

The Secret Negotiations: The Birth of the Cyprus Republic (1959-1960)

[Οι Μυστικές Διαπραγματεύσεις: Η Γένεση της Κυπριακής Δημοκρατίας (1959-1960)]

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This book marks a turning point in Cypriot studies, especially in the fields of institutional and political history. Moreover, it fills major gaps in the available bibliography. The study of Cypriot affairs, Cypriot history and institutions has suffered much due to the prominence of the Cyprus question itself. Until relatively recently, research on the Cyprus question, in its various forms and phases, had dominated the academic agenda, literally to the effective exclusion of everything else. For many decades, scholars turned their attention to the international deliberations regarding the future international status of Cyprus, or the successive crises of the Cyprus question from the early 1950s until the period after the 1974 Turkish invasion. In this process it has not been unusual for scholars –at least many among them– to take the complicated legal issues for granted, and display a painfully large degree of barren legalism, without even having the legal background to shape an informed analysis.

With the exception of two earlier reference works,¹ the systematic research on Cypriot institutions started only some years ago.² Although these studies also usually placed the institutional development of Cyprus in the context of an evolving Cyprus question, they arguably contributed to shifting –even partially– the focus to the ways

¹ Stanley Kyriakides, *Cyprus: Constitutionalism and Crisis Government* (Philadelphia: University of Pennsylvania Press, 1968); Criton G. Tornaritis, *Το Πολιτειακόν Δίκαιον της Κυπριακής Δημοκρατίας* [The Legal System of the Republic of Cyprus] (Nicosia: Cyprus Research Centre, 1982).

² Dimitris K. Melissas, *Η Οργάνωση της Πολιτικής Εξουσίας στην Κυπριακή Πολιτεία* [The Organisation of Political Power in the Cypriot State] (Athens-Komotini: Sakkoulas 1996); Kypros Chrysostomides, *The Republic of Cyprus: A Study in International Law* (The Hague, Boston, London: Martinus Nijhoff Publications, 2000); Evanthis Hatzivassiliou, *The Cyprus Question, 1878-1960: The Constitutional Aspect* (Minneapolis: Minnesota Mediterranean and East European Monographs, 2002); Nikos Christodoulidis, *Τα Σχέδια Λύσης του Κυπριακού, 1948-1978* [The Plans for a Solution of the Cyprus Question] (Athens: Kastaniotis, 2009). See also the works of Professor Emilianides in note 3.

that institutions functioned *within* Cyprus – thus to the levels of Cypriot constitutional history, political culture and the evolution of political forces. Essentially, this was an integral part of a larger development, namely, the emergence of a strictly academic bibliography, by people who were really trying to understand what happened and why, rather than to be part of international disputes, or crusaders seeking to ‘steer’ political developments to the desired direction. Still, the specialised works on Cypriot institutions and parliamentary history again remained relatively few, and it was Professor Emilianides who took the lead in providing much needed relevant studies, thus contributing the element of an inter-disciplinary approach, and adding the perspective of Constitutional Law to the works of political science, international relations or international history.³

The new book by Prof. Emilianides, however, arguably exceeds his earlier studies in scope. It is the best manifestation of the emergence of a Cypriot constitutional history. Emilianides has located the archives of the Cyprus Joint Constitutional Committee (JCC), the body that drafted the Cyprus Constitution of 1960. The archive includes the records of the plenary sessions of the JCC, of the sub-committees, as well as correspondence and drafts of the Constitution. The author has also consulted the British archives and the memoirs or specialised publications of members of the Committee; and he has exhaustively used the relevant bibliography. Thus, the book is the product of a large-scale historical/archival research, combined with the knowledge and background of a major expert in Constitutional Law.

In order to assess the importance of this material, it may be briefly necessary to sketch the role of the JCC in the making of the 1960 Cyprus Constitution. This was a very peculiar case of Constitution-making. The ‘basic principles’ of the Constitution of independent Cyprus were agreed upon in the Greek-Turkish agreement, reached in Zurich in February 1959, providing for the setting up of a Cypriot state which would not have the right to unite, either in whole or in part, with a different country, Greece or Turkey. This was the concept of ‘guaranteed independence’, excluding union with Greece or partition between Greece and Turkey. The agreement was confirmed a few days later in London, by Britain and the leaders of the two Cypriot communities,

³ Achilles C. Emilianides, *Η Υπέρβαση του Κυπριακού Συντάγματος* [The Transgression of the Cypriot Constitution] (Thessaloniki: Sakkoulas, 2006); Achilles C. Emilianides, *Πορεία προς την Καταστροφή: Κοινοβουλευτική Ιστορία της Κυπριακής Δημοκρατίας, 1964-1976* [A Course towards Disaster: A Parliamentary History of the Cyprus Republic, 1964-1976] (Nicosia: Aegean, 2007); Achilles C. Emilianides, Christos Papastylianos and Constantinos Stratilatis, *Η Κυπριακή Δημοκρατία και το Δίκαιο της Ανάγκης* [The Cyprus Republic and the Doctrine of Necessity] (Thessaloniki: Sakkoulas, 2016).

Archbishop Makarios and Fazil Küçük. Thus, the backbone of the Cypriot Constitution – a document which normally should have resulted from processes involving only its own citizens – was in practice ‘given’ by an international agreement between two other states. We now know that this process was agreed upon between the Greek government and Archbishop Makarios, but this element, however important, cannot lead the researcher to ignore the fundamental fact that the basic provisions of the Constitution had been agreed at an international level before the start of the drafting of the Constitution itself. As if this particularity were not enough, the JCC presented a further, unusual to say the least, characteristic: its membership was expanded to include, not only representatives of the two Cypriot communities, but also of Greece and Turkey, while it was also presided by a ‘neutral’ expert, Professor Marcel Bridel of the University of Lausanne. In other words, the drafting of the Cyprus Constitution arguably ran counter to some fundamental principles of Constitution-making. The process was bound by an international agreement, and in the drafting body itself two other states played a hugely important role, at least in the sense that they provided expert opinion and even (in the Turkish case) guidance for the Cypriot representatives involved.

Is this, then, a study in Constitutional Law or in international politics? The student of Cypriot affairs knows that it is all of these. In essence, it is part of an effort to understand the multiple Cypriot deviations that, in the view of this author, a future settlement will have to avoid. One of the major complexities of the Cyprus question, and a cause of possible further trouble, is the constant breaking up of every sensible rule of institution-making, because of the ‘invasion’ of international political considerations (especially of the geopolitical interests of a third state) in processes which should normally remain internal Cypriot, and be settled by the citizens of the state in question.

Even with these important deviations from normal institution-making, or perhaps because of them, the story that Emilianides tells us is extremely interesting. Despite the limits that the Zurich-London agreements had imposed on the JCC, there was a huge spectrum of issues that the JCC had to settle. The most important of these was the question of the powers of the (Greek Cypriot) President of the Republic as opposed to those of the (Turkish Cypriot) Vice-President. This existential problem was finally solved through an agreement to give the presumption of competence to the Council of Ministers with its Greek Cypriot majority. This meant that, in all issues in which the President and the Vice-President were not expressly competent accord-

ing to the Zurich-London agreements, the Council of Ministers would be competent. Thus, albeit in an indirect manner, the Cyprus Constitution finally provided for majority rule, even if this was tempered by the excessive powers of veto of the Vice-President or the powers of the Turkish Cypriot deputies in the House of Representatives in specific, expressly mentioned subjects.

Emilianides, however, as a good law expert, does not stop there, as others (including the author of this review) have done in their works. He also deals with the shaping of the Constitutional provisions for the Cypriot communities and minorities (including their membership); the nature of the state (a unitary state or a 'federation' of some sort –he concludes that it is a unitary one); the fundamental rights of citizens; the powers of the executive, of the legislative and communal assemblies, of the judiciary; local administration (with its huge peculiarities in the Cypriot context of the late 1950s and early 1960s); and the issues of public service and armed forces. It should be noted that the issue of separate municipalities finally became the breaking point which triggered the crisis of 1963-64.

It is really difficult for a student of the Cyprus question to exaggerate about the importance of this book. It goes many steps forward, compared to the available bibliography. It provides a factually reliable –indeed, accurate– picture of a hugely crucial aspect of the only Cyprus settlement recorded so far. As such, it marks a turning point in our understanding of the dynamics of Cypriot institutional development, political culture and, perhaps, prospects for the future. The book shows what has been done in 1959-60; but also, what went wrong with this process. And what transpired, was a fundamental mistake: the Constitution was called upon to serve not only internal but also international interests, which, by the nature of things, is not the job of a Constitution; and an international agreement had to be implemented by a body consisting of representatives not only of the Cypriot citizens, but also of third states. The result was a hugely detailed Constitution, providing for excessive over-regulation: an unacceptably rigid document which could break up rather easily, as was proved in 1963-64.

Moreover, the book is not simply a huge contribution to the available bibliography. It sets the stage for the necessary development of a Cypriot constitutional/political history, which the obsession with the Cyprus question had impeded until now. It calls for the emergence of a younger generation of scholars, who will look at the relevant issues from the point of view of contemporary institutions, Constitutional Law,

the law of human rights, and without being burdened by the priorities, geopolitical, ethnic and other, of the traditional 'Cyprus question'.

Last but not least, it is, albeit indirectly, a call for reliable Constitution-making. Emilianides' work shows that a Cyprus settlement cannot but be relevant to, indeed dependent on, some fundamental principles which govern the organisation of human societies. Respect for the people who will implement these institutions, and their right to shape them, has to be an integral component in any future settlement, if we want it to have a fair chance of successful implementation. Realistically, one inevitably has to accept that the international interests will have to be taken into account, at least to some measure; but these should not devour the interests of the people concerned, namely, the citizens of Cyprus. The need –indeed, the realistic necessity– to show respect for the people concerned: this, perhaps, is the most important conclusion for the reader of this book.

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