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CONFEDERATION, FEDERATION AND SOVEREIGNTY*

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It is not at all clear in the modern world whether federations have a glorious future, or a glorious future behind them. In the European Union we see states taking steps, albeit with some misgivings, to establishing a degree of federal organisation from what is at present an essentially confederal position. In some states, as in Britain, there is a perceptible movement towards a federation some time in the future composed of England, Scotland and Wales. Some established federations like Switzerland, Germany and the United States seem relatively stable, though it must be said that the unitary elements in these systems are pronounced. Canada may well undergo a sea change if Quebec decides in the end to secede, and Belgium has become a federation in reality. The former Czechoslovakia abandoned federation for the complete independence of the Czech Republic and Slovakia, and amicably so, which is unusual. As we well know the Yugoslav federation has been, and still is, in dire trouble. Federation, we might say, is certainly a safety valve in certain circumstances, especially when a unitary state is seen to be too oppressive for the cultural and political aspirations of ethnic or others types of groups. Yet a federation does not necessarily satisfy the needs it seeks to meet. As a generalisation for discussion it might be suggested that federations made from the top down, where there is change from a unitary state, are less stable than those that are made from the bottom upwards: there is likely to be more enthusiasm for the new configuration in the latter than in the former case.

However, there are many factors to be taken into account. Whichever way a federation comes into being, some factors seem vital for success. The first must surely be a widespread belief in all communities or states to be federated in federalism itself—in other words a real desire to create a federal entity as a good in itself. This applies to a degree to the European Union, where the initial driving force was to create a multinational organisation that would make European wars impossible in the future. Second, we take inspiration from John Stuart Mill (as noted by Reed Coughlan) who believed that a successful federation required mutual sympathy among the populations involved, some mutual need, and the assurance that one unit will not dominate the others.¹ Third, as also mentioned by Reed Coughlan, the degree of consociationalism present is important. To spell this out, consociationalism refers to political systems which possess 'a grand coalition of the political leaders of all significant segments of the plural society'—as occurs, for instance, in the Swiss seven-member federal executive council—and institutionalises the will to compromise that draws strength from a desire of leaders in all parties or groups to share in power. It calls for decisions to be made by political élites through consensus; the power of veto, though still maintained, is not much stressed. Essential for the success of consociationalism is that the leaders have enough standing in their communities actually to lead their followers and not to be led by strong nationalist elements. In such systems minorities need to be over-represented and accorded posts in government proportionate at least to their numbers. The existence and promotion of activities that create organisations cutting across national divisions (e.g. labour unions, business and educational structures) also help reduce communal tensions, especially in small states. Consociationalism has never really

been possible in Cyprus where the élites did not really coalesce in former times under British rule, despite some degree of shared schooling, and where they put themselves at the head of nationalist groups. The only areas of co-operation and sympathy created between the two communities were those established in the labour unions by the very left-wing labour union, AKEL.

APPROACHES TO CONFEDERATION AND FEDERATION IN CYPRUS SINCE 1960

Because also of the development of Hellenism among the Greek Cypriots over a long period of time, their insistent call for union with Greece, enosis, and their feelings of superiority over the Turkish Cypriots, the Greek Cypriots could hardly think of entering into consociational relationships with their Turkish Cypriot fellow citizens. Moreover, the accent on enosis created a communal opposition among the Turkish Cypriots. It has been observed that whilst they might have accepted the economic and commercial superiority of the Greek Cypriots, they could not, as the former masters of Cyprus, really accept being ruled by Greek Cypriots. They “evinced an instinctive hostility to anything which smacked of Greek political supremacy”.² As a result of Turkey’s substantial diplomatic pressure, assisted by Britain’s disinclination to grant self-determination to the Greek majority for the island as a whole, the 1960 settlement ushered in a constitution for the new Republic that satisfied the Turkish Cypriots to a good degree, while not ordaining the partition that had become the desired end. The constitution gave the Turkish Cypriot community a veto power in the Council of Ministers and also in the legislature where, for major matters, separate majorities of the deputies from each community could be required. They also enjoyed under the constitution local autonomy in the municipalities of the five major towns. As is well known, the Constitution was overthrown in 1963-65 as the result of Greek Cypriot pressure, the extremes of violence they used to obtain their ends, and the acquiescence of the international community to this situation, including that of Britain, a Guarantor Power of the 1960 treaties.

After the Turkish military intervention in 1974 under the terms of the Treaty of Guarantee and the establishment of the Turkish Federated State of Cyprus, negotiations for a reunification of the island began under the auspices of the United Nations. Both sides produced their desiderata for a federal settlement, after agreeing, on 12 February 1977, on four guidelines. From a constitutional viewpoint the two, important points were numbers 1 and 4, as follows:

- (1) We are seeking an independent, non-aligned, bi-communal federal republic
- (4) The powers and functions of the central federal government will be such as to safeguard the unity of the country, having regard to the bi-communal nature of the state.

These guidelines were not enough, however, to prevent the submission by each side in subsequent negotiations of proposals that were radically different, particularly in the early stages.³ The early Turkish submissions verged on the confederal, with major powers being only advisory. Progress towards a stronger federation was envisaged for the future as confidence between the two sides increased. The Greek Cypriots, on the other hand, stressed the sovereignty and territorial integrity of the Republic of Cyprus, which, as a federation, would still have very considerable powers. Later Turkish Cypriot proposals moved in the direction of greater federal powers than at first envisaged, but with residual powers kept within the preserve of the constituent states. The Turkish Cypriot side also wanted equality in the execution of policy in the Council of Ministers and virtual equality in the proposed federal assembly. The powers of the federal centre were at first limited by the Turkish side to certain spheres, notably, those of foreign affairs, tourism and federal health services. The bi-zonal aspect of the proposed federation was also stressed, a development from the bi-communal federation mentioned in the Four Guidelines that the Greek Cypriot side has never been very happy to accept. In 1981, the Greek Cypriots continued to stress the sovereignty of the proposed federation, which, in their submission,

was to be composed of two provinces, not states. In addition to the federation's possessing one territory, it was to have one people and one citizenship. The federal centre would have substantial powers, leaving little of importance to the 'provinces' and would have residual powers. The essential problem began to emerge whether sovereignty lay with the federal state or with each state.

By 1984 some agreement seemed to be in prospect that would allow substantial powers to the federal centre (though not the residual powers), but in both the Council of Ministers (the executive) and in the federal assembly (the legislature), the Turkish Cypriots would in major matters again have virtual equality. This was to reproduce the position of the 1960 Constitution. Later, in 1992, the Set of Ideas, approved by the UN Security Council as the basis of negotiations with both sides, retained this possibility of veto in major areas of government by either side in the Council of Ministers and the lower house of the legislature. By and after 1992, however, the Turkish Cypriots were becoming more insistent on the recognition of the sovereign status of the Turkish Republic of Northern Cyprus (TRNC) before entering into any agreement on a federation. The Turkish Cypriots welcomed the initial assertion by the UN that "sovereignty emanated from both sides equally", but this was certainly not acceptable to the Greek Cypriots. The Greek Cypriot side approved the formulation in the Set of Ideas that the Cyprus settlement was to be based on "a State of Cyprus with a single sovereignty and a single citizenship".⁴ Combining these doubtfully consistent concepts, the Security Council proposed that the federal republic would have "one sovereignty which is indivisible, and which emanates equally from the Greek Cypriot and Turkish Cypriot communities".⁵ When this principle of the emanation of sovereignty from both communities equally was repeated in the Draft Joint Statement submitted by the UN at the meeting of the two presidents at Troutbeck, New York (July 1997), Greek Cypriot political leaders denounced it. The item was dropped from the later Joint Draft Declaration submitted to the two leaders at the Glion, Switzerland meeting (August 1997).

Since there was no detailed response from the Greek Cypriot side to the Set of Ideas, beyond stating that it constituted a basis for discussion, it is not altogether clear how far apart the two sides were on constitutional matters. However, the present Turkish Cypriot demand for the recognition of the TRNC as a sine qua non for further negotiations, combined with diverse views on the nature of sovereignty in a federation, is a clear point of disagreement. The proposal for a confederation made by the TRNC in 1998 was, not unexpectedly, rejected out of hand by the Greek Cypriot government, despite its being presented as open to negotiation, and was not regarded as acceptable by the UN Security Council.⁶

Not all responses from the Greek Cypriot side were as hostile, however, to the confederation proposal as those generally encountered. A thoughtful response by Chris Economides saw features in the confederal proposal that distinguished it from true confederations.⁷ He claimed that since it was said that the proposed confederation might apply to join the EU, it must be presumed that, unlike a true confederation, it would constitute a single international entity. He also pointed out it was stated in the proposal that "all rights and powers which are not referred to a confederal entity will reside with the two confederal states" (para. 5). By this he seemed to be suggesting that this recognition of a confederal power indicated that what was intended was in reality more than a confederation. Clearly, it is time to investigate what are very difficult problems of definition and the theoretical difficulties encountered in the study of confederations and federations.

RANGES OF DEFINITION

We may begin by suggesting that simple or pure confederation comes about when two or more autonomous states, or entities, agree to the joint exercise of power in a number of defined areas of governmental activity as, for instance, in trade or defence. When policies are made and decisions are taken jointly in these areas, unanimity is the natural rule. So, too, in the nature of the arrangements, it must be reasonable to assume that secession is a right.

It is important, however, to point out that if decisions are to be taken and put into effect, there must naturally be a meeting, or meetings of members of the governments of the confederated states to decide what to do and

who is to do it. Some central organisation is almost bound to be created for policy discussion—and for implementation—unless the constituent states administer agreed policies themselves. Any such central organisation must clearly hold any authority it develops, however, “at pleasure from the constituent (‘peripheral’) units of the confederation”.⁸ Examples of confederation are the 1781 American Confederation, the Swiss Confederation to about 1847 and the European Union.

A modification of this pattern can easily occur, however, when the wishes of a majority of states in a confederation are resisted by a minority. In this case the confederated entities might agree to accept the majority principle, which in a large member confederation might not seem too objectionable provided the elements constituting a majority could reasonably be expected to change. If this comes about, a confederated state that has agreed to majority rule, if only intermittently, will have given up part of its sovereignty, though not to the centre, only to the other states acting collectively. There is a way out of this dilemma, however, suggested a long time ago by John Calhoun.⁹ He stressed the contractual nature of, in this case, a federation, claiming that the states always retained their sovereignty and right to secede. This was because in setting up a central authority they had not transferred their sovereignty, only powers or functions. In a confederation that went so far as sometimes to recognise majority rule this sort of argumentation could be urged. It may be noted in this regard that in paragraph five of the TRNC's confederation proposal the transfer of sovereignty is not suggested, but, instead, the transfer of some, unspecified, rights and powers. From the approach advanced by Calhoun it may be argued that it is possible to set up a coherent state with a number of central functions without transferring sovereignty. Whether Economides had this in mind when he noted the existence of a central entity in the proposal is not known. More probably he assumed that some element of sovereignty was to be transferred. An earlier statement of its position by the TRNC at the time of the Set of Ideas negotiations would have encouraged thinking in this direction. In its response in 1992 to the proposals in the Set of Ideas, the Turkish Cypriot side stated, after agreeing to ninety-one of the one hundred paragraphs of the Set of Ideas, that remaining differences stemmed from inter alia a lack of agreement on the modalities of the implication of the principle of ‘one sovereignty’ for both communities which may be expressed by the formula: “The federated states are sovereign in so far as their sovereignty is not limited by the sovereignty of the federal state”.

For those of John Calhoun's persuasion sovereignty cannot lie in a federal centre whether the state calls itself a federation or a confederation. For those who have federations at heart, however, it is more appropriate, if appropriate at all, to attach such reasoning to a confederation, rather than to a federation. Traditionally, it has been assumed by constitutional lawyers that a federal state must have a single source of sovereignty without which it cannot be a proper state. Most modern definitions of federations by students of politics, however, tend to avoid the troublesome word sovereignty and define federation as, for example, ‘a state which consists of several regional governments and a central government, and in which both regional and central governments have powers over specified matters’¹⁰. Other definitions do, however, often take into account the question of sovereignty. For example, a federation is said to be born “when a number of usually, separate or sovereign political units, or units with some pretensions of sovereignty, mutually agree to merge together to create a state with a single sovereign central government while retaining for themselves some degree of guaranteed sovereignty”.¹¹ This clearly proposes that sovereignty may be divided. Stephen Bosworth, however, seems to be moving off, interestingly, along a rather different path when he states that each of a federation's authorities “shares in one, system of sovereignty”, a view that is really at the core of Preston King's formulation, to be referred to later.¹² In Stephen Bosworth's view, no region or state may secede from the federation, but he makes the essential point that “the existence and character of the regional (or national) authorities cannot be decided by the central authority acting alone”. Does this still mean, then, that in a federation sovereignty is in the last analysis divided between central and regional institutions, as suggested by the rather legal definition given above? This would seem to be the straightforward position, and one that gets a good deal of support, though it introduces a divided sovereignty that many find unacceptable and which can create difficulties for international recognition. Preston King proposes a way out of the dilemma, developing the point made by Stephen Bosworth. He points to the intricate interweaving of central and state or regional functions in complex federal institutions, like that of the United States. This leads to the view that “the central government is not

sovereign in a manner which excludes the involvement of the regional units".¹³ The 'involvement' of the regional units seems to be the crucial point. This implies that a federal system has to be seen as a unified sovereign whole. Emphasising the unified feature of a federation, Preston King sees the chief problems in determining whether or not a state is federal to lie in, '1) establishing that the basis of its representation is territorial, 2) that this territorial representation has at least two tiers ..., 3) that at least the regional units are electorally and perhaps otherwise incorporated into the decision procedure of the national centre and, 4) that the basis of such regional representation at the centre cannot be easily altered, as by resort to the bare majoritarian procedure ... regional territorial representation, in short, must be entrenched'.¹⁴

In this submission, the classic notion of sovereignty as absolute supreme rule by fiat by a supreme ruler or body is outdated and cannot be applied to modern democratic states, whether they are federations or unitary states, a distinction that in Preston King's view is not absolute. In federal or unitary democratic states the stability of law and the realities of political participation by various means have to be taken into account. What is necessary is a set of structures through which decisions will be made, not a location for absolute sovereignty. In other words a federation, like a unitary democratic state, constitutes a unified sovereign whole of many interacting parts; by the very fact of the distribution of power in complex modern democratic societies the concept of sovereignty residing in some particular person or institution is too unreal to be acceptable.

POLITICAL CONSIDERATIONS

This leads to matters of politics in federations in democratic states. It is certainly in one sense realistic to say that in democratic societies power is divided and that pressures for decision making coming from various quarters have to be reconciled and converted where appropriate into new legislation or decisions. These pressures come principally through the electoral system, through elected parliaments, through powerful groups, through the legal institutions that guard, and may seek to change, the law, and through the central bureaucracy, even if behind the scenes. However, in all this complexity there is a special role assigned to the electorate, or more inexactly, to the people, whose will, it is often declared, lies at the root of everything, because sovereignty belongs in the last resort to them. Manipulated to a degree though it may be by the media, it is a powerful element in legitimising government. It is this political support, the importance of political sovereignty (often overlooked) that ultimately supports, and may well destroy, a federation. A federation may begin as a combination of states, but since the federal government usually has large and important functions, like say, defence, economic development and health, it soon attracts wide and sustained interest among the population throughout the federation. Hence federal institutions tend to create and develop large pressure and interest groups and, even more significantly, to exert democratic pressures on central institutions through the ballot box. The result is that political institutions at the centre begin to develop more responsiveness to the electorate as a whole. This has been seen in the United States, for instance, in the development of the responsiveness of the House of Representatives and the Presidency. In Switzerland the original confederation has evolved into a federation whose central authorities represent nation-wide interests to a large degree; there are many 'cross-cutting cleavages'—groups representing say, mountain farmers, the tourist industry, or religious organisations that span cantonal and regional boundaries. Popular initiative in proposing legislation through referenda for the confederation as a whole has also developed.

Another factor that increases the significance of the federal centre is that if it has a large range of important functions, it also has to have the financial means to perform them. Federal taxation and federal resources become important. They can be, and often are, used by federal authorities to induce state or regional governments to follow federal advice in legislation and administration in return for grants in aid. In brief, federal states, whose central institutions come to rely more and more on popular support, are strongly inclined to influence, and even erode, state and provincial areas of autonomy. This is a cause for concern even in a relatively homogeneous country like the United States. In some federations, as in Canada, and especially in situations where a province or state is culturally or ethnically very different, there can arise a powerful desire to secede. This did occur in the former Czechoslovakia, as has been mentioned. In short, the tendency of a federal state to reduce state or provincial autonomy, whilst often popular overall, can increase inter-communal

tensions, and once the federal authorities develop the support of a majority throughout the federation, it is not easy to accept a good deal of regional independence. In a bi-communal federation this problem can become particularly acute.

IMPLICATIONS FOR CYPRUS

Do these general observations help throw light on the situation in Cyprus? In the first place, it may be claimed that the 1960 Constitution was essentially confederal in nature, not the disguised federation, as it is sometimes described, and most certainly not a unitary state. This is because an essential feature of confederalism, the prime feature perhaps, is unanimity in major decision making. There existed under the 1960 Constitution presidential and vice-presidential vetoes in the Council of Ministers. Also each community's representatives in the legislature were elected by each community and a majority of each group of deputies could veto proposed legislation in fields of major importance. Because the confederation was bi-communal, there was no way of modifying the unanimity principle along the lines mentioned above, i.e. by allowing some degree of majority voting. That the essentially confederal nature of the 1960 arrangements was not openly recognised inhibited the admission that in just such a constitution the right to secession had to be recognised as the way, in the last resort, to solve impasse, though the fact that there was little or no physical separation of the two major communities made such an admission practically impossible. However, the ready assumption by the international community in general, and the UN in particular, that Cyprus had been established as a coherent state with one sovereignty, one territory and one citizenship led to the acceptance without much debate of a set of expectations that this essentially confederal state was most unlikely to fulfil. We may see, with that remarkable gift of hindsight that we all possess, that impasse, and the subsequent and largely successful attempt to impose majority rule by resort to violence, were well-nigh inevitable, especially as there were not consociational factors from which to obtain support, or the 'sufficient amount of sympathy among the populations' that John Stuart Mill saw as necessary for the success of federations.

Second, it has to be observed that the Turkish Cypriot position in the UN-led negotiations after 1975 was, instinctively perhaps, for a confederal solution. When this could not be accepted by the other side the Turkish Cypriots reverted to the norms of the 1960 Constitution, which, as we have seen, was another, if more complex, means to the same end. In this way they sought to maintain acceptance of their own sovereignty, though they did allow, in the abortive 1986 Draft Framework Agreement, to which they agreed, that the federal government would 'exercise sovereignty in respect of all the territory' and that there would be a single citizenship. Again, in 1992, the Turkish Cypriot side, still insisted on separate majorities in the legislature for major matters, as they had in 1986, but accepted that the proposed federal republic "will have one sovereignty which is indivisible"¹⁵ whilst making the proviso referred to earlier that "the federated states are sovereign in so far as their sovereignty is not limited by the sovereignty of the federal state".¹⁶

Third, it may be observed that the Greek Cypriot side has done itself no favours by insisting on a single and indivisible sovereignty for the proposed federation, nor has the UN Security Council in their endorsement of this formulation. If we accept the Preston King's position, we can appreciate that the classic formulation of sovereignty cannot apply to modern democracies and, at best, a federation expresses a composite sovereignty. To insist on the completely unreal concepts of a single, indivisible sovereignty, a single citizenship, one territory and one people is inappropriate, provocative and very unlikely to produce agreement. It only reinforces the TRNC's awareness of the need to protect its own sovereignty.

Fourth, even if a more appropriate form of presentation of the essentials of a federation is devised, the TRNC needs to be careful of the effects of what might well be a sudden and precipitate emergence of pressures from the electorates and from business and other groups looking for island-wide policies, and their administration by central agencies of government. In a bi-communal federation this could lead to majority pressures that some would see as threatening the identity and independence of the smaller Turkish Cypriot community. As in the case of Quebec, the pressures to secede would no doubt mount.¹⁷ If the TRNC were to enter into a federation, it would surely be wisest for such a federation to be regarded, as John Calhoun insisted, as based on a contract

between the participating states. In such a contract only the powers, or functions, of the two states would be transferred to a federal centre, not any part of their sovereignty, and each state would have written into the contract the unilateral right to secede, lest there was any doubt on this score.

To return finally to confederation, to proceed along that line would undoubtedly be the least troublesome way to restore some unity to the island. It surely needs to be recognised by the Greek side, and by the UN Security Council, that to look for a federation with a single indivisible sovereignty over one territory and one people is an anachronism. It is impossible to analyse modern democracies in these terms. It also needs to be more generally appreciated by the international community that any federation would, for political reasons, spell real danger for the integrity of the TRNC, even if couched in the more modern way suggested by Preston King, which accepts the sovereignty of a federation as a composite whole. In the end, the realities of politics are more important than the names attached to institutions. In this regard, it also needs to be recognised that a confederation does not prevent the formation of confederal governmental and administrative institutions composed of members of the government of each state, though not of the elected representatives of the two peoples. Such institutions would ideally start with a minor range of functions. Whether this could develop into a federation would depend on an appreciation of the dangers that might well arise for Turkish Cypriot identity if federal institutions, as they are driven to do, came to depend on the support of the people as a whole.

1 Reed Coughlan, in 'The Prospects of a Federated Settlement in Cyprus and Lessons from Political Theory and Practical Experience' (a paper presented to the Second International Congress on Cyprus Studies, 24-27 November 1998), quotes Mill as follows: "A federation is advisable ... [if there is] a sufficient amount of sympathy among the populations. The federation binds them always to fight on the same side; and if they have such feelings towards one another, or such diversity of feeling towards their neighbours, that they would prefer to fight on opposite sides, the federal tie is neither likely to be of long duration nor to be well observed while it subsists".

2 Robert Holland, *Britain and the Revolt in Cyprus 1954-1959*, Clarendon Press (Oxford University Press) 1998, p. 12.

3 The course of the negotiations is admirably analysed by Zaim M. Necatigil in *The Cyprus Question and the Turkish Position in International Law*, revised second edition, Oxford, 1998, pp. 156-83, 271-295, and 354-423. See also my 'Constitutional Aspects of the Cyprus Problem', *The Round Table* (1990), pp. 339, 343-355.

4 1992 Set of Ideas on an Overall Framework Agreement on Cyprus, Overall Objectives.

5 Ibid.

6 *The Cyprus Mail* (2 September 1998) regarded the proposal for a confederation as an 'ultimatum' and reported the 'outrage' felt by Greek Cypriot leaders. What it found most depressing was that "the justified rejection of Denktash's latest proposal simply brings the Turkish objective of partition even closer". But acceptance would mean "acquiescence to making partition the basis of a new round of negotiations. Heads they win, tails we lose."

7 'Denktash's Confederation Plan', *Cyprus Mail* (22 January 1999).

8 Preston King, *Federalism and Federation*, Baltimore and London, 1982, p. 133. For a succinct definition see also Stephen Bosworth, 'Confederation, Federation, Morality and Practicality: some Features for a Possible Solution', a paper given to a Round Table on Globalisation, Eastern Mediterranean University, 19-20 November 1998.

9 In *A Disquisition on Government and a Discourse on the Constitution and Government of the United States*, 1951, especially see Vol. 1.

10 G. K. Roberts, *A Dictionary of Political Analysis*, London, 1971, p. 81.

11 Zaim Necatigil, *The Cyprus Question and the Turkish Position in International Law*, second revised edition, Oxford, 1998, p. 151.

12 Stephen Bosworth, 'Confederation, Federation, Morality and Practicality', see footnote 8.

13 *Federalism and Federation*, p. 140, see footnote 8.

14 *Ibid.*, p. 143.

15 *Set of Ideas on an Overall Framework Agreement on Cyprus, Guiding Principles*.

16 The Turkish Cypriot response to the proposals in the *Set of Ideas* is usefully given by Necatigil, *The Cyprus Question*, pp. 306-6.

17 A means of achieving secession, should that be necessary, is suggested by Stephen Bosworth, in 'Confederation, Federation, Morality', but the principle of secession would first have to be accepted by the Greek Cypriot side, which does not seem at all likely. Also the UN Security Council seems to be wedded to the need for a perpetually unified island, not recognising that the present division is probably more stable than any federation would be, and less likely to increase tensions in the Eastern Mediterranean.