, imbued with fundamental freedoms, abstracted into human rights and constitutionally fundamental rights. Such is the right to human dignity, and in connection with it, and derived from it and interpreted from it, the general personality right, the freedom of self-determination, the right to self-expression. In the absence of a causal, taxative or even exemplifying normative content, this freedom can even be called unlimited. But

the inviolability of human dignity excludes unlimited freedom. No one may invoke the freedom of self-realisation, self-expression, self-determination, etc., if it violates the human dignity of others or even the (personal) dignity of the person concerned. Because it is the first and primary duty of every human being to respect his or her own human dignity and to fulfil his or her own personality in this framework. Intellectual property right holders and creative personalities have a heightened obligation and responsibility in both directions: in their self-expression, creative expressions and services, they must also take into account the personal fulfilment and building of the personality of the recipients. A work of art, a work or a programme must not be offensive or destructive to the personality. Or if it is, it should not be legally protected. A concrete example is certain television reality, talk shows, etc., which violate the dignity and distort the personality of the authors, editors and viewers, but which generate huge profits for the intellectual property investors. In order to protect human life, health and physical integrity, prior inspections, authorisations, prohibitions and mandatory regulations on food safety, pharmaceutical safety, accident prevention, etc. have become accepted, although they obviously restrict and limit the freedom of private property, enterprise and trade (contract). The toolbox of legal protection is expanding not only in the world of legal norms, but also in the world of public authorities, courts and other “non-judicial” institutions of law enforcement, including the “consumer protection” institutions of civil society. The same, or similar, legal protection instruments could be developed and operated in the field of the exploitation and distribution of intellectual property rights and the consumption of intangible goods. To deny this, it is not enough to keep crying for state censorship. The state has a primary duty to protect fundamental freedoms and human rights, to establish the standards necessary for their protection and to set up independent institutions for the protection of rights. In both phases there is (would be) an opportunity to involve civil society institutions, to support their creation and operation. There would be no need for the state to play a role if the self-regulatory, self-monitoring mechanisms of civil society autonomies were in place, not to restrict freedom, but to prevent the abuse of freedom, to prevent freedom from being distorted into liberty, to ensure that intellectual property serves to build personality, not to

dismantle it. Dishonourable creators and dishonourable works would therefore not benefit from the protection of the right, would not be granted intellectual property status, and would not be able to derive any benefits, especially extra profits.

It is obvious that general gratuitousness is as inapplicable in the world of intellectual goods, intellectual property rights, as it is in the world of material goods: material interest is a powerful driving force, an incentive, a social recognition and an appreciation that cannot be replaced by anything else. Without it, there would be intellectual, cultural, and then economic and social decline, which would obviously damage human personality. What I have tried to point out is that excessive, almost unbridled materialism, investor and profit motives can have the same harmful side effects. Within the complex notion of “intellectual property”, I wanted to speak of the prefix “intellectual”, i.e. man, his personality, his creative personality, even at the expense of the suffix “property”, but most of all in the interest and defence of man, the self-actualising, self-fulfilling man, i.e. the man who forms himself. For it is much easier to slide down the slope than to climb the tiresome ascent; but only the latter will take us to the summit, which in our case is the culmination of human personality, in other words, the becoming of a more cultured, more human person. It is the duty of law to promote, encourage and protect it, but in no case to hinder it, neither with excessive generosity nor with fictitious promises.

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# Condemned to Life<sup>1</sup>



## 1. Reflections on life and death

THE CONSTITUTIONAL COURT is an iconic institution of the 30 years of Hungarian regime change, and one of its iconic decisions is the abolition of the death penalty. Not only is it a controversial decision to this day, but it is also extremely inspiring: it is thought-provoking, prompting further reflection. Some of these reflections I am putting together for the 30th anniversary of the decision. The title of my article is the conceptual opposite of “condemned to death”, the other side of the coin. The abolition of the death penalty, that is to say, the prohibition of the death penalty, results in an *ab ovo* condemnation to life, regardless of the nature and quality of that life, regardless of its compatibility with dignity. And if there are diseases and conditions incompatible with life, then, given the monistic conception of the right to life and dignity, there may also be lives incompatible with dignity. Moreover, the abolition of the death penalty does not mean the abolition of death. Since man’s life, like that of every other living creature, is finite, all men are *ab ovo* “doomed to die”. Of course, if Albert Einstein is right that there is no darkness, only the absence of light, no cold and frost, only the absence of heat, then there is no death, only the absence of life. This particular conception of life and death means that every human being is *doomed to a finite life*, and must therefore live a “finite life-conscious” (or death-conscious) life, and must realise and fulfil his or her own *humanity* (for each individual human being;

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<sup>1</sup> 30 years since the abolition of the death penalty. Written version of an online conference presentation.

and for humanity as a whole) in the shorter or longer time available. This is the content and meaning of life, which is not a right, but a fundamental human duty, the source of human obligations. This is what the person condemned to life is given more time and a chance to do, avoiding the death penalty abolished by the Constitutional Court. My reflections are only an illustration of the dimensions in which we can and should still think about abolishing the death penalty. This boldness was also prompted by what Tamás Lábady and Ödön Tersztyánszky emphasised in their parallel reasoning: “The existence and dignity of man, as a human entity, is not really a right, because the human essence is in fact transcendent, i.e. inaccessible to law. In the catalogue of human rights and in modern constitutions, human life and dignity are therefore not even considered as fundamental rights, but as sources of rights, as extra-legal values that are inviolable. The law must ensure that these inviolable values are respected and protected. But this protection – and only this – is the dimension of law.” What needs to be stressed again and again is that there are fundamental values outside the law, which are inviolable and protectable even by the law, which can be the source of fundamental rights and duties. Let’s take a closer look at some other dimensions of human essence outside and beyond law.

## 2. The last days of death

UNTIL NOW, WE THOUGHT that the days (hours, minutes) of a dying person could be counted. Yuval Noah Harari, on the other hand, discusses “the last days of death” in one of his worldwide bestsellers. “Having reduced mortality from starvation, disease and violence, we will now aim to overcome old age and even death itself. (...) And having raised humanity above the beastly level of survival struggles, we will now aim to upgrade humans into gods, and turn *Homo sapiens* into *Homo deus*. (...) We are constantly reminded that human life is the most sacred thing in the universe. (...) ‘the right to life’ is humanity’s most fundamental value. Since death clearly violates this right, death is a crime against humanity, and we ought to wage total war against



it” (Harari, 2018<sup>2</sup>). The tools of the war on death include increasingly effective medicines, medical devices and therapies, the dizzyingly fast advances in genetic engineering and nanotechnology, and regenerative medicine. “If all that is not enough, the fear of death ingrained in most humans will give the war against death an irresistible momentum. (...) A large part of our artistic creativity, our political commitment and our religious piety is fuelled by the fear of death” (Harari, 2018<sup>3</sup>).

Similar ideas can be found half a century earlier in the works of István Bibó. “Man, by becoming conscious of his own exposure to death, is filled with a fear which he can overcome only by various ploys which do not avert death and yet give the illusion of triumph over death; such, above all, is the power over the life and death of another man and the struggle with him for this purpose. Each victory in this death struggle with another man seems a victory over death” (Bibó, 1986<sup>4</sup>). At the same time, he stresses that the death struggle between humans is not a law of nature. Instead, he recommends Christ’s gestures of love: whoever slaps you on your right cheek, turn the other to him also; if a stone was thrown at you, repay it with bread. “The Christian response to the convulsions of violence, fear and hatred is to put active love at the centre. (...) for every gesture of violence, there is a stronger gesture of love, arising from active love, which can disarm that gesture of violence. (...) we should find the gesture which arouses shame in the assailant over his own actions, the recognition of the futility of his own action. The content of the rule is that there is a gesture (...) that lowers the raised arm of even the most monstrous of henchmen.” But Bibó is also a realist: “If we are unable to find such a gesture, “we have no choice but to defend those entrusted to us to the best of our ability, even using violence as a last resort, if no other means are available.” But the point is the knowledge that the violent means is the worse option” (Bibó, 1986<sup>5</sup>). This “worse option” has also been the death penalty.

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2 Harari, Y.N. (2018) *Homo deus: [a holnap rövid története]*. Budapest: Animus. p. 27.

3 Harari, Y.N. (2018) pp. 33-34.

4 Bibó, I. (1986) ‘Az európai társadalomfejlődés értelme’ in Bibó, I. *Válogatott tanulmányok. 3. kötet 1971-1979*. Budapest: Magvető Kiadó, p. 15.

5 Bibó, I. (1986) pp. 44-45.

In the light of the foregoing reflections, the following questions may be asked: to what extent does the abolition of the death penalty fit into the toolbox of the struggle to defeat death; to what extent is it a gesture of love in the face of the most serious gestures of violence; has it achieved its purpose against the “moral monster” criminals; what else can we do to protect ourselves and those entrusted to us?

### 3. The sixth commandment

**THE TEN COMMANDMENTS** are over four thousand years old. Its sixth commandment is as follows: You shall not murder. A short, concise, unambiguous prohibition, an imperative norm requiring absolute enforcement. Whoever breaks it commits a sin for which he must be punished. Sin cannot go unpunished. Yet there have always been and still are those who violate it, and in the 20th century, the killing of human beings became industrialized and mass. Man has turned scientific and technical progress against man – in other words, it backfired. He committed mass murders with weapons of mass destruction. And in addition, mass murderous ideologies (fascism, communism) and “traditional” tyrannies and dictatorships (e.g. military) have used the law and the death penalty to destroy their opponents. As a counter-effect, the conscience of the whole of humanity rebelled against these terrible crimes and made the prohibition of war, the ideals of democracy and the rule of law, the inviolability of and absolute respect for human life and human dignity, and finally the abolition of the death penalty, universal imperative norms. Then, through the same “interpretation” of fundamental freedoms and human rights, the symbol of the greatest gesture of love, the cross and the Ten Commandments, including the Sixth Commandment, were taken down from the walls of public school classrooms. “Human rightsism” is also becoming distorted, it is seeking to dominate. It sees an enemy in people’s beliefs beyond the law, in religions and churches, in their norms, even if they are identical in content, even if they are the source of certain human rights; instead of cooperating with them, working together with them towards common goals. Such a common goal is the sixth commandment. Why is it forbidden to kill a man on this basis?

“Because man is the only creature God created in his own image. (...) The fact that man bears the image of God means that man belongs to God. His life belongs to God. (...) Therefore he who touches the life of another robs God, and therefore every drop of spilled blood cries to heaven. On the other hand, it means that he has the same function over the created world as God has over the whole universe, namely, to rule. On everything but each other. No one man was given dominion over another. In this line of thought, God’s command also applies: You shall not murder. Because if we start to dominate each other, sooner or later it will end like this” (Cseri, 1994<sup>6</sup>). I wonder why the secularists are worried when someone refrains from committing murder on the basis of this line of thought (one’s beliefs), instead of being happy about it.

#### 4. The birth of violence

**NOT ONLY DOES MAN HAVE** innate and inalienable rights, but he also has the same instincts and inclinations, and even basic duties, to control and contain them (the instinct to kill, violence, aggression). From the very first human couple, Adam and Eve’s two children, one of them, Cain, committed fratricide, killing Abel. Since then, every man is Cain and Abel in one person – he can become a fratricide or a victim. So it is difficult to answer the question: how much is a person worth? “So much so, that God gave his only begotten Son for us all, equally (...) That is how treasured, how precious to God is man. So is the guilty man. So is the murderer. Cain too. (...) No one can touch even a fratricide without touching God’s property. It is not Cain’s deed that God justifies. He calls sin a sin and it receives judgment. But he welcomes the sinner into his mercy. Such is the incomprehensible greatness of God’s mercy. That’s how seriously he takes the fact that we are his. That is how much he protects our lives, even the lives of the sinner” (Cseri, 1994<sup>7</sup>). Abolition of the death penalty, with a narrow constitutional argument, it equally protects human life, even that of the guilty man, even the “moral monster”. Of course, this still leaves

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6 Cseri, K. (1994) *A tizparancsolat*. Budapest: Harmat. p. 121.

7 Cseri, K. (1994) p. 123.

open questions today, as in the case of Cain and Abel: why did God only accept the animal sacrifice of the shepherd Abel; why did he let him be murdered; why did Cain beat his brother to death; why did the fratricidal farmer Cain not die? In their highly successful book, the authors Kai Michel and Carel van Schaik search for and find the answer in an evolutionist reading of the Bible. According to that, the greatest paradigm shift in human history was the shift from a forager–fisher–hunter to a settled, agriculturalist–animal-herder way of life. This brought with it the development of private property, monogamous marriage, patriarchy, and the right of the first-born to inherit. “The Neolithic Revolution broke with a fundamental law of human coexistence that had governed everyday life for thousands of years – the rule that food must be shared. Property has undermined the solidarity of primitive man. What had been a common good – food from nature – was suddenly monopolized. That was the real scandal! Not only will an everyday, vital activity – fruit picking – be banned, but it will also be made a crime.” (...) “A society based on property has unleashed competition, inequality and violence on the world. (...) from the revolution of agriculture, fratricide follows almost with the inevitability of natural law” (Michel and Schaik, 2019<sup>8</sup>). The reverberations of this paradigm shift are still being felt today, now on a global scale and in a global context. The task is the same as it was in Biblical times: if we have been expelled from paradise and cannot make the possessive way of life harmless, let us at least tame it, make it more solidary, fair and just. In short, more humane. For example, we can’t kill the fratricidal Cain, and we can’t even make the state kill him.

## 5. Extension of the ban on killing

**ACCORDING TO THE TEACHINGS** of Jesus: “You have heard that it was said to those of old, ‘You shall not murder; and whoever murders will be liable to judgment.’ But I say to you that everyone who is angry with his brother will be liable to judgment; whoever insults his brother

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<sup>8</sup> Michel, K., Schaik, C. van (2019) *Az ember három természete: A Biblia evolucionista olvasata*. Budapest: Typotex. p. 62. and p. 79.

will be liable to the council; and whoever says, ‘You fool!’ will be liable to the hell of fire.” (Matthew 5:21–22). The colloquial expression for quarrelling, bickering couples, brothers and sisters, angry people is: they kill each other! According to this, you can kill by word, by deed, even by omission, or as we read in the Bible, by violent gestures. You shall not murder. “What a lot there is in those two short words. You can kill not only with a weapon, but also with a hateful word, with a murderous passion. It is possible not only to take someone’s life in a moment, but also by biting, chewing, killing each other for years, decades” (Cseri, 1994<sup>9</sup>). This kind of killing is much more massive than literal murder, like a poison that kills slowly in small doses, but the effect is the same in the long run. Just as its antidote is the same as that of gestures of violence in general: gestures of love. Or as Kálmán Cseri writes: “The opposite of manslaughter is guarding people. I am a guardian for my brother. I am there to protect. From myself too. So I can love him. The opposite of killing is love” (Cseri, 1994<sup>10</sup>). It was not by chance that Pope John Paul II called European civilization “the civilization of love” (Vereb, 2010<sup>11</sup>).

## 6. About legitimate defence

**MAN HAD THE “RIGHT”** to defend himself, in order to protect his life and limb, his family and his means of subsistence, even before the state and the law had been established. This “right” was “natural law” for tens of thousands of years. And if the attacker was stronger, attacked his vulnerable or defenceless victim with a weapon or at night, it was later considered immoral. If the attacked person killed his attacker, the community recognised this, and saw him as protecting other members of the community (as potential victims). Man cannot be a predatory animal, but neither can he be its prey, a prey animal.

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<sup>9</sup> Cseri, K. (1994) p. 92.

<sup>10</sup> Cseri, K. (1994) p. 124.

<sup>11</sup> Vereb, J.M. (ed.) (2010) *Minden napra egy gondolat: napi meditációk a nagy pápa imádságaiból és írásaiból Jerome Vereb atya szerkesztésében*. Budapest: JLX. p. 174. and pp. 194-195.

We are therefore talking about an important tool in the process of becoming human. That is why this natural and moral law was taken over by the nascent state and its law – first unwritten, then written – and why it is still enforced today. This is not changed by the unified view of the right to life and dignity, nor by the absolute conception of the right to life. After the abolition of the death penalty, neither the scope nor the conditions of legitimate defence were narrowed, on the contrary; legitimate defence was included in the Fundamental Law (Article V) and thus acquired the constitutional status of a fundamental right to which everyone is entitled. Perhaps because if the right to life and dignity of the “moral monster” criminals was valorised, the right to life and dignity of their (at least potential) victims had to be matched. It is not, then, a “state of nature” outside of law, where the instinct to live can transcend all civilizational barriers, but a balancing of the absolute right to life of two persons of equal dignity, precisely in order to protect human civilization, to become and remain human.

## 7. About justice

**IN MY UNIVERSITY LECTURES** on the principles of civil law, I always quoted an old judicial wisdom when talking about the principle of justice: “From the bench, you can kill a man not only with a death sentence, but also with an unjust sentence!” After the abolition of the death penalty, I updated this by saying that now you can only kill people with an unjust sentence. Of course, it would be wrong to make unjust judgments, especially while maintaining and emphasising the appearance of formal legality. The Constitutional Court does not deliver judgments – it gives decisions. But this decision can be measured by the same standards of justice as if it were a judgment. Three quarters of society (a very convincing qualified majority!) considered the decision to abolish the death penalty unjust and supported its retention. The Parliament, being a “representative” body (the adjective of the “democratic constitutional state”, also means “representative” democracy), would not (could not) have abolished the death penalty. Therefore, the Constitutional Court openly admitted – however, only in a parallel reasoning – that it was not bound by public opinion, the will of the majority

or the will of the legislator; and exercising its power of constitutional interpretation, it reviewed the constitutionality of the Criminal Code and gave the final word, abolishing the death penalty. It also stated that it was not bound by any moral or scientific orientation. The exception to this, however, was the then prevailing moral and scientific trend, summarised in the 1983 Additional Protocol No. 6 to the Rome Convention, which stated that “the death penalty shall be abolished”. The Constitutional Court was bound by this, otherwise it could have made a decision with the opposite content, “interpreting” the principle of proportionate (just) punishment in criminal law and the democratic rule of law. Make no mistake, I also think the death penalty should be abolished. We cannot wait for “the gentlemen who do the murders take the first step!” But in a country that had previously been ruled for forty years by a vanguard of ideology and where one person had the power to have the final say, this decision should not have been taken in 1990, not by the Constitutional Court, but by Parliament. Just as in the case of abortion, which affects the right to life with even greater weight and in far greater numbers, the same Constitutional Court has placed the decision and its responsibility on Parliament.

## 8. The cruelty of life imprisonment

THE CONSTITUTIONAL COURT was aware that the most severe punishment following the death penalty is *life imprisonment* (LI). This is clear from the text of paragraph 5 of the decision: “Since the punishments provided for in the Criminal Code form a coherent system, the abolition of the death penalty as an element of this system requires a review of the entire penal system, which, however, does not fall within the competence of the Constitutional Court.” Only formal logic tells me that, in the spirit of this idea, the abolition of the death penalty was not part of it either (see the dissenting opinion of Péter Schmidt). However, knowing that the LI replaces the death penalty, it could have compared and assessed the two from the point of view of the right to life and dignity, lest it should later turn out that the LI is a crueller, more inhuman and more degrading punishment than death. This is similar to the problem of euthanasia. In extreme cases – thanks to the increase

in the average age of life and the development of medical science – it is increasingly the case that mere life is more humiliating and degrading than a dignified (natural, merciful) death. The main question here is: if the state and the prisoner's relatives cannot have the right to decide over the prisoner's life, why should the prisoner not have the right (freedom) to decide over his own life and death, or why does the punishment of imprisonment also apply to this freedom? This question has remained open ever since, and the Constitutional Court has subsequently dealt only with the hope of a release in relation to the LI.

## 9. On the dignity of the death penalty

**THE TERMINALLY ILL PATIENT**, as long as his consciousness is clear, can dispose of his own life, can forbid the prolongation of his torture, his suffering, his life support by deep sedation. He can do the same at any time in his earlier life. This option is also available to a person sentenced to LI, but only in the case of terminal illness. When in fact the LI is a “terminal” penalty. The very knowledge of this can be torturous, and the LI can be considered cruel treatment and a cruel procedure. Vegetating as a “biomass” for 40–50 years until death is an inhuman punishment. “I’d rather be dead”, even the most vicious villain might say, unable to reintegrate into society even if he were ever released. The “right to die with dignity” could also be his. He could implement his decision himself, with humanitarian assistance. In the meantime, of course, he could revoke his decision at any time and interrupt its implementation. And if he is not given this right, or does not wish to exercise this right (because he would prefer to live, in whatever way he can), the way in which the LI is carried out must be made humane, e.g. so as to atone for his crime towards the victim, his family, his own family, society.

## 10. On mercy

**LIKE THE GESTURES OF LOVE**, mercy is not a legal norm; it is more and stronger than that: it is a moral and religious command. “Be merciful, just as your Father is merciful” (Luke 6:36). “Blessed



are the merciful, for they will be shown mercy” (Matthew 5:7). In the deep layers of European (more than “Western”: Christian) civilisation, we find this as a fundamental value. We just have to dig deep to extract it and bring it to the surface for use. Such “use” also means discovering the correct content of legislation by interpreting the text. For this purpose, Szladits proposed “*evaluative interpretation*” in addition to the traditional types of interpretation (grammatical, logical, historical, taxonomical). The meaning of a dubious legal provision must be explored by applying correctness standards. The extent to which an interpretation is correct is determined by *the basic concepts of law*. For this purpose, external reference points and *value ideals* must also be taken into account, such as: (a) the current value perception of the leading social strata; (b) the latest results of modern jurisprudence; (c) the value system of the average reasonable person; (d) the value perception of professional circles and professions; (e) trade habits; (f) *the general cultural expectations of humanity*; etc. The understanding of the law thus determined is then regarded as the correct, objective meaning of the law (Szladits, 1938-1941<sup>12</sup>). The most exciting for our train of thought are (f) and etc. The most recent (20th–21st century) general (universal) cultural norms of humanity include fundamental freedoms and human rights. The abolition of the death penalty can be included here as an ideal interpreted from the right to life and dignity. These ideals (which could even be called “*invisible constitutions*”) must be “implemented” today and in the future through national constitutions and national legal systems. As for the etc., taking advantage of the open-ended list, we can draw on the achievements of our historical constitution as well as the core values of our national identity, and the civilisational core values of European (Jewish – Christian) identity, to explore the basic ideas of law as a set of values. The charitable gestures, the social solidarity institutions that can be traced back to love for one’s neighbour, can also be seen as the “soul of Europe” that must be saved. Just as Robert Schuman wanted: “All European states have been made what they are by Christian civilisation. It is precisely this European spirit that must

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12 Szladits, K. (ed.) (1938-1941) *Magyar magánjog 1. köt. Általános rész, személyi jogok*. Budapest: Grill Kiadó. pp. 156-158.

be revived” (Lejeune, 2015<sup>13</sup>). Obviously to pass it on to future generations. And to ensure that Europe remains the most attractive, exemplary and model continent and civilisation, so that it does not perish. For that, many more decisions, inspiring ideas and value-saving with similar values are needed.

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13 Lejeune, R. (2015) *Politika és életszentség: Robert Schuman, Európa atyja*. Budapest: Magyar Máltai Szeretetszolgálat. p. 249.

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# The Ethicalisation of Law<sup>1</sup>



“It is not true that law  
does not need morality.”  
(János Zlinszky)

**1. THE FIRST HIGH-PROFILE CASE** that I had as a rapporteur constitutional judge was an examination of the constitutionality of the second sentence of Section 200(2) of Act IV of 1959 on the Civil Code of the Republic of Hungary: “A contract shall also be null and void if it is manifestly in contradiction to good morals”. This legal provision was challenged by two applications for subsequent abstract review, one of which considered the word “manifestly” and the other the expression “good morals” inadmissible from the point of view of the requirement of legal certainty derived from the rule of law. In Decision 801/B/2002, the Constitutional Court rejected both petitions. I have written a paper on the case and included it in my book on the main cases of my work as an ombudsman and constitutional judge.<sup>2</sup> Although the decision has given constitutional protection to the institution of good morals in the Civil Code, this does not in itself guarantee that the norms of morality are sufficiently present in our society today, nor that they are adequately enforced in our law today. This is why I decided to organise my further thoughts on the relationship between law and morality.

**2. THE IDEA IN THE TITLE**, as a leitmotif, is borrowed from the great teacher of generations of private lawyers, Károly Szladits: “This process, which in private law increasingly mitigates the crude

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1 Published in Boóc, Á. (eds.) (2019) *70: studia in honorem Ferenc Fábíán*. Budapest: KRE ÁJK. pp. 309–317.

2 Lenkovics, B. (2018) *Ember és jog*. Budapest: Dialóg Campus Kiadó. pp. 265–279.

assertion of individual interests by giving greater weight to the interests of others, is called *the socialisation of the private civil law order*. As this process also means the enrichment of the moral content of private law, we can justly call this development (...) *the ethicisation of private law*. (...) This moral ennoblement of private law also points the way for the future development of private law. What is certain is that private law has long since ceased to be the ‘bible of selfishness’ that the poetic irony (Heine) called the Roman Corpus Juris.”<sup>3</sup> It is clear from the quote that there is much more at stake – the ethicisation of private law as a whole – than simply the nullity of contracts that are contrary to good morals. One could even call it a return to the original Papinian principle of “*contra bonos mores*”: “...acts which offend our sense of duty to our fellow men, our honour, our sense of decency and – to put it in general terms – are contrary to good morals, are not permissible.”<sup>4</sup>

A similar generalisation was made by many jurists of Szladits’ time. “Law, if it is to remain law, must not promote immorality.”<sup>5</sup> The principle of *contra bonos mores*, like the civil law principle of *fairness*, is “considered to be the immanent core of every legal provision.”<sup>6</sup> Why is it necessary to fight against unfairness (immorality) in general and in certain situations in life in particular? The answer was best formulated by Ödön Kuncz and Elemér P. Balás in the explanatory memorandum of Act V of 1923 on the prohibition of unfair competition: “...a trader who strengthens his position by unfair means usually harms *all* his honest competitors. Unfair competition is therefore *a public danger*. ...if the honest trader is not adequately protected against unfair competition, he is faced with the embarrassing alternative of either going bankrupt or resorting to unfair means himself.”<sup>7</sup> It is clear from this that al-

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3 Szladits, K. (ed.) (1938-1941) *Magyar magánjog 1. köt. Általános rész, személyi jogok*. Budapest: Grill Kiadó. pp. 33–34.

4 Földi, A., Hamza, G. (1996) *A római jog története és intézményei*. Budapest: Tankönyvkiadó. p. 486. (sw. 1560)

5 Trócsányi, J. (1909) *Erkölcstelen ügyletek, turpis causa: magánjogi tanulmány*. Budapest: Grill.

6 Kelemen, L. (1935) *A joggal való visszaélés: chicane*. Különlenyomat. [Szeged]: [s.n.]

7 Kuncz, Ö., Balás, P.E. (1924) *A tisztességtelen verseny: az 1923. 5. törvénycikk magyarázata, kieg. a törvényt végrehajtó rendeletekkel*. Budapest: Politzer.

lowing formally legal but immoral behaviour – any behaviour, not just unfair competition – would set off a negative self-expansion process, like a snowball thrown from a snowy mountaintop, avalanching down a valley. Bringing the quoted thoughts to life, this is why we formulated in our joint note with György Bíró that “the requirement of *fairness* raises the general requirement of morality to the rank of law. ...This principle also expresses the *ethical* commitment of civil law, the intertwining of civil law norms and social moral norms. ...Today there is no ‘division of territory’ between the different norms; they are merely trying to achieve the same end by different means: morality tends to use the force of *internal conviction*, law tries to threaten *by external coercion*.”<sup>8</sup> Even after two decades since the first edition of the note, it is becoming increasingly clear that the need for fairness, the general requirement of morality, extends to the whole legal system, permeating all aspects of political, public and social life.

**3. SIMILAR IDEAS CAN BE FOUND** in recent Hungarian legal literature. “...the prohibition of contracts contrary to good morals makes moral norms the content of the legal norm and thus part of the law, and therefore the prohibition of contracts contrary to good morals expresses the identity of law and morality, not their difference. ...Thus, for the purposes of the prohibition of contracts contrary to good morals, by morals we mean a social rule of conduct which is independent of the assessment of individuals (and therefore objective).”<sup>9</sup> The relationship between law and morality was, and still is, considered by many to be one of the greatest mysteries of jurisprudence and philosophy of law, a question with no exact answer. You could say that it is an “innate” difficulty, because: “It cannot be clearly decided when the elements of the three types of norms, legal, religious and moral (*ius, fas, mos*), became independent of each other, or which one could be considered the ‘mother’ of the others.” Modern literature does not provide a clear and definitive answer to the interconnection, interaction, divergence

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8 Bíró, Gy., Lenkovics, B. (2010) *Általános tanok*. 8. átd. kiad. Miskolc: Novotni. pp. 85–89.

9 Mengyhárd, A. (2004) *A jóerkölcsbe ütköző szerződések*. Budapest: Gondolat. pp. 12–13.

or even complete independence of the different normative systems. “Therefore, the most important function of the good morals clause in the Code is to raise awareness. The *boni mores* and its national variants are exclamation marks for the seeker of rights to interpret the concept and make his judgement in the awareness of his concrete situation, of his ‘here and now’, i.e. of his spatial and temporal constraints, but also in the knowledge of the dynamism and variability of the processes.”<sup>10</sup>

Two important lessons can be drawn from what has been said so far. One is that “good morals” are a measure of social value judgement and are therefore objective. Not to be confused with individual private morals, which are inherently diverse and highly variable, always subjective. The second is that the content of good morals can vary over time and space, depending on historical circumstances. Suffice it to point out that in Act IV of 1959, on the basis of “socialist morality”, the second sentence of Section 200(2) read as follows: “A contract shall also be null and void even if it is manifestly in contradiction to the interests of the working people or to the requirements of socialist coexistence.” Good morals were only rehabilitated by the socio-economic “value system” change (Section 14 of Act XIV of 1991), and then the new Civil Code also revalued it by including it in a separate Section under a separate title (Section 6:96).

**4. IT HAS ALREADY BEEN POINTED OUT** that if we are not talking about the prohibition, i.e. the illegality, of contracts contrary to good morals, but of human conduct contrary to good morals in general, it is obvious that this legal principle has a significance far beyond itself. Killing, stealing, lying, coercing, deceiving, cheating, harming, etc. have always been and we hope always will be forbidden by legal, religious and moral standards. To this extent, the moral system is as stable as the legal system. On the other hand, the evolution of the legal fate of good morals in the Civil Code proves that there may be constant elements that are more stable than the law, so that when transposed into the legal system such norms are more in line with the requirement of legal certainty derived from the rule of law than, for example, laws that follow the rapid and frequent changes in economic–financial–social

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10 Deli, G. (2013) *A jó erkölcsökről*. Budapest: Medium. p. 70. and p. 255.



circumstances. In such cases, too, the optimum consistency between fundamental moral principles and legal norms is achieved if the latter codify the former at a high, even the highest level, in human rights and constitutional fundamental rights norms. This is what the UN has openly embraced by adopting the Universal Declaration of Human Rights (UDHR). In its introduction, it points out that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind”. Two terrible world wars in a row, the development and deployment of weapons of mass destruction, the immense suffering of the civilian population, the extreme ideologies and concentration camps that treated human beings as objects to be destroyed, have rightly provoked a profound moral indignation of all humanity. The values that had held societies together and kept them together were disintegrating, Europe was disillusioned, exhausted, even burnt out, and the world was threatened with a state of total hopelessness (*anomie*). The aftermath is still felt 70 years later. Douglas Murray writes: “Philosophical and political ideas (...) the more popular they have been the more desolation they leave in their wake. As was the case with the most popular philosophies of all – philosophies that could be made into totalistic political visions.”<sup>11</sup> As a historical “counter-effect” of the aforementioned 20th century “influences”, the United Nations proclaimed the Universal Declaration of Human Rights “as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”

What are the main common ideals that can be drawn from the Declaration? The inherent freedom, equal dignity and equality before the law of all human beings; the prohibition of discrimination; the right to life, liberty and security of person; the prohibition of slavery; the

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11 Murray, D. (2018) *Európa furcsa halála: bevándorlás, identitás, iszlám: mit tartogat számunkra a jövő?* 4. kiad. Pécs: Alexandra. pp. 210–218.

prohibition of torture, cruel or degrading punishment and degrading treatment; the prohibition of exile; the right to defence and remedies; the right to asylum; the rights to property and to social security; in particular the right to work; the protection of motherhood and children; the right to education and culture. These fundamental *moral, ethical and legal* values have been interpreted, expanded and elaborated by a multitude of international conventions, national constitutions and specific human rights laws, and have now become a vast body of law. In secular Europe, Murray writes, all this remains “deeply unsettling. The post-war culture of human rights pretends (or its adherents pretend) to be a religion itself, and as such introduces a secularised version of Christian consciousness. It may be partially successful in doing so. But it is a religion that is never sure of itself, because it does not have its certainties. The language is revealing. As the language of human rights became more and more grandiose and self-serving, it became increasingly clear that this system was not capable of fulfilling its original purpose.”<sup>12</sup> Let us add that it cannot do so on its own, but perhaps with the help of religious and moral norms.

**5. SO I AM NOT AS PESSIMISTIC** as Douglas Murray for two reasons. One of the reasons is precisely the very human need to ethicise law, which is resurfacing again and again, even if this need has been suppressed or is being suppressed again by the positivist, “pure jurisprudential” tendencies. The other reason is Europe’s Christian identity, which is also making its way under the surface, but as a diving trail. It is as if the *ius, fas, mos, legal, religious* and *moral* norms not only draw on common European civilisational roots – Greek philosophy, Roman private law and Christian morality – but also reunite at the level of human rights for common ends.

Let us first take a closer look at the question of the morality of human rights, which could greatly contribute to the ethicisation of each national legal system, and of “law” in general. It is precisely since the adoption of the UDHR that more and more people have been claiming that human rights are “moral rights”, based on its content. According to the philosopher János Kis: “The claim to human rights is a moral

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<sup>12</sup> Murray, D. (2018) p. 211.

claim. If this claim can be defended, the justification must be based on a moral argument. ...Morality creates a particular sense of community among those whose behaviour it regulates. ...They commit themselves to justify their actions to other people. ...The moral community: the community of justification. Its members recognise that they can hold each other to account for adherence to moral principles and accept that they themselves are accountable. ...Moral precepts tell us what is right and wrong to do; and that depends on the nature of the act, not on the qualities of the doer.”<sup>13</sup> Since law is also fundamentally a measure of right and wrong, it also creates a norm-following community; society is not only a moral community, but also a legal community. And behind both – regardless of the diversity of churches – there is also the religious community, in Europe with its Christian religion, with its moral roots.

The interpretation of certain laws and the legal argumentation could be strengthened, made more meaningful and valuable if we admit that human rights norms and requirements are also “moral standards”, expectations. The answer to the how is Tamás Földesi’s idea: “The morality of human rights is worth examining and emphasizing because the moral principles with which most people agree promote identification with human rights and support for them, and the fact that some human rights have morally debatable ‘readings’ does not change this, because the effective choice between moral concepts also contributes to one of the main functions of human rights, the humanization of human existence.”<sup>14</sup>

**6. THE WHOLE HISTORY OF HUMANITY** so far can be seen as a history of human existence, of social coexistence, of the humanisation of our world. We can examine how far we have come in this humanisation in historical times, when and why, and how far we have fallen back. For our current ills, “The cure: collective reflection and

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13 Kis, J. (2003) *Vannak-e emberi jogaink?* Budapest: Stencil Kulturális Alapítvány. pp. 18–19.

14 Földesi, T. (2003) ‘Gondolatok az emberi jogok moralitásáról, avagy az emberi jogok és az erkölcs viszonyáról’, *Acta Facultatis Politico-iuridicae Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae*, tom. XL, pp. 109–144.

the never-ending effort to re-humanise.”<sup>15</sup> The system of values and norms of human rights can therefore be understood as a tool of the 20th–21st century effort of re-humanization, which transcribed moral and religious values into legal values, but without at the same time excluding, denying or even persecuting or negating religions themselves. “By protecting the inalienable personal dignity due to every human being, moral norms that prohibit wrong do at the same time protect the fabric of human society and safeguard the direction and productivity of its development. The basic moral rules of social life for all impose precise requirements to which public authorities must adapt, just as citizens must adapt. ...For the guarantee of a people’s legal system is the strength of its moral sense, and conversely, public morality also presupposes that the legislators do not depart from a moral judgment of right and wrong. ...The nation’s confidence in the legal system is based on an unspoken identification with an eternal moral order. Because if not, why would we invoke the Universal Declaration of Human Rights? The Declaration appeals to people’s consciences, and draws its strength from a sense of moral duty that no one disputes. The Declaration of Human Rights is not just a positive legal convention.”<sup>16</sup>

**7. IT IS NOTEWORTHY** from Cardinal Lustiger’s quoted reflection that it gives a greater force to the sense of moral obligation to observe and apply human rights as moral rights than if they were “merely” positive legal conventions. Others (like Douglas Murray) are also pessimistic about mere legal transcription. “It is no longer only the soul of Europe and the world that must be saved, but also the work of the Creator, the earth that sustains and nourishes the life of every human being and living creature. This cannot be replaced by a flood of non-binding human rights rhetoric.”<sup>17</sup> If human rights were just empty words, pessimism would be both justified and worrying. However, the rule of law institutions, specifically designed to protect and enforce

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15 Lustiger, J-M. (2018) *Emberhez méltón*. Budapest: Magyar Máltai Szeretetszolgálat. p. 73.

16 Lustiger, J-M. (2018) pp. 102–104.

17 Lejeune, R. (2015) *Politika és életszentség: Robert Schuman, Európa atyja*. Budapest: Magyar Máltai Szeretetszolgálat.

human rights and fundamental constitutional values, are a cause for optimism. Of course, this can also be made more effective if the legal values are given moral and religious support.

Most of the fundamental values of human rights can be traced back to a single concept: the concept of love. To add an adjective: love of one's neighbour is, for our subject, the most powerful religious commandment. This is the "hard core", the main characteristic of European civilisation, also called Christian. "This concept refers exclusively to the humanity of man, the humanity that is present in all men. This is the broadest basis of community, which goes deeper than alienation: it unites human beings living in different communities."<sup>18</sup> Believers in Christ see in the death of Christ on the cross a sign that "love is poured out to show itself towards our neighbour, to transform the whole of human civilisation *into a civilisation of love*. ... *civilisation* as a word is a further formation of *civis*, citizen. Civilisation is part of human history because it responds to man's spiritual and moral needs. Man, made in the image and likeness of God, who received the world from the hand of his Creator, has also undertaken the task of fashioning it in his own image and likeness. It is from the fulfilment of this task that civilisation is born, which is ultimately nothing less than *the humanisation of the world*."<sup>19</sup>

**8. IT CAN BE STATED** without boasting or exaggerating, Europe is at the forefront of the development of human civilisation and the humanisation of the world. Compared to its population and its share of the world's total population, it is an economic and especially social (humanitarian) high performer. It is no coincidence that the bulk of global migration is directed here. Europe's internal peace, the social peace of its member countries and its global attractiveness are mainly due to the establishment and maintenance of large solidarity institutions. Compulsory and free public education, public health care, pensions, maternity and child protection, family support, social assistance and support, care for the elderly all serve to promote social justice and

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18 Vereb, J.M. (ed.) (2010) *Minden napra egy gondolat: napi meditációk a nagy pápa imádságaiból és írásaiból* Jerome Vereb atya szerkesztésében. Budapest: JLX.

19 Vereb, J.M. (ed.) (2010) p. 174. and p. 194.

equal opportunities, and thus to preserve social peace. All of this, of course, requires a massive redistribution of all the wealth available to society, a redistribution by the state. This is what the “social constitutional state” does, guaranteed by democracy, based on universal, equal and secret suffrage. But it is based on the idea of equal dignity and equal rights, which have religious and moral roots. Article 2 of the Treaty on European Union lists human dignity, freedom, democracy, equality, justice and solidarity as fundamental values. They could hardly function without the moral demand and support of society. These, as fundamental values, are social consensus, which is the essence of moral norms, and proof that the law does need morality and that it does not hurt to have religious support. “Christianity calls solidarity love of neighbour. Its measure is “as thyself.” But society is not obliged to be Christian, the state is neutral to values, say the opponents. Yet the Constitution requires it, because it perceives that it is bad for the whole of society if one part of it is miserable.”<sup>20</sup> And it is bad for Europe and bad for the whole world, which is why it is also prescribed in human rights documents, not just for Christians. The acceptance of the morality of human rights, also as fundamental constitutional rights, could thus obviously contribute to the further ethicisation of national legal systems, of the law as a whole, to its becoming an internal norm “written in the heart” of man, and to its mass, voluntary observance.

**9. OF COURSE, OTHER CIVILISATIONS,** other religions, other morals and other legal systems have also worked and are working to humanise the world, to improve it. As an illustration, I highlight Mahatma Gandhi, who as a Hindu belonged to the Jaina religion, but also drew on Buddhism and Christian teachings, and studied law in England. His two guiding principles drawn from all these sources were *non-violence* and *love*. He wrote about the “religion of morality”<sup>21</sup>, but he did not forget the Aristotelian virtues: “The truly moral man lives a virtuous life, not because it is for his own good, but because it is the law of existence, the life-giving breath. In short, virtue is its own

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20 Zlinszky, J. (2007) *Közéleti és jogászeti etika a gyakorlatban*. Budapest: Szent István Társulat. p. 20.

21 Gandhi, M.K. (1998) *Az erkölcsiség vallása*. [Budapest]: Farkas L. I. pp. 27–39.

reward.” A moral person is one who can distinguish between good and bad, right and wrong. But can the legislator and the law always make a difference? If not, how should the conflict be resolved? According to Mahatma Gandhi, moral laws “are not temporary and transitory like those which men have made, but have eternal force, and it is our duty to obey their commands even more strictly than the laws of the state.” In fact, Gandhi says it openly: “Disobedience to the laws of the state becomes our imperative duty when they conflict with the law of God.” In the same way, he also discusses the relationship between religion and morality: “Religion and morality must always go hand in hand. (...) Religion is to morality what water is to a seed sown in the ground. Just as a seed withers in the earth if it does not have sufficient water, so morality, without the fertilizing influence of religion, withers, dries up and finally dies.” According to Gandhi, therefore, both law and religion have a solid foundation in morality, which, if it crumbles, both law and religion will crumble. Most importantly, according to Gandhi, “the laws of human conduct and morality are essentially the same in all religions of the world. And all the great preachers of religion have taught that religion is built on morality.”<sup>22</sup> If, then, the essence of the great religions, morality, is eternal and universal, then there must be a correspondence between human rights (also as fundamental constitutional rights) and morality, which are intended to be universal. In our terminology, then, it is nothing other than, as we have already stressed, the unity of *jus*, *fas*, *mos* to be restored or created, the ethicisation of law, with religious assistance.

**10. A MORAL COMMUNITY**, an ordered community of rights, a good society – anywhere in the world – can only be created by good people. Therefore “political science spends most of its pains on making the citizens to be of a certain character, viz. good and capable of noble acts. ... For the good man judges in every instance correctly, and in every instance the notion conveyed to his mind is the true one. ...the virtuous man is worthy of respect.”<sup>23</sup> The same can be said of the moral (i.e.

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<sup>22</sup> Gandhi, M.K. (1998)

<sup>23</sup> Arisztotelész (1987) *Nikomakhoszi etika*. 2nd edition. Budapest: Európa Könyvkiadó. p. 23., p. 67. and p. 104.

ethical) law that follows and enforces the moral good, the morality: it is worthy of respect.

To conclude, let us add that “good morals” (in Hungarian: “jóerkölcs”) in this form in Hungary is a legal term, “where the adjective ‘good’ denotes the legally protected moral norms, and does not presuppose ‘bad’ morals as the opposite of good morals.”<sup>24</sup> And the adjective “good” also refers to good and wise people who have good morals and can thus distinguish between good and bad, right and wrong. They, and the good lawyers and good judges who emerge from them, are the guarantee for the further ethicisation of private law and of the entire legal system, that is, for the re-humanisation of our world, for the construction of a civilisation of solidarity and love. Because the 21st century will either be a civilisation of love or it will not be.

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24 Mengyhárd, Attila op. cit. p. 14



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# Comments on Legal Certainty<sup>1</sup>



**1. IT WAS THE IDEA OF MY COLLEAGUE** and friend Professor György Bíró to write together a short textbook on the general part of Hungarian civil law, which would “fit” into one third of a semester, because it was missing from the palette of civil law notes even in the second half of the 1990s.

The General Doctrines had a specific mission after the change of regime. In addition to laying the foundations of private law studies, by familiarising young law students with the concept, system, historical development and most important institutions of private law and civil law (studies of norms and legal relationships), it was also necessary to introduce the fundamental legal principles and the values preferred and protected by private law, to which both private law legislation and the application of the law must conform. Whether we call them introductory provisions, *principles*, or what Károly Szladits calls “guiding ideas”, we are talking about the same thing: the value field within which private law must operate. The main elements of this field of values go back to Roman private law and as such they are also basic civilisational values (protection of property, freedom of contract, protection of good faith and fairness, etc.), as well as the Aristotelian virtue of *justice*, or the Enlightenment requirement of *reasonableness*. But this value field also includes the historical values of Hungarian private law, such as the protection of the institution of motherhood, children and the family in dower or in lineal succession. Historical eras can of course narrow or broaden this field of values, discarding some elements, replacing them with new values, and then the next era will decide whether they did the

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1 Originally published in: Barzó, T., Juhász, Á., Leszkoven, L., Pusztahelyi, R. (eds.) (2015) *Ünnepi tanulmányok Bíró György professzor 60. születésnapjára*. [Debrecen]: Lícium-Art Kereskedelmi Kft. pp. 318–329.

right thing or made a mistake, whether the new values are permanent or whether it is better to return to the old ones. This was also the case when we wrote the “General Doctrines” on the principles of socialist civil law.

**2. WE KNEW, OF COURSE,** that some of the most “socialist” principles (the principle of compensation for needs, the principle of planning, the principle of comradeship, the requirement of socialist coexistence, etc.) had already been surpassed. Not only the political dictatorship, but also the ideological influence of the law has been tamed. We were also aware that certain principles remained unchanged in terms of wording, but their content and interpretation changed, keeping pace with socio-economic developments (the principle of legal interpretation that improves the law, the principle of the proper exercise of law). For example, after 1982, the conclusion of a contract for civil law partnership was no longer considered a contract for the acquisition of income without work, contrary to socialist morality; on the contrary, as a socialist form of small business it became a model for many other such legal institutions, not only recognised but also encouraged by the law. The protection of property, instead of privileging public common property, was first extended to the protection of all forms of property recognised by the Constitution, and then abstracted to the principle of the protection of substantive rights. (From this we further abstracted the principle of the protection of “autonomous space” – private autonomy.) We have also learned and taught that the organic development of private law, the building from the bottom up (which did not “cease” in the socialist civil law era), the consolidation of good judicial precedents into common law and then the codification of them, has also produced a new principle: the general principle of expectable conduct, abstracting the exculpatory formula of the general rule of tort liability. And before the time of writing the textbook, the Constitutional Court had already started to elaborate and increasingly refer to the most basic requirements of “constitutional civil law” (equality and co-equal rights of the parties, balance of interests and values, equality of property forms, protection of the right to property, “privacy and protection of personal data”, etc.).

**3. CHANGES IN THE COMPOSITION** and content of the principles have always faithfully reflected changes in socio-economic-political conditions and, in this context, in people's everyday lives. New values emerged – new values created by jurisprudence and legislation, to be precise – and they shone for a while, then faded and disappeared. Old values that had been banned or simply ignored reappeared and began to have an impact again with the old or renewed content. Values that were previously considered only as principles of private law in the legal sector have been transposed into the Constitution and have been elevated to the status of fundamental rights or constitutional values (human dignity, legal capacity, equality of rights, freedom to conduct a business, fair competition, etc.). Looking back on the history of constitutional doctrine and constitutional culture over a quarter of a century, it can be said that there has been no halt in the development of law in this area either. The most general framework norms, the most fundamental values, along which the social community wishes to organise its coexistence, cannot be considered as eternally given and unchangeable, even when written into the Constitution. Emotional upheavals on a societal scale – enthusiasm, disappointment, disillusionment, anger, rage – can have a strong impact on values and their content. However, the most important virtue in such cases is to remain calm, to use common sense and to control the excessive swing of the “value-pendulum”. This is nothing less than the “golden mean”, the search for balance, the creation and, as far as possible, the maintenance of *legal certainty* in the world of law. Adding that the written law is by nature static and rigid, while the life circumstances governed by law are also by nature dynamic, constantly changing, adapting to ever-changing circumstances. If this can be called progress, static law cannot stand in the way of it, it cannot become a restraining force, an obstacle to progress. The law must be regularly renewed, amended, “modernised”, what is obsolete should be repealed and replaced by a completely new one. But in the meantime, legal certainty must not be forgotten. Based on the paradox of “static law – dynamic living conditions”, neither full nor lasting harmony between them is possible; but legal certainty as an objective cannot be abandoned. Without it, law would lose its essence, its power to regulate social life. This conclusion was one of the reasons why legal certainty, as a fundamental

principle of civil law, was “written back into the General Doctrine” as one of the guiding ideas of private law. The second reason was that in the meantime, legal certainty had risen to the status of a constitutional value derived from the rule of law – in other words, a “public law principle” – in the practice of the Constitutional Court and in constitutional doctrine. It is not a bad thing, in fact it is a welcome event, if the field of private autonomy fertilises public law – without, of course, public law then corrupting or overwhelming private law doctrine. So let’s take a closer look at what legal certainty means in private law, what it means in public law, and then what the common threats are in both areas.

**4. ACCORDING TO SZLADITS**, the guiding ideals of Hungarian private law are: reasonableness; justice; legal certainty.<sup>2</sup> He points out that “in our law, these main objectives are also *specifically expressed* in the Prologue of Werbőczy’s Book of Three”. This means, on the one hand, that they have become written customary law and, on the other hand, that although they are ideas, they also have a normative binding force. “Centuries of custom have ripened these propositions into common legal belief.” These three guiding ideals partially overlap in content – and thus strengthen rather than weaken each other. Private law dispositivity allows room for sober, prudent, deliberate, rational decision-makers to shape their legal relationship, considers such behaviour as typical and expected from everyone else, and then abstracts it as a norm. This will make further compliance with the law easier, faster and safer. It is expedient to follow reasonable law, so it is good that “law should aim at a reasonable order”. If the law is reasonable, it is expected of the law enforcers – both the parties and the judge – that they “should not believe an explanation of the law that is contradicted by common sense”. Reasonableness therefore increases legal certainty.

Within justice, following Aristotle, *Szladits* also discusses legal (distributive) and judicial (corrective) justice separately. From the point of view of legal certainty, he considers a just law to be a priority because of “equal treatment”, equality before the law. “While justice

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2 Szladits, K. (ed.) (1938-1941) *Magyar magánjog 1. köt. Általános rész, személyi jogok*. Budapest: Grill Kiadó. pp. 40–44.

thus requires taking into account the specific circumstances of the case, i.e. individualising it as much as possible, legal certainty, on the contrary, requires the typification, the averaging of the varieties of life. Law is intended to serve *as a general yardstick* in the life of society. (...) As a consequence, the general law is forced to settle for average and approximate truth in deciding typical cases. In this way, legal practice is in constant conflict between the ordinary truth of the general law and the concrete truth of the individual case, i.e. the fair decision; the most difficult, but also the most beautiful task of jurisprudence and the application of the law is to bridge this gap.” A just law is easier for a law-abiding citizen to adapt to, to adapt his behaviour to, to anticipate the consequences of breaking it. It is also easier for a judge to adjust a law that is inherently just, to make a fair judgement by considering all the circumstances of the particular case. A just law and a just judgment are therefore also a major factor in legal certainty.

**5. HOWEVER, THE GUIDING IDEA** of legal certainty is also discussed by *Szladits* himself, and it is worth quoting this part verbatim in its entirety: “The aspect of legal certainty places various demands on the *legislator* above all. Above all, it requires the development of a legal system that describes the legal institutions in as much detail and with as much precision as possible. This is the aim of systematic codification. The legislator must also take into account that one of the main pillars of legal certainty is the permanence of legal acts, since the legal order is predominantly maintained not by the power of state coercion, but by the voluntary adaptation of citizens, and only this transforms the dead letter of the law into living law. The rule of a law is therefore all the more firmly established the more traditionally it is rooted in people’s consciences. Therefore, especially in private law, occasional legislation, legislative overproduction: over-regulation and overloading of the legal practice with detailed rules, and frequent changes of rules, should be avoided as much as possible. (...) the smooth operation of the legal system is greatly hampered if it is constantly confronted with reforms (which are otherwise objectively correct).

Legal certainty also requires *uniformity in the application of the law*; everyone should be able to rely on similar decisions in similar situations. The main guarantee of this equality of treatment is the

judge's respect for the legal provisions and the law in general: not only must the judge not arbitrarily set aside the clear law, but he must also refrain from unjustifiable fluctuations in judicial practice. Therefore, case law aimed at preserving legal unity is an important safeguard of legal certainty."

From the text, I will highlight a few phenomena which, as we shall see, are "eerily" topical: occasional legislation; legislative overproduction; over-regulation; overloading of the legal practice; meticulous regulation; frequent shuffling; incessant reforms.

**6. LET US NOW LOOK** at legal certainty as a constitutional value, an important element of the rule of law. For this purpose, we quote from Decision 9/1992 (I. 30.)<sup>3</sup> of the Constitutional Court as one of the basic decisions to which the Constitutional Court referred back in many subsequent decisions – both in relation to the rule of law and legal certainty. (This decision has abolished the institution of appeals in the interest of the law.) "Legal certainty is an essential element of the rule of law. Legal certainty requires the state – and primarily the legislator – to ensure that the law as a whole, its individual parts and the individual laws are clear, unambiguous, predictable and foreseeable in their operation for the addressees of the norm. (...) However, the principle of legal certainty leaves a wide margin of discretion and decision for the legislator, since the rule of law also requires the application of other principles, which may conflict with the requirement of legal certainty. For example, the institution of fairness to promote justice in individual cases is in principle contrary to legal certainty. However, legal certainty is not undermined because the scope and conditions for the application of specific exceptions are clarified in advance by law. This applies both to certain legal concepts of fairness [such as compensation on the basis of fairness under Section 347(2) of the Civil Code] and to concepts that allow for broad judicial discretion. (The predictability of the content of the latter is ensured in the rule of law by various institutions, including the courts.) The requirement of substantive justice in the rule of law can be achieved by remaining within the institutions and guarantees of legal certainty. "The Constitution

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3 (1992) *Alkotmánybíróság határozatai*, (59), pp. 65–66.



does not (cannot) guarantee a substantive right to the ‘enforcement of substantive justice’, just as it does not (cannot) guarantee that no judicial judgment is unlawful.”

The private law nature of the ‘constitutional law’ argument is striking, and a number of key concepts seem familiar: clarity; predictability; foreseeability; fairness; equity; and ensuring legal unity. And it is also clear from its sceptical but realistic conclusion that legal certainty is more of a “guiding ideal” than a reality, more of an objective and a programme than a statement of fact, even in the Constitutional Court’s vocabulary. The Commentary on the Constitution also acknowledges this,<sup>4</sup> stressing, on the one hand, that the rule of law is not the only requirement of legal certainty, and on the other hand, that legal certainty “is itself a *complex ideal* that encompasses several requirements.” The Constitutional Court – quite rightly – did not provide a “canonical taxonomy” of what it includes under the conceptual umbrella of legal certainty, but the requirements it does mention, by way of example, can be linked to the law’s function of guiding behaviour: the existence of general rules rather than *ad hoc* orders; non-retroactivity; norm clarity; stability; sufficient time for preparation; protection of acquired rights and legitimate expectations; and effective enforceability.<sup>5</sup>

Without further elaboration and comparison, it is evident that just as constitutional law has drawn from the idea of legal certainty guiding private law, so private law can now draw from the constitutional value of legal certainty, mutually enriching each other while respecting the different specificities of the two areas of law. On the one hand, because the public/private law “confusion” itself works against legal certainty (in both areas of law), and on the other hand, because there are newer phenomena which work against legal certainty, in both areas of law.

**7. WITHOUT LEGAL CERTAINTY**, the legal system, the rule of law, is unsustainable. At first sight, this statement seems too general and too bold. So it’s worth thinking about it a little more carefully. The concept of ‘sustainability’ emerged just over a quarter of a century

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4 Jakab, A. (ed.) (2009) *Az alkotmány kommentárja*. 2. jav., bőv., kiad. Budapest: Századvég. p. 163.

5 Jakab, A. (ed.) (2009) pp. 163–192

ago in the context of environmental and nature conservation, but its economic, social and legal contexts have made it a widely used and diverse concept, including a legal one.<sup>6</sup> It is therefore both inevitable and natural that the concept and yardstick of sustainability can and must be applied to the legal system as a whole, and indeed to the rule of law itself, sooner rather than later. Professor and Minister of Justice *József Petréttei* did so with particular sensitivity.<sup>7</sup> “Legal certainty and sustainability are closely linked, as they express a forward-looking mindset of preserving values, reducing risks where possible, and making processes predictable and plannable.”<sup>8</sup> At the same time, in today’s incredibly fast-paced world, which is also facing many crises, the state – both as a legislator and as an enforcer – is constantly forced to react, change and adapt. “Therefore, when considering the sustainability of the rule of law, we must also take into account the changing objectives of the rule of law. The rule of law is never an end in itself.” The state is obliged to maintain and “safely” operate the large social subsystems (e.g. education, health, social care, pensions), while it is obvious that “(...) only social institutions that are able to cope with change, constantly renewing and adapting can survive for a long time.”<sup>9</sup> Stability and constant change? This seems to be the “catch-22” of legal certainty.

**8. PETRÉTEI HAS COMPILED** a list of the growing problems related to the sustainable rule of law:

- ≡ “overgrowth of the rule of law”; “flood of norms”; “torrent of norms”;
- ≡ legal overregulation; “paragraph jungle”; “flood of lawsuits”;
- ≡ lack of ex-ante and ex-post impact assessment; lack of deregulation;
- ≡ lack of stakeholder involvement;

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6 Bándi, Gy. (2005) ‘Fenntartható fejlődés és a környezethez való jog’ in *Fenntartható fejlődés, fentartható jogállam*. Budapest, Emberi Jogok Magyar Központja Közalapítvány, pp. 100-127.

7 Petréttei, J. (2005) ‘Fenntartható jogállam’ in *Fenntartható fejlődés, fentartható jogállam*. Budapest, Emberi Jogok Magyar Központja Közalapítvány, pp. 10-29.

8 Petréttei, J. (2005) p. 13.

9 Petréttei, J. (2005) p. 19.

- ≡ lack of codification training and expertise;
- ≡ the complexity and mobility of living conditions;
- ≡ the rapid development of science and technology.

The list goes on and on. I also mention the European Union's legal system, which is binding also for Hungary, and the internationalisation of Hungarian national law (through human rights). The increasingly layered law, even if it were stable, makes it increasingly difficult to navigate safely, and the increasingly layered system of redress forums does not help, but in fact makes it more difficult and complicated to reach a final and binding decision.

*Petrétei* also put together a set of possible responses to the problems of the sustainability of the rule of law:

- ≡ improving the quality of legislation (whether a new rule is needed at all; if so, a precise – subjective, substantive – analysis of the circumstances; deregulation; simplification; codification training);
- ≡ improving the general conditions for the effective administration of justice (legal knowledge, awareness, compliance; access to justice; development of legal infrastructure; e-government; preventive and remedial procedures; efficiency of enforcement).<sup>10</sup>

These responses are not new, but rather “evergreen”. The author himself senses this when he states: “New problems cannot be solved by the tried and tested tools of the rule of law. Moreover, the issue is not politically neutral. *On the one hand*, it is often criticised that too much legislation restricts the individual's room for manoeuvre and thus undermines the protection of the rule of law. *On the other hand*, the rule of law today requires active, not inactive, lawmaking.”<sup>11</sup> Let us also add that most of the “too many laws” are of a public law nature (EU or international obligations, constitutional or administrative, misdemeanour or criminal), i.e. imperative rules (imposing an obligation or prohibiting something), but even if they are private, they are typically

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<sup>10</sup> *Petrétei*, J. (2005) p. 24.

<sup>11</sup> *Petrétei*, J. (2005) p. 29.

binding. This leaves little room for the parties to put aside legislation that may be against their interests, or that may be clearly wrong, and to “regulate” their own lives, taking advantage of the discretionary power that has hitherto been characteristic of private law. Finally, it should not be neglected that the sanction for the violation of public law is not reparative, but punitive (repressive), the (objective) extent of which is often exaggerated. And here I am reminded of the thought of *Artúr Meszlény*, quoted in the General Doctrines (2013 edition, p. 91): “law is not for taking, but for giving.”<sup>12</sup>

**9. EVEN IF THE DIAGNOSIS** of the dear reader, based on the description of the previous symptoms, were that the rule of law is unsustainable, that one of its essential elements, legal certainty, is an illusion, I would urge a high degree of caution regarding the therapy. In our wasteful, consumerist world, we no longer repair our broken things, but throw them away, as mass production throws a plethora of new things at us. But neither the rule of law nor legal certainty is such a disposable mass product. Both are core values extracted by the civilisational development of humanity. We suffered for it like a shell for a pearl. It should not be thrown away, but restored. If we made a mistake, we have to fix it, because we inherited it from our ancestors and we have to pass it on to future generations. Let them too not have to suffer for it again and again, making the mistakes we and our ancestors made in the absence of the rule of law and legal certainty. In our world today (Africa, the Middle East), there are already some peoples where the state has been dismantled and the rule of law has broken down, and they are the greatest challenges to the global world order. The great upheaval, the great chaos, calls for a very strong (even violent) order. But the world had had enough of the 20th century of totalitarian dictatorships, which is why it set the rule of law and legal certainty as its goal and constitutional status.

In agreement with *József Petrétei*: “What can be said with certainty, however, is that the sustainability of the rule of law must be ensured, because the predictability and stability of the processes of

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12 Meszlény, A. (1917) *A polgári törvénykönyv szocializálása*. [Budapest]: Franklin Nyomda.

change taking place today, and the improvement of the sense of security and quality of life can only be achieved most effectively within the framework of a modern rule of law.”<sup>13</sup>

“All” we have to do is figure out what we mean by “the framework of a modern rule of law” in this therapeutic proposal.

With due *respect* for the fundamental legal principles and guiding ideals developed and followed by our great predecessors, but also *with* measured *creativity*, we will invent them.

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13 Petrétei, J. (2005) p. 29.

## References

- ≡ (1992) *Alkotmánybíróság határozatai*, (59), pp. 65–66.
- ≡ Bándi, Gy. (2005) 'Fenntartható fejlődés és a környezethez való jog' in *Fenntartható fejlődés, fentartható jogállam*. Budapest, Emberi Jogok Magyar Központja Közalapítvány, pp. 100-127.
- ≡ Jakab, A. (ed.) (2009) *Az alkotmány kommentárja*. 2. jav., bőv., kiad. Budapest: Századvég.
- ≡ Meszlény, A. (1917) *A polgári törvénykönyv szocializálása*. [Budapest]: Franklin Nyomda.
- ≡ Petrétei, J. (2005) 'Fenntartható jogállam' in *Fenntartható fejlődés, fentartható jogállam*. Budapest, Emberi Jogok Magyar Központja Közalapítvány, pp. 10-29.
- ≡ Szladits, K. (ed.) (1938-1941) *Magyar magánjog I. köt. Általános rész, személyi jogok*. Budapest: Grill Kiadó.



# Collapses<sup>1</sup>



**1. MY THOUGHTS IN THIS TRIBUTE** were inspired by two works by Béla Pokol, which seem unusual in jurisprudence, but which are common from him. One of them is entitled “The End Days of Europe” (“Európa végnapjai”, Kairosz Kiadó, 2010<sup>2</sup>), subtitled “The consequences of demographic collapse” (“A demográfiai összeroppanás következményei”). The other is an article in Legal Theory Review (Jogelméleti Szemle<sup>3</sup>) 2015/2: “The social scientification of jurisprudence (and thus its perspectival emergence)” („A jogtudomány társadalomtudományosodása (és így perspektivikus létrejötte)”). My thoughts are grouped around the key word I have chosen from the book’s subtitle, “collapse”. First I wonder, what is it that is collapsing? Europe, European culture, the civilisation called European. And then I wonder why it collapses if we value it so much, love it so much and cling to it so much. What fundamental values and pillars should be saved and strengthened to avoid collapse and disruption? And how jurisprudence can contribute to the salvation of Europe, especially when it had/has a role in bringing about the threat of collapse?

**2. EUROPE IS NOT JUST A CONTINENT** here on planet Earth, especially not the westernmost peninsula of Eurasia, but also the name of a great culture, with its own identity, one of the great civilisations in the history of mankind. To be European, to join Europe, to belong to

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1 Originally published in Karácsony, A., Téglási, A., Tóth, J.Z. (eds.) (2021) *Philosophus trium scientiarum : tanulmányok a 70 éves Pokol Béla tiszteletére*. Budapest: Századvég Kiadó. pp. 105–120.

2 Pokol, B. (2011) *Európa végnapjai: a demográfiai összeroppanás következményei*. Budapest: Kairosz.

3 Pokol, B. (2015) ‘A jogtudomány társadalomtudományosodása (és így perspektivikus létrejötte)’, *Jogelméleti Szemle*, 2015/2, pp. 106–130.

Europe, to migrate to Europe or to flee to Europe, all of these are still qualities, a kind of standard in the world.

The birth of Europe is linked to its two great predecessors, Greek and Roman culture and civilisation. In particular, Greek philosophy and Roman law are still cited as the pillars of the European Union. The next phase is the “baptism” of Europe, the adoption of Christian faith and religion, the third pillar, the normative system of Christian morality, which drew on Greek philosophy and Roman law. “In this way it formed the human ideals of the good prince, the good vassal, the good knight, the good citizen, the prudent steward (...), it created a world in which the lowest could rise above the highest, who in turn could be just as damned as anyone else. (...) This worldview not only justified the existing power differences and the clamorous contradictions of social possibilities, but at the same time it allowed for a critique – in a distant word, anticipating a much later phenomenon – a revolutionary critique of these powers” (Bibó, 1986<sup>4</sup>).

The awakening and coming of age of Europe can be traced back to the Renaissance (14th–16th centuries), the Enlightenment (17th–18th centuries) and then to the civilisation (19th century). The paradigm shift of civilisation was from verticality, the general state of servitude, to horizontality, the general state of freedom. The citizen: a free man, educated and industrious, creating his own property by his own labour, caring for himself, his family and his nation, his state and his church, which in turn preserve and protect him. He has dignity, he does not tolerate tyranny. Europe – if we may say so charitably, on the basis of its Christian and civic mission – wanted to civilise the whole “uncivilised” world, but instead it colonised it and became the master of the world. Sudden great wealth and great power distorted a “civilised” Europe that used its economic power and cultural superiority to impose its violence. By the 20th century, it had become a “mass-destruction” civilisation, destructive inside and outside itself. No wonder it was at odds with himself, which is a serious psychological trauma. So it retreats into its comfort zone, tries to come to terms with itself and, to ease its conscience, gives a large proportion of aid to the world’s

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4 Bibó, I. (1986) ‘Az európai társadalomfejlődés értelme’ in Bibó, I. *Válogatott tanulmányok. 3. kötet 1971-1979*. Budapest: Magvető Kiadó, p. 31.



poor. It is still living off the wealth it has accumulated over centuries in prosperity and social security. But in the meantime it has become very tired, burnt out, old and now it seems to be showing symptoms of panic disorder. Welfare Europe sought an even better existence, which for many turned into hedonism. Protestant Puritanism has turned first into a consumer society and then into a wasteful society, which is unsustainable for ecological, social and ethical reasons. The natural balance has been upset by overconsumption and waste of goods. Social reproduction has also become minus, the population is shrinking, and extinction is threatening. First the millions of migrant workers from southern Europe, then the population drain from eastern Europe reduced but did not eliminate the problems. Millions of migrants are now besieging Europe, in need of social care for an unforeseeable period of time and to an unforeseeable extent. How long can supply systems cope without collapsing? Moreover, the new immigrants come from civilisations with different (non-European) values, they do not want to integrate, and the “clash of civilisations” has moved into Europe. Who will beat whom and when?

Are today really the “end days of Europe” (Béla Pokol<sup>5</sup>), just before the “strange death of Europe” (Douglas Murray<sup>6</sup>)? Are we (for now) living witnesses to the decline of a great civilisation, to the destruction of great civilisations like those of the past? Is a new, colourful, Afro-Asian multicultural human civilisation being born in the westernmost peninsula of Eurasia, which will start its developmental phases all over again? What it will be, we do not yet know; what it will not be, we can already guess: it will not be white, it will not be Christian, and it will not be European. Although it will be on a continent called Europe. Can this process of destruction still be stopped, or even reversed? Who tells us what should be done? Where are the social scientists who know? Where is the social science that is researching this and that has solutions? What kind of state, what kind of law, what kind of instruments would be able to implement proposals that do not yet exist?

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5 Pokol, B. (2011)

6 Murray, D. (2018) *Európa furcsa halála: bevándorlás, identitás, iszlám: mit tartogat számunkra a jövő?* 4. kiad. Pécs: Alexandra.

**3. BÉLA POKOL'S BOOK** is a description and analysis of the state of affairs, based on a huge amount of factual material, including historical antecedents, and a flawless diagnosis. Europe is terminally ill. The main symptom of this is demographic collapse, inadequate social reproduction, an ageing and shrinking population. The “overpopulation” of certain ethnic groups – still minorities –, the Islamization of Western Europe, the “gypsyisation” of Eastern Europe, and the “population drain” from Eastern Europe, are not curing the problem, but rather increasing it. The author is rightly pessimistic: “To sum up the analysis of the possible averting of negative demographic trends in Europe, we must conclude these lines on a sombre note. It seems that only the extent of each negative process can be shifted in time, but almost none can be completely reversed” (Pokol 2014<sup>7</sup>). He also refers to Thilo Sarrazin’s shocking “scandal book” entitled “Germany Is Liquidating Itself” (*Deutschland schafft sich ab*), which is true for the whole of Europe; if no radical countermeasures are taken urgently, Europe will liquidate itself. The same is Douglas Murray’s conclusion: “Europe is not only changing but is losing any possibility of a soft landing in response to such change. An entire political class have failed to appreciate that many of us who live in Europe love the Europe that was ours. (...) The public (...) will not forgive politicians if – whether by accident or design – they change our continent completely. (...) Prisoners of the past and of the present, for Europeans there seem finally to be no decent answers to the future. Which is how the fatal blow will finally land.” (Murray, 2018<sup>8</sup>).

In a book by one of today’s best-selling authors, Yuval Noah Harari (“21 Lessons for the 21st Century”<sup>9</sup>), Lesson 9 is about immigration. This problem is the most serious in Europe. “The European Union was built on the promise to transcend the cultural differences between French, Germans, Spanish and Greeks. It might collapse due to its inability to contain the cultural differences between Europeans and migrants from Africa and the Middle East.” (Harari, 2019<sup>10</sup>). On this issue, a uni-

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7 Pokol, B. (2011) p. 184.

8 Murray, D. (2018) p. 312.

9 Harari, Y.N. (2019) *21 lecke a 21. századra*. Budapest: Animus.

10 Harari, Y.N. (2019) p. 127.

fying Europe is divided. The pro-immigration and anti-immigration debate “often degenerates into a shouting match in which neither side hears the other. To clarify matters, it would perhaps be helpful to view immigration as a deal with three basic conditions or terms:

Term 1: The host country allows the immigrants in.

Term 2: In return, the immigrants must embrace at least the core norms and values of the host country, even if that means giving up some of their traditional norms and values.

Term 3: If the immigrants assimilate to a sufficient degree, over time they become equal and full members of the host country. ‘They’ become ‘us’.

These three terms give rise to three distinct debates about the exact meaning of each term. A fourth debate concerns the fulfilment of the terms.” (Harari 2019<sup>11</sup>). The author stresses that this debate must be democratic, not a battle between good and evil, not a weapon of suppression or silencing of the other side. Instead of the serious accusation of racism (which for Béla Pokol is “the weapon of minority rights”), he also proposes the introduction and use of the concept of “culturalism”, which is softer, more tolerant and more realistic. The debate could even lead to the conclusion that the host cultures are better than the cultures of the countries left behind by immigrants, since it is no coincidence that tens of millions of people are seeking to migrate to European culture. Harari’s proposals could be an important first step in developing a toolbox for therapy. There is nothing to prevent host countries from concluding immigration treaties with individual migrants. Its essential content could be enshrined in law after a democratic debate. Anyone who does not accept the terms of the contract should not be admitted, and anyone who accepts and then seriously breaches them can be deported. But it is essential to move away from the current deadlock. Because Harari is also right that “if 500 million affluent Europeans cannot absorb a few million impoverished refugees, what chances do humans have of overcoming the far deeper conflicts that beset our global civilisation?” (Harari 2019<sup>12</sup>)

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<sup>11</sup> Harari, Y.N. (2019) p. 128.

<sup>12</sup> Harari, Y.N. (2019) p. 140.

**4. IT IS CLEAR** that one of the root causes of the global migration that has started is world poverty, the widening and deepening of the global social divide. This is due to a serious distortion of the global property order, a grossly unequal distribution of goods (wealth; economy). In Europe, it is a basic truth of social science that the social order is based on the economic order, which in turn is based on the property order. If the legal concept of property collapses, what will happen to the economic and social system that is built on it? If it does not collapse, but is used for conditions for which it is not appropriate (not “adequate”), it can have serious dysfunctional side effects. I wrote about this in my paper “Global Property – Global Power” („Globális tulajdon – globális hatalom”, *Pénzügyi Szemle* 2019/1<sup>13</sup>), which is also included in this book. Here I quote the opinions of some other authors.

Let’s start with István Bibó, who writes in the study cited above “about the concept of property and the conceptual confusion surrounding it. (...) a distinction is made between *real property*, which brings a man into direct contact with an object capable of increasing his freedom, be it a piece of land which he cultivates, a house in which he lives, a tool or a workshop which he uses, and property which, with its enormous size, cannot be grasped by the agency of a single man; and property in this case does not mean a relation between a man and an object, but the relation of *power of a man in relation to other men*, the possibility of availing himself, through the object which he calls his property, of the services of other men without consideration, or for a disproportionately small consideration. It is utterly ridiculous to talk about the personality-enhancing and freedom-enhancing effects of property in the case of mammoth estates and mammoth corporations that give one man *unlimited power* over thousands of people. Therein lies the *fraud* of the defenders of property” (emphasis by me: L.B.). (Bibó, 1986<sup>14</sup>) Bibó extended this view to the socialist state (all-people)

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13 Lenkovics, B. (2019) ‘Globális tulajdon – globális hatalom’, *Pénzügyi Szemle*, 64(1), pp. 146-160. [Online]. Available at: <https://journals.lib.uni-corvinus.hu/index.php/penzugyiszemle/article/view/1350/892> (Accessed: 29 September 2023). Or in English: Lenkovics, B. (2019) ‘Global Property – Global Power’, *Public Finance Quarterly*, 64(1), pp. 149-164. [Online]. Available at: <https://journals.lib.uni-corvinus.hu/index.php/penzugyiszemle/article/view/1350/893> (Accessed: 29 September 2023).

14 Bibó, I. (1986) p. 69.

property and called instead for the property of the workers, for the dissolution and humanization of property (Bibó. 1986<sup>15</sup>).

The same opinion was expressed by the lawyer Bibó's contemporary, the eco-economist Ernst Schumacher, in his world-famous book "Small is Beautiful": "It is immediately apparent that in this matter of private ownership the question of scale is decisive. (...) a in small-scale enterprise, private ownership is natural, fruitful, and just. b In medium-scale enterprise, private ownership is already to a large extent functionally unnecessary. The idea of 'property' becomes strained, unfruitful, and unjust. (...) there can be, and should be, a voluntary surrender of privilege to the wider group of actual workers. c In large-scale enterprise, private ownership is a fiction for the purpose of enabling functionless owners to live parasitically on the labour of others." He quotes R. H. Tawney's disapproving remark: "To the lawyer the first is, of course, as fully property as the second." (Schumacher, 1988<sup>16</sup>). (We note that István Bibó was a lawyer, but Tawney did not know him!)

Let's see also the opinion of Erich Fromm, the cultivator of social psychology, in his also global bestseller entitled: "To Have or to Be?" "Our judgments are extremely biased because we live in a society that rests on private property, profit, and power as the pillars of its existence. To acquire, to own, and to make a profit are the sacred and unalienable rights of the individual in the industrial society. What the sources of property are does not matter; (...) This kind of property may be called *private* property (from Latin *privare*, 'to deprive of'), because the person or persons who own it are its sole masters, with full power to deprive others of its user or enjoyment. While private ownership is supposed to be a natural and universal category, it is in fact an exception rather than the rule if we consider the whole of human history (including prehistory), and particularly the cultures outside Europe in which economy was not life's main concern." (Fromm, 1994<sup>17</sup>). Fromm

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15 Bibó, I. (1986) p. 70.

16 Schumacher, E.F. (1988) *A kicsi szép: tanulmányok egy emberközpontú közgazdaságtanról*. Budapest: Közgazdasági és Jogi Könyvkiadó. pp. 271-274.

17 Fromm, E., (1994) *Birtokolni vagy létezni?: egy új társadalom alapvetése*. Budapest: Akadémiai Kiadó. p. 73

deals at length with the expansion of property and the power that comes with it, the commodification of people, and recommends an existential way and the pleasure of being instead of an existential way of possessing.

**5. NEXT, LET'S LOOK BACK** to prehistoric times, as Fromm also mentioned, based on a recent bestseller “The Good Book of Human Nature – An Evolutionary Reading of the Bible” (Michel and Schaik, 2019<sup>18</sup>). The first nature of man is our primordial, our “natural nature”. “The first nature consists of innate feelings, reactions, and preferences. They have evolved over hundreds of thousands of years and have proven their effectiveness in the daily lives of small hunter-gatherer groups. (...) Such tendencies belong to this first nature as love between parents and their children, a sense of justice, indignation at injustice and inequality, a sense of duty to others after receiving a gift or help...” The main law of this long period was that “food must be shared!” “The Neolithic Revolution broke with the fundamental law of human coexistence (...) which had governed everyday life for thousands of years. The newfound idea of property has undermined the solidarity of primitive man. What used to be a common good – food provided by nature – has suddenly become a monopoly. That was the real scandal! (...) We still feel the aftershocks of this scandal today.” The transition to agriculture and settlement was the biggest paradigm shift in human history. The authors quote Rousseau in agreement: “The first man who fenced in a piece of land and found himself saying, ‘*This is mine*’, and found people so simple-minded as to believe him, this man created civil society. How many sins, wars, murders, miseries and horrors would have been saved from the human race if someone had torn out the markers or buried the trench and cried out to his fellow man: Don’t listen to this fraud! You will lose if you forget that the harvest belongs to all and the land to no one” (Michel and Schaik, 2019<sup>19</sup>)

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18 Michel, K., Schaik, C. van (2019) *Az ember három természete: A Biblia evolucionista olvasata*. Budapest: Typotex.

19 Michel, K., Schaik, C. van (2019) p. 28. and pp. 62-63.

**6. AND INDEED, THE GREAT EGALITARIANISMS**, the egalitarian or at least equalizing efforts, the struggles, the revolutions, all in some form and degree, have sought to reassert the most ancient, tribal, the first human and natural law, to redistribute wealth more fairly, to have a redistributive state redistribute them. Despite the successes so far, globally we can still say that not enough is being done, not yet to the extent of a natural sense of justice. Moreover, private property that is too large has not simply become global in scope, its quality has also been transformed, although the essence, the domination of other people, has not changed. Global ownership is predominantly money ownership, and ownership is exercised by bankers and brokers, with the owners of course sharing in the benefits. Ownership of things, means of production, factories, raw materials and finished products and the labour associated with them was embodied (incorporated) in shares as securities only a few decades ago and the stock exchange was a concentrated market for them. Today, share ownership has been further abstracted: first dematerialised, then virtualised, transformed into secondary, tertiary, etc. derivatives. These are managed by speculative brokers who think in terms of emerging regions, economic sectors and risk portfolios. They regulate their stock market transactions themselves, to their advantage: they always win, even when there is a recession in the economy and everyone else loses. The “principle of free movement of capital” provides global space and unlimited scope for this. The huge volume of win-lose games is known by all brokers to be “*unfair and unjust*”, but the magic word they use to defend themselves is “*legal*”. What kind of law and what kind of right is it that reproduces extreme wealth inequality on a global scale? An over-abstracted law and justice, detached from the everyday life of the individual, distanced from and even opposed to man. It is for this law that man is born, who is born to increase the profits of capital which has become the property of money. Therefore, he is “free” to wander the world to where he makes the most profit, because he will get a little more of it than where he migrated from. What is needed is a law that is not for the usurers, but for the exploited. Because law is for man and not man for law. The over-abstractation, expansion and collapse of property rights has led to an inhuman global property order and an inhuman world. History has shown that people do not tolerate

inhumanity, humiliation and the violation of their dignity, and it is time to make urgent and significant changes. Nature – as climate disasters show – has already rebelled against human exploitation. People have only just started to migrate, irregular invasions, but terrorism and violence are already spreading. This must be stopped not by weapons of mass destruction, but by the rational, just and fair distribution and redistribution of wealth.

**7. THE OTHER CONCEPT** that is threatened by the danger of over-abstraction and collapse, and which could equally collapse our entire civilisation, is “*motherhood*”. “There is only one mother”, the old saying goes, and the only sure thing is who she is. Today, thanks to human reproductive techniques and surrogacy, divorce and remarriage, adoption and foster care, a child can have 5–6 mothers. Meanwhile, in “Western” civilisation, there are still not enough mothers, few children are born, the population is shrinking because the value of motherhood is declining. In the past, it was the love of a mother, the “mother’s love”, that held the family, the father and the children together. If married couples do not have children, if women are unable or unwilling to give birth, to become mothers, the marriage falls apart, the institution of the family collapses. When families fall apart, the nation, society as a whole, falls apart. In his research on the causes of the demographic collapse in Europe, Béla Pokol has shown, with irrefutable data, that “the main cause of the demographic collapse is the change in the role of women and the marginalisation of the role of mother, which in recent decades has led to the complete abandonment of the role of mother for an increasing proportion of women” (Pokol, 2011<sup>20</sup>). He believes that the process, which has been underway for the last hundred years and accelerated thirty years ago, can no longer be stopped, much less reversed. There are many reasons why motherhood and the role of the mother “disintegrates”. Thus, women’s “equal participation with men in the economy, public life, the intellectual sector, etc.” (Pokol, 2011<sup>21</sup>.) This was coupled with “the rise of individualism over the collective

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20 Pokol, B. (2011) p. 195.

21 Pokol, B. (2011) p. 173.



needs of communities” (Pokol, 2011<sup>22</sup>) and the “intellectual current of the French Enlightenment, which elevated equal rights and equality above all else”, which “after a while raised the problem of women’s biologically based maternal role and their consequent difference from men” (Pokol, 2011<sup>23</sup>). The simple but distorted slogans of militant feminism – which launched a war against male domination and then against men – such as “the husband is not the head of the family, not the master of the wife”, “the woman is not the slave of her own child”, “the woman is not a breeding animal”, etc., have changed the consciousness and behaviour of masses, going beyond the goal. “The very justifiable attempt to establish the equality of the woman subordinate to the man has led European civilization to an evolutionary dead end, and its biological foundations are being destroyed at an accelerating rate” (Pokol, 2011<sup>24</sup>). “What European Christian culture, which has become predominantly irreligious today, can no longer achieve, Islam can still easily do” (Pokol, 2011<sup>25</sup>). Muslim family customs are rooted in religious observances, and the socialisation of girls into female roles is essentially about mothering, and the family is organised around this. Western Europe’s Islamisation will “solve” the demographic collapse in half a century, but it will also be a population and civilisation change. Do the pro-immigration people know and want this, or do they know but don’t want it, or don’t know because they don’t think ahead? According to Béla Pokol, the main reason for pro-immigration today is still the “pure profit motive”! “The labour force of the Muslim countries and their willingness to send hundreds of thousands of their citizens to work in the West on a permanent basis could not be resisted by the Western capitalist groups, who initiated this process purely out of short-sightedness and the hope of greater profits” (Pokol, 2011<sup>26</sup>). But they have miscalculated, both in terms of profit prospects and the fate of human rights and basic values of civilisation. So also in the assessment of “motherhood”, including the institution of marriage

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22 Pokol, B. (2011) p. 186.

23 Pokol, B. (2011) p. 188.

24 Pokol, B. (2011) p. 174.

25 Pokol, B. (2011) p. 183.

26 Pokol, B. (2011) p. 195.

and the family. The appearance is that the gender-ideological egalitarianism is winning, while the reality is that an entire culture and civilisation is being lost, defeated by another in which the role of women as mothers, the social institution of “motherhood” and the family are still fundamental values.

**8. TO CONCLUDE OUR REFLECTIONS,** let us return to the problem of the social scientification of jurisprudence. Jurisprudence thinks it is big in its own circle – too bad this circle is too small. It needs to be expanded, which requires stepping out, but at least looking out of it. “Man”, for example, is not just a legal subject, and certainly not an abstract legal concept, but a living being, a child of nature, although he imagines himself its master. His thoughts and actions are guided by two powerful instincts: the instinct to survive and the instinct to preserve the species. The legal institution for the former is property, and those serving the latter are motherhood, marriage and family. If they degenerate from their natural function, if they function in a way that is not intended, they put man himself in danger. This is when the science of law must intervene, thinking in a broad context, to protect man, if necessary, from himself, against himself. And even against the degenerate written law, of which the degenerate 20th century had plenty of examples. It’s a bit like a surgeon operating on himself to remove a cancerous tumour, because only he can save his own life. But this is where other social sciences, also known as “human sciences”, can help. I will give three examples.

The first is the evolutionary biologist and historian authors cited above, who say that man has three natures: the first is innate biological (natural endowments), the second is cultural (morality, religion), the third is rational (rules, goals, institutions). The synchronisation and optimal balance of these three natures is the condition for the development of man, for the evolution of civilization (Michel and Schaik, 2019<sup>27</sup>). Neither can be ignored, but neither can they be over-emphasised. Including a legal system that is closed and rational in itself.

The second is a book by a bioethicist-psychologist who argues that man is a “biopsychosocial” being, the result of his physical (somatic, genetic), spiritual (mental) and communal (social, socialisation)

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27 Michel, K., Schaik, C. van (2019) pp. 28-29.

endowments. A very sophisticated complexity. “Evolutionary psychology and psychopathology assume that humans are the product of Darwinian natural selection, not only somatically but also in terms of mental functioning: our mental characteristics have essentially served to adapt to the ancient environment in which 99% of human evolution took place.” Today, we live in a completely “different environment than the one we are adapted to, so it is not that we are mentally ill, but that our environment today is not designed for the psychological needs of man. (...) Man (...) is maladapted in his current environment. One could say that man has domesticated himself, and lives in a kind of self-created zoo, which, although comfortable and safe compared to the ancient environment, does not allow for the psychic satisfaction and happiness that the species naturally experiences” (Kovács, 2007<sup>28</sup>). Is that why more and more people are longing to get back to nature, because that’s where they feel truly happy? Perhaps that is why the “happiness index” has replaced the GDP, which values natural assets such as clean air and drinking water, healthy soil and food, peace and quiet, and a network of family and friends. (I can’t help noting that I have now a better understanding of why some species of animals do not reproduce in zoos of all comforts, and why the richest, western civilization is becoming infertile...)

The third book is a book by the best-selling author and historian, who says “Scholars began to study the history of happiness only a few years ago, and we are still formulating initial hypotheses and searching for appropriate research methods. (...) This is the biggest lacuna in our understanding of history. We had better start filling it.” (Harari, 2020<sup>29</sup>)

This would also require a paradigm shift in *science, social sciences and law*. Today people have a lot of rights (“human” rights), but it doesn’t seem to make them any happier. It is increasingly difficult to find one’s way around in the maze of law, and it is easier to get lost. Some rights often cross each other, discrediting them, and this calls for another right. The creation and application (interpretation) of legal regulations

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28 Kovács, J. (2007) *Bioetikai kérdések a pszichiátriában és a pszichoterápiában*. Budapest: Medicina. pp. 121-122.

29 Harari, Y.N. (2020) *Sapiens: [az emberiség rövid története]*. Budapest: Animus. p. 352.

that are constantly growing in number and complexity requires a large number of highly skilled, well-paid lawyers and legal scholars. Is it necessary? Lawyers tends to function as social engineers. They can make themselves and society believe that they can construct a better man and a better society. However, if this has not worked so far, it would be better to be more cautious and modest. People do not want more rights – they want more happiness, more humanity. This is where science, social science and jurisprudence, the “human sciences”, should help people. Before man gets lost in the legal jungle, drowns in legal chaos, or his humanity and civilisation collapse.

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# Human Rightsism



## Introduction

**THIS PAPER** – emphatically *not a* work of *jurisprudence* – is a meditation on the world and man in it, on the inner world of man, on life and death, on faith and science, and on law and morality. A new kind of *ism*, which was born seventy years ago as the “Universal Declaration of Human Rights”, as a great idea and a human betterment idea, which has achieved great successes, whose impact is still felt in everyday life, but which now as a *human rightsism* is becoming unfit for its purpose as much as its great predecessors of the 18th, 19th and 20th centuries. Indeed, “the road to the gates of hell is paved with good intentions”, so the popular wisdom goes. So it is good to be careful with it, especially with its extreme interpretations, and to urge the new generations, always enthusiastic about anything new, to be prudent and cautious. As a retired person, with over seventy years of life experience and fifty years of accumulated theoretical knowledge behind me, I feel not only entitled to admonition, but also, as professor emeritus, I feel it is my duty. Somebody – who can still speak – has to tell the responsible (?) decision makers! Lawyers are, after all, the *engineers of society* (or many people think they are; sometimes they think they are); they design and construct the structure and functioning of society and the state, and arrange the conflicts and relations of people *in the spirit of reason, fairness and justice*. They create peace, which is the prerequisite and solid foundation for the happiness sought by all human beings. So that we can have “a

hopeful history” (Rudger Bregman<sup>30</sup>). So it is no small responsibility to be a lawyer.

## 1. On the global idea

**I READ – AND RECOMMEND TO EVERYONE** – the selected thoughts (reflections) of the Hungarian human ethologist Vilmos Csányi about the world. The book is called *The Global Mind (A globális elme, Libri Kiadó, Bp., 2018*<sup>31</sup>). The human mind is the organ of thought, it’s in the head of every human being; but the fact that it already exists in a global version is surprising. At least on first reading. Then on reflection, and seeing the *internet-addicted* grandchildren, it’s not so surprising. “The archaic community was based on the communication of ideas, which rested, originated and ended exclusively in the spoken language. ... Modern technology allows eight billion people to communicate directly. ... If we consider as minds the activity of eight billion human brains connected by modern communication, we can recognize ourselves as a good approximation, only the dimensions and effects are different. Millions of news, events, actions, theories, ideas and proposals jostle for the world’s attention. There is little trace of rationality. The global mind wanders. ...this mind is rather dumb, still childish. It doesn’t focus on the really important things” (Csányi, 2018<sup>32</sup>). However, human ethologist Vilmos Csányi is also looking below the surface and finding encouraging signs. If there is a global mind, it must have global thoughts, and rational, relevant thoughts at that. He recalls the UN Universal Declaration of Human Rights (UDHR, 1948), citing its first article: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” It was in 2018 that this declaration was “born seventy years ago and, though slowly, it is still having an impact on the world today. It was already a global idea” (Csányi,

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30 Bregman, R. (2020) *Emberiség: mégis jobbak lennénk, mint hittük?* Budapest: HVG Kv.

31 Csányi, V. (2018) *A globális elme: elmékedések a világról.* [Budapest]: Libri Kiadó.

32 Csányi, V. (2018) pp. 18-19.



2018<sup>33</sup>). These words of praise are commendable. But the question arises, how, from what, why is a global idea born, what is the right way of thinking leading to a global idea? How do eight billion concrete individual thoughts become one abstract global thought? Once it is born, will individual people no longer have to think? Yes, they do; before every word spoken, before every action. Although there is freedom of speech, think carefully about what you say and what you don't say. The thought is free – but think carefully about what you do and don't do based on it. Even if everything is free for you, not everything works. The UDHR was born *after the war, against the war*, with the aim that man should choose the *gestures of love* instead of the *gestures of violence*, as István Bibó recommended, because they will surely make him a better man (Bibó, 1986<sup>34</sup>). Feed the hungry, give the thirsty something to drink, clothe the naked, shelter the fugitive, nurse the sick, visit the prisoner – a simple, concrete programme of action. It will also make the global world a better place. But you can't solve all the world's problems on your own, so do it in concentric circles, starting with those closest to you: love the spouse you are sworn to love; the children you decided to have; the members of your family you can count on most; the members of your local community among whom you live; the co-workers you work with; your fellow citizens with whom you share a culture; your fellow citizens with whom you live in a state; your fellow human beings with whom you live on a planet. Be a *good and careful father of a family*; be a prudent steward; be a *good citizen*; be a *good (decent, upright) man*, as already recommended by Károly Szladits (Szladits, 1938-1941<sup>35</sup>). This was *the image of man* in Roman private law and classical Hungarian private law, which is now the image of European legal systems and universal human rights. It would be difficult to think of a better one, and it is even a question of whether it should be invented (e.g. the *gender-man*), or whether it would be sufficient to

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33 Csányi, V. (2018) p. 20.

34 Bibó, I. (1986) 'Az európai társadalomfejlődés értelme' in Bibó, I. *Válogatott tanulmányok. 3. kötet 1971-1979*. Budapest: Magvető Kiadó, pp. 44-45.

35 Szladits, K. (ed.) (1938-1941) *Magyar magánjog 1. köt. Általános rész, személyi jogok*. Budapest: Grill Kiadó. p. 365.

make this old but not obsolete *idea of man* a reality on a mass scale – at last, at some point, perhaps at an accelerated pace.

“It should be clear that the global mind works much more slowly than a human mind. It would be terrible if it were much faster, because then the potential gaining of erroneous, harmful, fatal ideas would cause irreversible damage. At its own pace, the great mind has the right speed. It will be good if we still consider it a child, ‘to be taught and educated’. The more intelligent human thought that enters the recombinational realm of knowledge, the more effective the teaching of the global mind can be. The global mind must be persuaded of the human good by every possible means, by writing, by speech, by every means of the media. It is ready to learn” (Csányi, 2018<sup>36</sup>). I am more pessimistic than that, but I am hopeful too. There are at least two reasons for my pessimism. One is that the global ideas of the UDHR were already formulated in essence in the Declaration of the French Revolution of 1789, as a result of the European Enlightenment and civilisation, but more than two centuries were not enough to learn them. The second is that fraternal brotherly love, one of the *main commandments of Jesus: love your neighbour as yourself* – is now two thousand years old! But if every human being is created in the image and likeness of God, then he is a child of God, and therefore a brother and sister, and has equal dignity. So there is nothing new under the sun! And the reason for my hope is that the global mind has realized all this and has redefined and reaffirmed it as a global idea. All that remains are the corresponding global actions, which remain unchanged: acts and gestures of peace and sacrificial love. It’s a simple truth, easy to see, if man and the global mind is truly capable of learning; if it is not dumb, but smart. Given the extinction of generations of the “Gutenberg Galaxy” and the “net addiction” of newer generations, the *smartening–dumbening* match is, to put it charitably, a draw at best. The information flow is not yet knowledge – to acquire knowledge one needs to select, but selection requires a solid set of values, organizing principles, fundamental values. However, general value relativism and the value crisis that follows in its wake are working against proper selection and smartening. The *fundamental freedoms and human rights*, as *the cultural norms* of civilized

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36 Csányi, V. (2018) p. 21.

humanity (Károly Szladits' expression), are trying to act alongside and for it, provided that the *cultural nations and civilized people* accept, embrace, follow and enforce them. Let's take a closer look at this.

## 2. On human rightsism

**HUNGARY IS A PRECIOUS NATION.** As a Hungarian, I can say this with a bias; as human beings, we can say this impartially. It is valuable because it has a valuable culture. It has a valuable literature, art and science, folk tales, folk music, folk dance and folk traditions, a valuable history and the knowledge of experience and survival that it has acquired. In all these ways, its contribution to European Christian civilisation and universal human culture is valuable. Like the history of all other peoples, its history had a nationalist period that turned into chauvinism, but at the cost of bitter sacrifices the Hungarian people also learned to be proud of its national culture instead of its Hungarianness as such, and to talk *about culturalism* rather than *nationalism*, to cling to its cultural *identity as patriots who* love their homeland. It has also learned from history that national pride must not turn into arrogance, a sense of superiority, a hatred of other nations, especially neighbouring nations. Even anger gives *bad advice*, and hatred – whether racism or class hatred – *breeds violence*, and is *humiliating* for both the hater and the hated, and therefore offensive to morality. Hatred almost always *leads to war* that destroys people and culture. But people who love their human brothers and sisters (*human beings*) want to live a peaceful life in a peaceful world. Peace is the ultimate aspiration of humanity, the measure of *humanity*. War is the triumph and rage of *evil* (Satan in man). After the Second World War in the 20th century, humanity *made a* once and for all *commitment* to human goodness and peace, against war, with the creation of the United Nations and the Universal Declaration of Human Rights (UDHR). There is great truth in the saying that “history is the teacher of life” (*historia est magistra vitae*). This is true even if many people have a very low opinion of history (in fact, of the hateful and war-mongering man), because wars have always been, have been (locally) fought since 1948, and are still fought today.

According to Hermann Hesse, “history, is both banal and diabolic, both horrible and boring. I don’t understand how anyone can waste time on it. ... World history is nothing but an endless, dreary account of the rape of the weak by the strong, ... World history is a race with time, a scramble for profit, for power, for treasures. What counts is who has the strength, luck, or vulgarity not to miss his opportunity.” (Hesse, 2012<sup>1</sup>). At the same time, he considers “the achievements of thought, of culture, of art” to be real history, which is “always an escape from the serfdom of time, man crawling out of the muck of his instincts and out of his sluggishness and climbing to a higher plane, to timelessness, liberation from time, divinity” (ibid.). The Hungarian Albert Szent-Györgyi, who believed that history is nothing but the senseless pushing of national borders back and forth, held a similar view. The statues of our rulers and generals are the greater, the higher their pedestals the more they conquered, the more battles they won, that is, the more men they killed (Szent-Györgyi, 1989<sup>2</sup>). History should be about science, the arts, culture, their leading figures (Galileo, Newton, Darwin, Pasteur, Bach, Buddha, etc.), not about wars, not about conquests.

For centuries, the law *has* also *regulated* war as an existing, even inevitable fact, and tried to *humanise it*, without much success. Wars continue to escalate, drag on and become more violent, and the people fighting them *become dehumanised*. This is the nature of war – all wars, whether they are fought for power, conquest or economic ends, or because of religious or ideological conflicts – because they are *a means of applying force*, of *violence*. But because war is fought by men against men, violence, aggression, brutality, cruelty are not the *nature of war*, but the *nature of man*. If, therefore, the evolutionary process of man’s becoming man, his development, is the *process of man’s betterment*, there will necessarily come a time when there will be no more war, there can be no more war. Not because international law forbids it, since even to enforce the prohibition, violence must be used as a last resort (*ultima ratio*), but because the moral force of *humanity*, which

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1 Hesse, H. (2012) *Az üveggyönggyjáték: Josef Knecht Magister Ludi életrajzának kísérlete, valamint Knecht hátrahagyott írásai*. Budapest: Cartaphilus. pp. 360-261.

2 Szent-Györgyi, A. (1989) *Az örült majom*. Budapest. Magvető. p. 255.

has become inwardly moral, restrains it. After the Second World War – “barbarous acts which have outraged the conscience of mankind” – the UN General Assembly proclaimed the Universal Declaration of Human Rights with this aim. “Whereas it is essential, (...) that human rights should be protected by the rule of law” and not by arms. The UDHR is thus the *common standard* “of achievement for all peoples and all nations” (Preamble, declarations 3 and 8). This standard *must* be inculcated in humanity, in every single human being. Education “shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace” [Article 26(2), 2nd sentence]. Looking at the wars of the 21st century so far and the current Russian-Ukrainian war, we can see that this education has so far failed, or at least is lagging far behind. Perhaps what *is needed* is a *stronger belief* in these common standards, a reaffirmation of them. Man (since Adam) has been enthusiastic about so many ideas with religious fervour, though in the end he has been disillusioned with all of them, because in the practical application they have all somehow turned out differently, backwards, into warfare, against man. This is *The Tragedy of Man*, as Hungarian writer and poet Imre Madách wrote it in the pearl of Hungarian literature. But perhaps if we tried again and considered *universal* human rights as a global idea *and a common standard*, as a *human rightism*, as a new religion, we would believe in them? Well, there are such views, but they are not necessarily optimistic.

Alain de Benoist, in the light of the mass destruction of *the* 20th century *isms* (fascism, communism), speculated on *Human Rightsism*, which he considered a new universal instrument of domination (Demokrata 2003/42). “Human rights represent the moral horizon of our age”, quotes Robert Badinter, “they must become the basis of all societies”, adds Kofi Annan, and “they contain the seeds of the concept of a true world government”, states Jean Daniel. “...Human rights are presented as a new Ten Commandments, as if they had a sacral character as the new foundation of the human order. In this way they could be defined as a religion of humanity (Nadim Gordimer) or *as a secular world religion* (Elie Wiesel). Evidence is like dogma: it cannot be disputed. That is why today it seems as inappropriate, as sacrilegious, as

scandalous to criticise the ideology of human rights as it once was to doubt the existence of God. Like all religions, the discourse of human rights tries to present its dogmas as a series of absolute truths. ...the proponents of the credo of human rights also see themselves as having a legitimate mission to impose their principles on the whole world.” So human rightsism is also “first and foremost an instrument of domination, and must be regarded as such.” This is a pessimistic, but not unfounded, view. It is not the same whether it is an *external coercive* instrument, acting through the force of law, or an *internal incentive*, acting through the force of morality. Moreover, these two could be *co-efficients* of force in the optimal case and in the optimal ratio.

Human rights as a common standard presupposes *community*, the *family of humanity* as a universally valid norm. The *rule of human rightsism* would therefore mean global (legal and moral) rule over all humanity. This, however, is incompatible with today’s over-emphasis on individual freedom, with unrestrained and especially selfish individualism. Francis Fukuyama writes: “As people soon discovered, there were serious problems with a culture of unbridled individualism, where the breaking of rules becomes, in a sense, the only remaining rule. The first had to do with the fact that moral values and social rules (in our line of thought: human rights – L.B.) are not simply arbitrary constraints on individual choice; rather, they are the precondition for any type of cooperative enterprise. Indeed, social scientists have recently begun to refer to a society’s stock of shared values as *social capital*. Like physical capital (land, buildings, machines) and human capital (the skills and knowledge we carry around in our heads), social capital produces wealth and is therefore of economic value to a national economy.” (Fukuyama, 2000<sup>3</sup>). A society dedicated to the constant upending of norms and rules in the name of increasing individual freedom of choice will find itself increasing disorganized, atomized, isolated, and incapable of carrying out common goals and tasks.” (Fukuyama, 2000<sup>4</sup>). This inability applies also to the realisation, i.e. the enforcement, of human rights as common standards,

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3 Fukuyama, F. (2000) *A Nagy Szétbomlás: az emberi természet és a társadalmi rend újjászervezése*. Budapest: Európa. p. 30.

4 Fukuyama, F. (2000) p. 31.

and thus to the prevention of wars. Of course, we could also say that no new common standards, no new faith and no new religion were (or would have been) needed to ban war, and that it would have been enough to observe only one of the “old” Ten Commandments: You shall not murder. Not only in war, not only with arms, but in no other way shall you kill, not even by thought, word or omission! This has not yet been achieved, and since the separation of church and state, *secularisation*, the chances of avoiding war have further deteriorated. The power of the apparently “neutral” state and the law, which has become its instrument of power, over human souls has increased, but its effectiveness in peacemaking is no better – quite the contrary. After the total domination of the *mass-murdering ideologies* of the 20th century, of *fascism and communism*, of fascist and communist states and rights, the shadow of suspicion is cast over every new common ideal, every “brand new” ideology invented by the people, every secularized state and every right. For the common goal of human goodness and peace, the state and the church (the UDHR and the Ten Commandments) could once again join forces and cooperate, a new *division of powers* that would benefit both the state and the church.

Douglas Murray writes about it in his book *The Strange Death of Europe*: “Yet despite having lost our story we are still here. And we still live among the actual debris of that faith. Few people among the crowds flowing through Paris flock to Notre-Dame to pray, but yet it is there. (In fact, after the fire it is now being rebuilt – L. B.) Westminster Abbey and Cologne Cathedral may still dominate the places in which they stand, and though they have ceased to be places of pilgrimage they still signify something, though we do not know exactly what.” (Murray, 2018<sup>5</sup>). He quotes the English *atheist theologian* Don Cupitt: “Nobody in the West can be wholly non-Christian. You may call yourself non-Christian, but the dreams you dream are still Christian dreams.” For example, the dream that the *love of weapons will one day be replaced by the weapon of love*. Or that Europe is building a civilisation of love and *will one day be a civilisation of love*. This is not helped – and is therefore disturbing – if *human rightsism*, following the example of

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5 Murray, D. (2018) *Európa furcsa halála: bevándorlás, identitás, iszlám: mit tartogató számunkra a jövő?* 4. kiad. Pécs: Alexandra. p. 210.

20th century atheist isms, *also* seeks to expropriate faith and religion. The attempts of the “dominant ideologies” of the 20th century to do so did not end well. “The post-war culture of human rights pretends (or its adherents pretend) to be a religion itself, and as such introduces a secularised version of Christian consciousness. It may be partially successful in doing so. But it is a religion that is never sure of itself, because it does not have its certainties. The language is revealing. As the language of human rights became more and more grandiose and self-serving, it became increasingly clear that this system was not capable of fulfilling its original purpose.” (Murray, 2018<sup>6</sup>). Yet human rightsism is becoming more and more *institutionalised*, with a growing number of professional (movement) missionaries, *priests, prophets, and even a self-proclaimed pope*. But faith cannot and must not be *imposed* on societies by classifying it as *ius cogens*, i.e. as binding norms of international public law. Coercion is resisted by societies because it is “not only a cause for concern but an exhausting emotional process” (Murray, 2018<sup>7</sup>). The European man no longer believes in *redemptive ideas*, in new and new *unique saving* truths. He no longer wants the “pursuit of continuously, relentlessly, pursuing ideas to their end point – wherever that might lead” (Murray, 2018<sup>8</sup>). Human rights do not carry absolute truth. “Just one of the problems with absolutes and the pursuit of them is what happens when they crash. Unlike the fudge of liberalism – which allows everybody to plausibly blame anything – an absolute, when it crashes, leaves everything in the wreckage: not only people and countries, but all dominant ideas and theories” (Murray, 2018<sup>9</sup>). “Philosophical and political ideas (...) the more popular they have been the more desolation they leave in their wake. Much of Europe’s twentieth-century political misery came from a(n) (..) effort to arrive at a political absolute” (Murray, 2018<sup>10</sup>). Let us add that Europe’s problems in the 21st century stem from the same source, only now many want to take the latest dogmas of human rightsism they have

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6 Murray, D. (2018) p. 211.

7 Murray, D. (2018)

8 Murray, D. (2018) p. 212.

9 Murray, D. (2018) p. 213.

10 Murray, D. (2018) p. 214.



created to the absolute, to the extreme. As a counter-effect, we slowly start to question everything, but we never get anywhere. “The destruction of ideas is perhaps precisely because we are afraid of where they might lead” (Murray, 2018<sup>11</sup>). Therefore, we must rather not allow human rightsism to become a new secular religion, a collection of new beliefs, especially if the specific interpretations of its fundamental tenets are to become dogmas.

Konrad Lorenz considered the power of dogma to be one of *Civilized Man's Eight Deadly Sins*. “Such a doctrine, elevated to an all-embracing religion, gives its supporters the subjective satisfaction of secure knowledge bearing the stamp of revelation. All facts contradicting it are denied, ignored or, more frequently, *repressed*, (...) thrust into the subconscious. (...) But indoctrination begins to have satanic effects only when it unites vast human conglomerates, whole continents, even the whole of humanity in a single, or erroneous, evil creed.” (Lorenz, 1988<sup>12</sup>). In the light of this, it is understandable and at the same time incomprehensible why the believers in human rightsism want to uniformise the whole of humanity, to homogenise people and nations, national cultures, and to put them in uniforms (i.e. ideological strait-jackets). I stress that the problem is not with human rights, but with extreme and distorted interpretations of them, with the exclusivity of interpretations and their rigidification into dogmas, with the imposition of dogmatic beliefs on the masses, with the practice of human rightsism as a secularised religion. This is not a new problem, but a well-known one from the 20th century. We Hungarians know this problem well from our recent history, from the period of total communist dictatorship: “Their ideology was protected by dogmas against the will to innovate. The idea of improving a rigid ideology was branded heretical, in their words revisionist” and persecuted, discredited and even destroyed, together with its originator (Kopátsy, 2013<sup>13</sup>). Among other things, human rights were born to solve this problem, not to repeat or deepen it, and certainly not to form new dogmas.

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11 Murray, D. (2018) p. 221.

12 Lorenz, K. (1988) *A civilizált emberiség nyolc halálos bűne*. Sopron: IKVA. p. 81.

13 Kopátsy, S. (2013) *Történelemszemléletem: társadalomfejlődési elemzések*. [Szentendre]: Vincze Papírmerítő Műhely. p. 34.

According to Sándor Kopátsy, “The greatest of the idealists was Marx. He considered himself a consistent materialist, yet he was the greatest idealist in history, the last great founder of religion despite his anti-religion” (Kopátsy, 2013<sup>14</sup>). This is a big paradox, and it is worth looking more deeply into its origins and repetition. We Hungarians have half a century of experience in this field, which is perhaps why we are more cautious and suspicious than Western nations of any new religion founder or new “atheist religion”. Let’s call on the science of *human ethology* again, after Konrad Lorenz, once again Vilmos Csányi. “Most human ethologists agree that the capacity for religious faith may have played an essential evolutionary role in the formation of communities” (Csányi, 2018<sup>15</sup>). This ability can be average, stronger than average, or weaker than average. Studies have shown that there are genetic differences between the two extreme groups. “... The VMA2 gene ... was found to occur much more frequently in those inclined towards spirituality than in those less so inclined. The media latched onto these findings and began talking about the ‘*God gene*’. Of course, for the sake of accuracy, it should be added that this is just one of many genes that influence spirituality... All this shows is that there are *genetic reasons* for certain individuals to be more receptive to the concept of a transcendent world that is beyond them and surpasses them, which they can enter in a special state of consciousness. ...The importance of genetic influences in the manifestations of spirituality has been confirmed by twin studies. ...Of course, the fact that someone has this ability does not mean that they are religious, or if they are, they can follow any religion. There is a sharp distinction to be made between the willingness to be spiritual and the practice of a religion” (Csányi, 2018<sup>16</sup>). So there is nothing surprising in some people being *believing communists*, others *believing liberals*, others *believing Christians* or *Muslims*, *Hindus* or *Buddhists*, or most recently *believing human rightsists*. What is really surprising, however, is the persistence and even revival of *religious hatred* towards those of other religions (dissenters), i.e. ultimately towards our fellow human beings, our

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14 Kopátsy, S. (2013) p. 37.

15 Csányi, V. (2018) p. 137.

16 Csányi, V. (2018) p. 138.

brothers and sisters, which can erupt in violence, heresy, burning at the stake, real or virtual, in religious wars, in clashes of civilisations, even today, on a local or even global scale. Differences both in the degree of ability to believe and in the different religions (including atheism) are also necessary to resist “delusion, superstition, deception, fraud. And the sceptics are always warning their community about such things, so their activity is also useful” (Csányi, 2018<sup>17</sup>). Just as, by virtue of its evolutionary role, gentle, non-violent faith and religion is also, and indeed is, the most useful.

Hungarian sociologist Elemér Hankiss wrote about the same in a different approach and context (Hankiss, 2014<sup>18</sup>). “Heroes’ exploits, religious beliefs, moral standards, world views, artworks, games and jokes can all help us to ease our anxiety for a while and make us feel at home in this world. ...In 1911, the German philosopher Hans Vaihinger argued that humanity cannot exist and live without *fictions*. ...the *constructs* of human consciousness and imagination: concepts, classifications, systems of relations, logical formulae, *laws*. Ideas which have no counterpart in the material world, but which nevertheless enable us to deal with this material world. (Note: I consider human rights to be such ideas – L.B.) Tools, catalysts, signposts to help us navigate and live in this world. ...We have become *Homo sapiens* by constructing our world from symbols and symbol systems. ...We would not know ourselves and each other if the brilliant constellation of symbols that we have created were to suddenly disappear from the world and from our consciousness. It may turn out that castles in the air built from symbols are real castles after all. And sometimes even stronger than fortifications built of stone. It may turn out that the forms and shapes created by the human spirit, though fragile and perishable, are more important than we now believe, want to believe, dare to believe” (Hankiss, 2014<sup>19</sup>). “To create something out of nothing, to build constellations out of symbols, perhaps out of nothing, to build a world of freedom, reason and dignity in a silent and empty universe: this, I believe, was a work worthy of

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17 Csányi, V. (2018) p. 139.

18 Hankiss, E. (2014) *Emberi kaland: egy civilizáció-elmélet vázlata*. [Budapest]: Helikon Kiadó.

19 Hankiss, E. (2014) pp. 405–411.

man. A real human adventure” (Hankiss, 2014<sup>20</sup>). Nor does it fit into this line of thought that the designers, builders and defenders of the various castles and constructions should hate and murder each other. On the contrary, joint success can only be achieved through constructive cooperation. Whether we regard the grandiose system and religion of human rights, human rightsism, as a system of symbols, a castle in the air or a fiction, either way it is a powerful and valuable human construct, the culmination of man’s evolutionary and civilisational development, without which we can no longer live. But human rightsism alone is not enough to keep us alive.

In Hermann Hesse’s ironic phrase, “not everyone can spend his entire life breathing, eating, and drinking nothing but abstractions. (...) Abstractions are fine, but I think people also have to breathe air and eat bread” (Hesse, 2012<sup>21</sup>). There are several warnings in this thought. The first is that every abstraction (community-organising idea, organising principle, theory and ideology) is worth as much as it is put into practice and used for the benefit of man. Consequently, the second warning is that abstraction should never be *too distant*, too disconnected from reality, from people’s lives and real needs. Every theoretical construct tends to take on a life of its own, to become something in itself and for itself. However, *jurisprudence*, which *creates concepts*, condenses human knowledge and know-how into concepts, and then analyses and interprets its own concepts, is particularly threatened by the danger of *over-abstraction*, of detachment from reality, from the real, from the good of man. This danger is greatest when the law transcribes the propositions and dogmas of an already over-abstracted ideology into law, into its conceptual system, in order to impose them on people as norms. It will be a case of people for the law, not law for the people. This is *the reversal* of law, the “dehumanisation” of law. This is the *improper* legislation, interpretation and application of law, the improper exercise of law, the *abuse of law*. The law prohibits the abuse of rights, and so does the UDHR (Articles 29 and 30) prohibit the abuse of fundamental freedoms and human rights.

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20 Hankiss, E. (2014) p. 412.

21 Hesse, H. (2012) p. 362.

Human rights *are communal standards* and man is (and always has been) a communal being, despite all the rumours to the contrary. Even if some people (not a few in Western civilisation) have strayed into the dead-end of *selfish individualism* or *singularism*. Therefore, “everyone has duties to the community in which alone the free and full development of his personality is possible” [Article 29(1) UDHR]. The interests of the community (the public interest, the common good) are the duty of every individual. “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society” [Article 29(2)]. In other words, freedom is freedom *in the community*, not freedom *from the community*, and certainly not freedom exercised at the expense, harm or detriment of the community. But even within the limits of the law, “These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations” [Article 29(3)]. It is a universal prohibition of abuse, a reconnection of fundamental freedoms and human rights, otherwise formulated at a high level of abstraction, to real, diverse and varied human communities (societies, religions, cultures, civilisations, peoples and nations).

The risk of *over-concretisation* can also be inferred from the risk of *over-abstraction*, *a contrario*. The higher the level of abstraction of a norm, the more (kinds of) human behaviour it can be extended to, the more concrete life situations it can include in its scope. The same is true for all the broad and open *general clauses* (general personality right, unnecessary interference, conflict with good morals, etc.). In this situation, the most difficult task of the law enforcer is *subsumption*, i.e. the selection and matching of the always concrete facts of life and the always abstract legal facts corresponding to them. It is this difficulty that gives the judiciary its complexity and beauty, that gives rise to good precedents and to the case law of the judiciary, which is ultimately used in codification. But this difficulty is now compounded by two new phenomena. The first is that overly abstract human rights are interpreted and applied not only by professional judges, but also by professional (sometimes well-paid) activists (revolutionaries, rights

activists). The second is that the broad norm allows for diametrically opposed interpretations. Movements can be organised around different interpretations, which fight each other, often violently. This is very bad for human rightsism, the internal coherence of the legal system and the requirement of legal certainty. Here are some important examples. Every person (every human being) has the right to life and human dignity. From this we can derive the freedom of the person, from this the freedom of self-determination for women, from this the freedom to have an abortion, but we can also derive the absolute respect and protection of life, the protection of foetal life and the prohibition of abortion. From the separation of church and state we can deduce the removal of the Ten Commandments and the cross from public school classrooms, but from the right of cultural identity we can deduce the opposite. From the prohibition of torture and the number of prisoners, the minimum size of the prison cell can be inferred (or not). Freedom of speech can be interpreted as freedom to use the red star, but not the swastika. If, in order to avoid similar contradictions, we appoint an *interpretative* (i.e. concretising) *supreme power*, we are in fact placing the legislative, executive and judicial political powers in the same hands, without democratic legitimacy. If this supreme power is a court, we are talking about *judicial power* (Richtermacht). If an NGO claims this power, and it represents the position of a minority, then it is the supremacy of a social minority over the majority ("Bolshevik", with a vanguard mentality). This is democracy upside down, the use of law as a political weapon. If such NGOs organise themselves into a global network, they can even gain global supremacy and dominance of opinion. They are "more universal" than the Catholic Church, omnipotent and omniscient, "more papal than the Pope." Such an organisational network was built by the Open Society Foundations against the "closed commercial state" and the closed communist dictatorships during the bipolar world power system, and this could have been a positive development. But today, in a multipolar world, it has become the means of creating a unipolar, uniform world (Homo Deus?). A global "cultural revolution", in ideological uniform, waving and shouting a set of dogmas of neoliberalism? Uniform programming of uniform brains, mass production of bionic beings, creation of *homo roboticus*? The one who programs them, who controls them, is the

master of the world. What does it make of the world, of man and of man's inner world? One of Douglas Murray's new books is called *The Madness of Crowds: Gender, Race and Identity*<sup>22</sup>. Despite the fact that the aim was to liberate man, to eliminate the phenomenon and the possibility of domination over man. As the UDHR puts it: "Whereas (...) the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, (...) if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". This is and remains the universal purpose of human rights, and it is therefore forbidden to abuse them in any devious way and for the purpose of covert domination. It is better, therefore, not to allow human rights to become human rightsism, a religion of new dogmas and a universal instrument of domination. It should be seen for what it was originally: a declaration, i.e. a statement of the social ordering principles and fundamental values by which all humanity intends to live its life, objectives towards which societies (UN member states and UDHR signatories) and their members, individual (but not selfish) people, will strive. Common standards to harmonise the legal systems of sovereign nations, bringing peoples who otherwise retain their own national (cultural) identities closer together in a "brotherly spirit", for a valuable, diverse, civilised, culturally rich, peaceful and secure world, for a sustainable future.

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22 Murray, D. (2020) *A tömegek tébolya: áldozatok a politikai korrektség oltárán?*  
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# Plea for Hungary<sup>1</sup>



**DURING MY SHORT TENURE** as President of the Constitutional Court (in 2015), Hungary was also attacked by the left-wing liberal group in the European Parliament for violating the rule of law and common European values. The question was raised whether I would go to the plenary session in Brussels where this issue will be on the agenda and make a short speech in defence of Hungary and the Hungarian rule of law. I said no, for a simple and clear reason: the Hungarian Constitution and the Constitutional Court Act (and the Ombudsman Act) categorically prohibit a constitutional judge from being a member of a political party, from engaging in political activity, or even from making a statement with political content. This is the guarantee of the independence of the institutions of the rule of law, their legal status above political parties. The Constitutional Court took the ban very seriously from the beginning and has respected it.

However, as the attacks repeated and intensified, the question arose again and again in my mind of what I could have said if I had accepted the invitation and complied with it. I have never written either a plea or an indictment, but the attack is in bad faith and unjust even if it is formally legal, because formal legality is always easy to create. In other words: it is easy to find formal legal arguments for political accusations. The more general (more abstract, broader) legal concepts are used as a basis for the prosecution, the easier it is. The most dangerous from this point of view are ideological propositions that have become dogmas, transcribed into law, i.e. institutionalised by law, made enforceable. The totalitarian dictatorships of the 20th

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<sup>1</sup> This article was published in Lenkovics, B. (2023) *Ember és emberség: újabb gondolatok*. Budapest: Ludovika Egyetemi Kiadó.

century are proof that *legal dogmas* can become veritable *weapons of mass destruction*. Such were the great ideals of the Enlightenment and civilisation, *liberty, equality, fraternity*, which started as great moral philosophical objectives, then became public *declarations*, then became political weapons, which made it “free” to murder millions because they were not “equal” enough or did not show enough “fraternity”. From this grew the great *equality experiment* of scientific socialism, historical in Hungary, on the whole of society, on flesh and blood, in which anyone who was not proletarian enough was a bourgeois, a clerical reactionary or a kulak, and any of these qualifications was sufficient reason to be dragged off to a forced labour camp and exterminated. Murderous ideologies were born on other bases, too. Originally healthy nationalisms distorted *into chauvinism* and led to the First World War. The road led from national socialism to racism and anti-Semitism to concentration camps, gas chambers and the Second World War. So, the modern-day formulators, interpreters and practitioners of the latest ideologies and dogmas, the accusers against Hungary, should be much wiser and more cautious, given sufficient historical knowledge and life experience.

## 1. In defence of Hungary

**THE HUNGARIAN PEOPLE** committed themselves to Europe, to the European West, to Western Christianity, and to *Christian Europe* as a whole, more than a thousand years ago, after settling in the Carpathian Basin, at the time of the foundation of the Hungarian state. King St Stephen converted his people to Roman Catholicism and established a hierarchical feudal state, the most modern system of organisation at the time. But it was never admitted to the club of the European centre, and Hungary remained a peripheral country in Europe. As the eastern frontier of Europe, it was ravaged by the Tartar hordes for centuries, and then under Turkish occupation for 150 years. When, following the great geographical discoveries, Western Europe colonised and divided up the world among itself, appropriating and accumulating its natural resources and the labour of its slaves, Hungary was for three hundred years part of the semi-colonial line

of the Habsburg Empire. Natural and human (spiritual) wealth did not flow in, but flowed out. When Hungary could finally awaken to its national consciousness and become an independent state thanks to civilisation, the Austrian Emperor and the Russian Tsar joined forces to mark its place in the Europe of the Holy Alliance. Then the imperialist conflicts of the developed West dragged it into the Great War, of which it was the biggest loser. The victorious powers dismembered royal Hungary and gave two-thirds of its territory and one-third of its indigenous Hungarian population to its no less chauvinistic neighbours. As colonialists, they have become accustomed to arbitrarily redrawing national borders to suit their interests. They programmed Hungary's participation in the Second World War in advance, exposed first to the German Third Reich, then to their then victorious ally in the East, the Soviet Empire, and branded it first as fascist, then as communist. Hungary, as it has always survived every calamity in its history, has survived this one too. As in 1848–49, so in 1956 and 1989, it set an example to Western Europe of love of freedom, defence of European and Christian culture, and adherence to the values of *Western civilisation*. Impoverished in the communist experiment, Hungary, which was *changing its regime*, was spontaneously robbed by the rich Western countries, which imagined themselves once again as victorious great powers, in the name of their own “victorious ideology”, the dogmas of *liberalisation, deregulation and privatisation*, which aspired to global autocracy, on the basis of the free market. Economically, they wanted a new hunting ground, a new market, cheap labour, higher profits, a new colony, not a new, free and independent Hungary. In the political arena, of course, only the latter was pronounced. In economic and financial terms, we have become a vassal state again in the wealthy, wealth-hierarchised empire of global financial domination, usury civilisation, transnational monopoly capitalism, and we remain unchanged on the periphery of Europe. So let no one be surprised if Hungary views the “latest” imperial plans and ambitions of some with suspicion and reservations.

## 2. Centre or periphery?

**AFTER THE MISGUIDED REGIME CHANGE**, the only hope we had left was the European Union. We longed and waited for it like true believers for Paradise. It was a peculiar Hungarian expectation that the *borders of Trianon* would be freely permeable, and that the fragmented Hungarian nation would be reunited in a Europe without borders. But we have failed to ask the question in reverse: why do Europe, the European Union, need us? After the global dogmas of the *Washington doctrine*, in order to enforce its own EU dogmas, the *four fundamental freedoms*. In all four areas, the *free movement of* capital, labour, goods and services, the balance is positive for the countries of the western centre and negative for the countries of the eastern periphery. Brain drain, population drain, and profit drain are the key words of our accession to the European Union, its realistic results and at the same time its fundamental problems. Not the rule of law and the functioning of democracy in Hungary. This is just a dust-up and a distraction to prevent clarity, to prevent the real issues from being discussed. The issue of indigenous minorities – including Hungarians living outside the borders of the mother country as a result of the Trianon peace dictate – has not even been on the agenda of the European Parliament, and they do not receive a fraction of the attention that illegal immigrants do. This is not the European Union we wanted, and we are very disappointed. And now it wants to annex us *as a new empire*, to restrict us, and even to take away our sovereignty, our freedom. This is what the Hungarian people – along with other freedom-loving peoples (see BREXIT) – cannot tolerate. Those who wage political war against us (and against other countries on the eastern periphery) with the weapon of new legal dogmas (the rule of law, liberal democracy) are therefore threatening not only our freedom, but also the future of the Union and even of Central Europe.

## 3. On the Hungarian rule of law

**THE DEMOCRACY AND THE RULE OF LAW** of the *Hungarian democratic constitutional state* are undoubtedly both characteristically

Hungarian, rooted in our historical past and our culture. But what is new, unique or surprising in this? French bourgeois transformation followed a distinctly French path, different from the earlier English or Dutch one. German civil society was very different from both English and French society. Hungarian civilisation was twice crushed by the Habsburg Empire (in 1795 by the bloody suppression of the Hungarian Jacobin movement, and in 1849 with the help of the Russian Tsarist Empire, by the suppression and repression of the civil revolution and the War of Independence). Therefore, Hungary *was forced into* a peculiar *feudal-capitalist path*, which was late and slow to civilise. It has remained half feudal, half capitalist, with a peculiar mixture of these two characteristics. Then, thanks to the dictatorship of the Communist Soviet Republic of 1919 and the annexation of the country by the Trianon dictate of 1920, it remained on the halfway road of feudal hierarchy and free market capitalism. The Hungarian people have become very accustomed to the vassalage and state care of their subjects (which began with the enlightened absolutism of Maria Theresa and continued under Franz Joseph, after the Austro-Hungarian reconciliation, for half a century, during what was called the “happy peacetime”). Knowing this, and taking advantage of it, the harsh communist dictatorship that followed World War II took advantage of the opportunity: it compensated for the complete deprivation of the fragmentary civil-political freedom with a broad but poor *state paternalism* (1948–1968), which many considered a peculiar *feudal socialism*, following the feudal capitalist model. The *party-state*, with its dual quality of capitalist owner and plan-holder in one person, and at the same time exercising total political dictatorship, looked after its subjects (at the very bottom, the wage-working proletarians and serfs forced into collective farms, and in total the minimum-wage *state wage-slaves*) as the main vassal. After the introduction of the *new economic mechanism* in 1968, a *socialist market economy* was established in Hungary, which necessarily differed from the *social market economy*, which was then considered a “German miracle”, but also differed substantially from the Soviet orthodoxy. The “Muscovite” communist critics derided the Hungarian model as *goulash communism* or *refrigerator socialism*, as “petty bourgeois”. Thanks to this *attempt at economic reform*, Hungary became the softest dictatorship and the *most cheerful barrack* in the

Soviet camp. However, *attempts at political reform*, as in Hungary in 1956, in Czechoslovakia in 1968, and in Poland in 1981, were defeated by military force – always with tacit Western (NATO) assistance – by the forces of the “Soviet holy alliance” (the Warsaw Pact). The devout (bigoted) apostles of the communist ideal, with a narrow interpretation of the dogmas of their own religion, did not tolerate the slightest ideological *deviation*, and *the enemies of socialism* were first sentenced to death and executed in show trials, but later only discredited. It was very similar to the religious wars of the Middle Ages, the Holy Inquisition, the torture and public burning at the stake of heretics. The developed and wealthy Central Europe, the *West*, basically stood by and watched all this, while doing business with the Eastern despots. And the *socialist legal system, the socialist rule of law and socialist democracy*, built on the ideological basis and dogmas of Marxism–Leninism, functioned essentially unhindered. Feudal–socialist paternalism’s view of *entitlement* was ingrained in the minds of people deprived of their rights and basic freedoms and, having survived the regime change, became and remained a strong social expectation of the state.

#### 4. After a *change of mode*?

AND NOW, A LIFETIME AFTER the change of regime in Eastern Europe, and half a lifetime after the enlargement of the Union to the East, it is as if a familiar “spectre is haunting the European Union, the *spectre of the communist soft dictatorship*.” In the European Union, in its Parliament, in the 21st century, what *new religion*’s blind prophets are trying, *by what new method*, to impose their narrow interpretation of their own dogmas on everyone else? It is as if a new ideological-political *vanguard* has emerged from the “Brussels” bureaucracy. Who are trying to uniformise Europe, to dress it up in a *liberal Marxist*, even *liberal Maoist* uniform, in the name of what new *cultural revolution*, on the basis of what *little red book* dogma? What new, left-wing and green idea that will redeem Europe and even the whole world are they the sole creators, the sole connoisseurs and the supreme interpreters of, and where did they get the power to select and persecute the new heretics? They have no new knowledge, no new common goals, and they

are not willing to put their goals up for wide open debate and democratic discussion. Their tools and methods are the same old ones, well known and tried and tested in the Soviet socialist dictatorships. At best, they manipulate the masses even more effectively with the help of new technology (internet and mass communication). The mildest classification of these tools and methods is *social-liberal* (*soclib*), the harshest is *liberal-bolshevik* or *liberal-communist*, the more serious accusation is *liberal-fascist*, and these are the tools and methods that, for historical reasons, the more cautious peoples of Europe, living on the eastern periphery, do not want. Perhaps these adjectives and qualifications are exaggerated, but folk wisdom says that *he who is bitten by a snake fears a lizard*. The memory of the fears and suffering caused by the great, lying and deceitful powers – which practised total dictatorship – is still alive in the guts and nerves of the *people of the periphery*, engraved in their minds and souls. Given their past, newer generations in Eastern Europe cannot be oblivious. The horrors of Auschwitz and the *Gulag*, the ideologies of mass destruction and their methods must be recalled again and again so that they are not repeated, so that their atrocities never happen again. In the dogmatic systems, a single general accusation (enemy of the people; class enemy; enemy of socialism) was enough to discredit even the most valuable people, to prosecute them, to make them impossible to exist. Today, *democracy* and the *rule of law* are such general concepts, categories of values, ideals, but they can become dogma and be used as weapons to destroy political opponents, provided that their exclusive interpreters gain the power to do so. In the world of law, *democracy* (rule of the people), the *constitutional state* (Rechtsstaat) and the *rule of law* are broad and open framework norms, so-called *general clauses*, which can be filled with rich, diverse and varied content and can be interpreted in many different ways (extensively or restrictively). Just as there are many kinds of kingdoms, many kinds of republics, and even many combinations of these, there are many kinds of democracies and rule of law. No one can be invested with the exclusive and supreme power of interpretation, because that would itself result in a *supreme* (unlimited) *power* which, as history has shown, can be abused in the most terrible ways. Therefore, the *interpretation that is considered to be the only correct one* should be the most widely and vigorously debated and discussed.

This includes freedom of thought, freedom of expression, freedom of opinion, freedom of the press and media, social publicity, *democratic discourse* and democracy itself. The election, control, accountability and removal of politicians is the prerogative of the electorate, which is the essence of freedom and democracy. The Hungarian people, one of Europe's most freedom-loving nations, know this, and therefore it is safe to entrust them with their own destiny, rather than to ignore, lecture, or even punish or exclude them, humiliating their dignity. It is forbidden to humiliate an entire people, to consider them disabled. The Hungarian people know well (because they have experienced and suffered) what fascism is, and also what communism is; what fascist law is and what communist law is; what fascist rule of law is and what communist rule of law is. They know what *socialist rule of law* is and what *socialist democracy* is, that in both cases the adjective "socialist" was in fact *a negative prefix*. Today, it seems as if the *liberal* adjective is increasingly being used as a negative prefix. The Hungarian people also know what is formal legality and what is substantive illegality. As the ancient Romans knew: *summum ius, summa iniuria*. The most strictly, formally, *literally* observed (enforced, applied) law is the greatest *injustice*. The totalitarian dictatorships of the 20th century and their totalitarian legal systems proved the truth of the Roman legal principle in black and white. In the show trials and other proceedings, the communists tried to observe *the letter of their own law* (as they interpreted it) to the strictest extent, while committing brutal injustices. This *tool and method* is still a great danger today, no matter which power tries it. For a while, the appearance of legality can be maintained, the real (ideological, political, disguised, *ulterior*) intentions can be covered up, but sooner or later "the cat is out of the bag", "cloven hoof is showing", "a lie has no legs". These proverbs demonstrate the wisdom of the people, the *demos*. In a democracy, the voice of the people is the word of God, democracy is the rule of the people, in which the people have the supreme power and the final say. "Though ships bob on the surface And oceans run beneath us It is the water rules." (The Hungarian poet Sándor Petőfi's poem is part of Hungarian cultural identity) Universal, equal and secret suffrage, the *equal dignity* of the people, must be taken very seriously not only by the people, but also by the political elite in representative democracy, the EU politicians



and bureaucrats. Especially when their power is legitimised through multiple mediations. The supreme power cannot be taken away from the people either by the directly elected national political elite, or by the elected or appointed elite of the distant European Union, which aspires to federal (imperial) power, or by the unelected and unnamed elite of the global economic–financial–communication ruling institutions, dictating from the background. We have to trust the people to trust themselves, to want to make the right decisions and to be able to do so. Calling Hungary *a sick democracy* is therefore tantamount to insulting, humiliating and degrading the Hungarian people, which are typical ways of *violating their dignity*. The qualification “sick democracy” refers not to the sickness of the body of the people, but rather to the sickness of their minds and souls. To say the same thing about a person or a minority would be homophobia, racism, segregationism, for which a grievance award could be claimed. If someone says that the Hungarian people and their democracy are “sick”, it is *Hungarophobia*, *anti-Hungarianism*, and there is no way to sugarcoat it.

## 5. Towards good democracy

**OF COURSE, TO MAKE THE RIGHT DEMOCRATIC CHOICES**, one needs to be well informed, and that requires substantive and credible information, free from manipulation. The truth, and many truths, must be spoken and debated, and this requires intelligent and calm dialogue (democratic discourse). No one can lie, least of all the politician who is dedicated to the public good; politics, public power, cannot be based on lies. This is the great historical lesson of the Hungarian elections of 2006 (the *speech of the Hungarian Prime Minister* in Balatonőszöd and the bloody police attack on the 50th anniversary of the 1956 Revolution and Freedom Fight). Alibi-politicisation and the imitation of democracy had to end. But it is not enough to deny the past (or the policies of the current government) and “abolish it for good”; one must offer the electorate a fair and competitive electoral (political, social-building) programme, and the winning programme must be implemented (or convincingly justified if the compelling force of changing circumstances requires deviation from it). Informed *consent* is not only a

fundamental principle of individual self-determination, but also an informational-social and political principle. Accordingly, a democratic election is a choice of a social programme of action, not a technical instrument of power, not merely a means of acquiring and retaining political (public) power. Just as politics is not a mere power technique. Not “Machiavellianism”, but the consensus of a (convincing majority) of voters of equal dignity on a winning electoral programme. It is a *social contract that is renewed* with each election. The fundamental values of democracy and the *democratic rule of law* are political *public goods* that should not be “marketised”, subjected to the domination and control of the *political market*. Political *marketing and advertising* should be banned as a means of manipulating the *political* electorate. Credible information and democratic discourse and substantive debate on electoral programmes must be conducted under strict legal conditions and within strict limits. Neither politics nor the politician is a market commodity, not for sale and purchase. Elections are not a speculative stock market game, the choice of political programmes and politicians is not about making profit, not about maximising profit, and especially not about private gain and private profit. Just as vote-buying is a criminal offence, so is gaining private political benefit. *Salus publicum suprema lex esto*. Politics should be for the public good (*pro bono publico*), that’s why we call it a *public service*. A politician is a *public servant*. And only a decent person can be a public servant. (It is difficult to find such a person, since “every man kindles the fire below his own pot”). When a dishonest man becomes a politician, his politics becomes dishonest, which makes the state and society dishonest. Dishonest politics is the greatest harm to social justice, whereas politics is supposed to create, restore and defend social justice. *Iustitia regnorum fundamentum*. When politicians and their minions gain undeserved privileges, they violate social justice, they violate democracy and the people. At the very least, they will become dysfunctional and will be ousted, but if they have done harm in violation of the law, they will have to answer for it, politically to history and the electorate, legally to an independent court of law. Ultimately – before God – everyone gets what they deserve (*suum cuique*). It is always possible, necessary and allowed to warn and reprimand the wrongdoer for straying from the right path. But in a democratic constitutional state, it is the right

and privilege of free and informed voters to make political judgements, assessments and consequences. To deprive them of this is not only humiliating, but an abuse of another, even greater and possibly more dishonest (e.g. “imperial”) power of the depriver.

## 6. Defending the nation state

**THE EMERGENCE OF NATION-STATES** is itself the result of an evolutionary development of society: an organised communal framework for the coexistence of people who form a nation. It had many causes for its emergence, and is itself the cause of many causes and changes. As a new idea it has generated enormous enthusiasm and released energy. It has turned diverging forces in a common direction (converged diverging forces). It has a huge positive (economic, social, cultural) impact, but it also has a heavy negative “burden”. Its most pernicious manifestation is *its distortion into chauvinism*, hatred, subjugation, conquest, exploitation (plundering, usurpation) of other nations; the pursuit of the “national interest” at the expense of other nations. Great nations have become “empires” (colonial empires) at the expense of “not yet nations”, small nations, or even large but weaker nations. The struggle for nation-state interests in Europe ended with the two great world wars of the 20th century, with great destruction, and in the world with the wars of colonial liberation and the birth of a multitude of new independent nation-states. This end was also a new beginning: new, peaceful forms of cooperation were institutionalised (European Coal and Steel Community; European Economic Community; European Union). This *process* did not abolish the nation state, it only eliminated its distortions and removed its dangers. It has returned it to its original, positive waters; it has restored and re-mobilised its driving forces: freedom, independence (sovereignty), historical and cultural identity, tolerance and support towards other nations, mutually beneficial economic, political and cultural cooperation. This is a new “value framework” for the coexistence of nation states, a new stage in the development of culture and civilisation: *culturalism instead of nationalism*. Instead of throwing out the nation-state, we need to fix it, heal it, set it right and keep it on course. Similarly to the idea of private

property (because it has a powerful driving force): ethicisation and socialisation. Property is not only a right, it is also an obligation; it is also for the benefit of the community. The “world domination” of capitalist companies must be prevented, and their creation and operation *entail social* (social, environmental) *responsibility*. A principle of company law has become a *constitutional* principle in Hungary’s Fundamental Law: *property* shall entail social responsibility. In the same way, the nation-state brings social (economic, social, cultural, environmental, humanitarian, etc.) benefits, but also responsibilities. Therefore, all of this must be strengthened, not dismantled. Because we don’t know what would come in its place, who and what would take over its responsibilities? The nation state is not an outdated category, not a daily consumer good (“throw it out, buy a new one”). The producers of the new “stupefying” ideas and the idea dealers will also tell us what to buy instead: open society, gender ideology, LGBT freedom, United States of Europe. These newest, most fashionable ideological distortions, ostensibly counter-ideas to distorted chauvinism (racism), are in fact *counter-hatreds*. These too lead to destruction and decay, now at the expense of culturalism. An analogue example: instead of nuclear bombs, we need to produce not hydrogen bombs and neutron bombs, but nuclear power plants and radiotherapy treatment devices. The antidotes to the mass-destructive ideologies of the 20th century are not the new mass-destructive ideologies that can destroy civilisations. Population replacement (with family support, integration of immigrants) cannot be distorted into population exchange, because it would result in civilisation exchange, civilisation decline, and the destruction of European (Christian, Western) civilisation. Instead, the model of a corrected (not colonial, but just and solidary) European civilisation is the example to follow for the global world. Only the strong can help the weak, only a strong European civilisation (with Christian roots) can help the developing world – as it has done so far – so that hundreds of millions of people do not have to flee from there and become “landless”, homeless. Taking in a million or two refugees is a pseudo-solution, an inspiration for a global migration of overwhelming proportions, even billions. And a strong Europe can only be built and sustained through an alliance of strong nation states, through close and mutual cooperation.

## 7. Protecting Europe

**FOR MORE THAN TWO MILLION YEARS**, caveman lived in small communities, where he became (evolved, was raised) human. This explains why people today still feel comfortable in family, among friends, *in teams, groups*; they like to live in small communities that are small, transparent and manageable (can be organised, controlled, monitored and limited), and in which they can be themselves. They can monitor each other's goodness, loyalty, usefulness, selflessness, honesty and integrity. They ennoble and mould each other to become better, more humane people. The relations of ever larger communities, on the other hand, are becoming more and more "distant" from the individual, out of their control, and then in opposition to them, and they are bringing the individual under their control. Large organisations that are *too distant* (imperial centres, transnational corporate giants, financial networks, world powers, super-rich group meetings, G20 world economic meetings) are able to exercise complete and unlimited control over the lives and destinies of individual people. In such relations, man is *not a legal subject but a legal object*; he does not possess his own person, but is possessed by others. The communities surrounding man, as concentric circles, human scopes, must be precisely known and must be able to distinguish one from the other, to protect the smaller from the larger, the closer from the distant. The innermost circle is the *hard core*, considered untouchable by law, the intimate sphere of man – his personality, his private life, his marriage and his family, his home and his private life. Then comes his kinship, his clan, his tribe. Next comes his circle of friends, acquaintances, work and home community. Then the region and the state, the national and the religious community. The continent as a cultural and civilisational community; and finally the *extended family of humanity* as a global and planetary community. The *anonymous and virtual* communities of the internet are breaking down and dismantle these boundaries, and people no longer know where they are, where their place is, where their head is, where their heart is. Sometimes they don't even know if they are a boy or a girl, a man or a woman. A great Hungarian writer (Áron Tamási) said "We are in the world to be somewhere at home in it". The same can be said about our skin, its colour and our biological sex. We need to know our

place in the world, and the place of the world in ourselves. We have to have a self-image and a worldview. In a small nation-state, we are still able to find our way around, to see through and influence its relations. Large nation-states are better if they are structured in a fragmented way. Like the Federal Republic of Germany, which is a federation of the *Länder*. The *Land* structure is one of the “eternal” clauses of the German constitution, the *Grundgesetz*, and it is forbidden to change it, let alone abolish it. The cause is the fascisation of the Third Reich, the aim is to prevent the creation of a Fourth Reich. Nor can the European Union become a highly centralised, all-powerful Fourth Reich. Even if it had already been created as such, it would sooner or later have to be broken down into nation states, regions and provinces, and transformed into a structured entity, brought closer to the citizens of the EU – applying the principle of subsidiarity generously. So that the too distant Empire could not politic against them, rule over them. The iron law of “action radius” makes this a dead idea anyway. Alexander the Great and the Roman Empire, Napoleon’s conquests and the British colonial empire, Hitler’s and Stalin’s empires are proof that “over-sized” empires are not long-lived, but as long as they exist, they are life-threatening. The “peripheries” are constantly rebelling, breaking up and breaking down, empires are falling apart. Even artificial “small-scale” creations – created by great powers – such as Czechoslovakia or Yugoslavia. The latter disintegrated in a horrific “South Slavic war” that every European after Auschwitz must have thought would never happen again – in Europe. The “Arab Spring”, the “export of democracy”, should not have been forced by the model state of liberal democracy, a geopolitical superpower, the USA; after the Vietnam War, the wars in Iraq, Afghanistan and Syria were a total failure, with a lot of suffering, destruction and a flood of refugees. Their negative impacts – which Europe, for the most part, will have to bear – are still to be assessed. Imperial ambitions must therefore be ended, in Europe and in the world.

History must be allowed to bear the future of Europe, which has a natural development rate and gestation period, in peace and quiet, and premature birth must not be forced: many premature babies are not viable and the mother’s life may be at risk. Without violence, threats and punishments, with incentives and support, the periphery will

catch up with the centre sooner, and with what the centre countries do better. Until then, we must be patient with them and treat them with goodwill. Peace is the reward for people of goodwill, and this – peace and solidarity in Europe – is the greatest success and achievement of a Europe and the Union with Christian roots. It would be a shame to risk it. And if something is done better on the periphery, it can only benefit the centre. It may even be rewarded with praise and recognition in return for loyalty and gratitude. At least in the Europe of fundamental, traditional and shared values, in Christian Europe, in our Europe.

