

# German-Greek Yearbook of Political Economy, Volume 1/2018

Edited by  
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Verlag Holler, München

German-Greek Yearbook of Political Economy,  
Volume 1/2018

Cover: Katharina Kohl

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Gnesener Str. 1, D-81929 München, Germany  
[www.accedoverlag.de](http://www.accedoverlag.de), [info@accedoverlag.de](mailto:info@accedoverlag.de)  
Fax: +49 89 929 4109

Printed and bound by *Books on Demand GmbH*, Norderstedt

ISBN 978-3-88278-300-1

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## **German-Greek Yearbook of Political Economy, Volume 1/2018**

### **Introduction to the Volume**

We, the “founding editors”, have launched the German-Greek Yearbook of Political Economy (GGY-PE) with the aim to contribute to a better understanding of the relationship between political entities but also of the two peoples. In 2015–16, at the height of the Greek debt crisis and, to put it mildly, a time of tense exchanges between Germany and Greece, we turned to reflect on what the peoples of the two countries shared and united them rather than what divided them. Soon we realized that there have been so many political, economic, intellectual and cultural exchanges and connections over a very long period that it was only sensible to focus on mutual interests and symbiotic relationships. We have to admit that we were also motivated by intellectual curiosity: we wanted to understand the specificity of the German-Greek relationship which was obvious to us – and its roots and its consequences.

Noting that, instead of *Deutschland* and *Hellas*, both countries are referred to with their Roman names, brought us to Classical Greek Culture as the point of reference, and its paramount impact on the European Culture, in general, and the German culture, more specifically. The adoption of the values of the ancient Greek civilization was accompanied by a high degree of revision, redefinition, and reinterpretation especially in the 18<sup>th</sup> and the beginning of the 19<sup>th</sup> century. The resulting “romantic perspective” was highlighted with the installment of the second son of the Bavarian King Ludwig I, a philhellene and open supporter of the Greek independence war, as King Otto I of Greece in 1832. It was Ludwig I who notoriously said that he will not rest before Munich looks like Athens. But the German–Greek exchanges have been unequivocally bi-directional. To name but a few: over the last two centuries, the German legal tradition served as the basis of the Greek civil law; two more German Princesses became Queens of the Hellenes; during the 1950s to the 1970s West Germany acted as host of thousands of Greek “Gastarbeiter” migrants, while German Universities have educated generations of Greek students in

the entire spectrum of academic disciplines. Even in sports, in 2004 a German football manager led the Greek national team to winning the Euro in what has been the greatest sporting achievement of modern Greece. On the other hand, in Germany, the study of classical Greek language is still offered at some German highschools and, on a different level, at Universities, accompanied with the study of classical Greek culture and what came out of it.

Encouraged that this rich and variegated experience augurs well for our project, we held the Inaugural Conference of the Yearbook, in 13–14 October 2017 in Munich. We list below the ‘Call for Papers’ and the ‘Conference Program’ (see last pages of this volume). The present volume contains a collection of papers from the Conference.

The research papers cover a wide range of topics relating to ancient and modern times. The paper by George Tridimas examines the formal ignition of German–Greek relations in the modern era, the reign of King Otto, 1832–1862. It addresses the problems of setting up the governance of a new state: an underage Bavarian Prince arrives in a backwater country, newly liberated, ex–province of the decaying Ottoman Empire, and faces contradicting demands by the locals.

The changing relations between Greece and united Germany towards the end of the nineteenth century is the focus of Korrina Schönhärl’s paper. She raises the question of what, if any, attractions were there for the Prussian financier Bleichröder to lend money to Greece, an under-developed country. A possible answer was to support Bismarck’s policy for the Eastern Mediterranean field of tension.

Next, Konstantinos Pilpilides uses the cases of constitution writing in 1862 Greece and 1948 Germany to inquire how the motives of self–interested constitutional drafters and the constraints imposed to them by political and electoral considerations affect constitutional framing and especially the specificity and rigidity of constitutional provisions. Pursuing the line of the legacy of German law and legal theory to modern Greece, Athanasios Gromitsaris deals with the political economy of the beginnings of Greek administrative justice, set up during Otto’s reign, and examines the historical roots of the main problems of the system adopted.

Ancient Greece and its relation to Germany inspire the next four papers. Barbara Klose–Ullmann explores different interpretations of the myth of Medea from the ancient play of Euripides to Grillparzer’s play, Feuerbach’s painting (both in the nineteenth century), and Pasolini’s modern film. Love, revenge, parenthood, attitudes to foreigners and moral obligations coalesce in the myth and the various artistic representations of the Medea theme which made Medea one of the pivotal characters of the European culture next to Hamlet, Faust, and Helena. The paper reflects on the ethics and values of different societies at different eras.

The emergence of federal structures in ancient Greece is the focus of the work of Economou and Kyriazis, who describe the underlying principles and institutions of the Achaean proto-federation (a politically significant unit over the third and second century BCE) and then compare them with modern Federal Germany and the European Union.

Anja Pütz, the director of the AscheiMuseum, looks into the puzzle posed by the discovery of the “Athena of Dornach”, a figurine of the goddess with a Latin inscription, excavated at Dornach northeast of Munich in 1994. Unlike archaeological findings dated from the times when southern Germany was part of the Roman Empire, the “Athena of Dornach” dates to the Hellenistic period. So how did it get there? Most probably it was in the first century BCE, that is, at least a century before the Romans built their villas at Dornach (which is in the Aschheim community).

The influence of ancient Greek philosophers on German thinkers motivates the paper by Kurz. He first notes that Marx called Aristotle the “greatest thinker of antiquity”, and that he adopted Aristotle’s distinction between “use-value” and “exchange-value”. He proceeds by discussing Aristotle’s rejection of the idea of a “common third” and Marx’s rejection of the idea that a use-value could serve that purpose. Kurz then invokes Sraffa’s analysis and argues that both views are difficult to sustain.

The volume closes with the project of the Greek artist Konstantinos Koulaouzidis, established in Germany, who has embarked on a search for understanding and relating seemingly different ideas by tracing common patterns and analogies which may integrate arts and sciences. Using the canvass of numerical arrangements captured by “magic squares”, Koulaouzidis presents fascinating patterns of harmony between numbers, colours and sounds. However, the full paper of Koulaouzidis can only be reproduced in the second volume of the Yearbook, which is already under way. In addition to Koulaouzidis’ paper, it will contain a paper by George Bitros “Germany and Greece: A mapping of their great divide and its EU implications” with an extensive comment by Patrick McNutt.

We are actively seeking contributions for the second volume. We are especially, but not exclusively, interested in work on how modern Greeks see their recent and distant past, and its relation to Germany and encourage potential contributors to submit their work

December 2017  
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# When the Greeks Loved the Germans: The Political Economy of King Otto's Reign

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**Abstract:** In 1832 Prince Otto Wittelsbach of Bavaria was appointed King of the newly founded independent Greek state. Otto's reign was a momentous period for Greece, initially under Regency then under Otto as an absolute ruler and from 1843 as a constitutional monarch until his expulsion in 1862. Using the historical record the paper focuses on three political economy questions, namely, the rationale for the foundation of a state, which relates to the provision of public goods and rent distribution, the constitutional order of the state regarding the choice between monarchy or republic, and the emergence of democracy by revolution or evolution.

**Keywords:** Greece, King Otto, monarchy, revolution, democracy, commitment, rent creation and rent seeking, constitutional exchange.

**JEL Code:** D7, N4

## 1. Introduction

An aspect of the ongoing multifaceted Greek debt crisis has been a strain in the relations between Greece and Germany, where members of the

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<sup>1</sup> An earlier version was presented to the Adam Smith Seminar, Munich, in October 2016. I wish to thank seminar participants for various comments. I am also grateful to Manfred Holler for his many insightful thoughts during the preparation of this work.

German cabinet have been caricatured as heartless fiscal disciplinarians and of the Greek cabinet as delinquent fiscal rule breakers. A moment's calmer reflection reminds us that in modern times the relations between Greece and Germany have been long standing and steeped in mutual respect. A case in point is the reign of King Otto of Greece from the Bavarian royal house of Wittelsbach. Modern Greece rose formally as an independent nation state in 1832 with the seventeen year old Otto as its ruler. Otto was welcomed in Greece with jubilation. An overwhelming majority of Greeks loved their German sovereign, who dreamy-eyed from ancient Greek glories and heroic acts during the 1821 Revolution against the Ottoman Empire arrived to build a new state. None of the parties involved could have imagined what followed culminating in Otto's expulsion in 1862 after a turbulent thirty year reign. Founding state institutions after its people broke free from their previous master to be governed by alien rulers raises fundamental political economy questions including an explanation of the origins of the state, the role of the government in providing public goods, creating and distributing rents, the choice between monarchy and republic, revolution, political compromises and democracy. The present essay explains how Greece dealt these, partly overlapping, questions during the reign of King Otto.

The next two Sections describe the historical developments during Otto's reign, the government of the Regency (Section 2) and Otto's rule first as an absolute and then as constitutional monarch (Section 3). Using the experience of Greece Section 4 inquires the origins of the state, that is, whether a state emerges by individuals joining to produce public goods or it is imposed by a ruler looking to maximise the surplus that can be extract from the subjects. Section 5 discusses the emergence of constitutional monarchy and its relevance to Greece, while Section 6 investigates how far revolution and constitutional evolution may explain the foundation of democratic government. Section 7 concludes.

## **2. Greek Independence and the Bavarian Regency**

In 1821 the Greek subjects of the Ottoman Empire revolted against their rulers.<sup>2</sup> Initial military successes of the rebels were followed by heavy

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<sup>2</sup> In presenting the historical narrative of Otto's reign I rely primarily on Markesinis (1966)



defeats but after the united fleets of Britain, France and Russia destroyed the combined Turkish–Egyptian fleet in the sea battle of Navarino of 20 October 1827 independence beckoned. The nascent state confronted grave challenges including uncertainty about its territory, a ruined post–war economy, an illiterate population, and a divided society where different groups engaged in civil war and vied for control. In 1832, following intense diplomatic manoeuvring between the three “Protecting Powers” of Britain, France and Russia, with each one pursuing its own interests and the former two being suspicious of Russian intentions after it won the Russo – Turkish war of 1828–29, two international treaties were signed. Interestingly, the Greeks did not participate in either of the two treaties. The first treaty, signed with the Ottoman Turks, recognised Greece as an independent state. The second treaty signed with the King of Bavaria, Ludwig I of the House of Wittelsbach (an admirer of ancient Greece and a philhellene), installed his second son Otto (born in 1815) as King of Greece; Otto’s selection was ratified by the Fifth National assembly of Greece in 1832. According to the treaty, Otto was appointed absolute hereditary monarch and was granted a force of 3500 Bavarian troops to oversee his safety while the Bavarian officers would also train the Greek army. The new state was given loans of 60 mils franks, to be paid in three instalments and guaranteed by the three powers, to help manage the government finances and build the economy.

The news of Otto’s selection was received by his new subjects with great joy; he received a rapturous welcome when he arrived in the then capital city Nafplion in January 1833. Exhausted by the war effort and in the midst of another civil war (that broke out after the 1831 assassination of the Greek Governor, I. Capodistrias), the Greeks saw Otto as a messiah. Not only did he embody the hope for domestic peace and progress, but as a king he was also conferring Greece equal international status with the rest of the European states. As Otto was not yet 18 years old, a Regency of three men ruled in his name. Count Joseph von Armansperg, exercised executive control, Law Professor Ludwig von Maurer, was responsible for designing the system of central and local government and civil and criminal justice, and General Karl Wilhelm von Heideck, administered the army.

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and Kostis (2013). Excellent brief accounts in English can be found in Clogg (1986), Gallant (2001) and Koliopoulou and Veremis (2010).



“King Otto arrived at Nafplion” by Peter von Hess, 1935 (*Bayerische Staatsgemäldesammlung, Neue Pinakothek, München*)

The romantic view inspired by the marvels of ancient Greece and the admiration for the heroism during the Revolution along with the optimism and goodwill of the Bavarians must have been in sharp contrast to the picture of devastation and impoverishment that met them when they arrived in 1832. Setting up a new state and establishing an effective government was a daunting task. To adopt Weber’s conception of the state, the ability of the new state to monopolise violence and impose law and order was at first limited. A national army had to be built from the revolutionary fighters. A pressing problem was to integrate the armed irregulars who having fought in the war of liberation against the Ottomans expected to be rewarded and turned to criminality like extortion and brigandage when aggrieved. Inducements were offered by way of pensions to older fighters and enlistment of younger ones to the regular army and the gendarmerie, but few fighters considered those rewards as sufficient. To establish its authority, the government had to wrestle control from the local political magnates (mainly big landowners) who acted as chiefs of clans and had administered public life during the Ottoman rule. Public administration was then organised by dividing the country to newly drawn prefectures, provinces and demes. Mayors in particular were given responsibility over a number of functions including education, law and order, and infrastructure works. The heads of each local authority were

appointed by the crown from a list of candidates compiled by a local selection council whose members were elected in a restricted franchise and non secret vote. The new administrative structure broke traditional forms of exercising power and was met by local resistance which sometimes took the form of refusal (often violent) to pay taxes and refusal of conscripts to serve in the national army. Nevertheless, recognising the power and influence that could be exercised in the new administrative structure, local elites strived for control of the local authorities. As a result and until the end of the 19<sup>th</sup> century, local population was interested more in local authority than national elections.

Since the majority of the peasant population were landless solving questions of land ownership and redistribution were most demanding. Legislation was passed in 1835 giving all those who had fought in the war credits that were then used to buy smallholdings from the national lands (formerly land held by the Ottomans) to be held in perpetuity after paying off a 36 year mortgage. The land bought with such credits however could provide no more than subsistence, while tax and mortgage payments had also to be paid, implying prolonged poverty for those families that had no additional means. The system failed to achieve its goals of creating a large class of independent smallholders and securing tax revenues.<sup>3</sup> The dire state of an economy was compounded by the presence of thousands of destitute Greek refugees from lands where the revolution had been suppressed. Further political ramifications followed from the support of the latter group for an irredentist policy of renewed war to liberate the Greeks still living under Turkish rule. An additional economic handicap was that fertile lands where the majority of the population was Greek, and prosperous commercial centres remained under Ottoman control and sovereignty. Nor were affluent Greek merchants based in the European centres of commercial activity willing to resettle in the liberated Greece and apply their talents and assets to its economic regeneration.

The relationship of the Orthodox Church of the independent Kingdom to the “Mother Church” of the Ecumenical Patriarchate of Constantinople was a serious concern. Liberals advocated the independence of the Greek Church but conservatives opposed it. This dispute was important not only because Otto, the titular head of the Church, was king “by the grace of

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<sup>3</sup> The issue of granting land ownership to the peasants was finally settled in 1871.

god” but also because of his catholic denomination. In the end a compromise was formally accepted by the Patriarchate in 1852 by which the Church of Greece was recognised as administratively autonomous but spiritually united with the Patriarchate.

Justice and education too required urgent attention. Until the publication of a formal code, civil law would be based on the Byzantine Code and supplemented by customary law norms that had developed during the Ottoman times. A criminal law code was published based on the Bavarian code, while for commercial issues the Napoleonic code, which was already in use in the eastern Mediterranean basin, was adopted. The Bavarians also set up a system of primary, secondary and tertiary education upon taking control of rudimentary schooling that was carried out by the church, the traditional provider. German architects, urban planners and engineers were also brought in to design the buildings that would enrich and decorate Athens which was named the capital city in 1834.

In the diplomatic realities of the post Napoleonic Europe, the representatives of the three Protecting Powers held considerable influence on the political life and diplomatic relations of the new kingdom, so much so that each domestic political faction allied itself with either the French, English or Russian foreign ministers in Athens. The “Russian party” was the largest group; it was supported by conservatives and the Orthodox hierarchy. The “French party” was a collection of warlords from Continental Greece, primates from the Peloponnese and island ship owners. The “English party” combining men of commerce, bureaucrats, intellectuals and city dwellers was the smallest. Though called “parties” they had nothing to do with the parties of modern representative democracies.

Lacking a domestic power base and distrusting the locals the Regency appointed to key posts in the state administration a number of Bavarians to the bitter disappointment of the Greeks. Not unreasonably, the Regency tried to set up the institutions of a modern European state familiar from Bavaria. They went about it by centralising decision making commanding their wills to the local population, who nevertheless lacked the relevant know-how, rather than involving it. Educated Greeks returning from the diaspora were also appointed to positions of authority, opening up a new cleavage between the “indigenous”, those born and grown up in Greece, and “non-indigenous” Greeks, those who migrated from abroad after the

liberation war ended. A modern commentator might have characterised the new kingdom as a “failed state.” Yet this would have been premature if not plainly wrong: there was no state that had failed; a new state was being set up, virtually from scratch. As it turned out, state capacity was eventually established.

### **3. The reign of King Otto**

By a special law Otto came to age in 1835 but Count Armanperg, who had emerged as the dominant man of the Regency, remained influential as Otto continued the authoritarian *modus operandi* of the Regency. That year also marked the official visit of King Ludwig to Greece, who won the affection of the Athenians. In 1836 Otto married Amalia daughter of the Grand Duke of Oldenburg. At first, the queen enjoyed great popularity. It was hoped that Otto, a catholic, and Amalia, a protestant, would bestow their adopted country a royal prince that would be raised as an orthodox. In 1837 Armanperg was dismissed and after a brief interlude by Ignaz von Rudhart, Otto himself assumed the presidency of the ruling council. Even after the departure of the last Bavarian troops in 1838, Bavarian officials continued to be prominent, and although there was some participation by Greek politicians, their role in policy making remained largely peripheral. Over the years, Queen Amalia assumed an increasingly active role in government, advising the King and acting as Regent when he was absent (although such regency was not provided by the statutes).

Otto’s absolute rule and exclusion of the local elites from the high offices of the state could only heighten tension especially since a number of the former had fought for the liberal ideals of the French Revolution. Resentment grew when the failure of the royal couple to sire an orthodox heir became apparent opening questions of succession. During the first decade of Otto’s reign the economy recovered driven by the growth of seaborne trade as Greek ships handled the transit trade between Russia, the Ottoman Empire and Western Europe. Public finances however remained precarious. Debt repayments and spending on administration and the military had claimed the loans guaranteed on Otto’s appointment, while tax revenues remained meagre. In the meantime, Britain was using every opportunity available to press the government to fulfil the schedule of its debt servicing obligations. Popular dissatisfaction was high in 1842 and all three parties were asking Otto to grant a constitution. Unable to repay the

1832 loans, in July 1843 Greece defaulted on the external debt prompting a settlement with the three Powers that required substantial cuts of public spending. The latter hit particularly hard civil servants and military staff who along with disaffected politicians contrived an uprising against Otto. On 3 September 1843 large crowds and the garrison of Athens staged a demonstration in front of the palace demanding Otto to grant a constitution. It was a bloodless uprising and Otto obliged appointing a new council of ministers consisting of politicians from all three factions and elections were called for a national assembly to write a constitution. The events described showed the importance of two factors that became endemic in the political life of Greece. The first is the pivotal role of the military in politics. The period 1843 – 1967 witnessed twelve military revolts, putsches and counter-putsches, interventions with far reaching political and constitutional consequences.<sup>4</sup> The second is the strategic importance of Athens, the capital city, in the success of a military uprising. Control of Athens was vital for achieving political aims while rebellions in the provinces could be suppressed unless the forces challenging Athens were willing and able to start a full-blown civil war. For example, in 1962 Otto contained the rebellion of garrison of Nafplion (see below).<sup>5</sup>

The 1844 Constitution, based on the 1830 French and 1831 Belgian constitutions, provided for the protection of individual rights and established constitutional monarchy referring to Otto as “King of Greece by the Grace of God”. The legislative power was exercised by the King, who had the right to ratify legislation, by the elected parliament, and by the senate, whose members were appointed for life by the king. Both the parliament and the senate were self-standing and had to approve taxes. The king had the right to dissolve the parliament and call for elections. He also retained the right to choose and remove ministers. The king was the source of judicial power and appointed the judges. The constitution mandated that the next king of Greece had to be Christian Orthodox. No provisions were included for the amendment of the constitution.<sup>6</sup>

<sup>4</sup> See Tridimas (2015) for a review, and Veremis (1997) for the changing motives and objectives of military over that period.

<sup>5</sup> For details of the significance of controlling Athens when challenging the central government see Markesinis (1966).

<sup>6</sup> The very last sentence of the text provided that “the observance of the constitution is devoted to the patriotism of the Greeks”, a declaration of the responsibility of citizens to

Remarkably for the European standards at that time, the electoral law that followed introduced universal suffrage for men above the age of 25 years in possession of land or exercising a profession. In effect, the constitution recognised a division of powers between the king and the leading social groups and entitled political elites to a share of power. The crown however retained substantial privileges for it was nowhere mandated that it had to select as prime minister the person that commanded a parliamentary majority.

Otto and his subjects were united in the pursuit of foreign policy goals and specifically the so called 'Great Idea' of liberating the unredeemed Greeks living under the Ottoman yoke. Otto based his reign on the popularity of the Great Idea and sought to align himself with the foreign power most amenable to this end. However, he failed to realise that the Protective Powers were not prepared to disturb the international peace achieved through their balancing acts for the benefit of Greece at the expense of the Ottomans. At the time of the foundation of the Greek state, Europe was recovering from the turmoil of the French Revolution and the Napoleonic Wars and the monarchy had been restored in France, with the Quintuple Alliance of Austria, Prussia, Russia, the UK, and France holding the peace settlement and the political status quo. Yet, as more Greeks lived under Ottoman rule than the approximate three quarters of a million inhabitants of Otto's kingdom, breaching the territorial integrity of the Ottoman Empire was an aspiration shared by the king and his subjects, while it also made economic sense. An opportunity to pursue the irredentist cause arose during the 1839–41 War of the Ottoman Empire against Egypt, as the Empire seemed on the verge of collapse after defeat in the hands of the Egyptian Mehmet Ali. Tension between Greece and the Ottomans escalated, but after British intervention the Egyptian challenge collapsed and Otto had to fall in line with the wishes of the Protecting Powers. This set the pattern of Great Powers intervention in Greek affairs that became typical of Greece's attempts for territorial expansion.

In 1853 the outbreak of the Crimean War was seen as offering another opportunity to fulfil the Great Idea. Anticipating a Russian victory against the Ottoman Sultan, Greek irregulars crossed the Greek–Turkish frontier

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protect the constitution, which has been repeated in all subsequent constitutions, but proved a dead letter given the number of times the constitution was violated.

with the blessings of Otto and support of the people. Britain and France however, fighting the war against Russia, intervened decisively in favour of the Sultan and a joint Anglo–French expedition occupied the port of Piraeus from 1854 to 1857 forcing Greece to a policy of neutrality. At the same time with Greece unable to repay the 1832 loan, a commission was appointed to administer the Greek finances. Otto's stance saw his popularity soaring during the foreign intervention period (which also brought an outbreak of cholera in Athens and Piraeus), but when the foreign troops withdrew the old political fissures reappeared.

After the introduction of constitutional monarchy, Otto chose his prime ministers on the basis of their loyalty to him, so that he could control policy. Election outcomes did not decide the appointment of prime ministers, while the electorate process fell short of free and fair. This was possible because the parliament was in command of the electoral process; hence, the faction with parliamentary majority could annul the election of candidates that did not approve, and ex post declare its actions as legal (for details see Kostis 2013, pp. 280–281). Party alteration in office was the result of shifting royal inclinations and expediency in the light of the demands of the foreign powers. As a result, after the election of 1844, all sitting prime ministers won the elections they contested (see the Appendix), since they could intimidate the electorate with immunity.

Rigging the 1859 elections fed an anti–Otto wave which also included student unrest. The younger generation had no first–hand experience of the revolutionary war and was growing politically restless. A failed assassination attempt against Queen Amalia took place in 1861. Otto's popularity suffered more when he appeared to support Austria in the struggle against the Italian nationalists with whom most Greeks had identified. In addition, fearing that naming a successor might reduce his own prestige and authority Otto was dodging the issue of succession adding to uncertainty.

In February 1862 the crown rode another storm by suppressing the revolt of the garrison of Nafplion. However, in October 1862 when the royal couple was touring the Peloponnese, the garrison and people of Athens rose up again and a new provisional authority (consisting of a number of politicians with a wide range of different convictions) took over and declared an end to Otto's reign. On the advice of the ambassadors of the Protecting Powers, and despite Queen Amalia's opposition, Otto did not resist and left Greece. George Glücksburg, a Danish prince was later



appointed king of Greece and arrived in 1863. Otto did not officially abdicate nor did he complain against his adopted countrymen. He died in 1867 at the age of 52 without ever returning. The news of his death were received in Greece with sadness. Amalia died in 1875 at the age of 57.

By the time the royal couple left Greece, in comparison to 1833, the economy had improved significantly with real per capita GDP increasing by almost 50%, although at a highly volatile pace – see Figure 1 in the Appendix. A steady increase in the volume of shipping, maritime trade and agricultural production made possible from an increase in cultivable land account for this. Nevertheless, the country was still afflicted by serious structural problems from the burden of the national debt, lack of industrialisation, underdeveloped land markets and heavy taxation of farm production.

#### **4. The origin of the state: state of nature, anarchy and autocracy**

The 1821 Greek revolution was a movement for national liberation. In terms of political economy, the Greeks set up a new state to provide a range of public goods including to freely uphold their national identity, practice their religion, administer their affairs and manage the size and distribution of economic resources.<sup>7</sup> Not unlike the USA, during the Revolution a number of Greek assemblies (convened in 1822, 1823, 1826, 1827 and 1832) envisaged a republican system of government with an elected parliament exercising legislative power. On the contrary, as was described above, an absolute hereditary monarchy was established upon independence following the military intervention of the Protecting Powers against the Ottoman Empire and long civil war amongst the Greeks. Obviously, the Protecting Powers chose and imposed the institutions of governance that best suited their interests during a climate of restoring the political and diplomatic order that prevailed before the French Revolution, which had no room for political liberties, and aimed to preserve the balance of powers as they could not agree on how to carve up the ailing Ottoman Empire. Otto, a prince not related to any of the royal families of

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<sup>7</sup> See Mueller (2003) for a formal discussion of the origins of the state based on the economic analysis of public goods and redistribution. Mueller (2010) reviews positive and normative accounts of the state and how they may explain the emergence of Sumer, China, ancient Athens and the USA.

Britain, France and Russia, fitted the bill and was appointed as the sovereign.

The type of regime installed in Greece by Britain, France and Russia was compatible with the predictions of selectorate theory of Bueno de Mesquita et al (2003). The theory argues that if a victorious power finds costly to takeover a defeated adversary (the Ottoman Empire), or impose a puppet government on it, it opts to change the political institutions so that the foreign policy of the adversary serve the policy interests of the victor. That is, the controlling powers set up a new state, Greece, with an acquiescent government, as Otto was expected to be, given the financial weakness and lack of the military ability to challenge the diplomatic status quo.

Greece in 1831 was as close as any real world situation to the state of nature as described by Thomas Hobbes in his book *Leviathan* (1651)<sup>8</sup>, where life is poor, nasty, brutish, and short, and therefore an absolute monarch seemed a suitable solution. Having won independence after a bloody war the Greeks were divided along several dimensions. There was a geographical division between the Peloponnese, Continental Greece and the Islands. In addition there was a civilian–military division. The civilian group included local magnates who had assumed the role of political elites during the Ottoman period, and ship owners who often bankrolled the military struggle; the military group included the military chieftains who led the fight against the Ottomans. The various factions sometimes in alliance with each other fought to control the state. This conflict reaffirms the enormous power of the state as a creator, distributor and protector of rents: At a time when the old order had collapsed and the economy was devastated, control of the state was vital for defining property rights, securing access to resources (land most significantly), paying for war reparations, and acquiring government jobs as government service offered lucrative opportunities for rents.<sup>9</sup> Like the ship–owners, some groups were

<sup>8</sup> For an analysis of the opposing perspectives of the origins of the state by Hobbes, who endows the sovereign with absolute powers, and Locke, who argues for restricting the sovereign according to natural law, see Rowley (2005).

<sup>9</sup> A rent is the surplus that a person receives from a particular activity beyond the necessary incentive to perform that activity. Government policies that affect the distribution of income through regulation, taxation or public spending motivate actors to seek rents. Successful rent seekers benefit from favours and privileges. In the contest to obtain rents resources are used unproductively instead of creating wealth. For an informative and wide ranging introduction to the rent seeking literature, see Hillman, 2013.

seeking compensation for the losses suffered during the Revolution; others aimed to advance their material and ideological interests by offering different visions of the new state including its international orientation, while after bearing the brunt of fighting, the military chiefs claimed their right to control the state. Unproductive rent seeking was intense. Centralisation of power was an essential requisite for the state to operate.

A foreign prince, not linked to any of the competing domestic factions, was acceptable to the local population as it was hoped that he would bring an end to the civil war and lead to economic recovery. The king of the new state would guarantee the provision of certain public goods, most notably social peace. We may cast the situation that the locals confronted in terms of the prisoner's dilemma: a faction benefits from peace when all factions refrain from attacking each other, but it enjoys an even higher benefit if it defects from peace by taking over the state, while the rest of the factions keep the peace. However, when all factions behave like that, they end up fighting a civil war. In this circumstance installing a sovereign king with the power to impose peace could solve the prisoner's dilemma and secure a cooperative solution. However, the Regency and then Otto failed to do so; instead they became players in the game of resource distribution. In mitigation, it was not clear what the different groups would consider as equitable, and therefore acceptable. Otto must have found himself on the receiving end of different and contradictory demands. At the same time, he repeatedly failed to project himself as a neutral arbiter. Distrustful of the qualities and loyalties of the local Greeks the Regency introduced governance structures that were alien to the locals and disregarded them in making appointments to positions of power. Otto engaged the locals a lot more than the Regency, but his policy choices and appointments of people to positions of influence alienated a wide range of domestic political players, who were backed by foreign powers and came together in opposition against him. A lack of leadership is detected here, or at least, a failure of leadership to inform about its vision and unite social groups around it. Seen from a different vantage, Otto came to rule a weak state, virtually one without state capacity, where Besley and Persson (2011) define state capacity as the institutional capability of the state to carry out various policies that deliver benefits and services to households and firms. Partly to satisfy a thirst for territorial expansion and preparation for war required building an effective state. In building the state, the temptation to erect extractive institutions was not resisted.

The rule of the Bavarians and Otto's autocratic tendency shares common characteristics with Olson's (1993) "stationary bandit" theory of the origin of the state, which posits that an external conqueror violently forces his will on a local group and rules as an autocrat. Contrary to a roving bandit who maximises short-term payoffs by raiding and plundering, a stationary bandit adopts a long horizon and invests in public goods, in the form of protection from enemies, law and order, and infrastructure, to maximise output and therefore tax revenues for him.<sup>10</sup> In comparison to being preyed upon by roving bandits, his subjects receive a double benefit, from moderate tax and from public goods. In this line of thought the stationary bandit emerges as a dictator out of anarchy. Obviously, Otto was not an external raider who occupied an unwilling Greek population. Nevertheless, he was imposed by the Protecting Powers at a time when the Greeks were unable to resist even if they wanted to. Describing the Bavarians and Otto as rulers who maximised their own benefits instead of giving in to majoritarian demands better explains the observed pattern of behaviour. It bears noting that the stationary bandit is not necessarily a peaceful ruler. An uncertain but victorious war brings him benefits, like higher revenues, prestige and a historical legacy, while the cost of fighting falls mainly on the population.<sup>11</sup> An autocratic ruler may therefore have strong incentives to be belligerent at the expense of the population. Again this is consistent with Otto's record in office.

We can see therefore that the set up of the Greek state lends credence to important aspects of more than one theory of state formation. One hopes that future research will shed more light into this question.

## **5. The choice of the constitution: monarchy versus republic**

When looking at the governance of a state we distinguish between two separate dimensions, namely, the form of government, autocracy or democracy<sup>12</sup>, and the rule for selecting the head of state, that is, hereditary,

<sup>10</sup> For details and formal analysis of the ruler as maximizing personal consumption from the control of office see Tullock (1987) and (2002), Grossman (2002), Grossman and Noh (1994), McGuire and Olson (1996), and Wintrobe (1998).

<sup>11</sup> See Wilke (2002) and Jackson and Morelli (2007).

<sup>12</sup> "In autocracies the ruler is absolute. The people are his subjects and he appoints officials to govern them. Their authority springs exclusively from the autocrat; they are his

as in monarchy, or by some form of selection as in a republic. States, like all organisations that outlive their founders, face problems of succession. Upon the death of the ruler rival groups may fight for his position imposing severe losses on themselves and the population. A ruler may try to avoid such problems by appointing a successor. However, by doing so the “successor’s dilemma” arises: On the one hand, the sitting ruler risks his own survival by designating a successor who in turn builds his independent support to ensure his succession against his rivals; on the other hand, if the designated successor fails to build a power base, his rule will be at risk and so will the legacy of the sitting ruler. Hereditary succession according to family lines reduces that risk significantly. Perhaps more importantly (and echoing Hobbes) it brings additional benefits to the subject of the king: a fixed rule of hereditary succession upon the death of a sovereign minimizes uncertainty and violence that may follow when rival groups fight for control. Hereditary succession is however subject to genetic risks where heirs lacking the relevant talents inherit the throne. An absolute monarchy combines hereditary succession on the throne and autocratic government by the king for life. A democratic republic is headed by a president (whose legislative and executive powers may vary from constitution to constitution) serving for a fixed term and is governed by means of elections and voting. A constitutional monarchy combines a hereditary king as head of state and a parliamentary government.

Otto found himself reigning over a people considered the intellectual heirs of ancient Hellas and Christian Byzantium whose political philosophy and actual experience included various forms of kingship. In addition to the democracy of Athens, ancient Hellas also made significant practical and theoretical contributions to kingship. Sparta, the formidable military power and rival of Athens, inaugurated an embryonic form of constitutional monarchy (Finer, 1999): Two hereditary kings coming from two different royal houses ruled jointly. Each king acted as a check on the other but more importantly they were both checked by the five *ephors* who were appointed by the oligarchic Council of the Elders. The kings carried out religious and judicial duties but their main functions were to lead the army, although during military campaigns only one king was in command.

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dependents” (Finer, 1999, p.865). “The central procedure of democracy is the selection of leaders through competitive elections by the people they govern” (Huntington, 1991, p.6).

After the defeat of Athens by Sparta (404 BCE) and the disillusion with democracy, Greek authors also developed a theory of monarchy where contrary to Eastern empires the monarch was not legitimised by religion.<sup>13</sup> The philosopher Plato famously argued for philosophers to become kings, or kings to become philosophers, to release mankind from political troubles. The historian and essayist Xenophon argued in favour of a benevolent king on the basis of his charisma, while Aristotle wished for an exceptionally virtuous king. The fourth century Athenian orator and speechwriter Isocrates advocated monarchy arguing that a king, even if a less talented individual, is unencumbered by short office horizons, and as such he acquires the relevant experience, pursues the long-run interests of the community, focuses on good administration instead of pandering to parochial expedience, and achieves military prowess.<sup>14</sup>

After the death of Alexander the Great in 323BCE, his extensive empire split into separate states ruled by men who had served as his generals and took the title of king. Like the stationary bandit, their rules were based on military conquests and established dynastic succession. Royal rule was less objectionable in Asia Minor, Syria and Egypt, where monarchy was the traditional form of government, rather than mainland Greece with the tradition of free city-state. The power of the king was maintained through his control of the army, whose loyalty was secured by paying soldier wages, gifts of land and the king's appeal as a leader. These kings sought to legitimise their rules by adopting one form or another of divine protection by the gods and goddesses and claims of mythical and heroic ancestry. In order to facilitate the transition from one ruler to the next, kings often gave their eldest sons independent commands and elevated them to co-rulers during their own lifetimes. Hellenistic authors of the time justified rule by the king on the king's personal qualities. The ideal king had to be victorious in the battlefield, protect his people from the enemies, just, pious towards the gods, accessible, generous, magnanimous and affectionate towards his subjects, and avoid excesses and hedonistic behaviour. These were normative views rather than descriptions of what actual kings were like.

In medieval polities the chief role of the king was to defend the country, secure law and order, and provide justice. The Greek-speaking Byzantium,

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<sup>13</sup> See Walbank (2008) and Cartledge (2009) for details.

<sup>14</sup> Analogous arguments are offered in modern literature; see Tridimas (2016) for a review.

successor of the Roman Empire in the East, was an Orthodox Christian autocracy ruled by an emperor legitimated by religion, heading a standing army and served by a complex bureaucracy. For a millennium (395–1453), the imperial regime was stable but who was sitting on the throne was highly and violently contested. Of the 107 emperors in that period, 64 were in one or another way deposed. According to Finer (1999) the main reason was that there was no fixed rule for succession, as lineage did not secure ascendance to the throne. Ambitious generals could mobilise troops against the sitting emperor. The dogmatic view was that whoever was on the throne had been chosen by God, while the emperor who was overthrown had been abandoned by God. In order to bring stability to imperial succession sitting emperors often followed the practice of appointing the designated successor as co-emperor. The tradition of a Byzantine emperor ended with the 1453 Ottoman conquest of Constantinople. In Medieval Europe the Church sanctified the king (epitomised by the coronation and anointment of Charlemagne in 800), but after the Reformation that shrank papal power, lay monarchs could claim that their divine rights came directly from God which further legitimized hereditary succession. In France absolutism culminated under King Louis XIV of (1643–1715) when royal rule was paramount.<sup>15</sup>

The English Glorious Revolution of 1688 established constitutional monarchy where the king reigns but does not govern, so that he is substantively and procedurally constrained, breaking the link between hereditary rule and autocratic rule. One hundred years later, in 1789, the French Revolution heralded a complete break from preceding systems of royal government, so that the nineteenth century witnessed the birth of the nation–state, where the state belongs to the nation, identified with the people, and not a royal dynasty. At the same time, liberalism in the sense of protecting the political freedoms of the individual against the state was unequivocally on the march. Objection to monarchy originated from monarchy's denial of liberty and equal opportunity.

During the Greek Revolution and even before, the Greeks had envisaged founding a democratic and republican state.<sup>16</sup> However, the turn

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<sup>15</sup>As Bishop Bossuet, preacher to the Court, put it: “Royal authority is sacred...God established kings as his ministers and reigns through them over the nation...The royal throne is not a throne of a man but the throne of God himself”, quoted in Jones (1994) p.151.

<sup>16</sup>It bears noting that in the Greek language the word *democratia* stands for both

of events was that the Revolution succeeded with the military and diplomatic support of the Protective Powers, so that the Greeks were not in a position to enforce their preferred constitution and the new state ended up an absolute hereditary monarchy, the prevailing European norm. At a deeper level, founding a kingdom played an important credibility role. A royal dynasty signalled the existence of a perpetually living state which would bind the future generation of leaders and could be trusted to behave in the mould of the rest of the European states. Public euphoria surrounded the arrival of King Otto, but given the intellectual and political currents of the period it is not surprising that Otto's absolute rule gave way to constitutional monarchy.

The 1844 constitution granted by Otto after the 1843 revolt gives credence to John Locke's view that the state emerges through the consent of the governed and, contrary to Hobbes, the government derives its authority from a social contract which guarantees and protects the natural rights of individuals to life, liberty and property. Instructively, in his speech to the assembly Otto explicitly stated "let us conclude a treaty with each other" (quoted in Markesinis, 1966, p.171). Locke rejected the divine right of kings. On the contrary, the king is bound by the social contract and if he fails to honour it he loses the allegiance of the people. In a constitutional monarchy, the role of the king as head of state is limited to constitutional duties in appointing the prime minister and countersigning laws, ceremonial functions that project the power of the state, and symbol of the nation (see Tridimas 2016).

Otto was treading a thin line as he was exercising both a constitutional and a political role, not only being the head of the state but also actively involved in government while unwilling to share power with groups strong enough to challenge him. Being childless and of a minority religious denomination he also confronted a severe successor's dilemma that he never resolved. At the same time monarchy in Greece lacked two essential elements that were pivotal for its endurance in contemporary European kingdoms: It lacked both a pre-existing popular tradition that would have made it acceptable to the nation and a local aristocratic class with strong

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"democracy", the system of government where a majority of voters decides policy typically through their representatives, and "republic", where the head of state is appointed from among the citizens and is not hereditary, irrespective of whether the state is governed democratically.



links to the royal family. The institution of monarchy was new and had not had enough time to form the sentimental bond between the king and the people that advocates of monarchy consider as vital for the legitimacy of the dynasty. The popular feeling was fickle. Further, there was no traditional aristocracy with the authority and experience to manage public affairs sharing policy making powers with the crown, and the ability to advise and assist the new king. The absence of an indigenous Greek aristocracy may also explain why bicameralism did not prosper in Greece. The king-appointed senate provided by the 1844 Constitution demonstrated Otto's wish to retain control. It was abolished in the 1864 Constitution after Otto's overthrow. On the contrary, European upper chambers with veto powers manifested the power of the aristocratic class in a system of divided government whose consent was necessary for the king to raise taxes (Congleton, 2011). The retention of the upper house, amongst other things, made the transition to parliamentary government more acceptable to the ruling elites. As Mueller (1996, p. 198) put it: "The upper house was to protect property from the masses ... bicameralism emerged as a form of compromise in which the aristocracy agreed to share power with the commoners." Otto violated his constitution repeatedly and was eventually overthrown. But it must be emphasised that the revolt was against Otto, the person on the throne, not against the institution of monarchy which survived his reign.<sup>17</sup>

## **6. Revolution, democracy and constitutional exchanges**

The bloodless rebellion of 1843 resulted in the introduction of constitutional monarchy but not of representative government. In fact, democracy deteriorated. From a value of -3 for each year during the period 1833-43, the POLITY index for Greece fell to a value of -4 for each year of the period 1844-61 (scores of -10 and +10 respectively indicate full autocracy and full democracy; data available from <http://www.systemicpeace.org/inscrdata.html>) chiefly as a result of the few

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<sup>17</sup> The Greek monarchy was overthrown in 1924 but restored in 1935. A republic was eventually established in 1974. For detailed constitutional economics account of the history of the Greek monarchy and its rejection in the 1974 referendum see Tridimas (2010) and (2015).

earlier formal limits imposed on the policy making powers of the hereditary king.

The 1844 Constitution is best seen as a stage in the development towards representative government. Broadly speaking, the political economy literature on democratisation can be divided into two branches, “big-bang” or revolutionary<sup>18</sup> theories and “evolutionary” or reform theories. The former contend that democracy in the West emerged suddenly, typically as a result of revolutions or constitutional conventions (or a combination of the two). Revolutionary accounts emphasise that violence or the threat of violence are the crucial factor in the establishment and change of government (Acemoglu and Robinson, 2006). The American Revolution of 1776 is a good example of the revolution-cum-convention creation of government. Constitutional conventions focus on how assemblies can aggregate preferences of different constituencies and agree on institutions of governance (Buchanan and Tullock, 1962).

Evolutionary theories of constitutional reform (Congleton, 2011) emphasise that the emergence of western democracy was a gradual process accomplished in a number of steps over a long period of time. It unfolded by building on the existing architecture of the “king-and-council” template, where policy making power is divided between the king and a council that was first dominated by the aristocracy, but with the extension of franchise it turned to represent the entire citizenry. The king (chief executive) and the council (legislative body) are engaged in a game of constitutional exchanges whereby authority to approve taxes and decide policy is reassigned between them as and when preferences and external circumstance change. This was accomplished through formal revisions in the law that reflected shifts in the ideology and the interests of the enfranchised classes who had the authority to reform the existing system of government. Over the 19<sup>th</sup> century policy making authority moved gradually and mostly peacefully away from the aristocratic chamber towards the elected chamber as the cumulative result of a series of minor liberal reforms that reduced the control of the sovereign. England offers the archetypical example, but also constitutional developments in the Netherlands, Sweden, Germany, the USA and Japan fit this general model

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<sup>18</sup> Berger and Spoerer (2001) define revolutions as occasions characterized by “(i) the use of violence, or the credible threat thereof, in an effort to change the political system; and (ii) collective action, that is, active involvement of the crowd in that effort” (p. 295–296).

of gradual evolutionary change (Congleton, 2011; see also Tridimas, 2012, for a review of Congleton's theory). Similarly, and contrary to Acemoglu and Robinson (2006), North et al. (2009) argue that in the transition to democracy opening political and economic access to the disenfranchised classes was not forced on elites but it was in part driven by them who found in their interest to expand access.

The gravest theoretical weakness of the revolutionary explanation of democratisation is probably that it is not in the interests of a successful rational revolutionary to establish democracy. A revolutionary aiming to change the existing government must overcome a severe collective action problem (Olson, 1965). If the revolution succeeds in establishing a better government, all citizens will benefit from the revolution. A rational individual realizes that he will not be excluded from the benefit of a successful revolution but also understands that he benefits even more by not participating in revolutionary acts that incur severe costs in the form of resources (own time and money) and risks of punishment if arrested (see Tullock, 1987, and Olsson-Yaouzis, 2012). He would then not participate but free ride. But this implies that the revolution will never materialise for lack of revolutionaries. It follows that rational actors will become revolutionaries only if after the revolution they gain private and excludable benefits like rents from office.

To resolve the collective action problem revolutionary organisations try to indoctrinate their members and offer private exclusive inducements and limit them to a small circle of members. However, it is doubtful that the revolution leads to democracy. According to Bueno de Mesquita et al (2003) the revolutionary leader is subject to a time inconsistency problem: Before a revolution against an autocrat he promises that he will establish democracy but after the revolution prevails, his incentives change and prefers to establish an authoritarian system of government sharing the spoils from office with a small coalition of supporters. It then follows that successful revolutionary leaders who relied on bands of close collaborators and operated in the shadows of legality before they attacked the established order, are more likely to keep control of the government, restrict rents to a close circle of confidants, and continue the revolutionary organization's hierarchical decision making, secrecy and discipline, instead

of permitting rival ideas and allowing competition for the offices of the state.<sup>19</sup>

That the 1843 rebellion did not lead to representative government was due to Otto's subsequent violations of the constitution rather than that the rebels establishing autocracy. The rebels, led by politicians, army officers and intellectuals had little in common apart from the interests in extracting concessions from the crown. In truth, it is more appropriate to consider that bloodless rebellion as a piece in the jigsaw of constitutional negotiations between the sovereign and the groups with a stake in policy making as described by Congleton. As already argued, the 1844 constitution manifested a step towards a new division of powers between the king and leaders of an emerging Greek political elite, of the type theorised by Congleton. The next step in that process was the 1862 uprising that deposed Otto; then (as in 1832) the Protecting Powers chose a new foreign born king, who subsequently approved a new more liberal constitution which came into effect in 1864. Constitutional evolution continued with the introduction of the principle that the government must enjoy the "manifest confidence" in 1875 and extension of suffrage to all adult males in 1877.

## **7. Conclusions**

In sum, the following developments marked the first thirty years of the Greek state, 1832 – 1862:

King Otto of the Bavarian royal house of Wittelsbach was at first received with unremitting joy as a saviour to heal and lead the country; he and his Queen returned the affection to their adopted country.

The new kingdom was severely handicapped by the policy interests of Britain, France and Russia, the Protecting Powers, who guaranteed its independence but aimed to cut Otto down in size in order to preserve the balance of powers, and by its severely limited human and financial resources.

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<sup>19</sup> Once more, it is worth recalling that despite various ambitious declarations, the 1821 Revolution did not establish democracy; even during the war against the Ottomans factional infighting precipitated civil wars, while an authoritarian streak characterised the administration of Capodistrias, the assassinated governor before the arrival of Otto.

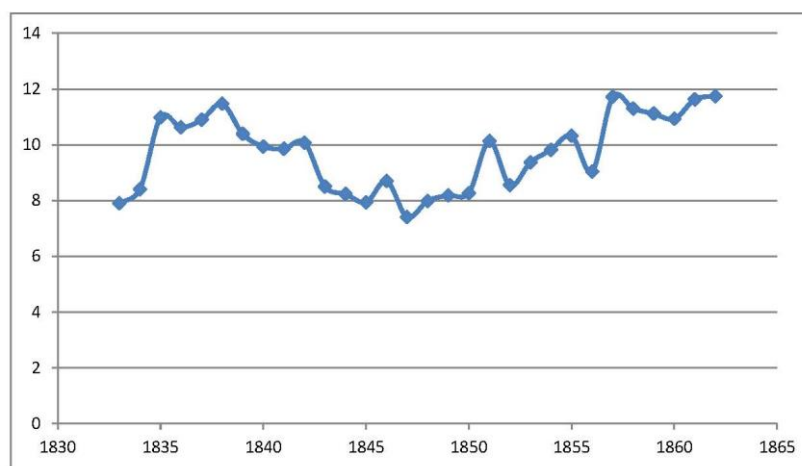
Otto fused in himself the activities of the head of state and head of government playing an openly political role even after granting a constitution. Although no credible republican movement existed at the time, Otto failed to cement loyalty to his dynasty. The reason for this failure were lack of manpower with expertise in administering the state institutions set up by the Bavarians, lack of financial resources to satisfy local claims, and Otto's failure to share power with the local elites. Intriguingly, chance may also have played a role: had Otto sired a child his dynasty might have lasted longer.



“Reception of King Otto at Athens” by Peter von Hess, 1839 (*Bayerische Staatsgemäldesammlung, Neue Pinakothek, München*)

## Appendix

**Figure 1:** Greek per capita GDP (Index 2006=100)



Source: [scholar.harvard.edu/files/barro/files/macrocrisissince1870\\_08\\_0614.xls](https://scholar.harvard.edu/files/barro/files/macrocrisissince1870_08_0614.xls)

Prime Minister	From	To	Party	Election date	Election winner
A. Metaxas	03-09-1843	16-02-1844	Russian	1843	Metaxas
K. Kanaris	16-02-1844	30-03-1844	Russian		
A. Mavrokordatos	30-03-1844	06-08-1844	English	1844	Kolettis
I. Kolettis	06-08-1844	05-09-1847 <sup>a</sup>	French	1847	Kolettis
K. Tzavellas	05-09-1847	08-03-1848	French		
G. Kountouriotis	08-03-1848	15-10-1848	French		
K. Kanaris	15-10-1848	12-12-1849	Russian		
A. Kriezis	12-12-1849	16-05-1854	English	1850 1853	Kriezis Kriezis
K. Kanaris	16-05-1854	17-07-1854	Russian		
A. Mavrokordatos	17-07-1854	22-09-1855	English		
D. Voulgaris	22-09-1855	13-11-1857	French	1856	Voulgaris
A. Miaoulis	13-11-1857	26-05-1862	English	1859 1861	Miaoulis Miaoulis
G. Kolokotronis	26-05-1862	11-10-1862	Russian	<i>Otto deposed</i>	

<sup>a</sup>: Kolettis died in 1847 and was replaced by Tzavellas

Source: Compiled from Kostis (2013)

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## **Why Invest in Greece? Gerson von Bleichröder and the Greek Loan of 1889<sup>1</sup>**

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**Abstract:** It is not only in the present day that Greece is seen as a shaky candidate for foreign direct investment, this was also the case in the 19<sup>th</sup> century. In the period between 1879 and 1891 the country borrowed sums at the international financial markets that obviously exceeded its debt sustainability, so that it went bankrupt in 1893. Why did European financiers not stop Greek borrowing in time? Using the example of the German banker Gerson von Bleichröder, who participated in the emission of a Greek loan in 1889, this paper examines the risk perception and risk management of European bankers concerning the emission of Greek bonds in the 1880s. It seems unlikely that Bleichröder's willingness to become involved was motivated by the relatively low profit expectations. Rather it can be assumed that the bond issue was made in order to maintain and strengthen Bleichröder's close relationship with the German Chancellor Otto von Bismarck, who was one of the cornerstones of the banker's business success and who used the loan as a political instrument to influence Greek politics.

**Keywords:** Greece, Greek international debt, international lending problems, International financial control, Bleichröder, Gibbs, Tricoupis, Bismarck.

**JEL Code:** F3, N4

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<sup>1</sup> For a German version of the paper, see Schönhärl (2013, 2017b: 214-247). This material was revised and translated during a fellowship at the Historical College in Munich.

## **1. Introduction**

Greece already began borrowing abroad during her struggle for independence against the Ottoman Empire (1821-1828). After independence in 1830 the country was allowed to emit an international loan of 60 million francs, guaranteed by the Great Powers. But from 1843 onwards the Greeks were no longer able to serve their country's foreign liabilities, causing their exclusion from the European Stock Exchanges. It was not until Greece entered the Latin Monetary Union in 1868 and an amicable settlement was made with the creditors from the 1820s and 1830s that Greece was again permitted to borrow abroad. After 35 years of suspension from the international money market she was readmitted in 1878 (Wynne 1951: 283-295).

During the next thirteen years Greece was able to emit seven international loans abroad with a total volume of about 640 million francs, although the country was considered to be a high risk financial market. The nominal interest fluctuated between 6 and 4%, the runtime between 37.5 and 99 years, and the issue rate between 67.4 and 76. The loans with nominal values of between 60 and 155 million francs were emitted by Paris banks (Comptoir National d'Escompte, Société Générale, Banque de Paris et des Pay-Bas), London banks (Anthony Gibbs & Sons, Hambro & Son, Emil Erlanger), the Bank of Egypt, the Bank of Constantinople, and also the Berlin houses Bleichröder and Nationalbank für Deutschland (Levandis 1944; Pantelakis 1995: 41-80; Iliadakis 2011: 56).

When the world economy stumbled into crisis in 1891 it became clear even to the casual observer that the borrowed sum by far exceeded the country's capability, as bankers and investors could have noted earlier. In December 1893 the Greek Prime Minister Tricoupis had to admit bankruptcy. The amortisation of foreign debt was stopped, and the payment of interest reduced to 30%. The question often asked by historians is why European bankers emitted Greek bonds in amounts that obviously exceeded the country's debt sustainability in the decade before the bankruptcy? What did their risk management look like? This article analyzes this question in a case study of the Greek loan of 1889, emitted by the London banking house Anthony Gibbs and the Berlin private banker Gerson von Bleichröder, who was the house banker of the German Chancellor Otto von Bismarck. The focus is on Bleichröder's risk perception, decision taking and risk management.

## **2. Why could Greece emit over the limits of her debt sustainability?**

### **A research review**

Andreas Andreadis, the “Nestor” of Greek Economic and Social History, asked as early as 1925 why foreign capitalists had been willing to lend Greece a constantly growing amount of capital between 1879 and 1891 (Andreadis 2010 [1925]: 164f.). His answers are convincing in some points, e.g., he discussed the personal trust of Western politicians and financiers towards the Greek Prime Minister Charilaos Trikoupis (Tricha 2009) who had spent part of his life in Paris and London and was excellently connected in international diplomatic circles. Trikoupis indeed argued very skillfully to explain why Greece needed foreign capital (see Trikoupis 2010 [1887]). Firstly, the country would need money to acquire Thessaly, which was granted to Greece at the Congress of Berlin under the condition that Greece agreed to take over the proportion of the Ottoman foreign debt ascribed to this region. Secondly, Trikoupis argued that capital from abroad would enable the Greek government to convert previous internal Greek loans with interest of 8 or 9% into loans with much lower interest. This would unburden the state’s finances considerably and render a balanced budget possible, the condition for the restoration of the convertibility of the drachma, which was very significant for international trade with Greece. Thirdly, Trikoupis planned to use the money to build up infrastructure like roads and railway lines and to industrialize Greece. His up-to-date arguments convinced not only foreign diplomats, but also investors (Psalidoulos and Schönhärl 2013).

Andreadis mentioned additional reasons why foreign capitalists would have lent to Greece. He suggested a lack of information on the part of the bankers. This argument is less convincing, because there were many foreigners present in Greece who realized that only some of the borrowed capital was being employed for infrastructure, while much money was used for armaments and military purposes. Besides the official legates there was, e.g., the so-called Mission Française (Papagiannopoulos 1989: 49), a group of French engineers sent to Greece to work on further infrastructure projects in response to the demands of the Greek government. These engineers reported regularly to Paris, like the special envoys from France or Great Britain (an 1891 example is the English special envoy Edward Fitzgerald Law, see Morison 1911). Some industrial enterprises like the German firm Krupp had their own deputies on-site to keep close contact to the military and politicians, and industrialists like Friedrich Alfred Krupp

even traveled to Greece themselves.<sup>2</sup> Furthermore, some bankers were well connected with Greece, for example due to ties to the Greek National Bank, and some banks also sent their own envoys to Greece to get an idea of the local situation and to negotiate with local business partners.<sup>3</sup> Even the West European press reported extensively on Greece and her finances, like economic specialists in their memorandums (e.g., Théry 1905). Clearly contemporaries had the opportunity to gain information on the Greek economy and finances if they so wished.

Andreadis also mentioned high gains and provisions for the banks as a reason. He considered high profits in Greek business as a key element in the decision-making process of bankers (high risk, but also high risk premium) in a situation where interest in Western Europe, especially Great Britain, was low – we come back to this point later. But, to anticipate, Bleichröder's profit in the Greek business was not higher than in his alternative emissions of the time, and actually even lower. So why did the financier nonetheless decide to invest in the Greek “niche market” (Bonin 2013)? Of course, some bankers, including Bleichröder, were looking for (exotic) investments for their growing capital. But if he had only considered the distribution of risk and diversification of investment, other candidates with lower risks could have been found. In the case of Bleichröder it is thus clear that beside the hope for profit other factors must have influenced the decision-making process.

Investment decisions for Greece are easier to explain for banking houses that had close business ties and personal relationships to the country over decades, for example Hambro or Erlanger in London (Schönhärl 2017b: 391-402). In these cases there were strong path dependencies. But Gerson von Bleichröder was a newcomer to the Greek market without any obvious previous ties to the country: he only started to take interest in Greece and to import Greek bonds to Germany in 1888<sup>4</sup>,

<sup>2</sup> See, e.g., list of conversation partners in November 1888 in KA WA 4/1031. The reports of the envoy Otto Dinglers, who was responsible for exports to the Ottoman Empire and to Greece, in KA WA 4/1484.

<sup>3</sup> The *Crédit Lyonnais*, e.g., sent Monsieur Guicciardi to Greece from May until August 1891, see CL 62 AH 77.

<sup>4</sup> In October 1888, Bleichröder, with the Nationalbank für Deutschland, imported part of the Greek loan of 1881 (110,635,000 francs, issuing rate 82.0) and 1884 (96.100.000 francs, issuing rate 82.0). In January 1889 part of the gold monopoly loan of 1887 (135,000,000 francs, issuing rate 77.25) followed; see *Börsen-Enquête-Kommission* 1893: 24ff; Schaefer 1995: 322. However, Schaefer is wrong in one point: the bonds offered in May 1889 by Bleichröder and Nationalbank für Deutschland at the Berlin Stock Exchange were not part of the conversion loan of 1887, but part of the 4% gold loan which is the main focus of

and it was 1889 before he participated in the emission of a Greek loan. So why did he decide to enter Greek business?

### **3. Bleichröder and the Greek 4% loan of 1889**

In May 1889 Bleichröder, in cooperation with Anthony Gibbs & Sons and Hambro & Son, emitted the tax-free consolidated gold loan with a nominal value of 125 million francs (£5 million or 100 million marks). The nominal interest was 4%, the runtime was 30 years. The bonds were emitted at 400, 2,000 or 10,000 marks.<sup>5</sup> The issue rate in Berlin was  $77\frac{1}{8}$ , the real interest 5.5% per annum. This issue rate was clearly above the average of Greek bonds in the 1880s, which Schaefer calculates at 73 (Schaefer 1995: 321), although it was rather low compared with other state bonds, clearly marking the bonds as a high risk investment. The capital from the emission was bound for the conversion of four older Greek loans: the 6% loan from 1879, the 6% loan for the railway line Myli-Kalamata from 1888, the 6% loan for the line Mesolonghi-Agrinio and the Greek internal loan from 1874.<sup>6</sup>

In the case of Anthony Gibbs & sons this appropriation explains the decision: the bank had previously participated in the financing of the railway line from Myli to Kalamata, this funding was now encountering problems and the aim was to acquire new capital for the completion of the project (Pantelakis 1995: 56, 158). On the other hand, for decades Hambro had been the gatekeeper for Greece on the international financial markets and had emitted several Greek loans, which also indicates strong path dependencies (Minoglou 2002). But Bleichröder's decision is less easy to explain, because the bonds that he had introduced at the Berlin and Frankfurt stock exchanges in 1888 had no direct connection with the loan of 1889, and he obviously had no other direct connection with Greece, not even an education in ancient Greek.

Already in March 1889 the Gibbs bank, when issuing the second tranche of the 1888 loan, had asked Bleichröder if he was interested in selling some bonds in Berlin for Gibbs.<sup>7</sup> Bleichröder refused because the business did not seem important enough to him, but he simultaneously dangled the possibility of his participation in a bigger loan.<sup>8</sup> In May, when

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this article.

<sup>5</sup> Loan Agreement and Prospectus, Estate Bleichröder in NBB, Loan Agreements 64.

<sup>6</sup> Ibid.

<sup>7</sup> Gibbs to Bleichröder 14 March 89, MA MS 11.113-2-164, 471.

<sup>8</sup> Gibbs to Bleichröder 18 March 1889, MA MS 11.113-2-164, 479.

Gibbs and Hambro issued the first part of the 4% gold loan (30 million francs) and Gibbs was already preparing the emission of the second part, Bleichröder was therefore invited and participated in the emission without any further discussion.<sup>9</sup> Still in May the prospect for the 4% loan of 1889 was authorized at the Berlin Stock Exchange (Börsen-Enquête-Kommission 1893: 26f.). Bleichröder also participated in a syndicate with a capital of £1 million to stabilize the Greek bonds, together with Gibbs, the Bank of Constantinople with its branch in Athens and the Greek National bank.<sup>10</sup> In June, he proposed Gibbs to issue the still owing part of the loan also in Berlin, an offer which the London bank accepted, promising Bleichröder high profits.<sup>11</sup>

When Bleichröder expressed doubts in July, because of the poor performance of the already issued bonds (which had sunk since May from  $77\frac{1}{2}$  to  $74\frac{3}{5}$ ), Gibbs quieted him: the reason for this poor performance was the Cretan crisis and the weak situation of the international money market in general, caused by the danger of war, bad relations between the German and the Russian Empire, the problems of French domestic policy and the fiasco of the conversion of Egyptian bonds.<sup>12</sup> Gibbs recommended not opposing this depression with invention support, because, in the long run, the political situation in the Orient would develop to the advantage of Greece in any case.<sup>13</sup> The emission of the second tranche of the loan in London started in October.<sup>14</sup> Again Bleichröder participated in the syndicate to stabilize prices in November with a capital of £643,720.<sup>15</sup> However, he did not sell this second tranche in Berlin, but left this business in August 1890 to the bank Markus & Volkmar (Börsen-Enquête-Kommission 1893: 28f.).

Bleichröder realized with his part of the loan of about 23 million francs,<sup>16</sup> a profit of 687,500 francs (550,000 marks), i.e. about 3%; the colleagues who sub-participated profited with  $1\frac{7}{8}\%$ .<sup>17</sup> This result

<sup>9</sup> Gibbs to Bleichröder 20 May 1889, MA MS 11.113-2-164, 503; 21 May 1889, 508; 22 May 1889, 514; 22 May 1889, 516. In London the loan was issued 24 May, see Gibbs to Bleichröder 24 May 1889, 533.

<sup>10</sup> Gibbs to Greek National Bank (ETE) 5 June 1889, MA MS 11.113-2-164, 680.

<sup>11</sup> Gibbs to Bleichröder 29 June 1889, MA MS 11.113-2-165, 65. Gibbs prognosticated that the price could double.

<sup>12</sup> Gibbs to Bleichröder 27 July 1889, MA MS 11.113-2-165, 237.

<sup>13</sup> Gibbs to Bleichröder 2 August 1889, MA MS 11.113-2-165, 271-3.

<sup>14</sup> Gibbs to Tricoupis 25 September 1889, MA 11.113-2-165, 485.

<sup>15</sup> Gibbs to Bleichröder 12 November 1889, MA 11.113-2-165, 710.

<sup>16</sup> To be compared with German investment abroad in general which amounted to about 500 million marks in 1889, see Schaefer 1995: 98.

<sup>17</sup> Benvenisti from Berlin to Bleichröder 30 December 1889, NBB VIII Imelmann.



explicitly outperformed Bleichröder's expectations as he had calculated lower profits, although even 3% were far from overwhelming: with some German bonds Bleichröder made profits of between 4 and 10%.<sup>18</sup> His Russian loans, e.g., the emission of the obligations of the Russian railways in 1889 with 175 million rubles in gold (700 million francs), of which Bleichröder took over 26<sup>11</sup>/<sub>12</sub>% (about 188 million francs; Schaefer 1995: 241), brought him profits of between 3 and 8% (Stern 2008: 619f.).<sup>19</sup> Comparison of the sums emitted in Russia and Greece clearly shows that the south European country – hardly surprisingly – was small business. Nonetheless, the invested sum was not insignificant even for a banker like Bleichröder, leading in the emission of foreign loans: Bleichröder's private fortune is estimated to be about 125 million francs at the end of his life (Schnee 1955: 299).

At the end of 1889 Bleichröder kept 15 million francs (£600,000) of the Greek loan of 1889 himself. These bonds had to be sold, but this was not a very difficult task. The Berlin Stock Exchange traders and the German public were very interested. This was caused partly by a big media event in Athens. On 27 October 1889, the Greek heir to the throne Constantin I married Sophie of Prussia, the sister of new German Emperor Wilhelm II. Many German newspapers sent their correspondents to Athens to report on the ceremonies and used the opportunity for detailed stories on the country and its people. Bleichröder and Gibbs had rightly expected the Berlin Stock Exchange to react positively to this wedding.<sup>20</sup> Because the public did not really understand the political background of the marriage<sup>21</sup>,

<sup>18</sup> In Germany Bleichröder invested, e.g., in the Laura Metallurgic works, the textile and petrol industry and deep-sea fishery, see inventory of Bleichröder's estate in BAR.

<sup>19</sup> Simultaneously the bank in the 1880s invested in Mexico, Romania, the Ottoman Empire, Italy, Hungary and Egypt, see *ibid.*

<sup>20</sup> "On affirme que l'Empereur et l'Impératrice d'Allemagne vont se rendre à Athènes pour assister au mariage de leur Fille avec le Duc de Sparte : espérons que ce voyage aura lieu et que l'effet en sera favorable." Gibbs to Bleichröder 18 June 1889, MA MS 11.113-2-164, 744.

<sup>21</sup> Contemporaries struggled to find a convincing interpretation of the marriage. For example, *Allgemeine Zeitung* (1 November 1889, quotation from the Italian "Riforma") understood it as approximation of Greece to the Triple Alliance to stabilize the Mediterranean. Although *Kreuzzeitung* (8 October 1889) stated that the Cretan question would undermine such attempts, because it brought Greece in harsh opposition to the Ottoman Empire as a close German cooperation partner. Therefore, this newspaper guessed that Wilhelm II would attend the marriage ceremony in Athens only due to family reasons. From the dynastical perspective the marriage with a member of the important Danish dynasty of Sonderburg-Glücksburg was indeed advantageous for the Hohenzollerns.

many investors interpreted it as a kind of guarantee by the house of Hohenzollern for the Greek royal dynasty (Radu 2017), as in the case of a bourgeois marriage where the future brother-in-law would certainly have assessed the economic validity of the candidate. However, Wilhelm II and Otto von Bismarck were more interested in intervening in domestic Greek power struggles by backing political supporters of Prince Constantin – who had been educated in Berlin and was seen as an admirer of Wilhelm –, the so-called “Small Court,” onto a peaceful course towards the Ottoman Empire. By this policy the Germans hoped to spare the Ottomans, with whom the German economy was ever more closely connected, military quarrels with Greece (Loulos 2010: 141f.). Wilhelm even traveled to Athens to attend his sister’s marriage – and subsequently used the opportunity for extended travel through the Ottoman Empire.

Against this background the Greek loan was popular amongst German “small investors” (concerning this quite misleading term see Finger 2016). Philhellenic motivation might have been significant in some cases as well: e.g., the investor Prof. Dr. Flach, chief editor of an unnamed newspaper and father of several children, referred in a letter written in 1894 to having signed bonds of the Greek loan for 2,500 francs, due to his attachment to the Greek nation, “the language and destiny of which have shaped my life’s studies.”<sup>22</sup>

Due to change in currency exchange rates Bleichröder’s profits from the Greek loan increased in early 1890 to 875,000 francs (700,000 marks), 3.8%.<sup>23</sup> The Greek loan was more profitable than Bleichröder had originally calculated, also due to continued press reports on Greece, which functioned as free advertisements for the bankers.<sup>24</sup> In May and October 1890 the bonds in Berlin sold so well that Bleichröder was able to realize most of his stock, and he additionally sold some bonds for Gibbs.<sup>25</sup> His clerk Benvenisti, who had obviously been greatly worried about the Greek loan (“With God’s help we will be freed also from this burden”),<sup>26</sup> must have been relieved.

In the light of these details, our question becomes even more puzzling: why did Bleichröder agree to get involved in this business, which did not promise extraordinarily high profits, but was judged to be high risk? The

<sup>22</sup> Flach to Tricoupis 17 April 1894, ELIA, estate Tricoupis, 16/106/d. Many similar letters to Tricoupis in *ibid.*, 22/1-14. Translation here and the following by the author.

<sup>23</sup> Benvenisti to Bleichröder on 1 November 1890, NBB VIII Imelmann.

<sup>24</sup> Benvenisti to Bleichröder on 30 December 1889, NBB VIII Imelmann.

<sup>25</sup> Gibbs to Bleichröder 27 May 1890, MA MS 11.113-2-166, 82; 1 August 1890, 121.

<sup>26</sup> Benvenisti to Bleichröder 1 January 1890, NBB VIII Imelmann.

timing in the midst of philhellenic enthusiasm due to the royal wedding was certainly a skilled piece of risk management, but the risks were still considered to be high. The available sources and the relatively reluctant and limited participation do not suggest that he considered Greece as an “emerging market” where the risk was worth taking because of splendid “imagined futures” (Beckert 2016). Neither can the direct influence of the House of Rothschild, Bleichröder’s close cooperation partner, be proved.<sup>27</sup> Clearly, other factors must have played a role in Bleichröder’s risk perception.

#### **4. The German Foreign Office and investment in Greece**

Because Fritz Stern described Bleichröder as a particularly politically oriented man, well connected in Berlin diplomatic circles, it seems worthwhile to search for further insights in the archives of the German Foreign Office. What did German diplomats think about the chances and risks of investment in Greece? This question touches upon research concerning the relationship between banks and imperialism, a deeply explored field of economic historiography (Barth 1995; Schaefer 1995; an overview in Wiczlinski 2011: 63-72). Until the mid-1870s German diplomats in Athens viewed the chances and profit expectations of Greek infrastructure projects quite negatively. For instance, in the case of the railway line planned to run from Piraeus to Lamia and the Turkish frontier and thus connect the Greek railway network to the European one, the German ambassador Hirschfeld judged that it was only “the easily stimulated fantasy of the Greek”<sup>28</sup> which saw “on big international trade routes the wealth of two empires floating into his country.”<sup>29</sup> He considered these hopes to be unrealistic, both concerning Greek and international trade. Accordingly, the diplomats did not regret that German banks did not commit themselves in Greece, particularly as the Greek state budget was already in deficit. An additional reason for the German reservations was that Greece was totally unimportant in Bismarck’s complicated policy of alliance. The only reason why the German chancellor had supported the Greek claims against the Ottoman Empire at the Congress of Berlin in 1878 was their potential to prolong the Oriental

<sup>27</sup> Nothing could be found in the RAL XI/63/17, nor in the Rothschild estates in ANMT 132 AQ 2 P 0582 and 0583.

<sup>28</sup> Report “The project of a railway from Piraeus via Larissa to the Turkish frontier“, Athens 21 November 1875, as attachment to a letter of the German embassy in Athens to the German Foreign Office (AA), 21 November 1875, BAR R901-15278.

<sup>29</sup> *ibid.*

Question and thus to occupy the rivals Russia, Austria and the Ottoman Empire, distracting them from establishing alliances against the German Empire. In these plans Greece, like the other Balkan states, was nothing more than a means to an end for Bismarck (Kosev 1982: 71-81). The notion of Germany having reached saturation point propagated by Bismarck was held by all German diplomats. Who wanted to invest money in a country like this? One could calmly continue to leave such business to others.

But this situation changed in the following years. Following its readmission to the European Stock Exchanges the Greek state started to build up its railway network intensively and to invite tenders for various railway projects, while Prime Minister Charilaos Tricoupis reformed the tax system and thus managed to double public revenue (Psalidopoulos and Schönhärl 2013). In 1878, there were no more than 10 kilometers of railway in Greece, that is to say the line between Piraeus and Athens, finished in 1868. By 1888 the railway network also included the lines Volo-Larissa and Volo-Tricala-Kalambaka with 225 km and the Peloponnesus line with 365 km. Lines from Patras to Pyrgos and from Nafplion to Kalamata were under construction (Papayannakis 1982; Georgii and Harr 1889: 11). Railway construction, which had proved to be an extraordinarily profitable business in Western Europe in previous decades, seemed to be heading toward its take-off in Greece. The orders for material and construction were given to firms abroad, because the necessary machinery and know-how was not to be found in Greece. The funding was in part organized by limited companies, which acquired the exploitation rights for several years and paid their shareholders dividends in line with profits. In other cases the Greek state emitted loans abroad and paid subsidies for the construction of certain segments. In both cases there was intense competition for the orders between European consortia and firms.

The German diplomats understood that the industrial orders were significantly regulated by the streams of capital involved. The successful tenders always came from firms from the countries that supplied capital. German competitors (e.g., Krupp from Essen, which mostly exported armaments to Greece) were rarely successful in big infrastructure projects, it was rather the French and Belgian firms that won the contracts. "France, Belgium and England outrival us in this respect."<sup>30</sup> If the Germans wanted to improve this situation for German firms, they would have to stimulate German investment in Greece. "The success of this industry could be much greater if it were, like the Belgians, supported by national capital and the

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<sup>30</sup> German embassy Athens to AA, 27 December 1888, BAR R 901-1539.

national entrepreneurial spirit. As far as this report can interest German investors, engineers and circles of entrepreneurs in these lucrative construction works more than has so far been the case, I would recommend forwarding it to the press.”<sup>31</sup> The sales agents situated in Greece shared this opinion: the reason for the lack of orders placed with German enterprises in Greece was the “lack of participation of German capital in the bigger projects, because naturally the export-industry of a country will benefit directly from the presence of its capital in enterprises abroad.”<sup>32</sup> All the reports agreed: to acquire further orders for German industry in Greece, the German bankers would ultimately have to show their commitment to the country. The diplomats estimated the risks to be manageable and no higher than elsewhere. “Greek bonds are as secure and maybe even more secure as many other bonds traded at the Berlin stock exchange. One has to admit that this could change some day, but it may not. And businesses with high gains and no risks probably do not exist today anywhere.”<sup>33</sup>

Therefore the diplomats regretted the reservation of German bankers towards Greece. Their first attempts were, however, not encouraging. In summer 1888 the Frankfurt-based bank Erlanger & Sons introduced bonds of £600,000 of the Greek 4% Monopoly loan of 1887 in Frankfurt<sup>34</sup>, which were issued by the London branch of the bank. The German newspapers reacted with discrediting articles. The “morality and conscientiousness of Greek borrowers” was even worse than that of the Turks, and the Greek state finances were distressed. “The fact that a Greek loan is traded at the German stock exchanges is a very bad sign of our times.”<sup>35</sup> Under these circumstances the bankers continued to have reservations and the diplomats celebrated every single order that came from Greece for a German firm despite the bankers’ aloofness as a leap of faith for quality made in Germany, e.g., in the case of Harkort from Duisburg who beat a Belgian competitor despite the higher price.<sup>36</sup> Indeed there were a couple of material orders for German firms despite the reluctance of German banks to follow industry to Greece. The chances for such material orders were especially high when Greek enterprises won the construction orders,

<sup>31</sup> German embassy Athens to AA, 2 June 1889, BAR R 901 – 15279.

<sup>32</sup> Moral, Felix, technisches Bureau in Athen: Geschäftsbericht für das Geschäftsjahr 1889/1890 und Mittheilungen von allgemeinem Interesse über die industriellen Verhältnisse Griechenlands, BAR R 901 1536.

<sup>33</sup> German embassy Athens to AA 27 December 1888, BAR R 901 – 1539.

<sup>34</sup> £600,000 of £5,400,000, issue rate 72,30 (Börsen-Enquête-Kommission 1893: 124f.).

<sup>35</sup> A Greek loan, in: *Der deutsche Ökonomist*, 14 July 1888.

<sup>36</sup> Counsel General Oberg from Patras to AA 23 May 1889, BAR R 901 – 15279.

because they were willing to shop in Germany. One example was the railway line between Pyrgos and Catacolo, where Krauss-Munich provided the necessary machinery and the Bochumer Verein the trucks. This was also the case for the Peloponnesus railway, where in addition the Gutehoffnungshütte produced the bridges. The railway construction between Patras and Pyrgos, executed by the Greek engineer team Vlangalis and Matsas, contracted orders of 6 million marks to Germany. The Attic railways, also constructed by a Greek company, imported tracks from Ruhrort and wagons from Esslingen (Georgii and Harr 1888: 14ff.). But these isolated orders were not considered to be satisfactory in the eyes of German diplomats, who saw greater opportunities. Therefore they tried to draw the attention of German investors to all projects where German industry was able to provide materials.

Further negotiations concerning the construction of the above-mentioned railway line between Athens, Larissa and the Ottoman frontier were of great interest for the industrialists. After several failed attempts, by 1888/89 three different bids were on hand: two English consortia (Seligmann-Lafayette and Watson-Pierson) and one international group consisting of Comptoir d'Escompte, Länderbank Wien and Deutsche Bank had submitted proposals.<sup>37</sup> Deutsche Bank saw the construction of the Greek railways as a natural continuation of its commitment in the Ottoman Empire (where it had been able to outrival Bleichröder in the same year of 1888 in an invitation to tender concerning the concession of the Anatolia Railway, see Wiczlinski 2011: 260). But the situation was not easy for the German group. Thanks to the range of bids the Greek government was able to tighten its conditions. Not only was the guarantee of interest reduced from 6 to 5% but an obligation was also added whereby the winning firm was to be independently responsible for the Ottoman concession to connect the Greek line with the Ottoman one. If this connection was not completed a high convention penalty would have to be paid to Greece by the consortium. These were hard conditions, even if the Germans counted on their good relationship with the Sublime Porte. However, Tricoupis seemed to be quite convinced by their order, as he explained to the German ambassador.<sup>38</sup>

But the Deutsche Bank was not willing to accept further tightening of the conditions. In February 1889 the consortium refused the conditions, which now seemed unprofitable, and withdrew its bid.<sup>39</sup> In March 1889,

<sup>37</sup> German embassy to AA, 19 July 1890, BAR R 901 – 1536; 30 August 1888, BAR R 901- 15278; 14 February 1889, BAR R 901 – 15279.

<sup>38</sup> German ambassador Le Maistre to AA 14 February 1889, BAR R 901 – 15279.

<sup>39</sup> German embassy to AA 14 February 1889, BAR R 3101–7401.

Comptoir d'Escompte collapsed, causing a total breakdown of the group in which Deutsche Bank participated. However, in the following months the Greek government changed its mind again and decided not to contract a concession with a guarantee of interest, but to lead the railway construction itself, giving orders to sub-contractors who were to be paid thanks to a new international loan. Deutsche Bank therefore picked up the project again and instructed its representative Alfred von Kaulla to negotiate in Constantinople.<sup>40</sup> German diplomats were anxious to foster these attempts. The competitors, e.g., from Belgium, were denounced. It was quite deplorable, reported the Germans, "that the Belgians are still not as discredited and in disfavor as would be advantageous for our interests."<sup>41</sup> The diplomats repeatedly emphasized that only firms from countries that were the source of necessary capital had any chance of winning the popular orders. Was it this pressure from German diplomacy that caused the commitment of Gerson von Bleichröder, the house banker and intimate of the chancellor Otto von Bismarck? Because Bleichröder and Bismarck conversed frequently face to face, sometimes even daily, their conversations are difficult to reconstruct – with Fritz Stern we have to bewail the catastrophic consequences of oral communication for the historian. However, sources prove that Bleichröder used this influence later (after Bismarck's dismissal from office) in the context of Greece: the Greek diplomat Coronio reported two years later to Tricoupis that Bleichröder would try to make the German government employ an competent legate in Athens.<sup>42</sup> And Greek diplomats in London also received information on the plans and ideas of the German government via Bleichröder.<sup>43</sup>

But the Archives of the British Foreign Office (FO) point in another direction. Some material on Greece was generated in the FO during the wedding ceremonies of Princess Sophie in Athens on 27 October 1889. Herbert von Bismarck, the chancellor's son and state secretary of the German Foreign office, attended the festivities, accompanying the German Emperor to Greece. In a conversation with him, the British delegate Sir Edmund Monson articulated his growing fears caused by the war propaganda of Greek Prime Minister Tricoupis towards the Ottoman Empire. Could Herbert von Bismarck, invested with his father's authority,

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<sup>40</sup> German embassy to AA 27 May 1889, BAR R 901 – 15279.

<sup>41</sup> German embassy Athens to AA 27 May 1889, BAR R 301 – 7401.

<sup>42</sup> Telegram of M. Coronio to Tricoupis 8 October 1892, ELIA, Estate Trikoupis, 16/64/g.

<sup>43</sup> Greek legate Theotokis to Tricoupis 18/30 March 1893, ELIA, Estate Trikoupis, 20/3/g.

intervene to keep Tricoupis peaceful? The German politician left Monson in no doubt that the German Empire, in common with all the other Powers, would no longer patronize Greece if she entered into new conflicts caused by her own fault. Indeed, it would worry him very much to leave sweet Princess Sophie in a country which so endangered itself. Nonetheless, the marriage in no way caused any political liabilities. "Germany would never move her little finger to save Greece from the expenses of her own folly."<sup>44</sup> In a later discussion between Bismarck junior and Tricoupis, arranged by Monson, the German politician ruthlessly explained to the Greek prime minister that his aggressive policy not only strained the sympathies of the Great Powers, but also could be the "cause of heavy financial prejudice to Greece."<sup>45</sup> This formulation could of course address the high costs of an eventual war, and Monson perhaps understood it this way. But the passage can also be understood as a threat that Bleichröder's Greek loan project could fail and severely damage Greek finances. The following events confirmed this interpretation. The situation between Greece and the Ottoman Empire did not escalate, and the Greek loan was emitted a few months later as planned. Bleichröder executed the emission, a project for which despite the pressure of German diplomacy no other German banker could have been persuaded.

## 5. Disappointed hopes

As far as the railway business was concerned the hopes of the German diplomats were not fulfilled. The order for the railway line to the Ottoman frontier, on which so many hopes were focused, was given in June 1889 to the English firm Godfrey, Eckerley and Liddeton with financial support from the bank Seligmann-Brothers. Due to its strong negotiating position the Greek government could not be forced to negotiate a so-called *tied loan*, which would have bound it both to an investor and a constructor. Rather it had finally invited tenders for the construction by offering a mileage allowance with the quite low price of 140,000 francs per km. The English company had accepted this and therefore had won the "industrial competition."<sup>46</sup> Against the background of growing national tensions German diplomats interpreted this unprofitable English commitment as a long-term strategy: obviously the English wanted to prepare for more

<sup>44</sup> Monson, British embassy in Athens, to Salisbury, British Foreign Office, 28 October 1889, NA, Foreign Office 289-393.

<sup>45</sup> Monson, British embassy in Athens, to Salisbury, British Foreign Office, 31 October 1889, *ibid.*

<sup>46</sup> German embassy Athens to AA, 27 June 1889, BAR R 3101- 7401.



lucrative projects later on, “when the country will be covered with English industrial developments of all kinds and when the English engineers will know it better.” The diplomats very much regretted that the Germans had not even submitted an offer in the last round. “For its own sake, the absence of German industry in this competition is to be much regretted. For a long period to come the German iron and mechanical industry will painfully experience English domination on the Greek market, a position which it had good opportunities to acquire itself. Under the given circumstances the best scenario will be that the funding of the project could produce profits for German banks, because it probably will be facilitated through a loan with participation of the Bleichröder bank.”<sup>47</sup> As has been previously demonstrated even these profits were quite limited.

Bleichröder did not execute the investment as favored by the German diplomats. Firstly, he emitted the loan in cooperation with two English banks and in no way attempted a national solo act as the diplomats, concerned with nationalistic criteria, suggested. Secondly, he did not ensure that the purpose of the money was restricted to infrastructure projects. It was rather determined for the conversion of previous loans. The details of Bleichröder’s investment thus differ broadly from what the diplomats would have wished. One could at least have hoped that the loan would open doors for further German investment. But this hope also failed. Only the Nationalbank für Deutschland participated in 1890 in a Greek loan at 5% for the railway line between Piraeus and Larissa in cooperation with Hambro & Son.<sup>48</sup> Further loans did not take place. The underlying reason for this continued reservation might have been that Greek finances quickly and severely worsened after 1890. The crisis was caused by the international banking crisis initiated by the (nearby) failure of Baring in London. The serious decline on the world market of raisin prices, the main Greek export, was a further reason (Pizanias 1988; Tsiovaridou 1980). Prestige projects like the works on the railway line from Piraeus to Larisa and the maritime Canal at Corinth (Schönhärl 2017a) ceased. Therefore Tricoupis, much admired abroad, found himself more and more on the defensive in domestic politics. His fall from power after losing the 1890 election caused the depression of Greek bonds at the London Stock Exchange, because the Greek diaspora there did not trust the new Greek

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<sup>47</sup> German delegate Tschirschky to AA, 27 June 1889, BAR R 901 15279.

<sup>48</sup> Nominal value £3.595.000, issue rate 92 5/8 (Börsen-Enquête-Kommission 1893: 28f.). Because no documents concerning this emission are handled down in the archives of the Nationalbank für Deutschland, its decision making for this investment cannot be investigated.

government.<sup>49</sup> New loans could no longer be acquired abroad.<sup>50</sup> Declining trust in Greek finances was also visible in the attitude of the German diplomats in Athens who now changed their tune and commented more and more critically on Greek wishes to borrow abroad: "If instead of the wasteful financial administration of recent years with its dependence on loans, there had been a parsimonious financial policy, keeping the budget within existing resources wisely, the situation would probably differ from the current heavily compromised state credit."<sup>51</sup> In the German press there was suddenly much sympathy for the reservations of the investors. It was said to be very reasonable "that European capital has had enough of repeatedly grasping into its own pocket to enable the Greek government to pay its interest."<sup>52</sup> The course of Greek bonds declined massively by about 25% (Börsen-Enquête-Kommission 1893: 24-29).

In 1892, German skepticism turned into open criticism: "When a Prussian princess married Greece, many investors bought Greek bonds; those who invest money due to such motives may not bewail the consequences, even though this does not mitigate accusations towards the issuing houses of Greek bonds."<sup>53</sup> Afterwards, as so often with criticism of speculative behavior, everybody knew better. Indeed, the value of the drachma crashed and export earnings plummeted. In December 1893 Greece had to stop the amortization of its foreign debt and to reduce the interest on 30%. Tricoupis had no option but to declare bankruptcy; he announced to the parliament "Regretfully, we are bankrupt".

## **6. German intervention after the bankruptcy**

Creditors all over Europe were shocked. They organized themselves to call vehemently for the reimbursement of their capital. When Tricoupis gave them the runaround and repeatedly delayed negotiations, the creditor organizations turned to their national governments for help. London and Paris showed themselves – as was usual in cases like this – unsympathetic. The investors had known the risk and invested on their own responsibility, and they would therefore have to bear their losses on their own, too (Petersson 2009: 33-50). In contrast German politicians (about 125 million francs of a total of 750-820 million francs of the Greek foreign debt was held in Germany, see Schaefer 1995: 323) did not refuse to support the

<sup>49</sup> Gibbs to Bleichröder, 30 July 1891, MS 11.113-2-166, 426.

<sup>50</sup> German delegate Lüders to AA 31 July 1891, BAR R 3101 – 7401.

<sup>51</sup> German delegate Lüders AA 5 September 1891, BAR R 901 -1540.

<sup>52</sup> *Vossische Zeitung* 14 October 1891, BAR R 901-1540.

<sup>53</sup> *Der Deutsche Ökonomist* 19 March 1892.

creditors' interests so rigorously, but strengthened the hopes of German investors that political pressure could bring about the complete reimbursement of their capital. Therefore the German creditors consistently rejected Tricoupis' proposal to reimburse 30 or 35% of the invested capital (Petersson 2009: 39-46). Did the German diplomatic services feel a particular responsibility towards the investors because of they had explicitly advertised investment in Greece? Gerson von Bleichröder's personal influence was surely no longer meaningful, because he had died on 18 February 1893 in Berlin.

Indeed the German government soon found a way to exercise pressure. In 1897, a further military conflict between Greece and the Ottoman Empire escalated, which the Turks were able to win within a few weeks. They occupied Thessaly and were willing to return it only after large reparations. Bankrupt Greece had no way to borrow the necessary money on the international financial market herself, but had to ask for a guarantee from the Great Powers. Irrespective of the official admission at the stock exchanges, who would otherwise have bought Greek bonds? Greece had to accept all conditions for peace, including an International Financial Commission (IFC; see Petersson 2009: 47-50). The IFC was allowed to collect the state revenues from taxes on salt, cigarette papers, matches and playing cards, stamp duty, the tariff revenue from tobacco and duties from the harbor of Piraeus, and thus paid back the Greek debt abroad. The financial autonomy of Greece was seriously limited. The IFC, which was composed by the legates of six European countries, succeeded (with short breaks) in serving Greek foreign debt until the German invasion of Athens in 1941 (Tunçer 2015: 100-122).

## **7. Conclusion**

The article started with the question of why, during the period between 1879 and 1891, European bankers were willing to issue loans for Greece that far exceeded its debt sustainability. The participation of Gerson von Bleichröder in the Greek 4% loan of 1889 was examined as a case study. It could be shown that Bleichröder's expectations of profit were not exorbitant although he and his employee judged the risks to be high. Therefore profit maximizing alone could not have been the main motivation for Bleichröder's willingness to get involved. Other factors of his risk perception must also be considered.

From the mid-1880s German diplomats in Athens sent reports pushing for the participation of German capital to better the chances of German industry getting orders from Greece. In a period of growing nationalistic tensions in Europe competition for industrial orders became increasingly important, even in the field of politics. The diplomatic service tried to

employ the bankers to achieve their aims. But the German Chancellor Bismarck himself followed another agenda with the Greek loan issued by his house banker. He used the loan as a political bargaining chip to force Greece on a course of peace, in keeping with German policy. Bleichröder therefore emitted the loan primarily to do Bismarck a favor. The chancellor's increased trust in Bleichröder and his appreciation of the banker as a political instrument in the financial sphere was the (non-monetary) risk premium Bleichröder appreciated most. He viewed the supposedly high exposure (not only in terms of monetary risks, but also in terms of a loss of reputation as an issuing house) as being a reasonable investment in the long run, because the close relationship with Bismarck was the most important cornerstone of Bleichröder's business success.

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### **Archive signatures**

ANMT Archives nationales du monde du travail, Roubaix.

BAR Bundesarchiv Berlin-Lichterfelde.

CL Crédit Lyonnais Archives in the Archives historiques du Groupe Crédit Agricole, Paris.

ELIA Hellenic Literary and Historical Archive, Athens.

KA Krupp Archives, Essen.

MA Anthony Gibbs papers in Metropolitan Archives, London (available also as microfilm edition: *The Gibbs Archive. Papers of Anthony Gibbs and Sons 1744–1953*. Guildhall Mss 11021–96, 11108–11140, 111467–111474, 16869–16904, 19802–19888. Microfilm, London 1984).

NBB Bleichröder Collection in the Baker Library, Harvard Business School, Boston.

RAL Rothschild's Archive, London.







## A Tale of Two States: Explaining Constitutional Choice in Germany and Greece

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**Abstract:** The paper proposes a model to endogenize the degree of specificity and rigidity of constitutional provisions. It is shown that depending on the probability of setting the policies in the future and the time horizon of the drafter, a rational drafter will manipulate the specificity and rigidity of constitutional provisions to minimize the distance of future implemented policies to their ideal policy. Three equilibrium strategies are presented. To test the predictions, the behavior and constraints of the presidents of the Second National Assembly in Athens of 1862, Dimitris Voulgaris, and the *Parliamentarischer Rat* of 1948, Konrad Adenauer, are examined. After their participation in the assembly, both Voulgaris and Adenauer served as heads of government of their countries. Nevertheless, the electoral competition they faced was very different. It is shown that their actions within the assembly are consistent with the theory proposed in the paper.

**Keywords:** Germany, Greece, constitutional specificity, constitutional rigidity

**JEL Codes:** D02, D72, N40

### 1. Introduction

Reading the constitutions around the world reveals a great variety not only in the aspects of life that are constitutionally regulated but also in the extent to which constitutions give specific instructions for the legislators or the legislators are given discretionary power to decide the content of the laws they introduce (specificity). For example, some constitutions require

choosing the government through elections, while others specify also the characteristics of the elections (universal, secret, etc). A similar variation characterizes the difficulty with which different constitutional provisions can be amended (rigidity). For example, the provisions defining the amendment procedure are treated in many countries as “eternal”, i.e. their amendment is prohibited by the constitution. Contrary, only the constitution of Ecuador of 1843 has ever entrenched eternally the separation of powers in three branches (Roznai 2017). This variation is observed both between constitutions and within a constitution. Indicatively, the constitution of Canada defines four different amendment tracks (Albert 2015d).

Research has investigated the determinants and impact of different constitutional provisions for several constitutional charters. The literature has also discussed the effect of increasing the costs of amending a constitution and the interaction between the size and scope of the constitution as a function of the difficulty to amend it. However, existing theories do not explain the variation in rigidity and specificity among different provisions of the same constitution. The paper tries to explain these two aspects by looking at the extent to which drafters expect to be able to write the laws for a sufficient period in the future. It argues that drafters manipulate the degree of discretionary power given to the future legislature depending on whether they expect to be part of it. If electoral competition is strong so that they are uncertain whether they will enjoy a long-lasting power to set the policies, they will constrain the policies that are available to the legislature (policy space). Additionally, they will make amendments costly to stop the legislature from changing the framework for legislation.

To test this conjecture, two case studies are conducted. The constraints, under which the Second National Assembly in Athens of 1862 and the German *Parlamentarischer Rat* of 1948 worked, are discussed. Then, the behavior of the presidents of each assembly, Dimitris Voulgaris and Konrad Adenauer respectively, is compared to the theoretical expectations. It is shown that despite the similarities in the constraints under which the two men were acting, the differences in their behavior can be explained by the differences in the probability of attaining and retaining power that the two men faced.

The paper is structured as follows. Section 2 gives an overview of the existing literature on constitutional rigidity and the importance of procedural rules for constitution - making. Section 3 presents the theoretical framework and the connection between expected electoral competition and the two characteristics of constitutional provisions. Then, section 4 uses the theoretical framework to explain the two cases. These

case studies provide additional evidence in favor of the theory. Section 5 concludes.

## **2. Literature Review**

### *2.1. Why a constitution?*

Despite the claim of Ackerman (1993) that constitution - making induces benevolence, sufficient empirical evidence shows that drafters try to satisfy their personal agendas (Beard 1913; McGuire 1988; McGuire and Ohsfeldt 1986, 1989a, 1989b). This enables us to analyze constitutions as any other selfish behavior. The seminal work of Persson and Tabellini (2003) has spawned the interest on the effects of constitutional rules (Voigt 2011). Alongside the importance of constitutional rules, the literature has also investigated the determinants of constitutional choice. Two main strands of theories have emerged to explain which rules make it into the constitution.

Electoral market theories (theories of hegemonic preservation) argue that constitutional constraints aim to protect the current elite, if they ever lose their power. Ramseyer (1994) and Hirschl (2007) show that the probability of losing future election is a good predictor for the existence of an independent judiciary. However, Tridimas (2010) uncovers a potential problem in the argument. Specifically, once the elites delegate power to an independent actor, it cannot ensure that the actor will protect the preferences of the current elite against that of the future elite. Despite this theoretical problem, hegemonic preservation theories appear to find empirical support, when one looks at the timing of the introduction and change of constitutional rules. Ginsburg and Versteeg (2014) using data from constitutions around the world show that indeed the introduction of constitutional review is largely explained by the degree of electoral uncertainty.

Self-control theories posit that the government needs (financial) support to maximize its utility. In this context, it faces two problems: transnational interactions and commitment problems. Transnational interactions constrain the government through four mechanisms (Goderis and Versteeg 2014). Coercion necessitates a foreign power forcing the government to accept a certain institutional environment. Competition involves the government trying to attract external “institution-sensitive” investors by increasing legal certainty. Learning and acculturation entails that the government observes which institutions induce growth or are perceived as growth promoting and copy them. This argumentation concludes that the stronger the transnational connections of states with a specific institution the more likely this institution will crossover. Although

Goderis and Versteeg present evidence of diffusion for constitutional rights, Ginsburg and Versteeg (2014) cannot find such evidence in the case of constitutional review. Commitment problems, on the other hand, emerge when the survival of the government is a function of citizen support. North and Weingast (1989), North (1990), Acemoglu, Johnson, and Robinson (2005) stipulate that formal institutions can be used to guarantee to the citizens that the government will not abuse its power. By binding its hands, the government can convince the citizens to produce more or even avert a revolution. The empirical evidences for this approach are compelling. The approach is further validated when one considers that the empirical proof attained so far is dampened because we cannot exclude from the sample the constitutions that are not written to pose any constraint (Law and Versteeg 2013; Caruso, Scartascini, and Tommasi 2015).

## 2.2. *Why a specific and rigid constitution?*

The aforementioned literature has studied the rules included in a constitution as a series of binary choices. This allowed for comparisons between different countries and times. The specificity in the wording of a constitutional provision is considered irrelevant. This approach is surprising. Research shows that constitutional specificity / verbosity matters (Elkins, Ginsburg, and Melton 2009; Tsebelis 2017).

The government can circumvent constitutional constraints by changing the interpretation of the rules without amending the constitution (Voigt 1999; Posner and Vermeule 2008; Albert 2015b, 2015c). If we perceive the constitution as a contract between the citizens and the government, the need to write down detailed clauses covering all contingencies is reduced when the two contracting parties believe (trust) that “creative interpretation” will not be a problem. If the constitution is explicit on what it allows, this mechanism becomes more difficult to use. Bjørnskov and Voigt (2014) show that indeed national trust levels are negatively correlated with the length of the constitution. This paper extends the literature by focusing on another type of specificity, namely the range of alternative policies that a provision allows for.

The literature has also examined the difficulty to amend a constitution. If a constitution is unchanged over time, it will be a more reliable coordination device for the citizens (Hardin 2013; Hadfield and Weingast 2014). The frequency of amending a constitution has been coined *amendment rate*. Sadly, the different indicators that attempt to quantify the difficulty to amend are only weakly correlated to each other and are bad predictors of amendment rates. Ginsburg and Melton (2015), after discussing the problems of previous measures, claim that formal amendment constraints do not matter but attitudes toward amendment do.

They coin these attitudes *amendment culture*. Combining formal constraints and amendment culture, they extrapolate their measure of amendment difficulty. Their estimates are derived by taking previous amendments as given and argue that what happened in the past will be repeated in the future.

Tsebelis (2017), pointing out the problems of the estimates, demonstrates that increasing the specificity of the constitution while keeping formal constraints constant induces constitutional amendments. His finding is in line with previous literature claiming that detailed constitutions will be unable to facilitate the need for adjustment and therefore are more likely to be amended (Lutz 1994; Rasch and Congleton 2006; Versteeg and Zackin 2016; Pilpilidis 2018).

To disentangle the difficult to amend from specificity the paper suggests the following definition for rigidity. Constitutional rigidity expresses the cost differential between changing a simple law and amending a specific constitutional provision as a result of different procedural requirements.

### 2.3. How to procedurally constrain constitutional drafting

Before proceeding to the explanation for specificity and rigidity proposed in the paper, a caveat is in order. Constitutions are the result of a drafting process. The framework, for the drafting matters. Procedural drafting rules encompass the selection of the assembly members, the rules of deliberation, quorum, majorities and deadlines and the ratification procedure. These rules can affect the preferences represented in the assembly and the discretionary power of the assembly.

Osborne and Slivinski (1996), Besley and Coate (1997), Grosser and Palfrey (2014), Bol, Dellis, and Oak (2016) and Dal Bó et al. (2017) using different assumptions and methods come to the same conclusion. The rules under which a political assembly will be selected changes both the preferences that will be represented in the pool of candidates as well as the preferences that will ultimately be represented in the assembly. In the specific case of constitutions, Ginsburg, Elkins, and Blount (2009) show empirically that whether the drafters are selected from the executive or the legislature branch influences the distribution of power between the parliament and the executive in the constitution.

Elster (1995) names the constraints set by the selection process *upstream constraints*. Contrary, constraints by the ratification / validation process are named *downstream constraints*. He argues that changes in the constitution can be traced to the fact that the assembly needs to formulate the constitutional proposal so that the ratifying body will be willing to accept it. Despite the appeal of the theory, empirical research indicates that

constitutions are usually written in times of disarray and the public is willing to make a number of concessions in order to exit anarchy (Widner 2007), i.e. they are willing to ratify any kind of functioning constitution. In a case study, Moehler (2008) claims that popular participation improves democratic attitudes in the country. This implies that even if ratification does not constrain the assembly, it could alter the popularity of different rules. Eisenstadt, LeVan, and Maboudi (2015) studying 138 new constitutions in 118 countries between 1974 and 2011 present empirical evidence that increased participation in the drafting stage significantly increases the level of democracy in the new constitution.

To complete the review of the literature, we need to mention an aspect, which has yet to be empirically investigated. Since the assembly is not a unitary actor, rules for deliberating and taking decisions are required. Assemblies before they begin their work on the actual constitution discuss and vote on the rules of procedure. Nevertheless, preference aggregation cannot be perfect; thus, these rules have important incentive effects. For example, Elster (2012) claims that whether the discussions of the assembly are secret or public, influences the degree to which logrolling and political bargaining is possible.

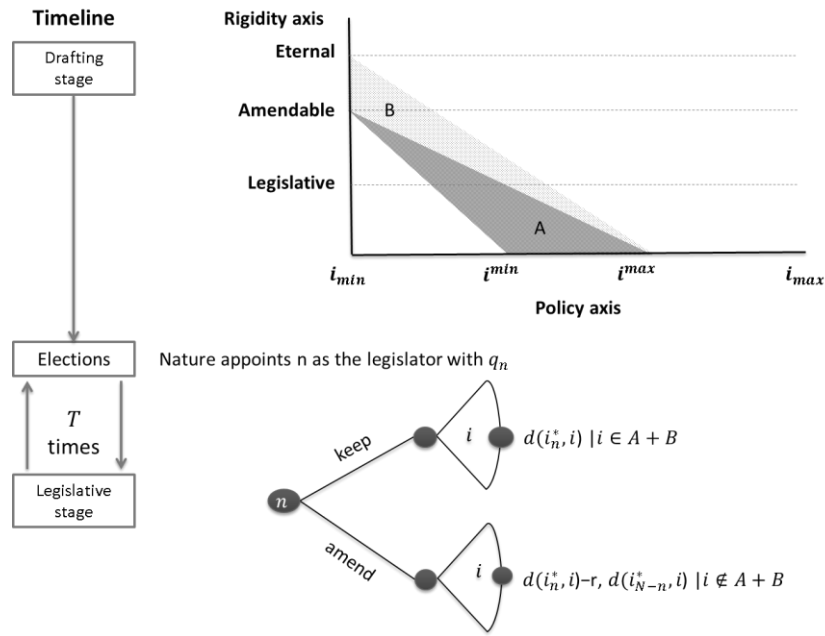
Having given an overview of the discussion on a number of relevant questions, the paper now proceeds by proposing a novel explanation for the rigidity and the specificity for a given constitutional rule.

### **3. Inter-temporal regulation game**

#### *3.1. General Frame*

The basis of the model is that drafting and amending are two different processes. Amendments are highly regulated constitutional changes. Contrary, drafting is a moment of legal creation. Although drafters could orient their work on existing rules perceived as best practices, the existing legal order is non-restraining. The stakes in case of failure are also different. During the deliberation for the amendment and after a failure to pass it, a functioning constitution is in place. Drafting begins when the status quo is no longer accessible. To regulate the time from constitutional breakdown to ratifying the new constitution, interim constitutions and transitional provisions are used (Ginsburg and Alston 2017). Such documents are used to temporarily minimize legal uncertainty, but by definition can bring no constitutional stability (Varol 2014). Under the shadow of the change of the legal order, the government has no incentive to pursue long-term goals and the judges have no incentive to invest effort in solving legal problems. The drafters are aware that they are in a position to use the constitution to implement unpopular policies (Versteeg et al.

2010). Weintal (2011) calls this relationship of the drafters to the population, *imperfect representation*. This phenomenon is confirmed by the fact that historically it is very rare that a constitution fails to be ratified in a referendum (Michel and Cofone 2017).



**Figure 1:** Inter-temporal regulation game

Figure 1 shows the decisions taken by the player in the game. The left side graph represents the decisions taken during the drafting stage. The right hand side represents the decisions taken during the legislative stage. It is assumed that the drafter acts as a unitary actor pursuing her individual interest. Further, it is assumed that all different political decisions can be represented as points on a uni-dimensional axis,  $I = [i_{min}, i_{max}]$ . Before the drafting stage, the drafter is appointed. Then during the drafting stage ( $T_0$ ), she writes the constitution. Drafting entails the manipulation of two aspects. The first aspect is the specificity of the constitutional provision. This decision is operationalized in the model by allowing the drafter to set an upper and a lower bound for the political decisions which are acceptable before an amendment is necessary ( $i^{min}$  and  $i^{max}$ ).<sup>1</sup> The

<sup>1</sup> For example, let us look at the decision on what kind of majority should the

second aspect is the rigidity of the constitutional provision. To manipulate this aspect, the drafters can increase the procedural requirement that a constitutional amendment would entail compared to the normal legislative procedure. We can define the cost differential due to different procedures as  $r$ .

$$\Delta C = C(\text{Amendment}) - C(\text{Legislation}) \equiv r \geq 0 \quad (1)$$

The constitution is drafted only once (drafting stage). Then, Nature appoints the legislator with a probability  $q_{n \in N}$  from the population  $N$  so that  $\sum_{n=1}^N q_n = 1$ . Let us denote the times that a specific member of the society is appointed as the legislator as  $t_{n \in N}$  for  $\sum_{n=1}^N t_n = T$  (the periods between two constitutional assemblies).

The legislator is the third player in the game. Because of the appointment mechanism used in the model, it is possible also that the drafter becomes the legislator. The legislator makes two choices. He chooses whether to change the policy space available (amend) at the cost of  $r$  or not. Then, he sets a policy which is compatible with the (amended) constitution,  $i \in [i^{\min}, i^{\max}]$ . This constraint implies that the constitution has a “bite”. The legislator can avoid its constraints only by amending it formally. The possibility to disrespect the constitution is considered a prohibitively costly endeavor. This could be due to the loss in legitimacy, which makes implementation costly, or the loss of trust in the legislator. Additionally, the boundaries to which interpretation can be used to escape the provision are subsumed in the degree of specificity.

Setting policies creates losers and winners. Rule-making inevitably contains an element of redistribution (Tullock 1967; Krueger 1974). Thus, members of the population in the model have complete preferences over the policy space and experience disutility the further away  $i$  (the implemented policy) is from their ideal policy,  $i_n^*$ . We can define a utility function as  $d_n = d_n(i) = d_n(|i_n^* - i|)$ :

$$d_n(i_n^*) < d(i \neq i_n^*) \quad (2)$$

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government attain. The spectrum can vary from the Athenian lot-drawing rule (governments with no support) to unanimity (government with support from the entire population). The requirement of an absolute majority rule without reference to universal suffrage allows for a number of different majorities to be attainable with the constitution.



### 3.2. Legislative Stage

The incentive that drives all individuals is reducing the distance of a policy to their ideal point over time. Achieving that goal is connected with different constraints for drafters and legislators. Legislators are constrained by the constitution. Whether one will be the legislator for another period is uncertain. The probability of being elected for  $t$  number of periods is:

$$P_n(t) = \binom{T}{t} q_n^t (1 - q_n)^{T-t} \quad (3)$$

It is possible that the legislator at a certain period only gets to set the policy for this one period. Contrariwise, legislation is specific, i.e. a point-choice, not an interval. To be able to choose this policy the legislator might need to amend the constitution. Amendment in the model relates to changing the  $i^{\min}$  and / or  $i^{\max}$  or the  $r$ . Rigidity cannot be changed at the same time with the content of the constitution. This constraint is used to increase the external validity of the model, i.e. to capture that amendment rules are in principle amended in a special assembly (Albert 2015a).

For an amendment to be part of the sub-game perfect equilibrium strategy, two conditions are necessary:

**Condition 1:** The ideal policy is not part of the constitutionally allowed policies:

$$i_n^* \notin \{i^{\min}, i^{\max}\} \quad (4)$$

**Condition 2:** The marginal benefit differential between implementing the closest policy allowed from the constitution<sup>2</sup> compared to implementing the ideal policy is greater than rigidity.

$$r < d_n(i^{\min}) \quad (5)$$

As is seen by Condition 2, if we increase rigidity it is less likely that amendments will come about. This means that  $i^{\min}$  will be implemented. If rigidity is low, then the constitution will be changed and  $i_n^*$  will be implemented. Condition 1 also tells us that for any distribution of

<sup>2</sup> For shortening the formulas, I will focus on the case  $i_n^* < i^{\min}$ . The case where  $i_n^* > i^{\max}$  is its mirror image and it produces the same results. Additionally, it is assumed that a certain status quo bias exists, so that if  $r = d_n(i^{\min})$  the constitution is not amended.

preferences in the population increasing the size of  $\{i^{\min}, i^{\max}\}$  reduces the attractiveness of a constitutional amendment.

We know what will happen in the last period of the game. Going one period backwards, if  $n$  takes power in the  $T - 1$  period, he knows that if he amends the constitution, he will be able to attain his ideal point both this period with certainty and next period with a probability  $q_n$ . A high  $q$  makes the shadow of rigidity less daunting. The one-time investment in amending the constitution is compensated by the utility coming from being potentially able to implement the ideal policy for a number of future rounds. Furthermore, if the number of the remaining rounds were large, even legislators for whom condition 2 does not apply would be better-off amending the constitution not to attain their ideal policy but to ensure that the policies attainable with the constitutional provision make it disadvantageous to amend the constitution.

### 3.3. Drafting Stage

Drafters are given the opportunity to set the initial state of the constitutional provisions. Depending on how they draft, amendments become the utility maximizing choices. Additionally, they are in the position to use rigidity to protect a policy from future majorities. However, as discussed drafting follows a change in the status quo. Drafters do not know how their ideal policies will look like once technology and environmental conditions change. Moreover, the longer the time horizon of the constitution, the thicker the veil of uncertainty under which the drafter has to decide. This uncertainty makes rigidity a double-edged knife in the long-run (Müller 1998).

Rigidity: Description	
<b>Omit</b>	No mention of the amendment process for the provision.
<b>Law</b>	The provision can be changed as a simple law.
<b>Amendment</b>	The provision is procedurally more costly to amend compared to a law.
<b>Eternity</b>	The provision can be changed only if a new constitution is drafted.
Specificity: Description	
<b>Omit</b>	No constitutional provision regulates this policy area
<b>Aspiration</b>	The provision speaks of general principles for regulating the policy area.
<b>Framework</b>	The upper and lower limits of regulation are defined by the provision.
<b>Directive</b>	The provision explicitly regulates but transposition through legislation or an executive act is necessary.
<b>Regulation</b>	The provision can be used for direct action.

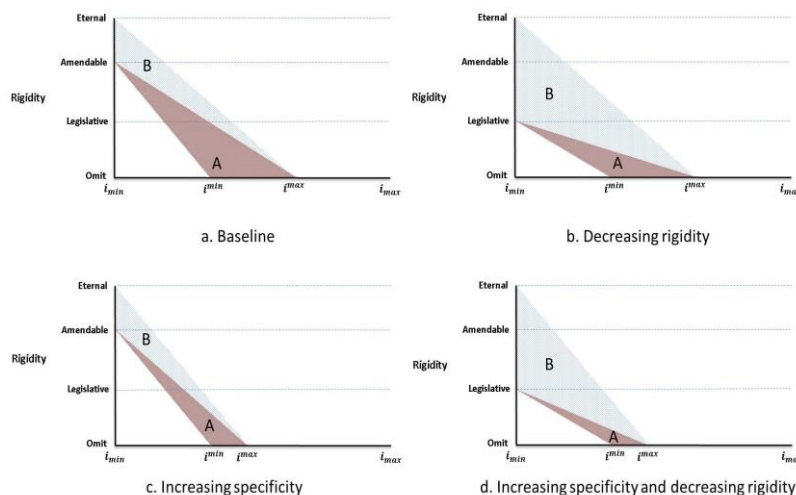
**Table 1:** Discreet options available to drafters

To make the level of complexity of the choices of the drafters manageable, we will present the different options that legal science and history has indicated. Although drafters can use a mix of legal instruments, the choice will be presented as discreet options described in Table 1.

A constitution can have provisions that are not equally difficult to amend. The lower level of protection once a policy area enters the constitution is to allow for its change through simple legislation. On the other hand, the highest level of protection is achieved through eternity clauses. Eternity clauses equate an amendment of the protected provision with constitution making. A new constitution does not have to be significantly different from the previous but it carries two costs. First, all policy areas are on the table for renegotiation. Second, as discussed, the benefits of having a constitution are a function of whether a constitution can credibly commit, i.e., it is self-enforcing and enjoys certain longevity.

On the level of specificity, drafters choose within a spectrum of full regulation to no regulation. Aspirational provisions are the lowest form of constraining future majorities. With this tool the drafters choose to use very broad strokes to define the set of principles on which a state should be structured in the future (Scheppelle 2003). Several legal scholars treat such provisions as a defining element of constitutional continuity (Jacobsohn 2010). On the other side of the spectrum, regulating provisions contain explicit rules of behavior and their consequence. Defining the language of communication with the state with a constitutional provision is one such case.

Figure 2 shows how the level of rigidity and specificity change the policy choices available for a legislator before an amendment is necessary. Area A represents the constitutional core. Area A+B represents the discretionary power of the legislator. The legislator can choose to implement policies within area A or he can choose to increase rigidity by entering area B. For example, signing an international agreement makes changing the legislation for a specific policy costly (Dreher and Voigt 2011). Figure 2a-d shows the discretionary power of the legislator, area A+B, when rigidity and specificity change.



**Figure 2:** Discretionary power, rigidity and specificity

In the model, the drafter can become the legislator for a number of periods. In democratic constitutions, elections are used to appoint the legislature and the executive. Having drafted the constitution carries political prestige, which may lead to electoral success. Furthermore, in a dictatorial constitution, drafters are usually trustees or cooperators of the dictator. In both cases, a part of the drafters is likely to be transposed in the government. The model assumes that the probability of a drafter being the legislator in the future is given and common knowledge for the drafters.

Using backward induction, we come to three equilibrium strategies depending on  $q_n$  and  $t_n$ .<sup>3</sup> *Type 1* is such that when electoral competition is low ( $q_n$  is high) and the time horizon of the drafter is long (i.e.  $t$  approaches  $T$  further away from 1), the drafter wants to make sure that even if she loses power in a random round the legislator will have no incentive to change the constitution. This can be achieved by decreasing specificity. Low specificity, irrespective of the distribution of preferences within the population, entails that the number of members of the population for which condition 1 applies is higher. Secondly, condition 2 is true for the rest of the population even for lower values of  $r$ . Even the

<sup>3</sup> Violating the notation we can define  $t_n$  as the time horizon of a member of the society. It is exogenous and independent of  $q_n$ . If the member of the society is interested in short-term rents (roving bandit), then  $t_n$  approaches 1. If the member is interested in long-term rents,  $t_n$  approaches  $T$ .

most extreme policies are not sufficiently far from the policies that the constitution allows, to make paying the cost of an amendment rational.

Type 2 relates to when either  $q_n$  is low or  $t_n$  is small; then the drafter wants to be sure when she comes into power she will be able to implement her ideal policy without having to carry the burden of an amendment. As discussed, the smaller the shadow of the future the more burdensome rigidity becomes. As long as a Type 2 drafter is never willing to pay the cost of amendment, she can use rigidity as a contingency plan, when other types become the legislator. Thus, by increasing rigidity they can improve the chances that their ideal policy will always remain attainable with the constitution.

Lastly, Type 3 is such that for some members of the society both  $q_n$  is low and  $t_n$  is small. The constitution is the stronghold of a type 3 drafter against other type of legislators. The best strategy to ascertain that the distance between her ideal policy and the implemented policy over time approaches zero is by drafting a very specific constitution which is protected by a prohibitively high rigidity. Although this comes at the cost of having a constitutional provision, which is not flexible to survive the test of time, constitutions are bundles of rules. This entails that often a few outdated rules need to be tolerated, to avoid drafting a new constitution.

## 4. Case Studies

### 4.1. Case selection

The findings of Ginsburg, Elkins, and Blount (2009) provide preliminary evidence for the validity of the aforementioned predictions. To quantitatively test the theory however one would need information on the subjective/perceived probability of being in the government for each drafter, their relative bargaining power and their exact political preferences for a wide variety of policies.

This type of imaginative reconstruction ex post bears dangers. One needs to rely on objective and consistent criteria to extrapolate preferences from behavior. Otherwise, all is explainable. Rational choice theory assumes that individuals are able to convert environmental and intrinsic inputs to output in a systematic way. This approach compared to other (sociological, anthropological etc.) makes its prediction dependent on a coherent set of assumptions. This is why the present paper relies on the tools of rational choice theory.

Since it is impossible to reconstruct such data for a sufficient number of drafters in constitutional assemblies globally over the time, this paper uses qualitative analysis. The methodology of case studies allows for a

detailed look into the context as well as the institutional detail. Moreover, collecting data on the individual level is no longer impossible. Since in case studies, the external validity is decided by the representativeness of the cases (Elman, Gerring, and Mahoney 2016), a few words on the case selection are due.

To ensure the level of the rigidity chosen is comparable between the cases, the paper limits its selection pool to assemblies, which introduced eternity clauses. Eternal entrenchment acts as an one-way ratchet (Ginsburg, Elkins, and Simmons 2013, 63). Indicatively, only a handful of countries stopped using the mechanism of eternity clauses, after a constitution introduced it. Often policies that were entrenched are “re-entrenched” after they are amended. Thus, to be sure that the introduction of eternity clauses is not the result of path dependence, the pool of relevant cases is reduced to the constitutional assemblies that never before experienced eternity clauses.

Secondly, the paper controls for the possibility that the variation in behavior is not attributable to differences in constraints. In both cases, the drafters served the same role within the assemblies facing very similar upstream, downstream and internal constraints. Additionally, both drafters shared significant political support before the summoning of the assembly. Thus, drafters were chosen so that they are the most similar to each other but not too deviant from other drafters (Seawright and Gerring 2008).

Lastly, some scholars claim that eternity clauses are not only used for functional purposes. They can be also used for expressive purposes, namely stating values and giving a symbol value to the constitution (Albert 2013). For example, the current constitution of Greece (Art. 110 of the current constitution) prohibits among others amendments that would change the republican form of government. After such a change, fundamental revisions to the existing constitution would be needed to avoid legal contradictions. As a result, even if such an amendment would be allowed, changing the polity would factually be constitution making. Since it is impossible to distinguish symbolic and functional eternity clauses, the paper assumes that for all discussed clauses the functional value outweighs the symbolical usefulness. The paper examines the presidents of the following two assemblies: the *Second National Assembly* in Athens of 1862 (Greek Assembly) and the German *Parliamentarischer Rat* of 1948 (German Assembly).

The constitution of 1864 contained 110 articles and until today has lasted longer than any other constitution. The constitution had clear influences from the previous constitution of 1844, the constitution of Belgium of 1831 and the constitution of Denmark of 1849. It provided for amendments after ten years from its introduction but did not allow for amending the entire constitution at once. It stated that the initiating

parliament had to specify the exact content of the amendment and a second amending parliament had to ratify the amendment. This mechanism was retained in all democratic constitutions of Greece. The amendment of fundamental provisions was not allowed (Art.197). What constituted the fundamental parts of the constitution was not defined. It was nevertheless accepted that the amendment procedure was an essential part of the constitution.

The constitution of 1949, which is still the constitution of the German Republic, contained initially 146 articles. It was heavily based on the constitution of the Weimar Republic. It required that amendment laws were explicit and passed with an absolute two-third majority in both the *Bundestag* and the *Bundesrat*. It further stated that amendments to the provisions about the division in federal states, the participation of the states in legislation, the right to human dignity and the structure of the state are not allowed. In its 70 years, this constitution has been amended 54 times. Surprisingly, despite the many amendments, 83 of the initial articles were never amended (WD 3-3000-181/09 2009).

#### 4.2. Similarities

The financial state of the Kingdom of Greece at the time was very bad. The economy was based on agriculture. The land was concentrated in the hands of a few families with great political influence. Around the end of the reign of King Otto, a small middle class was starting to emerge. Regulatory capture and the inadequacy of the tax collection system kept tax revenues low. The Greek constitutional drafters had to gain the support of the Russian Empire, Britain and France (Great Powers) for the survival of the state.

State financing was dependent on getting the three rates of a loan guaranteed by the Great Powers, granted when King Otto came to power (see Tridimas, this volume). By 1861, the state had already declared three times bankruptcy and the third rate of the loan was not going to be paid-out without their support.<sup>4</sup> During the reign of Otto, the role of the Great Powers in the political life of the country was prominent (Clogg 1979). Until 1860, political parties were followers of the Great Power bearing their names, that is, the Russian, French and English Party. Even during the drafting of the constitution of 1844, the Great Powers through the political parties were able to make sure that the constitution introduced would be to their liking.

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<sup>4</sup> The third rate was never paid. But a restructuring of the loan was negotiated by the new government.

The dethronement of Otto meant a serious blow in the relationship of the Greek Kingdom and the Great powers. Otto's appointment was a guarantee that the Kingdom of Greece would not start expansionary wars against the Ottoman Empire. Right before Otto's dethronement, the different states of the Italian peninsula had unified. The political opponents of Otto blatantly accused him for not seeking the support of Garibaldi to liberate the Christians in the East. Thus, the overthrow of Otto could have been interpreted as the restart of the fight to liberate the Greek lands. Lastly, the old political parties had dwindled and the Powers lost their direct connection to the political life in the country. Under these conditions, the 1862 assembly needed to signal it would not deviate from the previous accepted external and internal policies. Although the justification for Otto's overthrow was the establishing a constitutional rule, no fully-fledged democracy was introduced.<sup>5</sup> The revolutionary leaders directly declared their support for kingship.

Specifically, they initiated a plebiscite where the People were asked to write down in an empty ballot their preferred king. Only 93 votes in 241,202 votes proposed a republic instead of a king (Finlay and Tozer 1877). Although, the elected Prince Alfred from the royal house of Great Britain could not accept the throne, the results were a strong signal that kingship would be supported. General Grivas, who conspired to attack Athens with his 7000 men and declare himself the president of Greece, carried the only significant opposition to kingship. He died however before he could go through with his plans. Despite the initial plebiscite, the constitution proposed by the assembly and the selection of the future king would not be put under public scrutiny. Only the king would have to ratify the constitution proposed by the 1862 constitutional assembly.

Although the German Assembly was summoned more than half a century after the Greek Assembly, many historical similarities can be found. On a central state level, the Allied Control Council created by the United States, Britain and France governed. However, the allies did not manage to agree on a common economic policy. What initially seemed a viable cooperation rapidly deteriorated to a conflict between East and West. The inability to deescalate the tension led to the London Six-Power Conference with the absence of USSR, which was occupying East Germany. Although the national parliaments were hoping for a unified German Republic, the western allies pushed for the creation of a West

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<sup>5</sup> The distinction between democracy and constitutional liberalism is thoroughly discussed by Fareed (2007). According to his distinction, democracy entails the transfer of power to unrestrained majorities. Contrary, constitutional liberalism entails introducing limitations to the polity, through the rule of law.



Germany. It was made clear that, if the drafters did not cooperate the occupation status would not be lifted. Additionally, the economic revival of Germany would not be possible.

For Germany, defeat in World War II meant that huge war reparations had to be paid. The country was in a bad financial state. The cost of occupation was depleting the national budget, which could not cover government expenditure. A great part of the working-age population was either incapacitated or killed. Subsidies during the war pushed the industry towards armament production. However, after the Potsdam conference the allies decided to disarm Germany, which necessitated the restructuring of the existing industry. The western part of Germany faced a high demand for housing and food. The Military Governors of the Allied Control Council continued the practice of conscription of labor used by Hitler. The Marshal Plan could only partially contribute to the costs of rebuilding the state, the cost of occupation and reparations.

On the political level, after the elections of 1933, national parliaments were abolished and the political opponents of the NSDAP were prosecuted or worse. When the Allied Forces reintroduced national parliament, a number of former members of the NSDAP managed to re-enter politics. One explanation for this phenomenon is that NSDAP membership did not directly meant ideological support for the regime. NSDAP mandated that certain posts and offices were occupied by party members. As a result, a number of public officials entered the party to keep their position (Herwig 2013). Nevertheless, since controlling for party involvement was difficult due to the tactic of scorched earth employed before the surrender of Germany, the allies could not be certain that local politicians would support the creation of a free state.

The financial states in Greece and Germany were very bad. Unsuccessful warfare in both countries had depleted the national reserves. Both countries were facing expenditures greater than their income leading to a high dependency on foreign aid. The population was suffering due to shortages. Furthermore, in both cases the previous governments had not respected the constitution. This was partially because the constitutions did not constraint sufficiently the head of the executive. This starting point is not unusual for constitution making.

Not only the historical context is similar, but also the downstream constraints on the assemblies were the same. Neither constitution was approved by a referendum. Both assemblies negotiated with the *de facto* ratifying body during the drafting process. The Greek Constitution had to be signed by the King, whose identity at the beginning of the drafting process was not known. Once the proposal was submitted for approval, he requested two changes. Only one of them was implemented by the assembly. It was clear that as long as the Powers accepted the constitution,

he could not deny ratifying it. The German *Grundgesetz* had to be approved by the Military Governors of West Germany and only then would it be submitted to the national parliaments for ratification. Before approving the constitution, the allies issued three Memoranda (22.11.1948, 02.03.1949, 14.04.1949) asking for changes and giving explanations to the constitution. The additional requirement for ratification from the national parliaments was only a technicality. Only the parliament of Bavaria voted against the ratification but later accepted the constitution.

To sum up, for the constitutional proposal to be implemented in both cases, an actor who was not going to be subject to the constitution had to agree. Despite the similarities in the events leading to the assemblies and the procedures of the two assemblies, a significant difference can be seen in the degree of specificity of eternity clauses and the policies that they entrench. This difference could be attributed to the differences in the degree of electoral competition and the probability of entering the government of the drafters in the assembly.

#### *4.3. Voulgaris, the president of the Greek constitutional assembly*

After the dethronement of King Otto, the revolutionary government called elections. The elections were conducted according to an adjusted version of the electoral law of 1864. The law stated that males of twenty five years of age were to elect their representatives for their district with a direct and secret vote in a two-round majoritarian system. The revolutionary government amended the law so that the Greeks abroad were given the right for the first time to vote in the consulates. In order to avoid manipulation of the elections, the revolutionary government dismissed local national guards and local mayors and temporarily striped municipal authorities of their power.

The candidates participated in local lists without any party affiliations. Only 41 candidates-drafters showed a clear connection to the liberal group Rigas Ferreos, however the group was disbanded when the assembly was convened. Due to the weakened state of the old parties, the drafters were a mixture of old and new political figures in the country. The elections produced 284 drafters from the Greek districts and 59 drafters from the Greek communities abroad and the not-liberated Greeks in the Ottoman Empire. After Britain gave the Ionian Islands to Greek as a gift for King George accepting his post, 84 drafters from the Ionian Islands were added. Sixteen drafters were anti-Otto parliamentarians from the previous parliament. Nine were members of the senate. Twenty-four were members also of the constitutional assembly of 1844. Only the group of Ionians managed to act as a stable coalition and showed political experience. The other drafters showed a lack of cohesion.

The parties within the assembly were formed spontaneously, according to where the drafters chose to sit every day in the room, stating their support to this political group. The drafters sitting around Kanaris and Grivas were called the Mountain. The drafters sitting around Voulgaris were called the Plains. Independent drafters, who tried to balance the conflicts between the two main parties, were named the Selectives. Lastly, the National Committee consisted of politicians supporting Deligiorgis, who believed that conservative elements should be removed from the assembly.

The conditions under which the assembly was elected and the fact that the electoral law was changed made prediction on future elections impossible. During the reign of Otto, the king appointed the members of the senate and his cabinet. Additionally, due to violence and intimidation against the electorate Otto exercised a certain control on the composition of the parliament. Even the drafters, who had political experience, had no experience with free elections. In order to test the theoretical predictions, the paper will focus on Voulgaris.

Voulgaris was an influential drafter, acted as the president of the assembly for a certain time and gained the position of the prime minister many times before his death. His political opponent, Kanaris, was a fighter in the Greek Liberation Fight of 1821. Kanaris at the time had served the greatest number of years as the prime minister compared to any other Greek politicians. He was perceived as a patriot and managed to have the support of two Great Powers.

Voulgaris based his political career in clientelism and corruption. He was representing the interests of *Kotzabasides*. *Kotzabasides* were Christian landowners, who were enjoying financial and political privileges during the Ottoman Empire. They represented the old state order, which was tolerated by the post-revolutionary governments. For this reason, Voulgaris was against disbanding the senate. Due to the dwindling importance of *Kotzabasides* the political support of Voulgaris was grounded on personal relationships. His allegiance to parties was weak and opportunistic. In other words, he was aware that a strong constitutionalism would be the end of his political career. In terms of the model, Voulgaris was a type 2 drafter.

As predicted by the theory, he was a supporter of non-specificities in the constitution, which he used in his favor during his political career afterwards. After the elections of 1874, Voulgaris was asked by the king to form the executive although Koumoundouros had the majority in the parliament. This was possible because the constitution did not explicitly state that the executive needed to have the support of the parliament. Months later Voulgaris voted the budget without a quorum by

misinterpreting a vague provision in the constitution. This event stayed in history as the gross irregularities of 1875 or Stilitika.

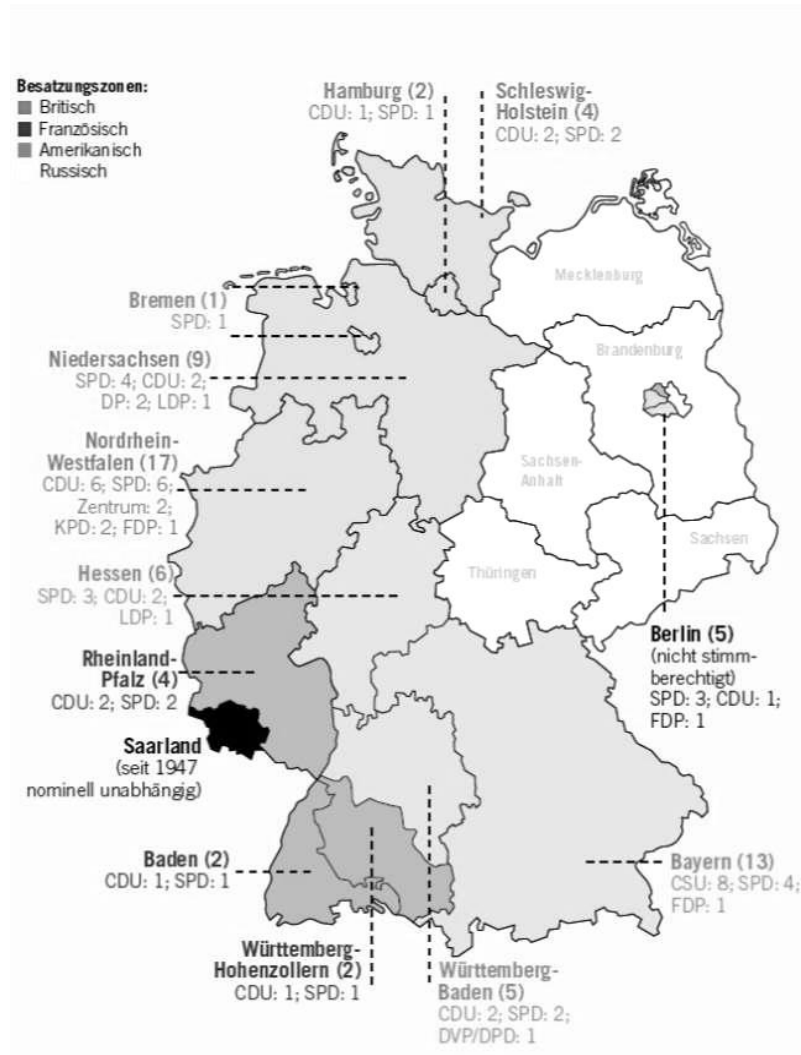
Voulgaris based his career into manipulations of the constitution and support from the king. The condition leading to the new constitution allowed him to entrench sufficient privileges and freedoms on the face of the king. Should the constitution not have been rigid, he would no longer be able to survive in the political horizon. It is interesting to note that the demise of Voulgaris comes with the specification of the nature of parliamentarism, namely that the prime minister must enjoy the manifested confidence of the parliament.

To sum up, the example of Voulgaris seems to be in favor of the theory provided in the paper. To see whether the comparatives in section 3 are true for other types as well, the case of Konrad Adenauer is discussed.

#### *4.4. Konrad Adenauer, the president of the German constitutional assembly*

The German constitution was drafted in the aftermath of the constitution of the Weimar Republic and its manipulation by Hitler. The assembly was convened after the allies handed the Frankfurt Documents to the eleven representatives of the state parliaments. A suggested constitution was drafted by the prime ministers, and the state parliaments were requested to elect the members of the constitutional assembly. After the capitulation, the allies reinstated the national parliaments. Figure 3 shows the division of seats.

The influence of the allies is salient in the constitution. The allies knew that after the occupation is lifted, they could no longer intervene in the development of Germany. As a result, they wanted to insure themselves against the re-emergence of a strong state that could not be controlled. Furthermore, expediting the restoration of Germany was synonymous to expediting the payment of war restorations from Germany. According to the theory, if the allies were acting as a single individual, we would categorize them as type 3 drafters. The paper does not proceed in such an analysis for a number of reasons. Firstly, the allies were never part of the assembly. Secondly, they did not have “individual-like” preferences.



Source: (Sönke 2008: 7)

**Figure 3:** The division of representatives between parties in Germany

However, one thing was clear. Only a constitution establishing federalism, where the individual states would be guaranteed their importance would have been approved. As can be confirmed by the Frankfurt Documents, the three memoranda (22.11.1948, 02.03.1949, 14.04.1949) and the general attitude of the Military Governors during the drafting of the constitution, the allies indeed were in favor of a constitution

more specific in terms of the division in federal states, the participation of the national parliaments in state legislation and financing. They needed assurances that a law amending this aspect or an executive act would not cancel their plan for a free demilitarized Germany. It is no wonder, that many of the eternity clauses represent the demands carried by the allies.

The allies did not press however for a social state. Constitutional liberalism was enough. The fact that the social nature of the state is protected needs to be looked in the assembly. Due to the division of Germany, it was unclear how the political balances would shift in the case of reunification. Both the CDU/CSU and SPD representatives were afraid that a reunification could mean a shift of the majority towards communism. In this case, the majority of the drafters faced a common “enemy” and the same type of uncertainty. Keeping  $t_n$  constant and decreasing  $q_n$  would mean -according to theory- that type 2 behavior will be induced. This is also what we observe from the final choice to include this aspect in the eternity clauses in such a generic way.

We now examine why the president of the assembly did not support additional rigidity based on the work of Morsey (1970) and after consulting the historical records of the speeches from Adenauer. Adenauer was the only party leader, who was elected in the assembly. He was the second oldest member of the assembly and had already been politically active in the Weimar Republic. His election as the president was based on the support of SPD representatives. They believed that Adenauer was a mature politician with a solid political support base and would be dangerous for SPD in other drafting committees. They supported his presidency to ensure that Adenauer would not be a hurdle in the election of Schmid in the Central Committee of the Assembly. This position was useful for Adenauer because he was given the opportunity to represent the assembly in front of the military governors.

Adenauer's goal in the assembly was twofold. He wanted to achieve the lifting of the occupation and the reintegration of Germany to the rest of Europe. He also wanted to ensure that communism did not pose a threat. This can be seen in his disregard for the representatives of the KPD in the deliberations.

In his party, he tried to bring together the Catholics and the Protestants of Germany. He believed a party not achieving cooperation between Christians would be susceptible to anti-democratic ideas. The fact that his party had already managed to gain a significant majority 2 years after the re-instatement of national parliaments, ensured his political survival. As Morsey (1970, 66) puts it, his political opponents were counting on his age to keep him out of politics. Although CDU took the role of the most heated supporter of a strong federalism, Adenauer kept a median position, which further improved his political bases of support.

His adamant denial during the NS-times to stop criticizing the NSDAP regime and the fact that he was the leader of a political party is an indication that the time horizon of Adenauer was long. Additionally, he was a mature and respected leader of one of the majority parties. He was aware that no matter which party won the elections, the political system would require the creation of coalitions. Thus, he was sure that he would have the chance to influence legislation to his preferred policy choices. Adenauer was a type 1 drafter.

As expected, Adenauer did not push for a detailed constitution. With the exception of his disapproval of socialist central planning and his support for individual freedom, he was in favor of a constitution giving sufficient discretionary power to the parliament (Morsey 1970, 85). His goal was to use this power to achieve the restructuring of the economy and the revival of industry. Additionally, Adenauer knew that for his party to be able to stay in power, flexibility was needed. This explains why eternity clauses in Germany cover almost only the parts of the constitution for which the allies were interested.

To recap, the case of Germany and particularly the behavior of Adenauer are in accordance with the theory. Although additional assumptions would be required to apply the theory to the allies; preliminary evidence indicates that such an exercise would bring favorable results for the theory proposed. Despite the historical differences and the distance between the two countries, these case studies support the validity of the theory proposed.

## **5. Conclusion**

This paper has discussed a model for the use of specificity and flexibility of constitutional provisions. Specifically, it is argued that constitutional drafters participate in an inter-temporal regulation game with the legislator. They draft constitutions that reflect their expectation that they wield or not legislative power in the future. Depending on the uncertainty of the drafters about their future position, they choose a degree of specificity to optimize the degree of discretionary power a constitution affords the legislator. Furthermore, they use rigidity in order to ensure that even if the opposition gains power, the costs of revision would avert an amendment of the constitutional provision. This is however only necessary, if they face a credible threat that the opposition takes power. In order to substantiate this kind of thinking two case studies are conducted. The presidents of the constitutional assembly in Germany of 1948 and the constitutional assembly in Greece of 1862 were examined. These two cases provide preliminary evidence in favor of the validity of the proposed theory.

Additional quantitative research is desirable. Although qualitative work pays attention to detail, perfect counterfactuals are not possible making identification highly problematic. Empirical methods allow for the construction of such a counterfactual. The paper does not attempt to do that for two reasons. First, neither constitutions nor the upstream constraints of the assembly are exogenous. Assemblies are chosen and they choose what to write in the constitution. Second, the impact of the constitutional text seems to be varying over time and country. Whether and how a provision will be implemented lies in the hand of its interpreters.

**Acknowledgements:** I would like to thank Prof. G. Tridimas and Prof. M. Holler for organizing the Conference German-Greek Relations: Political Economy Perspectives and for their helpful comments as editors. I would also like to thank Prof. S. Voigt and PD Dr. A. Gromitsaris for their suggestions and comments. All remaining errors are my own.

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## **On Some Aspects of Administrative Justice in Post-Revolutionary Greece and their Relevance Today**

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**Abstract:** Starting from the interaction between the western institutions imposed by the Bavarians and the stubborn realities of the Post-Ottoman Greek society, the paper deals with the political economy of the beginnings of Greek administrative justice and discloses the historic roots of the actual system's main problems. The focus is set on the hiatus between public law scholarship and public-sector reality, the separation of judicial and executive power as well as the compatibility of the Greek versions of the French and German models of administrative justice.

**Keywords:** German philhellenism, administrative disputes, tax farming, Court of Prizes, action for annulment, action for failure to act, interim relief, segmentary society, patronage.

### **1. When “true Greeks” meet “real Greeks”**

German neo-humanism's effort to define the identity of German culture without reference to France used Greek culture to emancipate itself from French cultural domination.<sup>1</sup> There was a German identification with the politically fragmented ancient Greeks, conquered by force of arms, but

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<sup>1</sup> Espagne (2008); Fuhrmann (2011), p. 123, 126.

united by a single language.<sup>2</sup> But also in this field, there was a competitor: “(T)he Greeks, if Greeks they could be called, were unworthy of their ancestors, whose true descendants were to be found in the colleges of Oxford and Cambridge.”<sup>3</sup> “True Greeks” are the privileged few, who, through formal training in ancient Greek at elite universities or as distinguished autodidacts, adopt a set of non-hereditary ecumenical values<sup>4</sup> and, therefore, deserve their status as a member of an elite cultural group.<sup>5</sup> With the War of Independence of 1821, “Greece” is suddenly no longer ancient; “Greece” becomes a modern “Cause.”<sup>6</sup> There is an obvious “universal” message<sup>7</sup> in the uprising: linguistically and ethnically different groups, mainly belonging to the Ottoman Orthodox Christian de-territorialized “*rum millet*,” want<sup>8</sup> to be “Greeks.”<sup>9</sup> Article 2 of the Provisional Constitution of Greece ratified by the National Assembly of Epidaurus in January 1822 specified: “All indigenous inhabitants of the Land of Greece (Hellas) believing in Christ are Hellenes and are entitled to an equal enjoyment of every right.” This is clearly confusing “ecumenical ideology with the new element, the creation of a nation state.”<sup>10</sup> Later, due to increasing competition of the new Balkan states against one another for the national loyalty and assimilation of the population in the Balkans the use of multiple and shifting criteria of ethnic affiliation and citizenship was introduced.<sup>11</sup>

When Germans come to Greece during and after the War of Independence, they see “real Greeks,”<sup>12</sup> Modern Greeks. The Greekness of the latter does not provide “a queue-jumping ticket to privilege”<sup>13</sup> within the modern world, but, rather, as in the case of every nation, a privileged access to themselves: it denotes their view of the Greek literary and oral tradition. Confirming or contesting this view became a factor in political<sup>14</sup> or military<sup>15</sup> action and an object of research in a wide variety of fields,

<sup>2</sup> Marchand (2003), p. 24, 26; Hinighet (1976), p. 375.

<sup>3</sup> Woodhouse (1971), p. 23.

<sup>4</sup> Hall (2014).

<sup>5</sup> Hall (2015).

<sup>6</sup> See Beaton (2013).

<sup>7</sup> Finlay (1877), p. 352.

<sup>8</sup> Bérard (1893), p. 239.

<sup>9</sup> See Boyar (2007), p. 50, quoting Ahmed Cevdet Paşa.

<sup>10</sup> Droulia (2004), p. 51f.

<sup>11</sup> Bogli (2012), p. 71-82, 83-120, 121-157; Livianos (2008), p. 264; and Zelepos (2002)

<sup>12</sup> Schulz (2011), p. 254.

<sup>13</sup> Hall (2015).

<sup>14</sup> Zimmermann (2014), p. 24-35.

<sup>15</sup> “Seeing the enemy” in Mazower (2001), p. 157-161.

ranging from history to genetics.<sup>16</sup> The insurgents that hit the headlines in 1821 are only a small part of the Greek world and they are not gathered around archaeological sites.<sup>17</sup> Only in post-independence Greece, there was a movement of the Christian population from the infertile but secure highlands, that were free from the oppression of local powerful primates and tax-farmers, to the fertile, albeit malaria infested lowlands.<sup>18</sup> The soldiers of the Bavarian auxiliary corps experienced a cultural clash.<sup>19</sup> And not every educated Philhellene was as qualified as *Friedrich Thiersch*<sup>20</sup> (1784–1860) to see the relation of ancient to modern Greek language and understand its state- and nation-building function.<sup>21</sup> According to Thiersch, only Germany deserves to regenerate Greece, Germany that has completed the Humboldtian reform, the University reform in Munich. He links the “natural character of the Greeks, expressed in their folk poetry to their equally natural political aspirations and the hope for progress.”<sup>22</sup> The originality of his approach was that he wanted to introduce modernity while respecting existing institutional elements. That was not the main stream current during the Bavarian rule though, that brought to the surface many of the “conflicts inherent in the attitude of empathy with the locals and patronizing them simultaneously.”<sup>23</sup>

Loyalty and commitment to the monarchy proved to be as fragile as loyalty to any ordinary political leader involved in mutual obligation, patronage and clientage relationships.<sup>24</sup> The fact that Greece had been declared different from other national movements<sup>25</sup> did not prevent her from having the typical problems of Christian State formation in the Balkans of the 19<sup>th</sup> Century. The monarchs of these states were, as a rule, imported<sup>26</sup> from German statelets while their organisation answered to the description of a “segmentary society” that tends to undermine the central government – whether authoritarian or democratic – and to subject the individual to some patronage network.<sup>27</sup> The initial question is therefore:

<sup>16</sup> For example, Lazaridis et al. (2017); and Hanink (2017).

<sup>17</sup> Finlay (1877), p. 125f.

<sup>18</sup> McGrew (1985), p. 19, 225.

<sup>19</sup> They were “in part, even disgusted” and responded “to the Greeks with unconcealed arrogance” Haggenmüller (2015).

<sup>20</sup> Loewe (2010).

<sup>21</sup> Byron (2011), p. 18; Hale (1833), p. 12; Finlay (1878) vol. 5, p. 230, 284.

<sup>22</sup> Güthenke (2008), p. 110.

<sup>23</sup> Fuhrmann (2011), p. 126.

<sup>24</sup> Legg (1969), p. 193.

<sup>25</sup> Güthenke (2008).

<sup>26</sup> Anonymous (1832).

<sup>27</sup> Veremis (2014), p. 23, 34. Gellner (1994), p.1-12.

How is judicial review possible, in a country where constitutional documents can be on occasion overruled or ignored,<sup>28</sup> and both public authorities and courts are staffed by men who owe their positions to political and personal ties with the established parties and elites? Or, with reference more especially to the present: How can judicial review protect itself<sup>29</sup> against political influence while reviewing the constitutionality of the reform efforts aimed to overcome “structural and institutional blockages”<sup>30</sup> in the country’s pre-crisis growth model?

The questions reflect research findings highlighting that “the social and political system of modern Greece cannot be understood without a knowledge of family roles and the clientage system,” that the courts “are part of the political bargaining network,” and that “the prevailing behaviour through centuries was the avoidance, not the challenging, of authority.”<sup>31</sup> In post-revolutionary Greece, patronage proved strong enough to combat the inception of central administration and to prevent for a long time the Council of State and a system of administrative courts from finding the right terrain in which to take root and translate into life. Nowadays, provable personal ties to a patron have been replaced by “bureaucratic clientelism”<sup>32</sup> and selective distribution of public resources to mobilise electoral support.<sup>33</sup> This is hidden in the dead angle of public law concepts or insufficiently conceptualized as a distinction between legal rules and their application, i.e., trivialised as a problem of implementation common to all legal orders. To this extent the specificity of the Greek “gap between formal rules and informal practices”<sup>34</sup> is rendered legally invisible. Having in mind the adaptation, not the disappearance, of state capture strategies today, helps identify the legal norms and concepts pertaining to problems of political interference in the judiciary (see below point 7). Additionally, as Greek governments are better off avoiding reforms that deprive their client groups of benefits,<sup>35</sup> judicial review can and should become an instrument for addressing clientelist bias in structural reforms and for highlighting the distinction between fiscal adjustment and public debt service on the one hand, and changes to the way the government and the economy work, on the other. Finally,

<sup>28</sup> Legg (1969), p. 95.

<sup>29</sup> President of the Council of the State (2017).

<sup>30</sup> Iordanoglou and Matsaganis (2017), p. 16-25.

<sup>31</sup> Legg (1969), p. 33, 96, 121.

<sup>32</sup> Mavrogordatos (1997) and Lyrantzis (1984).

<sup>33</sup> Afonso, Zartaloudis, Papadopoulos (2015), *passim*; Trantidis and Tsagkroni (2017).

<sup>34</sup> Papadoulis (2006), *passim*.

<sup>35</sup> For evidence, see Trantidis (2016).



depicting the main features of administrative justice today after the presentation of its historic roots, shows where the challenge for administrative justice and public law scholarship lies.

## 2. Imposing Central Administration against Patronage

Like the government of *Ioannis Kapodistrias* (1776–1831),<sup>36</sup> the Bavarian regency established a centralized government. The model was the German “*Policey-Staat*.”<sup>37</sup> While, in Germany, “participation was to be more a consequence than an instrument of modernisation,”<sup>38</sup> the local notables, in Greece, dressed their opposition to central administration “as a fight for constitutional rule.”<sup>39</sup> Defining a new role for municipalities in a “modern” state was a problem for both *Maximilian Joseph of Montgelas* (1759-1839) in Bavaria and for the regency in Greece, but, in difference to Greece, Bavaria could make its way to a non-revolutionary passage from a patrimonial state to constitutionalism.<sup>40</sup> Absolutism, a regular army, “*Bavarianism*,” all this was part of the attempt to westernize the country and to curb partisan strife and the influence of the three protecting powers.<sup>41</sup>

The criticism of the westernization of the country saw municipal autonomy as a pre-revolutionary “paradise lost” and tried to highlight its democratic features by comparing it with foreign forms.<sup>42</sup> In reality, the Greek “primates employed the municipalities, like the Turks, as fiscal engines for their own convenience.”<sup>43</sup> Although Thiersch knew this,<sup>44</sup> he suggested the introduction of a system of checks and balances at municipal and regional level,<sup>45</sup> a solution inspired by a reform in Württemberg.<sup>46</sup> His ideas were close to those developed by *George Finlay*. They both point out that authority received by popular election should be subject to some form of accountability. The local chief magistrate should not simply be directly elected by the municipality. The authority which he receives

<sup>36</sup> Finlay (1878), p. 197-198, 284.

<sup>37</sup> Clark (2006), p. 47; Jelavich (1983), p. 222; Hösch (1985), p. 77, 86.

<sup>38</sup> Nipperdey (1996), p. 23.

<sup>39</sup> Koliopoulos and Veremis (2002), p. 48, 269; Petropoulos (1968), p. 160.

<sup>40</sup> Tsapogas (1992), p. 106, 107.

<sup>41</sup> Maurer (1835), vol. 2, p. 9f.; Finlay (1861), p. 303, and Petropoulos (1968), p. 163.

<sup>42</sup> Moschovakis (1882), p. 160-225.

<sup>43</sup> Finlay (1861), p. 284-285; Jelavich (1983), p. 48.

<sup>44</sup> Thiersch (1846).

<sup>45</sup> Thiersch (1833), p. 217, 226.

<sup>46</sup> Thiersch (1833), p. 227.

“should only be revoked or suspended by the decision of a court of law, and not by the order of a minister or king.” The control of the executive over the mayors should be confined “to accusing them before the courts when they neglect their duties.”<sup>47</sup> However, in practice, it would not be easy to make municipal and state authority responsible only to the law, in a “segmentary society” where patronage infiltrated courts and dispute resolution mechanisms. The establishment and development of administrative dispute resolution mechanisms in Greece relates to the tensions between central and local authorities and to their efforts to protect and use the most important resource of the country, national lands.

### 3. Nature of Administrative Litigation

The concept of “contentious administrative matters,” a translation of the French term “*contentieux administrative*,” was already in use during the Greek War for Independence. The nature of administrative litigation is linked to problems of land ownership and distribution. One type of disputes involved attempts to overturn Turkish legal decisions to possess properties “taken unjustly” by Moslems. Another type arose from alleged purchases by Greeks of Moslem property before or during the war.<sup>48</sup> Additionally, the provisional governments of Greece had begun, on the one hand, to promise land compensation to those fighting for independence. On the other hand, foreign loans were staked on national estates as guarantees. As there were no reliable data, disputes over ownership rights and tax farming were endless.<sup>49</sup> In the absence of other proofs, the type and amount of tax paid defined the form of holding. The most significant change in land law was that the Bavarian administration replaced the Ottoman legal regime of shared rights and divided tenure by the Western institutions of unitary ownership and mortgages, imposing a clear-cut distinction between private holders and public domain.<sup>50</sup> Unfortunately, the law for the dotation of Greek families, enacted by the Bavarians in 1835, “sought objectives which were mutually exclusive”, namely “to turn the national estates over to the peasantry and also to produce large government revenues immediately” and was unsuccessful.<sup>51</sup> Administrative litigation mechanisms were organised around disputes

<sup>47</sup> Finlay (1861), p. 307-308.

<sup>48</sup> McGrew (1985), p. 78.

<sup>49</sup> Konstantinopoulos (1986), p. 37; and Güthenke (2013).

<sup>50</sup> McGrew (1985), p. 63, 120f., 128f.

<sup>51</sup> McGrew (1985), p. 164.

about defining and protecting national land and conflicts between tax payers, tax farmers and the state.

The Statute of October 21, 1825, on the organisation of the courts stipulated that public authorities should not deliver judgements on disputes about national land and national revenue without previously notifying the ministry of justice. A commissioner or a lawyer appointed by the minister of justice should defend the public interest in such procedures.<sup>52</sup> After the end of the War for Independence the first free government of the country under Kapodistrias established a specific administrative committee, in 1829, which was given the power to decide on application about disputes between the state and tax farmers or lessees of state property. One year later the committee was given the right to review and quash its own judgments. These procedures could not accommodate the huge volume of disputes with tax farmers over land ownership and payment of triple tithe without the benefit of a property code or a land register.<sup>53</sup> It could only decide 60 out of 200 cases within a period of two years.<sup>54</sup> The next step was the abolition of this committee and its replacement by a new system of administrative dispute resolution. In fact, the government excluded those disputes from the jurisdiction of civil courts. It was therefore necessary to give a definition of what is an administrative dispute and to designate the bodies having jurisdiction to decide them. Instead of a general definition of the concept of administrative dispute an indicative list of contentious administrative matters was established. These matters were “provisionally” assigned to the local administrators on site, who were given the role of an “administrative panel of first instance,” deciding after consulting the committee on economic affairs (the financial ministry of that time), and to the Government that functioned as an “administrative panel of second instance” and gave in itself the final and irreversible judgment on the matter.<sup>55</sup> *Ludwig von Maurer* (1790–1872) calls this system “a sort of jurisdiction” (“*eine Art von Gericht*”).<sup>56</sup> Regarding the process, the procedural rules in use in front of the civil courts of first and second instance had to apply. A “commissioner of the Government,” a jurist, represented and protected the public interest.<sup>57</sup> This system was based on the proposal from *Ioannis Genatas* (1777–1847), the Minister of Justice at the time (1829–1831), a lawyer from Corfu educated in Italy. Genatas’

<sup>52</sup> Dimakopoulos (1979), p. 98.

<sup>53</sup> McGrew (1985), p. 62–63.

<sup>54</sup> Vellios (1832), p. 113f., 113.

<sup>55</sup> Dimakopoulos (1979), p. 99, 118.

<sup>56</sup> Maurer (1835), p. 537.

<sup>57</sup> Dimakopoulos (1979), p. 119.

proposal was applied not immediately, but through a series of decrees issued during the years 1830 and 1831. Implementation was far from uncomplicated. Administrative disputes in second instance were still pending from 1830 up to 1838 (Government Gazette of the Kingdom of Greece No 11, Athens April 12, 1838).

After the death of Kapodistrias, as an interregnum of anarchy and a period of civil War came, all the courts were abolished by the decree of the October 8, 1832. However, the administrative authorities invested with the power to decide administrative disputes were not abolished. The administrative authorities judging in specific administrative matters instead of the civil courts were invested with this power since the Kapodistrian period. The list of these specific issues was published in the decree of May 26, 1837 by the Bavarians (Government Gazette of the Kingdom of Greece No 18). This decree introduced the jurisdiction of the prefects and the prefectural administration in the field of administrative dispute resolution. In 1838, administrative courts of first and second instance were established, with jurisdiction mainly over tax disputes (Government Gazette No 29, Athens, July 31, 1838).

#### **4. The Court of Prizes as Administrative Court**

Apart from land distribution and tax farming, piracy is the second important field of administrative disputes. During the War of Independence, Greek ships had systematically preyed on Western-flagged ships that were sailing to Ottoman ports, arguing that they were preventing supplies from reaching the enemy. Notwithstanding the “rigorous measures adopted by the British, French, and Austrian admirals in the Mediterranean, which were heartily seconded by Admiral Miaoulis,” piracy continued to be carried on “by Greek mystics to a very great extent; to repress which, the Provisional Government issued a severe decree on June 8, 1826.”<sup>58</sup> The Greek Provisional Government had to prove that rules existed and were indeed applied: “pirates unworthy of the Greek name have enraged the neutral powers through the harm that they cause to their international trading.”<sup>59</sup> Henceforth, only vessels belonging to the Greek fleet that are equipped with the necessary papers may fly the Greek naval ensign. Article 3 gives a list of piratical activities and vessels, and Article 6 describes the role of the maritime court in Nauplia. In turn, British ships are authorized to seize every “Armed Vessel which they shall meet with at Sea under the Greek Flag...such Ships of War only excepted

<sup>58</sup> The Edinburgh Annual Register for 1826, p. 329.

<sup>59</sup> British and Foreign State Papers 1825-1826, p. 1066-1067.

as are belonging to, or acting under the Orders of, the Persons exercising the Powers of Government in Greece.”<sup>60</sup> In matters of piracy the Western powers did not always confront Greece in unison. Whereas the British government acknowledged the validity of insurgent blockades, the Austrians, “would not recognize any belligerent rights to the Greek marine”.<sup>61</sup> From a legal point of view this led to questions not only of “legality” but also of “legitimacy” concerning the establishment and case law of the Greek Court of the Sea or Court of Prizes.<sup>62</sup> Identifying and selecting relevant rules, questioning their validity, or scrutinizing their application, all these are questions of administrative justice and administrative law in connection to international law.<sup>63</sup>

After independence, Greek piracy was indefensible. The court of the sea in Aegina operated as an administrative court. It decided many cases of piracy, ships seized, disputes on prize distribution, or receiving stolen goods. Problems of independence of the Court from the executive were an issue as early as in the national assembly of February 14, 1827. Under Kapodistrias, the decisions of the court were published only after approval by the Government for political and diplomatic reasons. Although there were pressures to Kapodistrias to cover up charges against the piratical activity of Mani all the cases were brought to the Court from foreign subjects und too important to disregard.<sup>64</sup> Under the Bavarian rule no real Sea Court was established. The Constitutions of 1844 and 1864 did not entail any specific provisions governing this subject matter. Disputes on piracy are clearly deemed disputes of “contentious administration” that could be judged, pursuant to Article 101 of the Constitution of 1864 by a special administrative court. The Constitution of 1911 provides for the possibility of establishing a sea court according to The Hague Convention relative to the Establishment of an International Prize Court of 1907. However, this convention never came into force, and, anyway, would have established the International Prize Court, not national Prize Courts.<sup>65</sup> The law of March 29, 1913, provided for a Sea Court composed of two judges, two officers of the navy and one law professor. The Court assesses into detail the presence of a “*bonne prise*” and the compliance of national with international law and custom.<sup>66</sup> The Impact of problems of legitimacy and international law on Greek administrative litigation can, anyway, be

<sup>60</sup> British and Foreign State Papers 1826-1827, p. 785.

<sup>61</sup> Gordon (1832), p. 326-327.

<sup>62</sup> Gordon (1832), p. 326-327; Prokesch-Osten (1867), p. 43, 143.

<sup>63</sup> Reuter (1933).

<sup>64</sup> Chatzioannou/Harlaftis (2002), p. 148.

<sup>65</sup> Schramm (1913), p. 386.

<sup>66</sup> Saripolos (1913).

described by the example of the Prize Court in the early days of the Greek state.

### 5. Rejecting Administrative Justice Altogether or Just its Pathology?

Administrative disputes were mainly disputes about land distribution and piracy. Their resolution relates to three different kind of problems. The first one concerns inefficiency of information processing and lack of infrastructure. There are no roads, no land register, no effective law of evidence, no judges. The second refers to the general problem of patronage and corruption,<sup>67</sup> and the third to the very existence of administrative courts.

From the viewpoint of the English legal system, Finlay points out “one serious violation of the principles of equity in the judicial organisation introduced by the regency”. “In compliance with the spirit of administrative despotism prevalent in Europe”, he finds that “the sources of justice were vitiated whenever the fiscal interests of the government were concerned, by the creation of exceptional tribunals to decide questions between the state and private individuals; and these tribunals were exempted from the ordinary rules of judicial procedure.”<sup>68</sup> However, this was not true in the case of Greece, where civil procedure applied, at least in theory, on administrative dispute resolution.<sup>69</sup> The “general dissatisfaction” that “the proceedings of these exceptional tribunals” caused, was due to patronage and corruption, not to their nature as “administrative.” They were indeed abolished after the Revolution of 1843, and an article was inserted in the constitution of Greece prohibiting the establishment of such courts in future.<sup>70</sup> Nevertheless, that was the rejection of the idea of the “*administration juge*,” not of the idea of independent administrative courts. On October 8, 1832 the whole judiciary, not just the administrative tribunals, was abolished.<sup>71</sup> Finlay misunderstood, against his British backdrop, administrative dispute resolution and administrative jurisdiction *per se* as an “official privilege introduced by Kapodistrias and the Bavarians, for the purpose of placing the agents of the government above the law of the land.”<sup>72</sup> Yet, the article

<sup>67</sup> See for a summary of the two first aspects: Mendelssohn Bartholdy (1864), p. 135-136.

<sup>68</sup> Finlay (1861), p. 313.

<sup>69</sup> Grec (1833), p. 65.

<sup>70</sup> Finlay (1861), p. 313f.

<sup>71</sup> See, on this point, Maurer (1835), sections 232, 234, 369. See also Mendelssohn-Bartholdy (1862), p. 142-143).

<sup>72</sup> Finlay (1861), p. 380.

101 that was inserted in the constitution of 1844 did not forbid in general “the re-establishment of the exceptional tribunals which Capodistrias, the regency, and King Otho, had used as instruments of fiscal extortion and illegal oppression.”<sup>73</sup> The Constitution forbade the inception of such tribunals “without a proper legal basis.” It abolished “existing administrative courts” and the Council of State, and all of their cases were transferred to civil courts. However, the civil courts operated alongside the “competent administrative authorities” which kept on having jurisdiction over administrative disputes. The Court of Audit was not abolished, since it was considered as administrative authority, not as a court.<sup>74</sup>

In his report of 1830 Genatas describes the particularity of and the necessity for the affection of contentious administrative matters to the administration and not to civil courts in four points. His main argument is that in a land where there are no land registers, notary offices and valid title deeds, and where falsification of documents is widely spread, there were disputes – such as those regarding the legal categorisation and distribution of national estates and the securing of national revenues – which could not, by their nature, be left to the jurisdiction of the civil courts, and needed instead to fall into a separate category, that of administrative disputes, and be decided by public authorities.<sup>75</sup> As land was practically the single resource of Greece, the state was “so determined to protect its claims to ownership and the tax advantages which adhered to it, that excluded the courts from exercising jurisdiction over disputes with tax farmers, reserving such decisions to administrative tribunals.”<sup>76</sup> However, Genatas does not advance any grounds for assuming that these administrative litigation commissions were independent and impartial. He sees a guarantee of the protection of the “national rights” in the paternalistic nature of the executive that incorporates the public interest. On the other hand, it is true that the Greeks did not lay down the principle of the rule of law in their constitution; “they preferred the nominal equality of France to the legal equality of English law.”<sup>77</sup> In practice, administrative privileges exempted officials from the direct operation of the law, as it should be administered by independent and impartial courts. This social reality could not be ignored by public law scholarship.

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<sup>73</sup> Finlay (1861), p. 377, 380.

<sup>74</sup> Heinze (1845).

<sup>75</sup> Dimakopoulos (1979), p. 110-117.

<sup>76</sup> McGrew (1985), p. 121.

<sup>77</sup> Finlay (1861), p. 307.

## 6. Public Law Scholarship and Public Institutions

After the War of Independence, patronage “persisted for decades” and thwarted any attempt to create a politically neutral centralized administration.<sup>78</sup> The Bavarians “cobbled together a hybrid system that drew its structure and trappings from the French” administrative law institutions and its state-theoretical and philosophical basis from German thought.<sup>79</sup> *Nikolaos Saripolos* (1876–1944), a public law scholar, adopted the German theory of the legal personality of the state and tried to neutralize through the rule of law and the sovereignty of the Constitution the French doctrine of popular sovereignty that had been received in Greek constitutional law by his father *Nikolaos I. Saripolos* (1817–1887). The *res publica* sets the procedural prerequisites of popular and state sovereignty and poses the problem of counterbalancing the partisan state based on majority and popular representation.<sup>80</sup> In the style of *Georg Jellinek* (1851–1911), Saripolos thinks that the establishment of a legal order is synonymous with domestication of political power.<sup>81</sup> As highlighted in a book-review, the king is not the highest representative of the nation, but one of the state organs, and he has no other powers except those that are invested in him by the Constitution and the laws of the land.<sup>82</sup> The validity of legal rules as a “chance” of rule implementation and a normative prescription (*Sollen*) at the same time, is an idea of *Max Weber* adopted by Jellinek in his theories of the state’s two-sidedness and constitutional transformation. Saripolos combines Jellinek with *Paul Laband* (1838–1918). His constitutional positivism<sup>83</sup> tries to give reliable answers to political problems from a legal point of view. He stresses the right and duty of the courts not to apply unconstitutional laws. Moreover, he gives the right to constitutional review of statutes not only to courts but also to civil service and citizens. He justifies this with the nature of the constitution of the country (1864/1911). The latter is supposed to set limits to both the executive and legislative power while constitutional review is considered as the best guarantee for human rights, minority protection and real implementation of the separation of powers. In contrast to Laband who thought that disobeying superior’s instructions harbours a danger to the basic chain of command in the public sector and bears the risk of

<sup>78</sup> Gallant (2016), p. 59; Gallant (2015), Chapter 4.

<sup>79</sup> Gallant (2016), p. 59.

<sup>80</sup> Tassopoulos (2013), p. 59–88.

<sup>81</sup> Vassilojannis (2001), p. 223.

<sup>82</sup> Ion (1911), p. 128.

<sup>83</sup> Vassilojannis (2001), p. 216–232 ; Errera (1910), p. 628.



disintegrating the state, Saripolos sees an unlimited duty to follow even the illegal instructions of a civil servant's superior as a factor of arbitrariness that furthers illegality and dismantles the rule of law.<sup>84</sup>

Greece's historic context explains the role of legal conceptualism in public law. It is by screening out political and social realities that public law creates normative barriers and upholds the normative aspect of constitutional institutions. In this way, patronage system and public law can evolve parallel to each other in two separate worlds. Language is here of decisive importance, because it makes the translation of European legislation and academic literature possible.<sup>85</sup> The language of the illiterate peasants and brigands who fought for independence on the side of the Philhellenes had qualities,<sup>86</sup> but it was fragmented and not rich enough in syntax or vocabulary "to communicate effectively with the West."<sup>87</sup> Finlay attributes the fact that the Greeks made "greater progress in regenerating their language than in improving their moral condition," to the "superiority of the material on which they worked." The language "retained its ancient structure and grammar; the people had lost their ancient virtues and institutions." Language and social reality are separated in Greek public law too. Legal texts, constitutions, treaties, in a word: black letter law, may attain "literary eminence in retirement."<sup>88</sup> By contrast, public institutions lead their own life, in a different world. There are many instances of the "contrast between the impressively comprehensive law codes which the Bavarians hurriedly translated into Greek and the stubborn realities of Greek society which repeatedly foiled these alien legislative thrusts."<sup>89</sup> This explains why the development of legal doctrine testifies to an impressive capacity of subtle differentiation whereas public institutions remain unstable, problematic, premodern. At least public law concepts are formally consistent, the public sector though, is not. French administrative law concepts, therefore, have been readily adopted along with the history of the French institutions they used to describe and regulate. However, although the deployment of French legal concepts and the interpretation of legal normative texts focus on technical consistency of public law, they are

<sup>84</sup> Vlachopoulos (2001), p. 234, 243.

<sup>85</sup> Papaderos (1970).

<sup>86</sup> Goethe's reaction to folk poetry of modern Greece is a "combination of admiration for the vitality and spontaneity of folk song with a civilised, incredulous disdain characteristic of the Romantic response to folk poetry at this period," see Beaton (1980), p. 6; Irmscher (1999), p. 123, 125. See also Müller (1825).

<sup>87</sup> Legg (1969), p. 87; Koliopoulos and Veremis (2002), p. 267.

<sup>88</sup> Finlay (1877), p. 286.

<sup>89</sup> McGrew (1985), p. 126.

not necessarily apt to combat the patronage networks of a state dependent economy.

## **7. Problematic Structures and Historic Relics**

This historic legacy is important for the understanding of some of the problematic structures of administrative jurisdiction in Greece today. They pertain to the influence<sup>90</sup> of the executive on the judiciary, the role of the General Commission of the State for the Ordinary Administrative Courts (Code of Courts Rules and Judges' Status Article 19), the combination of advisory, administrative, and jurisdictional functions, and above all, to deficits of access to justice and administrative compliance.

### *7.1. Political Influence*

There are constitutional provisions that serve as a gateway for governments to exert their political influence on the judiciary. Although pursuant to article 89 para 1 of the Constitution “(j)udicial functionaries shall be prohibited from performing any other salaried service or practicing any other profession”, the list of exceptions provided for in paras 2 and 3 of the same article is long enough to allow for the indirect “remuneration” of judges by the executive, circumventing, therefore, the guarantee of judicial independence in Article 87 section 1 of the Constitution. And, pursuant to article 90 para 5 Greek Constitution, “(p)romotion to the post of President or Vice-President of the Council of State, of the Supreme Civil and Criminal Court and of the Court of Audit is effected by presidential decree issued on the proposal of the Cabinet, by selection from among the members of the respective supreme court, as specified by law.” Such senior positions imply important responsibilities in the special courts of articles 86 and 100 of the Constitution including in respect of the control of other judges and members of the executive. What is more, decisions or acts in compliance with the provisions of article 90 are not subject to remedies before the Supreme Administrative Court (article 90 para 6 Greek Constitution). To be reviewable, selection criteria must infringe article 90 para 5 Greek Constitution not simply the relative legal statute.<sup>91</sup> It is practically solely up to the appointed judges to assess whether they want to comply with their “duty of ingratitude” towards the authority that appointed them. Revising the method of selection concerning the most senior positions of judges and limiting the possibilities of accumulation of

<sup>90</sup> Papatheodorou (2011).

<sup>91</sup> Council of State 4751/1998.

offices, as, for example, “Vice-President of the Council of State, Head of the Inspectorate for Administrative courts, President of the Special Court for Mistrial cases, member of the Supreme Judicial Council for administrative courts,”<sup>92</sup> is necessary.

### *7.2. Combination of Administrative, Advisory and Jurisdictional Tasks*

A historic heritage is the double nature of the Council of State and the Court of Audit. An institutional reform has been set in motion in different countries to establish a clear distinction between the Council’s advisory function regarding legislation and its jurisdictional function. In Greece, the fact that some councillors have participated in the discussion during the assessment of a presidential decree for advisory reasons and that the Court assesses the same decree as a judge,<sup>93</sup> is normally taken into consideration by the President of the Court when launching the composition of each session. As to the Court of Audit, it is to a certain extent a judge in its own case.<sup>94</sup> Until the Greek debt crisis, and according to “a traditional model of audit organisation”, carrying out spot checks on expenses and performance auditing was not an issue. There was no examination of public sector activities, i.e. of financial management and management systems regarding effectiveness and efficiency.<sup>95</sup>

The general commission of the state for the ordinary administrative courts is a constitutionally protected institution (art. 90) and constitutes a separate branch of senior judges, article 90 being part of section V of the Constitution on “The Judicial Power.” The vertical separation of the Council of State and the ordinary administrative courts within the context of administrative justice made its establishment appear to be necessary. The legislator tried to delimitate the function of this institution that is situated in the intersection of the executive and the judicial power.<sup>96</sup> However, although “any instruction, recommendation or suggestion to a judge in connection to a substantial or procedural question in a specific case or category of cases is inadmissible and constitutes a disciplinary

<sup>92</sup> Greco (2015), para. 82.

<sup>93</sup> See ECtHR, *Union fédérale des Consommateurs Que Choisir de Côte d’Or v. France*, no. 39699/03, June 30, 2009. These problems are now addressed by a statute – LOI n°2016-483 du 20 avril 2016 relative à la déontologie et aux droits et obligations des fonctionnaires (1).

<sup>94</sup> ECJ, C-363/11, December 19, 2012, para 24; See for a description of the Court of Audit: Spyropoulos and Fortsakis (2013) para 498.

<sup>95</sup> Sarmas (2010), paras. 2-3.

<sup>96</sup> Code of Courts Rules and Judges’ Status (C.R.J.S.) ratified by Article One of Law 1756/1988.

offence,”<sup>97</sup> the tasks these judges must fulfil are not of truly jurisdictional but, rather, of administrative nature, and it is not always clear, what “supporting,” “monitoring” and “controlling” independent courts in their task actually means.<sup>98</sup>

### 7.3. *A Recalcitrant Executive*

Enforcement against the state has never been easy in Greece.<sup>99</sup> And this despite the existence of a series of legal provisions formally prescribing compliance: articles 94 para 4 and 95 para 5 Greek Constitution, article 50 para 4 of the Presidential Decree no. 18/1989 (Council of State litigation procedure) as well as article 198 of Law no. 2717/1999 (administrative courts procedure). A full and immediate implementation is required.<sup>100</sup> Final, non-appealable, and provisionally enforceable judgments constitute, pursuant to article 199 of Law 2717/1999, an enforcement order. Furthermore, per articles 272A–272I of the administrative courts procedure, which were added in 2015, payment orders can be enforced against the Greek State also in the field of public procurement. An amount of money payable to the person concerned is fixed as a sanction against non-compliance according to the procedure provided for in law no. 3068/2002. However, the procedure implemented by this law cannot ensure compliance of public authorities to court orders. Quite often the citizen is under pressure to employ political patronage solutions as an efficient alternative to the deficit of legal implementation.<sup>101</sup>

### 7.4. *Undue Delays and Judicial Deference*

Although the Greek judicial review of the constitutionality of laws<sup>102</sup> has both the features of a diffuse (article 93 para 4 Greek Constitution) as well as, in certain cases (art. 100 paras 1 and 5, and art. 88 para 2 Greek

<sup>97</sup> Article 19 paragraphs 1 sub-paragraph d), 2 and 3 of C.R.J.S.

<sup>98</sup> Dagtoglou (2014), para. 208.

<sup>99</sup> ECtHR, Hornsby v. Greece judgment of 19 March 1997, paras 40–41. The Greek Supreme Court of Civil and Penal law ruled in its decision 21/2001 the article 8 of the law 2097/1952 unconstitutional because it impairs article 2 para 3 of the International Covenant on Civil and Political Rights, the articles 20 para 1 and 94 para 4 of the Greek Constitution and the article 6 ECHR. The article 8 of Law 2097/1952 stipulates that the enforcement of court orders for payment, also the payment of trial costs, against public authorities is not permitted.

<sup>100</sup> Council of State 1518/2014.

<sup>101</sup> Dagtoglou (2014), para 841.

<sup>102</sup> Vegleris (1967).

Constitution), the characteristics of a centralized control, the ECtHR gets extremely involved with the Greek legal order. Violations of Article 6 (1) ECHR are partly attributed to the courts' understaffing and the lack of infrastructure, or to the repetitive granting of adjournments. Rules on adjournment do exist but they are not respected in more than 50% of the cases.<sup>103</sup> Instead of focussing on the last phase of proceedings, one should reform the principles and assessment of workload management and create official channels of complaints for undue delays to prevent risks of interventions.<sup>104</sup> Interestingly, a Chamber of the Council of State<sup>105</sup> made an application to the ECtHR on a problem of constitutionality, instead of submitting the case to the Plenary Session of the Council of State pursuant to article 100 para. 5 of the Constitution, bypassing in this way time-consuming proceedings in Greece. According to the 'model trial', introduced as an instrument of streamlining the procedure in administrative courts,<sup>106</sup> cases raising important legal issues, which affect many similar cases, can be heard as a matter of priority by the Council of State. The German model case proceedings are different.<sup>107</sup> The Greek competent court does not carry out one proceeding in advance but it submits the case to the highest administrative court. Art. 69 of the Law 4055/2012 (article 108A of the presidential decree 1225/1981) introduced a fast track ("model trial") procedure also before the Court of Audit.

Apart from fair trial guarantee and lack of effective remedy, most of ECtHR findings of violation against Greece have focused on religious freedom and the link between organizations<sup>108</sup> of the Orthodox Church and the state. Another feature of the Greek public sector is the tendency by the legislature to interfere with the administration of justice to influence the judicial determination of a dispute<sup>109</sup> and to misuse – notably in planning law – the traditional French concept of "*validation législative*." The latter,

<sup>103</sup> The World Bank (2016); ECtHR Paskhalidis and Others v. Greece, no 1/1996/620/710-803, March 19, 1997. Amendments to the Greek civil procedural system by virtue of Law 4335/2015 (in force since January 1, 2016) introduced tighter rules on adjournments.

<sup>104</sup> Greco (2015), para. 93-94.

<sup>105</sup> Council of State 372/2005.

<sup>106</sup> Law No. 3900/2010; ECtHR, Vasilios Athanasiou and Others against Greece /Manios against Greece (and 189 similar cases), H/Exec (2014)1 7 March 2014.

<sup>107</sup> Section 93a of the German Code of Administrative Court Procedure.

<sup>108</sup> For ex. ECtHR, Holy Monasteries v. Greece, 9 December 1994, 13092/87, and 13984/88, par. 49.

<sup>109</sup> ECtHR, Stran Greek Refineries and Stratis Andreadis v. Greece, judgment of 9 December 1994, Series A no. 301 -B, p. 82, para. 49; Papageorgiou v. Greece, judgment of 22 October 1997, Reports 1997-VI, p. 2228, para. 37.

in the Greek context, results in the fact that judicial review can be bypassed through the confirmation of a single case decision of the administration by a non-reviewable legislative act.<sup>110</sup> Sometimes, legislative regulations are specified as far as possible in such concrete terms that they need no implementation and, therefore, they cannot be challenged. Further, legislator and executive tend to rush hand in hand into the judicial protection gap left by the high degree of judicial deference towards “*actes de gouvernement*.” Similarly, “acts of legislative content”, that may be issued “by the President of the Republic upon the proposal of the Cabinet under extraordinary circumstances” (articles 44 para. 1 and 48 para. 5 of the Constitution), are deemed to belong to the “sphere of political responsibility.”<sup>111</sup> They cannot be challenged by a petition for annulment, but they are merely subject to indirect constitutional review as to the compatibility of their content with the Constitution.<sup>112</sup> The compliance with the constitutional requirements for the issuance of such acts is not reviewable.<sup>113</sup> Amenability to judicial review is further influenced by two concepts: “popular sovereignty” and “public interest.” As in post-revolutionary Greece, where the fight for constitutional rule did not imply the establishment of the rule of law, and despite the influence of *Nikolaos N. Saripolos’* positivism, nowadays, “popular sovereignty,” which “is the foundation of the government” (pursuant to art. 1 para. 2 of the Constitution), is still too often considered in legal theory and case law to take precedence over the principle of the rule of law.<sup>114</sup> It is further problematic that legal provisions using the term “public interest” are practically excluded from constitutional review or they render it unsuccessful on the grounds that the legislator’s recourse to “public interest” justifies an interference with individual rights.<sup>115</sup>

Finally, the vertical separation of the jurisdiction of the Council of State and the ordinary administrative courts within the frame of administrative justice implied an antagonism between them that partly took the shape of a German influence on the Greek version of French institutions.

<sup>110</sup> See the struggle of the Council of State 6066/1996, 3824/1997, 4365/1997, 2157/1998, 1249/2003, 1567-8/2005, 123/2007, 1847/2008 against this practice. For France: Conseil Constitutionnel, Décision n° 99-422 DC du mardi 21 décembre 1999; ECtHR, Zielinski and Pradal and Gonzalez a.o. no 24846/94, 28.10.1999.

<sup>111</sup> Council of State 737/2012.

<sup>112</sup> Council of State decisions 3636/1989, 737/2012, 136/2013, 56/2013.

<sup>113</sup> Cf. the minority viewpoint in Council of State 1250/2003.

<sup>114</sup> Dagtoglou (2014), paras. 111-112, 120.

<sup>115</sup> For discussion and critique see Dagtoglou (2014), para. 121; Council of State 1094/1987.

## 8. Two Models of Administrative Justice: German Influence on French Institutions

### 8.1. *From the Specific Nature to the Categorization of Administrative Litigation*

Since the inception of the Council of State, practical difficulties arise from the allocation of competences between this court and administrative litigation committees or, later, ordinary administrative courts. *Alerino di Palma*, a Philhellene, had suggested in 1822 the inception of a Council of State.<sup>116</sup> In 1835 the Bavarians established this institution,<sup>117</sup> but it was an “imitation of the Senate of Capodistrias.” It was meant to be a “Parlamentsersatz.” There is a parallelism with the inception of the “Geheimer Rat” in Bavaria in 1808 that operates, after the dismissal of Montgelas in 1817, under the new name “Staatsrat,” and combines administrative with judicial functions. In 1848, Article 1 of the Bavarian “Grundlagengesetz” stipulates the complete separation of jurisdiction and administration and, in 1879, the Bavarian “Verwaltungsgerichtshof” is created as a Higher Administrative Court separated from the administration, although, at lower instances, administrative bodies still assume, albeit independently, the function of administrative justice. Many of the members of the Greek Council of State “were insignificant and ignorant men, but all were eager to retain the high place into the house”.<sup>118</sup> However, in article 41 of the relative Regulation,<sup>119</sup> we can recognize the beginnings of the action for annulment. Article 41 concerns breaches of law that were decided by a mechanism like the French system of “*justice retenue*,” according to which a minister acting as a judge decided on breaches of law in the context of a hierarchical administrative procedure. In its actual form, as an administrative cancellation jurisdiction, the Court exists since the Law 3713/1928. Still, it only began operating as of January 1, 1929. Since the final establishment of the ordinary administrative courts by the law 1406/1983, the discussion no longer revolves around the specificity of the nature of administrative litigation and the suitability of civilian courts to deal with it. Rather, the distinction between annulment disputes (“*litiges d’annulation*”) and substantive administrative disputes

<sup>116</sup> Palma (1826).

<sup>117</sup> Government Gazette of the Kingdom of Greece No 8, Athens 18. (30.) September 1835.

<sup>118</sup> Finlay (1861), p. 372-373.

<sup>119</sup> Government Gazette of the Kingdom of Greece No 8, Athens 18. (30.) September 1835.

(“*litiges de pleine jurisdiction*”)<sup>120</sup> dominates the stage in the form of a *summa divisio* called upon to delimitate the jurisdictional powers of the Council of State from those of the ordinary administrative courts. Although several differentiation criteria are used in theory – such as different limits to the scope of judicial review, enforcement of compliance with the rule of legality or effective protection of the citizens’ interests and rights, cancellation or modification of the challenged administrative act, challenge of a discretionary or a non-discretionary administrative decision – these distinctions are blurred in case law and legislative practice.

### 8.2. Decision-Making Powers, Standing, and Levels of Review

Given the special nature of the Council of State’s role in reviewing enforceable administrative acts on grounds of *ultra vires* (art. 95 para.1 a Greek Constitution), applications for annulment of normative or individual administrative acts by someone who has a lawful interest can be an expedient and very efficient remedy against unlawful behaviour of the state. This excludes the *actio popularis*, but remains a considerably less strict requirement than legal standing deriving from the possible infringement on individual rights, as it is requested by section 42 para. 2 (single case decisions) and section 47 para. 2 (regulations) of the German Administrative Court Procedure (VwGO). By contrast, the standards of judicial review of administrative discretion and margin of appreciation in interpreting legal terms or in recognizing facts are more restricted, compared to those applied by German administrative courts (“*Beurteilungsspielraum*”), even though in complaints for annulment the Court may also review misapprehension of facts and trespass of the outer limits of administrative discretion. If law gives discretion, the action of annulment is the appropriate remedy against the administrative decision, as it includes a sufficient degree of deference towards such decision making. The annulment decision is binding on all and re-establishes the status quo before the breach of law. However, when the Court examines a normative act on a collateral basis, it merely annuls the individual act based on the former *inter partes*. The same happens when the Court finds a statute unconstitutional. The Court does not apply the unconstitutional statute *in concreto*, but the law remains valid (article 93 para 4 Greek Constitution), while the law declared unconstitutional by a judgment of the Special Highest Court (a non-permanent body) of the article 100 Greek Constitution is abolished. The fact that the Council of State is called upon to rule at first and last instance, makes of the petition of annulment a very

<sup>120</sup> Spiliotopoulos (2004), para. 403.



efficient remedy, provided that the procedure before the Court is not excessively formalistic, as there is no further instance.<sup>121</sup>

In line with a strict doctrine of separating the executive power from the judicial power which is due to the specifically French history of the recourse for the excess of power, there is a series of limits to judicial review of administrative action. The major deficiency of the action for annulment is linked to the inability to fully resolve the applicant's situation in instances where the applicant challenges a refusal or an omission. In such instances the applicant will merely obtain the annulment of the refusal not the administrative decision expected from the public authority. Administrative courts may merely indicate to the authority all the consequences to be drawn from the annulment decision. There is no specific remedy, such as the action for failure to act in European law or the action for performance of an administrative act in German law, or the application for mandamus in English law, for reviewing the legality of a failure to act.

Compared with this, ordinary administrative courts (i.e. all first instance and appeal administrative courts except for the Council of State) stand for a model of jurisdiction where the issues of fact and law are considered in three instances. The Council of State has only exceptionally full jurisdiction, as provided for in the Constitution (art. 95 para 1 c, art. 18 para.5, art. 65 para. 6, art. 103 para. 4) or by a law issued upon constitutional authorization (art.95 para 1 c). Administrative courts decide only by way of exception (art. 95 para 3 of the Constitution) annulment disputes. As a rule, and as provided in the Constitution (art. 94 paras 1 and 3, art. 95 para. 1 a and c), they deal with "substantial administrative disputes", i.e. recourses of full jurisdiction, in which case they may proceed with a review of the contested act both on the merits and in relation to its compliance with the law, and they may sentence the administrative authority to compensate the plaintiff. The latter must prove the existence of a right which was prejudiced by the contested act. This is a model of legal protection that is closer to the German system of administrative courts.

### *8.3. Two Different Career Paths for Judges*

The two models are further different regarding the stages of the careers of the judges. Until 2001, the Council of state used to consider the promotion of judges of ordinary administrative courts to the rank of councillor of the

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<sup>121</sup> ECtHR Case of Sotiris and Nikos Koutras Attee v. Greece, no. 39442/98, 16 November 2000, para. 22.

Council of state as a breach of Article 88 para 6 (1) of the Constitution which prohibits the transfer of magistrates into another branch. A Constitution amendment, article 88 para. 6 (3), has been necessary to explicitly make such a promotion possible up “to one fifth of the posts, as specified by law”. Besides, the Council of State used to refuse, until 1991, to rule on administrative disputes which were referred to it by an administrative court not having jurisdiction, because they should have been lodged before the competent court. The trial of categories of cases that come under the Council of State’s jurisdiction for annulment (for excess of power) may by law come under ordinary administrative courts (of appeal or of first instance), depending on their nature or importance. In this case the Council of State has the second instance jurisdiction, as specified by law (article 95 para. 3).

#### *8.4. Jurisdictional Antagonism*

There exists a presumption that annulment disputes fall within the jurisdiction of the Council of State. The recourse of full jurisdiction must be provided for in a specific law.<sup>122</sup> The legislator has the tendency to make large-scale use of this possibility, turning the exception into the rule, and thereby creating tensions between the two jurisdictions about their constitutionally protected roles and the separation of powers (article 26 Greek Constitution). The transfer and eventually the transformation<sup>123</sup> of disputes of annulment into disputes of full jurisdiction by the legislator mean a restriction of the jurisdiction of annulment of the Council of State and are both reviewable.

The transfer concerns disputes arising not only from the challenge of single case decisions but also from the challenge of decrees of general regulatory nature, unless the issue is so important that it needs to be exclusively decided by the Council of State.<sup>124</sup> Disputes arising from the challenge of a decree of a general regulatory nature which come within the Council of State’s elaboration competence (art. 95 para 1 d Greek Constitution) are not transferable to the ordinary administrative courts. This would imply that lower courts would directly review decrees elaborated by the highest administrative court.<sup>125</sup> The Council of State declared that the full jurisdiction of the ordinary administrative courts

<sup>122</sup> For ex. Laws 702/1977, 2721/1999, 2944/2001, 3068/2002, 3659/2008, 3900/2010.

<sup>123</sup> Council of State 693/2013; Lazaratos (2013), para. 19.

<sup>124</sup> Council of State 618/2013 para.12.

<sup>125</sup> Council of State 618/2013 para. 11.

should not be extended to categories of cases implying substitution of the executive by the judiciary branch and, therefore, a violation of the principle of the separation of powers. Accordingly, in carrying out a four-part test, the Court will consider the nature of the challenged single-case decision, the conditions for adopting such a specific measure, the complexity of the investigation regarding the assessment of the conditions under which that measure can be taken and the consequences stemming from the judicial amendment to the administrative decision.<sup>126</sup> In fiscal matters and in the wake of the Greek debt crisis, the legislator (law 3900/2010, art. 20 para.1 c) established that, when a public authority infringed fundamental principles governing the assessment of fines, the administrative court should itself carry out this assessment, a provision taken over almost word-for-word in section 113 para.2 of the German VwGO.

#### *8.5. Right to an Effective Remedy and Complementarity of the Models*

The introduction of article 20 of Greek Constitution, which corresponds to article 19 (4) of the German Constitution has had a considerable impact on both models described above. Regarding the judge's power of injunction against the administration, German influence is obvious: Art 20 (1) Law 3900/2010 echoes section 113 (2) of the German VwGO. But interim relief proceedings are the most prominent example. Injunction proceedings are now possible before both the ordinary administrative courts<sup>127</sup> and the Council of State.<sup>128</sup> And section 123 (1) VwGO carried weight when it came to the regulation of instances where, on request, the court may make an interim order if the danger exists that the enforcement of a right of the plaintiff could be prevented or considerably impeded by means of an alteration of the existing state.<sup>129</sup> Effective legal protection has become more important than the traditional concept of separating the executive from the judicial power.

On their part, public law scholars and judges face the challenge to be well versed with comparative law issues, as "French" and "German" legal solutions, coming from two different autonomous and stringent conceptual systems, find themselves coexisting within the Greek institutional setting

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<sup>126</sup> Council of State 217/2016 para. 3.

<sup>127</sup> Articles 200-215 of the Code of Administrative Litigation Procedure

<sup>128</sup> Article 52 of the Council of State Litigation Procedure

<sup>129</sup> Sinaniotis (2006), p. 206.

and must be rendered compatible to each other.<sup>130</sup> They also need to modify and develop legal concepts that delimit the new role of the state in a globalized economy, notably to adopt a functional definition of public authorities and a functional view of public contracts.<sup>131</sup> A concept that exemplifies the combination of these tasks is the term “enforceable act of the administrative authorities” (art. 95 para 1 a Greek Constitution) which has divergent meanings and is used in contraposition to different concepts in French, German, Greek and European Union law.<sup>132</sup>

### **9. Economic Governance through Constitutional Review**

In dealing with financial crisis, the Council of State, applying the proportionality test, found that there was no violation of art. 17 1 of the First Protocol to the European Convention for the Protection of Human Rights and art. 17 of the Greek Constitution because the austerity measures constituted limitations on and not deprivation of rights. According to the Court they were necessary for reasons of public interest and, at the same time, they pursued the objectives of the countries of the Eurozone, i.e. to avoid state default and attain sustainable budgetary positions.<sup>133</sup> Clearly, the Court plays not only an important role as a defensive factor against illegality, but also a major role facilitating reforms in an ongoing state-building process in Greece. Some rulings<sup>134</sup> highlight the importance of the existence of depoliticized independent agencies, for ex. of the National Broadcasting Council (paras 2 and 3 art. 2A law 4339/2015 violates art.15 para 2 Greek Constitution). Further, the Court facilitated reform when it emphasized that the conditions of compulsory dismissal of employees from their service may not be based on criteria which are related neither to the operational and organizational needs of the public service nor to the qualifications and performance of the employees.<sup>135</sup> Another important aspect of public sector reform is the principle of continuance of providing an uninterrupted public service.<sup>136</sup> Regarding economic governance, the

<sup>130</sup> Dagtoglou (2014), para 213.

<sup>131</sup> Dagtoglou 2012, paras 510-511; Dagtoglou 2014, para 209β.

<sup>132</sup> Cf. art. L200-1 of the French Code des relations entre le public et l’administration (May 26, 2016), section 35 of the German Code of administrative procedure, ReNEUAL Model Rules on EU Administrative Procedure Book III, and articles 288 para. 4 and 263 para. 4 of the Treaty on the Functioning of the EU.

<sup>133</sup> Council of State 668/2012 para. 35.

<sup>134</sup> Council of State 95/2017, 319/2017, 365/2017, 820/2017, 1054/2017.

<sup>135</sup> Council of State 3354/2013.

<sup>136</sup> Council of State 236/2013.

Court facilitated privatizations and foreign investment,<sup>137</sup> it stressed the importance of fiscal methodology consistence, and it scrutinized the relation between zoning districts and property tax assessment in a context of increasing economic recession and deterioration in the housing market.<sup>138</sup>

Regarding the constitutional limitations imposed on reforms, the court ruled that the transformation of a state water company to a private one which operates on a for-profit basis makes uncertain the continuation of access to affordable and efficient services of general interest of a high quality, as they would be no longer comprehensively secured by state oversight.<sup>139</sup> Concerning labour law the Council ruled unconstitutional the provisions abolishing the opportunity of unions to resort unilaterally to arbitration following the failure of negotiations in order to conclude a collective labour agreement. By contrast, restrictive measures are constitutional as long as they do not affect the core of the right to collective autonomy, namely the right to freedom of association and the right to strike (Art. 22 and 23 of the Greek Constitution).<sup>140</sup> In a further series of decisions<sup>141</sup> the Court took the view, quoting the German Federal Constitutional Court, that pension cuts may not reach the point at which the pensioner is no longer able to live in dignity.<sup>142</sup> Moreover, the court saw itself confronted with the problem of adapting the application of the proportionality test to the cumulative effects of recurrent restrictive measures on the same category of adversary affected persons.<sup>143</sup> As this case law shows, constitutional review defends, in times of distrust towards the political system and the European Union, not merely the constitution. It selects by the same token the type of reform measures for which it tries to generate trust and ownership.

## 10. Conclusions

In Post-Ottoman Greece, judicial control of public authorities is intertwined with state policies toward national lands and piracy. The Ottoman legacy of tax farming and political patronage undermined

<sup>137</sup> Council of State 218/2016.

<sup>138</sup> Council of State 2334-2337/2016

<sup>139</sup> Council of State 1906/2014.

<sup>140</sup> Council of State 2307/2014.

<sup>141</sup> Council of State 668/2012, 1283/2012, 1284/2012, 1285/2012, 1286/2012, 1623/2012, 1972/2012.

<sup>142</sup> BVerfG, Judgment of the First Senate of 09 February 2010 - 1 BvL 1/09 - paras. (1-220) (BVerfGE 125, 175–260).

<sup>143</sup> Council of State 2287/2015 (laws 4046/2012, 4051/2012 and 4093/2012).

repeatedly the efforts of establishing neutral and impartial courts. In theory, all the reasons in favour of the establishment of administrative courts were well known. In practice, neither expediency nor insider administrative knowledge nor neutrality characterized administrative dispute resolution by administrative committees. There is a thread running from the times of Kapodistrias and the Bavarian rule up to today's public sector and administrative justice, and that is the need for the development of loyalty to impersonal<sup>144</sup> institutions. The experience of the Court of Prizes shows that without acceptability at the international level administrative courts' accountability and legitimacy cannot be enhanced. Nowadays, if the judicial system is perceived from abroad as "inefficient, slow and vulnerable to corruption and political influence"<sup>145</sup>, this is not conducive to business and should be proven wrong, to enable reputational damage to be minimized. Otherwise, investors will either keep their distance or opt for international alternative dispute resolution, bypassing Greek law and courts.

A historically handed down institutional framework must adapt to meet the new circumstances and rule of law requirements. What is needed are: limitation of the possibilities for judges to accumulate offices and tasks, change of the system for appointing senior judges, separation of advisory, administrative and jurisdictional functions, unequivocal third-party role for a judge, a modern interpretation of the administration's failure to act and of the terms of "public interest" and "popular sovereignty" in relation to the principle of the rule of law. The Greek political system avails itself of concepts intrinsic to the history and differentiation process between political sphere, administrative state and administrative justice in France - such as "*actes de gouvernements*" and "*validation législative*" - to bypass judicial scrutiny, although French and European jurisdictions along with the Greek Council of State try to overcome the force of inertia of such historic relics by introducing adequate requirements. The task for the Council of State, however, will continue to prove difficult in a state where political influence transcends *de facto* the separation of the legislative and executive powers. Regarding undue delays amounting to *de facto* denial of justice, they cannot be reduced by simply introducing "fast tracks" or improving the case load management skills of judges, because the problem is more profound and systemic. Rather, it necessitates the elimination of impediments to depoliticization of public administration and independent agencies, to enhance the ability of public authorities to cooperate with

<sup>144</sup> Corruptions Perceptions Index 2016, Greece, Rank: 69/176, Score 44/100, in: Transparency International (2016).

<sup>145</sup> GAN Integrity (2015).

administrative justice and to comply fully with the judgments of the courts. Then lawyers will follow and reconsider their delay tactics, and opportunities and incentives for political influence will decrease.

Furthermore, the roots of a still existing hiatus between the high standards of public law scholarship and the social reality of public institutions become clearly visible in the retrospective. Debates about borrowed conceptual efficiencies that constantly remain mired in the implementation phase do not change the way of doing things. Moreover, the Council of State and the ordinary administrative courts are not only vertically separated, but they also represent two different models of administrative justice, with the former corresponding to a French institution and the latter being closer to the German model of legal protection in three degrees. The antagonism between the two models must give way to a combination of the strong elements of both. This can never be imported. Finally, Article 19 (4) of the German Constitution and the German Code of Administrative Court Procedure exerted, along with the ECtHR, a discernible influence on Greek legal theory and legislation, softening a strict view of the principle of the separation of powers and rendering it compatible with a more effective legal protection. In the context of the current crisis, the Council of State's constitutional review gets the opportunity to generate trust and facilitate reforms long overdue while protecting citizens' rights and defending its own impartiality and political independence.

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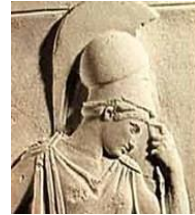
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## Medea on Stage: Child Murderess or Abandoned Wife

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**Abstract:** This paper was inspired by a theater production in the Munich *Residenztheater* based on *The Golden Fleece*, a trilogy by Franz Grillparzer (1791-1872), and especially on the third part: *Medea*. The production conveyed to me that Medea is above all a stranger and refugee, lost in a rather reluctant or even hostile environment in Corinth, abandoned by her Greek husband Jason. There are two interpretations discussed in this paper. The Greek interpretation of the play that was presented by Euripides in the fifth century BC at Athens' Dionysia, sees Medea as a vengeful wife who murders her children to destroy her husband. The German interpretation, probably strongly influenced by Grillparzer's play emphasizes that Medea suffered hard from being abandoned by her selfish Greek husband Jason in a discriminating environment that ranks her as a barbarian. First of all, it is an empirical question whether the hypotheses of the two different interpretations hold, but, in this paper, I will restrict myself to narrative speculations. In order to discuss and compare these interpretations we will look for further arguments in Anselm Feuerbach's Medea painting and Pasolini's Medea film. We will also consider the possibility that Euripides was, as reported, bribed by the Corinthians to make Medea the murderess of her children – to take away the possible blame from Corinth and its citizens to be responsible for the death of the two boys.

**Keywords:** Medea, Euripides, Grillparzer, Feuerbach, Pasolini, Maria Callas, murder, infanticide, discrimination, theater production.

**JEL Code:** Z11

### 1. Setting the Stage

It has been said – and written (cf. Graves 1960, 255) – that the Corinthians offered a large sum of money to Euripides if he made Medea kill her

children instead of the Corinthians stoning them, as according to one strand of the myth. If it is true, this bribe had tremendous consequences; I will discuss them at the end of this paper in section 8. In section 2, I will deal with two traditional interpretations about possible differences regarding the Greek and the German perception of Medea, child murderess or abandoned wife. Section 3 will give a short account of the Medea Myth. In section 4, *Medea* by Euripides will be discussed with an emphasis on the hypothesis of the child murderess. Grillparzer's *Medea* is analyzed in section 5 with a focus on the abandoned wife and Medea's experience as a barbarian among a Greek social environment. Section 6 interprets the *Medea* in Feuerbach's painting and in Pasolini's film with respect to these dimensions. Section 7 relates to the problem of testing differences in today's reception of the Medea myth in Germany and Greece. The appendix contains selected entries on *Medea* in various encyclopedias.

## 2. The Hypotheses

The *Greek interpretation* of Medea focuses on perceiving her primarily as a mother who killed her children. The *German interpretation* tends to see her as a strong abandoned woman who was "discarded" by her selfish husband for another woman when he concludes that he does not need her anymore. Also, she is perceived as suffering in Greece from her status as foreigner and refugee.

The difference, if it exists, seems to be supported by Grillparzer's *Medea* and its impact on the German-speaking cultural arena that emphasizes the second interpretation. The Austrian author and dramatist Franz Grillparzer (1791–1872) wrote the play in 1821. The Greek interpretation is *primarily* based on Euripides' play *Medea* (fifth century BC). It focuses on Medea as a vindictive, vengeful, wicked woman who even turns into a child murderess to destroy her husband. Shall we conclude that infanticide can only be committed by a monster? Why did Euripides add this turn to the Medea myth? Was it to discredit Medea, the barbarian (by Greek standards), or women per se? In ancient Greek mythology, there are numerous versions of the tale of the Golden Fleece, the Argonauts and the Medea story, but none is explicit about Medea killing her children.

Today, German-speaking performances *on stage* tend to focus on the abandoned wife who is isolated in Greek society as outcast, a stranger and barbarian, dismissed by her selfish husband Jason. This raises the question of how strong is the influence of Grillparzer's *Medea* version in shaping the German interpretation. Is this influence, directly or indirectly, reflected in Anselm Feuerbach's *Medea* of 1870, prominently exhibited at the *Neue Pinakothek* in Munich? (See below.)



One could argue that the picture of Medea as a child murderess is consistent with a patriarchal society, while a devoted sacrificing wife who was abandoned by her opportunistic husband is not. However, I would not dare to claim that the Greek society and the German society differ along this dimension. If this kind of comparative study has not yet been done, differences in the Medea interpretation could be a starting point to see whether such differences actually exist. What follows should help to find relevant questions.

My inspiration for this interpretation derives from a theater performance in the Munich *Residenztheater* in January 2016. The production was based on the trilogy *Das Goldene Vlies* ("The Golden Fleece") which Franz Grillparzer finished in 1821, and especially on *Medea*, the *third* part of it. In recent years, I saw several more Medea productions on stage, not only the Grillparzer version mentioned above but also one in Hamburg's *Deutsches Schauspielhaus* a few years ago. A production of the Euripides' play by Thalheimer in Frankfurt was fascinating. The one I saw in the Munich *Volkstheater* just a few months ago was quite different but also *worthwhile to see*. So was *Mama Medea* by Tom Lanoye at the Munich *Kammerspiele* almost ten years ago. This list of productions in various German cities demonstrates that the topic *Medea* is an important part of the German theater repertoire. Medea herself is an icon in the German culture, however, only to perhaps a very small minority.

To give flesh to the above hypotheses we will look into details of the Euripides *Medea* and the Grillparzer version. First, however, a brief account of the Medea myth seems appropriate on which Euripides and Grillparzer (and many other authors) based their works.

### 3. The Medea Myth

According to Hesiod's "Theogony,"<sup>1</sup> Medea's father Aietes and his sister Circe were children of the sun god Helios – Medea's mother Idyia, was a daughter of Oceanus, the River Ocean God. Medea served as priestess of Hecate who was the moon goddess and enchantress. In another version of the myth, Hecate is Medea's mother.

For our purposes, the story starts with the fleece of the gold-haired winged ram that had brought Phrixus to Colchis on the Eastern shore of the Black Sea (situated in today's Georgia) where he asked for Aietes' hospitality. In return, in order to thank him, Phrixus sacrificed the ram and

<sup>1</sup> Around 700BC. Besides Homer's *Iliad* and *Odyssey*, Hesiod's writings are the oldest sources of Greek mythology.

presented Aietes its Golden Fleece, the symbol of kingship and power, happiness and wealth. The Fleece was put in the holy grove of Ares and was guarded by a never-sleeping, fire-spitting dragon.

Later, when Jason and his Argonauts landed in Colchis to claim the Golden Fleece from Aietes and bring it back to Greece, i.e., to Pelias in Jason's home town of Iolcus, Aietes agreed thinking that Jason could never succeed with this endeavor, to the contrary, it would mean his death. However, Hera convinced Aphrodite that her son Eros would make Medea fall madly in love with the handsome Greek hero Jason. Indeed, Medea struck by love and totally enamored to Jason wanted to save him. She became his helpmate and proved instrumental for his success. As Circe's niece and priestess of Hecate, she knew much about witchcraft. She prepared poisonous ointment to protect him and used other magic powers so that he could accomplish the deeds demanded by Aietes and finally win over the dragon and get hold of the Golden Fleece. Without Medea's help, Jason would have never been able to get the Fleece. Under the condition that Jason marries her, she wanted to flee with him and the Argonauts to Greece on their ship Argo. She betrayed her father, left her family, and even helped Jason to kill her brother Absyrtus who persecuted them with a large number of Colchian soldiers – she accomplished all these deeds because she was struck by love of this Greek daredevil.

Landing in Greece, Jason and Medea went to Jason's hometown Iolcus to bring the Fleece to his uncle Pelias who reigned over the city. Pelias had promised to Jason that once he brought him the Fleece, he would be installed as the legitimate king of Iolcus. However, Pelias did not keep his promise. He did not step down but, shortly thereafter, he died. His children blamed Jason and his 'wicked' wife Medea for murdering him. They were banished and had to flee from Iolcus. That is how they came to Corinth.

#### **4. Medea by Euripides**

The versions still existing from the Archaic Period (before the fifth Century BC) demonstrate that the myth was told in various ways with different endings. One was that Medea was "invited by the Corinthians to be their queen and that she was unintentionally responsible for her children's death..." (McCallum-Barry 2014: 24, according to Eumelos, ca. 730 BC). In another ending, the children were murdered by the citizens of Corinth, after Medea had killed Kreon and his daughter. In addition, there are other stories about what happened to the children but none mentioned intentional infanticide by Medea. This cruel turn entered the stage in 431 BC with Euripides' play.

Therefore, the question arises why Euripides changed the myth so drastically. What was his motivation? Was it for theatrical reasons (to be

discussed below) or primarily for being bribed by the Corinthians? We will try to answer these questions in section 8 below

Euripides (born 480 or 484 BC in Athens; died 406 BC in Macedonia) was an experienced dramatist and contributor to the Great Dionysia, the Athens theater festival held every year early in the spring. In the year 431 BC, he had 24 years of experience with this competition. In 455 BC, he participated with a trilogy, which included "The Daughters of Pelias", already dealing with parts of the Argonauts' legend. By then, the annual dramatic festival had taken place for about a hundred years.

There are estimates as to how many spectators could be seated in the fifth-century festival theater: they range from 4.000 to 15.000 people. The question whether female spectators were permitted is disputed. If women were allowed as part of the audience, they had to sit at the back separately from the men. Thus formation of a collective male identity through the play, and maybe even a female identity, became possible (see Wyles 2014: 48f).

In this tragedy, Euripides gives various reasons for Medea's revenge campaign, killing not only Creon and his daughter, i.e., Jason's bride and his future father-in-law, but as culmination also murdering their two sons. Above all, we should keep in mind that in Euripides' time a "tit-for-tat" behavior ("an eye for an eye and a tooth for a tooth") was the accepted moral standard. Being mocked was a most horrible imagination for everybody. Medea did not want to be laughed at as abandoned wife as it meant to be dishonored; she also wanted to save her children from such a fate as well. In addition, as an abandoned barbarian woman without a family to turn to, she was isolated in the Corinthian society, she was an outcast.

Up to a certain point, Medea, pretending to be an ordinary woman, has the support of the Chorus of Corinthian women, especially when she complains about the abject role of a woman. However, the Chorus vehemently object to Medea killing her children and become almost paralyzed. Yet, the Chorus' reaction does not affect Medea at all.

In an important scene somewhat on the side, when she met Aegeus, the king of Athens, who told her about his infertility, she promised to help him and made him swear to give her shelter in Athens. (Swearing was binding). In this meeting with Aegeus, it became clear to her that the utmost harm to Jason would not be his death but to have no sons anymore and remain childless, to have nobody who would continue the family line and take care of him in old age. At this point, vengeance becomes her driving force. By betraying her father and her brother, she was guilty for their death and the erasure of her father's family. She wants to bring the same fate to the house of Jason. She kills their two sons. It seems that Medea is no longer the mistress of her decisions, but the tool of a revengeful god – or is she a

goddess herself seeking revenge? Gods are allowed to be cruel, and not just the Greek ones. Indeed, in the final scene, Euripides transforms Medea explicitly into a goddess, the granddaughter of Helios. She swings up in the air, sitting in the fiery chariot that Helios had sent her and holding her children's bodies as if to take them to another "world" and disappears. The very last words come from the Chorus: "Zeus on Olympus watches over many things. The gods have many shapes and they appear most often when you don't expect them. What seems most likely does not come to pass. A god can find a way to do the unexpected. Such is what happened here."

This ending was a stunning theatrical effect. Euripides was harshly criticized because of using a "*deus ex machina* solution," i.e., choosing too easy a way to let the horror tragedy end, especially as Medea could not be held accountable for her atrocious crimes on the basis of human law.

This is not the place to point out all the male stereotypes in Euripides' play. It suffices to mention that Medea (like her name meaning "adviser" suggests) was considered by some a sorceress, by others a wise woman with high rhetoric talents, and as such more intelligent and stronger than her husband. Generally speaking, such superior qualities for a female were not accepted in Athens' patriarchal, male-dominated society, or elsewhere in Greece. Medea's monstrous deed to kill her children "...suggests that chaos and destruction would result should women ever act like men, demand equality, and throw off the constraints that their society places on them" (Cairns 2014: 137). Not only the misogynist male audience considered the filicide outrageous, the female spectators were appalled as well – it triggered vehement protest and at the same time fascination. Turning Medea into a goddess did not fully calm down these feelings; the child murderess was not dispensed because of her divine family background.

Euripides' trilogy was ranked only third in the Great Dionysia of 431 BC. Approximately 100 years later, Aristotle strongly objected to the "inorganic" and "improbable" ending (quoted in Hall 2014: 139f. - Poetics 15:1454b):

"The denouement of plots ought to arise just from the imitation of character, and not from a contrivance, a *deus ex machina*, as in *Medea*. The contrivance should be used instead for things outside the play, either all that happened beforehand that a human being could not know, or all that happens later and needs foretelling and reporting, for we attribute omniscience to the gods."

## 5. Grillparzer's play

As a 19<sup>th</sup> century author, Grillparzer would not let the restoration of divine order be a chief moving agent. Instead, he emphasizes the psychological

constellation, especially Medea being a non-Greek and a refugee in Corinth. In Colchis, in the first part of the trilogy (*Der Gastfreund*), Aietes kills Phrixus for greediness to get hold of the Golden Fleece, despite Medea begging him not to offend the holy law of hospitality. The dying Phrixus curses Aietes, who later passes this curse on to the fleeing Medea. During all her life, her father's curse haunts Medea.

Grillparzer's *Medea* emphasizes that Medea is a stranger, an outcast, in the eyes of the Greeks – a barbarian from a non-Greek, wild and uncivilized environment. In the beginning of Grillparzer's play, Jason and their two children had just arrived in Corinth. In order to become accepted, Medea tries very hard to adjust to the life in this eminent Greek city and to integrate into Corinthian society. She even buries her magic utensils, which, a long time ago, she had received from Hecate in her native Colchis, such as the Goddess' wand and the veil and, the mightiest objects of all, the Golden Fleece. She had left her home country Colchis, where she – the daughter of the king – had been a powerful priestess with great magic talents. In Corinth, she was no more than the non-Greek wife of a Greek exile from Jolcus asking for asylum in the city.

There are distinct differences to the Euripides version. For example, Grillparzer introduces Kreon's daughter and Jason's new wife Creusa as an active member in the triangle relationship Medea-Jason-Creusa. Euripides had not even mentioned the latter's name with Medea referring to her as "the girl" or "woman." Creusa is the blond, frail young Greek whereas Medea is the dark-skinned, tough barbarian from far away. Jason is the weary ex-hero acting like a cad in Medea's eyes. There is no chorus. Yet, from time to time, her maid Gora takes over the role of a chorus.

Among the Greeks, Creusa is the only person who is friendly and open towards Medea. Creusa sincerely tries to help her adjusting to the life in Corinth. She is aghast when she hears Medea complaining about Jason's egomaniac, ruthless and calculating behavior towards her (617–640). Shortly thereafter, Jason tells Creusa how he sees Medea – and his statements are just as full of hate towards her as was Medea's account about him.

There are two important references to Aietes' curse. At one point, the curse is mentioned by Jason towards Creusa (745–750) when he tells her that Aietes cursed them, instead of giving him and Medea his paternal blessing. At the end of the fourth act when Medea drowns next to her sleeping son, she thinks of her father's curse:

"Know thou shalt be thrust forth  
Like a beast of the wilderness," thou saidst;  
"Friendless and homeless, with no place  
To lay thy head! And he, for whom

Thou hast betrayed me, he will be  
 First to take vengeance on thee, first  
 To leave thee, thrust thee forth, and first  
 To slay thee!"  
 (2110-2117. Translation: Theodore A. Miller)

She feels this curse looming over her.

On board of the *Argo*, when they were sailing to Jolcus, already then their marriage seemed to her a serious mistake. There are grave differences between them that cannot be overcome: Jason is convinced of the uniqueness and superiority of the Greek culture; compared to it everything else must be inferior. He wants to be honored as a hero who is rich and highly esteemed in society with the appropriate position; he is opportunistically striving to achieve these goals. Above all, he now wants to get rid of his barbarian wife as he considers her the reason why he is being shunned everywhere. In Corinth, apart from the latter wish he wants to lead a well-off quiet life as a powerful, reputed man in a pleasant surrounding – he has turned into a philistine, a “Babbitt.” He despises Medea for her barbarian origin and her otherness. Neither of the two wants to understand the way of thinking, the attitudes, the convictions and preferences of the other. Maybe for the first time in German literature, it is shown that clinging to different national consciousness is the cause for the irretrievable breakdown of a familial relationship.

Jason strongly exhibits the superiority of the Greeks and their culture. He states several times that he suffers from the fact that people around him consider his wife a wild witch and sorceress from far away and an absolute *mésalliance* – instead of him supporting her efforts to adjust and protecting her from defamatory statements. On Medea’s part, there is love turned hatred but she definitely wants to stay with Jason because that is what they had promised each other. In addition, the status of an abandoned wife is very low in the Greek society, especially when a woman has no family to go to and is even considered a barbarian.

After the herald of the Amphictyons in Delphi (985) proclaimed that Jason and Medea have been banished, Creon tells her to leave Corinth (1040) alone without her children, as Jason is not guilty and would get married to Creusa. Medea reminds Jason of the oath that years ago on the *Argo* they had both sworn to each other: “One home for both, one body – and one death.” She asks him to keep it and follow her but he declines (1045ff).

This is the decisive moment for Medea to concoct her revenge. Her offended female vanity together with her father’s curse, her farness from her family and her culture, her crimes, all due to getting married to Jason and fleeing with him, explain her strong sense of vengeance. When the

children rejected her as well, disaster took its course. In the end, Creusa and the children are dead. Jason has to leave Corinth. Medea is going to Delphi to return the Fleece to Apollo's altar and let his priests decide over her future fate. She is willing to accept their decision no matter what will be the sentence. Her last words to Jason are that he should endure and repent.

In contrast to Euripides' version, Grillparzer depicts her as steadfast woman, not as half-goddess, a woman who turns into an avenger and penitent. Medea is in certain ways resembling some of the tragic heroines in modern American literature, e.g., by Eugene O'Neill or Tennessee Williams, or in Strindberg's and Ibsen's dramas. She is a very strong, a very emotional woman who fell in love with a foreigner, both giving each other an eternal promise to stay together, no matter what the circumstances are. She is torn between her feelings of guilt towards her family, her cultural identity, her being considered a barbarian outcast in her husband's country and by him. Her social status in this society is so different from what she was used to in her own country. Such is the complex mixture that she does not want to end "the fast way" and kill herself. Instead, her conscience tells her to bring the Fleece back to Delphi and let the priests judge over her crime, guilt and repentance.

There are later adaptations of the Medea myth by German-speaking dramatists that emphasize even more the fact that Medea suffered from heavy discrimination in her husband's country being considered totally inferior to Greeks. The German author Hans Henning Jahn (1891-1959) strongly emphasized this "culture clash" due to racism, which for Medea became unbearable. In his Medea play, he suggested "the marriage problem Medea-Jason could be made clear only by putting her on stage as negro" (Jahn 1926: 55f). It would be interesting to see whether this change of focus applies to today's Greek reception of Medea as well.

In German theater performances, the focus was on Medea as unrightfully abandoned wife, having been "discarded" by Jason because he does not need her any more. More recently, with the issues of refugees, migration, and integration being most imminent challenges, the emphasis has been expanded: Medea suffers from similar problems as many refugees, e.g., from Syria or Nigeria.

The aspect of Medea being a stranger and outcast was strongly emphasized in the theater version at the *Residenztheater* (see above). The Euripides versions which I attended put the main focus on the strong-willed woman Medea against her selfish husband, the latter being a weak character. None of them ended with any allusion to Euripides' *deus-ex-machina* end.

## 6. Feuerbach and Pasolini on Medea

The myth and fate of Medea also stimulated painters in their work, perhaps most prominently in Germany Anselm Feuerbach (1829–1880).

What kind of image does Feuerbach's painting "Medea" (1870) convey? The painting is also called *Medeas Abschied* ("Medea's Farewell") or, alternatively, *Medea am Meer* ("Medea at the Seaside"). It is part of a series of three paintings about the Medea Myth together with "Medea with a Dagger" before murdering her children (*Kunsthalle, Mannheim*) and "Medea and the Urn" showing an urn with a relief depicting the murder scene (*Kunsthistorisches Museum, Vienna*). In an 1869 letter, Anselm Feuerbach gives a list of possible scenarios: "Medea before the deed, Medea after the deed, Medea fleeing by the seashore at night, Medea as a loving mother, as a murderous fury, awake, regretting and suffering." In a letter to his stepmother Henriette Feuerbach, he postulates that a "history painting should portray a life in a situation, it should point to the future and the past and stand for itself for all eternity" (Feuerbach 1920, chapter 20). Hagen and Hagen (2011:380) conclude, "...by avoiding the extreme climax, the painter enables us to see Medea in the wider context of her tragic destiny."



Anselm Feuerbach, 1870 (*Bayerische Staatsgemäldesammlung Neue Pinakothek München*)

Feuerbach had come to Paris in 1851. There he saw in 1854 the tragedy "Medée" by Ernest Legouvé, a well-known French playwright. At the end, Medea kills her children for – this is his hypothesis – the Corinthians



would stone them. Medea was played by the then very famous Italian actress Adelaide Ristori. Apparently, Anselm Feuerbach was absolutely fascinated by the Medea myth. He wrote to his stepmother: “das ist nun wieder ein Gegenstand, in den ich mich absolut verbissen habe, von dem ich nicht loskomme” – (Feuerbach 1920, chapter 20). This sounds like Delacroix who was working on the Medea myth for 30 years.

Medea is shown with the two sons in her arms. She is painted as a monumental classic heroine, well dressed with a royal hairdo. (Incidentally, the actress Ristori in the Paris performance had a similar hairdo.) To her right but much smaller there sits a woman in a dark brown dress, most likely her maid, mourning, burying her face in her hands. On the ground, one can see a horse’s skull, a sign for the impending tragedy. Also, the gloomy background refers to bad things to happen. The active persons in this painting are the sailors getting the boat ready. Is this for Medea’s flight to Aegeus in Athens or is it a reference to the Argo?

Some contemporary critics were not happy with Feuerbach’s paintings as they were neoclassic in the tradition of Winckelmann and not realistic or impressionist corresponding to the then modern trends. In addition, they could not connect *Medea’s Abschied* to the heroine. However, between the German upper and middle-class, his paintings were quite popular as there was a strong preference among them for classical Greece. Hagen and Hagen (2011: 605) point out that idle middle-class women visiting the *Neue Pinakothek* in Munich at the end of the 19<sup>th</sup> centuries<sup>2</sup> could identify with Medea as an isolated, abandoned mother. They were also confined to the role of housewife and mother, a setting that was then prominently dealt with by Henrik Ibsen, e.g., in “A Doll’s House” (1879) or “Hedda Gabler,” (1891) and Theodor Fontane, e.g., in “Effi Briest” (1895).

To me, Feuerbach’s Medea communicates an impression of a strong almost god-like heroine holding mute dialogue with her children as if to say farewell. She is oblivious to her surroundings. Neither does she notice the gloomy atmosphere of the place, nor the derisory state of the ship nor the person sitting not far to her left. She seems to be there for eternity. In a way this is not so different from what we see in Pasolini’s Medea movie of 1969 in which the heroine acts (and looks) like a divine, powerful woman both in her home country Colchis but also later, even on the primitive ship “Argo” during their flight and return to Greece, first to Jolcus and finally to Corinth. Medea is played by Maria Callas. She personifies this very

<sup>2</sup> The painting was bought from the artist by Ludwig II, King of Bavaria, a nephew of Otto I, King of Greece, and given to the Munich art museum *Neue Pinakothek* in 1879.

emotional and resolute (non-human) woman who adheres to her archaic roots. Colchis is supposed to have had matriarchic traits; Medea is a powerful priestess to Hecate.

The scenes in her home country show a way of life that is strongly connected with nature. At the beginning, there is a long ritual involving a young man being sacrificed to the gods. The spectators stand in a circle around him. When he is dead, they try to catch some of his blood and parts of his intestines; chanting and preying they walk across the meadows and fields and smear blood drops on various crops to secure a rich harvest. Colchis seems to be extremely archaic – in contrast to the highly civilized, well-structured court life in Jolcus and in Corinth, which we see later in this movie.

Maria Callas' Medea remains a strong-willed heroine throughout the film: as daughter of the king and a priestess in Colchis (carrying a costume and jewels weighing roughly 50 kilos), as enchantress and helper-maid to Jason, fleeing with him and the Argonauts, in Jolcus and later in Corinth, even when killing her two sons – she remains a *grande dame* and demi-goddess, the granddaughter of Helios. Jason cannot match her grandeur (not only because he is lacking acting skills and seems to be more like a young boy who feels comfortable and jolly with his male friends rather than being a mature husband and father). At the end, he is totally shattered and miserable.

From the very beginning when Jason and Medea meet, the difference between them is plainly obvious. Is this part of Pasolini's message? It is worth to watch the movie because of the stunning locations, the music and, of course, because of Maria Callas and of Pasolini's and her interpretation of the Euripidean Medea. There are only few parts taken literally from Euripides' play. However, there is some of his version's atmosphere in the film. Helios appears twice as rising sun and speaks to Medea. It becomes clear that she connects with him, i.e., her grandfather, and that he encourages her in her vengeance, and in her last step to "leave" with the children. She kills the two boys but the killing does not look like murder, rather like a ritualized putting them to sleep. The end is very abrupt and confusing: no chariot but fire. This interpretation somewhat undercuts the story of the child murderess as emphasized by Euripides.

It is interesting to know that Maria Callas sang „Medea“ for the first time in 1953 in London's Covent Garden and from thereon it became her favorite opera role, especially in La Fenice in Venice. In a 1970 interview with the Observer, Maria Callas expresses her compassion for Medea:

“I have compassion for her. She kills her children because she feels she has no other choice, and because, being a goddess, she can remove them from this bitter and bloody world and enable her to

join them in everlasting life. She kills so they may live in peace and dignity. She knows there will be no hope of that for them in this world, so she commits them to the next” (quoted in Bret 1999: 78).

In another interview by the Daily Telegraph, Maria Callas said, “Medea was a demi-goddess whose downfall came about when she put all her trust in a man” (quoted in Bret 1999: 263).

There are of course thousands of other art works that deal with *Medea* or aspects of this myth. Pasolini has been selected because he is on the one hand a sort of crown witness: he had studied the Classical Greek culture for many decades, translated ancient texts and elaborated material of that culture in his poems. There is also his film *Edipore re* (Oedipus Rex), released in 1967, and his film project of an *Orestide Africana*. He worked on the latter project,<sup>3</sup> but, in the end, it was not realized. On the other hand, Pasolini offered a timely interpretation of the Medea story. “Jason is seen as a Western colonial power, while Medea represents an indigenous people, vulnerable to conquest and exploitation, symbolized by the theft of the Fleece. On this view, Medea’s murder of her two children represents her revenge against the colonial power” (Shapiro 2014: 96). Given Pasolini’s politico-ideological background it seems quite likely that he invited this interpretation.<sup>4</sup> But how does this match with presenting Medea as a child murderess? Perhaps this is why the killing was presented like putting the children to sleep. On the other hand, the killing of her rival, i.e., Creon’s daughter Creusa (alternatively named Glauce) and her father King Creon was demonstrated even in two versions. This was Medea’s barbarian revenge.

## 7. Who knows of *Medea* today?

I started asking people that I met in Germany about Medea “what comes into your mind when you think about Medea?” To my surprise, few people have an idea that comes close to one of the Medea characters presented in this paper. Many, even people with an academic degree, have no clue, unless they are avid theatergoers. This created some rather awkward situations as people felt like examined at school and saw themselves failing

<sup>3</sup> See the documentary *Appunti per un’ Orestide Africana* (Notes Towards an African Orestes)

<sup>4</sup> “...*Medea* could easily be the story of a Third World people and its disastrous encounter with the materialist Western civilization, while Jason’s inability to understand such pre-industrial culture marks him as part of the modern world we all inhabit” (Bondanella 2001: 277f).

the test. It seems that, more or less random, interviewing is not an adequate method to find out whether Medea is primarily seen as a child murderess or an abandoned wife. Moreover, obviously, we need a large sample to get relevant responses at all – or we have to direct our question to people who frequent theater or have attended extra-curricular studies on culture.

How to deal with this wide ignorance of Medea is the next question? Clearly, a typical German did not come across the figure “Medea” or could not remember that he did. My hunch is that both explanations are to the point. I would argue that modern Germans are largely unaware of Medea’s myth except for theater visitors and people interested in cultural matters. Even then, how should you remember an abandoned wife – there are so many abandoned wives in literature, history and daily life. Perhaps a child murderess is much easier to remember. This raises the question whether Medea is better known in Greece than in Germany, and if so whether this could be due to the different focus in the interpretation. Note that the Trojan Horse and Cassandra made it into German everyday language. Odysseus (Ulysses) and Helena are rather popular in Germany – more popular than Medea. “Trojaner” became a synonym for computer virus and makes this “tribe” even more referred to than one wishes.

In Greek everyday language, Medea is used as a synonym to behaving badly to children, like “don’t act like Medea” when a woman acts cruelly towards her children. My assumption is that in modern Greece in contrast to Germany, the main Greek mythological tales, including “Medea,” and the Olympian Gods are widely known. Because of such widespread familiarity, “Medea” could even enter into Greek everyday language.

Over the centuries, Medea has been dealt with by many authors, painters, and other artists for different purposes. In the twentieth century, it was mainly to demonstrate major distortions within or between societies. In the early twentieth century, Medea became the symbolic figure of the English suffragettes (Hall 2014:149f). The topic has been used to show racism, discrimination and cultural clashes and by now, it has occupied a prominent position in the gender debate.<sup>5</sup> At some point, in Nikolaos Grammatikos’ film *Medea: Louder than my thoughts* the heroine was interpreted as nature and this nature fights cruelly back if we do not honor her.

No matter in which context Medea has been used, it remained a fascinating plot of attraction between most different characters, featuring love, betrayal and cruel revenge. After more than two and a half thousand years, the plot is still valid.

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<sup>5</sup> On Medea’s impact on 20th century art (“her career as a mythological figure in multimedia”), see Stephan (2006); also Carlà and Berth (2015).

### 8. Is there a political economy of *Medea*?

Why did Euripides present Medea as an atrocious person who kills her children? Robert Graves (1960: 255) maintains that "... misled by the dramatist Euripides, whom the Corinthians bribed with fifteen talents of silver to absolve them of guilt, pretend that Medea killed two of her own children; and that the remainder perished in the palace which she had set on fire...". In a theater program for a recent Euripides *Medea* in the Munich *Volks theater*, we can read<sup>6</sup> that historical research revealed that the citizens of Corinth paid Euripides a larger sum to take the blame and responsibility for the child murder away from them and to shift it onto Medea. That is, bribing Euripides explains why according to him Medea killed her sons.

Was it because the Corinthians were guilty of killing the two children and wanted to absolve themselves for this deed? However, would historic Corinthians feel guilty for mythological offences?

Perhaps this is the first case we know where a playwright is suspected of having accepted a bribe, which then determined the story he is telling us. Of course, this bribe is not always money – in general, it is success, acclaim and recognition, a social career, and the like. Shakespeare has written many of his plays with a tendency to please Queen Elizabeth, celebrating the Tudor kings and their forerunners. The wicked Richard III was even charged with ordering the murder of his nephews Edward and Richard – the older one, being king Edward V but still too young to rule. Richard III murdered many people and arranged the death of many others, but the infanticide "of his own blood" outperforms the other killings. (Does this parallel Medea as presented by Euripides?) However, it seems that there is no documentary proof that the children were murdered and that he was involved in their disappearance.<sup>7</sup> Indeed the two boys vanished

<sup>6</sup> "Forschungsergebnisse besagen, dass die freien Bürger Korinths es sich einiges kosten ließen, damit Euripides ihnen die Schuld des Kindermordes abnahm und sie Medea auferlegte. Bestechung des Dichters war also ein Grund dafür, dass Medea ihre Söhne ermordet. Das war nicht nur eine Neu-Erzählung, sondern eine aggressive Um-Erzählung, genau genommen eine Fälschung, die allerdings den historischen Trend zur patrilinearen Rechtsordnung und die Gegenwehr von Frauen widerspiegelte. Diese Frau tut genau das, womit sie den treulosen Ehemann am härtesten strafen kann: Sie nimmt nicht ihm das Leben, sondern seinen Söhnen. Damit nimmt sie ihm nicht nur das (vielleicht) Liebste, sondern auch das gesellschaftlich Wertvollste: die männlichen Erben, die Zukunft seines Geschlechts."

<sup>7</sup> If we can trust Jones and Ereira (2004). Terry Jones is a Welsh actor, writer,

in 1483. Richard took the opportunity to make himself king with the approval of the English Parliament, only to be defeated in the 1485 Battle of Bosworth by Henry Tudor, Earl of Richmond, who made himself King Henry VII on the strength of the sword and a very distant claim to the crown, with the approval of the Parliament. Queen Elizabeth was the granddaughter of Henry VII and of course most interested in legitimizing his claim to the throne. One way to do this was to demonize Richard III. Perhaps Shakespeare followed this path to please the Queen and get her support – and not to end like his fellow-poet Christopher Marlow who was killed in a pub brawl most likely initiated by Her Majesty's agents. There are alternative stories, but to be man of letters in those days was dangerous and Shakespeare knew about this. Perhaps plays like *Richard III* were his life assurance.

Seen from this background the Euripides case is somewhat puzzling. Of course, taking money is not a puzzle, but in the years before his *Medea* was performed at the Dionysia in Athens there were repeatedly political tensions and even military interactions between Corinth and Athens. It was a conflict between Corinth and Athens that triggered the Peloponnesian War, starting in 431 BC, the year when Euripides' *Medea* had its first performance. Taking money from Corinth in this period looks like an extra-risky project. However, if it is true and Euripides took the money and made Medea kill her two sons, it seems that he also struck a major blow to the picture of womanhood. Was Euripides a misogynist? But how does that square with presenting her as a strong personality – much stronger than Jason? Alternatively, did he want to show that people taken by rage commit unheard atrocities? However, he presented Medea as a goddess – or, at least, as the granddaughter of a god with close relationship to her grandfather Helios.

Maybe Euripides wanted to balance things out later (406 BC) by portraying Agamemnon as an awful father prepared to slaughter his daughter Iphigenia. Agamemnon agreed to sacrifice her in order to placate the Gods of Olympus so that they let the Greeks sail to Troy. This is like bribing gods. Did Euripides bribe the gods by letting Medea kill her two sons? Was this a sacrifice? I wonder whether he would have challenged the Olympian Gods in such a way. Maybe he did it just for money or for fame. Alternatively, did he try to create good will with the Corinthians – with the backing of Athens or some Athenians – in order to avoid armed conflict? Was bribing Euripides a signal that not all Corinthians were interested in an armed conflict with Athens? We know too little and can only speculate!

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comedian, screenwriter and film director – and accomplished historian. He was a member of the Monty Python comedy troupe.

Of course, as already mentioned, Pasolini's *Medea* adds a rather distinct interpretation: Medea and the Colchians are the victims of Jason's imperialist designs. She responds to this exploitation by killing her own two sons. Susan Shapiro (2014: 96) asks "How can Medea be presented as both innocent victim and vengeful witch?" How can we sympathize with a child murderess? Doesn't this subvert the case of Jason's imperialism made by Pasolini? Or, does it demonstrate an extremely dreadful consequence of Jason's imperialist designs – which was the cause of Medea's misfortune. I will not dive further into the interpretation of Pasolini's *Medea*, although here we find political economy at work, as I do not think that it had a substantial impact on whether the Germans and Greeks see her as child murderess or as abandoned wife.

## Appendix

**Medea as characterized in various encyclopedias:** Today, the topic *Medea* has entered all art genres in very different versions and interpretations. It is still popular and performed on theater and opera stages in many countries, in movies, books and paintings all over the globe. I looked in various encyclopedias for "Medea" and found references, which are relevant for the above text. Most of them are however in German language.

### **Meyers Großes Konversationslexikon, 6<sup>th</sup> edition, 22 volumes, 1906.**

Vol. 13 p.510, entry *Medea*:

Medea is described as a revengeful woman murdering her enemies, including her Corinthian rival and her children fathered by Jason

Vol. 6, 1906, p.338, entry *Grillparzer, Franz*:

1822, in his trilogy *The Golden Fleece*, Grillparzer contrasts the idyllic serenity of nature and naivety in Colchis with (the natural and therefore tragic) striving for conscious culture and glory in Greece.

### **Colliers Encyclopedia of 1969, 24 volumes, 1969.**

Vol. 9, p.395, no entry under *Medea*, only under *Euripides*:

"*Medea* is the grim story of a woman's revenge...Jason gains the hand of a Corinthian princess (Medea is not in law his wife). He is not a heroic figure, but he is also not the contemptible scoundrel that Medea – and most modern readers – feel him to be. He claims with some justice that his marriage will mean security for Medea and for their children as well as for himself...But Medea, maddened by his desertion of her, thinks of nothing

but revenge...after a long story with her maternal love, strikes her deadliest blow at Jason by killing their children...”

It should be noted that this is typical for the late sixties, before the strong emancipation movement had real impact.

Vol.11, p.456, entry *Grillparzer, Franz*: “1818–1821 followed the magnificent Golden Fleece, a masterful treatment of that ancient Greek legend, *convincingly humanizing Medea’s destruction of her rival and her own children.*”

### **Encyclopedia Britannica, 15<sup>th</sup> edition, 30 volumes, 1975**

Vol.6, p.1032, no entry under *Medea* or *Grillparzer*, but entry *Euripides*:

“Clearly he was attracted by the devastating character of Medea...misogyny is altogether too simple an explanation...” In his plays there “...are oppressed heroines who begin by attracting sympathy and finish by being as vindictive as were their oppressors...”

### **Kindlers Literatur Lexikon - Einmalige zwölfbändige Sonderausgabe 1970**

Vol.V, p.4032ff, entry *Das Goldene Vlies* von Franz Grillparzer (1791–1872): Trilogy about the Fleece, “the sensual symbol (sign) of the desirable, of the greedily aspired, of the unrightful acquired” (Grillparzer, Diary, 1822). In the third part of *Medea*, Grillparzer wants primarily to show her being tragically torn between her barbarian roots and the Greek civilization and lifestyle.

Vol.VII, p.6129ff, entry *Medea*: Among references to Euripides, Seneca, Corneille and others, a German dramatist of the late 18<sup>th</sup> century, Friedrich Wilhelm Gotter (1746–1797), is mentioned. Grillparzer got a few valuable suggestions from him as to the psychologic motivation of her revenge.

With respect to my hypothesis on the perception of *Medea* in Germany, it seems worthwhile to take a look into the work of the German dramatist Hans Henny Jahnn (1894–1959). In his version of *Medea*, he is very critical about Western civilization referring especially to the issue of race and racism. Today’s discrimination of colored people is quite similar to the discrimination of barbarians in ancient Greece. Therefore, Jahnn maintained that “the marriage problem Medea-Jason could be made clear only by putting her on stage as negro” (H.H. Jahnn in “Die Scene: Blätter für Bühnenkunst,” 16, 1926, H. 2, p.55f – quoted in *Kindlers Literatur Lexikon* as above, p.6130) . It is interesting that Jahnn, like Grillparzer, emphasised Medea’s roots in a completely different culture and she is suffering all the more of being abandoned by Jason as she is completely isolated as a stranger.



**Brockhaus, 19<sup>th</sup> edition, 24 volumes, 1986-1994**

Vol.14, 1991, p.368f, entry *Medea*: Medea, the daughter of Aiëtes, king of Colchis, endowed with magical powers, helped Jason to obtain the Golden Fleece... she killed her rival Creusa. The Corinthians killed her children, (according to Euripides, it was Medea)...

Vol.9, 1989, p.148, entry *Grillparzer, Franz*: In his trilogy *The Golden Fleece* of 1822, Colchis and Greece represent the contrast of nature and culture.

**Acknowledgement:** I would like to thank Manfred J. Holler for his ongoing support and George Tridimas for his extremely valuable comments as discussant to my paper in the Conference *German-Greek Relations – Political Economy Perspectives* in Munich, October 13/14, 2017, both editors of this publication. I would also like to thank Konstantinos Koulaouzidis for his art and inspiration and for arranging the contact with the filmmaker Nikolaos Grammatikos who produced *Medea: Louder than my thoughts* and gave me the chance to see this most fascinating film a second time.

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# **Ancient Greek Achaeans, Modern Germans and EU Integration: An Interdisciplinary Analysis of Federations<sup>1</sup>**

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**Abstract:** In the present paper, we analyze the emergence of one of the first democratic federations in history, the Achaean. We analyze its structure, its decision-making bodies, institutions and finances. Then, we offer arguments about why the federal structure as a political entity prevailed in Greece and then we compare the Greek proto-federation with a modern mature European federal state, modern Germany, and a would-be federation, the European Union, under a specific set of institutional criteria. We finally argue that the Achaean Federation can offer some institutional proposals and ideas useful in favor of the further integration of the European Union (EU) as a federal pan-European entity.

**Keywords:** Achaean federation, modern Germany, European Union, institutions, EU integration

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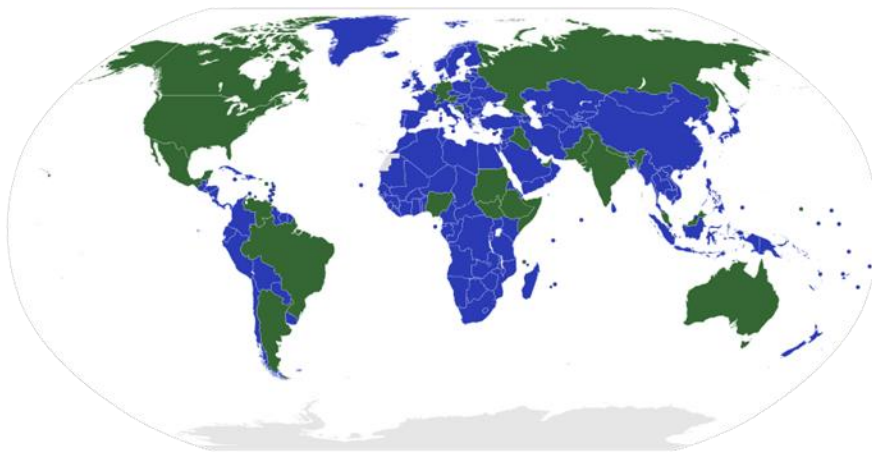
<sup>1</sup> Versions of this paper were presented at the 26<sup>th</sup> Heilbronn Symposium in Economics and the Social Sciences, 20-23 June 2013, in Heilbronn, at the 53<sup>rd</sup> ERSa Congress, "Regional Integration: Europe, the Mediterranean and the World Economy", August 27-31, 2013 in Palermo, at the "Europe-no thanks: Facing the challenge of Euroscepticism", University of Thessaly-Konrad Adenauer Stiftung Conference, 29 April in Volos, at the 17<sup>th</sup> Conference of the Greek Historians of Economic Thought, 5-6 June 2015 in Volos, at the 4<sup>th</sup> International NIFIP Conference, "The long and tortuous path of the euro crisis: institutional innovations and monetary policy", 1-2 October 2015, in Porto and at the 4<sup>th</sup> Pan-Hellenic Conference on Applied Economics, "Economy and Democracy", in 23-24 November 2015, in Volos

## 1. Introduction

It is generally accepted that direct democracy emerged by the end of the 6<sup>th</sup> century BCE in Classical Greece, the first fully developed example being Athens after Cleisthenes' reforms of 510-507 BCE and the fall of tyranny. What is less known is that, within the same democratic environment, the idea of voluntary federations of democratic city-states also emerged and was practiced from the 5<sup>th</sup> century BCE, but certainly, and in a more organized way between the 4<sup>th</sup> to 2<sup>nd</sup> centuries BCE. Ancient Greek political entities, such as Athens, Sparta and Macedonia have been the focus of attention of a vast modern scholarship. But the concept of federations of free democratic city-states that unite voluntarily to evolve into a political unit with a specific institutional structure is a research topic that has been studied only sporadically.

Scholarly interest in the ancient Greek federal entities has recently revived (see, e.g., Mackil, 2013; McInerney, 2013, Beck and Funke, 2015; Economou, Kyriazis and Metaxas, 2015, Economou and Kyriazis, 2016). Thus, federalism is an ancient political phenomenon, which still plays an important role in global affairs. Currently, there are 28 cases of federal states throughout the world (figure 1, see in green colour), among them some that play a leading economic and political role in global affairs such as USA, Russia, Canada, Germany, Switzerland, and India.

**Figure 1:** Federal states all over the world



Source: [http://en.wikipedia.org/wiki/Federation#mediaviewer/File:Map\\_of\\_unitary\\_and\\_federal\\_states.svg](http://en.wikipedia.org/wiki/Federation#mediaviewer/File:Map_of_unitary_and_federal_states.svg)

When on March 25, 1957, the European Economic Community (EEC) was created, the founding fathers at that era such as Konrad Adenauer, Jean Monnet and Robert Schumann, followed a strategy of achieving the basic political goal, which was the European political unification through the economic development and interdependence between the (first six) member states. It is also known that when on 7 February 1992 the 12 EEC members signed the Treaty of Maastricht, which created the European Union (EU) they actually envisioned the further political integration of Europe in the future. In all probability, this unification is related to the creation of a federal pan-European entity. After all, there are many scholars such as Burgess (2000) who already consider the EU as a structural type of an “economic confederation”.

This paper is organized as follows: First, it analyses the origins of European federalism which dates back to the ancient Greek antiquity. We analyse one of the first ever recorded cases of an organized federal political entity with democratic governance, the Achaean Federation. Second, in order to avoid any kind of historical anachronism it proposes the following criteria of federalism: (1) Democratic governance and offices (2) Common citizenship (3) Monetary union (4) Federal budget (5) Federal justice (6) Common foreign and security policy. Using these criteria it compares the political structures of the EU and modern Germany in order to inquire whether the ancient federation could offer any suggestions to further develop today’s EU institutions towards political and economic integration.

The choice of the Achaean federation is not arbitrary but intentional, since both ancient sources and the modern literature offer us a sufficient amount of information which, if treated accordingly, can accurately describe the main politico-economic and institutional mechanism of the ancient federation<sup>2</sup>. We chose the Federal Republic of Germany since it plays a leading role in the current EU economy and in EU political integration and is a key federal structure in global affairs. The choice of the EU was motivated from the observation that, although not yet a federal state, the EU may finally move towards this direction after further integration in Europe.<sup>3</sup> We believe that significant intuition can be gained by studying the ancient Greek Achaean paradigm and juxtaposing it to the modern German federal experience and the EU.

<sup>2</sup> Since the 5<sup>th</sup> century BCE, we have at least 12 democratic federations including the Achaean, the Aetolian, the Boeotian, the Arcadian and the Aenianian (see among others Mackil, 2013, Economou, Kyriazis and Metaxas 2015, and Economou and Kyriazis 2016).

<sup>3</sup> One has to bear in mind the opposite steps represented by the Brexit vote of June 2016 and the growing rise of *Euroscepticism* throughout the EU.

In section 2 we first offer a brief historical background of the Achaean Federation and in section 3 we analyze its institutional, political and economic organization. Section 4 utilizes game theory and institutional analysis, to answer the question why states chose to participate in federation. A brief analysis of the federal institutions of modern Germany follows, which is necessary to compare the Achaean Federation, the modern Federal Republic of Germany (FRG) and the European Union (EU) under our specific set of federal criteria.

## **2. The Achaean Federation: A brief history**

The Achaean Federation was established sometime between 431 and 382 BCE, as an evolution of an older alliance of city-states in north-western Peloponnese (a part of today's southern Greece) which existed since the 5<sup>th</sup> century and may have served as a model for the Federation (Rahtjen, 1965: 100-104; Mackil, 2013: 8, 46-52).<sup>4</sup> The Federation increased from 10 members in 280 BCE, to as many as 50 member-states later, from all over northern and central Peloponnese, which voluntarily decided to participate. Amongst the most important cities were Sikyon, which became a member in 251 BCE, Corinth in 243 BCE, Megalopolis (capital of the ex-Arcadian federation) in 235 BCE and Argos in 229 BCE (Polybius, Hist. 2.41; Griffith, 1935; Russel and Cohn, 2012).

As it will be argued in detail on section (4a) the main reason for its establishment, (as was the case also for the other major ancient and modern federations), was pre-emptive defense against neighboring states such as the Aetolian and the Boeotian Federations, Sparta but mainly against the Macedonian kingdom of northern Greece. Then, the Achaean Federation became a major political force in Greece during the 3<sup>rd</sup> century BCE, trying to balance Macedonian and Spartan power in a series of wars and shifting alliances, and safeguarding the independence of its member city-states from both powers.

It came to prominence when in 251 Aratos, a leading political figure in the city-state of Sikyon, took Sikyon into the federation. At its peak, the Achaean state covered a significant geographical territory (see figure 2) and spanning possibly over 40 city-states (or even more)<sup>5</sup>, which means

<sup>4</sup> This conclusion is derived from Mackil (2013: 46-52), who based on Xen. Hell. 4.6.2.-4., mentions an alliance of the Achaean federal state with Sparta during the Peloponnesian War (431-404 BCE) and offers additional references by both modern and ancient authors.

<sup>5</sup> Russell and Cohn (2012: 35f) offer a detail list of these cities-states, such as Dyme, Patra, Cerynea, Tritaia, Cleitor, Gortys, Methydrium, Pallantium, Tegea, Theisoa, Argos and Hermione.

that it was a significant politico-economic and military power in the Greek affairs for the era.

**Figure 2:** The geographical territory of the Achaean Federation (green colour) in comparison to the neighboring Aetolian Federation (purple colour).



Source: <http://etc.usf.edu/maps/pages/6100/6136/6136.htm>

Aratos remained the dominant politician until his death in 213. The Federation came to an end at the Battle of Leukopetra in 146 BCE after decisively beaten by the Romans, which resulted in the abolition of democratic regimes and independence in mainland Greece. The Achaean region consequently became a Roman province (Badian, 1952; Oliver, 1978).

### 3. The institutional framework of the Achaean Federation

The main political bodies of the Achaean Federation were three. First, the citizen's federal Assembly (Greek: *Ecclesia*), where all citizens, from every city-state aged 30 and above, could participate, that means, to elect and be elected in federal state post.<sup>6</sup> Practically, this meant, that when the federal pan-Achaean Assembly was taking place, they could travel to the place where the Assembly was taking place, to vote not for their city-state but for the federal Achaean political entity. This was a direct democratic procedure. The federal Assembly was called twice a year to decide on specific important issues such as alliances and war, first time during spring always at Aegion, the capital city of the federation, and second time at other city-states in turn, sometime in the autumn (Livy, Hist. R. 29; Freeman, [1893]: 2013: 260f; Shuckburgh [1899], 2012: Iviii; Davis, 1978: 31).<sup>7</sup> Those assembly gatherings could be seen as an institutionalized process of referendums.

The second main political body was the *Council* (Greek: *Synodos* or *Boule*), a preparatory body whose primary objective was to set up the agenda for the Assembly's meetings, in all probability having as a model the Athenian *Council of the Five Hundred*. The members of this Council were elected representatives of the city-states. (Polybius Hist. 2. 46. 6; 29, 23-35, 29. 24.6; Larsen, 1972). There is no evidence regarding the exact number of the federal councilmen and it is rather difficult to offer an

<sup>6</sup> In all probability, Achaean citizens had the right of election of their federal officers since their 20 years of age, after serving their two-year military duty (18-19 years old), as it was the case for example, in ancient Athens (see Hornblower, Spawforth and Eidinow 2012: 435).

<sup>7</sup> Ancient sources Polybius (Hist. 2.43.1-2) and Liv. Hist. 29.23 contradict each other with respect to the number of the meetings, leading thus to different interpretations by modern scholars such as Mitsos (1947), Larsen (1968: 216) and Mackil (2013: 342) who are arguing about four pan-Achaean assemblies a year. Since the Achaean state had similar political structures with the neighboring Aetolian federation, which performed two assemblies a year (Econonou, Kyriazis and Metaxas, 2015) it is highly probable that the Achaean assembly convened twice a year as well. However, the number of the assemblies held does not affect our argument about direct democracy and federalism.



approximation. However, since its institutional structure was based on the Athenian model of the *Council of the Five Hundred Men*<sup>8</sup>, there is a strong possibility of an equal representation in the Council, meaning that each state had the right to provide as councilmen, the same number of representatives, thus the issue was not determined by population criteria. This means that a city-state with a higher population was not offering more council members than a city-state with lower population capacity. If this suggestion is true, the Achaean model was similar to the American Senate to which each state has two representatives.<sup>9</sup> Further, it is almost certain that the Federal Council was taking decisions about which issues to be sent for final decision in the federal Assembly under a majority vote.

Generally speaking, the Achaean political system was actually a mixed democratic system combining elements of both direct democracy (the Assembly), with elements of representative democracy (the Council). Day-to-day affairs of the federation were carried out by a 10-member government executive board called *synarchontes*, or *probouloi*, or *demiourgoi*, who were democratically elected by the two pan-Achaean assemblies, serving annual terms of office. The Government's executive board had a specific hierarchy: First among them was the *General* (Greek: *Strategos*), combining the offices of both supreme military commander of the military forces and political head of the federation. Under the General, there was the 10-member governing body of the *synarchontes*, contributing to the General in his duties, resembling, more or less, a modern cabinet. Ancient sources attest also to the existence of three military commanders, the *hypostrategos* (major-general) the *hipparchos*, head of the cavalry, and the *navarchos* (admiral) who served under the general, as well as a *grammateus* (secretary) who may have been responsible for the keeping of the general archives of the state, such as the Assembly's and the Boule's decrees and laws (Larsen, 1972: 183; Mackil, 2013: 342-343).

Probably these four officials were part of the 10-member elected board of the *synarchontes*. In order to avoid political manipulation of the federal institutions and privileges by a single city-state, General Philopoemen, the head of state sometime between 223 and 183 BCE, established a system under which the federal assembly met not only in Aegion, the capital, but also in other member city-states, like Argos (Liv. Hist. R. 38.30). Concerning the rest of the state public officials, it is not known if the

<sup>8</sup> For the Athenian *Council of the Five Hundred* further organization see among others Thorley (1996: 28), Schwartzberg (2004: 312) and Tridimas (2011: 62).

<sup>9</sup> The American constitutions of 1787 was strongly inspired by the ancient Greek federations, as can be seen from the discussion in the *Federalist Papers* 16, 18, 34, 38, 40, 44, 51, 63 and 70. On this issue, see among others (Freeman, [1893], 2013), Davis (1978) and Momigliano (2012).

offices of the federation were remunerated, but in all probability, state official were paid, as was the case in ancient Athens.

It is doubtful whether poorer citizens could fully participate in the decision-making process. This practically means that a large portion of low-income people may not have the means to come and vote in the federal Assembly twice a year because of the opportunity cost they could suffer (not only to cover the transportation cost, but also, the days of travel, and the loss of income because of their absence from their jobs. However, again there is no strong evidence by ancient source for modern scholars to either deny or confirm such a view.

It should further be noted that by referring to the Achaean federation as a federation we follow Larsen (1971) who considered each “composite state” of Greek city-states (“*sympoliteia*” in Greek), as equivalent to a modern federation, where different local and central authorities exercise power on the citizens at different levels. This means that the federal Assembly of the Achaean citizens was taking decisions which had to do with the state as a whole (e.g., public spending, foreign policy), whereas, at the city-state level there were also local assemblies of citizens which were taking decisions for issues of local concerns such as build a water-dump or refurbishing a local main road, or refurbishing the water supply system.<sup>10</sup>

Two very important elements of the federation were the *isopoliteia* and *enktesis* of its citizens. *Isopoliteia* (single citizenship) was an institutional mechanism of providing political, civil and voting rights in local elections for citizens in every member city-state of the federation. For example, to illustrate by using a modern analogue, if a Swede moves to Italy, he does not automatically get voting rights in Italian national elections. On the contrary, a citizen of ancient Sikyon moving to Corinth, which were both members of the Achaean Federation, enjoyed voting rights in his new city-state of residence (McInerney, 2013, Mackil, 2013; Economou and Kyriazis, 2016) for the time period he resided in Corinth. He could vote there, in the local elections, as well as take part in the federal elections as a Corinthian citizen-voter.

<sup>10</sup> Many modern authors define the Achaean state and rest of the other similar cases of the time as “leagues”. This denomination should be considered as inappropriate, since the term “league” is almost a synonym of “alliance”. For the more modern approaches who argue that the adoption of the term “federation” has a superior explanatory power instead of the term “confederation” or “league”, see also the recent views of Mackil (2013), McInerney (2013), Beck and Funke (2015), Economou, Kyriazis and Metaxas (2015) and Economou and Kyriazis (2016). Finer’s (1999) objection to considering the ancient Greek word of *sympoliteia* as a “federation” arguing that the Achaean composite state was a “confederation” is wrong. Even in Modern Greek the word *sympoliteia* describes more accurately a federal conceptual framework rather than a confederate one.

Furthermore, *enktesis* was the extension of the right of federal citizens from one city-state to own property in another city-state member of the federation (Mackil, 2013). Land and houses and their legal transfer between individuals, was strongly reinforced in cases of intermarriage (Greek: *epigamia*): the groom could easily receive his dowry in another member city-state and establish clear and defined property rights there. This was a widely-accepted process in Greek federal states, such as the Achaean, the Aetolian and the Boeotian (Mackil, 2013: 296-298). Other inscriptions also prove that individuals, men and women, had the right to make loans to individuals in other cities in exchange for a series of rights such as to graze flocks of animals on public land for their own personal benefit.<sup>11</sup>

Another innovative institutional mechanism was the establishment of a kind of federal Court of Justice. Such courts acted as intermediaries by solving political or economic disputes among member city-states. One customary practice was that a third member city-state could offer judicial services in order to solve a dispute between two member-states; for example, Megara in the dispute between Epidaurus and Corinth and Patras between Megalopolis and Thourioi. Sometimes, more than one city undertook this task, as was the case in which 11 federal cities-states intermediated in litigation between Epidaurus and Arsinoe (Ager, 1996). The federal court(s) were also responsible for property rights and criminal cases, possibly involving citizens of different member city-states (Larsen, 1972: 82).

Concerning federal coinage, even as early as 390 BCE, the Achaean Federation operated a monetary union, more precisely, a multicurrency area with a parallel circulation of federal and city-state coins. All member city-states had the right to issue their own coins in parallel with those issued by the federal mints, used mainly for federal purposes, such as payment of the federal army and navy and federal administration (Caspari, 1917; Thompson, 1939; Mackil, 2013: 251f).

#### **4. Why states choose to participate in federations? Lessons from the Achaean Federation**

In this section we explore reasons why federal states were successful. As has already been mentioned, the primary reason for their creation was to provide defense to its members. But since states are not engaged all the time in warfare, what makes the further existence of federations feasible?

<sup>11</sup> For a comprehensive analysis concerning the federal budget specification of the Achaean Federation, see Economou and Kyriazis (2016).

We trace answers based on the ancient Greek federal experience in the following sub-sections 4.1 and 4.2.

#### **4.1 Security as a basic motive for participating in a military alliance or a federation**

It is well-known that after the catastrophic and sanguinary Peloponnesian War (431-404 BCE), the geopolitical and military power gradually shifted from the central-south to central and northern Greece. Thus, at first, the Boeotian Federation took the lead in the Greek affairs after the decline of Athens and Sparta. However, its influence proved short-lived mainly because it did not have the economic strength to evolve into a viable hegemony or empire (Buckler, 1980).

Following that, Macedon from northern Greece emerged as the major political, military and economic power, mostly due to the very competent and far-sighted king, Philip II, who reigned between (359–336 BCE). After Philip was murdered, his son and successor, Alexander III (the Great) ruled between 336 and 323 BCE further expanded the Macedonian power not only in mainland Greece, but as far as ancient India (today's Pakistan). After Alexander's death, the Macedonians tried further to consolidate their control in Southern Greece. Then, a multi-polar power ancient Greek *Machtpolitik*<sup>12</sup> took place since a series of strong geopolitical entities such as the Achaean, the Aetolian and the Boeotian Federations, Macedonia, Sparta, Thebes, as well as the Roman Republic and the Hellenistic kingdoms of Asia Minor and the Middle East, had all been engaged in fierce competition for power and dominance.

The key reason for participating in a mere military alliance or alternatively, in a more integrated political structure such as a federation, is primarily common defense against a stronger enemy. It appears that this was the main and initial reason for the formulation of the Achaean federation and the rest of the ancient Greek federal states. During the 4<sup>th</sup>-2<sup>nd</sup> centuries BCE, military and geopolitical competition throughout the Hellenistic world was very intense. Thus, city-states in the wider region of the Achaea found it beneficial to share defense expenditures so as to repel Macedonian expansionism more efficiently, instead of undertaking this task, each one of them on its own. In modern terminology, the pooling of defense resources creates positive economies of scale, this being a general

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<sup>12</sup> For the theory of *Machtpolitik* (English: *Power Politics*), see Morgenthau (1946, 1948). For all the geopolitical, historical and military background during that era, see Fine (1940), Larsen (1965), and Grainger (1999).

argument for all kinds of benefits of federations (Ferejohn and Weingast, 1997).

Table 1 offers a 2-by-2 matrix game, based on the well-known Prisoner's Dilemma, which was widely utilized as a theoretical concept during the Cold War when the arms race was at its peak, a situation similar to Hellenistic antiquity between 4th-2nd centuries BCE. However, the analyzed situation involves three city-states, A, B and C and there is the possibility of alliances. City-states A and B are willing to defend themselves against an imminent invasion by City-state C. State A may consider undertaking the task of defense by itself exclusively and in isolation, whereas state B decides to face the threat as a member of a military alliance, but more effectively, as a part of a federal entity together with A.

Table 1 shows the payoffs of A and C in the case that A faces C as a singleton. In case that both states A and C choose "Disarmament" and have peace, then the result is evaluated by (8,8) as shown in the payoff matrix. In case that state A decides not to arm itself, while at the same time, state C does, then, in case of war, state A loses almost everything (e.g., destruction of its infrastructure, territorial losses, etc.) and thus, receives 1, while state C can assure itself a payoff of 10: it wins the war, retains relatively intact its infrastructure and gains also by plundering the infrastructure of its enemy. The payoff pair (1,10) represents the outcome. A corresponding result prevails if A chooses "Arms Race" and C chooses "Disarmament" as described by (10,1) in table 1.

**Table 1:** Arms race and payoffs for states A and C

		City-state C	
		Disarmament	Arms Race (war reparations)
City-state A*	Disarmament	(8, 8)	(1,10)
	Arms Race (war reparations)	(10,1)	(5,5)
* : City-state A does not belong to a federal structure			

Finally, when both states are engaged in an arms race, then they probably avoid war because of the "balance of terror", (a phrase which belongs to the Cold War era doctrines) which in other words means the possibility of a mutual destruction of both of them. However, peace with

an arms race has a cost, which is exorbitant defense expenditures, diminishing the amount of available resources for other priorities such as health, developing education and social welfare, infrastructure such as roads, ports, etc. Thus, under the balance of terror, both states A and C gain 5 in the payoff matrix (5, 5).

Note that “Arms Race” is a strictly dominant strategy for A as well as for B. If table 1 expresses the evaluations of the states of the various outcomes, then we should expect that both choose this strategy. The payoff pair (5,5) thus represents an equilibrium in strictly dominant strategies. This equilibrium is inefficient as the two cities could achieve (8,8) if they decide to cooperate and choose “disarmament.” But how to implement this cooperation? There are many game theoretical models that demonstrate that there can be cooperation even when the game is non-cooperative and binding agreements are not possible – for instance, if the game is repeated with unforeseeable end and discounting is low. The prevalence of conflicts and wars however demonstrate that these models do “not always” apply.

**Table 2:** Arms race and payoffs for Alliance A+B and City-state C

		City-state C	
		Disarmament	Arms Race (war reparations)
Alliance A+B**	Disarmament	(12, 8)	(3,5)
	Arms Race (war reparations)	(10, 5)	(8, 1)
** : City-states A and B belong to a federal structure			

Now City-state B enters the scene. It forms an alliance with A to defend itself against an attack of C. Table 2 is a possible matrix that describes the decision situation that C and the alliance A+ B face. “Arms Race” is not a dominant strategy for the adversaries of C – in fact, the alliance A+B has no dominant strategy, but C has. C’s dominant strategy is now “Disarmament.” If A+B assumes that C acts rationally and chooses its dominant strategy then “Disarmament” is a best reply and the result will be (12,8). In terms of game theory, the strategy pair (Disarmament, Disarmament) is a Nash equilibrium.

The game of table 1 shows that A can achieve a payoff of 5 if it stands alone facing an arms race with C. If a similar game holds for B with a reservation payoff of 5, too, then we expect that the benefits of 12 out of

the equilibrium in table 2 will be shared equally. This guarantees a gain of 1 for each out of cooperation. However, the payoff 12 could represent a pure public good that benefits A and B with an equal value of 12, like peace, security, etc., despite disarmament. Then the benefits of cooperation will be 7 units each. In general, we should expect that there are elements of pure public goods and perfect private goods in the basket for A+B in case that the equilibrium (Disarmament, Disarmament) results and the alliance A+B holds and is reliable.

#### **4.2 Other major economic, social and institutional motives to participate**

By the overall analysis of the Greek federal states we can find a series of extra motives for city-states to further participate into federal structures. To start with, in the previous section we have already referred to the issues *isopoliteia* (single citizenship and voting rights) and *enktesis* (the right to have property and civic rights in every member city-state of the federation). The right of ownership in another city-state was strongly reinforced in cases of intermarriage (*epigamia*) across different city-states. Furthermore, as evidenced by a series of inscriptions and fragments found all over today's Achaea, it can be argued that individuals, men and women, had the right to make loans to individuals in other cities but also to the state authorities (Mackil, 2013, 453-482). In addition, the economic and commercial transactions of city-states became easier and faster because of the absence of barriers to the mobility of labor and capital, which was achieved by introducing common coinage. Both federal and local coins were institutionally protected by law against counterfeiting, as was the case in Classical Athens through Nikophon's law (Ober, 2008; Economou and Kyriazis, 2016).

Single citizenship, regional mobility of labor and capital and trust in common coinage were facilitated by body of magistrates called *agoranomoi* (those who check the market's prices), who were responsible for protecting against exorbitant prices and preventing profiteering), and who adjudicated disputes between buyers and sellers (Mackil, 2013: 268-269). In addition, both *agoranomoi* and the federal courts were also responsible for ensuring that contract were binding (*ibid*, 272). These institutional mechanisms for an ad hoc monitoring of market transactions must have led to the smoother function of the market exchanges, thus achieving what in modern terms is called "transaction cost reduction".

The above arrangements suggest that the federation was not only a monetary union but, to some extent, also an economic one. Free circulation of capital (under a monetary union) and labor (under single citizenship),

which are two of the main economic pillars of today's EU, did exist in the Achaean federation approximately 2300 years ago.

Moreover, there is evidence that when member-states faced serious problems, tax policy was also used to retain the cohesion of the federation. During 183/2 BCE Deinokrates, an influential figure in Messenian politics asked the Roman General Flamininus (who was commanding an expeditionary force passing through Greece on its way to the Asia Minor), to help him to secede his city-state Messenia from the Achaean federation. What followed was revolt of the Messenians against the Achaean federation, the intervention of Rome through the legate Quintus Marcius Phillipus in favor the Messenian's request, the refusal of the Achaeans to accept Messenian secession, a war between the Messenia and the Achaean federation, the death of the famous Achaean general Philopoemen and the counter-attack by the federal Achaean troops under general Lykortas, that ravaged Messenia and resulted in the capture of the leaders of the rebellion including Deinokrates, who finally was forced to commit suicide (Ager, 1996: 310; Errington, 2008). In 182/1 BCE the city state of Messene decided to re-join the Achaean federation.

What is important (as a federal policy instrument) is that when Messene was restored to the *koinon* (meaning the federal state) in 182/1 after its revolt, the terms of the settlement included the grant of tax immunity (Greek *ateleia*) for three years, so that the destruction of its territory during the revolt and the warfare that followed "*would harm all the Achaeans no less than the Messenians*" (Polyb. Hist. 24.2.3; 23.15.1-3). Mackil argues on this point (pp. 300-301) that when the cohesion of the federation was under scrutiny, the Achaeans treated their members "*with equity rather than arrogance*". It seems that the Achaean policymakers considering the "federalization" of the Peloponnese as the primary political objective were prepared to offer a form of tax immunity. The above incident shows that city-states could obtain significant gains from participating in Greek federal structures instead of acting individually. De Figueiredo and Weingast (2005) argued that two basic prerequisites are important for a federation to be established and become viable through time. First, there must be "gains" from participation and secondly, those gains cannot be found elsewhere, through other forms of political organization.

The following description of Polybius' (Hist. 2. 27.9-11) verifies such an argument: He argues that the federal member-states had managed to increase their overall welfare by their participation in the federal structure. He adds that the federation was not only a military alliance since member-states shared "*the same laws, the same measures and currency and common government officials, members of the Council and judges.*" Here,



a clear picture of the existence of common federal laws, currency, common ways of measurement and common practices are clearly described.<sup>13</sup>

Polybius goes on to argue that “*in general, the whole of the Peloponnese was a unique city: its inhabitants were not circumvallated by the same wall, but everything was common and the same for everyone and for each city-state separately*” (our own translation from the original text). We think that Polybius’ description essentially confirms the argument already presented.

### 5. A comparison between the Achaean Federation, Modern Germany and the European Union

In this section we compare the institutions between the Achaean Federation, modern Germany (the Federal Republic of Germany, FRG) and the European Union. We are making such a comparison only with a “subtractive” prospective, primarily to see if there are any possible lessons that the ancient Greek federations might offer to the further EU integration.

As Germany’s and EU’s main institutional bodies are well-known (see among others, Gunlicks, 2003; Moussis, 2008; Hix and Hoyland, 2011; Peterson and Shackleton, 2012), it is not necessary to describe them any further. Table 3 compares the main Achaean federation’s institutional bodies to those of the FRG and the EU under a specific set of criteria: democratic structure, common citizenship, monetary union, federal budget efficiency, federal justice and common foreign and security policy.

**Table 3:** Comparison of the Achaean Federation, the Federal Republic of Germany and the EU

Criterion	Achaean Federation	Federal Republic of Germany	EU
Democratic structure and offices	Mixture of both direct ( <i>the Assembly</i> and the federal government) and indirect	Parliamentary democracy  The President The Chancellor The Cabinet	Indirect democracy  Institutional bodies (EU Commission, the President of the EU) are appointed instead of being elected with exception of the EU Parliament

<sup>13</sup> Common ways of measurement are an indication of a federal type of governance. For example, when the UK entered the EEC, it was forced to accept, among other, the kilometer instead of the yard, as a means of having a common way of calculating things, etc.

	democracy (the <i>Council</i> )	The Federal Diet ( <i>Bundestag</i> )  The Federal Council ( <i>Bundesrat</i> )	Elements of direct democracy in national and regional level through referendums in some member states
Common citizenship	Yes, <i>isopoliteia</i> (common citizenship)	Yes	No common citizenship
Monetary union	Yes, parallel circulation of both federal and local coins in member city-states	Yes, the <i>euro</i>	Common currency for the <i>Eurozone</i> members
Federal budget	Unknown	11,2 % of GDP in 2017 (official projection)	Very low (0.95% of the EU GDP)  Low level of social welfare and solidarity
Federal justice	Local and federal courts in the federal member city-states and in the Capital	Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> )  Various federal courts, e.g., <i>Bundesfinanzgericht</i> , <i>Bundessozialgericht</i>	European Court of Justice (Luxembourg)  European Court of Human Rights (part of the Council of Europe, wider membership than EU members) (Strasbourg)
Common Foreign and Security Policy (CFSP)	Federal armed forces (army and navy)	Yes, federal armed forces ( <i>Bundeswehr</i> )	No effective CFSP yet in the political level

To start with, the Achaean Federation practiced direct democracy at both the local and the federal level, thus it can be certainly considered as more democratic. FRG is a parliamentary democracy but initiatives and referendums need to be exercised much more frequently so that Germany reaches a sufficient level of direct democracy. But why do we need more direct democracy?

For two main reasons: Firstly, because it makes citizens more active in political life (Cronin, 1999; Manville and Ober, 2003), thus it actually makes them more willing to “defend the system” according to B. Weingast (1997). Secondly, econometric studies indicate superior outcomes (measured as GDP growth) and less waste under direct democracy procedures than under representative ones (Voigt and Blume 2006; Blume and Voigt 2010; Matsusaka 2005a, b). The main reason for this is that, provided voters are fully informed about the issue at hand, under direct democracy, the principal-agent problem is eliminated (e.g., there is a better monitoring of the “agent”, the politicians, by the “principals”, the citizens-voters). Under direct democracy, the “agent”, the government officials, is denied discretion and is forced to act according to the interests of the “principal”.

As far as the EU is concerned, the EU Commission is the sole EU institution tabling laws for adoption by the Parliament and the Council. Before the EU Commission proposes new initiatives, it assesses the potential economic, social and environmental consequences that they may have. It also consults interested parties such as non-governmental organizations, local authorities and representatives of industry and civil society. Citizens, businesses and organizations can participate in the consultation procedure via the website public consultations.<sup>14</sup> Then, the European Parliament and the Council review proposals by the Commission and propose amendments. If the Council and the Parliament cannot agree upon amendments, a second reading takes place. In the second reading, the Parliament and Council can again propose amendments. Parliament has the power to block the proposed legislation if it cannot agree with the Council.

Secondly, all three cases are monetary unions with some qualification. The EU uses a common currency, the *euro*, through the 18-member Eurozone, with Germany being the “steam engine”. The Achaean Federation utilized a parallel circulation of city-state and federal currencies. Thirdly, all federations practiced the so-called “three fundamental economic freedoms”, that is, the free circulation of goods, capital and labor.

Fourth, the Achaean Federation implemented single citizenship, allowing property, citizen and voting rights in other member city-states. Single citizenship exists in Germany but not in the EU. Fifth, all federations had a federal budget to finance the armed forces and other public outlays. FRG’s 2017 federal budget spending is projected to be as high as 329.1 billion euros (\$349 billion). That’s an amount corresponding to 11.2% of the country’s projected Gross Domestic Product (GDP) in

<sup>14</sup> [http://europa.eu/eu-law/decision-making/procedures/index\\_en.htm](http://europa.eu/eu-law/decision-making/procedures/index_en.htm)

2017.<sup>15</sup> The annual EU budget is €145 bn (2015 figures) – a large sum in absolute terms, but only about 0.95 to 1% of the income generated by EU economies every year.<sup>16</sup> The Achaean federal budget was probably higher than that of the EU since it needed to finance high military expenditures and (we suppose) other federal state obligations.

By contrast, in the EU, not only is the “federal budget” for compensatory social policies very weak, but there is a rise of *euroscepticism*, which is growing fast in many EU members culminating with the recent June 2016 Brexit UK referendum outcome. One of the principal reasons for euroscepticism is the series of austerity measures being introduced by their governments, especially after the crisis of 2008.<sup>17</sup> The crucial point here is the perception held by the citizens in these countries that these measures have been imposed by the EU, against their own and probably, their elected government’s wishes.<sup>18</sup> Finally, there are also inefficiencies concerning the so-called EU’s Common Foreign and Security Policy, relating to differences in the interests and objectives of governments of the sovereign member-states.<sup>19</sup>

All successful federations are based on three fundamental principles, solidarity, trust and community of interest, both in the relationships between their member-states, and the attitude of citizens towards the federation. If these three principles are upheld, as it appears to have been in the Achaean and the German case, the federation shows a sufficient degree of cohesion and legitimacy in the eyes of its constituents. When they are weak or begin to weaken, as in today’s EU, cohesion starts to suffer and the federation may be in jeopardy. Such an argument is crucial, since it poses the strong prerequisite of a bottom up legitimization of a would-be federation by the society itself as a whole.

<sup>15</sup> <http://www.dw.com/en/german-federal-budget-goes-up-for-2017/a-36528845>

<sup>16</sup> [https://europa.eu/european-union/topics/budget\\_en](https://europa.eu/european-union/topics/budget_en)  
<https://www.ifs.org.uk/uploads/publications/bns/BN181.pdf>,  
<http://www.europe-infos.eu/europeinfos/en/archive/issue158/article/5539.html>  
[https://www.ifs.org.uk/tools\\_and\\_resources/budget-european-union](https://www.ifs.org.uk/tools_and_resources/budget-european-union)

<sup>17</sup> Others seem to relate to losses in national sovereignty, insufficient democratic control of the EU executive organs, and rising immigration to EU member-states.

<sup>18</sup> After the Greek economic crisis manifested in 2010, Greek policymakers undertook harsh economic measures such as hikes in direct and indirect taxes, including a tax on land property which is still in force, the so called “ENFIA” tax. All these measures have caused social outrage because they were not introduced under a consent building strategy, as would have happened in an ancient Greek democratic federation, where direct democratic procedures very often functioned as a “safety valve” concerning the introduction or not of any new state policy measures.

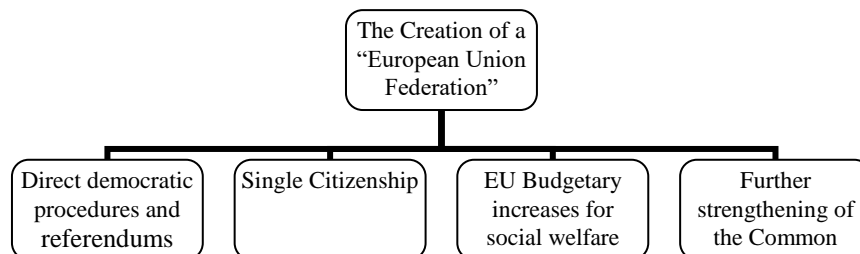
<sup>19</sup> For these inefficiencies one can read, among others, Hartley (2003, 2007). For the further evolution of the CFSP, see Kollias (2008) and Metaxas and Economou (2012).

Furthermore, as we have already argued in detail in 4.1, historically, the primary reason for forming a federation was mainly defense against a great external threat, such as the Achaean case against Macedonian expansionism, and although not discussed here, the medieval Swiss against the Austrians and Burgundians, the United Provinces against Spain, and the USA against Great Britain. During this formative period, federal constituents gradually develop some “bonds” between them, such as solidarity, trust, cohesion and a sense of community of interest. These values are the mechanisms which hold them together, so long as the threat persists, defense is successful and the economy thrives.

If these values are accompanied by successful economic federal policies beneficial to the citizens, under a democratic spectrum where they can be legalized at least by the majority of the citizens, then the federal structure continues to function even if the external threat ceases to exist. Manville and Ober (2003: 65-66) showed that active participation in day-to-day state politics was the case with the Athenian democracy and that it was the main reason for its success: *“citizens as active members of the state were undertaking leading positions [in public life]....they were becoming better as personalities themselves and more efficient as members of the society as a whole”*.

It seems that the above are lacking in today’s EU, a fact that has also been noticed and raised, among others, by Jürgen Habermas (2012), but more research needs to be undertaken to establish clear causative links. With this in mind, Figure 2 illustrates how based on the functioning of the Achaean Federation these ideas could serve as a benchmark for further EU integration.

**Figure 1:** The institutional value added by the functioning of the Achaean federation to the EU



## 6. Conclusions

By offering an analysis of the institutional political and economic functioning of the Achaean Federation, Germany and the EU, the paper attempts to find out the motives of Greek city-states in voluntarily abandoning part of their national sovereignty for the sake of participating in a federal structure.

Taking as a case study the Achaean Federation, we found out that, at first, the primary reason for the establishment of the Federation was to achieve a more efficient level of defense. But more important, we think, is the extra motivation of participants not only to remain in a federation, but to contribute towards its further integration. We have traced a series of political and economic motives such as participation in both direct and representative democratic political procedures on equal terms for the participants as a whole, an effective environment of federal judicial services, the introduction of a reliable system of federal currencies which boosted commercial transactions and reduced transaction costs, as well as single citizenship, which critically boosted further regional mobility (free circulation of both labor and capital).

Our brief comparative analysis of modern Germany and the EU shows that the EU lacks basic elements that could result in a functional federal entity, such as single citizenship, democratic procedures for the election of its main institutional mechanisms, such as the President of the EU, who is still appointed instead of being elected. The EU has a very small federal budget, inadequate for implementing an efficient social services network throughout the EU, while there are also inefficiencies in its Common Foreign and Security Policy. But if the EU wishes not to be regarded as “*an economic giant but a political dwarf*,” it must focus on certain areas, such as those we have mentioned and analyzed throughout our paper.

The recent incident of the Brexit must be the critical point for revision of the EU policies so far. If the EU policymakers wish to learn from the past, ancient Greek federalism offers the lesson that, they must reshape the EU political institutions as described above by adopting more direct democratic procedures. And if they need to learn how to better organize European economies, they probably need to look carefully at the German economic miracle from 1945 to today. We hope that the present analysis and suggestions may open a new area for future research and discussion concerning the future of Europe.

**Acknowledgments:** The authors wish to express their many thanks to Manfred Holler and George Tridimas for their comments that lead to significant improvement of this work.

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## **The Athena of Dornach: A Bronze Statuette Unearthed in Munich's Neighborhood**

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**Abstract:** This paper demonstrates the connection between Germany and Greece during the Hellenistic times. In 1994, a bronze statuette of the goddess Athena with a Latin inscription was excavated in Dornach northeast of Munich. Apart from its artistic value, its significance is that it is dated in the first century BC, that is, before southern Germany was part of the Roman Empire. The figurine must have come from northern Greece as it bears remarkable similarities to sculptures crafted there at the time. How it arrived in Germany is a puzzle. The paper discusses several answers to this puzzle.

While making the tour through the AschheimMuseum, the visitor will come to a section "migration and long-distance relations," where he (or she) will be attracted by a single figurine of about thirteen centimetres presented in a single vitrine. By looking more closely we will discern the shape of a woman, standing on a pedestal in an offering posture (see Figure 1). She wears a helmet on her head, with an impressive bundled plume on the top, reaching over the neck and to her back. The helmet is pushed to the neck, so the ventail is positioned over the head of the figure. Eye-catching, two lightly curved and forward-facing horns protrude from the helmet. Between the horns, on the ventail, incisions are to be seen.

Underneath the helmet, the parted hair, curled into two pigtails and flowing to the shoulders becomes visible. The face shows some rough features, the nose looks a bit broad. Over her shoulders she is wearing a cape-like cloak made of feathers, closed at the chest by a disc-shaped brooch. The cape is worn over a ground-reaching shift, ornamented by fine dot-punches. A similarly ornamented overdress reaches to the knees and shows a braid in a different style on its edge. The overdress is tied around her hips, running to the back and over the left shoulder reaching her left arm. The arm is bent forward, holding a closed tin in the hand. The right arm is slightly outstretched, presenting a plate on its hand. The figure

stands on a round, hollow pedestal with a broken stand, bearing an inscription.



Figure 1: The Athena of Dornach, in front sight, from the left and from behind. (Aschheimuseum/Pütz)

Such figurines are very well known in southern Germany throughout the Roman imperial period – see, for example, the treasure of Weißenburg in mid-northern Bavaria. Together with many other objects, eighteen three-dimensional bronze figurines, representing gods have been found at Weißenburg. This ensemble is interpreted as the treasure of a temple, stolen and hidden in the ground during the chaotic period of the 3<sup>rd</sup> century AD.<sup>1</sup>

We can conclude that these figurines belong to a period, when southern Germany was part of the Roman Empire. But the Athena of Dornach dates to a much earlier period and therefore belongs to a very different cultural context. This is what makes this object so extraordinary and so exciting –

<sup>1</sup> For the treasure of Weißenburg, see Kellner and Zahlhaas (1993). The treasure is shown in the RömerMuseum at Weißenburg, Bavaria.

it is not Roman; it shows strong influences of the Hellenistic World of the first century BC.<sup>2</sup> Let us have a closer look.



Figure 2: The Athena of Dornach: The incarded details of the helmet-ventail, including the sun-like symbols over the eye-slots (Aschheimuseum/Pütz).

The Athene of Dornach was found in 1994 during rescue excavations in preparation of the development of a business park in the south of the eponymous village of Dornach – today part of the community of Aschheim (northeast of Munich). On this 15 hectare wide area, many relicts of settlements and graves from the late Bronze Age (1200-800 BC) and from the middle and late La Tène period (350-30 BC, i.e., about year 0) were found and excavated. The La Tène period<sup>3</sup> in Southern Germany relates to

<sup>2</sup> The reference for this information is Irlinger and Winghart (1999).

<sup>3</sup> The La Tène period is the late part of the Iron Age. It is named by the well-known archaeological site of La Tène at the Lake of Neuenburg in Switzerland. The La Tène (or Latène) period is traditionally parted in an older period (app. 450-400 BC) a middle period (app. 400-200 BC) and a later period (app. 200-30 BC/around 0). The later period is heavily debated with respect to its ending. In earlier times the archaeologists thought, that around 40/30 BC the Bavarian region was

Celtic inhabitants. As a consequence, we assume the settlement in Dornach was inhabited by Celtic people. In the northern part of the area, a small group of archaeological structures attracted attention, including the layout of a wooden house, shown by the postholes, a water-well and a pit-house (interpreted as a working or a storage house).



Figure 3: The Athena of Dornach: The upper part of the figure, with the face, the cape and the brooch (Aschheimuseum/Pütz).

These structures seemed to belong together or at least to have existed contemporaneously. In the backfilling of the maximally ten feet deep water-well the statuette was found without the pedestal, which was detected separately, around three feet under the surface and together with ceramic sherds. These sherds are dateable by comparing them with sherds coming from sites with a more reliable age identification. They are typical

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nearly unsettled and the incoming Romans around 15 BC would not have met an ancient/native population. But recently the evidence for the existence of an earlier population in the later La Tène period increases. This is why the dating of the end of this period is not fixed.

for the period between 100 and 30 BC or maybe even the year zero.<sup>4</sup> Because the lifetime of a ceramic pot in customary use is not too long, these sherds give us a good guess of the period, in which the well was given up and filled in and therefore also of the period when the statuette came under the earth. But it does not give us an answer to the question, when the statuette was made; she could also be older – but definitively not younger! From this epoch – the late La Tène period – such high quality fully shaped bronze figures are not known from southern Germany. It is obvious that she is an imported figurine – most likely imported from the Mediterranean.

Because of her clothing and her posture – especially because of the helmet and the cape (in the classical Greek world called *Aigis*) with its brooch, the statuette shows a great similarity to Hellenistic images of the deity Athena – specifically to the Athena from the Parthenon in Athens. But some parts of our figurine are unfamiliar when compared to the Greek version. The brooch, for example, should show a Gorgon head – the head of Medusa, with snakes forming the hair (see Figure 3). This refers to the myth of Athena helping Perseus to kill Medusa and also to her role as War-Goddess.

The Gorgon head should strike fear in the enemies as Medusa petrified people looking into her eyes. It seems as if the craftsman who produced the figurine of Dornach knew of the brooch, but did not understand its significance. The same applies for the helmet. The craftsman must have known the shape of a Corinthian helmet, as worn by the classical Athena, but not the exact design. On the ventail, which is too short, the eye-slots and an abstracted nose guard are only engraved and not cut out. Other engravings are the two sun-like symbols to be found over the eye-slots for which we have no convincing interpretation (see Figure 2). Maybe they stand for the eyes of a bull. But the most striking part is the horns. The combination of the goddess Athena with a horned helmet has been found also in an archaeological context at the city of Pella in Macedonia, northern Greece.<sup>5</sup> Here three terracotta-figures survived, all made in the same mould. The position and shape of the hands of these figures however show us that they didn't hold a tin and a plate, but a spear and a shield, exactly as the ante-type of the classical Parthenon Athena. The spear and

<sup>4</sup> In Irlinger and Winghart (1999) a slightly older age determination is found. However, because of recent evidence – see Meixner and Pütz (2012) – a somewhat younger dating of the sherds seems to be likely.

<sup>5</sup> In the period of Phillip II and Alexander the Great in the 4<sup>th</sup> century BC, Pella was the capital of the Macedonian Empire. Pella is to be found approximately 50 miles northwest of Thessaloniki.

shield are the classical attributes of her, as she is the goddess of wisdom and tactical warfare.



Figure 4: The terracotta statuette of Pella/Macedonia, northern Greece (M. Andronicos, Pella Museum, Athens 1979, page 26, pic. 12).



The Athena of Pella wearing bull's horns (figure 4) has its explanation in the city's founding myth. It has been told that the region around Pella was called *Bounomeia* – meaning “controlled by cows.”<sup>6</sup> So maybe the reason for the horns was to combine older deities with the new protector of the town, i.e., goddess Athena.



Figure 5: The Athena with spear (lost) and plate – in a gesture of sacrifice – and with small horns on the helmet of the collection from Kanellopoulos, Athens. (Archaiologikon Deltion, Chronica, 26, 1971, Tab. 571).

<sup>6</sup> See Irlinger and Winghart (1999: 129).

Another statuette of Athena with horns was found in the Collection of Antiques of Kanellopoulos, Athens (Figure 5).<sup>7</sup> This Athena however, has only very small horns and, like the Athena from Pella, does not wear a cape. In the right hand she holds a spear, but in the left hand she offers. Like the Athena of Dornach she has a plate representing a gesture of sacrifice.

Another head of a deity, possibly Athena or Minerva (which is the name of the goddess in the Roman world) with horns on the helmet was bought by a German collector of antiques (Figure 6).<sup>8</sup> But the archaeological contexts and age determinations of these figures stemming from the art market are unfortunately unknown.



Figure 6: The head of another goddess (Athena?) with horns on a Corinthian style helmet, from a private art collection in Germany (J. Kostka).

The gesture of sacrifice with tin (called *pyxis*) and plate (called *patera*) is a rare subject in the Hellenistic world. More often, it is known for small figures of the same period in central and northern Italy (Figure 7). The clothing and the gesture of these figures and the Athena of Dornach are

<sup>7</sup> Archaiologikon Deltion, Chronica. Tomos 26, 1971 (1975), table 571.

<sup>8</sup> The collector showed the small head to the Aschheimuseum and thankfully also offered pictures. Because of the lack of other attributes the goddess was not to be defined.

very similar. This is why the archaeologist Stefan Winghart saw a Hellenistic ante-type indeed, but thought the Athena of Dornach to be handcrafted in the southern Alpine region.<sup>9</sup> While looking at the workmanship and quality of northern Italian figurines of the time, there is not a single example to be found with a quality comparable to the statuette of Dornach. So this statuette would be an exception under the northern Italian figures.



Figure 7: Parallels of small goddesses similar in clothing and gesture to the Athena of Dornach stemming from northern Italy (E. Walde-Psenner, *I bronzetti figurati antichi del Trentino*, Patrimonio storico e artistico del Trentino 7, Trento 1983, No. 110, 108, 107; P. Càssola-Guida, *I bronzetti friulani a figura umana*. Cataloghi e monografie Archaeologiche dei civici Musei di Udine 1, Udine 1989, No. 34).

We have as yet not discussed the inscription of the pedestal. Although the hollow-worked pedestal was found separately, its relationship to the massive figure is without question as traces of the stand and the fixation show. The inscription was chased into the stem of the column-like stand and is easily readable as: MARIO D(onum) D(edit) L(ibens) M(erito). This is a typical consecration formula, specifically for the 1<sup>st</sup> century BC to the beginning of the 1<sup>st</sup> century AD. It can be translated into “Mario has given this gift freely and suitably” (or, “according to a promise”).<sup>10</sup> It tells us, that a person called Mario was the donator of the figure, which was a gift for the goddess thanking for a favour or good fortune.

According to Karlheinz Dietz, a well-known epigraphist, the Name Mario is very common in the Antique World, especially within the lower social classes. Inscriptions prove the wide distribution of the name among slaves and freed slaves in the whole Mediterranean.<sup>11</sup> The use of Latin for

<sup>9</sup> See Irlinger and Winghart (1999: 132f).

<sup>10</sup> See Dietz (1999:144-147).

<sup>11</sup> See Dietz (1999:145-147).

the inscription gives only a small hint to the figurine's origin, because in the 1<sup>st</sup> century BC Latin was common also in the Hellenistic region.

To conclude, we are not sure where the Athena of Dornach comes from. Even if the examples of figures with a gesture of sacrifice are rare in the Hellenistic world, the conspicuous combination of a Goddess Athena and a horned helmet as well as her similarity with finds in northern Greece suggest that she originates from this region. How the statuette found its way to Dornach and why she was put in the filling of a water-well together with sherds, and therefore waste, will remain a secret, however.

Relations between the Celtic people and the Hellenistic world can be proved by the latter's influence in Celtic art, but also by written sources and archaeological findings.<sup>12</sup> However, these proofs relate to earlier periods. They are still evident for the 3<sup>rd</sup> and 2<sup>nd</sup> century BC but this is too early for our statuette. Also, it cannot be ruled out, that a Celtic mercenary brought back the figure from northern Greece. In Dornach, it might have been kept as an heirloom over all these years. Anyway, the statuette of the Athena of Dornach bears witness of a very interesting relationship between the Celtic world north of the Alps and the Hellenistic world of the Mediterranean of more than 2000 years ago.

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<sup>12</sup> Archaeological evidence of these contacts is more often in the 7<sup>th</sup> to the 5<sup>th</sup> century, in the later Celtic period they are rare. See Schönfelder (2007).



## Marx on Aristotle and the Problem of the ‘Common Third’: A Sraffian Perspective\*

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**Abstract:** Marx was well read in Greek philosophy and related his own theory of value, the central element of his analysis of the capitalist mode of production, to insights encountered in Aristotle. The main idea was that of a ‘common third’, that is, the problem of whether qualitatively different commodities could be said to represent equal or different quantities of the same substance. Marx’s answer was that the common third can only be abstract human labour. The paper scrutinizes critically Marx’s theory of value and the role of *tertium comparationis* in it and argues that Marx’s view is difficult to sustain. The reasoning put forward draws inter alia on reflections contained in Piero Sraffa’s hitherto unpublished papers at Trinity College, Cambridge.

**Keywords:** Aristotle, Common third, Karl Marx, Piero Straffa, value.

**JEL Code:** B11, B14, D46, D51

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\* Paper given at the conference ‘German-Greek Relations: Political Economy Perspectives’, Hochschule für Politik, Technical University of Munich, Munich, Germany, 13-14 October 2017. I am grateful to Amartya Sen and Geoff Harcourt for their encouragement and valuable observations and to Tony Aspromourgos, Jurriaan Bendien, Daniel Eckert, Christian Gehrke, Bertram Schefold and George Tridimas for valuable comments and suggestions on an earlier draft of the paper. The responsibility for any remaining errors or misinterpretations is, of course, entirely mine. – In this paper I draw freely on some works of mine, partly written in collaboration with others. See, in particular, Kurz and Salvadori (2010), Kurz (2012, 2013, 2017) and Gehrke, Faccarello and Kurz (2016).

## 1. Introduction

Karl Marx was very well read in Greek philosophy. He wrote his PhD dissertation entitled *On the Difference between the Democritean and Epicurean Philosophy of Nature*, of which unfortunately only parts have come down to us. In these parts, Marx mentions Aristotle several times. He also does so in his *Notebooks on Epicurean Philosophy*. In his *Grundrisse der Politischen Oekonomie* right at the beginning, he takes issue with what in the eighteenth century became popular: the ultra-individualistic doctrine of human nature and civil society and the use of Robinsonades. Interestingly, his critical account of the new doctrine has recourse to Aristotle who in *Politics* insisted that man is by nature a political being, a *zoon politikon* (ζῷον πολιτικόν). He also refers to Aristotle's theory of potentiality and actuality in the *Metaphysics* when explaining his view of production and consumption. Aristotle's *Nicomachean Ethics* and *Politics* are prominently mentioned in *A Contribution to the Critique of Political Economy* and then in Marx's magnum opus, *Capital*, of which only volume I was published during Marx's lifetime. Basically, at every crucial juncture in his intellectual development, Marx made specific references to the importance of Aristotle for his own thinking and explained in which regard he had adopted Aristotle's point of view and in which he deviated from it.

In this paper, I deal with a single issue only: Marx's theory of value or, more precisely, his attempt to establish what he called the 'law of value' in part I of *Capital*. There he dubbed Aristotle the 'great thinker' and the 'greatest thinker of antiquity' (Marx 1954: 64 and 384) and developed his labour theory of value in terms of a critical discussion of Aristotle's thoughts on the problem of the value relation. In chapter I, he recalls Aristotle's query whether two things that are exchanged for one another must be equal in some further dimension and thus commensurable. In chapter II, he adopts Aristotle's distinction between 'use-value' and 'exchange-value' as the basis for his subsequent investigation. In chapter III, he investigates the role of money in the circulation of commodities and discusses Aristotle's distinction between natural and unnatural economy (see Kurz 2016: 8-10). The former refers to the household economy in ancient Greece, in which goods are produced and traded which are designed to allow the citizen of the polis and his family a 'good life', whereas the unnatural economy is concerned with making profits and money.

The composition of the paper is the following. In Section 2, Marx's 'law of value' is briefly explained. Section 3 has a closer look at the starting point of Marx's disquisition – Aristotle's discussion of the value relation – and what Marx found wanting in it. The following sections deal with Aristotle's rejection of the idea of a common third and Marx's

rejection of the idea that a use-value could serve that purpose: with the help of Sraffa's analysis it is argued that both views are difficult to sustain. Section 4 deals with a first criticism levelled at Marx's concept of the law of value. Section 5 turns to a second criticism and scrutinises Marx's concept of abstract labour. While a meaningful definition of it can be provided, Marx left it open how its magnitude can be ascertained and was unable to demonstrate convincingly its usefulness in the theory of value and distribution. Section 6 contains some further remarks by Sraffa on the concept of *tertium comparationis*, focusing on a famous fragment by Heraclitus. Section 7 concludes.

## 2. The 'law of value'

Marx was convinced that the 'law of value' he established in volume I of *Capital* holds not only in the state of nature, as John Locke had maintained, nor only in the 'early and rude' state of society, as Adam Smith had been convinced, but also in capitalist society which reflected the highest state of civilization attained up until then. By establishing the law of value, Marx sought to show that capitalism, no less than former modes of production, was based on the exploitation of one class of society, workers, by another class, capitalists. He identified labour as the *source* and *substance* of all value. Labour generated value, but was itself no part of the exploitative mechanism at work: it is the capital-labour relationship that is the source of social domination, control and exploitation.

The 'law of value' is the cornerstone of Marx's analysis of capitalism to which he stuck unswervingly until the very end of his life. He did so because he arguably considered it the single most important achievement of his entire corpus of scientific work in which he succeeded to go beyond Aristotle, the 'greatest thinker of antiquity'.<sup>1</sup> Marx defined the commodity as the 'cell form' of modern society and in accordance with Aristotle he distinguished between its use-value and its exchange-value. To understand what a commodity is, one must understand what it is in the most advanced society, in which value is manifested in the dominant form of socio-economic coordination – interdependent markets, trade and exchange. This, however, requests to start from the usefulness of a commodity, its use-value, which appears to be straightforward and obvious. Historically, in non-capitalist modes of production, and the Greek polis Aristotle

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<sup>1</sup> For a more comprehensive discussion of the relationship between Marx and Aristotle, which however does not focus attention on the issue of the common third dealt with in this paper, see, among others, Mansfield (1980) and the papers contained in McCarthy (1992).

analysed is a case in point, men assessed commodities first and foremost in terms of their intrinsic use-value – their objective capacity to satisfy certain needs and wants. While there was exchange in ancient Greece, it had not yet taken full possession of the economy, and exchange-value therefore seemed to be accidental rather than reflecting some fundamental forces at work. For this reason, the focus of Aristotle's analysis was on use-value. In contrast, in capitalist society exchange is well established through interdependent markets: it is the ruling coordination mechanism of numerous processes of production and consumption and of the corresponding social division of labour. Exchange-value is now regulated by economic law and no longer reflects accident and caprice. Exchange value, Marx was convinced, expresses the 'true' value of commodities.

But what is the law of value under consideration? When two things are exchanged for one another in a given proportion, Marx maintained in a famous passage, which is the focus of attention in this paper, there must exist

*in equal quantities something common to both. The two things must therefore be equal to a third, which in itself is neither the one nor the other.* Each of them, so far as it is exchange-value, must therefore be reducible to this third. (Marx 1954: 45; emphasis added)

After some deliberation concerning several candidates to serve as the 'common third', he concluded:

As use-values, commodities are, above all, of different qualities, but as exchange-values they are merely different quantities, *and consequently do not contain an atom of use-value.*

If then we leave out of consideration the use-value of commodities, they have only one common property left, that of being products of labour. ... *Along with the useful qualities of the products themselves, we put out of sight both the useful character of the various kinds of labour embodied in them, and the concrete forms of labour;* there is nothing left but *what is common to them all;* all are reduced to one and the same sort of labour, *human labour in the abstract.* (Marx 1954: 45-6; emphases added)<sup>2</sup>

<sup>2</sup> As early as *Zur Kritik der politischen Oekonomie* of 1859, Marx praised the superiority of John Ramsay McCulloch, a contemporary of David Ricardo, over the 'fetishism of German "thinkers"', who declared the "material" [Stoff] and another half a dozen of tomfooleries [Allotria] as elements of value.' (Marx 1859: 22 fn.)



This is Marx's law of value. Below we shall come back to the difficulties besetting it. In competitive capitalism Marx emphasized already at the time of the publication of volume I of *Capital* (see Marx 1954: 163 fn.), that the law applies only 'ultimately', because with a uniform rate of profits 'prices of production' deviate in a systematic way from values; viz. the (in-) famous problem of the 'transformation' of (labour) values in prices of production. However, this problem need not concern us here.

### 3. Marx's starting point: Aristotle's discussion of the value relation

Let us now turn to Marx on Aristotle. Marx credited him with having been 'the first to analyse so many forms, whether of thought, society, or Nature, and amongst them also the form of value' (Marx 1954: 64-5). But he accused him of having failed to see that (abstract) labour is the 'substance of value'. Aristotle, Marx maintained with reference to the fifth book of the *Nicomachean Ethics*,

clearly enunciates that the money-form of commodities is only the further development of the simple form of value – *i.e.*, of the expression of the value of one commodity in some other commodity taken at random ...

He further sees that the value-relation which gives rise to this expression makes it necessary that the house should qualitatively be made the equal of the bed, and that, without such an equalisation, these two clearly different things could not be compared with each other as commensurable quantities. "Exchange," he says, "cannot take place without equality, and equality not without commensurability" (...). Here, however, he comes to a stop, and gives up the further analysis of the form of value. "It is, however, in reality, impossible (...) that such unlike things can be commensurable" – *i.e.*, qualitatively equal. Such an equalisation can only be something foreign to their real nature, consequently only "a makeshift for practical purposes." (Marx 1954: 65)

What is the reason for Aristotle's sudden "stop"? Marx expounded:

Aristotle therefore, himself, tells us, what barred the way to his further analysis; it was the absence of any concept of value. What is that equal something, that common substance, which admits of the value of the beds being expressed by a house? Such a thing, in truth, cannot exist, says Aristotle. And why not? Compared with the beds, the house does not represent something equal to them, in so far as it represents what is really equal, both in the beds and the house. *And*

*that is – human labour.* (Marx 1954: 65; emphasis added)

It had escaped the greatest thinker of antiquity what Marx considered to be a fact, namely, that the substance of value is labour. What prevented Aristotle from seeing that ‘to attribute value to commodities, is merely a mode of expressing all labour as equal human labour, and consequently as labour of equal quality’? Marx answered:

Greek society was founded upon slavery, and had, therefore, for its natural basis, the inequality of men and of their labour-powers. The *secret of the expression of value*, namely, that *all kinds of labour are equal and equivalent*, because, and so far as they are human labour in general, cannot be deciphered, until the *notion of human equality* has already acquired the *fixity of popular prejudice*. This, however, is possible only in a society in which the great mass of the produce of labour takes the form of commodities, in which, consequently, the dominant relation between man and man, is that of owners of commodities.

Marx concluded:

The *brilliancy of Aristotle’s genius* is shown by this alone, that he discovered, in the expression of the value of commodities, a *relation of equality*. The peculiar conditions of the society in which he lived, alone prevented him from discovering what, “*in truth,*” was *at the bottom of this equality*. (Marx 1954: 65-6; emphases added)

Marx prided himself with having discovered what ‘is at the bottom of this equality’. The brilliancy of Marx, we might say, paraphrasing ‘Old Moor’, consisted precisely in establishing this truth.

Living in a society founded on slavery and thus the politically enforced and supported inequality amongst men and their labour power, the truth or ‘secret’ (Marx 1954: 80) Aristotle could not see, was the equality and equal worth of all labour as abstract human labour. This secret, Marx opined, could only be disclosed once the idea of human equality has assumed the fixity of an indisputable fact. In such a situation the ‘characters that stamp products as commodities ... have already acquired the stability of natural, self-understood forms of social life’; hence, ‘the labour-time socially necessary for [the production of various commodities] forcibly asserts itself like an *over-riding law of Nature*’ (Marx 1954: 80; emphasis added).<sup>3</sup>

<sup>3</sup> According to Marx, ‘The religious world is but the reflex of the real world.’ He

These insights, Marx apparently believed, stood firm: on the basis of the law of value it was not only possible to ascertain the inner relations and law of motion of capitalism, it also provided the key to an understanding of the socialist and communist societies that would supersede it.

Hence, while Aristotle disputed that such 'unlike things' as different commodities can be commensurable, Marx insisted that that they can and that homogeneous labour is the common 'third'. In the following it will be argued that neither view can generally be sustained. This is done within the simple framework of an economy in which no social surplus is produced: whatever is produced is just sufficient to reproduce the means of production used up in the course of production and the means of sustenance of the population. The latter may consist only of producers who produce all products; in this case the means of sustenance go entirely to them and their families. If the population contains also a propertied class, such as landowners, the means of sustenance include also the (elevated) consumption of this class. All products are traded as commodities via interdependent markets. The attention focuses on the conditions to be met in terms of exchange-values of commodities that allow for the reproduction of the economic system. The with-surplus case, in which the surplus will be distributed at a uniform rate of profits on the capital invested in each line of production – the case of competitive capitalism – will be mentioned only in passing.

#### 4. A first criticism: use-values and multiple common thirds

Early on, several objections were levelled at Marx's argument and especially at the concept of abstract human labour as the substance of value. Here is not the place to provide a comprehensive account of these objections. The focus is rather on just two of them, arguably the most important ones. First, Marx in *Capital* repeatedly rejected the view that a use-value (or a bundle of use-values), could be a common third. This comes as a surprise since he was aware of the classical economists' search for an 'ultimate measure of value'. This search was motivated by the fact that the classical economists lacked the appropriate analytical tool to deal with the case in which commodities are produced by means of commodities. How then to compare heterogeneous commodities and ascertain their exchange-values? The idea they came up with was to 'reduce' each and every commodity to some ultimate measure of value, that is, a commodity needed in each and every production. The proposals

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added: 'Christianity with its *cultus* of abstract man ... is the most fitting form of religion' (Marx 1954: 83) in capitalism.

put forward included William Petty's 'bread' and Adam Smith's 'corn': bread or corn, these economists argued, are needed directly or indirectly in the production of all commodities, because all production needs workers fed on bread and thus corn, and corn also enters directly into its own production. Hence, all commodities could be reduced to the suggested ultimate measure of value and commodities could be conceived as being exchanged in proportion to the amount of it contained in each of them.

However, Marx steadfastly rejected the idea that atoms of use values could possibly be the sought *tertium comparationis*. In several references to chemistry and physics, he stressed this point (see, e.g., Marx 1954: 87).<sup>4</sup> His argument is, however, not conclusive: any product that is needed directly or indirectly in the production of all commodities could serve as a common third. This can be shown in terms of Piero Sraffa early attempts in the late 1920s to come to grips with the classical economists' approach to the problem of value and distribution and their concern with an ultimate measure of value and then in his 1960 book. In an economic system that is just capable of reproducing itself, all commodities that are being produced are needed directly and indirectly in the production of all commodities either as means of subsistence or as means of production. Any one of them may serve as a common third.<sup>5</sup> In Sraffa (1960: 8) commodities that satisfy the given condition exclusively with regard to the means of production are called 'basic products'.

This can be made clear in terms of the following example in which three commodities are produced by means of themselves. Obviously, in conditions in which no surplus product is generated above and beyond what is needed for reproducing the economic system, there is no need to refer to 'quantities of labour' or 'labour values' in order to determine relative prices that meet the requirement of reproduction. The physical data concerning means of production needed and means of subsistence advanced to workers are enough to accomplish the task. In the case of

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<sup>4</sup> In one place we read, for example, 'So far no chemist has ever discovered exchange value either in a pearl or a diamond. The economic discoverers of this chemical element, who by-the-by lay special claim to critical acumen, find however that the use-value of objects belongs to them independently of their material properties, while their value, on the other hand, forms a part of them as objects.' (Marx 1954: 87)

<sup>5</sup> It deserves to be stressed that in Sraffa's early work in the second half of the 1920s Marx's concept of a common third played hardly any role. (See, however, Section 6 below.) This would change in the early 1940s (see below). This can be regarded as a further indication of the fact that in his re-constructive work Marx's analysis was not Sraffa's point of departure. See in this context also Gehrke and Kurz (2006) and Kurz (2012).

three products, we would have the following equations of production:

$$\begin{aligned} A_a v_a + B_a v_b + C_a v_c &= A v_a \\ A_b v_a + B_b v_b + C_b v_c &= B v_b \\ A_c v_a + B_c v_b + C_c v_c &= C v_c \end{aligned} \quad (1)$$

Here, the  $A_i$ ,  $B_i$  and  $C_i$  ( $i = a, b, c$ ) give the amounts of inputs of products, or 'commodities',  $a$ ,  $b$  and  $c$  in the production of the three products, comprising necessary means of production and means of subsistence, and  $A$ ,  $B$  and  $C$  the amounts of outputs of the three products; and  $v_i$  gives the value of product  $i$  ( $i = a, b, c$ ). In the case of an economy without a surplus or net product

$$A = \sum A_i, \quad B = \sum B_i, \quad C = \sum C_i \quad (i = a, b, c)$$

Equations (1) are homogeneous linear equations only two of which are independent of each other. They have infinite sets of solutions, but the solutions are proportional to each other. Fixing a standard of value implies setting the value of one of the commodities equal to unity. The values of the other two commodities are then expressed in terms of quantities of the standard.

Piero Sraffa in late 1927 and early 1928 began to discuss such systems of equations. He swiftly saw that 'reducing' the value of a commodity to the amounts of some other commodity needed directly and indirectly in its production yielded the following result:

For the first equations (without surplus) it is obviously true that the amount of  $b$  that a unit of  $a$  fetches in exchange is equal to the amount of  $b$  that directly or indirectly has been used up, in successive stages, in the production of a unit of  $a$ . The method would be that, if in  $1a$  enter  $3b + 2c$ , we would put aside the  $3b$ ; find that in  $2c$  enter  $1b + 2d$  ..., put aside the  $1b$  and find how many  $b$  enter into  $2d$  etc. etc. The series is infinite but the sum is finite.<sup>6</sup>

Since this method can be applied with regard to each and every commodity produced in the system, the exchange ratios of any two commodities can

<sup>6</sup> See Sraffa's Papers kept in Trinity College, Cambridge. According to the catalogue prepared by Jonathan Smith, archivist, the above passage is to be found in file D3/12/7 on pp. 30-31. (In accordance with the system of equations given above we have replaced upper case letters used by Sraffa for commodities ( $A$ ,  $B$ ,  $C$ ,  $D$ ) with lower case ones ( $a$ ,  $b$ ,  $c$ ,  $d$ ).

be conceived as reflecting the relative amounts of any one of the commodities in the system used up in the production of one unit of the two commodities under consideration.

We may conclude by saying the following. First, if Aristotle had been interested in conditions to be met with regard to exchange-values that guarantee the reproduction of the Greek economy, and he surely was, and if the Greek economy could be described in terms of a system like the one depicted by equations (1), then he was wrong in rejecting the idea that such unlike things as olives, wheat and muttons are commensurable. They definitely are – each one of them can be reduced to a quantity of any of the other commodities following the method suggested by Sraffa.<sup>7</sup> Alternatively, we might solve the system of equations and obtain not only an approximate solution.

Secondly, also Marx was wrong in contending that the common third can never be an atom of use-value. In fact, there is not only a common third, but a common fourth, fifth and so on, depending on the overall number of basic products in the system. We might also say, with Sraffa (1960: 20), that there is a Standard composite commodity, or ‘Standard commodity’, corresponding to a given system of production, which contains the various basic commodities in well specified proportions.<sup>8</sup>

Flukes apart, different systems of production will have different Standard commodities, that is, different sets of basic commodities. Vis-à-vis this finding one can only wonder whether the quest for a single common third – abstract labour – that can be used across space and time with the properties attributed to it by Marx was not chasing a will-o’-the-wisp?<sup>9</sup>

In an economic system without a surplus, that is, the one we have assumed in the above, the exchange ratios of any two commodities will always be the same irrespective of the commodity that serves as a measure of value in terms of which all values are expressed. However, this is

<sup>7</sup> Schefold (2016: 13f) argues that Aristotle’s theory of exchange of households’ surpluses in order to attain goods needed for the good life is reminiscent of Sraffa’s analysis of the no-surplus economy.

<sup>8</sup> In systems with joint production a Standard commodity may, but need not exist; see Kurz and Salvadori (1995: chap. 5, especially 244).

<sup>9</sup> The question is what is the ‘substance’ under consideration, whether it is unique, whether it can be known independently of solving the equations of production, whether it remains the same when time goes by and so on. As regards intertemporal and interspatial comparisons, there is no presumption that there is the same common substance ‘embodied’ in commodities produced at different times and locations, the ‘substance’, if any, is rather bound to change over time and with location.

generally not the case with regard to a with-surplus economy in which the distribution of the surplus is decided in terms of a uniform rate of profits on the capital advanced in each line of production. In this case, system (1) would be replaced by

$$\begin{aligned}(1+r)(A_a v_a + B_a v_b + C_a v_c) &= A v_a \\ (1+r)(A_b v_a + B_b v_b + C_b v_c) &= B v_b \\ (1+r)(A_c v_a + B_c v_b + C_c v_c) &= C v_c\end{aligned}\tag{2}$$

Here  $r$  gives the general rate of profits, the expressions in brackets on the left hand side of the equality signs give the sectoral advances of capital (means of production and means of subsistence), and the magnitudes on the right hand side the values of gross outputs. In the with-surplus case, obviously

$$A \geq \sum A_i, \quad B \geq \sum B_i, \quad C \geq \sum C_i \quad (i = a, b, c),$$

and at least one of the weak inequalities is actually a strong one. The capital advanced in each sector consists of heterogeneous commodities and is a value magnitude: it can generally not be known independently of, and prior to, the solution of the system. Since much of Marx's argument referred to the ideal case of competitive capitalism, the right starting point of his investigation would have been system (2) and not system (1). Alas, the question raised previously, whether the search for a common third with the role attributed to it by Marx was a search for a will-o'-the-wisp, gets aggravated in the with-surplus case: with several basic products in the system there are several 'things' common to all commodities, but, as has already been observed, these are generally 'embodied' in different proportions in the various commodities.

These are bad news for Marx's reasoning. We may ask whether his choice of homogeneous or abstract labour would fare better. Or is it beset by other difficulties? The following section deals with this issue and thus turns to the second objection mentioned at the beginning of Section 4.

### 5. A second criticism: 'abstract labour' – a meaningful and useful concept?

What does Marx mean by 'abstract labour' and how does he determine its magnitude?<sup>10</sup> Without being told how we can know the amount of labour

<sup>10</sup> Gehrke, Faccarello, and Kurz (2016: 215-20) argue that Marx approached the

‘congealed’ in any one commodity, Marx’s argument, while suggestive, is not compelling. The first problem we have to face is that Marx provides at least two definitions of abstract labour that do not amount to the same thing.

Marx had come across the distinction between abstract and concrete labour in Georg Friedrich Wilhelm Hegel and maintained, that

labour is, speaking *physiologically*, an *expenditure of human labour-power*, and in its character of identical abstract human labour, it creates and forms the value of commodities. On the other hand, all labour is the expenditure of human labour-power in a special form and with a definite aim, and in this, its character of concrete useful labour, it produces use-values.’ (Marx 1954: 53; emphases added)

He insisted that ‘*The labour ... that forms the substance of value, is homogeneous human labour, expenditure of one uniform labour-power*’ (Marx 1954: 46; emphasis added) and thus ‘*a productive expenditure of human brains, nerves, and muscles*’ (Marx 1954: 51; emphasis added).<sup>11</sup>

This appears to imply that in ascertaining the values of commodities, Marx suggested to simply add up the hours spent directly and indirectly in producing them, irrespective of the kind of labour performed, the skills and intensity of work applied, the productivity of labour, the dangers involved and so on. This gets some support from the view Marx held that the kind of technical progress congenial to capitalism tends to render superfluous all skilled labour and reduce it to simple labour that can, in principle, be performed even by children. See, for example, the manuscript of chapter 6 of book I of *Das Kapital* composed in 1863-66 (Marx 1863-66). He there takes up a theme present already in the *Grundrisse (Rohentwurf)* of 1857-58, where Marx insisted that the deskilling due to technical progress has the following effect: ‘Indifference towards specific labours corresponds to a form of society in which individuals can with ease transfer from one labour to another’ (Marx 1857-58 [1973]: 104). He added that this process is most advanced in the United States: ‘Here, then, for the first time, the point of departure of modern economics, namely the abstraction of the

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problem in essentially three different ways – socio-historical, dialectical, and in the footsteps of the classical economists – which are not mutually compatible with one another. They stress (ibid: 220): ‘The coexistence of conflicting conceptualizations is a source of dire controversies and confusions.’

<sup>11</sup> This is not a fully accurate translation of the German original, which speaks of ‘produktive Verausgabung von menschlichem Hirn, Muskel, Nerv, Hand usw.’ (Marx 1967: 58).



category “labour”, “labour as such”, labour pure and simple, becomes true in practice’ (ibid: 104-5).

In this perspective labour loses all its irreducible diversity and variety and becomes an appendage of machines. In Marx’s view the historical trend of capitalist development converges towards a situation in which only simple labour – the expenditure of human brain, muscle, nerve, hand and so on – matters and all types of labour are equal and commensurable in the sense specified.<sup>12</sup>

In this interpretation the concept of abstract labour poses no difficulty of quantification. The hours worked by a shoemaker, a baker, a tailor and so on can all simply be added up. This assumption seems to simplify matters considerably, and in the sense mentioned it does. However, it is affected by serious difficulties. First, there is the well-known problem that if commodities are produced by means of commodities, calculating the sum total of hours needed to produce a particular commodity requires solving a system of simultaneous equations and therefore the knowledge of linear algebra Marx did not have. It is therefore unclear how he could possibly ascertain the sum total of labour needed in the production of the various commodities. And since the general rate of profits and prices of production are supposed to depend on those quantities of ‘congealed labour’, it is also somewhat unclear what their magnitudes are in given conditions of production. While this seems to be essentially only a technical problem<sup>13</sup>, there is also a serious conceptual one that renders Marx’s specification of abstract labour difficult to sustain. Imagine two societies in which the same number of hours are worked, but in which one uses a much more advanced technology, which is reflected in a significantly higher social productivity of labour. Marx’s reckoning would imply that in the two societies the same amount of value is annually produced, because the different value-creating capacities of differently productive labour are not accounted for.<sup>14</sup>

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<sup>12</sup> Marx’s view of the polarization of society in two classes, capitalists and workers, would get some support from an equalisation of the rate of surplus value across all sectors of the economy, which would obtain in the case of a uniform length of the working day and a uniform real wage rate.

<sup>13</sup> Actually it is not, because the way in which Marx sought to determine the general rate of profits and prices of production cannot generally be sustained.

<sup>14</sup> Ironically, present day measures of labour productivity typically still contain numbers of workers or of hours worked in the denominator, irrespective of the work performed, its skill level, remuneration and so on. That is, like Marx did they add up things that have not been first rendered commensurable in one way or another.

The second definition we encounter in Marx's writings takes into consideration that different kinds of labour typically do not fetch the same wage rate and therefore are not of equal worth. Since in the determination of exchange-values of commodities the actual wages paid to different workers matter, one has to take into account the structure of wages at a given moment of time in the economy. As already William Petty and the physiocrats stressed, what matters are not hours of work performed, but the actual advancement of wage goods to workers. The case of a worker in agriculture whose upkeep and that of his family has to be guaranteed during the entire year and not only during the working season underscored the correctness of Petty's concern with 'food' rather than labour.<sup>15</sup> What mattered were the amounts of the means of subsistence in support of workers and their families. With different kinds of work performed by different workers and different real wages advanced to them, what could be the meaning of *abstract* or *homogeneous labour*? How could its quantity be ascertained? Would this quantity be independent of prices? And last but not least, could it perform any useful role in the theory of value and distribution that cannot also be performed by the physical data, that is, bundles of real wages and means of production consumed productively?

To answer these questions we consider again the no-surplus case. We assume that in each one of the three types of commodities in equations (1) a different kind of concrete labour is used and that each kind of labour is paid a different real wage per year. Assume that the real wage in the first industry is given by vector  $\omega_a$  and the corresponding number of workers employed in order to produce gross output  $A$  is given by  $L_a$ ; the corresponding vectors and scalars with respect to the other two industries are  $\omega_b$  and  $L_b$  and  $\omega_c$  and  $L_c$ , respectively. We can now separate the productive consumption of the means of production on the one hand and that of the means subsistence in support of the workers employed in each of the three industries on the other. How much do the three kinds of labour 'contribute' to the values of the gross outputs of the three commodities? Obviously, this can only be answered after equations (1) have been solved for  $v_a$  and  $v_b$ . Given the solution we could say that the 'contribution' of the  $k$ -th kind of labour expressed in terms of commodity  $c$  ( $v_c = 1$ ) is

<sup>15</sup> In agriculture, for example, workers and their families have to be fed and sheltered even in periods when natural conditions prevent them from performing at all or at least from performing their normal tasks, such as in winter time. (See Sraffa's respective observations in D3/12/12: 8 composed in summer 1929.)

$$L_k(\omega_{ka}v_a + \omega_{kb}v_b + \omega_{kc}) \quad (k = a, b, c)$$

These quantities could then be aggregated in order to get labour's total contribution in terms of commodity  $c$ .

We might also change the standard of value and express all values in terms of, for example, the third kind of labour. In this case the nominal wage rate per unit of it,  $w_c$ , would be set equal to unity, that is,

$$w_c = (\omega_{ca}v_a + \omega_{cb}v_b + \omega_{cc}v_c) = 1$$

Now the values of the commodities would generally be different compared with the previous solution, but their ratios would be the same. Expressed in terms of the third kind of labour, the nominal wage rates of the other kinds of labour would be  $w_a$  and  $w_b$ . The total amounts of labour performed in the three industries, expressed in terms of the third kind of labour, would then be  $w_a L_a$ ,  $w_b L_b$  and  $L_c$ . With the third kind of labour as standard of value, the prices of all commodities represent quantities of this kind of labour. Summing up across all commodities (means of production and means of subsistence) consumed productively in an industry we get the equivalent of an amount of labour of the third kind. Similarly, the value of an industry's gross output represents a certain amount of this kind of labour. The former may be called the labour value (in terms of the third kind of labour) of the intake of the industry's productive activity, the latter the labour value of its gross product.

Again, the quantities calculated are merely derivatives of the given physical data. They do not provide any new information that was not already contained in the latter. Therefore, they cannot possibly provide a foundation, let alone an independent foundation, of value analysis.

## 6. The *tertium comparationis* once again: Sraffa on a fragment of Heraclitus

In an attempt to come to grips with the merits and demerits of Marx's search for a common third, Sraffa in the spring of 1928 contemplated upon a famous fragment of Heraclitus whose English translation reads: 'All things are exchanged for fire, and fire for all things, as goods for gold and gold for goods.' It can safely be assumed that Sraffa came across the fragment when reading (the French edition of) volume I of *Capital* (see, e.g., Marx 1954: 107 n.). He quoted the Italian translation – 'Ogni cosa

contraccambiarsi in fuoco, ed il fuoco in ogni cosa, come l'oro in merci e le merci in oro' – and then commented on the interpretation of the fragment as advocated by its translator, Zeller. According to the latter, Heraclitus refers only to the qualitative change of the substance in exchange and insists that while the value is the same, the substance is not. Apparently Sraffa was not fully convinced. He quoted a passage by Zeller in Italian and added in parentheses question or exclamation marks. Here I give the English translation:

But, the importance of a comparison must not be exaggerated. The fire-substance becomes something different (?), i.e. it transforms itself, as we will see, in water, land, meteor, but Heraclitus supposes (?) always that fire remains hidden in every derived substance, but not in act, as the Aristotelians (!) would say, but in power/potentiality. This comparison like all comparisons is not the expression of a material identity (?), since, if the substance-fire becomes an absolutely different one, like gold exchanges itself for meat, wood, wine or any other object, it is no more possible to talk of a universal substance (D3/12/10: 24).<sup>16</sup>

Apparently, Sraffa did not agree with the interpretation given. He added: '(perché? La moneta, dice Verri e Lloyd, è la merce universale {why? Money, say Verri and Lloyd, is the universal commodity})', followed by: 'Tutto il dilemma dello Zeller che segue è contraddetto se a fuoco si sostituisce elettricità {Zeller's entire dilemma that follows is contradicted if one substitutes electricity for fire}.' (Ibid.)<sup>17</sup>

One can only wonder why Sraffa refers to electricity, and electricity only, in this context. One possible interpretation is that in modern times electricity is an input needed in the production of each and every commodity and that in very particular circumstances there may be

<sup>16</sup> The Italian original reads: 'Ma non dovrebbesi esagerare l'importanza di un paragone. Il fuoco-sostanza diventa altro (?) cioè si trasforma, come vedremo in acqua, terra, meteora, ma Eraclito suppone (?) sempre che il fuoco rimane nascosto in ogni altra sostanza derivata, non in atto, come direbbero gli Aristotelici (!) ma in potenza. Quel paragone come tutti i paragoni non è l'espressione di una identità materiale (?), giacchè, se la sostanza fuoco diventa assolutamente altra, come l'oro si scambia contro carne, legno, vino o qualsiasi oggetto, non si può parlar più di sostanza universale.'

<sup>17</sup>For a more recent discussion of the fragment, its meaning and English translation, see Kahn (1979:145-53). Kahn suggested the following translation: 'All things are requital for fire, and fire for all things, as goods for gold and gold for goods.'

exchange ratios of commodities that are proportional to the relative overall amounts of electricity 'embodied' in the various commodities. Electricity would in this case be the 'common third' or 'substance'. This conforms to Sraffa's concern with 'the objective ground of value' (D3/12/7: 27) as is reflected by numerous documents in the late 1920s. Another interpretation is that electricity is a metaphor used to represent a composite commodity entering in the production of all commodities, in a similar way as William Petty used 'bread' as a metaphor for all means of subsistence needed by workers. While at the time Sraffa had not yet elaborated his concept of Standard commodity (which he did in 1944), as we have seen in Section 3 above he was already clear about the fact that multiple commodities, or composites of commodities, could perform the role of a *tertium comparationis*.

In this context it is apposite to draw the reader's attention to the fact that Sraffa's concern with the problem of whether qualitatively different commodities can be said to represent equal or different quantities of the same substance received some support from contemporary physics. In a book originally published in German and then translated into English, titled *The Universe in the Light of Modern Physics*, Max Planck had stated: 'If we compare the old theory with the new, we find that the process of tracing back all qualitative distinctions to quantitative distinctions has been advanced very considerably.' And a bit further down on the same page he added: 'According to the modern view there are no more than two ultimate substances, namely positive and negative *electricity*.' (Planck, 1931: 16; emphasis added) Interestingly, in his personal copy of the book Sraffa had annotated these statements.<sup>18</sup>

Sraffa dealt with the idea of an ultimate measure of value or the common third also in an undated manuscript probably stemming from the late 1920s titled 'Difference (simultaneous) v. Change (successive in time)' (see D3/12/7: 118). In it he attempted to reach clarity about the relationship between two different kinds of theories of value. While a

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<sup>18</sup> There are two straight lines in the margin of the following passage: 'it is impossible to obtain an adequate version of the laws for which we are looking, unless the physical system is regarded *as a Whole*. According to modern mechanics, *each individual particle* of the system, in a certain sense, at any one time, *exists simultaneously in every part* of the space occupied by the system. This simultaneous existence applies not merely to the field of force with which it is surrounded, but also to its mass and its charge.' (The second and third emphases are Sraffa's.) Sraffa may well have learned of Planck's views earlier than 1931. From 1918 to 1940 the physicist and discoverer of the electron Joseph John Thomson was the master of Trinity College.

theory concerned with how the values of various commodities compare with one another at a given place and time refers to values that are simultaneous, a theory dealing with changes in values over time refers to a succession of time. As regards the first type of theory the question is, what determines the equality (or inequality) of values, ‘what is the common element, the substance which enters in equal {unequal} quantity in the two things hidden behind the widely different appearance?’ As regards the second kind of theory the question is: ‘what is the difference, hidden behind the identical appearance of these two pairs of boots, which makes them different in exchange {in two subsequent years}?’ Sraffa added: ‘This way of putting the distinction is confusing. If the “common substance” is drawn in for the first case, it is clear that as it explains the equality in the first case, it will explain the difference in the second. Besides the making of the first a matter of equality and of the second a matter of difference, is a purely verbal trick ...’

Apparently, Sraffa was intrigued by the idea that when commodities exchange for one another according to a certain rate they must be equal to one another also in some other dimension – the dimension of their ‘common substance’. Whether such a common substance existed and what precisely it was, was not so clear. As regards intertemporal comparisons of the exchange value of a commodity, Sraffa in the document referred to was inclined to think that if such a substance existed any change in the value of the commodity can be traced back to a proportional change in the amount of the substance ‘embodied’ in the commodity. However, this presupposes that in the two different situations the kind of substance under consideration, and thus the dimension at stake, has not itself changed. The question is also whether the argument is meant to apply both to systems without a surplus (first equations) and to systems with a surplus and given real wages (second equations).

These were not the only occasions on which Sraffa dealt with the problem of common substance. From 4 July to 9 October 1940 he together with other foreigners living in the United Kingdom was in an internment camp on the Isle of Man. Sraffa filled the time with reading the recently published reprint of volume I of *Capital* (Marx, 1938) and composed a few notes which he kept in his personal copy of the volume. He was once more intrigued by Marx’s discussion, right at the beginning of chapter I of part I, ‘Commodities’, of the ‘common “something”’ or ‘common substance’ that is said to manifest itself in the exchange-values of commodities and Marx’s criticism of Aristotle. When two commodities are equal in value, Marx had insisted, ‘there exists in equal quantities *something* common to both.’ And: The value ‘is the mode of expression, the phenomenal form, of something contained in it, yet different from it’ (ibid.: 3 and 5).

In one of his undated notes Sraffa asked: 'What is the force of this argument?' He gave the following answer: 'It appeals to some generally accepted principle, which should be stated explicitly. Something like this: if two things are equal in one respect, they must also be equal in some other respect.' He pointed out that while 'the argument is supported by such critics as take "marg[inal] utility" as the "other" thing', it is rejected by some other critics, including Gustav Cassel<sup>19</sup>: 'It is opposed by the Cassel-type of critics, who say, if two objects are of equal length, why should they have any other property in common, beside the same length?' In a *Nota bene* Sraffa sought to clarify the problem at hand. He started out by saying that 'This way of putting it begs the question in favour of the Cassell point of view: it is absurd to put the two "respects" or properties on the same plane.' He added:

M{arx} regards one as the expression, the appearance, and the other as the substance. "Two things are exchanged in a certain ratio, what do they have in common in that ratio?" is asking "what is the cause of that exchange ratio?" Cassel answers: "why should there be a cause?"

Sraffa went on:

Now if a measurement is made, and two things are found to be equal, it is said that they have the same length, or weight, or force etc. This may be a mere restatement of the result of measurement in other words – which merely gives the illusion that there is a substance (length, force, etc.) which is behind the measurement. But it may be not. *If the length, force etc. can be also measured (and therefore defined) in an independent way, then the statement is a real one, not an illusion.*

He concluded:

Thus to say that two things exchange for one another "because they have the same exchange value" is tautological, *if exch. value cannot be measured in any other way than by seeing how they exchange. But if it can, the statement is a law.* (Emphases added)

<sup>19</sup> The reference appears to be to Cassel's *Fundamental Thoughts in Economics*; see Cassel (1925, especially 62-7), which is suggested by Sraffa's annotations in the book.

To this he added another *Nota bene* in which he asked himself to make a list of such ‘quantitative properties’ and then listed a number of them, including, for example, length, weight, force and temperature. Notice, that all properties mentioned are physical properties.

Sraffa thus rejected Cassel’s view and insisted that the ratio at which two commodities exchange for one another *may* express a further property, another objective fact, common to both. This comes to the fore again in a note dated 8 January 1946, which contains a reference to the physicist Percy W. Bridgman.<sup>20</sup> Sraffa asked himself: What do values do? In answering this question, he identified three aspects of values that reflect the same property. The second aspect he described in the following way: ‘{They} give an *objective content* to ratios of exchange – *they correspond to something*. They satisfy a fundamental requirement, of which economists (Cassel) make fun, but other subjects see (Bridgman)’ (D3/12/16: 30A; emphases added). As Sraffa noted elsewhere, with a zero rate of profits values are proportional to quantities of labour embodied in the various commodities. This is the case in which a ‘Value Theory of Labour’ applies, with labour as the common ‘substance’ (see D3/12/44: 3 and D3/12/46: 24). Hence he had identified the case in which Marx’s search for a common third was not futile and in which it even explained the normal exchange-values of commodities.

## 7. Concluding observations

The argument has shown that neither Aristotle’s rejection of the concept of a common third of any two things exchanged for one another in the market nor Marx’s ‘law of value’ could generally be sustained. The search for a *tertium comparationis* was not completely futile: it actually led the classical economists, Marx and several other economists, especially Sraffa, to a careful investigation of the circular flow of commodities in production and thus of the amounts of any particular thing – whether labour or some use-value – ‘embodied’ or ‘congealed’ in the various commodities. This involved a huge step forward in understanding the characteristic features of modern industrial systems, in which commodities are produced by means of commodities. A by-product of the growing understanding of such systems was the insight that labour values could not be attributed the central role in the theory of value and distribution as Marx had thought.

<sup>20</sup> In Sraffa’s library we find the 1938 reprint of Bridgman’s *The Logic of Modern Physics* (Bridgman, 1938), originally published in 1927, with annotations by Sraffa, and Bridgman (1943). Bridgman advocated the view that it had no meaning to interpret physical concepts unless they are capable of observation.



This was so, first, because the data defining the process of the productive consumption of means of production and means of subsistence were enough to determine exchange-values in the case of a no-surplus economy and exchange-values and the competitive rate of profits in the with-surplus economy. Labour values were derived magnitudes and did not contain any additional information that was not contained in the data under consideration. They resulted just in a very special constellation of the economic system (no surplus), whereas outside that constellation and flukes apart they did not govern exchange-values. Secondly, Marx's idea of the 'transformation' of (labour) values in prices of production cannot generally be sustained. It involves a roundabout that is neither necessary nor fruitful: a correct determination of relative prices and the competitive rate of profits cannot only do entirely without a recourse to labour values, it has to do so in order to arrive at such a determination.

In the preface to *Capital*, volume I, Marx wrote: 'I pre-suppose, of course, a reader who is willing to learn something new *and therefore to think for himself*' (Marx 1954: 19; emphasis added). He would probably have been amongst the first to dispense with a doctrine – the 'law of value' – that is difficult to sustain.

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## ARS COMBINATORIA - or: The 64 Ways of Order

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**Abstract:** The driving force behind this project is the search for the possibility to relate and understand seemingly different or dissimilar ideas or disciplines by tracing common patterns and analogies. It is the Pythagoreans who were also open to the idea of achieving this goal with „patterns“ as a possible means: a basic concept on which, according to artists and scientists, not only the sciences are based, but human society and, in the broadest sense, life and the whole cosmic order.

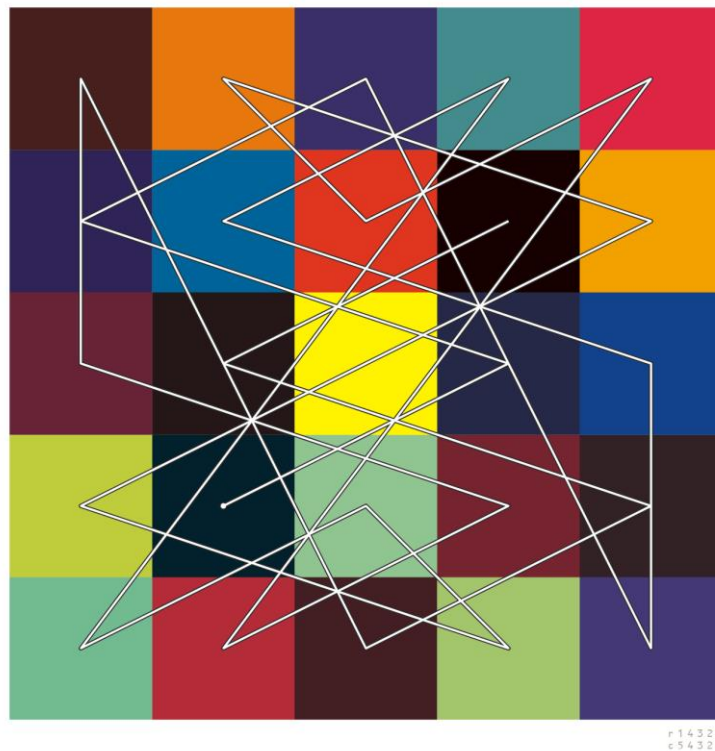
Patterns and numbers are inextricably linked together. 64 very special magic squares are the foundation of the project. They are used in order to correlate numbers, colors, sounds, the binary system (in form of the I Ching) and the base triplets of the essential amino acids.

The long lasting research and combinatorial studies aim to open up dialogues between the realms of science and art, as well as to give a personal artistic interpretation of the aforementioned correlations by means of different forms of presentation.

1	15	22	18	9	→ 65	1	15	22	18	9		1	15	22	18	9	
23	19	6	5	12	→ 65	23	19	6	5	12		23	19	6	5	12	
10	2	13	24	16	→ 65	10	2	13	24	16		10	2	13	24	16	
14	21	20	7	3	→ 65	14	21	20	7	3		14	21	20	7	3	
17	8	4	11	25	→ 65	17	8	4	11	25		17	8	4	11	25	
						↓	↓	↓	↓	↓							
						65	65	65	65	65		65					65

These examples are based on an order 5 magic square with a "magic constant" of 65.

*“The volume closes with the project of the Greek artist Konstantinos Koulaouzidis, established in Germany, who has embarked on a search for understanding and relating seemingly different ideas by tracing common patterns and analogies which may integrate arts and sciences. Using the canvass of numerical arrangements captured by “magic squares”, Koulaouzidis presents fascinating patterns of harmony between numbers, colours and sounds. However, the full paper of Koulaouzidis can only be reproduced in the second volume of the Yearbook, which is already under way” (The Editors).*



57

Arginine





## **German-Greek Relations: Political Economy Perspectives**

**Conference 2017, October 13/14, Munich (Germany), at the Hochschule für Politik (Technical University of Munich, TUM)**

### **Call for Papers**

The founding editors of the **German–Greek Yearbook of Political Economy** (GGY–PE) are organising the **Inaugural Conference of the Yearbook**. We welcome submissions on the multifaceted complex and ongoing relationship between Germany and Greece. We will accept papers on any aspects of this multifaceted, complex and ongoing relationship including topics relating but not restricted to

- The ancient Greek heritage in German scholarship, arts, literature, philology and philosophy
- German Philhellenism and German thought
- King Otto and the foundation of modern Greece: monarchy, constitutionalism and revolution
- The influence of the German legal tradition in modern Greek law and legal thought
- Greece and Imperial Germany: foreign policy and family ties
- Greek migration to Germany
- German migration to Greece
- Aspects of German-Greek collaboration in migration and refugee crisis
- Eurozone, German and Greek responses to the debt crisis
- The relationship between German and Greek academia and universities

Please submit your manuscript (in English) along with authors' details to

[Manfred.Holler@wiso.uni-hamburg.de](mailto:Manfred.Holler@wiso.uni-hamburg.de) or [g.tridimas@ulster.ac.uk](mailto:g.tridimas@ulster.ac.uk).

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Those interested in presenting a paper, please submit your abstract of 200–300 words by July 15, 2017. Authors will be notified by August 10, 2017.

**Conference Venue:** Hochschule für Politik (Technical University of Munich, TUM) Richard-Wagner-Str. 1, D-80333 Munich, Germany.

**There is no conference fee.**

**Organizing Committee:**

Eugénia da Conceição-Heldt (Reform Rector of the Hochschule für Politik, Munich)

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## **German-Greek Relations: Political Economy Perspectives**

**Conference 2017, October 13/14, Munich, at the Hochschule für Politik (Technical University of Munich, TUM)**

### **Conference Program**

<b>Friday, October 13</b>		
14:00-14:30	Welcome: Eugénia da Conceição-Heldt, George Tridimas, Manfred J. Holler	
Session I:	Chair: Manfred J. Holler	
14:30-15:30	Speaker: George Tridimas Discussant: E.M.L. Economou	When the Greeks loved the Germans: The political economy of King Otto's reign
15:20-16:10	Author: Korinna Schönhärl Presenter: Manfred J. Holler	Why invest in Greece? Gerson von Bleichröder and the Greek loan of 1889
15:30-16:00	Coffee break	
Session II:	Chair: George Tridimas	
16:00-17:00	Speaker: Marios Economou Discussant: Klaus Wieland	Ancient Greek Achaeans, Modern Germans and EU Integration. An Interdisciplinary Analysis of Federations
17:00-18:00	Speaker: Barbara Klose-Ullmann Discussant: George Tridimas	Medea on Stage: Child Murderess or Abandoned Wife?
19:00 onwards	Dinner	



<b>Saturday, October 14</b>		
Session III:	Chair: Paddy McNutt	
10:00-10:30	Speaker: Konstantinos Koulaouzidis	ARS COMBINATORIA or: The 64 Ways of Order.
10:30-11:00	Coffee break	
Session IV:	Chair: Marios Economou	
11:00-12:00	Speaker: Konstantinos Pilpilidis Discussant: Athanasios Gromitsaris	A Tale of Two States: Introducing eternity clauses in Germany and Greece
12:00-13:00	Author: George C. Bitros Presenter: M. Economou Discussant: Paddy McNutt	Germany and Greece: A mapping of their great divide and its EU implications
13:00-14:30	Lunch	
Session V:	Chair: George Tridimas	
14:30-15:30	Speaker: Athanasios Gromitsaris Discussant: Konstantinos Pilpilidis	Constitutional Control and Administrative Justice in Greece
15:30-16:00	Coffee break	
Session VI:	Chair: Manfred J. Holler	
16:00-17:00	Speaker: Heinz Kurz Discussant: George Tridimas	Marx on Aristotle and the problem of the 'common third'. A Sraffian perspective
17:00-17:30	End of the conference	
19:00-20:30	Reception at the <i>Goldberg Gallery</i> with K. Koulaouzidis' ARS COMBINATORIA	