

The spirit of the constitution. The institutionalized unsociability in Greece

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Abstract

With this article attempts a comparison of the Greek Constitution of 1975, the constitutions of Germany, USA, Switzerland, Austria, France, UK and Italy on the issue of property relations and general interest, in order to highlight those notified differences relating to these communities and resulted in specific social situations. While the constitutions of the other countries, which are among the most representative democracies of the Western world, are characterized by an increased institutionalization of sociability, the Greek constitution on the issue of general interest takes an antisocial and, at best, neutral attitude. The convergence of the Greek constitution on this issue with the other constitutions is considered a prerequisite for overcoming the crisis and, more generally, for social development. This little effort hopes to contribute to a more social future formulation of the Greek constitution and a corresponding behaviour of Greek society.

Keywords: Constitution, property, well-being, society, capital flight

Introduction

In his monumental work *The Spirit of the Laws* (1748) Charles-Louis Montesquieu, suggested that laws should reflect reason (logic) and be adjusted accordingly to each society's needs. Montesquieu tried to classify the various phenomena and to extract historical determinism. This article attempts to compare the Greek Constitution of 1975, with the constitutions of Germany, USA, Switzerland, Austria, France, UK and Italy on the issue of property relations and general interest, in order to highlight the differences relating to those societies and result in specific social situations.

The term “*syntagma*” (Constitution) was introduced in Modern Greek legal and political terminology by the pioneer of Greek Enlightenment Adamantios Korais (Smyrna, 27 April 1748 – Paris, 6 April 1833) who rendered thus the French term *constitute* (Droulia, 1997, p. 260) The beginnings of this term are traced back to Aristotle who studied 158 treatises *peripoliteion* among which only *The Constitution of Athens* has survived according to Diogenes Laertius (Nikoloudis, 1993, pp. 17-22). In more recent era the term “constitution” is found in the Anglo-Saxon world and specifically in the revolution of 1640 (Tomkins, 2005, p. 67). In his classic work *The Spirit of the Laws*, Charles-Louis Montesquieu (1689 – 1755) maintains that laws are shaped according to the necessities of societies and introduced the concept of the separation of powers to legislative, executive

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and judicial. Laws must take into consideration the structure of each society and serve the general welfare while securing liberty (Montesquieu, 1748, Chapter 3). Korais was a staunch supporter of Montesquieu's ideas (Kitromilidis, 2010, p. 219). Georg Jellinek, the famous Austrian constitution expert maintains that even though in most contemporary states the constitution contains the fundamental regulations of law, those do not meet with wide acceptance unless they are enforced by the state authorities. He attributes to this fact the failure of the French Revolution of 1789 and of the German one in 1848 (Schulz, 2004, p. 193).

This article attempts to compare the Greek "economic constitution" of 1975 with the corresponding ones of Germany, USA, Switzerland, Austria, France, United Kingdom and Italy. Pavlos Bakoyiannis, who was murdered on 26 September 1989 by the terrorist organization 17November, wrote the following about the socio-political conditions of the period in which the 1975 constitution was written: "The demand for renewal was in conflict with the fact that the way the political change took place brought forth the same persons who had led parliamentarism to a crisis before 1967. Along with these persons the ideas of that period re-introduced and found expression in the Constitution of 1975 (Bakoyiannis, 1977, p. 299).

Panayiotis Pikramenos, Prime minister (2012) and former president of the Council of State, remarked the following about the Constitution of 1975: K. Karamanlis believed that Greece needed a Constitution of parliamentary democracy which would empower the executive power without limiting the responsibility of the government before the members of parliament. What actually resulted was a "Greek Constitution", a liberal constitution adjusted to the special conditions of the country, with a definite character of a social state. K. Tsatsos, who was the president of the Constitutional Committee, was elected President of the Republic as soon as the Constitution was approved (Pikramenos, 2013).

The Constitution was drafted and voted in without broaching the distinction of powers, but not that of persons. Mr. Pikramenos makes the following comments about its content: It contained, however, redundant regulations, proclamations and vague details which should not be encountered in a brief and succinct text of a Constitution. It underwent revisions which burdened it even more and overturned its equilibrium. Above all, though, it was not always applied in the best possible way. Concerning the role of the 1975 Constitution, P. Dimitrokallis, an ex-member of parliament with the New Democracy party, points out the vast difference that existed between what it appeared to be and what it actually was. As far as the operation of our political is concerned, it adopted the conclusions of poll conducted by the Institute of Strategic and Developmental Studies "Andreas Papandreou". According to that poll 60.3% of the citizens believe our republic is in crisis. 22.5 % consider "big

business” as the institution with the greater power, while delegating 5.2 % to the Parliament. Furthermore, they consider the Army and the Church as the most attractive institutions and reserve the 14th position of the Greek Parliament, approximately the same place as... the telephone and the electricity company (Dimitrokallis, 2001 p. 16).

2. Explanation of the concept of general interest in the constitutional texts.

Let us discuss now the relation between private property and general interest as it is presented in the 1975 Constitution as well as in constitutions of other countries because without comparison we cannot arrive unreliable conclusions. That is the reason Aristotle studied the systems of government of many city states as he mentions in his works: Politics, Nicomachean Ethics, and The Constitution of Athens. Similarly Montesquieu examined the political systems of England, Rome, Naples, Tyrol and Holland (Holz and Götzl, p. 363).

Article 17.1 of the 1975 Greek Constitution states the following: *Property is under the protection of the state, but the rights deriving from it may not be exercised to the detriment of the general interest.*¹ The academic explanation of the term general interest stands as follows: “The Constitution does not anticipate a general provision in favour of public rights above, beyond and independent of the individual and personal rights of all, in front of which the fundamental rights of the citizens should surrender. The constituent law maker perceives the public right as the general interest, that is as the composition of the interest of the bearers of constitutional rights. This notion of the constituent law maker is absolutely correct (Dimitropoulos, 2004, p. 71). This point of view constitutes a legal and political position as the constituent A. Dimitropoulos teaches Constitutional Law at the University of Athens. Hence, it is his opinion that the general interest does not necessarily prevail over personal interest. Thus on 04 January 2016 there were severe reactions from the side of certain prosecutors against the announcement of the Union of Greek Prosecutors about the use of wrangled products as evidence against tax evaders. The reactions were provoked so that this evidence would not be used against Greek tax evaders who were in the list drafted by Christine Lagarde, Managing Director of the International Monetary Fund (Papadakou, 2016). Essentially the opinion of the dissenting prosecutors goes along with the academic teachings of the spirit that is promulgated by article 17.1 of the 1975 Constitution.

¹Article 17.1 of the Greek Constitution in Greek: Η ιδιοκτησία τελεί υπό την προστασία του κράτους, τα δικαιώματα όμως που απορρέουν από αυτήν δεν επιτρέπεται να ασκούνται εις βάρος του γενικού συμφέροντος.

In Article 14.2 the British Constitution provides the following: “*This Article does not in any way impair the right to enforce such laws as may be necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*” The British Constitution is inexorably strict in protecting the general interest. After the end of WWII in France in the constitutional provision of 1946 the following principle is included among others: “All real estate and all enterprises whose operation has acquired the characteristics of public service or of a monopoly must become property of the community”². The spirit of communality is very intense.

In Italy Article 42 of the Costituzione della repubblica italiana states: “Private property is recognized and is guaranteed by law which defines the ways of purchase, enjoyment and its limits in order to ensure its social operation and become available to all”. “Private property may be expropriated, on the occasions foreseen by the law and be compensated for reasons of general interest”³.

In Germany Article 14.2 of the constitution (Grundgesetz) of 1949 which still valid states: “Owning property entails obligations. Its use should simultaneously serve general interest.”⁴. The difference is obvious in that the German constitution clearly binds private property to serve general interest while the Greek simply forbids to harm actively the collective interest, but turns a blind eye and a deaf ear to passive harm. In the former the collective prevails over the private, whereas in the latter it is not clear what is in force. Moreover in the relevant German bibliography it is considered a given that private capital is subject to social obligations⁵ Furthermore, the socio-philosophical concept of “social obligation” (*Sozialpflichtigkeit*) was developed in relation to Article 14.2; according to this the use of private property is obliged to serve public wellbeing (Lau, 1997).

In Switzerland Article 94 provides as follows: The confederation and the cantons are obliged to uphold the principle of economic freedom. They protect the interests of Swiss economy in its entirety and the private sector contributes to the wellbeing and financial security of the population.⁶

²Préambule de la Constitution du 27 octobre 1946.

³La proprietà privata è riconosciuta e garantita dalla legge, che ne determina i modi di acquisto, di godimento e i limiti allo scopo di assicurare le funzione sociale e di renderla accessibile a tutti. La proprietà privata può essere, nei casi previsti dalla legge, e salvo indennizzo, espropriata per motivi di interesse generale.

⁴ Eigentum verpflichtet. Sein Gebrauch soll zugleich dem Wohle der Allgemeinheit dienen.

⁵(das Kapitaleigentum der Sozialbindung unterliegt) Scherhorn Gerhard, Ein Plädoyer für die Berücksichtigung ethischer Aspekte bei der Geldanlage. *Orientierungen zur Wirtschafts- und Gesellschaftspolitik*, 118 (4/2008), pp.40-46.

⁶Grundsätze der Wirtschaftsordnung I Bund und Kantone halten sich an den Grundsatz der Wirtschaftsfreiheit. 2 Sie wahren die Interessen der schweizerischen Gesamtwirtschaft und tragen mit der privaten Wirtschaft zur Wohlfahrt und zur wirtschaftlichen Sicherheit der Bevölkerung bei.

As one can perceive the relation between private property and collective interest is characterized by the same spirit in the constitutions of Germany and Switzerland. The spirit or the perception of European constitutions is characterized by a sociality while this provision of the Greek constitution is in discordance with the rest. In real life these societies prosper and set an example for the rest of the world. Therefore, this worldview of their constitutions is a proper one and it should be incorporated in the Greek constitution.

The constitution of the United States of America of 1787 states in Article 1, Section 3b: “A regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time [...]”⁷.

This provision of the 1975 Constitution displays which were the real intentions toward society and its effects are still felt today. Reviewing the relevant bibliography, the spirit of Article 17.1 of the 1975 Constitution would belong, in my opinion, in a category which Alfred Müller-Armack established in his work: *The Genealogy of Economic Style* (Müller-Armack, 1941, p. 18). In order to establish this new term, that is *economic style*, Müller-Armack refers to Max Weber and specifically to the changes that religious reformation brought to Europe in his work *The Protestant Ethic* (Weber, 2007). He defines the concept style as follows: The style of a period is the visible unity of expression and stance on various sectors of social life. By extension, he continues, we are talking about the economic style of a period “when the manifestations in the sector of social and economic life reveal similar characteristics. In every period there isn’t just one and unique Style, but several less important exist alongside the dominant one”.⁸

3. Economic behaviours or practices

In this article we intend to approach the “economic style” which led to the massive outflow of the savings of Greek citizens abroad and the way the Greek state handled the situation with respect to the spirit of Article 17.1 to the 1975 Constitution.⁹ We will also examine similar phenomena in other countries. Before we come to the facts, let us examine the role of money in contemporary theory of relevant social sciences. Georg Simmel, a theoretician of money and colleague of Max Weber,

⁷A regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time (Constitution of United States of America of 1787) Article I. Section 3b.

⁸Stil ist ...die in den verschiedenen Lebensgebieten einer Zeit sichtbare Einheit des Ausdrucks und der Haltung, Alfred Müller-Armack, 1941, p.21 Kurz das Geld ist Ausdruck und Mittel der Beziehung der Aufeinander-Angewiesen sein der Menschen, ihre Relativität, die die Befriedigung der Wünsche des einen immer vom anderen wechselseitig abhängen lässt (Müller-Armack, 1941, p. 120)

⁹ The 1952 Constitution in the same Article (17), does not refer at all on the issue of property with regard to general interest except in case s of expropriation.

write in his monumental work *The Philosophy of Money* (1900). “*Briefly, money is an expression and a means of interdependence among people, which allows them always to satisfy their desires while mutually dependent on one another*”. According to Georg Simmel, those who possess money are obliged to use it taking into consideration the needs of those who belonged to the other side of the function while they were earning it.

Article 17.1 of the 1975 Constitution behaves rather “loosely” toward Simmel’s position on property which includes money as well. The dominant “economic style” of our era, as Muller-Armack would say, is characterized by lack of interest toward the rest of the society where money is concerned. How was this regulation expressed in practice?

According to the report of the Bank of Greece the withdrawals of savings in Greece after the beginning of the current crisis was as follows:

Table 1. Outflow of deposits in relation to GDP and public debt in the years 2009 -2014 in billion Euro

Year	Outflow of deposits in billion Euros	GDP	% Outflow of deposits/GDP	Decrease of GDP	Debt in billion Euros	GDP/Debt
2009	3.6	233.2	1.54	-2.0	299.7	129.7
2010	24	222.1	10.8	-4.9	329.5	148.3
2011	33	208.5	15.8	-6.5	355.7	170.6
2012	100	193.3	51.7	-7.8	344.6	176.7
2013	53	185.1	28.6	-4.4	347.6	188.4
2014	16	186.5	8.6	+0.7	3493	188.9

Source: Bank of Greece, *The Yearly Report of the Managing Director of the Bank of Greece* for years 2009-2014

Cumulatively, the net outflow from the totality of deposits rose to 111 billion euro (39% of the initial balance of deposits in September 2009) The net outflow of deposits of non-financial enterprises rose to 20 billion euros (52% of the corresponding initial balance) and that of household deposits to 69 billion euros (36%)¹⁰. Specifically, where non-financial enterprises and households are concerned, the net outflow of time deposits rose to 53 billion Euros or 39% whereas the net outflow of one day deposits rose to 35 billion Euros or 36%. That is except for the speculators, Greeks or not, who would multiply their property in case of the collapse of Greek economy, there were some naive persons who believed that by exporting their capital from Greece they would help the country by returning it at some point in the future.

OECD attributes the predicted higher percentage of negative effect of the multiplier in Greek economy than in others to the fact that the Greek one is less open than the others (Barrell *et al.*, 2012 p.75). According to the 2013 report of the Bank of Greece during the period of crisis Greek banks

¹⁰According to Bank of Greece (2013), p. 140.

were cut off from the international markets. Until June 2012 they suffered an unprecedented outflow of deposits, which represented 1/3 of the base of deposits. In order to withstand these problems, they resorted to short term financing from the Eurosystem in a continuously greater intensity. At the peak of the crisis in June 2012 the amount of this financing came close to 140 billion euros (Bank of Greece, 2013, p. 4). Two years later we read in the following in the report of the Bank of Greece about Currency policy: “[...] at the present phase the outflow of deposits (which came close to 30 billion euros in the period October 2014 – April 2015), concern mostly withdrawals of bank notes from accounts which are eventually hoarded, while there is also capital flight abroad”¹¹. That is it ignores the negative effect of capital flight on economy, but also the moral obligation of its owners toward those who were the other side of the function while earning it.

By interpreting Article 17.1 of the 1975 Constitution coherently with the above mentioned developments one reaches the conclusion that the spirit of this article fed or allowed these behaviours of certain parts of society. Among these parts of society, we find a large percentage of elected members of parliament of the aforementioned parliamentary period (Makeleio, 2015). The Greek state had never taken any measures to prevent the outflow of deposits abroad, nor had it taken another to bring it back. What economic style characterizes this part of society which disposes great sums of money that it exports abroad? In my opinion the economic style which dominates but is not the only one, is the style of institutionalized unsociability. After these capitals were withdrawn from the Greek banks the government imposed capital controls which allowed withdrawals from accounts not to exceed 420 Euros per week. After the imposition of capital controls the Greek banks needed recapitalization.

The first subject of capital flights in Greece took international dimensions because of the so called Lagarde list. In 2010, the Managing Director of IMF sent to Greece a five-year-old list of 2,062 Greek customers of private bank HSBC which had been stolen by an informer. According to Finance Minister Varoufakis, only 49 customers had been audited until May 2015 and 31.000.000 Euros fines had been imposed (Zeit Online, 2015):

By contrast, in Germany the state acts differently toward its citizens. Hence, recently 150 to 200 inspectors were mobilized in all Germany and arrested 54.300 tax evaders who had deposits in Luxembourg (Handelsblatt, 2015a). The Obama government has filed complaint with the Chinese one because the latter sends agent in the USA to arrest Chinese citizens who have deposits in that country (Levin, 2015).

¹¹ According to the *Monetary Policy 2014-2015* (Bank of Greece, 2014, p. 5).

Frankel and Rose's report (1996) which concerns developing countries during the period 1971 - 1992 as well as that of Eichengreen *et al.* (1995) which concerns developed countries reach the conclusion that national currencies of certain countries face attacks from international speculator funds which result in the destabilization of national economies. Dornbusch (1987) stresses that the great accumulation of imported consumer goods in Chile during 1979-82 had the same consequences on capital as the flight of capital (Dornbusch, 1987; Tabellini and Alesina, 1996). Especially after the prevalence of globalization, international financial capital intensifies its activity in that direction with greater ease than in the past (Epstein, 2005; Le Quan, 2006; Adekunle, 2011).

The phenomenon of the flight of capital is not observed only in Greece, but also in other countries that were called PIGS. In Greece, however, it is observed much more intensely than in other theoretically or actually comparable countries such as Spain, Portugal and Italy. The chart below shows the tendency of capital flight was already stronger in Greece.

Table 2. Average of capital flight with relation to GNP in PIGS

Countries	World Bank Capital Flight 2009-2011 Averages (% of GDP)	WB 2011 Estimates (% of GDP)
Portugal	7.74%	23.10%
Italy	-1.81%	-7.44%
Greece	14.74%	33.23%
Spain	7.27%	5.80%

Source: McCaslin, 2013, p. 50

The law, as George Jellinek might say, is not broadly accepted unless is protected by the power of the state. Joachim Poß's ascertainment that Lagarde's list consists of a proof of the Greek state failure, concerning not only SIRIZA administration but all previous administrations too (Handelsblatt, 2015b), makes overbearing the need for change to the Greek state referring not only to the colour, but to its content as well.

Conclusions

Article 17.1 of the 1975 Greek Constitution which states that: "*Individual property is under the protection of the state, however, the rights that spring from it cannot be exerted at the expense of general interest*" goes against Montesquieu's view which holds in his work "The Spirit of the Laws" that laws are formulated according to the conditions of life and are obliged to serve general well-being. Article 17.1 either went unnoticed by the political discussion in Greece or it was purposely overlooked. The analysis of this Article aims at the creation of a wide discussion which could lead to

its change toward a more socially minded approach de jure and de facto. Hence, this article must change along with the spirit of the Greek Constitution in such a way as to serve the well-being of society, and not simply to forbid actions at the expense of general interest. The reason is that between those two views there is space for misinterpretations and side effects. The flight of so much capital that help foreign economies could help decisively the Greek one, as they ought to, because as Demosthenes stressed: “We need money, for sure, and without money nothing can be done that ought to be done” (Demosthenes, 1981).

Of course, there are many other ways to improve the financial situation, but this choice belongs strictly to the jurisdiction of the Greek government and is not affected by any other authority. It increases the flow of currency in economy without effecting negatively the development of external debt. The productive restructuring of economy and generally the reorganization of society is impossible with such legal provisions and even the constitution itself which indirectly but essentially urges the citizens to institutionalized unsociability instead of social institutionalization which characterizes the constitutions of the countries we saw above and probably no only those.

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Texts of constitutions

Bundesverfassung der Republik Österreich

Bundesverfassung der Schweiz vom 12. September 1848

Constitution of United States of America of 1787

Das Grundgesetz der Bundesrepublik Deutschland vom 1949

La Constitution de France du 3 Juin 1958

La Costituzione della Repubblica Italiana

The Constitution of Greece of 1952

The Constitution of Greece of 1975

The constitution of the United Kingdom of 1991 – 2014