

EVANGELOS VENIZELOS*

Bible and Constitution: Thoughts on the political theology**

Sia la Bibbia che la Costituzione sono testi storici suscettibili di interpretazione e, proprio come le leggi fondamentali sono incapsulate nella Costituzione, così lo sono i dogmi nella Bibbia. Ancora oggi concetti teologici fungono da sostegno della Costituzione; allo stesso modo, un'interpretazione della Bibbia come *sola scriptura* non può prescindere dalla tradizione. Resta da vedere nel mondo post-moderno, se gli sviluppi nella concezione dello Stato e della Costituzione non abbiano messo in discussione le loro basi teologiche.

Both the Bible and the Constitution are historical texts subject to interpretation. And just as fundamental rules are encapsulated in the Constitution, theological dogmas are in the Bible. Even today theological concepts underpin the Constitution; similarly interpreting the Bible as sola scriptura must still take tradition into account. It remains to be seen in the post-modern world, however, whether developments in the conception of the State and the Constitution have not placed their theological components into question.

My specific topic in the context of the general subject of the conference “Bible and Politics” is the relationship between Bible and Constitution. As you know, titles are sonorous and binding and constantly run the risk of being refuted by the content of the study, but I will take my chances.

I would like to start this discussion by a succinct reminder about the definition of politics.

In my version, politics is anything operating not only within the sphere of the State, but within the sphere of power in general, since

* Professor of Constitutional Law, Aristotle University of Thessaloniki, Faculty of Law, former Deputy Prime Minister and Minister of Foreign Affairs, Greece.

** Lecture at the international scientific conference of the Hellenic Bible Society on “Bible and Politics”, held in Athens on 14-15 December 2018.

power relations are developed both inside, as well as outside the State. After all, one way or another, the State itself is a concentration of power relations. The field of politics includes anything circulating within the public domain, in the broader sense of the term; thus, the civil society and economy are included. Of course, all these are attributable to the State, as concentration of powers, or to interstate relations, or to the realm of the international community, always through the State and with reference to the State. Moreover, the State is not defined only in relation to itself, but always in relation to society, as well.

Therefore, in my view, the field of politics is the widest possible and that is how we come across the notion of the Constitution. The latter is not simply a legal text of the highest force, regulating the construction and the exercise of State power (*i.e.* the elements associated with the national constitutional identity and State sovereignty), but a text of a normative content far wider than one can discern with the naked eye. The Constitution follows and regulates the entire spectrum of the State, the State-civil society relationships, the State-economy relationship and that between the State and the international community. Therefore, to be more exacting, what I define as “the spectrum of politics” is in reality identified with the normative scope of the Constitution, with the Constitution’s subject matter¹. In that sense, whether we want it or not, when discussing about the relationship between Bible and Politics² in the modern and, so much more, in the post-modern era, we necessarily have to talk about the relationship between Bible and Constitution; otherwise, we have no reference framework.

There is, however, an even simpler and more fundamental relationship between Bible and Constitution. The Bible is an apocalyptic, soteriological text; it is also a historical text that is subject to interpretation. Furthermore, it is a preview of the Constitution since, when reaching the historical moment of the national State (which is a basic product of modernity), the concept of the Bible (*i.e.* the basic reference text with doctrinal supremacy) leads onto the root idea of the Constitution as a political and legal charter

¹ Among many others, see D. ROUSSEAU, «La Constitution a-t-elle un avenir?», in *Nomos. Le attualità nel diritto*, 2 (2018) 756-768; E. VENIZELOS, «The Durability of the constitutional phenomenon on the Postmodern age», in P. HÄBERLE – M. MORLOK – V. SKOURIS (eds.), *Festschrift für Dimitris Th. Tsatsos*, Nomos, Baden-Baden 2003, 690-702.

² Referring to the Christian Bible, obviously. As regards politics in the Hebrew Bible, there is an impressive analysis in M. WALZER, *In God's Shadow: Politics in the Hebrew Bible*, Yale University Press, New Haven 2012.

that is legally superior and regulates the totality of a legal order³. The fundamental rules are encapsulated in a text which is the Constitution, just as, theologically, dogmas are encapsulated in the Bible.

Of course, the truth is that, on account of having this theological reference, the Bible has an unrivalled advantage compared to any national Constitution, or supreme legal rule in force within a given legal order. The Bible, as the unfathomable, divine word, is more powerful than reason: the later cannot easily escape, it cannot cover or fill in its gaps; on the other hand, divine word succeeds in this, since faith, the Holy Spirit, covers those gaps.

Such an escape is not available in the field of reason; Divine Grace, which can fulfill the lacking and heal the ailing, does not exist there. Thus, under these restrictions, we have to historically understand the Constitution as some sort of political gospel, incorporating the fundamental rules for the establishment and exercise of power, as well as the fundamental rules governing the relationships between citizen and power, in addition to the power-society, power-economy, power and international community relationships, with the highest possible legal force. It is just that the Constitution's legal force is founded on the pyramid of legal rules in a positivist way and the "sanctity" which it claims is indirect and subtle⁴, although explicitly invoked on numerous occasions – for instance, in the case of the preamble of the Greek Constitution, which invokes the Holy Trinity (the Trinitarian God), despite the fact that, from a historical perspective, these preambles are explained in a simpler way, since these are the introductory phrases of the Declaration of Independence⁵. Therefore, the legal force of the Constitution is connected with statehood, not with sanctity; although, in the legitimization game, however rationalism may desanctify power, a residue of claimed sanctity of the State and power always remains.

³ See T. POOLE, «Theology and Constitutional Theory in Thomas Hobbes and James Harrington. For Workshop on "Theological Foundations of Modern Constitutional Theory" », Institute d'Études Avancées de Nantes, 20-21 January 2016. www.iea-nantes.fr/rtefiles/File/Ateliers/2016%20Hong/theology-and-constitutional-theory-in-thomas-hobbes-and-james-harrington-thomas-poole.pdf

⁴ Cf I. WALL, «Notes on the Theology of Constituent Power», 20 June 2013, <http://criticallegal-thinking.com>.

⁵ See I.M. Konidaris and G.I. Androutsopoulos, comment under the preamble in PH. SPYROPOULOS – X. CONTIADES – CH. ANTHOPOULOS – G. GERAPETRITIS (eds.), *The Constitution: a commentary per article*, Sakkoulas, Athens 2017 (in Greek), ΑΙΚ. ΙΛΙΑΔΟΥ, «The preamble of Constitutions», in *Dikaiomata tou Anthropolou* (legal review) 2002, 1041 ss. (in Greek).

It follows that the Constitution, as a product of modernity, continues to be persistently linked with politeiological and legal concepts with intense theological references, such as sovereignty, the constituent power, the Constitution's supremacy, the separation of powers (which is the equivalent of the Trinitarian dogma in law), the state of emergency⁶.

This is exceedingly important in order to understand an idea which I will use and which is very often used by theologians, politeiologists and jurists – the idea of political theology⁷. In my version, political theology is a political narrative containing notions which are axiomatic, self-referring, populist, based on a depressively irresistible element, which is the actual interrelation of powers. This element comprises the core of political theology; this political word is “theological”.

Let us not forget, though, that the explanation about this likeness to the Bible which the Constitution claims, is due to the fact that the national State – that is the State which begins being conventionally shaped from the 14th century onwards – and the national, Westphalian State thereafter, arrives in history to replace the Empire. In other words, it comes to replace a form of power that is not simply “political”: it is also anointed. This is because the emperor is anointed, namely, he is put in power in a religious manner. As such, the formation of State power inherently contains this element of sanctity and religiousness. The concept of the monarch, through which constitutional monarchy and, thereafter, democracy (usually with a President of the Republic as the body standing

⁶ With regard to those concepts in Constitutional Law see, among others, E. VENIZELOS, «The Durability of the constitutional phenomenon on the Postmodern age». Regarding the historical context in which these concepts were developed, see B. BOURDAIN, *La genèse théologico-politique de l'État moderne*, PUF, Paris 2015.

⁷ At the heart of the theoretical discussion on the concept of political theology is the controversy between two iconic figures of law: Hans Kelsen and Carl Schmitt, see S. BAUME, «On Political Theology. A Controversy between Hans Kelsen and Carl Schmitt», in *History of European Ideas* 35 (2009/3) 369-381 and also ID., *Kelsen. Plaidier la démocratie*, Éditions Michalon, Paris 2007. As regards Schmitt's views, see C. SCHMITT, *Politische Theologie*, Duncker and Humblot, Berlin 1993 and also ID., *Political Theology II. The Myth of the closure of Any Political Theology*, Polity Press, Cambridge 2008. From the relatively recent bibliography on the uses of the concept of political theology, see J. TAUBES, *La Théologie politique de Paul. Schmitt, Benjamin, Nietzsche et Freud*, Seuil, Paris 1999, H.-J. GAGEY – J.-L. SOULETIE, «Sur la théologie politique», in *Raisons Politiques* 14 (2001) 168-187. H. MEIER, «Qu'est-ce que la théologie politique?», in *Commentaire* (2008/1) 205-211, on the views of the theologian Erik Peterson, to which Carl Schmitt responded in the second edition of *Political Theology*. See now B. BOURDIN, «La théologie politique chrétienne: de la monarchie impériale à la démocratie libérale. Pertinence et impertinence de la critique de la théologie politique chrétienne par Peterson», in *Laval théologique et philosophique*, 63 (2007/2) 305-327.

for and impersonating the unity of State) evolve, contain this memory: the memory of the emperor. This is maintained also by the ceremony of coronation of the king or queen of the United Kingdom, where, until today, we have the ceremony of anointment⁸.

The stage of ordainment is interjected, thus the above (the emperor's coronation and anointment) take place at the solea instead of the Inner Sanctuary, although the emperor is "the bishop of those outside". This is shown in all texts produced until the concept of the Constitution, which is a much subsequent, 18th century one, connected with the two great revolutions – the American and the French – is completed.

In that sense, "constitutional theology", as I tried to define it a little earlier, is a quest for a powerful, rational if possible, legitimization (with the contribution of Protestantism in "disenchantment" now more historically acknowledged)⁹. This is because, when we get to the American and the French Revolution, Protestantism has taken place and we find ourselves at a different landscape in relation to the Christian dogmas: desanctification is already then a much bigger issue, which the French and the American Revolution handle in parallel, though different ways. The element in common of both revolutions is the separation of State from Church. Religiousness is a matter of the civil society, but is not casted outside the public space. This is because of an elementary ground of expediency: the State wishes its citizens loyal to itself; there is a duty of obedience on the part of the citizen and a duty of loyalty on the part of State employees and officers.

In America, this happens in direct connection with the Bible and Christian faith, as regards the constitutional values imbued by the Bible, however, with the State's separation from the Church, although constitutional values are to a large extent biblical: they are Christian¹⁰. In France the same takes place by constructing a whole structured political theology. *Laïcité* is

⁸ Cf L. GOSLING, *Royal Coronations*, Shire Library, Oxford 2013. As regards the historical and theoretical formulation of associated institutions and concepts, see the classic work E.H. KANTOROWICZ, *The King's two Bodies: A Study in Medieval Political Theology*, Princeton University Press, Princeton (NJ) 2016.

⁹ Indicatively, I make reference to the commentary of Max Weber's views from A.J. CARROL, «Disenchantment, rationality and the Modernity of Max Weber», in *Forum Philosophicum* 16 (2011) 117-137.

¹⁰ See, characteristically, J. PELICAN, *Interpreting the Bible and the Constitution*, Yale University Press, New Haven 2004. Also, on the occasion of this book, the study of G.A. KALSCHERS, «Christian Scripture and American Scripture: An Instructive Analogy?», in *Journal of Law and Religion* 27 (2006) 101-142.

not a religious liberalism, this is not the case of a religiously neutral State: *laïcité* is an expression of political theology organized by the State¹¹.

In this light, many elements of political theology are inherently included in constitutional theory and in the theory of the State, the State of modernity. This happens long before the notorious Carl Schmitt (a theoretician on constitutional law of the Nazi regime, who, after the war, towards the end of his life, bore the consequences of his ideological views and became the chosen of the revolutionary extreme Left, particularly of the Italian) used this term during the interwar period, in fact, political theology has a history long before and long after Schmitt; he is not the founder of the concept, given that, in reality, these concepts are included in the provenance theories of constitutionalism.

Moreover now, the very concept of the Constitution – as a text legally superior and concentrative of the long historical term, consisting in a “legal Gospel” on which and by reference to which, a political officer can take on oath, provide reassurances and commit his life – requires that we draw further connections between the Bible and Constitution. Thus, the next connection must be made between the Bible and tradition, on one hand, and, on the other hand, between the Constitution and tradition. The Bible as *scriptura* cannot be fully understood, especially by the Orthodox and Roman Catholics, without *traditio*. Likewise, the Constitution cannot be understood *sola scriptura*; constitutional traditions, constitutional practices, constitutional conventions, namely, a huge normative volume, has to be taken into account.

Moreover, further connections derive from the common rules on interpretation of the Bible and Constitution. Theologians and jurists in great methodological proximity are united by their shared adventures in interpretation¹². Would you like to discuss the American theories of the Constitution’s interpretation, the conflict between originalism and living Constitution, the issues of the evolutionary interpretation applied in Europe, particularly in the European Convention of Human Rights? As a jurist, I have the impression that the issues of Bible interpretation are analogous¹³.

¹¹ From recent bibliography see J.-Y. PRANCHÈRE, «Laïcité suppose-t-elle une théologie politique?», in *Les Études philosophiques* 111 (2014/4) 531-546.

¹² Cf C. MANTZAVINOS, «Hermeneutics», in E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, <https://plato.stanford.edu/archives/fall2013/entries/compositionality/>.

¹³ See characteristically P.J. SMITH – R.W. TUTTLE, «Biblical Literalism and Constitutional Originalism», in *Notre Dame Law Review* 86 (2011) 693-764 and H.L. CHAMBERS JR., «Biblical

There is, however, something simpler: a school of Christian interpretation of the Constitution, in the United States¹⁴. In Europe, in Germany, there are reference books on interpretation, which state the identity of their creed – the Evangelical, in particular. The Evangelical dictionary of the theory of State is one of the most prominent reference books used¹⁵.

Certainly the big, lasting, present question, both in the United States as well as in Europe, mainly at the level of the European Convention of Human Rights which condenses the constitutional tradition of the European States (*i.e.* of the larger Europe of the 47, not only of the 28), is the relationship between Christian and constitutional ethics¹⁶.

Now, to get closer to my conclusion as well, the problem is that the ethics of modernity, which obviously have many elements that are Christian, theological, biblical, became constitutional, and this is an achievement. The question is whether the ethics of post-modernity continue to remain constitutional, or there are such deregulations that can lead to a risk of savagery, not in the name of a Christian morality which makes a comeback and meets the constitutional one, but in the name of no morality at all.

There is also a common typology of interpretation factors. The people is a factor for the interpretation of the Constitution, the Church's congregation is a factor for the interpretation of the Bible, professional theologians play whatever role they play and professional jurists, the clergy and councils the role played by the courts and case law. In both cases, "*auctoritas non veritas facit legem*" is a word of status, not of evidence – there is just very great difference in terms of relativism. In the Constitution, relativism is imposed as a guarantee of freedom (obligatory publication of the dissenting opinions in court judgments, appeals against judgments, shifts in case law, etc.), while in the field of theology

Interpretation, Constitutional Interpretation and Ignoring Text», in *Maryland Law Review* 69 (2009) 92-114.

¹⁴ See *ib.*, 92-114.

¹⁵ W. HEUN – M. HONECKER – M. MORLOK – J. WIELAND (eds.), *Evangelisches Staatslexikon*, Neusausgabe, Kohlhammer Verlag, Stuttgart 2006.

¹⁶ In greater detail see E. VENIZELOS, «The universality of the constitutional civilization and the necessity for a "politicization of globalization"», in E. VENIZELOS – A. PANTELIS (eds.), *Civilization and Public Law*, Esperia Publications, London 2005; ID., «The new Youth of the Constitution» in E. AMATO - G. BRILANT - E. VENIZELOS (eds.), *The Constitutional Revision in Today's Europe*, Esperia Publication, London 2002, 25-38; ID., «The European Constitution and the religion phenomenon», in *Revue Européenne de Droit Public*, 17 (2005/1) 651-706.

it is problematic. In other words, an excessively theologian thinking may be at risk of becoming a heretic. From a point onwards, there are the escapes of the divine word, while reason offers no escapes.

In addition, Greek constitutionalism contributes paragraph 3 of article 3 of the Constitution: the unalterable text of the Holy Scripture (the official translation of which requires the approval of the Ecumenical Patriarchate) as further evidence of unanimity between the Hellenic State and the Ecumenical Patriarchate¹⁷. However, this is a provision under amendment, in the context of full respect for religious freedom, subject to which is the Orthodox Church itself, which, obviously, can determine its dogmatic texts alone.

I am concluding with the question whether the evolution of these components of the State and of the Constitution in the post-modern era casts doubt upon all above. The sovereign national State ceases to exist; instead there is a State of limited sovereignty. In Europe, it is a “member-State” partaking in the European integration. In any case, even the States outside the European Union participate in the international community and obey the compulsions of International Law and international interrelations. Things are no longer clear, nor is the Constitution’s supremacy of the Constitution, because European Law and International Law, of course, claim primacy. Not even the separation of powers is clear within the institutional edifice of the European Union and in the so-called multi-level constitutionalism, etc.

Let us take a quick look at the situation¹⁸. A State in sovereign and efficiency crisis, due to the fact that, from a point onwards, it cannot ensure prosperity, cannot safeguard progress and development, or the European social model’s *acquis*; it cannot offer citizens the necessary safety, internal and external security (police, military). A State which is called to deal with the phenomenon of terrorism, called to handle problems, such as that of the refugees and immigrants. A State that is privatized, globalized, depoliticized. A European Union incurring the same problems at its own level and finding itself too, in a sovereignty

¹⁷ See I.M. Konidaris - G.I. Androutsopoulos, comment under article 3, in PH. SPYROPOULOS – X. CONTIADES – CH. ANTHOPOULOS – G. GERAPETRITIS (eds.), *The Constitution: a commentary per article*.

¹⁸ See, in greater detail, E. VENIZELOS, «State Transformation and the European Integration Project: Lessons from the financial crisis and the Greek paradigm», in *Centre for European Policy Studies*, (CEPS), Special Report 130 (2016).

and efficiency crisis. A West in self-doubt, primarily because President Trump regards the concept of the West in a one-sided and myopic way, as the field of a commercial war among Europe, United States and Canada. In view of all these phenomena, can the provenance elements of the Constitution, including constitutional ethics to which I have referred, be safeguarded? All above lead to a crisis of democracy, of liberal democracy, in fact, they lead to il-liberal democracy, to an authoritarian democracy which elects, by majority, an almighty and largely uncontrollable leader, as it happens in countries relatively close to us (let's say in Hungary). All these facts create a crisis of the Constitution, a crisis of politics, a crisis of democracy. At the same time, though, they also cause a rise in political theology, which looks for answers that are, as I said, self-referring, yet not always democratic and founded on the rule of law.

This crisis – an economic crisis, an efficiency crisis, a prosperity crisis, as well as a security crisis – is ultimately also an identity crisis, associated with national populism, with the crisis of reason, with the rise of the extreme Right. Many ask for transgressions that are ideologically dangerous. For instance, they bring back ancient theories on racial purity, or theories that consist in preaching enmity against the foreign, against the different. As such, ultimately, they distort the deeper Christian message. When the arc of the Constitution does not work, the arc of the Bible is at risk of not working either (by “arc of the Bible” referring not to the classic term in the Hebrew Bible, but to a practical-sociological concept, to the way in which society receives the biblical message).

Now, see how History turns around. The crisis of the Constitution is connected with the crisis of the biblical Christian values. The political theology of post-modernity is searched for by a fundamentalist, simplistic and obviously erroneous approach of Christian theology, because those shouting in the name of “Christian Europe” are, in reality, sending out an antichristian message, which, simultaneously, is an anticonstitutional one.

When confronted with this double threat and the double questioning under conditions of post-modernity, which is the one that resists more? Which is the one that safeguards, to the greatest extent possible, the values that started as Christian, became constitutional and are maintained as such – for instance, the value of human beings, human rights, etc.? In

my opinion, the one resisting against those threats, more and more effectively than Christian language, is the word of the Constitution. Thus, through a heterogony of ends, the Constitution, constitutional ethics and constitutional ideology come to protect the most fundamental and precious core of the biblical message.