

New Forces for the Greek State: Comments on Comments

VB verfassungsblog.de/new-forces-for-the-greek-state-comments-on-comments/

Armin von Bogdandy, Michael Ioannidis So 19 Mrz 2017

So 19 Mrz 2017

We are grateful to all contributors for their insightful comments and constructive critique. Greece, like the cases of Hungary and Poland, make it clear that in the EU we need to discuss thoroughly not only our common European institutions, but also each other's institutions. The pointed commentary published on Verfassungsblog over the last week—coming from different perspectives and informed from different experiences—shows the potential of such debates. In the case of Greece, they are an important addition to a discourse focusing too much on austerity or debt sustainability.

We would first like to shortly address two general concerns (1.) before going into some more detail in each of the commentaries (2.).

1. General remarks

One general point in many contributions had to do with the role of the Greek diaspora. We clearly noted that the scheme should be open both to resident and diaspora Greeks, but we indeed focused on the potential to harness the forces that are currently outside the country to support the domestic forces of reform. Some of our commentators were positive to this approach (Skordas, Chaniotis, Jakab, Ruffert) while other less so (Schorkopf, Koutnatzis, de Lucia, Dellavalle).

It is important to stress that the scheme we sketch does not imply any kind of formal or informal privileging of the diaspora. Merit should be the only criterion for choosing. Nevertheless, we do seem important advantages in measures that also address and invite the diaspora to join forces with those laboring to strengthen Greek institutions within the country.

Brain drain, the immigration of highly-qualified workers, has become a defining element of the crisis not only Greece, but also in other countries such as Spain and Italy. This is a structural issue. Young persons exit the South more often, and it is the EU that makes such exit easier: indirectly, by reducing barriers to movement, but also directly, by hiring people for European services. From an economic perspective, this is a success: labour mobility and labour market integration are essential components of an optimum currency area and the Eurozone has been lamented for not having enough of those. Yet there are important second-order effects. While the labour market becomes more European, education, public administration and politics remain mainly national. Accordingly, countries like Greece suffer a triple loss. Firstly, their (heavy) investment to human capital does not support domestic growth. Secondly, when they need qualified personnel, it is hard to compete with European and international employers. Thirdly, their politics are distorted because reformists have more incentives to leave than those who benefit from the status quo. To use the classic exit-and-voice scheme, if a system

allows those who want change to exit, it reduces their incentives for voice. Brain drain thus might deepen economic and political asymmetries between “sending” and “destination” EU countries. It does not only render human capital scarcer where it is already scarce and more abundant where it is already abundant but also makes reform of Southern economies less likely to come from endogenous actors alone.

Insofar as brain drain results from European integration, it is the EU that should adopt measures to mitigate its negative effects. EU intervention should have thus a corrective and re-distributive function. It is this corrective function we wanted to reinforce by suggesting that the EU should support a scheme that invite diaspora Greeks to return to their country in order to actively side with those struggling for reform.

Why then not simply give the money to the Greek administration and let them hire? Isn't EU involvement a step too far or even a form of “modern occupation”? This is the second point that attracted most attention from our commentators. We certainly need to be more precise on the role of the Greek state in the appointment process. The core of the idea, however, is clear: the purpose is not to impose some officials on the Greek government but rather to support Greece to strengthen its institutions. Our proposal sought to square two basic considerations: the Greek state needs more and better qualified public officials but that requires European funds. It is a European public investment to Greece's public sector. This calls for some say from the EU side. All Greek governments have complained about budget cuts reducing the capacities of Greek public sector. Our proposal takes up this justified complaint; the Greek government must contribute by pointing to the positions that need support but also by accepting some EU involvement in the selection of the personal. Other forms of EU involvement, such as conditionality or training schemes have not produced the deep transformation that Greece direly needs according to most accounts.

2. Individual comments

András Jakab makes explicit a point that underlies our analysis: bringing about reform requires much more than amending and applying laws. His concept of institution-building, which includes the ‘culture’ or ‘morality’ of governance, is far richer than what lawyers (and maybe also EU reform programs) usually assume. “A republic without republicans, or a bureaucracy without (Weberian) bureaucrats will not work”, notes Jakab. Changes in law are not enough to effectuate reform, and particularly so in counties where law has a limited steering capacity—like in Greece.

How can a cultural shift be effectuated? Jakab makes another point of extraordinary significance. He highlights the importance of changing the language of public discourse with the assistance of supranational institutions. If you need a rule-of-law reform, he suggests, tie yourself to an international regime that challenges domestic practices by heavily using the values and vocabulary of the rule of law. We share the point that strong external pressure might be needed to overcome domestic inertia. There is much to learn here from the policies used by Eastern European Countries in their ongoing process of transition.

Achilles Skordas' comments bring our proposal much further. All four challenges he describes—resistance by entrenched interests, legal challenges against reforms, lawfare against the persons in charge, and risk of assimilation of the reformers into the system—are valid and greatly enlighten us about the difficulties of the task. The remedies he suggests are imaginative and add important missing pieces to our original suggestion.

Two of Skordas' points deserve particular attention. In Skordas' view, the new group should also be ascribed a political function: newcomers should actively participate in public discourse, provide evidence of the deficiencies of the old structures, and actively demonstrate the need for change. The newcomers should be agents of reform in the broader sense, he suggests, also changing the terms of public discourse—an idea that is also in line with Jakab's concept of reform. We agree with this idea: newcomers should participate in public discussions and defend their cause. Newcomers should not, however, adopt the current language of politicians. Greece suffers from a persistently overheated public discourse—the sober language of facts and positive law could be an important contribution.

Skordas' also cogently reflects on another central topic we did not adequately touch upon: the accountability of new administrators. His preference is for a very tight relationship of the new administrators with the EU. Newcomers, he proposes, should be held accountable only to the Commission and a special court should be established under European and Greek law. Establishing an appropriate accountability framework is indeed one of the most demanding challenges for our proposal. However, we rather see this as a shared task between EU and Greek institutions.

Angelos Chaniotis brings concrete evidence of the problem we want to address. We totally agree with the link he suggests between the lack of meritocracy and brain drain. Chaniotis further reminds us of the historical experience of the 19th century, when the birth of the Greek state and administration was defined by the competing worldviews of Greeks from within and outside the new-born state. This is an important experience that offers two lessons. Firstly, that a division of Greek officials in reformists and non-reformists would be counterproductive. On the other hand, institution-building is always (also) a battle of ideas and in this battle support for reformist ideas may also come from the outside.

A prominent issue in Chaniotis' commentary is not to give monetary incentives to diaspora Greeks to accept tasks in the reform process—i.e. higher salaries than those currently paid in Greece—because that would enhance a feeling of inequality. We see this danger, and indeed it should be definitely avoided that persons doing the same job receive different wages. At the same time, we also want to be realistic. In a world of high mobility, if we need the public sector to attract the best, we also need to offer some form of competitive alternative.

Pál Sonnevend points to a very valid concern: that our proposal could fuel a rise of populist parties in Greece who demonise Brussels as a sort of colonising power. To address this danger we stress our consensual approach. Sonnevend brings forward an

additional element on how to further legitimize EU involvement. Reform, he suggests, should be one of the central programs of a Greek Government or at least of important political parties. This would increase ownership and acceptability. In Greek society and in politics there are a lot of reformist elements. Indeed, the EU should not and cannot replace the internal powers of reform—it simply needs to support them.

Sonnevend also correctly identifies two further points that we have only broadly sketched but where a great deal of legal circumspection is needed: the early retirement of civil servants and the judiciary. Experience from Hungary and due consideration of the relevant jurisprudence of the ECtHR and the CJEU should help to master these challenges.

Luca De Lucia points to the danger of using the suggested scheme to put Greece “under administration”. Again, we think that the Greek side should be the actual owner of this proposal being convinced that it helps to gain qualified human resources, using European funds, and in times that is most needed. De Lucia’s alternative suggestions—to have a recruitment procedure that is managed directly by the Greek government or to support the Greek administration through training—does not fully convince us. Greek governments have proved rather unsuccessful in autonomously reforming the administration. It would probably be too optimistic to use more European funds hoping that this time will be different.

De Lucia raises, however, a valid point when he points to the risk that new recruits might have a “double loyalty”: to the Greek State and to its creditors which might result in unbearable tensions. What our proposal aims at is to enlist persons that are not vested in the old systems of loyalty and power. If that requires an additional bond of loyalty to EU institutions and other EU citizens (not as creditors, however, but as partners in polity), we would not reject the idea. Of course, it needs procedures to deal with conflicting demands, i.e. reasonable structures of accountability, as suggested by Achilles Skordas.

Frank Schorkopf is critical of the role of diaspora (“ex-patriat mandarins”), the involvement of the EU (“modern administrative occupation”) and he also doubts whether “Greeks abroad epitomise a Greek brain drain”. Regarding the last point, there is compelling evidence that Greeks’ exit, like that of Spaniards and Italians, does constitute a brain drain. For the former, “occupation” is perhaps a too radical critique of our suggestions. We stressed the agreement of the Greek government as an essential prerequisite for any placement. “Ex-patriat mandarins” might also sound derogatory of the well-documented transforming potential of diasporas and how social change happens. In Greek history, to take this example, the ideas of rule of law and modern institutions were imported from Europe mainly from diaspora Greeks who occupied central positions at the aftermath of the 1821 revolution. State reform is often transnationally embedded: German state reforms after 1945 provide fine examples. Franz Schorkopf’s alternative suggestion, to shut down administrative units and rebuild them from scratch, has been already tried and failed spectacularly. In 2013, the former Greek government shut down the public broadcaster, one of the worst managed parts of

the Greek public sector, claiming the intention to rebuild it from scratch. In 2017, the Greek broadcaster stands out again as a beacon of clientelism, misspent public money, and party propaganda. This is not surprising: it is very difficult to break the link between political elites dependent on the public sector and this public sector. None has the incentive to reform the other as long as the system remains in equilibrium. The Greek crisis proves that such negative equilibria can even survive seven years of recession and strict conditionality.

Maciej Taborowski makes good use of Greek institutional history by drawing lessons from the implementation of the Marshall Plan in Greece after World War II. Then as now weak institutions were a key issue. His comment on a separate approach to positions in the court system is justified. Our suggestion painted with a very broad brush and there is need to distinguish clearer between actions to support the administration and the judiciary. We also consider Taborowski's proposals to strengthen the courts sound plausible and productive.

Taborowski asks whether our proposal, even if implemented, will change anything at all due to its necessarily limited ambit. The numbers we suggest are of course indicative. But in any case, there is no practical way—and also no actual necessity—to cover a much bigger part of the administration. We believe that bringing about change in some key positions will have significant effect.

Taborowski's last point is a very strong one: we need a narrative, he suggests, to support this proposal gain social acceptancy and effectiveness. We see with this point which, in another form, has been made by Jakab and Skordas. The legitimacy reasons together with the social-justice dimensions we presented above, commenting on Sergio Dellavalle's response may support such a narrative.

Matthias Ruffert brings to the foreground the concept of trust that is indeed critical both for understanding the Greek crisis and for designing responses. The Eurozone crisis, especially its Greek part, continues to be conceived as a crisis of trust. We share his view that proposals such as declaring the Greek debt “odious” and putting the blame solely to conditionality are counterproductive. Shifting the burden to the original or the current creditors of Greece should not be used to further delay necessary adjustment. In the short term, our proposal considers this reality of less-than-optimal trust by allowing the EU to have a closer eye on how European funds destined for the necessary institution-building are spent (unlike some of our other commentators Ruffert does not see the here a danger of “occupation”). On the long term, our suggestion could be one way to rebuilt trust: strong institutions are necessary for trust. Ruffert closes with an alarming note: “no doubt there will be no fourth rescue package”, he says. His assessment should alert us to try courageous strategies and not keep postponing structural reforms hoping that next time it will become easier.

Sergio Dellavalle presents a forceful interpretation of the scheme as a help from Europeans to Europeans. His starting point is the concern of how the proposed arrangement can be legitimized. Dellavalle correctly notes that holding a Greek

passport or speaking Greek is not sufficient to counter the “outsider” critique. The “traitors from inside” are subject to no less hatred than the “foreign occupiers”, he cautions. We agree. But who is an outsider and who is an insider in the EU polity? More importantly: do Greeks that had to leave the country because of national failures and EU policies and return supported by European public funds are delegitimized “outsiders”? We do not believe so, but as Dellavalle correctly invites us to, we need to make our position clearer.

In our view, the legitimacy of EU involvement comes from a combination of factors: firstly, from the need to compensate for the political imperfections caused in Greek politics by the EU-supported Greeks’ exit; secondly, by the spill-over effect that weak institutions have for the rest of the Union; thirdly, by the fact that European funds will be used; and fourthly, but the agreement of the Greek government that will always be required. At the end, our proposal is an expression of solidarity between the members of the European polity organized on a supranational basis. In this we are totally convinced from the approach Dellavalle suggests: “Greek citizens would get support as European citizens from all other European citizens.”

One final remark Dellavalle makes deserves additional attention. He cautions against a too “formalistic” approach that neglects the social dimension of the Greek problem. As he aptly notes, people see “their perspective for the future – as well as for the future of their children – almost fading away in the dust of despair.” We agree. There is a critical social-justice dimension in our proposal. Weak public institutions first and foremost harm the disadvantaged. It is the poorest that suffer the most when incompetent party clients become heads of public hospitals instead of health experts; it is the less privileged that are disadvantaged when public universities cannot hire the lecturers they direly need; it is those who need justice more who cannot afford a mismanaged judicial system. Strengthening institutions is a core matter of social justice.

Stelios Koutnatzis raises significant points of Greek Constitutional law, like the requirement that all appointments to the Greek administration shall be subject to the control of an independent authority: the Supreme Council for Civil Personnel Selection. As he points out, however, this does not cover the “selection for key managerial positions within public administration”, which are the positions we mostly have in mind. In any case, arrangements could also be developed that establish cooperation schemes between the Supreme Council for Civil Personnel Selection and the EU. His second point is that distinct payment arrangements of personnel selected under the proposed scheme would run the risk of violating the constitutional requirement of equal pay for work of equal value. We certainly do not have in mind a situation where officials sitting next to each other and doing the same job would receive different payment. We were mainly thinking about managerial positions, like heads of public corporations, where the risk of violating the constitutional requirement of equal pay should be less of an issue.

Koutnatzis also points that, any preference, direct or indirect, to candidates from the Greek diaspora, could contravene the equality of Greek citizens in terms of eligibility to

public service (Art. 4 par. 4 Const.). As noted above, our proposal seeks to offer a scheme inviting diaspora Greeks to return and to join forces with qualified people in the country. It is not meant to offer diaspora Greeks any direct or indirect privilege in the selection process. Merit should be the only criterion of selection, in line with the case-law of the Greek Council of State cited by Koutnatzis. Probably we should have made this point clearer in our original suggestion.

Ultimately, Koutnatzis says, “the selection of public officials is intrinsically related with the core of state sovereignty.” We beg to differ. Firstly, state sovereignty is no conclusive argument any more, but is to be balanced with other principles. Secondly, the final act of appointment would always remain at the hands of the Greek government. Thirdly, practice shows that EU involvement in appointments to national organs is already happening. Officials appointed by the Commission already assume tasks within the Greek administration, including within the Hellenic Corporation of Assets & Participations (Article 191 (2) b of L. 4389/2016), the Hellenic Financial Stability Fund (Article 4 A (1) of L. 3864/2010)—where appointments of members of the General Council and of the Executive Board even require the prior agreement of the Euro Working Group—and the Hellenic Statistical Authority (Article 4 1 (b) and 13 (3) c of L. 3832/2010).



While you are here...

If you enjoyed reading this post – would you consider supporting our work? Just click [here](#). Thanks!

All the best, *Max Steinbeis*

SUGGESTED CITATION von Bogdandy, Armin; Ioannidis, Michael: *New Forces for the Greek State: Comments on Comments*, *VerfBlog*, 2017/3/19, <https://verfassungsblog.de/new-forces-for-the-greek-state-comments-on-comments/>, DOI: <https://dx.doi.org/10.17176/20170319-121720>.
LICENSED UNDER CC BY NC ND