CONSTITUTIONAL LEARNING FOR CYPRIOTS IN THE LIGHT' OF THE SWISS AND EU EXPERIENCE: A SOCIOLOGICAL PERSPECTIVE

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Abstract

Public misconceptions in Cyprus concerning the "Swiss model" abound on both sides of the contentious federalist debate. This aggravates an already intractable conflict and further complicates attempts to apply constitutional principles of justification to the settlement of rival constructions of rights. I wish to argue that Greek-Cypriot and Turkish-Cypriot impressionistic understandings of Swiss federalism instrumentalise the federalist debate through cursory remarks and perfunctory summaries that trivialise the Swiss experience, hampering thus comparative constitutional learning through the initiation of constitutional reflexivity in the public discourse of both sides of the ethnic divide. This will be attempted through extracting some orientations from an analysis of the Swiss model which are deemed appropriate to the purpose of breaking through the systematically distorted communication that prevails in the constitutional hermeneutics of both communities. The aim will be to establish the comparative value of the Swiss experience in the federalist debate on Cyprus hoping to convert learning to policy relevant theory, encompassing as much complexity as the deadlock under consideration allows. In this first of two articles I critically examine the Turkish Cypriot constitutional vision; in a sequel article I consider relevant Greek Cypriot views.

Part I: Inducing Reflexivity in the Turkish-Cypriot Constitutional Vision*

Introduction: Misconceiving Swiss Federalism

Among the Greek-Cypriot public and many media pundits there prevails an irrational fear that any deliberation over aspects of Switzerland's cantonal federalism amounts to sanctioning partition, two separate state sovereignties and ultimately approval of a confederal solution legitimising the status quo. They get carried away by nominalist impressions of the "Helvetic Confederation", portray its weak rotating presidency and cantonal self-government as evidence of its confederal aspects and conclude that any resolution of the Cyprus problem on the

basis of the Swiss model will be nothing less than a "Turkish veil cloaking partition".[1] Equally careless, misleading and unprofound references are common among Turkish-Cypriots who are generally more well-disposed and unreserved with Switzerland's political institutions when they discuss comparative issues of constitutional design. A good case in point is the Turkish-Cypriot constitutionalist Zaim Necatigil who argues his community's case as follows:

> The Turkish-Cypriot view, regarding a weak federation with a proviso that more powers may devolve upon the central government as confidence grows, is supported by the Swiss example. Under the Swiss constitution of 1848 the central government's powers were mainly those generally considered an initial necessity in a federation: foreign attairs; defence and foreign commerce (...). As confidence grew, more and more powers were transferred to the federation (...). *This shows that the Swiss state was not artificially centralised, but built up from below (...). Will the sovereignty of the future federation (of Cyprus) derive from the sovereign peoples of the two communities previously organised in states of their own or will that sovereignty be derived from a single central government?* (Necatigil,1989, pp. 150-151).

Yet, no sustained effort has been undertaken by either Greek-Cypriot or Turkish-Cypriot constitutionalists to probe the Swiss case. If comparative lessons are to be absorbed creatively in the attempts to federalise Cyprus then it is the task of social, political and constitutional theory to identify conditions and critical variables that affected historical outcomes in the country that the Island is called upon to consider as a model of federalisation. Let me therefore engage this scattered Cypriot commentary on Switzerland by examining its implicit constitutional assertions in the hope of rationalising the terms of the debate. In this article I will critically examine Turkish Cypriot evaluations of the Swiss model.

a. Federalism and War

Usually the lack of historical knowledge prompts constitutionalists to single out country-cases of accommodation which are not properly placed against the sociological background of longer-time perspectives. In the above mentioned quotation by the legal scholar Zaim Necatigil, Switzerland is presented as having had an unencumbered free-wheeling constitutional evolution from confederation to federation. Although Switzerland did not escape the centralising tendencies of modern state-making, Necatigil seems to be arguing, its centralisation was not artificially engineered but sprang from below. This argument, however, cannot be fully sustained by Swiss history which no less than other European states witnessed authentic armed conflict and civic strife, in other words "war-making" as an ingredient of federalisation.

When the three states of Uri, Schwyz and Unterwalden were joining the first *Bundesbrief* (pact of confederation) in August 1, 1291, they did so by pledging mutual assistance against enemies. In this first assertion of federal liberty the citizens of Swiss valleys promised solidarity whenever the House of Habsburg tried to impose upon them a foreign judge. This primitive Swiss *Bundwas* defensive and directed against a visible and defined enemy nobody could misrecognise. For this reason it was reaffirmed in 1315 after another unsuccessful attempt by the duke of Habsburg to conquer the valleys and was consolidated in 1386 after a victorious battle against the German nobility. The Swiss *Bund* evolved as a defence treaty with Lucerne, Zurich, Berne, Glarus and Zug. Under this shape the confederation entered into war with Charles the Bold and added in 1481 two new members, namely Fribourg and Soleure before the next war against the German emperor Maximilian. In 1501 followed Basel and Schaffhausen while Appenzel joined in 1513. Under this composition the old Swiss Confederation lasted for more than two and a half centuries until the French Revolution and the Napoleonic conquest. *It is important to underscore the fact that with the exception of Fribourg all the thirteen member states enjoyed the homogeneity of German-speaking culture. No less important was the expansionist policy of the Confederation* that did not hesitate much to conquer the territories of Thurgau and Ticino (J. Wayne Baker, 1993, p. 21; Otto Kaufmann, 1989, p. 207).

So far it is evident that among the factors we should isolate in order to explain the sociological stability and durability of the old Swiss Confederation are,

I) Defence against a common enemy, be that the House of Habsburg, Charles the Bold, the German Emperor, the local German nobility or the Napoleonic French occupation.
II) No member-state or linguistic group ever declared a wish to disband the confederation and join Germany or for that matter the neighbouring France, Italy or Austria despite tension among their rank.
III) Ethnic cohesion and linguistic homogeneity among the original thirteen member-states was a favourable sociological condition for the early consolidation of the confederation.

When, therefore, Turkish-Cypriot legal scholars point at the "serene" constitutional evolution of Switzerland they should also be able to account for the following:

I) Germany was not looked after or admired by Swiss communities as a "motherland".No Swiss city or canton ever entertained en masse irredentist feelings, not even during or after the French occupation. By contrast, early on both Greek-Cypriots and Turkish-Cypriots did not entrust their

consociational institutions which were set-up not against a common enemy but against each other, conspiring therefore to destabilise the republic by looking respectively at Greece and Turkey with unabated irredentist feeling.

II) Unlike Cyprus where reluctant elites were called to join forces in a common republic, in Switzerland it was citizens and "men of the valleys" promising each other, forever, assistance whenever anybody attempted to impose foreign rule. That constituted a solid sociological base for the confederation.

III) No mentality of independence comparable in sociological depth to the Swiss one as it was shaped against German imperial dynasties (Habsburgs, Maximilian) ever appeared demandingly to the foreground in order to have consciousness-shaping effect against Greece and Turkey. Even the anti-colonial revolt against British rule involved only one community while the other abstained at best and collaborated with the colonial masters at worst. Militant labour strife involving sectors of both communities did develop in the late 1940's but failed to obtain continuity and long-term political impact.

IV) Exception to III was the development of considerable Greek-Cypriot resistance to cold-war partitionist plans which at various moments were promoted with the consent and active involvement of Greece. The legacy of Greek-Cypriot revolt against partitionist plans (such as Dean Acheson's) as well as the armed resistance put up against the Greece-led and U.S.-backed *coup d'etat* organised in 1974 in order to impose the former remains a consequential source of civic patriotism covering the Centre-Left partisan space. The sociological ripening of a pro-independence civic mentality against the Greek state's synergy in implementing partition argues against the totally *"penetrated society"* hypothesis put forward by the Turkish-Cypriot legal scholar Metin Tamkoc (1988, pp. 54-56).[2]

Moreover such an expressly manifested civic sentiment should potentially be counted among the moral foundations of Cypriot federalism. This potential however is presently neutralised by the following paradox. While Greek-Cypriot civil society developed a strong regionalist consciousness and grew more confident in relation to Greece due to an economic take-off and divergent cold-war alignments that triggered possibilities for new identity formations disconnected from Greece, Turkish-Cypriot elites discern in such newly grown confidence a renewed threat of Greek-Cypriot hegemony. Perceived threat of Greek-Cypriot hegemony in a reunified republic intensifies their insecurity making them even more reliant on Turkey *which in turn compels Greek-Cypriots to appeal to Greece for military protection.*

The Republic of Cyprus could not afford the Swiss confederation's German speaking homogeneity at least in its original stages. Cypriot bi-communalism

overloaded the constitutional process of partnership and that could not be mitigated by unity in the face of external threats. Moreover, the young Republic could not afford "nation-building" via expansionist policies which helped initially stabilise the Swiss confederation by keeping the "threat of diversity" at moderate levels.

Turkish-Cypriot scholars should thereby consider the absence (in the Cypriot case) of such enabling factors which fortified and perpetuated the Swiss federal process. In the light of all the above reasons, Necatigil's recommendation for a Swiss-model of federalisation from below ought to suggest alternatives that could realise it. One way of exploring such alternatives (in order to make up for a number of factors that choke prospects of successful federalisation), is to consider how cantonal civil societies allow their modernising lifeworlds a horizon of mutually presupposed meanings and deprovincialised norms shaped and elaborated through direct-democratic forms of participation. Insofar as Turkish-Cypriot constitutionalism seeks guaranteed ethnic homogeneity of communal territories, Swiss federalism may not be much pleasing for its aspirations. Once Swiss federalism has been designated by Turkish-Cypriot constitutionalism as a privileged source of inspiration it is incumbent upon it to rethink the constitutional frame of self-government as it actually evolved in the sociological and historical context of the Swiss Rechtstaat. Indispensable dimensions of such rethinking are certainly the direct-democratic compounding of majorities and the fact that *cantons, the most potent element of Swiss federalism, are not ethnically based. Is Turkish-Cypriot constitutionalism prepared to assume this immanent risk?*

b. Civil War and International Law

How did the Swiss Confederation survive its own civil wars? By 1529 Zurich, Schaffhausen, St. Gallen and Appenzel were swept by the Reformed faith of Ulrich Zwingli who was envisioning a new federation of Reformed cities under the banner of *Christliche Burgrecht* (Christian Civic Union). The Catholic alliance retaliated by forming *Christliche Vereinigung* (Christian Union) *in direct association with Austria.* The fielded army of the Christian Civic Union *headed by Zurich* forced the Catholic Christian Union into negotiations and a truce. In the resulting treaty – First Peace of Kappel – the Catholic Christian Union was placed under the obligation to disband its forces and *annul its treaty with Austria.* But the Christian Civic Union itself was after an expansion of the Confederation involving South German protestant territories and to this end Zwingli sought after an alliance with Philip of Hessen. Among the German-speaking cantons Bern opposed Zurich's expansionist policies by suggesting instead an economic embargo on Catholic states in order to force them to comply with the provisions of the treaty of 1529. Zwingli who envisioned a larger Protestant Confederation argued against the embargo on the grounds that Catholic states would thus be allowed time and place to regroup and initiate

hostilities. Indeed a reassembled Catholic force outrun Protestant troops in 1531, and Zwingli himself was counted among the victims (J. Wayne Baker, 1993, pp. 22-23).

The Catholic victory led to the Second Peace of Kappel ending thus Zurich's growing hegemony and prosyletization campaigns in Catholic areas. The vision of a greater, united, Protestant Switzerland was crushed. The Reformation had brought the country to the brink of partition between two federated territories. A century of religious strife had brought the old Confederation to its knees. Interestingly the Thirty-Years War (1618-1648) halted further disunity despite deep confessional divisions. Neutrality prevailed and the Treaty of Westphalia which concluded the war in the tradition of *jus publicum Europaeum* (Carl Schmitt, 1974) bestowed official recognition to Swiss independence. Swiss unity therefore was enhanced by the pluralist jurisprudence of *jus pub/icum Europaeum,* an order which

I) put an end to religious civil wars
II) replaced theological disputes with the deliberated statutes of jurists and
III) stipulated that war and peace would be conditioned by the recognition and legal protection of sovereignty and territorial integrity.

This order lasted until the Napoleonic conquest which signalled the rising sociological significance of bureaucracy and the concomitant functionalisation of constitutional law. Napoleonic imperial politics mandated administrative centralisation of the Swiss state and constitutional engineering from above. This policy failed and Napoleon was forced to restore the Confederation through the Mediation Act of 1803. Upon Napoleon's defeat, the Treaty of Vienna (1815) as another epitome of the legal tradition of *jus publicum Europaeum,* revalidated Swiss independence from the German Reich and French encroachments, recognised Swiss neutrality as a stabilising factor in European politics and further respected its territorial integrity by confirming the accession of Valais, Neuchatel and Geneva in the Confederation.

Time and again we therefore observe Swiss federalism enjoying the benediction of the *jus publicum Europaeum* without which its continued neutrality and *situation unique* would have been impossible. The fact that wars of extermination and massive population displacements were replaced by what Carl Schmitt called *gehegter Krieg,* that is contained, limited and controlled wars – *"wars in form"* – whereby the enemy was considered a legal subject, a *Justus hostis* defending an equally just cause, turned out to be a blessing for the constitutional evolution of Swiss federalism. *Wars in form* notwithstanding, one should not be oblivious of the dark side of the Congress of Vienna which proclaimed the preservation of the European status-quo based on the ill-famed "stability of things", meaning that internal revolts had to be suppressed by police-state methods in order to make

manifest the legality of existing regimes (Thomas 0. Hueglin, 1982, p. 32). This geopolitical pressure exerted by the neighbouring European powers which needed a *buffer-state* between them is an extra-constitutional factor which contributed immensely to Swiss unity. The federal system, Duchacek argues, partly mirrored the geopolitical balance of power surrounding Switzerland (Duchacek, 1970, p. 329). Unity was also, initially, enhanced geographically by the inaccessibility and unassailability of the Alps in the formative years of Swiss federalism.

As it was explained above, contrary to Turkish-Cypriot perceptions and notwithstanding favourable international circumstances Switzerland's internal constitutional development was asymmetrical and far from being uneventful. Fifteen years after the Congress of Vienna had secured the independent status of Switzerland, a wave of radical liberalism spread throughout protestant cantons culminating in the drafting of a new constitution only to be yet once more opposed by Catholic cantons. Eighteen years of rivalry, tensions and communal intransigence (1830-1848) culminated in a decisive civil war which although conducted in the spirit of *jus publicum Europaeum* imposed by majority a new federal constitution. When Turkish-Cypriot legal scholars appeal to Switzerland in order to exemplify the constitutional model which a federalising Republic of Cyprus should aspire to emulate they should not overlook the hard fact that *the present amicable partnership of consociational agreement was not in place when it was mostly needed.* From 1848 to 1891 the Federal Council consisted entirely of Liberals who had won a military victory over the Catholic cantons (Steiner, 1974, p.33). For forty-two years after the *Sonderbund* war the stability of Swiss federal government was maintained by the victors who monopolised the executive. A Christian Democrat was elected in the Federal Council only as late as 1891 while the Social Democrats who on proportional basis were qualified for a seat in 1919 did not receive one until 1943 and their proportional share of two by 1959 (ibid., p. 33).

What is thereby inferred is that Swiss federalism was imposingly shaped by winner-loser arrangements facilitated by the favourable international treaties of Westphalia (1648) and Vienna (1815) and sealed by the outcome of a determinative civil war (1848) which settled once and for all the internal balance of power not unlike the federal reunification of the United States effectively brought about also by civil war. The outstanding feature of this war however is that apart from being a test of strength that decided the victor and the vanquished, it considered the latter as a *Justus hostis* respecting the juridical and civil status in what was a self-limited contained and controlled war. Thus the jurisprudence of the *jus publicum Europaeum* to which Switzerland owed its continuing existence as a unified confederation was domesticated and integrated as a fundamental asset of its constitutional evolution.

c. Cyprus: From Colony to Post-colonial Quasi-state

Unlike Switzerland which could afford the luxury of civil strife without incurring territorial mutilation thanks to the special protection it enjoyed by international treaties concluded in the spirit of *jus publicum Europaeum,* Cyprus was founded by *Grossraum* expediencies which dictated its limited sovereignty. Therefore the unthought contradiction of Turkish-Cypriot constitutional discourse in its seductive engagement and fascination with the Swiss model is the following. Switzerland evolved a strongly resonant federal model, echoing and re-echoing the unencumbered status of its independence and sovereignty, consolidated by treat in the spirit of *jus publicum Europaeum.* Cyprus on the contrary was founded during the cold-war era which consummated the subversion of *jus publicum Europaeum* by establishing a *Grossraum* legality as the foundation of a functionalisied international law. The treaties which founded the Republic of Cyprus acted as the constitutional bottleneck of its independence reflecting the new foundations of global domination. How therefore could Cyprus – in itself a case study *Grossraum* constitutional politics – seek to emulate dimensions of a federal mol which was stabilised in the era of *jus publicum Europaeum?* Could a quasi-state or limited republic belonging to the third sphere of non-aligned states resist the influence of supra-state powers and constitutionally narrow the bottleneck?

A *Grossraum* according to Schmitt is a hegemonic geopolitical sphere which is constituted as a "bloc" whose political magnitude and influence extends beyond the states that comprise it as a spatial entity. The space defended by particular states cannot constitute a counterweight or challenge the hegemonic power of a *Grossraum.* The transition to a spatial order of *Grossraum* altered drastically the parameters of international law operated under the regime of *jus publicum Europaeum* which provided that states would base their recognition on equality and reciprocity and that every state thereby had a legitimate spatial dimension. That was the qualifying factor which enabled the U.S. to insist that the armed insurrection of the seceding South by no means constituted a state of war impairing the sovereignty of the American government by creating belligerent populations entitling foreign states to intervene (G. L. Ulmen, 1987, p. 66). The decline and demotion of the *jus publicum Europaeum* in international affairs gave rise to the notions of "limited sovereignty", "spheres of influence" and "satellite state dependent on new spatial formations. The founding of the Republic of Cyprus was a salient apophysis of this international order of *Grossraum* super-legality and *post colonial constitutional paternalism.* The process of decolonisation thereby overlapped with *Grossraum* formations which rendered tutelary constitutionalism consistent with the cold-war international law of limited sovereignty.

For the purpose of elucidating the *Grossraum* dimension of Cypriot constitutional politics it suffices to highlight the fact that the Greek-Cypriot armed campaign for

enosis (1955-59) was deeply enmeshed in an international constellation of imperial forces under an emerging U.S. hegemony within NATO.[3] After the entry of the U.S. into World War II in 1941 it became necessary for the British Empire to account for a no longer self-justifying colonialism. The State Department requested timetables for independence throughout the War (A. N. Porter and A. J. Stockwell, 1987, p. 29) although U.S. enthusiasm for decolonisation declined following the advent of the cold-war and its *Grossraum* realignments. *The ideological residues of the U.S. revolutionary tradition of anti-colonialism dissipated in the face of solid bloc priorities and expediencies.* This notwithstanding, U.S. tolerated and even encouraged anti-colonial movements (against the British and French empires) which were not inclined toward the Soviet Union. The Greek-Cypriot leadership of the *Enosis* movement ventured to capitalise on such an intra-imperialist rift in Western hegemony. During U.S. Congress discussions over aid programmes to Greece and Turkey in 1947 the State Department released a document which testifies U.S. support for ceding Cyprus to Greece through Greco-British negotiations in spite of its withdrawal after strong British representations and U.S. apologies that it was only intended as a discussion-document (Francois Crouzet, 1973, pp. 208-209).

When in 1950 a Greek-Cypriot delegation visited Washington in order to submit to the State Department copies of a plebiscite demanding *Enosis* they consciously included in their address to the Secretary of State an emphatic appeal to the divergence between U.S. and British colonial policies (Attalides, 1979, p. 5). The Greek-Cypriot leadership also attempted to trade upon U.S. alertness with the sprawling strength of local communism *(AKEL)* which British colonial policy in Cyprus did not mind manipulating as an ideological counterweight to right-wing *Enosis* nationalism. *AKEL* at the time was solidly forming itself into a *Lager* of social reform and British colonial policy in complete disregard of NATO's anti-communist agenda in world politics did not hesitate to use it as a balancing sociological antipode to right-wing *pro-enosis* forces. This was expected to legitimise evolutionary colonial constitutionalism and therefore prolong British domination. The British ideal which wanted colonial people to graduate (through a long evolutionary process) from the "Burkean School of Constitutional Law" in order to qualify for self-government was thus conveniently overlapping with the Empire's strategic interests in the Eastern Mediterranean and the Middle East. British colonial philosophy aspired to secure a peaceful path of constitutional evolution combining internal self-government with the carrying out of strategic imperatives.

Indeed it appeared in the 1950s that a strategic overlap of interests existed between Greece, U.S. and the Greek-Cypriot irredentist bloc since the former was by 1951 a member of NATO with the Royalist Right solidly established in power after the crushing defeat of the Left in the civil war (1946-1949) and the U.S. taking over the patronage of the conservative forces with the launching of the Marshall

Plan (ibid., p. 5). Moreover it is contended that the U.S. offered assistance to EOKA, the irredentist but also vigorously anti-communist guerrilla organisation which championed *Enosis* (Goldbloom, 1972). Union of Cyprus to Greece would render *Grossraum* strategic designing more efficient by containing Soviet influence on Arab regimes, as well as the strong and growing communist *Lager* in Cypus. Soviet advances in Egypt, the continuing Arab-Israeli conflict and the upsurge of Arab nationalism and neutralism necessitated the final settlement of the Cypr Question within the context of Natoist diplomacy.

At this moment, however, a significant shift appears in U.S. security considerations which was destined to arrest the aggressive momentum of *Enosis* by ushering Turkey in as a pivotal factor of containment politics. By 1953 Defence Secretary John Foster Dulles was considering Turkey an indispensable component for the defence of the Eastern Mediterranean and the extension of NATO influence in the Middle East. The formation of the CENTO pact concluded in 1955 had elevated Turkey's strategic importance in the Natoist system of bilateral a multilateral alliances hence the U.S. foreign policy dilemma over the *Enosis* dispute had to be resolved without risking Turkey's alienation from the carefully crafted security architecture of the West (Van Coufoudakis, 1977, p. 104). Consequently U.S. policy on Cyprus after 1955 emphasised a NATO-mediated resolution by "quiet diplomacy" and tripartite negotiations between Britain, Turkey and Greece.

The Greek government, however, was highly unstable and less than ten years after the end of the civil war was under mounting domestic pressure by an astonishing comeback of the Left. The latter thrived in supporting unconditional *Enosis* against a U.S. backed government trapped between its NATO commitments and Greek-Cypriot irredentism. The threatened status of the lives and properties of the (100.000) Greek minority in Istanbul and Izmir by Turkish government-instigated vandalism retaliating Greek irredentism allegedly threatening the Turkish minority Cyprus was an equally destabilising factor. It exposed a Natophile right-wing government as harmful to the national interest. The Greek government, therefore, deferred to public opinion and pursued the Cyprus Question in the U.N. General Assembly despite U.S. warnings and a threat for a negative vote. The undissuaded Greek government failed to obtain a positive resolution in its successive appeals (1954-1958) which were rebuffed as expansionist schemes seeking to annex Cyprus under the guise of the right of self-determination (Terlexis, 1971, pp. 159-213).

Guided by an exclusive emphasis on containment-politics and a resolution of the Cyprus Question satisfying vital security-interests of the Western alliance (Coufoudakis, 1977, p. 107), Dulles instead submitted in 1957 at the NATO Foreign Ministers' conference a scheme by which Cyprus would

I) join NATO
II) be ruled by a triumverate of commIssIoners (one Scandinavian, one Portuguese and one Mediterranean)
III) enjoy limited self-government

To this purpose the U.S. called Greece and Turkey to revise their national agendas in accordance with the overall interests of the Alliance (Attalides, 1979, p. 11).

The four-year (1954-1958) diplomatic fiasco of Greece in the U.N. along with the exhaustion of the Greek-Cypriot revolt practically translated in the dissipation of any political and military resources to support the right of self-determination.[4] By identifying the right of self-determination with the incorporation of Cyprus to Greece and not with independent statehood, the Greek-Cypriot leadership as well as the Greek foreign policy were faced with their limits. Greek-Cypriot discountenance with transitional self-government and outright dismissal of the potential for political development through constitutional evolution by reserving the right of self-determination, kept the irredentist revolt hostage to the Greek state's multilateral commitments to NATO. Between *evolutionary constitutionalism* and a *NATO-bound revolt,* it appears in hindsight that only the former could keep alive the right of self- determination without risking partition.

Incapacitated by a persistent diplomatic cul-de-sac, Greece joined the band of "quiet diplomacy" which revolved around the "partnership" plan of Prime Minister Harold Macmillan. The Macmillan plan announced in 1958 envisaged that the national aspirations of the two communities should not be met by the principle of self-determination but by association with Turkey and Greece in a partnership of shared sovereignty (Reddaway, 1986, p. 104). Had this plan failed the British government under Macmillan was resolved to proceed with a final solution of "double self-determination" and therefore impose partition (ibid., p.115). The Macmillan plan propelled Turkey and Greece to work out a settlement of the Cyprus dispute that would proscribe partition as well as *enosis* through "a policy that was subject to confidential consultation and discussion within the North Atlantic Treaty Organisation" (ibid., p. 112).

In December 1958 the Foreign Ministers of Greece *(Averoff)* and Turkey *(Zorlu)* met in the context of a NATO conference where the Cyprus question was discussed. Secret negotiations recommenced on January 20, 1959 where an outline of comprehensive constitutional settlement was drawn up in the absence of Cypriot representatives which secured *inter alia* the sovereignty of British military bases. Following this meeting, the Prime Ministers of Greece and Turkey discussed this outline along with their Foreign Ministers in Zurich on February 11. Then with almost incogitable speed on February 18 the Cypriot representatives were invited

over to London after all was said and done to sign the London agreements embodying the constitutional draft agreed in Zurich a week earlier along with the three associated treaties of Establishment, Alliance and Guarantee. In less than a month and without involving the constituent power of Cypriots, Turkey and Greece on behalf of the Alliance had formulated *Grossraum* constitutional principles for the founding of a limited Republic which was offered to Cypriot representatives in a "take it or leave it" fashion. Indicative of such *"expedited constitutionalism"* is a quite suggestive incident whereby Makarios, the Greek-Cypriot representative, after having realised that he was faced with a *fait accompli* requested a margin of time to consider the agreement. He was told instead that Prime Minister Macmillan and Secretary of Colonies Lennox-Boyd "were to leave next day for the Far East and Moscow respectively and therefore (he) had to give his answer immediately"(Polyviou, 1980, p. 14).

In view of the treaty structure binding the protectorate Republic by *unilateral rights of intervention* which were enshrined in order to secure that Cyprus remained a NATO ally, the Treaty of Guarantee could remain effective only as long as Greece and Turkey could themselves remain regardful of *joint intervention.* In this respect the "will of the people" literally emanated from allied *Grossraum* power.

It has been argued that Treaties intended to bind a Republic in perpetuity by an alliance established in terms of *foedus inequale* are invalid (Tenekides, 1964). There appears at first blush to be a strong case for this insofar as the Cypriot leadership signed the Treaties before the threat of partition thus alienating through the treaty process fractions of its sovereignty by establishing a *casus intervention,* under the assumption that only the preservation of the constitution may sanction intervention. This protective provision notwithstanding, Cyprus acceded to the Treaty under duress therefore voiding the Treaty *ab initio* (James H. Wolfe, 197 pp. 42-43). To this effect the Greek-Cypriot jurist Criton Tornaritis asserted that th constitutional enshrining of *casus interventionis* fails the test of the U.N. Charter legality (Article 103) which invalidates treaties violative of the sovereign equality of states. Therefore, Tornaritis argues, the Republic's adherence to the U.N. Charter in 1960 relieves it of any obligations restrictive to its sovereignty under the Treaty of Guarantee (1977, pp. 42, 60). Insofar as the Treaty of Guarantee authorises interventionary force in contravention to the peremptory norms of *jus cogens* and the U.N. Charter then (Article 103) provides that in the event of conflicting right: under the Treaty and obligations under the Charter, the latter shall prevail. U.N. Charter legality is also reinforced by the Vienna Convention on the Law of Treaties (1969) which encompasses the view that cases of neocolonial aggression car justify the denouncing of treaties as *"affirmative servitudes"* imposed upon former colonies as a precondition of their independence.

A *Treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the U.N. Charter.* [5]

Expectedly, the records of the Conference on the Law of Treaties indicate that "the representative of Cyprus was emphatic in its approval while his Turkish counterpart expressed serious reservations" (James H. Wolfe, 1979, pp. 43-44).

Turkey's hermeneutic counterpoint is that the very preamble of the U.N. Charter mandates respect for obligations arising from treaties and other sources of international law (Zaim Necatigil, 1989, p. 103). Even in terms of the Vienna Convention on the Law of Treaties it is stipulated (Article 4) that *its provisions have no retroactive application* (ibid., p. 109). Turkish constitutional hermeneutics also calls attention to the case of Canada whose power to amend the constitution was obtained as late as 1949 while the constitution itself was enshrined in an Act of the British Parliament. It was only in April 1982 that the British Parliament relinquished control over the Canadian constitution, so the argument goes (ibid., p. 112). This argument however is morally unfortunate and constitutionally unsound since the evolving relationship of English Canada with Great Britain does not correspond in any way whatsoever to the Greek-Cypriot connection to Great Britain, so that it may constitute a precedent.[6]

The Turkish hermeneutic strategy, however, provides more cogent arguments on the issue of Cyprus' status compatibility. It is certainly not mere constitutional acrobatics to argue that *Cyprus' accession to the U.N. was subject to its special status under the treaties, which status it cannot unilaterally alter* (Necatigil, 1989, p. 113). It must therefore be assumed that Cyprus must have waived its right to challenge the compatibility of its U.N. membership with the U.N. Charter insofar as the issue of status compatibility was neither raised nor debated in the General Assembly or the Security Council at the material time of Cyprus' acceptance as a member. Moreover Cyprus' *treaty legality* was not derogated to a pre-existing independent entity but was itself a guarantee of Cyprus' independence which came into being as a result of a set of international accords (ibid., p. 114).

According to all indications presented here *above,* Turkish-Cypriot constitutional discourse and International Relations theory appear to subscribe to the notion that *independence* is not essential to statehood. A fully independent and sovereign state could not and cannot be an acceptable option for Turkey and the Turkish-Cypriot leadership. Independence qua sovereignty was not and is not an end in itself. *"It is not unusual for* a *multinational small state to be subjected to the penetrative power and authority of a larger state or group of states, the principle of "sovereign equality" of all states notwithstanding. History is replete with stories of small states being created, influenced, controlled, and then swallowed up by major*

powers for the good of all' (Tamkoc, 1988, pp. 65-66). The constituent power of *Client States* to make and enforce either higher or lower law is limited *de facto* by a status of dependency and *de jure* by a treaty structure which over-determines State practice in terms of "permissible intervention". The ultimate test of legitimacy for the Republic of Cyprus, thereby, is not whether it is independent and sovereign vis-à-vis other states but whether it can fulfil the purpose for which it was created. In this respect Turkish-Cypriot discourse emphasises the *Grossraum rationality* of the framers of the constitution who embarked on the mission of founding a *sui generis Client Republic* with the deliberate purpose of restoring the cohesion of NATO's destabilised South-Eastern flank, namely the alliance between Greece and Turkey in the face of Soviet challenge in the Mediterranean. The *raison d'etre* of the founding was neither self-determination, nor independence qua sovereignty but accommodation of a *Grossraum condominium* under NATO influence which was given by way of treaties constitutional force. *Sui generis* condominia vary in purpose and duration but Cyprus in the light of the above considerations can be safely classified along with Samoa Islands (Great Britain, USA, Germany, 1889-1900), the New Hebrides (Great Britain, France, 1906 to date), the Anglo-Egyptian Sudan (Great Britain, Egypt, 1889-1956) and Tangier (Great Britain, France, Spain Portugal, Belgium, The Netherlands, Italy, 1923-1956) (Gerhard von Glahn, 1981, p. 78). To counter the Greek-Cypriot assertion about Cyprus' status incompatibility with the U.N. Charter, Tamkoc (1989, p. 66) refers to the examples of New Zealand Australia, Canada, Lebanon, Iraq, Syria, the Byelorussian Socialist Soviet Republic and the Ukrainian Socialist Soviet Republic which were admitted to the U.N. with full independent status while at the material time of their admission they were to varying degrees under the jurisdiction and control of Great Britain, France and the Soviet Union.

However legitimate or illegitimate Cyprus' treaty foundations of legality were at the time of its inception, one can hardly fail to sense the strongly neo-colonial resonance of such legal positivism. *The reified and cumbersome treaty legality notwithstanding, Cyprus may count upon new possibilities of constitutional reconstruction after the end of bipolarity and the emergence of a pluralist geopolitical alternative.* The cold war pressure which aggravated inter-communal conflict has been lifted much as the adhesive glue holding the Atlantic alliance together cannot be sustained any more by neo-colonial arrangements regulated by regional treaties. The decline of the U.S. monopoly on foreign policy initiatives with respect to regional disputes, the security shift toward a European defence structure, the consolidation of common constitutional instruments and the progressive solidification of principles concerning a unified foreign policy orientation by the E.U. comprise the elements of a *Grossraum* power transition after the exhaustion of cold war bipolarity. In terms of international law the evolving constitutional formation of the European federation signifies the emergence of a new public order beyond the

old *Realpolitik* predicated on the concept of an increasingly obsolete sovereign state. For the first time in its history Cyprus is presented with new comparative opportunities to move beyond a neo-colonial treaty-legality and an elite-centred perspective in constitutional politics. The revival of constitutional thought in sociology and political theory after the collapse of state socialism, the end of apartheid and the launching of European federation invigorate comparative learning to unprecedented levels.

Cyprus in this sense ceases being a mere constitutional curiosity of international law since its quasi-statal character overlaps with the E.U.'s non-statal constitutional evolution. Cyprus much like the evolving E.U. does not fit the criteria of statehood in terms of peoplehood and sovereignty. The Republic of Cyprus does not enjoy a "we the people" clause in its constitution which instead enshrines the principle of concurring majorities and communal dualism on all levels of government. The terms "popular sovereignty" implying majority-rule and national government is never mentioned. It is nowhere mentioned throughout the constitutional text that "the people of Cyprus" is the ultimate source of sovereignty. The treaties binding the Republic of Cyprus do not derive their constitutional validity from the political will of its citizens. The authors and addressees of the constitution are not identical and no constitution-making as an act of political self-determination ever took place. Moreover Cypriot sovereignty appears to be a constitutional impossibility with respect to the concept of territoriality. If territoriality means that no other authority than the state itself can exercise jurisdiction within its boundaries then Cyprus does not fulfil yet one more criterion of statehood since it is effectively divided since 1963 by a regime of *de facto* partition in force to this day. The Republic of Cyprus is not presently effective throughout its territory insofar as it cannot exercise comprehensive and unlimited authority over the Turkish-Cypriot community in the North. By the same token the E.U. has no territoriality of its own since it is the member-states which define the territorial limits of its authority. The status of citizenship is contingent upon the status of nationality in member-states (Ulrich K. Preuss, 1996, pp. 212, 214-215).

Neither the constitutional predicament of Cyprus nor the E.U.'s notorious democratic deficit are definable in the normative terms of democratic theory. With respect to processes of post cold war constitutional challenges it is much more creative to address such quasi or non-statal entities in terms of a federal theory of cross-cutting publics and pluralist associational subsystems co-existing with functional forms of bureaucratic success-oriented, elite-based intergovernmental federalism. Neither liberal democracy and majority rule nor consociational elitism are ends in themselves. *The E.U. is defined by processes of polycentric legitimation which couple structured elite-domination with transnational inter-institutional penetration along with civic formations, subcommunities and regions*

competent in participative politics. This process of polycentric legitimation presents Cyprus with a new range of possibilities for federalisation beyond neo-colonial treaty-determined, elite-centred, constitutional designs on one hand and/or unlimited majoritarian exercise of the constituent power inherent in popular sovereignty on the other.

While the E.U. in its drive to achieve greater coherence in its security policy in the Eastern Mediterranean started "a pulling of constitutional wires" in Cyprus by assuming a role of diplomatic broker, the government of the Republic made in 1990 a formal application for E.U. membership anticipating reunification of the islancd along the model of Germany. Governments in Athens and Nicosia view the E.U. as a reliable instrument of conflict-management with respect to Greco-Turkish disputes, one that eventually may take over the role of NATO (Theophylactou,1995, p. 117). Greek foreign policy expects that Cyprus' accession in the next E.U expansion drive, will render the divided Republic a beneficiary of the normative aspects of the Union's constitutional momentum especially those instrumentally concerning the *acquis communautaire,* namely existing E.U. law and the patently centralising doctrines of direct applicability, direct effect and supremacy of Community law which must prevail when found in conflict with the provisions of national law. Greek foreign policy therefore contemplates the prospect of reunification and demilitarisation of Cyprus that will neutralise Turkish zero-sum gains, counting on the far-reaching implications of *acquis communautaire.* Insofar as the E.U. is still a non-state whose only fundamental property beyond economic harmonisation is law-making independently of member state legal orders, the European Court of Justice becomes the principal agent of a liberal constitutional integration hence foregrounding the three fundamental freedoms (movement, property, settlement) as the principled premises anticipated to have direct effect in the resolution of the Cyprus Question.

Turkey on the other hand, opposes Cyprus' full membership in the E.U. by invoking Articles I and II of the Treaty of Guarantee which proscribe Cyprus' union with any state. In particular the second paragraph of Article I enjoins the Republic "not to participate, in whole or in part, in any political or economic union with any state whatsoever". Article II moreover puts Greece, Turkey and Great Britain under the obligation to frustrate this endeavour. Yet as I explained above, Cyprus' full- membership in the E.U. does not constitute a "union with a state" but *a union between a non-state and a quasi-state.* The legal status of such *non-statal union* may restrict the scope of Greek-Cypriot aspirations by the combined effect of two fundamental principles of European jurisprudence, namely *subsidiarity* and *proportionality.* Considered under these two principles *the breadth and intensity of the three fundamental freedoms for the grace of which Nicosia pursues its accession to he E.U. might be modifiable.* Any political resolution of the Cyprus

Question, thereby regulating, imposing ceilings or defining conditions for the implementation of these freedoms is not likely to be challenged by the liberal European Court of Justice as Greek-Cypriots expect despite the impressive arsenal of doctrinal limits on such an eventuality. On the contrary, a final settlement may be filtered through a jurisprudence of subsidiarity and proportionality which are moreover increasingly informing foreign policy-making.

Subsidiarity as an elevated principle of the E.U.'s constitutional design reassures the constituent states and *notably the regions and other subcommunities within member states that their distinctiveness will be respected at the European Community level* (George A. Bermann, 1994, p. 367). *Self-determination, preservation of identities, diversity and respect for the internal divisions of member states have figured prominently in the E.U. discourse of subsidiariy.*[1] Subsidiarity's vague reference to the virtues of localism undermine, I sense, Greek-Cypriot reliance on the E.U.'s role as a diplomatic broker. A contradiction appears to lurk in the principle of subsidiarity as a procedural *norm of constitutional design* on one hand and *policy-making instrument* on the other. The latter seems to place preference at the most local level favouring thereby loose confederational ties, yet *consistent with achieving a government's stated purposes. State-subsidium* to regions and subcommunities, however, *may not destroy or absorb* them, in case that is a secretive Greek-Cypriot aspiration. It is, otherwise put, a *sociological Treaty of Guarantee for the separate (territorial) existence of the Turkish-Cypriot community.* This is fully consistent with the Turkish-Cypriot claim about the existence of "two separate peoples", thereby in the event of concluding an agreement on Cyprus' full membership, the E.U. is obliged to include the Turkish- Cypriot people in the proceedings on an *equitable basis* (Zaim Necatigil, 1989, p. 300) .

But Greek-Cypriot aspirations for a tight local federation may still be sustained insofar as the principle of subsidiarity does not seek to challenge the direct applicability, direct effect and supremacy of E.U. law or any of the prerogatives of the Court of Justice which is authorised with laying the normative foundations of constitutional integration as first priority (Bermann, 1994, pp. 362, 365). The Greek- Cypriot leadership is more likely to read into the principle of subsidiarity an enlargement of spheres of competence by central institutions, and within these spheres delegate some to lower organs as the higher organisation sees fit. After all the E.U. concept of subsidiarity expresses a preference for local governance *consistent with achieving a central government's stated purposes,* something which departs from the original meaning as stipulated by a crucial document of Catholic social philosophy namely the Papal Encyclical *Quadragesimo anno,* paragraph 79:

> It is an injustice ..... for a larger and higher association to arrogate to itself functions which can be performed efficiently by smaller and lower associations. This is a fundamental

principle of social philosophy ..... Of its very nature the true aim of all social activity should be to help *(subsidium affere)* members of a social body, and *never* to destroy or absorb them (J. Finnis, 1980, pp. 144-150, 158-159).

Yet absent of concrete evidence that subsidiarity actually exerts legislative interpretive or adjudicatory influence and given its ambiguous status and difficulty in operationalising it without contradiction, appears sharply double-edged by raising dramatically the constitutional stakes for both communities within the E.U. Both communities may gain and lose by the application of subsidiarity as the fundamental law and measuring rod of E.U. federalism.

The same probabilities and competing scenaria about the impact of E.U constitutional dynamics on the final pattern that will be imposed on the resolution of the Cyprus dispute, feature in the principle of proportionality. The 1992 Edinburgh guidelines issued by the European Council with respect to *proportionality* clarify that the principle is not restricted to the judicial review of the legality of E.U. action but it is also *a legislative doctrine to be followed in policy and decision-making.* The 3rd guideline states that "while respecting community law, *care should be taken to respect well established national arrangements and the organisation and working of member-states' legal systems'* (Bermann, 1994, p. 387). These guidelines were elaborated as a modification of the Maastricht Treaty in order to induce the Danish electorate to support ratification of the Treaty in a second referendum following a no-vote in the first referendum. *The intentions of the Edinburgh shortcut formulations are therefore consistent with the scope of Turkish-Cypriot concerns regarding constitutional safeguards about the status of political equality which they anticipate to be enshrined in a final settlement.* Insofar as subsidiarity is more operationalisable in areas of environmental and consumer protection, or regional and cultural rights than in the more inflexible areas of market harmonisation, the Turkish-Cypriots may expect to have comparative gains.

Both principles derive their status from the Natural Law tradition and were used as recommendations for rulers with respect to statesmanship. But a substantive use of these principles "may enmesh the European Court in political judgements" for which it is ill-equipped to make (ibid., p. 391). *Procedural or substantive, these two norms of European jurisprudence may reinforce centripetal or centrifugal tendencies in a prospective Cypriot federation.* Both communities however appear to have a stake within the E.U., a stake that is in *engaging these instruments that enable their self-articulation vis-a-vis one another and also enhance the indispensable interaction with each other.*

If it is true that European jurisprudence has embarked on recovering from its positivist frenzy endeavouring to establish a new equilibrium beyond legal

motorisation, state rigidity and unresponsiveness to new challenges and is, coming to represent the legal will of Europe as opposed to egoistic communalism and national factionalism, if indeed European jurisprudence appears to move as Carl Schmitt (1943-44/1990) envisioned it, beyond the legal technicism of decrees and directives, then the constitutional settlement of the Cyprus conflict poses as a critical test-case for its normative principles. If these principles are expected to evolve into a constitutional *lingua franca* of the European spirit which in spite its positivistic dependency on the established corpus of community law *(acquis communautaire)* still enjoys considerable margins of authority and legislative dignity, then this development is all the more important for the Cypriot communities *whose neo-colonial treaty legality has degenerated into* "a *poisonous dagger" by which one (community) stabs the other in the back dissolving right into nihilistic opportunism.* The challenge for European jurisprudence in the case of Cyprus is to safeguard the supranational sources of legal consciousness by applying the principles of subsidiarity and proportionality in ways that

I) *do not serve the deadly legality of centralisation and majority rule* and

II) *do not reinforce a type of communalism which poses arrogantly as an unchangeable museum artifact supervised and conserved by ethnic elites whose privileged status is predicated on the perpetual reification of ethnic particularities.*

Otherwise this would trigger a vicious circle of infinite regression whereby sanctified ethnic reification becomes a source of intercommunal strife calling either for a strong central administration to regulate it or secession. Insofar as *only living communities able to resist bureaucratic redefinition can become susceptible to effective and lasting forms of federalisation* (Paul Piccone and G. L. Ulmen, 1990, pp. 29-30) European jurisprudence is then called to steer clear of further administrative fixation of identities through a prudent and innovative application of the principles of *subsidiarity* and *proportionality* enabling dereification and recapturing of the creative moments of such identities. Jurisprudence is called to seize this creative moment in its own authorial and masterly way, that is by refining, enriching and enlarging the rationality of law. Insofar as the spirit of law is wiser than the intentionality of the legislation at the moment of its enactment calls for commentary and interpretation by virtue of *juris-prudence.* Jurisprudence therefore stands for the *surplus of law,* an existential embodiment of practical reason, presence of mind, perspicacity and sound judgement under the pressure of hard cases, resisting expedience, scheming and politicness. But the far-sightedness of jurisprudential deliberation is also called to integrate the two fundamental principles that govern the very legitimacy of the European project, namely *utility* and *efficiency.*[8] After all, Cypriots evaluate the legitimacy of the European Union in terms of the presumed superiority of its problem-solving capacity over their own

inexperience and short-sightedness.

On the other hand the non-statal framework within which European integration evolves, challenges the Greek-Cypriot and Turkish-Cypriot communities to rethink the traditional ways they make sense of democracy and associated concepts such as sovereignty, legality, legitimacy, majority rule etc.

Greek-Cypriots may certainly have to reconsider their cherished ideal of sovereignty, unitary state and democratic majority-rule and put it in a federalit perspective much as Turkish-Cypriots are called to revise the *idee fixe* of separate self-determination and communal homogeneity.The polycentric, diffuse and incomplete character of legality in the European Union invites Cypriot communities to rethink their implicit sociological theories of state. The latter presently commits them compulsively to *government by state* while the Swiss and now also increasingly European challenge appeals to an adjustment of their competing constitutional visions to a non-statal framework of *government by civil socieity* whereby sharp demarcations of statehood do not hold. In my view the integration of Cyprus in the E.U. will take on the character of what Ulrich Preuss calls *"osmotic relationship',* only that this will be carried out between a non-statal federation and a quasi-state insofar as there is no identifiable constitutional centre able to accumulate and subsume the political quintessence of a supranational community either in the E.U. or in Cyprus. *The changing nature of international law may no longer require statehood as the only valid model of legal development or demand that any small country claiming the respect of its neighbours by achieving independent status must therefore by necessity consolidate sovereign state power. The impulse to construct strong states is no longer self-evident.* Here, the Swiss model stands again as a precurso,r indicating beforehand the track of current developments in the E.U. and may therefore serve as a comparative workshop for Cyprus' apprenticeship in a new geopolitical field between quasi-statehood and non-statehood.

Switzerland's Polycentric Structure of Legitimation as a Working Model for Redesigning Cyprus' Quasi-stateness in the Context of European Integration

Switzerland serves as a useful example of the sociological distinction between the concept of state *strictu sensu* and the more amorphous notion of a political centre. The Swiss mode of centralisation although in essence no less violent than other cases of state-building did not lead to "virtual statehood". *As a consequence of its own historical processes Swiss civil society evolved multiple centres of decision making which tolerated and accommodated resistant areas of de-differentiation through epigenesis rather than through bureaucratic rationalisation*

as the principal method of modernisation. Although the civil war decided victors and vanquished, political change allowed overpowered traditions to remain unchanged and yet accommodated thereby shaping the process of political centralisation in ways peculiar to Swiss culture. Self-government by civil society fostered the development of the market but also encouraged reliance on forms of direct-democratic participation hence strengthening the autonomy of the former. Self- government by civil society and direct democracy became mutually reinforcing. Switzerland thus achieved *centralisation* without *etatization* despite the experience of civil war and the near threat of a class war in 1918.

Contrary to opposing views, the Treaty of Confederation signed in 1291 as a permanent pact of alliance and mutual aid was violated repeatedly resulting to a chain of civil wars. These wars *nonetheless account for the uniqueness of the Swiss political system that was able to maintain a pluralist confederation during and after the civil wars* (Bertrand Badie and Pierre Birnbaum, 1983, p. 132). The ultimate military triumph of market liberalism, itself a unilateral outcome of German- Protestant mobilisation necessitated unification, nation-building and the imposition of a new constitution as an essential and indispensable condition for the continued existence of the Confederation. Yet, and this is precisely what is noteworthy about Switzerland, *neither the unification of the market nor constitutional integration operated as catalysts of etatization.* The self-centralisation of associational networks in civil society did not translate into a further strengthening and higher institutionalisation of central authority. The weakness of the Swiss state is prominent even today and is best exemplified by i) the modest size of civil service (32.000) which has not been successful in obtaining any substantive bureaucratic autonomy vis-a-vis civil society. *Most of the civil servants are employed by cantons, are employed for four-year terms and are usually recruited from the private sector* (ibid., p. 133). *That Swiss federal bureaucracy Jacks officially sanctioned career patterns or the guarantee of lifetime employment along with the absence of shared common background, training, status, resources and information, and the fact that it receives the lowest share of tax revenue among OECD countries illustrates a striking neutralisation of state power* (Katzenstein, 1984, p. 116). This is further demonstrated by ii) the weak formal supervision of the banking system and above all by the virtually autonomous status of the *Nationalbank* whose monetary policy is free of government interference (ibid., pp. 116-117).

Switzerland is characterised by a considerably centralised system of interest-representation, corporatist bargaining, cumulation of leadership roles, working class self-help culture and a weak, understaffed, underpaid parliament along with the private character of the welfare state and the potential use of referendum power by interest associations and political outsiders, bring about a national network of public policy-concertation which renders federal bureaucracy a minor actor. Superior

personnel and resources, their centralised-national organisational infrastructure as well as their prominence in pre-parliamentary bargaining makes Swiss associations unrivalled when compared to state and party-bureaucracies. Certainly business corporations like *Vorort* are hegemonic and dominant. Whether the modest federal bureaucracy in this way becomes a loyal agent of business corporations is, all considered, a relative question since the *relations and intensity among class, associations, parties, cantons, ethnic, religious and linguistic groups are* not *decided by rule of state but by the multiple centres of decision-making which all these factors comprise, that is by the polycentric structure of legitimation in civil society and not by an autonomous state possessing bureaucratic power of mediation.*

In this respect the "Swiss archetype" of non-statal federalism becomes a forerunner of European integration, exemplifying *"the road not taken"* at the time when Europe was painfully embarking circa 1650 in the construction of sovereign state-forms. Despite a spate of state-seeking nationalism following 1989, a variety of theorists who promoted the rise of state in sociology such as Charles Tilly argue that nations in the sense of culturally connected populations may survive, prosper and form anew *but they will live detached from powerful states. Historical sociology burrows out of the prison-house of state thinking* Tilly argues and calls attention transnational connections and comparisons without evoking uniform societies insisting that the units of observation be states. Looking at contingent connections among groups, organisations, localities and events rather than standard sequences packaged in "continuous societies" may enable sociology to extricate from its fixation on stateness (Tilly, 1991, pp.1, 7).

In the same mood Philip Schmitter suggests to read the trend of globalisation in terms of regional agglomerations: "The future of democracy is not likely to be global but might be regional". The E.U., according to Schmitter exemplifies a *"world-region"* with a considerable density of cross-border transactions and a shared experience with inter-governmental institutions (Schmitter, 1999, pp. 941-942). Yet these forces affecting its configuration do not seem to push the "Euro-polity" in a unitary direction but instead "toward diverse outcomes with no stable equilibrium likely to emerge in the future" (ibid., p. 942). Its most likely outcome within a medium term of twenty years will be a non-state form beyond an intergovernmenal organisation or a supra-national state or any other form along this institutional continuum (ibid., p. 943). Schmitter calls attention to the growing incongruence between functional and territorial domains in the emergent "Euro-polity" and emphasises the assertion and even consolidation of a "plurality of polities" at different levels of aggregation (national, sub-national and supra-national) that overlap in a multitude of domains (ibid., p. 943). Without sovereignty or a strong political centre empowered to resolve conflicts there is only a process involving

multiple actors such as states, the growing presence of sub-national units at the international level, the formation of cross-border issue coalitions, treaty-making by municipalities and sub-regions, professional associations, parties, social movements and firms. Schmitter refers, consequently, not to a single Europe but to many Europes beyond the Eurocracy of harmonisation policy, *with multiple regional institutions producing a variety of public goods* (ibid., p. 945). Schmitter readily identifies "formidable co-ordination problems" and conjectures that *coordination* can only emerge *"in an improvised and incremental fashion from successive compromises'* among actors with divergent interests and institutional legacies (ibid., p. 945).

This suggestion however is less European and much less novel since it resonates strongly with really existing Swiss liberal corporatism. Indirect Swiss influence on Schmitter's non-statal thinking is also evident in his proposals for a redesign of Euro-citizenship, representation and decision-making. He recommends reform of direct election to the European Parliament by

I) *Switching to electronic or postal voting over an extended period (perhaps a week) instead of the traditional voting booth while ensuring that Euro-elections do not coincide with any national or sub-national election.*

II) *Attaching advisory, non-mandatory referenda to Euro-elections in order to stimulate voter-interest and the emergence of a continental public space. In addition voters in Euro-elections may distribute vouchers to European-level associations and movements who they believe can best defend their interests and passions. These organisations would subsequently receive public subsidies from E.U. funds in proportion to the vouchers they received.*

Ill) By admitting small (Cyprus, Estonia) and medium size (Hungary, Poland, Czech Republic) newcomers, the E.U. *should persist on overrepresentation and overweighing of votes in the Council of Ministers. Such polities of different size, capability and identity should be assured against being persistently outvoted by large ones just as linguistic, religious and ethnic minorities should feel protected.*

Schmitter's second proposal combines ingredients of the Swiss formula namely parliamentary democracy and direct democracy while his third proposal builds on the Swiss consociational arrangement of proportional representation. Yet, Switzerland's manifestly liberal corporatist system of interest representation and intermediation along with referendum democracy relegate the parliament to a mere ratificational instrument and this may - when considered in the E.U. context - undermine an already ineffectual Euro-Parliament and Euro-Party system. If it is true that the E.U. is increasingly relying on mediated linkages and multiple layers of

claim-making, aggregation and representation through the initiation of networks articulating functional, territorial and post-material concerns then this is predictably expected to hamper an already impotent Euro-party system obtaining viable constituencies.

All the same the emergence of a post-Eurocratic order of multiple Europes with their own principles of democratic participation and complex web of polycentric legitimation through a variety of federal domains of functional, territorial, political and civic action poses a momentous dilemma for Greek-Cypriots who are called to dilute their majoritarian principles of democratic legitimation through the evolving complexity of multiple actors interposing on different spheres of Euro-policy making *Many Europes may imply many Cypruses coordinated through polycentric and diffuse processes of legitimation which contradict the experience of traditional. statehood, strong central government and a single political power-centre* Schmitter's third proposal which empowers small size newcomers in the E.U. through overrepresentation and overweighing of their vote exacerbates the following contradiction: Greek-Cypriots will welcome Cyprus' overrepresentation in the Council of Ministers but will resent Turkish-Cypriot overrepresentation in the Cypriot central government. On the other hand a serious coordination problem arises insofar as Eurocratic thinking counts on strong and stable national governments – evidently at the expense of subnational levels – with respect to fiscal harmonisation thereby favouring the Greek-Cypriot insistence on a strong central government. This may establish stateness as a fait accompli. Be that as it may, the *predicament of Greek-Cypriot constitutionafism under the circumstances seems to be the pursuit of a unitary state with a strong central government in an era which "Europeanises" in admittedly contradictory ways such Swiss goods as non-stateness, weak federal bureaucracy, strong cross-cutting associations, liberal corporatism, direct democracy and self-help culture. In other words the challenge for Cyprus' reunification fies in the constitutional strengthening of cross-cutting civil societal rather than statal processes.* The present state of E.U. integration seems to entail above all an abandoning of the focus on unitary stateness superceded strong cross-cutting webs of functional interests, public spaces and associational networks. The Swiss-European challenge for the Cypriot communities therefore is twofold and requires self-limitation in the following sense. Turkish-Cypriots are called to restrict the scope of their separatism by upholding constitutional guarantees for *civil societal traversibility* within their community i.e. by rendering their communal boundaries permeable by associational cross-ties while Greek-Cypriots are called to self-limit their majoritarian emphasis on unitary statehood and sovereignty.

Although Swiss institutions are not transplantable on the E.U. level they can serve as a source of inspiration in experimenting with new forms of citizenship,

representation and decision-making through a *"plurality of polities at different levels of aggregation"* (Schmitter, 1999, p. 943). *The problem which remains stubbornly unseen by Greek-Cypriot perceptions therefore lies squarely with the diffuse and contradictory institutional dynamics and possibilities of constitutional evolution within the E.U. and not with any inherent flaws of Swiss federalism per se.* Non-stateness in the *case of the E.U. engenders contradictory processes of legitimation while in the case of Switzerland the neutralisation of central authority was condusive in a certain sense to unitary nation-building and the crystallisation of "Swiss character".* Cypriot communities are presently found on the receiving end of E.U. experimentation with non-statal thinking and government by civil society.

Cyprus' Grossraum quasi-stateness seems to be approaching its end. It was felt by many Cypriots as a curse because the cold-war contradictions of quasi-stateness led eventually to *de facto* partition. But the latter is not *de jure* and is still reversible if Cypriot communities redefine quasi-stateness beyond neo-colonial treaties and discredited cold-war machinations. That is by engaging quasi-stateness in a normative redesigning through transnational and regional clusters of public space, primary and secondary forms of citizenship and tertiary levels of federalism under the new security umbrella and trust-building environment of the E.U. This however implies *"reargard constitutional politics",* more pragmatic in character than programmatic. Such *reargard constitutionalism* engages with *metaprescriptive dimensions of federalism,* i.e. federalism as an experiment which involves *practices* and innovative combinations of accommodative politics rather than affirmation of standard *categories.* The question that readily comes forward is whether such *de-essentia/ised, non-categorical* federalism can be enhanced by the formative influence of E.U. institutions. If this is so then the E.U.'s impersonal institutional influence transcends the mere framework of providing a trust-building and safe security environment and becomes a *potential constitutional paragon* and indirect power broker defining the context of a conflict-settlement. The dilemma therefore between the E.U. as a mere "security umbrella" indifferent to the context of the Cyprus conflict settlement and the E.U. as a direct power-broker does not hold. To Cyprus the E.U. stands both as a security provider and as a horizon of indirect constitutional influence becoming therefore an impersonal power-broker. This means that along with that of the E.U., Cyprus' federalisation process shall not take place through some "constitutional big-bang". Rather it means that it will take place *"by stealth"* through a noiseless evolutionary yet contradictory federalising process. *For this to evolve however Turkish-Cypriots as well as Greek-Cypriots may have to reflect more cautiously on the stakes of federalisation within the E.U.*

Notes

* The sequel article (Part II), sub-titled "Theoretical and Practical Stakes of Federalisation is to be published in the next issue of *The Cyprus Review,* (Vol. 15, No. 1).

1. Symptomatic of this penchant in Greek-Cypriot journalism is Yiannos Charalambides' article in the daily *Simerini,* August 15, 1999: "The Veil of Partition and the (Greek-Cypriot) entrapment in a viable settlement of the Cyprus Problem".

2. Tamkoc elaborates on James Rosenau's concept of the *"penetrative process"* according to which foreign missions, subversive cadres and organisational staff of one polity serve as participants in the political process of another by sharing authority in the (penetrated society's) allocation of values thus establishing *"linkages"* (Rosenau, 1969) .
The two motherlands according to Tamkoc developed a *"relationship of emanation"* toward their respective communities in Cyprus. Being mere extensions of their motherlands, Tamkoc continues, the Cypriot communities denied their own local identity and came under the overwhelming power of two patrimonial sources of emanation. Turkish-Cypriot scholars; display an inexplicable difficulty acknowledging visible and solid signs of pro-independence mentality among Greek-Cypriots notwithstanding "emanation politics" that also determine a partially penetrated society. Had emanation politics been so dominant there would be no need for the coup d'etat of 15 th July in the first place. Armed civilian resistance to the "coupists", the failure of the illegal government to obtain recognition, its subsequent resignation only a week after the executed coup allowing a partial revival of constitutional legitimacy call for more subtle negotiation of "emanation politics".

3. Already by 1946, U.S. security concerns in the Eastern Mediterranean dictated a more active "naval diplomacy" which led to the formation of the Sixth Fleet.

4. A statement admitting this new reality was made by the Minister of Foreign Affairs Averoff in the Greek Parliament, February 25, 1959, quoted by Terlexis, 1971, p. 367.

5. The text of the "Vienna Convention on the Law of Treaties" was published in the *Americ Journal of International Law,* No. 63 (October 1969) pp. 875-903.

6. In the former case English Canada prevailed over *Acadia* and *La Nouvelle France* through conquest and established itself as the Dominion of Canada and King George III's loyal constitutional flock. English speaking settlers who colonised Canada by defeating French imperial dominions had migrated more or less voluntarily and voluntarily they had chosen British allegiance. However even in the case of the British colonists' subjectship it was evident that they had voluntarily contracted with the monarch by trading allegiance for protection (Robert Bothwell, 1993, pp. 30-31). Unlike Greek-Cypriots, mid-Victorian English Canadians were high-minded of the sweep and majesty of British power. Citizenship in the greatest empire the world had ever seen exerted tremendous appeal. *"What ambitious young Canadians would turn from the privilege of membership in the empire to assert* sole *allegiance to a country whose population and world stature was comparable to Romania* (Desmond Morton, 1993, p. 55).

7. See the Declaration on the Entry into Force of the Treaty on European Union, October 29,
1993, DOC/93/8, issued by the European Council in Brussels.

8. See A. Weale's paper *'The Single Market, European Integration and Political Legitimacy':*
quoted by Ulrich Preuss, 1996, p. 219.

9. On this subject see also John P. Netti and Robert Robertson, *International Systems and the Modernisation of Societies,* London, Faber and Faber, 1968.

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