

The Clash of Rights and the Cyprus Conflict

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This study focuses on the clash of rights or, perhaps more accurately, on the clash of rights claims that seems to be at the heart of the dispute over Cyprus. From the Greek Cypriot perspective, any solution to the Cyprus problem must include guarantees for the fundamental rights and freedoms of the individual. These fundamental rights should be entrenched in the federal constitution, with the federal government granted the authority to implement and enforce the rights. The concern for effective enforcement of rights guarantees may in part explain the Greek Cypriot insistence on a federation rather than a confederation. For as Daniel Elazar has observed, whereas "federations are communities of both polities and individuals and emphasize the liberties of both," confederations "place greater emphasis on the liberties of the constituent polities."¹

Since 1974, following the displacement of populations and the de facto partition of the island, the Greek Cypriot community has championed in particular

the rights of freedom of movement, freedom of settlement, and freedom to own property over the whole island. In justification of their position, the Greek Cypriots note that these rights are consistently recognized in international declarations of rights and in rights conventions. Article 13 of the Universal Declaration of Human Rights, for example, acknowledges "the right of freedom of movement and residence within the borders of each state," and Article 17 recognizes every person's "right to own property" and not to be "arbitrarily deprived of his property."² Similarly, they may cite the European Convention on Human Rights, which guarantees that "everyone lawfully within the territory of a State shall . . . have the right to liberty of movement and freedom to choose his residence" (Article 1), and the European Union's *acquis communautaire*.³ They further note that most federal systems secure these freedoms of movement, residence, and property acquisition as fundamental rights. In the United States, for example, the Supreme Court has ruled the Constitution implicitly protects a right of interstate travel, and it has interpreted the Commerce Clause of the federal Constitution to forbid state efforts to exclude citizens from entering their territory and establishing residence there.⁴ In Germany, meanwhile, the Basic Law expressly safeguards the freedom of movement (Article 11) and property rights (Article 14).⁵ Finally, the Greek Cypriots point out that both communities have agreed that the freedoms of movement, of residence, and of property ownership will be important elements of a just solution to the Cyprus problem, from the 1977 Guidelines to the 1992 Set of Ideas and beyond.⁶

Even as one acknowledges the sincerity of their invocation of these fundamental rights, one must recognize that the Greek Cypriots' decision to frame their political claims in terms of rights--rather than, say, as goals or aspirations or interests--also has important strategic advantages. As Stuart Scheingold has observed, because of the "connotations of legitimacy attaching to legal rights," they can function as "political resources."⁷ Let me explain how this occurs and what its consequences may be.

To characterize one's aims as goals or aspirations is to imply that their realization is problematic, contingent, dependent on circumstances.⁸ And to speak of them as interests is to suggest that it is legitimate to balance other interests against them, that they can be compromised or denied in order to serve more important interests. In contrast, employing the vocabulary of rights allows one to seize the moral high ground. It allows one to insist that one's aims are definite and mandatory, non-negotiable, something to which one is entitled.⁹ As the legal philosopher Ronald Dworkin has argued, rights operate as "trumps," and they cannot be defeated by appeal to concerns for convenience or advantage, even the advantage of a majority of the population.¹⁰ Moreover, by tying one's claims to rights recognized in international rights conventions, the Greek Cypriot community has been able to place pressure on the signatories of those conventions--the European Union and the members of the United Nations--to support their position.

From the Turkish Cypriot perspective, unrestricted freedoms of movement, of residence, and of property ownership would pose severe

difficulties, given the disparities in population and wealth between the two communities on Cyprus. Nevertheless, the Greek Cypriot insistence on these internationally recognized rights does place the Turkish Cypriot community in an awkward position, as was evident in the discussions surrounding the 1992 Set of Ideas.¹¹ It is not enough to say that recognition of these rights is against the interests of the Turkish Cypriot community: after all, rights trump interests. Nor is it sufficient to maintain that honoring a right of return would precipitate a major social upheaval if even a minority of the 160,000 Greek Cypriots refugees sought to reclaim the property they lost in 1974. After all, inconvenience cannot defeat a rights claim, particularly when the inconvenience stems from having to relinquish property seized following the less-than-voluntary departure of Greek Cypriots from north Cyprus. It is not even sufficient to claim that the right to travel throughout the island would introduce security problems. For the obvious response is that even valid concerns such as security must be addressed in ways that do not sacrifice fundamental rights.

Yet there is a possible response to rights claims, namely, countervailing rights claims. Thus, the rights discourse of the Greek Cypriot community has encouraged a countervailing rights discourse on the part of the Turkish Cypriot community. In speaking of two founding peoples or two equal communities or two nations occupying a single island, what the Turkish Cypriots are really invoking is their right to national self-determination. This right too has an impressive international pedigree, dating back at least to Woodrow Wilson's Fourteen Points after World War I. Illustrative of the broad support this right

enjoys in international law is its inclusion as Article I of the International Covenant on Civil and Political Rights, which expressly acknowledges the right of all peoples to self-determination.¹²

Of course, one need not dispute the legitimacy of self-determination in order to reject the Turkish Cypriot claim; one need merely insist that, given the unity of the Cypriot state, the right of self-determination resides in its entire citizenry, not in a single community.¹³ This has long been the position of the Greek Cypriot community. Yet the Turkish Cypriot community argues that this confuses political borders with nations. The Turkish Cypriots contend instead that Cyprus encompasses two nations, two founding peoples, each of which can lay claim to a right to self-determination (and neither of which can preclude the other from exercising that right).¹⁴ Exercise of the right of self-determination for a nation within a binational state need not necessarily mean dismemberment of that state--a nation can choose participation in a federation or confederation rather than independence.¹⁵ After all, sometimes even a marriage of convenience is preferable to a messy divorce, although one suspects that both partners might demand an ironclad prenuptial agreement before entering into the marriage.¹⁶ But the right of self-determination does require that a nation, even a nation internal to a binational state, be granted the opportunity to negotiate its own constitutional future.¹⁷

At a minimum, this means that the internal nation be free from domination by a political majority and that its cultural autonomy be buttressed by a considerable degree of political-territorial autonomy.¹⁸ More specifically, from

this perspective there is no right for Greek Cypriots to settle in the North, if they would "swamp" the area and turn the Turkish Cypriots there into a minority.¹⁹ Likewise, there is no right for members of the more wealthy Greek Cypriot community to acquire property in the North, if that would lead to the displacement or economic subordination of the Turkish Cypriot community.

From the Greek Cypriot perspective, some of the specific demands of the Turkish Cypriot community pose no problem. The Greek Cypriots are quite willing to include constitutional guarantees of religious and linguistic rights in a federal constitution, individual rights that will help to protect the ethnocultural identity of what they view as a minority population within Cyprus.²⁰ And having embraced the concept of a bizonal, bicomunal federalism--a form of federalism made possible, ironically enough, by the segregation of the Greek and Turkish Cypriot populations after 1974--Greek Cypriots are reconciled to the notion that the Turkish Cypriot community should control certain policy areas crucial to that community's way of life. But on more fundamental questions, there is no meeting of the minds. The Greek Cypriot community emphatically rejects the claim that Cyprus encompasses two nations, each of which has a right of self-determination.²¹ And having rejected that, it also rejects the notion that the group rights proclaimed by the Turkish Cypriot community take precedence over the individual rights of movement, of settlement, and of property ownership that have been endorsed by the international community. Although willing to contemplate the possibility of some phasing-in of the rights of settlement and property ownership, the Greek Cypriots insist that those rights be recognized in

principle from the outset and that they be implemented in practice after no more than a short transitional period.

What emerges from this analysis is a picture of two mutually distrustful communities espousing competing rights claims, such that it is impossible--or is at least perceived as impossible--to honor the rights claimed by the Greek Cypriot community without jeopardizing those claimed by the Turkish Cypriot community, or vice versa. Rights may be a weapon in the search for political advantage, as Scheingold suggests, allowing the rights claimant to seize the moral high ground. Indeed, one may interpret the frequently voiced criticism that the Greek Cypriots have unnecessarily internationalized the Cyprus conflict as merely another way of saying that they have sought to take advantage of the fact that they are pressing for rights endorsed by the international community. But rights are effective weapons in political disputes only if the other side in the conflict cannot blunt the rights weapon by tendering its own rights claim. When rights claims conflict, as they do in the Cyprus dispute, the result may be not advantage but stalemate. Indeed, in the case of Cyprus, the result has been more than a quarter century of stalemate.

Some commentators suggest that given the character of the debate, the resulting stalemate is all too predictable. Although acknowledging that rights exist, these commentators argue that a political discourse dominated by rights claims reduces the likelihood that agreement will be reached. For present purposes, the critique advanced by Harvard law professor Mary Ann Glendon is particularly pertinent.²² Glendon argues that the proliferation of rights claims

and the tendency to frame political disputes in terms of rights impoverishes political discourse. For one thing, instead of promoting ongoing dialogue, a political discourse dominated by rights claims encourages absolutist formulations and rhetorical excess. Instead of speaking to each other, rights claimants speak past each other, each convinced of the rightness of their cause and unable to sympathize with the concerns of the opposing side. And once having raised expectations through the absolutist rhetoric of rights, political leaders find their leeway drastically reduced when they wish to compromise, because of the threat that they will be outflanked by more extreme competitors for office, invoking the very rights claims that they pioneered.²³

For another thing, instead of facilitating mutual understanding and a search for common ground, rights talk (as Glendon labels it) engenders a sense of entitlement and a consequent unwillingness to compromise, needlessly multiplying the occasions for civil discord. This is illustrated by the prototypical American practice of filing suit in order to advance one's political objectives. The job of the lawyer who represents those filing suit is well understood: it is not to resolve the dispute through accommodation but to win it outright. Glendon thus concludes that "[s]aturated with rights, political language can no longer perform the important function of facilitating public discussion of the right ordering of our lives together."²⁴

The book in which Glendon elaborates her argument focuses primarily on the United States, where the infatuation with proliferating rights, uncompromising rhetoric, and litigation is perhaps at its most advanced. Nevertheless, her

indictment may have resonance beyond the borders of the United States as well, because (as she notes) "[a]ll over the world, political discourse is increasingly imbued with the language of rights, universal, inalienable, inviolable."²⁵ I have suggested that the Cyprus debate has been decisively shaped by the two communities' competing rights claims and that Glendon's analysis helps explain why this debate has not led to a satisfactory resolution of the conflict. If this analysis is correct, then a different political discourse, less wedded to a zero-sum rhetoric of rights, may offer more promise. What might this entail?

First, this new discourse would, where possible, eschew framing the competing positions in terms of non-negotiable rights and instead emphasize the quest for mutual advantage and for ways to accommodate competing interests. One example of this new discourse might be the proposal by Chris Economides for a global exchange of Greek and Turkish Cypriot properties, expropriation with compensation at fair market value, as a way to alleviate concerns expressed by the Turkish Cypriot community about the consequences of recognizing property rights.²⁶ I freely admit that as a non-Cypriot, I do not know enough to evaluate fully the viability or desirability of this particular proposal, but I have no doubt that Glendon would endorse its spirit, whatever the final verdict on its particulars.

Second, insofar as rights are at issue, this new discourse would avoid the twin perils of rights absolutism and rights universalism. Rights absolutism impedes clear thinking about political questions by reducing them to simple questions of right and wrong. Reality, alas, is seldom that uncomplicated. Rights universalism insists that the rights to which one is entitled are unaffected by

considerations of context or circumstance. Yet as Joseph Carens wisely observes, "What justice permits or requires with respect to institutional arrangements and policies may be intimately linked to the particular culture and history of a given political community."²⁷ A perfect example of this sensitivity to context is the third guideline of the High Level Agreement negotiated between the leaders of the Greek Cypriot and Turkish Cypriot communities in 1977, which states: "Questions of principle like freedom of movement, freedom of settlement, the right of property and other specific matters, are open to discussion taking into consideration the fundamental basis of a bicomunal federal system and certain practical difficulties which may arise for the Turkish Cypriot Community."²⁸ This suggests a promising orientation and starting-point for dealing with these thorny issues.

Finally, the new discourse would recognize the importance of what might be called active empathy. Greek Cypriots must appreciate why Turkish Cypriots feel threatened by an insistence on the freedoms of movement, of residence, and of property acquisition. Likewise, Turkish Cypriots must understand the concern felt by Greek Cypriots that the demand for self-determination will have a disintegrative influence and that confederation is merely a way-station on the road to permanent partition rather than a mechanism designed to enable the two communities to live together. Yet recognition of these concerns is not enough. Each community would have to take affirmative steps to dispel the fears of the other community. For Greek Cypriots, as noted, these affirmative steps might include endorsement of proposals for compensation for property losses in lieu of

a right of return. For Turkish Cypriots, the affirmative steps might include an explicit declaration of the indissolubility of the state of Cyprus.

Whether the two communities on Cyprus will be willing or, given political realities, even able to take such steps remains uncertain. And whether such steps would be sufficient to dispel the doubt and distrust that decades of failed negotiations have spawned, likewise remains in question. Some keen observers of the Cyprus conflict, such as Tozun Bahcheli, have concluded that they would not, that one must accept that two independent states exist in Cyprus and will for the foreseeable future.²⁹ I do not know whether they are correct. But I am persuaded by the observation of Donald Horowitz that "[r]ights will form only a small part of the solution to ethnic conflict. Most people will have to find political techniques to enable them to live together within existing states."³⁰ I trust that this volume is making a contribution to that effort.

NOTES

1. D. J. Elazar, *Federalism and the Way to Peace* (Kingston, Institute of Intergovernmental Relations 1994), p. 27.
2. The Universal Declaration of Human Rights is reprinted in J. W. Nickel, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights* (Berkeley, University of California Press 1987), pp. 181-186.
3. The European Convention on Human Rights is reprinted in Nickel, *Making Sense of Human Rights*, pp. 187-210. On the importance of the *acquis communautaire*, see A. Theophanous, "Prospects for Solving the Cyprus Problem and the Role of the European Union," *Publius: The Journal of Federalism* (no. 30 Winter/Spring 2000), p. 234.
4. On the right of interstate travel, see *Shapiro v. Thompson*, 394 U.S. 618 (1969); on the right to establish residence in another state, see *Edwards v. California*, 314 U.S. 160 (1941).

5. The Basic Law is available on the internet at: www.uni-wuerzburg.de/law/gm00000.html.
6. For listings of the 1977 Guidelines and of the 1992 Set of Ideas, see C. H. Dodd, *The Cyprus Imbroglia* (Huntingdon, Eothen Press 1998), pp. 35 and 141-160
7. S. A. Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (New Haven, Yale University Press 1974), p. 84.
8. Nickel, *Making Sense of Human Rights*, p. 18.
9. J. Feinberg, "The Nature and Value of Rights," in J. Feinberg (Ed.), *Rights, Justice, and the Bounds of Liberty: Essays in Social Philosophy* (Princeton, Princeton University Press 1980), p. 151.
10. R. M. Dworkin, *Takings Rights Seriously* (London, Duckworth 1977), p. 92.
11. See Z. Stavrinides, "Greek Cypriot Perceptions," in C. H. Dodd (Ed.), *Cyprus: The Need for New Perspectives* (Huntingdon:, Eothen Press 1999), pp. 83-85, and Dodd, *The Cyprus Imbroglia*, pp. 45-51.
12. The International Covenant on Civil and Political Rights is reproduced in Nickel, *Making Sense of Human Rights*, pp. 211-229.
13. Thus the disagreement is not over whether a right to self-determination exists but over what unit gets to exercise that right. See B. Neuberger, *National Self-Determination in Postcolonial Africa* (Boulder, Lynne Rienner 1986), p. 55.

14. Cyprus, of course, is hardly unique in including more than one nation within its borders. According to one estimate, although there are less than 200 independent states worldwide, there are some 1500 nations in the ethnocultural sense, and in only about 15 states do state and nation completely overlap. See Neuberger, *National Self-Determination in Postcolonial Africa*, p. 7. A more recent estimate is that there are 184 independent states, but more than 600 living language groups and more than 5000 ethnic groups. See W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford, Clarendon Press 1991), p. 1. Thus, as Kymlicka notes, "virtually all liberal democracies are either multinational or polyethnic, or both." See W. Kymlicka, "Is Federalism a Viable Alternative to Secession?" in P. B. Lehning (Ed.), *Theories of Secession* (London, Routledge 1998), p. 119.

15. M. Keating, "Nations Without States: Minority Nationalism in the Global Era," in F. Requejo, ed., *Democracy and National Pluralism* (London, Routledge 2001), p. 47; and Neuberger, *National Self-Determination*, p. 63.

16. M. O'Neill, "Belgium: Language, Ethnicity, and Nationality," in M. O'Neill and D. Austin (Eds.), *Democracy and Cultural Diversity* (Oxford, Oxford University Press 2000), p. 115.

17. Keating, "Nations Without States," p. 47.

18. J. Rothschild, *Ethnopolitics: A Conceptual Framework* (New York, Columbia University Press 1981), pp. 151-158; and R. Bellamy, "Dealing with Difference: Four Models of Pluralist Politics," in M. O'Neill and D. Austin, *Democracy and Cultural Diversity*, p. 211.

19. Tozun Bahcheli, "Searching for a Cyprus Settlement: Considering Options for Creating a Federation, a Confederation, or Two Independent States," *Publius: The Journal of Federalism* (no. 30 Winter/Spring), p. 210.

20. See, for example, the 1998 speech of Glafcos Clerides, President of the Republic of Cyprus, excerpted in Z. Stavrinides, "Greek Cypriot Perspectives," pp. 55-56. The Turkish Cypriots, of course, reject the label of minority, viewing themselves as a distinct national entity within the borders of Cyprus. Enric Fossas has underlined the more general point: "Their [minorities] basic demand does not consist of defending the view that the political community is culturally plural, but rather it sustains the idea that there is more than one political community, each of which has the right to self-government." See E. Fossas, "National Plurality and Equality," in F. Requejo, *Democracy and National Pluralism*, p. 73.

21. For documentation of this point, see N. M. Ertekun, "The Turkish Cypriot Outlook," in C. H. Dodd, *Cyprus*, pp. 97-113; and C. H. Dodd, *The Cyprus Imbroglia*, pp. 42-43.

22. M. A. Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York, Free Press, 1991).

23. D. L. Horowitz, "Self-Determination: Politics, Philosophy, and Law," in I. Shapiro and W. Kymlicka (Eds.), *Ethnicity and Group Rights* (New York, New York University Press 1997), p. 439. For application of this insight in the context of Greek Cypriot politics, see Z. Stavrinides, "Greek Cypriot Perspectives," pp. 71-75.

24. M. A. Glendon, *Rights Talk*, p. xi.
 25. M. A. Glendon, *Rights Talk*, p. 12.
 26. The Economides proposal is discussed in Z. Stavrinides, "Greek Cypriot Perspectives," p. 89.
 27. J. H. Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness* (Oxford, Oxford University Press 2000), p. 35.
 28. Quoted from C. H. Dodd, *The Cyprus Imbroglia*, p. 35.
 29. T. Bahcheli, "Searching for a Cyprus Settlement."
 30. D. Horowitz, "Self-Determination, Politics, Policy, and Law," p. 453.
- A full quotation from Horowitz underlines what is at stake: "Most people will have to find political techniques to enable them to live together within existing states, unless they are prepared to do so much ethnic cleansing that the world will soon run out of soap."