## CONSTITUTIONAL LEARNlNG

## FOR CYPRIOTS IN THE LIGHT OF THE SWISS AND EU EXPERIENCE: A SOCIOLOGICAL PERSPECTIVE

**Part II\***

**Theoretical and Practical Stakes of Federalisation**

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1. **Incentives and Disincentives within the Evolving Structure of European lnterlegality:**

**Tertiary Federalism, *Acquis Communautaire* and Civil Society as Contradictory Challenges to Cypriot Communities**

There might be some haunting fears of future trouble held in stock by the EU for the Cypriot communities. Some of EU's institutional dynamics are certain to be perceived as ghosts of terrifying nature if both communities do not humble their monological claims to sovereignty. These spectres which I intend to introduce here may complicate even further Cyprus' already intricate constitutional cross-word if they are not received hospitably, generously, open-mindedly *along with* a *spirit of comparative insight willing to compromise their contradictory constitutional claims in the European context of an emerging interlegality.* Two of these spectres (tertiary federalism, acquis communautaire) are already visible and observable with bare eyes but their influence on the constitutional dynamics of Cyprus' federalisation is not self-evident. The third spectre of interlegality which can influence the settlement of the Cyprus conflict operates at the interface of European jurisprudence and national legal orders. Its criterion is not the consistency of norms but the reconciliation of *norms* with *values.* A prospective settlement of the Cyprus issue is not therefore going to be based solely on "European Principles". These principles will rather receive legal injections by contradictory values and meanings embodied by the two communities.

13

THE CYPRUS REVIEW

1. ***Tertiary Federalism: Cypriot Communities and L'Europe des Regions***

The constitutional trend toward a *Europe des regions* may prove as consequential for the political shape of Cypriot federalisation as was the Peace of Westphalia (1648) and the Congress of Vienna (1815) for the case of Switzerland in providing secure external conditions for successful federalisation. The Peace of Westphalia in fact laid the foundations of modern international law in the same way that the treaty-making power of the EU along with the newfound authority of European jurisprudence redraw the lines of political power between and within states. Westphalia marked a shift in the foundations of the European state system by eliminating Holy Roman imperial claims over Europe and by recovering Italian city-state practices of diplomatic rule-making, alliance formation, balance of power and respect of national sovereignty in response to the atrocities committed during the Thirty-Years' War. This arrangement codified by Hugo Grotius in his "Law of War and Peace" remained – with later extensions and refinements (of) the main standard of international law until the global upheavals of the twentieth century which introduced "total war", weapons of mass destruction and Grossraum power thus bypassing the Grotian "law of war and peace" as well as traditional notions of sovereignty and neutrality.

The current context of European constitutionalism marks a quite significant shift in the foundations of the European state system. The modern process of European state-building which swept away the medieval autonomy of free-cities, principalities, provinces, estates and deliberative assemblies now appears to back-pedal.1 The failure of the centralised welfare state along with the crisis of state corporatism and macroeconomic management are also conducive to a renewed interest in regionalism and complex patterns of decentred political power typical of the late medieval and early modern period best exemplified by the constitutional evolution of Switzerland. Catalonia, Wallonia, Emilia-Romagna, Andalucia, Lombardy are telling cases of an emerging regional power along with industrial regions comprising subsidiaries and subcontractors specialising in more flexible methods of production (Charles Sabel,1989).

"The decentring of the nation-state downwards and sideways" (John Keane, 1995, p. 198) is presently evident in the EU which is markedly defined by constitutional dynamics of tertiary federalism. The German *La.ender* exemplify this vigorous embodiment of subnational power *vis-a-vis* the federal government and its constitutional right2 to transfer authority, previously under the regional jurisdiction of the *Uiender,* to Brussels. *The Greek-Cypriot strategy looks forward to this eventuality and entertains latent expectations for the role of federal government as authority-centraliser in the case of reunification.* The German federal government, for instance, could alter the distribution of jurisdictions at the expense of the *La.ender* through foreign policy-making and the shaping of legislative policy through

14

CONSTITUTIONAL LEARNING FOR CYPRIOTS

the European Council of Ministers.

The representatives of the *Laender* however challenged the controversial Article 24/1 and this became a catalyst for the broaching of the pre-Maastricht debate over the role of the subnational level in a supranational community. The *Laendertheses* crystallised around four axes:

I) Entrenchment of the principle of subsidiarity in the event of EU treaty amendment.

II) Access of ministers representing the subnational level to the European Council of Ministers in issue-areas concerning subnational jurisdictions.

III) Establishment of a regional instrument on the European level.

IV) Entrenchment of the subnational level's right of appeal to the European Court of Justice in the event of violations of its rights by the Council of Ministers and the European Commission (Charlie Jeffrey, 1996, p. 207).

The German *Laender's* inter-regional mobilisation involved the convention of the Conference of European Regions along with a Bavarian initiative for a separate conference on the "Europe of Regions" which convened four times (between October 1989 and February 1992) before the Maastricht Convention. The Federal government rebuffed the second *Laender* claim for minister-level representation at the Council of Ministers on the grounds that this undermined its jurisdiction over foreign policy and refused to introduce it at the Intergovernmental Conference. Yet the issue was introduced by the Belgian mission operating under the mandate of Belgian regions and communities. These were the stronger *Läender* allies in that international mobilisation before Maastricht (ibid., p. 209). Ultimately all the claims advanced by the German *Läender* and Belgian regions were upheld and adopted by the Maastricht Treaty except the last one concerning the subnational level's right of appeal to the European Court.

For the first time since the Peace of Westphalia European regions asserted and won over their right to participate in treaty-making processes as co-representatives, side by side with their governments. This constitutional controversy between central governments and regions over the issue of parallel representation in Brussels encapsulates the essence of the constitutional antagonism between Greek-Cypriots (underhandedly relishing an upgraded role for central government in the Council of Ministers) and the Turkish-Cypriots expecting lateral representation in tandem with the German *Läender* and the Belgian regions' vision of tertiary federalism. The reassertion of European regions and inter-regional solidarity re-claiming the exercise of foreign policy based on the principle of subsidiarity and proportionality define new parameters for the federalisation of Cyprus favouring *co-evolution* and *codetermination* of the two communities. Ultimately the Turkish-Cypriot position is

15

THE CYPRUS REVIEW

favoured by several steps taken by the EU encouraging reciprocal evolutionary change between centres and regions. The Greek-Cypriot position however appears equally strengthened by the fact that most member-states do not concede participatory rights to their subnational levels and it is very unlikely that they will be favourably disposed to do so in the future. Both communities can have shared expectations for shared gains but also shared challenges.

All the same, the political unification of Europe cannot be viewed separately from the existing challenge of its decentralisation. European regions are expected to be the probable beneficiaries of such decentralisation. The growing pressure for a regionalist redefinition of national territories along with the further entanglement of member-states in European federal structures may lend added legitimacy to the Turkish-Cypriot claim that a Greek-Cypriot dominated federation cannot provide effective security and welfare to Turkish-Cypriot citizens.

Since Robert Lafont's *La Revolution Regiona/iste* (1967) a lot of water has flowed under Europe's bridges. Lafont made a case about France, a country "carrying the torch" of internal colonialism in the sense that regional resources, levels of development, distribution of income and lifestyles are dominated from outside the regions by capitalist cartels whose activities are facilitated by the administrative centralisation of the state. Regionalism since then has effectively surpassed the level of fashion and tokenism and evolved into a constitutional challenge of Pan-European scale and significance. The fact that the dominant Turkish-Cypriot elite presently does not perceive its opposition to Greek-Cypriot authority as necessarily compatible with European integration is not certain that it will render the Greek-Cypriot elite the sole beneficiary of this process.

##### Acquis Communautaire, European lnterlegality and the Jurisgenerative Role of Jurisprudence

The *acquis* being the most revered aspect of European integration imposes on new members an accumulated body of treaties, laws, directives and regulations (over 80.000 pages) agreed upon by its makers and constitutes the burning hope of Greek-Cypriots that its implementation will facilitate the island's reunification. I argue however that high aspirations and exclusive reliance on the *acquis* as a method of reunification are wholly unwarranted. In the first place, *many decisions dealing with foreign affairs, defence and internal security* – *of extreme importance to Turkish-Cypriots* – *are not considered part of the acquis.*

Secondly, the *acquis* involves more than the four fundamental freedoms for the movement of goods, services, capital and persons with all the private benefits accruing to them, something which conventional Greek-Cypriot opinion thinks will frame the settlement of the Cyprus question at the expense of Turkish-Cypriot

CONSTITUTIONAL LEARNING FOR CYPRIOTS

parochial particularism. Philip Schmitter has astutely counselled against an aggressive interpretation of the four fundamental freedoms because this, he argues, may endanger the cohesion of a "pluralistic security-community" (Schmitter, 1999, p. 947). The *acquis* therefore involves a variety of concerted efforts in domains which "produce more diffusely distributed public benefits" (ibid., p. 947). Any failure to cope with issues concerning compensation for uneven distribution of benefits generated by market liberalisation – especially in conflict-sensitive regions such as Cyprus – may mobilise affected publics and communities thus rendering the process of reunification controversial. This may undermine the legitimacy of the four Euro-economic freedoms and expose them as a Greek-Cypriot Trojan horse intended to erode the cohesion of the Turkish-Cypriot community.

*I would therefore argue that rights are not created by bureaucratic codes or motorised decrees, directives and regulations. The conflict between an aggressive upholding of economic rights competing for a higher legal status over and against security rights* and *regional viability is an area of jurisprudence and philosophy of law faced with singularities, exceptions and hard cases. The challenge therefore is not so much the observance of the acquis and its pronouncements but the assumption by European jurisprudence of an interpretive role at the spectral limit of what the rules permit, at the limit that is of internormativity.*

Moreover, it is increasingly becoming evident that the classical theory of *pouvoir constituant* embodying an absolute break and autonomy of the national assembly *vis-a-vis* all pre-existing law is no longer sustainable although it proved an effective instrument of legitimation and legal dissociation from the *ancien regime.* The historical role of *pouvoir constituant* is no longer the one attributed to it by Sieyes, namely revolutionary exit from an existing constitutional order. It is rather a matter of legal evolution in the unifying context of European constitutional civilisation. This is exemplified by the amendments of national constitutions following the conclusion of the Treaty of Maastricht. It was not the pure outcome of the *member-states' sovereign will* but rather the consummation of a three-dimensional institutional aggregate comprising the *nation state,* the *member-states* and the *constitutional instruments of the EU.* In view of the above, state governments and national assemblies could not become the sovereign subjects of decision-making nor could they decide alone about the context of constitutional amendment.3 *National court­ structures are engaged in "Europe-friendly" legal hermeneutics at the interface of national constitutional orders and the jurisgenerative space of European jurisprudence. This is a post-Kelsenian universe of multiple non-linear hierarchies of norms, permeable legal orders non-referable to a Grundnorm but to an interactive set of formal and material sources of law.* Justice in such a post­ Kelsenian context beyond state positivism is shaped by a permeable *"interlegality"* or *"internormativity'* carried out by a hermeneutic of *logiques graduees* whose

THE CYPRUS REVIEW

operative criterion is not *consistency* and *congruence* with ultimate principles but *compatibility* and *proximity* whereby norms and values are combined and fused during deliberation (B. de Sousa Santos, 1988, p. 382; M. Delmas-Marty, 1994, p. 141). The new hermeneutic shaped by the unifying constitutional space of Europe should not be perceived in mere terms of legal pluralism as it was hitherto studied by legal anthropology. Rather it rises in the context of *legal injections* whereby the conflict between legal systems is resolved either through the adoption of stronger principles by the weak or the incessant infusion of the stronger system by the principles, rules and meanings of the weak (A. J. Arnaud, 1991, p. 237).

This is high time for constitutional theory. Concepts and arguments drawn from international relations rather than federalism can no longer monopolise interest on the evolving dynamic of the EU. The European Court of Justice (ECJ) is in this sense exceptionally important in endowing this non-statal formation with a federal contour. It is precisely the ECJ which has transformed the EU into something more than a trade alliance, resembling a constitutionally based polity than a mere international organisation.

With respect to the Cypriot communities this high tide of constitutional politics provides ample reasons for puzzlement. The *principle of subsidiarity* is a case in point subject to a wide variety of interpretations. Central governments expect to bolster their national power against Brussels while regions – and in this case the Turkish-Cypriot community – can reasonably expect to circumvent central authorities "in carrying out the tasks at the most appropriate level". Whether this concept remains a political principle or the ECJ converts it into a comprehensive constitutional principle informing its rulings is something that will have a direct bearing on the constitutional dynamic of the Cyprus problem.

The Cypriot communities are called to put up with a relentlessly hermeneutic universe of *"simultaneous polysystemy'',* of constitutional injections over-subtle translation of principles and casuistic disorder. This time Europe's hermeneutic posture interpellates not only communities but also citizens. The *opinion publique ec/airee* of civil society is summoned to re-imagine communal values and commitments within the jurisgenerative space of *"law's empire". The latter translates principles not according to original intentions and transcendental norms emanating hierarchically from an ultimate "rule of recognition" or Grundnorm but in accordance with interpretive judgements and preliminary rulings which notice and take account of the hard fact that principles are pervasively contestable, therefore demanding reflective, refined and ingenuous deliberations beyond the ordinary politics and partisan commitments of civil society.* On the other hand "law's empire" as defined by self-reflexivity and interpretive practice is addressed to politics in the broadest civic sense.

CONSTITUTIONAL LEARNING FOR CYPRIOTS

It is a *"protestant attitude"* that makes each citizen responsible for imagining what his society's public commitments to principles are, and what these commitments require in new circumstances [...]. Though judges must have the last word, their word is not ... the best word. Law's attitude is constructive: it aims, in the interpretive spirit, to lay principle over practice showing the best route to a better future [...]. It is a fraternal attitude, an expression of how we are united in community though divided in project, interest and conviction (Ronald Dworkin, 1986, p. 413).

1. ***International Civil Society, Law's Empire and the Normative Conditions of Political Association: The Formal and Implied Challenges of Social and Legal Theory in the Federalist Debate***

Whether civil society in a quasi-state such as Cyprus overdetermined by *communalism, group rights* and *international relations* can espouse the *protestant attitude of law* (Dworkin, 1986, p. 413) and become thus a subject of law's empire remains an open but unavoidable question. In law's empire, courts are designated as capitals and judges ordained as princes. *If the Cypriot civil society does not want the judgemental interpretation of European courts to be the last word on the Cyprus question it has to develop reflexive constitutional theories which take notice, give reasonable account of and accommodate through moral insight, refined argument and constructive hermeneutics equally valid principles which contradict one's own communal interest and convictions.*

It is not enough for individuals, groups and associations of civil society to state vehemently their vague wish for a reunified island. Involved actors in civil society should be prepared to take up the interpretive challenge of law's empire commencing from the attendant obligations of citizenship in a prospective federal association of communities and citizens. Responding to such an interpretive challenge entails ordinary citizen self-reflexivity beyond the "creative ideas­ approach" characterising think-tanks. *Law's empire and its interpretive challenge address actors in non-specialised domains of civil society who engage in federal discourse beyond think tank-thinking. By its very nature think tank-thinking addresses an audience of political elites engaged in bargaining while law's empire interpretive challenge addresses a non-specialised audience of civil society engaged in a discourse of moral and political self-reflexivity aiming at a shared understanding of principles through moral insight, beyond de facto models of circumstance, by making responsibility toward citizenship fully intersubjective and personal.*

Responsibility toward citizenship involves *post-conventional moral testing of opposing discourses, reversal of perspectives, a capacity for "inner dialogue" and consideration of possible side effects.* A constitutionalism which involves civil

THE CYPRUS REVIEW

society in its processes ought to make think tank-thinking by expert publics responsible to the moral insight of non-specialised civic publics without collapsing the boundaries between scientific expertise and moral reasoning. The question of political legitimacy in a divided society is best served if non-specialised actors themselves start from the field of citizenship obligations instead of the codification of rights. The latter can follow at a later stage. Insofar as the two communities disagree about the moral and territorial boundaries of a federal association whereby neither practice nor custom nor solidarity nor constitutional law can render the Republic of Cyprus a shared political community, then the question of obligation becomes crucial in the eventuality of reunification.

Civil society therefore is the public space where the problem of the legitimacy of a reunified federal republic can be relocated in order to be reframed in terms of mutual obligations and concerns by considering what a bare federal community can be like before it can claim to be (if it so wishes) a genuine political community. In such a case civil society assumes the role of initiating the task of self-reflection over issues of political legitimacy, obligation and the responsibility of citizenship. Political elites alone associated with the infrastructure of whatever limited state-power exists cannot exhaust the totality of possible political communication. The *"political'* in this sense is being redefined as a process oriented toward a non-statal form of governance embracing public domains, parties, associations and intercommunal forums of *"non-specialised rapprochement'* between the two communities, areas which are "relevant to politics and political sociology and yet they are organisationally and indeed legally, outside the limits of 'state' and public law" (Andrew Arato, 1994, p. 138). On the eve of Cyprus' accession to the EU there appears a desperate need to address issues of bicommunal obligation and citizenship on the level of non-statal, non-specialised political communication, "subsidised" or mediated by social theory and comparative insights on federal cultures. *The hermeneutic dimension of sociology cannot remain indifferent to the self-interpretations of the Cypriot communities as civic actors and crucibles of constitutional identity any more than these actors' deliberations can neglect learning through comparative insight, more rigorous and sustained consideration of constitutional models, and political systems which are usually offhandedly dismissed as "unjust" or foreign to the Cypriot communal ethos. Here social theory emerges as a protestant attitude in Ronald Dworkin's words, a reconstructive method of self-reflection, self-observation and self-criticism of the federal politics of the Cyprus problem.* Social theory therefore as civil society's instrument of self­ reflexivity takes up the interpretive question of what character of mutual concern and moral insight its non-specialised citizenship practices must obtain in order to justify the assumption of the viable *intercommunal community* it seems to make.

If a political community is put together only by the force of circumstance, selfish interest and nothing more, taking the issue of obligation and political legitimacy for

CONSTITUTIONAL LEARNING FOR CYPRIOTS

granted it is sure to fail. Any political association respectable of its name is founded on the assumption that bargain rules and constitutional contracts do not exhaust the nature of political legitimacy and obligation. *Rules after all are negotiated out of shared commitments to underlying principles which are themselves contestable hermeneutic sources of further obligation.* A federal compromise does not reflect merely an antagonistic balancing of communal selfishness. A political association is pregnant with implicit obligations which go beyond *de facto* accidents of history and geopolitics. Political associations attract obligations which are exhaustible neither by think-tank thinking nor by decisions concluded through elite-bargaining. The secession of the Swiss canton of Jura from Bern exemplifies a case of *distorted recognition* and a paradigmatic failure by Bernese elites to acknowledge such duties flowing from federal principles which oblige majorities, even though these same principles were never identified or declared. The Jurassien experience viewed as a Bernese failure in solidarity applies in a very particular way to the moral responsibility of the Greek-Cypriot majority bearing important implications for its learning process. A constitutional model of circumstance adds nothing by way of special attitudes of *moral insight* and *solidarity* to the implied internormativity of principles and values that defines a bare political community. Neither think-tank and elite-orientated expertocratic publics specialising in techniques of conflict­ resolution nor parochial loyalties entrenched in inward-looking civil societies can work through the *crisis of solidarity* threatening the political legitimacy of a federal association. The implied moral horizon of such responses is at best a sense of *tactical solidarity* conceived statically and strategically by being founded on the presupposition of a *chance association.*

Concepts such as political legitimacy and obligation imply a sense of solidarity and shared moral space. When however this moral space of implied solidarity is not ascribed but remains to be achieved then communities are obliged to assume interchangeably the moral perspective of the *hypothetical third.* This indeed assumes the significance of a *moral counterpoint* in the social theory of the Cyprus problem whereby federal discourse deliberately splits in a *"communicative schizo­ flow'* incorporating simultaneously one's own standpoint along with the opponent's, under the auspices of a neutral third-person perspective. *Only a gesture of moral counterpoint in social and legal theory can identify blind spots in constitutional narratives, by combining, inverting and augmenting the rationality of political discourses thus creating potential for agreement in context bound interest-conflicts.*

To enable constitutional learning in a federalist debate distorted by systematically misrecognised and misstated expectations, social and legal theory is called to assume a *"multiple-voiced subjectivity'* by reconstructing conflicting expectations not so much by adopting a standpoint but by elucidating the *counterpoint* of the hypothetical third. In other words the possibility of a respectable compromise relies on the capability of civil society to assume a version of social and

THE CYPRUS REVIEW

legal theory's *intersectionality* by anchoring citizenship, obligation, legitimacy and solidarity in the perspective of the hypothetical third thus establishing bridges between communal identity and universality.

The constitutional puzzle of the Cyprus problem consists of the attribution of a set of rights to one community which claims them against another that is also a group right-bearer in its own right. The way Turkish-Cypriots and Greek-Cypriots assert their rights deprives these same rights of their universality and moral justifiability. It follows that for a federal association to be viable, rights must be validated through the moral perspective of social and legal theory's counterpoint. Validating a right in this case entails specification of the moral grounds of obligation so that when considered on its own a right must be sufficient to justify holding the other community to be under the duty to promote it. This again raises the spectre of *intercommunality* and *internormativity.* As Hannah Arendt brilliantly explained *no law or right can be anchored outside the public domain of discourse or above public life in a natural world that is not open to debate in any form* (Hauke Brunkhorst, 1996, p. 196). By subjecting rights to a validity test social and legal theory qua public discourse becomes of central importance in the debate over the refounding of the Republic of Cyprus. Not in the sense of any self-appointed enlightenment or a privileged access to truth which certain forms of communalism prevent from emerging anyway, but in the sense of a public discourse that elucidates the normative and communicative foundations of a stable federal compromise. Still, even a compromise of contradictory right-claims as an alternative to zero-sum gains and absolute truths needs learning, presupposes reflective distance from one's own perspective so as to entertain others, valorises what is common between competing identities and communities and identifies the dark side of traditions. A compromise without some philosophical and sociological sense of the aims, aspirations and principles of constitutional politics cannot be a viable compromise.

Apart from this however, what may mitigate the vicious circularity of competing rights among the two national entities is the observable fact that they are no longer sociologically the same *cofounding communities* which existed in the past. The international environment from which they partake and interact poses a new set of challenges and dilemmas.

A pressing theoretical question in contemporary Europe is whether new self­ reflexive forms of the old cosmopolitan and internationalist traditions are taking shape along with the process of EU's integration thereby rendering national identity a contingent matter of politics and choice rather than fate. The habitat of such late cosmopolitanism is acknowledgeably an emerging international civil society that gives shape to a network of *horizontal and vertical linkages* such as personal contacts, friendships, inter-regional forums, conferences, political parties, social

CONSTITUTIONAL LEARNING FOR CYPRIOTS

initiatives, trade unions and youth movements which take advantage of new communication technologies and increasing physical and cultural mobility (John Keane, 1995, p. 204). The undramatic, nearly invisible, informal and pre-legal status of civil society's continental public spaces increases an awareness of what Simon Weil's Greek term describes as the *metaxu* (intermediary space), a non­ statal habitat whose very informality ensures its strength as normative ideal.

In view of the above, can the Turkish-Cypriot community withstand such cosmopolitan pressure of vertical linkages whereby civil society becomes distinct from the political institutions of the community but remains politically relevant in the assertion and protection of rights? Can the Turkish-Cypriot community reconcile itself with the growing disassociation of rights from sovereign state-power and tolerate the gestation of new sources of legitimacy, obligation and legality which undermine the cohesion and unreflective solidarity of closing-ranks' communities? Can it also accommodate horizontal linkages and direct-democratic action that cuts across communal boundaries and nurtures new forms of recognition and trust that humble national identity? Could there possibly be a constitutional restriction of the right of intermarriage or of the right of belonging to intercommunal associations, parties and clubs without risking abrogation of communication rights? But the disaggregation of dimensions of citizenship, identity, belonging, participation, and legal standing "which signal the diminished legitimacy of claims to absolute sovereignty" (Jean Cohen, 1996, p. 179) is equally challenging for the Greek­ Cypriots. The possibility of an international civil society vitiates any latent or residual irredentism aspiring to an "indirect union" to Greece through EU membership. It challenges the Greek-Cypriot community to live up to the task of realising the meaning of obligation and solidarity by probing the depth of their commitment to constitutional politics of federalism rather than politics of the *democratic will.*

##### The Althusian Challenge of Social Federalism and the Turkish-Cypriot Dilemma in Federal Theory

Group rights as the language of expressing the most urgent aspirations of the Turkish-Cypriot community entails contradictions and dilemmas. How can civil liberties be balanced against a group's right to national security and glory if conceptions of security and glory do not trickle down so self-evidently to a group's members? If there is an internal reJation between an individual right and the collective goal then the problem of rights as "trump cards" over group interest does not arise.4 But marrying for instance whom one pleases understood as a right to intermarriage places limits on the extent to which a communal culture can be permitted to regulate its members' individuality. It would be self-defeating to say that the right to ethnic integrity is a group right that must be balanced against the individual's right to marry freely (Jeremy Waldron, 1987, p. 319). And yet Articles 111.1 and 22.2 of the Cyprus constitution *render intermarriage practically unfeasible by subjecting it to ecclesiastical regulation.* This is inconsistent with any sense of

THE CYPRUS REVIEW

federal *consociatio* apropos of modernity. For instance, the Swiss constitution which obtained the status of a holy document for all mediators to the Cyprus problem stipulates that *"the exercise of civil or political rights may not be restricted by prescriptions or conditions of an ecclesiastical or religious nature"* (Article 49, par. 4). The cantons and the Confederation may take measures against encroachment by religious authorities on the rights of citizens and of the state (Article 50, par. 2). The right to marry is therefore put under the protection of the Confederation (Article 54, par. 1). Statistical figures also indicate that minority cantons such as French­ speaking (18.4 of the total linguistic distribution of the population) and Italian­ speaking (9.8) reflect high intermarriage rates. According to these figures Swiss­ French-speaking cantons indicate an 18.2 intermarriage rate while Italian-speaking cantons reflect a rate of 12.2 (David Earl Bohn, 1980, pp. 175-76).

Neither high rates of intermarriage nor incoming Swiss-German migration since the establishment of the *right of free settlement* in 1848 (Article 45) appear to threaten the ethnic character of minority cantons. The latter through intermarriage integrate incoming population but in the process ethnic mobility too changes the host culture by breaking new common ground. *Below surface cleavages and a definite geographic distribution of ethnic populations we can observe a broad net of inter-ethnic family ties, emotional linkages and associational symbiosis in civil society.* Swiss minority cantons may therefore reassure the Turkish-Cypriot minority about the significance of inter-ethnic contact and associational cross-pressures.

Even Johannes Althusius whose *POLITICA METHODICE DIGESTA* (1614) reflected the symbiotic fruition of the consociational principles of federalism in Switz;erland and the Netherlands, stressed the significance of the distinction between family *(conjugalis)* and kinship *(propingua) (Politica,* pp. 27-32). According to Althusius' doctrine of conjugal and kinship consociations, the former is regulated by a bond *(vinculum)* of trust, communication of mutual aid, counsel and right. The conjugal bond therefore is regulated by *jus symbioticum,* symbiotic right. Kinship consociations on the contrary are regulated by rights of blood *Uura sanguinis)* and the right to coerce *Uus coercend1).* For Althusius' political sociology of consociations the founding of family is clearly a *voluntary act* belonging to the realm of *lex consociationis et symbiosis,* the law of association and symbiosis which consequently excludes *jus coercendi.* The difference between the Althusian principles of *conjugalis* and *propingua* supports the civic idea that the foundation of the institution of family is *covenantal* and not restrained by obligations of kinship hence allowing for the possibility of intermarriage. Althusius' challenge to Turkish­ Cypriot constitutionalism is whether it can make allowances for private covenantal consociations beyond the level of ethnic kinship. Can Turkish-Cypriot constitutionalism make room for consociational motivations and *intercommunal symbiosis* in civil society? Could there be made constitutional allowances for

CONSTITUTIONAL LEARNING FOR CYPRIOTS

intercommunal symbiotic consociations on the level of family and labour? We can recall that Switzerland's civil society is integrated not only by way of cantonal autonomy but also by instruments of direct democracy, parties and liberal corporatism which enable the consolidation of federalism not only by reference to the relationship of the cantons with government but also by incorporating cross­ cutting economic, associational and post-materialist aspects of civil life.

It is also useful to recall that the decision to introduce mechanisms of direct democracy in Switzerland's constitutional design was preceded by a bitter debate between a Bismarckian approach which viewed direct democracy as a majoritarian mode of political centralisation that would weaken the authority of cantonal elites, and an opposing approach which viewed federalism as the acme of cantonal consociationalism. The constitutional debate was concluded by a compromise involving a combination of *self-rule* and *shared rule* (William E. Rappard, 1936, pp. 380-392). Thus constitutional referenda and popular initiatives for partial or total revision of the constitution require double majorities (of the country as a whole and of more than half of the cantons' majority vote) while legislative referenda do not. Nonetheless, these mechanisms allow sections of cantonal civil societies to consociate through coalition politics and public discourse across perceived boundaries. Even though constitutional initiatives fail to gain approval by the majority of cantons, the way they are launched serves political integration nonetheless. For instance if a *constitutional initiative* requests partial revision of the constitution and meets the opposition of the Federal Assembly the latter is obliged to submit it first to a referendum based on the simple majority of the country's electorate as a whole and only then (depending on the positive outcome) it may proceed formulating it into a bill so as to be submitted to a second referendum requiring double majorities (George Arthur Codding, 1961, p. 62). Thus even when cantonal authority and self-rule is preserved, political integration is also served by allowing civil society a margin of autonomy to practice the act of consociating through the collection of signatures which despite its failure to obtain positive outcomes in most of the cases, it manages to register a public inter-ethnic and territorial distribution of feelings. This sometimes turns mere demands into policy­ outputs since the federal government cannot ignore them if it wants to achieve the widest possible consensus (Andre Eschet-Schwarz, 1989, p. 94).

When therefore Turkish-Cypriot constitutionalists such as Zaim Necatigil (1989, pp. 150-51) pinpoint Switzerland as a model for Cyprus' constitutional design they should not presume a deeply divided country which ostensibly achieved political stability and unity without the benefit of cross-cutting cleavages. With the exception of the Jura secession, the level of intersubcultural hostility is low, engages multiple actors and it is pluralist, complex, and cross-cutting since the cantons are not ethnically homogeneous.

THE CYPRUS REVIEW

Nobody of course can deny that the key concept in the Swiss federal tradition is *consociatio.* When however *consociationalism* is discussed in the context of the Cyprus question analysts and scholars force out of consideration the subsidiary concept of *societal federalism.* According to Althusius a polity is a federally constructed edifice of multiple (not merely governmental) layers of consociations. From kinship's *natural consociation* to family's *private consociation,* to various colleges, guilds and estates, *civil consociations* are held together by common professional and social interests that constitute *cities and provinces as public consociations.* All combine in the formation of a *commonwealth* as the final and *universal consociation* (Thomas O. Hueglin, 1994, pp. 46-47). *Representation therefore is threefold, territorial, functional and civil,* with the purpose being public communication of *"things, services and common rights'' (Politica,* p.19).

Althusius' insistence on mutual aid, public communication and sharing establishes the conceptual bearings of a *consociational commonwealth* on the basis of solidarity qua covenantal interdependency of consociations in a symbiotic civil society. Althusius' symbiotic theory of consociational checks and balances in civil society leads him to the following startling conclusion: "Such is the nature of the contractual mandate *(contractum mandatt). The less the power of those who rule, the more secure and stable the imperium remains'' (Politica,* p. 121}.

In the context of the case we discuss in the present study Althusius' federal counsel to Turkish-Cypriot constitutional thinking is that the less sovereignty is ceded to the political cartel of structured elite predominance the more secure, stable and therefore symbiotic Cypriot civil society will be. It is not so much shared sovereignty on the elite level that matters for Althusius as shared public communication, solidarity and symbiotic rights in civil society which bring about *security* and *stability,* the ultimate Turkish-Cypriot concerns. *Security and stability come about not through ethnic insulation, maximisation of self-interest and parochial withdrawal but rather through consociational symbiosis in civil society. Consociatio therefore should not be construed by constitutional design-makers merely as a decision-making mechanism which consolidates structured elite predominance but also as a regulative guideline for politically relevant symbiotic consociations in civil society.* I suggest that Althusius' political sociology of *consociatio* or *societal federalism* offers a valuable yardstick and heuristic tool for the reassessment of the bicommunal debate over the federalisation of Cyprus. For example, an Althusian reading of *subsidiarity rights* suggests to constitutional design-makers that they should not be reserved only for territorial actors - as the alarming example of the Lombard League's self-centred profit-maximising neoregionalism indicates - but should also extend to federalised domains of labour and post-materialist consociations mobilised around direct participation, active citizenship and personal identity as post-conventional antidotes to mass society, to

CONSTITUTIONAL LEARNING FOR CYPRIOTS

the pseudo-culture of phoney communitarianism and to techno-domination. Althusius' challenge with respect to federalisation is to balance *subsidiarity* with *solidarity* extended to politics, economy culture and identity through a *symbiotic communication of checks and balances in civil society, rather than on the level of state-building.*

1. **Abandoning Hegemony: Greek-Cypriot Learning and the Quest for the Accommodative Middle**

##### a. Geopolitical Distribution of Power and Comparative Constitutional Insight: The Significance of the Jura Case for the Constitutional Reflexivity of the Greek-Cypriot Community

The ancient Greek term *matheuma* (lesson) means reaching knowledge after effort, *epi prospatheias.* The process of *manthanein* a lesson is, however, linked to a *pathema,* a tragic misfortune: *ta de pathemata gegonai moi mathemata.* Misfortunes, setbacks, failures, liabilities, defeats are converted into lessons. It is after running or falling into the blindness of *pathos,* that learning commences. Learning is a reflection on pathology: *pathon, mathon.* It is about overcoming the consequences of an undesirable occurrence through moral understanding, a rational praxis of *matheteia* as opposed to *mageia* (wizardry, sorcery). The hermeneutic meaning of learning in ancient Greek refers to the intersubjective art of self-reflexivity played off against supernatural communication based on various techniques of incantation. Learning therefore is associated with a moral experience of self-understanding which has integrated *phronesis,* right judgement working through a *constellatio* of contradictions and comparisons.

This article is intended to be a critical-rational *matheteia* in comparative constitutional learning. The case of the Swiss canton of Jura can speak, I think, to the actual historical condition of Cyprus' constitutional predicament. It is hermeneutically capable if viewed as a political *"meaning-event" to* influence – upon reflection – the self-understanding of Greek-Cypriot constitutional discourse.

To this purpose let me draw on some relevant dimensions of the Jura case for Cyprus. Jurassian mobilisation was triggered after blatant ethnic discrimination with regard to a significant peak appointment in civil service which reminded the French­ speaking community of its minority status. Bernese complacency, negative stereotyping of Jurassian separatism, suppression of awareness of unresolved ethnic conflict, elusion of public debate via politics of omission, all defamed Bern's self-image as the quintessential facilitator of Swiss federalism's accommodative ethos. Here Bernese constitutional bargain-diplomacy modelled along utilitarian interest-based and corporatist oriented settlements of conflicts proved unprepared for a challenge which invited instead moral learning, reflexive solidarity, attention to

THE CYPRUS REVIEW

the sociological erosion of community and politics of recognition. The misrecognition of the Jurassian challenge led to premature conflict-resolution and eventually to minority street radicalism, sabotage and violence unprecedented for Swiss standards of public amicability.

*Discriminatory redistribution* was integral to the assertiveness of Jurassian identity as it was in the Turkish-Cypriot process of claim-making, an issue I intend to tackle further down. The Jurassians asked for more influence on decisions concerning the watch-making industry, a vital issue for the export-oriented regional economy. This dimension which was also visible in the Turkish-Cypriot case seems to corroborate Michael Hechter's thesis about internal colonialism. Bern appeared to be exploiting Jura in the same way that powerful commercial interests clustered around London exploited for several centuries Scotland and the Northern border region of England (Michael Hechter, 1975, pp. 47-157, 311-316). The crisis of the watch industry in the late 1970s encouraged big Swiss banks to intervene and stop the losses by ruthlessly clearing out the entire social fabric which supported traditional Swiss watch-making. Herr Schuetz, (a German speaker), was dispatched into the Jura to liquidate small firms whose owners received a rough 10% of the value of their shares as compensation; debts were cancelled while the remaining value was absorbed into *Schweizerische Gesellschaft fuer Mikro-Elektronik und Uhrenindustrie (SMH),* the new holding company which restored Switzerland to leadership in the watch-making world (Steinberg, 1976, pp. 185-186). Indirectly, however, the concentration of watch-making capital in the hands of *SMH* undermined the microsociological mosaic of Jurassian culture. The French­ speaking valleys of the area "lost their population and their will to live". Villages in the Vallon de St. lmier, towns like Le Lacie and La Chaux-de-Fonds were literally run down, provincialised and forgotten (ibid., p. 188) as it would have been their fate in any other centralised state. "Concordant democracy" gave way to the iron laws of political economy. Earlier in 1968 the federal government had dispatched a tank battalion in the Jura in order to prevent Jurassian separatists from seizing arms from the federal installations, recalling images of the Soviet invasion in Czechoslovakia the same year (lvo Duchacek, 1970, p. 238).

Constitutional scheming qua engineering of balance of power failed to address a crisis explicitly framed in terms of discriminatory redistribution and passionate identity-claims therefore leading to *direct action* and *direct democracy.* Initially direct democracy defeated separatism but eventually facilitated Jura's secession accompanied by a bitter partition of the breakaway canton between North and South in spite of moderate suggestions for a united independent Jura comprising of two half-cantons (Kurt and Kati Spillmann, 1992). Even in peaceful Switzerland the corporatist will to liberal compromise (devoid of learning and public reflexivity over moral injuries) was perceived by the Jurassians as a haughty gesture of ethnic manipulation by the complaisant German-speaking majority.

CONSTITUTIONAL LEARNING FOR CYPRIOTS

On the level of political psychology the *"Moeckli Affaire"* as it is known, was perceived as a case of ethnic discrimination, experienced as a collective narcissistic blow which demonstrated incidentally more general attitudes of blunt neglect and devaluation of the moral status and pride of the Jurassian community (ibid., p 110). To this effect Heinz Kohut argued that in the setting of history, thwarted narcissistic aspirations of various collectivities such as peoples, states, nations and communities interfere with conscious or unconscious fantasies concerning their greatness and specialness. Wounded pride or injuries to prestige needs, are important motivations for group behaviour (Kohut, 1978, p 773). This emotional frame of narcissistic injuries which is so central in the Kohutian sense of community is precisely what is lacking in Gellner's account of nationalism perceived as the sole outcome of a modernising educational machine which imposes "high culture" from grade school to university (Gellner, 1983). What is important in the political psychodynamics of ethnic relations is the underdogs' idealising transference to the nation of an intimate sense of narcissistic perfection (Peter Loewenberg, 1992, 96). The political repercussions of this conflict over the Swiss system are not negligible. They reflect an aggravating tension in the relationship between French­speaking and German-speaking Swiss.

The latter have a leverage over economic growth and appear to suffer less from economic downturns. The *Suisse Romande* (French-speaking) resent also their under-representation in military hierarchy, public administration and government offices, feel increasingly alienated by the fact that their Suisse patriotism is publicly disputed, and grow highly insecure by proposals which challenge the privilege of French as the first foreign language offered by cantonal school systems. Romand fears are also aggravated by the debate over the upgrading of half-cantons to full cantonal status that would further aggrandize the influence of German-speaking Switzerland (Clive Church, 1996, pp. 252-253). Moreover, although the Swiss­ Italian community of Ticino does not aspire to closer links with neighbouring Italy, it does feel marginalised on the federal level as well as colonised at home by Swiss­ Germans who are attracted by its moderate climate (ibid., 253).

With all necessary differences in mind Swiss-German and especially Bernese attitudes toward their "others" reflect a similar set of Greek-Cypriot attitudes toward Turkish-Cypriots. To begin with, the Greek-Cypriot elite is reported to have discriminated heavily against the Turkish-Cypriot community between 1963 and 1974 in ways which amounted to an irreparable loss of status for the latter. According to the Turkish-Cypriot Human Rights Committee (1983) students studying abroad were banned for re-entry in Cyprus;5 Turkish-Cypriot citizens travelling between towns and outlying villages were subjected to humiliating checks and searches;6 Muslim access to the religious shrine of Hala Sultan Tekke was subject to regulation and scrutiny by the National Guard;7 prohibition was imposed on purchase and sale of real estate between Greek-Cypriots and Turkish-Cypriots;

THE CYPRUS REVIEW

there was prevention of immovable property and purchased land registration (Turkish-Cypriot Human Rights Committee, 1983, p. 23); firms represented by Turkish-Cypriots (Lufthansa, Saba) were coerced to cancel agency agreements (ibid., p. 25); there were delays in social insurance benefits; denial of postal services;8 it is also estimated that Turkish-Cypriot contributions to the annual budget were between 15% and 20% in terms of direct and indirect taxes without corresponding benefits accruing to the community thereof (ibid., p. 27).

However, the most typical feature (exemplifying Michael Hechter's thesis on internal colonialism) which bears undisguised similarities with German-speaking domination over the watch-making industry in Jura, is the case of one-sided Greek­ Cypriot prosperity in the tourist industry from 1960 to 1974. Greek-Cypriot steering of the tourist traffic suppressed the existence of Turkish-Cypriot destinations which were defamed as "high-risk areas". Out of a total 600.000 (Cyprus Pound) low­ interest loans advanced for tourist development between 1960 - 1966 only 10.000 accrued to Turkish-speaking hoteliers. It is also claimed that in the next development-package allocated between 1967 – 1971, the Turkish-Cypriot community was not benefited at all (ibid., p. 32). It is also reported that Turkish­ Cypriot tourist establishments were censored in the advertising brochures prepared for marketing campaigns abroad while visiting tourist agents were prevented from contacting Turkish-Cypriot agencies. Cypriot delegations despatched abroad did not include Turkish-Cypriot representatives while touristic installations and beach resorts owned privately or by the religious trust Evkaf in cities as Kyrenia, Paphos and Limassol were occupied by the National Guard for security purposes (ibid., pp. 32-33).

All these grievances were reported after the collapse of constitutional government in 1963. The imposition of the 1960 constitution by Britain, Turkey and Greece met only grudging acceptance by the two communal elites which considered it respectively a prelude to *Enosis* (union to Greece) and *Taksim* (partition/union to Turkey). The status of ceded citizenship granted in 1960 by the guarantor powers could not elicit a sense of obligation and solidarity which could imply a wider complementarity of affectual communication among the two communities. That was so because:

* 1. Such "second best" arrangement crushed the enosis dream as the cultural anchor of the Greek-Cypriot elite which felt that the majority's will was severely tested in a costly anticolonial war against British rule but was ultimately robbed of self-determination; and
	2. Insofar as the Greek-Cypriot elite considered the constitution as a denial of the majority's natural rights and irredentist aspirations, *bicommunalism qua power-sharing* was illegitimate thereby any Turkish-Cypriot resistance in the form of strict adherence to the provisions of the ceded constitution had to be opposed accordingly.

CONSTITUTIONAL LEARNING FOR CYPRIOTS

All the above mentioned violations of civil rights were carried out under such decisionistic, natural law-frame of justification. The constitutional breakdown in 1963 came about in the wake of 13 sweeping amendment proposals submitted by the Greek-Cypriot to the Turkish-Cypriot leadership and the guarantor powers with the notification that any constitutional reform was solely a domestic affair of the Republic of Cyprus. Certainly this was in contravention to articles 181 and 182.1 which bestowed constitutional force to the guarantors' right of intervention in the eventuality of unilateral constitutional amendments. Neocolonial treaties binding the sovereignty of the Republic aside, the Greek-Cypriot elite did not make any further attempts to involve parties, interest associations and publics across communities in the revision process which intended a unitary and strong government with vast powers. It was carried out not only without the consent of the Turkish-Cypriot government elite but also without the consent of peak associations in civil society. The neutral German judge Professor Dr. Ernst Forsthoff of Heidelberg University who was appointed as president of the Supreme Constitutional Court and who resigned in 1963 because the rulings of the Court were flouted by the executive, stated clearly that the implementation of the disputed clauses of the Constitution "was a matter of good will" (John Reddaway, 1986, p.130). But the fact that bicommunalism was based on a geopolitical model which delegalised *Enosis* and *Taksim* but did not and could not divest these clandestine geopolitical identities of the moral legitimacy they enjoyed within the respective communities, entailed a rapid short-circuiting of the constitutional learning process. Richard Patrick (1976, p. 14), Christopher Hitchens (1984, p. 41-42) and John Reddaway (1986, pp. 133-135) leave no doubt that both Cypriot elites masked their true preferences and expected the 1960 constitution to prove unworkable in pursuance of their competing geopolitical goals. The geopolitical potential of *''belligerent identities"* did not allow the two contenders any room for "good will", mutual adjustments, confidence building and metabargaining out of the realisation that neither party could win on its own terms. On the contrary, both sides had reasons for mutual defection believing in a calculated zero-sum outcome. Neither side felt like making "wholehearted commitments" in the context of such geopolitical ambiguity.

For the Greek-Cypriot elite in 1963 it seemed rational to gamble for further gains (Enosis) by maximising the geopolitical possibilities offered by a newly found state of independence. The worldwide conjuncture of decolonisation in the 1960s could give long-shot geopolitical identities such as *Enosis* a chance to win thereby encouraging defection as a dominant strategy of hegemony over Turkish-Cypriots without expecting drastic reciprocation. My argument is that the Greek-Cypriot dilemma of hegemony and defection was avoidable. The Greek-Cypriot elite could eschew the "opportunist's obstinacy" and depart from the narrow pursuit of a unitary state at any cost while at the same time indulging in the self-emboldening functional delusion of *Enosis* which involved (apart from psyching-up) inaccurate evaluation of

THE CYPRUS REVIEW

the geopolitical distribution of power and a gross lack of comparative constitutional insight. It could conceptualise instead an alternative rationality by considering with greater equanimity potential losses from a strong commitment to constitutional defection. Even competitive actors occasionally face dilemmas of common interests and common aversions (Arthur A. Stein, 1990, p. 47). The mere consideration under those circumstances of the possibility of territorial mutilation and state extinction could generate dilemmas of survival and cooperation by pursuing politics of evolutionary constitutionalism and secondary ideological objectives. At the end, a short-term rationality of self-interest resulted in long-run disaster.

It appears in hindsight that the Greek-Cypriot elite which condemned root and branch the 1960 constitution as unworkable was motivated by the political expediency of a strict maximiser bent on defection rather than on a constitutional rationality of second best choices and compromise. It was only after the 1974 debacle that it made occasional appeals for a full implementation of the constitution. Among Greek-Cypriot legal scholars who made a strong case about the rigidity, unworkability and intricacy of the 1960 constitution is Polyvios Polyviou who argues *post factum* that ''the 1960 constitution must be immediately reactivated and fully implemented while intercommunal discussions should be held between the two communities for any amendments thereto thought necessary" (Polyviou, 1975, pp. 93-94). Hindsight always provides a more balanced vision. However, such belated conversion to the "founding principles" of the Republic implies little bargaining power at the present. When the strong party bargains from strength, the weak argues from principles (Jon Elster, 1991, p. 87). Such *post factum impartiality* by Greek-Cypriot constitutional discourse cannot avoid appearing parasitic on self­ interest.

Back in 1963, however, the Greek-Cypriot elite myopically perceived the Turkish-Cypriot strict adherence to the separate municipalities clause and civil service quotas as a claim to territorial partition. The latter according to the Greek­ Cypriot thesis was overstepping the principle of functional (non-territorial) bicommunalism. It was by all standards an irrationally self-interested interpretation of the Constitution which offended the *amour propre* of the Turkish-Cypriot elite. *Humiliating Turkish-Cypriot pride only three years after the Republic's founding was not the best way to facilitate commitment to a new political union.* The major flaw of the Greek-Cypriot strategy was its failure to foster a minimum set of legitimate expectations robust enough to defeat the Turkish-Cypriot right to secede from government based on considerations of rectificatory justice. *Most importantly the Greek-Cypriot leadership did not offer any formal or informal outlet that would facilitate genuine public discourse on consensual constitutional reform which in turn could enable communal demobilisation.* Public deliberation as a political opportunity structure for registering not only elite intentions and grievances but also the Turkish-

CONSTITUTIONAL LEARNING FOR CYPRIOTS

Cypriot community's popular will, was absent from the Greek-Cypriot repertoire of conflict-management.

By contrast, the Bernese elite despite its persistent misrecognition of Jurassian pride and its failure to accommodate identity claims through a post-corporatist rationaiity presupposing moral reflexivity, it did manage to circumscribe conflict through a plebiscitary focus on smaller and smaller geographic units giving thus precise expression to the popular will down to the smallest village unit (Heinz K. Meier, 1987). The Bernese government enjoyed however the luxury of resorting to the use of the "majority principle". That was practically the same colonial method applied by the British in Cyprus, namely the method of separate majorities. During the first referendum in 1974 a slight majority of Jura's population decided for an independent Jura but in 1975 the Southern Protestant districts were given – through a separate referendum – the opportunity to form their own majority and stay with Bern. Even minor border communities were also called to decide on their own whether they wished to change their cantonal status. This separate majorities procedure managed to split Jura through serial referenda but did not bring the Jura problem any closer than the Cyprus problem to a solution. Many Jurassians (just like many Greek-Cypriots) say openly that they will never give up their claim to the Southern districts .

Had the Greek-Cypriot leadership been more attendant about the evolution of the Jura crisis and more contemplative about Bern's contradictory management of similar secessionary pressure – originating in discriminatory redistribution and cultural offence of ethnic pride – it might have avoided unilateral moves and majoritarian attempts at premature constitutional reform which could not but harden respective positions in an already overloaded consociational decision-making process. The fact that ethnic conflict did escalate in an otherwise stable federal regime at that particular time of ethnic revivalism – indicating that even really existing Swiss federalism is not impervious to political deformity and the peril of partial breakdown – is a telling example of how much more susceptible to "state extinction" an inexperienced consociational polity such as Cyprus really was. At the end of the day the Greek-Cypriot majority could not afford Bern's majoritarian temptation due to its geopolitical weakness. Although a majority within the island Republic, Greek-Cypriots were a geopolitical minority in an area dominated by the overwhelming military presence of Turkey.

Conflict containment and institutional management notwithstanding, Jura did succeed to secede from the prestigious canton Bern only that it was also partitioned along ethnic lines between North and South. Likewise Cyprus seceded from the British empire (1960) in order to be effectively partitioned shortly after (1963). In fact the Greek-Cypriot demand for *Enosis* was opposed as early as 1956 by Allan

THE CYPRUS REVIEW

Lennox Boyd, colonial secretary, by appending the notorious caveat to the Radcliffe constitution upon its submission to the House of Commons. That infamous addendum provided for a British-sponsored, Turkish-Cypriots only plebiscite to decide the future of the island separately (John Reddaway, 1986, p. 95).

Astonishingly enough partition was included among the eventual British options *provided* that ''the international strategic situation and the *satisfactory operation of self-government permitted* it" (ibid., pp. 95-96). The measure of colonial cynicism is demonstrated by the barefaced admission that even if bicommunal self-government proceeded uneventfully without deviation from the Radcliffe constitution (in fact by cause of the fulfilment of that condition), Her Majesty's Government would on purpose pursue the option of partition. And yet, regardless of British colonial intrigues and imperial favouritism, the Greek-Cypriot elite could have adhered to the *principle* of the Radcliffe constitution which was also accepted by the Turkish­ Cypriot side. By seeking a broader Turkish-Cypriot alliance for constitutional coevolution through bicommunalism the Greek-Cypriot majority might have created sufficient foundations of political solidarity and mutual awareness of expectations and objectives as a means of forestalling prospective partition.9

As I argued above, this colonial tactic of divide and rule was *mutatis mutandis* followed by the Bernese elite from safer grounds. The British could "divide and quit". The Bernese could "divide and stay" in the following sense of system maintenance. However militant and unyielding they were, seceding Jurassians were not motivated by *geopolitical irredentism,* i.e. they did not seek secession from Switzerland and integration with neighbouring France. In other words the Bernese, elite could count on the Jurassian's deep-seated Swiss loyalty. This is an unmistakable indication that the historical institutions of the Swiss federation – unlike the short lived institutions of the Republic of Cyprus – had a character forming impact across linguistic, religious or regional cleavages (Peter Loewenberg, 1992, p. 99). This is further amplified by the fact that Jura's constitution drafted and ratified after its secession-partition, did not depart from overarching Swiss norms. It did not adopt the British or German parliamentary system with an institutionalised opposition and retained many of the administrative and legal arrangements derived from the "mother canton" Bern (Hanspeter Tschaeni, 1982, p. 116). Along with this observation it should also be noted that neighbouring France did not get actively involved during the Jura crisis, a development which facilitated the process of cantonal secession without further damage to the territorial integrity of the Swiss federation. By contrast the Turkish-Cypriot secession process took advantage of Turkey's geostrategic proximity.

We can safely conclude that notwithstanding moral injuries incurred over the years by Bernese imperiousness, Jurassian identity did incorporate the overarching

CONSTITUTIONAL LEARNING FOR CYPRIOTS

principles of the Swiss political culture, unlike the Greek-Cypriot majority which could not offer some rudimentary norms of reliable constitutional evolution which in the event of a national crisis could mediate and contain Turkish-Cypriot mistrust. In the end, however, the partition of Jura did leave behind unresolved psychological strains and resentments especially among the French-speaking enclaves of Southern Jura which decided to stay with the canton Bern (Kurt R. Spillmann and Kati Spillmann, 1992) but it certainly did not challenge the legitimacy of Switzerland's constitutional tradition.

From 1963 to 1974 the Greek-Cypriot majority wrongly perceived that time and history was on its own side, believing that it could drive its rival out of the game by default, i.e. by safely failing to implement constitutional provisions deemed essential by Turkish-Cypriot concerns, awaiting only monopolistic returns. Lacking both a shared constitutional tradition which could afford sufficient resources of legitimation as well as a stock of compromise seeking political skills, Cyprus was unavoidably heading for territorial partition. Bernese elite defection and leadership failure to accommodate Jurassian identity claims was a "privileged option", indeed a "luxury" that the Greek-Cypriot elite due to the particular geopolitical distribution of power could not afford at the time. A comparative insight at Bern's and Cyprus' constitutional predicaments could safely establish a rational base for eschewing *Enosis* as a geopolitical gamble with assumingly higher payoffs. Neither Bern as a region nor Switzerland as a state could be considered threatened entities during the cold war era when compared to Cyprus' geopolitical predicament. Hence, Jura's secession from Bern along with the farmer's partition were more or less acceptable risks not involving geopolitical actors along with the threat of external boundary changes. Switzerland's boundaries were not crossed by negative geopolitical flows during the Jura crisis. Cyprus however was a threatened entity within the given geopolitical configuration and simply could not opt for a gambler's rationality. The only option available against the gambler's rationality was the grim and unpleasant choice of constitutional evolution.10 Assuming the burden of co-evolutionary constitutionalism in 1963 entailed, therefore, poignant preference adjustments and comparative constitutional insight along with geopolitical reflexivity and prudence.

After the deluge of 1974 and the de facto partition of Cyprus, the status quo remains short of de jure legitimation. Like the partition of Jura, the Cypriot partition turns out to be a no long-run solution. Unlike the Jura case, however, Cyprus' geopolitical partition involved unacceptable disruptions of everyday civic life, dislocations of peoples, horrendous loss of human life and missing persons.11 The race still cannot be won by either side. Neither the breakaway "Turkish Republic of Northern Cyprus" can receive international recognition since it is hard by international law standards to lay any valid territorial claim and property right to the Greek-Cypriot areas it wishes to sever from the Republic of Cyprus, nor the Greek-

THE CYPRUS REVIEW

Cypriot controlled Republic of Cyprus can exercise jurisdiction and provide protection over its entire territoriality. Neither side can establish a superior position. Moreover, the cost of the race is becoming it seems undesirable for sizeable sections of both ethnic communities. The Turkish-Cypriot community suffers the consequences of partition in terms of low living standards, economic stagnation, migration and lately in terms of net losses of savings due to the partial collapse of the banking system.12 But Greek-Cypriot anxiety over the threatening presence of Turkey's occupation army which blocks refugee resettlement, free movement and restoration of property rights is a factor no less destabilising for a disgruntled majority.

***b. Improving the Odds: Agencies of Transition to Federalism and the Problem of Hegemony***

Civil society is not so much a sphere outside political power; rather it penetrates deeply into various centres of political power, fragmenting and decentralising it (Charles Taylor, 1990, p. 117). It is not separated but influent on centres of power. This is particularly true in the case of Cyprus whereby the concept of government does not enjoy any significant margin of sectoral autonomy while the cohesiveness of civil society and party blocs *largely compensates for the absence of a classical form of impersonal sovereign stateness capable of effect as well as affect. After all, Greek-Cypriot persistent pleas for a strong central government after federalisation reflects an indirect need for an adequate state beyond its present ghostly existence.* Under such circumstances of relative statelessness and low range state capabilities as far as effect and affect goes, historical parties like AKEL – founded in 1926, that is long before the founding of the reluctant Republic – carry a much larger functional weight. *Such parties obtain a pillar-status and become engines of authority legitimation unprovided by the state. Here AKEL as a labour pillar substituted tor the deficient legitimacy of the state, at least to the same extent that the Greek­Cypriot Orthodox Church did. Pre-existing the Republic, both AKEL and the local Orthodox Church are the older institutions on the island.*

Cyprus' state weakness is even more plausible when we consider the establishment of the Republic not as the outcome of internal processes of sociological differentiation (division of labour, decline of communalism, sectoral specialisation) but as a process of *epigenesis.* That is as the outcome of resistant communalism (dedifferentiation) and the changing power distribution between internal power-holders and external actors. An epigenetic process of state-making refers not exclusively to the salience of internal sociological differentiation but to dedifferentiation concerned with input from and articulation with external state units, i.e. it concentrates on boundary processes and their respective impacts on *epigenesis.*13

CONSTITUTIONAL LEARNING FOR CYPRIOTS

In other words the case of Cyprus exemplifies what Bertrand Badie and Pierre Birnbaum conceptualised as *the deficient capacity of the state to act on its environment and autonomously impose collective goals distinct from private objectives generated by the social system itself* (Badie and Birnbaum, 1983, p. 35). In this sense the belatedness of the state and its low-strength capability after independence left sufficient space for furtherance of party building and associational life.

Between a weak colonial state and a conservative Church establishment, AKEL the successor party of the outlawed Greek-Cypriot Communist party fulfilled a significant sociological function as a relay between the population and colonial administration taking up grievances, ideas and pressing problems pertaining to social citizenship. Partly responding to existing conditions of deprivation under colonial rule and partly responding to an organisational void, AKEL emerged as a mass party capable of shaping working-class perceptions along the lines described by Seymour Martin Upset and Stein Rokkan (1967) as well as by Giovanni Sartori (1968). Being an agent of sociological integration of a nascent working-class into a political community (Otto Kirchheimer, 1966, p. 189), AKEL performed also a counter-hegemonic role vis-a-vis the Church by integrating trade associations in the same but parallel organisational structure of PEO – (Pancyprian Federation of Labour) thus domesticating a potential ethnic cleavage and a source of conflict between Greek-Cypriots and Turkish-Cypriots. Cypriot syndicalism is indicative of a successful legacy of bicommunalism notwithstanding AKEL's long-term failure to penetrate thoroughly the Turkish-Cypriot working-class.

As a matter of fact PEO did establish in 1954 under the Turkish-Cypriot Ahmed Sadi a central office for the management of Turkish-Cypriot workers' affairs, with Sadi himself being also a salaried secretary in that office as well as a member of PEO's Central Council.14 Turkish-Cypriots were elected in PEO's district councils, PEO also facilitated the publication of a weekly Turkish trade-union newspaper under Fazil Ondur who was assassinated in 1958 (Demetrios Christodoulou, 1992, p. 319). Another attempt against A. Sadi narrowly failed (ibid). The organisational infrastructure of both AKEL and PEO and their combined potential to structure cleavage lines in a non-ethnic direction brought these new mass organisers under fierce attacks by the nationalist factions of both communities (EOKA, T.M.T.) thus enforcing by way of paramilitary action the prevalence of ethnic persuasion. Political and paramilitary pressure ultimately forced AKEL to make certain adjustments by paying lip-service to irredentist rhetoric, i.e. by making superficial commitments to Enosis not sincerely felt, yet maintaining its linkages with the Turkish-Cypriot community. These concessions, however, to irredentist rhetoric were sufficient to freeze the ethnic cleavage and split political identification along communal lines.

THE CYPRUS REVIEW

We know already from the Belgian experience how vulnerable to party fragmentation bicommunal arrangements are even when commitments to community do not escalate to paramilitary action. Belgium is indeed a good measuring rod of the fragility of bicommunalism. Resource distribution which in the nineteenth century favoured the industrialised Walloonia whereby coal, iron, glass, arms and transportation industries flourished, condemned the Flemish region to underdevelopment and low salaries (Jacques Vanderlinden, 1989, p. 117). In the twentieth century, however, the rise of the Flemish harbour of Antwerp to second ranking in the world (after London) along with the discovery of new coal fields in Limburg, the exhaustion of coal reserves in the French-speaking Walloonia and the unwillingness of the Belgian business elite to reinvest and modernise traditional nineteenth century plants led to the inescapable economic decline of Walloonia thus casting a dark shadow over 150 years of Belgian nation-building efforts (ibid., pp. 118; 112). Flemish growth in jobs and population along with the containment of migration and the settlement of the "royal question" in their favour increased the region's political influence in the same way that a similar combination of economic and political factors favoured Walloonia during the nineteenth century. *This pressure of uneven development and disproportionate political influence was sufficient to split national parties along ethnic linguistic lines.* The political rift appeared in 1968 with the Social Christian party (Flemish and French-speaking wings), followed by the Liberal Party in 1972 and the Socialist Party in 1978 (ibid., p. 120). Even new post-materialist parties founded on more universalist claims such as the Greens adopted a split structure, a practice also followed by pressure groups and the Catholic Church whose territorial dioceses oppose each other on ethnic issues. These issues intensified so much as to cause the secession of the Catholic University of Leuven in 1968 (Jean Beaufays,1988, p. 69).

In Switzerland, however, as Richard S. Katz (1984) has indicated based on the evaluation of relevant data on partisan conflict, it is *canton* rather than ethnic or linguistic groups which appear to be most important in structuring party politics. Moreover it was found that an equally important cleavage in all but three cantons was the left-right dimension; in these three cantons it was second in importance (Katz, 1984, p. 524). *Swiss parties therefore do not appeal exclusively to ethnic or linguistic groups in civil society although their decentralised structure renders them subject to cantonal variation.* Yet Swiss cantons are not ethnic but regional units. Although Swiss party distributions do not swing significantly due to sociological regularities such as family allegiances and political traditions (temporarily suspended during referenda), parties are still weaker than associations.

The Greek-Cypriot as well as the Turkish-Cypriot communities exemplify a strong intra-communal left-right dimension but only AKEL from the former has so far the potential of cutting across communities although its politics of *rapprochement*

CONSTITUTIONAL LEARNING FOR CYPRIOTS

appears lately to spill over uncertainly to the centre-right as well.15 Unlike Switzerland which exhibits an overall picture of weak federal administration, strong centralised (especially business) associations, and weak federalised parties, Cyprus is defined by a moderate administration, strong centralised associations as well as strong parties. *My suggestion is that Cyprus can capitalise on its strong associational life and party system in order to secure the bicommunal unity of a federalised country from below, thus departing from established patterns of centralised state-building. Rather than seeking reintegration of authority through a centralised state structure which is de facto impossible, constitution designers can propose institutions that enhance the reintegration of civil society through hybrid combinations of cross-associational ventures, bicommunal party projects, forms of corporatist representation, municipal initiatives etc.* We may recall that the constitutional struggle for proportional representation in Switzerland was in fact launched by small parties (including the Social Democrats), a constitutional initiative which gained popular and cantonal majorities in 1918 although the Federal Council and the Federal Assembly opposed it and recommended its defeat. Not accidentally then Ozger Ozgur ex-president of CTP and important personality of the Turkish­ Cypriot opposition suggested to Greek-Cypriot rapprochement forces to move one step forward by drafting conjointly with the corresponding Turkish-Cypriot organisations a federal constitution to be submitted for public discussion in both communities.16 The appeal of this vision in the Turkish-Cypriot constitutional imagination is compelling in the face of systematically distorted political communication between the two communal elites. A practical gesture exemplifying such public mood for constitutional praxis beyond elite bargaining was the collection of 70.000 signatures by 37 Turkish-Cypriot trade unions, political parties, professional associations, literary clubs and women's initiatives calling for de­ militarisation of Cyprus, democratisation and a resolution of the Cyprus problem on the basis of a bizonal, bicommunal federation in the context of the European Union.17 It appears that the underlying reason for the mobilisation of the Turkish­ Cypriot civil society was economic distress due to the crisis and partial collapse of the banking system in Northern Cyprus but also due to a series of suppressive measures against the editorial team of the oppositional newspaper *Avrupa*18presently renamed *Afrika.*

Two years later and on the occasion of the submission of a new set of constitutional proposals by the UN Secretary General these mobilisations rose to crescendo. The Annan plan became a catalyst inciting widespread and unprecedented agitation centring not so much exactly on the singularity and the specifics of constitutional engineering as on the likelihood of terminating the asphyxia induced by a sustained and unyielding Greek-Cypriot trade-embargo. This explains why the Turkish-Cypriot Chamber of Commerce and Industry was one among the main instigators of the mobilisations. The prospect of accession to the

THE CYPRUS REVIEW

EU operates as an enzyme for the emergence of a besieged *europopulism of the oppressed* disposed to reflect a growing despair induced by recurrent afflictions and hardships (caused by a trade as well as a political embargo) and, therefore, it should in no way be conceptually confused with the panoptically monitored and cavalier *europopulism of the rich* generally reflected in Greek-Cypriot attitudes. The failure of the UN's latest initiative for constitutional engineering can be attributed to the counterbalancing pressure triggered by these two types of *discrepant europopulisms* as they were and still are experienced from *contradictory ethnic and class locations.* Moreover, the constitutional debate was conducted under the severe time pressure of deadlines and remained appallingly provincialised as it lacked the insights of comparative constitutionalism. Most importantly, the very technocratic nature of constitutional engineering relying as it were only on inputs by think-tanks disallowed sustained public deliberation on the *legitimate status of the proposed set of rights* as well as on the relation between rights and *political decisions* – the former involving moral reflexivity over the foundation of rights and their mutual interrelations, the latter involving political deliberation over rights to be decided *by reason* and remain unchangeable on one hand and those that should be decided *by voting* and be subject to constitutional evolution and social change on the other. Neither was there any philosophical reflection on the intricacies of transition from *positive rights* to *natural rights,* from the actually existing legal system of the Republic to the normative evaluation of this system which is the only available method of *grounding rights beyond the sphere of instrumental power.*

Could, however, the laws of the market alone create a disposition for federalism? Economic considerations by themselves are not sufficient to create a sustainable federal impetus. As lvo Duchacek argues they result at best in customs unions or a common market. For a common market to graduate and become a federal system it needs an effective political and moral context (Duchacek, 1970, p. 200). The federal impetus to bicommunal constitutional praxis stimulated by the recent awakening of Turkish-Cypriot associationalism presupposes not only mutual compatibility of rights but also of values and norms, rational expectations of economic, political and administrative gains and above all unbroken links of public communication both geographically across territories and sociologically between social strata, associations, clubs and networks of individuals. It requires interpretation and reconciliation of fundamental political principles in the shadow of a growing eclipse of *elite charisma.* It takes *direct democratic associational charisma* based on shared values that promise to culminate in a federal norm transmitted through influence to constitutional designers.

The challenge of federalising Cyprus through direct democratic associationalism entails a great deal of tasks normally attributed to central government to be ceded to associations, regional municipalities and parties where bicommunal coordination

CONSTITUTIONAL LEARNING FOR CYPRIOTS

depends on the solidarity of these associations. According to Paul Hirst there are two ways of beginning to change the balance of power in favour of new patterns of coordinative governance (Hirst, 1994, p. 39).

First, instead of focusing on statecraft from above, *associations can start practicing on issues of federal governance from below* (ibid., p. 39). A good example is the way autonomous trade-union action led in 1948 to the setting up of health-care centres and social welfare facilities for PEO's members (PEO, 1987, pp. 39-40; Demetrios Christodoulou, 1992, p. 41). Moreover, unions played a leading role in establishing manpower training institutes (ibid., p. 41). This is an issue in which Cypriot unions proved themselves pioneers and foresightful when one considers that in the United States it came up so belatedly during the debate on welfare reform by the Clinton administration. In fact the self-help culture of working­ class associations in Switzerland became one of the factors explaining the minimum size of central government. Unlike Switzerland, however, whereby trade­ unions enjoy modest bargaining power compared to the business community and especially Vorort, Cypriot unions are exceptionally strong in tripartite committees (of government, employer-trade union consultation). Another index of union strength apart from the high percentage of employee unionisation (95%) is the mobile wage scale, an automatic cost of living-wage adjustment which is viewed by the majority of unions as an "acquis", "non-negotiable" acquired right (Christodoulou, 1992, p. 46). Cypriot unions are therefore in a keen position for assisting and even training weaker associations in the art of self-government and political campaigning focused on an associationalist constitutional reform strategy..

A second way of shifting the balance of power in favour of associationalism, according to Hirst, is through a widening of the efforts of municipal and regional initiatives for economic revitalisation (Hirst, 1994, p. 41). In this sense the "Nicosia Master-Plan", a bicommunal municipal initiative on which I intend to elaborate in what follows, should be considered a huge success of Cypriot associationalism.

Nicosia, the divided capital of the divided Republic of Cyprus came up due to the war of 1974 against a gridlock situation with regard to its urban development. This challenge assigned to Nicosia qua "unified city-subject" the responsibility of transcending bicommunal opposition by producing a common urban infrastructure on the local level by way of non-statal, municipal associationalism. How could city space respond to bicommunal strife? Could there be obtained "spatial consensus" in a divided city? Could the city after 1974 reconstruct its spatial code so as to recapture the associational unity of everyday life within the urban realm? The origins of municipal solidarity around the urban area of Nicosia can be traced back to 1974. By the end of that year the city was expecting the completion of its sewerage system whose treatment plant was located in the Northern Turkish-

THE CYPRUS REVIEW

Cypriot side of the dividing line. The war events of 1974 brought the project to a temporary halt.

Efforts for a joint sewerage system (which eventually led to the "Nicosia Master Plan") commenced in 1974 after joint municipal exertion *sidestepping to a significant extent political authority in both communities.*19 Getting involved in common municipal projects with Turkish-Cypriots three years after 1974, when the island was in enormous turmoil, "when all traumas were fresh, and emotions running high from the dead, the missing and the refugees" was indeed a daring venture and hazardous pursuit which according to the Greek-Cypriot mayor Lellos Demetriades was undertaken because the citizens of Nicosia across the dividing line were *"entitled to a reasonable life"* (Demetriades, 1998, p. 171).

The two municipalities' overarching commitment to a right to "reasonable life" enabled them to sidestep a number of cumbersome formalities – which intervened between the two official ethnic elites – and appealed directly to the UN Development Programme and the World Bank in order to procure funds and technical expertise. The distribution of loans and funds was carried out *through direct contacts with the municipalities circumventing government authorities* (ibid., p. 171-172). By 1980 when the sewerage system was ready to operate and in order to avoid hostile press publicity, the two municipalities decided to act in discretion. They initially connected certain units of the system to the Russian and US embassies and some others to the Greek-Cypriot General Hospital and a main hotel establishment in the Northern part of the city so that when news transpired upon the project's completion, mainstream opposition (including the head of the Greek Embassy at the time) could be neutralised (ibid., p. 172). This bicommunal municipal commitment to a *"city founded on reason"* (ibid., p. 173) gave despite adverse reactions on both sides20 greater impetus to the urban experiment.

The successful conclusion of this *municipal quest for urban reason* which culminated in the full operation of the sewerage system in May 1980 paved the way for a joint Master Plan for urban development which included the reconstruction of the inner city. Joint *municipal* diplomacy including visits to Venice procured funds for the restoration of the Venetian walls of Old Nicosia. Moreover the corresponding partition of the city of Berlin provided (in the early 1980s) a source of further bicommunal reflexivity and comparative urban learning. The main avenue of East Berlin comprising elegant old buildings, museums and public establishments was located right across the most depressed area of West Berlin so that upon the removal of the Wall – the two municipalities anticipated – it would take tremendous effort and funds to reintegrate the city, which is what is in fact happening after 1989 (ibid., p. 174). Learning from the negative urban experience of the partitioned Berlin, the two municipalities envisioned a reunification without having to face

problems of urban integration.

CONSTITUTIONAL LEARNING FOR CYPRIOTS

Under the auspices of the Nicosia Master Plan and in order to obtain a compatible way for the city's urban development in spite of its territorial partition, a joint bicommunal team was set up composed of architects, urban planners and sociologists. Once again commitment to norms of *municipal rationality* had insulated the Master Plan from the risk of media spotlights instigating a probable ethnopopulist backlash. In the meantime through the Master Plan the two municipalities reached into other associational issues organising joint bicommunal exhibitions and performances involving artists and theatre groups. Yet another bicommunal embodiment of symbiotic will was the revitalisation and repopulation of downtown Nicosia (the city quarter within the Venetian Walls across the buffer zone or "Green Line"). The Master Plan, a non-statal associational instrument for restoring the sociological fibre of urban experience achieved:

1. The rehabilitation of Famagusta Gate – upon the old Venetian Walls – into a cultural centre with a nearby park.
2. The renovation of Nicosia's old powerhouse into a multiple-use arts centre.

Ill) Successful pedestrianisation of the two commercial main streets of the inner city (Ledra and Onasagorou).

IV) Demilitarisation in the circumference of the inner city (ibid., p. 175).

Restoring the urban fibre of the sociological lifeworld of the inner city nearby the "Green Line" is no small achievement of *municipal reason* especially when one considers that Cyprus' political landscape is dominated by reluctant ethnic elites. "Space" as the urban philosopher Henri Lefebvre argued, cannot be reduced to a neutral frame after the fashion of the frame of a painting, a neutral frame that is vis­ à-vis lived experience, or be reduced to a container designed to receive whatever is smaller than itself. To imagine that space qua container serves no other purpose than to preserve what has been poured in it, Lefebvre argues, is an error. "But is it error, or is it ideology? The latter more than likely, but who promotes it, who exploits it?" (Lefebvre, 1991, pp. 93-94). *Space* therefore in the case of Nicosia's municipal space is not the opposite of *lived experience* but a constitutive social morphology, a lifeworld point of reference for associational praxis. *It is space becoming more than itself, signifying more than what it technically is.* Municipal space and the associational resonance of its symbiotic rationality does not contain simply what has been poured in it i.e. "sewer". Its spillover undermines the symbolic staging of the inner city as a *spatial totem* of communal purity and ethnic division. *Municipal space thus emancipates itself from the hypertext of monological nationalism and becomes the non-statal hypotext (hypokeimenon* – *the subject) which anticipates symbiotic constitutional praxis from below, that is from the "sewer".* This kind of *informal municipal constitutionalism* had to start from the "filth" and "impurities"

THE CYPRUS REVIEW

excreted from the bowels of mutually cancelling nationalisms. Constitutionalism in Cyprus is called to deal precisely with this "stink from the sewer" that all more or less suffer from when the blind wind of nationalism blows. By accommodating "lowly filth" and "excrements of unreason", the Nicosia Master Plan becomes an extraordinary embodiment of *the spirit of municipal associationalism as a civic alternative to intensive state-building. It has established itself as a strong bicommunal repository of problem-solving capacities.* Municipal associationalism, I can with confidence suggest, has validated itself as a potential resource of bicommunal constitution-making. *It, therefore, encapsulates and celebrates in advance a symbiotic constitutionalism which awaits further concretisation and expansion by political actors.*

Associationalism can afford new ways of thinking about constitutional design and constitutional actors, by recognising a diversity of ways of citizenship and representation. *A notion of a state claiming sovereign plenitude of power so as to regulate civil society from a single centre with a singular source of legitimacy is after all a kind of impossibility with respect to the federalisation of Cyprus.*

On the other hand, *an associationalist strategy of federalisation needs* (in order to succeed) *an effective political context as it was clearly demonstrated by the Swiss model.* The Swiss parties in this case despite their present-day weakness under conditions of liberal corporatism and bargain-democracy, have historically assumed an associationalist role in civil society resorting to direct democracy, associational means of publicity and coalition building in order to bring about constitutional reform. It is of singular importance to emphasise how influential and seminal party-based opposition was in effecting constitutional change in Switzerland. The Radical Party was largely responsible for structuring the original cleavage between liberalism and Catholic conservatism in favour of the former whose self-limiting hegemony succeeded in bringing about an effective federalisation of the country. The Radical Party's accomplishment becomes all the more important if one considers that liberalism notwithstanding its triumph in the civil war did not evolve into a party with national structures until 1894 (Steiner, 1974, p. 34). The second wave of democratisation however, was carried out against liberal entrepreneurial elites first by a Catholic-driven coalition and then by Social­ Democracy. Switzerland therefore exemplifies a class dimension, too. Filtered that is through a federal model whereby non-ethnically related, party based opposition linked to class became possible and viable in a system originally conceived to accommodate only ethnically related opposition, although institutional constraints prevent the class cleavage from becoming an open and explicit antagonism (Harold E. Glass, 1978, p. 371).

Political parties cannot be ignored in the process of federalisation. It is precisely for this reason that scholars of federalism sometimes call political parties "great

CONSTITUTIONAL LEARNING FOR CYPRIOTS

centralisers or decentralisers of a federal system" (lvo Duchacek, 1970, p. 320). For this reason I in my turn argue that the associational principle along with party organisation can federalise and reinvigorate the civil societies of Cyprus as a *supplement to* and *healthy competitor against* currently dominant forms of ethno­ communal organisation such as the Church and public bureaucracy. Political parties in this sense can structure and restructure cleavage lines but can also reflect the institutional framework, cooperative habits and trust-building afforded by the associational life of communities.

Of all the parliamentary parties of the Greek-Cypriot majority,21 AKEL (34,71%) due to the size of its organisational structure, the corporatist power it enjoys through union representation in the tripartite consultation system22 and its normative commitment to bicommunalism poses as a serious candidate for coalition building and therefore as a potential centraliser of a prospective federal Cyprus especially if it puts into use the pre-existing legacy of bicommunal solidarity.23 This associational experience of bicommunal trade-unionism can still be renewed with the advent of current mature knowledge and become a valuable symbolic resource for the normative justification of a federal compromise. A regenerated memory of past solidarity, indeed the *perspicacity of memory* can foreground the moral and political value of bicommunalism and its long-lost *associational charisma.* This perspicacious memory i.e. the axial memory of successful bicommunalism is in fact a latent public sphere of associations waiting to be rekindled by the federal impetus of parties which themselves pioneered associational citizenship in the colonial era.

Greek-Cypriot parties other than AKEL which also adopt a policy of bicommunal rapprochement such as the United Democrats – an "end of ideologies" cadre party of "governmentness" specialising in technocratic management – can still establish bicommunal linkages on the level of personalities. DISY (Democratic Rally) as the mainstream party of the conservative right has failed to win sympathies among Turkish-Cypriots due to its persistent ceremonial emphasis on the "Greekness" of Cyprus. This, evidently, works against rapprochement and inter-ethnic accommodation since the party is under continuing pressure to solidify and extend its support among the Greek-Cypriot community by exploiting anti-Turkish sentiments. In fact this attitude resonated in strongly paradoxical fashion with the occasion of several random episodes of casual and impulsive advocacy of the constitutional plan submitted to both communities by the UN Secretary General K. Annan. At this conjuncture DISY chairman N. Anastasiades feigned remarkable flexibility and responsiveness which, however, could barely conceal the racial undertones of his allegedly resilient advocacy of the Annan plan. His argument ran as follows: we are much better off as Greek-Cypriots by rubber-stamping the proposed constitutional plan. Otherwise Turkish-Cypriots will rush en masse southwards claiming EU passports after Cyprus' accession. Eventually they will

THE CYPRUS REVIEW

claim voting-rights and reactivation of the vice-presidential veto thus indirectly controlling the South while Turkey will be consolidating its rule in the North. The racial subtext of this discourse is that the presence of Turkish-Cypriots in the South except from token numbers pose a threat to the Republic of Cyprus. Hence the Annan plan is celebrated as an effective method of keeping Turkish-Cypriots in the North without mixing them with Greek-Cypriots in great numbers which could predictably put the latter's sacred purity at risk. Thus despite all the admittedly unexpected rapturous acclamations and right-wing blessings ceremonially eulogising pro-Annan plan Turkish-Cypriot mobilisations in the North, one cannot fail to detect a certain cavalier racism encoded as affectionate, peace-loving humanism. An elementary training in ethnomethodological awareness about all Greek-Cypriot background expectancies as well as the unstated presuppositions of mainstream right-wing discourse may unequivocally expose both a cold-blooded employment of reflexive racism as well as a kind of "subliminal" or "whispered nationalism" coercing a last minute endorsement of the Annan plan by the Greek­ Cypriot community. This is symptomatic of an intriguing reflexivity unravelled by the late mainstreaming of right-wing discourse within the Greek-Cypriot community, namely an attempt to frame unequivocal support for Turkish-Cypriot mobilisations in terms of what I call *europopulism from above* in order to hijack and steal the thunder of Turkish-Cypriot *europopulism emanating from below.* As it was mentioned earlier the former is an *offensive and beleaguering europopulism* that reflects the condescending *nationalism of the rich,* whereas the *besieged europopulism from below* seems to be the unpredictable outcome of a long­ standing obstinate and panoptic monitoring of a trade-embargo imposed by the Greek-Cypriot state elite on the inmates of the "open jail" in the North. It was an attempt by significant portions of the Greek-Cypriot elite to normalise, discipline and ensure the docility of a *besieged euro-radicalism of the poor.*

The Greek-Cypriot regime under Clerides, Markides and Vasiliou managed to alternate precariously between a parochial model of inward-looking, militaristic and belligerent nationalism recklessly driven by the infamous missiles crisis on one hand, and a new model of what I would call *panoptic nationalism of diplomatic and economic surveillance* based on the logistics of prospection, foresight and anticipation; outward-looking and professedly humanist as this *panoptic nationalism* is, it probes beneath the surface of flesh, reading the signs of Turkish-Cypriot tribulations, aiming at the eradication of suffering. Thus the Greek-Cypriot gaze evolved from a state of being abusive, censorious, malign and offensive to a benign *purifying gaze* promising Turkish-Cypriots deliverance from misery and hardship; a *biopolitical gaze* of *discrete compassion* for the poor who are only asked to pay an "interest" for their new accommodation. Greek-Cypriot power is thus rendered invisible, non-corporeal, innocuous. Consequently we witness an ironic blurring of distinctions between guilty and innocent, freedom and captivity, confinement and

CONSTITUTIONAL LEARNING FOR CYPRIOTS

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release, inside and outside. There is a certain dimension in the *Annan plan* which can be unfailingly identified as a *treatment scheme* consistent with the *correctional continuum* of the new age of pre-emptive wars. The successor government of Tassos Papadopoullos could not but keep operating within the above-mentioned panoptic continuum. Akel's participation in government may modify this gaze but it cannot alter it dramatically.24

This attitude is similar to the failure of Canadian Conservatives to win effective electoral support in Quebec, thus hampering French-English accommodation. Yet due to the Greek-Cypriot society's class pillarisation along *lager* lines, AKEL enjoying a densely organised party structure, allied to a wide range of auxiliary associations, is keenly positioned to address the corresponding Turkish-Cypriot subculture in terms of *federal culture* as a variant of a corporatist civic culture. In Greek-Cypriot corporatist politics parties play a pivotal role in aggregating and representing subcultural interests and values. To this purpose they rely heavily on an extensive network of interest groups, auxiliary associations and soccer clubs which shape civil society with *läger values.*25

The predominant split of the working class into PEO and SEK (Union of Cypriot Workers) reflects a universal trend toward *lager* organisation among farmers, students, women, secondary school teachers and shopkeepers (Markides, 1977, pp. 64-65). Whereas the right-wing lager expanded by monopolising nationalist rhetoric, indulging hero-worship and Greek-Orthodox religiosity, AKEL's institutional consolidation into a left-wing pillar proceeded by the pursuance of a rational, secular, problem solving, loyalist, gradualist approach which faithfully reflects its more comprehensive lager identity of "progressive republican patriotism". This concept of "progressive republican patriotism" serves as the master signifier of the Greek-Cypriot centre left and carries a mobilising effect which enhances lager distinctiveness as opposed to the racially encoded and on occasions ceremonially evoked nationalism practiced by DISY26 (Democratic Rally). Most importantly however, progressive patriotism as a lager norm of subcultural solidarity is also shared by many Turkish-Cypriots and in particular by YHP (Party of Patriotic Unity) and CTP (Republican Party). In terms of lifeworld sociology this norm seems to reflect a certain non-violent temperament, an inoffensive disposition for sociability, hospitality and conviviality among Cypriots, an impression partially valid and codified by several orientalist reports which otherwise "indigenise" Cypriots.27 Greek-Cypriot pillarisation therefore appears as an enabling factor in bridging the ethnic cleavage and fostering intercommunal conciliation.

In the light of the above analysis it is highly unfortunate that in constitutional proposals for the resolution of the Cyprus problem political parties and the party system do not figure prominently. Neither is there so far consistent and systematic

THE CYPRUS REVIEW

reflection by Greek-Cypriot scholars or others on the significance of electoral systems for purposes of inter-ethnic accommodation. In the first place there exist political parties whose sociological profile and ideological outlook are deeply permeated by *lägermentalitaet* and their political commitment to rapprochement was traditionally part of inter-lager hostility;28 then there is very low risk that these parties seeking interethnic vote-pooling and transferring of votes across communal lines might appear "soft" and "resilient" in the aggregate perception of the party's home community. Present-day constitutional discourse does not ponder the attainable possibility of providing sufficient incentives to include intercommunal party agreements for vote transfers in a federalised Cyprus. lntercommunal vote­ pooling such as the *single* transferable vote (STV) which allows voters motivated by bicommunal thinking to cast ballots for candidates responsive to their values and concerns across party lines, are left out of constitutional deliberations. Even under the Swiss list-system proportional representation, a voter regardless of ethnic, linguistic or cantonal origin may make choices across party lists. A citizen under the Swiss version may cast a cumulative vote (voting twice for the same candidate of the party list) or strike a name out of the party list and replace it with a name from another list. These devices are frequently used by Swiss parties in preparing their official lists but also by citizens themselves who are the *ultimate editors* of the lists (Jonathan Steinberg, 1976, p. 76).

Given the intensity of lager subcultures it is certain that Turkish and Greek­ Cypriot voters might seriously contemplate providing that necessary margin of victory for a candidate of the other group thus paving the way for interethnic policy compromise where candidates of reluctant state elites fail. Among the incentives for stabilising a federalised Cyprus I therefore propose party agreements to exchange lower-order preferential ballots as a way of mitigating the ethnic cleavage.

My argument throughout this section is that despite chronic and persistent ethnic rivalry in Cyprus there are sizable party blocs keenly positioned to foster vote­ pooling and accommodative coalitions when and where ethnic elites systematically fail to compromise. In fact under the light of the political sociology of the Greek­ Cypriot party system, coalitional vote-pooling arrangements may come to embody a quite profitable vote maximising strategy for the centre-left *läger.* Sociologically there is no plausible reason why Greek-Cypriot constitutional discourse should not build on vote-pooling incentives and electoral mechanisms of inter-group accommodation on the basis of *lager* alignments and subcultural solidarity. As Donald L. Horowitz explains, the absence of intra-communal party monopoly does not preclude vote-pooling (Horowitz, 1992, p. 181). The *läger*-competitive configuration of Greek-Cypriot politics creates propitious conditions for the exchange of votes through the mobilisation of partisan *läger* attachments across

CONSTITUTIONAL LEARNING FOR CYPRIOTS

ethnic community lines. Party dynamics in Cyprus are compellingly positive for the emergence of "coalitions which have a tangible interest in moderation and compromise on intergroup issues" (ibid., p. 182).

The constitutional promise of bicommunal coalitions committed to rapprochement and accommodation through *lager* alignments is worth pursuing through the designing of election mechanisms based on communal distribution requirements for electoral victory and preferential voting (single transferable vote). The advantages of these election mechanisms work at the voter level of communal civil societies bypassing ethnic elite defections traditionally based on separate electoral rolls, thereby giving the opportunity to Cypriot parties to sort out their identity by their willingness to compromise. Certainly the risk of these parties being surrounded by less conciliatory flanks is real in Cyprus given the consolidated existence of a nationalist Orthodox Church and a strong right-wing lager.

*Nonetheless, the rules of the game Horowitz argues, will generally favour accommodation* - *an enormous advantage in a divided society (ibid., p. 198). Indeed, rather than political participation occurring only by means of rigid quotas and token overrepresentation of the Turkish-Cypriot community as specified by the Cyprus constitution, it will expand to reward cooperation on the associational and party levels. The constitutional challenge on this level is to reshape an environment conducive to ethnic allegiances within the party system, and devise incentives for lager parties at least to bid for "bicommunal voters" who would otherwise vote their own group identity. Cyprus does have the potential counter forces to enhance accommodation. Were they to be given scope to operate, there might be created sufficient associational complexity and party coalitions to sustain compromise against existing and potential hegemons. These counter forces comprising the accommodative middle have learned (through the chronic impasse of de facto partition) to value self-limiting compromise, the art of heroic restraint and moderation.*

The Cyprus problem, therefore, needs to be recast in terms of learning through mutual vulnerability and interdependence by giving constitutional latitude to political learners prepared and willing to overcome hegemonic aspirations. So far constitutional designs seem to privilege "cognitive misers" who simply assimilate new information into conventional beliefs about intercommunal conflict. Mediators cannot be successful in pushing thorny issues aside by concentrating on issues susceptible to resolution, unless constitutional margin is given to political learners on equal footing with cognitive misers. Constitutional negotiations so far are not structured to serve the purpose of cognitive change by empowering learners with incentives to openly avert hegemony and embrace cooperation effectively. It is not only the compromise of self-interest but also the *structure of incentives* which is the

THE CYPRUS REVIEW

proper foundation for thinking about constitutional institutions in divided societies (Donald Horowitz, 1992, p. 261). This thinking however cannot be carried out if mediators keep ignoring the differential commitment of various parties and associations to the process of federalisation. Getting elites to the table of negotiation is not enough unless constitutional incentives for the accommodative middle are also put on the table, a move which has a good chance of rendering the two elites' quest for hegemony more benign and cooperative. Only a *"centre­ versus-flanks”* configuration on the table can force the elites to exchange hegemonic possibilities for immediate and long-term gains so as to avoid identification with the flanks or be left behind by the middle.

I have established that within the Greek-Cypriot political spectrum it is the centrist left struggling against the extremes that carries consent and incremental learning, also enhanced by a pre-existing tradition of successful bicommunalism. *This sizable learning middle,* however, *neither can benefit from nor can it reinforce the process of federalisation unless a heavy dose of constitutional engineering provides it with the appropriate vote-pooling electoral systems that will moderate ethnic party-bifurcation.*

In the light of the foregoing analysis one may also contemplate more constructive uses of the *sui generis* Cypriot regime of "vice-presidentialism" equipped as it were with absolute vetoes. Article 46 of the Cyprus constitution as is well known prescribes that the Greek-Cypriot President and Turkish-Cypriot Vice­ President are elected *separately* by their communities and that they appoint the seven Greek and three Turkish-Cypriot ministers separately. Moreover in articles 48 and 49 presidential powers are specifically enumerated, therefore deprived of residual executive powers. In this sense "the Vice-President is not the Deputy President, he is the Vice-Head of State ... " (S.A. de Smith, 1964, p. 289). Although Lijphart contends that presidentialism is incompatible with consociational power­ sharing and the principle of proportionality (1990, p. 75), the Cyprus constitution of 1960 exemplifies a rare case whereby presidentialism is balanced with vice­ presidentialism and therefore with collegial decision-making and *ad hoc* compromises. That is the reason why S.A. de Smith argues that the Vice-President of the Republic of Cyprus is "in one aspect the leader of a permanent opposition, an opposition quiescent till it rises in implacable defence of its communal interests, an opposition which, moreover, is part of the government itself" (de Smith, 1964, p. 289).

This rigid entrenchment of presidential and vice-presidential regimes within the same structure of government is prone to constitutional crisis unless such bifurcation of the executive is mitigated, unless that is the two Heads of State are elected on the basis of some vote-pooling formula thus transforming their offices

CONSTITUTIONAL LEARNING FOR CYPRIOTS

from bastions of ethnic exclusivity to focal centres of intercommunal accommodation. Many Turkish and Greek-Cypriots would thus have reason to have cross-claims if they helped elect the president and vice-president. Both will keep exercising their competences *independently* and *conjointly* as prescribed by articles 46, 47, 48, 49, 50, 57 and 58 of the Cyprus constitution; but the fact that the presidential and vice-presidential elections will be integrated into and founded on interparty electoral arrangements and not on independent mandates can render their consociational vetoes less malign than they visibly are since they will be based on an expanded basis of legitimation. Greek-Cypriot parties such as AKEL and Turkish-Cypriot parties like YHP and CTP in spite of occasional ambivalences and incongruous positions on a variety of issues can safely establish themselves at the constitutional centre based on the institutional support structure of their lager which embodies stronger repositories of problem-solving capacity than the right-wing lager. The fact that a strong left-wing lager can comfortably define itself as the centre of the political system – which is in fact what is happening in the Greek­ Cypriot community29 – refutes Juan Linz's assertion that presidentialism is consistent with strong but *ideological* parties foreclosing pragmatic adjustments (Juan Linz, 1994, p. 42). Rather than assuming additional costs of innovation on its road to federalisation, Cyprus can stick with presidentialism and vice­ presidentialism on the basis of the qualifications I suggested above. Likewise, mutual consociational vetoes can remain only if they are qualified, thus mitigated by attaching on them a cross-ethnic base of legitimation.

I am therefore proposing a neo-institutional rethinking of presidentialism and vice-presidentialism through a more creative deployment of cleavages, so as to render a federalised Cyprus the beneficiary of its own traditional patterned disorder. There is, I believe, much more to be gained by a neo-institutional engagement with existing dissensus and dissonance, tensions, antipathies, hostility and contradictions than from the manifest intent of consociational theory to accommodate them as they presently stand. By providing new constitutional sites for previously ignored or overridden, non-ethnically defined cleavages despite the persistence of conflicting ethno-communal values and interests, Cyprus may achieve federal ferment. Cyprus' refounding can make more efficient use of existing intra-communal incongruities and asymmetries.

Switzerland, for instance, exemplifies a consociational model of power-sharing that coexists in tension with more competitive forms of democracy. Direct Democracy enables precisely the creation of lifeworld pacts rooted in the evolving axiological contexts of civil society,30 beyond closed elite-directorates hence rendering them more accountable. What needs to be given constitutional form in the case of Cyprus is a certain *capability for proportional influence.* The Swiss system seems to carry out this principle through a combination of strong liberal

THE CYPRUS REVIEW

(non-statal) corporatism, a weak rotating presidency – where power sharing is mostly evident – and direct democratic forms of competitive citizenship. In the case of Cyprus above, I suggested an institutional remixing of presidential and vice­ presidential regimes based on more competitive, coalitional compositions, compromising cross-cutting qualified majorities without violating the consociational principle of proportionality and minority veto but mitigating them.

For this mix of incentives to ferment sociologically, however, it takes joint experimentation in public forums and interpersonal discussion networks; it takes secondary associational modes of direct democratic citizenship linked to a new analytical ground of critical epistemologies beyond the mediatised space of structured elite predominance. Direct-democratic participation, active citizenship, personal identity,31 conscious social individuality need to become experimental presuppositions for a new constitutional form to emerge in between political parties, civic actors and ethnic business-elites. The riotous nature of "Cyp-riots" can still work to their advantage constitutionally and not only in terms of a grammatological play.

1. **Beyond Civil Society and Rights-Discourse (Along with Rights on Board):**

**Toward a Civic Republican Model of Sustainable Federalism**

##### A Theoretical Agenda for Participatory Federalism

The above-mentioned constitutional proposals are not self-sufficient. Constitutional structures along with the petty catchphrase of "civil society" are currently used in the Greek-Cypriot community in ways which betray an absence of interest in either a theory of democracy and/or the sociology of state. That "civil society" has become a catchy password for household use and a shibboleth for liberal intellectuals and politicians without actual public debate sustaining and deepening its texture or unravelling the potentials and limitations of the concept itself is something that ought to sensitise sociologists operating in Cyprus since a closer consideration may reveal the scale of distorted communication and power involved in the reception of this notion. That it has become the *mantra* of politicians32 and their associate think-tanks is indicative of their attempt to normalise and streamline the concept so as to sanitise any references to the institutionalisation of *political counterforms* that may challenge their vested interests. The introduction of the concept of civil society into the Greek-Cypriot public sphere managed to suppress discussion over the issue of *counterinstitutions* during constitution­ making. The public reception of the Annan plan, for instance, left unaddressed the fact that the latter assumed a passive citizenry and a managerial approach to constitutional politics. The debate left unquestioned the relation of a passive citizenry to all four branches of government.

CONSTITUTIONAL LEARNING FOR CYPRIOTS

On the other hand Greek-Cypriot public discourse centred exclusively on rights thus failing to address the issue of *embodied democracy.* Rights are a necessary but insufficient ground for a civic-republican theory of societal confederations, town meetings, syndics, councils, committees and assemblies. This perspective allows to see the problem not only in terms of legal and constitutional institutions but also in terms of a multiplicity of legal associations, civic fellowships and groups. It is misleading to identify *associations* with *institutions* and *communities* with *corporations.*33Otto Gierke, in this respect highlights the role of an organised multiplicity of anonymous forms of society aiming at the production of solidarity by developing substantive grounds for opposing *fellowship* and *consociation* to *corporations.* Gierke distinguishes between *voluntary* and *compulsory* forms of organisation, between *Genossenschaft* and *Anstalt.* For a federal republic to be sustainable it needs to invent constitutional methods of neutralising the *anomie­* saturated market forces as well as the bureaucratic apparatus of the state and its ever-present threat of compulsion.

A civic-republican model suggests a mix between dispersed, local, municipal and syndical sovereignties in the context of a *social confederalism of participatory counterinstitutions* capable of realising the ideal of *symbiosis. Symbiosis* in Johannes Althusius' confederal theory of grassroot consociations is a legal concept part of *ius symbiotica* serving as an image of civic counterinstitutions embodying dispersed processes of popular sovereignty. By necessity participation *takes place* in assemblies or *bodies,* hence *embodied democracy* qua embodied *sovereignty* by which I mean *diffused sovereignty.* Such a social confederalist concept of participatory associationalism *opposes ascribtive identities* within nation-states by allowing systems, subsystems, communities, fellowships and groups to evolve by *symbiosis* and *co-evolution.* A civic-republican and social confederalist concept of constitutional politics grasps *the relation of individual to group, systems* and *communities* by reference to an *embodied notion of sovereignty* in the Aristotelian sense of *freedom* qua *participation* and substantive equality *(isonomia).*

Both sides of the debate therefore need a more substantive and institutionally elaborated conception of *political freedom* grounded on the formation of democratic counterinstitutions able to *reinvigorate public life from below.*

##### Overcoming the Mass Society and Instrumental Reason of Rights­ Nationalism: Social Confederalism and Civic Common-ism

To forge constitutional foundations of republican unity from below means *grasping and transforming each component unit through the other within itself* and not only confronting it externally as an antagonistic bearer of rights. Each component unit ought to be first and foremost generated through the other, otherwise a rights-centred settlement of the problem will merely recycle and

THE CYPRUS REVIEW

relocate antagonisms and frustrations. There seems to be no other way of resolving the problem of the *republican unity of federalism* except by countervailing existing injustices. *Atoning* injustices, *putting them right* not by opposing one rival set of rights against another among combatants, but by forging *confederal spaces of participation.* We settle existing injustices by making moral amends, by fashioning *civic competences,* entrusting the deftness and artistry of citizens to *commune* by enhancing their subjectivity, freedom and spontaneity. *Civic common-ism* is a social *communicative confederalism from below,* a way of "doing the public thing", experiencing and remaking the *res-publica* in confederal consociations, *a way of reconciling ethnic solitudes before reconciling rival sets of rights,* a way of overcoming the self-other alienation without resorting to *juridification* and the *legal engineering of moral complexity.*

Before consulting greedy law firms to elucidate our rights first we may have to create public spaces of mutual consultation. Hannah Arendt explained to this purpose that *"freedom is not about free will, free choice or liberation from oppression and want"* (Arendt, 1958, pp. 31-35). Freedom is not I would add about prerogatives, immunities and entitlements. Rather freedom lies strictly in a public realm constituted directly out of the civic *"sharing of words and deeds"* (ibid., p. 198). Either political freedom means *"to be a participator in (self)government or it means nothing''* (ibid., p. 218). Public freedom therefore is in some sense beyond rights. Of course as Ronald Dworkin argues the judiciary is a *forum of principles'*34playing an important role in the formation of public spaces by facilitating the growth of autonomous associations. Nonetheless the courts ought to guard against the contingency of *juridification* i.e. excessive materialisation of the law which undermines their own source of legitimation within the framework of the political system. Rights should rather be interpreted and applied by courts so as *to secure civic competences* and communicatively structured domains of public action against incursions from the market or the administrative state (Habermas, 1985, Vol. II, p. 357). We should not allow courts to instrumentalise rights by embarking on juridification. I have a sense that we are facing a great risk of instrumentalising law, of overemphasising, overusing and occasionally abusing rights as an effortless, devious and slick method of putting off a more pressing debate on duties and obligations. The Cyprus problem cannot be settled by way of court appeals and greedy law firms which have their own vested interest in the instrumental juridification and rationalisation of human pain. Otherwise the Cyprus problem will be bogged down in the quagmire of legal disputes. Ambitious young legal princes and predatory law firms aspiring to take the Cyprus problem under their custody should not be allowed to become the steamengines of a juridical capitalism of marketing strategies with a vested interest in the legal motorisation of rights. This hanky-panky commercialisation of rights by the legal trafficking of law firms is symptomatic of a mass society faced with the instrumentalisation of its public

CONSTITUTIONAL LEARNING FOR CYPRIOTS

reason. The Cyprus problem is not a matter of business law or a career path for ascending human rights-lawyers. It cannot be settled by legal action but by associational action. The reign of business legalism which has replaced international relations theory in the Cyprus problem-management should sensitise social thought to the emergence of a manipulative *rights-nationalism* replacing the conventional missiles and rockets of war-machines with the launching of property rights and the firing of immunities. Business legalism manipulates rights, instrumentalises morality, impoverishes associational politics and trades on the positivist delusion that law can replace civic reflexivity, moral complexity, republican virtue and the manual skills of political craftwork from below. Reconciling ethnic solitudes comes first. Rights come second. Legal greed comes last.

The present challenge facing activist groups on both sides of the divide is how much freedom can be permitted to this *action, speech* and *thought* and how public domains of freedom which are already accomplished facts, are going to be institutionalised during constitution-making. A republic depends upon constitutions and laws but it also requires public freedom, participation and therefore domains of public space. The question that Hannah Arendt poses to Cypriot activists is how this space would be organised and how it would mesh with constitutional institutions. Public freedom is not about rights, immunities, *laissez-faire* and free choice. Arendt reminds us that it is about *initiating new possibilities.* It is the responsibility of the republic to capture this novelty and provide it with constitutional foundations that will enable it to endure indefinitely.

1. ***Civic Common-ism as a Constitutiona/ism of Inoperative Communities***

The central question addressed by this study is whether comparative constitutional learning can take place at all and whether the Cypriot polity itself can become the beneficiary of its own disorder by attempting to redeploy and remix existing cleavages instead of eradicating them. *In* following Roberto Unger35 I conceptualise post-liberal rights in the direction of *destabilisation rights* and *solidarity rights.* Although we can afford a divided state we cannot and should not acquiesce to disconnected, dichotomised, and segregated communities. Destabilisation rights will entitle individuals, associations, movements, clubs and fellowships to demand the disruption of established institutions and forms of social practice that insulate hierarchies, factions and existing divisions from being challenged. Finally solidarity rights empower and entitle citizens to belong to *inoperative communities* based on mutual reliance and radical needs as opposed to market anomie and communitarian closure.

Civic common-ism is the name of a desire but also of a common noun. It is a desire for deterritorialised or translocational communities found and refound over and beyond subjection to technopolitical domination. But it is also the noun of

THE CYPRUS REVIEW

commonality, of *what we share in common at the limits of this commonality,* of *what we still hold in common at the loose ends of community.36* It is a call for a constitutionalism that addresses inoperative communities at the loose ends of existing ones, foregrounding issues which are not encompassed by the narrow scope of rights as they are defined by either democratic liberalism and/or communitarianism.

**Notes**

\* Part I, "Constitutional Learning for Cypriots in the Light of the Swiss and EU Experience: A Sociological Perspective", sub-titled "Inducing Reflexivity in the Turkish-Cypriot Constitutional Vision" was published in the previous issue (Vol.14, No. 2, Fall 2002) of *The Cyprus Review.*

* 1. John Keane mentions that 500 or so political units which dotted Europe circa 1500 were reduced to 25 by 1900 (Keane, 1995, p. 198).
	2. See the preamble and Article 24, paragraph 1 of the German Basic Law.
	3. I think this observation is valid despite the decision of the French *Conseil Constitutionnel* with regard to Maastricht which declared that the *"pouvoir constituant* is sovereign" (No. 92- 312, DC of 2 September 1992).
	4. See Jeremy Waldron's discussion of Dworkin's theory of rights as "trumps" in *Waldron*

1987.

* 1. UN Secretary General's report, S/8286, 8 December 1967.

6. S/5764, 15 June 1964.

7. S/8286, 8 December 1967.

8. S/5950, 10 September 1964.

1. The essence of Lord Radcliffe's constitutional proposals were encapsulated in his pragmatic reasoning that due to Cyprus' population dispersal there was "no pattern of territorial separation between the two communities and apart from other objections, federation of communities which does not also involve federation of territories seems to me a very difficult constitutional form. What is proposed is in reality nothing more than a system of functional representation, the function in this case being community life and organisation and nothing else" (Reddaway, 1986, p. 51).

CONSTITUTIONAL LEARNING FOR CYPRIOTS

1. Back then in the colonial period we can recall, the Greek-Cypriot community could have pursued the Radcliffe constitution in its totality without endorsing the colonial secretary's caveat for a separate exercise of the right for self-determination which entailed partition. Instead the Greek-Cypriot elite rejected the entirety of the scheme.
2. Swiss history is not alien to more poignant forms of partition similar to the one Cyprus experienced in 1974. The earliest Swiss example of this type of partition is the small mountainous canton of Appenzell which was divided in 1597 into a Catholic and a Protestant half canton following a coerced exchange of populations imposed by bigger adjacent cantons (Gerhard Lehmbruch, 1975, p. 391). This pattern is consistent with the bilateral penetration of the two Cypriot communities by Turkey and Greece respectively which aggravated the distance between the two elites, rendered learning extremely cumbersome therefore enabling identification with the two metropolitan reference groups against intercommunal accommodation (ibid., p. 383).
3. The economic crisis in Northern Cyprus which escalated in July 2000 was widely reported in both the Turkish-Cypriot and the Greek-Cypriot press. My information on the issue is drawn from the Greek-Cypriot liberal daily "Phileleftheros" and translated news reports from the North published in the same paper. See particular press coverage on the riots and occupation of the Turkish-Cypriot parliament in the aftermath of bank bankruptcies in "Phileleftheros" 2 July 2000, p. 26.
4. The epigenetic model of the sociology of state has been elaborated by Amitai Etzioni (1963), J. Peter Netti (1967; 1968), Bertrand Badie and Pierre Birnbaum (1983), and Joel S. Migdal (1988).
5. Information gleaned from PEO archives as reported by Demetrios Christodoulou, 1992, p. 319.
6. At least one ex-MP of the major right-wing party DISY, Mrs. Kati Clerides (daughter of the twice elected ex-president of the Republic of Cyprus) although a minority in her own party supports publicly rapprochement politics and believes that it has managed to alter average Greek-Cypriot perceptions about the Turkish-Cypriot community. See interview in HADE, Bicommunal Magazine, No. 1, November 1998, Nicosia, p. 26. Interestingly, however, she failed to get re-elected due to systematic boycotting of her candidacy by the party apparatus despite her hopeless attempt to win the voters' favour by flauntingly brandishing an antic and let-it-all-hang-out anticommunism which she deceitfully thought could offset her pro­ rapprochement image in the eyes of a hostile rightwing constituency. In the party congress (25 May, 2003) she did manage to get elected in the leadership structure but according to her counter-runner Rikkos Erotocritou, a Limassol MP, that was only due to the fact that the former president, Glavcos Clerides, being her father as well, casted his charismatic weight to dissuade the party's rank-and-file.

I think it goes without saying that rapprochement still fits uneasily with the ethnopopulist tradition exemplified by DISY and becomes reminiscent of AKEL's phoney campaign for enosis in the 1950s. This dissimulation of a fraudulent commitment to rapprochement resonates strongly with the figure of another DISY member of parliament namely Prodromos

THE CYPRUS REVIEW

Prodromou who incarnates the image of a self-righteous Hellenism, occasionally censuring AKEL for failing to be *de rigeur* with the required Hellenic etiquette, the ethnoracial lineaments and ideological regimen of institutionalised Hellenocentrism. Moreover he seems to be specialising in caricaturing and jeering in a rather hard-nosed and haughty fashion against AKEL's almost instinctive, subliminal and unpremeditated Cyprocentrism manifested in public appearances by many of its MP's. Nonetheless, Prodromou in his own uniquely self-asserting way audaciously contended during the short-lived debate on the Annan plan that it was DISY's policies which actually instigated Turkish-Cypriot agitation against Denktash and not AKEL's folkloristic and pacifist rapprochement. Audacity and cockiness aside, this assertion is both wrong and trivial not only because it counterfeits AKEL's bona fide and unimpeachable pro-rapprochement profile forged under systematic political harassment, persecution and victimisation by the paramilitary squads of the right, but also because it fails to identify the enduring republican value of this ethos. Undoubtedly AKEL's efforts to throw up strong bridges with the northern forces after 1974 went astray although it did enjoy residual sympathies among old-timer Turkish-Cypriots. This, however, should not and cannot devalorise its remarkable contribution in training its sizeable constituency (and along with that the wavering Greek-Cypriot community) to identify with the republican value of bicommunal symbiosis against the odds of persistent rightwing agitation and foreign infiltration undermining the legitimacy of the Republic of Cyprus. Enosis miscarried not only because of geopolitical contradictions but also because of the *defiant republicanism* of the Greek-Cypriot left in spite of inconsistencies and secondary failures. Even nowadays the unrelenting and unforgiving EOKA veterans who still hang tough on the desirability of enosis hold AKEL's pacifist resistance responsible for the miscarriage of their ideal.

1. Interview to the Greek-Cypriot liberal review "Ex Yparchis", issue 17, November 2000, p. 31.
2. The petition by the Turkish-Cypriot non-governmental organisations was submitted to the UN Secretary General on 26 September 2000 amidst growing intransigence and persistence on communal sovereignty by the Turkish-Cypriot leadership during the UN-sponsored negotiation talks with the Greek-Cypriot side. See ibid., p. 31.
3. See reportage in *Phileleftheros,* 15 July 2000, p. 3 and *Phileleftheros* 28 July 2000, p. 3.
4. The Master Plan was in fact conceived by Lellos Demetriades and Mustafa Akinci, respective mayors at the time of the Greek and Turkish-Cypriot sectors of Nicosia who were motivated according to the former by a shared vision of municipal bicommunalism. See Lellos Demetriades, 1998, pp. 169-176.
5. Turkish-Cypriot hostility to the project centred around "the Greeks sending us their sewerage" kind of opposition whereas Greek-Cypriot rejectionism raised fears of recognition of a breakaway Turkish-Cypriot state (ibid., p. 172).
6. Last House elections of 27 May 2001 gave the left-wing AKEL the largest share of votes, 34,71% and a marginal victory over the right-wing DISY, 34%. The Centrist DIKO received

CONSTITUTIONAL LEARNING FOR CYPRIOTS

14,84%, while the Social Democrats KISOS gained 6,5%. The openly anti-federalist "New Horizons" won 3,1%, whereas the liberal United Democrats netted 2,59%. The right-wing one man party ADIK ended with a 2,16% and the Greens with 1,98% *(Cyprus Mail,* 29 May, 2001).

1. The left-wing PEO claims the biggest union membership number (75.000) according to the "Europa World Year Book" (1991) followed by the right-wing SEK (51.581), the Civil Servants Union PASYDY (13.030) and the Social Democratic DEOK (4.407).
2. Working-class unity on the basis of bicommunalism reached the highest point of intensity and success in the mine industry run by a Los Angeles based company (CMG) during the 1930s and 1940s. The militant strike wave which broke out in the mine regions of Skouriotissa, Mavrovouni, Amiantos and Kalavassos involved from beginning to end Greek­ Cypriot and Turkish-Cypriot workers along with active participation of their families . It stands in the popular memory and oral narratives of the older generations as a landmark of successful bicommunal mobilisation against British rule as opposed to the divisive armed revolt headed by EOKA and the Church which alienated the Turkish-Cypriots. In these regions the striking workers were brutally suppressed - dismissals from work, forcible evictions from the lodges, exiles from the mine area, fines and prison sentences lasting for months - while the colonial police in two cases opened fire indiscriminately *(Mavrovouni­ Xero,* 1948) wounding ten Greek-Cypriot and four Turkish-Cypriot miners (Pantelis Varnava, 1993, pp. 124-125).
3. See the essay, "Irredentism Lite", by Marios Constantinou in this issue.
4. Soccer clubs in the Greek-Cypriot community reflect the general trend of subcultural encapsulation. Since the time of the Greek civil war (1945-1949) soccer clubs have taken sides left and right, they are directly or indirectly "politically geared", participate in presidential campaigns and provide their stadiums and facilities for the organisation of political rallies. Due to the mass following they enjoy by thousands of young Greek-Cypriot fans, soccer clubs such as the popular left-wing "OMONIA", "AEL", "NEA SALAMIS" and the right-wing "APOEL", "ANORTHOSIS" and "APOLLO" evolved into important sources of lager identification and party support not only by politically committed youths but also by persons whose political identification would not under normal circumstances entice them into the sphere of influence of party activity. Regrettably the underlying truism of this sociological regularity is so self-evident that it failed the attention of research interest.
5. Symptomatic of the scope and magnitude of sustained mental conditioning by ethno­ racial populism among the ranks of the Greek-Cypriot right-wing subculture is that the soccer clubs operating within the contours of its own lager mentality emblematise strongly the semiological centrality of Hellas as the organising pivot of the right-wing imaginary: "Apoel" is a "Greeks only" club, "Olympiakos" features a Greek flag on its logotype, "Ethnikos Achnas" highlights prominently a Greek map with Cyprus located between Rhodes and Crete, "Anorthosis" displays a Phoenix-like Hellenism rising from *the* ashes of History, "Apollo" spotlights the figure of the ancient Greek god, while "AEP" features an EOKA hero.

THE CYPRUS REVIEW

27. See Harry C. Luke (1921, pp. 209-210).

* 1. In everyday Greek-Cypriot politics the hard core fantasy of sizable portions of the iron­ handed, virile and redneck followers of the conservative Right identifies the "redness" of the Left with the threatening red of the Turkish flag. There were consistent attempts in the past to associate - especially during campaigns - the "red peril" with the "red Attila".
	2. With the exception of the charismatic Archbishop Makarios Ill all post-independence presidents were elected after securing support from the left-wing lager. The successful alliances of the left, however, foundered during the last two presidential elections (1993, 1998) whereby the right-wing DISY moved to the centre co-opting the Democratic Party (DIKO) the first time and the Social Democrats (KISOS) the second. This realignment however did not enjoy long-term stability since both parties withdrew support from the two times president elect Glavkos Clerides. Both parties claimed humiliation by "right-wing arrogance" and compulsive hegemony.
	3. See Section 3.
	4. Identity does not necessarily imply personality. Identity politics in general tend to suppress personality. The latter implies taste along with freedom. By freedom I mean an *existential pull by the ideal of perfection* – itself a civic republican ideal as exemplified by the work of H. Arendt and C. Castoriadis – as opposed to the *push of passion* that reduces personhood to passivity. Freedom calls the subject out and beyond itself, exposing it to the challenge of alterity. See Constantinou (1999) 'Agnes Heller's ECCE HOMO: A Neomodern Vision of Moral Anthropology', THESIS ELEVEN, No. 59, pp. 29-52.
	5. In exemplifying himself as a chairman of the anti-party beslaved to citizens Nicos Anastasiadis extended his deep thanks and gratitude to "civil society" cajoling and overpraising its qualities upon winning an unexpectedly high share of votes (34%) in the House elections held on 27 May, 2001.
	6. See Otto Gierke: 'Community in Historical Perspective', Cambridge University Press, 1988.
	7. Ronald Dworkin: 'Taking Rights Seriously', Harvard University Press, 1978.
	8. See Roberto Unger (1983) 'The Critical Legal Studies Movement', Harvard Law Review, No. 96, pp. 576-583.
	9. See Jean-Luc Nancy (1991) 'The Inoperative Community', University of Minnesota Press and 'Community at Loose Ends' (1991) edited by the Miami Theory Collective, University of Minnesota Press.

CONSTITUTIONAL LEARNING FOR CYPRIOTS

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63

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