

A Constitutional Discussion of Participatory Democracy in Greece

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Introduction

A high level of mistrust toward institutions of representative democracy occurs within Greece, dramatically increasing in recent years. As indicated in the 2013 European Commission's Standard Eurobarometers, the tendency to trust the Parliament has reached 10-12%, while the respective percentage of trust toward the government is only 9-10%.¹ Unavoidably, the severe economic crisis in Greece and its consequences have influenced the country's citizenry.

Not surprisingly, Greece's citizens often chose not to participate in political decision-making processes. The country's Constitution permits referenda but Greece has not held one since the establishment of the Third Hellenic Republic in 1974. Thus, the expanding gap between institutions of representative democracy and the public has substantially undermined the principle of popular sovereignty and representative democracy has been inactive. This phenomenon has led to the so-called "crisis of representative democracy." Attempts to persuade people to take an active role in the political decisions affecting their lives has been difficult but, as expressed in the Constitution, this exercise of power is an essential part of their political freedom.

The only feasible solution in accordance with constitutionally recognized representative

democracy is to encourage participatory democracy within the State's legal order. This approach may appear to contravene the representative form of the State, but this paper argues that either establishing or enhancing participatory methods can in fact complement representative democracy.

Constitutional background

The Constitution outlines the basic provisions of representative democracy. Article 1, Paragraph 1 of the Constitution states that "the form of government of Greece is that of a parliamentary republic,"² and Article 26 confirms this representative character in the separation of powers. Parliament and the President of the Republic administer the legislative branch, the President of the Republic the executive branch, and the government the judicial branch via the courts, all in the name of the Greek People. Finally, the State's representative character is widespread among provisions pertaining to State institutions. For example, according to Article 51, Paragraph 2, "the Members of Parliament represent the Nation."³

However, from a constitutional perspective, the representative regime does not prohibit establishing alternative methods in a more direct form, as illustrated by constitutionally guaranteed referenda. Article 44, Paragraph 2 states:

The President of the Republic shall by decree proclaim a referendum on crucial national matters following a resolution voted by an absolute majority of the total number of Members of Parliament, taken upon proposal of the Cabinet.

A referendum on Bills passed by Parliament regulating important social matters, with the exception of the fiscal ones shall be proclaimed by decree by the President of the Republic, if this is decided by three-fifths of the total number of its members, following a proposal of two-fifths of the total number of its members and as the Standing Orders and the law for the application of the present paragraph provide. No more than two proposals to hold a referendum on a Bill can be introduced in the same parliamentary term.

Should a Bill be voted, the time-limit stated in article 42, paragraph 1 begins the day the referendum is held.⁴

The Constitution recognizes two categories of referenda: crucial national matters and important social issues. Typologically,⁵ a referendum within the Greek constitutional order is a state referendum in the sense that the plebiscite initiative strictly belongs to State institutions of both the legislative and executive branches. The referendum in a crucial national matter is a creative one since the electorate's verdict will often formulate the policy adopted. It is also an *ante legem* referendum because the government has not passed a formal law on the issue. A referendum on an important social matter differs slightly. It is a *post legem* referendum because Parliament has already passed the bill, but the electorate is given the right to revoke provided the issue does not pertain to fiscal matters. In both cases, the President of the Republic proclaims the referendum and it is legally binding.

But the majority government's political will often determines the conduct of referenda. Between the establishment of the 3rd Hellenic Republic in 1974 and the 2012 election, political life in Greece was dominated by two parties, the centre right "Nea Dimokratia" and the social democratic "Panhellenic Socialist Move-

ment," with the latter succeeding the former in a single-party form of government. Typically, the governing party had control of the absolute majority in Parliament and one political party then determined decisions on crucial national matters. Since a large amount of both legislative and executive power had been accumulated into a single political factor, the possibility of "sharing" this power in an alternative decision making process such as a referendum seemed highly uncertain.

The situation is more difficult in the case of referenda on important social matters, as three-fifths of the members of the Parliament are required for the decision. Since the number of Parliamentarians demanded is relatively high (180/300), the referendum would imply the co-operation between major parties in the Parliament, a prerequisite highly impossible to be fulfilled in a system of a single-party political dominance. In addition, the referendum on important social matter is conducted for repealing a formal law already passed in the Parliament. This *post legem* character implicates a substantial contradiction since the Parliament by absolute majority has already decided on the issue while afterwards the same majority participates in conducting a referendum for the same issue. In case that an electoral process has taken place in the meanwhile, the new Parliament may repeal the Bill at stake simply by passing a new one by absolute majority.

Unlike other member states, pivotal political decisions in Greece that affect both the form of the state and its powers have not been queried by the public, including the accession of Greece to the EC or the implementation of the EU-establishing Maastricht Treaty and its subsequent amendment treaties.⁶ Only one referendum has been conducted throughout the history of the 3rd Hellenic Republic, referencing the institution of kingship and its possible abolishment.⁷ Most recently, former Prime Minister Georgios Papandreou addressed the issue in October 2011 when he proposed a referendum. In a crucial period that would decide the future of Greek social, political and economic life, the people could potentially have been given the power to

decide the fate of an austerity program and consequent measures that would keep Greece in the euro zone. However, after severe reactions from both internal⁸ and external⁹ major political factors, the government withdrew the proposal almost immediately.

The political decisions that inspire referenda are beyond the scope of this paper, but the common position adopted by political factors inside and outside Greece towards referenda is a key part of this discussion. A certain amount of fear exists when granting decisive power to the people. The rationale behind this avoidance is the perception that the electorate is not qualified to decide on matters of the highest political significance and importance¹⁰ and that political solutions should be left to governors with expertise-based logic. This approach illustrates a democratic deficit in the decision making process, reflecting a sense of authoritarianism that affects the core of democracy. Reactions to the 2010 referendum in Greece included statements from German scholar Jürgen Habermas, who addressed the lack of citizen participation by pointing to “the concentration of power in the hands of an inner circle of government leaders who impose their agreements on national parliaments.” He further argued that politicians should clearly explain political situations and restore decision-making power to its citizens.¹¹ In that sense, the role of politicians is mainly to guide citizenry by spherically providing all relevant information, whilst the ultimate decision, especially in a matter of highest importance such as the Greek economic crisis, shall be left to citizens who at the same time recuperate full political responsibility for the results of the respective decision.

Enhancement of Participatory Democracy

Strengthening participatory democracy in Greece could be a solution to the problem described above. This can be achieved through the institutionalization of certain methods that bolster civil society’s role in the decision making process while respecting the parameters of formal institutions and constitutionally acknowledged representative democracy.

A step toward this goal could be to establish popular referenda by relocating the plebiscitary initiative from State institutions to citizens. For example, where Parliament has passed a bill on important social matters, civil society could have the right to set the bill before the electorate by proclaiming a referendum. This would allow citizens to convey their thoughts on social matters of the highest importance and relevance by either by approving or rejecting a solution from their political representative. This type of referendum has decisive power in the sense that negative public opinion can lead to revoking a bill and proposing a new one, all in keeping with respective constitutional provisions or by the citizens’ legislative initiative.

Popular plebiscitary initiatives differ with regard to referenda for crucial national matters, and the difference lies in the timing in relation to the bill. Since this type of referendum is conducted *ante legem*, civil society has an opportunity to determine the political framework and fully formulate the plebiscitary topic. In this case, the beginning and the outcome of the legislative process essentially belongs to citizens. Although one could argue that this method is more suitable to directly democratic forms of government, the exceptional case of its application in crucial national matters could justify its use. As such, the verdict would rest with the ultimate source of political power, the people.

Nevertheless, certain competences limit the citizenry’s involvement. For example, issues covered by EU law where Parliament simply implements EU legislation into the Greek legal order will inevitably be exempted even though it may fall in the category of “crucial national matters.” These issues are decided in accordance with the principle of EU “conferral,”¹² an autonomous legal order whose authority is determined by the EU Treaties. Hence, this power cannot be taken back by force. The President of the Republic, who ultimately proclaims the referendum, decides issues of competence. In cases of referenda proposals on issues of EU competence, the President shall declare the proposal inadmissible on the basis of non-compliance with EU law.

The citizens' legislative initiative is an additional component of participatory democracy that enhances civil society's active role in the decision making process.¹³ An alternative form of legislative initiative active in other European states, this method of participation involves formulating a law proposed within civil society and requesting that it be formally debated in Parliament. For example, Article 41 of the Austrian Constitution states that every motion proposed by either 100,000 or one-sixth of voters in three States be submitted to the House of Representatives for action and be put forward in the form of a draft law.¹⁴ Similarly, citizens in Italy may introduce bills drafted in articles and supported by at least 50,000 voters,¹⁵ while in Spain the number of the voters required must be no fewer than 500,000.¹⁶

After the Lisbon Treaty amendment, the European citizenry actively participates, as stated in the provisions of the consolidated Treaty on European Union (TEU). In particular, Article 10, Paragraph 3 TEU guarantees the right of every citizen to participate in the democratic life of the Union and requires that formal institutions consider the citizenry as much as possible. Similarly, Article 11, Paragraph 2 helps keep the dialogue between EU institutions and civil society open, transparent and regular. However, the peak of this political position occurs in Article 11, Paragraph 4, where the TEU allows the European Commission to submit proposals on matters supported by at least 1,000,000 citizens who are nationals of a significant number of member states.¹⁷

The situation described above confirms the idea that representative and participatory democracy can co-exist. This alternative method of legislative initiative, based on public will and the electorate's direct involvement, strengthens the idea of representative institutions. Thus, citizens give their representatives a pure mandate that can become an objective of legislative debate.

However, citizens' legislative initiative must be primarily of a consultative nature in the sense that Parliament's approval is not legally binding. To do otherwise would simply confirm citizens' proposals without question and lead to a sub-

stantial abolishment of a representative form of governance, a practice that constitutes the basis of direct democracy. Parliament must still adequately explain its reasons in cases where it rejects citizens' proposals, but as in the referendum by popular plebiscitary initiative, citizens may propose only on topics covered by the Parliament's competencies.

Indeed, civil society's active role in the decision-making process should include proposals for the amending of the highest legal norm of the State, the Constitution. Yet should the amendment process begin in accordance with Article 110, Paragraph 2 of the Constitution, proposing that certain provisions be revised and formulated within civil society and sent to the Parliament on a consultative basis? If so, is Parliament under an obligation to examine these proposals and respond with an adequately justified explanation? In this way, people could be given a certain amount of constitutional power. They can actively participate in politics, shaping concepts that may materialize into legal norms and constitute a part of the highest law regarding the organizational structure of the State and their own fundamental rights.

Notably, however, citizens' proposals cannot contravene the exceptions indicated in Article 110, Paragraph 1 of the Constitution pertaining to non-revisable constitutional provisions. These provisions essentially summarize the core of the regime, determining that the government is a Parliamentary Republic conforming to general principles within the Greek legal order. Allowing society to set the non-revisable provisions under consideration implies that these provisions can be amended, ultimately leading to an abolishment of the constitutionally recognized form of State. This series of events could result in revolutionary action in the sense that building a new and large-scale norm based on a new regime embodied within it could provide a political future that is very different from its past.¹⁸

Conclusion

The application of the abovementioned principles requires a constitutional amendment in a

series of provisions. In the case of popular referenda, inserting a separate constitutional provision in Article 44, Paragraph 2 that pertains to this issue would make it more concrete. With regard to establishing a citizens' legislative initiative, Article 73 may include their right to introduce bills: Paragraph 1 states, "[t]he right to introduce Bills belongs to the Parliament and the Government," which can also be worded to include citizenry input. Moreover, the document would require another paragraph describing the citizens' legislative initiative.

In an environment of mistrust towards institutions of representative democracy, people should be provided with the chance to engage in the political decisions that affect their daily lives. A co-operative method of government based on an enhanced form of representative democracy that includes direct participation can help achieve this goal. Both popular referenda and citizens' legislative initiatives are positive movements in this direction and could help restore political trust in institutions without disrupting the balance of the system of representation. Hence, these two measures should not be perceived as opposing but as supplementing representative democracy.

Politically, active participation in central politics can enhance the citizenry's role in civil society. Establishing citizens' legislative initiatives and adding the possibility of citizen-driven popular referenda to the Constitution can facilitate the exercise of fundamental democratic rights that now remain largely theoretical. This "shot" of participatory democracy will lessen common notions within society that "the politicians decide for us without us," and will help establish a more co-operative form of representative democracy.

Notes

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- 1 European Commission, *Standard Eurobarometer 79*, online: European Commission <http://ec.europa.eu/public_opinion/archives/eb/eb79/eb79_fact_el_en.pdf> at 2; European Commission, *Standard Eurobarometer 80*, online: European Commission <http://ec.europa.eu/public_opinion/archives/eb/eb80/eb80_fact_el_en.pdf> at 2.
- 2 The translation of the Constitution of Greece, online: <<http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggluko.pdf>>.
- 3 *Ibid*, see also Lina Papadopoulou, "Μορφές "Άμεσης Νομοθεσίας": Δημοψήφισμα και Λαϊκή Νομοθετική Πρωτοβουλία" [Forms of "Direct Legislation": Referendum and Popular Legislative Initiative] (Delivered at the Conference of the Institute of Strategic and Development Studies - ISTAME "Andreas Papandreou", 25-26 February 2013), published as such (10 July 2013), online: www.constitutionalism.gr <http://www.constitutionalism.gr/site/wp-content/uploads/2013/07/2013_Papadopoulou.Lina-Laiki.nomothetisi.ISTAME.pdf> (Greek).
- 4 *Ibid*.
- 5 For the typology of referendums, see Andreas G Dimitropoulos, *Το Δημοψήφισμα: Ο Ρόλος και η Σημασία του Θεσμού στη Σύγχρονη Δημοκρατία* [The Referendum: the Role and the Significance of the Institution in Modern Democracy], (Athens-Komotini, Greece: Ant N Sakkoulas Publishers, 1997) at 77-150 (Greek).
- 6 Norway held two referendums on the question of entering the European Communities in 1972 and the European Union in 1994; France and the Netherlands conducted referendums on the acceptance of the Treaty establishing a Constitution for Europe whilst in the same line, Ireland's initial decision against and later in favor of the Lisbon Treaty was based on referendums.
- 7 It was held on 8 December 1974 and constituted the basis of the current form of government. The results were 69.18% in favor of abolishment and 30.82% against. See Antonis Pantelis, Stephanos Koutsoubinas & George Gerapetritis, "Greece" in Dieter Nohlen & Philip Stöver, eds, *Elections in Europe: A Data Handbook* (Baden-Baden, Germany: Nomos Publishers, 2010) at 838.
- 8 The political response from the opposition parties was severe. Nea Dimokratia characterized the referendum as "indirect national schism", while the Communist Party spoke of a "coercion mechanism" for the people. See also "Ομοβροντία από την Αντιπολίτευση που ζητάει Εκλογές" [Opposition Bursts Demanding Elections], *Eleftherotypia* (31

- October 2011) online: Eleftherotypia <<http://www.enet.gr/?i=news.el.politikh&id=322397>> (Greek).
- 9 The President of the French Republic at the time, Mr. Nicolas Sarkozy, was highly concerned from the announcement of the referendum that this unilateral decision would undermine the negotiation process at European level, “Sarkozy, consterné par l’annonce d’un référendum en Grèce”, *Le Monde Blogs* (31 October 2011), online: *Le Monde Blogs* <<http://elysee.blog.lemonde.fr/2011/10/31/sarkozy-consterne-par-lannonce-de-referendum-en-grece/>>. The UK Chancellor of the Exchequer, Mr. George Osborne said that “the decision of the Greek prime minister has added to the instability and uncertainty in the euro zone”: see Thomas Penny, “Osborne says Greek Referendum Decision Has Added to Instability”, *Bloomberg* (1 November 2011) online: *Bloomberg* <<http://www.bloomberg.com/news/2011-11-01/osborne-says-greek-referendum-decision-has-added-to-instability.html>>.
 - 10 Yiannis Z Drossos, “Ζητήματα Συνταγματικής Οργάνωσης, Δικαστικής Προστασίας και Δημοκρατίας στην Εποχή της Σημερινής Κρίσης” [Issues of Constitutional Organization, Judicial Protection and Democracy in the Time of the Ongoing Crisis] (Presentation delivered at the Meeting of the Centre for European Constitutional Law - Themistokles and Dimitris Tsatsos Foundation, Athens, 22 May 2012), published as “Κράτος, Δημοκρατία και Σύνταγμα στην Εποχή της Κρίσης” [State, Democracy and Constitution in the Time of Crisis (22 January 2013), online: *www.constitutionalism.gr* <http://constitutionalism.gr/site/wp-content/mgdata/pdf/drosos_2013_1_22_19_1_33.pdf> at 13-14 (Greek).
 - 11 “Habermas Stokes Debate on Europe” *Voxeurop* (9 November 2011), online: *Voxeurop* <<http://www.voxeurop.eu/en/content/news-brief/1152061-habermas-stokes-debate-europe>>, also in Drossos, *supra* note 9 at 13 (Greek).
 - 12 Article 5 Treaty on European Union, see also Damian Chalmers, Gareth Davies & Giorgio Monti, *European Union Law: Cases and Materials*, 2d ed (New York: Cambridge University Press, 2010) at 212.
 - 13 See also Papadopoulou, *supra* note 3.
 - 14 The translation of the Austrian Constitution, online: <http://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.pdf>.
 - 15 See article 71, paragraph 2 of the Italian Constitution, online: <https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf>.
 - 16 See article 87, paragraph 3 of the Spanish Constitution, online: <http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf>.
 - 17 EU Regulation 211/2011 (EC, *Commission Regulation (EC) 211/2011 of 16 February 2011 on the citizens’ initiative*, [2011] OJ, L 65/1) has been adopted for the procedures and conditions required for a citizens’ initiative in accordance with *Consolidated Version of the Treaty on the Functioning of the European Union*, European Union, 26 October 2012, Eur TS at para 1 of article 24.
 - 18 Leonard FM Besselink, “The Notion and Nature of the European Constitution after the Reform Treaty” *Social Science Research Network* (18 January 2008), online: *Social Science Research Network* <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1086189> at 3-4.