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Why do governments call a state of emergency? On the determinants of using emergency constitutions

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ABSTRACT

States of emergency do not only imply a significant change in the balance of powers between the three branches of government, they are also very frequently declared: between 1985 and 2014, at least 137 countries were subject to at least one such event. This contribution is the first to systematically inquire into the factors determining such declarations. We find that constitutions matter and that descriptive statistics indicate that countries without constitutionalized emergency provisions declare states of emergency significantly more often than countries with such provisions. Further analysis shows that it is crucial to distinguish between states of emergency declared as a consequence of a natural disaster from those declared as a consequence of political turmoil. Distinguishing between the costs of declaring an emergency and its benefits, we find that the less costly it is to declare an emergency, the more emergencies will be called on the grounds of natural disasters but not on the grounds of political turmoil. This is, hence, more evidence that constitutions matter. Finally, emergencies based on political turmoil are more likely to be declared if an economic crisis is hitting the country, large natural disasters are more likely to lead to an SOE when more powers are allocated to the legislature, and results suggest that even military coup governments are subject to constitutional constraints.

1. Introduction

Nine out of ten countries have constitutionalized their emergency provisions (Bjørnskov and Voigt, 2018). And the power to declare a state of emergency has indeed been used quite frequently: between 1985 and 2014, 137 countries declared a state of emergency at least once. This implies that roughly 2/3 of all sovereign nations declared a state of emergency during that period. In this paper, we seek to identify the factors that make governments declare a state of emergency.

Declaring a state of emergency has far-reaching consequences for all citizens – not least because basic rights are frequently suspended under emergencies. But declaring a state of emergency also has far-reaching consequences for the balance of powers within government:

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the power of both the legislature and the judiciary are usually curtailed to the advantage of the executive.

At least two intuitive reasons for declaring a state of emergency come to mind: the government identifies an “exceptional and imminent danger to the life of the nation”,¹ which could be caused by natural disasters, but also by man-made dangers such as terrorist attacks. A charitable interpretation of why governments call states of emergency would therefore be that the additional emergency powers granted by the constitution are necessary to act with speed and due diligence to save people and alleviate the social and economic consequences of emergencies. But a government might also declare a state of emergency because it is eager to use the additional powers connected to a state of emergency in its own favor, for example to weaken its political opposition. As such, states of emergency may be called for reasons not associated with actual emergencies, but as a tool to improve the chances of remaining in office or to implement policies that would otherwise be blocked.

Examples for such government behaviour abound: Many governments have declared a state of emergency to weaken the opposition. Two recent examples for such behaviour occurred in Ethiopia and Honduras. According to human rights activists, the Ethiopian government had used a ten-month state of emergency that lasted from the fall of 2016 until the summer of 2017 to kick off politically motivated criminal charges against key opposition leaders and journalists (Horne, 2017). In December 2017, the Honduran government declared a state of emergency subsequent to contested Presidential elections. Jesus Garza, a political analyst claims that “the government is provoking the chaos in order to justify the state of emergency.” (<http://progressive.org/dispatches/honduras-political-crisis-following-election-171204/>).

But there are other ways in which disasters – natural or man-made - can be used politically. In 2015, the government of Nigeria postponed national elections subsequent to activities of Boko Haram in the Northeast of the country. With regard to the U.S., it has been shown that emergency declarations are heavily influenced by political considerations. There, financial support of the federal government to the affected state seems to be driven by how important a state is for the U.S. president and less by the severity of the disaster (Garrett and Sobel, 2003).²

No previous study has analysed the factors that lead governments to declare a state of emergency. We are, however, aware of two papers that have produced data on declared states of emergencies, namely Hafner-Burton et al. (2011) and Richards and Clay (2012). Yet, they are not interested in the reasons behind declaring a state of emergency but rather ask whether declaring a state of emergency makes a difference regarding the rights that are subsequently derogated. In a sense, they are interested in the effectiveness of international law as that provides the possibility to derogate from a number of basic rights under specified conditions. Hafner-Burton et al. (2011, 703) find that governments of stable democracies and with strong courts are most likely to derogate “to provide themselves breathing space to respond to domestic crises by suspending individual liberties without breaching their treaty obligations.” Richards and Clay (2012) ask whether the legal prohibition to violate non-derogable rights during states of emergency works and answer that it does not.

We are here not interested in the effectiveness of international law, but rather in the factors that lead governments to declare a state of emergency at home. Comparing cases in which governments did declare an emergency with those in which they did not but could have because the preconditions were given, we find that it is crucial to distinguish whether a state of emergency is declared as a consequence of a natural disaster or of political unrest. Relying on a sample of up to 116 countries, we find that states of emergency based on natural events are declared significantly more often when declaring them is possible without the explicit consent of other political actors such as the legislature or the judiciary; in other words: when declaration has low direct political costs. Declarations referring to domestic turmoil are more likely when an economic crisis is hitting the country and political unrest (measured by the number of anti-government demonstrations, general strikes, politically motivated assassinations and the like) is high. We find that overall, democracies and autocracies behave remarkably similarly although declarations of states of emergency based on political events are more frequent among democracies.

Yet, we also find that the likelihood that a large natural disasters makes government call an SOE increases in the powers allocated to the legislature. Around national-political disasters, governments conversely react to calling a SOE when the emergency constitution makes it difficult to do so. We also observe that even military coup governments react to constitutional incentives by calling an SOE when the emergency constitution provides particular benefits, and when they do not face a formally independent judiciary or other veto players.

The rest of the paper is structured as follows. In Section 2, we discuss a number of potentially relevant factors for declaring a state of emergency. In Section 3, we describe the data on which our empirical estimates are built and offer some descriptive statistics. Section 4 contains a number of stylized facts as well as bivariate correlations between declarations of emergency and country characteristics. Section 5 provides the regression results and their interpretation. Section 6 concludes.

2. Theory

We follow established tradition in public choice and political economy by assuming all actors to be individual utility maximizers (Buchanan and Tullock, 1962). Here, we analyze the behaviour of politicians who are in government and assume that their overarching

¹ Quote from the Siracusa Principles on the Limitations and Derogations Provisions in the International Convention on Civil and Political Rights (ICCPR). In section II.A39(a) (b) of the Principles, such a threat is defined as one that “affects the whole of the population and either the whole or part of the territory of the State and threatens the physical integrity of the population, the political independence or the territorial integrity of the State or the basic functioning of institutions indispensable to ensure and project the rights recognized in the Covenant.”

² Sobel and Leeson (2006) analyze the consequences of the way in which agencies such as the Federal Emergency Management Agency (FEMA) are organized on their incentives to help fast and effectively. With regard to disaster relief in India, Cole et al. (2012) find that voters punish incumbent governments for events beyond their control (such as rainfall). But voters reward the ruling party if it responds vigorously to such events. Cole et al. also find that voters have a short memory: disastrous events – and government reactions to them – only influences the voting decisions if they occurred no more than a year ago.

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