THE CRACKED COLONIAL FOUNDATIONS OF A NEO-COLONIAL CONSTITUTION

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This working paper is based on a presentation delivered at an academic event held on 18 November 2020, organised by the School of Law of UCLan Cyprus and entitled '60 years on from 1960: A Symposium to mark the 60th anniversary of the establishment of the Republic of Cyprus'. The contents of this working paper represent work in progress with a view to formal publication at a later date.[1]

(from left to right) Archbishop Makarios III, Sir Hugh Foot and Dr. Fazıl Küçük at the ceremony in Nicosia on 16 August 1960

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Introduction

This working paper has one aim. It is to advance a thesis which flows from a formidable body of evidence. At the moment when the Constitution of the Republic of Cyprus ('the 1960 Constitution') came into force in the English language at around midnight on 16 August 1960, it stood on British colonial foundations, which were cracked and, thus, defective. In turn, these British colonial foundations rested on an underlying Ottoman Turkish colonial bedrock, which was likewise cracked and, thus, defective. All of which meant that the 1960 Constitution was shot through with cracks, which thereby rendered it defective.

The cracks existed because of the unspoken but unmistakable organising principle which was common to the Ottoman Turkish colonial epoch in the Island of Cyprus from 1571 until 1878, the British colonial epoch from 1878 until 1960 and the 1960 Constitution itself.[2] That organising principle was segregation.

The essence of the segregation was identified by Mr Justice Vassiliades in a judgment handed down in 1961 in the then High Court of the Republic of Cyprus. Even though this judge adopted the term 'division', he effectively painted a picture of segregation when he analysed the effect of the 1960 Constitution upon civil as well as criminal court proceedings. After pointing to 'the two communities' recognised by the 1960 Constitution and the related 'division' of citizens into 'Greek and Turkish', Mr Justice Vassiliades observed that this was 'a division permeating the whole constitution of the Republic.' Mr Justice Vassiliades explained:

> 'The very first article in the Constitution … speaks of the two separate communities. And article 2 defines the division, and places the citizens of the new State into either one or the other of the two distinct communities. With very few exceptions, this division runs from the top down to the roots of the structure of the state.'[3]

What made this segregation even more egregious was its imposition in absence of any fair consultation exercise or referendum involving the people who, on 16 August 1960, became the citizens of the then new Republic of Cyprus. As such, segregation was neither the product of the free democratic will of the people nor the consequence of any meaningful exercise of self-determination. Instead, segregation was inflicted on the Republic of Cyprus as a direct result of the diplomatic fixes concluded in Zurich and on London in February 1959.[4] These paved the way towards the establishment of the Republic of Cyprus, subject to the 1960 Constitution, two areas of the British Crown

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[2] The 1960 Constitution was originally published in *Cyprus, Cmnd. 1093* (London: Her Majesty's Stationery Office, 1960). A copy of the original version has been published online on the website of the House of Representatives of the Republic of Cyprus at www.parliament.cy/en/cyprus-independence/constitution-1960

[3] *Simadhiakos v The Police* (1961) CLR 64, per Vassiliades J, Cylaw website of the Cyprus Bar Association, www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/1961/rep/1961_1_0064.htm&qstring=Simadhiakos

[4] *Conference on Cyprus: Documents Signed and Initialled at Lancaster House [on 19 February 1959], Cmnd. 679* (London: Her Majesty's Stationery Office, 1959) and *Conference on Cyprus: Final Statements at the Closing Plenary Session at Lancaster House on February 19, 1959, Cmnd 680* (London: Her Majesty's Stationery Office, 1959).

Colony of Cyprus over which the United Kingdom ('the UK') continued to assert sovereignty, three Treaties (namely the Treaty of Establishment, the Treaty of Guarantee and the Treaty of Alliance)[5] and three 'guaranteeing powers' (namely Greece, Turkey and the UK).

This segregationist and neo-colonial state of affairs reflected the neo-colonial demands of the past two colonial hegemons of Cyprus, namely Turkey and the UK. In the years leading up to the Zurich and London Agreements of February 1959, both wanted to impede the application of democracy and the legal principle known as self-determination.[6] In practice, this meant the preclusion of enosis, the proposed union of Cyprus with Greece, along the lines of previous unions, such as those involving the union of Corfu, Crete, Rhodes and other islands with Greece.

Put another way, the preclusion of enosis contradicted the pattern across the Mediterranean where, by the 1950s, all of its 4,000 or so islands and islets – with the glaring exception of those forming part of the Crown Colonies of Malta and Cyprus – were united with a Mediterranean coastal state. The preclusion of enosis also defied the demographic realities in the British Crown Colony of Cyprus. For example, under the official *Cyprus Census of Population and Agriculture* carried out in 1946 by the British colonial authorities, 78.2 per cent of the population identified itself as 'Greek Orthodox', 17.5 per cent identified itself as 'Moslem Turkish' and the remaining 4.3 per cent identified itself as adhering to 'Other Religions'.[7] These 'Other Religions' included Armenian Orthodox Christianity, Maronite Catholic Christianity and Latin Catholicism.

In the light of the above, the remainder of this working paper explores what is meant by segregation, what is wrong with segregation and how the 1960 Constitution came to rest on a cracked Ottoman Turkish colonial bedrock, coupled with cracked British colonial foundations.

What is segregation?

Segregation is the antithesis of integration, the latter of which is a conspicuous feature of every pluralist democracy whose constitution expressly embraces the concept of 'the people', otherwise known as 'the demos', which is a defining characteristic of democracy.[8] On the one hand, the concept of 'the people' is conspicuous by its presence in several constitutions, such as those of the United States of America ('the

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[5] These three Treaties were originally published in *Cyprus, Cmnd. 1093* (London: Her Majesty's Stationery Office, 1960). The parties to the Treaty of Establishment and Treaty of Guarantee were the UK, Greece, Turkey and the UK. The parties to the Treaty of Alliance were the Greece, Turkey and the UK.

[6] For the classic history of the circumstances leading up to the Zurich Agreement of 11 February 1959 and the London Agreement of 19 February 1959, see Robert Holland, *Britain and the Revolt in Cyprus, 1954-1959* (Oxford: Oxford University Press, 1998).

[7] *Cyprus Census of Population and Agriculture 1946: Tables* (Nicosia: Government of Cyprus, 1949), 5, website of the Ministry of Finance of the Republic of Cyprus www.mof.gov.cy/mof/cystat/statistics.nsf/All/76344D539E2AF975C2257F64003CFD31/$file/POP_CEN_1946-POP(RELIGION)&HH_DIS_MUN_COM-EN-121017.pdf?OpenElement and www.mof.gov.cy/mof/cystat/statistics.nsf/populationcondition_22main_keyfarchive_en/populationcondition_22main_keyfarchive_en?OpenForm&yr=19468DE890B9A3693030C9B09DCB81EDD140&n=1946

[8] Paul Cartledge, *Democracy: A Life* (Oxford: Oxford University Press, illustrated paperback edition, 2018).

US'),[9] Ireland[10], Germany,[11] France[12] and post-Apartheid South Africa.[13] On the other hand, the concept of 'the people' is conspicuous by its absence from the 1960 Constitution which, instead, repeatedly refers to 'the two Communities'.[14]

If segregation is the antithesis of integration, what, precisely, is it? For an authoritative dictionary definition, one may turn to the *Oxford English Dictionary* published by Oxford University Press. Tellingly, this begins by revealing the Latin linguistic root of the English noun 'segregation'. This root is a Latin verb, sēgregāre, which means 'to separate from the flock, hence to set apart, isolate, divide'.[15] In a sense, this offers an insight into what is inherently wrong with segregation: it has the innate potential to treat a human being as if he or she is a farm animal, with all that entails.

Against this background, the *Oxford English Dictionary* defines segregation as 'The action of segregating' and as 'The separation or isolation of a portion of a community or a body of persons from the rest.' The *Oxford English Dictionary* goes on to provide a number of alternative definitions which amount to the same thing. One definition depicts segregation as the 'Dispersion' or 'break up' of 'a collective unity'. Another associates segregation with 'The enforced separation of different racial groups in a country, community, or institution. Cf. apartheid n.'[16]

A similar definition appears in the *Cambridge Dictionary* published by Cambridge University Press. In its view, the noun 'segregation' is associated with 'the policy of keeping one group of people apart from another and treating them differently, especially because of race, sex, or religion'. In common with the *Oxford English Dictionary*, the *Cambridge Dictionary* indicates that segregation is synonymous with the form of racial segregation that used to be applied in South Africa during the epoch of Apartheid.[17]

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[9] To read a scanned original copy, see 'The Constitution of the United States', website of the National Archives of the United States of America, www.archives.gov/founding-docs/constitution To read the current edition, see Michael J. Garcia et al (eds.), *The Constitution of the United States of America: Analysis and Interpretation: Centennial Edition: Interim Edition: Analysis of cases decided by the Supreme Court of the United States to August 26, 2017* (Washington DC: United States Government Printing Office, 2017), website of the United States Government Printing Office, www.govinfo.gov/content/pkg/GPO-CONAN-2017/pdf/GPO-CONAN-2017.pdf

[10] *Constitution of Ireland* (Dublin: Government Publications, 2020), website of the Department of the Taoiseach, www.gov.ie/en/publication/d5bd8c-constitution-of-ireland/

[11] *Basic Law for the Federal Republic of Germany 23 May 1949 [Translated by: Professor Christian Tomuschat, Professor David P. Currie, Professor Donald P. Kommers and Raymond Kerr, in cooperation with the Language Service of the German Bundestag] Last amended on 28 March 2019* (Berlin: Federal Parliament of Germany, 2019), www.btg-bestellservice.de/pdf/80201000.pdf,

[12] *Constitution*, website of the Constitutional Council of France, www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/constitution/constitution.pdf

[13] *The Constitution of the Republic of South Africa, 1996, As adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly*, website of the Department of Justice and Constitutional Development of the Republic of South Africa, https://justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf

[14] Articles 6, 123(3), 125, 137(1), 140, 178 and 19(2) of the 1960 Constituiton.

[15] 'Segregate', *Oxford English Dictionary* (Oxford University Press, online edition), https://oed.com/view/Entry/174892#eid23747111

[16] 'Segregation', *Oxford English Dictionary* (Oxford University Press, online edition), https://oed.com/

[17] 'Segregation', *Cambridge Dictionary* (Cambridge University Press, online edition), https://dictionary.cambridge.org/dictionary/english/segregation

It follows that Apartheid and segregation are, in effect, the two sides of the same coin. In turn, this begs a related question. What is Apartheid? The answer is that it is an Afrikaans word literally meaning 'apart-ness', 'apart-hood' or, as the *Oxford English Dictionary* puts it, 'separateness'.[18] This is apt, as the word 'separateness' takes us back to the 1960 Constitution. This is because the word 'separateness' was one of those used by the US National Security Council, an organ of the White House, in a declassified Report, dated 9 February 1960. Therein, the US National Security Council reached the following conclusion:

> 'The Zurich-London Agreements [of February 1959] institutionalize the historic separateness of the four-fifths Greek majority and the one-fifth Turkish minority in Cyprus in an intricate and delicately balanced governmental framework. Essentially a [non-territorial] federation along ethnic lines, the arrangements can only work successfully with the good will of the Greek and Turkish Cypriot communities and the continued cooperation of the Greek and Turkish Governments.'[19]

Even though the US National Security Council painted a picture of segregation, it did not actually mention that word. On the contrary, in common with so many other governmental, diplomatic and academic analyses over the decades, it used the words 'federation' and 'separateness' as euphemisms to avoid mentioning the obvious – that segregation was the organising principle which underpinned the Zurich-London Agreements, i.e. the texts upon which the 1960 Constitution was based.

Since 1960, other euphemisms and terms have been prominently deployed with the aim or effect of marginalising or overlooking the divisive concept of segregation. Prime examples include three terms which are prominent in the academic literature on the Republic of Cyprus, particularly as written by political scientists. The three terms are 'bicommunalism',[20] 'consociationalism'[21] and 'power-sharing'.[22]

What is wrong with segregation?

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[18] 'Apartheid', *Oxford English Dictionary* (Oxford University Press, online edition), https://oed.com/

[19] 'National Security Council Report [NSC 6003], Statement of U.S. Policy Toward Cyprus', 9 February 1960, in Ronald D. Landa, James E. Miller, David S. Patterson & Charles S. Sampson (eds.), *Foreign Relations of the United States, 1958–1960, Volume X, Part 1, Eastern Europe Region; Soviet Union; Cyprus* (Washington DC, United States Government Printing Office), 819-828 at 821 (Document 347, paragraph 8), website of the Office of the Historian of the United States State Department, https://history.state.gov/historicaldocuments/frus1958-60v10p1/d347

[20] See, for instance, Costas M. Constantinou, 'Aporias of identity: Bicommunalism, Hybridity and the 'Cyprus Problem',' *Cooperation and Conflict* 42(3), 2007, 247-270, https://doi.org/10.1177/0010836707079931

[21] See, for instance, John McGarry, 'Centripetalism, Consociationalism and Cyprus: The "Adoptability" Question', *Political Studies*, 65(2), 2017, https://doi.org/10.1177/0032321716666293
Neophytos Loizides, 'Arend Lijphart and Consociationalism in Cyprus' in Michaelina Jakala, Durukan Kuzu and Matt Qvortrup (eds.), *Consociationalism and Power-Sharing in Europe* (Cham, Switzerland, Springer Nature, 2018), 155-176, DOI: 10.1007/978-3-319-67098-0_8

[22] See, for instance, Ahmet Sozen, 'A Model of Power-Sharing in Cyprus: From the 1959 London-Zurich Agreements to the Annan Plan', *Turkish Studies*, (5) 1, 2004, 61-77, www.tandfonline.com/doi/abs/10.1080/14683849.2004.9687242

To understand what is legally and morally wrong with segregation as a constitutional or political mechanism, one must study the history of the US and South Africa. For the purposes of this paper, a useful starting point is the unanimous judgment of the US Supreme Court in the landmark case of *Brown v Board of Education of Topeka* 347 U.S. 483 (1954). When it was handed down on 17 May 1954, the judgment not only delivered a direct blow to the US system of segregation in the field of education and the related doctrine known as 'separate but equal'. The judgment also delivered an indirect blow to the very idea of segregation.

In the words of the unanimous judgment, as delivered by Chief Justice Earl Marshall, the case of *Brown v Board of Education of Topeka* turned on a specific issue – whether the educational segregation of what were called at the time 'Negro' children from 'white' children deprived the 'Negro' plaintiffs 'of the equal protection of the laws under the Fourteenth Amendment' of the US Constitution. As such, the Fourteenth Amendment enshrined the principle of equality before the law, which has long been considered a cornerstone of the rule of law, particularly but not solely in jurisdictions, such as the US and the UK, which adhere to the common law.[23]

In his judgment on behalf of the US Supreme Court in *Brown v Board of Education of Topeka*, Chief Justice Marshall observed: 'The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws.' All of the Justices agreed with this submission. The nub of their judicial reasoning was in the following passage of the judgment:

> 'To separate them [i.e. 'children in grade and high schools'] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.'

For these and for other reasons, Chief Justice Marshall began the conclusion to the judgment with the following words:

> 'We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.'[24]

It was in the light of the judgment in *Brown v Board of Education of Topeka* that, in New York on 15 December 1956, Dr Martin Luther King, Jr, delivered a typically trenchant

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[23] For example, in a classic academic article published in 2007, Lord Bingham of Cornhill, the then Senior Law Lord, identified equality before the law as the 'third' of eight 'sub-rules' which underpin the rule of law. In his learned view, equality before the law means that 'the laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.' Lord Bingham, 'The Rule of Law', *Cambridge Law Journal*, 66(1), March 2007, 67-85 at 73.

[24] *Brown v Board of Education of Topeka* 347 U.S. 483 (1954), per Chief Justice Earl Marshall at 488, 494 & 495, https://tile.loc.gov/storage-services/service/ll/usrep/usrep347/usrep347483/usrep347483.pdf

address on the subject of 'Desegregation and the future'. After referring to the judgment as 'one of the most momentous decisions ever rendered in the history of this nation', Dr King proceeded to explore what was inherently wrong with segregation:

> 'Segregation has always been evil, and only the misguided reactionary clothed in the thin garments of irrational emotionalism will seek to defend it. Segregation is both rationally inexplicable and morally unjustifiable.'

Dr King advanced 'at least three basic reasons why segregation is evil.' One 'reason' is that 'segregation inevitably makes for inequality.' A second reason is 'because it [i.e. segregation] scars the soul of both the segregated and the segregator.' A 'third reason why segregation is evil' is that 'it ends up depersonalizing the segregated [person]' so that such a person 'becomes merely a thing to be used, not a person to be respected.'[25]

On 10 December 1964, eight years or so after he uttered these immortal words, Dr King received the Nobel Peace Prize. That was shortly after the US Civil Rights Act of 1964 had cemented the legal sea change against segregation in the US, as previously heralded by the judgment in *Brown v Board of Education of Topeka*. What followed, on 21 December 1965, was the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, to which the Republic of Cyprus, Greece, Turkey and the UK have become state parties.[26] The Preamble of the Convention confirmed that 'the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith'. Meanwhile, under Article 3:

> 'States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.'[27]

On 4 April 1968, Dr King was assassinated. However, if that constituted a blow to the global campaign against segregation, it received a new boost upon the adoption of the International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973 ('the Crime of Apartheid Convention'). Its Preamble affirmed that 'an end must be put to colonialism and all practices of segregation and discrimination associated therewith'.[28] Its main body proceeded to criminalise Apartheid.

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[25] 'Desegregation and the Future,' Address Delivered at the Annual Luncheon of the National Committee for Rural Schools, New York, New York State, 15 December 1956, website of the Martin Luther King, Jr, Papers Project, the Martin Luther King, Jr, Research and Education Institute, Stanford University, okra.stanford.edu/transcription/document_images/Vol03Scans/471_15-Dec-1956_Desegregation%20and%20the%20Future.pdf

[26] '2. International Convention on the Elimination of All Forms of Racial Discrimination New York, 7 March 1966 [as 'adopted by the General Assembly of the United Nations in resolution 2106 (XX)2 of 21 December 1965']: STATUS AS AT : 24-11-2020 03:15:42 EDT', website of the United Nations Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&lang=en

[27] 'International Convention on the Elimination of All Forms of Racial Discrimination Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19', website of the Office of the United Nations High Commissioner for Human Rights https://ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

[28] 'International Convention on the Suppression and Punishment of the Crime of Apartheid G.A. res. 3068 (XXVIII)), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974), 1015 U.N.T.S. 243, entered into force July 18, 1976', website of the United Nations, www.un.org/en/genocideprevention/documents/atrocity-

The 109 State Parties to the Crime of Apartheid Convention do not include the Republic of Cyprus and its three 'guaranteeing powers' under the Treaty of Guarantee of 1960 – Greece, Turkey and the UK.[29] One wonders why. Whatever the explanation may be, one thing is clear. The doctrine known as 'separate but equal' used to be applied in both the US during the epoch of segregation and in South Africa during the epoch of Apartheid.[30] Indeed, in a unanimous judgment handed down in 2017, the Supreme Court of the UK observed:

> 'The history of the United States of America and of the Republic of South Africa, to take the two most obvious examples, has taught us to treat with great suspicion the claim that, if the races are segregated, "separate but equal" facilities can be provided for both, quite apart from the affront to dignity in the assumption that the races have to be kept separate.'[31]

It is, therefore, clear that segregation, Apartheid and the 'separate but equal' doctrine go hand in hand. It is also clear that the 'separate but equal' doctrine has the innate potential to undermine human dignity – by generating degrading and discriminatory consequences of direct or indirect kinds. Even so, the Republic of Cyprus has become saddled with a variant of the discredited 'separate but equal' doctrine. Evidence to this effect may be found in an Opinion by the late Professor Sir Elihu Lauterpacht CBE QC, as published on the website of the Foreign Ministry of Turkey. The Opinion points to 'the main trend' of the United Nations in relation to the Republic of Cyprus, namely its 'emphasis upon the separate but equal status of the two communities'.[32]

In the light of the above, the remainder of this paper will explore the cracked Ottoman Turkish colonial bedrock and the cracked British colonial foundations of the 1960 Constitution. It will do so with the underlying aims of explaining what is really meant by 'the two Communities', accounting for the segregation built into the 1960 Constitution and showing that Dr King was right to assert that, as a general rule, 'segregation is evil'.

Segregation in Ottoman-ruled Cyprus, 1571-1878

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crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf

[29] '7. International Convention on the Suppression and Punishment of the Crime of Apartheid New York, 30 November 1973: STATUS AS AT : 20-11-2020 06:54:17 EDT', website of the United Nations Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-7&chapter=4&clang=_en

[30] As Judge P.A.L. Gamble observed in a judgment handed down in South Africa in 2010, 'the 'separate but equal' philosophy' had been 'a hallmark of the apartheid era'. *Steyn v Steyn* [2010] ZAWCHC 22, at paragraph 27, website of the South African Legal Information Institute, http://www.saflii.org/za/cases/ZAWCHC/2010/224.pdf and www.saflii.org/za/cases/ZAWCHC/2010/224.html

[31] *R (Coll) v Secretary of State for Justice* [2017] UKSC 40 at 34, per Lady Hale (with whom all four of her fellow judges, Lord Clarke, Lord Wilson, Lord Hodge and Lord Toulson agreed), website of the Supreme Court of the UK, www.supremecourt.uk/cases/docs/uksc-2015-0148-judgment.pdf and www.supremecourt.uk/cases/uksc-2015-0148.html

[32] 'The Turkish Republic of Northern Cyprus-The Status of the two Communities in Cyprus (10 July 1990) Prof. Elihu Lauterpacht, C.B.E., Q.C.', paragraph 30, website of the Foreign Ministry of Turkey, www.mfa.gov.tr/chapter2.en.mfa

In the US during the bygone age of segregation, in South Africa during the bygone age of Apartheid and in the Republic of Cyprus since 1960, segregation constituted – or, in the case of the Republic, continues to constitute – a malign outgrowth of both colonialism and slavery. Indeed, the Island of Cyprus figured prominently in the inhumane Ottoman slave trade and related slave-related practices.[33]

For these and for other reasons set out elsewhere in this working paper, there are considerable similarities between the segregation which emerged in the US, South Africa and the Island of Cyprus. Even so, there are some key differences. Perhaps the main one is that, whereas British colonial rule was inflicted on north America (where the US was established), southern Africa (where South Africa was established) and the Island of Cyprus (where the Republic of Cyprus was established), Ottoman Turkish colonial rule was only inflicted on one of these three places – the Island of Cyprus. That accounts for a further difference – the 'bi-faith' form of segregation that came to be entrenched in the Island of Cyprus but not in north America or southern Africa.

From the moment of the violent Ottoman Turkish conquest of the Island of Cyprus in 1571, a numerical minority of Muslims began to emerge among the people of Cyprus. Against this background, the Ottoman Turkish authorities effected a form of 'bi-faith' segregation. In line with the Ottoman and Islamist doctrinal beliefs of the Ottoman Turkish Empire and Caliphate, this form of segregation drew a sharp distinction between two categories of people. In one category were Muslims, otherwise known as 'believers'. In the other category were non-Muslims, otherwise known as 'non-believers' or 'infidels'.

'Bi-faith' segregation was supplemented by a system of limited local 'non-territorial' communal autonomy under the sovereignty of the Sultan. This was known as the *millet* system,[34] '*millet*' being a Turkish word which has been defined as meaning 'a people or body of persons united by a common faith, i.e., religion'.[35]

In line with Dr King's dictum that 'segregation inevitably makes for inequality', non-Muslims in Ottoman-ruled Cyprus individually and collectively occupied a subordinate religious status, which was accompanied by the imposition of discriminatory measures.[36] A prime example is the special tax known as the *cizye*, otherwise known in

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[33] See, for instance, Ronald C. Jennings, 'Black Slaves and Free Blacks in Ottoman Cyprus, 1590-1640', *Journal of the Economic and Social History of the Orient*, Vol. 30, No. 3, 1987, 286-302.

[34] Karen Barkey and George Gavrilis, 'The Ottoman Millet System: Non-Territorial Autonomy and Its Contemporary Legacy', *Ethnopolitics* 15 (1), 2016, 24–42. doi:10.1080/17449057.2015.1101845 and www.tandfonline.com/doi/abs/10.1080/17449057.2015.1101845

[35] John A. Strachey Bucknill KC (an Advocate of the Supreme Court of Cyprus) and Haig A.S. Utidjian (of the Cyprus Civil Service), *The Ottoman Imperial Penal Code: A translation from the Turkish text with latest additions and amendments together with annotations and explanatory commentaries upon the text and containing an appendix dealing with the special amendments in force in Cyprus and the judicial decisions of the Cyprus Courts* (Oxford: Oxford University Press, 1913, Printed by permission by W.J. Archer, Supt. of the Government Printing Office, Nicosia, Cyprus, 1913), ix.

[36] Shama Churun Sircar, *The Muhammadan Law: Being a Digest of the Law Applicable Especially to the Sunnís of India, Volume 1* (W. Thacker & Co, Lodnon, 1873), 279 and 280. Also see Ronald C. Jennings, *Christians and Muslims in Ottoman Cyprus and the Mediterranean World, 1571-1640* (New York: New York University Press, 1993), 16, 31, 132 and 193-203.

certain Ottoman sources as *harac* and in Arabic as *jizyah*.[37] The *cizye* was a 'head tax' which had to be paid by adult male non-Muslims.[38] They, in consequence, were discriminated against on account of their age, sex and religion. (In parenthesis, it may be noted that in England today, age, sex and religion are among the 'characteristics' which, thanks to the Equality Act 2010, are 'protected' from direct and indirect forms of discrimination, as well as harassment and victimisation.[39])

In practice, the *cizye* was but one of several devices by which non-Muslims were subjected to what would today be considered direct or indirect forms of discrimination. In a report completed in 1867, the then British Consul in Cyprus, Thomas Sandwith, identified a wider list of discriminatory measures which he branded as the 'civil disabilities' and 'grievances' of 'the Greeks' and 'Christians', two terms he used interchangeably.

At the same time, Consul Sandwith indicated that certain disadvantages adversely affected 'both Mussulmans and Christians'. He wrote: 'It must not be forgotten that the members of the [Ottoman Turkish] Courts [in Cyprus] are open to bribery, and the rich Christian suitor is often more than a match for his poor Mussulman adversary. ...'. Thus, via the payment of one or more bribes, a perverse form of 'justice' could be 'purchased' by a party to legal proceedings! With this and other realities in mind, Consul Sandwith added:

> 'Though they [i.e. Christians] have just cause then to complain of the inferior position which they hold in the eye of the law in the instances already mentioned, both Mussulmans and Christians have equal case to be dissatisfied with the mal-administration which, in these days of commercial activity, arrests the development of the resources of the island. … But I think there can be no doubt that the evils which press equally upon Turks and Greeks are more intolerable than those of which the Greeks alone have cause to complain.'[40]

From this and other sources, one may reasonably infer that Ottomanism was not only a recipe for systemic segregation giving rise to inequality to the detriment of Christians and other non-Muslims who occupied an 'inferior position'. Ottomanism also caused misery for Muslims and non-Muslims alike.

The root cause of the discrimination dished out to non-Muslims under Ottoman Turkish rule was the 'Sher', otherwise known as the 'Sher' law' ('the Law of God'),[41] the 'Sacred

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[37] See *inter alia* Matthew Lubin, 'Aftermath of war: Cypriot Christians and Mediterranean Geopolitics, 1571-1625: A dissertation submitted to the faculty of the University of North Carolina at Chapel Hill in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the Department of History' (Chapel Hill: University of North Carolina, 2012), xi, 23, 45, 110, 147, 326, 328 and 341, https://core.ac.uk/download/pdf/210596912.pdf

[38] Jennings, *Christians and Muslims in Ottoman Cyprus and the Mediterranean World, 1571-1640,* 194.

[39] Chapter 1 ('Protected characteristics') and Chapter 2 ('Prohibited conduct'), Equality Act 2010, www.legislation.gov.uk website managed by the National Archives of the UK on behalf of the UK Government, www.legislation.gov.uk/ukpga/2010/15/contents

[40] Captain A. R. Savile (18th Royal Irish Regiment*), Cyprus: Compiled in the Intelligence Branch, Quarter-Master General's Deparment, Horse Guards* (London: Her Majesty's Stationery Office, 1878), 135-136 at 136.

[41] *Ibid*, 15, footnote 2.

(Sheri) Law'[42] and 'the Moslem sacred law'.[43] During the Ottoman colonial epoch in the Island of Cyprus from 1571 until 1878, this was the law of the land. Today, the 'Sher' is normally referred to as Sharia Law or Islamic Law (hereafter 'Sharia Law'). Yet, it was – and remains – fundamentally incompatible with what would today be considered the basic norms of democracy, human rights and the rule of law.

In a landmark judgment relating to Turkey, which it handed down in 2003, the European Court of Human Rights agreed with the proposition that '… sharia is incompatible with the fundamental principles of democracy, as set forth in the [European] Convention [on Human Rights of 1950]'.[44] In a subsequent judgment handed down in 2013, the European Court explained, with reference to its earlier judgment of 2003, that:

> 'The court ... has previously found a regime based on sharia to be incompatible with the fundamental principles of democracy, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts.'[45]

With all this in mind, I now turn to the British colonial epoch and the responsibility which must be placed on the shoulders of the UK for perpetuating segregation.

The cracked British colonial foundations of the 1960 Constitution

On 12 July 1878, the British assumed the administration and occupation of the Island of Cyprus, under sustained Ottoman sovereignty. They did so pursuant to the Anglo-Turkish Convention of 4 June 1878.[46] Yet, even before both of these dates, the mindset of the British Government was already shaped by the concept of 'bi-faith' segregation. For example, on 30 May 1878, the Marquis of Salisbury, the British Foreign Secretary, telegraphed Sir A. H. Layard, the British Ambassador in Constantinople, to convey the message copied below.

> 'You are authorized to consent to a Mussulman tribunal for the exclusive cognizance of Mussulman [i.e. Muslim] religious matters, but you should not bind Her Majesty's Government as to judicial institutions for persons not Mussulmans [i.e. non-Muslims].'[47]

By writing this, the British Foreign Secretary effectively showed that he had bought into the Ottoman Turkish doctrinal thesis that the people of Cyprus consisted of two

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[42] Sir George Hill, *A History of Cyprus, Volume IV, The Ottoman Province The British Colony 1571-1948* (Cambridge: Cambridge University Press, 1952), 176.
[43] *Hattije Dervish v Shukri Veysi* 1 CLR 55, per Fuad J, Cylaw website of the Cyprus Bar Association, www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/V16/rep/V16_1_0055.htm&qstring=mussulman
[44] *Refah Partisi (the Welfare Party) and others v Turkey* [2003] ECHR 87, paragraph 123, website of the British and Irish Legal Institute, www.bailii.org/eu/cases/ECHR/2003/87.html
[45] *Kasymakhunov & Saybatalov v Russia* [2013] ECHR 217, paragraph 111, website of the British and Irish Legal Institute, www.bailii.org/eu/cases/ECHR/2013/217.html
[46] Anglo-Turkish Convention of Defensive Alliance signed in Constantinople on 4 June 1878, FO 93/110/27B, National Archives of the UK, Kew Gardens, Surrey.
[47] Savile, *Cyprus*, 26.

separate categories of persons – 'persons' who were 'not Mussulmans' and 'persons' who were 'Mussulmans', the latter of whom were entitled to structures of segregation, such as a separate 'Mussulman tribunal'.

The upshot was the conclusion of the Annex, dated 1 July 1878, to the Anglo-Turkish Convention on 4 June 1878. Under this Annex:

> 'It is understood between the two High Contracting Parties [i.e. Turkey and England] that England agrees to the following conditions relating to her occupation and administration of the Island of Cyprus:
>
> 'I That a Mussulman religious Tribunal (*Mehkeme-i Sheri*) shall continue to exist in the island, which will take exclusive cognizance of religious matters, and of no others, concerning the Mussulman population of the island.
>
> 'II That a Mussulman resident in the island shall be named by the Board of Pious Foundations in Turkey (*Evkaf*) to superintend, in conjunction with a Delegate to be appointed by the British Authorities, the administration of the property, funds, and lands belonging to the mosques, cemeteries, Mussulman schools, and other religious establishments existing in Cyprus. …'.[48]

The reference to 'Mussulman schools' indicates that, alongside parallel systems of family justice, the British also inherited – and agreed to maintain – two separate, segregated and non-secular school systems. This explains why, in the House of Commons on 9 August 1883, Evelyn Ashley,the Under-Secretary of State for the Colonies, faced a question about expenditure upon 'Christian schools' and 'Moslem schools in Cyprus'. Revealingly, Under-Secretary Ashley responded as follows:

> 'A Board, or, possibly, two Boards – one Christian and the other Moslem – are to be formed to administer the grant [of money]; and it is believed that they will satisfactorily push forward the work of education in the Island.'[49]

As events were to unfold, the British did indeed create two separate, segregated and non-secular Boards of Education. This explains why the British colonial Elementary Education Law of 1933 refers to 'Boards of Education' in the plural.[50] Whereas the Law described one as 'the Board of Education for Greek-Orthodox schools' in Cyprus,[51] it described the other one as 'the Board of Education for Moslem Schools'.[52]

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[48] Annex dated 1 July 1878, as reproduced in *Cyprus* (a 'Confidential' handbook (No. 65), which was prepared 'under the Directorate of the Historical Section of the Foreign Office' and dated December 1918), 71-72, FO 373/3/21, National Archives of the UK.

[49] Hansard, House of Commons Debates, 9 August 1883, Columns 2069-2070, website of the Parliament of the UK, https://api.parliament.uk/historic-hansard/commons/1883/aug/09/cyprus-education

[50] Section 8, Elementary Education Law of 1933, Cylaw website of the Cyprus Bar Association, www.cylaw.org/nomoi/arith/1933_1_018.pdf

[51] Ibid, Section 9.

[52] Ibid, Section 10.

In the years after the British annexation of the Island of Cyprus on 5 November 1914,[53] the British likewise preserved the pre-existing structures of segregation in the field of family justice. Evidence to this effect may be found in colonial laws enacted in Nicosia, such as the Mussulman Religious Tribunals Rules, 1937.[54] Then, during the 1950s, family justice in the then British Crown Colony of Cyprus was modernised and, up to a point, secularised. This was achieved by virtue of two new and inter-connected Laws enacted by the British colonial government in Nicosia on 29 January 1951– the Turkish Family Courts Law of 1951[55] and the Turkish Family (Marriage and Divorce) Law of 1951.[56]

On the one hand, the Turkish Family Courts Law of 1951 secularised the law by incorporating the term 'Turkish' rather than 'Mussulman' or 'Moslem' in its title, by renaming the Mussulman Religious Tribunal as the Turkish Family Court[57] and by repealing the Moslem Religious Tribunals Law of 1949.[58] On the other hand, both of these new Laws had the effect of perpetuating 'bi-faith' segregation.

To take an obvious example, the Turkish Family (Marriage and Divorce) Law of 1951 expressly applied to what its full title described as 'the Turkish Moslem Community of Cyprus'. To take a second example, a substantive effect of this Law was to perpetuate core principles of Sharia Law, as in the case of the following stipulation: 'A marriage is prohibited between a moslem woman and a non-moslem man.'[59] The Law did not embody any equivalent prohibition against a Muslim man marrying a non-Muslim woman. As such, the Turkish Family (Marriage and Divorce) Law of 1951 reflected the segregation inherent in Ottomanism and the discrimination inherent in Sharia Law. At the same time, the Law flagrantly flouted the twin principles of equality before the law and non-discrimination. More to the point, by resting on the premise that Muslim women must not marry non-Muslim men, the Law reflected and normalised the segregation of Muslims from non-Muslims.

Whereas in 1878 the British inherited the pre-existing structures of segregation in the fields of family justice and education, they created other new structures of segregation. Perhaps the prime examples arose under British colonial election law. In 1883, the British colonial administration in Nicosia introduced two separate and segregated adult male electoral lists – one for adult male non-Muslim electors and one for adult male Muslim electors. These two lists were enshrined in law by means of a Proclamation, of the British High Commissioner, the precursor of the Governor.

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[53] Order-in-Council made at Buckingham Palace on 5 November 1914, *Supplement to the London Gazette*, 5 November 1914, website of the *London Gazette*, www.thegazette.co.uk/London/issue/28963/supplement/8998/data.pdf
[54] The Mussulman Religious Tribunals Rules of 1937, Cylaw website of the Cyprus Bar Association, www.cylaw.org/KDP/data/1937_1_194.pdf
[55] Turkish Family Courts Law of 1951, Cylaw website of the Cyprus Bar Association, www.cylaw.org/nomoi/arith/1951_1_003.pdf
[56] Turkish Family (Marriage and Divorce) Law of 1951, Cylaw website of the Cyprus Bar Association, www.cylaw.org/nomoi/arith/1951_1_004.pdf
[57] Section 15, Turkish Family Courts Law of 1951.
[58] Section 18, Turkish Family Courts Law of 1951.
[59] Section 7(1)(c) Turkish Family (Marriage and Divorce) Law of 1951.

Having been made pursuant to 'an Order of Her Majesty in Council bearing date the 30th day of November, 1882', the Proclamation was published on 15 February 1883.[60] The Proclamation envisaged the preparation in each *Nahieh* (i.e. administrative unit) of 'a list of persons eligible to be registered as voters at the election of members of the Legislative Council'.[61] However, a segregationist catch appeared elsewhere in the same Proclamation: 'Every such list of voters shall be made in two parts, one of which shall contain the names of Mahometan voters, and the other the names of non-Mahometan voters.'[62] The reader will have spotted the use of the number 'two'. In consequence, the British used an election, a device synonymous with democracy, as a means of widening the segregation of Muslims from non-Muslims.

From time to time after 1883, both before and after the British annexation of the Island of Cyprus in 1914, new laws continued to be used to reinforce 'bi-faith' segregation in Cyprus. Even so, there was no consistency in the selection or the spelling of the labels used to this end. For example, whereas the aforementioned Proclamation of 1883 referred to 'non-Mahometan voters' and 'Mahometan voters', an Order-in-Council made on 6 February 1925 referred to 'non-Mohammedan persons duly qualified as electors' and 'Mohammedan persons duly qualified as electors' in Cyprus.[63] Meanwhile, by means of the Municipal Corporations (Amendment) Law of 27 October 1948, the British colonial government in Nicosia referred to 'Christian electors', 'Moslem electors' and, in this context, two separate and segregated 'electors lists'.[64]

Throughout the post-1878 British colonial epoch, the British perceived ethnic and religious differences to be two sides of the same coin. Even though they studiously avoided using the noun 'segregation' or the verb 'segregate', the British were conscious about what they were doing – namely dividing the people of Cyprus along ethno-religious lines and labelling them accordingly. This becomes clear if one reads a number of declassified primary sources. A good example is an originally 'Confidential' but now declassified 'Handbook' prepared by the Foreign Office in London and dated December 1918. This includes the following analysis under the heading 'Race':

> 'The Cypriots are to-day divided into 'Greeks' and 'Turks'. By the census of 1911 the population of the island (including a British military population of 144 men) was 274,108, of whom 20.6 per cent. were Mohammedans and the remainder mostly members of the Orthodox Church. In common speech a Moslem Cypriot

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[60] '[No. 3] By the HIGH COMMISSIONER [ROBERT BIDDULPH] A PROCLAMATION', *The Cyprus Gazette*, 15 February 1883, 262, Digital Library of the Library of Cyprus, www.cyprusdigitallibrary.org.cy/files/original/61d3e11baf4c07a3501d1774b66ade33.pdf and www.cyprusdigitallibrary.org.cy/items/show/9

[61] Ibid, paragraph 1.

[62] Ibid, paragraph 2.

[63] 'ORDER of the King in Council providing for the establishment of a Legislative Council for the Colony of Cyprus AT THE COURT AT BUCKINGHAM PALACE, The 6th day of February, 1925', *The Cyprus Gazette*, 1 May 1925, 249-261, Digital Library of the Library of Cyprus, http://cypruslibrary.moec.gov.cy/ebooks/The_Cyprus_Gazette_1925/files/gazette%201925w.pdf and www.cyprusdigitallibrary.org.cy/items/show/51

[64] Section 5, Municipal Corporations (Amendment) Law of 27 October 1948, Cylaw website of the Cyprus Bar Association, www.cylaw.org/nomoi/arith/1948_1_034.pdf

> is called a Turk, an Orthodox Christian a Greek; but there is no racial distinction.'[65]

The same analysis proceeded to admit that the ethnic profile of Cyprus was much more diverse than it had previously:

> 'There are some negroes, descendants of slaves imported during Turkish rule from Arabia, the Sudan and Abyssynia … descendants of the Franks and Venetians … [and] a sprinkling of Maronites, Armenians, Jews, Levantines, &c.'[66]

Of these, any who were not Muslim were treated according to the dictates of 'bi-faith' segregation and cast into the relevant category of people. Thus, in answer to a parliamentary question about whether 'Jews resident in the island will be qualified to sit in the local council, or to vote at elections, or in other manner to perform the ordinary duties of citizenship', a minister provided the following answer on 4 May 1882:

> 'Sir, there are only 69 Jews in the Island of all ages and both sexes. In the Despatch mentioned [i.e. 'an official Despatch dated 10th March, 1882'] the population is divided into Christian and Mahommedan; but in the formal Constitution the division will be between Mahommedan and non-Mahommedan, and the Jews will vote among the latter.'[67]

During British parliamentary proceedings of the 1950s and in response to the then campaign for self-determination via enosis, British ministers started to use different segregationist labels. The new labels they started to use were ethnic rather than religious. Examples include 'the Greek-speaking and Turkish-speaking parts of the population' (the ministerial labels used on 28 July 1954),[68] 'the Turkish and the Greek communities in Cyprus' (the ministerial labels used on 5 May 1955),[69] 'Greek Cypriots' and 'Turkish Cypriots' (the ministerial labels used on 14 May 1956)[70] and 'the Greek Cypriot community' and 'the Turkish Cypriot community' (the ministerial labels used on 19 December 1956).[71] Notwithstanding the emphasis on ethnicity during the 1950s, the net effect of the use of such labels was the same – the cementing of segregation.

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[65] *Cyprus* (a 'Confidential' handbook (No. 65), which was prepared 'under the Directorate of the Historical Section of the Foreign Office' and dated December 1918), 7-8, FO 373/3/21, National Archives of the UK.
[66] Ibid 8.
[67] Leonard Courtney MP, Under-Secretary of State for the Colonies, Hansard, House of Commons Debates, 4 May 1882, Column 92, website of the Parliament of the UK, https://api.parliament.uk/historic-hansard/commons/1882/may/04/island-of-cyprus-the-new-constitution
[68] Henry Hopkinson MP, Minister of State for Colonial Affairs, Hansard, House of Commons Debates, 28 July 1954, Columns 505-506, website of the Parliament of the UK, https://api.parliament.uk/historic-hansard/commons/1954/jul/28/cyprus-constitutional-arrangements
[69] Henry Hopkinson MP, Minister of State for Colonial Affairs, Hansard, House of Commons Debates, 5 May 1955, Column 1924, website of the Parliament of the UK, https://api.parliament.uk/historic-hansard/commons/1955/may/05/cyprus
[70] Alan Lennox-Boyd MP, Secretary of State for the Colonies, Hansard, House of Commons Debates, 14 May 1956, Column 1732, website of the Parliament of the UK, https://api.parliament.uk/historic-hansard/commons/1956/may/14/cyprus
[71] Alan Lennox-Boyd MP, Secretary of State for the Colonies, Hansard, House of Commons Debates, 19 December 1956, Column 1268, website of the Parliament of the UK, https://api.parliament.uk/historic-hansard/commons/1956/dec/19/cyprus-lord-radcliffes-proposals

All of which could be described as ‘a name game’ reminiscent of what occurred in the US during the epoch of segregation. In the US, segregation gave rise to a number of labels, notably those mentioned in an academic article bearing a memorable title: ‘Changing Racial Labels: From “Colored” to “Negro” to “Black” to “African American”’.[72]

In this context, it should not go unremarked that when, in 1956, Colonial Secretary Lennox-Boyd popularised the inherently segregationist labels ‘Greek Cypriot’ and ‘Turkish Cypriot’ – labels which remain to this day – he did so in a year when the British and Turkish Governments were seriously contemplating the geographical partition of Cyprus. Indeed, when he referred to ‘the Greek Cypriot community’ and ‘the Turkish Cypriot community’ on 19 December 1956, he did so to float the prospect of partition as the geographical expression of segregation. In a prepared statement, Colonial Secretary Lennox-Boyd said: ‘Her Majesty’s Government recognise that the exercise of self-determination in such a mixed population must include partition among the eventual options.’ In answer to subsequent questions, he issued certain remarks which likewise presaged the *de facto* partition of the Republic of Cyprus in 1974:

> ‘I hope that there is no misunderstanding about partition as an eventual possibility, an eventual solution among the possible solutions. …
>
> ‘There is no proposal for partition. I am not suggesting that at this moment there should be the partition of Cyprus, and I think that none of us would regard partition here, or in many other parts of the world, as the best solution of the many problems there. This situation will arise only when the international situation permits, and when the Constitution, the terms of which will be issued this afternoon, has got properly under way. I did, of course, bring to the attention of both the Greek and the Turkish Governments the gist of the statement I have made, and that includes the reference to partition. …
>
> ‘I hope that the hon. Member, whose interest in these problems I recognise and whose knowledge of Turkey, in particular, has been of great assistance to me, as, also, to the House, will realise that partition is envisaged as one of the possible solutions, so to speak, at the end of the tunnel. It is not a suggestion that there should be partition now.’[73]

Over in Ankara, the Government had similarly embraced the idea of partition as the geographical expression of segregation. As recalled in 1974 by Nihat Erim, the author of a report in two parts submitted in 1956 to the Government of Turkey and, at the time, a former Prime Minister of Turkey who had held that office from 1971 until 1972:

> ‘In my report to the Government [in 1956] I stated: “It is quite obvious that today in Cyprus two separate peoples live. Admittedly Greek people on the island constitute the majority, but there is also a Turkish people with separate religion, separate language, separate past, separate future, separate hopes and

[72] Tom W. Smith, ‘Changing Racial Labels: From “Colored” to “Negro” to “Black” to “African American”’, *The Public Opinion Quarterly*, 56(4), Winter 1992, 496-514.
[73] Hansard, House of Commons Debates, 19 December 1956, Columns 1268, 1271-1272, 1273 and 1274-1275.

> aspirations that cannot coincide with those of the Greek people. While self-government demands of the Greek people were to be satisfied, the aspirations of the Turks had also to be taken into account and satisfied."
>
> 'The Government [of Turkey] adopted this thesis …'.[74]

The reader will have spotted how many times Mr Erim used the word 'separate'. Since 1956, Turkey has remained wedded to this separatist, segregationist and secessionist thesis. However, herein lies a further difference between the US and Cyprus. In the US, at least in the era since its Civil War, there has never any widespread political movement in favour of supplementing segregation with partition. The same could not be said for Cyprus, particularly after 1956.

The cracks in the 1960 Constitution

As events were to transpire during the late 1950s, Cyprus was not partitioned. During the same period, the initially political and ultimately paramilitary campaign in favour of self-determination similarly failed to bear any fruit. Instead, as already noted, a diplomatic fix was eventually reached via the Zurich and London Agreements of February 1959. What followed, on 16 August 1960, was the establishment of the Republic of Cyprus and the implementation of a form of geographical partition. This partition arose because the Republic of Cyprus was established in 97 per cent of the Island of Cyprus and the UK retained sovereignty over the remaining 3 per cent.

More to the point, the 1960 Constitution was founded on what has been described earlier in this paper as a cracked Ottoman Turkish colonial bedrock and cracked British colonial foundations. The end result was constitutionally sanctioned 'bi-faith' segregation dressed up in 'bi-communal' clothing coupled with discrimination. For instance, in line with the warning of Dr King that 'segregation inevitably makes for inequality' – the 1960 Constitution collectively relegated the Armenian, Maronite and Latin citizens of the Republic of Cyprus to a subordinate status as members of three separate and subordinate 'religious groups'.[75]

All of which was intentional. As pointed out on 14 July 1960 by Julian Amery MP, the Parliamentary Under-Secretary for the Colonies in the British Government:

> 'The basis of the Zurich Agreement is that there are only two communities in Cyprus. The view strongly held, particularly by the Turkish community, was that there are no other communities but only religious groups.'[76]

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[74] Nihat Erim, 'Reminiscenses on Cyprus - Nihat Erim', *Foreign Policy* (a quarterly journal of the Foreign Policy Institute in Ankara), Vol. 4 (2-3), 1974, 7-27, reproduced on the website of the Foreign Policy Institute, Ankara, foreignpolicy.org.tr/reminiscenses-on-cyprus-nihat-erim/

[75] This was the effect of *inter alia* Article 2(3) of the Constitution of the Republic of Cyprus, as brought into force on 16 August 1960.

[76] Hansard, House of Commons Debates, 14 July 1960, Column 1732, website of the Parliament of the UK, https://api.parliament.uk/historic-hansard/commons/1960/jul/14/cyprus-bill

For these and for other reasons, the UK has been accused of engaging in the reviled policy known as 'divide and rule'. Indeed, a few minutes before Mr Amery spoke on 14 July 1960, James Callaghan MP, the then Shadow Colonial Secretary, levelled this very charge at the then British Government. To quote Mr Callaghan, who later served as Foreign and Commonwealth Secretary and Prime Minister:

> 'The whole of the actions of the British Government over many years are suspect in this field. They have done that of which Britain has always been accused – divide and rule.'[77]

Thus, when it eventually came into force on 16 August 1960, the 1960 Constitution became the facilitator of 'divide and rule', not least via constitutionally-authorised segregation, discrimination and inequality. Indeed, segregation, discrimination and inequality were visible in the very first words in the Constitution – those in Article 1:

> 'The State of Cyprus is an independent and sovereign Republic with a presidential regime, the President being Greek and the Vice-President being Turk elected by the Greek and the Turkish Communities of Cyprus respectively as hereinafter in this Constitution provided.'[78]

Article 1 manages to segregate the people of the Republic of Cyprus into two separate 'Communities' while dishing out discrimination and the inequality that goes with it. After all, nobody other than a 'Greek' is eligible to be President and, thus, Head of both the Government and the State. Conversely, nobody other than a 'Turk' is eligible to be Vice-President.

On closer inspection, however, what lies behind these ethnic labels is a spin on the Ottoman Turkish 'bi-faith' segregation of Muslims from non-Muslims. This form of segregation rears its head in various places, not least Articles 2(1) and 2(2) of the Constitution:

> 'For the purposes of this Constitution:
>
> '(1) the Greek Community comprises all citizens of the Republic who are of Greek origin and whose mother tongue is Greek or who share the Greek cultural traditions or who are members of the Greek-Orthodox Church;
>
> '(2) the Turkish Community comprises all citizens of the Republic who are of Turkish origin and whose mother tongue is Turkish or who share the Turkish cultural traditions or who are Moslems;'.[79]

It follows that whereas the Greek Community equates to the Community for 'members of the Greek-Orthodox Church' and other non-Muslims (even if not Greek), the Turkish Community equates to the Community for 'Moslems' (even if not Turkish). It also

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[77] Ibid, Column 1635.
[78] Article 1 of the 1960 Constitution.
[79] Article 2(1) and Article 2(2) of the 1960 Constitution.

follows that 'the two Communities' equate to the non-Muslim Community and the Muslim Community respectively.

Meanwhile, another provision of the Constitution, Article 2(7)(a), bears out another of the warnings issued by Dr King, i.e. his warning that segregation 'ends up depersonalizing the segregated [person]' so that he or she 'becomes merely a thing to be used, not a person to be respected.' Under Article 2(7)(a): 'a married woman shall belong to the Community to which her husband belongs'.[80] The 1960 Constitution thereby treats a married woman as an appendage of her husband rather than as an independent human being in her own right.

Elsewhere, the 1960 Constitution authorised the retention or creation of one structure of segregation after another, such as 'the two Communities',[81] two separate Greek and Turkish primary school systems,[82] two separate Greek and Turkish Communal Chambers,[83] two separate Greek and Turkish electoral lists[84] and the 'Separate municipalities' to be created 'in the five largest towns of the Republic, that is to say, Nicosia, Limassol, Famagusta, Larnaca and Paphos[,] by the Turkish inhabitants thereof'.[85] Of these structures of segregation, the separate school systems and separate electoral lists harked back to the segregated 'Christian' and 'Moslem' schools and the segregated non-Muslim and Muslim electoral lists maintained by the British.

Conclusions

Within four years of coming into force, the 1960 Constitution came to the brink of collapse – upon the outbreak of what has come to be known as 'inter-communal violence' and upon the withdrawal of the Turkish Community from the structures of governance brought into force in 1960. In practice and in law, the 1960 Constitution was rescued by a judicial decision of 1964 which invoked and applied the doctrine of necessity.[86] What followed was an even more enhanced form of segregation – after Turkey misused an illegal coup in Nicosia on 15 July 1974 as a pretext to launch two inter-linked Turkish invasions on 20 July and 14 August 1974.

More specifically, what followed was *de facto* 'bi-zonal' segregation, i.e. the geographical counterpart to 'bi-communal' segregation. In large part, this arose due to Turkey's post-invasion occupation, ethnic cleansing and colonisation of 36 per cent of the northern territory and 57 per cent of the northern coastline of the Republic of Cyprus.[87] Amid a diplomatic culture infused with systemic impunity, the upshot was the

[80] Article 2(7)(a) of the 1960 Constitution.
[81] Articles 6, 123(3), 125, 137(1), 140, 178 and 19(2) of the 1960 Constituiton.
[82] Article 20(1) of the Constitution of the 1960 Constituiton.
[83] Article 86 *et al* of the Constitution of the 1960 Constituiton.
[84] Article 63(1) of the Constitution of the 1960 Constituiton.
[85] Article 173(1) of the Constitution of the 1960 Constituiton.
[86] *Attorney-General of the Republic v. Mustafa Ibrahim* (1964) CLR 195 and P. Polyviou, *The Case of Ibrahim, the Doctrine of Necessity and the Republic of Cyprus* (Nicosia: Chryssafinis & Polyviou Publications, 2015).
[87] Various sources produce compelling evidence in support of the proposition that, amid a diplomatic culture infused with systemic impunity, Turkey is responsible for forcible transfers, ethnic cleansing, acts of colonisation and other instances of demographic engineering contrary to international humanitarian law. Such sources include the two volumes of *Cyprus Against Turkey: Report adopted on 10 July 1976 by the European Commission of Human Rights* (Council of Europe, Strasbourg, 1979),

enforced *de facto* physical segregation of members of the Greek Community and the Turkish Community respectively. The former were forcibly herded into the areas of the Republic of Cyprus unoccupied by Turkey. The latter were forcibly herded into the Turkish-occupied north of the Republic. In line with one of the warnings issued by Dr King in 1956, each victim of *de facto* 'bi-zonal' segregation was treated as 'a thing a thing to be used, not a person to be respected.'

In the face of the 'bi-communal' and 'bi-zonal' forms of segregation inflicted in the Republic of Cyprus, what has been the response of the United Nations Security Council? Instead of calling for de-segregation, the Security Council has effectively called for re-segregation. In the words of Resolution 649 of 1990, the Security Council:

> 'Calls upon the leaders of the two communities to pursue their efforts to reach freely a mutually acceptable solution providing for the establishment of a federation that will be bi-communal as regards the constitutional aspects and bi-zonal as regards the territorial aspects …'.[88]

Any such 'federation' would inevitably be predicated on 'bi-communal' segregation and 'bi-zonal' segregation. It would also defy a basic lesson of history, as illustrated by the fate of the 1960 Constitution. Constitutions which segregate citizens are doomed – or potentially doomed – to fail.

With all this in mind, the Republic of Cyprus should follow the example set by the US and turn its back on segregation. For that to happen, the Republic of Cyprus, the European Union and the United Nations must adopt a multi-dimensional new strategy. In turn, that strategy must actively promote the rule of law, the application of justice and the achievement of at least four inter-related aims – democratisation, de-segregation, de-occupation and decolonisation. If these aims can be achieved, both segregation and the occupation can be consigned to where they both belong – the dustbin of history.

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https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-142540.pdf (Volume 1) and http://hudoc.echr.coe.int/webservices/content/pdf/001-142541?TID=thkbhnilzk.pdf (Volume 2) plus *Doc. 6589 REPORT on the demographic structure of the Cypriot communities (Rapporteur: Mr CUCÔ, Spain, Socialist)* (Strasbourg, Parliamentary Assembly of the Council of Europe, 27 April 1992, https://assembly.coe.int/Documents/WorkingDocs/1992/EDOC6589.pdf and various supplementary texts relating to the latter at https://pace.coe.int/en/files/6916#trace-1 Also see the judgments of the European Court of Human Rights in cases such as *Cyprus v Turkey* [2001] ECHR 331 and *Cyprus v Turkey* [2014] ECHR 478.

[88] United Nations Security Council Resolution 649 of 12 March 1990, paragraph 3. Also see other Resolutions, including those published in *United Nations Security Council and General Assembly Resolutions on Cyprus 1960-2006* (Nicosia: Press and Information Office for the Ministry of Foreign Affairs of the Republic of Cyprus, 2009), website of the Ministry of Foreign Affairs of the Republic of Cyprus, www.mfa.gov.cy/mfa/Embassies/Embassy_Brussels.nsf/All/23E37DCB8772A617C1257608004BF44C/$file/UN%20RESOLUTIONS%201960-2006.pdf