

THE UNIVERSALITY OF THE CONSTITUTIONAL CIVILIZATION
AND THE NECESSITY
FOR A “POLITICIZATION OF GLOBALIZATION”*

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I. INSTITUTIONAL AND POLITICAL ASPECTS OF GLOBALIZATION

I. We very often conceive the *globalization* in a very conventional way. That is, essentially, as something related to the enormous expansion of the international trade, the geographical distribution of the production of goods, the quick and easy movement of the funds, things that, as we all know, already exist in the international economy not only during the last decades, but at least since the late 19th century under, almost, the same conditions. Proportionally some small changes have occurred, after a century, to those elements¹. In my point of view, what reforms the facts of the international economy to a cultural and political phenomenon, which we are used to call globalization, is something more than these elements: first of all, it is the collapse of the guild socialism and the polarization, in other words *the change of the political conditions for the function of the international system and the enforcement of a depressive phenomenon of cultural and esthetical uniformity* which influences the taste and finally the cultural and political behaviors². It is also *the uniformity and the speed of information* through the Internet and the explosive connection of the tele-

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¹ P. HIRST / G. THOMPSON, *Globalization in Question: The International Economy and the Possibilities of Governance*, second edition, Oxford, 1999.

See also TH. PELAGIDI, *How far has the Globalization gone?*, Athens, 2003 [in Greek].

² See B. BARBER, *The world of Mac against Jihad*, Athens, 2001 [in Greek], p. 79 et seq.

communications and Informatics³. Finally, the globalization, I believe that is the *problematic and dangerous shrinkage of the ideological and political spectrum* that leads to a linear way of thinking⁴.

2. The whole phenomenon is progressing without having any clear political context and without transparency. It is connected with *the crisis of the international legitimacy and with the appearance of new subjects to the international reality*. Such subjects I consider to be, first of all, the phenomenon of the international terrorism, which influences drastically the function of the international system and second, the phenomenon of the state-troublemaker, which is characterized as such when it has two elements, according to the opinion that tends to prevail: when the state reveals points of political autarchy and at the same time reveals an uncontrolled capacity to use weapons of massive disaster⁵.

3. In the context of this international situation, not order, appears the contradictory *role of the United States of America* that tend to impose a double notion of international legitimacy. A legitimacy applied to the others and another one that applies to those states that possess the real power and the real capacity to enforce their will, based on a different conception concerning the security, that they conceive as their own internal political problem. So despite the fact that for all the other states in the whole world the international legitimacy is considered as an international problem, for the USA (for several reasons, not only political but also cultural ones), the problem of the international security and, therefore, legitimacy is considered as an internal problem, of political and legal order⁶. This is due to a

³ This point has been emphasized by A. BALDASSARRE, *Globalizzazione contro democrazia*, Roma-Bari, 2002.

⁴ In this aspect, the globalization is identified with the ideology of the end of history and the deterministic domination of the model of the neo-liberal financial policy, as very early foresaw F. FUKUYAMA, *The End of History and the Last Man*, New York, 1992.

⁵ See M. BOSI, *Security Matters in the New Global Order*, Athens, 1999 [in Greek].

⁶ See D. ZOLO, *Invoking Humanity. War, Law and Global Order*, London, 2002, p. 47 et seq., refers to the strategic analyses of Z. Brzezinski, R. Haas and S. Huntington, right after the end of the cold war and the collapse of the Soviet Union. This conception is much more clear after the tragic event on the 11th of September 2001 and it is presented in the *Quadriennial Defence Review Report* (30.9.2001).

missionary conception, to a political "missionarism", which comes down to the opinion that the "new world" has the historical responsibility to save the "old world", generally to save what we call order and security to the international system⁷. Besides, we saw, lately, in the case of the international convention about the International Criminal Court, how this double conception concerning the international legitimacy is expressed⁸.

4. At the same time, we are facing in a very clear way *the crisis concerning the reliability and the effectiveness of the United Nations Organization*, that has to confront its genetic problems again: The UN as a conception, as an organization and as a structure represents the international correlation of powers after the World War II⁹. It is also an organization funded from the beginning on an "oligarchic" basis. And this expression should not shock us or provoke us, because the major role that the Security Council plays, especially its permanent members, is quite obvious whereas the role of the democratic organ, which is the General Assembly of the United Nations, is completely secondary and supplementary.

We can see, once more, that the role of the United Nations is not adequate, since there is a total lack of effective mechanisms of control and enforcement. This is the case of the international inspectors for the weapons of massive disaster in Iraq, and is very often the case with the weakness of the United Nations to enforce their own decisions. A typical example is the decisions that have been taken since 1974 by the Security Council, concerning the known problem of Cyprus, that has joined the EU, but keeps on facing its political problem. We hope that by means of the European perspective for Cyprus and also for Turkey (that we all wish to have as a state with European and, in general, western orientation), it will be

⁷ NORMAN MAILER, Only in America, in: *The New York Review*, 27.3.2003, p. 49 et seq., describes fluently the "political psychology" of America's Mission. On the roots of this mentality in the Protestantism of New England, see P. NASIOUTZIK, *American Visions in Smyrne of the 19th century*, Athens, 2002 [in Greek].

⁸ See P. KONDYLI, *From the 20th century to the 21st century*, Athens, 1998 [in Greek], p. 125 et seq.

⁹ As is well known, the USA withdrew their agreement with the Treaty of Rome which provided for the foundation of an International Criminal Court and they are pursuing the signing of bilateral agreements that ensure the exemption of American citizens from the proceedings of the Court. On the International Criminal Court, see ST. PERRAKIS, *International Criminal Court. A new dimension in International Justice*, Athens- Komotini, 2002.

possible to solve the political problem of Cyprus, through a natural application of the *acquis communautaire* to the whole island, that is also to the Turkish-Cyprian community, several members of which have already expressed, in several ways, their will to exercise the rights and to enjoy the privileges of the European citizen.

II. IS CONSTITUTIONAL CIVILIZATION A UNIVERSAL CULTURE?

1. In the middle of this crisis of international legitimacy, *we observe simultaneously a particularly interesting and captivating bloom of constitutionalism*, which as a phenomenon is under no crisis. On the contrary, constitutionalism is thriving. The collapse of the communist states has led to the creation of new national states in need of a founding constitution of their own. Furthermore, a constitution without a state is now under discussion, a constitution that will regulate the structure and function of a supra-national entity, like the EU¹⁰.

2. In the dawn of the 21st century, on new terms, the question is whether *constitutional civilization is indeed a universal culture, a civilisation universelle*. Constitutional civilization as a major element of the western cultural model is a result of the great revolutions of the 18th century. It is the historical product of the French and American Revolutions. The basic attributes of constitutional civilization are the recognition of a central role for the representative system, as it has evolved since then of course, the imposition of the legal state, the protection of human rights and in the case of Europe as a continent of political and legal culture, as well as many other countries of the world, the establishment of the principles of social welfare. At a certain time, environmental awareness was also included in this band of constitutional principles¹¹.

3. The transition from industrial to post-industrial society, in the Age of Information, sets all the materials of this constitutional civilization under trial and calls for reevaluation, to examine how these materials endure under the new post-industrial and post-modern conditions.

¹⁰ See EV. VENIZELOS, *The challenge of the European Constitution*, Athens - Thessalonica, 2003 [in Greek].

¹¹ See EV. VENIZELOS, *Constitutional Law Course*, I, Thessalonica, 1991 [in Greek], p. 39.

4. In order to answer this question, we should review the evolution during the long period of industrial civilization - the industrial society's civilization identified with the peak of constitutional civilization - *of the phenomenon we could name the ideological leadership of constitutional civilization. How, in other words, the universality or universalization, more precisely, of constitutional civilization was founded and brought about.*

I believe that, after World War I, the universality of constitutional civilization can be greatly attributed to the adoption by the communist countries that began to emerge after the Bolshevik Revolution of a *nominal* "constitutional" civilization. As these countries and particularly the Soviet Union accepted *the use* of constitutionalism, they also unwittingly accepted its ideological superiority and leadership and rendered themselves subject to its standards¹².

In the following period and particularly after World War II, the great movement of de-colonization - Great Britain's gradual withdrawal from its colonies for example - led to a new batch of national states and a new, very interesting wave of constitutionalism¹³. The formation of the UN and the universal declaration of human rights, along with the founding Acts of the UN, internationalize in a celebratory and evident manner, the values and perceptions, the political ideology that is, of constitutional civilization¹⁴. The same thing occurs in Europe with the formation of the European Council and the European Convention for the Protection of Human Rights¹⁵.

5. The *Post-Cold War World* provides further impetus to and offers more proof of this ideological and political leadership of constitutional civilization. The new constitutionalism emerging with the creation of new states, particularly by the dissolution of the Soviet Union and Yugoslavia

¹² See P. BISCARETTI DI RUFFIA / S. ROZMARYN, *La Constitution comme loi fondamentale dans les états de l'Europe occidentale et dans les états socialistes*, Paris 1996.

¹³ For more on African constitutions see G. DE VERGOTTINI, *Le transizioni costituzionali*, Bologna, 1998, p. 128 et seq. In the most recent batch of African constitutions in the 90s we can observe a strengthening of classical liberal principles, whereas previously, on several of them, there was strong Marxist influence.

¹⁴ See EMM. ROUKOUNAS, *International protection of human rights*, Athens 1995 [in Greek], p. 57 et seq.

¹⁵ See EMM. ROUKOUNAS, *op. cit.*, p. 105 et seq., as well as K. CHRYSOGONOU, *Incorporation of the European Convention on Human Rights in the national legal order*, Athens-Komotini [in Greek], 2001.

has already been mentioned. In this way the values of constitutional civilization which are, for better or for worse, western values, basically associated with the western civilization, become universal. I refer, of course, to democracy, human rights and mostly the two basic criteria by which respect to international legitimacy begins to be measured, the respect of religious liberty and of minority rights¹⁶.

6. It is important to monitor this historical curve, in order to evaluate the data and to answer the question whether this “universalization” of constitutional civilization is something that is naturally received by and integrated into states and cultures geographically and historically outside the Western Civilization, or a phenomenon which many times takes the form of a legal *acculturation*, in a social anthropology term¹⁷.

7. *The basic constituents of constitutional civilization prove their resilience in post-industrial and post-modern conditions.* While many people spoke about the end of national states the phenomenon is actually constantly blooming¹⁸. While many people identified the phenomenon of the state with sovereignty, we can observe the revival of the phenomenon of states with limited sovereignty or even protectorates, yet even such states aspire to have a constitutional structure, constitutional organization and to join the movement of constitutionalism¹⁹.

¹⁶ See J.-F. FLAUS (ed.), *La protection internationale de la liberté religieuse*, Bruxelles, 2003. About the international protection against religious bigotry and discrimination, in general see C. ANTHOPOULOS, *Protection against racism and the freedom of information*, Athens, 2000 [in Greek]. Particularly on the principle of non-discrimination in European Law see M. BELL, *Anti-discrimination Law and the European Union*, Oxford, 2002.

¹⁷ This term expresses the transformation and adjustment process taking place internally in a specific culture when its members come in contact with other cultural groups. For more on *acculturation juridique* see T. PAPACHRISTOU, *Introduction to sociology of the law*, I. The theoretical frame, Athens-Komotini, 1984 [in Greek], p. 168.

¹⁸ The UN already numbers 185 member states of which 29 have joined the organization after 1990. In 1950 the UN numbered only 58 members.

¹⁹ See EV. VENIZELOS, *The challenge of the European Constitution*, *op. cit.*, p. 81-82.

The phenomenon of a state without sovereignty comes in juxtaposition with the phenomenon of a constitution without state, thus proving the system's adjustability and resilience²⁰.

Representative democracy becomes a democracy that meets the needs of a specialized involvement in politics that is conducted through citizen organizations instead of traditional political parties. Representative democracy as it is structured by the constitution often comes in contradiction with the so-called instant democracy of the Media, but in any case seems to endure these disputes and adjustments. The same is true, for the most part, for the legal state and its guaranties, for human rights and for the mechanisms of judicial control, which are innate to constitutional civilization in its most advanced form²¹.

III. THE DEVELOPMENT OF "CONSTITUTIONAL ETHIC" - A CRITICAL FIELD

1. An overview of the development of constitutional ethic as a basic constituent of constitutional civilization, in association with Christian morality and Christian civilization in general, as a marked example and a possible source of verification of what has been supported so far, is useful.

2. It is obvious that what is historically called constitutional civilization has very close ties with Christianity and its perceptions, as it derives from a historic template with very intense Christian characteristics²² and because Christianity's views and perceptions have profoundly affected constitutional civilization²³. The value of a human being, as a concept and a constitutional principle, the right to develop one's own personality, the protection of life and dignity, the very concepts of freedom and equality in any form, the relations between state and church which are in fact the relations between state and the citizens, are all deeply influenced by the Christian cultural model and Christian theories.

²⁰ See EV. VENIZELOS, *The endurance of constitutionalism in the post-modern age*, [in Greek].

²¹ See EV. VENIZELOS, *From representative to digital democracy*, [in Greek].

²² See EV. VENIZELOS, *The challenge of the European Constitution*, *op. cit.*, p. 124.

²³ *Ibidem*.

3. Constitutional civilization, like it or not, is associated with certain fundamental attributes: the civilization of the script²⁴, a culture that is based on monotheism and monogamy. That means it is associated with Christianity as a religion of reason, that although it often confronts the danger of self-annulment as such, it definitely contributed to the development of the perceptions of the Age of Enlightenment²⁵, of all the cultural, institutional, ideological and political prerequisites upon which constitutional civilization is historically based, from the 18th to the 21st century.

4. *Though constitutional civilization in the form of constitutional humanitarianism and ethic draws so much from Christianity, we have to admit that from some point on it transcends it.* It is obliged to incorporate the concept of *secularity* and (in the case of many countries) a different perception of church-state relationships, as in France, as typical example, but also to some degree in the USA²⁶ despite the contradictions.

5. Later and particularly in matters of family and personal morality, constitutional civilization necessarily departs from Christian morality. This is in reference to issues about divorce²⁷, abortions²⁸ and sexual orientation²⁹, and there may yet come further deviations on an ethical, philosophical and ontological level as it addresses new issues and threats; major among them

²⁴ About the Constitution as a “script” see EV. VENIZELOS, *Courses, op. cit.*, p. 25.

²⁵ See S. AGOURIDES, *Human rights in the western world*, Athens, 1998, [in Greek]. See also, J. MARITAIN, *Les droits de l’homme et la loi naturelle*, New York, 1942, who traces the source of the modern theory of human writings to the writings of Thomas Aquinas. Cf. for the Christian perception of human dignity and its evolution in the Age of Enlightenment, P. CONDYLIS, *Regarding dignity*, Athens, 2000 [in Greek].

²⁶ See EV. VENIZELOS, *Church and State Relationships*, Thessalonica, 2000 [in Greek], p. 44 et seq., p. 79 et seq. Also, of the same, *A culture of cultures*, Athens, 2001 [in Greek], p. 20-21.

²⁷ On the institution of divorce in correlation with the constitutional protection of marriage see M. KARASI, *Marriage and family as legal institutions*, Thessalonica, 1994 [in Greek], p. 22.

²⁸ On the modern theoretical problematic from a “popular” point of view see R. DWORKIN, *Life’s Dominion*, New York, 1993.

²⁹ See R. DWORKIN, *ibidem*.

are the need to protect man's genetic identity and to set boundaries on the use of biotechnology³⁰.

IV. IS THERE A POSSIBILITY TO "POLITICIZE GLOBALIZATION"?

1. Constitutional civilization exists, endures and has gradually and for historical reasons acquired a universal character. However the adjustment process and the control of the endurance of its materials are under constant development and is something that should be always under discussion and have our complete and full attention.

If the issues that have been addressed set the question of the universality of constitutional civilization, (I do not aspire to give a complete answer) then the second and final question arises: *can the potential to "politicize globalization" emerge through all this institutional, political and ideological evolution process?*

2. Another phenomenon is interesting from this point of view, the phenomenon we may call "*internationalization of constitutionalism*". Constitutionalism is directly and closely associated with international developments and the international balance of power. We, Greeks, have experienced this very intensely in the case of the independence of Cyprus and of the Cypriot Constitution in 1960. We live it once again, in the occasion of the discussion for a new constitutional arrangement in Cyprus, based on the plan of the UN's Secretary General. A constitutional arrangement based on an international compromise, an international settlement. We have seen it happening in our neighboring Former Yugoslavian Republic of Macedonia with the, peculiar in nature, Agreement of Aclid. We have seen it happening in Afghanistan with the Bohn Agreement and we see it happening now in Iraq in the case of the discussions about UN's role and the way Iraq will make the transition to another political regime³¹.

3. However, the opposite also occurs, if not now, at least throughout the duration of the 20th century, mostly through the function of the League of Nations and of the UN regarding the protection of human rights. The various international and regional treaties, the texts of the so-called "Soft Law", the bodies of international justice, like the European Court of Hu-

³⁰ See R. DWORKIN, *Sovereign Virtue*, Cambridge (Mass.), London, 2002, p. 427 et seq.

³¹ See EV. VENIZELOS, *The new youth of the Constitution*.

man Rights, the very concept of humanitarian intervention, show us that we face a phenomenon that is not the internationalization of constitutionalism, but rather the “*constitutionalization of international law*”. This means, we are very close to this approach: the construction of a unified political and institutional culture³².

4. We must examine whether there can be a role for the EU and if there can be a new part for the UN, or better, a new UN, because an international organization needs not only resolve political issues. The great economic inequalities must also be dealt with along with other always present and open fronts, like the third world debt and child mortality. It is not accidental that a series of artistic events of the cultural Olympiad we are hosting in Greece in view of the 2004 Olympics, in association with UNESCO and the IOC have been cancelled in order for the sum of 7 million dollars to be used for the vaccination of 1.5 million children in third world countries, with the collaboration of UNICEF. The survival of man is the primary cultural duty, the prerequisite for the survival of civilization.

5. It is left for us to see which institutional arrangement, which law can organize a civilization of civilizations and not bring on a confrontation of civilizations. In fact *the question is whether we can achieve a new international legitimacy*. In my opinion that is *absolutely impossible unless a new balance of powers is reached*. This is because, like it or not, the field of international legitimacy is a workshop of methodology and philosophy for the law. It is a laboratory where the endurance of the materials of lawful order is being daily tested. In order for a politicization of globalization, an institutional framework - of a political nature - for international relationships that is, of a transparent and democratic, to the extent that this is possible, nature - it can never be entirely democratic - to be created, it is absolutely vital to speak of a new international balance of powers, to see, that is, how the map is being formed, how geopolitical interests and approaches are being shaped and how the reality in the international arena is being formed.

6. Furthermore, the debate on the European Constitution in the much more specific, uniform and controllable environment of the EU of the 25 members, is in essence a discussion about a new political culture in the EU

³² See EV. VENIZELOS, *The new youth of the Constitution*.

level³³. The same, for the major part, must also take place in the international level.

All these issues are, of course, particularly hard to address as they actually reflect the entire international mesh of military, political and economic powers. It is, however, easy to set the relative questions. Besides, the basic conclusion from human civilization is that if the human mind has set a question, the answer is within its grasp. If you wish, this is the most important cultural achievement of modernity that must be preserved in the age of post-modernity in which we live in.

If, however, constitutional civilization wishes to ensure its existence and its universal traits, as they historically emerged and developed, its basic institutions and guarantees must be able to apply on the international level in the spirit of the age of globalization. Otherwise, the western cultural model will lose the most important universal element in the field of institutions and political ideologies it possesses, which means it will have suffered a deprivation that would be particularly dangerous in the long term for the international equilibrium and the safety of the planet.

³³ See EV. VENIZELOS, *The challenge of the European Constitution*, *op. cit.*, p. 65 et seq.