PERSPECTIVES OF RULE OF LAW AS VALUE AND LEGAL FUNDAMENTAL OF THE NEW WORLD DEVELOPMENT

CSABA VARGA[1]

Both the intellectual products and many of the technical solutions of our civilisational development so far raise the question of their human universality or their particularity in time and place. Western civilisation, our Europeanness, has always been in favour of universality from the very beginning, since both our dominant Christian tradition and the Enlightenment, which served as the cradle of many modern ideas we live with, linked them to the human being as such as basic needs. On the one hand, as anthropology asserts, "Man, biologically, is one." But on the other, the same anthropology is still more rigorous than this. In one of its most classic documents, it is stated that "Standards and values are relative to the culture from which they derive", and that, consequently, there is no human being *in abstracto*—that is, in general, in a purely biological sense—but only one who lives in his given community and thus in his culture. In a real sense, or in a cultural anthropological sense that goes beyond biological anthropology, none of them are universalisable. Accordingly, as its conclusion reads, "Only when a statement of the right of men to live in terms of their own traditions is incorporated […], then, can the next step of defining the rights and duties of human groups as regards each other be set".[2]

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[1] Research professor emeritus of the Institute for Legal Studies of the Hungarian Academy of Sciences and the Peter Pazmany Catholic University (Budapest), DSc. Visiting professor at many universities in Australia, Japan, Scotland, the United States, Italy, Germany, and Russia. Author of half of thousand works published, among others, in English and also in Russian, including "Codification as a Socio-historical Phenomenon", "The Place of Law in Lukács' World Concept", "Theory of Judicial Process", and „Paradigms of Legal Thinking". Recipient of the highest Hungarian state award for scientific achievement. Advisor to the prime minister of Hungary (1990–1994).

[2] [The Executive Board, American Anthropological Association] 'Statement on Human Rights' *American Anthropologist* 49 (October–December 1947) 4, Part 1, pp. 539–543 at pp. 541, 542, and 543.

This is obviously not the statement of a weightless and uninteresting truth in view of the emergence of a new multipolar world order, and certainly not in the context of intellectual products and technical solutions of civilisational development which, while standing for values defining the ultimate ethos of law and the law's working, have been meant to serve the maintenance and expansion of unipolarity as much as possible and precisely within the framework of a globalism controlled by, and in the interest of, the United States.[3]

(Rule of law) The idea of the rule of law or *Rechtsstaatlichkeit* has become one of the watchwords of international politics in recent decades, while its conceptual content has been debated especially in Hungary since the beginning of the region's so-called transition to rule of law. By this time, mainstream academic and political circles in the Western hemisphere have already universalised it as a closed and abstract concept that happens to be the minimum that should be achieved anywhere in the world, as it serves as a criterion for state institutions, human rights, and all the values Western Europe and the Anglo-American world happen just to hold. The situation is far from a local feature, a new or strictly Hungarian characteristic. Its genesis coincided with the dissolution of the Soviet Union and the imposition of American type globalisation on the newly unipolar world. Virtually from the end of the Cold War and from the unipolarisation of the world, the United Nations, together with its overpowering economic and financial organisations, as well as the United States foreign policy and the political, administrative and judicial centres of the European Union have used it as a means of globalist, respectively federalising, expansion with their own values, state structures, and conception of human rights.

[3] See only from the past a few decades ago as an example of the immediate and unscrupulous exploitation of a situation of power supremacy at any time, Csaba Varga 'Failed Crusade: American Self-confidence, Russian Catastrophe' *Central European Political Science Review* 8 (Summer 2007), Nr. 28, 71–87.

As to the conceptuality of the rule of law or *Rechtsstaatlichkeit*, it is a broad ideal with many values, which can only be approached by a pragmatic case-to-case weighing and balancing, ready to compromise at all times, in order to achieve an optimal solution for each individual situation and case. For, considering its complexity with conflicting values involved, internal collisions would be caused in any case of equal support. Moreover, this concept cannot be proclaimed as a universal model. It can only be a solution to issues within a given particular community, that is, state or international entity, which happens to be a response to queries that have arisen in their own place and time, in own context. Or, the idea itself is *per definitionem* particularistic, which cannot be universalised as abstracted from the concreteness of any of its *hic et nunc* occurrence. By looking at the variety of legal arrangements in the world today in a comparative historical perspective, one has to realise that it must be particular if only because it presupposes a rule-based legal order, which in fact is unique to the laws rooted in Roman law and thus far from universal.

So, if we summarise what we knew about this concept in its appearance a century or two ago, and what the new unipolar power is now trying to impose on the rest of the world, we are faced with a new phenomenon, because it has become transubstantiated in the meantime.

What it was, was taking the law seriously. It stood for the need, in the continental European version, for the law to bind the power that makes the law and all its addressees, while in the Anglo-Saxon version, it stood for a court to be authorised to say and enforce what the law ultimately is in any dispute. In the final analysis, it was nothing more than the expression of our civilisational self-aggrandisement in the field of law, an ideal to which we all aspire: each of us in our own practice, under conditions that have just been given to us in the constantly changing situations of the challenges and responses that are to define our existence. Its manifestations (forms, emphases and modes) are like this here and like that there: they show a great variety, moreover, a great adaptability, too, in

their internal development. Of course, they also change over time. Hence, in its origin and development, the idea of both the Rule of Law and *Rechtstaatlichkeit* comprehends all the experience accumulated in the civilisational self-ennoblement available in the operation of the state, an experience that has always been nourished by different responses to the changing challenges of particular places and times. It has therefore never been anything other than inherently context-dependent and thus inevitably particular, depending on its cultural (etc.) environment. Although present (and, in principle, mutual) learning processes between nations and ages may attempt to project it as universal, but a sheer articulation of this does not necessarily imply more than the natural need for self-justification of those who are involved in exporting values that are vitally necessary for the West.

At a time when the West used the slogan of the rule of law as a symbol of its superiority in the Cold War confrontation, it was only used to denote, describe, and characterise. Now, with the rise of globalisation, when according to its own claim, the world economy demands a unified regulatory environment and the European Union has embarked on centralised empire-building, the official mantra has become an increasingly insistent demand for the rule of law, but this time already enforced as a normative criterion.

What is the content? It is used as if it were a legal instrument, an instrument to enforce a long-known ideal worldwide. But deceptively, because it has now been placed in the political milieu of world power decision-makers and thus transferred from the legal to the political arena. With it came the chance, and the subsequent practice, of constantly expanding its content as its masters see fit, while attempting to force their innovations of today and tomorrow into the very scheme that was recognised yesterday. As if the deliberate commitment of a state to the *status quo ante* automatically extended to the contingency of any *status quo post*. But that which is freely extended and changed in this way is also a sign of

the actual lack of substance of this claim. It is no coincidence, then, that the concept itself seems to be internally empty also to its proponents.

And indeed, even though its metamorphoses changed it from a *de*scriptum to a *pre*scriptum and thus to a criterion for judging actually working legal systems from the outside and from above, they could not change the basic nature of the very rule of law. That is, the fact that, by its very nature, it is not a class concept with boundaries that can be drawn with precise sharpness based on definition, but a so-called concept of order that can only be described by characterisation and exemplification, illustrated by a series of manifestations of various occurrences and characteristic properties.[4] In other words, to use another terminology from the literature of the philosophy and logic of science, the foundational nature of the rule of law is precisely its immutability of essential contestability.[5] This is what, on the one hand, is freely and constantly expanded by ever-competing institutional and authorial formulations. At the same time and on the other hand, this is the basic trait which, of course, is a prerequisite for its unchanging service as the ideal of a humanity that believes in the rule of law or *Rechtsstaat*, despite changing circumstances.

Its content, even in the narrowest legal conception of the genuinely basic constitutive elements, is a confusing ensemble of values, goals and procedural paths which, since they naturally point in different directions and are also in tension with each other if equally or unilaterally emphasised, require weighing and balancing in each specific individual situation—if only because maximising any of them without such a compromise, or even attempting or supporting their full satisfaction, would result in their mutual extinction. Consequently, the rule of

[4] See Carl G. Hempel and Paul Oppenheim *Der Typusbegriff im Licht der neuen Logic* (Leyden: Sijthoff 1936) vii+130 pp.; Paul Oppenheim 'Von Klassen begriffen zu Ordnungsbegriffen' in Bayer, Raymond (ed.) *Travaux du IXe Congrès International de Philosophie: Congrès Descartes*, ed. Raymond Bayer, vol. 9 (Paris: Hermann 1937), pp. 69–76 [Actualités scientifiques et industrielles 530]; Gustav Radbruch 'Klassenbegriffe und Ordnungsbegriffe im Rechtsdenken' *Revue internationale de la Théorie du Droit* XII (1938) 1, pp. 46–54.

[5] See Walter Bryce 'Essentially Contested Concepts' *Proceedings of the Aristotelian Society* (1955–1956) 56, pp. 167–198.

law is not a category the fulfilment of which can be answered by simple ‘yes’ or ‘no’, but an ideal, a direction towards which we must strive in any actualisation of law. How? As it concludes, contradictorily and with compromises. For only the individual solution of a situation then and there, the responsible and responsive consideration of its *hic et nunc* can create any kind of some then and there optimal balance.

Inherent in the very nature of our subject is the fact that neither the rule of law nor *Rechtsstaat* has ever been—and in its current, bordering on abusive, usage has ever become—an operative concept in law. It is therefore not an operative term, because neither it as a whole nor its individual components contain definitions of facts which, by constituting a legal case in law, would make it possible to determine its prevalence or non-prevalence in law, and thus to establish and prove its facts in court. In fact, no such definition has yet been given by the domestic or international order of any state or international entity either, which bodies, by invoking this very concept, are today making political and economic demands or even using blackmail as a means of extortion.

This obviously also applies to the political-ideological extension of the notion of the rule of law when democracy, human rights, and liberalism with further values, are added to the list of demands under the aegis of the rule of law as *sine qua non* components. For neither can this mean that anyone may claim a commitment to the rule of law in the past as a justification for the subsequent assumption of any arbitrary extension (completion and/or amendment) at later times.[6]

(The case of human rights and the blending of non-governmental organisations serving political penetration with the civil society’s genuine formations) The problematics of human rights would simply be a separate issue

[6] Cf. Csaba Varga *Rule of Law – Contesting and Contested* (Budapest: Ferenc Mádl Institute of Comparative Law 2021) 408 pp. & <https://mek.oszk.hu/22800/22867/22867.pdf>.

if it were not associated with the contemporary mainstream stereotypes of the rule of law allegedly presupposing them as foundational parts. However, a closer examination reveals that there are, so to speak, parallel features that emerge here as well. Such as the transubstantiation of the notion in the meantime, because the liberal elites of the Western mainstream no longer regard human rights simply as fundamental rights indispensable to existence and life as human beings, nor as an umbrella protecting the individual from the overpowering power of the state, but as an absolutising extension of their permissiveness-cum-libertinism with exclusive emphasis on the unrestricted autonomy of the individual in any circumstances and at any time. Such is the fact that the content of human rights is treated by whatever minorities or interest groups as freely expandable in and for their struggles. And such is the underlying nature of human rights consisting of nothing more than highly projected artificial virtualities. For, basically, as theoretically reconstructed, human rights are simply a kind of mediatised projection of wishful ideation, which is actually matched by the actions of those who are motivated to act as it implies. It also raises the question of universality or particularity with the mainstream seeking to demonstrate their universalism as the ideological backing of their wish for their worldwide dominant position.[7]

At the same time, the international mainstream conception of democracy is increasingly based on a kind of reciprocity that is not content with the operation of the state apparatus, set up by the proportion of votes of respective elections, but would place the exercise of national sovereignty directly under the joint control of non-governmental organisations, which are emphatically proclaimed to be representatives of civil society. However, what is at stake here is nothing other than non-governmental organisations, which are, as it were, hidden in the common concept of genuinely civil formations and use the latters' potential,

[7] Cf. Чаба Варга [Csaba Varga] *Загадка права и правового мышления* Избранные произведения; Сост. и науч. ред. М. В. Антонов (Санкт-Петербург: Издательский Дом «Алеф-Пресс» 2015), «Природа прав человека», especially pp. 224–230.

neutral and at the same time beneficial and promoting the common good for all, for their own alien purposes, serving foreign political interests. Although they do not have any democratic representation or mandate, these as agent organisations built up, financed and run by foreign governments or other centres of political or financial capital are attempting to dominate the field of actual decision-making and to determine the course of a host country, by infiltrating domestic politics. And as rich documentation shows, American professional analysis has already admitted that what was once a secret service mission in the Cold War era can now be openly undertaken and carried out by such non-government organisations in the target countries.[8] Or, as Soros-funded self-praise[9] says, since the fall of communism, Central and Eastern European history can be thoroughly read from the chronology of actions taken by the "Open Society".[10]

(Formal legalism) Formal legalism is precisely the criterion that reflects the very nature of law. And it is the same that gives law its specificity as well. For it is law itself that will, starting from itself and addressed to itself, finally define and also enforce its own system of fulfilment.[11] Accordingly, the very basic requirement of the rule of law is that, in order to eliminate the chance of any arbitrariness, every legal act shall be legally patterned.

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[8] For James Corbett 'How the US Uses NGOs to Destabilize Foreign Governments' (August 8, 2015) <http://theinternationalforecaster.com/topic/international_forecaster_weekly/How_the_US_Uses_NGOs_to_Destabilize_Foreign_Governments>, "These organizations are Trojan horses: designed to appear as gifts, but containing secret trap doors through which hidden forces can enter the country and covertly undermine the governments in question. [...] [S]uch organizations are prime candidates for smuggling covert operatives into foreign countries." Or, according to William Blum *Rogue State* A Guide to the World's Only Superpower (Monroe, Me.: Common Courage Press 2000), p. 180., "A lot of what we do today was done covertly 25 years ago by the CIA."

[9] As *The Paradoxes of Unintended Consequences* ed. Lord [Ralf] Dahrendorf et al. (Budapest – New York: Central European University Press 2000), 233 admits—and Anders Åslung *Building Capitalism* The Transformation of the Older Soviet Bloc (Cambridge – New York: Cambridge University Press 2002), p. 438 reasserts—"[T]he history of postcommunist transformation is therefore, to a great extent, the history of the Soros foundations."

[10] Csaba Varga 'Civil Society Associations vs. So-called Non-governmental Organizations' *Civic Review* [Budapest] 16 (2020), Special Issue, pp. 212–225 & <https://eng.polgariszemle.hu/current-publication/157-excerpts-from-hungarian-history-and-scientific-life/981-civil-society-associations-vs-so-called-non-governmental-organisations>.

[11] This is 'Verfüllungssystem', a category of George Lukács' posthumous ontology; cf. Csaba Varga *The Place of Law in Lukács' World Concept* [1985] 3rd {reprint} ed. with Postface (Budapest: Szent István Társulat 2012) & <http://mek.oszk.hu/14200/14249/>, ch. 5.

However, this most basic root requirement of the rule of law is not without its consequences, at least in today's world, which is in a frenetic pursuit of perfection. For instance, in order to achieve or even approach this, it encourages ever-increasing and ever more complete juridification, and, as a precondition for this, ever-increasing norm production. As a specific mass field of state intervention, this concerns first and foremost the exercise of executive power, bound to result in a worldwide proliferation of the body of the law with the inevitable inflation of norms.

To take a striking example, French public law literature has come to regard this as one of the dangers, or even the greatest threat, to their own constitutionality. This has already produced the false connection between the rule of law and the completeness of legal order as such,[12] according to which the desirable guarantee of the primacy of law presupposes, as it were, the most comprehensive possible regulation of all life circumstances. And the future that it will not be able to avoid shall certainly be instability, with the growing weakening of legal certainty. Moreover, any self-accumulating mass of rules is also crying out for ever-increasing changes to the law, with heavily burdening side-effects as well. However, the actual path possibly leading to this remains—and has to remain—inevitably uncritical, because it will have been pre-justified from the outset, as all of it can be and will actually be done precisely in the spirit and service of the very "rule of law".[13] As a result of all this, the French *Conseil d'État* already pronounced that "the law itself will become a threat rather than a defence".[14]

As others have raised, formalistic rule positivism remains mostly a direct servant of the state interest embodied in regulation, instead of promoting the

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[12] See Csaba Varga 'Legal Mentality as a Component of Law: Rationality Driven into Anarchy in America' *Curentul Juridic* [Târgu Mureș] XVI (2013) 1 (No. 52), pp. 63–77 & <https://ideas.repec.org/a/pmu/cjurid/v52y2013p63-74.html>.

[13] Bernard Luisin 'Le mythe de l'État de droit' *Civitas Europa* 2 (2016) 37, pp. 155–182 & <https://www.cairn.info/revue-civitas-europa-2016-2-page-155.htm?contenu=article#re35no35>.

[14] Conseil d'État, 'De la sécurité juridique' [Rapport public annuel 1991] [in:] *Études et documents* (La Documentation française) (1992) 43, p. 20 [„le droit n'apparaît plus comme une protection mais comme une menace"].

possible fulfilment of individual freedom. As a consequence, the genuine and direct service to the people as the ultimate vocation of law remains without criteria. It is so because the representation of law as a mere abstraction deduced from rules inevitably isolates the whole formation from real social processes.

Lastly and especially, if the course taken becomes a cult for itself, it can contribute to a decline in individual initiative by imposing a single scheme of thinking that may amount to a kind of voluntary intellectual self-*Gleichschaltung*, which is to lead, as already warned,[15] to "closing down the faculty of independent moral thought".[16]

(Conclusion) The ideal that we are all striving to realise more and more fully in our civilisational self-aggrandisement is reasserted again, for it is just the same ideal that follows from our legal traditions, from the whole arc and logic of our legal development as well.

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[15] Jeremy Waldron 'The Rule of Law' in *Stanford Encyclopedia of Philosophy* (2016), <https://plato.stanford.edu/entries/rule-of-law/#OppoRuleLaw>, § 7.

[16] Cf. Csaba Varga 'Rechtsstaat, Rule of Law – Expectations, Criticisms, and the Nature of Claims' in *Rule of Law* ed. Grzegorz Pastuszko (Warszawa: Wydawnictwo Instytutu Wymiaru Sprawiedliwości 2023) & <https://wydawnictwo.iws.gov.pl/wp-content/uploads/2023/05/RuleOfLaw_DRUK.pdf>, pp. 13–58.