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STUDENT COMMENTS

CONSTITUTIONAL LAW AND SUSTAINABLE DEVELOPMENT IN CENTRAL EUROPE: ARE WE THERE YET?

Mark N. Salvo*

The euphoria in Central Europe has ended. The people's optimism begot by "quiet revolutions" in Bulgaria, the Czech Republic, Hungary, Poland, Romania, and Slovakia in 1989 and 1990 has been replaced by a grudging acceptance of a grim reality. New market economies in the region have created social and economic inequality, leading to political upheaval.¹ Privatization of state-owned industries has faltered in some countries, and economic growth has stalled. The adoption of new laws and the development of a trained judiciary has also been agonizingly slow, and despite the quick promulgation of new laws and regulations to reduce pollution and resource deprivation, the most distressing problem has been the lack of improvement in environmental conditions in Central Europe.²

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¹ On November 19, 1995, disenfranchised Polish voters elected former Communist Aleksander Kwasniewski as president over the incumbent Lech Walsea. People in urban centers, where unemployment is low and the signs of economic progress are visible, voted for Walsea. Peasants and workers, who six years earlier cheered the collapse of Poland's Communist government, felt left out of new economic gains and voted for Kwasniewski. Jane Perlez, *Ex-Communist Appears to Best Walsea for President of Poland*, N.Y. TIMES, Nov. 20, 1995, at A2. Former communists have also won parliamentary elections in Hungary, Slovakia, and Bulgaria since the fall of Communism in those countries. Perlez, *supra*. Ironically, Bulgarian protestors have recently demonstrated against the ruling Socialists — former Communists — demanding that they step down. Demonstrators are "fed up with crime, corruption, and the worst poverty in decades, and they blame the Socialists for Bulgaria's spectacularly swift economic collapse." *Bulgarians Stage Protest, Demand Vote*, FORT WORTH STAR-TELEGRAM, Jan. 15, 1997, at 16.

² See Margaret Bowman & David Hunter, *Environmental Reforms in Post-Communist Central Europe: From High Hopes to Hard Reality*, 13 MICH. J. INT'L L. 921, 923-30 (1992). But see Brendan Gillespie, *Tackling Pollution in Eastern Europe*, OECD OBSERVER, Feb. 12 1996, at 29 (suggesting that there are some indications that Central European environmental laws have been marginally effective in combatting environmental problems).

Environmental concern was a rallying point for Central European revolutionaries.³ Their commitment to environmental restoration and the opportunity to recreate Central European societies spawned hope in environmentalists that new Central European governments would become the first in the world to adopt sustainable development as their predominant social and economic paradigm. "It was a chance to use the experience from Western democracies as well as from the former Soviet bloc to develop a new social and political system: a 'third way,' perhaps greener than communism or capitalism, that incorporates environmental protection as a foundation for economic development."⁴ As economic conditions worsened, however, Central European governments abandoned environmental restoration to promote economic growth. Indeed, these governments now believe, like so many first world countries, that improvement in environmental conditions is the result of economic development.⁵

It has been sown, however, that environmental pollution and resource deprivation often result from the western-style economic development that Central Europeans crave. Rodger Manser in *The Squandered Dividend: The Free Market and the Environment in Eastern Europe* criticizes those who believe that free markets alone will solve Central Europe's environmental problems. He argues that governments, industry, and professional environmentalists can work together to make environmentally friendly improvements in Central and Eastern Europe if they can avoid following the West's yellow-tainted road to modernization.

A framework for sustainable development exists in Central Europe and the opportunity to implement sustainable development policies has not entirely passed. New constitutions adopted after the collapse of the Soviet Union and new environmental laws include special environmental rights and obligations that are conducive to sustainable development. Without foreign assistance, though, these constitutional provisions and statutes cannot create sustainable economies in Central Europe. Decisionmakers cannot realistically abide by their own environmental laws and regulations because of constant pressure for economic growth and the courts' refusal to enforce the laws. Central Europe needs sustainable technologies and financial aid from Western Europe and the United States. Unless these countries get help, Central Europe's historic attempt at sustainable development will fail.

I. Sustainable Development: An Overview

Since the 1930's, the human population has grown to 5.3 billion people, an increase of 250 percent.⁶ While the growth rate has declined over the last decade, demographers still predict that our population will reach ten billion in under a century.

³ Bowman & Hunter, *supra* note 3, at 925-6.

⁴ *Id.* at 923-4.

⁵ *Id.* at 929.

⁶ PAUL R. EHRLICH & ANNE H. EHRLICH, *THE POPULATION EXPLOSION* 13 n.1 (1990).

ry.⁷ According to the World Commission on Environment and Development, a five-fold to tenfold increase in global economic production will be necessary to meet the basic needs and aspirations of future generations.⁸ Using traditional development schemes, economic growth of this magnitude could be catastrophic to planetary support systems. Sustainable development that conserves resources and preserves the environment is the only alternative for economic development that will accommodate future population growth without destroying the ecosystem.

Human beings have maximized natural resources while trying to extract a living from the planet. The human economy appropriates forty percent of the net annual production of global biomass to feed our population.⁹ Nonrenewable oil and gas provide for sixty percent of global energy production with only fifty years of proven reserves;¹⁰ and human beings consume the equivalent of two tons of coal and one hundred fifty kilograms of steel per person each year, exhausting limited geological resources.¹¹ As a result, current consumption patterns threaten to deplete remaining resources before alternative sources have been found. Our search for food and fuel has also caused tremendous environmental harm. Environmental pollution and resource extraction in both industrialized nations and agrarian societies decrease the quality of life for contemporary people and destroy natural resources; rendering them useless to present and future generations.¹²

Environmental degradation results from economic activities that fail to account for the environmental costs of producing goods and services. Natural systems are circular; ecosystems recycle and re-use waste products.¹³ In contrast, modern economic activities are linear and assume that resources are inexhaustible and human-made refuse can be disposed of in "sinks".¹⁴ In modern economic systems, pollution is almost exclusively an external cost.¹⁵ Resource conservation is secondary to the

⁷ *Id.* at 15.

⁸ William C. Clark, *Managing Planet Earth*, SCI. AM., Sept. 1989, at 47, 48.

⁹ Robert Goodland, *The Case that the World has Reached Limits*, in ENVIRONMENTALLY SUSTAINABLE ECONOMIC DEVELOPMENT: BUILDING ON BRUNDTLAND 15, 18 (Robert Goodland et al. eds., 1991).

¹⁰ *Id.* at 15.

¹¹ Clark, *supra* note 9, at 48.

¹² On January 12, 1997, five years after the Earth Summit in Rio de Janeiro, the Worldwatch Institute released its annual *State of the World* report which concludes, inter alia, that "millions of acres of tropical and deciduous forest still disappear each year, carbon dioxide emissions are at record highs, and population growth is outpacing food production." *Environmental Watchdog Group: Global Outlook Gloomier than Ever*, CHI. TRIB., Jan. 12, 1997, at C11.

¹³ William D. Ruckelshaus, *Toward a Sustainable World*, SCI. AM., Sept. 1989, at 167, 169.

¹⁴ Goodland, *supra* note 10, at 16.

¹⁵ See Ruckelshaus, *supra* note 14, at 169.

profits of economic planning. Consequently, prices for goods and services are artificially low because they do not account for environmental damage or resource deprivation.

The goal of sustainable development is to recreate economic systems to emulate ecosystems. In *Our Common Future*, the Brundtland Commission defined "sustainable development" (often used interchangeably with "sustainability") as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs."¹⁶ Sustainable economic systems recycle by-products and internalize environmental costs. Prices include the environmental costs of producing a good or service.

Some commentators are pessimistic about the willingness of industries, governments, and individuals to adopt sustainable practices. Former EPA administrator William Ruckelshaus contends that "most individuals and organizations change when it is in their interest to change, either because they derive some benefit from changing or because they incur sanctions when they do not"¹⁷ While this view may seem cynical, it could also be true.¹⁸ Governments, corporations, and individuals might ignore moral and ethical reasons for complying with sustainable practices, and only support sustainability when profitable.¹⁹ If economic considerations guide decisions on whether to support sustainability, then international and domestic law, and economic systems must be changed to profit those using sustainable practices and penalize those who do not.

Information is key to achieving sustainability.²⁰ Developing countries require information from industrialized countries to make the best use of sustainable technologies. International organizations, including the United Nations Environmental Program, must regularly collect and analyze environmental data to determine if sustain-

¹⁶ WORLD COMM'N ON ENV'T AND DEV., *OUR COMMON FUTURE* 8, 43 (1987) (hereinafter *BRUNDTLAND REPORT*).

¹⁷ Ruckelshaus, *supra* note 14, at 168.

¹⁸ Maurice Strong, who served as secretary-general at the Earth Summit, issued a report in January 1997 suggesting that, despite some signs of progress, "far too few countries, companies, institutions, communities and citizens have made the choices and changes needed to advance the goals of sustainable development." *Environmental Watchdog Group: Global Outlook Gloomier than Ever*, CHI. TRIB., Jan. 12, 1997, at C11.

¹⁹ See PAUL HAWKEN, *THE ECOLOGY OF COMMERCE* 177-9 (1993).

²⁰ DONELLA H. MEADOWS ET AL., *BEYOND THE LIMITS* 222 (1992); see also *Rio Declaration on Environment and Development*, Principle 9, Adopted by the U.N. Conference on Environment and Development, I U.N. Doc. A/CONF. 151/5/Rev. 1 (1992) ("States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.").

able practices are achieving their goal. Individual nations must monitor their annual resource use and industrial pollution, and host and attend regular conferences to share new information.²¹

Data collection and analysis and the development and implementation of new technologies require generous and dependable funding. Industrialized countries must increase their donations to international environmental organizations and direct more aid to developing countries.²² The United States, Western Europe, and Japan must encourage multinational corporations to promote sustainable development in underdeveloped areas. In addition, people living in the developed world must adjust their standard of living downward to allow for redistribution of global resources among developing countries.

The success of sustainability also depends on international and domestic law that discourages nonsustainable development. Penalties must create conditions where complying with sustainability rules is less costly than violating them. Strong common standards are needed to deny competitive advantages to jurisdictions that wish to attract industry with poor environmental records. Nonsustainable industries ought to be taxed, and the revenue should be used to fund further sustainable development.²³ Once effective, sustainability rules will force less efficient, polluting industries out of the market.

A. Our Obligation to Future Generations

The purpose of sustainable development is to preserve natural resources and pass on healthy ecosystems to future generations. This purpose distinguishes sustainability from traditional development schemes that often serve contemporary people to the detriment of future generations.

A strategy for sustainability could impose pecuniary penalties on those whose

²¹ Ironically, the Republican controlled Congress in the United States has recently cut funding for international conferences like the Rio Conference on the environment and the Cairo Conference on population. Conferences cost as much as \$30 million. In 1995 Congress allocated \$6 million for conferences addressing such topics as overpopulation and world poverty. Defending the budget cuts, Congressman Chris Smith (R-NJ) criticized United Nations sponsored conferences as "mischief making" by nongovernmental activists who "dictate what the purported solutions are to the world's problems." *Republican Congress to Scrutinize Funds Spent on International Conferences*, GLOBAL WARMING NETWORK ONLINE TODAY, Mar. 17, 1995, available in 1995 WL 2265596.

²² See *Environmental Watchdog Group*, *supra* note 19, at C11 (suggesting that since the Earth Summit, Europe and Japan have made strides in fighting pollution and granting foreign aid while the United States leadership has "faded").

²³ See HAWKEN, *supra* note 20, at 177-99 (discussing "green fees").

activities fail to consider future generations. Economists agree that monetary penalties are an effective means of persuasion. However, many would argue that we have a moral obligation to protect future generations that extends beyond simple economics.²⁴ This obligation stems from our interest in our own children's welfare, a trait we share with other species, and from a genuine concern for future generations, a quality that is uniquely human.

Future generations may deserve proportionately more resources per person than we enjoy to compensate for the environmental problems that they will inherit from us. For example, our nuclear waste will continue to endanger future generations millions of years after we have died. Modern technology cannot reverse environmental damage caused by nuclear waste. So, while we enjoy the benefits of nuclear power, future generations must contend with our toxic waste.²⁵

Native Americans have long advocated the idea that the current population should consider its impact on future generations. Professor John Bonine notes that, in

²⁴ Philosopher Robin Attfield argues that we have the same obligation to future people as to contemporary people. ROBIN ATTFIELD, *THE ETHICS OF ENVIRONMENTAL CONCERN* 88 (1983). He uses an analogy used by Gregory Kavka to explain his reasoning. First, he assumes that most people would agree that wealthy individuals and groups have an obligation to aid strangers in need. He then argues that where the needs of future generations compare to contemporary strangers, the same obligation would seem to exist. He concludes that, since future people need clean air and water and the same ecosystems on which contemporary people depend, we must protect these resources for their use. *Id.* at 90, citing Gregory Kavka, *The Futurity Problem*, in *OBLIGATIONS TO FUTURE GENERATIONS* 186, 187 (R.I. Sikora & Brian Barry eds. 1978).

Attfield favors a theory of equitable distribution across generations that mirrors sustainability doctrine. The theory is premised on a condition laid down by John Locke in support of private property, namely "that each should leave enough and as good for others." *Id.* at 107.

Another professor, Gregory Kavka, similarly applied Locke's principle to protection of future generations. He believes that each person may "use the earth's physical resources only to the extent that technology allows for the recycling or depletion of such resources without net loss in their output capacity." *Id.*, quoting Gregory Kavka, *The Futurity Problem*, in *OBLIGATIONS TO FUTURE GENERATIONS* 186, 201 (R.I. Sikora & Brian Barry eds., 1978). Accordingly, each generation may use renewable and non-renewable resources (sparingly) provided that technological improvements and remaining resources can sustain the same level of population as earlier. Attfield notes that, based on Kavka's reasoning, "a generation that more than replaces its own numbers would be required to leave proportionately more total resources, so that equal provision could be made for each member of the next generation." ATTFIELD, *supra* at 107.

²⁵ See Albert K. Bates, *The Karma of Kerma: Nuclear Wastes and Natural Rights*, 3 J. ENVTL. L. & LITIG. 10 (1988) (discussing the moral implications of exposing future generations to nuclear wastes).

planning for the future, the Six Nation Iroquois Confederacy considered the impact of their decisions on the next seven generations.²⁶ Hence the simple fact that only today's population can help future people. Past generations obviously cannot act to protect future generations, and people not yet born cannot help themselves.

The Rio Declaration adopted at the United Nations Conference on Environment and Development in 1992 institutionalized concern for future generations in Principle 3: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."²⁷ Principle 8 urges nations to "reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies."²⁸ The United Nations Conference on the Human Environment, held in 1972, also recognized the need to plan for future generations. Principle 6 states the importance of preserving the "human environment" for future generations and implores people to act wisely for their own benefit and that of their posterity.²⁹

B. The Benefits of Sustainable Development to Contemporary People

Environmental problems often result from poverty, inequality, and the inequitable distribution of resources. Poor people are understandably more concerned with survival than with environmental protection and usually lack the political strength necessary to improve their condition. Problems grow worse when inequality enables dominant groups to exploit weaker groups by forcing them to contend with the "sinks" of economic growth.³⁰ To achieve sustainability, we must eliminate poverty and inequality and reorganize distribution systems to provide each individual with adequate food, shelter, and education.

Poverty will persist unabated in underdeveloped countries until they adopt sustainable practices.

[P]overty has become an increasingly environmental phenomenon.

²⁶ John Bonine, *Regulating Chlorinated Organic Pollutants*, in *WATER QUALITY STANDARDS FOR THE 21ST CENTURY* 151, 153 (Karen Swetlow ed., 1992).

²⁷ *Rio Declaration on Environment and Development*, Adopted by the U.N. Conference on Environment and Development, 1 U.N. Doc. A/CONF.151/26, 31 I.L.M. 874, 877 (1992).

²⁸ *Id.*

²⁹ *Declaration of the United Nations Conference on the Human Environment*, U.N. Conference on the Human Environment, U.N. Doc. A/CONF.48/14/Rev. at 1-3, 11 I.L.M. 1416, 1417 (1972).

³⁰ Environmental racism or the inequitable distribution of environmental hazards occurs at both domestic and international levels. See Robert W. Collin, *Review of the Legal Literature on Environmental Racism, Environmental Equity, and Environmental Justice*, 9 J. ENVTL. L. & LITIG. 121 (1994).

The poor not only suffer disproportionately from environmental damage caused by the better off, they have become a major cause of ecological decline themselves. Pushed to marginal lands by population growth and inequitable development patterns, they raze plots in the rain forest, plow steep slopes, and overgraze fragile rangeland. Economic deprivation and environmental degradation reinforce one another to form a maelstrom — a downward spiral.³¹

The Brundtland Commission confirmed that modern development trends leave increasing numbers of people poor and vulnerable while degrading the environment.³² The Commission also declared that “a world in which poverty is endemic will always be prone to . . . ecological catastrophes.”³³ Recognizing the barrier poverty poses to sustainability, the Rio Declaration implores nations and individuals to “cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.”³⁴

Sustainability requires that resources be more evenly distributed between rich and poor countries. Moreover, it requires that all people, especially women, have equal status under the law and equal access to economic opportunities. In *The Muted Voice: The Role of Women in Sustainable Development*, Robert Housman suggests that “[t]he failure to incorporate women in development processes has deprived developers of women’s knowledge and experience with small-scale, long-term, resource-efficient development, which could be a valuable tool for achieving sustainable development.”³⁵ The Rio Declaration was more emphatic: “Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.”³⁶

Sustainable development also depends upon public access to information and

³¹ Robert W. Collin & Robin Morris Collin, *Equity as the Basis of Implementing Sustainability: An Exploratory Essay*, 96 W. VA. L. REV. 1173, 1181 (1994) (citing Alan B. Durning, *Poverty and the Environment: Reversing the Downward Spiral*, 92 WORLDWATCH INST. 5, 6 (1989)).

³² BRUNDTLAND REPORT, *supra* note 17, at 4.

³³ *Id.* at 8.

³⁴ *Rio Declaration on Environment and Development*, Principle 5, Adopted by the U.N. Conference on Environment and Development, I U.N. Doc. A/CONF.151/26, 31 I.L.M. 874, 877 (1992).

³⁵ Robert F. Housman, *The Muted Voice: The Role of Women in Sustainable Development*, 4 GEO. INT’L ENVTL. L. REV. 361, 364 (1992).

³⁶ *Rio Declaration on Environment and Development*, Principle 20, Adopted by the U.N. Conference on Environment and Development, I U.N. Doc. A/CONF.151/5/Rev.1, 31 I.L.M. 874, 879 (1992).

wide participation in decision making. Principle 10 of the Rio Declaration codifies the policy and procedure of citizen involvement in, and oversight of, environmental decision making:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.³⁷

In addition to public right-to-know laws and provisions for citizen oversight, the Rio Declaration includes a "polluter pays" principle which permits victims of pollution and other environmental crimes to sue the polluter for damages.³⁸

Today's society will directly benefit from sustainability because the successful implementation of sustainable development requires that poverty be eradicated, that sexism and environmental racism cease, and that the unequal distribution of global resources be corrected. Sustainable development creates communities with low unemployment rates and good opportunities for development. Sustainable communities offer a high quality of life and are desirable places to live, work, and raise a family.

II. Environmental Law in Central Europe: A Legal Framework for Sustainability

The political geography of Europe changed radically with the reform movements in 1989 and 1990. The region formerly referred to as Eastern Europe has become the Central Europe of today. Poland, Hungary, Romania, and Bulgaria are all part of Central Europe, as are the Czech and Slovak Republics, former Czechoslovakia.³⁹

³⁷ *Id.* at Principle 10.

³⁸ *Id.* at Principle 16.

³⁹ Although some confusion exists over the precise term to refer to these countries, this paper will refer to them collectively as Central Europe. Central European leaders prefer this term and insist on calling themselves Central, not Eastern, Europeans to distinguish themselves from the former Soviet Union. John Maxwell Hamilton, *Will Pollution Kill the Revolution?*, BULL. ATOM. SCIENTISTS, June 1991, at 13. While often considered part of Central Europe for statistical purposes, Eastern Germany is not covered in this paper because its environmental policy is generally dictated by its merger with West Germany. Neither Albania nor the new

Environmental protection in Central Europe is the concern of domestic law⁴⁰ and international treaties. In addition, the European Union Council of Ministers is preparing for the admission of Central Europe to the European Community (EC) around the year 2000.⁴¹ Subsequently, any review of environmental law in Central Europe should consider developments in EC law.⁴² This study, however, focuses on the newly ratified constitutions of Central Europe that include special provisions for environmental protection.⁴³

A. Environmental Rights in Central European Constitutions

The constitutions of Bulgaria, the Czech Republic, Hungary, Poland, Romania, and Slovakia are, in environmental terms, among the most advanced charters in the world. Each constitution codifies modern environmental precepts developed over the past three decades, including many principles contained in the Rio Declaration. Special rights for women and children, safe working conditions, environmental protection, and even leisure time distinguish Central European constitutions from those of more established democracies.

The principle provision common to each constitution is the individual right to a

Yugoslavian states is covered because political tension and war in these states has overshadowed, and left in doubt, any environmental developments.

⁴⁰ See Bowman & Hunter, *supra* note 4 (summarizing the legislative history of pre- and post-revolution environmental law in Central Europe).

⁴¹ *Ministers to Make Start on Integrating East European States into EU Environment Policy*, ENV'T WATCH W. EUR., Sept. 16, 1994, available in 1994 WL 2511712.

⁴² The Council of Ministers has adopted five Action Programmes on the Environment since 1973. The Fifth Action Plan, entitled *Towards Sustainability, A European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development*, covers the years 1993-2000. While not binding law, as members of the European Union, Central European countries would be obliged to comply with the Action Plan principles. See ALEXANDRE KISS & DINAH SHELTON, *MANUAL OF EUROPEAN ENVIRONMENTAL LAW* 21-22 (1993). In the interim, (i.e., until Central European states are members of the European Union) the Council of Ministers adopted the *Environmental Action Programme for Central and Eastern Europe* to coordinate efforts by European Community members and international organizations to improve environmental conditions in Central Europe.

⁴³ Bulgaria replaced its 1971 constitution with a new constitution in July 1991. The Czech Republic adopted a new constitution on January 1, 1993. Hungary amended its 1949 constitution in October 1990. After several drafts and much consideration, Poland adopted a new constitution on December 8, 1992. Romania ratified a new constitution in December 1991, abrogating the existing constitution written in 1965. Slovakia adopted a new constitution in 1992 that became effective on January 1, 1993. English translations of Central European constitutions are reprinted in *THE REBIRTH OF DEMOCRACY: 12 CONSTITUTIONS OF CENTRAL AND EASTERN EUROPE* (The International Institute for Democracy, ed., 1995).

healthy environment. Slovakia's provision is exemplary of those of the other states: "Every person shall have the right to a favourable environment."⁴⁴ These provisions create a fundamental right to a healthy environment comparable to freedom of religion, suffrage, and property rights.⁴⁵ By comparison, more than thirty state constitutions in the United States have provisions that deal with the environment or natural resources.⁴⁶ However, no right to a healthy environment exists in the United States Constitution.⁴⁷ Statutes create federal environmental rights, and are merely regulatory in nature, establishing maximum levels for air and water pollution.⁴⁸

Although a constitutional right, Bulgaria's environmental provision may prove ineffective. Article 55 states that "[c]itizens shall have the right to a healthy and favourable environment corresponding to the established standards and norms. They shall protect the environment."⁴⁹ The first issue regards the definition of "citizen." This term, as used in other parts of the Bulgarian Constitution, refers to people.⁵⁰ Therefore, people in Bulgaria have a constitutionally mandated obligation to protect the environment, while industry and other nonpersons do not. Standing alone, this provision does little to promote sustainability. Unless the Bulgarian courts interpret "citizen" to include corporations, Bulgarian industries will not be responsible for protecting the environment under the constitution.⁵¹

⁴⁴ SLOVK. CONST. art. 44(1); *see also* HUNG. CONST. art. 18 ("The Republic of Hungary shall recognize and enforce the right to a healthy environment.").

⁴⁵ *See, e.g.*, POL. CONST. ch. 8 (Fundamental Rights and Duties of Citizens), art. 68 (right to work), art. 71 (right to benefit from a natural environment), art. 72 (right to education), art. 82 (freedom of religion), art. 84 (freedom of speech).

⁴⁶ *See* Elizabeth F. Brown, Comment, *In Defense of Environmental Rights in East European Constitutions*, 1993 U. CHI. L. ROUNDTABLE 191, 191 n.2 (1993); Robert A. McLaren, Comment, *Environmental Protection Based on State Constitutional Law: A Call for Reinterpretation*, 12 U. HAW. L. REV. 123, 129-130 (1990) (discussing scope and substance of state constitutions' environmental provisions). *See, e.g.*, HAW. CONST. art. XI, § 1 (providing one of the most progressive environmental provisions among state constitutions).

⁴⁷ Two efforts have been made to amend the Constitution. *See* S.J. Res. 169, 91st Cong. (1970) (proposing a constitutional amendment that provides for "the inalienable right to a decent environment"); H.R.J. Res. 1321, 90th Cong. (1968) (proposing an amendment for the "right of the people to clean air, pure water, freedom from excessive and unnecessary noise . . .").

⁴⁸ *See* Clean Air Act, 42 U.S.C.A. §§ 7401 to 7671 (West 1995 & Supp. 1997); Federal Water Pollution Control Act, 33 U.S.C.A. §§ 1251 to 1387 (West 1986 & Supp. 1997).

⁴⁹ BULG. CONST. art. 55.

⁵⁰ *See, e.g.*, BULG. CONST. art. 43(1) ("Citizens shall have the right to peaceful and unarmed assembly for meetings and manifestations."), art. 48(1) ("Citizens shall have the right to work."), art. 51(1) ("Citizens shall have the right to social security and welfare aid.").

⁵¹ Although they are apparently not covered by the constitution, corporate entities are subject to the Bulgarian Environmental Protection Act of 1991.

A second issue involves the vagueness of "established standards and norms." Such a standard does not provide the government a basis for enforcement or the citizens a guideline for correct environmental behavior. Where standards and norms are inconsistent, individuals and companies could avoid liability for polluting the environment by claiming that their behavior was similar to that of other people or companies. Each offender will argue that his conduct was within established standards and norms. This could eventually lead to a decline in environmental standards.

Some constitutions require the state to protect the environment.⁵² Accordingly, these states have established environmental ministries similar to those in the United States and other industrialized countries. Unfortunately, these new agencies suffer from the same problems as their American counterparts, including inadequate funding, inefficiency, and adverse political pressure.⁵³

B. Individual Rights and Obligations in Central European Constitutions

In addition to environmental rights, Central European constitutions provide for other "sustainability" rights. For example, several Central European constitutions guarantee welfare to poor people and social security to people who cannot work.⁵⁴ Such programs are important to sustainable development because they set a minimum income level and prescribe a basic standard of living that alleviates poverty. For example, the Slovak provision provides that "[a]ny person suffering material hardship, shall have the right to such assistance as may be necessary to secure his or her fundamental standard of life."⁵⁵ In addition to welfare and unemployment insurance, some Central European constitutions guarantee every person the right to work.⁵⁶ All of these provisions serve to reduce poverty and promote sustainability.

Central European constitutions also prohibit discrimination based on sex.⁵⁷ Several constitutions provide extra protection for women to improve their position in society and their access to economic opportunities.⁵⁸ The Polish constitution pro-

⁵² See, e.g., BULG. CONST. art. 15 ("The Republic of Bulgaria shall ensure the protection and reproduction of the environment, the conservation of living nature in all its variety, and the sensible utilization of the country's natural and other resources."); CZECH REP. CONST. art. 7 ("The state shall take care that the natural resources are exploited economically and that Nature's wealth is duly protected.").

⁵³ Bowman & Hunter, *supra* note 4, at 929.

⁵⁴ See, e.g., BULG. CONST. art. 51; HUNG. CONST. art. 70/E; POL. CONST. art. 70(1)-(2)(i).

⁵⁵ See SLOVK. CONST. art. 39(2).

⁵⁶ E.g., BULG. CONST. arts. 16, 48; HUNG. CONST. art. 70/B; POL. CONST. art. 68; SLOVK. CONST. art. 35(3).

⁵⁷ E.g., ROM. CONST. art. 4(2); SLOVK. CONST. art. 12(2).

⁵⁸ See also HUNG. CONST. art. 66 ("The Republic of Hungary shall ensure the equality of men and women in respect of every civil, political, economic, social and cultural right.");

vides the most extensive rights for women:

1. Women in the Republic of Poland shall have equal rights with men in all fields of public, political, economic, social and cultural life.
2. The equality of the rights of women shall be guaranteed by:
 - i. equal rights with men to work and to be paid according to the principle "equal pay for equal work", the right to rest and leisure, to social insurance, to education, to honours and decorations, and to hold public offices;
 - ii. mother and child care, protection of expectant mothers, paid leave before and after confinement, the development of a network of maternity clinics, creches and nursery schools, the extension of a network of service establishments and canteens.
3. The Republic of Poland shall strengthen the position of women in society, especially of gainfully employed mothers and women.⁵⁹

Central European constitutions guarantee fundamental rights for citizens and establish judiciary systems to protect those rights. Article 4 of the Bulgarian Constitution requires the state to protect the "life, dignity, and rights of the individual."⁶⁰ Article 117 creates the judicial branch of government to "safeguard the rights and legitimate interests of all citizens."⁶¹ These provisions suggest that citizens who suffer from environmental pollution — a violation of their constitutional rights—could use the courts to enjoin future activities by polluters.

Central European constitutions also charge citizens with special civil responsibilities. Article 58 of the Bulgarian Constitution states that "[c]itizens shall observe and implement the Constitution and the laws. They shall respect the rights and the legitimate interests of others."⁶² The Czech Constitution⁶³ and the Polish Constitution contain similar provisions.⁶⁴ These provisions require citizens to respect the consti-

HUNG. CONST. art. 70/A(3) ("The Republic of Hungary shall promote the attainment of the equality of rights also by measures aimed at eliminating inequalities of opportunity.").

⁵⁹ POL. CONST. art. 78.

⁶⁰ BULG. CONST. art. 4.

⁶¹ *Id.* art. 117.

⁶² *Id.* art. 58(1).

⁶³ CZECH REP. CONST. (Preamble).

⁶⁴ POL. CONST. art. 67(3) ("It shall be the duty of the citizens of the Republic of Poland to conscientiously perform their duties toward the Homeland and contribute to its develop-

tutional rights of their countrymen. Presumably, civil responsibility includes recognizing the right of each individual to enjoy a healthy environment. If the constitutional provisions also covered industries, then those suffering from industrial pollution and other environmental damage could seek protection of their right to a healthy environment by forcing polluters to recognize their constitutional responsibilities.

C. Sustainable Market Systems Established by Central European Constitutions

The constitutions of Central Europe guarantee that each state will have a market economy.⁶⁵ Central European states, perhaps suffering slightly from paranoia, included free market guarantees in their constitutions to prevent any slide back into communism. These provisions call for protection of investments,⁶⁶ prevention of monopolies,⁶⁷ protection of personal property,⁶⁸ and an employee's right to strike.⁶⁹

Several of the constitutions advocate socially and ecologically responsible development that aims to promote sustainability. Slovakia's constitution is unique among the others. Article 44 guarantees every person a favorable environment and requires that citizens protect and improve the environment.⁷⁰ Article 44 also makes the state responsible for "the economical use of natural resources, an ecological balance and an effective environmental policy."⁷¹ Article 55 requires that the Slovak economy be "based on the principles of a socially and ecologically oriented market economy."⁷² Thus, Articles 44 and 55 outline a plan for sustainable development. The success of these provisions in establishing sustainable economies, however, depends on their enforcement.

Romania's constitution also codifies some principles of sustainable development. The Romanian government, while obligated to protect free trade⁷³ and direct the exploitation of natural resources,⁷⁴ is responsible for "environmental protection and

ment."), art. 90 ("It shall be the duty of a citizen of the Republic of Poland to abide by the provisions of the Constitution and laws, to respect the principles of community life, and diligently discharge his duties toward the state.").

⁶⁵ See generally THE REBIRTH OF DEMOCRACY, *supra* note 47.

⁶⁶ E.g., BULG. CONST. art. 19(3).

⁶⁷ *Id.* art. 19(2).

⁶⁸ E.g., POL. CONST. art. 7; ROM. CONST. art. 41.

⁶⁹ E.g., ROM. CONST. art. 40.

⁷⁰ SLOVK. CONST. art. 44(1), (2).

⁷¹ *Id.* art. 44(4).

⁷² *Id.* art. 55(1).

⁷³ ROM. CONST. art. 134(2)(a).

⁷⁴ *Id.* art. 134(2)(d).

recovery, as well as preservation of the ecological balance.”⁷⁵ Romania’s constitution also states that ownership of private property does not include the right to damage the environment: “The right of property compels to the observance of duties relating to environmental protection and insurance of good neighbourliness”⁷⁶

Both the Romanian and Bulgarian constitutions retain state ownership over certain ecological resources. Article 18 of Bulgaria’s constitution states that “[t]he state shall enjoy exclusive ownership rights over the nethers of the earth; to coastal beaches . . . as well as over waters, forests and parks of national importance, and the natural . . . reserves established by a law.”⁷⁷ The Bulgarian constitution also creates a public trust doctrine similar to that recognized in United States jurisprudence: “The state shall utilitiz[e] and manage all the state’s assets to the benefit of citizens and society.”⁷⁸ These provisions facilitate stronger protection of the ecological integrity of publicly owned natural resources, and promote democratic, environmentally sensitive decision making in resource management.

III. Sustainable Development in Central Europe: The Next Step

Central Europe has adopted constitutional and statutory law necessary for sustainable development. Unfortunately, Central European governments cannot realistically enforce their own environmental laws and regulations. Industries are inefficient, depend heavily on nonrenewable resources, and routinely pollute the air and water. The cost of compliance with environmental laws would eliminate any competitive advantage these industries have in the global market. With few exceptions, Central European governments have refused to sabotage their own economies by demanding that industry comply with environmental laws or even constitutional provisions.

A major barrier is the lack of capital resources needed to implement sustainable technology. Without adequate funds, Central Europe cannot compete in the international market. Environmental degradation deters direct investment by American and Western European corporations. For example, a poll conducted by the World Bank and the Organization for Economic Corporation and Development found that the 1,000 largest multi-national corporations ranked environmental factors above political instability and inadequate physical and commercial infrastructure as obstacles to direct investment.

While the United States and Western Europe have invested millions of dollars in environmental improvements in Central Europe, the transition to sustainable development will require billions. Western democracies have an obvious stake in the success or failure of sustainable economies in Central Europe. The current aggregate environ-

⁷⁵ *Id.* art. 134(2)(e).

⁷⁶ *Id.* art. 41(6).

⁷⁷ BULG. CONST. art. 18(1).

⁷⁸ *Id.* art. 18(6).

mental market in Central Europe is worth approximately \$15 billion annually and will continue to grow by 4 percent each year. Without investment, these markets will become unavailable to the international community.

An ideal situation for the adoption of sustainable development exists in Central Europe. Environmental conditions make the need for environmentally conscience development apparent and Central European law demonstrates the willingness of countries to adopt sustainable practices. And the potential economic returns from sustainable development available to outside investors should provide incentive to American and Western European governments and corporations to invest in Central Europe.