

Retrogression Disguised as ‘Innovation’: The Case of the ‘Executive State’ in Greece

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Abstract: It has been argued that the recently established model of the ‘Executive State’ in Greece has the potential to enhance the coordinated and effective action of the administration. The question is: to what end and for whose benefit? From Carl Schmitt’s call for a strong state to save the German economy in 1932 to New Public Management and the new Executive State, there is a thread that connects various theoretical views on the role of the state in dealing with crisis situations. This chapter will discuss elements of innovation in administration in the context of the last decade of socio-political developments in Greece: from the crisis legislation that has been introduced through the form of Memorandums of Understanding, to the legislative innovation of the ‘Executive State’ introduced with Act 4622/2019. These forms of policymaking will be approached in the light of the theoretical work on ‘authoritarian liberalism’. This concept denotes a critical view of the role of modern states in a capitalist economy, which requires a combination of strong central administrations, which are capable of facilitating conditions of profitability for private initiative, and depoliticized processes. Approaching law and administration together with issues of political economy necessitates a focus on the structural function of the administrative state in mediating the contradictions of a capitalist economy. The ‘Executive State’ will therefore be approached as an attempt to institutionalize the model of crisis law-making so as to accommodate the content of law-making, which continues the restriction of political and social rights.

I. Introduction

Whether one accepts that crisis situations, no matter how devastating, can also enhance innovative thinking and the application of innovative solutions to long-standing problems ultimately rests on what one understands by ‘crisis’ and ‘innovative solutions’. In the context of the Greek sovereign debt crisis, several ‘innovative solutions’ were introduced to deal with ‘long-standing problems’ of the economy and public administration.

This chapter critically assesses these solutions on the basis of a heterodox analysis and understanding of the crisis. It will focus on Act 4622/2019

‘on the Executive State’,¹ which was enacted in July 2019 by the Hellenic Parliament and constituted the legislative measure that set the scene for the Kyriakos Mitsotakis administration. It could be argued that this reform was conducted after Greece exited the Memorandum programmes and therefore does not constitute an immediate result of the crisis. We believe differently. This paper will show the origins of this Act in Memorandum legislation. It will refer to respective reports produced during the crisis which called for administrative reform. But more importantly, it will assess this reform as an essential aspect of the authoritarian turn.

The evaluation of the Act’s innovativeness relies on the interpretation of the crisis. As we shall shortly see, mainstream interpretations assess the Greek sovereign debt crisis as being caused by endogenous factors. On the contrary, heterodox interpretations, which are based on critical political economy, assess economic crises as structural characteristics of capitalist societies. ‘Authoritarian statism’² and ‘authoritarian liberalism’³ are two of the terms that have been used to describe the authoritarian tendencies inherent in liberal institutional forms, which are awakened in the emergence of crisis situations. This chapter will address the literature addressing these terms in an attempt to trace the origins of the ‘Executive State’ in earlier historical attempts of administrative reform which followed an economic crisis.

We aim to focus on the issues of a concentration of power and depoliticization of public administration, understood in the context of such an authoritarian turn. From the ordoliberal models conceived in interwar Germany to deal with the consequences of the Great Depression, to the development of New Public Management in the aftermath of the first major capitalist crisis after World War II, authoritarian restructuring of institu-

1 We have decided to translate the word ‘epitelikos’ (επιτελικός) into ‘executive’, thereby using the term ‘executive state’ to convey the meaning of the term ‘epiteliko kratos’ (επιτελικό κράτος). The translation of this term is not a straightforward process as the term ‘epitelikos’ (as well as the term ‘executive’) can be used to describe functions of a strategic nature, as well as functions that execute policies developed and conceived by strategic institutions.

2 Nicos Poulantzas, *State, Power, Socialism* (Verso 2000) 219.

3 Indicatively see Agustín José Menéndez, ‘Special Section: Herman Heller’s Authoritarian Liberalism’ (2015) 21 *European Law Journal* 285; Eva Nanopoulos and Fotis Vergis, *The Crisis behind the Euro-Crisis: The Eurocrisis as a Multidimensional Systemic Crisis of the EU* (Cambridge UP 2019); Helena Alviar García and Günter Frankenberg, *Authoritarian Constitutionalism: Comparative Analysis and Critique* (Edward Elgar Publishing 2019).

tional forms, such as that introduced in Greece in 2019, has traditionally followed crisis situations. Such processes tend to involve the institutional concentration of power, as well as the depoliticization of policymaking; in other words the presentation of issues of high policy as technical and better resolved by experts rather than the people themselves. In this light, we shall argue that administrative reform in Greece can also be understood as the manifestation of this authoritarian tendency in administrative law and processes. A genealogy of the Executive State based on the concept of authoritarian liberalism will reveal this reform as an attempt to normalize the exceptional decision-making and regulatory processes that were used during the Greek sovereign debt crisis.

Based on the above, this chapter is structured as follows. The first section will compare two interpretation of the Greek sovereign debt crisis: a mainstream and a heterodox interpretation. If the dominant interpretation assesses the crisis as being caused by endemic factors and prescribed for solutions in the areas of labour and administrative policy, a heterodox interpretation challenges the technical assessment and solutions of the mainstream narrative and shows a more sinister and politically oriented content. The next section will analyse the main changes introduced with Act 4622/2019. It will examine its concentrationist structure and assess its main effects, focusing on the centralization of power and the depoliticization of the creation of public policy. The final section will complete the argument by setting out a genealogy of the Executive State. The aim is to present the recent administrative reform in Greece as a manifestation of a generalized tendency towards authoritarian solutions to crisis situations. Rather than innovative, the Act will be shown as being inspired by retrogressive aspects of authoritarian thought from the last century.

II. Competing interpretations of crisis

The diagnosis always determines what the remedy is for a disease. In the case of the Greek financial crisis, the form and content of the measures promoted to deal with it depended on the structure of the crisis itself. This section will compare the mainstream diagnosis, and the 'innovative' solutions it prescribes, to a heterodox diagnosis which challenges the innovativeness of such solutions.

To begin with, mainstream public media, as well as academic literature, interpreted the crisis as a 'sovereign debt crisis'.⁴ The Eurozone crisis in general, as manifested in the collapse of the economies of the European South, was attributed to the weaknesses in the governance of these specific countries. All these interpretations focused on reasons that are endogenous to specific Member States: administrative reasons (systems which foster political clientelism, and weak control of public expenditure) and economic reasons (low level of competitiveness, trade and investment imbalances and fiscal mismanagement). According to this narrative, Member States which had failed to implement measures to improve their competitiveness could not keep up with strong and growing economies and resorted to heavy borrowing, therefore increasing their sovereign debt.

Consequently, two levels of necessary reform were identified. On the one hand, the market, and more specifically the labour market, and on the other, the state and more specifically the body of administrative law. As for the former, the recipe to enhance the competitiveness of the Greek economy was found in the EU Commission's 1993 White Paper on 'Growth, Competitiveness, and Employment'.⁵ The guiding principle that would restore its competitiveness and lead the Greek economy to growth was that of 'flexibility'. 'Flexibility' was supposed to counter unemployment, make the labour market accessible to several parts of the population and thereby drive down the cost of labour and enhance the competitiveness of the Greek economy. In turn, this would attract investment from national and transnational capital, thereby leading to growth.

The legal form for introducing this principle and affecting this radical change of coordinates of the Greek economy was commensurate to this goal. The necessary measures were introduced through the legal mechanism of Memorandums of Understanding. These have traditionally been integral to the IMF's structural adjustment programmes which have introduced aggressive neoliberal policies in several economies around the

4 Indicatively, see Kevin Featherstone, 'The Greek Sovereign Debt Crisis and EMU: A Failing State in a Skewed Regime' (2011) 49 *Journal of Common Market Studies* 193; George Kouretas and Prodromos Vlamis, 'The Greek Crisis: Causes and Implications' (2010) 57 *Panoeconomicus* 391; Nikolas Zahariadis, 'Greece's Debt Crisis: A National Tragedy of European Proportions' (2010) 21 *Mediterranean Quarterly* 38.

5 Commission, 'White paper on growth, competitiveness, and employment' COM (93) 700.

world.⁶ Such programmes were used in the context of the Eurozone crisis to introduce far-reaching reforms in several countries (Greece, Ireland, Spain, Cyprus, Portugal, etc.) as a necessary counterpart to their bail-out agreements.⁷ The form of the Memorandum was crucial because it combined two elements which pushed with these unpopular measures irresistible force through the Greek legislature without substantive public discussion or popular contestation: i) the urgency of dealing with the crisis and avoiding default, and ii) the technical expertise required to deal with this.

The democratic processes were bypassed in this justification. Indeed, the Memorandums applied in Greece consist of lengthy documents which contain a list of measures aimed at radically reorienting the Greek economy and encompassing the whole spectrum of public policy-making: from fiscal policy and regulation of the financial sector, to privatizations, labour market reforms and reformation of the educational and judicial systems. Importantly, the Hellenic Parliament ratified all three Memorandums with the use of the emergency parliamentary procedure, which did not allow for substantive public consultation over the reforms.⁸

Yet, a key area of reform was not addressed through Memorandum legislation. Despite several mentions of its necessity in these documents and several draft bills and reports being produced during the crisis, the reform of public administration was conducted via an act of parliament several years after the final Memorandum was agreed. Nevertheless, administrative reform had emerged as one of the important requirements for dealing with the crisis by addressing its endemic causes since the beginning of the crisis. The solutions to the perennial problems of the Greek administration were drawn out in a report prepared by the Organization for Economic Cooperation and Development (OECD).

In a 2011 review of Greece's central administration, the OECD arrived at a series of general recommendations to address the weaknesses of Greek

6 Chelsea Brown, 'Democracy's Friend or Foe? The Effects of Recent IMF Conditional Lending in Latin America' (2009) 30 *International Political Science Review* 431.

7 Moisés J Schwartz and Shinji Takagi, *Background Papers on The IMF and the Crises in Greece, Ireland, and Portugal* (International Monetary Fund 2017).

8 Art 109 of the Standing Orders of the Greek Parliament provides that 'if a bill is characterized as urgent, it is processed and examined in one sitting', while 'the debate and passage of an urgent bill is concluded in one meeting which cannot last more than ten hours'. Furthermore, the process of ratifying an Act by the parliament is characterized as *interna corporis* and a therefore result is not subject to judicial review.

administration which caused the crisis.⁹ The main shortcomings of the Greek administrative system listed in the Report include: i) the lack of a strong and unified ‘Governance Centre’ equipped with the power to set ‘strategic priorities’, coordinate key ministries and ensure that government policies are effectively implemented;¹⁰ ii) the lack of adequate structures for inter-ministerial policy coordination, management and supervision of public policies;¹¹ and iii) the exhaustive definition of administrative responsibilities by law or by executive decree, as a result of which the capacity of ministers to take undertake key initiatives is hindered.¹²

Administrative reform to create a ‘steering state’ therefore appeared as a necessity and the crisis provided an opportunity for this modernization process to take place. To address the above shortcomings, the OECD Report proceeded with a series of ‘technical’ recommendations, including: i) the reinforcement of an Executive Centre of governance responsible for the coordination and strategic planning of public policy; ii) the accountability of this Executive Governance Centre for progress in the unified-horizontal policies in all government sectors; iii) the creation of a stable structure, responsible for inter-ministerial coordination, as well as strategic units in each ministerial department; and iv) the strict separation between ‘strategic’ and ‘executive’ functions, the classification of the former into ‘policy fields’ in order to map the internal division of labour in the government, and the transfer of the latter to decentralized and self-governing bodies.¹³

The ‘innovative’ goal was to create a strong Executive Centre of coordination and implementation of public policy. Yet, there is another possible interpretation of this focus on administrative change; one that sees administrative reform as a necessity not in order to address the internal causes that led to the crisis but to ensure continuity of the implementation of political – rather than technical – measures that were introduced as a result of the

9 Organization for Economic Cooperation and Development (OECD), *OECD Public Governance Reviews – Greece: Review of the Central Administration* (OECD Publishing 2012).

10 *ibid* 78–80.

11 *ibid* 47, 96.

12 *ibid* 55.

13 *ibid* 96, 101, 107, 185. See also Papatolias, *Theory and Practice of the Executive State* (in Greek, Sakkoulas 2021) 127–129.

crisis.¹⁴ Such an interpretation assesses the process of administrative reform as part of a generalized strategy to enhance those characteristics of the state that would allow it to more effectively proceed with the implementation of unpopular measures and secure the reproduction of conditions which may be favourable for capitalist investment but are, consequently, devastating for the working and living conditions of the vast majority of the population. This interpretation of the remedy is based on a different diagnosis of the crisis altogether. From a heterodox perspective, the crisis may be understood as not something exceptional but as a structural characteristic of a capitalist society.

From the point of view of critical political economy, crises are cyclical in capitalism.¹⁵ They provide evidence of the structural contradictions and unsustainability of the capitalist mode of production. A closer look into the economic laws of capitalism might provide us with an alternative interpretation of the measures introduced to reform the labour market, as well as the administrative state, in the context of the Greek crisis. Critical political economy emphasizes the law of the tendency of the rate of profit to fall as key to understanding the recurring nature of crises in capitalism.¹⁶ According to this law, over time, the value of the means of production (machinery, offices and other equipment) will rise with respect to the value of labour (the cost of employing a labour force). However, since value (and profit) is only created by labour, then, over time, the value produced by labour will decline with respect to the cost of investing in means of production and labour. Consequently, the rate of profit will tend to fall.¹⁷

Nevertheless, this law appears as a tendency because of the operation of various countertendencies. These include the intensification of the exploitation of labour, the depression of wages below the value of labour, the reduction in the value of constant capital, foreign trade, etc.¹⁸ The analytic-

14 Stella Ladi, 'Austerity Politics and Administrative Reform: The Eurozone Crisis and Its Impact upon Greek Public Administration' (2014) 12 *Comparative European Politics* 184.

15 See for instance Paul Mattick Jr, *Economic Crisis and Crisis Theory* (Routledge 1981) and Simon Clarke, *Marx's Theory of Crisis* (Palgrave Macmillan 1993).

16 Guglielmo Carchedi and Michael Roberts (eds), *World in Crisis: A Global Analysis of Marx's Law of Profitability* (Haymarket Books 2018).

17 See Michael Roberts, 'The Marxist theory of economic crises in capitalism – part one' (*Michael Roberts Blog*, 27 December 2015) ><https://thenextrecession.wordpress.com/2015/12/27/the-marxist-theory-of-economic-crises-in-capitalism-part-one/>> accessed 19 March 2024.

18 Karl Marx, *Capital: Volume 3* (Penguin 1992) 338–348.

al value of this law in explaining the prescribed solutions in a capitalist crisis can easily be seen. If reluctance to invest is not a result of a lack of effective demand but of low expected profitability, then restoring conditions of profitability becomes a necessity. And if the latter can be done primarily through increasing the exploitation of labour, then the deregulation of the labour market and its reorganization based on the principle of flexibility assumes a prominent role in the list of measures to remedy the crisis.

Indeed, flexibility may be nominally targeted at countering unemployment, yet the objective of reducing unemployment in reality reflects the true goal of reducing labour costs through the intensified exploitation of a wider labour force.¹⁹ Part-time, temporary relations (as well as the introduction of educational schemes for the unemployed) favour the inclusion of previously excluded elements in the workforce, so that the abundance of supply and the increase in the exploitation of workers reduce labour costs. Therefore, flexibility translates into measures which promote part-time and temporary contracts and performance-related pay, through the elimination of collective bargaining and the facilitation of dismissals during a period of recession.²⁰ Therefore, according to this interpretation, 'flexibility' stands for the deregulation of labour law and the consequent worsening of working and living conditions.

But what does the strong, 'steering', executive state stand for? The above heterodox approach to capitalist institutional structures recognizes the state's integral role in the process of capitalist production and reproduction. The state is conceived 'not as a neutral instrument but as a form-determined set of institutions within the world market' which 'by virtue of their structural separation from 'the economy' under capitalism, are integral

19 Byasdeb Dasgupta, 'Financialization, Labour Market Flexibility, Global Crisis and New Imperialism – A Marxist Perspective' (2013) Fondation Maison des sciences de l'homme Working Paper Series no 34 June 2013 <<https://shs.hal.science/halshs-00840831/document>> accessed 19 March 2024.

20 Apostolos Dedoussopoulos and others, 'Assessing the impact of the memoranda on Greek labour market and labour relations' (2013) International Labour Office: Working Paper n 53 <www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_232796.pdf> accessed 19 March 2024; Aristea Koukiadaki and Damian Grimshaw, 'Evaluating the effects of the structural labour market reforms on collective bargaining in Greece' (2016) International Labour Office: Conditions of Work and Employment Series no 85 <www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_538161.pdf> accessed 19 March 2024.

to the crisis-ridden process of capital accumulation'.²¹ Crudely put, the 'purpose of capital is to accumulate extracted surplus value, and the state is the political form of that purpose' as it ensures the cohesion, organization, integration and reproduction of the capitalist economy.²²

The struggle of the toiling classes and popular strata for better working and living conditions, which has historically found its legal expression in labour law and welfare state provisions, contradicts the goal of creating conditions for the intensified exploitation of labour. Therefore, the goal of restoring conditions of profitability as a way out of the capitalist crisis translates into unpopular measures which repeal labour law provisions, deregulate the labour market and increase exploitation. This goal requires a process of focused legislative intervention with the aim of enhancing the state mechanism's resistance to popular pressure in order to ensure the effective and efficient implementation of the economic measures. In other words, the state must become impenetrable by popular forces to ensure continuity in the implementation of measures that are favourable to capital.

We argue that the administrative reform of 2019 in Greece, which assumed the form of an act of parliament on the 'Executive State', should be approached in this light as an attempt to institutionalize the model of crisis law-making so as to accommodate a content of law-making which continues the restriction of political and social rights. As such, there is hardly anything innovative about this reform, which is inspired by earlier historical attempts to depoliticize decision-making processes and policy creation. Before we develop this argument, let us take a closer look at the provisions of the Act.

21 Chris O'Kane, 'Towards a New State Theory Debate' (*Legal Form*, 24 May 2019) <<https://legalfarm.blog/2019/05/24/towards-a-new-state-theory-debate-chris-okane/>> accessed 19 March 2024.

22 Werner Bonefeld, *Critical Theory and the Critique of Political Economy: On Subversion and Negative Reason* (Bloomsbury 2011) 182, 168. According to these theories of the state, the crisis-ridden pattern of capital accumulation necessitates a constant reorganization of social relations of production and exchange. This process, in turn, gives rise to new functions and forms of the state. See Ben Fine and Laurence Harris, 'State Expenditure in Advanced Capitalism: A Critique' (1976) 98 *New Left Review* 97, 99; Simon Clarke, 'The State Debate' in Clarke (ed), *The State Debate* (Palgrave Macmillan 1991) 14.

III. 'Innovative' administrative reform in Greece

Several symposiums, reports and even a bill for administrative reform were produced in Greece during the crisis.²³ These included an 'ambitious and far-reaching proposal to use European help to bring new forces, as well as the Greek diaspora into the reform process'.²⁴ Yet the actual legislative measure to introduce the reform came with the appointment of the New Democracy government, following the general election of 2019. The bill was one of the first that the new government introduced in parliament and fulfilled as one of the promises made in the party's manifesto to create a 'modern and effective state'.²⁵ According to the minister responsible for introducing the bill to parliament, Giorgos Gerapetritis,²⁶ this legislative measure is structured around five main thematic objectives: i) the organization of political normality, ii) the introduction of programmatic governance and monitoring of governmental work, iii) the distinction between political and service administration, iv) the assurance of wide-scale transparency, and v) adherence to the principles of 'regulatory governance' and 'good legislation'.²⁷

The above may appear to be standard characteristics of modern states operating in the context of geopolitical and socio-economic uncertainty, but in the context of crisis-ridden Greece and its traditional problems of maladministration and clientelism, such a reform takes on an innovative nature. For reasons of brevity and analytical clarity, we shall focus on provisions concerning the three main changes introduced by the Act, namely the introduction of a new method of planning and monitoring governmental work, the establishment of the office of the Presidency of Government, and the distinction between political and service administration.

23 See Papatolias (n 13) 152–196.

24 See the symposium organized by Armin von Bogdandy and Michael Ioannidis on 'New Forces for Greek State Reform'; Armin von Bogdandy and Michael Ioannidis, 'New Forces for Greek State Reform' (*Verfassungsblog*, 9 March 2017) <<https://verfassungsblog.de/new-forces-for-greek-state-reform/>> accessed 19 March 2024.

25 New Democracy, *Strong Development, Self-Reliant Greece: Our Plan*, Party Manifesto 2019 <https://nd.gr/sites/ndmain/files/docs/nd_programa_web.pdf> accessed 19 March 2024.

26 Gerapetritis, 'The main axes of the Bill on the Executive State'; see note n 5 above.

27 Notably, see Matthildi Chatzipanagiotou, *The Executive State: Constitutional Arrangement and Consequences of Act 622/2019* (in Greek, Nomiki Vilvithiki 2021); Paraskevi Dramalioti, *The Executive State: Regulatory Coherence and Coordination in the Centre of Governance* (Papazisis 2021); Dimitris Ntzanatos, *Executive State: Prerequisite to Overcome Decay* (Kastaniotis 2020).

The first innovative element applied to policy-making procedures. The new method of planning and monitoring of governmental work is based on a new top-down principle of public policy production. The strategic nature of this approach involves the production of a coherent operational plan for governmental policy-making, through the partnership of central structures of government and the ministries, which would then be implemented by individual ministries. The responsibility for the operation of this planning and monitoring system is assigned to a new office, the aforementioned Presidency of the Government, which subsumes all the different offices and secretariats which were previously directly subordinated to the prime minister.²⁸ Article 49 provides that the annual planning of governmental activity is reflected in the Consolidated Plan of Government Policy. This Plan is drawn up by the Presidency of the Government and reflects the government's priorities (goals, strategic options, policy axes, key actions), as well as the necessary legislative or regulatory measures for their actualization.²⁹

We can already see that the Act addresses the demands for optimal, technocratic, and depoliticizing regulatory processes. The emphasis on the procedural and programmatic nature of the governmental function appears as the 'rational' and technocratic reaction to the general pathologies which affected the effectiveness of governmental work during the crisis.³⁰ The drafters of the bill systematically emphasized that, in modern parliamentary systems, it is important to evaluate the agreement of legislative initiatives with the governmental programme in a centralized manner at the highest

28 *ibid* 201.

29 As set out in Art 52, the process of planning the following year's governmental work starts every April, with the Council of Ministers defining the main government priorities by policy area. Ministries are notified by May to start drafting the necessary actions, which should be sent for approval by mid-July to the Presidency of the Government which then proceeds to check the compatibility of the Draft Action Plans with the government's priorities and fiscal goals and finalizes its assessments in the Consolidated Draft Government Policy. The Draft Action Plans and the Consolidated Draft Government Policy are submitted for approval to the Annual Planning Cabinet each September, whereas the Consolidated Plan of Government Policy and the final Action Plans are approved by the Council of Ministers by the end of December, when they are made public.

30 Giorgos Gerapetritis, 'The Economic Crisis as Deregulating Factor of the Legal Sources' Hierarchy' in Antonis Argyros (ed), *Studies on the Memorandum* (Athens Bar Association 2013) 130.

possible level.³¹ The prime minister himself emphasized the pursuit of the unified and coordinated implementation of public policies through a strong political centre, when, during the discussion on the bill in parliament, he spoke of the modern and progressive demand for a 'strong central authority' as opposed to a 'fragmented government which decides without acting'.³² The ordoliberal connotations of this statement are undeniable.

As for the institutional forms of policy-making and coordination, the innovativeness of the Act primarily involves the establishment of a new office, namely the Presidency of the Government. This was designed to enhance coordination and cohesion, monitoring and continuity, as well as efficiency and effectiveness in implementing the government's programme. Understandably, the achievement of these goals involves a considerable amount of concentration and centralization of power. The Presidency of the Government, which reports directly to the prime minister, is the main pillar of coordination and strategic planning, i.e. the quintessence of the 'Executive State'. It is constituted as an Executive public office, with the task of continuously monitoring the progress of governmental work and evaluating effectiveness and efficiency regarding the goals set.³³

The Presidency of the Government consists of five distinct secretariats: i) the General Secretariat of the Prime Minister, ii) the General Secretariat for Legal and Parliamentary Affairs iii) the General Secretariat for the Coordination of Internal Policies, iv) the General Secretariat for the Coordination of Economic and Developmental Policies, and v) the General Secretariat of Communication and Information.³⁴ With regard to enhancing the executive, i.e. strategic characteristics of public administration, our interest rests with the two General Secretariats of Coordination and primarily on the General Secretariat of Legal and Parliamentary Affairs, which, in particular, conducts the final processing of bills before they are submitted to the parliament.³⁵ Therefore, the General Secretariat of Legal and Parliamentary Affairs has the main responsibility of coordinating the law-making process.³⁶ Any arguments against the disproportionate concen-

31 Stylianos-Ioannis G Koutnatzis, 'How and Why we Legislate? Executive State in Action' *TA NEA* (in Greek, Athens, 8 February 2020).

32 Kyriakos Mitsotakis, *Parliamentary Debate of Tuesday 6 August 2019* (Hellenic Parliament 2019), 1845.

33 Art 22 Act 4622/2019.

34 Art 21 Act 4622/2019.

35 Papatolias (n 13) 208–210.

36 Koutnatzis (n 31).

tration of powers within this body were countered by the minister though the invocation of the comparative context and the point that legislation in all advanced systems is produced by a central governmental unit and not by individual ministries.³⁷ Such governmental units have the capacity to utilize the findings of a very 'special science', i.e. the 'legal technique', which is necessary to combat poor legislative drafting.³⁸

Another institutional innovation introduced with this Act was the establishment of two governmental councils. These councils are of a constant and permanent nature and have extensive powers which they exercise within the framework of the general guidelines of governmental policy.³⁹ The councils are staffed and presided over by the prime minister⁴⁰ and their scope covers two core functions of government: i) economic policy by the Governmental Council on Economic Policy and ii) national security by the Governmental Council on National Security. The latter has far-reaching powers, as it is responsible for the national security strategy, the structure of the armed forces, the assessment of critical situations, the deployment of armed forces in the context of international commitments, as well as for authorizing the prime minister to declare war. Meanwhile, the Governmental Council of Economic Policy is responsible for the formulation of inter-ministerial policies and decision-making on all matters relating to the country's economic and developmental policy (including fiscal issues, public and private investments, market regulation and control, competition issues, issues of public debt, financial affairs and participation in collective European and international relevant bodies). As such, it appears as a crucial institutional formation to ensure continuity in the implementation of measures in line with the Greek crisis legislation.

Last but not least, the Act introduced an absolute distinction for the first time between political administration and service administration (or *stricto sensu* the civil service), thereby enhancing the process of depoliticizing public policy production and implementation.⁴¹ The biggest change to that direction was the introduction of the office of 'Service Secretary'. Article 36 provided for the establishment of permanent service secretaries, reporting

37 see (n 32).

38 Giorgos Gerapetritis, *Introduction to the Manual of Lawmaking Methodology* (Presidency of Government: General Secretariat for Legal and Parliamentary Affairs 2020).

39 Art 7(1) Act 4622/2019.

40 Art 7(2) and 7(3) Act 4622/2019.

41 Papatolias (n 13) 215.

directly to ministers, in every department.⁴² Service secretaries, as heads of all services tasked with the management of human and financial resources, are responsible for ensuring the smooth and efficient administrative and financial operation of their agencies. According to the Justification Report accompanying the bill, the main purpose of this measure was to achieve the ‘actual departure of the ministries from administrative and economic functions’, as well as the disentanglement of the political sphere from the administrative sphere in purely administrative matters.⁴³

It is obvious that this measure, as well as the reasoning behind it, assumes a problematic clear-cut distinction between political and administrative matters. It is also clear that the process of departure is closely linked to and constitutes an essential aspect of the process of depoliticization. In that sense, it responds to the essential requirements of the Memorandum legislation. The explicit reference to the strategy of depoliticization in the Act which ratified the Third Memorandum (4336/2015) seems to support this alternative interpretation. Indeed, in a distinct subheading under the title ‘For a Modern State and a Modern Public Administration’, there is an extensive description of a programme of modernizing Greek administration in close collaboration with the European Commission, towards ‘building its capacity’ and ‘depoliticizing’ it. The key elements of this strategy include the reorganization of administrative structures, the rationalization of administrative processes, the optimization of human resources, and the strengthening of transparency and accountability.⁴⁴

The special reference to the ‘dissociation of technical implementation from political decisions’, which constitutes the ‘quintessence’ of the depoliticization strategy, reveals the concern and strong demand of the lenders to transfer certain functions that are critical to the achievement of fiscal goals from the structures of central administration (ministry) to quasi-independent bodies, where they would not be subject to direct political control by the ministers.⁴⁵ In this light, the process of administrative reform in Greece can be understood as part of a generalized strategy to enhance those characteristics of the state that would allow it to more effectively proceed with the implementation of unpopular measures and secure the reproduction of conditions which may be favourable for capitalist investment but

42 Art 36 Act 4622/2019.

43 See Justification Report of Act 4622/2019.

44 See Art 3, part 5 of Act 4633/2015.

45 Papatolias (n 13) 134–135.

are, consequently, simultaneously devastating for the working and living conditions of the vast majority of the population.

These measures may appear more or less rational, technical and non-controversial from a perspective that accepts the dominant interpretation of the crisis as arising for reasons that are endogenous to Greece. However, a more critical review of the reform and the context in which it took place reveals it as an attempt to normalize the form and content of crisis law-making. The introduction of concentrationist structures and the enhancement of the depoliticizing processes sought with this Act were meant to ensure the 'continuity of the state', as well as the unhindered promotion of a controversial legislative agenda, which took care not to jeopardize the structural reforms of the past decade and introduced a series of new unpopular measures.

A careful look at some of the Acts enacted by the Mitsotakis administration enhances this critical interpretation. Reference can be made, for instance, to Act 4808/2021 which essentially provided for the abolition of the eight-hour working day, the initiation of unpaid work and a fifty-hour working week, by introducing the tool of 'work time regulation' to enable employers to impose a ten-hour working-day through individual 'agreements'.⁴⁶ Further deregulation of labour relations was accompanied by measures that further restricted the political right to protest. Indeed, Act 4703/2020 enables the prohibition of a planned public assembly or procession if it poses a risk to public safety or serious disruption to the socio-economic life of a certain area.⁴⁷ The Act's provisions give the police an extremely broad amount of discretion to impose restrictions on protests and can effectively be used as legal basis for repressing social struggles. Furthermore, the Act brought back to legal reality the possibility of criminalizing the spread of radical ideas through the establishment of a 'Violence Prevention Directorate', thereby enhancing the coercive potential of the state apparatus in managing social unrest.⁴⁸

IV. Innovative or retrogressive?

The characterization of the recent administrative reform in Greece as innovative ultimately depends on the interpretation of the crisis. If the dom-

46 Art 58 Act 4808/2021.

47 Art 7 Act 4703/2021.

48 Art 19 Act 4703/2021.

inant interpretation of the crisis as being caused by endogenous factors, which, with regard to public administration, centre around the lack of mechanisms of coordination and monitoring of the production and effective implementation of public policy, is accepted, then the Act on the Executive State is a beacon of innovation. Yet, heterodox approaches to crises, which recognize them as structural, recurring phenomena of capitalist societies, point towards a genealogy of administrative reforms and state models that share several characteristics with the Greek Executive state, thereby revealing the latter as not necessarily innovative and quite possibly retrogressive. Let us elaborate.

A genealogy of the idea of the Executive state reveals a tendency towards authoritarian forms of state administration following crisis situations. The origins of the Executive state can be traced back to the last days of the Weimar Republic and the elaboration of ordoliberal ideas about the relationship between the state and the economy. Hit by the global capitalist crisis, the German economy had to revert to the extraction of absolute surplus value (i.e. the intensification of exploitation by increasing the number of working hours and reducing real wages) so as not to spiral downwards into an inescapable crisis. German capital needed to break out of the falling rate of profit by the only means in existence which depended neither on other capitalist powers nor on the world market, i.e. the forced increase in the rate of surplus value by slashing the workers' wages.⁴⁹

But the aggressive policies needed to achieve this systematic reduction of wages involved a sustained attack on workers' rights which were safeguarded in the Weimar Constitution. The Weimar-welfare form could not accommodate the new conditions of intensified exploitation. New authoritarian and depoliticized processes of policymaking were necessary. An example of such authoritarian solutions was the one advocated by Carl Schmitt in his 1933 essay 'A Strong State and Sound Economics'.⁵⁰ There,

49 Alfred Sohn-Rehtel, *Economy and Class Structure of German Fascism* (Process Press 1987), 89.

50 This essay was based on a speech he presented to a prominent organization of German industrialists, the Langnamverein. See Carl Schmitt, 'Starker Staat und gesunde Wirtschaft: Ein Vortrag vor Wirtschaftsführern' (1933) 14(2) *Volk und Reich* 89–90; Carl Schmitt, *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954* (Duncker & Humblot 1958) 'Machtpositionen des modernen Staates' (1933) 371. A translation is found in Renato Cristi, *Carl Schmitt and Authoritarian Liberalism* (Wales UP 1998) 212. According to Franz Neumann, a similar model was formulated by Vilfredo Pareto, who espoused political authoritarianism and economic liberalism and who

he called for a 'rollback of the state [in the economy] to a natural and correct amount'.⁵¹ Schmitt's theoretical model, which sought to redefine the relationship between the state and the economy, contained ideas that would be adopted by the ordoliberal tradition, the Nazi administration, as well as post-war neoliberal thought. In the final days of the Weimar Republic, Schmitt set out a concrete political programme which involved the strengthening of the state for the purpose of 'healing' the economy.

Schmitt's authoritarian model, captured in the concept of the 'qualitative total state', would ensure conditions for enhanced profitability of capital through intensified exploitation of labour and extraction of absolute surplus value,⁵² by efficiently crushing the 'internal enemy', while leaving the planning of the economy to private interest. The 'qualitative total state' had to replace its 'quantitative' counterpart, a weak, social-democratic interventionist state. The capitalist economy should be 'depoliticized' and 'self-administered', meaning that 'economic leaders', owners and managers, had to be given substantial autonomy in their industries and factories, and they had to be freed from social-democratic forms of regulation. It is interesting to note that, among the elements that Schmitt counted as institutional preconditions for a strong state, we find a 'pure' administrative apparatus that is entirely independent of party politics – in other words, strict separation between political and service administration.⁵³

This theoretical model, although hardly mainstream, was rather influential for mainstream neoliberal thinkers like Hayek.⁵⁴ A prominent neoliberal economist, Alexander Rüstow, did not hesitate to confirm the 'liberal ancestry' of Schmitt's conception of the 'qualitative total state'.⁵⁵ The term 'authoritarian liberalism' was introduced by Herman Heller in 1932 to describe the inherent authoritarian tendencies of the liberal forms and tradition.⁵⁶ In contrast with *laissez-faire* liberalism, authoritarian liberalism

influenced Mussolini's early economic policies. See Franz Neumann, *Behemoth: The Structure and Practice of National Socialism* (Ivan R Dee 2009).

51 William E Scheuerman, *Carl Schmitt: The End of Law* (Rowman & Littlefield 1999) 103.

52 Alfred Sohn-Rethel, *Economy and Class Structure of German Fascism* (CSE Books 1987) 8.

53 Carl Schmitt, 'Strong State and Sound Economy: An Address to Business Leaders' in Cristi (n 50) 212–232.

54 A study on the ambiguous relationship between Carl Schmitt and Friedrich Hayek can be found in Cristi (n 50) 146–168.

55 Scheuerman (n 51) 31.

56 Herman Heller, 'Authoritarian Liberalism?' (2015) 21 *European Law Journal* 295.

assigned the task of ensuring the constitution of economic freedom to the state. From this point of view, the premise of free economy is the 'strong state'.⁵⁷ The 'weak state' is considered the 'Achilles' heel' of free economy because it is unable to defend itself against the demands of the popular classes. It does not set limits to contesting social forces and fails to depoliticize the socio-economic relations on the basis of a rule-based system of market interaction.⁵⁸ Only a strong state can distinguish itself from society and prevent government from becoming 'prey' to powerful private interests and class-specific demands.⁵⁹

It seems that there is a thread connecting ordoliberal thought and Schmitt's advocacy for a 'strong State' to secure a 'sound Economy', with the 'new Executive State' which was born out of the theories of New Public Management. The so-called 'new Executive State' was born in the period of post-welfare administration and is based on a radically different view of the role of the state compared to its predecessor. This view reflects a lack of faith in the state's interventionist or guiding capacity, as well as in its ability to regulate all aspects of socio-economic reality. In other words, it reflects neoliberal ideas which have dominated public policy discourse since the first major crisis of capitalism after the end of World War II.⁶⁰

The new challenges to the process of capital accumulation, manifested in the internationalization of production, the creation of global value chains⁶¹ and the development of information technologies, which, in the decades that followed the war, gave rise to the phenomenon of globalization, directly affected attempts to reform the state and its role in mediating such complex and translational processes and correlations of forces. While, until the 1980s, the State seemed to count only on its own forces for designing and implementing policies and programmes, from then onwards there are signs of a transition to a new regulatory role of the State, more distanced from the everyday management of the economy and more oriented towards

57 Werner Bonefeld, 'European Economic Constitution and the Transformation of Democracy' (2015) 21 *European Journal of International Relations* 869.

58 *ibid* 873.

59 *ibid* 874.

60 Prabhat Patnaik, 'On the Economic Crisis of World Capitalism' (1982) 10(5) *Socialist Scientist* 19.

61 Intan Suwandi, *Value Chains: The New Economic Imperialism* (Monthly Review Press 2019).

ensuring conditions for the efficient functioning of the market.⁶² Simultaneously, a strong state was necessary to steer these different institutional forms and levels of decision-making, while maintaining a very minimal scope for popular participation in them.

The 'Executive State' thus emerged as a conscious and rational evolution, as well as organisational adaptation, of the 'Welfare State' to the new environment of a globalized economy. The State's 'retreat' to a role of strategic viewing is arguably identified with the dominance of neoliberal ideology. The idealized view of the market opens the field of public administration to private players, which, through their involvement in service or operational functions, ultimately end up 'colonizing' the entire administrative system.⁶³ Such views promote a rupture with the hierarchical form and centralization of public administration, while encouraging the development of a new relationship between the latter and economic players.⁶⁴ A market-friendly state was required to depoliticize the issue of economic administration and to be strong enough to resist popular pressure on economic policies. This new model of the state was hardly novel but constituted an updated version of the ordoliberal model of a 'strong state' which accompanies a 'sound economy'.

The emergence of the idea of the Executive State coincides with the spread and dominance of the New Public Management approach. The latter promotes reform of the administrative state along the following lines: i) functional specialization and simplification of administrative procedures, ii) introduction of commercial thinking and opening of public services to competition, iii) public-private sector cooperation, as well as iv) a 'customer-centred' orientation of administration.⁶⁵ New Public Management sought to redefine the state's capacities to guide, coordinate, control and monitor public policy. It proposed a radical restructuring of administrative hierarchy, through a fragmentation of vertical and hierarchical structures and the proliferation of autonomous administrative units, i.e. agencies. This process of 'agencification' takes the form of either functionally decentralized bodies (agencies) or other *sui generis* administrative bodies with

62 Sebastien Billows and Scott Viallet-Thévenin, 'La fin de l'État stratégique: La concurrence dans les politiques économiques françaises (1945–2015)' (2016) 4(4) *Gouvernement et action publique* 9–22, 10–16.

63 Giorgos Sotiirelis, *Constitution and Democracy in the Age of Globalisation* (in Greek, Sakkoulas 2000).

64 Apostolos Papatolias (n 13) 19.

65 Ewan Ferlie and others, *The New Public Management in Action* (Oxford UP 1996).

a high degree of autonomy, which are organized around sectoral public policies.⁶⁶ In all its versions, the new Executive State concerns itself with the successful organization of the long-term ‘partnership’ between central government and other administrative bodies.⁶⁷

The central institutional innovation of the new Executive State lies in the fragmentation of the hierarchically structured public administration and the creation of semi-autonomous ‘executive agencies’ in such a way that the ministries can emerge as strategic headquarters which can more effectively fulfil the strategic function of policy-making and planning. In this context, the process of ‘agencification’ involved the performance of executive functions of government by agencies within a policy and resources framework set by a department. This process would eventually result in the establishment of a ‘twin-track’ public administration: on the one hand the central administration units charged with the strategic task of developing and monitoring policy-making and on the other the units tasked with the implementation of such policies in conditions of relative autonomy.⁶⁸ Institutionally, this would also translate into an internal division of civil servants into two categories: *members of ‘political administration’* – who can be relieved of their duties at any time – and *‘career civil servants’*.

The demand for the technical, almost mechanical, implementation of legislation presupposes the sealing off of the administrative apparatus from the socio-political environment, as well as the political and party neutrality of the civil servants in the exercise of their duties. This institutional fragmentation between policy and administration seems to reflect the liberal perception, according to which political power and administration constitute distinct and unequal domains, with only the former deriving its authority from popular sovereignty. In that sense, and despite its apparent hostility to hierarchical organization, the new Executive State also seems to reproduce the Weberian approach to administration as ‘instrumental’ and

66 Benjamin Lemoine, ‘L’État stratège pris dans les taux: L’invention d’une agence de la dette publique française’ (2016) 66 *Revue française de science politique* 435–459, 437–445.

67 Christopher Pollitt, Johnston Birchall and Keith Putnam, *Decentralising Public Service Management* (Palgrave Macmillan 1998), 1–65, 162–179.

68 Christopher Pollitt and others, *Agencies: How Government do Things Through Semi-Autonomous Organizations* (Palgrave Macmillan 2004), 106; Roderick AW Rhodes, ‘Reinventing Whitehall: 1979–1995’ in Walter JM Kickert (ed), *Public Management and Administrative Reform in Western Europe* (Edward Elgar 1997) 42–46.

dedicated to the execution of political decisions.⁶⁹ In the context of the new Executive state, administration is understood as a technical function.

V. Conclusions

Viewed in this light, the Executive State reform in Greece does not seem so innovative. Indeed, in reproducing common themes and principles of the authoritarian liberal tradition, it seems inspired by the most retrogressive models of public policymaking. These models combine authoritarian and concentrationist structures with depoliticizing processes and institutional forms intended to seal off policy production and implementation as far as possible from popular participation and contestation. Such institutional forms are essential to ensure the uninterrupted implementation of unpopular measures intended to create a friendly environment for capitalist investment which, alas, is simultaneously a hostile environment for the toiling classes and popular strata.

In the contemporary socio-economic and political context of 'permacrisis', characterized by the exacerbation of socio-economic antagonisms, electoral volatility and polarization, as well as asymmetric threats to representative institutional forms and the reproduction of capitalism, authoritarian and depoliticized forms of policymaking become essential aspects of the liberal democratic form. The preceding critical analysis of administrative reform in Greece is a case that illustrates and enhances the conclusion that the liberal democratic form includes its own negation. Yet, what would constitute, in dialectic terms, the negation of this negation and rejuvenate the democratic processes of the Western world remains to be seen.

69 Haldor Byrkjeflot, 'The Impact and Interpretation of Weber's Bureaucratic Ideal Type in Organisation Theory and Public Administration' in Byrkjeflot and Fredrick Engelstad, *Bureaucracy and Society in Transition: Comparative Perspectives* (Emerald Publishing 2018). Wolfgang Drechsler, 'Good Bureaucracy: Max Weber and Public Administration Today' (2020) 20 Max Weber Studies 219–224.

