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Slobodan Milacic, *De l'âge idéologique à l'âge politique – l'Europe post-communiste vers la démocratie pluraliste*, Bruylant, Bruxelles 2010, p. 475.

Two years ago the book *Mélanges en l'honneur de Slobodan Milacic – Démocratie et liberté: tension, dialogue, confrontation* was reviewed in this journal.¹ This year a brand new book by the distinguished professor of the Faculty of Law in Bordeaux deserves our attention, titled: *De l'âge idéologique à l'âge politique – l'Europe post-communiste vers la démocratie pluraliste (From the ideological age to the political age – Post-Communist Europe toward a Pluralistic Democracy)*. Aside from the renowned Belgian publisher *Bryllant*, common denominators for both these books are the persona and work of Slobodan Milacic. The first book was written by numerous authors (reputable European constitutionalists and politicologists), treating the subject matters which Milacic dealt with, whilst the other part contains some papers by Milacic himself. The new Milacic's book is a well incorporated mosaic of the author's reflections on law, politics and culture, and their mutual effects in the process of democratization in post-communist countries. It is a multi-layered work, equally interesting for constitutionalists, political scholars and other experts of the social sciences.

At least three tiers are easily observed in this book. The first contains a comprehensive analysis of the democratic transition process in post-communist countries. The second, a criticism directed at numerous politicologists and analysts who, driven by the consensual post-communist euphoria ("l'euphorie consesuelle du post-communisme", p. 53), analyzed the democratic transition in the East in a uniform manner, superficially, non-historically, as if it was not a matter of a complex, open and long-term process, but a model established *a priori*. "Post-communism

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was not analyzed as an open process of change, but as a completed transition” (p. 67). The third tier involves the search for a response to the question what is the purpose of a democratic legal state (*l'État de droit, pour quoi faire?*). Milacic does not only discuss the problems of developing a democratic legal state (*Rechtsstaat*) in post-communist societies, he also deals with the relations of democracy and freedom, in general. A democratic legal state is a complex and dynamic amalgam of the legal, political and cultural, and not a universal and static creation in which one of the aforementioned elements has predominance over the others. Legal state and liberal democracy are in “un marriage de raison” (marriage of reason), which unites freedom and equality, law and politics, the citizen and the state (*Introduction*, p. xvii). “Legal state guarantees freedoms and the exercise thereof. Democracy gives it, not only a soul, but content. And finally, how unjust would freedom be without equality and how somber equality without freedom?” (p. xvii).

The book is made up of an *Introduction*, which discusses the constituent elements of a democratic legal state, and three sections. The first one bears the title *Epistemological questions – a necessary return to history* (*Questions d'épistémologie – le nécessaire retour à l'histoire*), pp. 3–119; the second: *Questions about the regime – legal, political and cultural search for synchronized articulation* (*Le juridique, le politique et le culturel à la recherche d'une articulation synchronisée*), pp. 121–289, and the third: *Questions about the State – fragmentation of states following system breakup* (*Questions sur l'État – la fragmentation des états après la dislocation du système*), pp. 293–462.

Development and preservation of a democratic legal state is a complex process, which is continuous and never complete, but instead has its ups and downs. That process begins with a radical breakup with an authoritative past and the establishment of an institutional framework of a new system. That is the first phase, followed by great expectations and a belief in universal values, such as separation of powers and human rights. However, it is also always characterized by a fall in optimism which arises with the first serious difficulties in the building of a pluralistic democracy. Quickly, it becomes apparent that it is not sufficient to just “inherit” a Constitution from abroad (like the Constitution of the French Fifth Republic from 1958, which because of the flexibility of its system has shown to be very attractive for post-communist countries), to establish “democratic” institutions and to proclaim principles of free economy. It is necessary to create a democratic political culture, but for that “a number of generations” are required. For the purpose of creating such a culture, it is necessary to return to history and not consider it superficially and linearly. “History and culture are analytically conjoint... history is to a certain extent the creator of history.” (p. 3). History must be “a source of recycla-

ble energy” and “optimism... for a democratic legal state on the Balkans, and the East in general” (p. 24). A blatant example can be seen in Serbia’s 19th century constitutionality. That constitutionality confirms that Serbia was open to European experiences and the European spirit. It succeeded, during a span of fifty years (1835–1888), in conditions of great hardship, “to establish the basic elements necessary for the development and modernization of parliamentary democracy” (p. 23). Instead of becoming a stable parliamentary democracy in the 20th century though, Serbia ceased its constitutional evolution as a result of unfavorable external circumstances and geopolitical situation.

It would be wrong to say that Milacic relativizes or even belittles the significance of law in the creation of a democratic society. Yet, the law, on its own, is not sufficient, as legal state is not its own purpose. For the law to be efficient it must be quintessentially endogenous (*esentielle-ment endogène*), that is, it must be founded on deeper social consensus, which cannot be achieved without the free competition of arguments and ideas in a concrete society. Law taken from “abroad”, which was created in accordance with the suggestions of foreign experts (“experts for ‘institutional engineering’ who disremembered that the constitution is first and foremost a political and only thereafter a scientific work”, p. 189), which dogmatically treats distribution of power and human rights, not only cannot contribute to the building of a pluralistic democracy, but in fact very quickly exhibits contra-effects. The best examples are offered by the first post-communist constitutions. Instead of their being “transitional”, pre-democratic (*prédémocratiques*), “specifically post-communist” (p. 91), it seems like they are written for advanced democracies (*des démocraties avancées*); they are “hyperbolic constitutions” (enriched with norms on human rights, p. 153). Such constitutions could not serve their main purpose (regulatory, constitutionalizing functions), because their symbolic function was overemphasized. As Milacic stresses, that was the continuation of the ideological culture (*la culture idéocratique*) by alternate means. The political party cult was replaced by the cult of legal norms.

The development of a democratic legal state is not only hindered by unfavorable internal factors (authoritative past, strong ideological remnants in all social spheres, etc.). As a serious analyst, Milacic does not avoid directing his criticisms at the international decision makers who had in the past, and continue to do so now (example in the case of Serbia, *V. P.*), used as a guide ideological and geopolitical factors, and not measures of objective law and legal standards. Their declaratively legal requirements were more often, than not, political requirements interpreted in different ways when dealing with so called “good” and “bad students” of democratic transition, “powerful countries (like Russia) and small ones (like Serbia)” (pp.151–152).

The “light motive” of this book is Milacic’s thesis that the law, politics and culture are tightly knit, perhaps now more than ever. In this complex relationship between the law, the political and the cultural, Milacic places particular emphasis on culture. While political and legal revolutions are possible, a cultural revolution is not. “Culture is changed... but not by way of decrees and not on a daily basis” (p. 156). For a transition from a monistic to a pluralistic culture, from dogmatism to pragmatism, time and experience are required (pp. 443–444). For democratic political culture to be adopted, it is necessary to establish the foundations of a legal state and political pluralism. On the other hand, legal state and democratic pluralism cannot be effectuated in the true sense without democratic political culture. That “magic” of mutual action of the law, the political and the cultural has not been fully captivated anywhere thus far. However it is better “governed” by countries of developed democracy, although it is being acquired by post-communist countries, but with great resistance. There is no doubt, “culture will remain the last fight of the transition, the decisive one, but also the most difficult of them” (p. 177).

When faced with the question, where in the process of democratic transition is Serbia now and what its democratic perspectives are, Slobodan Milacic, French professor with Serbian roots, does not give an explicit response. However, Serbia is very much present in his reflections. Thus, the answer to the road which Serbia must take to becoming a democratic legal state can be perceived with careful analysis this book.

However, detailed inspection of this book also reveals certain contestable parts which in fact deal with Serbia or the events which took place in the former Yugoslavia. For example, Milacic states that “sometimes a state is born with post-communism” (p. 250), and in the footnote he gives as examples Macedonia, Belorussia and Kosovo (?!). Furthermore, he alleges that in the former Yugoslavia many states expressed interest in becoming “Great” (Serbia, Croatia, Albania, p. 399). In that sense, he emphasizes that Slobodan Milosevic, who was President at the time, wanted all Serbs in one state, by uniting the territories where Serbs were the majority (“everywhere where there are Serbian graves”). Evidently, he considers this statement uncontestable, as he does not give any references or literature which would confirm this. Finally, Milacic discusses the Constitutional reform of 1991, in which the President at the time, Slobodan Milosevic “deprives (*enlève*) Kosovo and Vojvodina of their provincial status” (p. 383). There was no Constitutional reform executed in Serbia in 1991 and the Constitution of Serbia was adopted in 1990. According to this Constitution, “The Republic of Serbia includes the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohia, these being the forms of territorial autonomy” (The Constitution of Serbia from 1990, Article 6). Therefore, there was

no “deprivation” of the status of Autonomous Province to neither Kosovo and Metohia or Vojvodina, by way of Constitutional reform.

Nevertheless, the aforementioned factual discrepancies cannot significantly weaken the very positive opinion one forms about this book and its author. With this book Milacic reaffirms his reputation as one of the best West-European experts in democratic transition in the East. He is a serious scholar, political scientist and constitutionalist, who has also significantly contributed to more objective analysis of the political processes in the former Yugoslavia with numerous works, including this book. We remain with hope that this book review will influence Serbian authors, legal experts and politicologist to get better acquainted with the works of Milacic. In that respect, a translation of this book into the Serbian language should be considered. It would be a nice confirmation that the spiritual bridges between the French and the Serbian people, have not been nor can they be destroyed.