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Emergency Europe

Jonathan White

Political Studies

At the level of general principle, representative democracy is appealed to by the EU institutions and member-states alike. Yet in today's Europe it risks being marginalised amidst the actions and rhetoric of emergency – a norm to be waived in a state of exception, leaving decisions of lasting consequence shielded from public debate. A German constitutional theorist once famously defined as sovereign the one who has the power to declare the state of exception, and linked this power closely to executive suspensions of the law. The European setting invites a different understanding of an emergency regime: one that is manifest in the contravention of norms which may or may not be legally codified, and which is collectively produced by multiple actors. The persistence of politics in the emergency register indicates precisely the weakness of political authority. The paper goes on to examine how exceptional this exceptionalism is. Is Europe's emergency politics a recent phenomenon, or has it been one of the currents of European integration from the beginning?

In this age of the 'rescue package', we have become used to the notion that the latest policy initiative, however technical in substance, is responding to the highest stakes – a necessity for bare survival. Nothing should obstruct it, for speed and resolve are the order of the day. That a period of crisis justifies a special response is an idea Europeans have been presented with for some time. Introducing one such rescue package in 2011, the EU Commission's President José Barroso declared 'these are exceptional measures for exceptional times. Europe must never again find itself in this situation.'¹ He was echoing the prevailing wisdom.

I take this to be an instance of *emergency politics*, in which actions departing from conventional practice are rationalised as necessary responses to exceptional and urgent threats. Though today's responses to the eurozone crisis give peculiarly stark expression to this political mode, it is an established topic of political thought (Schmitt 2005) and a wider phenomenon of the contemporary world (Honig 2009; Scheuerman 2006; Agamben 2005). As I argue in Section I, the politics of emergency has historically been associated with suspensions of the law, but today's Europe invites a broader understanding: one that sees it manifest in the contravention of norms that may or may not be legally codified, and in acts of legal improvisation as much as suspension. These moves gain their distinctive emergency character from the effort to legitimise them with securitising narratives. Contrary to a slender decisionism, such moves admit normative scrutiny: though they claim an exceptional status, they should not be thought insulated from critical appraisal.

¹ Statement to the press following the meeting of eurozone Heads of State or Government, Brussels, 27 October 2011, speech/11/713.

Section II examines some of the foremost expressions of emergency politics in today's EU and the normative problems they raise. Given particular attention, for they pose particular challenges, are three tendencies in the handling of the eurozone crisis consistently pursued against the backdrop of discourses of exception: a succession of moves to establish new institutions (notably an EU budgetary regime), the enactment of politics as foreign policy in interstate forums (prominently the European Council), and accelerated 'reforms' of the welfare state. As each of these tendencies illustrates, politics in the emergency mode has disturbing features: it makes a virtue of haste and can delegitimise dissent, undercutting public debate on decisions of lasting consequence.

But equally, emergency politics promises to be instructive. An influential line of twentieth-century juridical thought tells us it is in such moments we discover where real power lies. Carl Schmitt proposed the capacity to declare the state of exception as the defining feature of sovereign power. What we see today, I argue in Section III, is something different: an emergency regime co-produced by many rather than centred on the singular author and decision (cf. Doty 2007). Instead of being tied closely to an agent whose sovereignty it reveals, the emergency regime is a collaborative phenomenon, promoted by those with an interest in its production, and consolidated by those who lack the authority to revoke it or who actively give credence to the authority claims of others.

Section IV examines some of the wider questions this raises, particularly as they relate to ongoing concerns about the EU's legitimacy (Bellamy 2010; Mair 2007; Habermas 2012). Is today's exceptionalism novel, or are there structural reasons why European politics should be prone to the emergency register? I argue the tendency is entrenched, due to the peculiarities of the EU's make-up. 'Emergency Europe' is a long-standing phenomenon, and the question is how best to cope with it. Relief lies, I suggest, not so much in strengthening the EU as a legal order as in the political contestation of emergency measures and of the ideas and practices underpinning them. Only some such acts of contestation can be expected to take parliamentary form.

I. The Concept of Emergency

It is by studying the anomalous that we learn most about the true character of the normal. This, it seems, has been the intuition traditionally guiding thinkers of democracy to the study of political emergency (Schmitt 2005, p.13). If one wants to understand the nature of

sovereignty, political power, the state and the law, the suggestion is that we look not to the rulebook but to those moments in which the rulebook is laid aside.

This was the approach taken in Carl Schmitt's essays on *Political Theology*, where a focus on states of emergency was intended to unveil the structure and tensions of foundational juridical concepts. Like the later Wittgenstein, Schmitt saw rules – informal norms or codified law – as unable to determine the rules of their own application. Human interpretation was needed to decide when, where and how to apply them: hence 'like every other order, the legal order rests on a decision and not on a norm' (Schmitt 2005, p.10). The actor with whom this decision rests was properly regarded as sovereign. While the sovereign's institutional form and conditions of emergence were treated as unknowable in advance, the gaze was directed towards executive power, with states of exception foreseen as marked by executive demands having the force of law, and by the marginalisation of legislative and judiciary. Schmitt insisted such a perspective did not render the law irrelevant – it was unlikely to be the sovereign's wish to be rid of it, and the idea of exception presupposed a stable legal framework from which its status derived. It was part of, rather than external to, the legal order (Schmitt 2005, p.12; though cf. Agamben 2005; Huysmans 2008). But if this was in no sense a lawless vision, it nonetheless raised fundamental questions for the idea of the *rule* of law – questions which Schmitt, ever the sceptic of liberal pretension, apparently took pleasure in highlighting.

Few people today would share Schmitt's broader anti-liberal project, but his writings make a useful foil and his field of enquiry has gathered renewed attention, particularly from those for whom the rise of executive power is a stand-out feature of contemporary western democracy. It is the very *typicality* of emergency politics which has seemingly become the prime reason to explore it. From the early 2000s, the detainment by the US military of prisoners at Guantanamo Bay without standard legal protections has been a widely studied and theorised state of exception. This targeted suspension of the legal regime, and the 'war on terror' that was its narrative frame, has been treated as emblematic of longer-term trends towards the state of exception as, in Giorgio Agamben's words, the 'dominant paradigm of government' (2005, p.2; Scheuerman 2006; Gross 2006). Matters economic have been less commonly the focus for these critical theorists, but important work has been done on the use of emergency powers to enforce neoliberal reforms in Central / Eastern Europe and Latin America in the 1990s, and as a more general tool of crisis management and prevention throughout the twentieth century (Scheuerman 2000). The politics of emergency has become a fertile topic, including for those unequivocally critical of Schmitt's illiberal posture.

Yet what exactly should we understand by emergency politics, in particular as a framework to analyse Europe's response to the 2008- economic crisis? Emerging from constitutional theory, many accounts, including Schmitt's, are somewhat narrowly focused on quite specific constitutional scenarios to do with rule by decree (cf. Rossiter 2004 [1948]). This unduly restricts the concept's scope of application, not least because such scenarios are historically rare (Ferejohn & Pasquino 2004, p.216). This is one reason why some prefer to speak of 'emergency politics', the 'politics of the extraordinary' or 'government by emergency' rather than states of exception (Honig 2009; Kalyvas 2008; Ackerman 2010, p.73), seeking thereby a broader field of inquiry in which suspensions of the law, or its selective application, are only one of several actions to be examined. As we shall see, this shift has particular merit when thinking about Europe's response to economic malaise, enabling the identification of emergency politics in less dramatic yet no less consequential forms – in the hurried creation of new institutions, for example, or in accelerated policy reforms. Further, it allows one to empiricise the question of whether there is a pre-eminent actor whose deeds and authority are decisive, or whether many are implicated in the calling of emergency. Once one decouples the analysis of emergency regimes from the systematic goal of defining and locating absolute sovereignty, one can raise the prospect of a variety of actors, including non-state actors, as having the capacity to promote them (Doty 2007). Such a move – call it a Foucauldian one – allows power to be sought in the 'capillaries' of society as much as in its political institutions, and draws attention to the dynamics of surveillance in addition to those of coercion (Foucault 1980).

To approach emergency politics as something broader than – though potentially including – the political instrumentalisation of the law introduces new challenges of definition. What then characterises this mode of politics prevalent, as I argue, across Europe today? In the following, I treat it as a distinctive mode in which actions contravening established procedures and norms are defended – often exclusively – as a response to exceptional circumstances that pose some form of existential threat. It is marked by the interlocking of a provocative practice – e.g. a policy initiative or decision-making process – with a particular form of validation – often, though not always, bearing the vocabulary of 'emergency', 'exceptional', 'save', 'rescue', 'security' and so on, as in the Barroso example. Action and rhetoric go hand in hand, in a manner well captured by scholars of *securitisation*, for whom the tendency of elites to cast political problems as posing existential threats is one of the characteristic features of contemporary democracy (Aradau 2004; Buzan et al 1998; Williams 2003). A sense of urgency pervades emergency politics, and is commonly used to excuse the pre-empting of

debate and patient efforts to build public support. Necessity rather than consent is the organising principle. Importantly, I approach the politics of emergency as distinct from the objective conditions to which actions respond: not every crisis need be handled in an emergency fashion, nor need there be a crisis to occasion this response.² Emergency politics is a mode of rule.

If an adequate critical perspective on the phenomenon is to emerge, a second step back from Schmitt is required – this time from his stark emphasis on the unconstrained character of ‘decision’. Herein lies an ethical problem. The decision being portrayed as a moment of ungrounded action, the implication is that normlessness is at the core of politics. Political authority is arbitrary in the last instance: this is the ‘dirty secret’ of the liberal order Schmitt is generally understood as seeking to impart. But to make this one’s guiding assumption risks an excessive lowering of political expectations, as emergency politics becomes a reality all too easily acquiesced in. The effect is to undercut our ability to submit decision-making, especially in extraordinary moments, to ethical assessment (Kalyvas 2008; Lazar 2006, pp.247-8). A conservative realism or an anarchist disdain for all forms of institutionalised politics is likely to follow. Instead, while one may affirm the limits of law’s capacity to bind, and thus the central place of human interpretation in politics, if the notion of emergency is to do critical work then one must retain the thought that the moment of decision, rather than arbitrary, is properly informed by reasons, and therefore something for which public accountability and scrutiny is an appropriate expectation. While such a perspective does not restore the rule of law to pre-eminence over the ‘rule of men’, it allows emergency politics to be approached in a critical spirit, distinguishing the more nefarious forms it may take from the more trivial, and with a focus on the dangers it presents rather than with emphasis merely on its ineradicability.

The rhetoric and practices of emergency politics are of heightened concern, I suggest, when used to institute changes of lasting significance. Arguably there are forms of exceptionalism which, because they stay within narrow parameters, may be acceptable under certain conditions. Amongst the relevant limits often mentioned are: that measures taken in the name of emergency be conservative in nature, aimed at no more than restoring a *status quo* such that ‘normal rule’ may resume; that they be temporary in character, entailing no permanent transfer of decision-making powers, no enactment of permanent legislation, and no changes of a constitutional kind; and that the actor(s) wielding the powers of emergency be

² The distinction between a crisis situation and an emergency response is subtle, since it is in large part by the nature of the response that situations are constructed as such. Yet situations can be cast as grave and challenging without producing emergency politics: they can be handled in a ‘cold’, considered fashion as well as in the ‘hot’ manner associated with emergency. For an illuminating discussion of *crisis*: Koselleck 2006; cf. Ferejohn & Pasquino 2004, p.226.

subject, in normal times, to democratic control (Ferejohn & Pasquino 2004, pp.212ff.; Gross 2006).³ When emergency politics is thus circumscribed, some hold that it forms a legitimate component of crisis response. Be that as it may – I shall be agnostic – what is certain is that when emergency politics *violates* these constraints then the non-deliberative tendencies characteristic of it become especially problematic. In this essay it is with such cases we are dealing – developments which cannot be regarded merely as temporary suspensions of normal proceedings pursued with restorative intent. Nor, moreover, can they simply be reclassified as acts of constituent power, to which less demanding constraints might be applied, for they are accompanied by none of the mass mobilisations that direct expressions of ‘the will of the people’ can typically be said to involve (Frank 2010).⁴ They are more than restorative, yet less than participatory.

Let us turn then to these contemporary manifestations of emergency politics in Europe, and to a more detailed discussion of the challenges they pose.

II. ‘Exceptional measures for exceptional times’: Europe in crisis

Emergency politics thus understood has been widely visible at least since the collapse of Lehman Brothers in 2008 established new levels of uncertainty in global political and economic life. In Europe it has been manifest at both the EU and national level, though the distinction is increasingly difficult. Perhaps the most salient instances have been the repeated efforts to get to grips with what has become known as the eurozone crisis. Barroso’s rhetoric of ‘exceptional measures for exceptional times’ was fully consistent with the dramatic incursions into the familiar norms of representative democracy it heralded, and which subsequent manoeuvres have extended. In this section I highlight the more profound of these incursions, to better capture the scale of the phenomenon and the problems it raises.

a) Forging a new order: towards an EU budgetary regime

One of the most notable tendencies of the crisis to date has been the willingness to call explicitly for the permanent transfer of budgetary powers from democratic to functional authorities (Streeck 2011; cf. Menéndez 2013). The stakes, it has been widely said, are too high to be left to the vagaries of public opinion – a classic securitising move. To be sure, that

³ The last constraint is said to mark a modern departure from the ancient world, where – notably in the Roman case (Rossiter 2004 [1948]) – emergency powers were wielded by a dictator with no popular mandate, appointed for his personal qualities. The role corresponds to Schmitt’s ‘commissarial dictator’ (Schmitt 2013 [1921]).

⁴ Cf. Schmitt’s concept of ‘sovereign dictatorship’ (Schmitt 2013 [1921]).

budgets should be a matter for democratic debate and evaluation is a principle which has been steadily undermined for some years in the EU. The eurozone's Stability and Growth Pact placed it in question some time before the current crisis (Mair 2008, p.222). But the openness with which this principle is today denied, as well as the vigour with which mechanisms to outlaw it are pursued, is unprecedented. The January 2012 'Treaty on Stability, Coordination and Governance in the EMU' (the 'Fiscal Compact') proposed the monitoring of national budgets by the Commission and fellow member-states, and the introduction into national legal systems of a law requiring a balanced budget, its observance a matter for the Court of Justice should a case of breach be brought to it. Further proposals for a banking union headed by a European finance minister have also been on the table. Here it would seem we see clear moves to effect lasting institutional change under the cover of emergency.

The extent to which these measures will be regularised is to be seen – enforcement may turn out to be a matter more for interstate surveillance than legal coercion, and one should note the additional clause stating the budget rule can be waived in exceptional circumstances. But the effect, even if heads of state remain central to the enactment or not of these mechanisms, is to establish budgetary affairs as the domain of technocratic expertise, i.e. a domain where the legitimacy of policy-making does not derive from its having been subject to public debate. As German Chancellor Angela Merkel put it, emphasising the insulation of decision-making from political disagreement and thereby illustrating how warmly even elected officials can embrace a technocratic standard, 'new majorities in a parliament will not be able to change the fact that those [budget] caps apply.'⁵ This is a change of constitutional significance, placing a traditionally crucial domain of policy-making beyond the realm of political contestation. The prospect of the collapse not just of the eurozone but of the EU and of peace in Europe more generally has been widely used to focus minds: in Merkel's words, 'if the euro fails, Europe fails'.⁶ It is the use of politics in the emergency mode for transformational purposes, to introduce and constitutionalise a new status quo governed by the principle of technocratic expertise, not merely as a temporary means to bring a crisis situation under control. The commitments of the Fiscal Compact are conceived as binding for the long term – they have to be, if they are to perform their function of 'reassuring the markets'.⁷ The crisis is thus the

⁵ Merkel, press conference, 30th January 2012: www.bundeskanzlerin.de/Content/DE/Mitschrift/Pressekonferenzen/2012/01/2012-01-30-eu-rat-bkin.html?nn=74446

⁶ See Merkel's budget-debate speech to the Bundestag, 7th September 2011, <http://www.bundeskanzlerin.de/Content/DE/Rede/2011/09/2011-09-07-merkel-bt-haushalt.html?nn=74420>: 'Der Euro ist der Garant eines einigen Europas, oder anders gesagt: Scheitert der Euro, scheitert Europa.' The phrase was repeated in her Bundestag statement of 26 October 2011 (http://www.cdu.de/doc/pdfc/26_10_2011_Regierungserklaerung.pdf).

⁷ The treaty takes effect before all states have ratified it, facilitating its presentation as a 'done deal' to others.

occasion for the pursuit of new permanent arrangements, quite possibly grounded in law, not merely for temporary decrees.

b) Politics as foreign policy: the rise of the European Council

National executives, and the dynamics of power between them, have heavily shaped this emerging order. A pattern of outside intervention in national politics, characteristic of emergency politics, has been widely evident. The 2011 removal of Italy's Berlusconi government, and the installation of Monti's self-styled technocratic administration, appears to have been facilitated by a direct phone-call from Merkel to the Italian President, a clear intrusion on the norm of non-intervention in national politics.⁸ The international pressure exerted on Greek Prime Minister Papandreou following the announcement of a referendum on the 'rescue package' (2011) amounted to the same, and was again justified in the name of the gravity of the stakes – as was a later suggestion by Germany's Finance Minister Wolfgang Schäuble that the Greek election scheduled for spring 2012 be postponed.⁹ While in such cases one sees the breaking of procedural norms rather than the formal suspension of the law, and while domestic political factors were clearly involved, the defining feature was external pressure to push through major changes without popular consultation in the name of emergency. Technocratic administrations were promoted, domestically and internationally, as offering consensual decision-making, decisiveness, and international legitimacy. While they have been generally understood to be an exceptional measure of temporary duration, the principle that national elections are subject to secondary approval from beyond the community of eligible voters is likely to endure. In the admiring words of former ECB President Jean-Claude Trichet, we are on the cusp of a 'quantum leap of governance', whereby the policies of elected governments can be shaped not just by the commitments enshrined in treaty law but by the direct intervention of the Commission and Council – a new regime of 'federation by exception', as he terms it.¹⁰ For a crucial and potentially open-ended length of time, the normal rules of government and opposition are effectively suspended.

This internationalisation of decision-making corresponds to a more general tendency in this period towards politics pursued as foreign policy, a domain where governments have traditionally been less constrained by domestic controls (Scheuerman 2000). Decisions have

⁸ 'Deepening Crisis Over Euro Pits Leader Against Leader', *Wall Street Journal*, 30th December 2011 (<http://online.wsj.com/article/SB10001424052970203391104577124480046463576.html>).

⁹ *Die Zeit*, 15th February 2012: <http://www.zeit.de/wirtschaft/2012-02/griechenland-hilfspaket-zusagen>. In similar vein, see the international condemnation of the Greek anti-austerity party Syriza once the election campaigns were underway (Mavris 2012, pp.98-9).

¹⁰ Trichet, Eleventh Annual Niarchos Lecture, Peterson Institute for International Economics (Washington DC) 17th May 2012 (<http://piie.com/publications/papers/transcript-20120518niarchos-trichet.pdf>), esp. p.14.

increasingly been centred on the executive powers of the European Council and heads of government meeting in extraordinary, ad hoc fora (Dinan 2012; Puetter 2012). As well as facilitating specific shifts in policy, these trends towards executive discretion mark a break with what are generally considered the established norms of EU decision-making. National parliaments have been reduced to a largely post hoc role, with the European Parliament and its role of co-decision on the Stability and Growth Pact marginalised. Politics as interstate diplomacy is the pattern – sometimes, given the pressures applied, verging on gunboat diplomacy. Certainly, the situation does not involve a wholesale suspension of the law like a state of exception conventionally understood. The powers of the judiciary are ostensibly intact – Ireland’s attorney general felt able to demand a referendum on the new Treaty, and the German *Bundesverfassungsgericht* stepped in to resist when its government sought to make the approval of eurozone bailouts a matter for fast-track decision by committee rather than the Bundestag.¹¹ So we cannot speak of unconstrained executive decision. But what these bodies retain in formal veto powers is sharply qualified by the pressure exerted by their own executive and by external figures, and their role is mainly retrospective, limited to rejection or approval, implementation or non-implementation. The effect, as one commentator puts it, is the rule of law being replaced with executive rule *by law* (Supiot 2012).¹²

c) Accelerated ‘reform’: welfare state retrenchment

The present period sees radical initiatives to reduce welfare spending being pursued across Europe at speed. These measures are not reducible to the new budgetary regime previously described – they anticipate it and in some cases exceed it – but in the same fashion they involve dramatic initiatives of lasting consequence pursued in the name of emergency. Countries dependent on funds from the EU, IMF and World Bank are prominent in this process. Romania is one of the less discussed instances: having taken a loan of £16bn in 2009, its government increased sales tax by 5% and reduced public-sector wages by 25% to lower the budget deficit, largely without parliamentary debate. Following public protests, and on the occasion of his resignation, PM Emil Boc declared ‘in times of crisis, the government is not in a popularity contest, but is saving the country.’¹³ Likewise, Spain’s People’s Party government announced cuts of £22.5bn in its budget of 30th March 2012, defended by the budget minister Cristóbal Montoro with the classic formula: ‘We are taking extraordinary measures because the

¹¹ Ruling of 28th February 2012: <http://www.spiegel.de/international/germany/0,1518,818383,00.html>. The Bundestag’s bailout-related powers were ostensibly consolidated in September 2012 when the German constitutional court ruled that any extension of the fund would require Bundestag approval.

¹² On ‘post-democratic executive federalism’: Habermas 2012, esp. p.52.

¹³ *The Guardian*, 6th February 2012 (www.guardian.co.uk/world/2012/feb/06/romanian-pm-emil-boc-resigns).

situation is extraordinary'.¹⁴ In Italy, Monti described his administration's role in his first speech to parliament as 'to resolve a serious emergency in a constructive and united spirit' and warned of the dangers 'if we don't find the necessary unity of purpose.'¹⁵ The government's 'Save Italy' decree (5th December 2011), issued just 17 days after taking office, announced dramatic cuts on the grounds that 'the reduction of our public debt is a vital necessity and every deviation risks plunging our country into an abyss'.¹⁶ Inaction, Monti warned, would mean graver sacrifices within weeks.

But the combination of exceptionalist rhetoric and dramatic initiatives of lasting consequence has not been limited to those governments with reason to feel direct pressure. Elsewhere amongst the less subjugated we see instances closer to purposeful 'crisis exploitation' (Boin, 't Hart and McConnell 2009). The first national budget undertaken by the Conservative / Liberal Democrat UK coalition government (22nd June 2010), which laid out major cuts in public spending, was conducted out of cycle and presented as an 'emergency budget'. Before that spring's General Election, the Conservatives had announced they would hold a budget within fifty days of taking power explicitly to show their intention to reduce the public deficit. This was planned emergency politics, not just a fire-fighting exercise. Predictably, little indication was given before the election of where the cuts would fall, such that they might become a topic of public debate in the campaign. The opportunity for meaningful scrutiny of executive judgement was side-stepped. To be sure, such moves are not illegal – they are 'unexceptional' in the formal sense. Yet in the abruptness of their departure from the status quo, and in the discourses of legitimation offered for them, they are recognisably central to today's politics of the emergency.

In sum, recent years have seen numerous decisions marking a significant and potentially lasting departure from existing legal and normative frameworks, institutional procedures and policy regimes, defended as necessary steps to avert impending disaster. Whether it be the survival of the euro, the EU, a country's economy, or peaceful coexistence amongst Europeans (outcomes often merged into a single, existential question), the stakes are cast in maximal form. Political choices have been securitised, with drastic action presented as urgent and non-negotiable – to be accepted as a 'package' rather than pulled apart and discussed in its details,

¹⁴ *The Guardian*, 30th March 2012 (<http://www.guardian.co.uk/business/2012/mar/30/spain-budget-cuts-austerity>).

¹⁵ Monti, speech to parliament, 17th November 2011 (www.repubblica.it/politica/2011/11/17/news/monti_al_senato_per_la_fiducia_il_testo_integrale_del_discorso-25168289/)

¹⁶ http://www.governo.it/Presidente/Interventi/testo_int.asp?d=65735.

and to be adopted to a timetable of ultimatums. Investor confidence plays the role accorded in other settings to the terrorist's ticking time-bomb.

Why does this matter exactly? While many objections are possible, perhaps crucial is the way the value choices that lie behind major decisions come to be obscured. Emergency politics evokes the thought that, when push comes to shove, political ends are self-evident and generally agreed, and that what remains is to enact them. Political disagreement at high-stakes moments is thereby forestalled and made to seem irresponsible, and public appetite for it diminished (Glezos 2011).¹⁷ Decisions which arguably should be scrutinised in more detail than usual, because they involve sudden policy shifts with long-term consequences for the nature of society, are instead scrutinised more superficially. The goal of achieving 'order' in the short term crowds out closer consideration of the kind of order being achieved. The avowedly technocratic character of certain national governments gives their proposals the appearance of political neutrality,¹⁸ making their contestation by elected representatives difficult. Opposition voices are easily cast as 'playing politics', and may silence themselves for this reason. Partly because the political debate which would produce it is marginalised, politics in the emergency mode is characterised by the suspension of political justification in all but its most primitive form – survival.

Certainly, in many cases laws have been neither suspended nor broken. Decisions have been taken by elected governments, parliamentary approval has generally been required, and has often been forthcoming (notwithstanding the weakening of parliaments these measures may cause). While the 2011-13 Monti government was not elected by citizens, its first year of office saw it achieve the sustained support of parliamentarians across the political spectrum, as well as opinion poll support.¹⁹ However, like the aforementioned checks offered by judicial review, these are rather formalistic guarantees. What makes representative democracy a democratic form is not the simple fact that decision-makers are elected and proposals ratified by parliament: it is these facts combined with the further one that political initiatives are contested before approval and subject to the possibility of rejection or amendment, thus forcing justifications to be advanced on their behalf. These are the conditions in which decision is tied to reason-giving, and in which ideational links between representative and elector can develop (Urbinati 2011). They are the conditions that well-functioning partisan conflict provides, and

¹⁷ Politics in 'normal' times is also devalued, since the implication is that disagreement can be afforded then precisely because the stakes are trivial.

¹⁸ Noteworthy is how Monti presented himself in his first speech to parliamentarians as 'figura estranea al vostro mondo' (17th November 2011, *op cit.*).

¹⁹ Support was around 60% in January 2012. See also the margin of victory in the parliamentary confidence vote, 16th December 2011: 495 votes to 88.

are precisely what emergency politics lacks, when such conflicts are cast as distracting factionalism.

III. Emergency without a Sovereign?

So far we have concentrated on the outward forms of today's emergency politics and some of the reasons to regard it as problematic. We can deepen our understanding of the phenomenon by examining the forces behind it. As noted earlier, politics in the emergency mode has been prominently theorised as revealing underlying distributions of power – those capacities and structures that remain hidden in the normal run of things. It is appropriate to ask then what the current preponderance of 'exceptional measures' implies for Europe's arrangements of dominion today. Is the emergency regime the work of a sovereign?

Sovereignty, one should note at the outset, is not simply a matter of constitutional standing. That it cannot be reduced to a codified set of capacities, externally to do with formal juridical independence and internally to do with official chains of command, was one of Schmitt's more instructive observations, and is affirmed in contemporary treatments of the concept stressing the importance of intersubjective recognition (Krasner 1999). Nor can it be construed as the mere power to control: innumerable factors constrain the exercise of power without meaningfully impinging on 'sovereignty' – the force of gravity is one. Rather, it is on the capacity to influence through the exercise of *authority* that I propose to focus – i.e. that capacity to influence that derives from the widespread belief that its bearers are *qualified* to wield it. Sovereignty in the relevant sense is, I suggest, ultimately about the ability to make credible and effective claims to pre-eminent authority.

Perhaps the most straightforward interpretation of events is to see the emergency manoeuvres described in Section II as indicative of the enduring sovereignty of national executives. Both at national and European level it is member-state governments who have been foremost in the enactment of emergency measures, often circumventing or weakening the authority exercised by other institutions. It is not difficult to interpret the rise of the European Council as a concerted effort to reassert the independence of state governments from supranational institutions and the more constraining aspects of EU law.²⁰ That the Fiscal Compact is based on a new treaty rather than the adaptation of existing treaties would seem to remind of the discretion of governments to draw up new rules when they can agree them. The

²⁰ For some governments, the crisis evidently presents itself as a welcome opportunity to reduce supranational authority. See UK Conservative leader David Cameron's speech to the City, 14th Nov. 2011 (www.newstatesman.com/uk-politics/2011/11/european-british-world-russia).

practice and rhetoric of emergency can in this way be seen as confirmation of the essentially *intergovernmental* character of the EU (Moravcsik 1999).²¹ Europe's national executives are thereby revealed as sovereign.

A modest qualification of this view would highlight the imbalances between national governments and the pre-eminence of one in particular. The measures described can be seen as indicative of an increasing differentiation in sovereign capacity, and ultimately of the hegemony of the German government, as the orchestrator of Europe's response to the eurozone crisis and the source of much of the pressure experienced by other governments to pursue emergency measures of their own (Paterson 2011; Dinan 2012; Beck 2013). Germany's government can be said to have a variety of interests in emergency politics. First, the urgency associated with it facilitated the ability of the CDU/CSU/FDP ruling coalition to institute its desired policy response ('austerity') in a potentially short-lived period when the Council was dominated by like-minded Centre-Right governments. Second, emergency politics is likely to have special appeal to the largest contributor to the EU's lending funds. One of the defining features of politics in the emergency mode is that not only do its protagonists claim not to be bound by precedent, but – where it suits them – they may claim to *set* no precedent. Their actions sit outside the usual framework. Whatever transfers or loans are approved can thus be cast as 'special cases' without repercussions for moral hazard,²² something the government may hope reassures Germany's tax-paying public, as well as preserves its Ordoliberal credentials.²³ It is but a short step from noting that emergency politics suits the German government rather well to concluding the prevalence of exceptional measures in today's Europe has the same actor as its author. Notions of the EU as a 'post-sovereign order' are again revealed as spurious.

Yet such a position exaggerates the autonomy of executive decision, even in the strongest of EU member-states. While the strategic response of governments has been central to the course of events, many decisions have been taken under duress and with heavily circumscribed authority. They have been designed to 'send messages' to the financial markets, yet under conditions where the credibility and impact of those messages is unclear. Correctly or not, many governments apparently assume much of their policy-making has been anticipated

²¹ One objection to this view – that it overlooks the extent to which responses to the crisis have been outside the EU's structures – need not detain us here.

²² For one instance of a German minister emphasising Greece is a 'special case': Wolfgang Schäuble, 'Wie Schäuble einem Wirt die Euro-Krise erklärt', 12th February 2012, *Welt am Sonntag*.

²³ Note also that, insofar as emergency politics reinforces the economic uncertainty associated with the crisis, and insofar as this makes German bonds an attractive option for investors, the German government may be said to benefit economically from this approach – to the tune of €9 billion, by one estimate (<http://euobserver.com/19/114231>).

by market actors and pre-factored into assessments of risk and pricing, thus neutralising its intended effects. Fast-paced, discretionary responses may then appear the sole means left by which to retain a measure of independent authority. Emergency politics can be a symptom of government weakness as much as strength. Moreover, the point at which it slips from being beneficial to counter-productive is often a matter outside governments' hands.²⁴ The persistence of the crisis corresponds in part to the inability of any particular actor convincingly to assert the normality of the situation, even should they wish to. As such it may be regarded as the symptom of a more general crisis of political authority. There is an argument to be made, at least *prima facie* credible, that it is *economic* actors whom the politics of the current period has revealed as sovereign.²⁵

Several such actors have shown themselves able to securitise the economic situation. In deciding what credit rating to grant a state, ratings agencies strongly influence the conventional wisdom concerning the health of national economies. When they lower a country's rating, they establish that urgent action is necessary. They do not initiate or advocate policies – that they are not the motor of austerity seems clear from those instances when a country's rating has been lowered precisely due to sharp cuts in spending – but they have great power to set the timetable of action and to act as a reference-point for evaluation. They have gained for themselves the authority to 'speak truth', as a Foucauldian would say: to determine where there is a crisis and where there is not. They are the gatekeepers of 'credibility', shaping the criteria by which the initiatives of governments are to be assessed. Under their gaze, policy-makers can be expected to learn the art of self-discipline – in both the neoliberal and Foucauldian senses. These agencies' judgements hold public authority precisely because the crisis is an epistemic one in which the old market models and assessments of the 'economic fundamentals' are in question. Such conditions of uncertainty produce a widely felt need for definitive, objective, quantifiable and comparative judgements – i.e. expert knowledge – and open a space for those claiming to provide it. Such 'experts', however fallible their previous assessments, have a crucial advantage over governmental actors, because in a world where

²⁴ Leaders must tread a fine line between stressing crisis to evoke political urgency and stressing normality to calm investors. Statements for instance that the euro's future is at stake can be useful in winning compliance but destabilising to the market, as Germany discovered in May 2010 when seeking to press home the need for the European Financial Stability Facility.

²⁵ As a third category, neither of the political executive nor the market economy, a case could be made for the ultimate authority of central banks. Not only have central bankers used the language of exceptionalism but many, notably in the ECB, have been an important influence in defining the timing and nature of a suitable response. They have also sought to position themselves as the most reliable guarantor of the long-term public interest, able as technocratic actors to look beyond the short time-horizons of elected politicians, and hence the most authoritative voice in determining when an exceptional political response is justified. What prevents one plausibly ascribing them sovereign status is the highly domain-specific character of their authority.

political elites are widely thought to be moved by self-interest (Hay 2007), those who can claim non-political status can present their judgements as impartial.

Investors have likewise gained the capacity to cast favour or withhold it. Just as significant as their decisions to (threaten to) withdraw investment from a given location and cast doubt on a state's credentials has been their willingness to be reassured. We must be careful not to reify 'the markets' and thus reproduce some of the mythology of the moment: these actors are too diffuse to speak with one voice, and in many cases their views are articulated on their behalf by other actors, including governing politicians. Nonetheless, there has been no shortage of reports and 'research notes' issued by major investors and market analysts, often picked up by the media to assess whether the forecasts of political leaders are credible or 'optimistic'.²⁶

Some such actors have much to gain from politics in the emergency register (Streeck 2011). For investors, there are large sums of money to be made from short-selling under conditions of uncertainty. For others, the logic of 'too big to fail' and the exceptional state purchase of private debt, i.e. the selective application of norms of non-intervention in the market, offer an immediate exit from financial ruin. More generally, these conditions offer a convenient pretext for speeding up reforms that suit private capital and promise advantages in global competition (Scheuerman 2004, chap. 5). One sees a flavour of this when business leaders write joint letters to government ministers calling for measures to be adopted as a matter of urgency: more than once, British businesses have used the threat of economic turmoil to call for immediate action to reduce taxes and open services to private provision.²⁷ By securitising the situation, these actors turn a value choice into a technical necessity, thereby reducing the likely level of public opposition. Similar methods have been used to discredit strike action and press for changes in labour laws to make strikes less effective. Of course, not all actors in the marketplace have an interest in emergency politics – those wanting to protect savings or hoping to borrow may find it a hindrance. But many have at least something to gain from the perpetuation of politics in the emergency mode.

²⁶ On the swift rebuttal by city investors of Monti's claims (28th March 2012) the eurozone crisis is 'now almost over', and the call for 'more radical measures' to be taken in Spain to avoid a bail-out, see www.guardian.co.uk/business/2012/mar/28/eurozone-debt-crisis-mario-monti-almost-over.

²⁷ Cf. UK business leaders to *The Telegraph*, 10th November 2011, using the 'current turmoil in southern Europe' to call for 'immediate actions' by the Government, including ending the 50p tax rate, raising the tax-free personal allowance by £1000, and 'stimulating projects which are at the margin of commercial returns by accepting a greater risk where the project is in the public interest' (www.telegraph.co.uk/comment/letters/8882298/British-business-urges-the-Chancellor-to-invest-in-infrastructure-cut-taxes-and-simplify-regulations.html). Cf. a similar letter, 18 October 2010 (<http://www.telegraph.co.uk/comment/letters/8069609/Osbornes-cuts-will-strengthen-Britains-economy-by-allowing-the-private-sector-to-generate-more-jobs.html>).

Should we infer that market actors such as these are the true sovereign in today's Europe (von Lucke 2011)? This would be a dubious claim, not just on the purist grounds that categories developed in constitutional thought should not be assigned to non-state actors. First, one should be wary of a functionalist style of argument which concludes from the fact such actors derive benefit from emergency politics that they are instrumental in its production. This would be to explain the phenomenon with reference to its effects rather than its causes (Elster 2007): our focus must remain on the direct sense, if any, in which market actors are able to call the emergency. Second, and to this point, while the capacities we have noted are very significant, they are nonetheless sharply constrained. Crucially, there is a major option which states retain – even the smallest – and which much market activity can be seen as an effort to forestall: the debt default. Short of military force, this is, one might say, the ultimate ‘exceptional measure’, one which involves the most dramatic of ruptures with existing norms, typically justified in the name of the political community’s very existence. Any pressure exerted by market actors on political decision-makers has to stop short of inviting this response, else massive losses can be expected (Streeck 2011). To be sure, this is not a power which national governments may be able to extract much advantage from: the ‘nuclear option’ carries such immediately grave implications that it can be used only as the last resort. Its practical utility may be low. But it is a capacity overshadowing so much contemporary activity, and one the likelihood of which is so difficult for a market actor to quantify, that it prevents one from attaching pre-eminent status to those non-state actors who are in other respects so commanding.

Who then has the critical power of authoritative decision in contemporary Europe? Are we to conclude it is Greece, as the EU member-state apparently most likely to default on its debts, which is the true sovereign, the slave that owns its master? The eccentricity of the thought suggests the question may be badly posed. I suggest rather that no such decisive actor exists. This emergency regime is a collaborative phenomenon, one which escapes the authoritative control of each contributor taken individually, and which proceeds by surveillance and anticipatory compliance no less than coercion. It is not headed by an identifiable sovereign. While, like Schmitt, we should reject a realist ontology of the emergency as the unmediated threat-in-itself, unlike Schmitt we can hardly settle for a constructivist ontology centred on a single actor’s decisive claim. Indeed, this is, one might say, what reaffirms the situation as a true crisis. Governmental elites no longer have what Bourdieu once termed the ‘monopoly of legitimate symbolic violence’ (Bourdieu 1991, p.239), i.e. an unparalleled authority to define the features of the situation in which they and others

operate. They lack the unique epistemic authority to declare the exception, and must coexist with other actors who can make equivalent claims, albeit equally inconclusively. Moreover – a point we return to in the next section – emergency politics depends on the acquiescence of a mass public, as securitisation theorists have emphasised (Buzan et al. 1998). While the epistemic confusion associated with a crisis is conducive to that acquiescence, since uncertainty regarding the challenges to be faced may leave people with fewer resources to resist securitising moves, nonetheless this is an independent factor which cannot be assimilated to the decisions of elites.

In sum, rather than revealing a determinate sovereign, current developments seem to indicate there can be an emergency regime without anything resembling classical conceptions of sovereignty. Indeed, perhaps politics in the register of emergency is precisely what one gets when there is no sovereign – when it is open season on political claims to authority. The scenario described supports the idea that emergency politics needs to be reconceived to match a world where power and authority is dispersed through many actors rather than centred on a single unit (Honig 2009, pp.66-7). In the context of economic crisis, we see what has been less evident (though perhaps no less true) in the context of the widely-studied ‘war on terror’: the co-production by many of the emergency regime. This does not mean none can be held responsible – we might plausibly speak of a ‘power elite’ in today’s Europe (Mills 1956), one characterised by a highly reflexive and selective attitude to legal and moral norms and a disposition to exceptionalism (Boltanski 2011, pp.146ff.). But it does mean no actor is uniquely responsible, with implications for how an adequate response might look.

IV. Emergency Europe

Instinctively one thinks of emergency politics as an unusual phenomenon, in part because these are the terms in which it presents itself. Already, though, we have encountered the idea it may be commonplace in modern societies. Its prevalence in Europe today is perhaps less surprising than one might wish – indeed, arguably there are structural reasons why it comes *especially* easily to the EU. Let us point to just some.

As an institutional arrangement produced incrementally and continually in a process of modification, the EU lacks a settled constitutional basis. Its rules are always somewhat open to revision, transgression less easily punished, and the prospect of a reversion to a Europe of nation-states – a form of anarchy, in the realist IR sense – is ever-present. Additionally, a sceptical disposition towards public opinion, and the emergence of policy regimes largely

insulated from popular will, have been persistent themes for much of the course of European integration (Bickerton 2012; 2011, p.665; Schrag Sternberg 2013). Notions of a determinate common interest best identified by expert means rather than political debate are long-standing in public justifications for the EU, and widely normalised by scholars as ‘output legitimacy’ (Scharpf 1999). Such ideas gain some of their force from the twentieth-century experience of war: trenchant rationalism and the delegitimising of alternatives are comprehensible given a history of political violence. Then there is the EU’s institutional structure. As a political system, it has generally been poorly able to institutionalise dissent – consider the weakness of the Parliament and its parties (Mair 2007) – and this makes it more likely politics in the emergency register goes unchallenged. Furthermore, the multiplicity of actors involved – including governments, parliaments, supranational agencies, and powerful transnational economic actors arising from the construction of the common market – reduces the likelihood decisive authority rests with any one of them (Fabbrini 2007). At the same time it increases coordination problems, a relevant point given emergency politics gains its appeal from the drive to eliminate or circumvent dissent and to unite people behind a common decision. Where actors are numerous and fragmented, their cooperation and compliance in question, there is a natural incentive to push policies as necessary and urgent.

Arguably the post-2008 situation, rather than a temporary deviation from a rule-based order, merely discloses what has long been a core feature of European integration. Since the original market-making project was initiated in the 1950s and defended by leaders as, *inter alia*, a necessary bulwark against the communist threat (Adenauer 1956), the emerging European Community has lived intermittently in some form of emergency regime, with regular steps of constitutional significance taken by executive decision, legitimacy sought in securitising narratives, and dissent discredited as resurgent nationalism. The handling of discordant referenda results on the proposed European Constitution (2005) and the Lisbon Treaty (2008) displayed similar tendencies. Perhaps in the EU, as some have argued in modern democracy more generally, the state of exception is the norm, with actors largely ‘making it up’ as they go along, constrained by their capacity to achieve mutual agreement more than by regularised controls. In its mix of internationalised and securitised politics, the European world arguably resembles the West as a whole for much of the Cold War (Scheurman 2000, p.1880). Yet this should neither blind us to the troubling aspects of this mode of politics – principally the way it conceals value choices and delegitimises debate – nor disguise the novelty of the present, in which non-state economic actors have exercised a particularly critical role in instituting the emergency regime.

That politics in the emergency register is deeply entrenched in the European setting does not exclude efforts to alleviate it. If we accept its negative character, what strategies exist for countering it or coping with it? In particular, what possibilities are available in the absence of an identifiable sovereign actor whose decisions are exclusively the emergency regime's cause? Posing the problem in these terms offers a distinctive perspective on existing academic debates on the EU's legitimacy and the possibilities for addressing its failings.

Clearly one option is to seek the strengthening of the rule of law. In any political order, consolidating the procedures through which decision-making is exercised and dissent organised, and augmenting the role of courts, is one way to seek to make political elites accountable in times of crisis, perhaps even to achieve objectively superior decision-making (Holmes 2009; Ackerman 2006; cf. Scheppele 2008). The early-2000s effort to create an EU constitution was widely supported as a means to regularise the distribution of powers and consolidate restraints on executive decision (Habermas 2001). It was conceived as a way to accelerate the shift from an intergovernmental Europe, which in the pure form describes a realist world of state governments largely unbound by supranational and domestic controls, to a law-based Europe. The constitutional exercise did not bear fruit, but some might consider it more viable today, insofar as perceptions of shared crisis have historically been the precondition for successful 'constitutional moments' (Grimm 2005; Habermas 2012).

It is not clear however that even a successful constitution-making effort would suffice to resolve the challenge of emergency politics. The rise of the latter is widely observed even in states with strong constitutions such as the US. If legal provisions are ultimately dependent on interpretation, they are always liable to be selectively applied or circumvented, as well as being dependent on political will for their introduction. An exclusive focus on rights-based approaches runs the risk of neglecting this, allowing misplaced trust to develop, and encouraging oversight to be left in the hands of judges. Further, while such provisions may be somewhat effective in checking executive power, they can be quite impotent before the emergency manoeuvres of non-state actors. There is, moreover, the risk a constitutional approach stabilises an unjust order. What if one wants to place this order in question, perhaps as the undesirable remnant of an earlier emergency regime, rather than de-contest it as the constitutional year zero? Although an important element in any long-term strategy of countering emergency politics, legal provisions are unlikely to be sufficient alone.

A second strategy of response involves countering the developments described by political rather than juridical means (Feldman 2008, pp.552ff.). Instead of aiming for a more perfect rule of law, the goal becomes to de-securitise and re-politicise public discourse,

revealing the contestable character of choices, and forcing decision-making thereby to bear the burden of justification. It marks a refusal to accept the side-lining of ‘input’-based accounts of legitimacy²⁸ (Bellamy 2010), and corresponds to long-standing arguments for a more explicitly ‘politicised’ EU (Hix 2008; White 2011; de Wilde & Zürn 2012).

At the core of this approach in the European case would be various forms of partisanship, possibly involving a pan-European party (cf. Simms 2012), but most likely centred on opposition parties at the national level – those, that is, which have not themselves accepted the logic of austerity – acting independently or in transnational coordination. Amongst their targets would be the actions of governments, but under conditions where these actors do not hold exclusive authority, a wider partisan agenda would necessarily involve undermining the claims of those non-state actors who have achieved the power to ‘speak truth’ and who lend credibility to the emergency manoeuvres of political actors. Public intellectuals, media organisations and think-tanks would be at least as central to these clashes as actors of the parliamentary domain. The fact that no single actor can compellingly be ascribed sovereign status is of double consequence, at once obstacle and facilitator. It is the former because it multiplies the powers to be opposed and obscures where efforts should be focused. It is the latter because it softens the dividing line between those who exercise authority and those upon whom it is exercised. A unitary conception of authority, in which it is said to reside exclusively with a narrowly delimited set of actors, can be politically immobilising. It forgets how emergency manoeuvres are dependent for their success on the complicity of those who accept them, making them more contestable than Schmitt and others would have us believe (Honig 2009, p.107, 111; cf. Foucault 1980).

At the extreme, a response to the challenge of exceptionalism might take the form of developing an *alternative emergency politics*. Of the more prosaic variety, emigration would be an instance. Historically it has commonly functioned as a form of emergency politics, notably as individuals sought to escape the closed regimes of communist Europe, evoking the urgency of the moment through the desperation of their act (Hirschman 1993). Today, as part of the common market programme, Europe’s borders are open – exit is a logistical rather than physical challenge. Can it still be a political gesture? If practiced in sufficient numbers and publicly thematised, perhaps. Emigration from Greece and Ireland has already been a discussion-point in the media.²⁹ It is hard to imagine though it can be a substitute for organised

²⁸ I.e. those centred on the democratic character of the procedures by which decisions are reached, as opposed to the desirability of the ‘outputs’ that follow.

²⁹ ‘Emigration returns to crisis-hit Greece and Ireland’, Chris Bowlby, BBC, 13 April 2010 (<http://news.bbc.co.uk/1/hi/8616434.stm>)

protest, as its meaning is too open to construal. It can be cast as endorsement of the new as much as rejection of the old, and narrated as a personal tale. Emigration is likely to be prevalent in coming years, but it will be a symptom of emergency politics rather than an effective retort.

Only in the guise of collective action does a convincing rejoinder seem possible. In today's Europe, exceptional measures to resist the securitised moves of established powers are likely to include calls for unilateral debt defaults or a debt jubilee, and for general strikes, protests and boycotts designed to sway governments and firms.³⁰ In more radical cases, this kind of response would include civil disobedience – an archetypical form of emergency politics, whereby large numbers of people decide the normal rules are suspended. Unlike the manoeuvres discussed in Section II, such acts have a popular basis, and can make some claim to have stepped beyond the exceptionalist paradigm to be considered acts of constituent power. On a sufficient scale, they would represent arguably the most convincing impersonation of a European sovereign. Their pitfalls are not difficult to identify: they are unpredictable, and never immune to reactionary populism – the kind of emergency politics which calls for the closing of borders and the waiving of commitments on immigrants' rights. Still, forms of extraordinary counter-politics seem likely to find adherents. While militant responses have remained rare in today's Europe, milder forms of emergency politics can periodically be discerned in social movements such as the *indignados*, *aganaktismenoi* and Occupy, as well as some hard-left parties, where non-compliance with prevalent ideas of the good citizen and good consumer have been advocated in the name of an urgent crisis of democracy and capitalism. The success of such movements in providing a focal-point for dissent outside political institutions, and initiating debates which others (e.g. the Church of England) become reluctantly party to, shows the persistent possibilities for declaring emergency 'from below'.

Conclusion

The present moment sees Europe's political and economic elites converging on the discourse of exception as a way to advance and defend spectacular changes of lasting significance. We hear of 'emergency funds' designed to 'save' certain countries or the eurozone as a whole, and public commentary centres not on whether the extraordinary measures being instituted are justifiable but whether they were enough to avert disaster. Institutional improvisation and

³⁰ Even measures which today seem mild – e.g. fiscal stimulus – may need a form of emergency politics to promote them in future if austerity policies become effectively constitutionalised.

technocratic legitimation, politics as diplomacy and accelerated ‘reform’ are the order of the day. The politics of emergency is widespread, and while it bears witness to the dislocation of executive power from the institutions of representative democracy and popular will, the impulses behind it extend beyond the domain of the state to the private economy, where a range of actors co-produce it. It is no longer helpful to locate sovereign authority in one of these settings: too many actors are complicit. Though things would be easier (analytically and politically) if it were, this is not a Schmittian emergency.

As we reflect on the prospects for moving beyond these conditions of exception, it is as well to ask: on whose terms? While emergency Europe may be a depressing place, it is not clear that one should want to exit it if this comes at the price of the normalisation of those measures which still retain their capacity to shock. One of the disturbing features of emergency politics is the way today’s extraordinary measures are prone to become tomorrow’s status quo. This signals a damaging recalibration of ideas of the acceptable, disguising cumulative shifts towards the weakening of democracy. Moreover, should such actions be left unopposed, the weaker the resistance is likely to be to the next such authoritarian move. Though each act may be still more offensive than the last, each may offend public opinion a little less. Perhaps one should aim not for a new period of relative stasis, in which the rule of law sediments an unjust settlement and obscures the human powers that reproduce it, but to a politicisation of the crisis, even its intensification. This agonistic prospect is an unsettling one, even if it is no mere decisionist wasteland but has reasoned politics within it. It is an unpredictable and high-risk world, and a difficult one to achieve. But however much one recoils from emergency Europe, one must be alert to the hazards of seeking refuge in the post-emergency.

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Author Bio

Jonathan White is Reader in European Politics at the LSE. His research interests lie in the fields of political sociology and democratic theory. Prior to joining the LSE, he was an Alexander von Humboldt Research Fellow at the Humboldt University in Berlin, and a researcher at the European University Institute in Florence. His publications include articles in the *American Political Science Review*, *Journal of Politics*, *Political Studies*, *British Journal of*

Political Science, *Journal of Common Market Studies* and the *British Journal of Sociology*. He is the author of *Political Allegiance after European Integration* (Palgrave Macmillan, 2011).

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