

The Cyprus Question; 1878-1960

The Constitutional Aspect

Evanthis Hatzivassiliou

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Evanthis Hatzivassiliou is a lecturer on contemporary history at the University of Athens and despite his young age already an old hand in Cypriot historiography. So far he has published three excellent books on the British Colonial period in Cyprus which constitute a highly recommendable read for the expert as well as for the ordinary reader. This book is an updated version of a Greek monograph first published in 1998. While his other two publications deal with the 1950s, this work ambitiously covers the entire British colonial period choosing a new - and highly rewarding - topic: the constitutional aspect of the Cyprus dispute. It is the first attempt - at least in English language - to analyse the diverse constitutional orders Cypriots lived under or, as importantly, could have lived under, had diverse constitutional proposals been implemented, between 1878 and 1960.

The book is divided into five chapters, introducing the reader first to the major problems and peculiarities of the constitutional development of Cyprus before embarking on a chronological analysis of the constitutional orders and proposals during the 82 years of British rule.

His general and well substantiated thesis is that constitutional development was restricted, or even dictated by the demands of international politics and the realities of geopolitics from the start of the British colonial period: *"Between 1878 and 1948 international considerations merely reinforced the reluctance of the colonial officials to concede greater power to the indigenous population, but after 1950, the influence of international considerations assumed enormous and, by the late 1950s, dominant proportions."* The author leaves no doubt that the predominance of international factors was to the detriment in particular of the Greek but - and this thesis is more disputable - also of the Turkish Cypriots since the needs of the local population were hardly considered in the formulation of constitutional proposals for Cyprus. Indeed, all constitutional proposals after 1956 were primarily designed with a view to reach an international agreement on the future status of Cyprus acceptable to Greece, Turkey, and Britain. This can also be said about the Cypriot constitution of 1960. They also undermined the political dominance of the Greek Cypriots and de facto ended their dream of *enosis*. But these were positive

developments for most Turkish Cypriots, who managed to increase their political powers in any constitutional proposal since 1956 and, therefore, clearly benefited from the increasing importance of the role of Turkey.

This does not mean that Hatzivassiliou draws an all negative picture of the constitutional development in Cyprus. In fact, it started off promising. The beginning of British colonial rule brought the introduction of institutions and popular vote to Cyprus in 1882, at a time when such political freedoms were largely unknown to most territories in the wider region. But already in 1882, the unusual international status of Cyprus – under the sovereignty of the Ottoman Empire, and the administration of Britain – could not but be reflected in the organisation of Cypriot public life, "distorting it" as Hatzivassiliou puts it, for almost four decades by organising it along ethnic lines and giving the Greek-Cypriot majority population no equivalent representation in the Colonial Parliament, the Legislative Council. In this body Turkish-Cypriot representatives and colonial officials always constituted a majority. This arrangement turned the Turkish Cypriots into a partner of the colonial administration and the Greek Cypriots into a permanent parliamentary opposition to both. This basic principle remained largely untouched after Cyprus became a Crown colony in 1925. The Legislative Council was reformed but the basic principle of ethnic division and its power balance were hardly changed. The number of Greek-Cypriot representatives was increased from nine to twelve but this was counterbalanced by the addition of three British Colonial officials.

The failed 1931 uprising marked the turning point in Cyprus constitutional history: there would be no return to constitutional government until independence in 1960. According to Hatzivassiliou, the negative experience with the Legislative Council made Greek Cypriots distrustful toward the idea of gradual constitutional development; they rather saw it as a tool which the British used to prevent *enosis*. This view became dominant among Greek Cypriots especially after 1945, and largely prejudiced them against subsequent constitutional offers. In this context, the author applies two very helpful concepts for the characterisation of Greek-Cypriot nationalism during the colonial period. According to Hatzivassiliou, the *enosis* movement on the island followed two successive patterns, based on two historical precedents. Between 1878-1931, the Greek Cypriots were following the *Ionian Pattern* i.e. a policy imitating the peaceful struggle of the Ionian radicals for union with Greece hoping that the British, who had ceded the islands in 1864, would react similarly. The pattern lost its appeal shortly before the 1931 revolt and especially during the period of direct rule that followed. After the Second World War another pattern became prominent: the Cretan one - emphasising a dynamic, even violent, claim for liberation. Cooperation and gradual constitutional development under a colonial administration became far less acceptable under the Cretan pattern. For Hatzivassiliou, the change towards the Cretan pattern was a mistake. It locked the

Greek Cypriots in rigid, dogmatic positions failing to realise they were facing a European democracy with a tradition of gradual political development. Greek-Cypriot leaders viewed any British constitutional proposals after 1948 as a trap rather than a step in the desired direction. This work rightly leaves no doubt that the colonial rulers bear the main part of responsibility for the radicalisation of Greek-Cypriot nationalism. They refused to offer real political power-sharing to the majority of the population before 1931 but rather kept the Greek-Cypriot representatives a minority in the Legislative Council and then insisted openly on keeping the island indefinitely after World War Two.

Looking at the numerous constitutional proposals between 1948 and 1960, Hatzivassiliou makes the plausible argument that three constitutional proposals were a lost opportunity at least for the Greek Cypriots: in 1948 and again in 1955- 1956 the British and Greek Cypriots came close to a mutually acceptable constitutional settlement, remarkably the only two serious attempts to find a colonial settlement i.e. an agreement between the colonial people and its ruler based on Greek-Cypriot majority rule and a protected Turkish-Cypriot minority status. The 1948 constitutional proposal was "*A liberal constitution [which] would realize the Greek Cypriot's wildest dreams of the 1930s; but in the late 1940s, it might not be enough.*" The basic clash of interests jeopardising all attempts to solve the Cyprus problem between 1945 and at least 1956 was that after World War II only a constitution with a prospect for the union of the island with Greece would do for the Greek Cypriots, which was unacceptable to the British who had decided after the war to keep this island indefinitely.

In 1948, the Greek-Cypriot representatives demanded a large degree of self-government including all ministries except foreign affairs and defence. This was rejected by the British who signalled that the legislative would have a Greek-Cypriot elected majority and an association of Cypriot political leaders with government departments. But attacks from the Greek-Cypriot right which did not participate in the negotiations created the need for the left to present tangible concessions which were not forthcoming. In the end, the British were prepared to give ministries to the Cypriots in five years time, but this concession was not communicated to the Cypriots with highly detrimental consequences for the constitutional development of the island. The initiative failed and the Greek Cypriots lost the British concession of majority rule, a target they had been fighting for since 1882. The political left now adopted the "enosis and only enosis" line of the political right and started to participate in the ensuing internationalisation campaign, which would ultimately backfire on the Greek Cypriots by bringing outside powers into the conflict. The Turkish Cypriots had interestingly accepted the British proposal making clear that they would not consent to Greek-Cypriot demands for self-government, which would place the minority under the majority's domination. For Hatzivassiliou, "*the*

1948 proposals can thus be described as a major opportunity which all sides lost to set Cyprus on the path of normal constitutional development. The Greek side lost the opportunity to create a relaxed, if not self-governing, system, even to gradually build an essentially Greek Cypriot administration on the island. In the following years, neither the British nor the Turkish Cypriots would be prepared to accept an offer as liberal as the Winster proposals, while the Greek Cypriots themselves would be reluctant to accept anything less than the offer they had rejected in 1948."

The negotiations between the British Governor Harding and the Greek-Cypriot leader Makarios in 1955 and 1956 signified the second lost opportunity. Again, a Greek-Cypriot dominated administration was the base of the proposed agreement together with a vague acknowledgment of a Greek-Cypriot right for self-determination in an unspecified future, but the negotiations failed mainly over the issues of control over inner security and amnesty for the EOKA fighters. For Hatzivassiliou, the differences in the end were not insurmountable but the consequences of the failure disastrous. The British had for the last time negotiated directly with the colonial people. From now on international considerations would play the predominant role and outside interests would prevail over domestic needs.

The constitutional proposals of 1954 and the Radcliffe proposals of 1956 were not lost opportunities, as Hatzivassiliou plausibly argues. Despite some very favourable and liberal aspects – Hatzivassiliou even characterises the Radcliffe proposals as the most liberal constitutional offer the British ever made to the Cypriots – both had no chance of being accepted for the same reason: they were both accompanied by British political statements which completely discredited them from a Greek-Cypriot point of view. The proposal of 1954 was linked with the famous "never" statement to the complete independence of Cyprus by the British Undersecretary for the Colonies, Hopkinson, during the debate on the constitutional proposal. In 1956, the proposal was accompanied by the recognition of a separate Turkish-Cypriot right for self-determination by the Colonial Secretary Lennox-Boyd. The latter statement marked Cypriot history decisively also on a constitutional level: *"Inevitably, when a group of people (in this case the Turkish Cypriots) are granted such a right (even through a legal absurdity), they tend to put forward much wider constitutional demands, and do so more strongly than would otherwise have been the case."* The significance of the 1956 statement can indeed hardly be underestimated. It was made to blackmail the Greek Cypriots into the acceptance of the constitutional proposal and, therefore, the continuation of British colonial rule but it in fact changed the status of the Turkish-Cypriot community from that of a minority to that of a second and potentially politically equal community. The immediate consequences were the Turkish and Turkish-Cypriot demands for partition. After 1956, the Turkish-Cypriot right for self-determination together with the increasingly powerful position of Turkey formed the base for the near political

equality of the Turkish Cypriots in the 1960s constitution and – together with the facts created in 1974 – political equality in any envisaged post-1974 order including the Annan Plan.

Followed by the ill-fated Foot and Macmillan plans, which reflected the climax of potential mainland Turkish and Greek involvement in the administration of Cyprus, the island arrived at the constitutional settlement of 1959-1960. Though the author is highly critical of its imposed character, inflexibility, and provisions like the need for separate majorities for cases of electoral law, tax bills and municipal legislation, he belongs to the small camp of writers who considers the constitutional order of 1960 workable and a lost opportunity rather than a construction bound to fail. He sees the main reason for its failure in the politics pursued by the extremists on both sides after 1960: *"The constitution was indeed immensely complex, but not unworkable. In the end, the way a system is implemented is perhaps more important than its actual legal character. Implementation also involves aspects such as mutual trust and the desire to compromise."* Its main advantages from a Greek-Cypriot point of view were the creation of an independent and sovereign state, thereby removing the British colonial rulers, who could not mortgage the future of the island further, as they had done with the 1956 statement or the Macmillan Plan, the removal of the Turkish government representative and the preservation of a unitary state. The democratic principle of majority rule was still upheld though modified in the 7:3 ratio and in some fields subject to Turkish-Cypriot veto rights. The Greek-Cypriot president played the decisive executive role either directly or through his control of the Ministerial Council.

The constitution did not solve but froze the differences on the island, the most the constitution could aspire to achieve in the situation of 1959-1960. The establishment of mutual understanding between Greek and Turkish Cypriots was left for the future as was the Greek hope that in the long run the Greek-Cypriot majority would prevail: *"[The] fundamental unspoken assumption of the Greek side was that tension would work in favour of the extremists and of those advocating partition, while smooth political development would work in favour of moderate forces and of the Greek Cypriot majority."*

There is not much one can criticise in this thoroughly researched and well written study of Cypriot constitutional history during British rule. There are a few minor details, as for example, the fact that the author has omitted the concept of suzerainty from his discussion of the legal status of Cyprus until 1914.

The most disputable aspects of this book are the lessons and political demands deriving from his analysis for any future constitutional order in Cyprus. The fundamental assumption by which all past but also future constitutional designs are

evaluated is the application of majority rule as an indispensable element of any Western democratic constitution. Consequently, in the case of Cyprus, he rejects any constitution which is not built on Greek-Cypriot majority rule as undemocratic: *"a bicomunal society does not necessarily imply that democratic principles are not applicable; even in a federation [...] these principles are modified, not cancelled. [...]"*

With the possible exception of Belgium, one can indeed not think of any other Western democracy in which the majority principle has been set aside to give an ethnic minority political rights equivalent to those granted to the Turkish Cypriots in the Annan Plan - and in Belgium the population ratio is very different making equal power sharing more acceptable as just for the majority. In the case of Cyprus, however, the question is not if Hatzivassiliou is theoretically right but whether or not his thesis could *realistically* provide the basis for a constitutional arrangement given the intricacies of the island's recent political history. What is promoted in the book, an arrangement based on Greek majority rule, is not feasible in terms of Realpolitik.

It was already clear at the time of writing in 2001-2002 and is even clearer after the Annan Plan that demands for Greek-Cypriot majority rule stand no realistic chance partly because of the continued domination of international considerations in the search for a solution. But the necessity of political equality is now also the outcome of the political and social reality on the island after 1974. The Turkish-Cypriot claim for political equality was accepted by both the Greek-Cypriot leadership in the High Level agreements and by the international community. Consequently, there were only symbolic leftovers of the majority rule principle in Annan V and this is unlikely to change. This might indeed fly in the face of democratic constitutional theory, but it was accepted by the European Union, the guardian of Western democracy in Europe. The EU raised no objections to the violation of the majority principle, on the one hand in order to address power political realities but on the other also in order to overcome the legacy of ethnic strife and division.

Therefore, Hatzivassiliou's well substantiated objections to political equality for the Turkish Cypriots, for example in the form of a rotating presidency, are unavoidably overruled. If Cyprus is ever to have a joint constitution again, it will remain a sui generis case something Hatzivassiliou – and most Greek Cypriots – lament as "unjust" with very good reasons. But as far as one can foresee, this island has only two options. The first is that Greek Cypriots accept the principle of political equality as the price to be paid for reunification. This means the indeed risky attempt to produce a constitutional paradox, which will create a constitutional precedent: the creation of a Western liberal democracy based on political equality between numerically very unequal ethnic groups. In such a case, by highlighting the

inherently unjust nature of the constitution rather than focussing on the advantages of reunification, Greek Cypriots will be sowing the seeds of their own discontent thereby jeopardising the viability of the new political order.

The second option is to remain divided.

Hubert Faustmann