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Conclusion: Learning from the COVID-19 Cases for Future Emergencies

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Eugénie de Saint-Phalle*

As a final stop in our descriptive journey into the variety of COVID-19 policies in Europe, this concluding chapter is drawing, from our analysis, some take-aways for the future of emergency policymaking in Europe. Although EXCEPTIUS focuses on the specific case of Covid-19, our

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results also inform crisis-management strategies at large, in a context where climate change as well as the growing interdependence of economies and societies are likely to make large-scale hazards more frequent. Whether such hazards generate a crisis however depends on the level of vulnerability and preparedness of societies as well as on the nature of the policy responses adopted. In many cases, policy responses have been found exacerbate the vulnerability of societies to the pandemic (Bjørnskov & Voigt, 2022; Kelman, 2020; Lundgren et al., 2020). Seconding global calls for action encapsulated, for example, in the 2015 Sendai Framework for Disaster Risk Reduction, our analyses show the importance for government to invest in efficient, fair and accountable disaster governance. The current moment is particularly ripe for such exploration as many of the countries studied in the EXCEPTIUS project are currently evaluating to effectiveness of their COVID-19 policy responses. At the time of writing these lines, in late December 2023, such processes are ongoing at the national and international levels. For example, the Organization of Economic Co-Operation and Development (OECD)'s Directorate for Public Governance released the first evaluation reports of its work on "government evaluations of OECD COVID-19 responses". The present edited volume intends to contribute new evidence to such processes by identifying some key lessons learned and take-aways from our analyses.

Our ambition is to provide the first descriptive and comparative mapping of COVID-19 containment policies. Scholars focusing on decision-making and public policy rarely take a broad comparative approach, and when they do, they aim to provide a typology of institutions or policies using cross-national aggregated data, rather than an analysis of what decisions were taken in specific circumstances to solve specific problems. Decision-making itself is, therefore, usually studied using case-specific approaches or comparisons limited to two or three countries. This is mainly due to the fact that the problems that reach the political agenda in each country are different, and similar problems are dealt with in different time periods. In this respect, the COVID-19 pandemic is rather unique: many governments had to solve the same problem at the same time. This allows scholars to analyse decision-making in an unusually broad comparative perspective. This is done in this volume for 23 European countries. Given the novelty of this perspective, our priority was to provide a descriptive account of the policies adopted as collected in an open access database, to identify general trends and to contribute new evidence that could be used to assess traditional policy-making theories.

Two aspects in particular have been analyzed. The first is the impact of neighbors' experiences on domestic decision-making. Interestingly, agenda setting—the process by which problems gain or lose attention among decision-makers—was of secondary importance during the pandemic because, as in many emergency situations, the problems were largely defined exogenously. This could help supranational institutions, especially the European Union, to achieve policy convergence through recommendations and guidelines without creating legally binding constraints. Despite the activation of several EU coordination mechanisms, this convergence has not been observed. The second aspect is a global re-evaluation of old issues. While we do not provide a rigorous analysis of each of these issues, we do provide preliminary evidence throughout the volume. First, we find no compelling evidence for ideological styles of fighting the pandemic. The question of whether parties matter is answered in the negative. Second, the problem-solving approach does not seem to be congruent with what is observed. The severity of the pandemic only partially explains the degree of political exceptionalism. Third, the responsiveness to public opinion also seems to have been quite low. In short, there is even a negative relationship between public demand for more restrictions and the stringency of the measures taken. On the other hand, the data globally confirm the path dependency approach. The type of policy chosen is strongly related to what has been done before, even in the long run. Democratic practices and traditions have shaped the way in which the level of stringency, the role of parliament, subnational power and many other policies have been designed.

Individual contributions to this volume provide new insights into emergency policymaking as well as confirm previous findings. Our ambition to document how—behind semantic proximity—COVID-19 policies vary across countries calls for a stronger emphasis on the value of theoretically informed descriptive analysis for the study of policymaking. *EXCEPTIUS* taxonomy contributes a new conceptual framework to the analysis of crisis policy-making that could be applied to the management of other large scale transnational crises—such as the ongoing war in Ukraine. Moving beyond what governments declare to study how each policy is legally designed and enforced allows revealing new patterns of similarities and variations. This is especially the case of the contributions gathered in Parts II and III of this volume that show how governments opted for applying in their own way of common strategy—such as the implementation of a lockdown, the adaptation of education services or the restriction of

specific rights. The methodological approach followed to collect EXCEPTIUS data (see introduction for a detailed presentation) also opens new avenues for interdisciplinary research. Grasping in such a fine-grained manner the modalities of implementation of rapidly evolving COVID-19 policies would have been impossible without the support of computation linguists, expert in the automated processing of textual data.

Overall, this volume complements the predominant focus on crisis decision-making to cover an equally relevant dimension of crisis management, the design and implementation of crisis-management policies. So far, policymaking theories have mainly been developed under business-as-usual situations (Wenzelburger & Wolf, 2015). While testing these theories is beyond the descriptive scope of this chapter, we believe that our volume provides new evidence allowing for theory testing and development in policy (making) theories. In terms of agency, our volume gives justice to the variety of actors involved in crisis policymaking. While the first part of the volume mainly focuses on the role of political actors, Parts II and III broadens the scope of the analysis and presents in a fine-grained how various political, administrative actors and experts played a role in shaping the policy outcome observed in each of our country case.

Crisis management policies are only partially dictated by the characteristics of the crisis at hand, and the COVID-19 pandemic is no exception. Our chapters show that even when faced with a very similar set of challenges, countries opted for a variety of policy options. Analysing the rationale behind such diverse policies has long been a focus of the literature. So far, scholars have mainly considered leadership styles as a crucial factor shaping the effectiveness of crisis policies (see, among others Boin et al., 2016 as well as the introduction for a review). Our volume complements this focus by considering the role of slow-evolving structural factors. In many countries, COVID-19 containment policies appeared to be shaped by institutional and historical factors. Countries with a high level of institutional trust, a strong quality of democracy and a high degree of legal preparedness were also able to maintain a higher degree of democratic continuity in the management of COVID-19. The different waves of the COVID-19 pandemic also allowed us to see how much governments learned from managing one wave to the next. Our answer to this important question is rather pessimistic. On the one hand, governments do seem to learn from the effects of their past policies, as their policies evolved through the different COVID-19 waves. On the other hand, the evolution of containment policies does not converge toward a similar approach.

This suggests three conclusions. First, European governments have failed to collectively develop an evidence-based approach to managing the pandemic. Comparative data are scarce, and there has been no systematic collaboration to improve information and evaluate policies. Second, governments also failed to provide a consistent ethical standard for managing the pandemic. Behind technical terms such as “lockdown” or “curfew,” different restrictions were implemented and different levels of protection of individual freedoms were required. Third, despite the clear impact of the WHO recommendations, each government tended to respond more to domestic debates and specific legal opportunities than to the performance of its neighbors.

THE COVID-19 PANDEMIC: A GAME CHANGER IN EMERGENCY POLICYMAKING?

Most of the scholarly and media accounts of the policy responses to the COVID-19 stress the unprecedented challenge it created for European governments. Our analysis shows that—while this statement holds some truth—one should not overestimate the extraordinary nature of the governmental reactions to it. On the one hand, European governments had—in comparison with, for example, their Asian counterparts—little experience of coronavirus-induced pandemic. They hence had to improvise policy responses—sometimes mimicking each other; sometimes following their own pandemic containment strategy. This fueled a trial-and-error process which saw some countries adopting a very restrictive approach—such as Austria, France or Hungary—while others opted for a more gradual introduction of measures—the Netherlands, the United Kingdom and, to some extent, Germany. Over time and although our data only partially capture such time evolution, policies converged across the European policy space. For example, and following the lead of the European Union, most countries adopted, for example, a COVID-19 pass to allow for the re-opening of public spaces, restaurants and entertainment venues. The COVID-19 pandemic also accelerated the digitalization of public services, notably in the field of education. On the other hand, variation in COVID-19 policy responses reflect the weight of long-term structural patterns characterizing European countries. Patterns of emergency decision-making examined in the first part of this volume reveals that countries with high degree of democratic quality managed to safeguard it

during the pandemic much better than countries which were already experiencing some loss in democratic quality. By the same token, the reliance on COVID-19 apps highlights a broader appeal of technosolutionism that was already in place before the pandemic.

The game changing nature of the pandemic is, therefore, all relative. In many respects, the pandemic exacerbated trends that date back to well before. Our analyses suggest that the trajectory that countries followed during the pandemic could have somehow been predicted by looking at the quality of their democratic governance and the strength of their human rights protection apparatus before the pandemic. Evidence suggests the existence of strong path dependence patterns.

ESCAPING THE VICIOUS CIRCLE OF DISTRUST: THE IMPORTANCE OF PROPORTIONALITY

As many contributors to this volume note, an effective crisis-management strategy results in the use of proportionate emergency measures. While the spectrum of pandemic management policies is very large and diverse (including public health, economic and social policies), EXCEPTIUS focuses specifically on exceptional measures, namely measures imposing extraordinary restrictions on democratic governance, fundamental rights and daily liberties. Our focus comes from the fact that the exercise of exceptional powers come with several democratic and political costs such as: (1) The weakening of the rule of law, (2) The reduction of institutional predictability (triggering a perception of arbitrariness) and (3) An increased social and political polarization (through increasing the choices to be decided upon and limiting the adoption of policy options in a consensual manner). In the short run, exceptional measures also have a strong impact on the effectiveness of crisis management policies. Exceptional measures—especially as they extend in time as in the case of the COVID-19 pandemic—have a strong and negative effect on institutional trust. Yet, institutional trust is one of the key factors of the effectiveness of crisis management policies as it favors cooperation and coordination (Gyórfi, 2018). Overall, our results show that the lower the institutional trust, the more stringent exceptional measures and that the more policymakers based their pandemic management policies on exceptional measures, the more they lost the trust of the population. Policymakers should hence be concerned with not falling in what we identified as the “vicious circle of

exceptionalism”. Such a vicious circle leads policymakers to adopt exceptional measures to compensate for low initial levels of political trust while the use of exceptional measures during the crisis trigger, in turn, an erosion of political trust and a further vulnerability to future crises. Avoiding this trap is even more important as political trust is hard and slow to build.

Many contributors to our volume call policymakers for adopting measures proportionate to the severity of the public health posed by the pandemic. Neves, Merrill, Miguel and Forte advocate, for example, for the adopting a “balanced harm principle” restricting speeches that can cause direct harm (e.g., dangerous health advice), while being cautious about overreach that may stifle legitimate expression. Brzozowski, Hau and Ryczyńska call for preferring light restrictions that preserve religious freedoms in a non-discriminatory manner.

INVESTING IN LEGAL PREPAREDNESS

Safeguarding the principle of proportionality amid a large-scale crisis is, however, challenging. Faced with an emergency, policymakers are likely to fall into an *action bias* leading them to overestimate the benefits of exceptional decision-making in the absence of credible and legitimate alternatives (Voigt, 2022). To avoid this trap, our results call for learning from the COVID-19 pandemic to invest in legal preparedness to disasters. This recommendation is consistent with previous studies showing that countries that had legal arrangements in place before the pandemic reacted in more proportionate and managed to balance better public health needs with socio-economic and democratic ones (Lundgren et al., 2020).

Legal preparedness ensures the adoption of proportionate measures at several levels. First and foremost, it allows for the preservation of high standards of democratic decision-making in emergency situations. The chapters from Egger and de Saint Phalle and Chazel show that governments that relied on emergency powers to contain the pandemic were particularly heavy-handed in the adoption of restrictive measures. In contrast, governments that opted for acting on the basis of existing crisis management legislation—for example, pandemic management laws—relied on a larger panel of policy instruments—including public health recommendations as well as various forms of incentives. Many of the countries concerned—such as Ireland, the Netherlands or the United Kingdom—also adapted their legislation throughout the pandemic waves, hence maintaining parliaments as watchdogs of the executive in crises—as documented by

Poyet's chapter. Second, strengthening crisis management legal frameworks minimize legal uncertainties during crises and allow for a better understanding of regulations by the public but also the implementing agencies. This benefit of legal preparedness is documented by the contribution of Churrua Muguruza, Cretu and Urrutia Asua on the protection of asylum rights during the pandemic as well as by Brzozowski, Hau and Rybczyńska. Last, legal preparedness also contributes to preserving high-quality democratic governance in crisis. This is particularly reflected in the Ehin's and Piret's contribution that show that countries that had special voting arrangements in place before the pandemic were more able to maintain electoral continuity.

BRING DECISIONS CLOSER TO CITIZENS

Emergency policies lead to a temporary restriction of individuals' rights to guarantee public safety. The chapters gathered in this volume largely document the various strategies used to restrict these rights in a proportionate manner. Focusing on the nature of the restrictions adopted matter but should not lead to neglect the quality of the procedures through which such restrictions are adopted. In other words, the stringency of restrictions is not necessarily a problem in itself as long as their adoption is perceived as legitimate by citizens. Our findings show that a way of increasing the legitimacy of emergency decision-making is to bring decision-making closer to citizens.

Contributions to this volume propose two ways of doing so. The first strategy is to decentralise emergency response. Magni-Berton documents that countries that opted for decentralized decision-making were no less efficient in managing the pandemic than those who preferred centralized forms of governance and this led most countries to decentralize their policies after the second wave. Brzozowski, Hau and Rybczyńska think along the same line and call for recognizing the effectiveness of subnational or regional approaches in managing restrictions, as seen in countries like Germany and Spain, is important, as it allows for tailored responses to local conditions. A second strategy consists in granting citizens formal ways of debating (and possibly contesting) the emergency legislation adopted. Kuebler reveals that in the case of Switzerland, direct democracy served as a safety valve that allowed citizen to voice their stances while preserving high levels of social cohesion, public trust and democratic quality.

ENSURING CROSS-NATIONAL COORDINATION

The study of pandemic containment strategies in Europe reveals a paradox. Compared to other continents, forms of policy coordination between states abound in Europe particularly in the field of public health. The EU mechanisms to coordinate crisis response, share information and monitor the spread of the virus were activated on time. Civil protection services also supported each other across national boundaries. Yet, governments initially reacted to the crisis in a very chaotic and uncoordinated manner and continued to do so as COVID-19 waves unfold. Explaining this paradox falls outside of the scope of this volume but our results call for strengthening policy coordination in crisis time. Some of our contributors call for a stronger role of the EU in that regards, particularly concerning the protection of fundamental rights. Conde Belmonte, Huesca González and Villacián Goncer argue that as the EU places freedom of movement at the core of its integration project, it should also ensure stronger coordination and consistency among EU member states in implementing travel restrictions. In doing so, the organization should ensure they align with the EU principles of proportionality and non-discrimination.

Beyond coordination functions, our contributors also see the possibility for the EU to set stronger standards for balancing the need to effectively respond to emergencies and the safeguard of democratic governance and fundamental rights. The EU appears as the right forum to develop a clear, EU-wide framework for assessing and responding to public health emergencies that respects free movement rights while effectively managing health risks. Given the EU's influence in setting global standards, there should be careful consideration of how EU-initiated data infrastructures and policies impact international travel and privacy rights beyond Europe.

Yet and given the size of the European Union and the varied levels of exposure to the pandemic, policy coordination can also take place in smaller fora, involving, for example, neighboring states characterized by a strong socio-economic interdependence.

ENSURING TRANSPARENCY AND MONITORING: CALLING FOR THE PRINCIPLE OF EVIDENCE-BASED INFORMATION RESTRICTION

In addition to our findings, the EXCEPTIUS project revealed profound differences in access to data across countries. While in Northern Europe data were easily accessible, this is not the case for Southern and Eastern Europe. In particular, we were forced to abandon the collection of data on the enforcement of containment policies because they were particularly inaccessible. Moreover, in many countries the deliberations that led to important decisions were not open to the public, and even journalists did not have access to them.

This book is limited by this lack of data and, more generally, the understanding of crisis management suffers from this problem. The arguments for restricting access to some sensitive data are usually based on the risk of causing panic, loss of confidence, or compliance. We would like to argue that there is no evidence to support these expectations. In countries where data has been more accessible, trust has not decreased, mobility has not increased and more deaths have not been registered. While we can understand the fear that transparency might lead to debates and disagreements that are inappropriate at a time when coordination and solidarity are a priority, our comparative work does not document this pessimistic scenario.

On the other hand, transparency in itself is at the core of democratic and liberal values, and it is crucial to offer the scientific community the opportunity to effectively monitor the management of crises. As long as the scientific community has to assess to limited information, the improvement of the effectiveness of policies is slow, and this could increase, in time of crisis, deaths, poverty or disease.

This problem is the main obstacle for producing a rigorous comparative piece of research. We have experienced it in our data collection efforts and know how much it affects the quality of the evidence presented in this book. All we can do is call for the principle of evidence-based information restriction at the European level. According to this principle, no government should be allowed to restrict information unless it can provide evidence that this information has effects that the government explicitly wants to avoid in its policies. Among the best practices we have documented in this book, this principle is perhaps the first.

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