European Tradition and the European Society of International Law: Some Remarks about the Totalitarian Legacy

Iulia Voina-Motoc*

Contents

1. Introduction
2. The Eastern European Tradition
   2.1. The Delegalization
      2.1.1. Law as Superstructure – the Cult of Inconsistency
      2.1.2. Totalitarianism: International Law – The ‘Weapon of the Enemy’
   2.2. Post-Totalitarianism: Dynamics and Movement
      2.2.1 The State and the Capitalist World Economy
      2.2.2. Human Rights
3. The Western European Tradition
   3.1. The Search for Peace in the Process of European Integration
   3.2. Nomos: Federalism and Constitutionalism
4. Friendship in International Law

1. Introduction

From where do we come? How can we trace back a European tradition of international law? In our attempt to do so, we may identify two sources of this tradition, which goes as far as the Greek-Roman culture.

If we follow the Greek line of the European tradition, we notice that many of its concepts and ideas prepared the ground for the European key-concepts that we now call tradition: for example, paidea anticipates the modern philosophy of education and the tragedy, originally a literary term, informs many of the European concepts that followed.

Paidea, which conceptualized beauty and social good, developed into a trend in education that aimed to shape citizens devoted to the aforementioned values. Paidea represented the cultural formation of individuals and contrasted with learning a trade or an art. It helped the

* Professor of Public International Law, University of Bucharest. I thank Mona Momescu for the help with the preparation of the article in English.
tradition of European international law to define itself within an intellectual context.¹

According to the interpretation given by Nietzsche to the key concepts of ancient Greek thinking, the tragedy, the Apollonian vocation, which was inherent to the normativeness of the paidea received its complementary concept in the Dionysian sublimation of violence and irrationality.² This opened the path of the willpower that reinvents itself and glides on its own reflection, like Narcissus, demanding the apparition of the Übermensch and the rise of radical politics.

The Romans bequeathed the formalism of Roman civil law, as it had been codified under the Emperor Justinian in the Corpus Juris Civilis; it relied on the distinction between jus civile and jus gentium, later rediscovered at the edge of the Middle Ages by the French and Italian interpreters of Bartolus, the forefather of international private law.

Nevertheless, if we look back at the tradition the way we have, we interpret it from a meta-historic and mythological perspective. Tradition means the history of a domain that developed its own methods and means of investigation; within its margins, it continuously questions its very own methods previously invented.

Which tradition does the European Society of International Law, constituted in 2003 follow? What kind of questions should it answer and what type of problems is it supposed to solve? In the face of globalization and devastating perils the main voices of political philosophy have called for a planetary response involving the transition from classical international law, still anchored in the nineteenth-century model of the nation-State, to a new cosmopolitan order in which multilateral institutions and continental alliances would become the chief political orders.³ The rise of international institutions after the end of the Cold War and their growing influence on the behaviour of international subjects bring up the question of the legitimacy of international governance. This line of thinking automatically leads to questions about the nature of the boundary between regimes, international

² “That life is at the bottom of things, despite all the changes of appearances, indestructibly powerful and pleasurable . . . With this chorus the profound Hellene, uniquely susceptible to the tenderest and deepest suffering, comforts himself . . . Art saves him, and through art – life”, Nietzsche, The Birth of Tragedy, section 7.
³ G. Borradori, Philosophy in time of terror, dialogues with J. Habermas and J. Derrida (The University of Chicago Press, 2003) p. XVI.