

REINVENTING  CRITICAL THEORY

critical theories of crisis in europe

FROM WEIMAR TO THE EURO

EDITED BY

Poul F. Kjaer

Niklas Olsen

Critical Theories of Crisis in Europe

Reinventing Critical Theory

Series Editors:

Gabriel Rockhill, Associate Professor of Philosophy, Villanova University Annika Thiem,
Associate Professor of Philosophy, Villanova University

The Reinventing Critical Theory series publishes cutting edge work that seeks to reinvent critical social theory for the twenty-first century. It serves as a platform for new research in critical philosophy that examines the political, social, historical, anthropological, psychological, technological, religious, aesthetic and/or economic dynamics shaping the contemporary situation. Books in the series provide alternative accounts and points of view regarding the development of critical social theory, put critical theory in dialogue with other intellectual traditions around the world and/or advance new, radical forms of pluralist critical theory that contest the current hegemonic order.

Titles in the Series

Commercium: Critical Theory from a Cosmopolitan Point of View by Brian Milstein

Resistance and Decolonization by Amílcar Cabral, translated by Dan Wood

Critical Theories of Crisis in Europe: From Weimar to the Euro edited by Poul F. Kjaer
and Niklas Olsen

Politics of Divination: Neoliberal Endgame and the Religion of Contingency by Joshua
Ramey (forthcoming)

Comparative Metaphysics: Ontology After Anthropology edited by Pierre Charbonnier,
Gildas Salmon and Peter Skafish (forthcoming)

A Critique of Sovereignty by Daniel Loick, translated by Markus Hardtmann (forthcom-
ing)

The Invention of the Visible: The Image in Light of the Arts by Patrick Vauday, translated
by Jared Bly (forthcoming)

Critical Theories of Crisis in Europe

From Weimar to the Euro

Edited by
Poul F. Kjaer and Niklas Olsen

ROWMAN &
LITTLEFIELD
— INTERNATIONAL

London • New York

Published by Rowman & Littlefield International, Ltd.
Unit A, Whitacre Mews, 26-34 Stannary Street, London SE11 4AB
www.rowmaninternational.com

Rowman & Littlefield International, Ltd. is an affiliate of Rowman & Littlefield
4501 Forbes Boulevard, Suite 200, Lanham, Maryland 20706, USA
With additional offices in Boulder, New York, Toronto (Canada), and London (UK)
www.rowman.com

Selection and editorial matter copyright © 2016 by Poul F. Kjaer and Niklas Olsen. Copyright in individual chapters is held by the respective chapter authors.

All rights reserved. No part of this book may be reproduced in any form or by any electronic or mechanical means, including information storage and retrieval systems, without written permission from the publisher, except by a reviewer who may quote passages in a review.

British Library Cataloguing in Publication Information Available
A catalogue record for this book is available from the British Library

ISBN: HB 978-1-7834-8745-5
ISBN: PB 978-1-7834-8746-2

Library of Congress Cataloging-in-Publication Data Available

ISBN 9781783487455 (cloth : alk. paper)
ISBN 9781783487462 (pbk. : alk. paper)
ISBN 9781783487479 (electronic)



™ The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences Permanence of Paper for Printed Library Materials, ANSI/NISO Z39.48-1992.

Printed in the United States of America

Contents

Acknowledgements	vii
List of Abbreviations	ix
Introduction: European Crises of Public Power from Weimar until Today <i>Poul F. Kjaer and Niklas Olsen</i>	xi
Part I: Semantics, Notions and Narratives of Societal Crisis	1
1 What Time Frame Makes Sense for Thinking about Crises? <i>David Runciman</i>	3
2 The Stakes of Crisis <i>Janet Roitman</i>	17
Part II: Weimar and the Interwar Period Ideologies of Antimodernism and Liberalism	35
3 The Crisis of Modernity—Modernity as Crisis: Toward a Typology of Crisis Discourses in Interwar East Central Europe and Beyond <i>Balázs Trencsényi</i>	37
4 European Legitimacy Crises—Weimar and Today : Rational and Theocratic Authority in the Schmitt-Strauss Exchange <i>John P. McCormick</i>	53
5 Crisis and the Consumer: Reconstructions of Liberalism in Twentieth-Century Political Thought <i>Niklas Olsen</i>	69
Part III: The Causes of Crises from Corporatism to Governance	87
6 The Constitutionalization of Labour Law and the Crisis of National Democracy <i>Chris Thornhill</i>	89
7 Conflict and the Crisis in Labour Law: From Weimar to Austerity <i>Ruth Dukes</i>	107
8 From the Crisis of Corporatism to the Crisis of Governance <i>Poul F. Kjaer</i>	125

Part IV: The Euro and the Crisis of Law and Democracy	141
9 What Is Left of the European Economic Constitution II? : From Pyrrhic Victory to Cannae Defeat <i>Christian Joerges</i>	143
10 Reflections on Europe's 'Rule of Law Crises' <i>Jan-Werner Müller</i>	161
11 Democracy under Siege: The Decay of Constitutionalization and the Crisis of Public Law and Public Opinion <i>Hauke Brunkhorst</i>	177
Part V: The Consequences of Crises and the Future of Europe	195
12 Crises and Extralegality from Above and from Below <i>William E. Scheuerman</i>	197
13 'We Could Go Down the Road of Lebanon': Crisis Thinking on the Anti-Muslim Far Right <i>Mikkel Thorup</i>	213
14 Conclusions and Perspectives: The Reconstitution of Europe <i>Poul F. Kjaer and Niklas Olsen</i>	231
Index	239
List of Contributors	249

Acknowledgements

This book builds on insights originally developed within the framework of the conference *European Crises from Weimar until Today: History, Economy, Politics, Law*, which took place on the 11–12 December 2014 at the Department of Business and Politics of the Copenhagen Business School. The conference and the subsequent book project were generously funded by the European Research Council, within the framework of the research project “Institutional Transformation in European Political Economy—A Socio-Legal Approach” (ITEPE-312331, www.itepe.eu) and the Centre for Modern European Studies at the University of Copenhagen. Invaluable support was provided by Chris Engert, who carried out the linguistic editing of the manuscript.

Poul F. Kjaer and Niklas Olsen
Copenhagen, January 2016

List of Abbreviations

AfD *Alternative für Deutschland*/Alternative for Germany
AGIL Adaptation-Goal Attainment-Integration-Latency
DG Directorate General
ECB European Central Bank
ECJ European Court of Justice
ECSC European Coal and Steel Community
EEC European Economic Community
EFSF European Financial Stability Facility
EMU European Monetary Union
ESM European Stability Mechanism
EU European Union
FPÖ *Freiheitliche Partei Österreichs*/Freedom Party of Austria
G20 Group of Twenty: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, United Kingdom, United States, and the European Union
G8 Group of Eight: currently the Group of Seven (G7), following the suspension of Russia: Canada, France, Germany, Italy, Japan, Russia (suspended *sine die*), the United Kingdom, the United States, and the European Union
GATT General Agreement on Tariffs and Trade
GOP Grand Old Party (US Republican Party)
LGBT lesbian gay bisexual transgender
NATO North Atlantic Treaty Organization
NPM new public management
NSDAP *Nationalsozialistische Deutsche Arbeiterpartei*/National Socialist German Workers' Party
OECD Organisation for Economic Co-operation and Development
OEEC Organisation for European Economic Co-operation
OSCE Organisation for Security and Co-operation in Europe
PiS *Prawo i Sprawiedliwość* (Polish Law and Justice Party)
SER standard employment relationship
SPD *Sozialdemokratische Partei Deutschlands*/The Social Democratic Party of Germany
TFEU Treaty on the Functioning of the European Union
TSCG Treaty on Stability, Coordination and Governance
UK United Kingdom
UN United Nations
US United States of America
WWI World War I/First World War
WWII World War II/Second World War

Introduction

European Crises of Public Power from Weimar until Today

Poul F. Kjaer and Niklas Olsen

Once again, Europe finds itself in the middle of a crisis. In public discourse, the ongoing crisis has foremost been considered as an economic crisis, or a crisis of a largely technical nature due to failed governance within the Eurozone. However, the still unfolding refugee crisis and the widespread challenges to the state of law and parliamentary democracy, which have emerged in many European settings in recent years, indicates that the crisis trajectory cannot be understood in purely economic or technocratic terms. Accordingly, this volume takes a different approach to the understanding of the current crisis. First, it reconstructs the commonalities and differences between this and earlier major European crises from the interwar period onward. Second, it reconceptualizes these European crises as primarily crises of public power and authority. Third, it offers an interdisciplinary framework for analysing and understanding the phenomenon of crisis more generally.

The guiding point of this volume is that modernity and crises are co-original. As initially pointed by Georg W. F. Hegel and reinforced by scholars as different as Jürgen Habermas, Herbert Marcuse and Reinhart Koselleck, the breakthrough of modernity in the latter half of the eighteenth century also marked the emergence of the crisis phenomenon.¹ Societal crises, as well as narratives and analysis of crises, are, in other words, inherent to the history of modern Europe. This insight has, however, been blended out in mainstream understandings of the current crisis trajectories.² This volume therefore counters the profoundly ahistorical perspectives that dominate contemporary crisis discourses by systematically contextualizing and explaining the dynamics and characteristics of the ongoing crisis within the framework of, and with reference to, previous European crisis experiences. The volume presents a particular take on the crisis phenomenon in Europe, by providing a long-term historical, sociological, as well as a 'conceptual history'-informed take on crises in twentieth-century Europe from the Weimar Republic and the interwar period through the 1970s crisis to the ongoing crisis of the Euro,

the European integration project and European society as such. It provides a historical and conceptual link between the interwar crisis and the crisis of today, while highlighting that the 1970s crisis was, in many ways, a prelude to the ongoing crisis.³ Thus, the volume asks how the crisis experience of the interwar period informs our thinking about crisis today, and, to what extent, the catastrophic consequences which emerged from the breakdown of the Weimar Republic might be repeated. As such, the volume advances a warning from history by highlighting that the chaos of Weimar is not as far away as one might have thought only a few years ago.⁴

At a more concrete level, the central thesis of the volume is that the crises focused upon are interconnected, in so far as many of the issues and conflicts characterizing the previous crises are reemerging in the current crisis. Economic and social turmoil was surely inherent to all the major crises of twentieth and twenty-first century Europe. However, purely economic takes on the crisis phenomenon need to be complemented by a stronger focus on the political and legal preconditions that paved the way for these crises, as well as on the more fundamental erosion or, in some cases, outright collapse of social order which marked large segments of interwar Europe and characterizes crisis-ridden countries such as Greece and Spain today. Against this background, a second thesis of the volume is that the root cause of both the interwar and the current crises was political rather than economic, and that these crises must be understood as crises of public power, order and authority. The essence of public power, as distinct from private power, is that it provides a generalized and legally-constituted framework of collectivity based upon both a formal constitutional setup and a social *praxis* which, through the rule of law, ensures the realization of a fairly unitary set of norms throughout a given society.⁵ A recurrent theme of the volume is that both prior to and during the crisis under scrutiny, such unitary norm-based frameworks were substantially challenged and undermined by political movements opposing the existing normative grid of society. In line with this, the volume illuminates how such ideological contestations tended to gain strength and intensity in times characterized by profound structural transformations of society, causing a discrepancy between the unfolding of social processes and the institutional frameworks that have been established to stabilize such processes normatively.

Focusing on how notions of public order and authority have been severely challenged and, in many instances, undermined, the volume reconstructs how the crises unfolded, how they were experienced, and what kind of responses the specific crises in question provoked. In doing so, the volume draws on the rich 'crises literature' developed mainly within the critical theory tradition to outline a conceptual and sociological framework for understanding what societal crises are. By concrete use of and reference to central scholars associated with critical theory, such as

Franz L. Neumann and Hugo Sinzheimer, the volume seeks to bridge the gap between humanistic, legal and social science approaches to the subject matter. Moreover, at a theoretical and methodological level, the volume combines structural and sociological explanations and approaches with insights from conceptual and intellectual history, drawing also on analytical devices from scholars such as Reinhart Koselleck and Niklas Luhmann. It is well known that both scholars developed their work within different traditions than—and at times in opposition to—critical theory.⁶ Notwithstanding this, there are, arguably, many commonalities in the respective approaches, and they can be fruitfully combined in the analysis of the European crisis. In particular, Koselleck's conceptually-oriented analysis of the emergence of modern political language and its key concepts (such as that of 'crisis') and Luhmann's idea that issues of crisis and societal integration in the modern world must be understood in the light of the functional differentiation of society, seem to be not only compatible with, but also to enrich the analytical ambitions of critical theory, by opening other paths to the study of language, society and politics, as well as the relation between them.

On a more general level, combining insights from critical theory, functionalist sociology and conceptual history, this volume aims to provide a dialectical perspective on the relationship between ideological articulations and the structural transformations unfolding in society. These ideological articulations are considered normative in their core and are observed in both their progressive (e.g., in relation to democracy, human rights and emancipation) as well as reactionary (e.g., antidemocratic and antimodernist) variants. In addition, they are viewed as both reflections and factors of societal change. Against this background, the book provides frameworks for analysing how, in different societal contexts—characterized by specific structural problems and contradictions—ideological articulations influence structural transformations over time and *vice versa*. As will become apparent, these frameworks allow for a combination of descriptive and normative approaches to the subject matter. Also in this sense, the ambition of critical theory becomes visible in so far as critical theory since Immanuel Kant has been based upon the idea that productive articulations of normative endeavours must be done with reference to the structural setup of society, while, at the same time, such articulations possess the potential to alter the structural setup of society over time.⁷

The present volume adds crucial perspectives to the vast amount of books on crises that have appeared in recent years. Most of these books are monodisciplinary and monothematic (e.g., they look exclusively at the financial crisis, the crisis of the public sphere or the crisis of democracy).⁸ In contrast, this volume cuts across different problem constellations and presents a broad range of analyses of how societal crises emerged and evolved in the European context from the interwar period until to-

day from an interdisciplinary perspective. The volume opens with two chapters that develop a conceptual and temporal framework for thinking about societal crisis, identifying what societal crisis are, how they unfold over time and what implications they have for democracy in the present and the future.

David Runciman's central concern is the ability to pin down the time frame of crises: When do they begin and when do they end? Discussing the concept of crisis in relation to that of democracy, he defines a crisis as a situation characterized by fundamental threat and fundamental choice, which implies the need to take fundamental decisions. At the same time, he highlights the difficulty in pinning down crises, asking the question as to whether crises emerge when a fundamental danger occurs or at the moment that fundamental choices have to be made. In a similar vein, he discusses the particular experiential and perspectival dimensions of crises, as well as the issue of ubiquity, arguing that crisis semantics tend to suffer from inflation, in so far as it is invoked time and again, thereby diluting the concept of crisis. This was particularly the case from the 1960s onward, in so far as semantics of 'events' and 'catastrophe' have increasingly lost out and been replaced with crisis semantics. Runciman further discusses this development in relation to an increased acceleration of societal time and a compression of temporal frames of crises, which implies a higher level of contingency and unpredictability of societal developments.

Observing a profound lack of scholarly inquiry into the significance and practice of the concept, Janet Roitman examines the particular stakes of crisis. She does so by reflecting on the status of the concept as a ubiquitous qualifier of contemporary historical conditions. Instead of providing a fixed theory or definition of crisis, she examines the role and function of the term in the construction of narrative forms. How does the term *crisis* serve as a place from which narrative accounting can begin? How does *crisis* serve as a narrative device, which establishes certain events as moments of truth? How is crisis mobilized to engender conditions of action, serving to constitute a particular form of ethics or mode of critique? Probing these questions, Roitman unveils how crisis has come to serve as a non-*locus* which enables claims concerning access to history and knowledge of history. Against this background, she compels us to put less faith in crisis by asking more critically how we produce meaning and history through the concept.

Following the section devoted to conceptual and temporal frameworks for thinking about societal crisis, a section of three chapters focuses on the crisis experience of the interwar period, and on how these experiences were negotiated in intellectual thinking in this period. Focus is, in particular, on how ideologies of antimodernism and liberalism were negotiated and came to challenge democratic forms of public power in

the Weimar Republic, in Eastern and Central Europe, as well as within transnational networks spanning Western Europe and the United States.

John P. McCormick provides a re-evaluation of the Weimar writings of Carl Schmitt and Leo Strauss, specifically, their intellectual efforts to replace, as the ground of political authority, Enlightenment rationality with, respectively, 'political theology' and 'Biblical atheism'. Schmitt and Strauss each insisted that Enlightenment rationality was unravelling into a way of thinking that violently rejected 'form' of any kind, as fixated myopically on human things and lacking any conception of the external constraints that condition the possibilities of philosophy, morality and politics. Consequently, so McCormick argues, they considered Enlightenment reason a threat to 'genuine' expressions of rationality and a dangerous obfuscation of the necessity of political order—of the brute fact that human beings stand in need of being ruled. Finally, McCormick points to—and warns against—the ways in which contemporary enemies of liberal democracy share Schmitt's and Strauss's anxieties over Enlightenment values and likewise seek to develop genuinely authoritarian alternatives to liberal state theory.

In a similar vein, Balázs Trencsényi explores the radicalization of political style in Europe in the interwar period. His focus is on how intellectuals in Eastern and Central Europe launched a new image of modernity and crisis, which emphasized the rupture of development and a liminal period which threatened the community with dissolution, but also carried with it the promise of renovation. While Trencsényi links these discursive features to the broader ideological framework of 'antimodernism' which had a powerful appeal all over Continental Europe throughout this period, he shows how intellectual élites in Eastern and Central Europe constructed a distinct local discourse about the crisis of the Western civilization as a possibility for non-Westerners to redeem a supposedly youthful East from the declining West and alter the perceived hierarchy between the two regions. Finally, Trencsényi reflects on the complex afterlife of the crisis discourses that were launched in interwar Eastern Europe, pointing, among other things, to the recent promise by Viktor Orbán to build an 'illiberal' Hungarian state.

Drawing on perspectives from the interwar period to the current financial crisis, Niklas Olsen illuminates the making of the contemporary consumer figure in twentieth-century Western European political thought. His argues that the meaning, role and status ascribed to the consumer today is, to a great extent, a product of semantic reconstructions of the figure, which was performed by liberal academics and politicians with the aim of reconstructing liberalism in times of crises. His contribution focuses specifically on how, in the 1930s, the British economist William H. Hutt coined the notion of 'consumers' sovereignty' in an attempt to remedy certain malfunctions that he identified in classic liberalism. The result was an updated version of liberalism, based upon con-

sumers' sovereignty and a scheme of government intervention, which aimed to ensure a more equal, just and productive society, and to solve the 'crisis of liberalism'. Moreover, Olsen traces how liberal thinkers since 1945 have advanced a concept of the consumer which disconnected ideals of economic efficiency, utility and growth from those of democracy, equality and moral behaviour. This disconnection, he argues, should be seen as a contributing factor to the still ongoing economic crisis that became visible from 2007 onward.

In the following section, historical sociological and sociology of law approaches are invoked in order to provide structural explanations for the emergences of societal crises. The three contributions in this section focus on the relationship between the political and economic dimensions of society with particular attention being paid to how the failure of stabilising this relationship with the help of legal instruments was a central cause of both the Weimar and the ongoing crisis trajectory.

Chris Thornhill develops the thesis that the central dimension in the construction of nations was the integrative function of political, economic and social rights. Social rights were mainly introduced through corporatist measures based in labour law, which thereby became part of the fundamental inclusionary structure of society. From Thornhill's perspective, the Weimar Republic was a paradigm case of the attempt to establish a unified nation through reliance on rights including social rights. Both the political constitution of the Weimar state and the corporatist economic and social rights based constitution of the economy, however, remained half-evolved and were factually not capable of handling the normative intentions associated with them. The consequence was a move toward 'hyperpoliticization', in which public power and public interests were dismantled and substituted with the advancement of private interests by powerful economic groups. Thornhill characterizes this development as a move from inclusionary to exclusionary corporatism, which he sees as a quite typical example of the problems associated with national inclusion. In contrast to prevailing theories, he does not see Weimar Germany as representing a highly distinctive *Sonderweg* (special path), but rather as a paradigmatic case of the failure of national inclusion strategies.

Departing from Hugo Sinzheimer's seminal Weimar text *The Crisis of Labour Law* (*Die Krisis des Arbeitsrechts*) of 1933, Ruth Dukes picks up the baton from Thornhill by exploring how the notion of conflict has evolved within labour law. In the Weimar context, a highly conflictual relation could be observed between labour law and the private law (*bürgerliches Recht*) framework guiding the wider economy. This conflict was exacerbated by the Great Depression and the policies of the late Weimar Republic, effectively leading to a breakdown in the capacity of labour law to serve as a framework for protective and emancipative measures. This conflict constellation, Dukes argues, has reemerged in recent decades through policies aimed at breaking down the ability of labour organiza-

tions to serve as frameworks for stability and for the protection of employees. Since the heydays of Thatcherism and the subsequent New Labour and Third Way era, the conflictual relationship between capital and labour has been underemphasized. Instead, a 'divide and rule strategy' has been imposed in order to prevent the (re)emergence of a unified representation of labour interests. According to Dukes, this development has greatly increased the vulnerability and sense of insecurity of large segments of the citizenry in the Western world.

Poul F. Kjaer examines the close link between the emergence of societal crises and the evolution of intermediary institutions in their corporatist, neocorporatist and governance variants in the European context. Intermediary institutions, he argues, assume a strategic location in society, in so far as they are central sites of social integration as well as disintegration. The 'turn to corporatism' which unfolded throughout interwar Europe implied a move toward a short-circuiting and dismantling of the legal infrastructure through which the relationship between public power and the rest of society was structured. The result was a process of mutual decay and disintegration of the normative and institutional underpinnings of both the economy and the political system. The neocorporatist reconstitution of society which unfolded at both the national and the transnational level of Western society in the immediate post-WWII era was aimed at rectifying this development. The 'turn to governance' which, as a response to the crises of the 1970s, started to unfold from the late 1970s onward has, however, implied a return to many of the issues known from the interwar period. Also in today's society, Kjaer argues, a (re)privatization of public power contributing to an increased erosion of its integrity can be observed.

The gradual shift from a focus on the crisis of the interwar years to the contemporary crisis in the previous section is reinforced in the next section, which takes issue with the crisis of the rule of law within the EU, its member states and beyond.

Christian Joerges reconstructs the intellectual lineages of the ordoliberalist tradition from Weimar Germany to the Euro crisis. Ordoliberalism became *come il faut* in the post-WWII period where it was regarded as a legal theoretical response to the disaster of Weimar. Today, ordoliberalism is, however, mainly associated with the austerity policy advanced by the German government within the framework of the Euro crises. Joerges, nevertheless, argues that ongoing policies in relation to the euro-crises have little to do with ordoliberalism. The policy response to the Euro crises is, instead, characterized by discretionary and delegalized managerialism. The transnational executive machinery which has been established as a reaction to the Euro crises largely operates outside the realm of the rule of law. It is, according to Joerges, a framework which is devoid of any inherent normative foundation, and, as such, it threatens to

undermine the integrity of the EU legal order and thereby the integration project.

Jan-Werner Müller also illuminates Europe's 'rule of law crisis' within the EU and its member states. Using Hungary as the most striking example, he focuses in particular on the determined destruction of the rule of law advanced by the present and previous governments of member states such as Hungary, Poland and Romania in the past half decade. Müller analyses the reasons and consequences of the particular political choice made by the EU to frame the developments within these countries as a 'rule of law crisis'. He argues that the term *rule of law crisis* seemed to be a pragmatic option for the EU policymakers, but that it has made it difficult for European actors not only to understand the crisis as a serious political conflict, but also to intervene in what is going on. According to Müller, the rule of law approach fails to capture the political essence of the populist movements and governments which aim to undermine core EU values by offering a conflictual story of good versus evil engaged in a final battle. The consequences of the situation might be that the supposed 'rule of law crisis' becomes permanent, so that the EU comes to house a group of countries in which fundamental values are continually violated.

Hauke Brunkhorst follows suit by advancing the thesis that the financial crisis and the interconnected Euro crisis have mutated into a crisis of parliamentary democracy. This is the case within—as well as beyond—the borders of Europe. At the heart of the crises, Brunkhorst observes a conflict between the notion of legal formalism, as advanced by Hans Kelsen and others in the interwar period, and Schmittian legal dynamism which transformed law into a mere façade of power politics. Over the past decades, he argues, legal formalism has lost out both in Europe and throughout the globe, and it has increasingly been replaced by informal practices of decision-making which bypass democratic institutions. In this process, the public sphere has increasingly lost its link to institutionalized democratic processes, and, in the words of Nancy Frazer, it has become a weak public sphere. According to Brunkhorst, a re-animation of democratic politics is what is needed.

In the final section, left- and right-wing political reactions to the ongoing crisis are examined, thereby highlighting the potential consequences and responses which might emerge from it.

William Scheuerman illuminates conceptual features in recent debates about the place of extralegal political action in the context of societal crises. He departs from a distinction between the 'top-down' extralegality of European executive actions during the Euro crisis and the 'bottom-up' call for extralegal action by left-wing political movements in the face of supposedly dire crises. Scheuerman demonstrates how left-wing political movements justify action outside the law and how these justifications often reflect specific theoretical arguments in defence of illegal popular disobedience to government. More specifically, he shows that both the

'top-down' and the 'bottom-up' calls for extralegal action are based upon similar claims about the limits of legality in the face of crisis situations, as well as strikingly parallel models for how political actors should be expected to conduct themselves. However, he also points to key normative differences between executive-level extralegality 'from above' and popular forms of 'extralegal' protest from 'below', suggesting that defenders of executive level extralegality should be expected to face a higher burden of proof than those engaged in civil disobedience from 'below'.

Mikkel Thorup examines crisis perceptions on the contemporary anti-Muslim right. He uncovers the premise of right-wing violent imaginaries by dissecting how themes of crisis, treason, internal enemies, European decline and its culmination in a civil war appear in the writings of contemporary right-wing anti-Muslim writers. He further reflects upon what it means for thinking about crisis, societal decline, culmination, and solution when these themes are framed within a civil war narrative. A central argument of his chapter is that the contemporary anti-Muslim right frames the crisis as a crisis of modernity, which is related to a politicized experience of loss and defeat from the French Revolution onward. They are furthermore informed by the specifically modern idea that it is choice and not destiny that determines the future. Finally, Thorup argues that the crisis discourse on the far right is linked to the broader governmental crisis in contemporary Europe, and that it has the potential to undermine the hitherto dominant ideas of modern Europe as advanced within enlightenment and critical theoretical thinking.

The volume ends with a brief conclusion which sums up the findings and outlines possible pathways for further research and political engagement. Contemporary Europe, it is argued, is at a crossroad, and a fundamental reconstitution of its institutions and normative underpinnings is needed.

NOTES

Poul F. Kjaer's research is supported by the European Research Council within the project 'Institutional Transformation in European Political Economy—A Socio-Legal Approach' (ITEPE-312331-www.itepe.eu).

1. For a reconstruction of Hegel's take on modernity and crisis, see Jürgen Habermas, *The Philosophical Discourse of Modernity* (Cambridge: Polity Press, [1982] 1990), 23 *et seq.*, and Herbert Marcuse, *Reason and Revolution: Hegel and the Origin of the Theory of Society* (Abingdon: Routledge, [1941] 1986). For more general reflections on the crisis of modernity, see Jürgen Habermas, *The Structural Transformation of the Public Sphere* (Cambridge: Polity Press [1962] 1989); idem, *Legitimation Crisis* (Cambridge: Polity Press, [1973] 1988); and Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Cambridge, MA: MIT Press, [1959] 1988).

2. As also pointed out in Hauke Brunkhorst, 'The Return of Crisis', in Poul F. Kjaer, Gunther Teubner and Alberto Febbrajo (eds.), *The Financial Crisis in Constitutional Perspective: The Dark Side of Functional Differentiation* (Oxford: Hart Publishing, 2011), 133–71.

3. Wolfgang Streeck, *Buying Time: The Delayed Crisis of Democratic Capitalism* (London: Verso Books, 2014).

4. See, also, the contributions in Christian Joerges and Navraj Singh Ghaleigh (eds), *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and its Legal Traditions* (Oxford: Hart Publishing, 2003).

5. For different, but related, takes on the constitution of public power, see Hannah Arendt, *On Violence* (New York: Harvest Books, 1970); Jürgen Habermas, 'Hannah Arendt's Communications Concept of Power', *Social Research* 44 (1977): 3–24; Niklas Luhmann, 'Power', in: idem, *Trust and Power* (New York: Wiley, [1975] 1979); idem, *Die Politik der Gesellschaft* (Frankfurt aM: Suhrkamp Verlag, 2008); Franz L. Neumann, 'The Concept of Political Freedom', in: William E. Scheuerman (ed), *The Rule of Law Under Siege: Selected Essays of Franz L. Neumann and Otto Kirchheimer* (Berkeley: University of California Press, [1953] 1996), 195–240.

6. See, for example, Niklas Olsen, *History in the Plural: An Introduction to the Work of Reinhart Koselleck* (Oxford: Berghahn Books, 2012); Poul F. Kjaer, 'Systems in Context: On the Outcome of the Habermas/Luhmann-Debate', *Ancilla Iuris* (2006): 66–77.

7. Immanuel Kant, *Critique of the Power of Judgement* (Cambridge: Cambridge University Press, [1790] 2000), Introduction Part II. See, also, Hauke Brunkhorst, *Critical Theory of Legal Revolutions: Evolutionary Perspectives* (London: Bloomsbury Academia, 2014).

8. See, for example, Andrew Gamble, *Crisis without End? The Unravelling of Western Prosperity* (London: Palgrave Macmillan, 2014); Streeck, *Buying Time*; Janet Roitman, *Anti-Crisis* (Durham, NC: Duke University Press, 2013); David Runciman, *The Confidence Trap: A History of Democracy in Crisis from World War I to the Present* (Princeton, NJ: Princeton University Press, 2013); Phillip Mirowski, *Never Let a Serious Crisis Go to Waste: How Neoliberalism Survived the Financial Meltdown* (London: Verso Books, 2013); Costas Lapavistas et al., *Crisis in the Eurozone* (London: Verso Books, 2012); Gerard Dumenil and Dominique Levy, *The Crisis of Neoliberalism* (Cambridge, MA: Harvard University Press, 2011). For a recent volume analysing the current crisis of capitalism from a critical theory perspective, see Heiko Feldner and Fabio Vighi, *Critical Theory and the Crisis of Contemporary Capitalism* (London: Bloomsbury Publishing, 2015).

Part I

Semantics, Notions and Narratives of
Societal Crisis

ONE

What Time Frame Makes Sense for Thinking about Crises?

David Runciman

There are a number of fundamental difficulties involved in defining the scope of crises. These difficulties derive both from the ambiguity inherent in the term, and also from its current overuse to describe a wide variety of different political, social and cultural phenomena. These factors are related: crisis is a difficult concept to pin down not just in spite of its growing ubiquity as a label for all sorts of different kinds of events, but, in part, *because* of its growing ubiquity. In particular, there is a problem of deciding what marks the start of a crisis and what marks the end of one: in other words, the question of time frames. This can be seen in relation to the recent financial crisis (the one that ostensibly started in 2008, though there are good reasons to dispute that, in many senses, it started long before). We are now—eight years on—living in an environment that is routinely described as *postcrisis*, yet also as containing the ongoing legacy of the crisis, including the possibility of further iterations of the crisis. If nothing else, this is evidence of how hard it is to get time frames fixed when discussing crises: Is it really over or not? However, this is not just a recent problem. It derives from the historical experience of crisis in both Europe and the wider world across the twentieth century.

This analysis has something in common with Reinhart Koselleck's classic account of the concept of crisis, its historical development and its resulting ambiguities. 'The concept remains as multi-layered and ambiguous as the emotions attached to it,' Koselleck wrote.¹ He argues that the fundamental ambiguity lies between the idea of crisis as an acute moment of choice or bifurcation of possible futures (as in 'the crisis of the

disease'), and crisis as an ongoing state of uncertainty or potential peril (as in 'the crisis of Western civilization'). In one case, crisis has a focal point in time; in the other, it is expansive across time and can even be annexed to the notion of the end of times. Koselleck identifies three primary sources for the modern conception of crisis: it comes from medicine, where the emphasis is on crisis as a turning point; from economics, where crisis can mean both an acute breakdown and also an ongoing malfunction of the system; and theology, where crisis tends to be deployed in eschatological terms and contains within it the notion of immanent or even permanent transfiguration. Together, these different sources feed into contemporary political uses of the term, which often alternate between or combine various ideas of crises as both short- and long-term phenomena, raising immediate, as well as enduring, challenges. Crisis, Koselleck writes, 'can be conceptualized as both structurally recurring and utterly unique'.²

My account here shares this focus on the fundamental temporal tension in the idea of crisis. But I develop my argument beyond Koselleck in a number of ways. First, he was interested in how the concept evolved over the modern period up to the early- to mid-twentieth century. I am interested in how it has evolved into the twenty-first century. This means that where the primary political reference point of crisis for Koselleck is revolution, I am interested in crisis in democratic settings where revolution is a remote possibility: the recent crises of the established Western democracies have not carried with them a serious prospect of revolutionary upheaval in the traditional sense. So, I will be writing about crisis against a backdrop of democratic stability, which poses a particular set of challenges. Second, Koselleck's primary interest is in the contrast between the 'subjective' and 'objective' aspects of the idea of crisis, and between its cosmic and more narrowly secular connotations. I am interested more specifically in how crises pattern themselves in our discourse and our imaginations: their beginnings, their endings and their repetitions. Koselleck does not much discuss the problem of framing in these terms. Third, I am interested in how different temporal conceptions of crisis react on each other: that is, in how long-term perspectives shape our conception of the short term, and *vice versa*. My argument is that a distinctive feature of the contemporary understanding of crisis is the interplay and mismatch between different time frames, which creates particular problems for thinking about our long-term future.

I want to begin with three background difficulties that I take to lie behind any attempt to fix the time frame of a crisis. The first is *definitional*. It is possible to come up with a broad, catchall definition of what we mean by the word *crisis* in a way that accommodates its inherent ambiguity. A crisis might be defined as a situation characterized both by fundamental threat and fundamental choice. Each needs to be present for it to count as a crisis. So threat without choice—for instance, in the case of an

asteroid on a fatal collision course with earth—does not qualify as a crisis, since the scale of the threat precludes meaningful choice (though a choice about how to respond in such fateful circumstances—preparation, resignation, liberation?—could still constitute a crisis situation). Choice without threat is also insufficient—a decision about what to do with an unexpected financial windfall is not in itself a crisis, unless the difficulty of making that decision produces a sense of threat (option paralysis leading to lost opportunities, for instance). Choice plus threat are necessary, and both have to be serious. What is meant by serious? It is hard to be precise, but a serious choice does not have to rule out the possibility of inaction. Some crises may force a choice between doing something and doing nothing—as Thomas Paine wrote of the revolutionary crisis of the early 1790s, ‘there remained no choice but to act with determined vigor or not to act at all’.³ But inaction needs to be a decision: in situations of crisis, mindless drift no longer remains an option.

A definition like this accomplishes something, but it does not take us very far. It leaves unresolved the question of whether crisis is to be identified with the acute moment of threat/danger/choice or with a more entrenched or intractable situation. It could be either and it could be both. Equally, this definition does not help with the knowing of when to mark the beginning or the end of crises. Does the crisis start with the danger or with the choice? Does it end when the danger has passed or when the choice has been made? Choice and threat are unlikely to coincide: threat is likely to predate choice, and also sometimes to outlast it. But it does not follow that choice represents the acute moment of crisis and threat, merely the ongoing condition: it could be the other way round. Take the financial crisis of 2008 and its aftermath: it is arguable that the moments of threat have been the most acute—particularly the week following the collapse of Lehman Brothers when the entire world economy was at risk—whereas the choices have been more enduring (in the sense that they keep needing to be made, particularly by policymakers maintaining a regime of cheap money to prop up deflating economies). Crises are also different from wars in this respect, though wars produce crises and are often identified with them. Wars have distinct beginnings and endings. Crises do not. For instance, WWI was undoubtedly an epic crisis, made up of a whole series of interlocking and overlapping crises. But it would be a mistake to identify the crisis of the war with the duration of the war itself. The crisis—depending on how it was experienced and from what perspective—was either longer or shorter than that; or both.

This leads to the second background difficulty of fixing the time frame of a crisis. I will call this problem *experiential*: the time frame of any crisis may look very different, depending on who is experiencing it. The crisis that led to WWI—the *July crisis* as it is often called—started earlier, as experienced in Belgrade or Berlin than in London or Washington. Some people are closer to the crisis than others, which means it strikes them