
Editorial: ‘Wanted dead or alive’: constitutions in the era of global financial crisis

Christina M. Akrivopoulou

Greek Refugee Appeals Authority,
Kanellopoulou Avenue 2, PC 101 77, Athens, Greece
Email: akrivopoulouchristina@gmail.com

Biographical notes: Christina M. Akrivopoulou holds the post of Committee President in the Greek Refugee Appeals Authority. She received her PhD in Constitutional Law and has been a Postdoctoral Researcher in the Greek Scholarship Foundation and the Aristotle University Research Committee. Her main research interests concern human and constitutional rights, the protection of the right to privacy, data protection, the private-public distinction, asylum and citizenship. She has lectured in the Faculty of Political Sciences of Democritus University of Thrace, in Hellenic Open University, in Aristotle University of Thessaloniki and in the EMA Unesco Chair inter-university master class. She also works as an Attorney-at-Law at the Thessaloniki Law Bar Association. She is collaborating with several Greek law reviews and she is an active member of many non-governmental human rights organisations in Greece and abroad.

Constitutions have historically contributed in the regulation of the relation between a given national society and its members with the organs of the state. In this sense, one of the main functions of constitutions has been that they have provided the national polities with a ‘*pactum societatis*’ a set of common principles and values that have guided and bound a political society as a whole. Nevertheless, the constitutions, though they have served as the common ground for a political society to organise itself and to develop societal and political stability in the present and future, cannot today be understood as the sole factor of this outcome. The European constitutional history shows that it was more the willingness of a society to self commit to the democratic and liberal constitutional values than the existence of a constitutional text itself that have provided the national political systems with social stability and coherence. In those cases where a national civil society felt strongly in favour of democracy and human rights protection, the constitution played a central and dynamic role in the political dialogue, whereas in those cases where a national society was not determined to form a political consensus, the constitution itself was either deregulated or dissolved by unconstitutional policies or practices.

In this framework, if one was willing to attempt a draw conclusion on what in the end makes a constitution to be either ‘weak’ or ‘strong’ should conclude that it takes two to build a strong constitution. First, it needs a strong constitutional text, containing strong guarantees in favour of democracy and liberalism, thus enhancing human rights and democratic dialogue, and a strong society committed in obeying and serving its principles. On a similar point of view, a constitution is weak both when it lacks in text all the necessary principles that can guarantee democracy and human rights protection and also it reflects on a society uncommitted or reluctant in obeying its rules. In fact, even a very strong in guarantees constitution can weaken or be completely deregulated in the

face of a weak and uncommitted to its application society. The best example illustrating these observations is that of the UK constitutional order. The UK has preserved over the years an exceptional constitutional legitimacy without having a constitutional text. It was the determination of the English society that preserved over the years the constitutional legitimacy, which might nevertheless be enhanced if a strong constitutional text existed.

If one applies this argument looking in the way that the constitutions work in the time of financial crisis, a series of questions can be posed. Can stronger constitutions better resist in times of crisis and better sustain via their guarantees a society's coherence and safety? Can a deep financial crisis erode a constitutional order? Can a constitutional text predict and prepare for a societal crisis? Is the difference between a strong and weak society in terms of determination in preserving the constitutional legitimacy play a critical role in the preservation of a certain constitutional system?

The current financial crisis shows that in fact stronger constitutions can better resist in times of crisis and preserve with their guarantees human rights and democracy in societies. A most characteristic example is that of the Portuguese Constitution, a text that provides social rights and social state with an extremely enhanced protection. Though, social rights protection has been severely wounded in all of the European South, including Spain, Portugal, Italy, Greece and France regarding public sector salaries, pensions and benefits, the Portuguese constitutional system have succeeded in preserving a core of its social state due to the strong constitutional protection that social rights enjoy. This very characteristic example shows that as far as a constitutional system is concerned, 'scripta manent', meaning that the constitutional text can serve as a constraint for those willing to truly and fully apply it.

A very significant question is whether or not a financial crisis as deep as the one we are facing nowadays has the dynamic to erode the guarantees of a constitution. When a constitution is dissolving during a crisis, is the crisis itself the only critical factor? Under normal circumstances the answer to this question should be a negative one. Theoretically, a crisis should augment the determination to bind to the constitutional guarantees and enforce constitutional legitimacy. A society should see the constitution to defend itself against a crisis and to employ it as a means to the ends of social coherence and solidarity.

Moreover, one should say that a financial crisis cannot inflict the democratic procedures and institutions the same way that inflicts social rights and the social state. The current financial crisis surely has a negative impact on social rights and the welfare state but why does it also have a negative impact to the democratic institutions and procedures? For example, why has the financial crisis favoured in Greece especially far left, even racist movements and parties (e.g., in Greece the Golden Dawn party). On this subject, the current crisis elaborates on two very important parameters. The first one is that rights and democracy go hand by hand as far as constitutional polity is concerned. Social rights favour social coherence and solidarity and thus enhance the democratic consensus and a society's faith in democracy and the democratic institutions. The second parameter is the substantial impact that a crisis has on a certain society. The crisis creates a social irregularity, is a period of turbulence and uncertainty. After a point, this uncertainty is reflecting also to the democratic institutions and effects their legitimacy. The point here is very easy to make. If these institutions are really effective why don't they resolve the crisis? When the society's answer to this question becomes a negative one the substantial dissolution of a constitution has started.

The question of whether a constitutional text can predict or prepare for a time of crisis is a perplexed one. Constitutions in general contain principles that can be enforced in times of crisis, leading to a more practical and flexible operation of the constitutional order. Thus, a crisis can lead to legislative acts of emergency steaming from the government and not from the legislative branch (a practice widely used in Greece nowadays). A crisis can also favour a more accelerated decision and policy making and thus bring forward innovative public policies and reforms. It can alter the balance between the organs of the state, thus strengthening the government which is the most efficient and capable institution with less formality and more decisiveness. The crisis also appointed the executive with new roles, that of creating completely novel beaurocratic mechanisms to manage and assist the communication with supranational institutions. But what is the most crucial and important for a constitution and a constitutional polity is not to have predicted a crisis but also to have prepared for it by maintaining a satisfying level of democratic legitimacy regarding its institutions. In this field, a society's constant fight against corruption and its determination to augment transparency and public accountability can really help a constitutional order to be preserved in times of crisis.

Lastly, one should observe that the existence of a weak or strong society which is negatively or positively committed in obeying the constitution is the most critical factor for its preservation and development in a time of crisis. A weak, disorientated society, one where political apathy and political free riding are dominating has a lot less resistance and resilience in protecting a constitutional system. Usually, these polities lack of constitutional patriotism. Accordingly, a strong, coherent society, based in transparency, in public dialogue and based on a strong public sphere can become a true guardian of a constitution and its principles in times of crisis. In this framework, one could say that a strong, deliberative democratic society reflecting a strong constitution with many institutional guarantees has a lot more chances in surviving in tact from a severe financial and political crisis. It is never too late for any constitutional policy to turn to this direction, to fight for a dynamic, participating society and a strong constitution.