Jonathan White   April 12th, 2023

Constitutionalising the EU in an age of emergencies

0 comments | 7 shares

Estimated reading time: 7 minutes

Over the last fifteen years, EU leaders have frequently resorted to emergency measures in response to periods of crisis. But while these measures may have helped bring order to unstable situations, have they come at a cost for the EU's legitimacy? **Jonathan White** *argues that instead of bolstering the EU's fire-fighting capacity, we would be better served by designing a 'normal' regime that is able to handle extreme circumstances.*

In today's volatile world, the ambitions attached to the EU have never been higher. French President Emmanuel Macron calls for the construction of 'European sovereignty' as a way to preserve European identity, shape the continent's destiny, and escape the role of 'mere witness of the dramatic evolution of this world'. Visions of a more assertive and autonomous EU abound in the European Commission too. But the grander the ambitions, the more important the foundations. Does the EU have the legitimate institutions and habits of rule to support this more activist role?

Critical assessment of the EU often centres on its effectiveness – understandably for an organisation created to solve problems. For their economic measures, border management, vaccine procurement or foreign policy, those acting in the EU's name are judged on their capacity to act.

The risk of assessing something by its outcomes is that one downplays how these are attained. A hallmark of EU politics over the last decade has been leaders' willingness to overstep legal and political constraints in the name of getting things done. One sees actions exceeding norms and rules, rationalised as necessary responses to exceptional and urgent threats – the template of emergency politics. Sometimes this empowers executives at the supranational level, in the EU institutions or things like the Troika; sometimes it empowers state representatives, in forums such as the Eurogroup or European Council.

Emergency measures have their logic and can bring order to an unstable situation. But they also raise constitutional issues. Power in such moments comes to be concentrated ever further on executive institutions, political and technocratic, at the expense of parliaments, courts and wider publics. It passes to key figures at the apex, often acting informally, opaquely and fast. Who precisely is in control, and what criteria they apply to decision-making, becomes difficult to discern and contest, while decisions may be hard to revise later.

Two structural features of the EU make it especially vulnerable to exceptionalism. The first is its soft constitutional structure. Processes of coordination are based on conventions of consultation rather than codification. This means there is little to deter executive agents, singly or collectively, should they seek to depart from procedure. A second vulnerability lies in the EU's historically technocratic orientation. For those imbued with a problem-solving ethos, achieving certain outcomes 'whatever it takes' is likely to be the prime concern. Ends will typically trump means.

Emergency scripts

In view of the EU's reliance on improvised and irregular methods, some argue the need to bolster its fire-fighting capacity. What the EU requires in this view is an agreed set of procedures for handling exceptional situations – a temporary boost in the powers of its institutions to protect public health, settle the economy, or respond to an international crisis. The EU needs an emergency

script, allowing its representatives to act quickly and efficiently while also maintaining their accountability.

Yet an exceptional mechanism of this kind could potentially make matters worse. Historically, such arrangements have been predicated on the idea that emergencies are short-lived. The ancient Roman institution of 'dictatorship', employed mainly in the context of war, assumed the limited duration of the military campaigning season. Exceptional measures were acceptable because the circumstances they addressed were exceptional.

Today's emergencies, in the EU and more generally, typically emerge from long-term pathologies of politics, capitalism and climate, giving them a much more extended horizon. If there is no natural boundary between normal and abnormal times, the risk is either of short, superficial responses to deep problems, or of a permanent politics of emergency.

The very existence of emergency powers encourages authorities to leave problems to fester. Knowing they can invoke extra powers when the going gets tough, they have less reason to pursue the hard choices and reforms that get to the heart of things. They have a fallback option to rely on. Emergency politics is always in some sense the legacy of policy failure, and when that failure can be mopped up using exceptional measures it is that bit easier to indulge.

Constitutionalising the EU

Instead of devising an emergency script, the task is to design a 'normal' regime that is able to handle extreme circumstances – efficiently but also acceptably. One goal should be a simplified structure of power. Abolish the European Council, Eurogroup and the like, and give the Commission the responsibilities of government. A more integrated transnational executive would be less prone to informality and the ad hoc concentration of power. To the extent that it would still lapse into arbitrary or unresponsive methods, it would be a more visible target of critique.

Couple this with strengthening the European Parliament. Embedding executive power in a parliamentary system gives it a stronger basis in public opinion and debate. One of the lessons of Covid-19 is that countries with strong parliamentary systems tended to respond at least as well as the alternatives.

The key principle of governing in extreme circumstances should not be speed but *consent*. Not only is this more democratic, but it increases the prospects of compliance in the short term and can build public support for the structural change needed to ward off crises to come.

Any such transformation of the EU is likely to meet plenty of resistance. But unlike with a supposedly temporary emergency script, the stakes would be clear at the moment of enactment. It would be approved only to the extent its arrangements are acceptable as permanent features rather than as temporary deviations from normality.

Constitutionalisation in this deeper sense would reflect the reality that the policy challenges of the present amount not to a series of passing emergencies, short-lived and exceptional, but to enduring problems of politics, society, climate and economy that should be engaged on a fundamental and open-ended basis. Recent events suggest an EU that aspires to become more militarised and economically assertive – a sovereign actor in world affairs. It needs a constitutional overhaul to match.

For more information, see the author's accompanying paper at the Journal of Common Market Studies

---

Note: This article gives the views of the author, not the position of EUROPP – European Politics and Policy or the London School of Economics. Featured image credit: European Union

---

About the author

Jonathan White

Jonathan White is a Professor in Politics and Deputy Head of the LSE's European Institute.

Posted In: EU Politics | LSE Comment | Politics