
The Vocabulary of Progress in Interwar International Law: An Intellectual Portrait of Stelios Seferiades

Thomas Skouteris*

Abstract

The intellectual portrait of Stelios Seferiades sketched out in this article performs a dual function. While paying tribute to the work of a neglected, but fascinating, scholar, it serves as a heuristic device which allows us to examine the ‘vocabulary of progress’ in international law – the discursive strategies used in legal argument to legitimize the transformation of the discipline. Crucial to the construction of such a vocabulary of progress in the international law writings of Seferiades is the opposition between the notions of absolutism and democracy. The article situates this opposition in the political milieu of the interwar period and the life trajectory of Seferiades. Ultimately, it points to the closely-knit relationship between ‘universalist’ vocabularies of progress, such as the opposition between absolutism and democracy, and the personal-ideological pursuits of public international lawyers.

1 Introduction

This essay sketches an intellectual portrait of Stelios Seferiades (1876–1951), a classic figure in European international law during the interwar period and, for many, the founder of the discipline of public international law in Greece.¹ This intellectual

* Lecturer, Faculty of Law, Leiden University, email: t.skouteris@law.leidenuniv.nl. The author wishes to express his gratitude to David Kennedy, Martti Koskenniemi, Spyros Marchetos, and Nikolas Tsaourias, for their precious comments on the first draft of this paper, and to Vangelis Herouveim for his invaluable help in obtaining original materials published in Greek. All translations from Greek to English are the author's.

¹ The work of Seferiades as a whole has received very little attention to date, with the exception of a post-humous collection of essays in his honour, containing only a brief introduction to his life and work. See S. Kalogeropoulos *et al.*, *Mélanges Séfériades* (1961) (2 Volumes, with essays in Greek, English and French) and, in particular, G. Tenekides, Στυλιανός Σεφεριάδης, 1873–1951 (Stylianos Seferiades, 1873–1951) (in Greek), at xv–xxiv. For a complete list of publications by Seferiades, see *ibid.*, at xxv–xxvi.

portrait, in addition to paying tribute to the work of a neglected, but fascinating, scholar, acts as a heuristic device which allows a close examination of the ‘vocabulary of progress’ of interwar international law: the discursive strategies used in legal argument to legitimize the transformation of the pre-war discipline of international law into the modern international law of the interwar period.

Underlying my interest in the work of Seferiades is therefore not a desire to identify errors or shortcomings in his scholarship. To be sure, that would be too simple a task, especially with the benefit of hindsight, and would result in an inquiry of limited analytical value. A certain amount of truth and falsity, realism and illusion, and so on, must be credited to any argument that seeks to explain why certain values or solutions are better than others. Most people would even agree that without some form of preference or bias, one would not be able to identify an issue or a situation, let alone pass judgment on it.

This paper pursues a different line of inquiry. It probes, instead, the ways in which Seferiades and his contemporaries argued their case for the renewal of international law. The term ‘vocabulary of progress’ is used here to refer to the discursive strategies with which arguments buttress their power over others and seek to distinguish themselves from their ideological opponents. In other words, this piece is not about truth or falsity in legal argument, but about the strategies that enable arguments to *appear* true, false, progressive, conservative, and so on. This line of inquiry leads one to pose a number of very different questions about the work of a scholar than the ‘what did he do wrong?’ type of investigation. Rather, it considers how Seferiades argued his case for the renewal of international law: Which ideals did he privilege in the process? Were other ideals denigrated? What was at stake in his plea for the transformation of the law? Who were his ideological opponents? What effects were produced? Who was the beneficiary of these effects? And so on.

Why should one be interested in the writings of a scholar in this manner? Although ‘progress’ is a convenient rubric to use in captioning one’s reformist agenda, it is clear that progress does not have a natural or obvious meaning out of context or, in any case, without reference to other terms that are equally equivocal. One person’s progress is another’s regression. To understand the meaning of progress in a particular debate, one would have to look not at the etymology of the term but rather at the historical and political discourse in which the term is employed. ‘Progress’ does not acquire concrete meaning without a background story, an explanation of how things were before and how they ought to become, and why. Progress, in that sense, is not an essence but a narrative. And this essay makes the narrative itself the target of its inquiry.

Why use the intellectual portrait of an interwar scholar from the periphery of Europe as the heuristic device for this essay? Not only because one may understand, in hindsight, Seferiades’ contribution as playing a catalytic role in the development of many international law doctrines and institutions that we consider important today. A much more symbolic function is envisaged for our scholar in this inquiry. The story of Seferiades appeals to contemporary consciousness as the story of an archetypal figure of our discipline, representing much of international law’s efforts to reinvent

itself. In a way, Seferiades 'did it all', and he 'did it well'. His legal and political credentials as a liberal internationalist would be considered impeccable even today. He advocated disarmament and the obligation to resolve international disputes peacefully; he argued the primacy of international law over national constitutions; he believed that democratic governance could lead to peace between nations; he fought for the right of individuals to stand before international tribunals; he sought to demystify the doctrine of state sovereignty; he promoted the notion of the nation as the basis for the formation of an international community; he subscribed to the sociological jurisprudence of the time; he believed in the importance of the role of public international lawyers in the reconstruction of the post-war international community. Certainly, one might disagree with some of his lateral views: whether, for instance, foreign nationals should be subjected to mixed (internationalized) tribunals given the alleged structural bias of domestic courts towards foreigners; or whether within a monist conception of law the national judge should nevertheless apply national law which has not been amended to comply with international obligations. Some of these choices might even be conceded to him for historical or other reasons. But few would disagree that Seferiades had his heart and his politics 'in the right place'.

Moreover, Seferiades published widely, and excellently, addressing issues of the highest political currency. His work is still cited today as a source of authority, and copies of his classic textbook² still figure prominently on the bookshelves of Greek international lawyers. The facts of his life leave us in no doubt that Seferiades engaged with international law with greater skill and devotion than might be expected of anyone. Although he shared the international law stage in Greece with another outstanding scholar, Nicolas Politis, who indeed merits separate attention, Seferiades became Professor of International Law at Athens University and created the first complete set of reference works in Greek, thus becoming a founding figure of the international law profession in that country.

Seferiades was not your proverbial ivory tower scholar either. He served the dual function of statesman and academic, rising to prominence in both realms. He was able to exercise considerable influence over institutional, political and scholarly developments at the national and international level, including negotiation of the text of the Treaty of Versailles and other instruments of extreme national importance for Greece. For a large part of his professional life he was a close associate and advisor of Eleftherios Venizelos, the legendary Prime Minister who dominated Greek politics between 1910 and 1936. He publicly aligned himself with the liberal movement and became a staunch supporter of political reform in Greece, advocating constitutionalism, democratization and the codification of fundamental rights and liberties. He advised the Greek Government in times of monumental importance for the future of the nation. A curriculum vitae for Seferiades would include functions such as Professor,

² S. Seferiades, *Μαθήματα Διεθνούς Δημόσιου Δικαίου* (Courses on International Public Law) (in Greek), 2 Volumes; vol. 1, *Το εν Ειρήνη Διεθνές Δημόσιον Δίκαιον* (International Public Law of Peace) (1920); vol. 2, *Διεθνείς Διαφοραί και Συγκρούσεις* (International Disputes and Conflicts) (1928–1929) [hereinafter *Courses on International Public Law*].

Dean of the Faculty of Law and Rector of the University of Athens, delegate at the Paris Peace Conference, Judge *ad hoc* of the Permanent Court of International Justice, member of the *Institut de Droit International*, three times lecturer at the Hague Academy of International Law, member of the Greek *Conseil d'Etat*, legal advisor to the ministry of Foreign Affairs, among others. In addition, Seferiades wrote fine poetry, translated many works from Ancient to Modern Greek, and was the father of one of the most important poets of his generation, Giorgos Seferis (Seferiades), a jurist and diplomat himself, and recipient of the Nobel Prize for literature in 1965.³ All in all, an exemplary international lawyer, liberal intellectual, and more.

Against this background, and perhaps not surprisingly, the story of Seferiades appeals to that same contemporary consciousness as the story of a tragic figure of the discipline. Seferiades did not see his lifework come to fruition. His dream of lasting peace in the context of the League of Nations was shattered by the traumatic developments of the 1930s. On the home front, the 1936 dictatorship put an abrupt end to the vision of a democratically governed Greece and signalled the marginalization (and even persecution) of many liberal intellectuals. At the dusk of his career, Seferiades found himself unable to comprehend the reasons for the failures of the liberal reform projects of the interwar period. In one of his last publications, he pleaded for the 'moral armament' of the new generation as the last resort against what seemed to be the inevitable outcome of the boiling European front.⁴ His last essay on international law was published in 1939, submitted for publication before the outbreak of the War.⁵ World War II signalled the end of his academic writings and his complete withdrawal from professional life. During his last 12 years (he passed away in 1951), he was largely occupied with his literary interests, withdrawn to his Paris apartment.

Did the interwar internationalist project 'fail'? If so, why? The explanation to be found in the writings of Stelios Seferiades appears to be quite an intuitive one to contemporary ears: liberal reform in international law, the story goes, failed because of the resistance of 'absolutism' as a system of domestic governance and as an approach to international politics as well. As Seferiades writes in one of his texts:

public law, domestic or international, and total absolutism are mutually exclusive concepts, concepts that cannot temporarily co-exist.⁶

The view that international law is incompatible with autocratic ideologies of different sorts (absolutist, totalitarian, Nazi, fascist, communist, dictatorial, fundamentalist, and so on) has survived 20th-century mainstream international law writing and

³ As a consequence, the student of Seferiades can benefit from a number of biographies of Giorgos Seferis, where a useful amount of information can be collected about his father. Among those biographies, those that stand out are R. Beaton, *Γιώργος Σεφέρης – Περιμένοντας τον Άγγελο* (George Seferis – Waiting for an Angel. A Biography, Greek translation) (2004); I. Tsatsou, *Ο Αδελφός μου Γιώργος Σεφέρης* (My Brother Giorgos Seferis) (in Greek) (1974).

⁴ S. Seferiades, *Ο Ηθικός Οπλισμός* (Moral Armament) (in Greek) (1935) [hereinafter *Moral Armament*].

⁵ S. Seferiades, *Eine Rundfrage der Friedenswarte über das Problem der Konsultation, Die Friedens-Warte* (1939), at 35–40.

⁶ S. Seferiades, *Το Μέλλον του Διεθνούς Δημοσίου Δικαίου* (The Future of International Public Law) (in Greek) (1919) [hereinafter *The Future of International Public Law*].

resurfaces each time international lawyers debate how to deal with situations like Yugoslavia, Afghanistan, Iraq, terrorism, failed states, humanitarian intervention, and so on.⁷ For Seferiades and his contemporaries, progressive efforts to reform international law were prevented from attaining their full potential because of the existence of an ‘absolutist’ approach to politics that resisted – and often waylaid – progress in international law and institutions.

This article assesses the role of the notion of absolutism in the legal argument of Stelios Seferiades. The objective is not to draw parallels with contemporary discussions about democracy and its Others. Instead, this paper aims to help us understand the structure of the ‘vocabularies’ of progress and regression in international law and points to the role of liberal intellectuals from the periphery of international law in the construction of such vocabularies. To this end, Section 2 introduces the international law writing of Seferiades and outlines the basic argumentative strategies that comprise his ‘vocabulary of progress’ and, more specifically, delineates the role of absolutism and democracy in this context. Section 3 digresses to interwar Greece to situate Seferiades and his scholarship in the political landscape of the time and, in particular, the political movement of ‘bourgeois modernization’. It rereads his ideas about the basis of obligation in international law as an example of how his ‘vocabulary of progress’ is reflected in his doctrinal prescriptions for the reform of international law. Finally, Section 4 suggests some directions for a critical reassessment of the work of Seferiades and the concept of progress in international legal argument.

2 The Absolutism v. Democracy Vocabulary

Let us then begin at the beginning. What is the reform project that Seferiades seeks to bring about in public international law? In November 1919, with the echo of the Paris Peace Conference in his ears, Seferiades delivered his – long overdue – inaugural speech as Professor of Public International Law at the University of Athens, on the topic of ‘The Future of International Public Law’.⁸ This speech should have been delivered four years earlier, when he was first elected Professor. However, the

⁷ Debates about the compatibility of international law with non-democratic systems of governance have been popular in international law writing since the interwar and post war periods: see, e.g., S. E. Edmunds, *The Lawless Law of Nations: An Exposition of the Prevailing Arbitrary International Legal System in Relation to its Influence upon Civil Liberty, Disclosing it as the Last Bulwark of Absolutism Against the Political Emancipation of Man* (1925); G. Schwarzenberger, *International Law and Totalitarian Lawlessness* (1943). These debates have become reinvigorated since the end of the Cold War. See, e.g., Reisman, ‘Islamic Fundamentalism and Its Impact on International Law and Politics’, in M. W. Janis and C. Evans (eds), *Religion in International Law* (2004) 357; Slaughter, ‘International Law in a World of Liberal States’, 3 *EJIL* (1995) 503; Tesón, ‘The Kantian Theory of International Law’, 92 *Columbia Law Review* (1992) 53; G. H. Fox and B. R. Roth (eds), *Democratic Governance and International Law* (2000). For a critical review of such debates see S. Marks, *The Riddle of All Constitutions: International Law, Democracy and the Critique of Ideology* (2000); and G. Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (2004).

⁸ *The Future of International Public Law*, *supra* note 6.

dissolution of the liberal government of Venizelos by King Constantine in 1915 prevented his appointment, due to Seferiades' connection with the politics of the Liberal Party (Κόμμα Φιλελευθέρων). Seferiades had to wait until the next liberal government in order to assume his duties. In 1919, standing before the friendly audience of his students, he read an evocative speech about the professional responsibility of the jurist in the reconstruction of the international community in the wake the Great War.

The *Future of International Public Law* constitutes Seferiades' first attempt to engage international law at such a level of abstraction and is his first international law publication in Greek. The language is direct and emotional, the tone intense, exuding a feeling of urgency and responsibility of a man standing before a crucial historical moment, when things may be made or broken. Seferiades opens his speech in great style by predicting that the future of international law would be similar to that of Ancient Greek art in the aftermath of the wars of the 5th and 4th centuries BC: although the wars almost decimated the monuments of all that had been achieved, those monuments somehow became the 'life-giving beginning' for the production of the finest masterpieces of all times in the years following the wars.⁹ So too with international law after the Great War:

Thus embarking on our current inquiry, we believe that it is possible to assert that the elements of international law which have existed until our day, and which were nearly extirpated by the recently terminated cataclysm, when rejuvenated and reshaped by the influence of a wider perception and new ideas, will create an international law superbly corresponding to the meaning and purposes of our discipline.¹⁰

His project, in other words, is the reconstruction of international law. The idea of 'reconstructing' international law was a common trope in interwar liberal scholarship on both sides of the Atlantic, and Seferiades felt at home in this approach. With Le Fur, Brierly, Scelle, Lapradelle as his oft-cited authorities (and in some cases as his personal friends), Seferiades had no trouble agreeing with Alejandro Alvarez that 'the task that is now necessary is the reconstruction of this law'.¹¹ Brierly spoke of a 'need of rehabilitation';¹² Politis desired '*la reconstruction du droit international sur de nouvelles bases*',¹³ as did Nippold and a long list of others.¹⁴ These writers presented reconstruction as a major, all-encompassing project of reconceiving international law in its totality, from its theoretical foundations to institution-building, the codification of

⁹ *Ibid.*, at 5.

¹⁰ *Ibid.*

¹¹ See Alvarez, 'The New International Law', 15 *Grotius Society Transactions* (1930) 35, at 38.

¹² Brierly, 'The Shortcomings of International Law', in Sir H. Lauterpacht (ed.), *The Basis of Obligation in International Law and Other Papers by the Late J. L. Brierly* (1958) 68. For Brierly's ideas on the matter, see the excellent intellectual portrait of the scholar by Landauer, 'J. L. Brierly and the Modernization of International Law', 25 *Vanderbilt Journal of Transnational Law* (1993) 881.

¹³ N. Politis, 'Le Problème des Limitations de la Souveraineté et de la Théorie de l'Abus des Droits dans les Rapports Internationaux', 6 *RdC* (1925) 1, at 5.

¹⁴ O. Nippold, *The Development of International Law After the World War* 4, (1923), at 25, who sought future 'reconstruction' of international law.

new law, and the creation of new doctrines. Alvarez went so far as to discern a fully-fledged professional ‘movement’ of reconstruction.¹⁵ In a symbolic way, the critical event enabling the transition from the ‘old’ to the ‘new’ for these scholars was the Great War itself.¹⁶ The atrocities experienced offered the surface against which the new internationalist movement could be projected and they catalyzed the creation of a new internationalist sensibility: a ‘wider’, open-minded conception upon which the new international law would be founded.¹⁷

The *Future of International Law* is an important essay not only because of its sensibility and timing, but also because it introduces the nuts-and-bolts of Seferiades’ reconstruction project. First, and very importantly, Seferiades fervently argues the existence of a fundamental incompatibility between absolutist political ideology and the very existence of international law. International law, he pronounces in the speech, will never exist as long as states continue to suppress democratic development, either on the national or the international level.¹⁸ Secondly, he stresses the need for the definition of a progressive agenda for reconstruction based on ideas of liberal democracy. The key to progress is the consolidation of an international community of democratic states.¹⁹ Finally, Seferiades nominates public international lawyers as crucial agents for this change, both nationally and internationally.²⁰

Let us take a closer look at this three-fold argument (critique of absolutism; international community of democratic states; the international lawyer as agent of change) and how, in particular, the three components are made to fit together into one coherent syllogism about renewal in public international law. To do so we will perform a parallel reading of three crucial texts by Seferiades, all of which squarely address the question of the foundation and nature of public international law and the role of absolutism and democratic governance in this context. Aside from the *Future of International Public Law*, the same argument is also elaborated in his other two major generalist texts, his textbook in Greek titled *Μαθήματα Διεθνούς Δημοσίου Δικαίου*

¹⁵ Alvarez writes: ‘[W]e may conclude that there exists a movement for the reconstruction of International Law. And in view of the crisis through which International Law is now passing, it is the duty of all international associations to study this great problem of the reconstruction of the law of nations and to agree as to the best method of realizing it’; See Alvarez, *supra* note 11, at 40.

¹⁶ See, e.g., B. Schmitt and H. Vedeler, *The World in the Crucible 1914–1919* (1984), at 455; Nippold, *supra* note 14, at 25; See generally, also H. Barnes, *World Politics in Modern Civilization* (1930); and W. Langsam, *The World Since 1914* (1940). For a fascinating treatment of international law’s approach to the war and the birth of interwar institutions, see Kennedy, ‘The Move to Institutions’, 8 *Cardozo Law Review* (1987) 841. See also the excellent account of the birth of ‘modern’ international law in Berman, ‘“But the Alternative is Despair”: Nationalism and the Modernist Renewal of International Law’, 106 *Harvard Law Review* (1993) 1793.

¹⁷ Alejandro Alvarez wrote that with the end of the war: ‘Almost overnight there came into being a new psychology, a new mentality, a new ideology, the fruit of new circumstances and environment, as well as of new political, philosophic and social concepts; they repudiate many ideas and doctrines which were until then accepted without question’; see Alvarez, *supra* note 11, at 37. See also F. P. Walters, *A History of the League of Nations* (Vol. I) (1954) 16.

¹⁸ *The Future of International Public Law*, *supra* note 6, at 5–12.

¹⁹ *Ibid.*, at 13–17.

²⁰ *Ibid.*, at 26.

(*Courses on International Public Law*)²¹ and his 1930 Hague Academy Courses on *Principes généraux du droit international de la paix*.²² Mindful of their different audiences and contexts, the three texts adopt different tones and styles. The texts in Greek are engaged and polemical, taking sides not only in the international scholarly debate about international law but also in the Greek political scene of the time. The Hague Academy Course, in contrast, is more descriptive, avoiding unnecessary political puns in favour of a more poised, scholarly tone. All three texts, however, share a common narrative device: a historical account of the evolution of human society, which enables the author to draw conclusions about the nature of international relations at large, and subsequently translate this knowledge into guidelines about the reconstruction of public international law.

All three texts reiterate one of the grand narratives of modernity: the nature of man.²³ In a burst of ontological statements and style worthy of a 19th-century treatise on socio-economic theory, Seferiades presents his account of human nature. Man is a social being.²⁴ He joins his fellow men in forming communities, as a result of the realization that life within a community yields benefits to all. With Kant and Rousseau as his regular authorities, Seferiades assures the reader that each individual is endowed with special characteristics and comparative advantages that are indispensable for the well-being of society at large. Society, however, vests all men with equal rights, the exercise of which often results in conflicts with the rights of fellow men. There are two ways of resolving such conflicts, he argues. First, the solution frequently encountered in the primitive stages of human development: the forcible enforcement of rights, or ‘the law of force’, as he calls it.²⁵ Human nature, however, could never satisfy itself with such a violent state of being! It thus soon devised a second way: the concept of law, a set of rules based not on brutality but devised for the purpose of regulating the rights and obligations of the members of a community.²⁶ With the passage of time, individuals formed families, communities, tribes, nations, polities, in order to better protect themselves and their common interests. The writings of Adam Smith, Ricardo and Mill are the unmentioned but obvious sources of his understanding of the workings of comparative advantage on a global scale and of the contribution of international trade in increasing the wealth of nations. For, due to environmental, geographic, cultural and other reasons, Seferiades contends that these social formations developed their own characteristics that could be helpful to the well-being of humankind as a whole. In a similar way to the laboratory example of a local community, states participating in the international community are

²¹ *Courses on International Public Law* (vol. I), *supra* note 2.

²² S. Seferiades, ‘Principes généraux du droit international de la paix’, 34 *RdC* (1930-IV) 177, at 181–487 [hereinafter ‘Principes généraux’].

²³ *The Future of International Public Law*, *supra* note 6, at 5 *et seq*; *Courses on International Public Law* (vol. 1), *supra* note 2, at 7–15 and 47–107; ‘Principes généraux’, *supra* note 22, at 182–204 and 216–291.

²⁴ *Courses on International Public Law* (vol. 1), *supra* note 2, at 7–8; *The Future of International Public Law*, *supra* note 6, at 5–6; ‘Principes généraux’, *supra* note 22, at 182–184.

²⁵ *Courses on International Public Law* (vol. 1), *supra* note 2, at 7–8.

²⁶ *Ibid.*, at 8; ‘Principes généraux’, *supra* note 22, at 182–184.

endowed with equal rights and obligations.²⁷ The rules stipulating the extent of the rights and obligations of states comprise the object of study of the science of international law.²⁸ The contemporary lawyer can verify these rules in the workings of society through scientific observation, with the use of other social sciences that systematically study human behaviour, such as history, political science, sociology, economics and geography.²⁹

Rules defining rights and obligations for citizens in their relations with each other appear immediately after the emergence of such relations. But these rules are not always rules of law. For a rule of law to exist, there needs to be a society of natural or moral persons, feeling the need not to fight each other but for some sort of peaceful co-existence. Such meaning has to be attributed to the saying of *ubi societas ubi jus*. Wherever we find a society, we also find law. And in order to be able to find International Public Law, we need to find ourselves before a society of nations, that is to say, before polities recognizing mutual rights, and most importantly, mutual obligations.³⁰

Thus, Seferiades explains to us that the formation of an international community is not an easy matter. For it to exist, certain conditions need to be present. States must be prepared to realize the advantages of co-existence and, as a consequence, make concessions and undertake common responsibilities.³¹ This presupposes a certain coincidence of views, values and principles among the different states participating in the international community.

*C'est qu'en vérité, l'existence et par suite l'application, des règles du droit international présuppose une certaine similitude de mœurs et des conceptions juridiques entre les peuples dont ce droit est appelé à régir les rapports.*³²

The history of mankind teaches us, he suggests, that institutions similar to contemporary international law have come into existence only when such a common conception of morality and a similarity of social institutions existed, such as in Ancient Greece or in Ancient China.³³ The times of the Roman Empire or the Middle Ages, on the contrary, were periods of regression ('un formidable renversement'³⁴) because of the absence of such a shared conception.

The spirit of international law assumes an internationalist sensibility, that is to say a modesty of desire, voluntary limitation of ambition, favouring justice over interest. Most importantly, it must be guided by the fair and clear vision of the common interest of states. Without such a spirit there can be no perception of international law.³⁵

²⁷ 'Principes généraux', *supra* note 22, at 182–184.

²⁸ *Courses on International Public Law* (vol. 1), *supra* note 2, at 9; 'Principes généraux', *supra* note 22, at 183.

²⁹ *Courses on International Public Law* (vol. 1), *supra* note 2, at 30–33.

³⁰ *The Future of International Public Law*, *supra* note 6, at 5–66.

³¹ *Courses on International Public Law* (vol. 1), *supra* note 2, at 8, 47 & 99.

³² 'Principes généraux', *supra* note 22, at 211. 'The existence and then the application of rules of international law actually presuppose a certain similarity of morals and of legal conceptions between the peoples whose relations the law is called upon to govern.'

³³ *The Future of International Public Law*, *supra* note 6, at 6.

³⁴ 'Principes généraux', *supra* note 22, at 234.

³⁵ *Courses on International Public Law* (vol. 1), *supra* note 2, at 15.

So, this is why international law took so many centuries to develop, he observes. International law ‘presupposes a superior civilization’.³⁶ Until the beginning of the 20th century, practical reasons, such as the lack of technological advances in communication, prevented the development of this sensibility.³⁷ There was, however, a different, ‘psychological’, reason as well. Until recently, there was no common feeling of equality between states nor, most crucially, the ‘maturity’ to realize the need to foster such equality. With the exception of the enunciation of these principles in the French revolution and small brave steps taken here and there, international politics were governed by a Hobbesian perception of the world, where power and self-interest reigned paramount. In direct analogy to human societies, the closer the ties connecting two or more groups or individuals, the more similar were conceptions of ethics and social structures they would need in order that their bonds lasted.³⁸ Not any kind of common political institutions or morality fosters the creation of community and rules of law.³⁹ Here Seferiades shakes hands with many of his contemporaries in postulating the ideal of an international community based on a euro-centric idea of civilization.⁴⁰ He explains that for an international community to exist, it logically flows that nations need to share basically three elements: analogous moral principles, analogous political institutions, and a shared internationalist spirit. Without these three elements, disagreements between states would be of such a nature that the system would break down.⁴¹

Between 1648 and the end of the 19th century, the blood-stained armies of Europe and their diplomatic contests only sought to secure crowns and thrones. To be sure, the contests of that time for political equilibrium in Europe had nothing to do with *the open-minded and splendid conception of the public international law of morality which we espouse this very day*.⁴²

With the passage of time, and culminating with The Hague Peace Conferences and the Treaty of Versailles, man managed to develop the ‘splendid and open-minded conception’ needed for the reconstruction of international law. Oscillating between descriptive and prescriptive language in the text, Seferiades suggests that this conception consists of three tenets/conditions, ‘not different from those any human society relies upon’.⁴³ First, there is the principle of inter-dependence. Bonds of interdependence, without which the existence of an international community is impossible, connect

³⁶ *Ibid.*, at 10.

³⁷ *Ibid.*, at 10.

³⁸ *The Future of International Public Law*, *supra* note 6, at 14.

³⁹ *Ibid.*, at 6–12.

⁴⁰ See, e.g., H. Wheaton, *Elements of International Law*, Edited by J. Brown Scott (1936), at 15–16, para. 1; L. Oppenheim, *International Law: A Treatise*, vol. I, (3rd edn edited by R. F. Roxburgh, 1920), at 8–10, para. 7. See, generally, Tsagourias, ‘The Will of the International Community as a Normative Source of International Law’, in I. F. Dekker and W. G. Werner (eds), *Governance and International Legal Theory* (2004) 97; Abi-Saab, ‘La “communauté internationale” saisie par le droit. Essai de radioscopie juridique’, in Boutros Boutros-Ghali *Amicorum Discipulorumque Liber* (1998) 81.

⁴¹ *The Future of International Public Law*, *supra* note 6, at 7; *Courses on International Public Law* (vol. 1), *supra* note 2, at 33.

⁴² *The Future of International Public Law*, *supra* note 6, at 7 (emphasis added).

⁴³ *Ibid.*, at 9.

polities around the world. Interdependence has to be realized and sustained through the development of legal principles and doctrines. Then there is the principle of compulsory settlement of international disputes on the basis of justice, which is a natural corollary of the principle of interdependence.⁴⁴ And finally, the principle of 'homogeneous domestic structure', without which it will be impossible for nations to comprehend the possibility of interdependence.

Especially in recent times, all those who have studied seriously the means by which an international community governed by rules of law would be possible, teach without reservation that a viable establishment of such a community will not be possible unless it comprises *democratic* states ... , regardless of whether they are presided over by Kings or ordinary citizens. Because indeed public law, domestic or international, and *total absolutism* are mutually exclusive concepts, concepts with impossible temporal co-existence.⁴⁵

Seferiades avoids too frequent a use of the terms 'democracy' or 'democratic'. The terms are used in various passages as adjectives alluding rather abstractly to a representational system of governance inspired by Enlightenment ideas and in opposition to absolutism, but not to a clearly defined model of democratic polity.⁴⁶ This is hardly surprising: Seferiades, as with his audience, is a jurist in the interwar period and not a contemporary political philosopher. International law writing traditionally avoided frequent use of the term democracy, a situation which has been reversed only recently.⁴⁷ In addition, and as Section 3 of this article demonstrates,⁴⁸ the fluid political scene in Greece at the time did not permit public commitments to a strictly defined system of governance, especially with regard to the sensitive matter of the future role of the Palace.⁴⁹ Seferiades, however, does sketch with a broad brush a system of governance, which he openly calls 'democratic', and without which internationalism and international law appears to be impossible. With Rousseau and Kant as his authorities,⁵⁰ his system possesses many of the classical characteristics of liberal democracy: division of powers, rule of law, legislature elected by the people, representative government, a compulsory system of adjudication, equality – but also the realization that individuals must accept rights and obligations common to all.

The more common the characteristics of domestic law that connect two peoples, the more lasting their international law bonds will be, based as they are on a firmer ground. States governed by absolutist rules of domestic public law find it difficult to accept being subjected to international rules, the same rules that would be accepted by polities governed constitutionally. History in its entirety teaches us the correctness of this perception.⁵¹

⁴⁴ *Ibid.*, at 11 *et seq.*

⁴⁵ *Ibid.*, at 15 (emphasis added).

⁴⁶ See, e.g., *ibid.*, at 8, 14–15.

⁴⁷ On this point see Marks, 'International Law, Democracy, and the End of History', in Fox and Roth, *supra* note 7, 532.

⁴⁸ See Section 3, *infra*, at 19 *et seq.*

⁴⁹ See *Ibid.*, for a discussion on this point.

⁵⁰ *The Future of International Public Law*, *supra* note 6, at 14–15.

⁵¹ *Courses on International Public Law* (vol. 1), *supra* note 2, at 33.

Seferiades remarks that in order to be governed by truly representative institutions, states need to have ‘settled’ pending self-determination questions on their territory, so that the governments of these states truly represent their populations: in all cases where international associations have been successful, Seferiades asserts, people ‘of the same race’ have populated states.⁵² One can read here the echo of his concern about the Greek populations of Turkey. But his examples in the text are Alsace and Lorraine. It would not be possible for any association of human beings to be successful, he claims, if important matters remain pending and if the existence of good faith between them is questioned.⁵³ Finally, states must accept the principle of compulsory resolution of international disputes on the basis of rules of law.⁵⁴

In the antipodes of this ‘open minded and splendid conception’ of international law, Seferiades postulates an opposite sensibility, which could be historically traced to the Middle Ages and the early origins of international law. The Treaties of Westphalia and Utrecht, he claims, were not treaties concerned with the interests of nations, but rather deals securing the interests of emperors and kings. They were ‘*des règlements interroyaux*’, as he calls them, using a French neologism in the Greek text:

The Treaties of Westphalia and Utrecht, which brought together the representatives of the powerful polities of Europe for a peaceful negotiation after long-lasting wars, are considered by public law jurists as the landmarks that laid progressively the foundations of later public international law. Unfortunately these foundations, at least for the most part, have nothing to do with law. They are not arrangements dealing with the interests of nations but arrangements between emperors and kings. They are, if you would permit me to create a new expression, inter-royal arrangements (*des règlements interroyaux*).⁵⁵

Similarly to the use of term ‘democracy’, Seferiades does not make frequent use of the term ‘absolutism’. Again, one could assume many historical reasons for this choice, some related to the Greek political situation of the time. Recent appraisals in political theory deny the term ‘absolutism’ any determinacy or even any historical accuracy.⁵⁶ Misleadingly or not, in mainstream political theory, absolutism is ‘normally’ associated with the type of government of *Ancien Régime* states (especially France, Russia, Spain, and Prussia) and connotes, in its more colloquial sense, a despotic, dynastic form of governance which encroaches on subjects’ rights and privileges.⁵⁷ Absolutism is autocratic. It connotes a system in which the only legitimate source of power is the monarch or agencies dependent solely on the crown, and where consultation is shunned in favour of a centralized decision-making process, eschewing any vestiges of a representative form of government. Seferiades appears to

⁵² *The Future of International Public Law*, *supra* note 6, at 14 & 16–17.

⁵³ *Ibid.*, at 14.

⁵⁴ *Ibid.*, at 9 & 23.

⁵⁵ *Ibid.*, at 6.

⁵⁶ See, e.g., N. Henshall, *The Myth of Absolutism: Change and Continuity in Early Modern European Monarchy* (1992), at 1–6 and 199–214. Henshall argues that standard descriptions of absolutism are misleading due to a very myopic understanding of the role of consultation and delegation of powers in their system of governance and the nature of their economic policies and objectives.

⁵⁷ See, e.g., M. Beloff, *The Age of Absolutism* (1954), esp. at 11–27.

be using the term abstractly, in this general meaning of non-democratic, autocratic governance, both nationally and internationally: on the one hand, the idea of the absolute power of the state in international law (e.g. unlimited exercise of sovereignty, self-limitation, etc.); on the other, absolutism as a political concept of non-representative domestic governance. It is hard to tell whether Seferiades was aware of the historical reappraisals of absolutism that entered the debate of political theory in his time. It is clear, however, that the image of a coherent philosophy of autocratic governance with roots in the monarchic past of Europe was perfectly suited to his argument and was very well in line with mainstream accounts of history of the time.⁵⁸ In his international law writings Seferiades carefully sketches out a political sensibility constant in European history since the Middle Ages, privileging the interests of the monarch or hegemon over those of the people; and those of the sovereign state over the international community of states. The Hague Peace Conferences of 1899 and 1907, for example, crucial as they were for the consolidation of basic principles of law and the concept of the international community, would have been so much more successful, he claims, had it not been for the resistance of regimes such as that of Germany, refusing to accept the principles of disarmament and compulsory arbitration of disputes.⁵⁹ International law was confronted with this sensibility not only in 1648, but throughout its history, from the ancient times until the present, and he mentions many examples. The 1814 Congress of Vienna, for example, when the plenipotentiaries of the great powers decided to divide the continent 'purely in order to ensure the balance of power', rather than the prevalence of the rules of justice. The outcome of the Congress of Vienna 'had nothing to do with the interests of nations: dynastic interests governed the division of lands'.⁶⁰ The establishment of the *Sainte Alliance* in Paris one year later had the same objectives: the creation of an alliance of hegemonic rulers for the sole purpose of suppressing any popular revolutionary movement capable of challenging the decisions of the Congress of Vienna.⁶¹ The long historical narrative that follows includes numerous events recounted in the same light, from the Greek revolution in 1821 to the Greek-Turkish war of 1897.⁶²

What comes out of these Congresses is not a community but rather an association of Great Powers, or rather of their hegemons, aiming at the limitation of any democratic activity, without which the existence of an international community, and of public international law, is impossible.⁶³

⁵⁸ Whatever it meant to be a liberal or even a republican in modern Europe, it meant repudiating the age-old belief that monarchy is the best form of government. This often necessitated the rewriting of history, with the accusation of 'absolutism' associated with practices of European monarchy. For an excellent collection of essays on this topic, see M. van Gelderen and Q. Skinner (eds), *Republicanism: A Shared European Heritage* (2002), esp. vol. 1, part I, at 1 and 9–84.

⁵⁹ *Courses on International Public Law* (vol. 1), *supra* note 2, at 88 *et seq*; *The Future of International Public Law*, *supra* note 6, at 10.

⁶⁰ *Courses on International Public Law* (vol. 1), *supra* note 2, at 63.

⁶¹ *Ibid.*, at 65.

⁶² *Ibid.*, at 55–102.

⁶³ *The Future of International Public Law*, *supra* note 6, at 8.

The treaty of Versailles is the first true example of the new conception, which manages to reverse the tides of resistance to internationalism.

*Par ailleurs, l'idée que la société interétatique, pour pouvoir être régie par des règles de droit communes, doit être composée d'Etats ayant de mœurs politiques analogue et une conception similaire de la morale, se rencontre plus accentuée encore dans les textes adoptés par la commission française qui, le 8 juin 1918, présenta les principes sur lesquels pourrait être constituée la Société des Nations. D'après ces principes, en effet, dans le sein de la Société des Nations à établir, ne devaient pouvoir être admises que 'les Nations constituées en Etats et pourvues d'institutions représentatives'.*⁶⁴

So, what is the future of international law against this legacy of absolutism? And how will his vision of a liberal international law be attained? The Treaty of Versailles and the establishment of the League are, for Seferiades, the 'centuries awaited cornerstone of the future progress of international law'.⁶⁵ He is quick to caution his readers not to expect too much for now: they should not imagine that the 1919 Paris Conference may be able to instantly overpower the pre-existing regime.⁶⁶ For the future of international law to be peaceful, hard work and substantial reform is needed. In the closing section of the *Future of International Public Law*, Seferiades answers the question of what kind of outlook exists for the discipline by pointing to his audience.⁶⁷ It is ultimately the duty of public international lawyers to educate the general public, especially the youth, and to do everything within their means to disseminate the new internationalist spirit that endorses the idea of a community of democratic states.

On the doctrinal level, he sees a number of principles, already articulated in the Covenant of the League of Nations that require further elaboration and development:⁶⁸ the principle of compulsory adjudication of international disputes before international arbitral or judicial institutions; the 'forcible imposition of the principles of law' through a system of collective forcible action against outlaw states; the abolition of what he describes as the 'immoral' principle of neutrality; finally, albeit less importantly, the careful codification of new doctrines and principles of public international law. The creation of professional associations, such as the American Society of International Law and the *Institut de Droit International*, Seferiades, argues, is crucial for the purpose.⁶⁹ The future of international public law, he emotionally pronounces at the end of his lecture, ultimately depends on the extent to which an internationalist spirit will be disseminated and accepted widely, by society and political institutions alike. It is especially up to the youth, students of international law and others, to

⁶⁴ 'Principes généraux', *supra* note 22, at 222–223. 'Besides, the idea that for an interstate society to be governed by common rules of law it has to be composed of States having analogous political morals and a similar conception of the moral, exists in a more accentuated manner in texts adopted by the French commission which presented the principles on which the League of Nations could be established. Following those principles, indeed, the only nations to be admitted to the League of Nations under establishment shall be the "Nations constituted as States and provided with representative institutions".'

⁶⁵ *The Future of International Public Law*, *supra* note 6, at 18.

⁶⁶ *Ibid.*, at 19.

⁶⁷ *Ibid.*, at 22 *et seq.*

⁶⁸ *Ibid.*, at 22–23.

⁶⁹ *Ibid.*, at 26.

protect the rights and obligations of their country not on the basis of 'empty phrases' but on the basis of international law.⁷⁰

This otherwise inconspicuous historical account in the argument of Seferiades about the nature of man and the contest between absolutism and democracy performs an extremely crucial ideological function. The world begins in a primitive state of being, where life was nasty, brutish and short. Guided by the spirit of Enlightenment thought, slow and arduous progress has yielded the advances of civilization. International law, and especially the post-1919 'new' international law, is the crown jewel of this advancement. In engaging history and the grand narrative of the Enlightenment in such a manner, Seferiades situates international law at the apex of the long process of maturity of human perception of society. In a strange way, however, such lessons from history do precisely the opposite to what they claim: they *de-historicize* his account of the nature of international law, which is made to appear natural, universal and unequivocal. In this self-referential way, the account of the nature of international law *becomes* the nature of international law. Seferiades assumes that which requires demonstration and presents history in terms of a stark opposition between absolutism versus democracy, in which polar opposites appear as the only options. The result is an argumentative vicious circle. This process, as Terry Eagleton has described it, 'involves a specific ideology creating as tight a fit as possible between itself and social reality, thereby closing the gap into which the leverage of the critique could be inserted'.⁷¹ Social reality is redefined by the ideology to become co-extensive with itself, in a way that occludes the truth that the ideology in fact generated the reality. Along these lines, Seferiades' historical account performs a number of important functions in his international law argument.

First, the concepts of democracy and absolutism are 'naturalized'.⁷² Instead of being described as historically and culturally specific ideological projects, they are de-historicized and de-politicized: they appear as forces of nature which somehow simply exist, as traits of human nature, like the propensities to drink, to eat, to maximize our individual interest, and so on. Scholars of ideology critique have identified this discursive strategy as naturalization, 'whereby existing social arrangements come to seem as obvious and self-evident, as if they were natural phenomena belonging to a world "out there"'.⁷³ Along with other grand narratives of the Enlightenment about the eternal struggles between passion and reason, evil and good, now we have a new one – absolutism and democracy. Along with the naturalization of these concepts as formal categories, on a more concrete level comes the naturalization of their content and meaning. If the concepts are no longer trenches of ideological contestation but

⁷⁰ *Ibid.*, at 27.

⁷¹ T. Eagleton, *Ideology – An Introduction* (1991), at 58.

⁷² The terms 'naturalization' and 'dissimulation' used in the next few paragraphs are borrowed and adapted from the partly overlapping discussions of 'ideological modes and strategies' that can be found in Eagleton, *supra* note 71; Marks, *supra* note 7, at 18–25; J. B. Thomson, *Ideology and Modern Culture: Critical Social Theory in the Era of Mass Communications* (1990); and Žižek, 'Introduction: The Spectre of Ideology', in S. Žižek (ed.), *Mapping Ideology* 1 (1994).

⁷³ Marks, *supra* note 7, at 22. See also Eagleton, *supra* note 71, at 58–61.

elements of the human habitat, their meaning can somehow be found in the social nature of man. The terms acquire an essence that is not a product of the discursive framework in which they are employed but is somehow eternal, and delightfully unequivocal. The essentialization of the term not only removes from view the problem of linguistic indeterminacy, but it occludes the character and significance of heterogeneity – the complexity of social processes in which such concepts have thrived and constituted the banners of ideological opposition. Absolutism becomes a concrete, coherent mode of governance, despite the substantial differences that may have distinguished British, Prussian and Greek monarchies from each other. And democracy is presented as a coherent global standard without internal ruptures or discontinuities. In this story Pericles, Kant and Wilson can be pictured as having advocated the same thing. As Eagleton caustically puts it, with such accounts of history ‘[o]ne just has to accept that twelfth-century French peasants were capitalists in heavy disguise, or that the Sioux have always secretly wanted to be stock-brokers’.⁷⁴ Now, if the true meaning of the terms can be derived normatively, this allows them to be used in a fairly self-evident way. It reduces the necessity to explain in detail the assumptions behind one’s political agenda or to subject them to scrutiny. If my political agenda is derived from the concept of democracy, and if democracy stands on the side of progress, then my agenda is progressive. Most importantly, for my international law project, it would be enough for me to claim or prove that I contribute to democracy in order to gain legitimacy for it, without really having to enter into investigations of the notion of democracy (what does it really mean? what are its limits?) or the potentially adverse (even ‘un-democratic’) consequences of the measure itself. Together with democracy and absolutism a whole set of derivative terms are essentialized, acquiring their meaning in a descending manner from the normative concept: justice, nation, good nationalism versus bad nationalism, people, rights, liberties, rule of law, and so on. The naturalization of the terms also brings about a new field of expertise: the knowledge of how to extract a project of international governance out of the social nature of man. This is the field of expertise that Seferiades carves out for himself and the new international law jurists of the interwar period. The liberal intellectuals are the repositories of the new knowledge, managing authoritatively its content, its political vocabulary and its agenda, under the rubric of the new international law. Here Seferiades assumes one of the fundamental postures of ‘sociological jurisprudence’ of the interwar period: Law is the product of society, and in order to be able to improve this law one has to scientifically study the workings of society to derive the norms that should govern it.

Second, this naturalization formalizes the relationship between absolutism and democracy into a fixed opposition. It postulates that the dichotomy of the two is a stable one, or at least relatively stable, to the extent that one can ask what is the role of the one versus the other in history. The two opposites cannot be flipped. Metternich is an absolutist dictator, but Her Majesty’s colonial administrations have served the

⁷⁴ Eagleton, *supra* note 71, at 59.

purpose of democratizing the world. The 1917 policy of the government of Venizelos to lay off thousands of civil servants loyal to monarchy is undoubtedly to the service of democracy and progress, whereas a similar policy regarding civil servants of liberal political persuasions by royalist governments a few years later is a terrible absolutist practice.⁷⁵ The concepts themselves acquire meaning through their opposition. Absolutism is the Other of Democracy. This is a totalizing teleology. The history of the world can be recounted through this polarizing prism, where there is no room for alternative explanations. The Treaty of Westphalia was a legal instrument exemplifying the absolutist sensibility; the Hague Peace Conferences were an ambivalent fight, narrowly won by the forces of progress; and the Paris Treaty, redefining the borders of Europe, constitutes the capstone of progress in international law so far; the 'old' international law stands for regression; the 'new' international law stands for progress; being a monist is a part of the open-minded and splendid conception of the world, regardless of the international norms that you may admit in your national legal order; being dualist means that you support an absolute conception of sovereignty and you are thus an absolutist; and so on. Along these lines, international law's victories and defeats can be recounted rather tautologically, in much the same way as the Manichean struggle. Thus the mystified binary opposition becomes the interpretative device to understand almost any social or political decision. This hides terrible interpretative pitfalls. For one thing, the manifestations of a phenomenon can be mistaken for its causes. Thus, the eruption of the Great War is explained as the product of the resistance of absolutist governments to the development of international law. Surely, historical analysis does support the argument that absolutist regimes did undermine specific efforts in international organization. Identifying absolutism, however, as the main agent for these events is a slightly different matter. As demonstrated above, Seferiades in his writings mystifies the role of absolutist 'resistance': he vests it with mythical proportions and specific cultural and political traits. Resistance becomes a recurrent interpretative device in order to explain failures of the past and of the present – and to legitimate one's political agenda. At this stage in his argument, Seferiades' commitment shifts radically: from a commitment to the humanistic agenda of democracy, it becomes a commitment to the formalized interpretative device of absolutism versus democracy, a lens through which interpretations are made, judgments are passed, and agendas are legitimated. Resistance averts our attention from the incoherence or the lack of genuine transformative potential in interwar liberal argument itself.

Third, the naturalized, formalized opposition masks relationships of domination produced by the liberal project itself. Scholars of ideology critique describe this function as 'dissimulation', whereby 'relations of domination are masked, obscured, or denied'.⁷⁶ The transfer of attributes belonging to the one side can be displaced (transferred) to the

⁷⁵ Edgar, 'The 1917 Cleansings: Their Importance for the Reformist Agenda of Eleftherios Venizelos' (in Greek), in O. Dimitrakopoulos and T. Veremis (eds), *Μελετήματα Γύρω από τον Βενιζέλο και την Εποχή του* (Studies on Venizelos and his Era, in Greek) (1980) 519.

⁷⁶ Marks, *supra* note 7, at 20.

other. Democracy is depicted as the force of Good, without considering the possibility of itself creating injustice in the name of progress. The 1928 law passed by the Government of Venizelos penalizing with imprisonment ‘communist beliefs’ is undoubtedly to the service of democracy and progress.⁷⁷ This is part of the ‘open-minded and splendid’ conception of the new international law that Seferiades has in mind, which, one supposes, can be found also in the mandate system of the League and its infamous Article 22, which placed a sacred trust for the administration of former colonies in ‘civilized states’. The same splendid conception of international law envisages wars liberating ‘unredeemed’ fellow nationals abroad, with a view to ‘settling’ self-determination questions in third states. Dissimulation is the effect of obscuring the relations of domination created by the advocacy of the democratic agenda, with measures such as the above, leaving no doubt about the compatibility of the project with progress. Finally, dissimulation also resituates the causes of the failure of the internationalist project outside the project itself. Since the democratic project stands on the side of progress, regression has to be attributed not to the project itself but to external factors that have resisted or undermined it.

The naturalizing, dichotomizing, and dissimulating effects of the historical account are not ‘shortcomings’ or ‘errors’ in the writings of Seferiades. Every historical account, to some extent, inevitably naturalizes something and privileges and occludes something else. These effects are raised here to demonstrate how such argumentative strategies perform deeply ideological functions in legal argument and present claims as unproblematic. The reader of Seferiades, for example, having read only the historical account of the opening 50 pages of his textbook, is already assured that the ‘new international law’ of the interwar period is ‘progressive’ compared with the past. The reader is already convinced that the science of international law had to combat absolutism at every turn of its history and has helped bring peace to the world through its progressive democratization. The League of Nations and the teachings of public international lawyers *are* the contemporary agents of the uninterrupted flow of the dissemination of humanist ideals. The legal argument to follow, as long as it can be explained on the basis of the basic principle, is also situated on the side of progress.

But one could also argue that these very argumentative strategies that produce the feeling of forward movement are also the veil that prevents the reader from understanding the inadequacies and shortcoming of the liberal project itself. The liberal international law project becomes co-extensive with progress, without internal ruptures or shortcomings. The legal argument is no longer acting in the service of the ideal of democracy but in defending the coherence of a system, in which democracy versus absolutism can remain the central, interpretative device. In a tragic twist of

⁷⁷ This is the infamous Law 4229/1929, which has stayed in history with the nickname ‘*Ίδιώνυμον*’. On the topic of Law 4229/1929, see G. Katiforis, *Η Νομοθεσία των Βαρβάρων* (The Legislation of the Barbarians, in Greek) (1975), at 64–76. See also N. Alivizatos, *Οι Πολιτικοί Θεσμοί σε κρίση 1922–1974: Όψεις της Ελληνικής Εμπειρίας* (Political Institutions in Crisis 1922–1974: Aspects of the Greek Experience, in Greek) (1982).

fate, the same historical account brings Stelios Seferiades dangerously close to his ideological opponents.

A few years later, and for the protection of the liberal project, Seferiades goes as far as to advocate the censorship and punishment of individuals advocating ideas subversive to the liberal project. For Seferiades, there is no conflict between the 'splendid and open-minded conception of law' that he advocated earlier and his suggestion for an International Press Court which would take journalists disseminating 'false news' to trial. In 1934 Seferiades inaugurated the new academic year as Rector of Athens University and delivered a fervent speech on the topic of 'The Moral Armament'.⁷⁸ The speech reverberates with the passion and zeal of the newly appointed Professor of International Law who, 15 years earlier, inspired his students about the 'Future of International Public Law'. In 1934, however, Seferiades is anxious and no longer optimistic. The interwar reform has failed to yield a peaceful international community of states. Hitler's ascent to power, the progressive demise of the League of Nations, the election of yet another royalist government in Greece, and the ensuing marginalization of liberal intellectuals are his primary concerns. Seferiades asks his students to 'arm' themselves with morality in order to stand against the 'hatred' and 'moral decay' that absolutist practices have brought about.⁷⁹ Moral armament is the last remaining trench of resistance when states (such as Germany) or state institutions (such as the Greek pro-monarchic government) engage in absolutist practices, and when international institutions cannot manage to achieve the limitation of the absolute power of sovereign states. As a consequence, Seferiades proposes the 'modernization' of the social sciences and the education of the public through the teaching of 'objective' history and 'objective' knowledge; that is to say, history and knowledge that is purified from the morals of absolutism.⁸⁰ He suggests that the objectivity of knowledge is controlled by international institutions and is disseminated through the school system and mass media. He proposes three concrete plans of action in order to cultivate 'moral armament'. First, reform of the criminal codes of all nations, criminalizing 'subversive action' that threatens international peace and security, committed either by individuals or groups of people.⁸¹ Second, the creation of an International Press Agency which would censor and prevent the release of news misrepresenting reality for the purpose of destabilizing peace between nations.⁸² This Agency should retain the right to put to trial journalists engaged in such subversive behaviour. Third, the education of youth and the general public on the basis of 'objective' history which, once more, would be safeguarded by international institutions.⁸³

The purchase of the opposition of absolutism and democracy as an interpretative device for Seferiades becomes even more apparent when situated in the historical,

⁷⁸ *Moral Armament*, *supra* note 4.

⁷⁹ *Ibid.*, at 3–4, 9 and 21.

⁸⁰ *Ibid.*, at 5.

⁸¹ *Ibid.*, at 13 and 16–17.

⁸² *Ibid.*, at 14 and 18–19.

⁸³ *Ibid.*, at 14 and 19–25.

political, and personal setting of the life of our hero. The following paragraphs digress to the life of Seferiades and sketch out an uncanny correspondence between his international law writings and life trajectory.

3 A Vocabulary Situated

The intellectual ruminations of liberal scholars in interwar Greece must be read in the context of the political project of ‘bourgeois modernization’ (‘αστικός εκσυγχρονισμός’), launched by Prime Minister Eleftherios Venizelos in 1910 and pursued until the 1936 dictatorship and the final withdrawal of Venizelos from active politics.⁸⁴ The immense literature surrounding the personality of Venizelos bears testament to the momentous influence that the legacy of his era continues to exercise over contemporary Greek political consciousness.⁸⁵ In Greek history ‘Venizelism’ represents the most ambitious, dynamic and comprehensive attempt at the modernization of the country, the attempt that got the closest to achieving its declared objectives.⁸⁶ It marked some of the nation’s most celebrated successes, such as the consolidation of its borders in their current form, as well as some of its most lamented disasters, such as the 1922 destruction of Smyrna (Izmir).⁸⁷ Its power emanated from an unprecedented (at least in Greek political reality) combination of nationalism and modernization in organic partnership. Bourgeois modernization was a political-ideological project aimed at transforming Greece into a modern, Western state. It aspired to effect changes on a variety of levels, from the economy to language, education, law, administration, architecture, urban planning, social welfare, defence, and so on. In that sense, it shared much with similar projects of nationalist modernization elsewhere, from Turkey to Africa, Latin America, and Asia.⁸⁸

Bourgeois modernization operated on two broad, interdependent levels. First, a nationalist level, aimed at uniting the population under a new national identity.

⁸⁴ For the project of bourgeois modernization, see, e.g., G. Mavrogordatos, *Stillborn Republic: Social Coalitions and Party Strategies in Greece, 1922–1936* (1983); G. Mavrogordatos and C. Hatziosif (eds), *Βενιζελισμός και Αστικός Εκσυγχρονισμός* (Venizelism and Bourgeois Modernization, in Greek) (1988); O. Dimitrakopoulos and T. Veremis (eds), *Μελετήματα Γύρω από τον Βενιζέλο και την Εποχή του* (Studies on Venizelos and his Era, in Greek) (1980).

⁸⁵ For an interesting interwar appraisal of the statesmanship of Venizelos, see V. J. Seligman, *The Victory of Venizelos: A Study of Greek Politics 1910–1918* (1920), esp. at 171–185.

⁸⁶ For an appraisal along those lines, see Mavrogordatos, ‘Venizelism and Bourgeois Modernization’, in Mavrogordatos and Hatziosif, *supra* note 84, at 9.

⁸⁷ For a concise account of Greek interwar history, see R. Clogg, *Concise History of Greece* (2002) 46–141; and T. Vournas, *Ιστορία της Νεώτερης και Σύγχρονης Ελλάδας*, vol. B: 1909–1940 (History of Later and Modern Greece, in Greek), (1977). For the destruction of Smyrna and the Asia Minor campaign, see A. A. Pallis, *Greece’s Anatolian Venture – And After: A Survey of the Diplomatic and Political Aspects of the Greek Expedition to Asia Minor (1915–1922)* (1937); M. Housepian Dobkin, *Smyrna 1922: The Destruction of a City* (1971).

⁸⁸ See, e.g., J. M. Landau (ed.), *Atatürk and the Modernization of Turkey* (1984). For mainstream accounts on the relationship between modernization and nationalism, see E. Hobsbawm, *Nations and Nationalism since 1780: Program, Myth, Reality (Canto)* (1992); A. D. Smith, *Nationalism and Modernism, A Critical Survey of Recent Theories of Nations and Nationalism* (1998).

Venizelism sought the symbols necessary to forge nationhood on a new basis and found them in the idea of 'national fulfilment' ('εθνική ολοκλήρωση'), a set of irredentist ambitions concerning the liberation of 'un-redeemed' ('αλύτρωτοι') Greeks beyond the borders of the Greek state of the time, predominantly under Ottoman (later Turkish) domination, and possessing strong historical, ethnic and other ties with mainland Greeks.⁸⁹ The re-uniting of Greeks on both sides of the Aegean Sea was a desire that resonated vibrantly across the Greek political and social spectrum and thus quickly became a central policy for Venizelos.

Second, there was a modernizing level as well. The project sought to reorganize society across Western, liberal lines, espousing secularism, pragmatism, economic efficiency, rational development, industrialization, and so on. It signified the transition from the pre-capitalist 19th-century economy, which was primarily based on agriculture, an inflated state apparatus, and state interventionism, to a capitalist, industrialized model of production, with all its social and cultural consequences. It necessitated linguistic reform; secularization of education; sanitization of public administration; interventionist urban planning to accommodate mass flows of factory workers; and, of course, a flexible political system to absorb the turbulence of the transition. In political terms, this meant the difficult task of reassessing the role of monarchy, which was, in more than one ways, associated with the 'pre-capitalist' system. This in fact meant advocating the transition to a new constitutional model, monarchic or republican. It is in this context of political survival against monarchic institutions that the notion of 'absolutism' as a social and political force resisting progress started having purchase for liberal intellectuals.

From its beginning in 1910, bourgeois modernization in Greece placed itself in the service of 'national fulfilment'. In return, 'national fulfilment' served modernization to its very end, offering indispensable political legitimacy for the project and a wide social basis.⁹⁰ The political power of Venizelos stemmed from an uncanny multi-party alliance, spearheaded by bourgeois entrepreneurs, and powered by the emerging labour class and a landless rural population, craving for social and political rights, a welfare state and the redistribution of land.⁹¹ Bourgeois modernization in Greece, not unlike other similar movements, was a flexible amalgam of secularism, realism, empirical rationalism and nationalism. Key to its success was the ability to regularly shift between its various objectives and components, in order to forge temporary alliances and guarantee stability. Most important was its ability to reject for itself the denomination of an Ideology (like 'Marxism' or 'Communism') and rather present itself as focusing on pragmatic, tangible political objectives, governed by the overarching goals of national fulfilment and modernization, as values that were 'good for

⁸⁹ For a chronicle of the changes in the Greek borderline, see the informative account of D. Dakin, *The Unification of Greece 1770–1923* (1972).

⁹⁰ Mavrogordatos, *supra* note 86, at 11.

⁹¹ On the origins of the problem of land ownership and redistribution, see W. W. MacGrew, *Land and Revolution in Modern Greece, 1800–1881: The Transition in the Tenure and Exploitation of Land from Ottoman Rule to Independence* (1985).

everyone'. The strong link between modernization and nationalism is key to understanding both the momentum and the incoherence of the project. The combination of the two often led to brave progressivism in legislation and social reform (rights of women, labour unions, a system of free public education, urban planning, social welfare), which earned Venizelos and his governments the support of liberal intellectuals and a rapidly growing labour class. Other times, it led to measures restricting fundamental rights and fostering nation building, which earned Venizelos the occasional support of the capital and the Palace. In spite (or, because, one should say) of such contradictory strategies, Venizelism, as a political/ideological movement, developed a clear sensibility, style and morals, which were liberal par excellence.⁹² They included optimism, pragmatism, faith in education, and the usual strategies of rationalist planning, reconstruction, and piecemeal social engineering.

The most interesting, for the purposes of this essay, example of the opportunistic oscillation between conflicting positions, is the relationship between liberalism and the institution of monarchy. Although republicanism, democratization, and constitutionalism were at the heart of its political agenda, Venizelism was not necessarily, and not at all times, opposed to a system of constitutional monarchy. Recent assessments conclude that Venizelos and his governments considered Greece to be 'unprepared' to become a Republic and that the King could perform useful stabilizing functions, at least as long as his behaviour did not counter the project of bourgeois modernization.⁹³ Venizelos himself indulged on more than one occasion in extreme and unconstitutional political measures that he usually associated with his counterparts.⁹⁴ On two occasions (1909 and 1916–1917) he assumed power by means of an armed revolt and he even attempted a coup to 'restore democracy' in 1935.⁹⁵ In early 1917, thousands of royalist civil servants were made redundant in a systematic effort by the government to 'cleanse' the state apparatus from anti-liberal elements.⁹⁶ In 1929, Venizelos fielded an infamous law heavily penalizing the propaganda of communist beliefs.⁹⁷ At the very same time, the Palace and the King were depicted by liberals as agents of absolutism. In 1932, for example, with the prospect of losing the forthcoming election looming on the horizon, Venizelos used the accusations of 'absolutism' and 'not having accepted the democratic system of governance' as one of the main campaign slogans against his royalist counterparts.⁹⁸ The Palace stood in the consciousness of interwar liberals as the political establishment that defended

⁹² See A. Ioannidis, *Ο αισθητικός λόγος στο μεσοπόλεμο ή η αναζήτηση της χαμένης ολότητας* (Aesthetic Discourse in the Interwar or the Quest for the Lost Wholeness, in Greek), in Mavrogordatos and Hatziosif, *supra* note 84, at 369.

⁹³ Papakosmas, *Ο Βενιζέλος και το Ζήτημα του Αβασιλεύτου Δημοκρατικού Πολιτεύματος 1916–1920* (Venizelos and the Question of the Republic, 1916–1920, in Greek), in Dimitrakopoulos and Veremis, *supra* note 84, 485–499, at 485.

⁹⁴ *Ibid.*, at 485–490.

⁹⁵ Vournas, *supra* note 87, at 368.

⁹⁶ Edgar, *supra* note 75, at 519–550.

⁹⁷ On Law 4229/1929, see *supra* note 77.

⁹⁸ See Vournas, *supra* note 87, at 348.

pre-modern, pre-capitalist political and social structures. It also stood for foreign interventionism, due to the foreign family line of King Constantine and the open sympathy of the latter towards the Central Empires at the beginning of the Great War. Venizelos called the King ‘a tool of our enemy, of our chief enemy the German’ and an agent of autocracy and absolutism in Greece.⁹⁹ Venizelos is responsible for Greece joining World War I on the side of the *Entente*, a decision that brought significant territorial gains to Greece in the region and renewed hopes for the creation of a ‘Greater Greece’, including the ‘unredeemed’ populations of Minor Asia. The Palace, on the contrary, insisted on a policy of neutrality during the war, which encouraged allegations of allegiance to the Central Empires. Venizelos was cited in a newspaper of the time as stating that ‘the gap which divides me and my friends and King Constantine is as deep as the gap that divides the Allied Powers and the Central Empires. These are two entirely incompatible political conceptions’.¹⁰⁰

Seferiades’ attraction to the liberal politics of Venizelos is not hard to understand in this context. Stylianos Prodromou (Stelios) Seferiades was born in 1873 in the town of Smyrna (today Izmir, Turkey). Although little is known of the family’s occupation, it is clear that they belonged to the well-off, newly established bourgeois class that constituted the economic heart of the town. Smyrna was at the time the most important international commercial port of the Ottoman Empire with the West and was home to a vibrant Greek community, dating back to the ancient Greek Ionian colonies.¹⁰¹ Greeks on both sides of the Aegean considered the Greek population in Smyrna and the rest of Asia Minor to be ‘unredeemed’ – living under foreign rule. It is no wonder that Greek–Turkish relations became an important focus of Seferiades’ work later on.

Seferiades studied law at Aix-en-Provence, where he ranked top of his class in all three years of study. He received his doctorate title at the Sorbonne for a celebrated thesis in 1897.¹⁰² Days after attaining his doctoral title he returned to Smyrna to practise law and settle down. Before long he married Despo Tenekidou, daughter of one of the richest and most influential families in the town. Beaton describes Seferiades as a handsome man, an extrovert, zealous idealist in matters of politics and the arts, and uncompromising in his demands towards himself and his close family.¹⁰³ In 1900 Stelios and Despo celebrated the birth of their first son Giorgos, later to become Nobel Prize laureate for literature in 1965, under the *nom de plume* of Giorgos Seferis.

⁹⁹ E. Venizelos, ‘The Internal Situation in Greece and the Amnesty of Political Officers’, Speech of E. Venizelos in the Greek Chamber, 23 April 1920, A Literal Translation from the Official Report (pamphlet) (London, 1920), at 17.

¹⁰⁰ Statement as published in daily newspaper ‘Πατρις’ (‘Patriis’, in Greek), 22 May 1917.

¹⁰¹ Estimates on the exact size of the Greek population range between 25 and 50% of the total population of the city. On the position of the Greek community in the commercial life of Smyrna, see E. Frangakis-Syrett, *The Commerce of Smyrna in the Eighteenth Century (1700–1820)* (1992), esp. at 43–118. See, generally, B. Braude and B. Lewis (eds), *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society* (1982).

¹⁰² S. Seferiades, *Etude Critique sur la théorie de la cause* (Ouvrage couronné par la Faculté de droit de Paris) (1897).

¹⁰³ Beaton, *supra* note 3, at 33; Tsatsou, *supra* note 3, at 19.

Seferiades is not reported to have had any involvement with international law before 1912. He spent his time with his family, practising law, translating ancient Greek texts into Modern Greek, and writing poetry.¹⁰⁴ His only publications, aside from his doctorate, included poetry in local newspapers and a booklet on the stock exchange of Smyrna.¹⁰⁵ In 1912, a set of events on the island of Samos triggered his career shift to public international law. Samos was populated by ethnic Greeks and enjoyed special autonomy within the Ottoman Empire. After a successful armed revolt in 1912, the local population declared the island independent. Seferiades was quick to offer his services to the French consul in Smyrna (as legal adviser and translator), who acted as mediator between the Sultan and the independence movement. Seferiades became crucially involved in the negotiations that eventually led to the independence of the island from the Ottoman Empire and its unification with Greece in October 1912. He is reported to have been present on the island at the parliamentary session that declared independence. Beaton concludes that Seferiades appreciated at the time that his first sortie into international affairs had led to the best possible outcome for his country and his own political beliefs.¹⁰⁶ In the same year, he published his first international law essay, addressing the legality of boycotts under international law,¹⁰⁷ addressing recent practices of the Ottoman Empire against Greeks in Asia Minor. This was the first in a long series of international law writings.

Following the Samos incident, Seferiades abandoned his practice in Smyrna and moved with his family to Athens in 1914. The deteriorating relations between Greece and the new Turkish state made life for Greeks in Asia Minor more difficult than ever. This was not only the result of the First Balkan War, which yielded significant territorial gains to the Greek side (at Turkey's expense), but was also a product of the political change effected by the Young Turks revolution of 1908, the formation of the modern Turkish state, and the rise to power of Mustafa Kemal Atatürk.¹⁰⁸ Commenting on the impossibility of liquidating his property when leaving Smyrna, Seferiades published his second international law essay on the regime of immobile property in Turkey seen from the point of view of international law.¹⁰⁹ The forced departure from Smyrna and the eventual destruction of the city by the Kemalist army in 1922 was a traumatic experience for the entire family. Seferiades is reported to have lamented the loss of his homeland for the rest of his life, fervently hoping for its eventual liberation from Turkish rule.¹¹⁰ It is conceivable that this burning desire for the liberation of his

¹⁰⁴ His only published collection of poetry appeared one year after his retirement from academic life: S. Seferiades, *Απο το συρτάρι μου, Ποιήματα 1895–1912* (Out of My Drawer, Poems 1895–1912, in Greek) (1939).

¹⁰⁵ S. Seferiades, *Les Jeux de Bourse en droit international privé* (1902).

¹⁰⁶ Beaton, *supra* note 3, at 51.

¹⁰⁷ S. Seferiades, *Réflexions sur le Boycottage en droit international* (1912) [hereinafter *Réflexions sur le Boycottage*].

¹⁰⁸ For an account of the monumental influence of Atatürk's arrival on the Turkish political scene, see the recent biography by A. Mango, *Atatürk* (1999). For a brief account of the years 1908–1915 see also A. Mango, *The Turks Today* (2004), at 15–25.

¹⁰⁹ S. Seferiades, *Le Régime immobilier en Turquie au point de vue du droit international* (1913) [hereinafter *Le Régime immobilier*].

¹¹⁰ See Tsatsou, *supra* note 3, at 24.

homeland forged the link between his early attraction to liberal internationalism (since his Paris years) and his subsequent identification with the liberal project of bourgeois modernization. His involvement in the Samos incident earned Seferiades a fine reputation in continental Greece and a successful nomination for a professorship in international law at the Faculty of Law of Athens University. Although international law had been offered as a subject since the end of the 19th century, this was the first time that a specific Chair on the subject was established.¹¹¹ His allegiance to the liberal politics of Venizelos, however, caused a major setback. Venizelos lost the 1915 election with a landslide and the new political situation prohibited Seferiades from assuming his position. As a consequence, and in order to be able to cater for the growing economic needs of his family, Seferiades temporarily moved to Paris to practise law.¹¹² The following years signalled his rise to prominence, becoming one of the most important international law figures in Greece. While in Paris, he became personally acquainted with Venizelos and started advising him and actively participating in Greek foreign politics. The years following the return of Venizelos to power in 1917 found Seferiades representing Greece in a number of international *fora* and, most notably, participating in the Paris Peace Conference in 1919. The same year he finally received his overdue appointment as Professor of International Law at Athens University and returned to Greece to be reunited with his family.

Seferiades spent the following years travelling between Athens, Paris, and other European capitals, on mission and in relation to his private practice. Amongst his various functions, one must single out his appointment as member of the 'National Commission for Unredeemed Greeks' ('Εθνική Επιτροπεία Αλυτρώτων Ελλήνων'), established by Venizelos in 1918. He later became Legal Advisor to the Greek Ministry of Foreign Affairs, and received a number of international appointments, including member of the Permanent Court of Arbitration (1920), Greek delegate at the Assembly of the League of Nations (1920 and 1924), chair of the League Assembly sub-committee on the revision of the Paris Pact (1921), Greek Agent at the Mixed Arbitral Tribunals (1922–1923), Judge *ad Hoc* before the PCIJ.¹¹³ The *Institut de Droit International* invited him to join its prestigious ranks in 1925, where he remained a member until 1936. In 1920, 1925 and 1929 he published two editions of his major work – 'Courses on Public International Law' – and taught at The Hague Academy of international law on three different occasions.¹¹⁴

One should not fail to notice at the outset an uncanny correspondence between important political stakes for liberalism in Greece and the work of Seferiades on general international law. Many of his publications, for example, despite their generalist style, may be reread as articulate legal defences of the rights of the Greek population

¹¹¹ See Tenekides, 'Introduction', in Kalogeropoulos, *supra* note 1, at xvi.

¹¹² Beaton, *supra* note 3, at 58; Tsatsou, *supra* note 3, at 36–37.

¹¹³ *Lighthouses Case Between France and Greece*, Judgment of 17 March 1934, PCIJ Series A/B, No. 62 (1934).

¹¹⁴ S. Seferiades, 'L'échange des populations', 24 *RdC* (1928-IV) 307; 'Principes généraux', *supra* note 22; S. Seferiades, 'Le problème de l'accès de particuliers a des juridictions internationales', 51 *RdC* (1935-I) 1 [hereinafter 'Le problème de l'accès'].

on Ottoman/Turkish territory or the policies of Venizelos. A few examples may illustrate the point. His monograph on boycotting¹¹⁵ is framed as a general study on the question of the legality of the practice of boycotting under international law. It constitutes, nonetheless, an elaborate legal condemnation of the Turkish boycott of Greek products in Asia Minor in early 1910. It is a passionate plea for the illegality of boycotting under international law on the grounds that, although in theory non-state-supported ('pure') boycotts are permissible, in practice such a policy may not be implemented without the collusion (or active involvement) of the state apparatus. As a consequence, individuals of the nationality of the boycotted state and domiciled in the territory of the boycotting state (see Greeks in Turkey) suffer the most. Their livelihood is threatened, they are discriminated against and persecuted, and all this amounts to unequal treatment of foreign nationals with the support of the state, which is prohibited by international law.

Seferiades' next publication is a disquisition on the laws regulating the immobile property of foreign nationals in Turkey.¹¹⁶ There can be little doubt that this monograph was partly inspired by the problems that Seferiades and numerous other Greeks encountered in Smyrna when trying to liquidate their property and move to Greece. Turkish property law of the time imposed substantial limitations on the rights of foreigners over immobile property, particularly with regard to ownership and inheritance. As a consequence, and despite owning substantial assets in Smyrna, the Seferiades family only managed to bring along to Athens a fraction of their wealth, causing serious financial problems. In the *Régime immobilier*, Seferiades, who had an excellent knowledge of the Turkish legal system since his practising years in Smyrna, assumes once more the posture of the academic commentator, elaborating his argument in no less than 243 pages. His analysis is scholarly and comprehensive, systematically examining the history of Ottoman and Turkish property law, international agreements in force concerning foreign nationals (especially 'capitulations'), and the relevant practice. Seferiades concludes that property questions relating to foreign nationals in Turkey should be regulated either on the basis of the law of their nationality or be resolved by international or 'mixed' (consisting of national and foreign judges) tribunals. The main argument behind his prescription is the 'inherent bias' that, the story goes, exists in national courts against non-nationals – a question that he addressed years later in yet another monograph in French, entitled *Le Problème de l'accès des particuliers a des juridictions internationales*.¹¹⁷ The latter, which was presented both at the *Institut de Droit International* and the Hague Academy,¹¹⁸ is primarily concerned with the rights of individuals in foreign countries and their access to justice when there is legitimate suspicion that their access to justice will not be fair due to bias within the system. Subjecting foreign nationals to national courts, Seferiades argues, using the situation in Turkey as one of his examples, means that the

¹¹⁵ *Réflexions sur le Boycottage*, supra note 107.

¹¹⁶ *Le régime immobilier*, supra note 109.

¹¹⁷ Seferiades, *Le problème de l'accès de particuliers a des juridictions internationales*, IDI (1929).

¹¹⁸ *Ibid.*

prosecutor and the judge will be serving 'the same interests' (the best interest of the state), which goes against basic principles of procedural law. Seferiades resorts, once more, to international law-based alternatives to solve the problem: international or mixed judicial solutions are preferable. He also proposes this very model in the case of property being seized during times of war, in his relevant essay on Prize Tribunals. The latter essay should at least partly be attributed to his involvement in defending Greek shipping interests during the War.¹¹⁹

To conclude this list, it is worth noting his 1916 *Chronique sur l'arrestation*.¹²⁰ This brief note is a clear defence of the policies of Venizelos. Seferiades explains why the arrest of the German and Austrian consuls by the British and French occupying forces in Thessaloniki was in accordance with international law. What is not mentioned in the paper is that, during the early years of the War, Britain and France exercised all their political influence to cause the resignation of the Greek royalist government, which favoured a stance of neutrality during the Great War. In the meantime Venizelos, who advocated Greek participation in the war on the side of the *Entente*, prepared with the support of France and Britain an armed revolt that brought him back to power.¹²¹ Several years later, Seferiades would again defend Greek foreign policy interests with another essay on the international regime of the Marmara straits in Turkey.¹²² This essay too adopts the posture of the neutral academic observer, despite the obvious link between the subject of the paper and his role as advisor to the Greek government of the time. The decline of Venizelism in the mid-1930s coincided with the progressive withdrawal of Seferiades from active duty both as a statesman and an academic. Following the 1936 dictatorship, which led to the persecution of many liberal intellectuals and the definite end of Venizelism and bourgeois modernization, Seferiades retired from the University in 1938. Thereafter he moved to a Paris suburb. He never published in international law again and the remaining years of his life were devoted to his literary interests, leading to the publication of a collection of his own poems.

Aside from the temporal parallels sketched above between historical events and his publications, there are more associations to be made, on a structural level, between the work of Seferiades and the ideology of bourgeois modernization. One can read much of his generalist texts as an effort to convert the project of bourgeois modernization into legal doctrine. This is important ideological work that involves 'translation' into different discursive levels. First, it requires the carving out of a world-view in which the historical narrative and the founding assumptions of the project can be sustained. The historical argument discussed in Section 2 above belongs to this

¹¹⁹ Seferiades, 'Les Tribunaux de Prises en Grèce – Leur Constitution, Leur Fonctionnement et Leur Jurisprudence', 23 *Revue Générale de Droit International Public* (1916) 31. This can be inferred by the account in Tsatsou, *supra* note 3, at 36–37.

¹²⁰ Seferiades, 'Chronique sur l'arrestation des consuls d'Allemagne, d'Autriche-Hongrie etc. a Salonique', 23 *Revue Générale de Droit International Public* (1916) 84.

¹²¹ Vournas, *supra* note 87, at 178–200.

¹²² Seferiades, 'Contribution a l'Etude du régime international de la mer de Marmara', in *Mélanges Mahaim*, vol. II (1935) 320.

category of system-building work. The historical account of the world through the lens of the opposition between absolutism versus democracy is such a founding assumption of the liberal world-view, paving the way for the prescriptive-reconstruction project of inter-war international law. Second, it involves the construction and elaboration of legal doctrines that operationalize these assumptions into a coherent legal system, with doctrines ranging from the question of the basis of obligation in international law, to sources, subjects, responsibility, substantive norms, standards, and the setting up of devices that would explain away inconsistencies and restore the system when failures occur.

Seferiades' textbook, *Courses on International Public Law*, can be reread as a collection of doctrines performing this second type of 'translating' work for the liberal project. One classical example can be found when Seferiades tries to square the difficult question of the basis of obligation in international law with his ideal 'international community of democratic states of coherent domestic structure'. How was international law to be created in a world where many states could not be called 'democratic'?¹²³ To tackle the problem of the basis of obligation in international law, Seferiades produces the doctrine of a three-track international law, prescribing different legal relationships between states, depending on their degree of 'democratization'. The argument goes as follows. The existence of nations whose governance and culture do not share the model of European-type liberal democracy makes it clear that these states cannot be an equal part of the international community. This is a matter of 'pure logic' for our author.¹²⁴ There are nations whose history has demonstrated that their 'morality' is different or inferior to that of 'civilized states'. Such states are unable to comprehend and respect the system of international law. As a consequence, only states exhibiting a 'European' democratic civilization enjoy the privilege of being part of the international community, even if they are located outside Europe, such as the USA and Japan.¹²⁵ Japan is included on account of the 'most splendid perception' of the doctrines of morality of the civilized world of its people and 'their will, which within very few years achieved the re-shaping of the condition of their society in accordance with the most admirable [European] models'.¹²⁶

The world is thus divided into three categories of states: a) civilized states, which ought to respect the rules of international law in their mutual relations, in all circumstances and with no exceptions; b) semi-barbaric states, that is to say states that have adopted some democratic principles but by no means fully or consistently (such as Turkey and China), and towards which civilized states should respect, on the basis of reciprocity, only those rules of international law that semi-barbaric states themselves have consented to; and c) savage states, towards which civilized states have absolutely no legal obligation and are bound only by rules of general morality (such as respect of life, honour, property and the like).¹²⁷ In other words, international law is of

¹²³ *Courses on International Public Law* (vol. 1), *supra* note 2, at 38–43.

¹²⁴ *Ibid.*, at 38.

¹²⁵ *Ibid.*, at 39.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*, at 42–43.

universal scope but not 'pan-ethnic': it only concerns states that are part of the international community – only states with a 'European' culture.

At this point in his text Seferiades realizes the need to establish a secondary set of rules of thumb, explaining some of the grey areas in his model.¹²⁸ What happens when a civilized state persistently objects to the rules of international law? What if a group of civilized states decides to collectively deviate from 'general international law', such as the 'American International Law' movement that Alejandro Alvarez and others proposed?¹²⁹ How does one deal with 'non-democratic' states of European civilization (such as Germany) or 'democratic' states of non-European civilization? Seferiades builds his theory of the basis of obligation in international law revolving round this doctrine of a three-track international law. In an argument that could be called simultaneously 'ascending' and 'descending', to use Koskenniemi's well-known metaphor,¹³⁰ Seferiades seeks the basis of obligation in the consent of states, while resorting to normative safety valves to guard against the ever-present threat of absolutism. The basis of obligation is the 'mutual consent' of states of European civilization ('*consentement mutuel*'), which may be express or tacit.¹³¹ Public international law is based on the 'gradual coincidence' of the volition of many such states. When this mutual volition is united, it forms a superior volition ('*volonté supérieure*'), from which individual states may not deviate under any circumstances.¹³² There are, however, limits. The Judge, for one thing, must not apply rules stemming from this superior volition if for some reason the rules have ceased to be in conformity with the morality of European civilization.¹³³ He terms the system of this morality as 'international public order', in analogy to the public order of domestic legal systems.¹³⁴ Seferiades has 'absolutist' European states in mind, such as Germany, and 'semi-barbaric' states, such as Turkey. One can hear the echo of Greek sovereign interests of the time (e.g., in securing the rights of the Greek minority in Asia Minor) in the contestation that the volition of such states is cancelled out by the peremptory norms of the international public order. As long as these states do not endorse a democratic system of governance and 'European' morality they will remain outsiders to the law-making process. Similarly, a group of civilized states may not collectively deviate from 'general' international law and form a system of their own, such as 'American' International Law. This would fragment the system 'unacceptably', Seferiades contests, and would in fact violate 'general' international law if it involves existing rules.¹³⁵ There is only one international law, and this is the 'general' international law formed along the lines of mutual consent described above.

¹²⁸ *Ibid.*, at 41–43.

¹²⁹ A. Alvarez, *Le Droit International Américain. Son fondement – Sa Nature* (1910).

¹³⁰ M. Koskenniemi, *From Apology to Utopia – The Structure of International Legal Argument* (1989).

¹³¹ Seferiades, 'Aperçus sur la Coutume Juridique internationale', *Revue Générale de Droit International Public* (1936) 129; *Courses on International Public Law* (vol. 1), *supra* note 2, at 11 and 28.

¹³² Seferiades, 'Aperçus sur la Coutume Juridique internationale', *supra* note 131, at 172.

¹³³ *Ibid.*, at 189–194.

¹³⁴ *Ibid.*, at 192.

¹³⁵ *Courses on International Public Law* (vol. 1), *supra* note 2, at 42.

So, if we reconstruct the matrix of legal relations in the new international law of Seferiades, we would have to concede the following categories of legal relations:

- (i) The mutual consent of numerous states of European civilization, when united, forms a superior volition that constitutes the basis of obligation in international law;
- (ii) Civilized states become bound by certain rules of international law only by expressing their consent (expressly or tacitly);
- (iii) Civilized states have the duty to respect rules of international law at all times, but only towards other civilized states;
- (iv) Semi-barbaric states may become civilized through the acceptance of rules of general international law and by implementing the necessary changes in their domestic structure, such as establishing democratic institutions or settling questions of self-determination;
- (v) Civilized states ought to respect international obligations towards semi-barbaric states only to the extent that the latter have accepted the same rules;
- (vi) Civilized states ought to respect only basic principles of general morality towards savage states;
- (vii) Although different standards may be applied between civilized and non-civilized states, civilized states have to apply 'general' international law between themselves, and not 'American' international law or law of any other denomination.
- (viii) Civilized states (such as Germany) with absolutist governments remain fully bound by international law obligations, since they were initial members of the international community, but they cannot create new rules if these rules contradict the international public order;
- (ix) The persistent objection of civilized states towards specific rules of international law results in non-binding effect of these rules towards these states;
- (x) The mutual consent of semi-barbaric or savage nations may never create rules of international law or principles that general international law would take aboard.

The conception of a three-track international law and its consequences may sound outrageous today, at least to some ears. It does appear, however, as a perfectly logical and legitimate world-view when seen through the lens of the absolutism versus democracy paradigm and the bourgeois modernization project. If absolutism has undermined progress since the beginning of time, and if the European model of democracy exemplifies progress, it is perfectly logical that non-democratic states must not derive unjust benefits from a system to which they are not committed. Reciprocity is to be enjoyed only by those who are committed to the rights and obligations that international law stipulates. On this basis, a number of exceptions are called for in the relationship between civilized and semi-barbaric states, including, not surprisingly, in Greek–Turkish relations. This model explains, for example, the need for and legitimacy of 'capitulations', privileges and concessions for foreign nationals, which are derived from international agreements between Turkey and European states. The same holds for the institution of mixed tribunals: if Turkey is a semi-barbaric state

whose legal system does not provide the necessary procedural guarantees for foreign nationals, then Greek nationals should be subjected to either mixed tribunals or to Greek law directly.¹³⁶ On a global scale, the idea of a three-track international law explains the Mandate system of the League, which is understood as the holy duty of civilized states to pass on their light to savage states that became 'prematurely independent'.¹³⁷ The list of such exceptions can go on indefinitely.

4 In Closing

This paper has sketched out an intellectual portrait of Stelios Seferiades and, in the process, has introduced the term 'vocabulary of progress' in order to refer to the argumentative strategies in his work that gave purchase to his prescriptions about the reconstruction of public international law. The opposition of absolutism and democracy was one of these argumentative strategies, straddling political agendas and priorities on both the national and international level. On the national level, it was in tune with the strategy of bourgeois modernization to portray monarchy as an agent of foreign interventionism and autocratic governance. On the international level, it paved the way for faith in the establishment of the League of Nations and the 'sociological jurisprudence' of the interwar period, while conveniently explaining away Greek irredentism in Asia Minor and the exceptionalism of Greek foreign policy towards Turkey. Altogether, the narrative of absolutism versus democracy reinforced the self-perception of interwar liberal intellectuals as internationalist and progressive by situating them on the right side of a long historical tradition of struggle for social progress. The same vocabulary of progress, however, became the veil which prevented Seferiades from speaking of the dark sides of the liberal project and the inherent limitations of its transformative potential. Seferiades blamed absolutism for the 'failures' of democratization of Greece and of the 'new international law' of the interwar period. To make matters worse, he went so far as to defend, in the name of progress, measures and doctrines that could be viewed as being dangerously close to those of his 'absolutist' ideological opponents.

Seferiades identified himself and his fellow liberal international lawyers as experts in the technique of deriving a project of international governance from the social nature of man. He presented the international lawyer as scientific observer of human history, devoted to the task of defending human values through his scholarship. Indeed, from a scholarly point of view, his work was outstanding. His texts were thoroughly researched, written in fine style and renowned for their accuracy and attention to detail. His publications became the basis of the nascent discipline of international law in Greece. In dialogue with colleagues in Europe and elsewhere, he helped build faith in the 'new international law' of the interwar period in the task of reconstructing doctrines and institutions on a new basis, avoiding the mistakes of the past. He helped construct a comprehensive vision of public international law with

¹³⁶ 'Le problème de l'accès', *supra* note 114.

¹³⁷ *Courses on International Public Law* (vol. 1), *supra* note 2, at 101.

universal application, with doctrines applicable to all states and in an infinite number of circumstances. At the same time, a decisive correlation may be traced between his universalist ideas and local-personal ideological stakes. His international law work was reread as ‘translating’, at least in many instances, personal/collective ideological stakes into a workable universalist vocabulary about international law. Specific political goals which were high on the agenda of the liberal Greek governments of the time, but also in the personal life of our hero, were presented as indispensable components in the process of reconstructing international law in the aftermath of the Great War. Democratization of states, self-determination of minorities, discrediting monarchy as a system of governance, the protection of the rights of the Greek minority in Anatolia, the characterization of Turkey as a ‘semi-barbaric’ state, all became part and parcel of a progress narrative. His international law reform, a universalist vocabulary *par excellence*, was simultaneously a personal struggle.

Is the closely knit relationship between personal/collective ideology and universalist prescriptions problematic? Does it undermine the value of his otherwise excellent scholarship? Is this troubling news for the overall ‘quality’ of our international law scholarship – if one assumes that the story of Seferiades is not unique? Or should this relationship be embraced and placed at the heart of a new reading of the history of the discipline of public international law? To answer these questions I propose an image of the public international lawyer which is quite different from that which Seferiades carves out for himself and his peers in his own writings. To do so, I resort to Antonio Gramsci’s well-known essays on the role of the intellectual in the organization of culture.¹³⁸ Gramsci argued in his work that every social group, created in the sphere of an operation indispensable for economic production, ‘creates with it, organically, one or more layers of intellectuals, which vest it with homogeneity and consciousness of their proper function, not only in the economic field but also in the social and political one’.¹³⁹ For Gramsci ‘organic intellectuals’ are a crucial component in the production of culture. Gramsci’s representation challenges the classical image of the intellectual as a technician, whose influence is derived from specialist knowledge and talent. For Gramsci, the latter qualifications are only ‘external and ephemeral instigators of affections and passions’ (*motrice esteriori e momentanea degli affetti e delle passioni*)¹⁴⁰ and not the true basis of their role. It is rather their active involvement in practical life as constructors, organizers, and ‘permanent persuaders’ (propagandists) of new ideas that should be foregrounded in our understanding. These functions transform the intellectual from a technical labourer into an ‘instructor’, an ‘educator’, a political cadre (*dirigente*).¹⁴¹ Thus, intellectuals are therefore not mere observers of our social reality. With their work they ‘organize’ human masses and

¹³⁸ Antonio Gramsci’s views on the topic can be found in the essays written during his long years of imprisonment, the relevant selection of which was published posthumously in Italian in A. Gramsci, *Gli Intellettuali e L’Organizzazione della Cultura* (Intellectuals and the Organization of Culture, in Italian) (1949) (10th Reprint, 1972).

¹³⁹ *Ibid.*, at 3.

¹⁴⁰ *Ibid.*, at 7.

¹⁴¹ *Ibid.*

'guarantee' their consent to and their confidence in the dominant class. Their important role rests precisely in creating the basis for a new and comprehensive world-view, which is organically related to the dominant ideological group. They are servants ('*commissi*') of the dominant group for the performance of what he famously calls 'interconnected, subaltern functions of social hegemony and political governance'.¹⁴² The capitalist businessman, Gramsci suggests, brings along the industrial technician, the political scientist, the designer of a new educational system, of a new legal system.¹⁴³ Gramsci sees a division of labour between intellectuals in this process, similarly to the prescriptions of classical economic theory. On the top of the pyramid will be the creators and theoreticians of the various sciences, natural and social, of philosophy, of art, and so on. In the lower ranks one will find the administrators and disseminators ('*amministratori e divulgatori*') of the accumulated intellectual wealth.¹⁴⁴ Different specialties of organic intellectuals (including jurists) become necessary, depending on the social context.

Gramsci's idea of the 'organic intellectual' is useful because it offers a more complex understanding of intellectuals, such as public international lawyers, who are pictured as having their technical-professional work closely conditioned by personal/collective ideological struggles and projects. This image contests the assertion that the law professional is (or should be) autonomous from the dominant socio-economic class and the hegemonic political discourses; the classical conviction that the task of the jurist is precisely to help harness politics to the direction of the 'rule of law', the latter being an a-political, non-ideological ideal. Albeit different, Gramsci's image presents the intellectual as equally and terribly important in the production of culture, as translator and converter of ideology into a coherent world-view and the necessary doctrinal and institutional machinery for its implementation.

Along these lines, I would like to suggest an alternative assessment of Stelios Seferiades as an organic intellectual, operating simultaneously in more than one ideological debate. In the context of the Greek political scene, for example, Seferiades can now be viewed as having actively participated in the defence of the bourgeois modernization project and drawn legitimacy from it. As a French-educated, bourgeois sophisticate from Smyrna, his scholarship bore the credentials of cosmopolitan knowledge and personal-historical experience. Seferiades truly believed in the capacity of international law to bring about change at the local level through democratic reform. In the service of these ideas, he offered the scientific vocabulary that the political movement of bourgeois modernization needed in order to bolster its purchase with its own ideological opponents in Greece. Seferiades gave legitimacy to the project by neatly placing it along a historical continuum of social progress. His universal international law vocabulary rationalized foreign policy choices and placed it in the service of European foreign policy goals. Aside from his involvement in Greek politics, Seferiades participated in a separate scene: a worldwide, scientific, international law movement for disciplinary

¹⁴² *Ibid.*, at 9.

¹⁴³ *Ibid.*, at 3.

¹⁴⁴ *Ibid.*, at 10.

reconstruction in the aftermath of the Great War. He joined forces with friends and scholars in Paris, Geneva, London and elsewhere, in proposing a European conception of public international law based on a ‘democratic community of states’. As a Sorbonne-educated jurist, he enjoyed the confidence of the professional elite of scholars of the centre. As a sophisticate from the periphery of Europe, he furnished the ‘new international law’ with some of the universal legitimacy that it needed.

The intellectual portrait of Seferiades drawn above reinforces, rather than undermines, his pivotal role in democratic reform in Greece and the development of international law. Seferiades, like many of us, engaged with international law with tremendous devotion, skill, and vision. This essay uses his intellectual portrait as a heuristic device to invite an understanding of international law scholarship as a complex commitment to various personal/collective ideological projects. This understanding should not be feared but embraced and placed at the heart of a new, more layered perception of international law as a discourse consisting of numerous individual endeavours, such as that by Seferiades, to shape the face of ‘progress’. Our ‘vocabularies of progress’, operating simultaneously in different ideological struggles, are indispensable instruments in this process. This understanding offers not only a richer view of the mechanisms that produce scientific knowledge but reveals some of the frequently neglected ‘dark sides’ of the role of the public international lawyer. Recent scholarship has begun to tell such histories of public international law.¹⁴⁵ This paper hopes to add to this tradition by paying tribute to the fascinating scholarship of yet another founding figure of our discipline.

¹⁴⁵ During the past two decades, a new stream of international legal scholarship has fore-grounded such concerns in its inquiries. See D. Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (2004); M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2002); H. Charlesworth and C. Chinkin, *The Boundaries of International Law – A Feminist Analysis* (2000); A. Anghe, *Imperialism and Sovereignty and the Making of International Law* (2004). For a selective bibliography of newstream work see Skouteris and Korhonen, ‘Under Rhodes’s Eyes: The “Old” and the “New” International Law at Looking Distance’, 11 *Leiden Journal of International Law* (1998) 429.