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Nikitas E. Hatzimihail

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CYPRUS AS A MIXED LEGAL SYSTEM

Nikitas E. Hatzimihail*

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* Associate Professor of Private Law and Legal History, University of Cyprus; visiting scholar, University of Cambridge Faculty of Law. This article draws on papers presented at Juris Diversitas meetings in Lausanne (2009) and Malta (2010), the Jerusalem Congress of the World Society of Mixed Jurisdiction Jurists (2011), and a lecture at the University of Cyprus (2012). I am thankful to those present, as well as to my students at the University of Cyprus, for their feedback and attention; to my "informants" at the Cyprus bar (and judiciary) for providing me with a wealth of information, perspectives—and challenges; to my fellow travellers at Juris Diversitas, Vernon Palmer, and especially Maria-Tsampika Lampitsi for inspiration; to Esin Örücü, Richard Fentiman, Stelios Tofaris, Eliana Nicolaou and George Serghides for discussing points on previous drafts with me; last but not least, Olivier Moréteau, Jennifer Lane, the anonymous reviewers and the eponymous editors of this journal for helping turn a hybrid paper into a law-review article.

This article is dedicated, in loving tribute and respectful admiration, to the memory of Andreas M. Karaolis.

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ABSTRACT

Cyprus presents us with its own kind of a mixed legal system: its private law is mostly common law, long codified in statutes. Its public law derives from the continental tradition. Procedural law is purely common law—a major factor in the mutation of the "continental" elements of the legal system. The state of play is affected by the split in the legal profession between continental- and English-educated lawyers (a split acquiring generational and subject-matter dimensions). The bulk of legislation and legal institutions have a distinctively colonial and/or post-colonial flavor. However, the country and the legal elites identify with, and are active participants in, European law and institutions. Last, but not least, Cyprus law combines a traditionalist mentality with the sense of perpetual temporariness (interimness) due to the decades-long state of political emergency and the Turkish occupation of a substantial part of the territory. All these factors, and more, contribute to an amazingly complex picture of a unique legal system, which has seldom been studied properly, either from the inside or the outside. My paper attempts to use modern theories of comparative law, especially with regard to mixed jurisdictions,

legal influences and hybridity, to account for the complexities of Cyprus law.

I. INTRODUCTION

Mixed jurisdictions theory has come of age: it could even assert today the status of a sub-genre of comparative law itself, mixing traditional thinking about legal families with modern ideas on the uniqueness of, and communication between, individual legal systems.[1] Having begun as an exercise in understanding—and drawing connections between—legal systems that combine strong civilian and common-law elements, mixed jurisdictions theory is moving forward. In the past few years, the focus appears to be on bringing more legal systems into the mix; on drawing on "our" line of work to challenge the traditional ways of thinking about both the classification of legal systems and legal systems themselves.[2] There have also been repeated pleas to examine—and possibly use

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1. *See* MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY (Vernon Palmer ed., Cambridge Univ. Press 2001)[hereinafter MIXED JURISDICTIONS WORLDWIDE]; Kenneth Reid, *The Idea of Mixed Legal Systems*, 78 TUL. L. REV. 5 (2003); MIXED LEGAL SYSTEMS IN COMPARATIVE PERSPECTIVE: PROPERTY AND OBLIGATIONS IN SCOTLAND AND SOUTH AFRICA (Reinhard Zimmerman et al. eds., Clarendon Press 2004); MIXED JURISDICTIONS COMPARED: PRIVATE LAW IN LOUISIANA AND SCOTLAND (Vernon Palmer ed., Edinburgh Univ. Press 2009); for studies of individual mixed legal systems, *see notably* SOUTHERN CROSS: CIVIL LAW AND COMMON LAW IN SOUTH AFRICA (Reinhard Zimmerman & Daniel Visser eds., Oxford Univ. Press 1996); A HISTORY OF PRIVATE LAW IN SCOTLAND I – II (Kenneth Reid & Reinhard Zimmerman eds., Oxford Univ. Press 2000); LOUISIANA: A MICROCOSM OF A MIXED JURISDICTION (Vernon Palmer ed., Carolina Academic Press 1999). For a shorter introduction to the idea of mixed legal systems, *see* Vernon Palmer, *Mixed Jurisdictions* in EDGAR ENCYCLOPEDIA OF COMPARATIVE LAW (Jan Smits ed., Edward Elgar 2006); Jacques Du Plessis, *Comparative Law and the Study of Mixed Legal Systems* in OXFORD HANDBOOK OF COMPARATIVE LAW (Mathias Reimann & Reinhard Zimmmerman eds., Oxford Univ. Press 2008).

2. *See, e.g.*, most of the essays included in MIXED LEGAL SYSTEMS AT NEW FRONTIERS (Esin Örücü ed., Wildy Simmons & Hill 2010) (originally presented in the Second Congress of Mixed Jurisdiction Jurists); COMPARATIVE LAW AND HYBRID LEGAL TRADITIONS (Eleanor Cashin Ritain et al. eds., Schulthess 2010); STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING (Esin Örücü, Elspeth Attwool & Sean Coyle eds., Kluwer 1996).

as models—mixed legal systems in the discussion about the harmonization and future directions of European private law.[3]

The present article is somewhat more modest in its ambition, which is to present a comprehensive overview, in comparative-law terms, of a mixed legal system in the traditional sense. Today, Cyprus tends to be considered a mixed legal system. However, with the exception of Dean Symeonides's paper presented at the First Worldwide Congress of Mixed Jurisdiction Jurists in 2003,[4] it has been neglected in most comparative law narratives, whether because it was forgotten or because it was classified as yet another member of the common law family. In fact, by the end of British colonial rule in the early postwar years, Cyprus was exactly that—a common law jurisdiction. Moreover, part of its legal establishment has traditionally defined Cypriot legal identity in common law terms. Today, Cyprus still more closely resembles a common law jurisdiction than do legal systems habitually classified as mixed. The civilian or continental tradition has nonetheless considerably expanded its sphere of influence within the legal system. The common law tradition has probably retained its primacy and even managed to mutate some of the civilian elements; but common law institutions have also mutated.

The legal system of Cyprus, in fact, both confirms and challenges the basic premises of mixed jurisdiction theory. Like the better known members of Vernon Palmer's "third legal family," the law of Cyprus is built on the twin foundations of common law and continental law, each in control of different legal subjects.[5] It is also rather unique, in the sense that it is private law

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3. *See, e.g.*, THE CONTRIBUTION OF MIXED LEGAL SYSTEMS TO EUROPEAN PRIVATE LAW (Jan Smits ed., Intersentia 2001); JAN SMITS, THE MAKING OF EUROPEAN PRIVATE LAW: TOWARD A *IUS COMMUNE EUROPAEUM* AS A MIXED LEGAL SYSTEM (Intersentia 2002).

4. *See* Symeon S. Symeonides, *The Mixed Legal System of the Republic of Cyprus*, 78 TUL. L. REV. 441 (2003).

5. *See* Vernon Palmer, *Introduction* in MIXED JURISDICTIONS WORLDWIDE, *supra* note 1, at 7-9. In a legal system classified as "mixed" under Palmer's definition, "[T]he presence of these dual elements will be obvious to

(in most subjects) and criminal law that follow the English common law, whereas public law has a continental orientation. Procedural law is purely common law—a major factor in the mutation of the "continental" elements of the legal system. Like all major mixed legal systems, the *bijurality* of Cyprus law has been founded upon a transfer of sovereignty: from British colonial rule (1878-1960) to independence.[6] It has also been strengthened, and challenged, by the bilingualism of the system and the power politics of the legal elites.[7]

Mixed jurisdictions theory can help both comparative law scholars and the lawyers of Cyprus to better understand a legal system that has been aptly characterized as "a colorful plurilegal mosaic."[8] In its turn, the in-depth study of Cyprus law will provide material for the ongoing theoretical discussions about mixed jurisdictions and the legal process in general.

This article is but a first installment in such a long-term project.[9] Its principal aim is to provide an international—and, to some extent, a Cypriot—audience with a comparative lawyer's introduction to Cyprus law.[10] It consists of three parts: Part II

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an ordinary observer," a condition which probably requires "a quantitative threshold" (a condition met, *e.g.*, by Louisiana, but not Texas and California, despite their own civilian roots); *id*. at 8. Palmer also emphasizes the "structural allocation of content"; *id*. at 8-9. Of course, in Palmer's ideal type of a mixed jurisdiction civil law is dominant but "cordoned off within the field of private law."

6. On the importance of such "defining moments" in the "foundation" of a mixed jurisdiction *see* Vernon Palmer, *A Descriptive and Comparative Overview* in MIXED JURISDICTIONS WORLDWIDE, *supra* note 1, at 17-31.

7. *See id*., at 31-40 and 41-44 on the importance of the linguistic factor and the roles of the local jurists in the maintenance of mixity.

8. Symeonides, *The Mixed Legal System of the Republic of Cyprus*, *supra* note 4, at 442.

9. This project has involved, on the one hand, detailed studies of each of the systemic aspects—legal profession, judiciary, sources of law, legal discourse—and, on the other hand, case studies on individual legal fields which showcase a different level of hybridity: contracts, family law and private international law.

10. Apart from Symeonides's article, the main English-language reference, with chapters in all areas is ANDREAS NEOCLEOUS, INTRODUCTION TO CYPRUS LAW (Andreas Neocleous & Co LLC 2000). Symeon Symeonides & Erik

presents a short historical overview; Part III addresses the administration of the justice system (legal profession and court structure); and Part IV examines the sources of Cyprus law.

II. A HISTORICAL OVERVIEW

The Republic of Cyprus is a former British colony. It is a member of the Commonwealth and, since 2004, a member of the European Union. It was under British colonial rule between 1878 and 1960; that is for considerably less time than Malta, and much longer than Israel. Land- and population-wise, Cyprus is much bigger than Malta, and considerably smaller than Israel.[11] In 1960, the year of independence but also of the last island-wide official census, the island's native population was estimated at 550,000 people, composed of 81.14% Greek and 18.86% Turkish Cypriots.[12] The ethnic proportion of roughly 4:1 is a sensitive point and still adhered to, but the latest census, taking into account the significant number of EU and third-country immigrants, results

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Jayme, *Zypern* in INTERNATIONALES EHE- UND KINDSCHAFTSRECHT (Bergman & Murad Ferid eds., Gmb H & Co. 1979) also provides useful material. Most of the literature on Cyprus law is in Greek; the principal general reference remains Symeon Symeonides, *Introduction to Cyprus Law* in COMPARATIVE LAW (Dimitrios Evrigenis, Phocion Franceskakis & Symeon Symeonides eds., Sakkoulas Pubs. 1978), supplemented by EVANGELOS VASILAKAKIS & SAVVAS PAPASAVVAS, ELEMENTS OF CYPRUS LAW (Sakkoulas Pubs. 2002). The Republic's legislation and appellate case law is published in official collections and reports – the Official Journal (O.J.) and the Cyprus Law Reports (C.L.R—this reference is used here for both the volumes published in English as C.L.R. and the subsequent volumes entitled Apofaseis Anotatou Dikasteriou ("Judgments of the Supreme Court")). Current legislaton and appellate cases are also available online at the open-access legal database http://www.cylaw.org/cpr.html. An annonated collection of basic legislation was recently published: EGKOLPIO KYPRIAKON NOMON (Neocleous LLP & Nikitas Hatzimihail eds., Nomiki Bibliothiki 2013). Doctrinal works on individual subjects are cited below where appropriate.

11. Cyprus is the third-largest island in the Mediterranean, after Sicily and Sardenia, with an area of 9251 km2; http://www.mfa.gov.cy/mfa/mfa2006.nsf/glance_en/glance_en?OpenDocument (last visited Jul. 2, 2013).

12. CYPRUS: A COUNTRY STUDY (Eric Solsten ed., GPO for the Library of Congress, 1991), http://countrystudies.us/cyprus/21.htm (last visited Jul. 26, 2013).

in a population of close to one million, where Greek and Turkish Cypriots stand respectively at 71.5% and 9.5% of the total population.[13] Despite the longstanding demographic predominance of ethnic Greeks, who self-identify as deriving from Mycenaean settlers who came from the Greek mainland over three thousand years ago, geographically, the island is much closer to Turkey (to its north) and the Middle East (to its east) than it is to the Greek mainland (to its west). Its location has been a principal cause of both its strategic importance and its misfortunes.

A. Early History

Cyprus law has been the tributary of several legal cultures across time. Prior to 1164, ancient Greek and then Roman-Byzantine law was the law of the land.[14] Between 1164 and 1571, the island formed part of the Western European world: the Lusignan Kingdom of Jerusalem moved there following Saladin's reconquest of the Holy Land, with the Republic of Venice taking over in 1489. Venice has left us *Othello* and impressive fortifications; the Lusignans left the *Assizes of Cyprus and Jerusalem*.[15]

The Ottoman conquest of the island in 1571 led to the effective termination of the Catholic presence, the immigration of Muslim (and Christian) populations from Anatolia, and the emergence of the autocephalous Greek Orthodox Church of Cyprus as the political leader of the Greek population under the *millet* system.

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13. As of December 2011, the population comprised 681,000 Greek Cypriots (including the 8,400 members of the three non-Greek Orthodox, acknowledged Christian religious groups that opted to be regarded as part of the Greek community under the 1960 Constitution: Maronite, Armenian, and Latin), 90,100 Turkish Cypriots and 181,000 foreign residents. This count does not include the so-called "settlers" from mainland Turkey (estimated by some at 160,000), *supra* note 11.

14. *See* Symeonides, *The Mixed Legal System of the Republic of Cyprus*, *supra* note 4, at 443-445.

15. *See* Vol.1-2 of ASSISES DE JÉRUSALEM, OU RECUEIL DES OUVRAGES DE JURISPRUDENCE COMPOSÉS PENDANT LE XIIIE SIÈCLE DANS LES ROYAUMES DE JÉRUSALEM ET DE CHYPRE (Arthur Beugnot ed., Imprimerie Royale 1841-1843).

According to this system, non-Muslim confessional communities were treated as a "nation" (*millet*) and allowed to govern their own affairs according to their own laws and customs; the religious head was responsible for his *millet*'s administration and its good behavior towards the "paramount power."[16] The Church of Cyprus has continued to claim this role of national leadership (*Ethnarchy*) up to the present day.

The Greek Revolution of 1821, and the creation of an independent Greek state, which quickly began orienting itself to French-style codification and German *Pandektenrecht* and abolishing ecclesiastical jurisdiction over civil and family matters, marked a split between the Greeks in the new Kingdom, and those remaining under Ottoman (and Church) control. In 1839, the *Tanzimat* ("reorganization") movement of Ottoman institutional reform saw the introduction of large-scale legislative projects, which basically introduced Western-style private and criminal law legislation, such as the Commercial Code. Some of these laws remained in force until the very end of the British colonial era.[17]

B. British Colonial Rule (1878-1960)

In 1878, the British took possession of the island, with a view to reinforcing the maritime route to India and denying the Russians access to the Eastern Mediterranean.[18] With the Treaty of Berlin, the Ottoman Empire leased the island to the British Empire, but few, if any, thought this lease would expire. At first, the island's

16. *See, e.g.*, STEVEN RUNCIMAN, THE GREAT CHURCH IN CAPTIVITY 167 (Cambridge Univ. Press 1968).

17. The legal history of Ottoman Cyprus certainly merits a separate study. Ironically, the first stage of the British colonial era (in which "Continental" statutes of Ottoman provenance, regulating the basic legal subjects of private and criminal law, remained in force in a legal system that had adopted a common law system of administration of justice and an English language) comes closer to the classic definition of a mixed jurisdiction. For a short discussion, s*ee infra* Part IV. B(1). Again, this is the subject for a separate study that I hope to present in the near future.

18. WILLIAM MALLINSON, CYPRUS: A MODERN HISTORY 10 (IB Tauris 2009).

ethnic Greek majority rejoiced at the prospect of rule by their fellow Christians and eventual union (*Enosis*) with the Greek "motherland"; it was only in 1864, after all, that the British had ceded their Ionian protectorate as a gift to the new King of Greece. British policy remained ambivalent in that regard, but the outbreak of World War I, which brought the British and Ottomans at war with each other, led to the annexation of Cyprus and fired up hopes of *Enosis*. A few overtures were indeed made, in the early stages of the war, by London to Athens, with a view to luring Greece to the side of the Entente, but the two years it took for the anglophile faction to prevail in Greece and for the latter to join the war effort allowed the British to shelve their offer, in the postwar negotiating table. The end of World War I renewed Greek hopes of the eventual fulfillment of the so-called "Grand Idea" of uniting all territories primarily inhabited by ethnic Greeks into the Kingdom, but the Greek military expedition into Anatolia ended in disaster and death, or uprooting of the ethnic Greek populations there.[19] The 1923 Lausanne Treaty, which entombed the Greek "Grand Idea", was also the international instrument with which Turkey officially acknowledged British sovereignty over Cyprus.[20] In 1925, Cyprus officially became a British Colony.[21] It maintained that status until Independence in 1960.[22]

The institutions of British colonial rule included a small but effective colonial bureaucracy, led by the Governor; a partially elected Legislative Council; a King's Advocate (the future Attorney-General) who controlled all aspects of colonial governance, originally including the courts; and a two-tier judicial system of District Courts and a Supreme Court, with appeal to the

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19. MICHAEL LLEWYELLYN SMITH, IONIAN VISION: GREECE IN ASIA MINOR, 1919-1922 (C. Hurst 1998)

20. Treaty of Peace with Turkey, July 24, 1923, Article 16. Available at www.lib.byu.edu/index.php/Treaty_of_Lausanne.

21. *See* THE CYPRUS GAZETTE (EXTRAORDINARY NO. 1) No. 1691, May 1, 1925.

22. Independence was implemented by the Cyprus Act 1960, 8 & 9 Eliz. 2, c. 52, § 1 (1960) (U.K.).

Judicial Committee of the Privy Council and no lay participation.[23] British colonial officials dominated the judiciary throughout the colonial period, especially in the upper echelons.[24] Only in 1927 were the first Cypriots, one Greek and one Muslim, appointed as *puisne* judges to the Supreme Court, whereas the first Cypriot President of a District Court was appointed in 1942.[25] Seats in the Legislative Council were calibrated so as to deny the Greeks of the island a deciding majority: the six (and, after 1925, nine) colonial administrators could normally rely on the three Ottoman notables who represented the Muslim community to balance off the nine (after 1925, twelve) Greek delegates, letting the Governor cast a deciding vote.[26] Even in cases where the delegates of the two communities would side together,[27] the Governor could circumvent the Council and promulgate his proposed legislation by an Order-in-Council.

In October 1931, such government-by-decree ignited a major uprising of Greek Cypriots demanding the Union (*Enosis*) of Cyprus with Greece.[28] The ensuing crackdown on Greek nationalism and the expressed desire for the "substitution of a

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23. *See* the *Cyprus Courts of Justice Order-in-Council*, November 30, 1882 in THE IMPERIAL ORDERS IN CYPRUS APPLICABLE TO CYPRUS (1923).

24. *See* D.H. HADJIHAMBIS, THE SUPREME COURT OF CYPRUS AND ITS JUDGES SINCE ITS ESTABLISHMENT IN 1883 at 39-101 (2010), which profiles all judges who served on the Supreme Court between its establishment in 1883 and independence in 1960.

25. The first two *puisne* (or junior) Judges were Vasilios Sertsios and Mustafa Bey Fuad. Both had previously served as District Judges. *See* HADJIHAMBIS, *supra* note 24, at 72-75. Criton Tornaritis (1902-1997), originally named as District Judge to the Nicosia District Court in 1940, served as President of the Famagusta District Court from 1942 until he was appointed to the position of Solicitor-General of the Colony in 1944. In 1952, he became the Attorney-General of the Colony, a position he maintained until 1984.

26. *See supra* note 23.

27. It is ironic that the first Turkish nationalist elected to the Council sided with the Greeks, leading to the Governor's overruling the Council majority, which incited the 1931 Unionist insurrection.

28. *See* G. S. GEORGHALLIDES, CYPRUS AND THE GOVERNORSHIP OF SIR RONALD STORRS: THE CAUSES OF THE 1931 CRISIS (Cyprus Research Centre 1985).

British for a Greek atmosphere in the colony"[29] led to the suspension of the Legislative Council, along with the elected municipal councils and a number of political and cultural associations. British authoritarian policies, and especially the effective abolition of elected offices, may have had effects to this day: a vibrant culture of associations and political representation was interrupted, allowing, on the one hand, for the emergence of a strong labor movement with Communist affiliation, and forcing, on the other hand, the organization of the political mainstream (including much of the labor movement) under the ideological banner of Greek nationalism and the political leadership of the Church.[30]

A major consequence of the 1931 events for the development of the Cyprus legal system, with repercussions to this day, was making professional training in London and admission there as a barrister or solicitor an absolute prerequisite for admission to the Cyprus Bar. This effectively prohibited Cypriot graduates of the two Greek law schools from entering legal practice in their homeland (by 1931, Athens law graduates were constituting the majority of the relatively small number of Cyprus lawyers); as a result, United Kingdom-trained lawyers monopolized the legal profession and especially the judiciary during the last decades of colonial rule and continued to dominate both for decades after independence. Another side effect, which affected the administration of justice system but also had broader repercussions for Cypriot society, was an intensified British effort to stir up ethnic rivalries: Turkish Cypriots, who had been traditionally

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29. Governor Sir Richmond Palmer, as quoted by JAMES MCHENRY, THE UNEASY PARTNERSHIP ON CYPRUS, 1919-1939: THE POLITICAL AND DIPLOMATIC INTERACTION BETWEEN GREAT BRITAIN, TURKEY AND THE TURKISH-CYPRIOT COMMUNITY 85 (Taylor & Francis 1987).

30. On how this complex polarization affected colonial governance and the nationalist struggle, *see* ROBERT HOLLAND, BRITAIN AND THE REVOLT IN CYPRUS 1954-1959 10-12, 15-19 (Clarendon Press 1998); *and* MARIA TSAMPIKA LAMPITSI, COMMUNISM, NATIONALISM AND LABOR IN COLONIAL CYPRUS 1945-1960 (2010; on file with author).

underrepresented in the liberal professions, including law, were promoted beyond demographic proportion to the Bar, the courts and colonial administration, including the police. This eventually helped undermine the good relations between the two communities, especially as the repressive task entrusted to the colonial police were expanding.

The struggle for *Enosis* intensified in the 1950s, culminating in the EOKA (National Organization of Cypriot Fighters) armed rebellion (1955-1959).[31] In seeking to counter Greek nationalism, the British colonial administration, both prior to and during the rebellion, combined harsh reprisals and suppression of civil liberties, with offering incentives for self-rule. They also encouraged, notably in the 1950s, Turkish nationalist claims to partition of the island, as a counterweight to the Greek Cypriot demands for union with Greece, and despite the renunciation by Turkey under the Lausanne Treaty of all claims to the former Ottoman territories.

C. Independence

Independence of the Republic of Cyprus was imposed on a reluctant people in 1960 with the Zurich-London Agreements,[32] to which the Constitution of the Republic was attached. A joint committee of Greek and Turkish Cypriot jurists supposedly drafted the Constitution, with outside help, but its *travaux pratiques* remain unpublished to this day.

In constitutional law terms, the Constitution of Cyprus is an extremely rigid instrument: many provisions have been characterized as "fundamental" and may never be amended

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31. HOLLAND, *supra* note 30, provides the most complete, and generally objective, treatment of the EOKA struggle and what led us to it.

32. The conferences which resulted in the Zurich-London Agreements took place in February 1959, with the participation of Greece, Turkey, Great Britain, and representatives of the Greek and Turkish Cypriot communities; http://www.kypros.org/Cyprus_Problem/p_zurich.html (last visited Jul. 2, 2013).

(putting in doubt, according to some, the very existence of the principle of popular sovereignty).[33] For other provisions, a two-thirds vote by the representatives of each community was required for any amendment.[34] The Constitution divided all citizens of the Republic into a Greek and a Turkish Community[35] and provided for a binary or *bi-communal* government with presidential characteristics. For the highest offices, a "Turkish" second-in-command to the "Greek" office holder was explicitly provided for: President and Vice President of the Republic,[36] Speaker and Deputy Speaker of the House of Representatives.[37] The *independent officers* of the Republic established in the Constitution were also to be paired with a deputy who ought to belong to the other Community: Attorney General and Assistant Attorney General,[38] Auditor General and Assistant Auditor General,[39] Governor and Deputy Governor of the Central Bank,[40] Accountant General and Deputy Accountant General.[41] The Constitution also provided for relative parity in the two supreme courts of the land, both of which were to be presided over by third-country nationals: the Supreme Constitutional Court was to comprise one Greek and one Turkish Cypriot as members,[42] and the High Court, two Greek and one Turkish Cypriot.[43] Under the Constitution, Greek and Turkish replaced English as the official languages of the Republic, even though the presence of foreign presiding judges meant that

33. *See* CYPRUS CONST. art. 182(1), referring to Annex III. Of the Constitution's articles, fifteen have been declared as "fundamental" in their entirety, along with provisions from thirty-three more.
34. *Id*. at art. 182(3).
35. *Id*. at art. 2. The three acknowledged religious groups (Armenian, Maronite Catholic and Latin Catholic) have elected to join the Greek Community pursuant to Art. 2(3).
36. *Id*. at art. 1.
37. *Id*. at art. 72(1).
38. *Id*. at art. 112(1).
39. *Id*. at art. 115(1).
40. *Id*. at art. 118(1).
41. *Id*. at art. 126(1).
42. *Id*. at art. 133(1).
43. *Id*. at art. 153(1).

English was to remain, at the very least, the language of appellate adjudication into the distant future.

Bi-communal governance was, unfortunately, short-lived. Following the collapse of intercommunal talks on the governance of municipalities, the President of the Republic, in consultation with the British High Commissioner, submitted to the Turkish Cypriot leadership a proposal to reform certain constitutional arrangements in November 1963.[44] The proposals were rejected by Turkey before the Turkish Cypriot Vice-President had the chance to respond. A Turkish threat to invade and divide the island, followed up by bombing raids by the Turkish Air Force and paramilitary action on both sides, led to deployment of a United Nations peace-keeping force and gave the impetus for the departure of Turkish Cypriot officials from government and, most pointedly, the segregation of the Turkish Cypriot community, with the creation of enclaves policed by Turkish military and Turkish Cypriot paramilitary forces. Under what came to be known as the "law of necessity", measures were introduced to allow the Republic's institutions to keep functioning in spite of Turkish Cypriot non-participation.[45] At the same time, the separate institutions of the Greek Community were absorbed into the institutions of the Republic; Greek became the sole language of new legislation and eventually displaced English completely as the working language of civil service. The next decade saw small-scale conflict between the communities, but the Turkish Cypriot stance encouraged nationalist tendencies among the Greek Cypriots, leading eventually to violence between their own political factions. On July 15, 1974, a coup by army elements controlled by the Athens dictatorship against the President of the Republic provided the excuse for the Turkish threat of invasion from ten years earlier

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44. *See* DIANA WESTON MARKIDES, CYPRUS 1957-1963: FROM COLONIAL CONFLICT TO CONSTITUTIONAL CRISIS 129 (Univ. of Minnesota 2001).

45. *See* SAVVAS S. PAPASAVVAS, LA JUSTICE CONSTITUTIONNELLE À CHYPRE 127-44 (Economica 1998).

to finally materialize: the amphibious invasion in July 20, 1974, established a beachhead at the north of the island; it was followed by a massive land grab, in a combined armored and airborne assault on August 15, 1974, in violation of the ceasefire and despite ongoing negotiations with the restored democratic government.[46] To this day, Turkey continues to hold 36% of the island, with another 3% constituting a buffer zone under the control of U.N. peacekeepers. The United Kingdom claims sovereign status for its two military bases, Akrotiri and Dhekelia, which cover another 2.74% of the island.

Today, the Republic of Cyprus lives on as a bi-communal polity, in which the Turkish Cypriot community is expected to return, once set free from Turkey, and reclaim the seats allocated to the Turkish Cypriots in government, parliament and the judiciary. Turkish Cypriot property in the area controlled by the Republic is held for them in trust by the government, pending resolution of the Cyprus problem.[47]

The two communities have long been engaged in negotiations for a political settlement of the Cyprus problem.[48] In 1983, a "Turkish Republic of Northern Cyprus" was proclaimed in the occupied lands and recognized only by Turkey.[49] On the contrary, the international community has insisted that the Republic of Cyprus remains the sole legitimate government on the island,[50] with sovereignty over the entire territory. The Turkish Cypriot administration in the occupied north has been referred to instead,

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46. *See* PAULOS TZERMIAS, 2 GESCHICHTE DES REPUBLIKS ZYPERN 747-48 (3d ed., Franke 1998)

47. *See* the Turkish Cypriot Properties (Management and Other Topics) Law, L. 139/91, as amended. The Minister of the Interior acts as Guardian of Turkish Cypriot properties.

48. *See* CLAIRE PALLEY, AN INTERNATIONAL RELATIONS DEBACLE: THE UN SECRETARY GENERAL'S GOOD OFFICES IN CYPRUS 1999-2004 (Hart 2005).

49. *See* U.N. Security Council, Resolution 541 (1983), http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/541%281983%29; *and* Resolution 550 (1984), http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/550%281984%29 (both last visited Jul. 2, 2013).

50. JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 146 (2d ed., Oxford Univ. Press 2007).

by the European Court of Human Rights, as a "subordinate local administration",[51] which "survives by virtue of Turkish military and other support."[52]

Cyprus' accession into the EU has posed its own problems: Turkish Cypriot citizens of the Republic possess the privileges of EU citizenship, but the Community *acquis* has been suspended in the occupied North.[53] However, the European Court of Justice has held that the courts and institutions of the Republic may validly pass judgment over land situated in the areas not under its effective control.[54]

D. The Post-Colonial Legal Mind

The constitutional crisis of 1963-64, and the invasion of 1974, created what has been considered the major contribution of Cyprus to comparative constitutional law, i.e., the doctrine of necessity (*δίκαιο της ανάγκης*). Moreover, the persistence of the so-called "Cyprus problem" (*Kypriakó*) has, since the very beginning of the new country, laid the foundations for what I would describe as the two principal characteristics of Cypriot legal consciousness—and public life.

On the one hand, the prevailing sense in Cyprus has long been one of being in an interim stage, pending resolution of the communal dispute—one could speak of "perpetual interimness". The general tendency has, therefore, been to postpone legal,

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51. Loizidou v. Turkey, Preliminary Objections, 23 March 1995 (GC), 310 Eur. Ct. H.R. (ser. A) (Appl. no. 15318/89).

52. Cyprus v. Turkey, Decision of 10 May 2001, 2001-IV Eur. Ct. H.R. 1 at par. 77 (Appl. no. 25781/94).

53. *See* Protocol No 10 on Cyprus in the *Act concerning the conditions of accession [to the European Union] of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded*, 2003 O.J. (L236), at 955. For a detailed discussion, *see* NIKOS SKOUTARIS, THE CYPRUS ISSUE: THE FOUR FREEDOMS IN A MEMBER STATE UNDER SIEGE (Hart 2011).

54. Apostolides v. Orams, Case C-420/07, 2009 ECR I-3571.

institutional and political reform indefinitely. Thus, it took thirty years after independence for Greek to fully replace English as the language of court proceedings and appellate judgments. The translation, from English to Greek, of colonial laws still in force took even more time. In fact, the main body of the Rules of Civil Procedure has to this day not been officially translated.[55] Accession to the European Union—initially as a prospect and subsequently as a fact—has changed this attitude only in part.

On the other hand, *the Constitution has become the totem of the Republic*, the defining symbol of statehood and Cypriot identity. Ironic as this might appear for a document that was originally much derided as a "legal monstrosity," or as "the outcome of a dreadful dialogue between a mathematician and a lawyer,"[56] it is also a political necessity. The Supreme Court was initially very reluctant to allow the House of Representatives to amend non-fundamental provisions of the Constitution.[57] The first successful amendment, which concerned the allocation of jurisdiction over family law matters for members of the Greek Orthodox Church (remarkably, a matter left to the institutions of the Greek Community under the Constitution), was simply tolerated by an evenly split Court.[58] A strong majority of the Supreme Court would only expressly endorse the right of two-thirds of Greek Cypriot Representatives to amend non-fundamental provisions of the Constitution several years later.[59]

It goes without saying that such delicate insistence on the status quo has led to noticeable legal formalism. To use a recent example near home, given that the Constitution holds "the office of a

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55. For a discussion of the translation process (and the methodological problems it incurred) *see* Nikitas Hatzimihail, *Sources of Law and Plurilingualism* in FESTSCHRIFT IOANNIS SPYRIDAKIS (in Greek, forthcoming, Ant.Sakkoulas Eds., 2013; English text on file with editors).

56. *See* S.A. DESMITH, THE NEW COMMONWEALTH AND ITS CONSTITUTIONS 282-96 (Stephens 1964).

57. *See* President of Republic v. House of Representatives, (1986) 3 C.L.R. 1439.

58. Nicolaou v. Nicolaou, (1992) 1 C.L.R. 1338.

59. Kouloundis v. House of Representatives, (1997) 1 C.L.R. 1026.

Minister . . . incompatible . . . with a public or municipal office,"[60] it was widely claimed (and would probably be thus held by the Supreme Court) that a professor at the state-funded University of Cyprus could not become a cabinet minister even if he suspended his university affiliation. More often than not, constitutional defense of the status quo has been used to protect the vested interests of social and professional groups, especially among the legal elite and most notably the judiciary.[61] A unanimous full bench of the Supreme Court recently held unconstitutional the legislative amendment of the statutory provision on *locus standi* requirements for administrative litigation.[62] Calls to create an intermediate appellate jurisdiction or a separate administrative court, or even to return to the original constitutional arrangement and separate High and Constitutional Court were until recently commonly rejected by the judiciary as contrary to the Constitution.

III. THE ADMINISTRATION OF JUSTICE SYSTEM

Administration of justice in Cyprus would at first glance seem to conform entirely to common law stereotypes. The present judicial structure of Cyprus is principally a legacy of the late colonial period, especially after the merger of the two supreme courts provided for in the Constitution. The Cyprus judiciary strongly identifies with the common law tradition—an attitude shared by much, though by no means all, of the legal profession at large—and uses common law tools in judicial reasoning. Moreover, procedural law is probably the field of Cyprus law that most fully adheres to the English common law. This holds true even in areas where substantive law is modeled after, or even transplanted from, continental law.

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60. CYPRUS CONST. art. 59(2) (with reference to the expansive definition in Article 41(1)).

61. *See* the criticism by Papasavvas, *supra* note 45, esp. at 219-20.

62. *See* President of Republic v. House of Representatives, (2009) 3 C.L.R. 23, 3 LYSIAS 44 (2010).

A closer look, however, at the operation of Cyprus courts, as well as the structure of the bar and especially of the judiciary, will demonstrate considerable elements of hybridity and mutation.

A. The Legal Profession

In continental legal systems, reference is made to the legal professions in the plural.[63] For example, in Greece, even though Bar membership for a number of years is a prerequisite for a career either as a notary or in the judicial branch, both are considered to be distinct legal professions (*νομικά επαγγέλματα*).[64] On the contrary, Cyprus follows the unitary conception of the legal profession (*νομικό επάγγελμα*) prevailing in the common law.

1. A Unitary Bar

The Law regulating *advocates* is the second chapter in the colonial collection of the *Laws of Cyprus*.[65] The Law's description of what constitutes "practicing as an advocate" includes both litigation-related tasks and the basic forms of consultative lawyering.[66] The traditional English split between barristers and solicitors appears, therefore, alien to Cyprus.[67] In practice, however, a Cypriot advocate will often present herself as a "lawyer

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63. *See, e.g.*, the presentation of legal professions across EU member states at the European Judicial Network, available at http://ec.europa.eu/civiljustice/legal_prof/legal_prof_gen_en.htm.

64. *See, e.g.*, IOANNA LAMPIRI-DIMAKI, LEGAL STUDIES AND LEGAL PROFESSIONS IN GREECE 1960-2003 (3d ed., Sakkoulas Pubs. 2004, in Greek).

65. *See* the Advocates Law Cap. 2 (L. 58/55; "A Law to consolidate and amend the law relating to advocates and to make provision for the establishment of an Advocates' Pension Fund," as amended by L. 24/56). The Law has been amended over thirty times in the fifty years since independence; [hereinafter Advocates Law].

66. Advocates Law Cap. 2, art. 2(1), as amended gradually post-independence. Most consulting services enumerated were added in the early 1980s.

67. The original art. 2 provision of L. 58/55, *supra* note 6565, made reference only to court-related tasks. *See* 1 STATUTE LAWS OF CYPRUS: IN FORCE ON THE 1ST DAY OF APRIL, 1959 (rev. ed., C.F. Roworth 1959).

and legal consultant" in her business cards and storefront displays of law firms.

Cypriot advocates are organized into the Cyprus Bar Association, which constitutes the countrywide licensing body,[68] and a local Bar Association (one for each of the original District Courts), which takes charge of day-to-day affairs.[69] Requirements for admission include a law degree, pupilage for at least a year with an advocate, and success in exams organized by the Law Council—which consists of the leadership of the Cyprus Bar Association, the Attorney General, and advocates selected by them.[70] Once admitted to the Bar, Cypriot advocates are allowed to present themselves before any court throughout the Republic.[71]

The composition of the Cyprus Bar is representative of the legal system's evolution. Prior to independence, especially after the 1931 revolt, members of the Bar—including government lawyers and the judiciary—were trained in England and Wales (often without university education in law).[72] After independence in 1960, the majority of those entering the profession had obtained university degrees from Greek law schools; the United Kingdom remained the destination of choice for a minority, which included, however, most of the sons (and, gradually, the daughters) of the colonial-era Greek Cypriot barristers. Continental concepts and terms were introduced into Cyprus law, but less than might be expected in terms of the Bar's demographics. Moreover, it took more than three decades for English to be replaced by the Republic's official languages in courts (and colonial statutes to be translated). Both these phenomena could be explained in terms of a

68. Advocates Law Cap. 2, arts. 21-25, *supra* note 6565.
69. *Id*. at arts. 19-20.
70. *Id*. at art. 3.
71. *Id.*
72. In fact, according to biographical data, the majority of native lawyers admitted to the profession prior to 1931 held degrees from the University of Athens Law School. Following the revolt, successful training in the United Kingdom as a barrister (or a Scottish advocate) became the sole prerequisite.

contest between the various generations and social groups constituting the (Greek) Cypriot Bar.

The post-colonial character of the legal system as well as the lack, until very recently, of a legal academia (its impact has yet to be felt in practice) have also meant that the Bar has remained deferential to the judiciary much more than might be the case in other European countries. There exist relatively few publications on Cypriot law, and most are limited to the uncritical presentation of basic local case law.

The British colonial origins of the modern legal system are best illustrated by the omnipresent office of the Attorney General of the Republic (*Γενικός Εισαγγελέας*). During colonial rule, the Attorney General acted as both the colonial government's legal counsel and the head of colonial lawyers (and, for a certain period, judges). Upon independence, the Constitution established the Attorney General as the first among the "independent officers" of the Republic. The Constitution consecrated the Attorney General's role as both "the legal adviser of the Republic and of the President and of the Vice President of the Republic and of the Council of Ministers and of the Ministers"[73] and the officer vested with full prosecutorial powers.[74] The Attorney-General is also legally regarded as the first lawyer (advocate) of Cyprus: apart from being the Honorary President of the Cyprus Bar Association,[75] he also presides over the Disciplinary Council for advocates,[76] the Advocates Pension Fund[77] and the Law Council.[78] The office of

73. CYPRUS CONST. art. 113(1).

74. CYPRUS CONST. art. 113(2). *See also* DESPINA KYPRIANOU, THE ROLE OF THE CYPRUS ATTORNEY GENERAL'S OFFICE IN PROSECUTIONS: RHETORIC, IDEOLOGY AND PRACTICE (Springer 2009).

75. Advocates Law Cap. 2, arts. 23(1) and (4), *supra* note 65.

76. *Id*. at art. 16(2).

77. *Id*. at art. 26, which authorizes the Council of the Cyprus Bar Association to issue Regulations, approved by the Council of Ministers, on the creation and operation of the Advocates' Pension Fund. Issued in 1966, the Regulations name the Attorney-General as president of the Fund's Board of Directors.

78. Advocates Law Cap. 2, art. 3(1), *supra* note 65.

the Attorney General also acts as legal counsel to the House of Representatives, advises the Foreign Ministry, organizes the participation of Cyprus in EU law-making and the implementation of EU law in Cyprus, and represents Cyprus before European and international courts.

2. A Judicial Career

To be a judge in Cyprus means embarking upon a judicial career. According to the statute books of Cyprus, not unlike common-law jurisdictions, judicial appointments come on the basis of a successful career in the legal profession, with direct appointment to the higher ranks of first-instance judges, or even the Supreme Court, being possible. But the practice of judicial appointments has placed strong emphasis on seniority. It moreover comes close to continental models of a hierarchical, career-based judiciary. Trial judges are dependent for their promotions and transfers between districts on the thirteen Justices of the Supreme Court, who act as the Supreme Judicial Council.

"High moral standards" and a minimum of six years in legal practice are required for an entry-level appointment to the District Court, with ten years required for appointment to the middle and senior ranks of first instance.[79] The legal practice requirement can be fulfilled by "service in any judicial position."[80] It can also be reduced to five years for appointees at the entry-level, on the advice of two thirds of the Supreme Court Justices.[81] In fact, one only needs to have been a registered member of the Bar for the appropriate amount of time, without necessarily having distinguished oneself at the Bar. The selection process—operated by the Supreme Court Justices, in their capacity as the Supreme Judicial Council—principally involves an interview. One might say that neither the safety valves of continental systems (exams,

79. The Courts of Justice Law 1960, Art. 6(1) (L. 14/60).
80. *Id*.
81. Art. 6(2), *supra* note 79.

judicial training), nor those of common law systems (reputation among the Bar and the legal profession) are in place. On the other hand, the Cypriot legal profession is a small world and reputations are easily confirmable. Getting qualified candidates to apply might be a bigger problem than selecting the best suited among those who do apply.

District Judges, once appointed, are scrutinized from the higher judicial echelon, not unlike in continental systems. There are three ranks of District Judges: District Judge, Senior District Judge, and President of the District Court.[82] "Sorting out" takes place in the first two ranks, and disciplinary proceedings are not unknown. Each District Court is presided over by the senior President (known in the colloquial legal language as the "administrative President").

Appointment to the Supreme Court—and even the selection of the Supreme Court's President—tends to be strictly a matter of seniority between the Judge-Presidents of the District Court. The Constitution, in fact, provides that appointment to the appellate bench is made by the President "from amongst lawyers of high professional and moral standard."[83] However, only once was there an appointment made from outside the ranks of senior judges. In 1997, heeding calls from the Bar for an advocate to sit on the appellate bench, the President named a senior prosecutor to the Court in one of the two openings. This prompted an especially strong reaction by the judiciary.[84] Since 1991, Judges are also

82. Art. 4 of the Courts of Justice Law 1960, *supra* note 79. At present, the maximum numbers of active District Court judges are set at thirty-nine, sixteen and thirteen respectively for each rank, according to art. 6(3) of the Law.

83. CYPRUS CONST. art. 153(5).

84. The appointment was condemned by the Union of Judges in their general meeting, with thirty-four (out of forty-four) Judges present tending their resignation. *See, e.g.*, *Logos News from Cyprus*, September 29, 1997 (in Greek), available at http://www.hri.org/news/cyprus/logosg/1997/97-09-29.logosg.html (last visited Jul. 3, 2013).

organized into a Union, whose President is usually a senior President of the District Court.[85]

The judiciary is supported by an administrative mechanism of registrars and law clerks. The Court administrative personnel are considered part of the civil service of Cyprus: appointments and promotions are thus controlled by the Civil Service Commission. At the head of court administration sits the Chief Registrar of the Supreme Court. The Supreme Court employs permanent law clerks ("Legal Officers"), who assist the Justices with research and in drafting their opinions, especially with regard to administrative law cases. Originally modeled after the law clerks of common-law appellate courts, these legal officers increasingly play a role similar to—and certainly identify themselves with—the Assistant Judges (*εισηγητές*; *Auditeurs* in French) of the Greek Council of State (who constitute, however, junior members of the judiciary, and tend to rise through the Court's ranks).[86] At present—and somewhat controversially—these, too, are considered as civil servants, rather than judicial officers.

In his study of Louisiana judges, Symeon Symeonides, himself a Cypriot, associates the characteristics of the judge being or acting like "a law-maker, a policy-maker, a statesman, a politician" with common law judges, as contrasted to their brethren in civil-law jurisdictions.[87] In the case of Cyprus, partly by the power of law and partly by the force of necessity, the judiciary has been endowed with powers not unlike those of judges and justices in a common law jurisdiction. Cyprus judges enjoy the respect of Cyprus society; however they are often defensive of their status

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85. Creation of the Union was enabled by art. 4 of L. 136/91, which also added art. 10A to the Courts of Justice Law, *supra* note 79.

86. The *Référendaires* of the European Court of Justice are another model alluded to; however, the legal officers of the Supreme Court have a very high rate of permanent service. Very few have moved A few have been subsequently appointed as Family Judges.

87. Symeon C. Symeonides, *The Louisiana Judge: Judge, Statesman, Politican*, in LOUISIANA: MICROCOSM OF A MIXED JURISDICTION, *supra* note 1, at 89.

and do not tolerate challenges from either advocates or the public. The notion of contempt of court was used expansively,[88] until the European Court of Human Rights called Cyprus to task.[89] However, the judiciary has exercised notable self-restraint in matters of political sensitivity.[90] Even in less political subjects, we will search in vain for systematic efforts by the appellate bench to reshape the law. In fact, the recent tendency in many landmark cases appears to be to avoid expansive reasoning.

B. The Judicial System of Cyprus

Cyprus presently maintains a two-tier judicial system, one level each of trial and appellate jurisdiction.[91] The appellate jurisdiction of the Judicial Committee of the Privy Council was abolished upon independence.[92]

1. The Trial Courts of Cyprus: General Jurisdiction and Tribunals

The primary trial court, i.e. the court of general jurisdiction, is the District Court (*Επαρχιακό Δικαστήριο*).[93] Its jurisdiction extends over most civil and criminal matters.[94] All cases are

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88. Contempt is regulated in art. 44 of the Courts of Justice Law 1960, *supra* note 79, which effectively reprised art. 49 of the Colonial Courts of Justice statute 1953 (L. 40/53, Cap. 8).

89. *See* Kyprianou v. Cyprus (G.C.), 2005-XIII Eur. Ct. H.R. (Appl. no. 73797/01). The Supreme Court of Cyprus, (2001) 2 C.L.R. 236, had upheld the conviction of an advocate by the Assizes Court of Limassol for complaining that the judges on the bench were exchanging "billets doux" during his speech.

90. *See, e.g.,* Kettiros v. Koutsou, (2007) 1 C.L.R. 828, LYSIAS 71 (2008) with editors' note: even though the law on parliamentary elections effectively penalizes coalitions of parties as opposed to single party lists, the Court unanimously held that it is a matter for the electoral list itself to define its status.

91. The Constitution provides explicitly for the High Court (subsequently renamed the Supreme Court of Cyprus) as the highest court of last resort ("supreme second-instance court") and allows lower courts to be established by statute. *See* CYPRUS CONST. art. 152(1) explicitly provides art. 155(1).

92. Cyprus Act 1960, *supra* note 22, c. 52, §5.

93. Courts of Justice Law 1960, art. 22(1), *supra* note 79.

94. *Id.* at art. 22(1). The Supreme Court retained trial jurisdiction over admiralty cases; *see id.* at art. 19. In 1986, an art. 22B was added by L. 96/1986, which enables the District Court to hear certain kinds of admiralty cases referred

judged by a single judge—with the exception of serious crimes judged by the Assizes Court (*Κακουργοδικείο*), which sits in panels of three rotating senior District Judges.[95] Specialized tribunals, consisting of one professional and two lay judges (one representative for each of the respective social groups), adjudicate rent-control cases and employment disputes.[96] There are also the Family Courts, which are discussed below.

The trial courts of Cyprus are staffed by professional judges with tenure. With the exception of the representatives of the social groups participating in the Employment and Rent Control Tribunals, no lay participation is provided for anywhere in the administration of the justice system. Also, no magistrates' courts exist, or other small-claims jurisdictions.

2. Family Courts

Family Courts were established in 1990,[97] when the Republic begun reforming its family law in a unified, secular direction.[98] Until then, family law had been a matter of personal law, administered by community tribunals.[99] The British had removed community jurisdiction over a range of matters, including childcare and marital property, leaving ecclesiastical courts with

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to it by the Supreme Court (whether on its own initiative or by application of a litigant), These cases are listed in an Annex to the Law.

95. *See id.* at art. 5. The Assizes Court is presided over by a Judge-President of the District Court, with two Senior Distict Judges (or District Judges) as members. The Law does not dictate the duration of the term. Members of the Assizes Court may also sit in regular District Court cases.

96. On the Employment Tribunal, *see* the Remunerated Annual Leave Law 1967 (L. 8/67, as amended by L. 5/1973, art. 3), arts. 12 and 12A; Termination of Employment Law 1967 (L. 577/67), arts. 30-31. On the Rent Control Tribunal, *see* the Rent Control Law 1983 (L. 23/83), art. 4. The Court-Martial is usually regarded as a tribunal.

97. Family Courts Law 1990 (L. 23/90), as amended.

98. *See* Eliana Nicolaou, *Recent Developments in Family Law in Cyprus*, in INTERNATIONAL SURVEY OF FAMILY LAW 1996 at 121-34 (A.Bainham ed., Martinus Nijhoff Pubs. 1998).

99. *See* GEORGE SERGHIDES, INTERNAL AND EXTERNAL CONFLICT OF LAWS IN REGARD TO FAMILY RELATIONS IN CYPRUS (G.A.S. 1988).

jurisdiction over the validity and dissolution of Greek Orthodox marriages.[100] The Constitution maintained the application of jurisdiction of Greek Orthodox ecclesiastical Courts.[101] The Family Courts were originally intended to replace community tribunals, especially with regard to Greek Orthodox Cypriots. Separate Family Tribunals of Religious Groups were also set up to deal with the divorces of members of the three religious groups (Armenian, Maronite, Latin) recognized by the Constitution: these tribunals are composed of one "President" judge, appointed by the Supreme Court "from among members of the judicial service," one District Judge, and one representative of the respective group.[102] Over the past two decades, the jurisdiction of the Family Courts has been expanded, by statute and via the case law of the Supreme Court, both *ratione materiae* on every aspect of family law, and *ratione personae*.[103] At the moment, the main exceptions concern the validity and dissolution of marriage under the rules of the three religious groups (which fall under the jurisdiction of the respective Family Tribunal), and some cases involving Turkish Cypriots.[104] A three-member panel of Supreme Court justices, rotating in two-year terms, judge appeals.[105]

The Family Courts are one of the most interesting examples of Cyprus' legal hybridity. In fact, the ongoing conflicts about the status of Family Court judges and the delimitation of the Family Courts' jurisdiction vis-à-vis District Courts can tell a lot about the legal profession in Cyprus—just as the insistence, until very

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100. *See* art. 34 of the Courts of Justice Law 1953 (L. 40/53, Cap. 8). For English-era family legislation *see* Caps. 274-280 in the 5 Statute Laws of Cyprus, *supra* note 65.

101. *See* the original Art. 111 of the Constitution.

102. *See* the Family Courts (Religious Groups) Law 1994 (L. 87(I)/94), especially art. 3.

103. *See* a full account of the evolution in MODERN ASPECTS OF GREEK AND CYPRIOT CIVIL LAW (Nikitas Hatzimihail ed., 2013, in Greek).

104. *See* George A. Serghides, *Reflections on Some Aspects of the Family Law of the Turkish Community in Cyprus* , in PECUNIARY RELATIONS OF SPOUSES AND COHABITANTS 24-29 (G. A. Serghides ed., G.A.S. 2010)

105. Family Courts Law 1990, Art. 21(1), *supra* note 97.

recently, of the Church of Cyprus, alone among Greek Orthodox Churches in Europe, in maintaining some sort of divorce proceedings before its own bodies in addition to the court-granted divorce, might reveal something about the triggers of local particularities. But it is the development of Cyprus family law which makes it a fascinating case study.

What we have here is a legal field in which substantive law is, on the face of it, purely continental—a case of the effective transplantation of modern Greek family law. All but one of the ten family court judges were educated in continental law schools (more specifically, in Greece). This also holds true of most attorneys appearing regularly before the Family Courts. Family Court judges have been more prolific than their District Court brethren in legal publishing—whether this could be attributed to individual personalities, the limited subject matter they cover, the continental nature of their field, or to the availability of original material in Greek. But Cyprus family law is a true hybrid. Part of its hybridity is a matter of procedure: procedural law is common law and Family Judges use common law institutions, such as cross-examination of witnesses, alongside inquisitorial techniques. Unlike Greece, there is no consensual divorce and a marital dispute may involve four separate court cases—one each for divorce, marital property, child support and family home. As far as judicial reasoning is concerned, leading cases will cite Greek textbooks, but references to Greek family case law are less common.

Today, the Family Courts of Cyprus appear not unlike the Australian Family Court, or the Family Division of the High Court in London. They are viewed as courts of specialized jurisdiction, not as tribunals.[106] Family Court judges however tend to complain that even though they hold the same qualifications as their brethren at District Court, they are regarded as inferior. Their pay grade is

106. Sioukrou v. Ulrich, Judgment of March 10, 2011 (Kramvis, J. apparently endorsing a statement to that effect by Nikitas Hatzimihail in 1 LYSIAS 47 (2008)).

inferior: a President of the Family Court is equated to a Senior District Judge and not entitled to certain financial benefits enjoyed by their general-jurisdiction brethren. There can only be one President in each Family Court and senior justices appear firmly opposed to the idea of a President of a Family Court being eligible for appointment to the Supreme Court.

3. The Supreme Court of Cyprus

At the apex of the administration of justice system sits a single appellate court: the Supreme Court of Cyprus. The thirteen-strong Supreme Court has the attitude, and powers, of a common-law court of last resort. Its status and powers are determined in detail by the Constitution.[107] The Supreme Court sits on appeals and supervises trial courts and tribunals.[108] The Justices of the Supreme Court[109] act as the Supreme Judicial Council, which selects, appoints, promotes, and moves trial judges around.[110] The Supreme Court also writes the Rules of Procedure, which govern most procedural matters.[111] It issues prerogative writs.[112] It is also

107. *See* CYPRUS CONST. arts. 152-163.
108. *Id*. at art. 155(1); Courts of Justice Act 1960, art. 25, *supra* note 79.
109. The same word (*Δικαστής*) exists in Greek for "Judge" and "Justice" (as a person's title). Given that the Constitution referred to the members of the High Court as Judges, reference to them in English as Justices has been a very recent phenomenon.
110. Administration of Justice (Miscellaneous Provisions) Act 1964 (L. 33/64), art. 10, as amended by L. 3/87, art. 2). Between 1964 and 1987, Supreme Court justices constituted only the plurality of the Council (which was composed by the Attorney General, the President and two justices of the Supreme Court, one President of a District Court, one District Judge, and one experienced advocate). The Constitution provided that the High Court Judges act as the Supreme Judicial Council; *see* CYPRUS CONST. art. 157. Supreme Constitutional Court judges were to act as judicial council for matters pertaining to the High Court Judges, and vice versa; *id.* at arts. 153(8) and 133(8).
111. CYPRUS CONST. art. 163.
112. *Id*. at art. 155.4. The writs include *habeas corpus*, *certiorari*, *prohibition*, *mandamus*, and *quo warranto*. *See* the overview of case law in PETROS ARTEMIS, PREROGATIVE WRITS: PRINCIPLES AND CASES (2004, in Greek).

the country's constitutional court, with full power of judicial review in full bench,[113] as well as the sole administrative court.

The Constitution had provided, in fact, for two supreme courts: the *Supreme Constitutional Court*[114] and the *High Court of Justice*,[115] the former with one Greek and one Turkish Cypriot member, the latter with two Greek and one Turkish Cypriot members.[116] In both, a "neutral judge" (i.e. not a national of Cyprus, Greece or Turkey) was to preside—casting the deciding vote in cases of disagreement.[117] Constitutional Court members were supposed to act as a supreme judicial council overseeing the High Court judges, and vice versa.[118] The High Court reprised the first- and second-instance jurisdiction of the colonial Supreme Court over civil and criminal cases.[119] The Constitutional Court was, in addition to what is implied in its name, endowed with trial-instance jurisdiction over administrative-law cases.[120] Unlike his High Court counterpart, the President of the Supreme Constitutional Court could not be a "subject or citizen" of the United Kingdom or one of its present-day or former colonies.[121] The German law professor Ernst Horsthoff was accordingly appointed to that position, whereas the first High Court President (1960-1961) was the Irish Barra O'Briain, and his successor the

113. Board for Registration of Architects v. Kyriakides, (1966) 3 C.L.R. 640.
114. *See* CYPRUS CONST. arts. 113-151.
115. *See* CYPRUS CONST. arts. 152-164.
116. *See id.* at arts. 133(1) and 153(1), respectively.
117. *See id.* at art. 133(1)(1) for the Supreme Constitutional Court; art. 153 for the High Court (whose President was to have "two votes," in order to balance off a two-judge plurality).
118. *See id.* at art. 153(8) and 133(8), respectively.
119. *See* CYPRUS CONST. arts. 155-156.
120. Article 146 of the Constitution establishes a general ground of jurisdiction over petitions (the term "recourses" is being used, in the spirit of the French *recours en annulation*) to annul or confirm administrative acts. The provision has acquired great importance in actual practice. The Constitution also empowered the Supreme Constitutional Court to make a final determination of cases where the Public Service Commission is unable to muster the necessary majorities for an appointments or promotion decision. *See* art. 125(3), in conjunction with 151(1) .
121. *Id.* at art. 133(2)(3).

Canadian John Leonard Wilson (1962-1964)[122]. In 1964, as the constitutional crisis escalated and the threat of full-scale war loomed over Cyprus, both foreign Presidents left the island and the House of Representatives decided to merge the two high courts into a single *Supreme Court of Cyprus*.[123] It must be noted that the term in Greek (*Ανώτατο Δικαστήριο*), is the same for both High Court of Justice and Supreme Court. The two Turkish Cypriot incumbents continued to participate for a few more years, and indeed the Turkish Cypriot High Court Judge Mehmet Zekia (1903-1984) became the united Supreme Court's first President, on the basis of his seniority to the bench.[124] A side effect of the merger was that the High Court, which represented the continuation of the British colonial tradition and the English common law, effectively absorbed the Constitutional Court, which had embarked upon a process of transplantation and development of Continental public-law doctrine. Even though the Continental doctrinal influence over Cyprus administrative litigation persisted (in fact, it was significantly expanded) since 1964, it is likely that it would have had a more systematic, less haphazard character were it emanating from a specialized appellate bench with a Continental orientation, as opposed to a court with a strong, almost exclusively common law identity.[125]

Today, the Supreme Court constitutes a real super-court, which has absorbed the powers of both Courts—and has more recently extended its jurisdiction over family law matters, previously left to

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122. *See* HADJIHAMBIS, *supra* note 24, at 112-13 (on Forsthoff), 114-15 (on O'Briain), 120-21 (on Wilson).

123. *See* the Administration of Justice (Miscellaneous provisions) Law 1964 (L.33/64), especially art. 3.

124. Administration of Justice Law 1964, art. 3(4). On President Zekia *see* HADJIHAMBIS, *supra* note 24, at 94-97. Zekia became also the first Cypriot judge at the European Court of Human Rights, from 1961 until his death.

125. A corollary speculation concerns the possible orientation of Cyprus public law within the Continental legal tradition: the departure of Forsthoff led to the monopolization of Continental public-law influences by the Greek administrative law tradition, which at the time was strongly oriented towards the French.

confessional courts. The Supreme Court constitutes the veritable final arbiter of constitutional questions, given that the Constitution may only be modified with a procedure based on the doctrine of necessity, in cases it is absolutely necessary to do so.[126]

It is therefore evident that the Supreme Court of Cyprus is not just your typical "patriarchal" common law highest appellate court.[127] A noticeable difference with common law courts of last resort is that the Supreme Court has no discretionary power to select its own caseload: all civil—and criminal—judgments of trial courts are subject to appeal.[128] It thus performs the function of a common law intermediate appellate court. Moreover, the Supreme Court may review facts and even rehear evidence.[129] This new rule was introduced immediately upon Independence.[130] It could thus be argued that the Court's role is sometimes not unlike that of a continental court of appeals, *i.e.* of a second-level "trial" court (*juridiction du fond*).

What all this means, however, is that only a fraction of the appeals pose real legal questions. The Justices are thus left with little time on their hands for serious research. Some Justices, in some cases, effectively tend to simply choose between arguments presented by counsel.

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126. *See* Papasavvas, *supra* note 45.

127. *Cf.* DUNCAN KENNEDY, A CRITIQUE OF ADJUDICATION (Harvard Univ. Press 1997).

128. The Courts of Justice Law, art. 25(1) and (2), *supra* note 79.

129. *Id*. at art. 25(1)(3): "Notwithstanding anything contained in the Criminal Procedure Law or in any other Law or in any Rules of Court and in addition to any powers conference thereby, the Supreme Court, on hearing and determining any appeal either in a civil or a criminal case, shall not be bound by any determinations on questions of fact made by the trial court and shall have power to review the whole evidence, draw its own inferences, hear or receive further evidence and, where the circumstances of the case so require, re-hear any witnesses already heard by the trial court, and may give any judgment or make any order which the circumstances of the case may justify. . ."

130. *See* Charalambous v. Demetriou, (1961) C.L.R. 14 (the last case decided under the Courts of Justice Law Cap. 8). In the words of the Court's reporter, the opinions ("judgments") of the three Cypriot High Court Judges contain "a restatement of the powers of Appellate Courts in Cyprus under the old law in disturbing findings of fact of trial courts." *Id.* at 14.

The strongest reason for both the day-to-day influence of the Supreme Court and its overloaded docket, however, lies in its trial-level jurisdiction over administrative law cases under Article 146 of the Constitution. Such jurisdiction is only limited to annulment of administrative acts, as opposed to administrative litigation *au fond*. Be that as it may, there are a lot of administrative cases - infinitely more than what the drafters of the Constitution had in mind when they assigned them to the Constitutional Court. The Supreme Court justices spend more than half of their time—and almost all the time of the Court's law clerks—judging administrative cases individually (an arrangement colloquially referred to as "single bench"). Whereas civil and criminal appeals are examined by three-member panels, appeals against Supreme Court trial judgments are considered by five (other) Justices (a panel which is characteristically, if not confusingly, called a "plenary bench" in the colloquial legal language of Cyprus). The entire Supreme Court may be called upon in cases of great interest.[131]

Requiring a senior judge, who has spent decades to reach appellate Olympus, to actually adjudicate *en masse* small trial-level cases would be hard on anyone from any legal system. But here all Justices have spent the better part of two decades or more sitting on anything but administrative cases. A lot of them have never studied administrative law prior to ascending to the Supreme Court bench. These circumstances have led to a stronger role for the Court's law clerks or legal officers, who hold permanent positions as assistants to individual judges and tend to have studied in Greek law schools.

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131. Among instances of the full bench sitting in trial instance for administrative litigation, *see, e.g.*, Christodoulou v. Public Service Commission, (2009) 3 C.L.R. 164, 3 LYSIAS 116 (2010). The case—in which the annulment of the appointment of the Supreme Court's Chief Registrar was at stake—set a more formal rule regarding the extent to which the interview of candidates for appointment or promotion to public service may be taken into account. The President of the Court recused himself.

IV. SOURCES OF LAW

In Cyprus law, statutory law and case law coexist in virtually all legal fields. Written law could be said to be the principal source of law, somehow unlike a stereotypical common law jurisdiction (and even some notable mixed jurisdictions, such as South Africa and Scotland). Even prior to accession to the European Union, one could barely find a legal field without comprehensive statutory treatment.[132] Cyprus judges are usually unequivocal in stating that their mission is to interpret—and be bound by—statutory law. At the same time, the existing legislation often shows its age, a factor that has contributed to the importance of both English common law and local case law, at least as much as the institutional dynamics and common law mentality pervasive among the traditional legal elites, and especially the judiciary.

A. Sources Superior to Legislation

Cyprus law follows a clear hierarchy of sources. The Constitution is the supreme law of the land.[133] The existential challenges that the Republic has faced from its very beginning have also made the Constitution the paramount factor in the political, as well as the legal, discourse.[134] Given that the Republic of Cyprus stakes its continued existence, and any hopes of territorial restoration, on international legality and European integration, it should come as no surprise that European and

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132. Conflict of laws had constituted the principal exception, at least prior to EU accession. The law of domicile was however treated in arts. 5-13 of the Wills and Succession Law (Cap. 195) and a few specific provisions were found in other statutes.

133. CYPRUS CONST. art. 169. *See also* art. 188(2), *id*.

134. *See* Pavlos Neophytou Kourtellos, *Constitutional Law* in NEOCLEOUS, *supra* note 10, at 15-43; Papasavvas, *supra* note 45; ACHILLES EMILIANIDES, RELIGION AND LAW IN CYPRUS (Wolters Kluwer 2011). Among literature in Greek, most notable is the treatise by ANDREAS LOIZOU, THE CONSTITUTION OF THE REPUBLIC OF CYPRUS (2001), designed as an article-by-article commentary; ACHILLES EMILIANIDES, BEYOND THE CONSTITUTION OF CYPRUS (Sakkoulas Pubs. 2006).

international law also feature prominently in Cyprus law and politics.[135] In fact, upon accession to the European Union, the Constitution was modified so as to acknowledge the full supremacy of all European Union law (primary as well as derivative).[136] Constitutional provisions ought moreover to be interpreted in conformity to EU law.

International law is also an important direct source of law. Treaty law supersedes any legislative provision to the contrary.[137] Statutory provisions should be given, if possible, an interpretation conforming to international treaties.[138] It is less clear whether customary international law would be treated on a par with common law or by analogy to the status of treaty law.[139]

B. The Stromata of Cyprus Legislation

From a constitutional point of view, the statutory law of Cyprus consists of legislation enacted during the colonial era and maintained in force in accordance with Article 188(1) of the Constitution[140] and legislation enacted subsequent to independence by the House of Representatives in accordance with Articles 61 *et*

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135. On the role of international law in Cypriot appellate cases, *see* the cases reported and commented by Aristotle Constantinides in the *Oxford Reports on International Law in Domestic Courts – Cyprus* database, available at www.oxfordlawreports.com/subscriber_articles_by_category2?module=ildc&category=Cyprus (last visited Jul. 3, 2013). Among literature involving international law, usually with regard to the Cyprus problem, *see, e.g.*, Criton Tornaritis, *The Operation of the European Convention for the Protection of Human Rights in the Republic of Cyprus*, 3 CYPRUS L. REV. 455 (1983); KYPROS CHRYSOSTOMIDES, THE REPUBLIC OF CYPRUS: A STUDY IN INTERNATIONAL LAW (Springer 2000). On European law, *see* Constantinos Kombos, *Report on European Public Law in Cyprus*, 16(3) EUR. PUBL. L. 327-55 (2010); STUDIES IN EUROPEAN PUBLIC LAW at 101 (Constantinos Kombos ed., Sakkoulas Pubs. 2010).

136. *See* CYPRUS CONST. art. 1A (amended by L. 127(I)/2006).

137. CYPRUS CONST. art. 169(3).

138. *See* Larkos v. Attorney General, (1995) 1 C.L.R. 510, at 515; Aristidou v. The Republic, (1967) 2 C.L.R. 43.

139. *See* Aristotle Constantinides, *International Law in the Supreme Court of Cyprus* (2011, unpublished paper on file with author).

140. CYPRUS CONST. art. 188, *and* art. 29(1)(b) of the Administration of Justice Law 1960, *supra* note 110.

seq. of the Constitution.[141] The few elements of religious law that survive in present-day Cyprus law—notably, the rules on the inalienable religious endowments known as Vakf—do so by virtue of their incorporation into statutory law.[142]

A more useful approach would be to draw further distinctions between existing legislation enacted in different stages of Cyprus legal history. Identifying these *stromata* of legislation would allow us to better understand the evolutionary process that led to the present-day mixed or "hybrid" legal system and to perhaps predict its future development. A more practical reason, however, lies in the fact that the origins (and age) of legislative texts play an important role in determining the methods used in their interpretation. Legislation seen as a statement of common law principles is handled differently than legislation "indigenous" in origin or legislation deriving from continental legal systems.

We could accordingly discern five *stromata*, which correspond to five periods of the modern history of the island. The Colonial period could be subdivided into three stages: the first would range from 1878 until the official establishment of a colony of the Crown in 1925; the second from 1925 to World War Two; the third would cover the postwar colonial period, during which the long-term status of the island was continuously in question. The post-independence period could in its turn be subdivided by reference to accession to the European Union.

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141. Article 29(1) (a) of the Administration of Justice Law 1960, *supra* note 110, in combination with CYPRUS CONST. arts. 78 and 179.

142. *See* the Evcaf and Vaqfs Law (Cap. 337, enacted by L. 32/55). As to divorce, modern statutory law provides a special statutory regime for members of the three religious groups recognized in the Constitution (Armenian, Maronite and Latin) which incorporates by reference the grounds provided in the respective religious law but also lists a number of mandatory grounds. *See* art. 11 of the Family Tribunals (Religious Groups) Law 1994 (enacted as L. 87(I)/1994) and Annex I thereto. Religious ceremony under the rules of the respective denomination constitutes valid form of marriage with no need for the involvement of a civil authority: art. 9(2) of the Marriage Law (L. 104(I)/2003).

1. Another Mixed Legal System Entirely: The Early Colonial Period

The first half-century of British colonial rule did not see much legislative reform of substantive law. The administration of the justice system was redrawn from early on, with colonial courts replacing Ottoman tribunals and chipping away at ecclesiastical jurisdiction over succession and marital property. However, Ottoman law (much of it in Westernized form, following the *Tanzimat* law reforms of the mid-nineteenth century) survived as the residual legal system, until the official introduction of the common law by the 1935 Courts of Justice Law. It goes without saying that the strong control of the courts of justice by British colonial lawyers mitigated this regime from the very beginning.[143]

Much of the procedural law reforms of this period were significant, but most instruments were replaced by the interwar efforts to create a proper common law regime. However, much of the legislation on enforcement matters has survived, with little change, since 1885: the so-called Civil Procedure Law (Cap. 6), concerning precisely the enforcement of local judgments, is the principal example.[144] Specific performance of land contracts provided the other, until 2011.[145]

2. Receiving the Common Law: The Interwar Period

In 1925, Cyprus became a formal Colony of the Crown and the reform of substantive law began in earnest. Turning Cyprus into a common-law jurisdiction would happen gradually: only in 1935 were "the common law and the doctrines of equity" officially made the residual law; even then, they were to apply as in force on

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143. *See, e.g.*, Ismail v. Attorney-General, (1929) 16 C.L.R. 9, at 12 ("the rule of English law as to the binding nature of the decisions of appellate tribunals" must be followed "in the absence of a clear rule of Ottoman law in the subject").

144. Enacted as L. 10/1885.

145. Sale of Land (Specific Performance) Law (Cap. 232) (enacted as L. 11/1885 and replaced by its namesake L. 81(I)/2011).

November 8, 1914 (the day Cyprus was annexed to the Crown, following the declaration of war between the British and Ottomans). An interesting example of the conservative attitudes of British colonial lawmaking from this period concerns the Evidence Law (Cap. 9): the colony's evidence rules were reformed into a consolidated statute in 1946; Cyprus courts were nonetheless to apply "in any civil or criminal proceeding . . . so far as circumstances permit, the law the statutes in question and rules of evidence as in force in England on the 5th day of November, 1914."[146] The fact that this provision is still in place (even though the Evidence Law was amended a few years ago) is also indicative of the traditionalist mentality of the country's legal elites to this day.

The interwar era's lasting contribution has been the transplantation, mostly from other colonies, of important legislation on the basic fields of substantive law. Commercial law statutes dating from that period and still in force today are the Bills of Exchange Law (Cap. 262)[147] and the Carriage of Goods by Sea Law (Cap. 263),[148] the Partnerships Law (Cap. 116)[149] and the Bankruptcy Law (Cap. 5).[150] The most notable interwar statutes are the three "codes" of Cyprus: the Criminal Code (Cap. 154),[151] the Contract Law (Cap. 149)[152] and the Civil Wrongs Law (Cap. 148).[153] Such legislation constituted an effective codification of common-law principles in their respective fields; the statutes in question are still in force today, often with little modification.

The lineage of these "codes" is worth a separate study. It is generally accepted that the Criminal Code and the Contract Law

146. Article 3. The full title of L. 14/46 was "A law to amend and consolidate certain provisions relating to the law of Evidence."

147. Enacted as L. 20/28. The Law was identical to the English Bills of Exchange Act 1882. Its provisions on cheques were reformed in 1997.

148. Enacted as L. 8/27.

149. Enacted as L. 18/28.

150. Enacted as L. 8/30.

151. Enacted in 1928, by an Order in Council.

152. Enacted as L. 24/30.

153. Enacted as L. 35/32.

are effective transplantations of the respective nineteenth-century Indian statutes, whereas the provenance of the Civil Wrongs Law is more of a mystery. However, the full lineage of colonial statutes is more complicated: it has for example been documented that the Cyprus Criminal Code traces its immediate ancestry to the Nigerian code, which is turn is a descendant of the Queensland Code.[154] As to the Civil Wrongs Law, the 1932 Cyprus statute appears to follow the 1927 draft of a Civil Wrongs Ordinance for Palestine, which in turn was based on the Civil Wrongs Bill prepared for India by Frederick Pollock.[155]

But what does transplantation mean in this case? Let us use the example of the Contract Law, which appears almost a copy of the Indian Contract Act of 1872.[156] The primary differences between the two texts are technical. Certain of the Indian legislator's explanatory notes ("Explanations") have been moved into the main text, whereas the examples ("Illustrations") have been removed; the chapter on the sale of goods came last and was subsequently abolished. Specific performance is moreover provided for—in a single provision—in the Cyprus statute.[157] The principal

154. The Cyprus Criminal Code provided the original for the Palestinian Criminal Code Ordinance. *See* Norman Abrams, *Interpreting the Criminal Code Ordinance, 1936: the Untapped Well*, 7 ISRAEL L. REV. 25, 26-28 (1972), with a discussion of the origins of the Cyprus Criminal Code at 28-31.

155. On Pollock's influence, *see* Daniel Friedmann, *Infusion of the Common Law Into the Legal System of Israel*, 10 ISRAEL L. REV. 324, at 342 n.104 (1975). The Mandatory Civil Wrongs Ordinance, finally enacted in 1944, "reflects independent thinking and in many important points differs from both the Cyprus Ordinance and English law." *Id.*

156. On the history of the Indian Contract Act, *see* Stelios Tofaris, *A Historical Study of the Indian Contract Act 1872* (D.Phil. thesis, Cambridge University, 2010). The principal reference work on the Act is occasionally cited in Cyprus appellate cases to this day: NILIMA BHADBHADE, POLLOCK AND MULLA, INDIAN CONTRACT AND SPECIFIC RELIEF ACTS (14th ed., Lexis-Nexis 2012).

157. Article 76(1) of the Contract Law (Cap. 149): "A contract shall be capable of being specifically enforced by the Court if it is not a void contract under this or any other Law; and (b) it is expressed in writing; and (c) it is signed at the end thereof by the party to be charged herewith; and (d) the Court considers, having regard to all circumstances, that the enforcement of specific performance of the contract would not be unreasonable or otherwise inequitable or impracticable." A separate law, Sale of Land (Specific Performance) Law

substantive difference lies in the fact that the Cypriot statute provides explicitly that it be interpreted in accordance with English law,[158] even though in at least one occasion (namely the rule on *past consideration*), Cypriot, unlike Indian, courts have read the same text as deviating from the common law.[159]

The sole substantive deviation of the Cyprus statute from the Indian prototype concerns the capacity of minors. Until 1970, English common law considered minors ("infants") as all persons not having attained twenty-one years of age; capacity of minors was, and still is, governed by a series of intricate rules.[160] The Indian Contract Act espoused a clear-cut rule: capacity to contract depended upon the person reaching the age of majority according to his or her personal law ("the law to which he is subject").[161] The Cyprus Contract Law followed the Indian rule as to the non-capacity of minors, but avoided a similar reference to personal laws, simply fixing the age of majority at eighteen. In 1955, following a case in which incapacity was used as a defense by a minor against an action for breach of a promise to marry,[162] article 11 was amended to include a reference to the English rules on capacity.[163]

(Cap. 232), promulgated in 1885, governs specific performance over the sale of land. In contrast, specific performance in India is now governed by the Specific Relief Act 1963.

158. Article 2(1) of the Contract Law (Cap. 149), *supra* note 152.

159. Raif v. Dervish, (1971) 1 C.L.R. 158; *and* Romanos v. Chrysanthou, (1991) 1 C.L.R. 1991. The issue is discussed in Etaireia Diatheseon Tsimentou Vasilikou Apollon Ltd v. Kathidjioti, (1998) 1 C.L.R. 687 (notably in the dissent of Nicolaou, J.).

160. *See e.g.* JACK BEATSON ET AL., ANSON'S LAW OF CONTRACT 232-46 (29th ed., Oxford Univ. Press 2010). The age was lowered as of 1 January 1970 with the Family Law Reform Act 1969 (U.K.), §1.

161. Indian Contract Act 1872, art. 11.

162. *See* Myrianthousis v. Petrou, (1956) 21 C.L.R. 32.

163. Article 11(2) of the Contract Law (Cap. 149, as amended by L. 7/56): "The law in force in England for the time being relating to contracts to which an infant is a party shall apply to contracts in which a person who has not attained the age of eighteen years of age is a party." The second sentence of art. 11(2), conferring capacity to contract on a married person who has not yet attained the age of eighteen years was maintained.

The merits of the new rule have been debatable: it may be superior in the fairness of the result in individual cases and weaker in predictability (at least, in contrast to the general rule on modern British legislation, the provision allows Cyprus courts to take into account British statutory reform of the common law regime under the Minors Contract Act 1987). It certainly perplexes law students, but then again, the whole issue of minors' contracts has lost most of its significance in the real world. But the story is indicative of the strong orientation of late colonial (and even post-colonial) Cyprus towards the English common law–and its rules.

3. A Common Law Jurisdiction: The Postwar Period

In the years following World War II and leading up to independence, the Colonial government sought to consolidate the British position in Cyprus and to promote law reform in subjects that had previously been left to the *status quo ante*. Legislation on the administration of justice was thoroughly reformed; the new Courts of Justice Law made applicable in Cyprus the common law (and equity) as currently in force; and legislation was imported from England and Wales. Leaving aside labor and administrative reform, the main area of such legislative activity was business and commercial law. The principal examples of statutes surviving from this period are the Companies Law (Cap. 113)[164] and the Trustee Law (Cap. 193).[165] To these we must add the Trade Marks Law (Cap. 268) of 1951, which replaced an earlier statute dating from 1910.[166] A new Sale of Goods Law (Cap. 267) was enacted in 1953, modeled after the English Sale of Goods Act 1893, and repealing the Contract Law chapter on the sale of goods (modeled

164. Enacted by L. 7/1951.

165. Enacted as L. 46/1955, as a transplantation of the English Trustee Act 1925.

166. Enacted as L. 2/51. The Law was subjected to several, relatively small amendments since 1962; it was seriously revised more recently, especially by L. 176(I)/2000 and 121(I)/2006, in the process of implementation of the EU directives on intellectual property). The Appellation (Cyprus Wines) Protection Law (Cap. 127; enacted by L. 2/50) still remains in force.

after the Indian Contract Act);[167] That statute has been itself recently repealed, just like most colonial-era legislation on intellectual property.[168]

The increased participation of Greek and Turkish Cypriot lawyers in the colonial justice system also allowed, to a limited degree, the incorporation of continental legal institutions into Cyprus law: intestate succession follows the Roman-Byzantine norms,[169] whereas Turkish Cypriots are governed by the secular family law of Turkey, which has been transplanted in replacement of Islamic legal institutions of personal law.[170]

4. A Post-colonial Legal System: First Decades of Independence

Following the consolidation of the Republic, and under the reign of the doctrine of necessity, the House of Representatives pushed "indigenous" legislation seeking to deal with local concerns and political issues. A second wave of such "indigenous" legislation followed the 1974 invasions. The needs of a modern bureaucratic state have also led to a lot of normative administrative acts derivative of statutory legislation.

Transplantation of English and Greek law also took place to a considerable degree. English legal transplants have notably dominated commercial and business law reform in this period. In 1963, shipping legislation (which had been left unreformed under

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167. L. 25/1953.

168. *See* notably the Copyright Law (Cap. 264; enacted by Ordinance of April 25th, 1919, it arranged for the application in Cyprus of the (Imperial) Copyright Act 1911), repealed in 1976; the Merchandise Marks Law (Cap. 265; enacted as L.35/58), repealed in 1987; *and* the Patents Law (Cap. 266; enacted as L. 40/1957), repealed in 1998.

169. *See* the Wills and Succession Law (Cap. 195; enacted by L. 25/1945 and modified between 1951 and 1955); the law was subjected to minor amendments by L. 75/70 and L. 100/89 regarding forced heirship rules).

170. *See* the Turkish Family (Marriage and Divorce) Law (Cap. 339; enacted as L. 4/1951, amended by L. 63/54) *and* the Turkish Family Courts Law (Cap. 338; enacted by L. 43/1954, in replacement of L. 3/51).

British rule) was adopted in the mold of English law.[171] Other transplants eventually replaced (or actually updated) previous English transplants: the Sale of Goods Act 1994 has effectively copied the English Sale of Goods Act 1979,[172] the Trade Descriptions Law 1987 replicates its 1968 English namesake,[173] whereas the Copyright Law 1979 is inspired by the English Copyright Act 1956.[174] Other jurisdictions were used as models in matters of offshore finance: for example, the International Trusts Law 1992 reproduces much of the wording and concepts found in Caribbean common law jurisdictions. [175]

Greek law claims a strong influence in public law and in non-commercial civil matters. As to the former, the General Principles of Administrative Law 1999, which was meant to codify the case law of the Supreme Court of Cyprus (itself strongly influenced by Greek academic writings and case law), relied heavily on Greek doctrinal works.[176] With regard to private law, two examples from different moments might give an idea of both influence and mutation. The Associations and Foundations Law 1972, which governs many, but by no means all, non-profit institutions, since it coexists with Colonial legislation on charitable companies, trusts and clubs is one example.[177] The Law effectively reprised Articles 61-120 of the Greek Civil Code, with one key difference, which is indicative of the strong role of the Cyprus civil service: in Greece,

171. L. 45/63, known as the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law 1963.
172. L. 10(I)/94, replacing Cap. 267.
173. L. 2/87, as subsequently amended between 1987 and 2002.
174. L. 59/76 (as subsequently amended), replacing Cap. 264.
175. L. 69(I)/92, as amended by L. 20(I)/2012. An English translation of the original statute (prior to its 2012 amendment), with notes is found on the web site of the Central Bank of Cyprus, http://www.centralbank.gov.cy/media/pdf/ITLWE_ITCSLAW.pdf (last visited Jul. 3, 2013).
176. L. 158(I)/1999: "Law codifying the general principles of administrative law that ought to govern the actions of the civil service." The treatises of Athens professor Prodromos Dagtoglou on administrative law and procedure supposedly provided most of the definitions used.
177. L. 57/72.

registration is a matter for District Courts, whereas in Cyprus it is dealt with by a specialized governmental official (*Registrar*).

But the primary field of Greek influence over private law has been family law. Originally, the law of marriage and divorce had been left to the personal law of Cypriots. In the 1990s, following the establishment of state-run Family Courts, the family law of Cyprus was rewritten in a series of statutes modeled after the 1982/1983 reform of Greek family law; application of the new family law was gradually extended to all Cyprus residents. Greek law was the direct influence for the law of marriage, divorce (including marital property), children and parenthood.[178] The principal exception concerned adoption, which had traditionally been dealt with in accordance with English law.[179] The primary reason was the fact that the reform of adoption law in Greece was still not completed at the time, but another reason may well have been the orientation of the committee member who was entrusted with producing a draft statute (the strong role in adoption matters of administrative services under the Ministry of Labor and Social Welfare may have also played its part). Another exception concerns the protection of adults, which had been left outside family jurisdiction.

5. A European Legal System: Accession to the E.U.

In 2004, after fifteen years of internal debates and international negotiations, Cyprus became a member of the European Union. Cyprus did not adopt the practice of some other EU Member States, where framework legislation authorizes the executive

178. The following statutes (as amended) constitute the corpus of Cyprus family law: the Family Courts Law 1990 (L. 23/90); the Relations Between Parents and Children Law 1990 (L. 216/90); the Pecuniary Relations Between Spouses Law 1990 (L. 232/91); Children (Relation and Legal Status) Law 1996 (L. 187/96); *and* the recast Marriage Law 2003 (L. 104(I)/2003). A draft Law on personal relations between spouses, again modeled after Greek law, died in parliamentary committee. *See also* Nicolaou, *supra* note 9898, at 125-33 (as of 1996).

179. L. 19(I)/95.

power to implement EU directives by presidential decrees. As a result, the implementation of European secondary law has come to constitute the principal task of the House of Representatives. Moreover, a constellation of independent regulatory authorities (Commissioners) was established in Cyprus: their impact is being felt rather slowly, but surely.[180]

Most legislation adopted since the mid-1990s and especially the early 2000s appears to have been oriented towards preparing the country for European integration and implementing the community *acquis*. For example, the Unfair Terms in Consumer Contracts 1996 constituted an early implementation—at the time, perhaps more of a transplantation—of Directive 93/13/EEC.[181]

The accession in 2004 by Cyprus to the Vienna Convention on the International Sale of Goods (CISG) could also be seen in the light of European integration.[182] The United Kingdom has not to this day adopted the CISG, so by implication much of the sale of goods in Cyprus has been separated from English law. The fact that Cyprus adopted as official text the translation prepared by Greece a few years prior has led to some degree of mutation of what had up to that point been a purely common-law subject:

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180. Independent authorities include a Commissioner for Administration (Ombudsman); a Commissioner for Personal Data Protection; the Commission for the Protection of Competition; the Securities and Exchange Commission; the Cyprus Radio Television Authority; the Cyprus Energy Regulatory Authority; the Commissioner for Electronic Communication and Postal Regulation; and a Commissioner for Children's Rights (a position held by the Commissioner for Legislation: officially translated into English as "Law Commissioner", the office's powers are but a shadow of what similar institutions do in other common-law or even continental jurisdictions. This list does not include other "Commissioners," who hold in essence positions of junior cabinet members without portfolio.

Of these authorities, the Commissioner for Administration is frequently in the news; the market regulation commissions are fully functional, if understaffed. The authorities for energy and telecoms regulation have only recently begun to flex their muscle against the state-owned public utility companies, such as the Electricity Authority of Cyprus and the Cyprus Telecommunications Authority, which possess much stronger legal representation.

181. L. 93(I)/96.

182. L. 55(III)/2004.

moreover, Cyprus law may now claim, in several cases, two words in Greek for the same concept of the law of sales.

Cyprus' implementation of legislation has tended to follow prototypes from Greece and the United Kingdom. On certain occasions, however, implementation legislation has asserted a distinctive local touch.[183] The most common practice, however, has been to transpose the text of the directive into statute, with little attempt to consolidate EU derivative law. Consumer Sale of Goods is thus treated in a statute distinct from the Sale of Goods Law 1994;[184] two separate laws were enacted on the same day to implement the directives on contracts negotiated away from business premises and on distance contracts.[185]

6. A Note on Statutory Interpretion

Statutory interpretation reflects the key characteristics of the legal system. Were we to give a one-sentence summary, we could say that legislation of common law origin is interpreted in accordance with common law cases and authorities, whereas in interpreting legislation of continental provenance, continental authorities—usually Greek—will be used. Upon closer inspection, however, it appears that the terms, concepts and authorities used will, to a considerable extent, vary depending upon the individual case and the actors involved (both counsel and judges). In a contract case, for example, counsel may or may not present helpful English (or Indian) authorities. The judge sitting on the case will certainly take note of authorities mentioned by counsel; on occasion, the judge in question will do further research on his own, but we can hardly expect this to happen very often.

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183. For a case study on the implementation process, *see* CONSTANTINOS P. ILIOPOULOS, THE EU-MEMBERSHIP OF THE REPUBLIC OF CYPRUS: THE HARMONIZATION OF THE COMPANY LAW AND THE LAW OF INTELLECTUAL PROPERTY (Ant Sakkoulas, 2006, in Greek).

184. L. 7(I)/2000.

185. L. 13(I)/2000 in implementation of Directive 85/EEC; L. 14(I)/2000 in implementation of Directive 97/7/EC.

This raises the question of determining what influences judicial—and legal—reasoning. Undoubtedly, the common law nature of Cyprus court procedure and the common law mentality of most judges, as well as many legal practitioners, constitute a very important factor–perhaps the primary one. The system of the adversarial process helps maintain the common law attitude, even in fields of continental influence, such as family litigation. We must not underestimate, however, the impact of the quantity—and quality—of the caseload. An important factor has to do with numbers. On the one hand, the little variety in factual patterns incumbent upon a small jurisdiction means fewer complex issues for judicial decision-making; as a result, local authorities are very few compared to what is readily available from abroad. On the other hand, the lack of an intermediate appellate jurisdiction, which would act as a filter of cases on appeal, and thus allow Supreme Court justices more time for reasoning in depth, affects both mode and quality of judicial reasoning. It must be remembered that, unlike many of their brethren at the English High Court, few, if any, judges of the District Courts had a specialist legal practice prior to joining the judiciary—and they are certainly unable to specialize once on the bench. In their turn, Supreme Court justices, who spend a considerable amount of their time judging administrative cases at first instance, have effectively learned administrative law while on the Supreme Court bench. In short, Cypriot appellate judges deal with too many "easy" cases and too few guiding or landmark ones.

We must then consider the language factor: English was the original language of the system – in fact, until recently it had been the principal language. English terms and materials are still used—translated or not—in everyday practice. In certain legal proceedings, counsel appear to not have even read the statute, working instead straight out of the textbook used in their British law school studies. For example, in discussing the formation of contracts, the Contract Law speaks of *proposal* and *acceptance*.

The term *proposal* is regarded in Indian law as the equivalent of *offer*; it has been officially translated into Greek as *πρόταση*—a word that is both the exact linguistic equivalent of *proposal* and the established term used in Greek for *offer*.[186] The word *προσφορά*, used in colloquial Greek too as the equivalent of offer, is also used in correspondence to terms such as tender, or even bargain. All this has never been a matter of contention in Cyprus. Nonetheless, every once in a while an appellate judgment makes reference to "*προσφορά* (offer)" as the statutory term.[187]

At the same time, for the past three or four decades, the majority of practitioners have been educated in Greece. Greek terms, concepts and authorities have also made their way into judicial reasoning. Modern Greek legal thinking has insisted on looking for the purpose and meaning of the statute: *teleological interpretation* often prevails over *grammatical interpretation*. In Cyprus, lawyers and judges are much fonder of invoking the letter of the law—which has the additional advantage of not having to rely on external authorities. In fact, they appear more likely to consult and cite a dictionary of Modern Greek than their brethren in Greece.[188] But Cyprus judges also frequently employ the teleological method—certainly more than their English brethren traditionally have.[189] This does not hold as true, of course, when dealing with statutory provisions seen as stating a common-law rule: such provisions are usually interpreted in the light of English

186. *See, respectively,* MICHAEL STATHOPOULOS, CONTRACT LAW IN HELLAS (Kluwer Law International 1995).

187. *See, e.g.*, Georgiou v. Cyprus Airways, (1998) 1 C.L.R. 1794; Aresti v. LOEL, (2008) 1 C.L.R. 1305; 3 LYSIAS 47 (2010) (with a critical note by N. Hatzimihail, at 48-50).

188. *See, e.g.*, Pericleous v. Latsia Municipality, (2002) 2 C.L.R. 459 (looking into two dictionaries for the "common and natural meaning" of the word "store" in a criminal appeal). A quick search at the CyLaw legal database reveals (as of February 20, 2013) a total of sixty-six Supreme Court judgments in the past fourteen years, with judge or counsel citing GEORGIOS BAMBINIOTIS, DICTIONARY OF MODERN GREEK (Lexicoloy Centre, 1998) or subsequent editions.

189. English law has somewhat moved towards purposive interpretation since Pepper v. Hart, AC 593 (1993).

cases and legal literature.[190] Even there, however, we observe interesting examples of mutation, such as Cypriot contracts cases where "teleological interpretation" is invoked as the method of interpretation of a contract,[191] even though the term—certainly not used in the applicable English common law—is not really used in Greek law, either, with regard to contract interpretation.

B. Case Law is Paramount

If written law provides the Cyprus legal system with its foundations and building structures, it owes its actual shape to case law. The influence of English common law in Cyprus is such that the country is frequently regarded as a common law jurisdiction; local case law is important in all legal fields, especially those inspired by continental substantive law; and the European Union courts have been increasingly influential across the board.

A distinction should in principle be drawn between those legal fields which are regarded as falling under the English common law—notably procedural law, as well as most private law and criminal law—and fields where English common law is not regarded as applicable, granting its place to local case law and other authorities. The Supreme Court, however, has extended the doctrines on judicial precedent even with regard to the latter.[192]

1. On the Legal and Political Foundations of Case Law

According to the Supreme Court, rule by judicial precedent is grounded on the principle of judicial hierarchy—and the need for

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190. *See, e.g.*, Seamark Consultancy Services Ltd. v. Lasalle, (2007) 1 C.L.R. 162, reversing previous cases on the interpretation of art. 32 of the Courts of Justice Law 1960, *supra* note 79, with regard to worldwide effect of freezing orders, on the basis of new developments in English case law under the identical §45 of the Supreme Court of Judicature (Consolidation) Act 1925.

191. Club "Anorthosis" of Famagusta v. Apollon Athletic Football Club of Limassol (2002) 1 C.L.R. 518, at 525.

192. *See notably*, Republic of Cyprus v. Demetriades, (1977) 3 C.L.R. 213; Elefetheriou-Kanga v. The Republic, (1989) 3 C.L.R. 262.

predictability.[193] We will on the contrary search in vain the Constitution for an express legal basis for a case-law system, or even for the maintenance of English common law. This constitutional omission contrasts with the explicit constitutional provisions regarding the transitional maintenance in force of colonial statutes,[194] as well as the continued use of prerogative writs as a remedy granted by the High Court.[195] The colonial *status quo* was instead confirmed by the new Courts of Justice Law 1960,[196] which repeated most of the provisions of the colonial Court of Justice Law (Cap. 8) enacted in 1953.[197] Article 29 of L. 14/1960 has reprised Article 33 of L. 40/53 in stating the "law to be applied" by "every Court in the exercise of its civil or criminal jurisdiction." According to article 29(1)(c) such law includes "common law and the principles of equity save in so far as other provision has been or shall be made by any Law and so far as not inconsistent with the Constitution." With the exception of adding a reference to the new Constitution, the new provision is but the translation of Art. 33(1)(c) of L. 40/1953, with the original "doctrines of equity" translated into Greek as "principles of equity," absent a more exact word.[198]

The provision has been vividly criticized; in the words of Symeon Symeonides, it "went much further than the letter and

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193. *See* Republic of Cyprus v. Demetriades, (1977) 3 C.L.R. 213.
194. CYPRUS CONST. art. 188(1).
195. CYPRUS CONST. art. 155(4).
196. L. 14/1960.
197. L. 40/1953.
198. It is worth noting that the numbering of section (1)(c) has been maintained by a conscious effort: the Colonial provision named "the Laws of the Colony;" the Ottoman laws still in force (namely the law on Vakfs and the Maritime Code); common law and equity; and the "Statutes of Her Imperial Parliament and Orders of Her Majesty in Council, applicable either to the colonies generally or to the Colony save in so far as the same may validly be modifed or other provision made by any Law of the Colony." The new post-independence provision names: first, the Constitution and laws produced by the Republic; second, the colonial legislation maintained under Art. 188 of the Constitution; third, common law and equity; fourth, the laws and principles on Wakf (*ahkamul evkhaf*); and fifth, British laws applicable in Cyprus immediately before independence.

spirit of the Constitution, and sought to tie the legal system of Cyprus surreptitiously and permanently to the English common law."[199] There was no temporal limitation, and it meant that "a post-1960 decision of the House of Lords would be binding on the courts of Cyprus, and, what is more, even if a subsequent statute of the British Parliament had superseded that decision."[200]

Symeonides notes that the whole statute was "drafted by a well-known former servant of Her Majesty's government" and promulgated by an "inexperienced House of Representatives."[201] In their defense, the Representatives took the easy way out in repeating the pre-existing provision. The Republic begun its life in an uneasy truce between realities and aspirations; its constituent communities were locked in an opposition that soon came to hinder the state's very operation. Moreover, the various social groups, including the newly formed legal and political elites, were still trying to find their footing into the postcolonial era. It could be argued that neither the consensus nor the massive intellectual power needed to engage in large-scale law reform was there in 1960; on the contrary, maintaining the *status quo* would leave all options open for the future—and the *status quo* was a common law regime, with the probable exception of administrative law. It must be noted that, even though the right of appeal to the Privy Council was abolished upon independence, the new High Court was but the continuation of the colonial Supreme Court in law and in spirit: its foreign President had to be a Commonwealth national and its Cypriot members boasted of long service in the colonial judiciary.

Symeonides is nonetheless correct in pointing to personal biases, as well as what was to become a key conflict within the Greek Cypriot Bar. For the last thirty years of British colonial rule, membership to the Cyprus Bar had been effectively preserved for

199. Symeonides, *The Mixed Legal System of the Republic of Cyprus*, *supra* note 4, at 450.
200. *Id*.
201. *Id*.

people trained in England as barristers (many without a law degree).[202] Following independence, bar membership began expanding significantly. An increasing majority of the new lawyers came from non-legal families, and the vast majority of new entrants to the profession were holders of university degrees from Greek law schools (aided by scholarship policies, entrance exams, and especially the lack of university tuition). This resulted in a generational, as well as a "class", conflict, whose traces are still visible today. Maintenance of the English common law thus became a vehicle for the dominance of the established group of colonial advocates, and their children, in the emerging legal profession of Cyprus. This internal conflict is best illustrated in the use of the English language: it took three decades after independence for the legal system to complete the transition from English to the Republic's official languages (ironically, it took as much time for a graduate of a Greek law school to become an appellate judge); the basic colonial statutes were only translated in the 1990s. To this day, there has been no official translation of the principal instrument of civil litigation, the Civil Procedure Rules.[203]

2. The Common Law in Practice

Case law might rule Cyprus law in its entirety, but the sources used and the level of discretion permitted to judges depends on the subject at hand. We have already noted that colonial statutes seen as having codified the common law in the respective subject are to

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202. *See* the original Advocates Law (Cap. 2), art. 3 (1955). Admission to practice as an advocate was reserved to those "entitled to practice" as a barrister-at-law or "admitted to practice" as a solicitor in England or Northern Ireland or as an advocate in Scotland.

203. *Civil Procedure Rules*, available at http://www.cylaw.org/cpr.html (last visited Jul. 3, 2013). All amendments since 1960 have been in the official languages (notably Greek), but the main body of the Rules has remained unchanged (and untranslated) since British rule. Legal practitioners make use of unofficial translations into Greek, notably by a former Registrar, which are not well regarded by many.

be interpreted in accordance with present-day English common law.[204] Occasionally, the statutory provision is seen as simply the starting point for a discussion of more modern English authorities. Such legislation is certainly not "gapless." *Lacunae* are directly filled by the common law: a number of common-law torts thus today co-exist with those expressly sanctioned in the Civil Wrongs Law.[205] But we can also witness the contrary case, where the letter of a law normally seen as codifying the common law is applied in a manner such as to invent derogation from the common law.[206]

British legislation enacted after 1960 is regarded as not having any authority in Cyprus. Coupled with the reluctance of lawyers and legislators to reform basic laws, this actually means that English common law rules superseded by statute in the United Kingdom are still valid in Cyprus; an example that comes to mind concerns the common law doctrine of privity of contract and third-party rights. It might be possible, however, to "cheat" the court, using reference works and subsequent case law, into accepting that English law as modified by statute constitutes in effect English common law.[207]

The common law case law of other Commonwealth jurisdictions (notably Australia, New Zealand and Canada), and at times the United States of America, has persuasive authority.[208]

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204. *See, e.g.*, Stylianou v. The Police, (1962) 2 C.L.R. 152 (notably Josephides, J., at 171: "[I] am of the view that, as a general rule, our Court should as a matter of judicial comity follow decisions of the English Courts of Appeal on the construction of a statute, unless we are convinced that those decisions are wrong.").

205. *See* Universal Adver. and Publ'g Agency v. Vouros, (1952) 19 C.L.R. 87 (Civil Wrongs Law does not preclude an action for passing-off of a business).

206. For example, the case of past consideration. *See* Raif v. Dervish, (1971) 1 C.L.R. 158; *and* Romanos v. Chrysanthou, (1991) 1 C.L.R. 1991. The issue is discussed in Etaireia Diatheseon Tsimentou Vasilikou Apollon Ltd. v. Kathidjioti, (1998) 1 C.L.R. 687 (notably in the dissent of Nicolaou, J.).

207. *See, e.g.*, VASILAKAKIS & PAPASAVVAS, *supra* note 10, at 50.

208. *See e.g.* Republic v. Alan Ford et al., (1995) 2 C.L.R. 232 (referring to "Canadian and American cases" regarding criminal procedure); Jirkotis & Achilleos Co. Ltd. v. Paneuropean Ins. Co. Ltd., (2000) 1 C.L.R. 537, *citing* The Esmeralda I, (1988) 1 Ll.R. 206 (Aus.), as well as English treatises (among ordinary civil appeals (three-justice panel)); Standard Fruit Co. (Berm.) Ltd. v.

Especially in the early life of the Republic, U.S. case law was invoked in constitutional law matters.[209] Given that Privy Council jurisdiction was abolished upon independence, Cyprus law should arguably follow the English approach, which regards decisions issued by the Judicial Committee ("Board") of the Privy Council as of persuasive, and not of binding, authority.[210] "Authoritative" textbooks and other works on English law also have persuasive authority.[211]

3. Precedent into Continental Law?

Contrary to traditional stereotypes and despite pronouncements to the contrary, case law does form a source of law throughout the Western legal tradition, especially when actual legal practice is concerned. One might, in fact, speak of a neo-formalist streak in present-day continental legal tradition, where legal writers are reluctant to deviate or criticize established case law solutions. The case law of the European Court of Justice is especially authoritative and the anonymous long reasoning of its judgments is quoted as if stating the law, with little regard to fine concepts such as *obiter dicta* and distinguishing precedents. If common law judgments produce legal norms *auctoritate rationis*, continental

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Gold Seal Shipping Co. Ltd., (1997) 1 C.L.R. 464) (citing U.S. and Canadian cases).

209. *See, e.g.*, Khadar v. The Republic, (1978) 2 C.L.R. 130, at 230-33 (discussing Furman v. Georgia, 33 L.Ed.2d 349).

210. *See, e.g.*, R v. Blastland, AC 41, at 58 (1986) (Privy Council decision in *Ratten's* case, All ER 801 (1971)) ("Not technically binding" but "of the highest persuasive authority" in view of the Board's "constitution"). *See also* Simon Whittaker, *Precedent in English Law: A View from the Citadel*, 14 EUR. REV. PRIVATE L. 705, 721 (2006).

211. *See* Standard Fruit Co. (Berm.) Ltd. v. Gold Seal Shipping Co. Ltd., (1997) 1 C.L.R. 464. The Court, in this admiralty case, uses English treatises on international trade and carriage of goods as primary authority, excerpting at length from THOMAS GILBERT CARVER & RAOUL P. COLINVAUX, CARRIAGE BY SEA (12th ed., 1971) and CLIVE M. SCHMITTHOFF & JOHN ADAMS,. SCHMITTHOFF'S EXPORT TRADE: THE LAW AND PRACTICE OF INTERNATIONAL TRADE (9th ed., Stevens 1990) (publication dates are not mentioned in the decision); cases are only cited in an incidental fashion.

case law produces norms *ratione auctoritatis*. The case law of superior courts is binding because of the hierarchical control they exercise over lower courts. Superior courts tend to affirm their own rules out of respect for legal certainty, but especially to economize judicial time.

The administrative law of Cyprus is a case in point. British colonial rule left behind a well-functioning civil service, at least in certain areas, and a lot of ad hoc legislation. With the exception of prerogative writs, however, it left little in terms of either judicial review of administrative action, or, more generally, administrative law doctrine. This can be easily explained in light of the development of administrative law in the United Kingdom: only in 1958 did British administrative tribunals begin to be regarded as judicial ("external") rather than administrative ("internal") bodies and only in 1959 was a theory of judicial review of administrative acts elaborated as a doctrine, with the appearance first of S.A. De Smith and then William Wade's books.[212]

The Constitution had provided for a separate Supreme Constitutional Court, with jurisdiction to hear, apart from constitutional cases, petitions for the annulment of administrative acts.[213] In the meantime, all traditional, "common law" subjects were left with the High Court. As a result, the Supreme Constitutional Court, finding itself more and more drawn towards administrative litigation, soon oriented itself, under the leadership of German professor Ernst Forsthoff, towards the "continental administrative system" and the "principles enunciated" in continental administrative courts.[214] The tenure of Forsthoff, whose judicial writings bear an unmistakably-German touch, was short-lived. In 1964, the Supreme Constitutional Court was merged with the High Court. The continental legacy of Cyprus

212. S.A. DESMITH, JUDICIAL REVIEW OF ADMINISTRATIVE ACTION (Stevens & Son, Ltd. 1959); H.W.R. WADE, ADMINISTRATIVE LAW (Clarendon Press 1961).
213. CYPRUS CONST. art. 146.
214. Ioannides v. The Republic, (1979) 3 C.L.R. 295.

administrative law continued, however, albeit with a decisive turn towards Greek administrative law. At the time, Greek administrative law was modeled after the French administrative law and essentially judge-made, with the Council of State elaborating "general principles" of administrative law.[215] The case law of the Greek Council of State thus became the predominant authority in the early years of the Republic, supported by Greek academic writings.

The Supreme Court still makes frequent reference to the Council of State case law (and occasionally, guiding cases from the Greek administrative appeals courts). Over time, however, it has developed its own corpus of landmark cases that decide many important questions. Under Greek administrative law, the basis for treating such case law as a source of law would be to consider the case law as embodying "general principles" of administrative law; moreover, the values of legal certainty and predictability, and especially the principle of judicial hierarchy, constitute convincing arguments in favor of adherence to precedent.[216] The Supreme Court has repeatedly held that the *stare decisis* principle does apply to administrative law cases, precisely on the basis of the principle of judicial hierarchy and predictability.[217]

Where does this lead us? The decisions of the five-member Supreme Court panels sitting on administrative litigation appeals (erroneously called "plenary benches" in colloquial legal jargon) are clearly binding on individual Supreme Court justices sitting on

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215. *See* EPAMINONDAS SPILIOTOPOULOS, GREEK ADMINISTRATIVE LAW (Sakkoulas Pubs. 2004). Under the 1975 Constitution, German influence over Greek administrative law has expanded, even though the French influence remains stronger to this day. Since 1977, two "trial" instances of regular Administrative Courts were created (replacing specialized jurisdictions such as Tax Courts), supervised by the Council of State, which, however, still retains much of its first-instance jurisdiction. After decades of rule by case law, a Code of Administrative Process (along with a Code of Administrative Litigation Procedure) was enacted in 1999.

216. Amanuel v. Alexandros Shipping Co. Ltd., 1 All E.R. 278, at 282 (1986).

217. Demetriades v. The Republic, (1977) 3 C.L.R. 213, notably at 320 ; Elefetheriou-Kanga v. The Republic, (1989) 3 C.L.R. 262.

first instance.[218] The same rule certainly applies to judgments by the entire Supreme Court (which sits in full bench on cases involving constitutional questions, as well as on cases deemed of fundamental importance). The Supreme Court has adopted the English rules of *stare decisis*, as contrasted to the more liberal U.S. approach.[219] It has moreover reserved its right to reverse its own judgments—a judicial policy grounded on English judgments and *dicta*, but asserted more vigorously in Cyprus.[220] A single Supreme Court justice sitting at first instance is not considered as an "inferior court," but he is bound by the decisions of an appeals bench.[221] The full bench, however, may reverse its own case law. An appellate panel should accordingly be able to explicitly reject (or reverse) the rule created by another appellate panel. Consistency is usually sought after, but there are several examples where a line of precedent has been disregarded in some cases, leading to a contrary line of precedent co-existing with the established one.[222] It is moreover not always easy for practitioners and judges alike to draw a sharp distinction as to the binding authority of Supreme Court judgments in administrative first instance and appeals judgments. For example, in holding that the Advocates' Pension Fund constituted a private-law rather than a public-law entity a civil appeals panel led by the Chief Justice referred to Supreme Court judgments in administrative first

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218. Elefetheriou-Kanga v. The Republic, (1989) 3 C.L.R. 262. *See, e.g.*, KEO Ltd. v. The Republic, (1998) 4 C.L.R. 1023 (Nikitas, J. sitting at first instance, holding "the stare decisis principle" made "absolutely binding" on him an appellate ruling on the point in question, *citing* Republic v. Costas Tymvios Ltd., (1994) 3 C.L.R. 553. In the case cited as authority, the appellate panel reversed the first-instance judgment of Nikitas, J.).

219. *See e.g.* Republic v. Demetriades, (1977) 3 C.L.R. 213 at 259-264 (Loizou, J.), *and especially* 296-320 (Triantafyllides, P.).

220. *See* an early case, Papageorgiou v. Komodromou, (1963) 2 C.L.R. 221; Mavrogenis v. House of Representatives, (1996) 1 C.L.R. 315.

221. Republic v. Demetriades, (1977) 3 C.L.R. 213, at 320. *See also* KEO Ltd. v. The Republic, (1998) 4 C.L.R. 1023.

222. *See, e.g.*, a note by Laris Vrahimis in 1 LYSIAS 56 (2008), on the conflicting case law regarding the possibility of changing the legal ground on which applications may be filed under Order 48 of the Civil Procedure Rules.

instance settling the issue.[223] The practical result has a direct impact on the workload of Supreme Court Justices: in a civil case, the District Court would have first instance jurisdiction, with a three-justice panel on appeal, whereas in an administrative case, six justices would have been employed, one on first instance and five on appeal.

V. CONCLUSIONS

In his "Third Legal Family" project, Vernon Palmer set as the "lowest common denominator" of a mixed jurisdiction three characteristics.[224] The legal system must be built upon "dual foundations" of common-law and civil-law materials.[225] This duality must be "obvious to an ordinary observer"—a condition which probably requires "a quantitative threshold."[226] Palmer also emphasizes the *structural "allocation of content*"—that the civil and common laws dominate their respective spheres.[227] In the case of Cyprus, civil law has made sufficient inroads since independence so that we can honestly speak of dual foundations; mutations and hybrid elements cannot hide the predominance of each legal tradition in the respective sphere.

In that same project, jurists from seven emblematic mixed jurisdictions[228] were asked to respond to a detailed questionnaire divided into ten subjects: the founding of the system; the role of

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223. Raphael v. Advocates' Pension Fund, (2008) 1 C.L.R. 300, 1 LYSIAS 95 (2008) (Artemides, C.J., cited as previous authority); Raphael and Hadjiprodromou v. Advocates Pension Fund, (2000) 4 C.L.R. 1212 (Kronides, J., which *cited* Koumas v. Advocates Pension Fund, (2000) 4 C.L.R. 1167, where Artemides, J. referred to Nicolaou v. The Republic, (2000) 3 C.L.R. 221: that case actually concerned the government-controlled Surplus Personnel Fund, which dealt with redundant private sector employees, citing Greek authorities more than two decades old).

224. Palmer, *Introduction* to MIXED JURISDICTIONS WORLDWIDE, *supra* note 1, at 10.

225. *Id.* at 7.

226. *Id.* at 8.

227. *Id.* at 8-9.

228. Two more jurisdictions—Botswana and Malta—were added in a second (2012) edition to the book.

magistrates and the courts; judicial methodology; statutory interpretation; the shape of mercantile law; the role of procedure and evidence; judicial reception of common law; emergence of new legal creations; the internal opposition between "purists," "pollutionists" and "pragmatists;" and the linguistic factor.[229] This article has provided a first opportunity to explore these subjects.

Cyprus belongs to a small group of legal systems that were once part of the common law world, but have moved somewhat away from that legal family, since independence in 1960. European integration is further challenging the colonial status quo, but it may still be too early to assess its impact.

Yet Cyprus is still more of a common law jurisdiction than not. Most of private and criminal law clearly remain common law subjects; as far as mercantile law (the subject most easily taken over by the common law in mixed jurisdictions with private law of continental origin) is concerned, Cyprus law has seen new legislative transplants from England even decades after independence. Compared to the more populous—and popular—mixed jurisdictions with centuries of history, tiny Cyprus can claim less juristic innovation (except, of course, for the necessity doctrine in constitutional law); but it can also offer interesting case studies of hybridity and mutation of both common law and continental legal institutions.

The judiciary has been perhaps the singular most important factor in determining the fate or the exact "mix" of the legal system. Appellate courts have remained strongly attached to common-law notions: this has resulted in the use of common law judicial techniques, and especially the English doctrine of *stare decisis*, even in "continental" legal fields.[230] At the same time,

229. *See* the Questionnaire, *id.* at 471-478.

230. In this article, I have avoided applying the conceptual map of purists, pollutionists and pragmatists on Cyprus jurists, even though I have personally found it illuminating in the study of historical mixed legal systems. Cyprus legal consciousness has traditionally identified a division, which is not absolute, between lawyers educated in Britain and those educated in Greece. "Purists" in

those same courts are responsible for the wholesale reception of continental administrative law. Continental notions and techniques have also been integrated into the system, notably with regard to statutory interpretation. The abundance of written law (even before accession to the European Union) and the clear hierarchy of legal sources have been crucial factors in this respect.

The linguistic factor constitutes the other pillar of legal mixity. English has maintained enough of its influence so that the common law elements of Cyprus law are in no danger of disappearing; at the same time, the expanding use of the Greek language has been the pivot of—direct and indirect—continental influence.

These thoughts are certainly more of a working hypothesis than a conclusion properly speaking. This very article, after all, constitutes an early effort at understanding a unique legal system. Yet this is not a simple academic exercise. Comparative law theory is a valuable tool to those of us dedicated to the understanding, doctrinal development and elaboration of Cyprus law. Perhaps we could in time offer our own small contribution in consideration.

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historical mixed jurisdictions tend to defend local uniqueness against the global model of the common law; "pollutionists" have the support of an imperial, colonial or federal institutional machinery, as well as sheer numbers. In the case of Cyprus, the originally existing (common law) tradition has not been traditionally linked with the ethnic/national identity of the population at large; it is "pollution" that allows Cypriots to claim a local identity and, occasionally, assert their ethnic identity.