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ԵՐԵՎԱՆ - 2005

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# КОНСТИТУЦИОННАЯ КУЛЬТУРА: УРОКИ ИСТОРИИ И ВЫЗОВЫ ВРЕМЕНИ

ЕРЕВАН - 2005

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# CONSTITUTIONAL CULTURE: THE LESSONS OF THE HISTORY AND THE CHALLENGES OF THE TIME

YEREVAN - 2005

# Summary

The concept of a “Constitutional Culture” needs a definite comprehensive and serious scientific analysis in light of the actual legal-philosophical developments of the new millennium. In the twenty-first century, among the numerous challenges facing mankind, it is important to guarantee systematic stability and exclude social upheaval, which are fraught with unparalleled consequences. Not until the most recent centuries was the state given the most fundamental of laws, i.e. the constitution. It has fixed firmly the main concepts of the society’s behavior, the essence of the relationship of the individual and the state, and the order and the limits on the use of power. This has created the necessary environment for the full realization of a person’s creative essence and progress; it became possible at a certain stage of civilization and the public consciousness.

The concept of “constitution” (*constitutio*) comes from the Latin “foundation”, “institution”, “organization”. It is defined as the fundamental law of the state, which has supreme legal power. The main characteristics of the given law are conditioned by the circumstance that it stipulates:

1. Principles of state order;
2. Guarantees of the protection of the rights and fundamental freedoms of the person and the citizen;
3. System of state power, its functions and the principles and order of its organization; and
4. Legal limits on the realization of political power, manifestation of political, economical and social freedoms of the person.

In Armenian, the concept of “constitution”, first of all, means “determination”. As professor Samuelyan mentions, those who took part in the medieval Armenian national ecclesiastical assemblies (councils) charged themselves with “the meaning of the legislative factor”. They used the term “limits” which “...often carries the synonymous meaning of the ‘rule’ and

'law'; in the canonical decisions the verbs "establish" and "constitute" are often used to mean the establishment of laws and rules. At the same time, the concept of "constitution" has also been defined as "making limits", establishing the limits of power and creating an "inevitable trap" for those who try to transgress with their own laws against those already-established limits of power.

The *New Dictionary of Old Armenian* (Venice, 1873) presents the concept of "constitution" with a very attractive interpretation. First, the linguistically various synonyms are given, such as determinato, constitution, statutum, and desposito. Then, an extremely interesting and valuable definition is provided – "**definition of the limits and providence of God".** Separate historical examples of the concept of "constitution" are given. Particularly, Movses Khorenatsi's statement in the fifth century concerning the Ashtishat assembly as "by canonical constitution mercy is established" or Aristakes Lastivertsi's statement in the eleventh century "Chalcedonic Constitution". It is quite evident that in this dictionary the concept of "constitution" has had a very serious and thorough study, the basis of which is concerned a set of very important characteristics:

1. It is a decision, order and enactment;
2. It has an establishing meaning, i.e. there could not be any other decision that deviates from, is above it, or is supreme to it; and
3. The expression "Providence of God" compliments the limiting and supreme characteristics of the "decision" and emphasizes the existence of unchangeable "gifted from the Heaven" values.

The historical Armenian manuscripts in "Grabar" (old Armenian) versions were consistent in their understanding of the concept of "constitution" which unfortunately has not survived in "Ashkharabar" (new Armenian) translations. The idea



given in Khorenatsi's "History of Armenia" is a typical example where the concept of "constitution" is presented as implicit. In further translations, "according to the constitution" has become "according to the limits" and thus fully changing its meaning.

The *New Dictionary of Old Armenian* puts the meaning of "limiting" in the basis of the concept of "constitution" which is interpreted as to limit, to decide, to regulate, to order, to legislate, to constitute. All these meanings evidently have the effect of regulation and, more specifically, legislative regulation. Consequently, according to this dictionary, to the characteristics of the concept of "constitution" shall be added the normative characteristic of the present interpretation.

The "constitutionalization" of public affairs and the **establishment of the mandatory rules of behaviour by common consensus** form the corresponding constitutional culture according to its character, form, frames of survey, and value orientations. **The constitutional culture is a definite values system of the creative life of a society relating to the basic rules, norms and principles of its existence.**

The constitutional culture not only claims social consensus and a definite level of a person's social evaluation, but also the possibility to guarantee an individual's systematic development based on logically comprehended values and principles. And even more important, there is the capacity to make things possible.

**The main elements of the constitutional culture are: the rational comprehension by the social community, the availability of the main values of existence and social consensus, its perpetuation according to the norms of mandatory behaviour and the rules of actions, by attach-**

**ing to them a definite, regulated legal character.**

At the dawn of human civilization the cultural and moral norms, spiritual values and rules, which were used and preserved as the mandatory conditions of behavior, were the basis of the existence of the social community. Inasmuch as all of them were considered by the whole community to have a socially regulated meaning, they contained the evident elements of constitutional culture.

At the same time the constitutional culture manifests itself at a definite stage of civilization, when a developed demand to frame and follow the main rules of behavior, as mandatory legal norms, appears. In legal concepts this need brought about the constitution and the constitutional regulation of public life. At this stage the constitutional culture acquires a new quality in such social-state systems, i.e. the constitution goes hand in hand with the constitutionalism, when the constitutional norms and principles became a reality. Then, a necessary and sufficient democratic environment, where the constitution is not merely an instrument in the hands of the state power, is formed, but the fundamental law of civil society, and then has formed the basis of a constitutional democracy.

In the sense of the modern achievements of civilization, the main characteristic of the constitutional culture is that the fundamental law of the country must include the deep and whole system of the persistent values of the civil society, and guarantee their stable and reliable defense and perpetuation. In their turn, these values were formed over the course of time; each generation re-evaluates them and with their additions guarantees the continuation of development. Success follows the nations and people where this line does not break or permanently bend**. Therefore, the concept of "constitutional culture" may be characterized as historically formed, stable, enriched by the experience of the generations and all of mankind's definite system of values and convictions, imaginations, apprehension of legal relations, and legal principles – a system which forms the basis of society, contributing to the establishment and guaranteeing the fundamental rules of behavior based on social understandings.** The constitutional culture also characterizes the quality and the degree of interrelationships of the constitutional subjects and institutions, and the level of "maturity" of legal relations between them.

Speaking about constitutional cultures, the various specialists also emphasize the systematic peculiarities of their formation. For example, Professor Sanders defines such constitutional systems as the systems of the United Kingdom, the USA and France. Robert Gudin puts the main emphasis on similarities of constitutions of different countries. But, regardless of differences in the emphasis, the historical reality is that every country and every nation has passed its own way of forming its constitutional culture and confirmation of the constitutional reality, more or less accepting the experience of the others, making it more complete and adding something from their own values systems. The main and essential point is that the constitutional culture and the constitution itself **cannot be imported and exported.** This is the reality formed on the basis of the value system of the given society and the well-established social community.

Exceptional manifestations of the elements of the constitutional culture appear in Armenian history. They have great importance nowadays and require a thorough consideration. The author tries to appeal to the some of the historical realities of the Christian period, proceeding from the necessity to analyze them in the context of contemporary problems.

The elements of constitutionality have been formed over a

long historical period and appear throughout Armenian history with a special consistency, especially after adopting Christianity as the official state religion in 301 A.D., based on the need to establish inter-coordinated, unique rules of the secular and spiritual life. Mesrop Mashtots (362-440), Yeznik Koghbatsi (380-450), Yeghisheh (420-475), Movses Khorenatsi (410-495) and many other outstanding Armenian thinkers of the Middle Ages sought to understand and resolve the problems of law, legislation, justice, the inevitability of punishment, which is the natural sequence of events after a crime, inter-related concepts of "rationalism" and "law", and also the questions of the role of administering governance and the provision of the stability for society. Meanwhile, in defining divine justice from human justice, it was emphasized, "the law of the kings punishes the culprits, and God punishes the culprit and the kin; the culprit – as the legislator and the kin - as the competent". One of the characteristic features of this period is the great importance of the law and justice in the confirmation of social consolidation and the guarantee of the stable development of the state.

Movses Kaghankatvatsi mentions: "In the years of reign of the King Vachagan from Aghvan, a number of confrontations arose between the civil people and the bishops, between the priests and archbishops, between the noblemen and the common people. The King decided to call a populous meeting in Aghvan which happened on 13 of May".

As a result, the Canonic Constitution, consisting of 21 articles, was adopted. History considers this to have happened in 488. The following circumstances should be pointed out:

1. In the middle of the 5th century such an environment was developed in the Armenian reality where an attempt to solve the "confrontations" between the different segments of society was made – not by force or "administrative" methods (i.e. by order of the King or with a stick) but by legislative means, i.e. by adopting the constitutional law. This circumstance, first of all, witnesses not only the high conscience of the author of that initiative, but also the society's attitude towards such an approach and the maturity of the environment.
2. Factually, the constitution adopted by the Constituent Assembly is a progressive event for its time. It also witnesses that the principles of public consensus, which are the basis of public relations regulation, are considered to stand higher than the social and other stratifications.
3. The rules are characterized as constitutional. They get a special status, which declares the superiority of the norms established by the national consensus above all other norms and regulations.

To establish the rules and limits of actions, committing to it the help of the representative assembly and coming to a consensus, which was witnessed by all noblemen of Aghvank, and "for making the manuscript more trustworthy" consolidated it by the King's ring – it is not merely evidence of the birth of the constitution but also an event in the history of Armenian justice. We deal with a legal-philosophical event which demands a special approach, as well as interesting consequences between the need and order of the adoption of the Constitution in Aghvank in 488 and the adoption of constitutions in the USA in 1787, in Poland and France in 1791, and later in other countries, are observed. The general philosophy is the following – to establish the main rules of social existence, which are superior to other laws and rules; to limit the activities of the authorities; to fulfill it with conditions of public agreement, viz. calling of the Constituent Assembly.

A parallel is made between this Constitution and the "Athens Public Structure" (Constitution of Athens) presented by

Aristotle.

In Armenian history, especially in the Canonic Constitution of the King Vachagan, the ancient Greek democratic legal culture not only started its development, but also it was completed by a new event i.e. the calling of the Constituent Assembly which had "the power of voting" and was evidence of public consensus.

At the end of the eighteenth century, civilization brought together the manifestation of the fundamental law of the state and the need of a constitution with the ability to guarantee the stable and dynamic development of the country on the basis of public agreement. The same aim was followed in early medieval Armenian history. History also witnessed that given such a legal background, with the assistance of the public's consensus, the country achieved much success and understood that the reign of violation, "incomprehension", and "confrontation" would be accompanied by immutable losses and disruption.

Movses Khorenatsi starts "The Armenian History" with the words of censure "...not wise customs of our first kings and noblemen" and fittingly gives credit to those whose "writings when reading, we **get the science of the civil orders and study the political systems".** Doubtless, King Vachagan was one of the deserving whose lessons of wisdom are still applicable today.

Mateos Urhaeti's evidence is also very valuable as he, speaking about the times of potion of the Canonic Constitution, mentions "This was a time when the Holy See of Saint Gregory was separated into four parts... That time, when the rational sheep have become immoral, and the beasts acquired hearts, and became impudent and started to bark at the faces of patri-



archs... But such a commotion and indignation could not intrude the Aghvan country which is called the Great Country of Armenian...."

It is evident that the progressive and stable is society, the basis of which is the public consensus. This culture, apparently appearing in Armenian history in 488, had a very serious past which was united by the adoption of Christianity as the official religion, and the elaboration of different spiritual and civil rules, especially the Canonic Assembly in Ashtishat (365), the Canons of Shahapivan (446), which were established by the assembly with the Armenian noblemen participation. It is also evident that the emphasis was made on the regulation of public life with the help of regulations achieved by consensus; prominent progress was observed in all spheres of life. Even in the embryonic state, for our existence and development, the constitutional progress had a pivotal meaning at the dawn of mankind. Just the opposite, however, was the disagreement or the attempt at overcoming it with the help of violation, and thus became the cause of failure. As far back as Armenian recorded history began, the words of the Great Father of the Armenia History on the requiem of the matter of disintegration of the Arshakuni Kingdom are still influential. The main cause mentioned is "the world was frustrated, disorder took root, the orthodoxy was disturbed, and heresy was founded by ignorance".

After the adoption of Christianity as the state religion, when the rule of spiritual and civil lives were mainly established together, one of the main characteristic and attractive statements was that **the factor of the public consent was the basis of legal regulation.** In society, relations were regulated by agreement, which was achieved by the assembly, and not by force and the individual dictate. For example, Movses Khorenatsi, when speaking about the Assembly of Ashtishat

(365), witnessed that in the third year of the reign of Arshak, the son of the Supreme Patriarch Atanagines Nerses the Great "**called the assembly of the bishops and laity** and established mercy and rooted out the harshness". The Assembly banned the marriage of close relatives, condemned the deceit, denunciation, greed, theft, homosexuality, gossip, alcoholism, prostitution, murder, and charged the dukes with treating the common people with mercy, the servants – to obey their masters. It was decided to build hospitals for the disabled, orphanages for the orphans, hostels for widows, for foreigners and guests – guesthouses, and imposed taxes and duties for their maintenance.

In the first half of the fifth century the Assembly in Shahapivan was called where, according to historical manuscripts, "40 bishops and many priests, deacons, zealous ministers of religion and all clergymen of the holy church, all noblemen gathered; also the governors of the regions, the leaders of the regions, supreme judges, military men, community leaders and free people from different regions were present". The senior dukes of the country of Armenia who were zealous defenders of the laws and sacred possessions, said: "Reconstruct the order and rule established by St. Gregory, Nerses, Sahak and Mashtots, also establish other benefits on your voluntarily and we, voluntarily, with love will accept it, because the rule and order of the Church have weakened, and people have turned to despotism. You shall establish the order that pleases God and we will obey it and will be attached to it".

The Shahapivan Assembly adopted 20 canons. These canons dealt with such important and urgent questions of the everyday life of Armenia as regulation of conjugal-family relations, the activity of clergymen and control upon them, the fight against the sectarianism, nunnery, etc.



While not basing the heresy on ignorance, Armenian medieval history has other evidence, which emphasizes the following legal regulations, which resulted from public consensus. Among them is the Statute of Canons by the Armenian Catholicos Hovhannes Odznetsi (Hovan Imastaser Odznetsi) – the Armenian Statute of Canons, confirmed by the Third Dvin Council in 719. Hovan Imastaser Odznetsi was one of the first in the world, after Byzantine Emperor Flavius Justanianus (482-565), and the first in Armenia who systematized the Armenian "Corpus Juris Canonic" – the set of laws which receives its efficacy from the Catholicos and contains ratified canons, and was accepted at the Armenian national-ecclesiastical assembles of canons.

One of the main legal-philosophical peculiarities of the Statute of Canons is that the quality of human essence is strongly stressed. A person with self-dignity and a social role is looked on as having great value and is considered as the basis of legal regulation.

The history of Armenia is full of violations and destruction; those who committed these deeds were not able to distort the main qualities, which form the national distinctiveness. Humanity, a thorough rational-philosophical perception of the events, and loyalty to spiritual values and legality always prevailed there. For the Armenian reality, the awareness of "the loss of the spirit when one abandons the pure, direct and expounded by the Apostles' faith in God the Father, the Son and Holy Spirit, is bigger than the loss of the body", was of stable value. A thousand years ago Grigor Narekatsi, in his "Book of Sadness", showed the concentration of the spiritual perception of the Armenian identity. "Indicating the different passions of each", he emphasized that the sins, committed by the human essence, despite their quantity and character, were rather his misfortune than the crimes committed by him. Reading a "Supreme prayer to God" on the lips of the

Armenian nation, Narekatsi prays to God to set man on the right path so that a person can live with humane consideration. And this he considered to be real in the realm of agreement and fairness, in a society where people adhere to the law and with “healthy spirit” where the justice “when diminishing could not disappear” or “the bowl of rights on the scales cannot become too light, thus making the bowl of the lack of rights heavier”.

It was also assumed that law and order alone was not enough. People needed to understand the necessity to live according to these laws, so that the awareness was not persistence but assurance, which was based on stable and God-pleasing values, dictated by the rational essence of a person. That was why Nerses Shnorhali addressed not only God, but he addressed his commandments to the clergymen, “the noblemen of the world” and the people in “Council Message” of 1166. “Council Message” was the first condak of Shnorhali and the wreath of his prose, which is of exceptional significance in the aspect of generalization of the legal and constitutional culture. This document is unique due to its conceptual scale, and also by its value-systematic generalizations, interharmony of the norm-aims and the norm of “treatment”. Shnorhali formed the rules and directions, which were based on high spiritual and moral values and were addressed to all segments of society. He was sure that success could be achieved only when living according to this mandate, and overcoming the alarm of “evil and multi-power”, led by “the reach of justice”. He taught the common people “not to commit illegal deeds, not to rob, not to use cruel instructions, not to commit shameless trials, protect the widows and the poor, not to reduce the salaries of the workers, treat everyone equally, not to forget the spiritual for corporal”. Without exaggeration, it could be stated that the “Council Message” contains many norms relating to the human rights and competencies of



authorities. Particularly “nobles of the world” are ordered: “Do not treat your subjects shamelessly establishing heavy and back-breaking taxes, but judge everyone according to law and his wealth”, “do not deprive anyone and do not suppress the poor”, “do not appoint cruel and shameless administrators and governors”, “do not judge anyone shamelessly, but commit the trial directly”, “do not ignore the rights of the widows and the poor”, etc. Shnorhali’s approaches to the question of trial according only to law, retroactivity, correspondence of the degree of responsibility and punishment and other legal problems deserving of attention, so that “not to make a verdict based on cruelty and injustice; either punish someone or sentence someone to death as the New Testament does not allow that, but the Old Testament, though allows the sentencing of someone to a punishment or to death, but only when his/her guilt is proved”.

This evidence shows that in the Armenian medieval reality not only were the adoption of the laws and rules of social agreement achieved, but also it becomes evident that on the basis of this definition were put such social demands and necessary conscience. One of the main reasons for creating “Code of Laws” by Mkhitar Gosh (1184), which is one of the most exceptional examples of legal science, was that “evil has gained power and has become the essence of the man. The evil has grown into the imperfection of the soul, has destroyed the perfection and hatred and has replaced compassion and love”. “Code of Laws” was created to “help recover the intuition, the perfection of the natural law, replace hatred towards other people with compassion and love”. The circumstance that the judicial-political conception of Mkhitar Gosh is based on is that the theory of natural (divine) law deserves special attention. The main principles are – equality of people (before God), freedom, right to life, immunity of property, etc. So positive law must derive from the principles of natural law, which

is stable and unchangeable; it is created by people, and both time and the concrete circumstances leave an impress upon it. Another important statement is that according to Mkhitar Gosh, each nation and each country must have its own legislation and legal norms, and must choose the trial "according to the time, the nation and the world".

The main qualities of Armenian legal science of this historical period appear in the works of Nerses Lambronatsi (1153-1198). Lambronatsi considered that both in the natural world and in the social-political and moral spheres, everything is relative and people are endowed with the right of choice so that they are ultimately responsible for all their actions, deeds, and their consequences. He believed that the role of bringing is essential in the process of overcoming and destroying the illegalities and injustices that exist in society. He also assumed that ignorance and concealment of the shortcomings of society intensified the existing mistakes and defects.

The Statute of Laws of Smbat Sparapet, which was created in 1265 and was of great practical importance for strengthening the Cilician Armenian Statehood from the thirteenth to the fifteenth centuries, was foreseen as a way to fight despotism and violations. The researchers state that Mkhitar Gosh's legal consciousness and the system created by him not only originates from the theory of natural law, but also are fully penetrated by it; Smbat Sparapet's system concerns the sphere of positive law.

The Armenian legal science of the fourteenth century is represented by Grigor Tatevatsi (1346-1409). Tatevatsi stressed the correlation of a person and society and suggested a conceptual approach according to which the most important problems of the state (development of the country, war and peace, etc.) should be decided **by common intellect and by common will.**



Moreover, not the monarch but the people and its commoners are the subject of the law. According to the conception, the monarch loses his autocratic power, the power of deciding the common state problems alone. The authors, who consider that in this case we are dealing with the indications of the constitutional monarchy, are quite right. Tatevatsi also distinguished "the divine law" and the positive law, which is confirmed in different legal documents. The divine laws are unchangeable and exceptional; everybody is equal before them. The norms of the positive laws must be based on, and originate from, the divine laws, which fairly reflect the social and political reality.

For centuries, the main qualities of originality, and the features of the Armenian legal thinking were the primary means for fighting "lawlessness" and for the establishment of "life with love", which were "pleasing to God and suitable for the mission of strengthening the Church", rules suitable to the "nature of a man", and also readiness to "restrain" and hold them. The given concept forms the basis of the decisions of the Assemblies of Dvin (VI, VII cc.), Partav (VIII c.), Sis (1243), Dzagavan (1268), and Jerusalem (1651).

The loss of statehood and the long-term influence of the outside forces did not permit the people to embody this rich heritage into a unique constitution of state with the help of the constituent assembly. But it was impossible to confine the struggle for thought. From 1773 to 1788 in Madras, India the father and son Shahamiryans team created an exclusive example of law – the Constitution of the independent Armenia, which consisted of 521 articles and was highlighted as "The Trap of Vanity". This work is one of the few achievements in human history of social and legal views, where the ideas are stated according to a special system, and are not only the result of deep theoretical summaries, but are also the basic value of international constitutional development. The title of the work, according to Dominique Rousseau, the well-known

professor of constitutional law, is a whole legal theory. That constitution was to guarantee "...the possibility of preservation of freedom" and create "...inevitable traps for stinkards so that they were compelled to appear in the yoke of useful activity".

In the eighteenth century the Armenian constitutional culture was based on the principle of the rule-of-law, acknowledgment of the priority of the intrinsic rights, separation of the powers, guarantee of the harmony of constitutional functions, and checks and balances. "The Trap of Vanity" is not a response to European legal thought, but a summary of results of national-ecclesiastical assemblies of Aghven, Ashtishat, Shahapivan, Dvin, Partav and others, as well as the prolific activity of Hovhannes Odznetsi, Hovhannes Sarkavag, David the son of Alavk, Mkhitar Gosh, Nerses Shnorhali, Nerses Lambronatsi, Smbat Sparapet, and many other fellow campaigners of the Armenian social-legal thought. Article 389 of the Constitution of Shahamiryans contains a generalization, which says, "Each article contains a large number of details, which could be explained by the wise men. All explanations, if they follow a useful goal and correspond to the wishes of Hayots Tun (Parliament), must be honored, but the explanations that contradict human nature, must be abandoned". Here, not only is the classic rule of interpretation of the law established, but also it is emphasized that the rational nature of man, the supremacy of his rights, are its basis.

Coming back to the principles of the power of the nation, supremacy of law, representative democracy, separation of power and its functional independence, social protection and other basic constitutional principles, and rights of constitutional justice, for the first time in Armenian history an integral and regulated system of the norms of the constitutional law was achieved. This not only united the achievements of the Armenian and worldwide legal science, but also formed the



beginning of a new state mentality. Only "the fruits of the tree of law and justice" can become the basis of righteous activity of "just government" which seeks happiness for an individual and justice and lawfulness in society, all the while having the main importance "to live according to law and justice"- this is the main mandate of "The Trap of Vanity". To live "as a rational and worthy man ...we must choose behavior, order and law for us", not be led by "disorder and illegality", manage "to gather and hear about the law, and make laws". It is so concisely said that it is in harmony with the progressive legal mentality of today. The only way for the establishment of a legal state is a thorough understanding and following the advice "to listen to the law". The conclusion is that "...neither with us nor in our world let it not be and not appear anybody who with his self-willed actions, will not be punished by the law, and let our laws be our master and king, we don't acknowledge any other laws except ours and only God is above them..."

Today, another statement from the introduction of "The Trap of Vanity" is even more real, "...how much kindness we need to restrain our lives with the law and freedom, so that to deserve the respect of God". All these laws must be put down as "harmonic to the human nature, according to our rational soul".

Shahamiryans' approach to Roman history, especially, deserves attention: "Until they were steadfast and were faithful towards their laws, courageous and full of love, they grew, reproduced and owing to their laws became happier", but when the Elders of Rome allowed the position of the emperor "to become inherited", "darkness then entered their daylight, cruelty in their kindness, a break in their unity, a stone in their equality, earth and heaven, i.e. the superior and the lowest... Thus irreconcilability entered their lives".

"The Trap of Vanity" is a constitution for the state with a parliamentary form of governing. It establishes strict orders for elections in the Hayots Tun (legislative body), a three-year term, specified powers, the procedures for adopting laws and making appointments, etc. The legislative body forms the executive and judicial power in the order established by law. Any body of the power structure acts within the bounds of its competence established by legislation: "Patriarch, noblemen, bishops, leaders, priests, those having with power, nobody can order anyone if he is not authorized to, and can order only when authorized by the Church and Hayots Tun" (Art. 364). A definite principle of the hierarchy of legal acts is established: "Each document, concerning either the trade or concluding the treaty, or any other actions, signed by anyone, cannot have any value if it contradicts Armenian law or the rational nature of a person". Acknowledging the "rational nature of a person", a specific and concise formulation of the principle of constitutional legal equality is provided (Art. 3): "Any human nature, both the Armenian and other nationality born in Armenia or a stranger from a foreign country, both of male or female gender, is equal and is free in all his/her deeds, nobody has a right to rule him/her, and what is created by him/her must be paid according to the work, stated in the Armenian Law". Even the issues of protection of the rights of the convicted people are not ignored by Shahamiryans, "The prison must be clean not to harm the health of the convicts" (Art. 148). While envisioning the norms of constitutional regulation of the realization of property rights, the questions of social protection, at the same time with the issues of the nation-state, are prioritized. According to Article 127, "Hayots Tun must assist all specialists, especially in the spheres of philosophy, astrology, medicine, music, oratory art, etc.".

Considering the role of equality and restricting the power of the law, taking rights and values "harmonious to the nature of a person", and also the concepts of natural (divine) law and the social agreement as the basis, Shahamiryans stated their own constitutional provisions "for ruling the Armenian country". These are of exceptional value and have stable meanings for connecting the past and present-day legal thinking with the means of establishing independent legal statehood.



The loss of the Armenian statehood for more than seven hundred years left its mark on the public conscience. Whether one likes it or not, many civil aspects were distorted. The law was regarded as a constraint of the acceptable, and as an impediment for the development of originality.

It is undeniable that the legal culture is an inseparable part of the national – state culture. The Armenian legal culture has left reminders to mankind deserving attention. But as the natural part of the national culture, it was isolated from the national-state cultural environment, which we did not have in the period when we were stateless. For the present day priorities of establishing statehood, the formation of such a constitutional-legal culture must be mentioned such that it can serve as the basis for formation and confirmation of the civil qualities of an individual and which can become prerequisites for establishing a legal democracy. The establishment of democracy in the country is not an end in itself. There must be a legal and constitutional democracy, which attaches integrity and other necessary liberal qualities to the system.

Nowadays international constitutional and legal ideas stress the importance of guaranteeing the constitutional principles and norms in the public relations, i.e. the so- called constitutionalization of these relations, as a prerequisite for establishing the legal, democratic state systems. If, until today, the development of legal-political ideas brought about the adoption of the constitution and the idea of establishing public consensus with the help of the fundamental law of the social society, the guarantee

of constitutionalism in the country, which can raise the constitutional culture to a new level, becomes the main task of the post-constitutional period. Unfortunately, this task has become a reality only recently because it can be achieved only with independence.

Constitutionalism, which is the embodiment of the constitutional culture, is a complicated social-political and state-legal phenomenon. First, it supposes the confirmation of the constitutional democracy in the entire state system. This is the goal that all countries, which have chosen the route of social progress, try to achieve. But achievement of such a goal demands such necessary guarantees as acknowledgment and guarantees of the constitutional goals and basic principles by the state and society. As well, the availability of state power that corresponds to constitutional principles, and establishment of the legal system built on the supremacy of law, reliable protection of the constitutional order and supremacy of the Constitution, etc.

The question is not what the constitutional orders attached by the constitution are, which are based on the principle of the supremacy of the law and which are the guarantees of the establishment of the legal state and the civil society. Original among them is the level of establishment of the liberal legal mentality and its social perception and acceptance. Such legal mentality forms the basis of modern European constitutional developments.

The important stage of the theoretical and philosophical perception, and scientific interpretation of law, started in Europe in the middle of the seventeenth century. One of the characteristics of this period is that an integral world outlook on the natural law was formed and the so-called feudal legal world outlook was rejected. Among the champions of these



new ideas were N. Machiavelli (1469-1527), H. Grotius (1583-1645), B. Spinoza (1632-1677), T. Hobbs (1588-1679), J. Locke (1632-1704), Ch.-L. Montesquieu (1689-1755), J.-J. Rousseau (1712-1778), T. Jefferson (1743-1826), T. Paine (1737-1809), E. Kant (1724-1804), G. Hegel (1770-1831) and others. H. Grotius, for example, considered the natural law to originate from the essence of a man, which stimulated him for mutual connections. Acknowledgment of the natural law gives scientific character to jurisprudence. The law, which established by the will, is not able to get to its scientific roots.

The development of economic relations, the creation of free and specific space, acknowledgment of the human rights as **criteria for limitation of power,** and the gradual establishment of other elements of a liberal system of values in the European legal mentality over the course of the last three hundred years was crystallized in such norms and principles which, starting in the 1950s, formed quite a new level of European law.

**The values that are characteristic of the civil society, qualities of the legal, democratic state, were formed over the centuries, but they have become the systematic regulators of public life, especially during the last decades of the previous century.** In fact, beginning in the 1950s, the common democratic values and the principles of the legal state have found their systematic reflection in the constitutional solutions of the European states, taking into consideration the peculiarities of the well-established countries. But what is common for all of them is that the law and the state must be legal, they must guarantee equality, freedom and fairness, i.e. the valuable systematic basis of which is the priority of the inalienable human rights. Moreover, the legal system becomes integral and viable when these values become constitutional values. They acquire the constitutional guarantees of acknowl-

edgment, insurance and protection.

The European democratic processes even at the beginning of the twentieth century, together with deepening of the market – economic relations created prerequisites for the confirmation of the **liberal-legal type of legal consciousness.** The essence of the latter is recognized by the intrinsic rights of a person as supreme values, and as directly acting law and the basis of positive law. The inevitable logic of democratic development is that in the European legal system **the guarantees of the supremacy of law have become the basic values**. In its turn, **human dignity, democracy, equality, supremacy of law and respect of human rights** have become a valuable systematic basis of the constitutional culture. These are values that are characteristic for **the society, built on the principles of non-discrimination, pluralism, tolerance, justice and consent.** These values are part of the basis of the Constitution of the European Union, which is considered a major achievement in international legal ideas.

A few generalizations are mentioned about post-Soviet reality:

1. Many countries that were part of the Soviet Union have not yet passed on to the route of development of liberal market relations, which has been common for Europe for more than two hundred years. Many of them passed from feudalism to "socialism".
2. Other relationships of property were formed. With the prevalence of state property as the means of production, the population was separated from the power structure, and from it had become the object of abuse by the authorities. The law was changed to protect the power structure, and not man and his property.
3. The legal mentality which was formed during the centuries was replaced by the dogmatic, logistic-positive legal mentality that was built up and formed based on an atheistic world outlook.
4. In a single-party system, the will of the political force becomes the source of the power. The supreme body of the party, which has unlimited and unbalanced power, becomes the real normative – creative body.



It is natural that during the past decades, the will-establishing legal mentality, with its politicized and distorted displays, took deep roots in the territory of the former Soviet Union and Eastern Europe. This became a serious cause of the legal-system deformations.

The main constitutional and legal distortions of the public system during the transitional period can be divided into three groups:

1. The inertia of the legal mentality and law enforcement practice;
2. Distorted constitutional-legal solutions and gaps; and
3. Mechanical adoption and copying of the progressive legal values.

Unfortunately, in the countries with a society in transition, the systematic disintegration has not brought about changes in the collective mentality. The inertia of thinking and world perception is huge. At the stage of contemplation, while changing the concept of the legal state into a slogan, the necessity of guaranteeing the supremacy of law, restrictions of power through law, and constitutionalism of public relations, is not seriously considered. The ideas of power are still in the sphere of possible implementation of force and pressure. Democracy is considered as a kind approach of the state; a means for people to express their ideas within the limits allowed by the state. This is not the path of a developing Europe but rather a path toward medieval regressive values. International practice has witnessed three ways of establishing democracy:

1. Evolutionary development (the way of most European

countries);

2. Through revolution, chaos and anarchy;

3. Through authoritarian regimes (Portugal, Spain, Chile).

The point is that each of them needs time and has its price. The population of the countries who choose the second and the third way always pay more and frequently do not achieve their goals. Nowadays Europe rejects these ways. The main approach is that democracy can be achieved only with a legal basis. Wherever the law is violated, the democratic slogans become mere means for the establishment of totalitarianism.

It is characteristic that in the transitional public systems the Soviet legal mentality often finds fertile soil for its reproduction.

The complexity and peculiarities of the situation obligate us to deal not only with the inertia, which has deep roots, but also with the system's disintegration, which has brought to the forefront the necessity of redistribution of property, and thus, it causes the appearance of new events. On one hand, the establishment of private property objectively puts forward the need to confirm the efficacy of democracy, and on the other, the Soviet legal system, which mainly serves as a means for the defense of the state and its property, has lost its objective. It is preserved in its main characteristics and in the institutional system. It has become a weapon in the hands of the authorities, which redistribute property. This kind of situation is the biggest obstacle for democratic developments.

The realization of the legal revolution, with the help of "imported" democracy and without the creation of a value system for it is not promising for the future. This can result in a copy that is an obvious forgery of an original.

The question can be decided not only on the thought level, or on the level of the political consciousness, but also the epistemological distortion must be overcome. So the quickest way of establishing the legal, democratic state is not by jumping over the centuries, or making some values and principles into paper slogans and disguising the existing reality, but by **acknowledging the European values of the civil society within the frames of the private values system and the successive, indomitable changing of it into the comprehensive possessions of society's members.** The constitutional-legal solutions can be built only on such values, which include in themselves the inner energy to direct society to a definite way of development, and society itself must comprehend these values.

Professor Cheryl Sanders, President of the International Association of the Constitutional Law, highlighting the linguistic and context resemblance of the constitutions of different countries, emphasizes that the research of the histories of their creation shows that all of them have the same origin, but they must be in harmony with the values system of the society for whom the established constitutional norms and principles are meant. Otherwise, they stay on paper and will not become a reality. Moreover, opposing the values system of the reality, they turn from the stimulus of progressive reforms into either the stimulator of large social contradictions, or the instrument of compulsion in the hands of the power.

More frequently the constitutional principles and statements are borrowed and misinterpreted, thereby being adapted to different circumstances and conditions. First of all, the main constitutional principles, in the context of legal criteria, must be admitted and accepted. Then the examination of the approaches, with the help of which different countries could solve the constitutional questions they faced, are made, and thus could guarantee the stable constitutional development of the country. So the research of international practice of the constitutional changes of different countries becomes essen-

tial. For example, from the research of constitutional changes and constitutional laws of the past decades of Austria, the USA, Belgium, Germany, Denmark, Spain, Italy, Greece, Portugal, France, Finland, Slovakia and other countries, and the investigation of the constitutions of some countries of Eastern Europe and the former USSR (Poland, Slovenia, Czech Republic, Bulgaria, Russian Federation, Lithuania, Estonia, Georgia, Kazakhstan, etc.) it is shown that there are some stable and common tendencies in the formation and the development of the constitutional culture.

1. The democratic constitutional values become more dominating. The principles of the legal, democratic state obtain a systematizing character. The constitutional changes and amendments are directed at the restriction of power, decentralization of the political, economical and administrative forces and simultaneously for strengthening the guarantees and widening the abilities of the institutions of self-government.
2. Democratic values become the basis of the constitutional order and the guarantee of the peoples' freedom. Tendencies of the gradual restriction of the central power, decentralization of the powers (political, administrative and economical) and the expansion and the guarantees of capacities of self-government are observed.
3. Consecutive realization of the principle of the separation of powers, their practical balancing, and a sensible system of checks and balances become a common demand. The development of the representative democracy highlights the improvement of the public political structures and the protection of human political rights. The problem of the independence of the judiciary and the question of the guarantee of the strong system becomes a subject of special attention. Self-government acquires great importance.



4. The guarantees for strengthening the inner-constitutional stability and the constitutional guarantees of human rights are protected. Appreciation and rehabilitation of the legal system of violation of the constitutional balance between the constitutional guarantees of human rights and authorities take root. The constitutional order acquires a more viable "immune system". Among the numerous human rights, the right of the constitutional justice acquires a unique importance.
5. The solutions to the questions of the provision of "the immune satisfaction" of the public body are searched for in the constitutional field and, in its turn, any amendment in the national constitution receives great international significance.
6. The role and the place of international law become more and more important. The tendencies to identify the main constitutional concepts are noticeable. The principles and the norms of international law on the basis of common values, standards and positions play a more and more increasing role in the national legal systems. The character and functions of the state and law changes definitely. The internationalization of law is evitable. The basis of the unique European system of constitutionalism becomes stronger and the idea of a European constitution above the state becomes a reality. In the continental legal system the individual becomes the subject of international law and the international practice achieves great importance.

The above-mentioned summaries cannot completely cover the main tendencies of the constitutional developments in modern Europe, but present the main essence and logics of the events. At the same time they note that the supremacy of law is based on a high legal and constitutional culture. The legal globalization on the European level has created all nec-

essary prerogatives for the assertion that a new system of law - law of the civilized nations is formed.

The issues of the development of the institutions which carry out the functions of the branches of the authorities, the concretization of their functional role and the provision of all the necessary and sufficient powers are discussed.

Taking into consideration the role of stable power in transitional public systems, it is understood that the mentioned common tendencies are actual in the plan to form the conceptual approaches to the constitutional reforms in the transitional countries and to create the prerequisites of guaranteeing the supremacy of the constitution. These questions should be in harmony with the values system of the given society and be based on the necessary prerequisites become the fruits of the public consensus.

This problem can be solved positively only when the priorities of the development of the country and the system of values are solidified by the public's consensus; when the conceptual approaches for the provision of the development of the public life on the basis of real life are defined. This is especially necessary for the transitional social systems where the factors of vagueness and chaos reign.

The constitutional culture, both in the Armenian realty and in international practice, developed logically and, at the same time, had stable characteristics, i.e. social consensus and peace, limitation of power by the law, presence of laws which are "harmonious to the human nature and correspond to the wishes of our rational soul", and "unshakable fidelity" to them and the ability to restrict our lives with the help of "law and freedom". These values are brought to the path of progress and development. Lack of understanding, "contradiction", "immoral" behavior, "disagreement", "acceptance of the wish



of the carrier of power above the law", "confirmation of the irrational by negligence", "crack in the unity and mutual understanding" and many other manifestations of the evil lead to inevitable losses and regress. Unfortunately, our history has preserved many such pieces of evidence.

Constitutions are often written and changed in situations when society needs solutions to complicated and urgent problems. Such situations dictate a delicate and responsible approach to the main qualities of the constitutional culture. In cases when preference is given to the solution of the current questions and to the political agreements, it often creates risks for the stability and for the future of the constitutional order. The political events leave their mark on the acceptance of the contents and the forms of the manifestation of legal principles. Mainly, the choice of the form of government, the constitutional balance of the authorities, the practice of checks and balances, inner-constitutional guarantees for overcoming the conflicts in the legal sphere, the possibility of dynamic harmonization of the political and legal events, etc., are caused by political events. For the post communist countries, the situation was common when adopting the new constitutions were present both the left opposition longing for the revenge and the revolutionary liberalism. Their influence formed a definite environment of political agreement of the legal decisions. In nearly all these countries, the left opposition movement not only weakened, but also the liberal romanticism gave up its place to the moderate realism. The balance between the inner political influences was seriously damaged. The political-administrative influence of the acting authority gradually began to reign over the constitutional solutions and the new changes. It is dangerous, as the constitutional solutions are adapted to the solutions of the current political issues; thus they do not reflect the public's opinion.

The constitutional reforms must become the means of achieving public consensus and the means of overcoming political crisis, and not be the victim of “contradictions”. The outlooks on the experience of countries witness that the main characteristics of such crises are the loss of the trust of the nation towards the political, huge corruption (also political corruption), centralization of the political, administrative and economic forces, strengthening the corporative-clan government in the system of the state power, etc. Such negative directions destroy the guarantees of the continuity of the process of establishing the constitutional democracy, which is very dangerous for the transmitting countries.

The constitutional structure must have it logics, principles and limits. The main issue of the acceptance of the constitution and its amendments are the guarantees of the supremacy of law. In its turn, the availability of the precise constitutional guarantees of the provision of human rights and the fundamental freedoms of man are paramount in the criteria for appreciating the Constitution’s viability. This criterion is a starting point and a stable platform. Anything that is done for resolving political problems with the help of the constitutional changes, but does not originate from the principle of guaranteeing the supremacy of the law, cannot be constitutional and cannot contradict the values of the legal democracy. **One of the main principles of international law is that any constitutional change that weakens the defense of human rights or the guarantees of accomplishing these rights and freedoms is not permitted.**

The second issue of the constitutional change is guaranteeing the competent and productive work of the authorities. This is possible with the help of the successive realization of the principle of separation of powers, balance of their powers, and establishing a system of checks and balances. All the changes made in issues must answer the following question:



1. What kinds of changes happen in the functional plenary powers of the branches of the power, and how much can they violate the dynamic balance and harm the functional independence of the various branches of power?
2. How to guarantee system harmony in the **function-institution-authority** chain**?**
3. How well are the functional powers balanced with the anti-balanced powers?
4. How much are the restraining powers integrated and reliable given the new balance of functional and anti-balanced powers?

The third fundamental issue of constitutional reforms is guaranteeing broad public consensus on the constitutional solution. At the same time the constitutional gaps and discrepancies were decreased to a minimum, spotty situations were overcome, constitutional stability was enforced, the basic prerequisites that guarantee the supremacy of the Constitution were created and the constitutional democracy was established. The specialists often mention the main peculiarity of the American constitutionalism, which has a stable foundation and functional flexibility in accordance with the demands of the time. This is characteristic not only of the American constitutional practice, but is also considered the most important quality of the constitutional culture in international level. So the constitutional reforms must create such guarantees of constitutional stability **when the reliable and stable protection of the basic constitutional principles goes with the dynamic development of constitutionalism and the constitutional democracy, with consistent provisions for the supremacy of the Constitution.** These features are the main criteria of the modern constitutional culture and have basic significance for the legal state.

ՀԱՐՈՒԹՅՈՒՆՅԱՆ Գ. Գ.

## ՍԱՀՄԱՆԱԴՐԱԿԱՆ ՄՇԱԿՈՒՅԹ. ՊԱՏՄՈՒԹՅԱՆ ԴԱՍԵՐԸ ԵՎ ԺԱՄԱՆԱԿԻ ՄԱՐՏԱՀՐԱՎԵՐՆԵՐԸ

АРУТЮНЯН Г.Г.

## КОНСТИТУЦИОННАЯ КУЛЬТУРА: УРОКИ ИСТОРИИ И ВЫЗОВЫ ВРЕМЕНИ

Рассматриваются сущность и формы проявления понятия “конституционная культура”, представляется генезис формирования конституционной культуры в армянской исторической действительности, выявляются характерные особенности и основные признаки целостности проявления конституционной культуры в контексте современного развития европейского конституционализма.

HARUTYUNYAN G.G.

## CONSTITUTIONAL CULTURE: THE LESSONS OF THE HISTORY AND THE CHALLENGES OF THE TIME

The nature and forms of the notion “Constitutional Culture” are discussed, the genesis of the formation of constitutional culture in the Armenian historical reality is introduced, the features and main characteristics of the integrality of manifestation of constitutional culture are revealed in the context of modern development of the European constitutionalism.

Տեխ. խմբագիր՝
**Ա. Կարապետյան**
Անգլերեն ամփոփման թարգմանիչ՝
**Ն. Խաչիկյան**

«ՆԺԱՐ» հրատարակչություն Երեւան - 2005թ.
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