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Political secrecy in Europe: crisis management and crisis exploitation

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Abstract

This article theorises the relationship of crisis and political secrecy in European public policy. Combining the literatures on crisis management and securitisation, it introduces two distinct types of crisis-related secrecy. (1) Reactive secrecy denotes the deliberate concealment of information from the public with the aim of reducing immediate negative crisis consequences. It presents itself as a functional necessity of crisis management. (2) Active secrecy is about substantive or procedural secrecy employed by authority-holders to implement their interests with fewer restraints. Here, secrecy is an instrument of crisis exploitation, reducing obstacles to extraordinary measures. This distinction is based on an understanding of authority-holders as simultaneous legitimacy- and discretion-seekers whose secrecy politics depend on the constraints and opportunities presented by crises. In order to illustrate active and reactive secrecy, the article uses examples from the euro crisis (Eurogroup summitry, ECB sovereign bond purchases) and the security crisis after 9/11 (terror lists).

Keywords

Authority; crisis management; EU; public policy; secrecy; securitization

Moments of crisis are typically seen as the high times of political secrecy. Irrespective of their theoretical orientation, scholars perceive a general tendency for political crises to coincide with secretive political practices or at least a decline in transparency. The public policy literature on crisis management often treats political secrets as a functional element of crisis communication (Boin *et al.* 2005: 69–90; Guttieri *et al.* 1995). Scholarship in critical security studies, on the other hand, generally tends to cast crises and publicity as being in a zero-sum relationship: ‘The presumption holds that the more governments emphasise security ... the more degraded and eviscerated becomes the quality of public life in liberal democracies’ (Walters 2015: 287; see Barnett 2015). According to Williams (2003: 524), issues that are successfully framed as an existential threat to a political community are usually insulated from the process of public debate and ‘operate in the realm of secrecy’.

As the European Union concludes its first decade of interrelated and partially overlapping crises, a link between crisis and secrecy also seems to be confirmed empirically in this post-national setting. At least, observers are increasingly concerned with lowering transparency levels in governance areas affected by the crises (e.g. Curtin 2017; Schmidt forthcoming). In fact, precisely the most consequential acts of authority carried out as a crisis response were often accompanied by opaque procedures, backdoor bargaining, or temporarily withheld information.

However, we know hardly anything about why exactly this is the case and what we should make of it. There is a pronounced theoretical shortage to account for crisis-induced political secrecy. Why and how do crises prompt political secrecy? What motivates political actors to resort to what kind of secretive behaviour in the context of crisis? Not only are answers to these questions necessary to explain political secrecy in the context of crisis, they also have important consequences for how to interpret and evaluate the procedural legitimacy of (European) crisis governance. The ambition of this article is to provide a typological theorisation of different varieties of political secrecy as they occur in crises. While the arguments are developed with a view to the actors and institutions of the EU, the theoretical contribution is potentially applicable to all domestic or international political orders marked by authority relationships and not by (despotic) power.

To theorise the varieties of political secrecy in European crises, I integrate the usually distinct studies of crisis *management* on the one hand and crisis *politics* on the other (see 't Hart and Sundelius 2013: 446–9). The former strand of research has a technical-managerial perspective on crises and usually focuses on their constraining effects on decision-making processes and political choice for other-regarding policy-makers (e.g. Boin 2004). By contrast, the latter has a strategic-political perspective on crises and understands them mostly as opportunities constructed and exploited by self-interested policy-makers to implement extraordinary measures (Buzan *et al.* 1998; McDonald 2008). While these approaches seem to rely on incompatible actor-theoretic assumptions, I argue that they are two sides of the same coin. Based on the recent literature on (international) authority (e.g. Zürn 2017), European-level authority-holders should be understood as simultaneously seeking discretionary control over policy *and* legitimation by relevant audiences. In the context of crises, these endogenous preferences provide incentives to both *manage* and *exploit* the moments of turmoil which I conceive as two separate yet potentially overlapping types of actor strategies in times of crisis.

The reasons for resorting to political secrecy and its specific manifestation in crises are directly related to these underlying assumptions. I argue that the two basic crisis strategies go along with two distinct types of crisis-induced political secrecy in Europe: reactive secrecy as part of crisis management and active secrecy as part of crisis exploitation. *Reactive secrecy* denotes the deliberate

concealment of information from the public with the aim of reducing immediate negative crisis consequences. Importantly, a defining feature of reactive secrecy is that authority-holders have little or nothing to gain from secrecy in terms of political discretion. They resort to secrecy because they deem it functionally necessary for coping with the crisis. Crisis conditions thus function as constraints on the menu of choice for policy-makers. By contrast, *active secrecy* is about substantive or procedural secrecy employed by authority-holders to implement their interests with fewer restraints. Here, decision-makers are not (merely) functionally pushed into secrecy by the crisis conditions. On the contrary, active secrecy is characterised by the fact that authority-holders have a lot to gain from secrecy as it allows them to reduce the justification requirements and audience costs for contentious measures. Such secret activities become possible because the impression of threat and urgency lowers the public's demands for input legitimacy (see Krebs 2009). Crisis conditions thus open up 'secrecy opportunities' to decision-makers.

In order to develop this argument, the first part of the paper lays down some theoretical foundations for crisis politics in the EU. It starts by theorising the motivations and incentives of European-level authority-holders, before conceptualizing the core elements of crisis and discussing their constraining and enabling effects on policy-making. Building on these micro-foundations, the second part of the paper introduces reactive and active secrecy as analytically distinct types of crisis-induced secrecy relating to the strategies of crisis management and crisis exploitation, respectively. As a 'proof of concept', the paper provides empirical evidence to support and illustrate the basic existence statements regarding these types. I illustrate the dynamics of reactive secrecy with the example of secret deliberations in Eurogroup summitry during the euro crisis. To portray forms of active secrecy, I present firstly the case of the EU's terrorism blacklists introduced after 9/11 and secondly the assumption by the European Central Bank (ECB) of the role of a lender of last resort to countries in the Eurozone. In the conclusion, I point to questions for further research.

Wielding authority in times of crisis

In order to provide the baseline for theorising the concrete effects of crisis on political secrecy in Europe, this section starts by specifying some actor and action theoretic assumptions regarding the motivations and constraints of EU-level authority-holders under conditions of political stress. In a second step, it looks at the conceptual building blocks of crisis and discusses the constraints and opportunities for authority-holders emanating from these with a view to secrecy.

Motivations and opportunity structures for European authority-holders

European-level crisis politics may imply governance activities by a variety of different (executive) actors ranging from member state governments and the Council via the Commission to relevant executive agencies. These institutions certainly function according to partially diverging logics of action and are not normally considered like-minded in the general processes of European integration and day-to-day legislation (e.g. Hartlapp *et al.* 2014; Rittberger and Wonka 2011; Tsebelis and Garrett 2001). However, in the context of crisis politics and for present purposes, it is important to highlight that, at a very basic level, these actors share the social role of authority-holders, which is defined in opposition to the social role of the addressees of authority. As such, these actors have a common set of motives and restraints which allow for deriving more general expectations about their management and exploitation of crises (see Kreuder-Sonnen and Zangl 2016: 333).

International authority can be defined as a (collective) actor's ability to formulate prescriptions, rules, and orders that are, in principle, recognised as binding by the rule-addressees, even though they may go against the short-term interests of some community members (Zürn *et al.* 2012: 87).¹ Importantly, authority is 'reflexive' in that it builds on recognition and voluntary subordination which cannot simply be enforced as in domestic systems of rule backed by the monopoly on the use of force. On the contrary, to maintain and perpetuate authority relationships, the holders of authority constantly need to be legitimized (Zürn 2017; see also Krisch 2017). That is, authority-holders always rely on the principled support of those who confer the authority. They therefore attempt to nurture beliefs in their legitimacy, typically by trying to achieve goals in the public interest and adhering to certain procedural standards. This is not to say that authority will always be legitimate or that authority-holders may not pursue parochial rather than public interests. Yet strongly and permanently illegitimate authority is unlikely to be stable and sustainable for it invites non-compliance, shifting, and normative backlash (Heupel 2013; Heupel and Zürn 2017). Hence, we should assume an endogenous preference for authority-holders to be legitimacy-seekers and thus to work in the public interest.

At the same time, however, European authority-holders, be they political leaders or technocratic decision-makers, must also be seen as strategic actors whose broadest motivation is to realise their self- or other-regarding interests in the way they deem appropriate (Kreuder-Sonnen and Zangl 2016: 333). Other than authority-addressees who have a lot to gain from legally and politically constraining the reach and intrusiveness of executive authorities to protect their rights and freedom, authority-holders have a lot to gain from discretionary authority as it enables them more freely to implement their preferences. All other things being equal, decision-makers look for the path of least resistance to implement their interests and thus favour discretion and institutional flexibility

over rigid constraints and controls. They therefore seek discretionary control over policy.

Assuming that decision-makers in the EU thus have the endogenous preferences to (a) implement their interests as they see fit and (b) be perceived as legitimate in doing so, we can derive two broad expectations about the behavior of authority-holders in times of crisis. *First*, as Boin *et al.* (2005: 70) highlight, crisis governors depend on a 'permissive consensus' in their relevant audience to effectuate their policies without jeopardising their authority. In moments of acute crisis, this means that authority-holders need to make sure they appear to be effective problem-solvers in line with public expectations. Generally speaking, authority-holders therefore have an incentive to manage and fight crises in the interests of their respective publics to the best of their abilities. At least as important, however, crisis decision-makers need to stay on top of the information flow to get across an understanding of the causes and consequences of the crisis, in the light of which their actions appear reasonable. In that sense, crisis communication is absolutely crucial: 'Effective crisis leadership cannot be brought about by simply "doing the right thing" on the ground; it also presupposes a sure-footed manipulation of symbols that shape the views and sentiments of the political environment in ways that enhance leadership capacity to act' (Boin *et al.* 2005: 70).

Second, as discretion-seekers, authority-holders not only depend on permissive audiences, they also depend on permissive legal and institutional structures which do not hamper their ambitions to progress swiftly with their political programme. Whether or not they amount to 'critical junctures', which offset trodden institutional paths (Capoccia and Kelemen 2007), crises typically do imply a broader than usual menu of feasible policy options for authority-holders. As the securitisation literature has theorised and documented, the successful framing of an issue as a critical threat to a referent community opens the way for policy-makers to employ extraordinary means to cope with the situation, because the sense of crisis induces public deference to claims of political necessity (Buzan *et al.* 1998: 24; Hanrieder and Kreuder-Sonnen 2014). Authority-holders can thus be expected to exploit moments of fear and disorder to test hitherto barred institutional routes, take unprecedented steps, and test new legal waters. In extremis, this may amount to 'emergency politics' in which authority-holders assert crisis measures which deviate from established (constitutional) norms and procedures, justified as necessary to cope with the existential threat that makes up the crisis (Kreuder-Sonnen 2016; White 2015).

Considering authority-holders' general predispositions and the typical political opportunity structures created by crises, we thus arrive at two broad patterns of likely behaviour that could be juxtaposed as 'crisis management' and 'crisis exploitation' (see also Boin *et al.* 2009). While these are closely linked and certainly often intertwined empirically, their distinction highlights the somewhat paradoxical nature of crisis as simultaneous constraint and opportunity

for authority-holders. In the following, I shall specify in some more detail the basic characteristics of crises and how they constrain or enable policy-makers.

Crisis as constraint and opportunity

There is an abundance of different understandings and conceptualisations of crisis in the literature (see Koselleck 2006). The lowest common denominator of academic discourse on crisis seems to be the agreement that it marks a potentially disruptive phase in the – sociologically speaking – normal evolution of a system. In the crisis management literature, a definition dominates which implies ‘a serious threat to the basic structures or the fundamental values and norms of a system, which under time pressure and highly uncertain circumstances necessitates making vital decisions’ (Rosenthal *et al.* 1989: 10). While appearing as an objectivist notion of crisis marked by exogenously given facts, scholarship on crisis management has also come to stress the importance of intersubjective perception (Blumann and Picod 2010: 6): In the face of the greatest danger to the existence of a given community, no crisis will occur if the threat is not known or does not seem credible. Conversely, in the absence of any ‘real’ danger, a crisis may nonetheless unfold if a relevant audience believes or is made to believe in the existence of an imminent threat. This approach creates an area of overlap with the constructivist understanding of crisis dominant in the literature on crisis politics, most notably in securitisation theory. It builds on the assumption that existential threats are discursively constructed. There are thus no essential security or non-security issues, only securitised and non-securitised issues (see Buzan *et al.* 1998; Waever 1995). In both accounts, perception is a necessary condition for crises. The prominence of perception, in turn, underlines the potential for framing contests and discursive struggles over the interpretation of a given social reality (Boin *et al.* 2009).

For the purpose of this paper, a crisis is hence understood as a broad-based intersubjective perception of threat, urgency, and uncertainty – irrespective of whether these elements are measurable against some external standard or are mere constructions of the mind (see also Billings *et al.* 1980; Boin 2004; Boin and Rhinard 2008). The three dimensions of crisis – the perceived threat, the perceived urgency, and the perceived uncertainty – impose constraints and create opportunities for discretion and legitimacy-seeking authority-holders.

The element of *threat* imposes obvious constraints on authority-holders but simultaneously opens up political opportunities. In terms of constraints, legitimacy-seeking authority-holders confront a fearful public which expects solutions. Decision-makers are thus under pressure to manage perceptions, expectations, and the problem itself. Doing nothing is not an option. In terms of opportunities, by contrast, the common perception of a serious threat tends to shift legitimacy requirements from the input to the output dimension: people are less concerned with procedural standards than with the effectiveness of

policies (e.g. Krebs 2009). This allows authority-holders to exercise discretion (in good or bad faith) and adopt particularly intrusive or far-reaching measures which would otherwise have been impossible or at least more difficult to attain.

Crises also involve a sense of *urgency* in confronting the respective threat. Serious, even credible threats, as dangerous and life-threatening as they may be, will not induce a widespread sense of crisis if the underlying problem does not exhibit immediate and tangible consequences. Climate change (and the futile attempt at its securitisation) provides an example of this. As Boin *et al.* (2005: 3) put it, 'most policy-makers do not lose sleep over problems with a horizon that exceeds their political life expectancy. Time compression is a defining element of crisis: the threat is here, it is real, and it must be dealt with as soon as possible (at least that's the way it is perceived)'. On the one hand, urgency has the consequence that decision-makers at the operational level have to take vital decisions under enormous time pressure. On the other hand, urgency tremendously increases the issue salience and public sensitivity to political communication by the policy-makers in charge. For the legitimacy-seeker, this means severe restrictions on the capacity for proactive and informed policy-making, imposing prudent communication strategies and conscious choices of timing. However, for the discretion-seeker, urgency may be good news. For periods of heightened time pressure often require and justify the suspension or circumvention of ordinary decision-making procedures in order to fast-track important crisis measures. This crisis mode typically reduces transparency, undermines the quality of public debate, and thus facilitates the swift implementation of measures that would otherwise not – or at least less easily – have been possible.

Finally, crises are typically characterised by a high degree of *uncertainty*. If policy-makers knew exactly what the nature, causes, and consequences of the threat were, they could specify and target their solutions accordingly and would be able to prevent the problem from deteriorating into a full-blown crisis. Yet it is precisely a lack of this knowledge which renders crisis management a particularly difficult task. Often, uncertainty pertains to both the underlying problem (What exactly is going on? Why does it happen? What will happen next?) and, partly as a consequence, the effects of the political response (What are the policy options? What will be the consequences and opportunity costs of selecting one option over the other?) (Billings *et al.* 1980). On the one hand, this arguably puts crisis managers in an 'impossible condition' (Boin *et al.* 2005: 4) as they have to make urgent decisions and coordinate vital response operations while being in the dark about essential questions regarding the causes and consequences of the problematic situation they find themselves in. Moreover, the shortage of confirmed information provides space for the spread of public rumours and misinformation which put further stress on authority-holders. In order to avoid the spiralling out of control of crisis perception and the corresponding expectations towards policy-makers, crisis management also has to encompass rumour and media management (Boin *et al.* 2014: 311). On

the other hand, uncertainty and problem complexity also present some room for manoeuvre for discretion-seekers to exploit. As policy effects become more difficult to pin down and responsibilities difficult to attribute, necessity and success of crisis measures may turn into questions of representation and interpretation rather than measurement. This again increases the spectrum of possibilities for authority-holders.

In sum, we should expect European authority-holders to be simultaneously legitimacy- and discretion-seeking actors who will both have to manage and try to exploit crisis situations. Crises exhibit fundamental characteristics such as broad perceptions of threat, urgency, and uncertainty, which all impose a number of constraints and necessities on crisis managers but also provide opportunities for crisis exploiters. In the next section, I go on to show how these patterns translate into different types and logics of crisis-induced secrecy in Europe.

Crisis-induced secrecy in Europe

In the following, I will lay out two basic logics of crisis-induced political secrecy in Europe – active and reactive – and specify the kind and depth of secrecy employed in each type. I start with reactive secrecy as a crisis management tactic and illustrate my arguments with the example of secrecy in Eurogroup summitry during the euro crisis. In a second step, I present active secrecy as a means of crisis exploitation which goes along with a move to emergency politics. I identify two sub-types of active secrecy: secrecy as an extraordinary measure to reach a crisis-related political goal (direct); and the diversion of regular secrecy as a consequence of emergency empowerment (indirect). The former is illustrated with the case of opacity in EU terrorism blacklisting after 9/11, the latter with the case of the ECB's assumption of political authority during the euro crisis.

Reactive secrecy

Theorising reactive secrecy

Reactive secrecy describes the deliberate concealment of information from the public, based on a political decision which seems necessary to authority-holders for functional reasons of problem-solving. It is 'reactive' because authority-holders have no ulterior motive for secrecy other than limiting the crisis impact. In particular, this pertains to situations in which decision-makers even have incentives to open up to the public because they could score points with their domestic audience for being ardent problem-solvers or negotiating in their favour. We thus talk about secretive behaviour that is not self-interested per se. Instead, it forms part of the acute phases of crisis management that incite

crisis communication, which implies a strategic distribution of information. Here, resorting to secrecy can have three distinct goals:

- (1) *Control the public threat perception.* Probably the most common reason for concealing information from the public in crisis situations is to avoid panic. Crisis managers have the primary responsibility to defend given communities against a threat and this task may be facilitated if those who are to be protected do not have unrestrained access to the information decision-makers have. In an extreme case, full access might result in actual panic and thus chaos and disorder (think of bank runs, lootings, traffic breakdown, etc.). Such developments represent second-order crises which must also be dealt with and thus draw attention and resources away from confronting the initial crisis. Of course, the point is not to withhold vital information from community members who are thus actually put in harm's way, only to deflect attention from the problem. While this might arise as a problem of miscalculation and policy failure, the assumption here is that crisis managers intend to protect their authority-addressees.
- (2) *Avoid further deterioration of the problematic situation* through unfiltered or wrongly timed information. High levels of urgency and uncertainty may require the confidentiality of decision-making to prevent strategic alternatives or weaknesses from being aired (e.g. in a security crisis scenario). Especially regarding man-made risks and crises such as terrorism or financial crises, where the actions of individuals are decisive for the aggravation or containment of the threat (see Beck 2009), the concealment of information may seem necessary in order to leave adversaries in the dark or avoid detrimental collective reactions to potential decisions. Moreover, given the importance of timing in crisis communication, it can be imperative for creating or avoiding given policy effects to keep decisions secret until certain external conditions are met.
- (3) *Facilitate goal-oriented, not audience-oriented deliberations.* Confidentiality of crisis decision-making may have the crucial advantage of allowing authority-holders to have 'open negotiations' without being held to account for everything they say by their respective audience, which can only evaluate the overall negotiation outcome. In that way, they avoid audience costs, e.g. for revealing otherwise unpleasant truths (such as the true extent of problems, risks, damage), which may be necessary to devise adequate measures to cope with the crisis. Moreover, in the context of interstate crisis diplomacy, Kurizaki (2007: 543) points out that secrecy may enhance the prospect of peaceful outcomes because it 'insulates leaders from domestic political consequences when they capitulate to a challenge to avoid

risking unwarranted war'. In other words, negotiators' win-sets increase because they are less credibly committed to certain outcomes (Fearon 1997). In particular, they do not have to fear (full-blown) political punishment for negotiation failure and may thus more easily acquiesce in individually sub-optimal but collectively beneficial solutions. While the audience cost literature is about the interactions of state leaders and their domestic audiences, the basic rationale also applies to supranational crisis response agencies' confidentiality vis-à-vis their environment.

As a consequence of these goals, reactive secrecy will typically be mostly about the secrecy of deliberations, not of material decisions. In the context of crisis communication, the presentation and 'selling' of decisions as effective and sustainable remedies against the looming threat is of paramount importance. Authority-holders thus have little incentive to keep their solutions secret, except on a temporary basis for reasons of timing, as discussed above. Indeed, there may be confidential deliberations which deal with classified information that remains under wraps on a longer-term basis. Yet the crisis decision to which the deliberations gave rise will be communicated.

Reactive secrecy is not a fully operationalisable concept because it is defined by eventually unobservable actor motivations (as is active secrecy, see below). However, we can specify at least two observable implications which should increase confidence in the finding of reactive, not active secrecy. First, we should not see any major benefits that crisis managers can reap from secrecy in terms of executive discretion. The question is: did authority-holders achieve political goals through secretive practices which they would not otherwise have been able to achieve for reasons of institutional or popular constraints? If not, it is likely that their intention was not exploitation but management. Second, and related, in reactive secrecy, actors might forgo opportunities for political advantage by being secretive. If they actually have an incentive to carry out their practices in public, keeping the secret is detrimental to their political self-interest which is thus unlikely to be driving their behaviour. We can then conclude that secrecy is a crisis reaction which legitimacy-seeking authority-holders deem necessary.²

Illustrating reactive secrecy: summitry during the euro crisis

What is now commonly referred to as the euro crisis, i.e. the period of Eurozone members' near sovereign defaults, waning inter-bank lending, and broad economic downturn starting in late 2009, is a textbook example of the combination of threat, urgency, and uncertainty. The perceived threat was that unsustainable sovereign debt levels would make financial markets lose confidence in the integrity of the euro and thus endanger the survival of the common currency as a whole. A perception of urgency was created by very technical deadlines, such as sovereign bond maturity dates, and time pressure created by expected

market reactions to inaction. Finally, there was a high level of perceived uncertainty regarding both the underlying problem and the consequences of potential responses. Was the crisis a consequence of the 2008 global financial crisis? Was it a banking crisis? Or was it a sovereign debt crisis prompted by the profligate spending of some member states? And how would 'the markets' react to specific measures? How much of a safety net would be sufficient? Could rescue measures be counter-productive to solving the underlying problem? And so forth.³

In procedural terms, European-level authority-holders responded with a high level of secrecy in their deliberations, which they deemed vital to manage the public threat perception and to avoid a further deterioration of the situation. This partial concealment of information from the public was reactive, because it followed from the constraints imposed by crisis conditions and fulfilled a clear crisis-management function.⁴ Importantly, authority-holders hardly gained additional political power by operating confidentially. To the contrary, it seems that they could actually have profited from publicity. This at least is suggested by remarks of the then Eurogroup president, Jean-Claude Juncker, who in 2011 admonished the, in his view, insufficient secrecy of some European leaders, seeing the problem in the fact that 'each of us wants to show his domestic public that he's the greatest guy under the sky'.⁵

Juncker's concerns notwithstanding, the European crisis management was in fact marked by a strategic concealment or merely partial release of information – particularly during the early phase of the euro crisis. As revealed by an investigative report for the *Wall Street Journal* in September 2010, the first Greek bailout in April of that year had been preceded by months of negotiations behind the scenes, which were initially completely concealed from the European public.⁶ After the collapse of Lehman Brothers in the autumn of 2008, European leaders had set up a secret task force to prepare contingency plans in case of a crisis spill-over to the Eurozone. This 'group that doesn't exist'⁷ was made up of high-ranking government officials from France and Germany as well as representatives of the Commission, the ECB, and the office of the Eurogroup president. It was only in February 2010 that the committee opened its doors to the other Eurozone members (except Greece). Starting in late 2009, when the Greek Socialist government for the first time announced the country's true budget deficit, the secret task force met in the context of Council meetings and EU summits, at 6 am or late at night, to discuss ways to prevent countries in the euro area from defaulting.

Most importantly, secrecy was perceived to be necessary for the sake of impression management: decision-makers feared that the serious information they were dealing with, i.e. the eventuality of a Greek default, would lead bond traders to assume the country's imminent insolvency and thus cause panic among market participants. Hence, members of the secret task force even 'kept colleagues in their own governments in the dark, for fear leaks would trigger rampant speculations in financial markets'.⁸ Up until February 2010, Greece

was never an official topic at Council meetings and the key players in the group publicly insisted that the country's fiscal situation was not on the agenda, even though more and more information on a potential bailout was leaked to the media.⁹ Towards the end, when the first rescue package was finally hammered out, the crisis managers apparently cherished the hope that as long as they did not upset the markets by openly addressing the issue, Greece might be able to buy its way out of the trouble on its own. Secrecy was thus a means of managing the threat perception which stood in direct relationship to the magnitude of the crisis and was therefore deemed essential to prevent the situation from deteriorating further.

In the course of the crisis, this initial level of secrecy could not be upheld. Too much public attention was given to the emergency summits which had to be convened in ever shorter time periods, and rising expectations for definite solutions to the crisis rendered it impossible (and illogical) for authority-holders to deny that they were actually talking about the problem. Still, the summits preserved firm 'islands of secrecy' in the sense that, while it was clear who was negotiating with whom where and when on what issue, the substance of deliberations was kept under wraps and only meticulously timed pieces of information on the outcome were communicated to the public. One good example is the 26 October 2011 extraordinary euro summit, where European state and institution leaders met at the brink of another Eurozone meltdown and disappeared behind closed doors for more than 12 hours. It was only at 4 o'clock in the morning of the following day, just in time for the opening of the Asian stock markets, that the Commission and Council presidents went to the press to announce the leveraging of the European Financial Stability Facility into a new 'bazooka' supposed to calm the markets.¹⁰ In a public appearance a few months earlier, Jean-Claude Juncker openly stated that he was 'for secret, dark debates' and explained:

Actions on the financial markets are taking place in real time. We don't always agree at each and every debate on monetary policy, but meanwhile markets are reacting. [...] If we indicate possible decisions, we are fuelling speculations on the financial markets and we are throwing in misery mainly the people we are trying to safeguard from this.¹¹

The secrecy of summit deliberations throughout the euro crisis is thus well characterised as a reaction to functional requirements of crisis management. Also in this later period, the overwhelming secrecy objective was the prevention of a further deterioration of the situation through consequences of unfiltered and wrongly timed information. Moreover, it seems that a high degree of confidentiality at the meetings was a precondition for authority-holders, under close scrutiny from their domestic audiences, to reach agreements under pressure of time.

Active secrecy

Theorising active secrecy

Active secrecy denotes the deliberate concealment of information from the public in order to reach political goals that would otherwise be (more) difficult to realise. It is about situations in which authority-holders have nothing to gain from transparency, because it would merely raise justification requirements, incite critical questions, or even bar the implementation of specific policies due to legal or democratic resistance. While active secrecy may, in principle, be employed by authority-holders at all times, crises are particularly prone to the emergence of active secrecy. For the context of crisis provides 'secrecy opportunities' to decision-makers as the public tends to accept lower procedural standards if a threat is successfully framed as existential and requiring extraordinary measures in order for it to be contained (see Buzan *et al.* 1998).

In the most drastic scenario, secrecy may be employed to facilitate policies which, due to their legal or political implications, could hardly be realised publicly. Take the United States' secret surveillance programme after 9/11 which has only recently been uncovered. Here, the emergency measure, justified internally and – ex post – publicly as necessary to counter the threat of terrorism, was itself kept secret. The only conceivable reason for this decision was the anticipation that the extremely far-reaching surveillance programme would not have met with unanimous approval from the public, which could have hampered the programme's realisation or efficacy. However, this form of 'deep' active secrecy (Scheppelle 1988), by which authority-holders direct secret operations at the fringes of the law, does not seem to be easily realisable outside sovereign states. For it appears to be premised on the existence of a centralised security apparatus and a monopoly on its use. Given EU member states' broad retention of sovereignty in this area, it is rather unlikely to feature in European crisis politics.

At the European level, active secrecy can be expected to be about the reasons, backgrounds, or evidence for emergency measures and decisions. Authority-holders use the crisis conditions to present their policies as necessary to deal with the threat the community is facing and thus eschew the normally required standards of evidentiary reasoning to make the case for a certain measure and its application. Due to the emergency rationale, the public accepts claims rather than disclosed facts as a basis to approve of political action. Take the example of the run-up to the 2003 Iraq war: under the impression of an imminent new wave of transnational terrorism and the Anthrax panic which fuelled fears of a threat of biological weapons, the Bush administration claimed that the Iraqi government was harbouring terrorists and possessed weapons of mass destruction. It did not provide evidence for the allegations because they were putatively based on secret intelligence (Kull *et al.* 2003–2004). Public opinion in the United States nevertheless sided with the government and accepted the war was necessary.

This form of active secrecy can have two variants, one direct and one more indirect. In the *first type*, secrecy is itself part of the extraordinariness of emergency politics. That is, by way of increased secrecy, a common and normal practice is extended in terms of reach and intrusiveness. For instance, wiretapping or police raids are common and normal practices of law-enforcement which usually require the authorisation of a judge based on evidence for exigent circumstances. Yet when authority-holders in an apparent emergency suspend the legal process of authorisation or classify the evidence, e.g. for reasons of national security, the constraints on the use of wiretapping and raids are removed. For the non-disclosure of incriminating evidence consumes the basis for any kind of external review. As a consequence, the practices can de facto be carried out against anyone at any time. Moreover, the rule-addressees lose potential legal remedies to appeal against the measures because they cannot counter the evidence held against them.

Whereas the first type is thus characterised by normal practice and extraordinary secrecy, the *second type* is characterised by extraordinary practice and normal secrecy: it is about extended secrecy as an implication of extraordinary measures. That is, by way of emergency politics – i.e. practices exceeding the limits of the normal constraints on authority – the reach of ‘normal’ secrecy is expanded beyond its intended scope and purpose. This type of active secrecy pertains to authority-holders such as non-majoritarian institutions whose default operating mode is confidential. Since the general tasks of courts, central banks, or independent regulatory agencies are decidedly non-political and, presumably, collectively welfare-enhancing, shielding these institutions from public debate and scrutiny is seen to be an important factor to avoid politicisation of the supposedly technical decision-making (Majone 1999). However, emergency politics can turn this logic upside down. When a non-majoritarian institution adopts emergency measures – either because it is made to by powerful states or out of institutional self-interest – that go beyond its narrowly circumscribed mandate and entail distributional consequences, its decisions become political (Kreuder-Sonnen 2016). As a consequence, the opaque decision-making procedures designed for an institution with merely pareto-optimising regulatory tasks are being diverted to a political realm. ‘Normal’ secrecy thus becomes extraordinary secrecy through crisis exploitation. Indeed, while this type is more indirect than the first, it is still active secrecy, not reactive. Authority-holders know what they do when they employ a seemingly apolitical institution to implement emergency policies. The confidentiality of decision-making procedures, which shields the issue from public scrutiny and criticism, helps them implement their interests with less resistance.

Whether direct or indirect, active secrecy can thus be observed by uncovering the concrete power benefits of secrecy for authority-holders. In contrast to reactive secrecy, where the concealment of information from the public does not increase their executive discretion beyond normal institutional confines,

in active secrecy, authority-holders build on secrecy to circumvent those very confines and advance into the realm of discretionary politics.

Direct active secrecy: EU terror lists

In order to illustrate active secrecy in Europe, I start by describing a case of *direct* active secrecy: the EU's terrorism blacklist after 9/11. Here, European authority-holders (Council and Commission) exploited the international security crisis in the wake of the 2001 terrorist attacks in the US to devise emergency measures against terror suspects based on secret evidence. The case is set in a crisis situation marked by a widely perceived threat to the security of Western societies, exacerbated by an extremely high degree of uncertainty: after 9/11, the possibility of terrorist attacks was a 'known unknown' on everyone's agenda. It was known that attacks were planned and would be carried out, but it was unknown when, where, and by whom (Daase and Kessler 2007). Building on worst-case scenarios, policy-makers operated under a heightened sense of urgency because they had to assume that the next attack was imminent. Given the high potential impact of a terrorist incident, it would have to be prevented at all costs. This preventive logic shaped the global approach to counter-terrorism in the early 2000s (Goede 2008). One important counter-terrorism policy deployed in Europe is the blacklisting of terror suspects. To comply with UN Security Council Resolution 1373 (2001) requiring all states to freeze funds and other financial assets or economic resources of persons participating in or supporting terrorist activities, the Council of the EU adopted Common Position 2001/931/CFSP and Regulation (EC) No. 2580/2001 of December 2001. They represent the legal basis for the EU's list of individuals, groups, and entities that are subject to 'targeted' sanctions, in particular the asset freeze. It provides that the Council is in charge of drawing up the list and can amend it on a regular basis (Goede 2012).

This process was interspersed with elements of secrecy at three different levels. *First*, beyond the broad contours laid out in the legislation, the Council concealed the procedures on how names were added to and removed from the list. As Cameron (2003: 234) put it: 'A lot of the details of the process are shrouded in secrecy'. The actual working methods of the body thus could not be known in public. Its guidelines were only declassified in 2007, indicating that the Council decided on listing and delisting upon member state proposals after secret deliberations in its 'clearing house' (Heupel 2009). *Second*, while the Common Position indicates that proposals for names should be based on a decision taken by a 'competent authority' (such as a court) in the designating state, it was left to the governments to decide what counts as a competent authority in their domestic system. This opened the door to listings based on decisions by national intelligence services whose reasons and evidentiary basis for including individuals or entities remained secret (Cameron 2003: 235; see also Hoffmann 2008). In effect, the information and transparency

requirements for listings were extremely low: 'names and groups were added to the list without any examination by the Council (or Commission) of the reasons (none having been required or given) of the Member State which proposed the addition' (Guild 2008: 180). *Third*, and as a consequence, the listed individuals themselves remained completely in the dark about the allegations made against them. In the first years of the blacklist's existence, targeted individuals were not even informed about the imposition of measures against them, they just found their bank accounts frozen. And when they got to know that they were on the list, they would not be informed about the reasons for listing. Evidence was marked confidential. This had devastating consequences for the availability of legal remedies: judicial review was complicated by the fact that listing decisions were made by the Council in the framework of the Common Foreign and Security Policy, which normally lies outside both the domestic and European courts' jurisdictions (Guild 2008); what is more, 'since listed parties did not have the right to receive a statement of reasons why they were listed, it was unclear whether courts would be given sufficient information to be able to deliver judgments in the first place' (Heupel 2009: 317).

To be sure, not every aspect of secrecy in this case necessarily corresponds to the conceptualisation of direct active secrecy. For example, the confidentiality of deliberations regarding listing decisions can well be considered an instance of reactive secrecy where crisis managers had to fear negative security consequences from publicly disclosing all information they possessed on all potential suspects.¹² However, most of the elements described are indeed characteristic of active secrecy with little discernible problem-solving necessity but employed to extend authority-holders' executive discretion. For the secrecy regarding the evidentiary basis for the sanctions turns these otherwise unspectacular acts of public authority into de facto unconstrained emergency measures. Building on the public threat perception which clearly supported arguments for decisive and pre-emptive policies while making procedural concerns take a back seat (Aradau and van Munster 2007), the EU Council and its member states cultivated a high degree of secrecy which allowed them to implement their security interests swiftly without being harassed by legal or judicial constraints.

Indirect active secrecy: the ECB's emergency measures in the euro crisis

The second case of active secrecy illustrates the dynamics of *indirect* active secrecy: the ECB's assumption of the role of a lender of last resort to countries in the Eurozone. Here, European authority holders (the ECB in conjunction with powerful member states) exploited the crisis to have the Bank adopt emergency policies beyond its constitutional mandate as an independent regulator of monetary policy and thus diverted the function of its confidential decision-making procedures. The contours of the euro crisis have already been described above. This case highlights how the same crisis conditions may function both

as constraint, inducing reactive secrecy, and as an opportunity, allowing for active secrecy.

The initial design of the European Economic and Monetary Union (EMU) reflected the view that, in the absence of a real political union, decisions with distributional effects in economic and fiscal policy should be taken by parliamentary majorities at the national level. Only in the realm of monetary policy, where a pareto-optimising welfare effect of common regulation was discernible, was authority delegated to a non-majoritarian expert body, namely the ECB (Enderlein 2013: 717–21). By default, the Bank's decision-making takes place behind closed doors. Most importantly, the Governing Council minutes, including individual positions and voting behaviour, are kept secret. This is supposed to preserve the independence of the members of the Governing Council from outside (especially national) influence (Curtin 2017). In the classic logic of non-majoritarian institutions, secrecy is employed as a means to shield the institution from politicisation. As a counterpart to the Bank's regular secrecy, the ECB's reach of action was clearly delimited in the Treaties. To make sure that it remains within the confines of its delegated authority, the ECB's enumeration of competencies in the Treaties and its Statute 'gives expression to the principle of a strict definition of its mandate' (Tuori and Tuori 2014: 30). According to Art. 127 TFEU, the ECB is not only restricted to the realm of monetary policy, but has to focus on price stability as its primary objective (para. 1).

In the course of the euro crisis, however, the Bank's activities have expanded far beyond this narrow field. Not only has the ECB become the central authority in banking supervision but, most importantly, it has also assumed the role of a lender of last resort (LoLR) to countries in the Eurozone and thus forcefully entered the realm of economic policy. First with the adoption of the Securities Markets Programme (SMP) and later through the famous Outright Monetary Transactions (OMT) programme, the ECB has empowered itself to buy the sovereign bonds of financially distressed member states and thus effectuated fiscal integration 'through the monetary backdoor' (Schelkle 2014: 106). As a corollary, it got deeply involved in detailing, approving, and monitoring austerity reforms in debtor states – as part of the Troika but also in its own right. Not only did the ECB try to lock in its resistance to debt cuts and restructuring in negotiations over financial assistance through the bailout regime, it also used its creditor position to pressure member states to adopt fiscal and structural reform as a guarantee for the purchase of bonds (Beukers 2013). In sum, the Bank's discretionary power has markedly increased during the euro crisis, which arguably rendered it 'the most central – and powerful – supranational institution of our times' (Curtin 2017; see also Scicluna 2014: 568).

While the ECB's activities have broadened, its decision-making procedures have not become any more transparent. By way of emergency politics, the 'regular' secrecy for a non-political institution has thus been diverted to genuinely political issues. Importantly, it is hard to see in this extension of secrecy

a functional necessity for purposes of crisis management. By contrast, it is easy to see the advantages secrecy brings for discretion-seeking authority-holders. On the one hand, the ECB has obviously increased its institutional power and is now able to implement intrusive policies outside usual chains of (public) accountability (see also Curtin 2017). On the other hand, the most powerful member states of the Eurozone have also benefited from the arrangement, for the ECB's extraordinary measures filled a gap which the EU's political leaders had left wide open but could have closed in principle. Most observers agree that the same effect ECB President Draghi's 'whatever it takes' produced could also have been achieved by introducing 'euro bonds' and/or providing the ESM with a banking licence. However, these measures would have required public deliberations and the involvement of national parliaments. These would have exposed the highly political nature of the rescue operations and policy-makers would have been held to account for their proposals. Given the unpopularity of redistribution across Europe, this would have come at a high political cost. Instead, leaving the task to the putatively independent ECB which adopts seemingly apolitical decisions behind closed doors allowed authority-holders to reduce the political outcry and shift responsibility. The diversion of secrecy thus provided discretion to both member states and the ECB.

Conclusions

The aim of this article was to theorise and illustrate the relationship between crisis and secrecy in European public policy. Integrating the literature on crisis management and crisis politics through the concept of (international) authority, I have argued that European authority-holders are simultaneously discretion- and legitimacy-seekers who can be expected to either manage or exploit crisis situations. Building on these basic actor strategies, I have claimed that crises give rise to two types of secrecy, active and reactive, which reflect the crises' double function of political constraint and opportunity. Reactive secrecy denotes the intentional concealment of information from the public, deemed necessary for functional reasons by crisis managers. Active secrecy, on the other hand, is about authority-holders exploiting crisis conditions to justify the concealment of information from the public with the aim of implementing policies that would be more difficult to realise transparently.

Obviously, this theorisation is tentative and the empirical examples could merely illustrate the typology's plausibility. Further research is needed to develop a full theory of crisis-induced secrecy in (European) public policy. Most importantly, it would need to specify the conditions under which either active or reactive secrecy occurs and say how the two interrelate. Is active and reactive secrecy typically co-occurring or mutually exclusive? Are there particular crisis attributes or policy field characteristics which account for resorting to reactive rather than active secrecy (or vice versa)? These and related questions

should be addressed in comparative research. The results would certainly also feed back into debates about the normative legitimacy of political secrecy in times of crisis and potentially provide insights relevant for the question of how best to design institutions that allow for effective crisis management but at the same time prevent excessive crisis exploitation.

Notes

1. For an alternative, more legal definition of international authority, see Hooghe and Marks (2015).
2. To be sure, neither reactive nor active secrecy will necessarily appear in their pure form empirically. It is always possible that actors have mixed motives and will partially see a need to manage and partially see an opportunity to exploit crises. Empirical analyses need to be attentive to the complexities raised by this non-exclusivity of action motives.
3. Much has been written about these elements of the euro crisis from different research perspectives. For one descriptive but insightful account, see Bastasin (2012). For an overview of the origins and impacts of the euro crisis, see the contributions in Caporaso and Rhodes (2016).
4. To be sure, this is not to say that the entire episode of Eurogroup crisis governance was only about crisis management, not exploitation, at all its levels. The attribute of reactivity here relates exclusively to the secrecy of deliberations.
5. Quoted in Valentina Pop, 'Eurogroup Chief: "I'm for Secret, Dark Debates"', *euobserver*, 21 April 2011, available at <https://euobserver.com/economic/32222> (accessed 18 February 2017).
6. Marcus Walker *et al.*, 'On the Secret Committee to Save the Euro, a Dangerous Divide', *Wall Street Journal*, 24 September 2010, available at <https://www.wsj.com/articles/SB1000142405274870346700457546411360573156> (accessed 21 April 2017).
7. Xavier Musca, chairman of the Economic and Financial Committee in March 2009, quoted in *ibid.*
8. *Ibid.*
9. Ian Traynor, 'Currency Crisis: The Euro's Darkest Hour', *The Guardian*, 10 February 2010, p. 24.
10. David Gow, 'Europe in Crisis: EU's Bazooka Bailout Fails to Launch with a Bang: A Welter of Words but Few Figures as Germany Seeks to Lower Expectations', *The Guardian*, 27 October 2011, p. 6.
11. Quoted in Pop, 'Eurogroup Chief: "I'm for Secret, Dark Debates"'.
12. Note, however, that this only holds to the extent that decision-makers actually did disclose relevant information in those deliberations. As described above, even the Council clearing house was often lacking background information, let alone evidence.

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