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# Law Making, the Rule of Law, and the Quality of Democracy in Greece

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## Law Making, the Rule of Law, and the Quality of Democracy in Greece

Constantine P. Danopoulos<sup>1</sup>

The rule of law is arguable the single most essential dimension of quality democracy; it is virtually synonymous with democracy. It is the anchor upon which all other dimensions of the quality of democracy depend for substance, enforceability, effectiveness, and meaning. The literature on the rule of law leaves little room for doubt as to its seminal importance. Juan J. Linz and Alfred Stepan view the rule of law as an “indispensable condition.”<sup>2</sup> Guillermo O’Donnell believes that “the rule of law works intimately with other dimensions of the quality of democracy.” In his mind, “the rule of law is among the essential pillars upon which any high quality democracy rests. Without a vigorous rule of law, defended by an independent judiciary, rights are not safe and the equality and dignity of all citizens are at risk.” He adds: only under the rule of law “will the various agencies of electoral, societal, and horizontal accountability function effectively, without obstruction and intimidation from powerful state actors.”<sup>3</sup> Thomas Carothers sees a “profound” relationship between the rule of law and liberal democracy, asserting that “the rule of law makes possible individual rights, which are at the core of democracy.” Without the rule of law, he argues, “major economic institutions would not function, and the government’s multifaceted involvement in the economy would be unfair, inefficient, and opaque.”<sup>4</sup> Larry Diamond and Leonardo Morlino are equally emphatic regarding the salience of the rule of law and its impact on other dimensions of democratic quality. They assert that “when the rule of law is weak participation of the poor is suppressed and marginalized; civil groups may be unable to organize and advocate; the resourceful and well connected have vastly more access to justice and power; [and] corruption and abuse of power run rampant.”<sup>5</sup>

Simply stated, the rule of law means that there is a clear, understandable, stable, and self-

sustaining body of law based on universally accepted principles and precepts. It is non-retroactive, treats all citizens equally regardless of class, economic status, gender, color, or creed, and it is applied fairly, evenly, and consistently across the board by a network of judicial and law enforcement systems (including courts, the bureaucracy, the police, and other law enforcement agencies) that are held accountable but enjoy independence and professional *esprit de corps*. While dynamic and capable of meeting changing social conditions, the fundamental/constitutional components of the law cannot be changed easily (say, through simple majority vote) by relevant and constitutionally empowered bodies, but by a more elaborate process that takes in to account the needs and rights of minorities. Diamond and Morlino leave no doubt that a “good democracy” (by which they mean a liberal democracy) must “have a strong, vigorous, diffuse, self-sustaining rule of law.”<sup>6</sup>

Law experts agree that people are more likely to conform to a good and moral legal system than a defective one; and that a good quality legal system encourages conformity. Conversely, people cannot be expected to conform to laws they do not understand or see as arbitrary and unjust. Elucidating on what constitutes “good law” a leading authority stresses, “The law is good if it produces prudential reasons for action where and when this is advisable and if it marks out certain standards as socially required where it is appropriate to do so.... If the law does so properly then it reinforces protection of morally valuable possibilities and interests and encourages and supports worthwhile forms of social co-operation.”<sup>7</sup>

The need for clarity, conciseness, simplicity, parsimony, and stability is underscored by no less an authority than Charles-Louis de Secondat, better known as Baron de Montesquieu (1689-1755). In his classic, *The Spirit of Laws*, the venerable Frenchman urges lawmakers “to be particularly attentive to the manner of forming laws.” Included in Montesquieu’s principles are the following: the style of laws ought to be concise, plain, and simple, and a direct expression is better understood than an indirect one; the essential phraseology and wording ought to be such that convey the same meaning to everyone; laws ought to be general and must not be loaded with unnecessary details; the laws must not be subtle, as “they are designated for people of common understanding, not as an art of logic, but as the plain reason of a father of a family;” exemptions or limitations must be kept to an absolute minimum, and better be omitted for “details of that kind throw people into new details;” alterations or changes are advised only when

is absolutely essential and should not be made “without sufficient reason;” the quality of the law must be commensurate to the reason given by the lawmaker writing the law; every law must have an effect and laws that are easily eluded must be avoided or dropped as they weaken the entire law system. Simplicity in law should be grounded in candor and morality, and laws must be congruent with the reality they seek to regulate. Since laws are “made to punish the iniquity of men, they themselves ought to have the most spotless innocence.”<sup>8</sup> Contemporary scholars voice similar admonitions. Joseph Raz expresses a widely held view when he states emphatically that besides being relevant, the law must be transparent and communicated clearly and publicly so people can adjust their lives accordingly.<sup>9</sup>

Despite a legal tradition dating back to the 1821 revolution, the rule of law in Greece is weak and anemic. This deficiency is a leading factor responsible for the country’s current and economic crisis and hampers its ability to recover. There is near universal agreement among Greek citizens, legal and undocumented aliens residing in the country, as well of European Union (EU) officials and others that there are serious and chronic problems with the applicability of the rule of law. All aspects of life are affected including the economy, the country’s health system, and everyday social interactions. The evidence from indices, surveys, personal testimonies, casual observations, and scholarly analyses is simply overwhelming. Scores of opinion polls show overwhelming, deep, and persistent public concern. Summarizing the results of a 2007 survey data involving European academics, the conservative but highly regarded daily *Καθημερινή* (*Kathimerini*) asserted that even though the Greek state possesses an extensive legal framework, “Popularly elected governments do not have the political will to implement it.”<sup>10</sup> Conducted at the behest of the EU, the study was designed to develop indicators/standards of measuring progress on social convergence among community members. The report found that with a score of 102.52 (compared with an average of 100.00 for the EU) Greece has “a progressive legal framework” in the area of health protection, placing the country ahead of economically more advanced countries such as Germany, Denmark, and Holland. Yet when it comes to implementation of the relevant legal framework, Greece’s score drops to 56.45, placing the country in last place; nearly 50% of the laws are not implemented. The World Bank’s *Worldwide Governance Indicators* is in remarkable agreement. Using a scale ranging from -2.5 (most negative) to +2.5 (most positive), the report scores governance on six dimensions: voice and accountability, political stability, government effectiveness, rule of law, and control of

corruption. In the sensitive rule of law indicator, Greece receives a low passing score: +0.65 in 2007, +0.77 in 2003, and +0.68 in 1998.<sup>11</sup> More recent data shows even further deterioration.

### **Theoretical Antecedents**

Diamond and Morlino identify ten essential elements to sustaining and maintaining quality democracy anchored on the rule of law: (1) there is equality before the law with no-one above it; (2) the state exercises unchallenged authority over the entire domain and no local oligarchs, warlords, or local political bosses can take the law into their own hands; (3) the state administrative apparatus and the judiciary are relatively free of corruption and illicit or unlawful activity is punished under the law; (4) the bureaucracy enforces the law professionally, efficiently, fairly, and equally and assumes responsibility for enforcement and interpretation mistakes; (5) law enforcement is in the hands of professional, well-trained law enforcement bodies who adhere to the provisions of the law and respect citizens' rights, including due process; (6) equal and unfettered citizen access to the judicial system is available to defend against possible injuries or infraction by other citizens or state institutions; (7) there is timely resolution of disputes (right of speedy trial) involving both criminal and administrative legal cases; (8) the judiciary is free from political influence and enjoys neutrality and independence; (9) judicial decisions are respected and adhered to by state institutions and agencies; and (10) the constitution is the supreme law of the land and constitutionally responsible elements of the judicial system interpret and enforce its provisions.<sup>12</sup> Absolute and unfettered adherence to the rule of law is difficult to attain, and even countries with long democratic traditions do not always measure up.

Defects in the letter and the spirit of law as well as the bodies responsible for implementation and enforcement can impede the rule of law. O'Donnell identifies and delineates what he considers the most widely observable defects in the rule of law.<sup>13</sup> He begins with flaws in the law itself. There are too many laws that, either intentionally or otherwise, contain language or provisions that lack clarity, or discriminate against certain groups, including women and ethnic or other minorities. This is also true with administrative regulations or judicial standards and procedures.<sup>14</sup> Furthermore, he notes flaws in the way the law is applied. This refers to uneven, discriminatory, and discretionary use of the law that punishes the underprivileged but leaves room for the well connected "to exempt themselves from the law."<sup>15</sup>

This dangerous phenomenon can be seen when state agencies or powerful private entities can punish severely, and sometimes violently, the weak and the less privileged. At the same time, “an attentive eye can also detect the stubborn refusal of the privileged to submit themselves to regular administrative procedures, or say nothing of the legal impunity that they too often obtain.”<sup>16</sup> Another flaw relates to problems in the relationship between state agencies and citizens. Closely intertwined with the other two, this defect is at the heart of the deleterious effects uneven and unfair application of the law can have on people in their dealings with the state. O’Donnell’s language can hardly be more direct: “Perhaps nothing underlines better the deprivation of rights of the poor and vulnerable than when they interact with the bureaucracies from which they must obtain work, or a work permit, or retirement benefits, or simply (but sometimes tragically) when they have to go to a hospital or police station.” By contrast, for the privileged “this is the far side of the moon,” for they have the means to avoid the “ugly side of the state.”<sup>17</sup>

Limits and barriers blocking access to the judiciary and fair process is the fourth flaw. When the judicial system is “distant, cumbersome, expensive, and slow,” access for the poor and the underprivileged becomes problematic. But even if they manage to get access, lack of impartiality and spotty application of the law make hard for them to obtain a speedy and fair trial. The final flaw in the rule of law is state inability to enforce its own laws that can create a state of lawlessness. As a “constitutive part of the state,” the legal system must be able to “penetrate and texture society, furnishing a basic element of stability to social relations.” But when the state itself is weak and ineffective the “legal state” suffers from the same ills. As a result, portions of society or territory are frequently outside “the reach of the legal state.” This is especially true in geographically remote areas, but it is becoming more evident in the peripheries of large metropolitan areas: “the bureaucratic state may be present in the form of buildings and officials paid out of public budgets, but the legal state is absent.” In these so called “brown areas” local or indigenous legal systems/procedures or forms of vigilante justice dominate, replacing the legal state and the rule of law, creating an environment that is less than favorable for the poor and the underprivileged. As a result “many individuals are citizens with respect to political rights but not in terms of civil rights. Indeed, they are as poor legally as they are materially.”<sup>18</sup>

To ameliorate these deficiencies and buttress the saliency of the rule of law O'Donnell introduces and elaborates the democratic rule of law. In his mind, democratic rule of law fortifies and strengthens the legal system to defend democracy, protects citizens' rights, and strengthens the hand and resolve of bodies responsible for accountability. He identifies a number of dimensions associated with the democratic rule of law. First is the degree to which the judicial system applies the law evenly in all portions of society and state domain. That is, no portion of the country or society should be beyond its jurisdiction. In making this point, O'Donnell has in mind Latin American societies where narcotics and other high-handed outlaws ignore judicial and other law enforcement agencies and operate with relative impunity.<sup>19</sup> Equality before the law is a core ingredient of the democratic rule of law for it enables citizens to ensure "that government officials, the rich, the powerful, and the well-connected do not become a caste apart."<sup>20</sup>

Universality and uniformity of applicability must also encompass economic groups and social classes. A central factor in the effectiveness of the democratic rule of law is "the enactment and application of rules that prohibit and eventually punish discrimination against the poor, women, foreigners, and various minorities." This involves the state's capacity to extend and maintain effective constitutionally sanctioned and mandated control over its territorial domain. A logical extension of this would be the legitimately empowered institutions to investigate, hold responsible, and punish infractions by elected officials and to ensure that proper checks and mechanisms are in place so that citizens, regardless of background and social class, are not prevented from seeking to redress possible grievances through the legally sanctioned process.<sup>21</sup>

The third dimension in the democratic rule of law relates to courts and auxiliary institutions. It is essential but not sufficient for the judiciary to be free of political interference from other branches of government and political actors, courts must be impartial and also resist influence from dominant and well-connected business and other powerful social groups. But like other social institutions, courts are not above the law and therefore "must not abuse their autonomy for the pursuit of narrowly defined corporate interest."<sup>22</sup> The perception that judicial authorities lack impartiality and are influenced by the affluent and the well-connected are deleterious to individual protection, which is the single most important characteristic of

democracy. For as Rachel Kleinfeld asserts, “the poor or marginalized will not risk bringing misdeeds of their ‘betters’ before a court if they believe that courts will simply uphold the power structure of society.”<sup>23</sup> A well-functioning and effective democratic rule of law, notes O’Donnell, should also recognize and take steps to ensure that “the poor, the illiterate and otherwise deprived persons and groups have access to courts and competent legal counsel.”<sup>24</sup> Other law enforcement agencies, such as police and other security forces must respect citizens’ constitutional rights and treat them with dignity and respect. Prisons and other correction facilities should comply with fundamental rules of individual rights and human dignity.

In addition to courts, the responsibility of other state institutions is the fourth component of the democratic rule of law. Like courts and law enforcement agencies, all other state institutions--including executive, legislative and bureaucratic bodies — are required to treat everyone with “fairness, consideration, and respect.” State institutions have a responsibility to produce proper and clear of laws and regulations and ensure the public is informed about their rights and responsibilities. Legitimate and effective mechanisms should be in place to “prevent, stop, or redress state violations of citizens’ rights.” A democratic rule of law is not complete unless it guarantees peoples’ participation in political and other organizations as well as the right to strike and other civil rights. Diverse social organizations, including NGOs, must be allowed to form and function within the legal framework and these group should play a role in maintaining “vertical societal accountability.”<sup>25</sup>

Finally, civil and human rights are an essential dimension in his democratic rule of law panorama. Consistent with the position of most human rights advocates, O’Donnell stresses that human and civil rights violation must be investigated by relevant state authorities. He is both comprehensive and clear: “one should investigate the numbers, social position, gender, age, and geographic location of individuals who are victimized by violence, including domestic and police-perpetrated violence.”<sup>26</sup> This is not be limited to citizens only, “foreigners should be assigned the same civil rights as citizens, should be allowed at least at the local level to participate in political affairs, and should be treated by state agents and citizens with due consideration and respect.”<sup>27</sup>

While these dimensions of the quality of democracy are too high for any country to pass all the time, nevertheless they constitute a salient goal to reach if democracy and democratic

governance are to meet high standards. Certain conditions can help or impede the creation and sustenance of the rule of law and with it: quality of democracy. Likewise, establishing an effective rule of law is neither easy nor quick; it instead requires patience, restraint, and a level of commitment (attitudinal, behavioral, organizational, and financial) by all social groups, including dominant political, economic, and social elites.

A host of factors can help the establishment of the rule of law and even more can impede it, and some appear to be common across different cultures and environments. To begin with is the tendency of governing political leaders to use the law as a means to subvert adversaries or undermine would be political competitors and prevent them from gaining power. This phenomenon appears most often in developing societies and countries with young and not well-consolidated democracies. To ensure such self-serving laws would not be altered or overturned by judicial authorities, politicians may also pack courts with loyalists or sympathizers and/or insert constitutional provisions allowing the executive to dismiss judges or manipulate the composition or jurisdiction of courts.

In addition, there is the growing tendency on the part of powerful and economically ambitious and the well connected to use the judicial system to extract legal interpretations that would assert their own interests. Rather than use courts to adjudicate disputes and combat illegal activity, courts are employed to fill gaps in the law or secure rulings from the law that the law-maker purposely left vague or never intended but failed to exclude or add or extrapolate provisions that may go beyond the spirit of the law. It is hard to see how the poor, the marginalized, and those lacking a solid education can be leaders in this new but growing worldwide tendency to use the courts as vehicles to obtain favorable benefits that the lawmaker never intended.

Finally, Diamond and Morlino aver that democratic rule of law “is diminished in many countries by the diffuse cultural attitudes that view the law merely as an impediment to realizing one’s own interests, a nuisance to be circumscribed in any way possible.”<sup>28</sup> The effect is contagious; if such attitudes appear in one segment of society, particularly the entrepreneurial and other privileged social actors; unless they are nipped in the bud quickly they soon spread to other classes and eventually the entire society. By contrast, in a society where there is “diffusion of democratic values” among the population, and especially the elite, the emergence and

sustenance of democratic rule of law has a very powerful ally.<sup>29</sup> Other factors beneficial to the rule of law include a democratically minded and enlightened governing class, an independent, capable, and impartial judicial system, a strong, impartial, professional, and competent administrative machinery, and the financial means/support and proper training to fully implement the rule of law.

Building a rule of law environment is neither easy nor quick, nor is it widespread or easily replicated. As Diamond and Morlino assert, “no amount of training and financial resources (including external assistance) will suffice unless democratic leaders exhibit political will and self-restraint.” In the end, creating an environment in which the rule of law predominates requires “a mobilized and aware civil society and efficient democratic instruments of competition so that voters can remove public officials who obstruct rule of law reforms.”<sup>30</sup>

### **The Rule of (Un)law?**

As seen earlier, available data points to a rather weak state of the rule of law in Greece. The survey data is corroborated by scholarly analyses and the views of important practitioners. For instance, Pavlos Eleftheriadis leaves little room for doubt with respect to the fairly weak state of the rule of law in contemporary Greece. He states that despite the fact that the country possesses a well-structured legal edifice and a strong constitutional tradition, there are serious implementation weaknesses. As a result existing laws are not applied, courts and other law enforcement institutions have not managed to stamp out pervasive corruption in the public sector, the legal system does not mete out timely and impartial justice, and government ministries often ignore court rulings that go against their actions.<sup>31</sup> Keith Legg and John M. Roberts concur, noting that “in the hands of judiciary, law has been used more for purposes of state control of society than for protection of individual rights.” Under the circumstances, they assert, “the law has in essence deteriorated to legalism.”<sup>32</sup> Operating in the same wavelength, Adamantia Pollis laments the “prevalence of legalism evident in the sterile and abstract exegesis of laws by legal scholars and judges, which frequently has a tenuous relationship to practice.”<sup>33</sup> Analyzing the impact of legislation designed to regulate electoral campaigns attorney Angelos Syrigos concludes that, though well intended, inconsistencies, gaps, and weak enforceability provisions in the law rendered it useless and a dead letter; hence the damning title of his essay: “Laws Exist But Are Not Implemented.”<sup>34</sup> To these one should add the authoritative voice of

Vasileios Kokkinos, the former chief justice of the Supreme Court (Αρειος Πάγος). His assessment is both revealing and troublesome. He begins by pointing out that even though the judicial branch is constitutionally coequal, in practice its role does not measure up to the letter or the spirit of the highest law of the land. Kokkinos readily admits that the performance of the judiciary in combating law violations and official corruption falls short. He blames the intrusive behavior of the executive branch, stating that politicians verbalize the importance of judicial independence, but do not respect it. While in the opposition, argues the former chief justice, politicians profess devotion to the sanctity of judicial independence and favor measures that would strengthen and safeguard its role as the bulwark of democracy. But when they come into office they forget their pledges and often denounce judges as authoritarian violators of the people's will if and when judicial rulings go against the wishes of the political authorities.<sup>35</sup>

Deficiencies and inconsistencies in the rule of law affect every aspect of life, harming the quality of Greece's democracy. They range from the more mundane to the most intricate. An attempt to identify and present a complete enumeration of the myriad ways and deleterious consequences associated with law application problems would be unnecessary and redundant, but a few examples are instructive. Collecting revenue is clearly important for a healthy and effective state. Inability to collect revenue deprives the state of the ability to perform key functions such as providing security and protecting and enhancing the citizens' lives. Black economic activity is by nature hard to measure and estimates can vary substantially. Yet by all accounts, Greece has one of the highest and growing rates of tax evasion in Europe. The head of the Bank of Greece estimates that over 63% of taxable income escapes taxation. More than half of the VAT (Value Added Tax) is either not collected, or proprietors collect it but fail to turn the money over to state coffers. Laxity in law enforcement and belief that they would escape punishment prompts a whopping 42% of businesses to risk not paying taxes. Only a small number of violators get caught.<sup>36</sup> Examples abound of high-income professionals, other well connected individuals, and even politicians who systematically avoid paying taxes. A recent study estimates that "28 billion euros in self-employed income [went] untaxed in 2009, accounting for 31% of the deficit in 2009 or 48% in 2008."<sup>37</sup>

Unreported work is another major area of tax evasion. The European Commission reports that undeclared work amounts to 20% of the nation's GDP, placing Greece second from the

bottom among EU's 27 members; only Bulgaria ranks lower (27%). According to the commission, mutual benefit for employees and employers is the main cause of undeclared work. Migrant workers, students, unemployed, and self-employed constitute the majority of those involved in undeclared work, which predominates in the retail sales and service (tourism) sectors as well as construction, custodial, and housekeeping. Finally, the report is not too sanguine that Greek state authorities will manage to stamp out the phenomenon. A public opinion survey reveals that 60% of the respondents feel that the authorities have very little chance to catch and punish the perpetrators.<sup>38</sup> Tax avoidance is easily visible. One can spot café proprietors and barbershop or local tavern owners not ringing up sales or reporting compensation for services. It happens in Athens, regional towns and the countryside. Numerous households employ Filipino, Albanian or Bulgarian nannies or care providers for the elderly without paying the required employment tax. Even government ministers cannot resist the temptation.

The long-term negative effects of tax evasion may not be always understood by recipients or perpetrators, but the harmful consequences of bribing are directly and immediately felt by the citizenry, particularly the lower socio-economic strata. Obtaining a building permit, arranging a bank loan, or seeking medical care is difficult, if not impossible, without greasing the palm of some official or provider. Resort to illegal but unavoidable acts of bribing touch people's lives immediately and directly. Countless testimonies are corroborated by polling data. A survey conducted in fall 2007 by the public opinion firm, Public Issue, reveals that 20% of the respondents stated that they had to bribe government officials in order to obtain services mandated by relevant laws. In the private sector the rate is almost half (9%). It is estimated that in 2007, for instance, the amount spent on bribes reached 613 million Euros. Out of a population of about 11 million, approximately 1,240,000 had to grease the palm of a public official and 618,000 of private sector employees. Of those who bribed public officials 76% report paying 1000 Euros or less, 16% forked out between 1,000-3,000 Euros, and 8% spent more than 3,000. Medical care leads the way with 34%, with city planning (15%) second, and (Εφορία) tax collection (14%) third. Hospitals are the greatest offenders followed by physicians, banks, and attorneys. Tax collection agencies are the most demanding, trailed by city planning officials and people in the medical field.<sup>39</sup> According to Transparency International (TI) Greeks are eight times more likely to pay bribes than their Western European counterparts.<sup>40</sup>

Law violations impinge on people's everyday lives in countless ways. When civil servants show up for work late, leave early, or take unauthorized breaks they cause people to wait endlessly in smoke filled government offices to obtain services. Parking vehicles on narrow and uneven sidewalks legally reserved for walking render the streets of Athens and other cities a pedestrian's nightmare. People with special needs or confined to wheelchairs face an impossible task. Driving on streets closed-off to traffic or against the flow on one-way passages are frequently occurring phenomena endangering citizen safety. Very rarely one sees police issuing citations or taking steps to improve the situation.

The situation for migrant workers is even worse. Lacking political rights and with questionable residency status, they face daunting rule of law problems. The end of the Cold War and the demise of totalitarian regimes in the former Eastern bloc unleashed a torrent of legal and illegal migrants in search for employment opportunities in the more prosperous counties of non-communist Western Europe. In the last couple of decades, like other EU members (as well other healthy non-EU members); Greece became the recipient of thousands of migrants. Practically overnight, the country turned from a source of immigration to a recipient of thousands of foreign workers willing to accept lower wages and perform lower-end jobs spurned by locals. Many of the migrants were issued temporary working permits, but others entered (and still enter) illegally. As a result, there are no accurate statistics as to the number of migrants and their families residing in the country. Estimates vary from 700.000 to 1.5 million; the economic crisis, and instability in Syria and elsewhere have rendered these guesses even less reliable. Many of them, particularly those from troubled countries like Afghanistan, are in Greece to stay, but the Greek state has yet to find effective and legally enforceable ways to deal with the phenomenon.

Under pressure from the EU the Greek government adopted a series of laws aiming to deal with a variety of issues, including family re-unification, renewal of working permits, access to employment, acquisition of citizenship, and political and human rights. Despite the enactment of relevant legislation the situation of the country's migrant population remains in limbo and little noticeable progress has been made. A study by the British-based Migration Policy Group conducted in behalf of the EU criticized Greece's lack of progress, blaming it on poor implementation by courts and horrendous bureaucratic delays that negate the letter and the spirit of the law.<sup>41</sup> The findings of the study are supported by George Katrougalos' assessment. He

states that even though Greece's legislation on immigration is in par with EU standards, nevertheless there are significant deficits in the way it is implemented, or not implemented at all.<sup>42</sup>

The preceding discussion clearly shows that there are serious and widespread deficiencies in the rule of law in Greece. But it also reveals that deficiencies most affect those who find themselves at the bottom of the socio-economic pyramid—the elderly, immigrants, and average citizens—and not the affluent, the well connected, or the power holders. Allegations of wrongdoing, shabby construction of public works projects and substantial cost overruns, abuse and embezzlement of state funds, corruption, and other illegal activity by people in positions of privilege are either swept under the carpet or disappear in the muddy shoals of justice. Scandals involving powerful entrepreneurs, senior bureaucrats and even government ministers abound, but the accused are either found not guilty or the punishment is light and the fine is rarely collected. For instance, a few years ago the government agency responsible to promote competition in the market convicted a major dairy firm for unfair practices. The agency imposed a fine, but when the case was turned over to the courts for enforcement the penalty was reduced by nearly three-fourths and the violator escaped punishment altogether.

Another example involving retirement funds came to light and the uproar caused the resignation of the minister overseeing the funds. After a brief but intense public debate the issue was turned over to the turtle paced judicial system. The courts imposed fairly light sentences on a few minor bureaucratic officials and the case was added to the long list of written-off scandals due to lack of credible evidence or statute of limitation constraints. The perpetrators were never persecuted. The shenanigans surrounding the Athens stock exchange over a decade ago that caused untold financial loss to numerous citizens who had sunk their savings in fraudulent stocks had a similar fate: no formal charges, no convictions, and no punishment. The same plot unfolded several years later involving questionable property swaps between the monks on Mt. Athos and the state in which government ministers and other high officials appeared to have extracted considerable financial gains.

The well connected—these include major entrepreneurs, mass media moguls, well known journalists, top civil servants, and politicians—have the means and the wherewithal to engage in questionable, if not outright illegal activities, extract huge profits at the expense of consumers

and tax-payers, and do so with impunity. Besides endless delays employing legal maneuvers that cause the statute of limitations to kick in and enough time for public uproar and displeasure to die down, the powerful have other weapons at their disposal. For example, politicians can easily hide behind parliamentary immunity or the mantle of policy decision-making inviolability. Former chief justice Kokkinos laments the excessive vigor with which politicians protect and defend these prerogatives. He comments that Greek politicians regard themselves sacrosanct and above the law. They cannot fathom being accountable for their actions and show indignation when a member of the judicial branch dares to utter an unfavorable word against them. To ensure that they are not held accountable, parliament recently enacted a law regarding ministerial responsibility. The law requires such extraordinary majority to hold a minister accountable that virtually guarantees freedom from prosecution, regardless of the alleged infraction. In parliament one can readily observe a corporative spirit of synergy against the removal of parliamentary immunity, even when there is strong evidence that deputies may have committed egregious violations of the law. Immunity finds nearly universal support across the political spectrum, from left to right.<sup>43</sup>

Parliamentary immunity protects members of parliament as well, enabling them to escape prosecution and punishment. Parliament can remove immunity, but that almost never happens. Moreover, allegations of improper conduct and even formal charges against members are legally and formally dropped in the next round of parliamentary elections. High civil servants are also protected. Eleftheriadis notes that civil servants with well-found evidence of unprofessional and wrongful behavior are seldom sent to disciplinary bodies. In the few cases that reach such bodies or courts, the litigation process is exceedingly long and the sentences imposed tend to be extremely light.<sup>44</sup>

But law violations are not confined to individuals, well connected or not. The state itself is arguably the most conspicuous transgressor of its own laws. Countless cases have come up where government utility monopolies, such as the producer of electric power and the supplier of water, systematically overcharge customers who have little choice but paying the exorbitant bills or face service cut-off. Moreover, the cash-strapped government passed a law offering to “settle or put in order” hundreds of thousands of illegal additions to dwellings in exchange for a one-time fee. When government officials, including the relevant minister, were asked whether this

arrangement meant legalization of illegally- built structures, they resorted to verbal gymnastics arguing that the action meant settling or putting in order (τακτοποίησης), but not legalization (νομιμοποίησης). Left purposely vague is whether this arrangement would lead to increase in the square footage of these dwellings resulting in higher property taxes.

The economic crisis prompted the government to become more innovative and willing to temper with one of most widely recognized legal principles: laws cannot be retroactive. In order to extract badly needed revenue, state authorities decided to require tax- payers to pay an additional amount for previous tax years. Even though the constitution specifically forbids retroactive taxation, the government got around the law by dubbing the levy “extraordinary or emergency contribution” (έκτακτη συνεισφορά), and not a tax. It should be noted, that neither of these are novel ideas; previous governments had engaged in similar practices.

The preceding discussion provides ample evidence suggesting that in Greece the rule of law is marred by serious and multi-dimensional deficiencies, despite the fact that the country enjoys viable and consolidated democratic institutions, a comprehensive legal framework, a well-established judicial system, and a complex law enforcement apparatus.

### **Flawed Crafting**

On the surface, post 1974 Greece meets all the criteria of a society in which democracy is strong, consolidated, and the rule of law is as essential pillar of life. The 1975 constitution—adopted following the demise of the junta (1967-74) and the restoration of democracy—is highly democratic, providing for free and competitive elections, freedom of speech, freedom of association, right to strike, political equality and other guarantees associated with democratic governance. The constitution can and has been amended twice. Amending requires approval by two consecutive parliamentary majorities in the 300-member parliament (Βουλή), one of which must draw a 3/5-majority vote. The legal community, led by a well-trained group of constitutional scholars, is in touch with international legal developments and does its best to keep the constitution and legal framework current and in tune with EU law and the international environment. In addition, the country possesses an elaborate system of laws covering every aspect of life. The constitution provides for a separate and independent judiciary and the nation’s judicial system is complex and comprehensive. Greece’s three public law schools (no private

institutions are recognized) produce an abundance of lawyers, giving the country one of the highest attorney/population ratios in Europe. Data shows that the country has 40,000 lawyers—one for roughly 250 inhabitants. By contrast, the ratio in Germany is one for every 593, and in France one for every 1,403 people. Notary public figures are even more striking. There is a notary for every 3,346 people living in Greece. In France the ratio is one for every 7,287, in Italy one of every 12,023, and in Austria one for every 17,926. It is worth noting as well that there is a pharmacy for 950 Greeks; Belgium is the closest second (one drugstore for 2,450 souls). The EU average is 4,000.<sup>45</sup>

But law is not made in a vacuum. Legal scholars often use two adages to point to the importance of congruency between law and the norms of society: good law “both orders and reflects a society,” and effective law “is like making sausage.” As Steven Vago points out, “law is inseparable from the interests, goals, and understandings that deeply shape or compromise social and economic life,” adding that an efficacious and democratic legal system must stand “in close relationship to the ideas, aims, norms, and purposes of society.”<sup>46</sup>

As in all functioning parliamentary democracies, the one-house Chamber of Deputies (Βουλή) is Greece’s main source of legislation, although the President of the Republic can issue decrees on the recommendation of the cabinet. Besides legislating, the popularly elected body chooses the largely ceremonial President the Republic and exercises control over the executive headed by the prime minister and the cabinet. The structure and operating procedure of the Greek parliament displays striking similarities to Westminster and other legislative bodies in continental Europe; these include committees, reports, debates, hearings, and deputies questioning the relevant government ministers on issues pertaining to the minister’s competence. In structure and appearance, then, the Greek Chamber of Deputies displays all the markings of a fully engaged and effective law making institution. But a closer look shows that it is more “a talking” rather than “a working” parliament, and its main function (law making) has been relegated to little more than approving or ratifying bills proposed by the executive rather than engage in drafting legislation.<sup>47</sup> Moreover, consensus building is not a salient characteristic of the Greek chamber. Individual members are not initiators of legislation. This function is in the hands of the executive. As a result, very few bills are initiated by individual deputies. From 1974 to 1984, for instance, out of a total of 1,750 bills passed only a minor one was initiated by an

ordinary member, all the rest came from the cabinet. This means that 99.9% of all laws passed during this period were executive initiated, giving Greece “the highest percentage in any European country.” The Netherlands and Norway come close with 0.3 % and 1.3% respectively. By contrast, the average in Portugal is 60.2%, followed by Italy (30.2%), Austria (22%), U.K. (15.6%), France (13%), and Belgium (11.6%).<sup>48</sup>

The committee system, generally considered the workhorse of the legislative process, is of little value in the Greek chamber. The committee’s job is not to dissect or mark bills, but simply to prepare a report on the proposed bill that falls within the area of its jurisdiction. In the Italian parliament, by contrast, agreed upon procedures enable committees to pass “a large share of the bills.”<sup>49</sup> Or, unlike the British parliament where committee deliberations can last several weeks (up to 40 sittings) and clauses in the proposed bill are taken up and debated one by one,<sup>50</sup> the Greek situation is rather different. On an average, committees spend no more than several days on the proposed bill and meetings are venues for deputies to routinely reiterate their party’s views and criticize their opponents. Amendments introduced by the committee are of minor importance in the outcome of the bill, and are dropped if the relevant minister objects or disagrees with the content. Even if they chose, committees lack adequate financial resources and expert staff to do in-depth scrutiny of proposed bills. The committees are not arenas of deliberation, substantive discussion of the merits or shortcomings of the bill, and venues of consensus building between the government and opposition political forces. Since the governing party has a majority in each committee the outcome is predetermined and the committee system is a mere formality with virtually no noticeable impact on the legislative process.

The weak role of the legislative chamber in Greece’s political setting is the result of a number of factors, institutional as well as political. Building on historical precedent, the country’s current constitution—adopted in 1975 following the demise of the colonels’ dictatorship—strengthened the role of the executive at parliament’s expense. This is especially true in the area of law making. The first post-dictatorship assembly—dominated by the conservative New Democracy—rejected opposition proposals to establish permanent committees, each of which would oversee relevant government ministries. The framers also saw to it that the no special investigating committees could be established in key areas, such security and foreign affairs, without the consent of the majority in the chamber. Subsequent amendments,

especially those adopted in 1985 by the chamber controlled by the Panhellenic Socialist Movement (PASOK) reinforced the role of the prime minister and substantially reduced the power of the head of state. Although the executive has assumed a dominant position vis-à-vis parliament in most Westminster or majoritarian democracies, in no EU country the prime minister is vested with such powers as in Greece.<sup>51</sup>

On paper, the legislative calendar is controlled by the majority in parliament, but in practice that prerogative belongs to the head of government. As leader of the majority, the prime minister can single-handedly decide the opening and/or closing of parliamentary sessions. The decree is signed by the President of the Republic, who does not have the authority to refuse. Although not illegal, early closing or late opening can become heavy-handed if not undemocratic. In May 2009, for example, Prime Minister Costas Karamanlis (ND) moved to end the parliamentary session earlier than usual in an effort to divert attention from the numerous scandals besieging his government. The end of the session effectively shelved all pending inquiries concerning investigations of illegal conduct on the part of ND members. Taken on a Friday evening, the decision caught by surprise nearly everyone, including all but a few deputies of the governing party.<sup>52</sup>

Constitutional restrictions are complemented by standing orders, as well as the texture of the country's parliamentary configurations and the nature of parties. The role of the president of parliament—who is nominally elected by majority vote, but is nominated by the prime minister as head of the majority party—is enhanced by standing orders which enable him/her to dominate the work of the assembly. The majority floor leader plays an important role as well. Aided by the majority floor leader, the head of the chamber, in close communication with the prime minister, not only presides over parliament, but controls the agenda and has considerable discretion with respect to speaking requests from members. Parliament leaders can punish a recalcitrant member, especially from the ruling party, by not being very accommodating to the member's requests or even restricting his or her right to speak.

But the structure and nature of the two main parties accord the party leader extraordinary power. The party leader can single-handedly expel a deputy who crosses the party line. The leader's disciplinary hand is even stronger when the party is in power and when it enjoys a strong majority in the chamber. Deputies who defy party discipline do so at their own peril. As a

result of these factors, parliamentary activities are monopolized by parties at the expense of individual deputies. Sometimes the government will agree to amendments proposed by majority and even opposition deputies, and on occasion will withdraw a bill (or portion of it) that encounters unexpected resistance, but parliament seldom (almost never) turns down a bill proposed and supported by the government. The British House of Commons, by contrast, rejects a fair number of government bills. In 1998-99, for example, out of 31 bills introduced 4 (13%) were voted down and in 2000-01 the number went up to 7 out of a total of 28 (25%). The relative weakness of the Greek parliament confirms Amie Kreppel's point that "the character of the party system, and in particular the relative level of autonomy individual members of the legislature enjoy vis-à-vis their parties, can significantly affect the ability of the legislature as a whole to independently influence policy outcomes."<sup>53</sup>

Structural and political realities and the prevailing *modus operandi* define the chamber's functions and operating style, and shape the attitudes and the behavior of the members. Individual deputies lack the space, means, as well as the knowledge to influence the legislative process. A typical member maintains an office with a very small staff (1-2 people) whose primary responsibilities include routine office chores and attending to constituent demands for special favors (ρουσφετία--rousfetia). Many members do not maintain offices at all. Little or no time is devoted to researching issues that pertain to proposed legislation. The chamber's library, though lacking in organization, possesses an adequate supply of relevant material and a staff willing to assist. But library visits by deputies or their assistants seeking information about pending legislation are sporadic. The bureaucracy, which in well-functioning states is the collector and depository of information, is another source of data. But Greece's administrative machinery is too chaotic and too unreliable to be of much help. Whenever parliament members contact bureaucratic officials is mostly for purposes of extracting special favors for their constituents, and not about seeking data relevant to pending legislation.

As in many majoritarian assemblies, debates and discussions in the Greek parliament deal little with the substance of bills, and there is virtually no effort or commitment to seek consensus. Debates are conducted in highly polarized, excessively partisan atmosphere in which the opposition seeks not to provide constructive criticism but to tear down and summarily reject government proposals. Parliament sessions are devoted to endless litany of sterile, repetitive and

lengthy speeches that dwell on ideological platitudes and bashing of opponents. Precious little time is allocated to the substance of bills, the merits and/or shortcomings, or the costs and the benefits. Rhetoric is substituted for substance. Taking their cues from the executive, key party leaders outline the contours of the proposed legislation. Opposition deputies return the favor and seize the moment to declare their disagreement and sketch out the main reasons of disapproval missing no opportunity to resort to same tactics, but only in reverse. A good number of deputies tend to shun the parliamentary game, rarely address the assembly, and the speeches many deliver lack quality and content.

Concern regarding parliament's performance is expressed by leading members as well as the public. Drawing on comments by a number of leading members representing different political parties, including a former parliament president, an article published in *Kathimerini*, paints a less than flattering composite of the Greek chamber. Poor attendance, lack of adequate preparation, and disrespect for parliamentary rules of debate are responsible for "the continuous and multiple downgrading of parliament."<sup>54</sup> As a result, public approval of parliament is rather low. A confidence survey, for example, ranked parliament 30 out of 46 public institutions in 2007, and 36 out of 48 in 2008. The index is based on a survey conducted yearly by Public Issue and measures the level of confidence of Greek citizens toward leading political, religious, social, and other institutions, which include political parties, the government, local government, public corporations, and the mass media. The 2008 data showed that two out three Greeks do not trust the nation's representative body.<sup>55</sup> The current economic morass has sunk the approval of the nation's political institutions to an all-time low. A July 2013 *Eurobarometer* survey found that only 11% of the Greeks trust their country's legislative institution, which is 21% lower than the average EU. The data on other political institutions is equally devastating. For example, fewer than 5% of the Greeks trust the nation's political parties and 90% tend not to have confidence of the government. EU averages are 16% and 68% respectively.<sup>56</sup>

Owing to these structural and attitudinal factors the Greek parliament approves government proposed bills at a very rapid pace. For example, the first post-dictatorship parliament (1974-1977), the average legislative time per bill was one day. The need to move expeditiously to dismantle the vestiges of authoritarianism and set up a legal environment conducive to democratic governance, and the extraordinary majority the ND party enjoyed,

explain the furious pace with which bills cleared the assembly during this period. Legislative time increased to 11.1 days in the second parliament (1977-1981) and went up a bit more in the post-1981 period.<sup>57</sup> Despite this increase the Greek chamber still acts much more quickly than most of its European counterparts. This, coupled with the talking and not working nature of parliament, produce legislation that receives the approval of the sitting majority in the assembly, but does not necessarily reflect the social and other divisions in the Greek society. It is not unusual for the loyal opposition to promise that it would repeal laws just passed if and when it returns to power. Moreover, the texture and the tone of the debate do not help communicate the aims, the costs and benefits, or the importance of each piece of legislation. Put differently, laws are enacted with the public not knowing much of what is in these laws, how they would benefit society, or the prudential reasons to obey them.

Even though the time spent on debating bills has increased considerably in the last few decades, the Greek parliament enacts fewer laws than before. A few statistics would suffice. From 1974 to 2010, the parliament enacted 3,813 laws, which is an average of about 110 per year.<sup>58</sup> The first post-dictatorship parliament enacted a total of 753 bills, averaging 251 per year. The number was reduced to nearly half in the second (491 total, 123 per year), went down to 350 (88 yearly average) in the third (1981-1985), and dropped to 172 (86 average) in the fourth (1985-1987).<sup>59</sup> More time and fewer bills do not necessarily mean that the chamber has become a more deliberative body or the nature and the style of the debate have changed. To the contrary, one sees more speakers and longer speeches, but not necessarily deeper parliamentary involvement in initiating or crafting legislation. It should come as no surprise that the executive has filled the void becoming bolder and more intrusive at parliament's expense. This lends credence to the observation that "the power to elect and dismiss the executive branch serves to reduce the independent policy influence of a legislature."<sup>60</sup>

But a look at recent legislative action reveals that, although fewer in number, laws tend to be much longer, contain disparate and often unrelated provisions, and are designed to give the executive more latitude, freer hand, and greater control in law-making. These all-encompassing or "catch-all" laws are possible through a practice that allows the executive to introduce last minute amendments without the knowledge or involvement of appropriate parliamentary committees. Moreover, the national assembly has acquiesced to executive requests to transfer

law making to the cabinet via legislative delegation. That is, parliament agrees to let the executive fill in the blanks and provide details as it sees fit. The economic crisis intensified this trend as much of the legislation enacted by the Greek parliament to implement the EU, IMF, and Central European Bank (CEB) imposed “Memorandum” (Mnimonio) was passed with little discussion or debate, and virtually no amendments.

In addition, the executive can legislate by issuing autonomous legislative decrees, taking advantage of a provision in the constitution that allows such action in situations of emergency. But the constitution fails to define the parameters of what constitutes an emergency and courts have shown no inclination to intervene. By not acting courts have validated these procedures allowing them to become means through which the executive bypasses the primary lawmaker: Βουλή. As a result of these practices “the lawmakers’ official intentions are very often altered and weakened, if not directly annulled, since the concrete regulation of more and more issues by the executive escapes any kind of overt public accountability.”<sup>61</sup>

If lack of an adequate amount of legislation can hamper the rule of law, so can too much legislation, especially if it is conflicting, vague, and fails to spell out unambiguously citizen rights and responsibilities, and delineate the role of implementation and enforcement authorities. Greece suffers from legal hyperinflation due to the fact that besides parliament, the executive, the president of the republic, ministries, and the bureaucracy have the authority to enact or laws or issue decrees, directives, and regulations. In the three decades following the demise of the junta (1974-2005) parliament, the executive, and the administrative apparatus have enacted about 3.500 laws and regulations, 18.500 presidential decrees, and over 200.000 ministerial decisions. The tapestry gets even more complicated if one includes the legal actions of local governing bodies. With such volume of laws and regulations it is nearly impossible to control for quality, efficacy, and consistency.<sup>62</sup>

Finally, the way laws are drafted adds to the problem. Greece is a civil law country and its legal tradition and norms follow the Roman or Continental European tradition, often referred to as legal positivism. Unlike Anglo-Saxon common law—which gives primacy to custom, natural law, and judicial discovery (judicial review)—legal positivism sees law as human made and assigns the state the sole source of law as well as citizen rights. While parliament is the main generator of legal rules, the source of law emanates from the writings of leading legal scholars;

law is viewed as a science. In the case of Greece, these have created a strong sense of legalism, viewing legal experts as the people possessing the knowledge and the tools to deal with social issues and resolve societal conflict by writing the right laws.<sup>63</sup> Because of this, not only are government authorities inclined to deal with issues by proposing a law (or a series of laws) or issuing regulations, directives, or decrees, but the crafting of these is nearly the exclusive domain of legal experts who abound in Greece's bureaucratic apparatus. It is estimated that more than half of those with law degrees are employed in the nation's various ministries and other administrative bodies.

There is very little input from the bureaucracy, as there is a long tradition in Greece of strict separation of law or policy making from administration. Typically, the drafting of a bill proceeds as follows. Following the decision of the executive to deal with an issue, the relevant minister, together with a few higher echelon subordinates, huddle with a group of attorneys (usually employees of the ministry), discuss the issue, and proceed with the drafting of a bill. The process is short on transparency. Input by affected social groups is kept to a minimum, and inter-ministerial contact—especially at the staff or expert level—is erratic. As a result, laws tend to be written from a purely legal point of view and tend to impose top-down, legalistic solutions to social problems and societal conflicts. The emphasis is on writing the “perfect law” and not a law that social groups have a reason to support. Laws tend to be written in convoluted and highly legalistic language that is incomprehensible to most citizens and average bureaucrats alike. Not enough care is taken to see if proposed laws do not come in to conflict with existing laws, and to identify potential turf battles between the different agencies and local bodies responsible for implementation. But as Wade Channell observes, effective lawmaking “is normally based on some form of social discourse between government and numerous interest groups, which leads to selection of appropriate tools to accomplish the agreed changes.”<sup>64</sup> The input, in the form of opposition, comes after the law has been enacted.

In sum, lawmaking in Greece violates many/most of the important tenets outlined by Montesquieu, Raz, and other important legal theorists. Greek lawmakers are not particularly attentive to the manner of forming laws. As such, the nation's body of law provides little prudential reason for the Greek society to obey them. A 50% implementation rate is barely a passing score even in the most lenient grading scale.

## **Parting Observations**

The preceding analysis provides ample evidence in support of the widely held view that inadequacies in the rule of law have deleterious consequences on Greece's quality of democracy. On the surface, the country meets many/most of the criteria associated with quality democracy, but beneath the surface, one sees significant problems with the rule of law, which is one of the most salient pillars upon which any quality of democracy rests. Not only is the weak state of the rule of law one of the major culprits behind the current crisis, but it also is a major stumbling block impeding efforts to climb out of it. Without wide reforms it is difficult to see how Greece can recover, deal with the heavy debt, and embark on road of stability and economic growth. But reform is not easy and requires political will and reform capacity.

Citing the findings of Bertelsmann Stiftung, Kevin Featherstone and Dimitris Papadimitriou assert that "Greece has the lowest reform capacity of any of the thirty nations comprising the Organization for Economic Cooperation and Development (OECD)."<sup>65</sup> Reform capacity is measured by two indices: status and management. The first refers to "the need for reform in each country by reference to the operation of democracy and the nation's performance in specific areas of public policy." The management index assesses a country's reform capacity using two dimensions, which are "the capacity of government and the extent to which government was accountable." Greece fares badly on both. In the status index the country "was judged to be the lowest of any OECD country on issues including social and welfare provision, employment, and sustainability (the environment, education, an research and development." The news regarding the management index (ability to reform) is equally depressing, as the country "was assessed as the worst of all OECD states, below the other weak states: Poland, Turkey, the Czech Republic and Italy."<sup>66</sup>

Ideally, reforms should be undertaken in good economic times, as stability and calm allow for reflection, careful scrutiny of proposed measures, and an opportunity for various social and economic groups to voice their opinion. Yet this is not the norm, and some cultures are less amenable to reform than others. Greek culture is more reform resistant than accepting. The current economic crisis has had a devastating impact. In less than six years the country lost about 25% of its GDP, unemployment nears 28%, personal incomes have gone down by 40% or more, and the best and the brightest are leaving in droves. To prevent default the authorities were

forced to seek help from the EU, the IMF and the CEB. But the aid package came with stringent conditions for immediate, multifaceted, and deep reforms. Though unprepared and lacking reform capacity, Greek governments had no option but to pursue painful and necessary reforms in the midst of a severe, prolonged, and profound economic and social upheaval. Although it appears that the downward spiral has been arrested, nevertheless, the country is a long distance away from sustainable recovery and economic health.

Crises present daunting challenges, but can serve as stimuli that can lead to self-assessment, new social norms, and opportunities. In the cloudy, melancholic, and stressful environment one can detect signs of resilience, retrospection, re-assessment, willingness to change, and innovation and entrepreneurial spirit. A number of back-to-the-roots stories involving young people who left the congested urban Athens conurbation for the countryside to engage in innovative and potentially profitable forms of farming and other forms of economic activity. In addition, loss of income has forced people to rely on help from neighbors and extended family, which seems to be giving rise to a new community spirit that strengthens social capital and civil society.

Moreover, the crisis afforded an opportunity to one of Greece's oldest institutions, the Orthodox Church, to mend its reputation and renew its ties to society, which had been strained since the early 2000s over the identity cards controversy. In sharp contrast to his charismatic but ambitious and divisive predecessor, Archbishop Ieronymos promotes the church's philanthropic mission and social responsibility. As a result, the church stepped forward and is providing immediate and much-needed aid to the victims of the financial meltdown, including undocumented workers and refugees. Under his leadership the Orthodox Church has re-emerged as one Greece's respected social institutions at a time when many other institutions have lost the respect and confidence of a traumatized nation.

The country's political elites lost much of their clout and prestige, as the population blamed the crisis on their failure to lead and shield the country from the economic doldrums. As the once unassailable political elites struggle to regain their footing, space has opened up allowing new, hitherto unknown individuals unconnected with the old nomenclature to compete for positions of leadership. The recently re-elected mayor of Athens, Yiorgos Kaminis, and his challenger are but a few examples. Tough it is still too early to write-off the closed and family-

dominated old political class, nevertheless, even partial renewal could infuse the Greek political spectrum with a different and, hopefully, more reform oriented political personnel.

Finally, and more intimately connected to the rule of law and quality of democracy, are the stirrings of assertiveness seen from the ranks of the nation's traditionally docile judiciary. Led by younger and more independent minded judges, in recent years Greek courts have shown a far greater willingness to rule unconstitutional laws that led to lowering of pensions and the dismissal of state employees. In a clear break with the past, judges have also handed down guilty verdicts to a small number of high standing officials and a former cabinet minister convicted of wrongdoing.

Though limited in scope and still in their infancy, these developments could improve the Greek state's reform capacity and eventually lead to the emergence of new cultural attitudes and norms more conducive to the rule of law. For at the end of the day, without supportive cultural attitudes the sustainability of the rule of law and the quality of democracy are not on very solid grounds. Although it is too soon to uncork the champagne bottles, but when things reach the bottom of the barrel, then there is only one way they can go: up.

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<sup>1</sup> The author wishes to thank Theoharis Matheou for his invaluable research assistance.

<sup>2</sup> Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation—Southern Europe, South America, and Post-Communist Europe* (Baltimore: The Johns Hopkins University Press, 1996), P. 10.

<sup>3</sup> Guillermo O'Donnell, "Why the Rule of Law Matters," in Larry Diamond and Leonardo Morlino, eds., *Assessing the Quality of Democracy* (Baltimore: The Johns Hopkins University Press, 2005), P. 3.

<sup>4</sup> Thomas Carothers, "The Rule-of-Law Revival," in Thomas Carothers, ed., *Promoting the Rule of Law—In Search of Knowledge* (Washington: Carnegie Foundation for International Peace, 2006), P. 4.

<sup>5</sup> Diamond and Morlino, "Introduction," in Diamond and Morlino, eds., *Assessing the Quality of Democracy*, xv.

<sup>6</sup> *Ibid.*, xiv.

<sup>7</sup> Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, 1979), P. 249.

<sup>8</sup> Montesquieu, *The Spirit of the Laws*, edited with an introduction, notes, and appendixes by David Wallace Carrithers (Berkeley: University of California Press, 1977), Pp. 376-378.

<sup>9</sup> Joseph Raz, *Ethics in the Public Domain* (Oxford: Oxford University Press, 1994), P.371.

<sup>10</sup> *Kathimerini*, 21 January 2007.

<sup>11</sup> Reprinted in *Kathimerini*, 29 June 2009.

<sup>12</sup> Diamond and Morlino, "Introduction," xiv-xv.

<sup>13</sup> O'Donnell, "Why the Rule of Law Matters," Pp.10-13.

<sup>14</sup> *Ibid.*, p.10.

<sup>15</sup> *Ibid.*, p.11.

<sup>16</sup> *Ibid.*, p. 11

<sup>17</sup> *Ibid.*, p. 11.

<sup>18</sup> *Ibid.*, Pp. 11-12.

<sup>19</sup> *Ibid.*, p. 14.

<sup>20</sup> Rachel Kleinfeld, "Competing Definitions of the Rule of Law," in Carothers, ed., *Promoting the Rule of Law*, P. 38.

- <sup>21</sup> O'Donnell, "Why the Rule of Law Matters," p. 15.
- <sup>22</sup> Ibid., p. 15.
- <sup>23</sup> Kleinfeld, "Competing Definitions of the Rule of Law," p. 39.
- <sup>24</sup> O'Donnell, "Why Rule of Law Matters," p. 15.
- <sup>25</sup> Ibid., p. 15.
- <sup>26</sup> Ibid., p. 15.
- <sup>27</sup> Ibid., p. 16.
- <sup>28</sup> Diamond and Morlino, "Introduction," xv-xvi.
- <sup>29</sup> Ibid.
- <sup>30</sup> Ibid.
- <sup>31</sup> Pavlos Eleftheriadis, Syntagmatiki Metarithmisi kai Kratos Dikaiou stin Ellada," in Kevin Featherstone, ed., *Politiki stin Ellada: I Proklisi tou Eksichronismou* (Athens: Ekdoseis Okto, 2007), P.150.
- <sup>32</sup> Keith Legg and John M. Roberts, *Modern Greece: A Civilization on the Periphery* (Boulder: Westview Press, 1997), P. 125.
- <sup>33</sup> Admantia Pollis, "The State, the Law, and Human Rights in Modern Greece," *Human Rights Quarterly* 9 (1987), P. 597.
- <sup>34</sup> Angelos M. Syrigos, "Nomoi Yparchoun Blla Den Efarmozontai," in Kleomenis Koustoukis and Pantelis Sklias, eds., *Diafthora kai Skandala stin Dimosia Dioikisi kai Politili* (Athens: I. Sideris, 2005), Pp. 335-346.
- <sup>35</sup> Vasileios Kokkinos, "O Rolos tis Dikaiosinis," in Stephanos Manos, ed., *Kratos kai Diafthora* (Athens: I. Sideris, 1998), Pp. 223-237.
- <sup>36</sup> *Kathimerini*, 28 April 2008.
- <sup>37</sup> Nikolaos Artavanis, Adair Morse, and Margarita Tsoutsoura, "Tax Evasion Across Industries: Soft Credit Evidence from Greece," Chicago Booth Paper no. 11-25, Fama-Miller Center for Research and Finance, University of Chicago Booth School of Business, 2012, P. 29.
- <sup>38</sup> *Kathimerini*, 25 October 2007.
- <sup>39</sup> *Kathimerini*, 15 January 2008.
- <sup>40</sup> *Kathimerini*, 12 December 2006.
- <sup>41</sup> *Eleftherotypia*, 17 October 2007.
- <sup>42</sup> *Kathimerini*, 21 December 2007.
- <sup>43</sup> Kokkinos, "O Rolos tis Dikaiosinis," P. 227.
- <sup>44</sup> Eleftheriadis, "Syntagmatiki Metarithmisi," P. 164.
- <sup>45</sup> The data was reported by *Kathimerini* and is cited in Takis S. Pappas *Populism and Crisis Politics in Greece* (Houndsmills, UK: Palgrave Macmillan, 2014), 49.
- <sup>46</sup> Steven Vago, *Law and Society*, 8<sup>th</sup> ed. (Upper Saddle, NJ: Pearson-Prentice Hall, 2006), P. 6.
- <sup>47</sup> Nikos Alivizatos, "The difficulties of rationalization in a polarized political system," in Ulrike Liebert and Maurizio Cotta, eds., *Parliaments and Democratic Consolidation in Southern Europe* (London: Pinter Publishers, 1990), Pp. 131-135.
- <sup>48</sup> Ibid., Pp. 139-140.
- <sup>49</sup> Maurizio Cotta, "The centrality of parliament in a protracted democratic consolidation: the Italian case," in Liebert and Cotta, eds., P. 80.
- <sup>50</sup> Robert Rogers and Rhodri Walters, *How Parliament Works*, 5<sup>th</sup> ed. (New York: Pearson Longman, 2004), P. 200.
- <sup>51</sup> For discussion regarding the dominance of the executive see J. Blondel, *Comparative Legislatures* (Oxford: Oxford University Press, 1973), chi 1.
- <sup>52</sup> *Kathimerini*, 10 May 2009.
- <sup>53</sup> Amie Kreppel, "Legislatures," in Daniele Caramiari, ed., *Comparative Politics* (New York: Oxford University Press, 2008), P. 183.
- <sup>54</sup> *Kathimerini*, 11 July 2009.
- <sup>55</sup> *Kathimerini*, 12 December 2008.
- <sup>56</sup> <http://www.keeptakinggreece.com/2013/07/23/eurobarometer>
- <sup>57</sup> Alivizatos, "The difficulties of rationalization," P. 141.
- <sup>58</sup> *To Vema*, 1 January 2010.
- <sup>59</sup> Alivizatos, "The difficulties of rationalization," P. 140.
- <sup>60</sup> Kreppel, "Legislatures," P. 182.
- <sup>61</sup> Alivizatos, "The difficulties of rationalization," P. 141.
- <sup>62</sup> Antonis Makridimitris, *Kratos ton Politon: Provlimata Metarithmisis kai Eksichronismou* (Athens: A.A. Livani,

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<sup>63</sup> Nikos C. Alivizatos and P. Nikiforos Diamandouros, “Politics and the Judiciary in the Greek Transition to Democracy,” in A. James McAdams, ed., *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame: University of Notre Dame Press, 1997), 27-60, and Pedro C. Magalhaes, Carlo Guarnieri, and Yorgos Kaminis, “Democratic Consolidation, Judicial Reform, and the Judicialization of Politics in Southern Europe,” in Richard Gunther, P. Nikiforos Diamandouros, and Dimitri A. Sotiropoulos, eds., *Democracy and the State in the New Southern Europe* (Oxford: Oxford University Press, 2006).

<sup>64</sup> Wade Channell, “Lessons Not Learned about Legal Reform,” in Carothers, ed., *Promoting the Rule of Law*, P. 145.

<sup>65</sup> Kevin Featherstone and Dimitris Papadimitriou, “Assessing Reform Capacity in Greece—Applying Political Economy Perspectives,” in S. Kalyvas, G. Pagoulatos, and H. Tsoukas, eds., *From Stagnation to Forced Adjustment—Reforms in Greece 1974-2010* (London: Hurst & Company, 2012), 31.

<sup>66</sup> *Ibid.*, 33.