

# Europe and the Transnational Politics of Emergency

*Christian Kreuder-Sonnen and Jonathan White<sup>1</sup>*

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*This piece outlines the concept of emergency politics as it may be applied to EU politics, distinguishing it from more familiar terms such as crisis management. We define emergency politics as a mode of politics in which actions departing from convention are rationalised as necessary responses to exceptional and urgent threats. Arguably, the many crises affecting the EU in the recent past have made this mode increasingly salient. To capture its various expressions, the paper presents a new typology of the forms that emergency politics can take in this setting, identifying four in particular: supranational, multilateral, unilateral and domestic. It connects these to the events of the last decade, spanning eurozone economics, migration, and Covid-19. We conclude by considering the variable consequences of these different types of emergency politics, in particular for the EU's normative and sociological legitimacy.*

Keywords: Emergency politics; European Union (EU); Crisis; Legitimacy

## **Bringing emergency politics to EU studies**

‘Men take great decisions only when crisis stares them in the face’ (Monnet 1978: 421). So wrote Jean Monnet in his insightful memoirs, expanding on the significance of the Suez affair for the project of uniting Europe. It was a favourite theme of his, and one that would soon catch on. That European integration prospers from economic and geopolitical turmoil has become a familiar trope in EU studies (e.g. Lefkofridi and Schmitter 2012: 4). In the last decade of upheaval especially, one sees it widely invoked. There seems to be an enduring appetite to apply this heuristic – an impatience to see European leaders act in ways that live up to it.

In Monnet’s own telling, crisis-led decision-making was anything but mechanical. Even the best leaders could fail to act, and it was the role of figures like himself to make things happen. His memoirs are rich in detail on the methods used to focus minds, from the use of deadlines to build urgency to an arresting emphasis on impending chaos. ‘The obstacles have to be made clear and unavoidable; those who face them have to be shown that by temporising they risk losing everything’ (Monnet 1978: 423). But while there was an art to ensuring opportunities were seized, and open commitment to further integration, Monnet saw his proposals as technical. They were ‘solutions’ to common challenges, and it was a source of pride that

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members of the Action Committee left their politics at the door. Whatever their status in the national sphere, once together they would ‘forget their partisan domestic disputes’ and set their mind to practical problem-solving. Hence it could be said ‘that Europe would be built through crises, and that it would be the sum of their solutions’ (Monnet 1978: 417).

Much the same idea of crisis management as problem-solving is visible in EU commentary today. Whether in the context of Eurozone economics, migration or Covid-19, contemporary crises tend to be read as situations demanding functional solutions (Kreuder-Sonnen 2016). Recent scholarship mostly seeks to explain (dis-)integrative institutional outcomes and the variable distribution of power between European institutions and member-states (e.g. Genschel and Jachtenfuchs 2018; Smeets and Beach 2020). In this reading, policy-makers are confronted with an extreme challenge, and the question is whether they can rise to it. Will they do the necessary, or will they fall short? More complicated forms of agency tend to figure less prominently – if anything, we seem less aware than Monnet of the ways urgency can be cultivated and exploited. Under-emphasised more generally are the political agendas brought to crises, the normative stakes of the measures applied, and the marks such methods leave on the EU. As highlighted in the broader crisis-management literature itself, such a focus on functional notions of crisis *management* risks eclipsing the many dimensions of crisis *exploitation* (Boin et al. 2009; cf. Kreuder-Sonnen 2018b).

The concept of *emergency politics* is one useful way to bring these features to the fore. Building on a wealth of thought on the politics of exceptionalism, spanning realists like Carl Schmitt and liberals like John Locke, we define emergency politics generically as *actions breaking with established norms and rules that are rationalised as necessary responses to exceptional and urgent threats* (White 2015a: 300).<sup>2</sup> Applied to the EU, the concept’s value lies in shifting focus from managerial competence to the political aspects of decision-making under pressure (cf. Rhinard 2019; Suntrup 2018; van ‘t Klooster 2018; Auer 2021). Such a shift is the precondition for a more critical perspective: a focus on functional imperatives tends to minimise the range of thinkable outcomes, and with it the possibility to do more than applaud success or deplore failure. Such a shift is also a cue for rethinking the empirics. What constitutes a crisis and an appropriate response depends on what powerful actors wish to preserve and consolidate in the status quo. Typically, one is dealing with developments uneven in their effects, more critical from some material and ideological perspectives than others. Whereas the concept of crisis

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<sup>2</sup> NB we use the terms *emergency politics* and *exceptionalism* interchangeably.

tends to evoke simple, stark alternatives – order and disorder, health and decay – it is crucial to examine the political questions of *what kind* of order is produced, and how.

As the above definition suggests, emergency politics denotes on the one hand a set of *practices*. It entails actions on the part of governing authorities that break with established norms and/or codified rules and expand executive discretion by suspending or evading the constraints to which it is normally subject. In parallel, emergency politics involves a certain way of *rationalising* such moves (see also Rauh, this Section). It entails casting actions as largely unavoidable responses to exceptional and challenging circumstances. Emergency politics is a reactive logic, one that sees actions explained in terms of external demands rather than chosen normative priorities. It was entirely consistent of Monnet, for whom European integration was but a sequence of crisis measures, that he should see it as driven ultimately not by human will but the pressure of events. ‘The federator was not any named individual, but always that same multifarious abstract force that operates on everyone: necessity’ (Monnet 1978: 422).

As two recent books argue, in the contemporary history of European integration one finds the script of emergency rule transferred to the transnational setting (Kreuder-Sonnen 2019; White 2019). One sees actions by authorities at odds with the norms and rules of EU and national politics rationalised as necessary responses to exceptional and urgent threats. This need not mean elites constructing crises to exploit them for self-serving interests. While instances of such behaviour exist in recent history (Levitsky and Ziblatt 2019), one can assume that, in the wide majority of cases, actors pursue the public interest as they see it (see Rauh, this Section, for a counterinterview). What we emphasize is rather that, whether actors are well-meaning or otherwise, emergency politics entails a willingness to overstep legal and political constraints, and reflects the dominant ideas and power structures that shape how problems are conceived and what count as solutions (cf. Ripoll Servent 2020). By invoking irregular, informal, and sometimes extra-legal procedures to enact emergency measures, the role of power (ideational and material) is exponentiated, along with the democratic-legitimacy concerns that accompany it.

When emergency politics moves beyond the state, it takes on forms different from those familiar at the domestic level (see also Heupel et al. 2021; Scheuerman 2018). For one, it does not operate in the shadow of the monopoly of force. A state of exception in the state context is typically underpinned by coercive institutions, notably the police and ultimately the army. Conversely, supranational authorities tend to lack independent enforcement capacities.

Consequently, there is more scope for clashes between actors seeking to shape the outcome: the lack of agreed hierarchies means power is there to be claimed. Second, transnational legal structures tend to be less codified and constitutionalised. Accordingly, they can be more malleable, and emergency rule more informal. Executives can more easily bend the law, or work creatively within it. Third, emergency rule in the transnational setting generally involves a wider array of actors and audiences. Emergency measures tend to be co-produced by national and supranational institutions, often with the involvement of transnational private actors. Further, they tend to address not just the domestic public of a single state but populations and decision-makers in several.

In this opening paper of the Debate Section, our goal is to highlight the transgression of legal and political norms that typically accompanies EU crisis politics, and thus to provide a counterpoint to the literature's usual focus on the adequacy of the policies chosen or their implications for supranationalism/intergovernmentalism. As we argue, European crisis decision-making typically involves exceptionalism, and grasping its extent is important for at least three related reasons. First, it shapes the public communication of EU actors, notably the authority-claims they advance, altering the terms on which EU politics presents and justifies itself to the wider public (see also Rauh, this Section). Second, European-level exceptionalism affects the foundations of the EU's legal order, and with it the polity's self-understanding as a community of law. It is a challenge to the idea of European constitutionalism, one that demands normative engagement (see also Auer & Scicluna 2019; Scicluna 2018; Kreuder-Sonnen 2016; White 2015b; Joerges 2014). Third, and relatedly, exceptionalism in the EU raises questions of legitimacy. As Schmidt (this Section) examines, a crucial one concerns the extent to which expected output benefits can balance the incursions on input and throughput legitimacy that European emergency politics gives rise to. Because each dimension has far-reaching implications, EU crisis politics should be approached with a focus not just on the bargains struck, but on the irregular methods employed in the process – with a focus, that is, on the practices and rationalities of exceptionalism.

### **Varieties of exceptionalism in Europe: Different crises, same script**

In this section, we unpack the concept of emergency politics as it applies to the transnational sphere. The concept has long been tied to the state, describing when constitutional rules are suspended to allow a government more room to manoeuvre. In the context of the European

system of multi-level governance, however, there are multiple potential emergency governors, and multiple layers of law and norms liable to suspension. To delineate the empirical expressions of emergency politics in the EU, we introduce a descriptive typology of European exceptionalism deriving from distinctions in the two categories of who is empowered (EU institutions or national governments acting alone or in concert) and what kind of norms or laws are derogated (EU constraints on EU institutions, EU constraints on member-states, or domestic constraints on national governments). We can distinguish accordingly four types of exceptionalism: *supranational*, *multilateral*, *unilateral*, and *domestic*.

The typology helps us understand and assess the EU's transformations of the past decade. Certainly, the euro, Schengen and coronavirus crises were all very different, both in their causes and treatment. Yet they were united, we argue, by the same emergency script, unfolding in different configurations. In all cases, holders of executive authority expanded their discretion by breaking with established norms and rules, justifying their actions as necessary to cope with exceptional threats. The typology's main purpose is to integrate a seemingly diverse set of practices into one framework, showing how they belong to one class of events. Additionally, it facilitates comparisons between the causes and consequences of the different types, as further explored below.

*Supranational emergency politics* entails European institutions<sup>3</sup> expanding their executive discretion by undermining or circumventing the constraints that bind their authority in normal times. If these institutions rationalize their actions as an exceptional necessity, we may speak of supranational emergency politics. The euro crisis provides multiple examples (Kreuder-Sonnen 2019: 117–151; White 2015, 2019: 64–77; Lokdam 2020): most forcefully, the Troika composed of the ECB, Commission and International Monetary Fund emerged as an intrusive emergency governor imposing draconian austerity measures on debtor countries like Greece and Portugal. Not only did the measures collide with these countries' exclusive competence in economic and fiscal policy, but they also interfered with the social and economic rights of the people affected. Time and again, bailouts with strict conditionalities were justified as “exceptional measures for exceptional times” (see also Rauh, this Section). Moreover, the ECB widened the scope of its own discretion when arrogating the role of lender of last resort to eurozone sovereigns, also when sending letters with detailed reform demands to states

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<sup>3</sup> Note that we refer to institutions with supranational authority that is either delegated (e.g. the Commission, the ECB) or pooled (e.g. the Council of Ministers under ordinary legislative procedure). Council actions that remain intergovernmental (without pooling) as well as actions by the European Council are subsumed under multilateral emergency politics.

benefitting from the Bank's bond purchases. While then-ECB President Draghi declared the Bank's willingness to do whatever it takes '*within our mandate*', the expansion of the Bank's authority was based on a reinterpretation of that mandate (Schmidt 2020) that left few constraints as long as the ECB worked towards the greater good of 'saving the eurozone' (see also Schmidt, this Section; Scicluna & Auer, 2019).

*Multilateral emergency politics* is characterized by EU member-state governments collectively expanding their discretion by creating new authority structures outside the EU legal framework. The Treaties, and more generally the EU's normative structure, not only commit members to certain positive goals but lay down the terms by which these are to be reached. In both ways, states face constraints. In a crisis situation, the goals may change, or actors may deem the existing framework unfit for reaching goals that remain unaltered. Where this leads to the creation of alternative formal or informal arrangements evading the usual constraints on authority, we may speak of multilateral emergency politics (cf. Kreuder-Sonnen and Zangl 2016). Historically, the emergence of the European Council was an example of this – summits between heads of state were a way to pursue crisis decision-making unencumbered by the constraints of the Community method (White 2019: 56-60). The euro crisis provides the most recent examples. To circumvent the no-bailout clause (Art. 125 (1) TFEU) and offer direct liquidity assistance to financially-distressed members, Euro-area states first created the European Financial Stability Facility (EFSF) as a separate *société anonyme*, and later established the European Stability Mechanism as an international organization outside the EU framework (Tomkin 2013; Gocaj and Meunier 2013). A formal Treaty revision was deemed too lengthy and unreliable given the constitutional hurdles (e.g. national referenda). Hence Euro-area states resorted to collective emergency measures, establishing an alternative multilateral institution with fewer legal constraints.

*Unilateral emergency politics* refers to one or several EU member-state governments expanding their executive discretion individually by suspending or abrogating EU rules that normally constrain them. It is about non-compliance based on the appeal to exceptional necessity. Many international legal instruments, especially in trade and human-rights regimes, include exception clauses allowing states to derogate from treaty rules in cases of national emergency. Even without such formal authorization, however, governments regularly assert their discretion when they see vital interests threatened and they can deploy an emergency justification. The same holds in the EU (Stone 2011: 104–130). Here, unilateral exceptionalism is best illustrated with examples from the so-called refugee crisis. In 2015, a significant increase in incoming asylum-

seekers led several governments to speak of a ‘refugee wave’ threatening their national security. Several states of first arrival ceased complying with the Dublin Regulations, letting refugees continue to their preferred destinations in Northern Europe. This, in turn, led most of those states to unilaterally suspend the Schengen rules and introduce border controls (Schimmelfennig 2018). They used the idea of a transnational state of exception as a legitimisation device, emphasising unprecedented and unpredictable migratory pressure (Davitti 2018).

*Domestic emergency politics* is the most conventional form of exceptionalism, but it gets a twist in the European context. This type entails the expansion of executive discretion by national governments relative to their state’s constitutional normalcy. Governments formally or informally suspend constraints on their authority – checks and balances, procedural requirements, individual rights etc. – by reference to exceptional necessity. Actions range from the classic, constitutionally-accommodated state of exception to more brutish acts of extra-legal self-empowerment (Gross and Ní Aoláin 2006). In Europe, the coronavirus crisis has escalated this type of exceptionalism across the Union. Many governments have imposed the greatest restrictions on civil rights and liberties in their countries since World War II. Importantly, while domestic emergency politics may seem exclusively domestic, it too has transnational features. Most visibly with the coronavirus, it represents the reaction to a common, overarching threat. The responses of individual states typically affect others. Moreover, domestic publics are likely to evaluate their government comparatively by looking at the actions and experiences of other countries, evident in the pandemic context with regard to the length and severity of lockdowns, the expertise claims invoked to support them, and the vaccination programmes meant to end them. For both publics and leaders alike, the frame of reference is thus transnational, even if the norms and rules in question are national.

None of the crises used to illustrate these forms of exceptionalism is restricted to any one type. All exhibit elements of several. The euro crisis was marked by both supranational and multilateral emergency politics, but also showed traits of the domestic kind (e.g. the use of decree-laws, and the acceleration, even circumvention, of parliamentary debates). The refugee crisis incited mostly unilateral emergency politics, but also produced supranational elements (the empowerment of Frontex/the European Border and Coast Guard, pushback operations on the Mediterranean and at land borders) and multilateral elements (the involvement of NATO, the EU-Turkey deal) (White 2019: 81–82). Finally, the coronavirus crisis has entailed plenty of domestic exceptionalism, but accompanied by instances of each other type. It prompted further

unilateral suspensions of the Schengen rules; it reactivated the multilateral emergency structures created in the euro crisis, such as the ESM, the reliance on the informal Eurogroup, and recourse to emergency summitry; it also incited the supranational ECB to establish the Pandemic Emergency Purchase Program (PEPP), the latest escalation of its mandate-expanding practice of purchasing government bonds. The ‘exceptional measures’<sup>4</sup> associated with Next Generation EU, that departed from established norms by communalising debt, were also an instance of supranational emergency empowerment insofar as they entailed new Commission oversight of national spending.

Furthermore, note that these different types of emergency politics generally spur and reinforce each other. There are spill-over dynamics involved. Supranational and multilateral emergency politics may require states to adopt domestic emergency rule to be effective. Tellingly, the ECB demanded Italy adopt austerity measures by decree-law, and parliamentary debates were cut short to ease the ESM’s ratification. Conversely, supranational emergency politics may itself sometimes be driven by problems created by unilateral emergency politics. The Schengen breakdowns in the refugee and coronavirus crises encouraged the Commission and other European agencies to adopt their own assertive emergency response.

The typology opens up several lines of research. Most basically, it allows the study of different varieties of emergency politics in comparison (see Schmidt, this Section) or the conscious focus on one type (see Rauh, this Section). For the broader research agenda, it is important to note the interrelations between the different types and to study how societal, political, and institutional interdependence in Europe incites emergency politics beyond governments acting in isolation. While we highlight how several types often emerge together, an important question for future research concerns the conditions and drivers prompting actors to prefer certain configurations over others. Even more centrally, the typology begs the question of whether different types or combinations carry different normative and social consequences. First conjectures are provided as follows.

### **Legacies of emergency politics beyond the state**

Different forms of emergency politics affect different legal and political orders in the first instance. While *unilateral* exceptionalism strikes EU rules and norms directly, *domestic*

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<sup>4</sup> Art. 1, Conclusions of the Special meeting of the European Council, 17-21 July 2020.



exceptionalism strikes those of a given member-state. Its initial significance may be local. But as an interdependent order, one where exceptionalism migrates easily from one setting to another, the EU as a whole tends soon to be affected. With *multilateral* and *supranational* exceptionalism especially, the legacies tend to be wide-ranging.

Contemporary forms of emergency politics in the EU raise many normative legitimacy issues (see also Schmidt, this Section). Some are the familiar concerns that attend exceptionalism in the state context – the strengthening of executives versus legislatures, courts and individuals; the abuse and degradation of law; the attenuation of democratic debate on matters of constitutional significance; and policies embedding the dominant ideology of the day (here varieties of economic liberalism) in the guise of mere problem-solving. Each is present in today’s EU. But transnational exceptionalism also raises distinct normative problems (Patberg 2020; Scheuerman 2017; White 2014; Kreuder-Sonnen 2019: 199-207; Wolkenstein 2020). *Supranational* and *multilateral* emergency politics, for instance, may be especially hard to reverse. The weak constitutional basis of transnational politics, the lack of agreed hierarchies, and the sheer number of actors involved, lends decisions a semi-permanent quality, intended or not. Whereas a change of government can be the occasion for a fresh start at the national level, things are rarely so straightforward with transnational regimes, allowing lasting authority leaps that push integration forward in a politically and legally questionable way. Emergency measures, in other words, tend to be normalised (Kreuder-Sonnen 2019: 195-199; White 2019: ch. 7), and their accumulation in turn affords future possibilities for executive discretion as authorities gain more options to play with. Meanwhile, *unilateral* and *domestic* emergency politics tend to undermine the authority of EU institutions and law. The foundations of the EU’s legal order are challenged “either through refusal to comply, or through eroding domestic structures necessary to provide EU law with practical force” (Dawson 2020: 51).

Sometimes the observer may feel such normative costs are worthwhile – that the alternatives in a given situation are too dire, or that major opportunities would be passed up if such measures were not taken. An all-things-considered assessment of EU crisis decision-making is not something we need offer here (but see Schmidt, this Section; also Crum 2013). What deserves emphasis though is that any such assessment must factor in these costs. The challenges to normative legitimacy posed by exceptionalism and its legacies are no less significant than the policy outcomes agreed.

Transnational emergency politics also raises issues of sociological legitimacy, such that it can negatively affect public opinion about the rightfulness of rule at the European and domestic levels. One way is mainly discursive, and counts for all types of emergency politics. Whether centred on pandemics, migration or economic upheaval, transnational emergency politics is conducted as a politics of *necessity*. Authorities adopt measures not because they are intrinsically desirable but to ward off a threat, be it a disease, instability or economic disruption – their actions are explained as unchosen in substance and timing. Heightened governmental activity – what one may call ‘*doing*’ – is thus coupled with heightened disavowals of *agency*, the capacity to choose freely between options (White 2019: ch. 6). It is against this reactive mode of governing that many contemporary political groups claiming the mantle of insurgency define themselves. What tends to be called ‘populism’ is typically a repudiation of the discourse and performance of necessity that emergency politics puts centre-stage (White 2019: ch.6; cf. Lorimer 2019, Séville 2017, White 2021). Emergency politics fosters an anti-system politics in its mirror image.

Another challenge is mainly institutional, and counts for *supranational* and *multilateral* forms of exceptionalism especially. Emergency politics beyond the state often increases the intrusiveness of executive authority quite drastically. Without concomitant extension of deliberation and democratic participation, decisions with tangible distributional consequences for rule-addressees are taken. Indeed, as the costs of measures increase, the level of democratic accountability often decreases. Domestically, dissatisfied voters may seek to contest specific policies and alter the composition of government. But at the European level, such policy-opposition is liable to become polity-opposition, as it lacks effective mechanisms to translate voter dissatisfaction into policy change (Mair 2007). As emergency politics thus breeds dissatisfaction with EU authority in general, it offers formidable mobilization potential for populists who thrive on notions of distant and unaccountable elites (Kreuder-Sonnen 2018a; Kreuder-Sonnen and Rittberger 2020). This is one of many reasons to be wary when EU initiatives, even seemingly desirable ones like the communalisation of debt, are introduced as emergency measures.

While transnational exceptionalism typically invites a societal backlash against national and supranational authority, the one type of emergency politics unlikely to do this is the *unilateral* variant. While potentially challenging the integrity of EU law and undermining the EU’s problem-solving capacities, such measures typically carry few immediate costs for domestic constituents, who may additionally be receptive to claims about sovereignty and national

control. Arguably, then, transnational exceptionalism either increases European governance capacities at the risk of compromising their sociological legitimacy, or it respects short-term demands of domestic constituencies but undermines the EU's capacity to act.

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