



# City Research Online

## City St George's, University of London

**Citation:** Kivotidis, D. (2024). The curious genealogy of the “executive state”: A critical review of the latest administrative reform in Greece. *International Journal of Constitutional Law*, 22(2), pp. 354-375. doi: 10.1093/icon/moae041

This is the published version of the paper.

This version of the publication may differ from the final published version. To cite this item please consult the publisher's version.

**Permanent repository link:** <https://openaccess.city.ac.uk/id/eprint/37421/>

**Link to published version:** <https://doi.org/10.1093/icon/moae041>

**Copyright and Reuse:** Copyright and Moral Rights remain with the author(s) and/or copyright holders. Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge, unless otherwise indicated, provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way. For full details of reuse please refer to [City Research Online policy](#).

---

# *The curious genealogy of the “executive state”: A critical review of the latest administrative reform in Greece*

Dimitrios Kivotidis\*

*This article critically discusses the latest reform of the Greek administration system, which took the form of an Act establishing an “executive state.” It intends to make two contributions to the existing literature. First, it offers a critique of the executive state. Existing critiques generally focus on the bureaucratic concentration of powers in the office of the Prime Minister or the abandonment of positive elements found in previous reform attempts. However, they largely accept the reform as a technical response to the crisis. In contrast, this article presents a comprehensive critique that fully addresses the historic origins and contemporary significance of the notion and institutional forms of the executive state, revealing it as a political, rather than technical, measure that reflects deeper views about the relationship between the state, the economy, and society. Additionally, the article assesses the two main effects of this administrative reform—the centralization and depoliticization of policymaking—as manifestations of an authoritarian shift. The second contribution concerns the literature on authoritarian liberalism, which examines the authoritarian tendencies inherent in liberal forms and ideals. While several authors have explored the authoritarian tendencies of institutional reform in the face of crisis, this article seeks to explore the authoritarian phenomenon as part of a process of market capture and to examine its effects specifically on administrative law and structures. Ultimately, this article argues that administrative reform in Greece follows a rather sinister genealogy, and must be understood as an essential counterpart to the generalized and sustained attack on social and political rights following the dictates of the market.*

\* Lecturer in Law, Goldsmiths, University of London, London, United Kingdom. Email: [dimitris.kivotidis@gmail.com](mailto:dimitris.kivotidis@gmail.com). I would like to thank Dimitrios Kagiarios for reading and commenting upon an early draft of this paper.

## 1. Introduction

It has been a few years since political developments in Greece dominated the public domain. From 2010 to 2015, Greece came close several times to defaulting on its sovereign debt, and was subjected to three rescue plans and a decade-long process of radical change in every sphere of socio-political and economic activity.<sup>1</sup> In 2022, Greece made the global news again with a wiretapping scandal which exposed the contradiction between the celebrated “return to economic and juridico-political normality” and the reality which the process of socio-economic restructuring has resulted in.<sup>2</sup>

It was generally recognized by Greek and international media that the spyware scandal, which involved the surveillance of journalists and politicians of the opposition parties, had its roots in the model of state that was established as soon as New Democracy was able to form a government following its victory in the general election of 2019.<sup>3</sup> Media coverage of the spyware scandal stressed that the Act on the Executive State, which placed the National Intelligence Service (EYP) under the direct control of the Prime Minister’s Office, was one of the first issued by the Mitsotakis Administration.<sup>4</sup>

The Act on the Executive State was the “flagship” of the “legislative fleet” commissioned by the newly appointed government in 2019, which included an Act on Digital Governance;<sup>5</sup> an Act which restricted public assemblies and processes;<sup>6</sup>

<sup>1</sup> See in particular THE INTERNAL IMPACT AND EXTERNAL INFLUENCE OF THE GREEK FINANCIAL CRISIS (John Marangos ed., 2017); GREEK CAPITALISM IN CRISIS: MARIST ANALYSES (Stavros Mavroudeas ed., 2016); Costas Lapavistas, *Political Economy of the Greek Crisis*, 51 REV. RADICAL POL. ECON. 31 (2019); Ioannis Katsaroumpas, *De-constitutionalising Collective Labour Rights: The Case of Greece*, 47 INDUSTRIAL L.J. 465 (2018); Aristeia Koukiadaki & Lefteris Kretsos, *Opening Pandora’s Box: The Sovereign Debt Crisis and Labour Market Regulation in Greece*, 41 INDUSTRIAL L.J. 276 (2012); Dimitrios Kivotidis, *The Form and Content of the Greek Crisis Legislation*, 29 LAW & CRITIQUE 57 (2018).

<sup>2</sup> Alexander Clapp, *The Rot at the Heart of Greece Is Now Clear for Everyone to See*, N.Y. TIMES (Aug. 22, 2022), [www.nytimes.com/2022/08/22/opinion/greece-mitsotakis-predator-spyware.html](https://www.nytimes.com/2022/08/22/opinion/greece-mitsotakis-predator-spyware.html); Helena Smith, *Greek PM under Pressure over Tapping of Opponent’s Phone*, THE GUARDIAN (Aug. 7, 2022), [www.theguardian.com/world/2022/aug/07/greek-pm-kyriakos-mitsotakis-under-pressure-over-tapping-of-opponents-phone](https://www.theguardian.com/world/2022/aug/07/greek-pm-kyriakos-mitsotakis-under-pressure-over-tapping-of-opponents-phone).

<sup>3</sup> Clapp, *supra* note 2; Smith, *supra* note 2.

<sup>4</sup> See Nomos (2019:4622) Epiteoliko Kratos: Organosi, leitourgia kai diafaneia tis Kyvernisis, ton kyvernitikon organon kai tis kentrikis dimosias dioikisis [Executive State: Organisation, Operation and Transparency of Government, Government Bodies and Central Public Administration], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 2019, A:133, esp. art. 21(4) [hereinafter Act 2019:4622]. I have decided to translate the word “epitelikos” (επιτελικός) as “executive,” hence using “executive state” to convey the concept of “epiteliko kratos” (επιτελικό κράτος). The translation of “epitelikos,” similar to the term “executive” itself, is not straightforward, as it can describe functions of a strategic nature, and those that implement policies devised by strategic institutions. Moreover, the notion of governance is intrinsically linked to executive functions—it encompasses political guidance, central institutional planning, and strategic guarantees of policy implementation. Thus the call for an *epiteliko* (i.e., strategic) executive state is essentially a pleonasm.

<sup>5</sup> Nomos (2020:4727) Kodikas Psifiakis Diakivernisis (Ensomatosi stin elliniki nomothesia tis Odigias (EE) 2016/2102 kai tis Odigias (EE) 2019/1024)—Kodikas Elektronikon Epikinonion (Ensomatosi sto elliniko dikαιο tis Odigias (EE) 2018/1972 kai alles diatakseis [Code of Digital Governance (Implementing Directive (EU) 2016/2102 and Directive (EU) 2019/1024—Code of Electronic Communications (Implementing Directive (EU) 2018/1972 and other provisions)], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.], 2020, A:184.

<sup>6</sup> Nomos (2020:4703) Demosies Ypaithries Sinathroises kai alles diatakseis [Public Assemblies and other provisions], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.], 2020, A:131 [hereinafter Act 2020:4703].

as well as a couple of Acts intended to facilitate further deregulation of the labor market.<sup>7</sup> According to the Minister of State, Giorgos Gerapetritis, who was responsible for introducing the Bill in Parliament, the Act on the Executive State aimed to establish: (i) political normality; (ii) programmatic governance and the monitoring of governmental work; (iii) a clear distinction between political and service administration; (iv) wide-scale transparency; and (v) good legislation.<sup>8</sup> These goals, arguably uncontroversial, are considered essential for any state, especially in the context of asymmetric threats and shifting circumstances. However, a critical review and genealogy of the executive state reveal a more sinister potential for this administrative model introduced with Act 2019:4622.

In this article, I focus on the issues of power concentration and depoliticization of public administration, understood in the context of an authoritarian turn. Authoritarianism is not understood here in the narrow sense, i.e., as a process of undermining checks and balances in the system of government or delegating lawmaking power from parliament to the executive. Instead, authoritarianism is used in a broader sense to describe processes where authoritarian measures are introduced by governments operating within the boundaries of a liberal democratic framework.<sup>9</sup> In this sense, authoritarianism combines the enhancement of concentrationist and depoliticized/de-democratized elements in the decision-making process with a sustained and prolonged attack against socio-political rights (especially labor rights) and economic democracy.<sup>10</sup>

The term “authoritarian liberalism” is significant in this respect. It has been used to describe the authoritarian tendencies inherent in liberal forms and ideals, whereby the main task of ensuring the constitution of economic freedom is assigned to a strong state.<sup>11</sup> In this article, I adopt the viewpoint that sees authoritarianism as opposed

<sup>7</sup> Nomos (2021:4808) *Gia tin Prostasia tis Ergasias—Sistasi Anexartitis Arxis “Epitheorisi Ergasias”—Kirosi tis Simvasis 190 tis Diethnous Organosis Ergasias gia tin exalpsi tis vias kai parenoxlisis ston kosmo tis ergasias—Kirosi tis Simvasis 187 tis Diethnous Organosis Ergasias gia to Plaisio Proothisis tis Asfaleias kai tis Ygeias stin Ergasia—Ensomatosi tis Odigias (EE) 2019/1158 [For the Protection of Work—Establishing Independent Agency “Work Inspectorate”—Ratification of Convention 190 of the International Labour Organisation for the eradication of violence and harassment in the world of work—Ratification of Convention 187 of the International Labour Organisation for the Promotional Framework for Occupational Safety and Health—Implementing Directive (EU) 2019/1158], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.], 2021, A:101; Nomos (2023:5053) *Gia tin Enisxixi tis ergasias—Ensomatosi tis Odigias (EE) 2019/1152—Aplopoiisi psiflakon diadikasion kai enisxixi tis Kartas Ergasias [For the Enhancement of Work—Implementing Directive (EU) 2019/1152—Simplification of the Digital Procedures and Enhancement of the Work Card], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.], 2023, A:158.**

<sup>8</sup> Giorgos Gerapetritis, *The Main Axes of the Bill on the Executive State*, KATHIMERINI (July 29, 2019), [www.kathimerini.gr/politics/1036016/oi-vasikoi-axones-toy-nomoschedioy-gia-to-epiteliko-kratos/](http://www.kathimerini.gr/politics/1036016/oi-vasikoi-axones-toy-nomoschedioy-gia-to-epiteliko-kratos/) (in Greek).

<sup>9</sup> Michael Wilkinson, *Authoritarian Liberalism and the Transformation of Modern Europe: Rejoinder*, 1 EUR. L. OPEN 191, 201 (2022).

<sup>10</sup> Dimitrios Kivotidis, *The UK Economic Constitution: Between Authoritarianism and Democracy*, PUB. L. 650 (2023).

<sup>11</sup> Werner Bonefeld, *European Economic Constitution and the Transformation of Democracy: On Class and the State of Law*, 21 EUR. J. INT’L RELATIONS 867, 869 (2015). See also *Special Section: Herman Heller’s Authoritarian Liberalism*, 21 EUR. L.J. 285 (2015); EVA NANOPOULOS & FOTIS VERGIS, *THE CRISIS BEHIND THE EURO-CRISIS: THE EUROCRISIS AS A MULTIDIMENSIONAL SYSTEMIC CRISIS OF THE EU* (2019); HELENA ALVIAR GARCIA AND GUNTER FRANKENBERG, *AUTHORITARIAN CONSTITUTIONALISM: COMPARATIVE ANALYSIS AND CRITIQUE* (2019).

to democracy, especially economic democracy, and consequently as a crucial factor in a process of market capture.<sup>12</sup> The analysis explicitly links the authoritarian turns listed in the article (during the interwar period, the 1970s, and the 2010s) to a process of market capture that seeks to abolish measures of economic democracy and deregulate the labor market to enhance capital’s profitability following respective crises. Authoritarianism is thus seen as an essential element of market constitutionalism, defined as the “undoing of the constitutional form under the pressure of total market thinking,”<sup>13</sup> and represents the strategic opposition to democratic constitutional elements (and labor rights as an essential manifestation of economic democracy).

The main argument is that the latest administrative reform in Greece is a manifestation of this authoritarian tendency in administrative law and processes, as well as an essential element of market constitutionalism. To develop this argument, I will tentatively propose a genealogy of the executive state starting from the interwar period and ordoliberalism to theories of new public management and the “new executive state.” Underlying this genealogy is a contextual analysis. Demands for a “strong state” to shield the economy from potential threats in a volatile socio-economic and political environment appear when socio-economic and political rights are seen as barriers to profit and, thus, normatively abhorrent.<sup>14</sup> Therefore, administrative reform in the form of the executive state can only make sense as part of the process of shielding the state and decision-making processes from political contestation of such deeply unpopular measures. As such it constitutes an essential counterpart to a generalized and sustained attack on social and political rights.

The article is structured as follows. Section 2 analyzes the main changes introduced with Act 2019:4622. It examines its concentrationist structure and assesses its main effects, focusing on the centralization of power and the depoliticization of public policy production. Section 3 sets out a genealogy of the executive state to sustain the argument that Act 2019:4622 must be understood as a manifestation of a generalized tendency toward authoritarianism in the process of market capture. Section 4 examines the context and processes that led to the introduction of the Act on the Executive State. It focuses on the legislative response to the economic crisis and examines the proposals for reform in the field of administrative state and law, arguing that this reform is not a technical measure to optimize policymaking in Greece but rather a political one aimed at consolidating the norms of market constitutionalism.

## 2. The Act on the Executive State

During the crisis there were several organized collective efforts to initiate the process of administrative reform, which took the form of symposia, reports, and even a draft bill

<sup>12</sup> EMILIOS CHRISTODOULIDIS, *THE REDRESS OF LAW: GLOBALISATION, CONSTITUTIONALISATION AND MARKET CAPTURE* 8 (2022).

<sup>13</sup> *Id.*

<sup>14</sup> Ruth Dukes, *Constitutionalizing Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law*, 35 *J. L. & Soc’y* 341 (2008).

prepared by specialist committees.<sup>15</sup> However, the actual legislative measure to introduce the reform was implemented with the appointment of the New Democracy government, following the general election of 2019. This Bill was one of the first introduced by the new government in parliament, and it fulfilled one of the promises made in the party's manifesto for the creation of a “modern and effective state.”<sup>16</sup> According to Minister Gerapetritis,<sup>17</sup> this legislative measure is structured around five main thematic objectives: (i) the organization of political normality; (ii) the introduction of programmatic governance and monitoring of governmental work; (iii) the distinction between political and service administration; (iv) the ensuring of wide-scale transparency; and (v) adherence to the principles of “regulatory governance” and “good legislation.”

For reasons of brevity and analytical clarity, I shall focus on provisions concerning the three main changes Act 2019:4622 introduced, namely a new method of planning and monitoring governmental work; the establishment of the office of the Presidency of Government; and the separation between political and service administration. The first innovation concerns policymaking procedures. The new method of planning and monitoring of governmental work is based on a new top-down and concentrationist principle of public policy production. The centralizing aspects of this approach included the production of a coherent operational plan of governmental policy, through the partnership of central structures of government and the ministries, which would then be implemented by individual ministries. The responsibility for the operation of this planning and monitoring system is assigned to a new office, the aforementioned presidency of government, which subsumes all different offices and secretariats that were previously directly subordinate to the prime minister.<sup>18</sup> Article 49 of Act 2019:4622 provides that the annual planning is the responsibility of the presidency of the government and reflects the government's priorities (goals, strategic options, policy axes, key actions), as well as the necessary legislative or regulatory measures for their actualization.<sup>19</sup>

<sup>15</sup> See APOSTOLOS PAPATOLIAS, *THEORY AND PRACTICE OF THE EXECUTIVE STATE* 152–96 (2021) (in Greek). See also Armin von Bogdandy & Michael Ioannidis, *New Forces for Greek State Reform*, VERFASSUNGSBLOG (Mar. 9, 2017), <https://verfassungsblog.de/new-forces-for-greek-state-reform/> (the symposium was based on the authors' “ambitious and far-reaching proposal to use European help to bring new forces as well as the Greek diaspora into the reform process”).

<sup>16</sup> *Strong Development, Self-Reliant Greece: Our Plan*, NEW DEMOCRACY PARTY MANIFESTO (2019), [https://nd.gr/sites/ndmain/files/docs/nd\\_programa\\_web.pdf](https://nd.gr/sites/ndmain/files/docs/nd_programa_web.pdf).

<sup>17</sup> Gerapetritis, *supra* note 9.

<sup>18</sup> Papatolias, *supra* note 16, at 201.

<sup>19</sup> See Nomos (2019:4622) *Epiteliko Kratos: Organosi, leitourgia kai diafaneia tis Kyvernisis, ton kyvernitikon organon kai tis kentrikis dimosias dioikisis* [Executive State: Organisation, Operation and Transparency of Government, Government Bodies and Central Public Administration], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 2019, A:133, art. 52 [hereinafter Act 2019:4622] (establishing that the process of planning next year's governmental work starts every April, with the Council of Ministers defining the main government priorities by policy area. Ministries are notified by May in order to start drafting the necessary actions, which should be sent for approval by mid-July to the Presidency of Government. The latter then proceeds to check the compatibility of the Draft Action Plans with the government's priorities and fiscal goals and finalizes its assessments in the Consolidated Draft Government Policy. The Draft Action Plans and the Consolidated Draft Government Policy are submitted for approval to the Annual Planning Cabinet each September, whereas the Consolidated Plan of Government Policy, together with the final Action Plans, are approved by the Council of Ministers by the end of December, when they are made public).

We can already see how the Act responds to the demands for centralizing, technocratic, and depoliticizing regulatory processes. The emphasis on the procedural and programmatic character of the governmental function appears as the “rational” and technocratic reaction to the general pathologies which affected the effectiveness of governmental work before and during the crisis.<sup>20</sup> The drafters of the Bill systematically emphasized that, in modern parliamentary systems, it is crucial to evaluate the agreement of legislative initiatives with the governmental program in a centralized manner at the highest possible level.<sup>21</sup> During parliamentary debates over the Bill, the Prime Minister himself emphasized the pursuit of a unified and coordinated implementation of public policies through a strong political center, speaking of the modern and progressive demand for a “strong central authority” as opposed to a “fragmented Government which decides without acting.”<sup>22</sup> The ordoliberal connotations of this statement are undeniable.<sup>23</sup>

Another centralizing innovation of the Act is the establishment of a new office, namely the presidency of government, which was designed to enhance coordination and cohesion, monitoring and continuity, as well as the efficiency and effectiveness in implementation of governmental programs. The presidency of government, which reports directly to the prime minister, appears as the main pillar of coordination and strategic planning, i.e., the quintessence of the “executive state.” It is constituted as an executive public office, with a task of continuously monitoring the progress of governmental work and evaluating the effectiveness and efficiency regarding the goals set.<sup>24</sup>

Furthermore, the establishment of two governmental councils enhanced the concentration of powers under the direct control of the prime minister. These councils are constant and permanent, and they have extensive powers which they exercise in the framework of the general guidelines of governmental policy.<sup>25</sup> They are staffed and presided over by the prime minister,<sup>26</sup> and their scope covers two core functions of government: (i) economic policy by the Governmental Council of Economic Policy and (ii) national security by the Governmental Council of National Security. The latter council has far-reaching powers as it is responsible for the national security strategy, the structure of the armed forces, the assessment of critical situations, the deployment of armed forces in the context of international commitments, as well as for authorizing the prime minister to declare war. The Governmental Council of Economic Policy, in turn, is responsible for the formulation of interministerial policies and decision-making in all matters relating to the economic and developmental policy

<sup>20</sup> Giorgos Gerapetritis, *The Economic Crisis as Deregulating Factor of the Legal Sources’ Hierarchy*, in *STUDIES ON THE MEMORANDUM 130* (Antonis Argyros ed., 2013).

<sup>21</sup> Stylianos-Ioannis G. Koutnatzis, *How and Why We Legislate? Executive State in Action*, TA NEA (Feb. 8, 2020) (in Greek), [www.tanea.gr/print/2020/02/08/opinions/pos-kai-giati-nomothetoume-lfto-epiteliko-kratosstin-praksi/](http://www.tanea.gr/print/2020/02/08/opinions/pos-kai-giati-nomothetoume-lfto-epiteliko-kratosstin-praksi/).

<sup>22</sup> Parl. Deb. (Aug. 6, 2019) at 1845 (Kyriakos Mitsotakis intervening) (in Greek), [www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20190806.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20190806.pdf).

<sup>23</sup> See further Section 3.

<sup>24</sup> Act 2019:4622, esp. art. 22.

<sup>25</sup> *Id.* art. 7(1).

<sup>26</sup> Act 2019:4622, art. 7(2)–(3).

of the country (including fiscal issues, public and private investments, market regulation and control, competition issues, issues of public debt, financial affairs, and participation in collective European and international relevant bodies). As such, it appears as a crucial institutional formation to ensure continuity of the market capture which began with the Greek crisis legislation.

Last but not least, Act 2019:4622 introduced for the first time in an absolute way a distinction between political administration and service administration (or civil service in the strict sense), thereby enhancing the process of depoliticizing public policy production and implementation.<sup>27</sup> The biggest change to that direction was the introduction of the office of “service secretary.” Article 36 provided for the establishment of permanent service secretaries, reporting directly to ministers, in every department.<sup>28</sup> Service secretaries, as heads of all services tasked with the management of human and financial resources, are primarily responsible for ensuring the smooth and efficient administrative and financial operation of their agencies. According to the Justification Report accompanying the Bill, the main purpose of this measure was to achieve the “actual departification of administrative and economic function of Ministries,” as well as the disentanglement of the political from the administrative sphere in purely administrative matters.<sup>29</sup>

We may already note that this measure, as well as the reasoning behind it, assumes a problematic clear-cut distinction between political and administrative matters. It is also evident that the process of departification is closely linked to—and constitutes an essential aspect of—the process of depoliticization. In that sense it responds to essential requirements of the Memorandum legislation.<sup>30</sup> Yet, a discrepancy is also evident, at least *prima facie*, between the demand for depoliticization and the assertion of control by the executive branch of government over administrative policy through centralization and monitoring, which seems to strengthen the influence of politics over administrative action. In the following sections I intend to show that these two processes are not mutually exclusive, but rather aspects of one and the same process of the authoritarian transformation of policymaking procedures and institutions.

### 3. Genealogy of the executive state

#### 3.1. Executive state and market constitutionalism

Administrative reform aimed at enhancing the strategic function and steering capacity of a state is not, *prima facie*, controversial. The idea of governance includes elements of strategic coordination, public policy guidance, and public interest promotion, all of

<sup>27</sup> Papatolias, *supra* note 16, at 215.

<sup>28</sup> Act 2019:4622, art. 36.

<sup>29</sup> See ΑΠΟΛΟΓΙΚΗ ΕΚΘΕΣΗ ΣΤΟ ΣΧΕΔΙΟ ΝΟΜΟΥ “ΕΠΙΤΕΛΙΚΟ ΚΡΑΤΟΣ: ΟΡΓΑΝΟΣΙ, ΛΕΙΤΟΥΡΓΙΑ ΚΑΙ ΔΙΑΦΑΝΕΙΑ ΤΙΣ ΚΥΒΕΡΝΗΣΙΣ, ΤΟΝ ΚΥΒΕΡΝΗΤΙΚΟΝ ΟΡΓΑΝΟΝ ΚΑΙ ΤΙΣ ΚΕΝΤΡΙΚΙΣ ΔΙΟΙΚΗΣΙΣ” [JUSTIFICATION REPORT OF ACT 2019:4622], 25, [www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/epitel-kratos-eis.pdf](http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/epitel-kratos-eis.pdf) (last visited July 7, 2024).

<sup>30</sup> Further on this requirement, see Section 4.

which rely on the existence of a state with robust guiding and regulatory capacity.<sup>31</sup> Yet, the specific form of the executive state is hardly technical or politically neutral. Instead, it is the product of concrete socio-political processes. Before delving into the genealogy of the executive state, it is important to explore these socio-political processes through the lens of market constitutionalism.

The concept of market constitutionalism describes the subsumption of constitutional thinking and practices by market rationality, as well as the process of “undoing of the constitutional form under the pressure of total market thinking.”<sup>32</sup> As a result, constitutional function shrinks to “what Hayek calls ‘catallaxy’—the protection of property title and the stability of expectations.”<sup>33</sup> This market capture signifies a “paradigmatic shift of constitutional thought from political to a market register.”<sup>34</sup> Historically, the characteristics of market constitutionalism have developed and crystallized whenever the market had to prevail against principles and institutional forms of the rival model of democratic economic constitutionalism.

This rival model is arguably based on the original notion of the economic constitution, which had meant democratic control of the economy.<sup>35</sup> The principles of economic democracy involve the extension of democratic standards and liberal values in the economy,<sup>36</sup> as well as a greater regulatory role for trade unions, through an enhancement of collective bargaining and collective labor agreements.<sup>37</sup> According to democratic economic constitutionalism, labor rights, such as the right to unionize or the right to take industrial action, promote the unilateral protection of employees and aim to create, at a constitutional level, a rival authority against that of the employer-entrepreneur, which emanates from the right of ownership of the means of production.<sup>38</sup> The constitutionalization of such rights reflects the social struggle of workers to limit the monopoly power of their social competitor to unilaterally determine their employment status.<sup>39</sup> From this perspective, the constitutionalization of labor rights appears crucial for the substitution of workplace democracy for workplace despotism.<sup>40</sup>

However, capitalist crises of profitability<sup>41</sup> have historically ignited processes of market capture accompanied by authoritarian institutional forms and processes. Yet, profitability depends on the regulation of industrial relations and the mediation of the balance of forces between capital and labor in favor of the former.<sup>42</sup> Consequently,

<sup>31</sup> Jacques Chevallier, *L'état régulateur*, 111 *REVUE FRANÇAISE D'ADMINISTRATION PUBLIQUE* 473, 474 (2004).

<sup>32</sup> CHRISTODOULIDIS, *supra* note 13, at 8.

<sup>33</sup> *Id.* at 9.

<sup>34</sup> *Id.* at 2.

<sup>35</sup> Wilkinson, *supra* note 10.

<sup>36</sup> ROBERT A. DAHL, *A PREFACE TO ECONOMIC DEMOCRACY* (1986).

<sup>37</sup> Keith Ewing, *Socialism and the Constitution*, 73 *CURRENT LEGAL PROBS.* 27, 33 (2020).

<sup>38</sup> DIMITRIOS TRAVLOS-TZANETATOS, *INDUSTRIAL ACTION IN THE ENTERPRISE AND THE CONSTITUTION* 16 (1984) (in Greek).

<sup>39</sup> *See id.* at 17.

<sup>40</sup> Dukes, *supra* note 15, at 346.

<sup>41</sup> In the field of political economy, a compelling argument has been made recently that the recurring and regular economic crises and slumps in output, investment, and employment in modern economies are due to the falling profitability of capital. *See* WORLD IN CRISIS: A GLOBAL ANALYSIS OF MARX'S LAW OF PROFITABILITY (Guglielmo Carchedi & Michael Roberts eds., 2018); Henryk Grossman, *The Theory of Economic Crises*, in 1 HENRYK GROSSMAN WORKS: ESSAYS AND LETTERS ON ECONOMIC THEORY 44, 44–9 (Rick Kuhn ed., 2018).

<sup>42</sup> 1 KARL MARX, *CAPITAL* 340–417 (Ben Fowkes trans., Penguin Books 1990) (1867).

the most efficient way to reduce labor costs is through a sustained policy of restricting the legislative protection of workers in various ways, such as: removing provisions protecting employees against collective dismissals; shifting the level at which collective bargaining takes place closer to the enterprise level, thereby reducing the collective power of workers; and placing restrictions on industrial action.<sup>43</sup> It follows that a process of market capture aimed at creating conditions for profitable investment of capital and economic growth is dependent on a sustained attack on labor rights.

Seen in this light, market constitutionalism involves the crystallization of legal principles that facilitate the profitable investment of capital, as well as the establishment of authoritarian institutional forms to accommodate this process of market capture, once labor rights are perceived as barriers to profit and obstacles to capitalist investment and growth. In terms of substantive measures, for instance, in the United Kingdom, the Trade Union Act 2016 has been described as taking UK labor law “beyond neo-liberalism,” as it reflects a highly authoritarian strand of Conservative ideology that is anti-liberal, rather than neo-liberal, in its orientation.<sup>44</sup> More recently, the Stikes (Minimum Service Levels) Act 2023, which allows for unilateral changes in the employment contracts of thousands of people to be made by a piece of secondary legislation,<sup>45</sup> has been described as an authoritarian measure<sup>46</sup> that manifests the current UK economic constitution’s hostility towards any form of economic democracy.<sup>47</sup>

As far as institutional forms of decision-making are concerned, market constitutionalism favors the enhancement of depoliticized institutions and de-democratized processes. Depoliticization is understood as a constituent element of the process of de-democratization. If an issue is not political, but rather technical, there is no need for democratic processes and citizens’ input.<sup>48</sup> The goal appears to be the establishment of a technocratic economic governance that would supposedly render economic policy a realm of dispassionate administration by posing limits on government discretion.<sup>49</sup> The proliferation of independent fiscal institutions, such as the British Office for Budget Responsibility, as well as the phenomenon of agencification,<sup>50</sup> can be explained as manifestations of this process. Similarly, the executive state can be understood in this context as a crucial reform, whose concentrationist and depoliticizing features enable continuity in the production of authoritarian legislation that restricts

<sup>43</sup> See, e.g., Eur. Comm’n, *White Paper on Growth, Competitiveness, and Employment*, COM(93)700 (Dec. 5, 1993), [www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vikqhc45qzx1](http://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vikqhc45qzx1) [hereinafter Eur. Comm’n White Paper on Growth].

<sup>44</sup> Alan Bogg, *Beyond Neo-Liberalism: The Trade Union Act 2016 and the Authoritarian State*, 45 *INDUSTRIAL L.J.* 299, 300, 307 (2016).

<sup>45</sup> See HL Deb (21 Feb. 2023) (827), col. 1568 (Lord Judge) (U.K.).

<sup>46</sup> Ioannis Katsaroumpas, *Crossing the Rubicon: The Strikes (Minimum Service Levels) Act 2023 as an Authoritarian Crucible*, 52 *INDUSTRIAL L.J.* 513 (2023).

<sup>47</sup> Kivotidis, *supra* note 11.

<sup>48</sup> It is worth noting that depoliticization is a political process. Denoting areas of policymaking as “non-political” and insulating them from processes of political contestation is a political decision par excellence.

<sup>49</sup> Ben Clift, *Technocratic Economic Governance and the Politics of UK Fiscal Rules*, 18 *BRIT. POL.* 254 (2023).

<sup>50</sup> Koen Verhoest, *Agencification in Europe*, in *THE PALGRAVE HANDBOOK OF PUBLIC ADMINISTRATION AND MANAGEMENT IN EUROPE* 327 (Edoardo Ongaro & Sandra Van Thiel eds., 2017).

socio-economic and political rights—especially labor rights—aiming at the deregulation of the market—especially the labor market—to attract investment of capital.

### 3.2. Origins of the executive state

A genealogy of the executive state confirms the tendency towards authoritarian forms of state administration to promote the principles of market constitutionalism and remove any obstacles to capital’s profitability. The origins of the executive state can be traced back to the final days of the Weimar Republic and the development of ordoliberal ideas about the relationship between the state and the economy. Hit by the global capitalist crisis, the German economy had to revert to absolute surplus value extraction (i.e., intensification of exploitation by an increase in the number of working hours and a drop in real wages) to avoid spiraling into an inescapable crisis. German capital needed to break out of the falling rate of profit by the only means available that did not depend on other capitalist powers or the world market, namely, a forced increase of the rate of surplus value through the slashing of workers’ wages.<sup>51</sup>

However, the policies necessary to achieve this systematic lowering of wages required a sustained attack on workers’ rights, which were safeguarded in the Weimar Constitution. In other words, market constitutionalism had to prevail over the democratic economic constitutionalism of the Weimar Republic. The democratic economic constitutional form of the Weimar Republic posed insurmountable obstacles to the establishment of new conditions of intensified exploitation. New authoritarian and depoliticized processes of policymaking were necessary. An example of such authoritarian solutions was advocated by Carl Schmitt in his 1933 essay “A Strong State and Sound Economics.”<sup>52</sup> In it, he called for a “rollback of the state [in the economy] to a natural and correct amount.”<sup>53</sup> Schmitt’s theoretical model, which sought to redefine the relationship between the state and the economy, contained ideas that would be adopted by the ordoliberal tradition, the Nazi administration, as well as postwar neoliberal thought.

In the final days of the Weimar Republic, Schmitt set out a concrete political program that involved strengthening the state for the purpose of “healing” the economy. His authoritarian model, encapsulated in the concept of the “qualitative total state,” was designed to ensure conditions for enhanced profitability of capital through intensified exploitation of labor and the extraction of absolute surplus value<sup>54</sup> by efficiently crushing the “internal enemy,” while leaving the planning of the economy to private interest. The “qualitative total state” had to replace its “quantitative”

<sup>51</sup> ALFRED SOHN-RETHEL, *ECONOMY AND CLASS STRUCTURE OF GERMAN FASCISM* 89 (1987).

<sup>52</sup> This essay was based on a speech he presented to a prominent organization of German industrialists, the Langnamverein. See Carl Schmitt, *Starker Staat und gesunde Wirtschaft: Ein Vortrag vor Wirtschaftsführern*, 2 *VOLK UND REICH* 89 (1933); Carl Schmitt, *Machtpositionen des modernen Staates*, in *VERFASSUNGSRECHTLICHE AUFSATZE AUS DEN JAHREN 1924–1954*, at 371 (1958), translated in RENATO CRISTI, *CARL SCHMITT AND AUTHORITARIAN LIBERALISM* 212 (1998). According to Franz Neumann, a similar model was formulated by Vilfredo Pareto, who espoused political authoritarianism and economic liberalism and who influenced the early economic policies of Mussolini. FRANZ NEUMANN, *BEHEMOTH: THE STRUCTURE AND PRACTICE OF NATIONAL SOCIALISM* (2009).

<sup>53</sup> WILLIAM SCHEURMAN, *CARL SCHMITT: THE END OF LAW* 103 (1999).

<sup>54</sup> SOHN-RETHEL, *supra* note 52, at 8.

counterpart, a weak, social-democratic interventionist state. The capitalist economy should be “depoliticized” and “self-administered,” meaning that “economic leaders”—owners and managers—had to be given substantial autonomy in their industries and factories, and freed from social-democratic forms of regulation. It is noteworthy that among the elements Schmitt counted as institutional preconditions for a strong state was a “pure,” entirely independent from party politics, administrative apparatus—in other words, a strict separation between political and service administration.<sup>55</sup>

To a certain extent this model was programmatically sought and partially institutionalized by the Nazi administrative state. In his first Reichstag speech on March 25, 1933, Adolf Hitler announced that the Nazi administration would “safeguard the interests of the German Nation not by roundabout ways of bureaucracy organized by the state but by encouraging private initiative and by recognizing private property.”<sup>56</sup> An example of such depoliticized self-administration of the economy can be found in an order of the Minister of Economics of November 12, 1936, which transferred significant responsibility for the supervision of cartel activities from governmental authorities to bodies of economic self-administration.<sup>57</sup>

Referencing Nazi administration for a genealogy of the executive state might seem like an exaggeration. However, it is based on a close observation of the administrative trends developed in the final days of the Weimar Republic that were carried forward by the Nazi administration and later reproduced in postwar attempts to adapt the administrative form in response to crises. Recent scholarship has demonstrated the origins of New Public Management in ideas of administration developed during the Nazi regime.<sup>58</sup> According to this analysis, the theory of public administration developed by Nazi legal scholars aimed at liberating decision-making and regulatory processes from a state mechanism that was receptive to pressure from lower social strata. In other words, it aimed at freeing the market from the burdens of democratic regulation of the economy (especially the labor market), thus effectuating a process of market capture. The methods it sought to implement this included: (i) decentralization and independent authorities (agencies); (ii) competition between the state and local decision-making bodies; and (iii) a proliferation of special directorates.<sup>59</sup>

<sup>55</sup> Carl Schmitt, *Strong State and Sound Economy: An Address to Business Leaders*, in CARL SCHMITT AND AUTHORITARIAN LIBERALISM 212 (Renato Cristi ed., Renato Cristi trans., Univ. of Wales Press 1998).

<sup>56</sup> ERNST FRAENKEL, THE DUAL STATE: A CONTRIBUTION TO THE THEORY OF DICTATORSHIP 61 (E. A. Shils with Edith Lowenstein and Klaus Knorr trans., Oxford Univ. Press 2010).

<sup>57</sup> Minister Hjalmar Schacht, *Erlass des Reichswirtschaftsministers*, Kart. Rundsch. 1936, 754, quoted in *id.* at 97 (“It is my intention to obtain the co-operation of private economic organisations in the execution of the supervisory activities of the cartels which my ministry has hitherto exercised alone. The administrative bodies of the private economic organisations should be responsible for seeing that the cartels are in harmony with the economic policy of the government in every respect”).

<sup>58</sup> JOHANN CHAPOUTOT, FREE TO OBEY: HOW THE NAZIS INVENTED MODERN MANAGEMENT (Steven Rendall trans., Europa Editions 2023).

<sup>59</sup> These measures would transform the state from supreme authority and an organ of national sovereignty into merely another instrument to achieve a goal—a carrier, among others, of political power. It is notable that the retreat of the state and the proliferation of agencies were promoted in Nazi Germany by Reinhard Höhn, a senior SS officer and general, whose “pioneering” work on administrative state and law, conducted postwar in the Bad Harzburg Business School, is considered a precursor to New Public Management. *Id.* at 14–19.

Returning to Schmitt, it is essential to note that his theoretical model, although hardly mainstream, was quite influential for mainstream neoliberal thinkers like Hayek.<sup>60</sup> A noted neoliberal economist, Alexander Rüstow, did not hesitate to confirm the “liberal ancestry” of Schmitt’s conception of the “qualitative total state.”<sup>61</sup> The term “authoritarian liberalism” was introduced by Herman Heller in 1932 to describe the inherent authoritarian tendencies of the liberal forms and tradition.<sup>62</sup> Unlike laissez-faire liberalism, authoritarian liberalism assigns the task of ensuring the constitution of economic freedom to the state. From this standpoint, the premise of free economy is the “strong state.”<sup>63</sup> Conversely, the “weak state” is considered the “Achilles’s heel” of free economy because it is unable to defend itself against the demands of the popular classes. It does not set limits to contesting social forces and fails to depoliticize the socio-economic relations on the basis of a rule-based system of market interaction.<sup>64</sup> Only a strong state can distinguish itself from society and prevent government from becoming “prey” to powerful private interests and class-specific demands.<sup>65</sup>

### 3.3. Neoliberalism and the executive state

Authoritarian liberalism is, therefore, seen as an essential aspect of market constitutionalism. Furthermore, there is a thread connecting ordoliberal thought and Schmitt’s advocacy for a “strong state” to secure a “sound economy” with the “new executive state” that emerged with the theories of New Public Management.<sup>66</sup> The so-called “new executive state” was developed during the transition from the welfare state model to the neoliberal administrative model. Its genealogy is thus distinct from that of interventionist administrative models (like the New Deal or the Weimar model, which have been regarded even as forms of a “socialist” administrative model).<sup>67</sup> The “new executive state,” an essential element of the neoliberal model, was based on a radically different view of the role of the state, in contrast to its predecessor. This view reflects a lack of faith in the state’s interventionist or guiding capacity, as well as in its ability to regulate all aspects of socio-economic reality. In other words, it reflects neoliberal ideas which have dominated public policy discourse since the first major crisis of capitalism after the end of World War II.<sup>68</sup>

<sup>60</sup> CRISTI, *supra* note 53, at 146–68 (examining the ambiguous relationship between Carl Schmitt and Friedrich Hayek).

<sup>61</sup> SCHEUERMAN, *supra* note 51, at 31.

<sup>62</sup> Herman Heller, *Authoritarian Liberalism?*, 21 EUR. L.J. 295, (2015).

<sup>63</sup> Bonefeld, *supra* note 12, at 869.

<sup>64</sup> *Id.* at 873.

<sup>65</sup> *Id.* at 874.

<sup>66</sup> See QUINN SLOBODIAN, *GLOBALISTS: THE END OF EMPIRE AND THE BIRTH OF NEOLIBERALISM* (2019) (in the context of the complex relationship between ordoliberalism and neoliberalism, convincingly showing how the Austrian ordoliberals and fathers of neoliberalism, like Friedrich Hayek, Ludwig von Mises, Wilhelm Röpke, and Michael Heilperin, did not propose a regime of laissez-faire, but rather how states and global institutions could be used to insulate the markets against sovereign states, political change, and democratic demands for greater equality and social justice).

<sup>67</sup> See, e.g., William A. Forbath, *Socialism Past and Future*, LPE PROJECT (June 22, 2020), <https://lpeproject.org/blog/socialism-past-and-future-part-i-of-ii/>.

<sup>68</sup> Prabhat Patnaik, *Capitalism and Its Current Crisis*, 67 MONTHLY REV. (2016), <https://monthlyreview.org/2016/01/01/capitalism-and-its-current-crisis/>.

The new challenges to the process of capitalist accumulation, manifested in the internationalization of production, the creation of global value chains,<sup>69</sup> and the development of information technologies,<sup>70</sup> which in the decades that followed the war gave rise to the phenomenon of globalization, had a direct effect on attempts to reform the state and its role in mediating such complex and translational processes and correlations of forces. Whereas, until the 1980s, the state seemed to count only on its own forces for the design and implementation of policies and programs, from then onwards there are signs of a transition to a new regulatory role of the state, more distanced from everyday management of the economy and more oriented towards ensuring conditions for the efficient functioning of the market.<sup>71</sup> Simultaneously, concentrationist structures remained essential to steer the different institutional forms and levels of decision-making, while maintaining a very minimal scope for popular participation in these.

The “executive state” thus emerged as a conscious and rational evolution, as well as organizational adaptation, of the “welfare state” to the new environment of a globalized economy. The state’s “retreat” to a role of strategic viewing is arguably identified with the dominance of neoliberal ideology. The idealized view of the market opens the field of public administration to private actors, which through their involvement in service or operational functions ultimately end up “colonizing” the entire administrative system.<sup>72</sup> Such views promote a rupture with the hierarchical form and centralization of public administration, while encouraging the development of a new relationship between the latter and economic actors.<sup>73</sup> A market-friendly state was required to depoliticize the issue of economic administration, as well as be strong enough to resist popular pressure on economic policies. This new model of state was hardly novel but constituted an updated version of the ordoliberal model of a “strong state” which should accompany a “sound economy.”

The emergence of the idea of the “new executive state” coincides with the spread and dominance of the New Public Management approach. The latter promotes reform of the administrative state along the following lines: (i) functional specialization and simplification of administrative procedures; (ii) introduction of commercial thinking and opening of public services to competition, (iii) public-private sector cooperation; and (iv) a “customer-centered” orientation of administration.<sup>74</sup> New Public Management sought to redefine the state’s capacities to guide, coordinate, control, and monitor public policy. It proposed a radical restructuring of administrative hierarchy, through a fragmentation of vertical and hierarchical structures and the proliferation of autonomous administrative units, i.e., agencies. This process of agencification takes the

<sup>69</sup> INTAN SUWANDI, *VALUE CHAINS: THE NEW ECONOMIC IMPERIALISM* (2019).

<sup>70</sup> Christian Fuchs, *Information and Communication Technologies and Society: A Contribution to the Critique of the Political Economy of the Internet*, 24 EUR. J. COMM’N 69 (2009).

<sup>71</sup> Sebastien Billows & Scott Viallet-Thévenin, *La fin de l’État stratège: La concurrence dans les politiques économiques françaises (1945–2015)*, 4 GOUVERNEMENT ET ACTION PUBLIQUE 9, 10–16 (2016).

<sup>72</sup> GIORGOS SOTIRELIS, *CONSTITUTION AND DEMOCRACY IN THE AGE OF GLOBALIZATION* (2009) (in Greek).

<sup>73</sup> PAPANOLIAS, *supra* note 16, at 19.

<sup>74</sup> EWAN FERLIE, LYNN ASHBURNER, LOUISE FITZGERALD, & ANDREW PETTIGREW, *THE NEW PUBLIC MANAGEMENT IN ACTION* (1996).

form of either functionally decentralized bodies (agencies) or other *sui generis* administrative bodies with a high degree of autonomy, which are organized around sectoral public policies.<sup>75</sup> In all its versions, the new executive state concerns itself with the successful organization, on a long-term basis, of the “partnership” between central government and other administrative bodies.<sup>76</sup>

The central institutional innovation of the “new executive state” consisted in the fragmentation of the hierarchically structured public administration and the creation of semi-autonomous “executive agencies” in such a way that the ministries could emerge as strategic headquarters which would more effectively fulfil the strategic function of policymaking and planning.<sup>77</sup> In this context, the process of agencification involved the carrying out of executive functions of government by agencies within a policy and resources framework set by a Department. This process would eventually result in the establishment of a “twin-track” public administration: on one hand the central administration units charged with the strategic task of developing and monitoring policymaking and, on the other, the units tasked with the implementation of such policies in conditions of relative autonomy.<sup>78</sup> Institutionally, this would also translate into an internal division of civil servants into two categories: members of “political administration”—who can be relieved of their duties at any time—and “career civil servants.”

The demand for technical, almost mechanical, implementation of legislation presupposes sealing off the administrative apparatus from the socio-political environment, as well as the political and party neutrality of the civil servants in the exercise of their duties. From this perspective, the executive state reform in Greece does not seem so neutral or technical. This model combines authoritarian and concentrationist structures with depoliticizing processes and institutional forms, intended to seal off as much as possible policy production and implementation from democratic participation and popular contestation. Such institutional forms are essential to ensure the uninterrupted implementation

<sup>75</sup> Benjamin Lemoine, *L'État stratège pris dans les taux: L'invention d'une agence de la dette publique française*, 66 *REVUE FRANÇAISE DE SCIENCE POLITIQUE* 435, 437–45 (2016).

<sup>76</sup> CHRISTOPHER POLLITT, JOHNSTON BIRCHALL, & KEITH PUTNAM, *DECENTRALISING PUBLIC SERVICE MANAGEMENT* 1–65, 162–79 (1998).

<sup>77</sup> It has been argued that the new executive state, based on the principles of New Public Management, was more accurately reflected in the UK administrative reform of the 1980s. Since 1988 and the important “Next Steps” Report, which laid down the basic distinction between “strategy” and “execution” and proposed the transformation of ministerial service units into autonomous policy implementation and service bodies (agencies), the UK civil service has been a laboratory for the redefinition of the regulatory mission of the state. This model, which subsequently found several imitators (from Italy and France to the countries of northern Europe), initially bore the stamp of Margaret Thatcher’s ultra-liberal policies, which promoted the privatization of public services, the stimulation of competition, and the creation of “internal markets” in the state’s sphere of operation, as well as administrative pluralism through the extension of the state’s contractual relationship with new semi-autonomous public, private, or charity bodies. See CHRISTOPHER POLLITT & GEERT BOUCKAERT, *PUBLIC MANAGEMENT REFORM: A COMPARATIVE ANALYSIS* (2004); KATE JENKINS, KAREN CAINES, & ANDREW JACKSON, *IMPROVING MANAGEMENT IN GOVERNMENT: THE NEXT STEPS* (1988); Émilien Ruiz, “Agencification” et compression de personnel: Le NPM et la question des effectifs de l’état, *PENSER/COMPTER* (Sept. 13, 2014), <https://compter.hypotheses.org/740>.

<sup>78</sup> CHRISTOPHER POLLITT, COLIB TALBOT, JANICE CAUFIELD, & AMANDA SMULLEN, *AGENCIES: HOW GOVERNMENTS DO THINGS THROUGH SEMI-AUTONOMOUS ORGANIZATIONS* 106 (2004); Roderick A.W. Rhodes, *Reinventing Whitehall: 1979–1995*, in *PUBLIC MANAGEMENT AND ADMINISTRATIVE REFORM IN WESTERN EUROPE* 41, 42–6 (Walter J.M. Kickert ed., 1997).

of unpopular measures aimed at the creation of a friendly environment for capitalist investment which, alas, is at the same time a hostile environment for the toiling classes and popular strata. It appears, therefore, as a crucial reform in order to consolidate the process of market capture in Greek social, political, and constitutional reality, as well as the shift of constitutional thought from the political to the market register.<sup>79</sup> Let us now turn to look at how this process of market capture materialized in Greece following the crisis.

## 4. Market capture and administrative reform

### 4.1. During the crisis

The dominant interpretation of the economic crisis in the Eurozone countries attributed it to governance and administration weaknesses in Southern European countries.<sup>80</sup> This interpretation focused on endogenous factors specific to these countries: administrative factors (systems which foster political clientelism, and weak control of public expenditure) and economic factors (low competitiveness, trade and investment imbalances, and fiscal mismanagement). According to this narrative, member states that failed to implement measures to enhance their competitiveness could not keep up with strong and growing economies and resorted to heavy borrowing, therefore increasing their sovereign debt. Consequently, there arose a need for structural adjustments to be imposed from above and monitored externally by institutions with the technical expertise to put the economy “in order.”

As a result, two levels of necessary reform were identified: the market, specifically the labor market, and the state, more specifically the body of administrative law. Regarding the former, the solution focused primarily on the deregulation of the labor market. The goal was to remove the obstacles to profitable investment of capital imposed by decades of legislative intervention under the pressure of the social and political struggle of subordinate classes.<sup>81</sup> Measures of economic democracy, protected in the Greek Constitution, were seen as obstacles to profit and investment.<sup>82</sup> To enhance

<sup>79</sup> CHRISTODOULIDIS, *supra* note 13, at 2.

<sup>80</sup> See in particular Kevin Featherstone, *The Greek Sovereign Debt Crisis and EMU: A Failing State in a Skewed Regime*, 49 J. COMMON MKT. STUD. 193 (2011); George Kouretas & Prodromos Vlamis, *The Greek Crisis: Causes and Implications*, 57 PANOECONOMICUS 391, (2010); Nikolas Zahariadis, *Greece's Debt Crisis: A National Tragedy of European Proportions*, 21 MEDITERRANEAN Q. 38 (2010); STAATSREFORM FÜR EIN BESSERES EUROPA (Georgios Dimitropoulos, Athanasios Gromitsaris, & Martin Schulte eds., 2016).

<sup>81</sup> See CHARALAMBOS KOUROUNDIS, *THE CONSTITUTION AND THE LEFT* (2018) (in Greek).

<sup>82</sup> On this issue, see the report conducted by J.P. Morgan Chase on the process of adjustment of the Euro-area economies to the crisis, which assessed Southern European Constitutions “as aberrations to the EU social *acquis* and as obstacles to growth and competitiveness.” According to the report:

Constitutions tend to show a strong socialist influence, reflecting the political strength that left wing parties gained after the defeat of fascism. Political systems around the periphery typically display several of the following features: weak executives; weak central states relative to regions; constitutional protection of labor rights; consensus building systems which foster political clientelism; and the right to protest if unwelcome changes are made to the political status quo.

David Mackie & Malcolm Barr, *The Euro Area Adjustment: About Halfway There*, EUR. ECON. RSCH. (May 28, 2013), [www.europe-solidarity.eu/documents/ES1\\_euro-area-adjustment.pdf](http://www.europe-solidarity.eu/documents/ES1_euro-area-adjustment.pdf).

the competitiveness of the Greek economy and attract investment, a new regulatory environment was necessary—one that favored market forces in determining working conditions over workers’ rights.<sup>83</sup>

The recipe to enhance the competitiveness of the Greek economy was found in the EU Commission’s 1993 White Paper on “Growth, Competitiveness, and Employment.”<sup>84</sup> The guiding principle that would restore its competitiveness and lead the Greek economy to growth was that of “flexibility.” “Flexibility is nominally aimed at countering unemployment. However, the goal of reducing unemployment in reality stands for the true goal of reducing labor costs. Reduced labor costs—in other words, increased exploitation of labor—are an essential aspect of the process of creating favorable conditions for profitably investments, thereby promoting “growth.”<sup>85</sup> The introduction of flexibility in the Greek labor market has led to the proliferation of part-time and temporary contracts, and performance-related wages, through the elimination of collective bargaining and the facilitation of dismissals. This, in turn, has led to cuts in wages, the creation of uncertainty, and a generalized worsening of working conditions.<sup>86</sup>

The legal method of introducing this principle, and radically changing the coordinates of the Greek economy, was commensurate to this goal. These “necessary” measures were introduced through the legal mechanism of memoranda of understanding. These have traditionally been integral to the International Monetary Fund’s (IMF) structural adjustment programs which have introduced aggressive neoliberal policies in several economies worldwide.<sup>87</sup> Such programs were used in the context of the Eurozone crisis to carry out far-reaching reforms in several countries (Greece, Ireland, Spain, Cyprus, Portugal, etc.) as a necessary counterpart to their bail-out agreements.<sup>88</sup>

<sup>83</sup> This logic pervades the European Court of Justice Advocate General’s opinion in the case of C-201/15, *AGET Iraklis v. Ypourgos Ergasias, Koinonikis Asfalisias kai Koinonikis Allilengyis*, ECLI: EU:C:2016:972 (Dec. 21, 2016). According to the Advocate General, domestic laws protecting workers against collective dismissals merely give the impression of being protective of workers. In reality, workers are best protected by an economic environment which fosters stable employment and the only way to achieve this is by undertaking “rigorous reviews and modernisation of collective bargaining, industrial action and, in line with the relevant EU directive and *best practice*, collective dismissals.” Case C-201/15, *AGET Iraklis v. Ypourgos Ergasias, Koinonikis Asfalisias kai Koinonikis Allilengyis*, ECLI:EU:C:2016:429, ¶¶ 73, 76 (June 9, 2016) (Wahl, A.-G.). Consequently, according to the Advocate General, in order for the workers to be protected against unemployment, any protection against collective dismissals has to be forfeited. This opinion clearly links economic growth to a deregulated labor market.

<sup>84</sup> Eur. Comm’n White Paper on Growth, *supra* note 44.

<sup>85</sup> Byasdeb Dasgupta, *Financialization, Labour Market Flexibility, Global Crisis and New Imperialism: A Marxist Perspective*, FONDATION MAISON DES SCIENCES DE L’HOMME (July 3, 2013), <https://shs.hal.science/halshs-00840831/document>.

<sup>86</sup> Apostolos Dedoussopoulos, Valia Aranitou, Franciscos Koutentakis, & Marina Maropoulou, *Assessing the Impact of the Memoranda on Greek Labour Market and Labour Relations* (Int’l Labour Office, Working Paper No. 53, 2013), [www.ilo.org/media/453911/download](http://www.ilo.org/media/453911/download); Aristeia Koukiadaki & Damian Grimshaw, *Evaluating the Effects of the Structural Labour Market Reforms on Collective Bargaining in Greece* (Int’l Labour Office, Conditions of Work and Employment Series, Paper No. 85, Dec. 15, 2016), [www.ilo.org/media/428761/download](http://www.ilo.org/media/428761/download).

<sup>87</sup> Chelsea Brown, *Democracy’s Friend or Foe? The Effects of Recent IMF Conditional Lending in Latin America*, 30 INT’L POL. SCI. REV. 431 (2009).

<sup>88</sup> MOISES J. SCHWARTZ & SHINJI TAKAGI, BACKGROUND PAPERS ON THE IMF AND THE CRISES IN GREECE, IRELAND AND PORTUGAL (2017).

The economic crisis was thus used as a justification for unpopular measures which were designed to re-regulate the economy at the expense of the working classes, to escape from political contestation. The arbitrary distinction between technical and political measures was key in this process. The justification for external intervention and the imposition of top-down solutions relied on two factors: (i) the urgency of the situation, as Greece was about to default, and (ii) the expertise necessary to address the major, yet merely “technical,” problem of sovereign debt that could not be dealt with by a default in the absence of a sovereign currency. Both grounds of justification led to the same result: the bypassing of democratic input. This “rush to the experts” was also combined with a strong aversion towards domestic politicians and the political apparatus as a whole, which was expressed in the social movements of 2010 (which became known as “indignados”), the formation of a technocratic government (the Papadimos administration) in 2011, and the collapse of the two-party system in the general elections of 2012.<sup>89</sup>

Yet, the public’s response to the crisis differed from that of the institutional apparatus. The public responded to the economic and political crisis—that was also essentially a crisis of representation—in predominantly political ways. The indignados movement was dominated by demands for a direct and radical democracy. Indeed, it has been argued that the whole movement was an exercise in direct democracy.<sup>90</sup> In parallel, a wave of industrial action, general strikes, and mass mobilization evinced a process of radicalization of social consciousness, with slogans like “the people united will never be defeated” and “the worker’s right is the law” dominating the public sphere.

This process of radicalization posed a threat to the effective implementation of the measures and further reinforced the need for depoliticizing decision-making processes. The measures of the first and second memoranda of understanding were implemented using the emergency discourse and procedures, in an attempt to depoliticize these measures and present them as purely technical.<sup>91</sup> For instance, the Greek Council of State utilized the theory of exception to defer to the judgment of the executive on the suitability of these measures to address the crisis.<sup>92</sup> However, the process of market capture cannot be effective in the long term if it relies solely on emergency measures, institutional structures, and narratives. The long-term implementation

<sup>89</sup> Yannis Theocharis & Jan W. van Deth, *A Modern Tragedy? Institutional Causes and Democratic Consequences of the Greek Crisis*, 51 J. REPRESENTATIVE DEMOCRACY 63 (2015).

<sup>90</sup> COSTAS DOUZINAS, *PHILOSOPHY AND RESISTANCE IN THE CRISIS: GREECE AND THE FUTURE OF EUROPE* (2013).

<sup>91</sup> Kanonismos tis Voulis [Standing Orders of the Greek Parliament], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 1987, A:106, art. 109 (providing that “if a bill is characterized as urgent, it is processed and examined in one sitting,” while “the debate and passage of the urgent bill is concluded in one meeting which cannot last more than ten hours”). Furthermore, the process of ratification of an Act by Parliament is characterized as *interna corporis*, and as a result is not subject to judicial review.

<sup>92</sup> Symboulion Epikrateias [S.E.] [Supreme Administrative Court] 668/2012, para. 35 (holding that “the measures were neither inappropriate, nor can it be proven that they were not necessary.” These measures were “part of a larger program of fiscal adjustment,” and “they serve the public interest and the immediate need to address the economic needs of the country”).

of deeply unpopular measures required deeper reforms in the public sector and administrative practices to ensure the continuous ability of the state to implement and monitor.

The need for a strong state and depoliticized processes became evident, making the demand for administrative reform all the more pressing. The memoranda themselves made provision for administrative reform a crucial technical measure. The strategic view and guidance for this reform would be provided by the expert knowledge of another external and unaccountable institution, the Organisation for Economic Co-operation and Development (OECD). In a 2011 review of Greece’s system central administration, the OECD identified key shortcomings and provided several general recommendations for improvement.<sup>93</sup> These shortcomings included: (i) the lack of a strong and unified “Governance Centre” equipped with the power to set “strategic priorities,” coordinate key ministries, and ensure that government policies were effectively implemented;<sup>94</sup> (ii) the lack of adequate structures for inter-ministerial policy coordination, management, and supervision of public policies;<sup>95</sup> and (iii) the exhaustive definition of administrative responsibilities by law or by executive decree, as a result of which the capacity of ministers to take undertake crucial initiatives was hindered.<sup>96</sup>

To address these shortcomings, the OECD Report proceeded with a series of “technical” recommendations, including: (i) the reinforcement of an executive center of governance responsible for the coordination and strategic planning of public policies; (ii) the accountability of this executive governance center for the progress of unified-horizontal policies in all government sectors; (iii) the creation of a stable structure, responsible for inter-ministerial coordination, as well as strategic units in each ministerial department; and (iv) the strict separation between “strategic” and “executive” functions, the classification of the former into “policy fields” to map the internal division of labor in the government, and the transfer of the latter to decentralized and self-governing bodies.<sup>97</sup>

## 4.2. The aftermath of the crisis

If one accepts the dominant interpretation of the crisis as due to endogenous reasons, then the Act on the Executive State appears non-controversial. Yet, there is another possible interpretation, one that sees administrative reform as part of a generalized strategy to enhance those characteristics of the state that would give effect to the process of market capture of every social field—especially those dominated by democratic processes—by ensuring continuity in the implementation of unpopular measures which may be favorable for capitalist investment but are, consequently, simultaneously devastating for the working and living conditions of the vast majority of the population.<sup>98</sup>

<sup>93</sup> ORG. FOR ECON. CO-OPERATION & DEV., PUBLIC GOVERNANCE REVIEWS. GREECE: REVIEW OF THE CENTRAL ADMINISTRATION (2012).

<sup>94</sup> *Id.* at 78–80.

<sup>95</sup> *Id.* at 47, 96

<sup>96</sup> *Id.* at 55.

<sup>97</sup> *Id.* at 96, 101, 107, 185. See also PAPTOLIAS, *supra* note 16, at 127–9.

<sup>98</sup> Stella Ladi, *Austerity Politics and Administrative Reform: The Eurozone Crisis and Its Impact upon Greek Public Administration*, 12 COMP. EUR. POL. 184 (2014).

The explicit reference to the strategy of depoliticization in the Act that ratified the Third Memorandum (2015:4336) seems to support this alternative interpretation. Notably, under the subheading “For a Modern State and a Modern Public Administration,” there is a detailed program to modernize Greek administration in close collaboration with the European Commission. This program focuses on “building its capacity” and “depoliticizing” government functions. Key to this strategy is the “dissociation of technical implementation from political decisions,”<sup>99</sup> a move that epitomizes the essence of the depoliticization strategy. It reflects the lenders’ concern and strong insistence on transferring certain functions critical to the achievement of fiscal goals from central administrative structures (ministries) to quasi-independent bodies, thereby minimizing direct political interference by ministers.<sup>100</sup>

I argue that this process of market capture, necessitating drastic changes in the economy and labor relations, also required transforming the administrative superstructure. Creating an executive center of coordination and monitoring public policy tackles the challenge of “improving institutional memory” and ensures consistent implementation of structural reforms aligned with the needs of capitalist investment. The executive state is integral to this process of market capture, which cannot succeed without an authoritarian sealing-off of political decisionmaking from popular contestation. Thus, the administrative reforms of the executive state in Greece reflect a longstanding pattern of authoritarian shifts to uphold market dictates during crises.

The genealogy of the executive state, discussed earlier, shows that authoritarian approaches to state administration in response to capital accumulation challenges are well documented.<sup>101</sup> Central to this are practices and narratives that frame political decisions as technical actions to shield them from democratic contestation. Administrative reform, aimed at creating a strong executive state, is crucial to the ongoing efforts to restrict social and political rights, creating optimal conditions for capitalist investment and growth. The introduction of concentrationist structures and the enhancement of the process of depoliticization sought with this Act were meant to ensure the “continuity of the state,” as well as smooth advancement of a contentious legislative agenda, which took care not to jeopardize the structural reforms of the past decade and introduced a series of new unpopular measures.

A careful look at some laws enacted by the Mitsotakis Administration, heralded as direct outcomes of the executive state’s ability to drive essential reform, supports this critical interpretation. For example, Acts 2021:4808 and 2023:5053 combined to abolish the eight-hour working day, introducing a fifty-hour workweek by means

<sup>99</sup> See Nomos (2015:4336) Sintaksiodotikes diataxeis—Kirosi tou Schediou Simvasis Oikonomikis Enischisis apo ton Evropaiiko Michanismo Statherotitas kai rithmiseis gia tin ylopoiisi tis Simfonias Chrimatodotisis [Pension Provisions—Ratification of the Convention Plan of Financial Support from the European Stability Mechanism and Regulations for the Materialization of the Financial Agreement], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 2015, A:94, art. 3, para. C5.

<sup>100</sup> PAPANOLIAS, *supra* note 16, at 134–5.

<sup>101</sup> According to critical theories of the state, the crisis-ridden pattern of capital accumulation necessitates a constant reorganization of social relations of production and exchange. This process, in its turn, gives rise to new functions and forms of the state. Chris O’Kane, *Towards a New State Theory Debate*, LEGAL FORM (May 24, 2019), <https://legalform.blog/2019/05/24/towards-a-new-state-theory-debate-chris-okane/>.

of “work-time regulation” allowing employers to impose a ten-hour workday through individual “agreements.”<sup>102</sup> This further deregulation of labor relations was accompanied by measures that additionally curtailed the right to protest. Notably, Act 2020:4703 permits the banning of planned public gatherings or marches if they pose a risk to public safety or cause serious disruption to the socio-economic life in a given area.<sup>103</sup> The Act grants the police broad discretion to limit protests, effectively serving as a legal basis for suppressing social movements. Furthermore, Act 2020:4703 reintroduces the potential to criminalize the dissemination of radical ideas by establishing a “Violence Prevention Directorate,” thereby boosting the state’s coercive capacity to manage social unrest.<sup>104</sup>

The pursuit of a legislative agenda that increasingly restricts social and political rights underscores a broader process of “undoing of the constitutional form under the pressure of total market thinking.”<sup>105</sup> The administrative reform of the executive state is an essential aspect of this agenda, enhancing power concentration through centralized policy production and meticulous policy implementation monitoring. This approach is particularly evident in the highly sensitive and contested fields of national security and economic policy, where decision-making is tightly controlled by the core executive, manifested in the establishment of specialized governmental councils. The stringent political oversight of administration in matters of national security became apparent in the wiretapping scandal, which kickstarted our discussion. Indeed, the appointment of the head of EYP in 2019 was heavily criticized as having been carried out under party considerations, as well as breaking the rules of “good legislation,” and thereby contradicting fundamental principles of the executive state reform.<sup>106</sup> These measures and processes, although presented as technical necessities, are part of a narrative that Act 2019:4622 and its focus on depoliticization seeks to perpetuate.

It is hardly a coincidence that this administrative reform came after the experience of the Synaspismos Rizospastikis Aristeras (Syriza) Administration. Regardless of Syriza’s systemic evolution even before assuming power,<sup>107</sup> the party’s ascent was undeniably fueled by social unrest, culminating in the July 2015 referendum. In his “Reflections of an Accidental Politician,” Costas Douzinas describes how well-intentioned members of the Syriza Administration faced the politically biased inertia

<sup>102</sup> Nomos (2021:4808) *Gia tin Prostatia tis Ergasias* [For the Protection of Work], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.], 2021, A:101, art. 58.

<sup>103</sup> Nomos (2020:4703) *Demosies Ypaithries Sinathroises kai alles diatakseis* [Public Assemblies and other provisions], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.], 2020, A:131, art. 7 [hereinafter Act 2020:4703].

<sup>104</sup> *Id.* art. 19.

<sup>105</sup> CHRISTODOULIDIS, *supra* note 13, at 8.

<sup>106</sup> A last-minute amendment, an addendum to a Bill intended to regulate drivers’ licenses which became Act 2019:4625, changed the criteria for the appointment of the Chief of EYP, arguably to enable the appointment of the preferred candidate who did not fulfil the criteria of the earlier provision. Nomos (2019:4625) *Rithmiseis tou Ypourgeiou Ypodomon kai Metaforon kai alles epeigouses diatakseis* [Regulations of the Ministry of Infrastructure and Transport and other emergency provisions], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 2019, A:139.

<sup>107</sup> John Milios, *The Greek Left Tradition and SYRIZA: From “Subversion” to the New Austerity Memorandum* (2016) (unpublished manuscript), [http://users.ntua.gr/jmilios/Milios\\_Delphi\\_2016.pdf](http://users.ntua.gr/jmilios/Milios_Delphi_2016.pdf).

of the Greek civil service during their four years in office.<sup>108</sup> Douzinas describes a public sector characterized by “traditional anti-left bias,” consisting of civil servants “opposed to government policies,” who held ministers “hostage” by denying files and data necessary for the development of policy, failing to implement policies, and leaking plans for radical policies to the press, in an attempt to frustrate their political “masters” and expedite their departure.<sup>109</sup>

Douzinas concludes that power and governance are not synonymous, suggesting that the Greek power structure largely overlooked the Syriza Government. Yet, it is the solution he proposes which best describes the threat addressed by the executive state and the ratio for the recent administrative reform in Greece: “[F]aced with such recalcitrance, the government should have removed top civil servants as soon as it realized that resistance to change is a structural characteristic supported by a sense of personal entitlement.”<sup>110</sup> According to Douzinas, “the class orientation and ability of public sector workers” should have become the main criterion for appointment in administrative posts by a government of the radical left.

This perceived threat of disruption accelerated the process of the fortification of the state. The potential infiltration of the state by radical political elements, regardless of the seriousness of the threat, intensified the urgency to depoliticize administration and centralize power. Thus, the new executive state promoted in Greece is not merely a technical adjustment to enhance the public administration’s effectiveness and efficiency; rather, it represents a controversial measure that reflects political choices about the relationship between the state, the economy, and society, and as such should be subject to a comprehensive critique that pays full attention to its historic origins and contemporary significance.

## 5. Conclusion

In this article, I have provided a comprehensive critique of the latest administrative reform in Greece, situating it in a historical context. The article offered a genealogy of the executive state, tracing its origins to the interwar period and the ordoliberal tradition, and linking these developments to the rise of neoliberalism and the New Public Management model in public administration, itself a product of a capitalist crisis. The demands for centralized structures and depoliticized decision-making seem to acquire particular significance in this context, in an attempt to insulate the state from democratic input and popular contestation. A strong, depoliticized public administration emerges as an essential counterpart to unpopular legislative measures that seek to create favorable conditions for capitalist profitability through increased exploitation of the workforce and management of social discontent. The executive state is thus understood as the institutional adaptation necessary to ensure the continuity

<sup>108</sup> COSTAS DOUZINAS, *SYRIZA IN POWER: REFLECTIONS OF AN ACCIDENTAL POLITICIAN* (2017).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

of structural reforms introduced and implemented during the crisis, which restricted social and political rights.

This analysis firmly holds that the reform of administrative institutions in Greece is not an anomaly. The demand for authoritarian, depoliticized decision-making processes resurfaced in the efforts to address the repercussions of the Covid-19 pandemic. The depoliticization of inherently political responses to the crisis was achieved through invocation of the emergency situation, as well as through the portrayal of these measures as self-evident and technically necessary. However, the pandemic acted as a catalyst for a new economic crisis. With an exponential rise in inflation, the subsequent worsening of living and working conditions, social unrest, waves of strike actions across the United Kingdom and Europe, and an ever-more-palpable climate crisis, administrative reform might be deemed a necessary tool to increase the state’s efficiency in preventing, managing, and countering threats and destabilizing tendencies.

The emergence of “asymmetric threats” and the creation of a “perfect storm” of crises, along with the potential social unrest these may cause, will likely prompt further debate over the restructuring of the state apparatus. Managing these risks might provide fresh grounds for administrative reforms in various countries. However, it is critical to recognize that while the tendency to bolster the authoritarian aspects of administration might seem necessary, it could simultaneously result in the weakening of the state. The concentration of power and the depoliticization of decision-making could expose the state’s partial nature even more starkly and diminish its capacity to function as a relatively autonomous mediator. Although the rise of the executive state might initially seem to secure its dominance, it could paradoxically also hasten its decline.