POLITICAL PARTY-CLOSING AS SELF-DEFENCE OF DEMOCRACIES?
RECENT DEBATES AND CRITICISMS OF MILITANT MODEL OF
DEMOCRATIC SELF-DEFENCE

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ABSTRACT

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In liberal democracies, which can be defined as a particular form of representation regime, the fact that political parties as legitimate channels of this representation can be dissolved creates a fundamental contradiction. The defense mechanisms developed by liberal democracies to address this contradiction are discussed under the title of different models of democratic self-defense. In this study, we intend to present an intra-critical examination of these three models of democratic self-defense, identified in the literature as militant democratic self-defense, procedural democratic self-defense, and social democratic self-defense. With this exposition, we will try to show that the dominant position of militant democracy, which appears as the fundamental legitimizing mindset in the dissolution of political parties, is obviously open to criticism. In other words, we will try to show that militant democracy which tends to discuss the closure of political parties on a purely constitutional level and reinforces official rationality, is not the only stance that can be taken regarding the practice of dissolution of political parties. We hope that presenting the promises of alternative mentalities that tend to approach the practice of party-banning from a political and

sociological perspective will contribute to the enrichment of the debates on the related issue, especially in a country like Turkey, which has a high tendency to regard the closure of political parties from a purely militant perspective.

ÖZ

DEMOKRASİLERİN ÖZ SAVUNMASI OLARAK (MI) SİYASİ
PARTİLERİN KAPATILMASI: MİLİTAN DEMOKRATİK ÖZ SAVUNMA
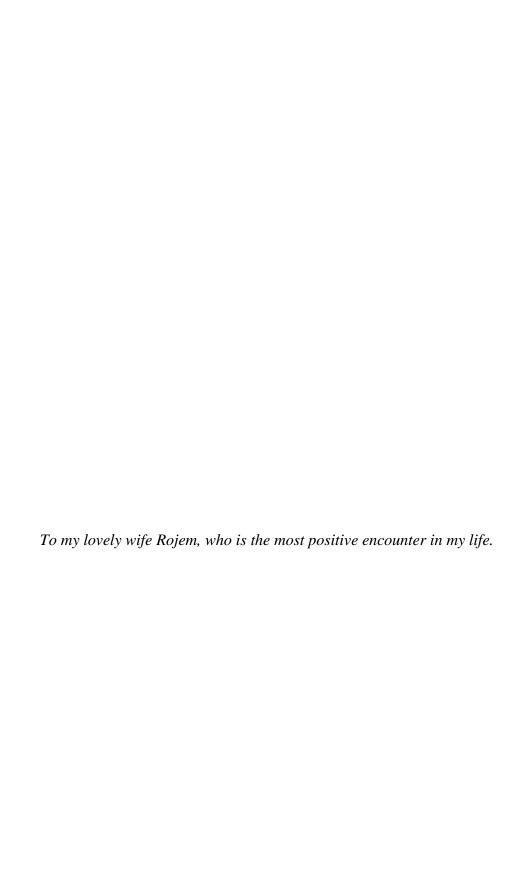MODELİNE YÖNELİK SON TARTIŞMALAR VE ELEŞTİRİLER

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En temelde belli bir temsiliyet rejimi olarak tanımlanabilecek liberal demokrasilerde, bu temsilin meşru kanalları olarak siyasi partilerin kapatılabilmesi temel bir çelişki yaratmaktadır. Liberal demokrasilerin bu çelişkiyi gidermek için geliştirdikleri savunma mekanizmaları, farklı demokratik özsavunma yöntemleri başlığı altında ele alınmaktadır. Bu çalışmada, literatürde militan demokratik meşru müdafaa, prosedürel demokratik meşru müdafaa ve sosyal demokratik meşru müdafaa olarak tanımlanan bu üç farklı demokratik meşru müdafaa modelinin eleştirel bir serimlemesini amaçlıyoruz. Bu serimleme ile, siyasi partilerin kapatılmasının en temel meşrulaştırıcı söylemine dönüşen militan demokrasi kavramının hâkim konumunun son derece eleştiriye açık olduğunu göstermeye çalışacağız. Başka bir deyişle, siyasi partilerin kapatılmasını tamamen anayasal düzeyde tartışmaya meyilli ve resmi rasyonaliteyi pekiştiren militan demokrasinin, siyasi parti kapatma pratiği konusunda takınılabilecek tek tavır olmadığını göstermeye çalışacağız. Siyasi partilerin kapatılmasıyla ilgili tartışmalarda konuya siyasi ve sosyolojik bir perspektiften bakma eğiliminde olan alternatif rasyonalitelerin vaatlerinin, siyasi

partilerin kapatılması olgusunu tamamen militan bir perspektiften değerlendirme eğilimi yüksek olan özellikle Türkiye gibi bir ülkede konu ile ilgili tartışmaların zenginleşmesine katkı sağlamasını umuyoruz.

Anahtar Kelimeler: Siyasi Partilerin Kapatılması, Demokratik Öz Savunma, Militan Demokrasi, Prosedürel Demokrasi, Sosyal Demokratik Öz Savunma

To my lovely wife Rojem, who is the most positive encounter in my life.

ACKNOWLEDGMENTS

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LIST OF ABBREVIATIONS

ICCPR   International Covenant on Civil and Political Rights

CPD   Emergency Advisory Committee for Political Defence

ETA   Euskadi Ta Askatasuna

NPD   Nationaldemokratische Partei Deutschlands

SRP   Sozialistische Reichpartei

DRP   Deutsche Reichpartei

FIS   Front Islamique du Salut

ECHR   European Commission of Human Rights

CHAPTER 1

INTRODUCTION

1.1. The Scope, Aim and Significance

The dissolution of political parties creates a serious contradiction for liberal democracies, which define *politics* as a particular regime of representation. This is mainly because liberal democracies mark tolerance, freedom of expression and association, and living together with differences as essential components of their identity. One regulatory institution that is supposed to enable the realization of all these essential elements on a rational basis is marked as political parties. Hence, it is very accurate to say that one of the most apparent projections of modern liberal democracies in the political arena is the emergence of political parties. Thus, the closure of such centrally important institutions creates a serious barrier to the inclusiveness of democracies. Democracy in Turkey is one of the democracies that feel the existence of such a barrier the most. This barrier to the expansion of democratic inclusion is likely to be higher than in any other European country. It is evident that the number of dissolved parties in Turkey is incomparably higher than any other European country. The number of dissolved political parties only after 1983,[1] (which can be considered the starting point of the most extended period in which democracy has survived in Turkey without being interrupted by military coups), is sixteen.[2] The situation is not different in

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[1] With this date, we do not claim that the culture of democracy has been fully established in Turkey. Obviously, the quality of democracy in Turkey is open to very different interpretations. However, the fact that the military coups, which have become one of the hallmarks of Turkish politics, have not been experienced after this date, made it possible to talk about a functioning democracy (at least) at a formal level.

[2] The names of these parties and the years they were dissolved are as follows: United Communist Party Of Turkey- 1991, Socialist Party- 1992, Socialist Union Party- 1995, People's Labour Party- 1993, Freedom And Democracy Party-1993, Democratic Party - 1994, People's Democracy Party- 2003, Socialist Turkey Party-1993, Democracy Party-1994, Democracy And

the previous period. The number of lawsuits filed by the Constitutional Court[3] between the 1960 and 1980 military coups demanding the dissolution of a political party was six.[4] All of these cases resulted in the decision to close the relevant parties. The following criteria were included among the reasons for the closure of these parties:

- being contrary to the principles of protecting the secular nature of the state and Atatürk's revolutionism,
- attempt to destroy indivisible integrity of the state with its territory and nation
- serving communist aims,
- acting in reactionary activities,
- desiring a social group to dominate over others,
- using religion for political interests and
- becoming the focus of anti-secular actions

Although Turkey creates a severe attraction in terms of studying it with its large number cases of dissolution and quite different types of justifications, examining the dissolution of cases in Turkey or any other context will not be within the scope of our study. This study will aim to reveal the rationality that works in common in all similar dissolution processes instead of examining the particular reasons for each closure. In this regard, this study will try to present the

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Change Party- 1996, Labour Party- 1997, Welfare Party- 1998, Virtue Party- 2001, Democratic Mass Party- 1999, Democratic Society Party- 2009.

3 It is obvious that the number of political parties dissolved in Turkey would be much higher if the parties that were closed during the military coups are also included. The parties we have mentioned here are those which have been decided to be dissolved by the Constitutional Court. It is possible to witness that many parties were closed before the establishment of the Constitutional Court and during the single-party period. In this study, we do not mention the parties that were closed during the single-party period or as a result of military coups, as we think about the practices of party-closure that democracies claiming to be pluralistic have justified as a requirement of democratic self-defence   .

4 These parties and the years they were closed are as follows: Workers-Farmers Party- 1968, Workers Party of Turkey- 1971, Turkey Advanced Ideal Party- 1971, National Order Party- 1971, Great Anatolia Party -1972, -Turkey Labourer Party- 1980

framework in which the issue of party-closure is discussed in the context of political theory.

What does the dissolution of these channels of legitimate representation mean for liberal democracies? What tension does it create? What methods are used to overcome this tension? Such questions are among first queries that this study will seek to answer. Likewise, can one speak of a dominant rationality used to legitimize such a practice? With which dominant rationality do democracies legitimize party-closure? Is this dominant legitimating mindset justified to the extent that it is widespread? What does this dominant mentality promise regarding the notion of democratic self-defence, (the most radical form of which is the dissolution of a political party)? What are the major limitations of this dominant mentality? Which other views are emerging as alternatives to this dominant legitimating rationality? What are the criticisms of these alternative approaches to the dominant mentality? What path do these alternative approaches envisage when it comes to democratic self-defence? What are the promises and limitations of following this path? These will be the major and minor questions that this study will seek to answer. We think that these questions are essential in determining what kind of conceptual framework the practice of dissolution of political parties is discussed in the context of political theory.

Democratic self-defence and the paradox of tolerance are at the forefront of the basic expressions of this conceptual framework. As we have stated before, the necessity of taking certain undemocratic decisions in order to protect democracy creates a serious dilemma. The concept of democratic self-defence marks precisely such a necessity. The question how can democracies deal with anti-democratic threats "without destroying the very basis of its existence and justification" (Tyulkina, 2015: 27) constitutes the core of this dilemma. Or, how can a legitimate justification of such grave acts (for a democratic regime) as party-banning or restrictions of the right be realized? How can democratic self-defence be secured democratically?

It is observed that scholars from constitutional tradition and political science have frequently discussed the notion of violation of rights in general and the dissolution of a political party (as a specific form of restriction of right). As Bourne also underlines, it is possible to come across numerous studies, which generally examine country-specific cases and aim to show the official rationales for the practice of banning of a party in question (e.g., Husbands, 2002; Niesen, 2002; Turano, 2003; Tardi, 2004; Koçak & Örücü, 2003 Güney & Başkan, 2008). Another line of studies, which generally use a comparative method to show how different countries try to cope with radical groups differently, has a significant weight in the literature (e.g., Gordon, 1987; Downs, 2002; Brunner, 2002; Husbands, 2002; Pedahzur, 2004; Art, 2006; Backes, 2006; Casal Bertao & Bourne, 2017). It is also noticed that different studies aiming to show the effectiveness or ineffectiveness of party closures and examine the process after such a decision, and have also made a profound contribution to the literature. (Eg: Ferreres, 2004; Bale, 2007; Navot, 2008; Withfield, 2014; Benavente & Manso, 2014). However, we can argue that these studies will not form the fundamental framework of this study. Instead, we intend to employ such research in the form of secondary sources.

As we have stated, we aim to exhibit the conceptual framework around the notion of dissolution of a political party. Even in the first steps of the literature review, we are involved with such a quest, we have encountered with the following standpoint: *Militant democracy appears as the primary legitimizing mindset in the dissolution of a political party*. This rationality, we think, has a set of concepts that reinforces the official ideology,[5] prioritizes the swing of the pendulum persistently in the field of security in the dilemma of security/freedom. We observe that approaching the practice of dissolution of a political party with the lenses of militant democracy compresses the phenomenon on a legal ground.

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[5] The similarity between the official discourse of the state and the understanding of militant democracy in Turkey is an issue that deserves much consideration. We will not undertake such a work, as it will be beyond the scope of this thesis. However, it should be stated that Oder's (2009:628) determination that militant democracy has been "co-determinate of Turkish political paradigm" should be taken seriously.

Therefore, one of the most fundamental purposes of this study will be to present alternative approaches that prioritize the political and sociological dynamics of the issue and intend to rescue the practice of dissolution from a purely constitutional ground. In other words, we will aim to draw a portrait of the promises, shortcomings, and criticisms of this paradigmatic mindset, which appears as a familiar position when it comes to the dissolution of a political party and prioritizes security in the dilemma of security/freedom.

The search for alternatives to militant democracy will confront us with the rationalities of procedural democratic self-defence and social democratic self-defence. We will also try to mark the promises and fundamental limitations of procedural democratic self-defence and social democratic self-defence. Through identifying the criticisms brought by these two alternative mentalities towards militant democracy, we want to contribute to the enrichment of the discussions on the issue, especially in Turkey. We regard the dissolution of political parties as a more complex phenomenon that deserves much more than to be discussed solely with arguments of militant democracy, which derives its strength from the reproduction of official discourse. We hope that the most fundamental contribution of this study will be to increase the viability of these alternative approaches. Militant democracy is not the only rationality that can be interpreted in the debates on the dissolution of political parties, and this rationality inherently risks imposing more severe damage on democracy in a way it claims to protect democracy. Therefore, this study will highlight these severe risks and present procedural democratic and social democratic models as alternatives, counterposed to the rationale of militant democracy. The dissemination of the views of procedural and social democratic views without being squeezed into the boundaries of militant democracy and careful examination of the promises and suggestions of these two approaches might contribute to the severe weakening of this democratic dilemma, even if it does not eliminate it completed.

1.2. Thesis Plan

This study is divided into five chapters. Chapter One, presents the major problematics of this study, the questions it seeks answers to, the scope and importance of the study. In Chapter Two, we will analyse the concept of militant democracy, which we consider to have become a key reference point in justifying the dissolution of a political party. Chapter Three aims to identify the main propositions of the rationale of procedural of democracy, which is accepted as the first systematic opposition to the militant democracy. In Chapter Four, social democratic self-defence, which fundamentally claims that no solution that negates the determination of socio-economic sphere on political extremism can guarantee a durable and inclusive democracy, will be examined in detail. In Chapter Five, we will conduct a discussion comparing the fundamental promises and possible shortcomings of these three primary rationalities with respect to party closure. These summary points are explained in more detail in the next section.

The first chapter is in the form of introduction. It introduces the primary purposes of this study. This chapter includes primary and secondary questions and the fundamental framework of this study. Chapter Two will intend to examine detail the rationale of militant democracy, which is seen as the legitimate argument for the dissolution of political parties. Under the subheading *Origin and the Development of Militant Democracy*, we will first examine the emergence of the concept and its transformed use in different historical contexts. Afterward, we will describe the framework developed by the constitutional lawyer Karl Loewenstein, who is accepted as the founding figure of the concept and gained a serious reputation in the interwar period thanks to his contribution to determining the fundamental framework of militant democracy. We will see that the opinions of this founding figure play a prominent role in the formation of such attitude: It is legal and legitimate for democracies to take specific extra-legal protective measures which can be considered anti-democratic under certain circumstances. We think that the reflections towards such an attitude constitute

the core of the separation between militant democratic self-defence and neo-militant democratic self-defence. It is possible to mark two different positions within the tradition of militant democracy, which differed in their attitude toward Loewenstein's viewpoint, which was considered quite harsh and severe. We will describe the former of these positions as militant democracy and the latter as neo-militant democracy, following the categorization of Malkopoulou. We will see that while the advocates of militant democracy tend to accept Loewenstein's position directly, neo-militant scholars favour a more critical acceptance. Doubtlessly, the proposition "in times of crisis, legality takes a vacation" is one of the expressions that most clearly reflects Loewenstein's original argument.

Andreas Sajo, Svetlena Tyulkina, Gregory Fox & Georg Nolte will be the names whose works will be examined to understand the essential characteristics of the rationale of militant democracy. By examining the works of these names, we will try to predict the possible attitude of the mentality of militant democracy when the closure of a political party comes to the agenda. Similarly, under the subheading *Neo-Militant Approaches* in Chapter Two, we will first mark the points that lead to such differentiation between neo-militant and militant democratic self-defence. Those who envision neo-militant democratic self-defence diverge on the following point: Although practices based on the rationale of militant democracy are legitimate and legal in principle, Loewenstein cannot provide a strong justification for legitimizing such severe practices as the dissolution of a political party. We will present alternative solutions of Alexander Kirshner, Bastian Rijpkema, and Stefan Rummens & Koen Abts as representatives of the view of neo-militant democracy, which claims to moderate militant democracy and justify more powerfully the practices based on militant democracy. We think that examining the solution proposals by these figures to the essential paradox of what is defined as the "democratic dilemma" has a crucial role in understanding the perspective of neo-militant democracy.

In Chapter Three, we will first examine procedural democratic self-defence, which brings the most comprehensive criticism to the mentality of militant democracy. Hans Kelsen, the most influential representative of this view and who had severe polemics with Loewenstein, would be very suitable for clearly understanding the outlines and basic premises of procedural democratic self-defence. Therefore, we will first begin to underline the criticisms of this name against militant democracy. It is safe to state that Hans Kelsen's judgments that protecting democracies with undemocratic interventions will never strengthen democracy, but will make it authoritarian, are at the centre of his criticisms of militant democracy. In other words, the idea of procedural democracy, which Hans Kelsen defines as a regime that has to listen to even the voices that they do not want to hear and which differs from other regimes by granting equal representation to different demands, constitutes an important reference point for other criticisms of militant democracy. We will also include other criticisms of militant democracy based on this primary criticism in Chapter Three. We will first address the criticism that militant democracy has an inherently arbitrary characteristic. It should be stated that we find this criticism, which Carlo Invernezzi Ancetti and Ian Zuckerman have identified quite accurately, extremely important in showing that certain restrictive practices based on the mentality of militant democracy can be highly arbitrary. As Ancetti and Zuckerman have pointed out, such practices fundamentally presume the identification of the element of "enemy" within the political community. Who or which group will be excluded from the political community is inherently based on a Schmitian friend-enemy distinction. As such, the impossibility of such a determination by democratic procedures demonstrates the element of inherent arbitrariness in militant democracy.

Another criticism we will address in Chapter Three will be the remark stating that militant democracy has an elitist assumption. As Malkopoulou and Norman reveal quite accurately, militant democracy deeply distrusts the people's ability to make accurate political decisions. Malkopoulou and Norman try to expose Loewenstein's profound distrust of the masses, which he so obviously felt, by

examining the many articles in which Loewenstein developed the idea of militant democracy.[6] They think that Loewenstein's depiction of the people as "emotional masses" (always susceptible to manipulation) justifies such elitist assumption.

Another criticism we will include in Chapter Three will be the objection concerning the effectiveness and possible counter-productive effect of the militant democracy. Minkenberg's findings achieved through examining the after process of some practices based on the mentality of militant democracy in different processes (in the French and German contexts), reveals that such practices do not always lead to the expected outcomes. According to Minkenberg, such a severe practice as the dissolution of a political party, which can seriously damage both the democratic essence and the democratic image, contains the risk of being ineffective and counter-productive. The risk of ineffectiveness lies in the possibility that these parties could quickly organize another political party with a Houdini trick. At the same time, such a decision that can be considered quite heavy as party closure may lead to a more serious radicalization in the base of the party in question. These new political formations may argue that democratic channels are persistently closed to them. Therefore, they can find a more suitable ground to propagandize the effectiveness of the struggle outside the democratic sphere.

After these warnings by Minkenberg, another name we will include in Chapter Three is Udi Greenberg. Greenberg has examined Karl Loewenstein's adventure in the political arena and the effect of this adventure on an aggressive and oppressive liberal mindset adopted by the United States during World War II and the Cold War period. Through examining Greenberg's outcomes, we will try to show that there is always an inherent risk for militant democracy to turn into a legitimating discourse for anti-democratic practices so as to extend into international affairs. Greenberg's study underlines that Loewenstein, who

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[6] "The masses needed to be kept at arm's length from political decision-making" (Loewenstein, 1937a; cited in Malkopoulou and Norman, 2018:444) is just one of these statements

migrate to America to escape Nazi power, became a compelling figure in the American politics of the relevant period. Thus, the idea of militant democracy has found such wide ground for application for the first time since it was first developed in 1937. This study also reveals multiple violations of rights which the American governments of the related period caused with a serious obsession, especially in Latin America, during and after World War II. These numerous rights violations, including "the mass internment and deportation of the civilian population," were legitimized by the discourse of militant democracy. Similarly, this study is significant in terms of showing that many other violations of rights caused by the United States in its struggle against communism (which it saw as the main threat during the Cold War) are tried to be hidden behind the curtain of militant democracy. We think that such a perspective is precious in clearly exposing both the arbitrary characteristic and elitist assumption of the rationale of militant democracy. Such a perspective will also remember that the extra empowerment that militant democracy demands by trying to monopolize the claim of protecting democracy has the inherent potential to lead to a more significant democracy crisis. In other words, such an image of a "democracy saver" itself can become the greatest obstacle to "a more democratic" democracy.

In Chapter Four, we will examine the general characteristics and fundamental assumptions of another systematic objection to the notion of militant democracy. Although this approach, called social democratic self-defence, has not yet found much discussion in the literature, it is possible to argue that its active role in building stable democracies in the interwar and post-WWII processes is rekindling the interest directed towards it today. We will try to present the criticisms of this rationale, which considers the dissolution of political parties as an end-product of political extremism This social model, which assesses the phenomenon of political extremism as an inevitable upshot of existing socio-economic inequalities, emphasizes that the most effective way of democratic self-defence is to build a democracy which centres on social equality and social justice. For this reason, the social democratic self-defence sees the militant

democracy (which claims to solve political extremism only with legal regulations and judicial power), very narrow. According to the social model, militant democracy offers a short-ranged and everyday solution to a multi-layered issue shaped by deeply rooted economic and social dynamics. However, the democratic solution to political extremism (and the practice of closing a political party as the most drastic measure against the problem of political extremism) can only be possible by building a more robust democracy. Therefore, it is possible to define the social model as a search for a solution centred on social dynamics regarding democratic self-defence. Thus, *social democratic self-defence* can also be defined as the pursuit of discussing the practice of dissolution of political parties beyond the legal ground. A detailed analysis of the reflections of Herman Heller (who is accepted as the founding figure of this rationale) on social democratic self-defence will be efficient in better understanding the social model's fundamental features. We will see that Herman Heller's views are highly effective in comprehending the social democratic self-defence as an alternative third way that departs from both militant democracy and procedural democracy. Heller thinks that the first thing to be questioned about democratic self-defence is the possible contribution of given democracy to forming the ground where anti-democratic demands might emerge. He believes that a democracy that cannot guarantee social equality and the fair distribution of wealth is always vulnerable to anti-democratic threats. A democracy whose solely procedural boundaries are defined can lead to the emergence of radical views that will always turn towards itself. Heller supposes that the success of democracy is primarily related to ensuring the belief of the disadvantaged sections of the society that they can exist both economically and politically in the social arena. In other words, he argues that the presence of democracies depends on forming a socio-psychological state in which all politically relevant segments of society feel like equal members of the political community. Heller defines this socio-psychological state as social homogeneity. As will be seen in detail, the principle of social homogeneity occupies a central position in Heller's conceptualization of democratic self-defence.

Another view that we will address in Chapter Four, which can be seen as a different interpretation in the tradition of the social democratic self-defence, will be the social security approach. We will see that the most basic premise of this interpretation is that the victorious survival of democracies depends much more on their ability to overcome the future anxiety of the people. Developing and strengthening the social security scheme is one of the adequate methods of democratic self-defence.

Finally, in the last chapter, titled *Conclusion*, we will try to foresee the possible attitude of the three essential rationalities that we have tried to compare throughout our study when the closure of a political party comes to the agenda. We will try to identify the promises and limitations of looking at the dissolution of a political party through the lenses of militant democratic self-defence, procedural democratic self-defence, and social democratic self-defence, respectively. In the light of the findings we have obtained, we will argue that the self-confident attitude of the militant democracy (which we think is due to its reminiscence of the rationality of *raison d'état*), is open to criticism from quite different points. We will try to show that practices based on the rationality of militant democracy threaten the possibilities of discussing the issue beyond the legal ground. We will also try to indicate that the two other primary mentalities, procedural democratic and social democratic self-defence, have made serious contributions to the discussion of political party closure. Yet these two approaches have also their deficiencies on which we will also pursue a brief discussion.

CHAPTER 2

MILITANT DEMOCRACY AS THE LEGITIMIZING RATIONALE OF PARTY CLOSURE

2.1. Origin and Development of Militant Democracy

Militant democracy, of course, is not the only view to express the necessity of democratic self-defence. Even if it is not directly expressed with this concept, the possibility of anti-democratic groups abolishing democracy by using democratic channels is a risk underlined by many influential liberal thinkers. In particular, principles of tolerance towards all views and majority rule that liberal democracies adhere to have been at the centre of these discussions. At this point, it has been stated that liberal democracies should have a moderate tolerance and should not tolerate groups that could harm democracy's existence.[7] On the other hand, the pronunciation of the concept of militant democracy is encountered after the risk that "democracy can be abolished by manipulating democratic means," expressed at the theoretical level, has also been experienced in practice. At this point, it can be said that the gradual withering away and finally the abolition of Weimar democracy by the Nazis who adhered to democratic procedures played a dominant role in the emergence of the concept of militant democracy. In this context, as Rijpkema quite accurately identified, "Weimar is, therefore, *locus classicus* in militant democracy, the best clear example of how anti-democratic

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[7] Paradox of tolerance seems the central point around which almost all discussion on the militant democracy turn. It could be argued that the defenders of militant measures aim to portray some influential liberal figures as claiming that the solution to this paradoxical situation requires an answer that will coincide with the logic of militant democratic measures. For example, Rijpkema cited Rawls's argument that "the limitation of liberty is justified only when it is necessary for liberty itself, to prevent an invasion of freedom that would be still worse" (Rawls 1999: 192; cited in Rijpkema 2018: 82). Similarly, Kirshner refers to Rawls's another argument that "people need not stand idly by while others destroy the basis for their existence" (cited in Kirshner 2014: 3). Sajo also reminds Locke's point that "state's tolerance cannot be extended to those who (in the name of religious) are not willing to be tolerant (of) others" (Locke, 1963, as cited in Sajo (2006: 93).

powers can manipulate excessive democratic tolerance" (Rijpkema, 2018: 2). In that sense, it would not be a mistake to argue that militant democracy is in the claim of protecting democracy from severe damage that democracy can pose itself. The reason why democracy can damage itself is apparent for the view of militant democracy: democracy has many inherent weaknesses over which anti-democrats can attack to reverse the system against itself (Rijpkema, 2018: 3). Svetlana Tyulkina explains why democracy has an inherent capacity to risk its own safety as follows: "Democracy is inherently liberal, and it is a system of governance based on numerous political ideas and views" (Tyulkina, 2015: 11). Therefore, militant democracy tries to answer how these inherent weaknesses can be eliminated on a theoretical basis without harming democratic principles. This justification itself determines whether such severe violation of right as the practice of closing a political party is a practice that will protect and strengthen democracy or whether it is an arbitrary decision taken by the power through applying pressure on the judiciary in order to suppress the opposition. However, many current proponents of militant democracy state that militant democracy lacks such an "ethic" (Kirshner, 2014), or "political-philosophical" (Rijpkema, 2018) justification. Therefore, it is possible to see that especially the advocates of neo-militant democracy[8] often claim that they aim to build such a theoretical ground. Jan-Werner Müller expresses this deficiency as follows:

> It might seem somewhat surprising, then, that there exists no general legal or, for that matter, proper normative theory of militant democracy—a theory that could solve, or even just address, what is often referred to as the "democratic paradox" or the "democratic dilemma", namely the possibility of a democracy destroying itself in the process of defending itself (Müller, 2012: 1254).

Tyulkina similarly claims that there is no general definition of the concept of militant democracy. However, she adds that it is possible to determine a common perception in the literature on the features desired to be specified with the concept of militantcy (Tyulkina, 2015: 14). The concept of militantcy primarily

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[8] The terms neo-militant democracy and neo-militant scholars are used in Malkopoulou's sense (Malkopoulou, 2019). At its most basic, neo-militant democracy claims that militant measures are legitimate and justified in principle, but that there is no satisfactory theoretical justification for the concept of militant democracy.

presupposes "a pre-emptive state". It implies that democracies, therefore, do not need to wait for the threats to become more vital to act. Militant democracy aims to play a preventive role rather than punitive. Another feature that this concept points to is that these preventive measures presumes a specific enemy (Tyulkina, 2015: 14). This point shows that as the political groups defined as threats to liberal democracies in different historical periods have changed, the element that is hostile to militant democracy has been redefined. Militant democracy, therefore, does not aim at a fixed enemy of democracy, and for liberal democracy, the concept is redefined as the enemy changes. It is possible to identify some crucial differences in how militant democracy is pronounced in the historical process depending on changing characteristic of "enemy."[9]

First of all, the concept of militant democracy has taken on a meaning that foresees the struggle with fascism after the Second World War. The first expression of militant democracy on the constitutional level coincides with this process.[10] After the complete elimination of the fascist threat, it is seen that the concept of militant democracy was pronounced this time to express an anti-communist struggle with the Cold War period. In this process, many liberal democracies frequently resorted to this concept, especially in their decisions to close or sanction Communist parties. In the post-Cold War period, this concept was referenced in many legal arrangements made to protect the new liberal regimes in the post-Soviet countries, which were defined as young and fragile. Another breaking point in the use of the concept can be identified as the 9/11

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[9] It is possible to observe that there is a parallelism between the periods when the concept of militant democracy was more pronounced in the political and academic circles and the periods when party closure practices became more frequent. It can be seen that while the former one is noted by Tyulkina (2015) and the latter one by Bourne (2018). In the categorization made in this study, it is benefited from both scholars' periodization.

[10] It is mostly accepted that militant democracy was firstly constitutionalized in Germany during post-war periods. This fact, at the same time, leads many scholars to sign Germany as "the cradle of militant democracy" (see at: Tyulkina, 2015:15). Article 21 of the German Basic Law of 1949 claims that:
Parties that, by reason of their aims or the behavior of their adherents, seek to undermine or abolish the free democratic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality (cited in Tyulkina, 2015: 15).

September attacks. After this attack, it can be noticed that the concept of militant democracy is pronounced in many regulations and policies, which are called anti-fundamentalist and anti-religionist, by governments. Today, Tyulkina claims that militant democracy is understood as follows: "as the fight against radical movements, especially radical political parties and their activities" (Tyulkina, 2015: 15). Recently, it can also be determined that the concept of militant democracy is used to describe the struggle against the rising right populist movements as well as radical movements (Sajo, 2012: 563).

At this point, in order to determine the general lines of the militant democracy, it would be appropriate to take a look at the analyses of Karl Loewenstein, who is accepted as the founding figure of the concept, and Andras Sajo, Svetlana Tyulkina and Gregory Fox and Georg Nolte, who are the current commentators of the concept in our times.[11]

2.1.1. Militant Democracy and Karl Loewenstein as its Constitutive Figure of the Concept

How can democracy justify such a grave act for itself as dissolution of a political party, which means a severe restriction on one of the very fundamental rights, the right to free expression? Put another way, through which kind of justifications such a strict violation of a fundamental right are legitimized? It seems almost inevitable that anyone asking similar questions will encounter the concept of militant democracy. Origins of this concept are mostly traced to Karl Loewenstein, a Jewish origin German constitutional lawyer witnessing the rise of Nazi brutality. Loewenstein, who was dismissed from his position at the University of Munich School of Law by the Nazis, had to leave Germany and settle in America. He has discussed the concept of militant democracy as a

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[11] At this point, we think it would be appropriate to make a warning. We will consider the views of Sajo, Tyulkina, and Fox and Nolte as advocates of the view of militant democracy, since they tend to follow Loewenstein's core arguments. Therefore, although these names wrote at the same time with the advocates of the view of neo-militant democracy, which we will cover in the following pages of this chapter, they differ in their attitudes towards Loewenstein's arguments.

liberal response to the rising threat by authoritarian ideologies of fascism and communism in his two articles named "*Militant Democracy and Fundamental Rights*, *I and II*" published at 1937 by *American Political Science Review*. He fundamentally claimed that liberal, pluralistic democracies in Europe needed some vital extra-legal arrangements to protect their existing structure against fascist threats all around Europe. Including its most radical form, restricting fascist groups' right of expression if necessary, such measures are both necessary and legitimate.

It is impossible not to feel the urgency of doing something hastily in these two founding texts of Loewenstein, who was one of the living witnesses of the rise of fascism and had to leave his country because of these fascist attacks. Given this hasty attitude, it is possible to argue that there is a consistency between Loewenstein's analysis of fascism and his justification for militant measures. Loewenstein defines fascism as an insatiable search for power which tries to seize it through the emotional manipulation of the masses (Loewenstein, 1937a: 422). Fascism, according to him, is a technique rather than an ideology that tries to infiltrate into democracy through the system of proportional elections, which is the weakest part of democracy. He considers the essential feature of the liberal state to be based on rationality. The mainstay of fascism is, however, the manipulation of emotions with totalitarian methods. Thus, in Loewenstein's conceptualization, fascism is identified with irrationality. Militant democracy, in this respect, is portrayed as the quest for an effective rational response to an irrational threat.

Loewenstein also defines fascism as an autocratic regime (Loewenstein, 1937a: 432), and therefore militant democracy is defined as the struggle to prevent democracy from turning into autocracy. The most important indicators of an autocratic regime are the absence of separation of powers and the absence of a control mechanism in the administration. It is a regime in which a single person or group is authorized in the legislative, executive, and judiciary branches.

Moreover, according to Loewenstein, "today's rising autocratic threat" is shaped in the form of fascism.

The main criticism developed against Loewenstein's founding articles, which he wrote emphasizing that something must be done urgently, is that Loewenstein did not provide a deep theoretical justification. Loewenstein justifies the necessity of taking militant measures with propositions such as "*fight against fire with fire*" (Loewenstein, 1937b: 656), "*in times of crisis, legality takes vacation*" (Loewenstein, 1937a: 432), or "*democracy cannot be blamed if it learns from its enemies* "(Loewenstein, 1935: 580). He argues that anti-democratic threats directly target the very existence of democracy and should therefore not be tolerated in any way. He thinks that security takes precedence over all other rights and freedoms when such a threat is exposed. Therefore, the most effective response to those who undertake an attack against democracy must be pretty decisive. Loewenstein expresses the existence of anti-democratic threats with an analogy of war. Defenders of democracy should eliminate the enemies in this war. At this point, Loewenstein makes a series of suggestions, including the closure of a political party and the restriction of freedom of expression.[12] He claims that even the restrictive effects of the decisions on fundamental rights and freedoms should be ignored in the implementation of these decisions.

In another justification of Loewenstein, it is not wrong to claim that he followed a similar idea to the first one. It is legitimate for democracy to defend itself in the war posed by anti-democratic threats. First of all, war is a state of emergency, and therefore, according to Loewenstein, "legality takes vacation" in extraordinary situations. Democracy should not hesitate even if it feels that it should go beyond the borders of legality in extraordinary situations. Democracy should perceive these threats as threats to its very existence and ignore any cost

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[12] Loewenstein lists his proposals in 14 items. Among these suggestions, there is a suggestion in the first article that ordinary criminal codes should be applied for threats that occur in the form of direct rebellion against the democratic regime. Later, it is possible to come across many suggestions such as closing the anti-democratic parties, preventing the right of demonstration and march of such parties, banning the uniforms and symbols of such parties (see at: Loewenstein, 1937b: 645-656).

(that may arise from these restrictions and prohibitions) directly outside its existence. Loewenstein thinks that the inherent weaknesses of democracy cause the rise of fascism. At this point, both Loewenstein and many other advocates of militant democracy point out three points as the weak points of democracy. The first of these points is that democracy is a form of government based on consensus. Loewenstein and many other supporters of militant democracy claim that this feature can only work under ordinary conditions, but representative democracy based on consensus may not work well, especially in times of economic crisis. At this point, it would be helpful to remember that Loewenstein portrayed one of the reasons for the rise of fascism as an economic crisis. Another weak point of democracy is its tolerance, which promises freedom even to its enemies. Advocates of militant democratic self-defence mostly argue that persistent democracy creates a paradox of tolerance. According to Loewenstein, while the principle of freedom of speech facilitates the propaganda of fascist ideas, freedom of assembly makes it possible to represent these parties in the parliament. Of course, at this point, it would be wrong to think that Loewenstein found these basic principles unnecessary. Loewenstein, who often implies his commitment to liberal values, instead opposes the abuse of liberal values and thinks that democracy should be able to partially eliminate these principles (to avoid the attacks that democracy is exposed to) when needed. The last but the weakest point of democracy is that, according to Loewenstein, the enemies of democracy, as the Nazi experience shows, quickly take over institutions that can cause democracy to be abolished after they have had sufficient vote in the elections.

At this point, any liberal democratic state should not hesitate to take "the most comprehensive and effective measures against fascism: proscribing subversive movements altogether" (Loewenstein, 1937b: 645). What a liberal democratic state must exactly do, regardless of discussing whether it restricts fundamental rights and freedom, is "to fight against fire with fire" (Loewenstein, 1937b: 656). The danger created by fascist movements whose basic motivation is "supersession of constitutional government by the emotional government"

(Loewenstein, 1937a: 418) is severe enough to require immediate action. Fascism as "a true child of the age of technical wonders and of emotional masses" (Loewenstein, 1937a: 423) has a unique capacity to adjust itself to democracy perfectly. Thanks to this capacity, it easily manipulates democratic channels to abolish democracy. "Democracy and democratic tolerance have been used for their own destruction" (Loewenstein, 1937a: 423). Today's fascism, according to Loewenstein, has developed a new strategy by benefiting past experiences. Rather than organizing a military coup or as an underground organization, it officially annexed legality. The strategy of fascism as a political technique to conquer power consists of attacking democracy over its weakest point. Fascist movements purposefully seek power based on studious legality by obtaining national and communal representative bodies. Proportional presentation, signed as the gravest mistake of democracy by Loewenstein, plays a very facilitating function in realizing such an insidious strategy. Unfortunately, the optimistic attitude of democracies fed from democratic fundamentalism and legalistic blindness creates the most significant threat for democracies. Loewenstein describes this fundamental threat with an iconic phrase: "the mechanism of democracy is *the Trojan horse* by which the enemy enters the city" (Loewenstein, 1937a: 424). It is obvious that these arguments of Loewenstein are frequently emphasized in the current debates on the concept of militant democracy. Under the following subheading, we will examine how Andreas Sajo, who largely adopted Loewenstein's approach, reinterpreted Loewenstein's suggestion of militant democracy.

2.1.2. Andras Sajo and Reinterpretation of Loewenstein's Militant Democracy

Andras Sajo, a Hungarian legal academic and former European Court of Human Rights judge and is considered to be one of the contemporary interpreters of Loewenstein's approach, expresses the same risk in the following sentence: "Democracy is one of the gravest threats to democracy" (Sajo,2019:187). He, as one of the contemporary advocates of militant democracy, seems to be a

determined follower of Loewenstein's argument. Just like Loewenstein, Sajo also considers taking militant self-preservative measures as inherently justifiable and legitimate (Sajo, 2006). Remember that in his highly debatable justification,[13] Loewenstein argues that as soon as fundamental rights are institutionalized and recognized significantly, their brief suspension within the call of democratic self-protection is justified (Loewenstein, 1937a: 432). Sajo, in his justification, seems to have a pretty similar logic with Loewenstein. For him, democracy is quite open to being manipulated and abused if understood as only the rule by the majority. In that sense, he thinks that democracy (majoritarianism) wishes counter-strategies, including certain violation of rights in certain cases. A form of militant anti-majoritarianism (constitutional militantcy) might be justified. Hence, democratic system may thoroughly be in want of certain regulations on political participation to protect itself (Sajo, 2012: 562). Militant democracy, in this context, is celebrated as an innate response to anti-democratic threats. "It concentrates power to counter-evil" (Sajo, 2019: 187).

Constitutional self-defence, according to Sajo, inherently exists in the logic of modern constitutionalism.[14] He tries to show that the essential documents of constitutionalism have been deeply worried with the outcomes of majority rule (Sajo, 2006: 194). At the theoretical level, modern liberal constitutions have always been involved in determining some preventive and protective measures, Sajo believes. He underlines these measures which inherently existed in modern

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[13] It is possible to see a critical attitude towards Loewenstein's justification from almost all camps in the literature of militant democracy. Even supporter and contemporary advocates of these measures generally describe Loewenstein's justification as "straightforward" (Tyulkina, 2019). The advocates of neo-militant democratic self-defence, who generally accept the legitimacy of application of militant measures in principle, think that Loewenstein does not provide a comprehensive ground (Kirshner, 2014; Rijpkema, 2018; Rummen & Abts,2010). Opponents of militant measures also mostly criticizes Loewenstein's as "inherently arbitrary in the determination of enemies of democracy" (Ancetti, & Zuckerman, 2016) or "inherently elitist" (Malkopoulou & Norman, 2018)

[14] This is one of the most common points among contemporary advocates of militant measures. Fox and Nolte (1995), for example, also underline the difficulty of finding any modern liberal constitution which ignores possible threats which can come from anti-democratic groups. Tyulkina also emphasizes a similar point: "The constitutional practices of contemporary democracies reveal that it is hard to find a modern constitution completely lacking militant provisions, even where there is no precise reference to the militant character of a state" (Tyulkina, 2018: 121).

liberal constitutions as amendments, institutional guarding of the constitutional term limits, and electoral system. However, Sajo does not find these technical measures satisfactory or preventive enough. He argues that these technical solutions are far from being absolutely effective as both history and current experiences reveal (Sajo, 2004: 196). This fact comes from the inherent weakness of contemporary constitutionalism, he claims. Contemporary constitutionalism, as Sajo argues, tries to present neutral positions against all democratic political parties or all elected governments. Modern constitutions, as he believes, accept a false assumption as true: all democratic parties or elected governments respect constitutional procedures (Sajo, 2004: 196). He also shares his worries about difficulty of the implementation of militant measures into the current constitutional thought since the contemporary constitutionalism has still a similar mindset (Sajo, 2004: 197). Being aware of a quite crucial fact that not even the best model can guarantee and provide an absolute protection against the abuse of democracy, Sajo shares a list of legitimate and efficient countermeasures against contemporary anti-democratic threats including "super entrenching and making unamendable core elements", "guarantee that constitutional court will be effective guardian of the constitution" and "independent agencies to monitor the legislative body" (Sajo, 2019: 199-200).

Accepting militant measures as inherently legitimate and justified, Sajo remains sceptical about the absolute effectiveness of sole constitutional measures. Following Loewenstein, he also relates the rise of illiberal threats with its success grounded in emotionalism. Although he accepts that contemporary illiberal threats (which he refers to the populist movements) have a changing characteristic compared to fascist threats that Loewenstein has mentioned, he still underlines a crucial continuity. Still, such illiberal threats aim to raise the emotional politics against politics of reason. What Sajo refers to by emotional politics is quite clear actually: a context in which emotional manipulation of the masses determines the politics itself (Sajo, 2012: 572).

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Both Loewenstein and Sajo see emotionalism in politics as the biggest threat to liberal democracy. At this point, Sajo argues that militant democracy cannot be understood only as a general theory on the protection of the constitution, but "it can be perceived as a set of measures directed against radical emotionalism, a technique that may be relevant in all situations where emotionalism takes over the political process" (Sajo, 2012: 572). He also claims that emotional politics is not a completely fascism-related danger. In the contemporary world, illiberal threats are also fed with emotionalism in politics. Their strong belief in the destructive characteristic of emotional politics seems to provide a legitimate ground in the justification of militant, democratic self-defence for Loewenstein and Sajo. As Loewenstein argues and Sajo entirely agrees, democratic politics substantively requires a militant constitutionalism as an effective response to the inherent emotionalism of the masses (Sajo, 2012: 570). These two influential constitutional lawyers, living in different eras, agree on what kind of a response should be given to this most prominent threat. They both believe that emotionalism cannot be fought with counter-emotionalism since constitutional democracy, above all, is a specific form of government based on the reason (Loewenstein, 1937a: 430; Sajo, 2012: 570). In that sense, it would not be wrong to say that both constitutional thinkers share the same distrust in the ability of people to protect democracy by themselves.[15]

Another justification given by Sajo is related to the paradox of tolerance. Arguing that democracy is a regime of tolerance inherently and each view can be tolerated identically might be a grave act for democracy. Referring to Locke's views on tolerance that the state has right to be intolerant against the intolerant, Sajo supports an intolerant position against anti-democratic threats. In his article titled "*From Militant Democracy to Preventive State*", referring to Locke once more[16], Sajo claims that the threats posed by religious movements, which seems

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[15] It is one of the central arguments that harshly criticized by opponents of militant measures. Malkopoulou and Norman, for example, describes this attitude as "inherently elitist assumption of militant democracy" (Malkopoulou & Norman, 2018). This point will be discussed in detail in the second chapter of thesis.

like the biggest illiberal threat in the contemporary world, might require some restrictions and limitations on the political participation and activity of such movements (Sajo, 2006: 2268)

Quite similar to Loewenstein's debatable justification claiming that it is democracy's basic right to intervene when an existential threat occurs, "even at the risk and cost of violating fundamental rights" (Loewenstein, 1937a: 432), Sajo also believes that such measures do not give harm to the notion of democracy (contrary to what opponents argue). According to him,

> This justification of the anti-democratic right-restricting measures and special regimes against fundamental enemies of democracy does not rule out the possibility that measures taken under dictates of exigency will actually determine democracy itself (Sajo, 2006: 2269).

He sees the militant self-defence of democracy as the state's most natural characteristic. Democracy, for Sajo, has an instinct (by its nature) to preserve itself against dangers coming (especially) from inside since it is always open to be abused (Sajo, 2004). Svetlena Tyulkina also takes a position quite similar to Sajo's justification that militant measures are legal and legitimate. Therefore, we think that Tyulkina's arguments, which we will examine in following section, are significant in terms of what kind of stipulating possible reflex which militant democracy might develop when the phenomenon of party closure is concerned.

2.1.3. Svetlena Tyulkina and Militant Democracy as an Inherent Characteristic of Modern Constitutions

Tyulkina seems having no need to supply a further justification for whether militant measures should be taken. Instead, she seems to take it for granted. Rijpkema notices that Tyulkina seems to accept Lowenstein's standing as the centre for her justification (Rijpkema, 2018: 88). Quite similar to Sajo, she

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[16] "Those that by their atheism undermine and destroy all religion can have no pretence of religious where upon to challenge the privilege of toleration" (Locke, A Letter Concerning Toleration; 47, cited in Sajo, 2006:2268).

argues that, at least in principle, there is almost no need to discuss the legitimacy of the concept. Defending democracy against anti-democratic threats in a militant way is inherently legitimate, she believes. In her book named *Militant Democracy and Undemocratic Political Parties and Beyond*, she seems to detect how different democratic regimes respond to the anti-democratic threats and they legally apply the militant measures. For her, militant democracy and its measures seems to be accepted as given.[17] This approach aiming to discuss the notion of militant democracy from a legal and comparative perspective is not a situation unfamiliar to the literature in this field, as it will be remembered that Loewenstein's founding work followed a similar path. In that sense, it is possible to determine such a similarity between Loewenstein and Tyulkina.

With a strong belief in the necessity of militant measures, Tyulkina also tries to show the inherent existence of a militant logic in the modern constitutions (similar to Sajo). She argues that it is almost impossible to show a modern constitution that ignores the fact that democracy is always open to be overthrown. In that sense, modern constitutions, mostly, have a militant reflex even they are not explicitly referring it (Tyulkina, 2019: 212). This is not the only point on which Tyulkina and Sajo agree. Tyulkina also refers to militant democracy as a practical measure against the rise of emotionalism in politics. Entirely accepting Sajo's description of militant democracy as "a technique that may be relevant in all situations where emotionalism takes over the political process" (Sajo, 2012: 532), she argues that Loewenstein's analysis on the relationship between emotionalism and the rise of fascism (although it seems to be a discussion about a particular political context) is still relevant today. It is because although fascism as a quite specific historical phenomenon which can occur one time, emotionalism in politics is the question for all times in the existence of any political conjecture in which the masses are emotionally manipulated. She, parallel with both Loewenstein and Sajo, believes that militant

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[17] See also at Rijpkema. He argues that Tyulkina's attitude toward the notion of militant democracy can be summarized in this way: "militant democracy exists, it must therefore be studied" (Rijpkema, 2018: 89).

democracy is the best option against dangers coming from emotionalism in politics (Tyulkina, 2015: 214).

Tyulkina also reminds the risk of abusing democracy by the majority rule. She also underlines the risk that absolute commitment to the principle of rule of majority might cause to "the deformation of democracy" (Tyulkina, 2015: 217). As a determined defender of militant measures, she also takes side with those who favour substantive democracy in the long-termed debate about the nature of democracy.[18] She argues that democracy cannot be accepted as only a set of procedures and could not decide whether a political party is democratic only depending on whether it does follow the procedural requirements. Democracy needs some substantive limitations, in that sense, to protect its democratic characteristic (Tyulkina, 2015: 215).

It is possible to notice that Tyulkina tries to extend the application of militant measures "beyond its traditional scope of application", and she sees this as a significant contribution of her book. (Tyulkina, 2015: 217). She suggests to apply militant measures in a much wider sense than has so far been implemented. Militant democracy, for her, can extend its scope to the new threats as the rise of populist movements. Besides new right-wing populist movements, fight against terrorism[19] and approaches to religious fundamentalism

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[18] As it will be seen in the following parts, the debates on militant democracy mostly turn around question how democracy should be defined. It will not be wrong to underline this discussion as the starting point. In that sense, while supporters of militant measures almost inherently define democracy as substantive, skeptical opponents of it tend to understand democracy as procedural one. Fundamentally, the substantial view argues that understanding democracy as only set of procedures will make it so open to be overthrown if any anti-democratic movement succeeds to achieve sufficient majority. The procedural one, however, argues that what makes democracy a democracy is precisely the existence of procedures that require the participation of all segments of society in all decision-making and implementation processes. Therefore, the defence of democracy will only be possible by following the democratic procedures.

[19] The discussion on the relationship between counterterrorism and militant democracy is also attractive one. In that sense, Tyulkina seems not to be alone. Sajo (2006) and Rijpkema (2015) also shortly mention this relationship. However, different from Tyulkina, both scholars seem to make a clear distinction between counterterrorism and militant democracy. Both thinkers, similarly, think that "terrorism is not threat to consolidated democracies, but rather a threat to security" (Engelmann, 2012). Thus, militant democracy as defence of democracy involved in responding to threats targeting directly to democracy.

are signed as two new possible fields of application by Tyulkina. Tyulkina celebrates militant measures as a barrier which ensures that democratic states do not cross constitutional limits in the fight against terrorism (Rijpkema, 2018: 90). It is also possible to notice this demand for extending the scope of militant measures in the redefinition of the concept given by Tyulkina. She defines militant democracy as "the capacity of liberal democracies to defend themselves against challenges to their continued existence by taking pre-emptive measures against those who want to overturn or destroy democracy by abusing democratic institutions and procedures" (Tyulkina, 2015: 206).

Another crucial point reflected by Tyulkina is related to the relationship between international law and militant democracy. She does not share the same sceptical position with Fox and Nolte, arguing that while the international community might determine which responses to authoritarian movements are suitable, it should not impose any of them on any member state to be enforced. Tyulkina supports, in a more determined manner, a more "positively obligatory" role of international law in the implementation of militant measures (Tyulkina, 2019: 218). She seems to favour that the application of militant measures should not be understood as an internal affair of a country. However, international public law should have a binding position. Especially in such a conjecture in which populist anti-democratic movements continue to grow, it is definitely relevant that international law must have much more orient towards militant democracy (Tyulkina, 2019: 218).

This justification that a democratic state should be intolerant against those who have not tolerated any other opinion seems to be one of the most favorable among advocates of militant measures. By generally referring to Popper, Rawls and Locke, some other scholars see such practices as dissolution of a political party as the legitimate ground over which militant measures are justified. Gregory Fox and Georg Nolte, for example, argue that intolerant groups do not have any entitlement to complain if they are not tolerated by the majority because "a person's right to complain is limited to violations of principles he

acknowledges himself" (Fox & Nolte, 1995: 18). The approaches of these two scholars, which we will examine more closely in the following section, will be extremely favourable in identifying the cornerstone of the rationale of militant democracy.

2.1.4. Gregory Fox and Georg Nolte on Intolerant Democracies

The analysis of Fox and Nolte, which they developed in their well-known article titled "*Intolerant Democracies*", occupies a significant place among the texts defending the militant democratic self-defence. Most fundamentally, this line of justification argues that since a regime that has just transitioned to democracy has a very fragile structure, it can be subjected to constant attacks by the defenders of the previous regime through abusing democratic channels.[20] Therefore, militant democratic measures are justified to prevent the possible abolishment of this newly established democracy. This article also seems to aim pointing out the existence of such risks.

Fox and Nolte determine the main focus of their article as "the question of how democracy can protect itself against its enemies and still remain democratic" (Fox & Nolte,1995: 2). Expressing that the danger to liberal democracies has changed its shape and turns to the ones that come from organizations which obsoletes "traditional and undemocratic values" after the collapse of the Soviet Union (Fox & Nolte,1995: 8). Fox and Nolte, at his point, underline Algeria as a clear example of this new version of the threat. They remind that On December 1991, Algeria held its first multiparty elections after thirty years. In the first round of this election, quite dangerous results have occurred. The Islamic Salvation Front (FIS- *Front Islamique du Salut*), founded in 1989, openly claiming that, if victorious, it intended to remake Algeria into an Islamic state,

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[20] Angela K. Bourne also presents this argument as the major reason in application of dissolution of a political party. In her study titled "*Democratic Dilemmas: Why Democracies Ban Political Parties*" in which she aims to map the rationales behind party banning, she underlines that in especially newly established democracies, state's orientation towards dissolution might be high since it feels much more under threat coming from previous actors (Bourne, 2019).

won 189 of the 231 parliamentary seats overwhelmingly. This high rate was seen as a signifier that FIS would win a sufficient parliamentary majority to change the constitution. However, President Chedli Benjadid has resigned to prevent that the second round of voting could happen. At the same time, Algerian army seized power by military coup and it cancelled the second round. Fox and Nolte argue that the Algerian crisis reminds the possible destructive effect of the paradox of tolerance. They argue that although tolerance is a fundamental principle of democratic rule, it is surely possible to claim that "where the very existence of democracy is threatened, survival precedes tolerance" (Fox & Nolte, 1995: 8).

It is essential to note that Fox and Nolte do not accept the military coup as a militant democratic measure. However, reminding the Algerian crisis,[21] they seem to be convinced that democracy is under constant risk of being overthrown if it is understood in only a procedural way. At this point, they have made a clear distinction between procedural and substantive democracy. They argue that while procedural one fundamentally defines democracy as "a set of procedures, which provides a framework for decision-making, but does not prescribe democracy themselves", the second one defines it "not as the process of ascertaining the preferences of political majority, but as a society which majority rule is made meaningful" (Fox & Nolte, 1995: 16). Thus, this separation brings them to take the side of substantive democracy compared to the procedural one. They, interestingly, find a clear example of this model in Carl Schmitt's theory of the unalterable core. Fundamentally, Schmitt argues that constitutional theory and practice should follow the idea of a constitution with an unalterable core to be robust against regime of proceduralism.[22]Schmitt thinks that organized

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[21] It is seen that some historical events are frequently mentioned in terms of proving that the arguments of supporters of militant democracy are not only a theoretical discussion, but on the contrary, have a direct impact on the practical field. While Fox and Nolte select Algerian Crisis as their clear example, other militant and neo-militant scholars generally refer to the dissolution of Weimar Republic. Quite interestingly, it is possible to see in many articles defending militant measures, Joseph Goebbels's famous saying that "this will always remain one of the best jokes of democracy, that it gave its enemies the means by which it was destroyed" is used as an important reminder (see at: Tyulkina, 2015; Sajo, 2012)

political forces of 1920's Germany (fascism and national socialism) are strong enough to gain sufficient majority to change the constitution. The constitution without some substantive core, thus, seems quite defenceless and it needs to be regulated in a way that an anti-democratic force cannot harm its core even if it follows all procedures (Schmitt, 2004; cited in Tyulkina, 2015: 211)]. Fox and Nolte agree with Schmitt's solution and say that "certain substantive principles in democratic constitutions which cannot be overlooked or abolished, even when prescribed procedures are thoroughly followed" (Fox & Nolte, 1995: 19).

Another introductory remark made by Fox and Nolte is related with the question how international law and institutions see or approach the notion of militant democracy. They examine ICCPR's (International Covenant on Civil and Political Rights) article on the issues, various international treaties such as EU's Admission Criteria and some practices of dissolution of political parties to map how these international institutions perceive the concept and how they practically react to it. It will not be a mistake to argue that Fox and Nolte have developed one of the most comprehensive accounts on this topic. They comprehensively discuss which understanding of democracy (substantive or procedural) is favoured by the contemporary international law and whether international institutions should have an imposing power on any anti-democratic member states. They summarize the results of their findings as follows: "public international law favours a substantive view of democracy, but at the same time, it does not entirely reject the procedural view" (Fox & Nolte; 1995: 38). Additionally, public international law mostly accepts any democratic state's right to enact legislation against anti-democratic threats as legitimate and justified (Fox & Nolte,1995: 59). Fox and Nolte's remarks can be seen as another basis over which militant democratic self-defence is justified. Not surprisingly, in

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[22] Carl Schmitt is an often-cited name in the justification of militant measures. His strong criticism against parliamentarism is attracted by supporters of militant measures. In this sense, Rijpkema – as a neo-militant scholar- shows Schmitt as "one of the intellectual fathers of militant democracy" (Rijpkema, 2018). Similarly, Fox and Nolte (1995) also think that one of the most influential criticisms against procedural democracy can be found in Schmitt.

many debates concerning the legitimacy of the dissolution of a political party, international law is mainly shown as the legitimate ground.[23]

2.2. Neo-Militant Democratic Self-Defence

Until this point, we have underlined some of the points that might be decisive in determining the attitude of the mentality of militant democracy when it comes to closing a political party. In this section, we will examine the neo-militant perspective, which shows a continuity with the militant democracy in its emphasis on inherently legitimate nature of militant democratic self-defence, but points out a break at the point of justification. After briefly expressing the basic features of the neo-militant perspective, we will examine Alexander Kirshner's self-limiting theory of militant democracy, Bastian Rijpkema's democracy as self-correction and Stefan Rummens and Koen Abts's concentric model of democracy respectively. It would not be wrong to express the essential feature of neo-militant democracy as follows:

Although militant democracy is accepted as legitimate and justified in principle, Loewenstein cannot provide a strong justification against the risk that authority to dissolve a political party can turn into an arbitrary application of power or that this practice itself acquires an anti-democratic feature. Another available feature concerns whether militant democracy will be effective against today's current anti-democratic threats. J.W. Müller summarizes this concern as follows:

> One of the important questions, then, is whether the "orthodox" instruments of militant democracy, such as, party ban and restrictions on free speech can simply be redeployed in new circumstances, or whether militant democracy in fact needs new means (Müller, 2016: 254).

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[23] The Case of Refah Party is generally shown as a clear example of this argument in practice. In the indictment regarding the dissolution of the Refah Party, the Constitutional Court stated that one of the reasons for the dissolution of the party was the violation of "freedom of religion and conscience", which is accepted as one of the fundamental rights and freedoms by the international law to which Turkey is bound. In the indictment itself, the Constitutional Court has clearly stated that its adherence to the principles of the European Court of Human Rights, of which it is a member and which it accepts as the highest court, is one of the reasons for its dissolution. In its decision announced in 2003, the Court found Turkey justified.

At this point, it is possible to argue that, one of the common concerns of neo-militant scholars is contributing to a militant democracy theory with current and new tools. Another common point is that party closure is recommended as a last resort solution since it is the most severe punishment possible. It is recommended that different measures can be considered as alternative to party closure. Alternatively, it is a common opinion that in cases where the practice of closing a party is unavoidable, its justification should be well-grounded. It would not be wrong to claim that the neo-militant approach is a moderation move. Its primary purpose is to minimize "the democratic cost" of such a grave practice as party closure with a well-grounded justification.

At this point, it would be appropriate to mark the general lines of neo-militant thought by examining the approaches of Alexander Kirshner, Bastian Rijpkema and Stefan Rummens and Koen Abts, who can be considered as current representatives of this approach.

2.2.1. Kirshner and Self- Limiting Theory of Militant Democracy

Kirshner essentially argues that claiming that militant democratic self-defence is inherently legitimate and justified is not enough to prevent the occurrence of what he calls the *paradox of militant democracy*: "the possibility that efforts to stem challenges to self-government might themselves lead to the degradation of democratic politics or the fall of a representative regime" (Kirshner, 2014: 2). Therefore, militant democracy needs to have a self-limiting characteristic to avoid any possible abusing of democracy by actors who see themselves as "true" democrats. Militant democracy, therefore, must be provided with such a theoretical framework that democrats will not become the ones who violate the very basis of the democracy. Militant democracy should not aim to defeat anti-democratic, in that sense, but it must aim to reach a more democratic regime. It should not be forgotten that anti-democratic actors are not the enemy to defeat but those who must be conceived to be "future partners" in a more democratic society (Kirshner, 2014: 29).

Kirshner fundamentally aims to provide an ethical justification for such grave acts as restricting fundamental rights. As one of the common points of all neo-militant scholars, he also favors the fundamental principle of the militant democracy that democracy must protect itself against "inner" enemies. As Rijpkema also accurately shows that Kirshner's fundamental problem involved questions on how to intervene and when to intervene to anti-democratic threats (Rijpkema, 2018: 84). In other words, he aims to circumscribe the scope of potential undesired outcomes of any restrictions of rights. To provide an ethical justification, he provides three regulatory principles for applying them not to pass beyond the border of democracy in the struggle given in the name of democracy itself*: participation principle, limited intervention and democratic responsibility.*

Kirshner portrays these principles as a chain of interconnected principles. The participation principle refers that everyone has equal right to participate in the decision-making process in a democratic society. That is to say, *they all have an equal claim on participation in democratic decision making*. In comparisition to militant approaches, he radically differs with his claim that even anti-democrats have an equal right to participate. Therefore, related with the first principle, a primary consequence almost inherently occurs: No one has the right to prevent others from enjoying his/her right to participate. This inherent consequence brings one to the second principle: *Militant democratic approach should always ensure that its intervention will be limited*. Militant measures should only be applied to those who violate others' right to participate safely. This point is also common in other neo-militant interpretations. As Anthoula Malkopoulou also shows, neo-militants try to focus on the actions differently from militants who also focus on the anti-democratic ideas (Malkopoulou & Norman, 2019 :95). Kirshner can be seen as a typical example since he explicitly argues that militant measures ought to target anti-democratic actions, but not the ideas. As the last principle, militant democrats should not be comfortable going without turning back after deciding to implement certain sanctions to anti-democratic threats. Democrats have *democratic responsibility* against those sanctioned for their

democratic actions because they are not existential enemies but possible future partners who should be inclusively conceived. This last principle, democratic responsibility, is depicted as a neutral barrier against the possible abusive effects of sanctioning by Kirshner. What is the matter for democrats is to handle the paradox of militant democracy successfully, and they should not have the option of sanctioning without sufficient consideration, he claims.

Kirshner, as it is clearly seen, tries to solve this paradox. He fundamentally targets to give a well-designed theoretical and ethical justification. He aims to overcome the dichotomic relationship between intervening with all possible democratic costs and not intervening with the significant risk of being abolished (for a democracy). He believes that democracy can defend democracy without necessarily behaving in an undemocratic way. "Societies can keep faith with democratic principle; to do so, they must steadfastly defend the rights of both democrats and anti-democrats" (Kirshner, 2014: 164).

2.2.2. Bastian Rijpkema and Democracy as Self-Correction

Another similar attempt to provide a political-philosophical justification for militant democracy comes from Bastian Rijpkema. Rijpkema begins his book titled "*Militant Democracy: The limits of Democratic Tolerance*" with a frame breaking claim. He questions the common argument that militant democracy is traced back to Karl Loewenstein. He argues that another constitutional lawyer in the continent, Dutch professor Van der Bergh, introduced this vision in his inaugural lecture followed by a great interest in 1936 (This is the year just before Loewenstein has published his two constitutive articles in 1937). What is interesting about these inaugural lectures is that Van der Bergh introduced the concept of militant democracy there and that he substantively focused on supplying a political and philosophical justification for the militant measures, which is missing in Loewenstein (Rijpkema, 2018:122). Rijpkema, following the ideas of Van der Bergh on militant democracy, seems to build a pretty attractive theory. Rijpkema argues that neither substantive interpretations of democracy

through which militant democrats, not surprisingly, feel at home, nor the procedural interpretations that always leave huge gaps for the risk that *Trojan horse can enter the city* can provide a solution for justifying the militant measures. Thus, he suggests "democracy as self-correction", which he presents it as a middle ground among these two conflicting interpretations of democracy.

"Democracy as self-correction asserts that the unique characteristic of democracy is the receivable nature of decisions; decisions can always be reversed" (Rijpkema, 2018: 134). That is to say, democracy has sufficient channels (as periodically regulated free elections and check and balance mechanisms) that will enable society to make up even when it makes a wrong decision. This unique characteristic of democracy is signed as the constitutive principle on which Rijpkema builds political-philosophical justification for the militant democracy. Why democracy as self-correction stands in a middle position between substantial and procedural democracy? Why is this self-correction more applicable in the justification of militant measures?

Rijpkema answers both questions through clear explanations. Firstly, democracy as self-correction assumes that democracy has an inherent capacity to review its decisions, what Rijpkema named as the capacity for self-correction, through regular elections and checks and balances mechanisms. The self-corrective mechanism at least requires the principle of evolution, political competition and freedom of expression. These values constitute the core of this mechanism. In a democracy, he argues, people have a serious responsibility towards the outcomes of their decisions, but, at the same time, they also have great chance to revoke them (Rijpkema, 2018: 195). However, there is only one decision that citizens can have no chance to revoke. That is to say; *it is the only decision that is not open to self-correction*: decision to abolish democracy. Relatedly, Rijpkema argues that this decision must be the only unforgivable mistake in a democracy: "Only the political parties which violate the self-corrective capacity of democracy to abolish it ought to be banned" (Rijpkema, 2018: 131).

What makes democracy as self-correction different from substantial democracy in this formulation? Rijpkema argues that in van der Bergh's principled democracy (substantial democracy), which is used as a counter concept against Hans Kelsen's procedural democracy,[24] there is a much wider field of interpretation for a judge to decide whether a party should be banned. Van der Bergh underlines freedom of conscience and equality before the law as the untouchable core of democracy (That is practically to say that violations of this core should be banned harshly for van der Bergh). Therefore, democracies must decide to ban a party if it violates this core. That is what the first interpretation of Van der Bergh's militant democracy says. The second one, however, tells a different story: Only a political party which damages the democracy's self-corrective capacity should be banned. Rijpkema believes that the only possible way to overcome the paradoxical character of party banning, thus, goes from decreasing all possible costs of such grave act. However, principled (substantial) democracy does not offer such a solution, as he argues, since the risk of abusing democracy by "true" democrats is always high. On the other side of the coin, procedural democracy cannot do so since abolishing democracy might become quite possible if any anti-democratic party succeeds in gaining a sufficient majority. Therefore, democracy as self-correction eliminates all possible weaknesses coming from both sides. It eliminates the risk of being abused for democracy by restricting the field of interpretation as much as possible (This means depoliticizing the decision on dissolution). Another feature is that it also eliminates the emergence of a possible landscape in which anti-democratic enemies can see the castle of democracy unprotected. "Democracy as self-correction can temper the injections of proceduralism without removing all defence mechanisms and rendering democracy defenceless" (Kirshner, 2018: 167).

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[24] Hans Kelsen's procedural democracy seems to be the strongest response to militant democracy. The arguments of the founding figures and current advocates of this alternative approach will be examined in detail in the third chapter of this study.

2.2.3. Stefan Rummens and Koen Abts and the Concentric Model of Democracy

Another moderate interpretation comes from Rummens and Abts. As a typical neo-militant reflex, they claim that their purpose is to solve the paradox of tolerance, which is at the centre of debate on militant democracy, as it is shown many times so far. They argue that a simple, but crucial distinction can respond to the essential criticism toward militant democracy, that democracy contradicts itself by implementing militant measures. Rummens suggests making a distinction between political adversaries and anti-democratic enemies (in a Mouffean sense). To tolerate the intolerant who does not tolerate any other idea than her/himself might be an irreparable mistake. In that sense, Rummens, like all other militant and neo-militant scholars, see a militant stance against the enemies of democracy as legitimate and justified. Only a simple fact, according to him, can solve the paradox: "Our political relationship with the enemies of tolerance is qualitatively different from our relationship with ordinary political opponents" (Rummens, 2019: 115). Consequently, the notion of democratic self-defence requires a different type of conduct. Enemies of democracy who do not accept "a common symbolic framework constituted by the commitment of all political parties" must not be tolerated. It is because the struggle against anti-democratic actors is not the same as the struggle against political opponents who reached a consensus on the ethico-political values of liberty and equality for all (Mouffe, 2000: 102-104; cited in Rummens, 2019: 116). In a struggle among political adversaries, co-existence in a legitimate way is ensured, and the possibility of elimination of one of the sides is abolished. Under this circumstance, tolerance is valuable per se, and it must have no limit. However, in the other scenario in which enemies of democracy, explicitly or implicitly, struggle to eliminate all actors except themselves. In abolishing democracy, Rummens argues, tolerance might turn a grave act as it did in Weimar. Rummens believes that a robust stance against anti-democratic threats does not create a contradiction. Despite, he claims that self-contradiction lies with those who

mistakenly suppose that they have to treat unlike opponents in a like manner"
(Rummens, 2019: 117)

Rummens and Abts fundamentally suggest an alternative view of democracy to both procedural and substantial one. They argue that a deliberative interpretation of democracy can provide an adequate account of defending democracy. The concentric model of deliberative democracy, according to Rummens and Abts, might overcome false opposition between procedural and substantive democracy (Rummens & Abts, 2010: 651). This model presumes the concentric, two-track nature of the democratic decision-making process. This presupposition assumes that the democratic decision-making process requires a mechanism with two different centres, one in the core and the other in the periphery. In the periphery, there exists the informal public sphere, in which individuals and civil public organizations or civil interest groups can actively and freely participate in the decision-making process. (Rummens & Abts, 2010: 652). It is the sphere of informal political action and public debate, in that sense. At the core, the formal public sphere in which centralized decision-making institutions, like parliament or government operate. A relation of influence from the periphery to the centre exists between these two concentric models. Describing the democratic decision-making process in this way is essential to Rummens and Abts's justification for the question of how democracy can be defended without surrendering to the paradox of tolerance. Just like the democratic decision-making process, the process of sanctioning that will determine the level of tolerance to the extremists has a concentric model. This model requires a pretty simple operation. The tolerance level shown to extremists should be decreased as they move from the periphery to the centre. In that sense, "the discussions in the informal public sphere (in the periphery) should be as free as possible and not obstructed by conversational restrains or rules of exclusion" (Rummens & Abts, 2010: 653). This feature reflects the procedural side of the concentric model. At the centre, however, it is not possible to mention such a high degree of tolerance since extremists in the formal public sphere as a possible legislator can lead to the collapse of democracy as a whole. Rummens and Abts think that persuading

radical parties in a deliberative way in the informal public sphere is the ideal solution. However, when such a process of persuasion and filtering cannot be realized successfully, and the radicals, naturally, move from the periphery to the centre as an organization, they claim that democrats should take measures to protect democracy. These sanctions may be administrative sanctions or political isolation in the first place. At this point, Rummens and Abts, like other neo-militant thinkers, think that closure of parties is a solution that should be resorted to as a last resort, as extremists whose progress towards the centre is not stopped and who have a place in the formal public sphere (Rummens & Abts, 2010: 655). At this point, it is obvious that Rummens and Abts' model bears a strong resemblance to Rijpkema's democracy as self-correction model in terms of its claim to offer an alternative to procedural and substantive models of democracy. In addition, his insistence on marking the closure of a political party as a final solution can be marked as a common feature with Kirshner (and other neo-militant scholars).

In this chapter, we have indicated the fundamental outlooks of rationales of militant and neo-militant democratic self-defence and the points of divergence between these approaches. We tried to show that militant and neo-militant democracies (which can be considered as in continuation of each other) see strategies of democratic self-defence (including the dissolution of a political party as its most severe form) as legitimate and justified in principle. In the next chapter, we will take a closer look at the rationality of procedural democracy, the first systematic challenge to militant democracy. We will also try to illustrate the primary characteristics of this rationale, which relies on the assumption that the only way for democracies to remain democratic is to guarantee freedom of expression and association without reservation.

CHAPTER 3

FUNDAMENTAL CRITICISMS CHALLENGING TO THE RATIONALE OF MILITANT DEMOCRACY

3.1. Theoretical Scepticism Felt Towards the Rationale of Militant Democracy

In this third chapter of the study, we will try to underline the fundamental criticisms toward both the mentality of militant democracy and its practical implications. We will begin with Hans Kelsen, who was a contemporary of Loewenstein and in constant polemic with him. It is safe to begin with Kelsen because he is seen as one of the strongest representatives of the theoretical skepticism towards the notion of militant democracy. Then, we will focus on another criticism, mainly the argument that militant democracy contains an inherent arbitrariness in its theoretical formation and practical implementation. After stating the major points of this criticism by Carlo Invernezzi Ancetti and Ian Zuckerman, we will move on to another criticism toward the notion of militant democracy. In that part, we will examine Antholou Malkapoulo and Ludvig Norman's critique arguing that the understanding of militant democracy has an elitist and exclusionary assumption. Among the objections to militant democracy, another one we will examine will be the criticism which focuses on the effectiveness of militant democracy. This objection states that certain interventions based on the rationale of militant democracy may have a counter-productive effect contrary to what is expected. We will see that the common emphasis of these criticisms is the point that the understanding of militant democracy has an unignorable potential for causing more serious damage to democracy while embarking on the work of protecting it. Then, towards the end of this chapter, we will examine a period in which such potential risks manifest themselves most clearly, and interventions based on the rationality of militant

democracy sometimes amount to very obvious violations of rights. In this section, we will mainly see how easily the mentality of militant democracy may also become the main legitimizing discourse for certain anti-democratic practices in a specific period through examining the highly impressive work of Udi Greenberg. Such witnessing will also be extremely effective in showing how likely it is that the potential for anti- democratic side of militant democracy may come to light.

It is significant to see that the dominant weight of militant democracy arises from its depiction as a legal necessity rather than a political choice. Especially when the debates on the dissolution of a political party became more frequent, it is open to serious criticism. At this point, since Loewenstein first conceptualized it, the concept of militant democracy has faced several influential criticisms. Now, it is better to start with that of Hans Kelsen, the well-known figure of these criticisms.

3.1.1. Hans Kelsen and His Criticism towards Militant Democracy

We can mark the name who brought the most substantial criticisms to the concept of disciplined or substantive democracy as Hans Kelsen (Malkopoulou & Norman, 2018; Norman, 2016; Dyzenhaus, 1997: 102; Jacobson & Schlinks (Eds), 2002). He is a famous legal theorist and constitutional lawyer known chiefly for his studies in legal theory, but he is also highly oriented to political issues[25] (Lagerspetz, 2017: 155). Kelsen categorically rejects any interpretation, suggesting that democracy can sometimes be protected by non-democratic means. In other words, Kelsen strongly denies the understanding of a democracy, whose basic assumptions are as follows:

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[25] It should also be underlined that Kelsen is one of the pioneers of the idea of developing the institution of Constitutional Courts as a supreme supervisory mechanism, as Sweet (2001) also clearly reflects.

Although it is fundamentally based on popular sovereignty,

- Democracy may need to be disciplined in certain extraordinary situations.
- Democracy should be put back on track by a group of technocrats when needed, or
- Democracy cannot be left only to the initiative of the irrational masses.

He argues resolutely and perhaps radically that democracy can be a democracy if and only if one adheres to the decision taken by the majority. He lays out the pillars of this radical defence of democracy in his theory, which he conceptualizes as procedural-majoritarian. Therefore, a close examination of the procedural-majoritarian theory of democracy will be vital to understand the ground on which his critique of militant democracy has risen.

3.1.1.1. Hans Kelsen's Procedural-Majoritarian Theory of Democracy

Like most of his contemporaries, including Loewenstein, Kelsen's primary aim was to give a vigorous defence of parliamentary democracy, which was subjected to intense criticism.[26] In this context, while Loewenstein claims that the preservation of democracy should be ensured even in an authoritarian way, Hans Kelsen (perhaps with an understanding that can be directly placed in the centre of his theory) claims that the act of preserving democracy, by whatever means that is not purely democratic, harms democracy much more . In other words, while the former draws attention to the risk of the destruction of democracy by internally surrendering to the tolerance paradox, the latter argues that being overly concerned with the possibility of sacrificing democracy to tolerance may itself begin to threaten democratic life. In this context, as Lagerspetz (2017) also states, Kelsen aimed to formulate a realistic normative to

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[26] Norman's categorization, which aims to determine Hans Kelsen's place in these discussions, seems quite accurate. Norman cites Kelsen's approach as one of the two main approaches developed in response to empowered radicalism to the parliamentarian democracy in Weimar Republic. The two responses that emerge at this point are underlined as Kelsen's principled pluralism and Loewenstein's constrained democracy. (Norman, 2017)

the democratic ideal. Kelsen's motivation to present a realistic normative alternative for the protection of democracy can be understood more efficiently when the general nature of the period is remembered.

Kelsen was a political and legal theorist conducting his academic studies during interwar periods when antidemocratic scepticism rose dramatically in Europe. The most general feature of this period, as Lagerspetz (2017) stated, was that it was a period of crisis of parliamentarian democracy that arose from the fact that parliamentary democracy, for which Rousseau presented an ideal framework with conceptualizations of popular sovereignty and general will, could not find a response in real politics. Contrary to mass participation, it is possible to see that democracy was characterized by "limited political participation, *de facto* elite rule, centralized parties, intense struggles between interest groups, narrow heterogeneous and switching majorities, mass demagogues and Caesarist tendency" (Lagerspetz, 2017: 156).

Hans Kelsen thought that such criticisms, which draw from quite different sources (and one is especially effective like that of Carl Schmitt), could be answered with a more substantial commitment to democracy than ever before. In this context, he thinks that democracy should be based on the following theoretical ground to be a clear answer to those criticisms:

> For that is the great question whether there is cognition of absolute truth, insight into absolute values, that is the basic conflict between *Weltanschauungs* [personal philosophy of view of life] and views of life under which the conflict between autocracy and democracy can be subsumed. Those who hold absolute truth and absolute values to be inaccessible to human cognition must consider not only their own but also foreign opposing opinions to be at least possible. Thus, relativism is the *Weltanschauung* the democratic idea presumes. Democracy values each person's political will equally, just as it respects equally any political belief, any political opinion, which is after all expressed by the political will. It, therefore, gives every political conviction the same chance to be articulated and to compete freely for people's minds and hearts (Kelsen, 2000 [1929]: 107).[27]

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[27] Kelsen's famous study "*On the Essence and Value of Democracy*" was published in 1929 as "*Von Wesen und Wert der Democratie*". The version that I benefit from in this study is the one published in the book titled "Weimar: A Jurisprudence of Crisis" by Arthur Jacobson in 2002.

For Kelsen, nothing but only such a definition should take place at the centre of the democratic ideal. Democracy cannot accept or assume an unchanging definition of absolute truth or of the common good. On the contrary, truth and good can be defined quite differently by various views under changing circumstances. In this context, it is possible to mention only relative political truths. Democracy, therefore, can only be a ground where these relative political truths have the same chance to be freely and equally represented by different political groups. Accordingly, the main factor determining the value of democracy, for Kelsen, is its ability to provide a free and equal representation of relative truths rather than protecting certain truths that it assumes as absolute at any cost. Hence, as Norman also puts it,

> At the basis of Kelsen's notion of democracy was a far-reaching value relativism in the sense that its fundamental essence was based on the acceptance of 'everyone's political will equally' even going as far as stating that a democracy that seeks to assert itself against the will of the majority by force ceases to be a democracy (Norman, 2018: 540).

Another crucial point here is that Kelsen's distinction between absolute and relativistic truths, is the most basic criterion for distinguishing democracy from autocracy. As Udi Greenberg demonstrates:

> Central Europe's foremost liberal thinker, Hans Kelsen maintained that what differentiated democracy from autocracy was its willingness to recognize that absolute truth did not exist. The "absolutist worldview," he wrote, "translates into an autocratic stance, [while] the critical and relativist worldview [translates] into a democratic stance. According to Kelsen and his students, the republic's mission was to represent the will of the people, broadly defined, and it therefore bore the "tragic fate" of allowing antidemocrats to participate in its institutions (Greenberg, 2014: 174).

Therefore, Kelsen categorically refuses to put any limits on the relativistic worldview, which he sees as the most immanent element of democracy. He presupposes an equivalent relativist stance for every idea that will compete in the democratic arena. This point radically distinguishes Kelsen's democratic imagination from Loewenstein's. Consequently, this distinction determines Kelsen's attitude towards militant democracy. For Kelsen, a fundamental

principle of democratic government can only be "to allow even those political movements to participate that promote views, which are widely deemed unacceptable, even overtly anti-democratic and illiberal" (Malkopoulou & Norman: 2018: 448). In that sense, "there was no alternative, for true democrats, to embracing the first horn of the dilemma of militant democracy" (Vinx, 2020: 686). Therefore, the fact that any intervention based on the rationale of militant democracy has strong potential to harm democracy makes Kelsen's attitude towards this understanding as almost non-negotiable. With such an attitude, he has not hesitated to claim that, "he who is in favour of democracy must not allow himself to be drawn into a fatal contradiction and reach for the method of dictatorship in order to save democracy" (Vinx, 2020: 686). Kelsen's description of militant democracy as a dictatorial method is closely related to the kind of understanding of democracy he developed. This democracy is primarily a procedural democracy "based on freedom and more specifically freedom as individual autonomy" (Malkopoulou & Norman, 2018: 448). The most basic principle of democracy is the majority rule and this principle is not even open to discussion, for Kelsen, under any circumstances. Besides, Kelsen was doubtlessly aware of the risks of democratic self-abolition. In his book named *Foundations of Democracy* (1955), he argues that,

> Democracy seems to have less power of resistance than autocracy, which without any consideration destroys every opponent, whereas democracy, with its principle of legality, freedom of opinion, protection of minorities, tolerance, directly favours its enemy. It is a paradoxical privilege of this form of government, a doubtful advantage which it has over autocracy that it may, by its own specific methods of forming the will of the state, abolish itself" (Kelsen, 1955: 31).

Although Kelsen is aware of the risk of self-abolition of democracy, he does not see militant democracy as a democratic and reasonable option. He thinks, "a democracy that seeks to act against the will of the majority, that has even tried to act by force, has ceased to be a democracy" (Kelsen, 1932: cited in Rijpkema, 2018: 34). So, what does Kelsen suggest for possible self-abolition as an existing risk, of which he is well aware?

The answer to this question finds its clearest expression in Nancy Rosenblum (2008): *Faith in Politics.* Rosenblum, one of the rare current advocates of Kelsen's approach, thinks that opening an unlimited and equal space from the democratic space to all ideas would be the most effective way to moderate radical actors. Therefore, as Malkapoulou and Norman (2018: 449) also states, "faith in politics" per Rosenblum is thus a direct opposite of Loewenstein's call "to fight fire with fire". The limit of this faith is actually thought provoking. This belief must be preserved even when the worst possible scenario for democracy comes true:

> But with this situation in mind the question also arises of whether one should restrict oneself to defending democracy theoretically. Whether democracy should not defend itself, even against the people who no longer want it, even against a majority, which is united in nothing other than its will to destroy democracy. To ask the question is to answer it in the negative (Kelsen, 1932: cited in Rijpkema, 2018:34).

Kelsen categorically rejects any intervention based on the logic of militant democracy. At this point, there is no other option but only a belief in the strong ideals and promises of democracy that cannot be compared with any other form of government such as autocracy or theocracy, and the hope that a democratic ideal that is wanted to be destroyed by an anti-democratic force will be demanded more strongly in society in a short period of time.[28] As Ancetti and Zuckerman note:

> Those who are for democracy cannot allow themselves to be caught in the dangerous contradiction of using the means of dictatorship to defend democracy. One must remain faithful to one's flag even when the ship is sinking; and in the abyss one can only carry the hope that ideal of freedom is indestructible, and the more deeply it sinks the more it will one day return to life with greater passion (Kelsen, 1932: cited in Ancetti & Zuckerman, 2017:182).

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[28] Kelsen's this attitude is often criticized as "naive" (Rijpkema, 2018), "over-optimistic" (Malkopoulou & Norman, 2018), and "unmatched in today's political world" (Tyulkina, 2015). We will cover these criticisms in detail in Chapter 4.

3.1.2. Inherently Arbitrary Characteristic of Militant Democracy

Another criticism developed against militant democracy comes from Carlo Invernizzi Ancetti and Ian Zuckerman. They mainly argue that the decisions and implementations restricting fundamental rights and freedoms based on the mentality of the militant democracy inherently contain an element of arbitrariness. They argue that, most fundamentally, practices based on militant democracy are about identifying the elements that threaten the democratic system and excluding them from the political community. The determination of what will be excluded also specifies the boundaries of the political community, and, it is not possible to follow a democratic procedure while determining this limit. In this context, "there is an irreducible element of arbitrariness in whichever way the decision is taken as to what constitutes an 'enemy' of democracy" (Ancetti & Zuckerman, 2017: 183). Therefore, it is safe to argue that Ancetti and Zuckerman, although feeding off different points of criticism, unite with Kelsen on a central critique. As it can be remembered, Kelsen also claimed that the weakest point of the militant democracy was to assume an absolute truth and common good in politics. He thinks that such a presupposition would be to deflect democracy from a democratic path from the very first moment. Since democracy is an incomplete experience in which all ideas were given equal value and had equal representation, it should inherently presume relativistic truths and goods. Thus, according to Kelsen, the initial moment when militant democrats decide to establish absolute truth and absolute common good corresponds to the first moment when its anti-democratic framework begins to form. From a different pathway, Ancetti and Zuckerman reach the same conclusion: Militant democracy implies that the decision of who or which group to be designated as the "enemy" is itself arbitrary, and therefore cannot follow a democratic procedure. As Ancetti and Zuckerman put it,

> Provision of militant democracy may have the opposite effect than the one intended: instead of protecting democracy against its supposed enemies, they may provide a means for those empowered to make the relevant decisions to

arbitrarily exclude an indeterminately expansive range of political competitors from the democratic game (Ancetti & Zuckerman, 2017: 184).

They argue that while militant democracy theoretically has an internal element of arbitrariness, at the same time, many practices of dissolution of political parties in different periods fell into the same trap. At this point, it is helpful to closely examine how they justified the argument that the understanding of militant democracy theoretically and inevitably includes a serious risk of becoming a rule of arbitrariness.

In their two impressive articles titled "*What's Wrong with Militant Democracy*" and "*Militant Democracy as Decisionist Liberalism*", Ancetti and Zuckerman begin with a rather interesting argument to justify their criticism against militant democracy. The exciting and very attractive aspect of this claim comes from their argument that, the founding traces of this idea can be found in Carl Schmitt (although they admit that Loewenstein first used the idea of militant democracy). At this point, Ancetti and Zuckerman differ from everyone else whose analyses have been reviewed in this study.[29] Then, they try to show why the view of militant democracy is weak by examining both Loewenstein's and Schmitt's justifications.

Loewenstein's constitutional government, which guarantees the rationality and calculability of the administration and adopts militant democracy as its principle, was, as it will be remembered, opposed to the emotional government, which reads politics through emotions and seizes the rational reason of the state by emotionally manipulating the masses. Ancetti and Zuckerman claim that it would be somewhat arbitrary to determine which group is emotional and which one is rational in the opposing dichotomy that Loewenstein established:

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[29] Ancetti and Zuckerman differ from the names we have discussed in this study in finding the intellectual roots of the concept of militant democracy in Schmitt. However, as it will be remembered, we can see that Fox and Nolte, which we examine as an example of a neo-militant approach, also establish a correlation between Schmitt and intolerant democracies. While Fox and Nolte do not establish a relationship between Schmitt and militant democracy conceptually, they consider Schmitt as the thinker who gives the strongest criticism of procedural democracy.

Such a distinction between "emotionalism" and "constitutional government" is incapable of providing a juridically operational criterion to establish who is to be treated as a legitimate target of militant democracy, since all political actors within a democratic framework must necessarily make use of emotional cues and strategies to compete for power (Ancetti & Zuckerman, 2019: 72).

Ancetti and Zuckerman reminded Schmitt's view that, the Nazi Party and the Communist Party should be dissolved, because they are hostile to the Weimar Constitution. In Schmitt's constitutional theory, if a political group emerges which will threaten the existence of the constitutional order; the authority should have the right to exclude this political group in question from the political community, based on the right to protect the constitutional core. Even if following the procedures in the positive form of the constitution will not lead to such a result, political authority should have an exceptional power to do so. In other words, even if the positive form of the constitution does not find it appropriate, the regime should still be able to decide to close a political party based on its power coming from the necessity to protect constitutional core.[30] As Ancetti and Zuckerman remind, Schmitt has made certain recommendations for the dissolution of the Nazi party and the Communist Party in 1932, precisely on these grounds. Schmitt persistently states that the Weimar constitution's positive expression can be violated to protect the substantive core, and for this reason, it is vital to use an extraordinary power to close these two parties, which threaten the existence of the constitution (Ancetti & Zuckerman, 2017: 185). It is precisely on this point that Ancetti and Zuckerman develop their argument that militant democracy involves an inherent arbitrariness, both in theory and in its practical applications. Because, as Schmitt well knows, "the decision which will determine the boundaries of a political community must necessarily be taken in a sovereign (i.e.: exceptional) manner by whoever has the power to declare an exception (Schmitt, 2004: 78-79; cited in Ancetti & Zuckerman, 2017: 186).

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[30] This point is directly related to the debate on the notion of legal positivism. Schmitt's handling of the issue is quite clear. As David Dyzenhaus has shown, Schmitt strongly opposes the understanding that equates constitutionalism with a written constitution. In the words of Dyzenhaus, Schmitt "wanted to resist the liberal tendency to equate 'constitution' with 'written constitution' or with all those statutes which are valid by formal criteria" (Dyzenhaus, 1997: 52)

In Schmitt's views, rejecting *the procedural view of the constitutional core-as-amendment procedure* in favour of *the substantive view of the core-as-sovereign decision* is a logical requirement for the understanding of militant democracy, as Ancetti and Zuckerman (2017: 186) argue. This formulation of Schmitt clearly reveals that the determination of the group that must be excluded in a political community - to be defined as the "enemy" in a Schmittian distinction - involves an inherent arbitrariness and implicit authoritarianism. Thus, the upshot of Schmitt's analysis is that a democratic order cannot address the problem of the potential existence of internal enemies without repoliticizing the question of membership within the political entity, and therefore inevitably introducing a foreign element of authoritarianism into the very functioning of the democratic order itself (Ancetti & Zuckerman, 2017: 186). This point is central to Ancetti and Zuckerman's critique of militant democracy. According to them, every reference to the concept of militant democracy refers precisely to such a political perception. Militant democracy, on both practical and theoretical grounds, tends to authorize rather than protect, contrary to what is argued. Hence, Ancetti and Zuckerman believed that from a whole-heartedly democratic perspective, militant democracy might not be the best way of safeguarding the democratic dimension of a regime in the end (Ancetti & Zuckerman, 2017: 186).

Having identified both the inherent arbitrariness and implicit authoritarianism in Schmitt and Loewenstein's approaches, Ancetti and Zuckerman argue that neo-militant approaches also cannot escape the same trip. At this point, they propose to examine Alexander Kirshner and Stefan Rummens's approaches, which we have examined in detail in the second chapter of this study. Ancetti and Zuckerman argue that both approaches claiming for the democratization of militant democracy are also trapped in the same dilemma:

> Neither Kirshner's liberal account of militant democracy nor Rummens' democratic account of militant democracy can answer, in a non-arbitrary way, to the question of who is to be treated as an enemy of democracy, which is implicitly a question over who is to be considered a member of political entity itself (Ancetti & Zuckerman, 2017: 189).

Considering these findings of Ancetti and Zuckerman, the anti-democratic character of militant democracy lies in determining the group that will pose a threat to the democratic system. This decision is primarily about the repolitization of the question of membership. Hence, the repolitization of the question of membership that is implicit in the logic of militant democracy necessarily implies the introduction of the element of arbitrariness. This is because the understanding of militant democracy "is incapable of providing juridically operational criterion to distinguish between presumptive friends and enemies of democracy, and therefore ultimately falls back into an equivocal call for a 'supreme arbitrer' of politics whose power of decision cannot be controlled by any prior legal norm" (Ancetti & Zuckerman, 2019: 65).

3.1.3. The Elitist Assumption of Militant Democracy

Another serious criticism towards militant democracy is the one that almost inevitably stems from the arbitrarily decisionist characteristic of militant democracy: the elitist bias of militant democracy. Considering the reflex of reading politics with a decisionist perspective, which inherently exists in the understanding of militant democracy, it is safe to say that the emergence of its elitist character becomes almost natural. Together with its first usages, at the centre of militant democracy's attempt to reconceptualize democracy in the face of the destructiveness of the Nazi experience, it is seen that there is a move away from mass participation, which is seen as the signature of totalitarian regimes (Malkopoulou & Norman, 2018: 444). The formulation of the core element of this understanding manifests itself in its pure form in Loewenstein's following proposition: "The masses needed to be kept at arm's length from political decision-making" (Loewenstein, 1937a; cited in Malkopoulou & Norman, 2018: 444).

If we recall that Loewenstein formulated fascism as the victory of the emotional government over the constitutional government, it will be easier to see why the concept of militant democracy has an elitist character. In Loewenstein's view of

fascism, he almost identifies fascism with mass participation and almost makes one feel that fascism is a natural consequence of mass participation. A predictable result of this outlook, which can be defined as escaping from the masses in Loewenstein, is undoubtedly a conceptualization of democracy which cannot be left to the masses' initiative. Undoubtedly, the determining factor in Loewenstein's reaching such a conclusion appears in his depictions of people and society. In almost every line of his famous articles,[31] Loewenstein makes one feel that he sees society as a group of emotional people who are always open to manipulation and who always follow the determined directions in an almost indispensable and internal way. The individual's image who will not chart his path, cannot go beyond the determination imposed on him, and is always open to manipulation because he is exempt from such capacity, is dominant in almost all of Loewenstein's texts. As Greenberg summarized well:

> …Loewenstein was convinced that democratic institutions flourished only under the guidance of wise and responsible political elite. This class of highly skilled and well-educated politicians, who were deeply committed to individual liberties, would make sure that power did not become concentrated in the hands of an autocratic ruler… Loewenstein held a highly elitist and suspicious view of the "masses." Most citizens, he believed, were prone to primitive emotions and irresponsible demagoguery. They lacked the capacity to fully appreciate the liberties granted by the liberal state. In this top-down model, representative democratic institutions were not designed to encourage the "people" to actively participate in politics but to help responsible elites preserve individual liberties and the separation of power (Greenberg, 2014: 175-176).

These descriptions, finally, form the basis of Loewenstein's elitist imagination, which finds one of its most precise expressions in the proposition that "liberal democracy is suitable in the last analysis, only for the political aristocrats among the nations" (Loewenstein, 1937). At this point, Malkopoulou and Norman (2018: 445) argue: "To the extent that Loewenstein was concerned with freedom at all, his militant democratic model allows for a temporary suspension of basic freedoms and a significant degree of domination to protect constitutional democracy."

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[31] We here refer mainly to Loewenstein's best-known articles published in 1937: *Militant Democracy and Fundamental Rights I- II.*

Malkopoulou and Norman rightly mark the element of endorsing an infantilizing conception of the masses as irrational and emotionally unreliable as the major assumption in the legitimization of militant democracy. This is also one of the most prominent points which clearly manifests the elitist presumption of militant democracy. Malkopoulou and Norman also consider this elitist and illiberal core as inherently perpetuated in other neo-militant approaches. While they accept that neo-militant approaches are more critical of Loewenstein, they believe that there is still a strong continuity bound between these two understandings. At the point of focusing on reducing the side effects of the militant measures and searching for the best forms of intervention, neo-militant approaches diverge from Loewenstein's militant democracy. However, neo-militant democratic self-defence agree on accepting the mentality of militant democracy as internally legitimate and justified as well. It is possible to come across a clear reflection of neo-militant scholar's conflictual relationship with Loewenstein, which can be considered as the most fundamental characteristic of them, as pointed out by Fennema (2000). On the one hand, these scholars, who justify Loewenstein's call for immediate intervention, also know that such hasty attitudes will carry anti-democratic traces. In his article titled "*Legal Repression of Extreme Right Parties and Racial Discrimination*" published in 2000, Fennema follows Lowenstein and says that:

> To fight ethnic intolerance and racial discrimination seems to require a more substantial conception of democracy (that) cannot, in a multicultural society, be based on popular consensus. Hence, the repression of racist and anti-immigrant propaganda tends to undermine the democratic consensus and create a more elitist and paternalistic form of government (Fennema, 2000: 140).

According to Malkopoulou and Norman, accepting militant democratic practices as legitimate repeats the same distrust, which finds its most intense expression in Loewenstein.

Thus, neo-militant democrats recast Loewenstein's anti-participatory elitism and the passive role of citizens in democratic government. Through this endorsement, the more constrained understanding of democracy is reproduced

(Malkopoulou & Norman, 2018: 446). Malkopoulou and Norman also state that the arbitrary element inherent in militant democracy, which we discussed above, violates the principle of non-domination, which is the most decisive condition of liberal democracies. This violation, according to them, is an inevitable consequence of the assumptions concerning deep-seated exclusionary elitism and suspicion towards popular participation that militant democracy has predominantly embodied.

It is possible to remark Ludvig Norman's article "*Defending the European Political Order: Vision of Politics in Response to the Radical Rights*" as another study emphasizing this elitist characteristic. Like many other scholars whose thoughts we have included in this study, Norman, in his very inspiring article, states that the rise of the radical right in Europe is historically similar to the period between the two world wars. Therefore, he claims that understanding the main discussion points of that period can be decisive in locating today's approaches into place. He formulates the two responses to radical demands in this period as Hans Kelsen's principled liberalism and Loewenstein's constrained democracy. Both approaches rely on specific common points, especially in determining the factors affecting the rise of the radical right in the given period. The first and most decisive of these common acceptances is their belief in the existence of "myth in politics". [32] Norman argues that Kelsen also believes that the dominant mentality in determining politics is still largely mythical rather than rational thought, similar to Loewenstein's rather sharp distinction between emotionality and rationality. Mythicality here is positioned as a challenge to the Enlightenment tradition. In that manner, the rise of the extreme right fed by mythical thinking and manipulating the masses is accepted as an anti-Enlightenment phenomenon. [33] Therefore, Norman claims that many influential

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[32] As Norman also points out, it is possible to see that the approach conceptualized by liberal thinkers as "irrationalization of politics," "myth in politics," or "rise of emotionalism in politics" was quite dominant in the relevant period. It is possible to come across this approach in the studies of some of the influential liberal figures of the relevant period as Karl Popper, Ernst Cassier and Karl Loewenstein, and some other liberal thinkers (Norman, 2016: 537)

liberal thinkers of interwar era have agreed on the following argument: "The whole of society appear to have abandoned reason and rational thinking, instead supplanting it with a reliance on myth, especially those of Nation and People" (Norman, 2016: 537). Accordingly, liberal intellectuals of this period have mainly looked for an answer to the question: "How can we understand the victory of mythical thinking over rational thought?" (Norman, 2016: 537)

According to Norman, Loewenstein also sees emotionalism (as the opposite of rationality) as the main engine of fascism in parallel to Kelsen and Popper's connection between mythical thought and fascism. Loewenstein's diagnosis also reflects deep distrust of the people in his outlook. The mythical thinking, as the most prominent feature of the emotional masses, "was thought of in terms of regression, a semi-pathological return to a more primitive way of being and acting, with potentially apocalyptical implications for democratic politics and society in general" (Norman, 2016: 539). At this point, it is better to remind that the deep distrust of the people was not only a conviction in Loewenstein. Such conviction was especially evident in the liberal elites of the same period. To put it with Müller's words: "In particular, Western European political elites fashioned a new and highly constrained form of democracy, imprinted with a deep distrust of popular sovereignty- in fact, even of the traditional parliamentary sovereignty" (Müller, 2012: 2)

At this point, Loewenstein, who shared the same understanding with Kelsen in believing that mythical thought is the main factor that defeated democracy against fascism, seems to differ completely in the point of suggestion.[34] Kelsen's approach is, as Norman perfectly describes it:

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[33] This point is very interesting. As it is known, Adorno and Horkheimer establish the connection between Enlightenment, fascism and mythical thought from the opposite point of view. For them, it was not the victory of mythical thinking over rational reason that made fascism possible. On the contrary, it was the instrumental reason of Enlightenment which penetrated all areas of life. At this point, as Norman quite aptly reminds, "Enlightenment, finding its most disastrous expression in the Holocaust, is thus visual by Horkheimer and Adorno as "mythical fear radicalized"(Adorno and Horkheimer, 2002 [1944]: 11, cited in Norman, 2016: 539)

[34] Norman (2016: 540) quite accurately describes this point as "one diagnosis, two answers."

based on a certain amount of faith that reasoned reflection on the values of democracy could break the spell of mythical thinking. Furthermore, this was a position based on the belief that a democratic constitution can only persist if the values of that constitution are embraced by the group of individuals to which it applies (Norman, 2016: 540).

On the other hand, in Loewenstein, this situation turns into deep mistrust, declaring that people never have the sufficient potential to break free from fascism by themselves. Relatedly, there is no other option for democracy if it desires its salvation; so it should distance itself from the people. Therefore, insisting on the "democratic fundamentalist" approach, which claims to include all segments of society in all decision-making processes, is nothing but creating its gravediggers for democracy. There is no doubt that Loewenstein's attitude, not to persist in democratic fundamentalism, itself prominently illustrates the elitist assumption of the understanding of militant democracy. Similarly, his life-long insistence not to trust the capability of the irrational and emotional masses who have been deceived and easily manipulated by the apparatus of fascism represents this assumption in a clear manner.

3.1.4. Possible Ineffectiveness and Counter-Productiveness of the Militant Democracy

Another criticism towards militant democracy is the argument concerning the effectiveness and the counter productiveness of militant democracy. This approach examines whether the dissolution of political parties has had the expected effect by focusing on the after processes of disclosing political parties in different contexts. Considering the case studies examined, the core of this criticism is that the interventions based on the understanding of militant democracy may not permanently weaken radical political parties, as expected. On the contrary, such an intervention may strengthen them since intervention may provide a basis for these political parties to claim that they have been treated anti-democratically and they are deprived of their fundamental rights. At the same time, radicals might argue that, the political system has persistently closed off the legitimate political ground itself. Thus, their task has become more

complicated with the dissolution of political parties in keeping their basis on the political line. In addition to the criticism that anti-democratic parties can find a ground for intense propaganda, the effectiveness of militant interventions is often questioned. As certain examples in different contexts show, closed political parties can quickly establish a new party with a Houdini trick, in Rijpkema's (2018) wordings, and continue their political activities almost uninterruptedly. Therefore, this fact may inevitably bring up the question of effectiveness of the dissolution of political parties. It is possible to find a successful example of this argument in Michael Minkenberg's influential article "*Repression and Reaction: Militant Democracy and the Radical Right in Germany and France*."

Minkenberg's primary concern is to seek an answer to the question "Does the application of state repression have the desired effect on the radical right? Or is the state repression rather counter-productive and, if so, under what circumstances?" (Minkenberg, 2006: 25). He opposes that different legal provisions applied in different historical processes may not always have the same effect. He reminds that there have been always such legal regulations in the founding texts of the states. Therefore, he expresses that, the historical process itself shows that these regulations cannot be effective alone.[35] In other words, he questions the effectiveness of executing the fight against extremism only on a constitutional basis. For this reason, he often formulates the strategy of countries that have been successful in combating political extremism as "a *high level of intolerance + integrative strategies*". However, Minkenberg thinks that this formulation cannot be effective in all circumstances. It is just because such oppressive policies in Germany and Italy could not prevent the rise of extremist movements. He points to these two contexts as examples in which the possible counter-productive outcomes arose. Examining the closure of the *Sozialistiche*

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[35] The Alien and Sedition Acts of 1798 in the United States, the escalating struggle against the 'enemies of the revolution' during the 1790s in France, and the banning of several associations in England are shown as certain long-date backed examples by Minkenberg. Additionally, he points to Belgium, Czechoslovakia, and Finland as the contents in which comprehensively applied repressive instruments against anti-democratic parties and movements enhanced democracy (Minkenberg, 2006: 32).

Reichpartei(SRP), the successor of the Nazi party closed in 1952,[36] and the subsequent processes, he claims that this intervention had an effect contrary to what was expected. Despite the existence of all necessary militant legal regulations in the constitution and the example of the *Sozialistische Reichpartei (SRP)*, the *Deutsche Reichpartei* (DRP) and *Nationaldemokratische Partei Deutschlands*) (NPD), which were accepted as the successors of this party, were re-established and won a substantial 4.3% share in the Bundestag in the 1969 elections. The effects of such intervention manifested themselves in the form of *radicalization*, *delegitimization*, and *reorganization* in parties and movements that emerged in the following years and embraced the legacy of this closed party. Doubtlessly, these state interventions, which took the form of party closure in the extreme form,[37] show the limits of tolerance that a constitutional order might accept with respect to anti-democratic parties. However, it cannot be ignored that the practice of party closure may always have the potential to be an ineffective and counter-productive, Minkenberg argues. He also underlines crucial factors, which may lead to the actualization of the former potential as organizational *and strategic flexibility of mentioned radical groups, a tendency towards ghetto formation occurring after the disclosure process, and hardening of the ideology at the core.* (Minkenberg, 2006: 42). In his own words:

> Repression can have the effect of stimulating in its victims a tendency towards ghetto-formation, which can lead to the creation of clandestine networks and the hardening of radical-right positions. Furthermore, banning demonstrations and heavy policing set in motion a ritualized chain of actions involving the police,

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[36] Minkenberg does not refer solely to this event. He thinks that similar potential risks emerged during and after the lawsuit against the NPD (*Nationaldemokratische Partei Deutschlands*) in 2004, which is more recent but did not result in closure unlike in 1952. Even if it did not result in closure, he thinks that even the case of closure itself has a counter-productive effect. He claims that the process that resulted in the selection of the 12 deputies of NPD in the state of Saxony in the September 2004 elections unveiled this effect very clearly. (Minkenberg, 2006: 30)

[37] In his study, Minkerberg tries to show that almost all legal provisions, whose extreme form of it is considered as party closure, may also be ineffective in general. In this context, he, reminding the case of neo-Nazi Christian Worch in Hamburg, argues that the political struggle of the group after the cancellation of the protest march was extremely effective both in increasing their popularity and in their efforts to establish a public space for the radical right that they entered with this fight. At this point, he claims that the potential that the movement earned after this decision, (which it could not achieve this during the 1990s), is extremely thought-provoking (Minkenberg, 2006: 42).

the courts, and the radical right, which will be repeated at each new attempt at repression. Since this chain of events can be counted as a success by the radical right, it will also contribute to strengthening rather than weakening radical-right positions (Minkenberg, 2006: 43).

He thinks the second one may also come true concerning the first potential. With the dissolution, greater loyalty to the party ideology in the relevant party core may develop. Such solidification may lead the movement to behave more like a sect than a party. In parallel, the belief that it cannot make its voice heard on legitimate and legal grounds may push the relevant party to seek ways out of the legal order. Moreover, this process may result in transforming an extremist group that is envisaged to struggle against itself as a political party into a terrorist organization. Therefore, this intervention by the state may always have the potential to give rise to an opposite effect contrary to the expected results, he claims.

Another crucial shortcoming Minkerberg focuses on is militant democracy's reflex of addressing both the notion of fight against extremism and practice of dissolution of a political party only at the constitutional level. As he asserts:

> It seems that the damage to democracy outweighs the benefits of state control, particularly when the fight against the radical right is reduced to the institutional level of 'militant democracy'. Instead, alternatives within civil society need to be strengthened, both because they can affect the radical right on their own and because they can 'embed' state action and thereby render it more effective (Minkenberg, 2006: 44).

It is worth emphasizing a few points concerning Minkenberg's study. First, Minkenberg objects to the effectiveness of forms of state repression, including militant democracy, from a practical rather than a theoretical level. At this point, Minkenberg's example differs from other criticisms of militant democracy that we have examined in this study. Another point that should be underlined to avoid impetuous comments that may be directed is this: We need to see that Minkenberg does not claim that the interventions which can take the form of state repression will be ineffective in all circumstances, or have a counter-productive effect under all conditions. Instead, he points out that these

possibilities always exist as potential and may emerge in this way in certain contexts. Thus, it would be more accurate to read Minkenberg's objection as "militant democratic approaches almost internally contain the potential to strengthen extreme movements" rather than as militant democracy understanding strengthens extreme movements under all circumstances.

At this point, Rijpkema's criticism arguing that interventions made with militant democratic rationality have a positive effect rather than a possible counter-productive result can be considered a hasty one. Rijpkema reminds us that after the closure of the Batasuna Party, which is seen as the political leg of ETA (*Euskadi Ta Askatasuna*), comments were made in many circles that this practice could lead to "intensification" and "polarization." However, contrary to the expected counter-productive effect, he claims that Batasuna's closure had the opposite effect: The ban was followed by one of the least violent periods to date (Rijpkema, 2018: 97). Additionally, he states that despite Batasuna's open call for a boycott, an increase in turnout was observed in the regional elections held after the practice of the disclosure. Rijpkema maintains his claim, arguing that just one year after the ban case, Batasuna leader, Arnaldo Otegi, initiated the first step towards peace. Therefore, the evolution of the process shows the effectiveness of the dissolution of Batasuna and falsifies the assumption of "ineffectiveness and counter productiveness" (Rijpkema, 2018: 98).

Considering the warning in the previous paragraph, it is possible to object to Rijpkema on the following point: Rijpkema's analysis which is achieved through examining only the last phase of a long-termed violence process is highly problematic. It is simply because the closure of the Batasuna Party was not the first militant measure taken in the fight against ETA, and almost all previous attempts have resulted in counter-productive effects in terms of increasing the violence. Therefore, one cannot guarantee that the judgment reached by Rijpkema over the practice of the dissolution of Batasuna can be realized in different contexts and under all circumstances. At this point, Minkenberg's criticism becomes more meaningful. As we have stated, Minkenberg does not

claim that militant measures are counter-productive *per se.* Instead, he highlights that these measures can always be potentially counter-productive. Thus, the main pillar of Minkerberg's criticism is that the rationale of militant democracy lacks of additional mechanisms for preventing the occurrence of such potentials.

3.2. Militant Democracy in Practice: Militant Democracy as the Legitimizing Discourse of American Foreign Policy During World War II and Cold War

It is possible to underline another criticism towards militant democracy as critical questioning of the implications of such mentality in the political sphere. Unlike the ones we have mentioned so far, this line of criticism problematizes and evaluates certain historical conjectures in which certain severe right restrictions are justified by referring to the understanding of the militant democracy rather than entering into a theoretical conflict with the concept. In other words, it would not be wrong to state that the criticism which we will examine under this heading is directed at the practice of militant democracy rather than its theory. This criticism is essential because it shows that the risks marked by some of the theoretical criticisms we have expressed throughout this chapter can always be observed in a practical sense. It is possible to find a trace of militant democracy's effort to protect democracy in an anti-democratic way (as expressed by Kelsen), the decisionist character of it (as stated by Ancetti and Zuckerman), and the elitist character of it (as shown by Malkopoulou and Norman) in certain conjectures. At this point, it would be highly beneficial to closely examine the work of Udi Greenberg, in which he examined the effect of German emigres on the determination of the international policy followed by the U.S.A during WWII and the Cold War. In the chapter "*Individual Liberties and "Militant Democracies: K. Loewenstein and Aggressive Liberalism"* of his influential book "The Weimar Century: German Émigrés and the Ideological Foundations of the Cold War", Greenberg fundamentally argues that the rationale of militant democracy was one of the primary sources of the aggressive liberal attitude of the U.S.A at that time.

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Now, we will examine in detail the part in which Greenberg identifies the relationship between Karl Loewenstein and U.S.A's foreign policy of the period. It should be underlined that we will do such review being aware of Greenberg's primary purpose and considering the fact that he did not directly engage in theoretical dialogue with the rationality of militant democracy. Well, how could a book that discusses the ideological roots of the international strategy determined by the U.S.A during WWII and the Cold War become a significant reference source for our study?

Interestingly enough, Greenberg's work showed that all the risks we have underlined as the possible shortcomings of the mentality of militant democracy had been experienced in a given political conjuncture. Greenberg's work clearly reveals that many of the violations of rights that the U.S.A caused at that time, both within the country and in other countries, were tried to be justified by presenting them as a natural consequence of the mentality of militant democracy. Therefore, we will examine Greenberg's work closely to see how easily such mentality can be instrumentalized to cover up certain anti-democratic practices.

Greenberg begins by reminding that the ideas of Loewenstein during the 1930s, which did not receive enough attention and could not prevent the collapse of the Weimar Republic,[38] were met with great interest on the Western side of the Atlantic just before WWII. The anxiety of officials in the U.S.A towards rising socialist demands has led to a much faster admission of his views than would have occurred under normal conditions. Shortly after the time Loewenstein has arrived to the U.S.A., the rationale of militant democracy became almost the official legitimation discourse in eliminating America's "enemies" in domestic

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[38] In the Weimar Republic, there was actually a very serious threat to the regime before the Nazis. The chaotic political environment was the most important indicator of this. In particular, violence had become one of the essential elements of daily politics. Therefore, the rise of the Nazis should not be read as a perfect adjustment of them to the democracy. The Nazis probably succeeded by adding a subtler use of this established culture of violence to their repertoire. Therefore, the threat to the regime was not a Nazi-specific phenomenon. On the contrary, this anxiety was quite dominant even before the rise of the power and visibility of the Nazis. As Greenberg also mentioned, the question of whether the republic could endure these threats was a burning political and intellectual debate.

and foreign policy. This meant much more than a state being influenced by the ideas of an intellectual figure and shaping some of its policies according to his thoughts. Loewenstein would soon become one of the most influential intellectual roots of the attitude and political strategies of the United States during the Second World War and the Cold War. As Greenberg clearly states:

> In promoting his own liberal ideas from the Weimar era, he [Loewenstein] helped shape US foreign policy and mobilize German liberals in support of anti-Communist suppression. His vision offered an important response to the seemingly existential threats against democracy that shaped the mid-century world, setting stiff boundaries for post war democratic tolerance. On both sides of the Atlantic, militant democracy became a guiding principle for Cold War democracy (Greenberg, 2014: 172).

Loewenstein came to America in 1933. However, it took a very short time for him to become an influential intellectual whose suggestions were followed with great interest in the U.S.A. Then, one should ask what were the reasons for such easy admittance?

First was the uneasiness created by the left movement, which gained strength and popularity, especially after the Great Depression, among the liberal elites and the capitalists in the U.S.A.[39] This led to great interest towards Loewenstein. His theory was seen as the theoretical basis for the extraordinary power that could be employed in ordinary conditions needed to break the power of the socialist movement. Loewenstein responded to this unexpected interest in a way that fuelled such interest. He revised his views on the struggle to preserve liberal democracy, emphasizing the anti-communism element more strongly. Another

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[39] It will be extremely useful to look at the political conjecture in the United States in this the period in order to better understand the growing interest that in Loewenstein so quickly. At this point, it is possible to talk about an increasing militancy in the American working class during the 1930s. The American working class, which was highly influenced by the working-class movements in Europe, has organized many mass actions, strikes and boycotts in factories and workshops led by the organization "Popular Front" at that time. This situation was the main source of the concerns of the conservatives, liberals and state officials, especially the capitalist class. Therefore, the understanding of militant democracy, which envisages an aggressive liberalism, was the theoretical recipe sought in America among these groups. As a matter of fact, the support these anxious groups offered to Loewenstein at the point of spreading militant democracy was one of the reasons for Loewenstein's rapidly rising popularity (Greenberg, 2014: 184-185).

element that was added to Loewenstein's thought was the necessity of internationalizing militant democracy. The militant struggle, which was portrayed as an internal problem in his discussions of the Weimar period, also evolved into an external issue during his time in America. He persistently claimed that an international democratic revolution should be carried out under the leadership of America, which he presented as the most successful implementer of representative democracy.[40]He began to openly emphasize that America always had the right to intervene in totalitarian regimes that it saw as anti-liberal. Unsurprisingly, these arguments brought Loewenstein closer to the centre of the mainstream American politics of the time.

It is safe to claim that the assignment of Loewenstein to the Department of Justice and the State Department, which was one of the most decisive institutions of American diplomacy, just before and during WWII, as stated by Greenberg, was a complete turning point for him. For the first time, militant democracy found a perfect ground for application. Nevertheless, this ground did not lead to the building of a stronger democracy neither in U.S.A, nor in other countries. On the contrary, as Greenberg argues, Loewenstein's vision became the basis for the anti-democratic practices undertaken by the United States after the WWII, especially in Latin American countries, against "a possible risk of communism."

With its involvement in WWII, one of the institutional actors of the policy developed by the United States, especially towards Latin America, was the Emergency Advisory Committee for Political Defence (CPD). In the reports written by the CPD to the Latin American governments of the period, many individuals and institutions operating in the relevant countries who seem to be against the interests of the United States at that time, were shown as major threats. Loewenstein became one of the most influential officers of this institution. Again, not surprisingly, militant democracy was the fundamental

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[40] The relationship between Loewenstein and U.S.A started long before he has moved to America. In his writings before constructing his perspective on militant democracy, Loewenstein had claimed that the most accurate model of democracy for the Weimar Republic was an American-style democracy. To see how Loewenstein justifies his obvious admiration for American democracy see: (Greenberg, 2014: 175-177)

discursive element for legitimization of such witch-hunt initiated by CPD, which acted in coordination with the FBI (Federal Bureau of Investigation). So, what exactly were the activities of this institution?

The activities of the CPD included preparing reports of recommendations[41] for Mexican and Brazilian authorities. These reports mostly recommended the closure of radio stations and newspapers, which were considered subversive. The declaration of a state of emergency, which would play a very facilitating role in implementing such restrictions, was also among the recommendations of the CPD. Additionally, The CPD was also the institution that prepared the detection reports, which effectively isolated German, Italian, and Japanese citizens living in Latin America from the commercial area.[42] In short, these people, who have no crime except being a citizen of the enemy state in a war they have not decided about, were "pre-emptively put under surveillance for the duration of the war" (Greenberg, 2014: 190). Unfortunately, the activities of the CPD in Latin America, of which Loewenstein is one of its most influential figures, were not limited to these. Under the discourse of militantly defending democracy, many anti-democratic practices that violate even the most basic rights were included. The most striking of these was the preparation of the report of "potentially dangerous" in Latin America.[43] Many people detected through these reports were held in concentration camps of the time because they were seen as "potentially

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[41] The fact that these reports are named as recommendation reports should not be misleading. Given the deep network of interdependency between the U.S.A. and the Latin American' governments of the time, it should be emphasized that these reports were instructions rather than recommendations.

[42] It is useful to know that the pressure on these three groups in particular is quite high. Undoubtedly, the fact that the members of these three people were citizens of the Axis power states was the main factor.

[43] Greenberg's striking article shows that the anti-democratic practices of the period have also included "the mass internment and deportation of civilian populations". Moreover, in this process, he states that US government relied on the documents of the CPD in many deportations both within the country's borders and in Latin America. Additionally, it is understood that the US, along with many other institutions besides the CPD, is carrying out the process both for the mass displacement of many innocent people who are seen as a potential danger and for sending them to the camps.

dangerous" even though they had not been involved in any crime[44] (Greenberg, 2014: 192).

Loewenstein's political activities were not limited to these. His becoming one of the ideologists of America's expansionist attitude during WWII made his popularity much stronger. Greenberg states that the new two-polar situation that emerged especially in the post-war period owes a lot to Loewenstein's thought. No doubt, Loewenstein probably enjoyed this new identity of democracy-saver. According to Greenberg, the proposal for the formation of a democratic bloc under the leadership of the United States, which Loewenstein saw as a unique example of representative democracy, started to attract greater attention with the new conjuncture. Greenberg describes the mentality of militant democracy in Loewenstein's mind:

> In a world of militant democracy, governments would forego state sovereignty and domestic autonomy, to be replaced by a mechanism of permanent mutual intervention. This would allow democracies to support and enhance one another's ability to overcome their global enemies. Just as democratic institutions were more important than the people's will, national sovereignty likewise had to be subordinated in the interest of preserving democracy (Greenberg, 2014: 186).

At the same time, post-WWII period was the process of restoring the honor of Loewenstein by Germany, so to speak. After his rise in America, Loewenstein was commissioned as an American official to take part in building the new democracy in Germany, ravaged by war and Nazism. After WWII, liberalism became the ideology of the re-establishment in West Germany. Many liberal thinkers who had to leave Germany during the Nazi rule began to return. Unsurprisingly, Loewenstein turns out to be one of the most effective actors in the de-Nazification and de-communization process. So much so that the new constitution of West Germany declares that, West Germany is based on the principles of militant democracy. This can be seen both as the construction of a new understanding of democracy and as a sign of a new positioning in real

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[44] It is worth noting a point that Greenberg underlines. These camps were called as internment camps by the officials' sterile language both at home and abroad.

politics. Such declaration undoubtedly means the construction of West Germany which definitely sided with U.S.A in the Cold War. Loewenstein appeared as one of the most influential figures in such a repositioning as the symbolic name of German-American collaboration during the Cold War era. Such collaboration "would help turn militant democracy into one of the guiding principles of post-war German liberalism" (Greenberg, 2014: 198).

The core of Loewenstein's arguments in the new process, who became one of the most influential intellectuals in West Germany, was the idea that the source of political power were institutions that ensured the separation of powers, rather than the organic nation claimed by the Nazis. This idea also explicitly portrayed democracy as a measure against potential tyranny of majority rather than an immediate manifestation of popular will. That is to say, Loewenstein's democracy was based on the principle of democratic institutions rather than the will of the manipulable masses (Greenberg, 2014: 200). This approach of Loewenstein also contained a message to identify the founding element of the new democratic republic. He insisted that the new regime had to learn lessons from the past and that the existence of the regime could not be maintained by popular sovereignty alone. Greenberg (2014: 202) claims that Loewenstein insistently underlines the necessity of the existence of a responsible and wise elite in his lectures, which reach a very large number of participants.[45] Along with Loewenstein's this stance, which Malkopoulou and Norman quite accurately conceptualized as "deep distrust of the people," his emphasis on the necessity of anti-communism, was another reason for rising interest towards Loewenstein in West Germany. The spectre of communism, which settled immediately on the east side of the Berlin Wall, was alarming the West German elite. Loewenstein, who had proved his abilities with his activities in Latin America before and during WWII, was seen as the most appropriate name to overcome such an uneasiness. This significant part of Loewenstein's intellectual and political

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[45] His vast experience as a CPD official in Latin America, his steady emphasis on militant democracy, and the fact that the Nazi tragedy had justified him, undoubtedly made Loewenstein one of the most suitable members of such an elite committee. At this point, it is quite possible to talk about such a tendency of both Loewenstein and the dominant public opinion of the period.

adventure undoubtedly offers a reasonable answer to the question of why Germany is considered the cradle of militant democracy. Moreover, it also shows how the militant democracy was operationalized both in the establishment of American hegemony before and during the WWII, and in the positioning of West Germany during the Cold War.

Then, we should ask what is the relationship of these practices (which display their most radical form as mass deportation, concentration camps, and severe political suppression) with the rationale of militant democracy as the central legitimating discourse of dissolution of a political party? At this point, this question seems quite reasonable and accurate. Our claim, of course, is not that similar governmental practices will emerge in every condition where the mentality of militant democracy is expressed. That would undoubtedly be an overly generalizing and reductionist comment. However, examining the practices of militant democracy in the period when the concept was most popular in the political conjecture can be genuinely useful in conceiving the promises and risks of the concept.

Greenberg's study helps us to claim that political reflexes based on the rationality of militant democracy might themselves have an anti-democratic character. In other words, the potential risk of anti-democratization for the logic of militant democracy (due to its inherently arbitrary characteristic) is not at all difficult to be actualized. Certain political practices cited in Greenberg's study show that it is quite possible for militant democracy to become the sword of *democles* in suppressing dissident views. In other words, as Greenberg's study unveils that certain theoretical weaknesses of militant democracy (which are hastily tried to be overlooked) may lead to a large body of anti-democratic practices. It is also quite possible to notice how a phenomenon conceptualized as measures to combat anti-democratic elements in domestic politics could rapidly turn into a founding element of an expansionist discourse for dominant power. All these possible risks and the fact that some of these risks have been actualized in a

certain historical conjuncture reveal that reflexes based on the rationality of militant democracy should be discussed carefully.[46]

Recall that, we focused on the promises and basic arguments of militant democracy in the second chapter of this study. In this chapter, starting with Loewenstein, who is considered to be the founding figure of the concept, we have examined the approaches of Sajo, Tyulkina, Fox and Nolte, who stated that this approach is legitimate and necessary. Then, we looked at neo-militant names who claimed that militant democracy was both legitimate and justified but who also warned that Loewenstein's militant democracy needed moderation and democratization. In that section of the second chapter, we discussed the approaches of Kirshner, Rijpkema, Rummens and Abts, respectively. We can claim that the second chapter explicates major promises and arguments of the concept of *militant democracy*, which is the most dominant rationale in the debates on the closure of political parties.

In the third chapter, we tried to present the counter-arguments that mark the limitations and drawbacks of the mentality of militant democracy. Starting from Hans Kelsen's procedural democracy, who is a contemporary of Loewenstein and who had intense polemics with him, we presented Ancetti and Zuckerman, Malkopoulou, Norman, and Minkenberg's arguments pointing out the theoretical shortcomings of militant democracy. Next, we examined a particular set of state practices in a particular historical period in which the concept of militant democracy is so often pronounced. Greenberg's study, in which he revealed the traces of the logic of militant democracy in the American politics of WWII and the Cold War, gives strong evidence to the theoretical suspicions concerning the theory and practice of militant democracy.

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[46] In the last chapter of this study, we will discuss in more detail what kind of a reflex the views of militant democratic, procedural democratic and social democratic self-defences can adopt in a conjuncture where the dissolution of political parties is on the agenda. We will also discuss what can be the possible promises and limitations of these attitudes.

In the next chapter, we will examine the promises of the view of social-democratic self-defence, which criticizes both the elitist and inherently arbitrary characteristics of militant democracy and the over-optimistic approach of Kelsen's procedural democracy. We will try to express that this model of democratic self-defence can be considered as an understanding that can be effective both in preventing the practices of militant democracy which may sometimes violate democracy and in overcoming the possible inadequacies of procedural democracy in defending democracy.

CHAPTER 4

INTEGRATIONAL (SOCIAL) MODEL: SOCIAL DEMOCRATIC SELF-DEFENCE AS ANOTHER ALTERNATIVE WAY

4.1. The Cornerstones of Social Democratic Self-Defence

In the previous chapters of this study, we examined the promises and limitations of the views of militant democracy and procedural democracy, which we underline as the origins of the reflexes that occur when the practice of dissolution of a political party is on the agenda. We stated that these two approaches, which should be seen as systematic searches for an answer to the question how a democracy can struggle against the internal threat which may be directed against itself, take the phenomenon of democratic self-defence to the centre. In this context, we emphasized that militant democracy tends to envisage orthodox instruments such as the dissolution of the relevant political party and the prohibition of its political activities (Malkopoulou, 2021) and compress the issue onto the constitutional-legal sphere. On the other hand, we have seen that procedural democracy claims to show that, it is possible to realize democratic self-defence from the solely legal sphere and to protect democracy in a way which is not anti-democratic. Recall that the view of procedural democracy fundamentally states that all political groups have equal rights in participation, and banning a political party or closing the political scene for any social group is itself the biggest threat to democracy. In this chapter, we will examine the view of social democratic self-defence, which appears as a third way and brings severe criticism to both militant democracy and procedural democracy's proposals. We will show the similarities and differences of social-democratic self-defence with the other two approaches. In this regard, one should realize that the social democratic self-defence adopts the criticisms directed by the procedural democracy towards militant democracy: that the practices of militant democracy

have an almost internal tendency towards being technocratic (Malkopoulou, 2020b),[47] elitist, inherently arbitrary, and counter-productive.

Nevertheless, we will also try to show that it radically differs from militant and procedural democracy by bringing social and economic elements to the centre of democratic self-defence. Then we will examine the most fundamental promises of the social democratic self-defence, which claims to be an alternative to both approaches. After examining the criticisms of social democratic self-defence against the other two approaches, we will identify the principal moments of the arguments of Herman Heller, who is accepted as one of the founding figures of the approach. Next, we will examine the traditions of "social homogeneity" and "social security," demarcated as two major ideas within the view of social democratic self-defence. In the end, we will conduct a discussion on the promises of this approach for today and the possible attitude it will take on the issue of the dissolution of a political party.

The most distinctive feature of the social-democratic approach is that the social and political conditions under which extremism (as one of the obvious threats to democratic life) can flourish should be examined in depth. Social-democratic self-defence assumes that the struggle against extremism necessitates a broader and comprehensive strategy, aiming to eliminate social dynamics, which may make the extremist demands more attractive. In other words, primarily, this approach "places the broader social dynamics of extremism front and centre" (Malkopoulou & Norman, 2018: 450). According to this version, all measures taken by ignoring the deeply rooted social dynamics will remain superficial and short-term solutions. In this context, Sofia Nasström's (2021: 376) classification of three different models of democratic self-defence (militant, procedural and

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[47] In his article *'What Militant Democrats and Technocrats Share*,' published in 2020, Malkopoulou draws attention to the existence of the dominant technocratic trend in militant democracy rationality. She thinks that such a tendency for transferring the task of democratic self-defence to the experts is an extension of the search to reduce politics to a technocratic manner. Relatedly, Rune Moller Stahl and Benjamin Ask Popp-Madsen also emphasize this tendency, which they believe, inherently exists in the rationale of militant democracy. In their article *"Defending Democracy: Militant and Popular Models of Democratic Self-Defence,"* Stahl and Madsen (2021: 2) call this tendency *depoliticizing.*

social self-defence) as legal, political, and integrational, respectively, is very convenient.[48] When understood in this way, it is possible to state that the most fundamental criticism made by social model to the legal and political ones is that both approaches ignore the social perspective (Malkopoulou & Norman, 2018; Nasström, 2021; Malkopoulou, 2016).

Contrary to the first two models, the social model (or integrational model) describes extremism as an end product and mainly argues that "democratic discontent and increasing intolerance between certain groups is difficult to address in legal and political terms" (Nasström, 2021: 377). For this view, extremism emerges as an immediate consequence of the disappearance of the possibility for a particular group in society to express socio-economic demands through the political system (Malkopoulou & Norman, 2018: 450). Therefore, ensuring that democratic channels function in an effective way also means draining the resources that can feed all extremist and anti-democratic demands which may arise within a political community. At this point, it is safe to argue that this view is a more inclusive and holistic approach which aims to transform the deep-seated inequality in a political community. Contrary to militant and procedural approaches, social-democratic self-defence incorporates the network

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[48] Another point that should be mentioned is that the social model is overlooked compared to the militant and procedural approaches. We have stated that the interest in militant and procedural approaches has increased in parallel with the rising right-wing populism and the strengthening neoliberal authoritarianism, and these approaches, which were discussed intensely in the interwar period, started to gain popularity, especially in the 2000s. At this point, Nasström, quite rightly, thinks that the interest in the social model is so low that it is extremely surprising given the success of social democracy in many Scandinavian countries both in the interwar and post-WWII periods. It is better to note that Nasström's surprise is quite understandable. In addition to this, it is useful to draw attention to the Scandinavian studies on the further discussion of social-democratic self-defence in the academic field. It should be underlined that the project, Democratic Self-Defence: The Social Model, which started on 1 July 2019 and is planned to end on 30 June 2022, was carried out by Uppsala University/ Department of Government and under the chief coordination of Sofia Nasström. We think the social model can be discussed more intensely with the publication of the findings of this project, which determine its fundamental aim as "to move away from legal approaches which target specific actors for improving the political and social structures needed to regenerate long-term commitment to democratic practices and ideals. The question is not merely how to defend democracy, but to ask what kind of democracy is worth defending." For the introduction page of the ongoing project, see: https://www.statsvet.uu.se/research/democratic-self-defence--the-social-model/

of economic relations into the repertoire of combating extremism. Therefore, this view suggests that discussing the notion of struggle against extremism, (which it perceives as an immediate manifestation of very deep structured social and economic relations) over false methods will bring everyday solutions. This most common false or inadequate method is the reflex of reducing the democratic self-defence to only a matter of legal technical regulation. Thus, according to the social model, the path to effectively combat political intolerance and its inevitable result, extremism, goes through asking the central question "how can the promotion of social equality contribute to the defence of democracy?". The answer, envisaged by the social model, is shaped by a fundamental proposition: *a high level of social equality will lead to a high tolerance level*. Consequently, the high tolerance level will contribute to the emergence of a political environment in which extremist demands lose their attractiveness. In this context, it is possible to notice that the social model has a different imagination of democracy compared to the conceptualizations of militant and procedural views which we have outlined in previous chapters. Establishing this new democracy[49] centred on social justice and social equality will be the most robust response to political extremism. At this point, the objection expressed by the social model as "the question is not merely how to defend democracy, but to ask what kind of democracy is worth defending" gains a strong meaning. It is better to remember that this objection manifests the strong demand for a new democracy through social-democratic self-defence. The necessity for such re-defined democracy comes from its vital position in ensuring the durability of the democratic system. This re-defined democracy has to establish a political system in which all segments of a political community can equally convey their political demands. Then, according to this approach, which conditions ensure the

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[49] The vision of a new democracy is key to understanding the historical roots of the social democratic model. It is quite understandable that this demand, which was intensively expressed by social democracy, especially after WWII, is also re-emphasized by the view of social democratic self-defence. As stated before, this model argues that the achievements of social democracy in successfully re-establishing social and political order after WWII (seen as the most unstable and bloodiest years in human history) make the social model a realistic solution against today's extremist threats.

durability of a democratic system that functions properly in the sense that all segments of the society can convey their political demands equally?

A clear answer to this question in this view is ensuring social stability. That is, social stability is a *sine qua non* condition which will enable the idea of democracy and democratic institutions to be perceived as the most legitimate form by the whole society. Ensuring social stability can only be possible by constructing a democratic politics which will include all segments of the society and determine social justice and equality as indispensable elements. It is simply because extremism and anti-democratic threats become more assertive as an inevitable result of social discontent and instability. What contributes to instability is the imagination of a society based solely on liberal and individualistic promises. It is worth emphasizing that this point is quite significant as it shows that the social-democratic self-defence view differs radically from the militant and procedural approaches. Recall that although militant and procedural views suggested different solutions in the struggle against extremism, they were common in protecting and strengthening liberal democracy. Unlike both views, the social model engages centrally with the imagination of a society based solely on liberal and extremely individualistic promises. It argues that imagining such a society would reproduce and deepen existing inequalities in society, thus fostering possible interest in extremist demands (Malkopoulou & Norman, 2018: 449). At this point, the construction of social stability depends above all on the definition of a new democracy which shifts the emphasis to social justice and social equality rather than purely liberal and individualistic elements. A new definition of democracy, at the same time, would be the most effective instrument in the fight against the rise of extremism since it eliminates the economic and social conditions in which these extremist demands can find a suitable ground. To that extent, a new conceptualization of democracy which presupposes political and social integration is "a means, not an obstacle, to fight against extremism" (Malkopoulou & Norman, 2018: 451). At this point, it is essential to note that the social-democratic self-defence answers

the question of how democracy can be protected from anti-democratic threats without harming the democratic essence, and even strengthening this core.

Moreover, this view fundamentally argues that "a continuous maintaining of a polity's democratic health is more reliable and legitimate than curing a potentially lethal infection in an exceptional manner" (Stone & Malkopoulou, 2021: 3). In this context, it is safe to argue that social democratic self-defence aims to develop time-bound, inclusive, and deep-rooted solutions compared to quick, pre-emptive, and short-term ones proposed by the militant democracy. Social-democratic self-defence expresses that this pursuit of "quick intervention" by militant democrats is also one of the most significant risks for preserving the democratic self. As Nasström (2021:379) underlines, what makes militant democracy quick to respond is also what makes it democratically adverse in the long run. In that sense, as Stone and Malkopoulou show, it is better to perceive democratic self-defence as "a part of democratic self-maintenance, not an emergency measure born out of exceptional crisis situations" (Stone & Malkopoulou, 2021: 3). It is safe to argue that the social model has such a logic of democratic self-defence.

Another point where the social model opposes to the militant view is its answer concerning which subject should be the protector of democracy against irrational and extremist demands. Recall that, as Malkopoulou and Norman present, militant democracy is deeply pessimistic about the people's role in eliminating possible extremist attacks which threaten democracy. Such pessimism, doubtlessly, originates from its inherent mistrust of the people (as masses). Contrary to the pessimism of militant democracy, the social democratic self-defence persistently underlines that democracy should be built on a fundamental trust in the capability of people to shape the organization of politics. In other words, unlike the militant view, it presupposes the mobilization of citizens as the defender of constitutional values (Malkopoulou, 2016; Malkopoulou & Stone,

2021)[50]. Another related point of divergence manifests itself in different views with respect to the imagination of society. While the militant model depicts society as masses that can be easily deceived and manipulated by the extremist and irrational demands and, hence, as a perpetrator, the social model portrays society as a victim. In the social model's depiction of society, it is possible to encounter the image of people condemned to a disadvantageous position in accessing political channels due to the inequality-producing characteristics of the socio-economic structure. In this depiction, the liability in the emergence of conditions over which extremism may rise belongs more to the socio-economical structure rather than people. Hence, it is safe to underline one of the basic assumptions of the social model: the transformation of a system that produces inequalities through functionalizing democratic channels which will create a severe break in the attraction of anti-democratic groups. In other words, the social model marks "an inclusive organization of democratic politics, along with an emphasis on social justice and equality" (Malkopoulou & Norman, 2018: 450) as the best possible remedy.

It is also possible to identify that social democratic self-defence is associated with the procedural view in rejecting some basic premises of the militant democracy. The overt reflections of such commonality can be found in the following points:

- their shared belief that democracy can re-establish itself,
- their common suspicion about the dominant anti-democratization tendency that militant democracy potentially has, because of its inherently arbitrary characteristics, and
- their objection to militant democracy's attempt to confine the issue to the legal framework

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[50] Malkopoulou and Stone's article *"Allotted Chambers as Defenders of Democracy"* published in 2021, suggests what may seem quite radical. They argue that designating the constitutional courts as the guardians of democracy risks depoliticizing the phenomenon of democratic self-defence. They defend that the execution of the task of defending democracy by allotted chambers -randomly selected citizen bodies- will make it possible to protect democracy in a non-technocratical hence democratic way.

It is comfortable to pick up these points as the common element of the intersection set of social democratic self-defence and procedural views. However, this does not necessarily mean that the social model accepts all the propositions of procedural view. Quite the contrary, it is better to underline that the social model's criticism of the procedural view is quite harsh on certain points. The traces of these divergence points between the procedural self-defence and social-democratic self-defence can be traced back to well-known discussions between Hans Kelsen and Herman Heller (whose views will be examined closely in the following pages of this chapter), who are considered to be the founding figures of the social model.[51] Heller argues that Kelsen's value-neutral theory of democracy will remain blind to the extent that it does not refer to socio-historical conditions. It is an empty theory as long as it ignores the historical political ethos (Malkopoulou, 2020a: 398). It would not be wrong to say that this fundamental critical stance of Heller toward the procedural view continues in Malkopoulou, Norman, and Nasström, who can be considered as current representatives of the view of social democratic self-defence. However, it is necessary to note that this critical stance in Malkopoulou and Norman is not as radical as in Heller. At this point, Malkopoulou and Norman (2018: 450) give Kelsen credit by insisting that Kelsen's proceduralism is the only logical response to militant democracy so far, and it is highly effective in showing that militant democracy may not be the only way to handle extremism. Additionally, Nasström also affirms the basic assumption of procedural democracy by summarizing it as follows:

> The upshot is that even in times of crisis, one must have faith in procedures. Why? Because the most effective guardian of democracy is democracy itself. The rationale behind the political approach [52] is that by drawing the inner enemies of democracy into the codified procedure of equality, one will gradually socialize them into becoming democrats (Nasström, 2021: 380).

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[51] The main points of this debate and Herman Heller's harsh criticisms against Hans Kelsen's fundamental argument that democracy should be value-neutral and give all political positions equal opportunities for expression and participation will be examined in detail in the following pages.

[52] Recall that Nasström called the militant, procedural and social-democratic self-defences the legal model, political model, and social model, respectively. Hence, reading the political model as the procedural democratic self-defence will not cause any errors.

After emphasizing the importance of the procedural view on the matter of struggle against extremism, Malkopoulou, Norman, and Nasström agree that the procedural view also has certain shortcomings and "its positive side is not self-evident" (Nasström, 2021: 381). Malkopoulou and Norman underline the most significant shortcoming of the procedural view as its possible counter-effect. They argue that "as recent studies on the mainstreaming of populism show, inclusion may also give authoritarian populists a chance to normalize their claims" (Malkopoulou & Norman, 2018:449). They reflect on a crucial point: Politics is not a phenomenon in which different views come face to face and try to persuade each other in a hypothetical space freed from value judgments, social perceptions, and power relations. It is more than this. Politics ontologically necessitates a social context to exist. Relatedly, as Nasström (2021: 381) points out, procedural democratic self-defence has an inherent propensity to ignore that politics always come about in a particular social context. Thus, we must understand the social democratic self-defence precisely as a quest to centralize the social context which is assumed to be ignored by militant democracy and neglected by the procedural view. As it stands, Malkopoulou and Norman's following comparison seems quite apt:

> Unlike militant democracy, the social democratic theorists do not confine themselves to discussing the narrow legalistic framework of democratic self-defence. They take a broader perspective that recognizes an active role for citizens in the pursuit of resilient democracy (Malkopoulou & Norman, 2018: 453).

Malkopoulou and Norman mark one of the main pillars on which the view of social democratic self-defence stands with this comparison. Relatedly, Nasström also marks the other pillar with her following critique of procedural democracy: "Although elections and deliberative procedures are essential to the working of democracy, they cannot themselves generate the legitimacy that they need to sustain over time. They need social back up" (Nasström, 2021: 381).

We have marked the position of the social model with respect to the legal (militant) model and the political (procedural) model and the basis of the

criticisms against these two views. With such marking, we can easily infer that the social model tends to avoid discussing the dissolution of a political party on a purely legal or political basis. It is simply because, according to the social model, conducting the discussion on such basis means ignoring the phenomenon of extremism, which is the basis of the practice of dissolution of a political party, and more importantly, the socio-economic structure is seen as the main determining factor in the emergence and strengthening of extremist demands. After marking the fundamental pillars of the social model once again, it would be appropriate to turn to Herman Heller, who is accepted as the founding figure of this view. It is appropriate since it is almost impossible to find a more suitable name than this founding figure, who had intense discussions with both the understanding of militant democracy and Kelsen's proceduralism in the interwar period. In other words, the way to comprehend the source of the objection by social democratic self-defence (which should be seen as the solution proposed by the theory of social democracy to the problem of democratic self-defence) goes directly through examining Heller's ideas on the issue. It is now better to take a closer look at the essential arguments of Heller, who suggest that;

- the economic and social disadvantages should be eliminated,
- public resources should be redistributed in a way that encourages the active participation of citizens in politics, and
- the climate of deep poverty and inequality that may feed extremism should be eliminated.

4.2. Herman Heller and His contribution to the Social-Democratic Self-Defence

A soldier who served as a volunteer in the Austrian army during the First World War, a dedicated militant in the armed struggle to transform the Weimar Republic into a socialist regime after the war, and an ardent member of many socialist youth organizations for many years that he could fit in his short life, an

exile just like many other Jewish intellectuals living in Germany during the Nazi rule, as well as one of the two most important theorists of German Social democracy along with Gustav Radbruch...All these define the same person, Herman Heller, who passed away at 42 due to his poor heart condition inherited from the First World War. No doubt, Herman Heller, who had a long-lasting effect on European political thought and especially on the strengthening of the understanding of social democracy, is an intellectual who has deserved more attention. Interest in him was far less than what was expected for a long time. However, it is safe to state that the interest in Heller has increased significantly, especially in recent years, even if it is not at the level we think it deserves. Both Kaynar (2020: 331) and Malkopoulou (2020a: 393) underline that the rise of authoritarian neo-liberal regimes has increased the attention towards Heller's studies.[53] As Kaynar comments: "Democratic parliamentary institutions are coming under fire and even dysfunctional on the grounds that they serve to the rise of authoritarian neoliberal regimes" (Kaynar, 2020: 331). Therefore, in such a political conjuncture, where parliaments became dysfunctional, Heller, who presented a unique recipe for parliamentary democracy, (which had experienced a similar crisis in a different historical period), started to attract more attention. In other words, as Malkopoulou reflects, Heller's accurate correlations between the extremist threats to democracy and their socio-legal, structural, and cultural contexts contribute to increasing this attraction. His deep vision in explaining the rising level of political extremism with the increasing socio-economical inequalities, doubtlessly, offers an essential perspective to those who want to examine the populist and extremist movements in today's Europe. It is reasonable to turn to Heller, one of the most influential figures of the period in which parliamentary democracies have suffered a lot, and argue that it is possible to get out of the crises by strengthening democracy rather than scraping democracy. Therefore, Heller seems crucial in search of a solution to a similar crisis that today's European democracies face. However, the point to be

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[53] Malkopoulou states that there has been an increased interest in Heller's work, especially in the critical evaluation of the consequences of neoliberal policies. She also underlines that the persistent and consistent work of especially David Dyzenhaus and Ellen Kennedy have contributed to increasing the attention towards Heller today.

underlined here is, as Agustin Jose Menendez (2015: 287) quite accurately puts it, learning from Heller does not mean going back to his time but understanding Heller's suggestions.

4.2.1. Achieving Social Homogeneity as the Best Possible Antidote Against Extremism

Heller believes that democracy can ensure its durability and sustainability only if all politically relevant segments of the society feel themselves to be an equal part of the political community. In that context, this sense of belongingness ensuring a commitment to the rules of political community is the *sine qua non* condition of a well-operating democracy. The importance of such a commitment comes from its role in creating a strong belief in achieving social equality, without which Heller thinks, "the individual liberty for which liberals fought are worse than worthless" (Dyzenhaus, 2000: 250). Therefore, this socio-psychological ground is the necessary precondition that makes the existence of democracy possible. The disappearance of this ground means a break with democracy. Consequently, the result of such disappearances can only give way to "civil war, dictatorship or alien domination" (Heller, 2000 [1928]: 260)[54]. Heller calls this socio-psychological state necessary for maintaining democracy as social homogeneity. This concept has a central role in eliminating threats to democracy and, therefore, in ensuring the maintenance of democracy in confidence. So, where does the centrality of this concept come from?

Heller points out the essential functions of social homogeneity in his famous article. Remembering these essential functions will facilitate our understanding of the reason of the centrality of social homogeneity in Heller's thought. First and foremost, ensuring social homogeneity assumes reaching consensus through dialogue, which is one of the most dominant features of democracy. It also

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[54] Heller's influential article "*Politische Demokratie und Soziale Homogenitat*" (Political Democracy and Social Homogeneity) was first published in Berlin in 1928. The version referenced during this study is the one which is translated into English by David Dyzenhaus and takes place in the book named "Weimar: A Jurisprudence of Crisis" published in 2000.

rejects violence and creates a basis for political dialogue. It is simply because the existence of social homogeneity is the only way to realize that two opposing groups are in debate. A political community that has not been able to create "we" consciousness and, therefore, failing in achieving social homogeneity will lose its faith in democracy. Consequently, disadvantaged segments of the society will believe that what is in place is a dictate (by governing class) rather than a debate (between equal groups) (Heller, 2000: 260). At this point, it would be appropriate to identify the social groups that Heller considers because it is vital to form a unity among themselves through ensuring social homogeneity.

When the general line of the idea of social democracy is remembered,[55] it will be seen that the two groups pointed out by Heller are the bourgeoisie and the proletariat. Paralleling the strategy of social democracy to increase the common welfare of the people with some reforms within the capitalist system, Heller also seeks a solution within the system. For him, comprehending democracy as merely following specific procedures and ignoring deep social inequalities will only reinforce the domination of the bourgeois class over the working class. Under the circumstances where social equality is not provided, the demands of the bourgeois class for freedom and democracy would only be a deception. It is because the bourgeois class has the power to determine the public opinion with its effective apparatus, cognitive and technological superiorities, and obvious superiority in almost every sphere inherent in civilization. The bourgeois class

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[55] At this point, of course, we do not intend to accept social democracy as a holistic and consistent thought and to attempt a definition of social democracy from this point of view. Like all other modern political ideas, the idea of social democracy refers to different phenomena in different historical contexts. At this point, the Russian Social-Democratic Workers' party, of which Vladimir Ilyich Lenin was a member, and the German Social-Democratic party led by Bernstein, which took its place in the Weimar parliament between 1920-28, had significant differences in terms of the descriptions of change or revolution. In this study, we refer to a version of social democracy (in which Heller is also involved), which is independent of the revolutionary strategy of Marxism and aims to overcome the social contradictions with reforms within the system. Such an understanding of social democracy presupposes that political parties, parliament, associations, and trade unions emerge within bourgeois democracy and that capitalism can be regulated and even transformed through these institutions (just like Heller thinks). Therefore, the parliamentary democracy also constitutes the most central element of the strategy of social democracy. Heller's intense intellectual efforts in this area undoubtedly point to this centralization.

can dominate the press, political parties, cinema, literature, and many other fields, mainly thanks to its economic power (Heller, 2000 [1928]: 262). Under such a political and social organization, there is no reason for the working class to be easily convinced that democracy would be the best possible option. This political system which resolves all the contradictions that spill over to the social surface by taking a stand on the side of the bourgeoisie and creating a sense of inequality of opportunity with its all institutions and decision-making bodies means nothing, but only an oppressive apparatus for the working class. This deep inequality and disparity to be felt by the working class, as one of the most fundamental components of the social structure, makes it impossible to establish political unity, the major function of politics. Politics that will be carried out by ignoring this deep unequal distribution of power would only be a game of democracy rather than democracy in its true sense. It is simply because this disparity removes the ground on which the parliamentary process needs to run in a healthy way. Politics of ignoring inequalities divides society in an irreconcilable way. Convinced that their democratic struggle against the bourgeois class, (which they see as the absolute owner of the system) will only lead to new disappointment, the working class may turn to extra-parliamentary alternatives. This, in turn, precisely means a political atmosphere or (in Heller's words) a socio-psychological state that will strengthen populist, far-right, fascist, or communist movements.[56] At this point, it is only the social homogeneity that can create such a belonging for all segments, especially the working class, who do not, or could not have a sense of belonging to the political formation in which they take place. Recall that Heller defines social homogeneity as a *socio-*

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[56] It initially seems interesting that a thinker like Heller, who strongly criticizes the current capitalist system and understanding of democracy of the corresponding period, adopts an anti-communist attitude. However, as stated before, this situation becomes more understandable, especially when the dominant position of German Social democracy in the interwar period is considered. It is because the social democracy of that period did not share the ideal solution that Marxism saw possible only with the abolition of capitalism. Along with this attitude, which is defined as reformist in Marxist circles, especially German social democracy, turned its face entirely into the system and advocated the proposal that the possible way to increase the welfare of the proletariat is regulated capitalism. Because it is only the capitalist system, with its apparent technical superiority and undeniable power to increase production, can create such welfare. Therefore, the solution should be to reform this highly productive system rather than abolish it and put it on a fairer track in terms of the distribution of wealth.

psychological state, therefore, it would not be wrong to define it as the process of acquiring a sense of belonging to the political formation that certain segments of society are in, but do not see themselves as subjects. This also means that social homogeneity is a process of persuasion and inclusion, without which it is not possible to call democracy as the best possible. In his own words:

> To be sure, political democracy wants to preserve the equal opportunity of each member of the state to influence the formation of political unity by summoning representatives. But social disparity can make *summum jus* (supreme right) into *summa injuria* (supreme wrong). Without social homogeneity, the most radical formal equality becomes the most radical inequality, and formal democracy becomes the dictatorship of the ruling class (Heller, 2000 [1928]: 264).

Heller defines the understanding of democracy which ignores social reality and compresses democracy into the procedural field, as formal democracy. In a sense, it is an incomplete democracy that has not been able to realize itself in real terms. It is because, as Nasström so accurately underlined, "democracy necessitates a strong belief not in public discussion as such, but in the existence of a common foundation for discussion" (Nasström, 2021: 383). So, what does Heller's recipe for ensuring social homogeneity include? To answer this question, it is better to begin with what Heller understands from democracy. He simply argues that: "Democracy means rule by the people. If the demos (people) are supposed to *kratein*(rule), it must exhibit a system for unifying wills for which the law of the small number is always valid" (Heller, 2000 [1928]: 259). For Heller, "all politics consist in the formation and maintenance of a unity" (Nasström, 2021: 382). In other words, the stability of democracy depends precisely on the success degree of establishing a political unity (as a singular body) among the people (as plurality). Such unity is possible only if all relevant segments of society strongly believe in this unity they have formed. The unending plurality and inherent diversity of social acts need to be united in a way that even the smallest part of society is not excluded if democracy desires to be ensured. In that sense, he describes democracy as consciously forming political unity from the plurality of people. Such a seemingly impossible mission can only

be achieved through securing social homogeneity. Thus, the crisis of democracy, for Heller, comes from the failure to achieve such social homogeneity.

In this definition, it is necessary to specify a point of warning. Heller's social homogeneity does not refer to the standardization of plurality or the assimilation of different identities. It should be avoided from any possible misunderstanding as if this notion refers to a conceptualization that tends toward a totalitarian or fascist imagination. As he also emphasizes, "social homogeneity can never mean the abolition of antagonistic social structure" (Heller, 2000 [1928]: 261). As Christian Krell (2016: 147) also notes, Heller marked himself off from a *Volkisch*[57] conception of the nation as the primary community. That is, the notion of nation in Heller does not refer to the group of people tied through blood and soil. Rather, with the concept of social homogeneity, he refers to a unified will at the point of commitment to "the existence of a common foundation for discussion and in the possibility of fair play for one's internal opponent, in the relationship with whom one thinks one can exclude naked force and come to an agreement" (Heller, 2000 [1928]: 260). In other words, Hellerian homogeneity refers to a homogenized community at the point of sharing a strong belief in democracy. Thus, the project of social homogeneity,[58] as Heller openly demonstrates, is based neither on national identity nor blood ties. Instead, what Heller describes as homogeneity is, in real terms, plurality within unity (Kaynar, 2020: 324). Heller's homogeneity is predominantly a social and economic category rather than a spiritual, cultural, or ethnic one.

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[57] The concept of *Volkisch* comes from the *Volkisch Movement*, an ethnic-nationalist movement that started in the late 19th century, continued into the Nazi era, and was active during the Nazi regime. This racist approach, which envisions the nation as a monolithic organic body united by blood and soil, also forms the basis of Nazi ideology.

[58] It is important to note that there are different approaches to Heller's conceptualization of the nation. One of the most interesting of them belongs to Marcus Llanque. In his article named *Hermann Heller and His Republican Way of Political Thinking*, he (2019: 16) argues that Heller, who considers the nation as an inevitable background for all self-governing regimes and, therefore, democracies, rejects the vulgar determinism of Marxism. He claims that Heller's approach to these notions, by arguing that the concepts of nation and state are not dependent on such determinism and have a unique potential, is quite similar to that of Antonio Gramsci. Like such interpretation of Heller's reaction to historical materialism, J. Kennedy (1984: 112) also claims that Heller considers both Kelsen's pure theory of law and Marxist materialism as forms of same positivism whose ontology is not unlike fascism.

While pointing out the essential elements of the social democratic self-defence, we stated that this perspective carries the suggestion that achieving the desired result in the fight against extremism only depends on the redefinition of many fundamental concepts of the political field. The notion of citizenship comes first among these concepts. A new formulation of the criterion of citizenship who are actively involved in the political process is strongly defended by Heller. Contrary to the bourgeois conception of the citizen as the passive consumer, an active conception of citizenship is central to strengthening democratic life. This form of citizenship, which will become the active subject of a new understanding of democracy, is different from the image of a citizen who is only a carrier of legal rights of the procedural approach. A new pattern of emotions is also built around this new form of citizenship. Such shared values as trust, empathy, solidarity and responsibility constitute this new pattern of emotions. Thus, this new conception of citizens circulated through shared common values is critical in the struggle against extremism. This point is highly crucial because, in a way, it is possible to notice an implicit criticism of the militant democracy pursued by social-democratic self-defence. Recall that militant democracy believes that one of the main reasons for extremist demands to be reciprocated on a social basis is the emotional character of the masses, which makes it entirely open to manipulation. On the other hand, the social-democratic self-defence proposes to look at the positive side of emotionality, in a way, with this new definition of citizenship, which builds around a new pattern of emotionality. This attitude also aims to underline an alternative to the approach of militant democracy which equates emotionality with irrationality. Relatedly, this can also be considered as a response to militant democracy's distrust depicting the public as an unconditional acceptor of propaganda. As Alf Ross (1952: 175; cited in Malkopoulou & Norman, 2018: 451) has indicated, the population may seem quite sensitive to propaganda. However, there is always room for making the population "propaganda-proof" by emphasizing a new positive emotionality and democratic education. So, how can this new vision of citizenship, (which the social model determines as one of the central elements in the fight against extremism), be turned from potential to actual?

Remember that extremism for social democracy is a problem of deprivation and degradation from the lenses of social democracy. The unequal distribution of economic resources also deprives the time and energy of citizens needed to engage in politics. Additionally, the doctrine of capitalism based on selfishness and extreme individualism counterweights the solidaristic political atmosphere that society needs. These conditions, unfortunately, create an excellent basis for the strengthening of extremist demands. Therefore, Heller makes a series of concrete proposals to remove this negatively favourable ground.

First and foremost, as Dyzenhaus (1997: 193) also underlines, Heller believes that, for social homogeneity to be realized, the formal constitutional state of liberal *Rechtsstaat* (state based on the rule of law) must be completed by the material and social state and transform itself into *Social Rechtsstaat*. Recall that Heller's formulation of social homogeneity depends on a fundamental assumption: any democracy that cannot secure social equality cannot ensure the durability of political unity, and it inevitably faces the risk of destruction. In that sense, social homogeneity is, in an unmediated way, linked with social and economic equality. These two essential preconditions ensure the successful operation of the democracy. In that sense, the need for securing the social homogeneity and hence realizing democracy in its true sense obligates such a movement from *Rechtsstaat* to *Social Rechtsstaat*.[59]

Heller sees the demand for *Social Rechtsstaat* as the most effective form of struggle against extremism. This demand states that some structural obstacles in

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[59] It is worth emphasizing that this proposition also points to Herman Heller's distance from the real socialism of the period. First, he moves away from the line of Marxism by not considering the transformation of the state into a class state as the primary condition for eliminating social injustice. He thinks that the reorganization of the capitalist state in a way that will guarantee social justice and social equality will be enough to eliminate deep inequality. The basis of this interpretation is undoubtedly Heller's reflection on the concepts of nation and state in a very different way from classical Marxism. Opposing the internationalist attitude of Marxism regarding the nation, as cited by Lammers (2013: 50), he aimed to reconcile socialism and the nation in his works. It does not adopt the demand for radical and fundamentalist change for the society and state structure and considers both phenomena as "acceptable realities." However, he thinks that the relations in these two significant fields must be reformed in accordance with social justice, solidarity, social equality, and equality of opportunity.

front of the individual who wants to become an active subject in the social and political field must be overcome. Heller, as a social democrat, thinks that every individual as a citizen does not mean they can freely enjoy their citizenship rights equally. It is because, in a conjuncture where social justice is not established, not all citizens can benefit from their rights equally. This proposition also criticizes the formal definition of freedom in procedural democracy. Therefore, the primary purpose of the state should render this equality, which has been provided at the formal level, practically applicable. This can only be possible by implementing a series of radical reforms. These reforms include:

- The allocation of tax income to eradicate social injustice
- The allocation of public resources in a way that provides necessary time and energy for citizens to be active subjects in the decision-making process
- The establishment of protective state mechanisms to prevent income inequality
- The abolition of all social privileges for the realization of equality of opportunity
- The establishment of a ground where political parties can compete on equal terms for the actual implementation of democracy.

Furthermore, the *Social Rechtsstaat*, which envisages the necessity of reorganizing the state on the axis of social justice, freedom, and social equality, is essential for ensuring social homogeneity. At this point, Heller defines *Social Rechtsstaat* and social homogeneity as two complementary elements. Then, he (2000 [1928]: 256) argues that the state's primary duty is to achieve social homogeneity, which means the state must incorporate the representative of all politically relevant sections of the people. At the same time, this representative should feel collegial responsibility towards the people. As Kaynar (2020: 324) comments: "In this way, the people in their plurality are equally represented while representatives are equally positioned vis-a-vis the people."

Heller's argument that the state must be reorganized to eliminate social inequality is also crucial in his polemic with Hans Kelsen. Heller sharply criticizes the idea of formal *Rechtsstaat*, (which he considers Kelsen as a defender of this view) and defines formal *Rechtsstaat* as a product of liberal thought. Heller places the notion of legal positivism at the centre of his criticism and harshly criticizes this notion over Kelsen. He opposes Kelsen's conceptualization of pure law, which he thinks that it is utterly devoid of political context. He claims that all conceptualizations in the legal field are necessarily political and determined by specific historical and social conditions. Kelsen, however, removes the socio-political ground and attempts to conceptualize law in isolation from all these determinations. Heller believes that, as Malkopoulou (2020a: 398) perfectly underlines, the conceptualization of positivist legal theory is based on the incorrect analogy of the mathematical logical method to law. Hence, legal positivism establishes for itself an imaginary sense of security and objectivity. In this way, Kelsen's legal positivism[60] (as an immediate reflection of "fear of decision" (Malkopoulou, 2020a: 398) which positivists mostly have) poses a severe danger to democracy. As Dyzenhaus (2000: 251) comments: "Kelsen's positivism, which indiscriminately grants the title *Rechtsstaat* to any state, is, in Heller's words, the ideal catalyst for dictatorship." Such accusation also shows the point where the debate between Heller and Kelsen (considered to be carried out more on the level of constitutional law) is related to democratic self-defence. It is because, as Dyzenhaus (2000: 252) shows, Heller's conceptualization

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[60] Concerning this point, it is worth emphasizing that it is helpful to remind the relationship between these three influential thinkers, which are frequently compared, especially in David Dyzenhaus's important work *Legality and Legitimacy: Carl Schmitt, Hans Kelsen, and Herman Heller in Weimar*, published in 1997. Heller, who is the opposite of Kelsen with his anti-positivist attitude toward the law, on the other hand, shares the same ground with Carl Schmitt in this manner. Like Schmitt, Heller strongly opposes a value-neutral conceptualization of law and thinks that law is formed and shaped politically and by the determination of social and cultural elements. However, as Malkopoulou (2020a: 399) also underlines, Heller strongly objects to Schmitt's rejection of *Rechtsstaat.* Additionally, he never shares Schmitt's anti-pluralists and anti-liberal stance. In other words, both Schmitt and Heller (as opposed to Kelsen) believe that there is no such law independent from the political context and social determination. However, when it comes to democratic governance and the provision of social justice, Güngören (2017: 70) argues that Heller and Kelsen take place on the same side against Schmitt. Concerning this point, in his influential article "*Authoritarian Liberalism?*", Heller (2015: 296) himself openly criticizes Schmitt and argues that "Carl Schmitt seeks to present the state of exception as true and proper ordinary state."

of *Social Rechtsstaat*-the social state based on the rule of law- fundamentally aims to protect and strengthen democracy against anti-democratic threats. Such a transformation from *Rechtsstaat* to *Social Rechtsstaat* is the most effective way of dealing with political instability, hence protecting democracy.

4.3. Universal Social Security as a Complementary Strategy for Social Democratic Self Defence

We have shown that the major proposition of social democratic self-defence is shaped through the concept of social homogeneity. Still, this is not the only approach in social democratic self-defence. Another response from the social democratic perspective to the notion of democratic self-defence is the social security approach.[61] Recall that Heller underlines "disparity" as the most severe threat to democracy (Kennedy, 1984: 109) and states that the only possible way for democratic self-defence to be successful is to eliminate this disparity. However, as Nasström points out, the perspective of social security claims that uncertainty rather than disparity is the primary source of extremism. Therefore, the most successful democratic self-defence method is to establish a social security model that will end this climate of uncertainty. The rationale behind this argument is mainly that more than poverty, it is a sense of uncertainty about how long this poverty can last, which frightens the broad masses who personally experience the deep inequality in the social sphere. Gustav Möller describes this anxiety of uncertainty in a perfect manner:

> What makes life *Gehenna* for the great masses of modern industrialized society is not primarily a comparatively low standard of living, or habit of wear and tear in an often dull and monotonous work environment, which slackness and paralyzes the spiritual resilience of people and leaves no room for free time. All this is undoubtedly an evil of the times and should be alleviated. Still, the worst of evils is the economic insecurity and uncertainty, the threat to tomorrow's provisions, and the catastrophe that constantly hovers over the heads of the manual worker and his family, which, when it occurs, breaks down the home

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[61] It should be noted that in such a categorization, we follow the framework drawn by Sofia Nasström in her article titled *Democratic Self-defence: Bringing Social Model Back* published in 2021.

and destroy what has been created by decades of hardship and renunciation. (Möller, 1928: 3; cited in Nasström, 2021: 384)

The most accurate strategy that can be developed against this uncertainty - described by Möller in this way- would be to build a social security scheme that will strengthen social solidarity. This is because it is impossible to convince the broad masses, who feel deep anxiety about the future, that the current democratic regime should be adopted by all segments of society as a common value. Therefore, the essential rationality behind the social security scheme is precisely the following: "social security has the capacity to unite citizens into an entity of solidarity" (Möller, 1947: 343; cited in Nasström, 2021: 385).

It is worth underlining that the tradition of social security is an approach which proposes to examine the material conditions of political extremism. Additionally, it proposes a solution that is aware of the need to eliminate the socio-emotional ground on which the extremism is fed. In parallel with the tradition of social homogeneity, the view of social security also believes that political extremism craves the moments when emotions such as fear and anxiety overwhelm the whole social ground. Such an emotional atmosphere will make it possible to draw attention to anti-democratic forces at a level that would never be attractive under ordinary conditions. Thus, social security scheme must be considered a robust response to the possibility of strengthening extremist demands. As Nasström (2021: 386) claims: "Since enemies of democracy know how to exploit individual and collective anxieties, one must target this condition directly and aim for a scheme of universal social security; it keeps enemies of democracy at bay."

We have stated that Nasström categorizes the tradition of social security as one of the two systematic searches for answers to the rise of extremism, together with the tradition of social homogeneity under the view of social-democratic self-defence. Although we rely on such a categorization in this study, we differ with Nasström at one point. While Nasström tends to describe the traditions of

social homogeneity and social security as two separate approaches within the social model, we think that the two approaches complement each other. We think the social security scheme is not only a search for a cure for uncertainty, but also a vital step toward ensuring social homogeneity. The social security scheme plays a vital role in forming the "we" consciousness that social homogeneity is trying to create. Therefore, there is no reason for citizens with deep concerns about the future to adopt the "we" consciousness, which is supposed to hold the society together. Hence, based on such a rationale, it is safe to claim that it is not possible to achieve social homogeneity without implementing the schema of social security.

4.4. Promises of Social Democratic Self-defence for Today

Throughout this chapter, we have examined social-democratic self-defence as a rationale that has been neglected but has proven its success in different historical contexts. We think that this neglected approach can effectively respond to the democratic erosion created by today's neoliberal and authoritarian regimes, characterized by insecurization and growing precarisation.[62] In this context, especially the social security scheme of the social model can be an effective antidote to the climate of insecurity, deep anxiety, and uncertainty about the future. Relatedly, the view of social homogeneity can also provide a robust barrier to the marginalizing tendency, which is also another hallmark of neoliberal authoritarian regimes. Recall that we stated that the social model preferred to discuss the issue of dissolution of a political party over the concept of extremism. We added that he considered the phenomenon of extremism as an expression of the deep socio-economic inequalities that exist. To the extent that this is the case, it is possible to foresee that the reflex that the social model will

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[62] The concept of *precarization* describes the new phase of the employment field, which is defined by the conditions of insecurity and flexibility. Guy Standing's book *Precariat: The New Dangerous Class* (published in 2011) directly impacted the concept's use in social theory. Standing finds that flexible working conditions such as freelance, remote, and home office create a new production regime, whose most dominant feature is insecurity and uncertainty. This new regime created a class called the precariat, the most fundamental characteristic of which is futurelessness.

give to the issue of closing a political party will be to go beyond the legal context in which the issue will be tried to be imprisoned in the first place. However, it should be added that the social-democratic self-defence approach will adopt a mechanism of persuasion and inclusion. This approach assumes that if a new understanding of democracy based on social justice and social equality has not been established or created, both extremism and the immediate response of closing a political party will always be ready to hit the social and political surface. In this context, it is highly significant that the social model raises initially the question of *which democracy* when it comes to democratic self-defence. At the same time, we think that the social model will play an extremely key role in overcoming the elitist and depolitical stance of militant democracy. Similarly, it is possible to say that the social model presumes a much more inclusive and comprehensive solution to certain naive assumptions of the procedural approach. In the next chapter, we will discuss these assumptions in comparative way.

CHAPTER 5

CONCLUSION

In the previous chapters, we examined, respectively, the basic positions of the three prominent views (militant democratic, procedural democratic, and social democratic) with respect to democratic self-defence by underlining the basic characteristics of each. We started from the political conjuncture in which these views were discussed intensively coming to our times. In this chapter, we will examine the possible promises and adequacy of three different stances to be taken when discussions on the dissolution of a political party arise. In other words, the possible promises and shortcomings of militant democratic self-defence, procedural democratic self-defence, and social democratic self-defence with respect to a political party closure are discussed.

It is possible to foresee that a response from the mentality of militant democracy will desire to resolve the tension between promoting public freedoms and preserving public order with security and order-oriented guideline. At this point, the founding figure, Loewenstein's propositions such as "fire must be met with fire" and "in times of crisis, legality takes a vacation" clearly reveal that a reflex based on the rationale of militant democracy will possibly insist on a rigid and uncompromising attitude with a sense of urgency. In a way that will not be difficult to foresee, an attitude will be taken to ensure that a political party's closure remains within purely constitutional and legal grounds. A statement that the attitude of democracies which guarantees freedom of thought does not mean that democracies will be a spectator to the abolition of democracies will undoubtedly be among the arguments of this perspective. Similarly, it will be quite possible to hear such an argument that democracy's building of a shield of protection against anti-democratic demands will be justified and legitimate under

all circumstances. There are clear traces of such reasoning in many decisions on the dissolution of a political party taken in different political conjunctures.[63]

Additionally, a justification that democracies have to take preventive measures to protect other sections of the society from being "poisoned" by anti-democratic ideas would also be among the suggestions of this rationality. This "nip-in-the-bud" attitude will also help to understand why some political parties that will never have enough voting potential to transform the democratic system were closed in the past. Similarly, the striking example of the destruction of the Weimar Republic[64] by the Nazis through following democratic procedures will probably appear as a strong justification. Well, what are the promise(s) or limitation(s) of looking at a possible case of closure of a political party with the lens of militant democracy?

We think the fundamental reason that militant democracy has become the dominant interpretation in this field is also the most crucial advantage of the concept. The mentality of militant democracy necessitates a preventive and immediate form of democratic self-defence. In this context, it envisages a quick and immediate response to anti-democratic threats and formations. Contrary to procedural democratic and social democratic self-defence, it develops a pre-emptive reflex at the point of eliminating the concern for the continuation of the democratic structure and functioning. At this point, as we have mentioned

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[63]The Socialist Reich Party of Germany (SRP), which was closed in 1952 for allegedly being a follower of the Nazis, can be cited as an example of the decisions on closure that took place in these different conjunctures and were based on the rationale of militant democracy. Similarly, the main argument of the militant mentality, "There can be no freedom for the enemies of freedom," is also seen among the reasons for the closure of political parties that were dissolved in Turkey after 1980. At the same time, not surprisingly, the Communist Party of the Basque Territories, dissolved in 2008, was dissolved on the grounds that its separatist demands did not comply with constitutional values and that it was legitimate for democratic regimes to protect themselves.

[64] As we mentioned, Rijpkema (2018: 2) refers to the Weimar example as the *"locus classicus"* of militant democracy. This is the example most frequently used by the proponents of militant and neo-militant democracy to show how excessive tolerance open to manipulation is. Particularly, Goebbels's oft-repeated words, "This will always remain one of the best jokes of democracy, that it gave its deadly enemies the means by which it was destroyed" (cited in Tyulkina, 2015: 1), reveals that these words are so convenient for supporters of a militant democratic mindset.

before, it plays a critical role in alleviating the existential pain felt by liberal democracies that the democratic order can be sacrificed to meet the requirement of the toleration principle. We can argue that such a quest to prevent this pain from getting stronger and developing into a more severe problem is the most obvious point that makes the rationale of militant democracy attractive. In other words, the fact that a response to be developed based on militant democratic rationality presumes a quick and immediate intervention can be considered a strong point.

However, it is possible to identify certain limitations of such a response based on militant democracy. The first and most important of these is that such a reflex can quickly become highly functional in building or consolidating an authoritarian regime. The relatively painless legitimization of the dissolution of a political party with the lens of militant democracy can undoubtedly attribute the existence of different representation groups in the social sphere to the arbitrary attitude of the regime. In other words, the trump card of closing a political party effortlessly in relative terms can turn into the sword of *democles* directed at the opposition in the hands of the ruling party. This possibility stems from the inherent arbitrariness of identifying the group or party whose freedom of thought and expression has been violated by claiming to be anti-democratic, as Ancetti and Zuckerman (2017) have accurately determined. This arbitrariness arises from the impossibility of following a democratic procedure in the determination of the alleged anti-democratic group; therefore, this determination is made by reference to Schmitt's friend/enemy distinction.[65]

Another related shortcoming derives from the elitist assumption that militant democracy carries, as Malkopoulou and Norman (2018) clearly argue. This elitist attitude indicates a deep distrust of the people and their ability to determine what is right for them. The image of the people, which is identified

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[65] This argument is explained in detail in the Chapter Three, under the subheading of "Inherently Arbitrary Characteristic of Militant democracy". For a detailed justification of this argument, the relevant part of this study can be reconsidered.

with irrationality and intense emotionality and depicted as being deceived at any moment, especially in Loewenstein's texts, may lead to the disappearance of the elements of trust in the people and politics. Such a loss of faith can inevitably lead to the depoliticization of such a highly political phenomenon as the dissolution of a political party. This is simply because an interpretation that the people cannot solve a "problem" faced by democracy on their own, or the expectation that the issue shall be handed over only to their competent people with a technocratic perception may lead to a weakening or disappearance of belief in politics over time.[66]

Recall that we have stated that the rationale of militant democracy has a highly dominant position in determining the attitude taken when the issue of the prescription of a political party comes to the fore. Nevertheless, we also know that even in the interwar period, when democratic self-defence began to be discussed intensively, the mentality of militant democracy was harshly criticized by different political perceptions. We have also underlined that the foremost of these criticisms belongs to the Austrian-German Legal scholar Hans Kelsen. As Dyzenhaus (1997:103-106) states, Hans Kelsen's understanding of procedural democracy expressed the most substantial criticisms of the rationale of militant democracy, which he considers as a form of disciplined and substantive democracy. Claiming that protecting democracy in an undemocratic way would be the most significant harm to democracy. This approach categorically rejects all arguments like "democracy can be protected albeit at the expense of violating the principle of popular sovereignty" or "the fate of democracy cannot be left to the irrational masses." For the procedural mindset, democracy can be a democracy if and only if one adheres to the majority decision. Democracy, first of all, requires a deep trust in itself and in the people, who are the only responsible subjects of democracy. If we recall Kelsen's iconic words, "Those who are for democracy cannot allow themselves to be caught in the dangerous

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[66] This argument is explained in detail in the chapter titled *Procedural Democracy and Fundamental Criticisms to Militant Democracy*, under the title of "The Elitist Assumption of Militant Democracy". For a detailed justification of the argument, the relevant part of this study can be returned.

contradiction of using the means of dictatorship to defend democracy. One must remain faithful to one's flag even when the ship is shrinking" (Kelsen, 2006: 237; cited in Rijpkema, 2018: 34).

What can procedural mindset promise, and which limitations can it cause for approaching the issue of closing a political party with the lens of a procedural democracy, accepted as a categorical rejection of the rationale of militant democracy?

First, we may predict that a response from the rationale of procedural democracy would persistently refrain from giving an affirmative answer to the dissolution of a political party. This response will probably state that the most defining characteristics of democracies are freedom of expression and plurality; therefore, political parties whose views are not welcomed most of the time also have the right to express their thoughts. We think that the traces of exactly such an attitude were also found in the case of the closure of a political party in Turkey. It is possible to come across the traces of an opinion expressed in line with such rationality in the article, *Counter Vote* by Yılmaz Aliefendioğlu, who voted against the decision of the Turkish Constitutional Court to Close the Socialist Party in 1992. The Supreme Court of Appeals Chief Public Prosecutor's Office, together with the indictment dated 14.11.1991, decided to close the Socialist Party by the majority of votes in the lawsuit filed in the Constitutional Court for the closure of the Socialist Party, which it claimed was engaged in activities aimed at disrupting the indivisible integrity of the state with its country and nation. However, Yılmaz Aliefendioğlu, a court board member, voted against it. In his countervote article, Aliefendioğlu stated that political parties, as indispensable elements of democratic political life, have implemented the principles of majority and pluralism with their organizational structure (Sancar, 2000: 204).[67]

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[67] Aliefendioğlu also stated that participation in democratic life is possible when people participate in organizations with a democratic structure with their voices and thoughts at every stage of the decision-making process. Hence, the central role of political parties in democratic

The argument that the trump card of closure of a political party has the potential to be turned into a tool to suppress the opposition by the governments will also be marked as one of the objection points. Another argument that the dissolution of a political party that has not been involved in violence will harm the democratic essence more seriously will be among the justifications for this response. Due to these reasons, it can be seen that the most significant advantage of the rationale of procedural democracy, which states that rigid and harsh stands should be avoided in the relevant process, will be its insistence on remaining loyal to the democratic essentials. If we consider democracy as the guarantee of a ground where different social demands can be voiced, even if they are not always compatible with the system, we can predict that the lens of procedural democracy will strengthen the belief in democracy. It is because democracy differs from authoritarianism in that it can learn from its mistakes and tolerate even the demands directly opposite to it. This contribution of procedural democracy will be better understood if we perceive democracy as a reasonable belief in the principle of equal representation of ideas and a process of persuasion for the appropriate application of these principles.

Much related to the strengthening of such belief in democracy, the strengthening of a reflex based on the mentality of procedural democracy can also prevent the radicalization and undergrounding of marginal tendencies. It is possible to come across many movements claiming that the political sphere excludes them and does not recognize any right to speak; therefore, they turn to more radical methods because they believe they cannot gain anything from the struggle in the legal political sphere. Undoubtedly, the essential factor in reinforcing the belief of such movements in democracy can be a guarantee that their right to express their opinions cannot be restricted for any arbitrary reason. This belief in a

political life stems from these characteristics. As a matter of fact, guaranteeing democratic pluralism and democratic participation is possible by respecting the right of people whose views are not approved or disliked all the time to express their views openly. Freedom of thought, one of the most basic conditions for ensuring social peace, will guarantee the representation of different views. Political parties cannot be closed unless they resort to violence and terror to realize their political projects, even if their political projects differ from those of the wider society. (Sancar, 2000: 204-206). It is worth noting that we think Aliefendioğlu's attitude in the justification of the countervote perfectly corresponds to the rationale of procedural democracy.

democratic regime can make the anti-democratic parties moderate. In stark contrast to the view of militant democracy, the suggestion based on the mentality of procedural democracy would also preserve the belief in the people, which liberal democracies identify as the sole holder of sovereignty without any condition and reservation. Contrary to the Jacobin attitude "for the people despite the people," which can be traced in the mentality of militant democracy, procedural democracy carries the belief that the people can turn from a mistake which stems from their own choices. Therefore, belief in both democracy and its executive subject, the people, can be seen as the most significant promises of the vision of procedural democracy.

Alongside this vital promise of procedural democracy, we should mention one of its limitations, which advocates of both militant democracy and social democracy have mentioned. The other two viewpoints express the criticism that a response based on the rationality of procedural democracy would be naive or overly optimistic. Similarly, when the dissolution of a political party is on the agenda, it is highly possible that both the opponents of militant and social democratic self-defence would criticize a strategy that follows the mentality of procedural democracy for being "far from reality" or "unrealistic." It is also possible to encounter criticisms that this naivety and optimism comes from Hans Kelsen's over-formalistic understanding of democracy.

However, we must express our serious doubts that these criticisms successfully point out the deficient or disadvantageous aspect of a reflex based on the mindset of procedural democracy. We think that approaching the practice of dissolution of political parties, as Kelsen perceives, opens up more space for equal representation of different social demands. Undoubtedly, the Weimar example is tragic, but when it comes to the practice of party closure, it is possible to come across many situations where this practice has turned into a government's oppression mechanism as a trump card.[68] Therefore, we think there is no

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[68] Particular examples make one think that it is possible to find traces of such arbitrariness in the closure decisions made in Turkey. Two different decisions determining the violation of rights

shortcoming that the mindset of procedural democracy, (which might adopt a more prudent approach when such an agenda arises), is overlooked at this point. This more sensitive reflex is fed by the attitude of not wanting to sacrifice democracy for such a cost, considering the cost that the freedom of expression can be manipulated. The mentality of procedural democracy has a strong belief that democracy has historically proven its absolute superiority over all other regimes. Democracies might overcome all the problems without violating the principles they have been founded on.

At this point, we think the mindset of social democratic self-defence is more successful than the militant view in detecting the primary deficiency of procedural democracy. As Malkopoulou and Norman (2018), and Nasström (2021) clearly show, procedural democracy has an imagination of the political as if it is free from social dynamics. It is significant to determine this attitude as a crucial shortcoming. When it comes to democratic self-defence, Malkopoulou and Norman (2018) warn that such a response based on the mindset of procedural democracy unconditionally may open the door to the normalization and rapid spread of certain anti-democratic ideas that may have devastating effects. The social democratic view, which believes that politics should always be considered a phenomenon occurring within particular social and economic relations, argues that such images of the political in itself, isolated from this social reality, have severe deficiencies in democratic self-defence.

regarding the dissolution of a political party by the ECHR (European Commission of Human Rights) -as a higher norm-setting institution- are incredibly critical in terms of showing this arbitrariness.

First, concerning the case of the United Communist Party of Turkey, which the Constitutional Court dissolved on July 16, 1991, ECHR declared its decision determining violation of rights in its report dated September 5, 1996. One of the most fundamental reasons for this decision was that "it is one of the basic features of democracy that it allows suggestions for the solution of a country's problems through dialogue and without resorting to violence, even if they are disturbing" (see Case of United Communist Party of Turkey and Others v. Turkey, par. 56; cited in Uygun, 2000:262).

Similarly, in the case of the Socialist Party, which the Constitutional Court dissolved on July 10, 1992, the ECHR once again gave an infringement decision against Turkey on January 27, 1997. One of the main reasons for this decision was as follows. "Just because a political program is contrary to the basic principles and organization of the state does not mean that it is incompatible with democracy" (see at Case of the Socialist Party and Others v. Turkey, par.47/3; cited in Uygun, 2000:264).

We have also examined the discussions about the dissolution of a political party through the mentality of social-democratic self-defence, and what kind of limitations can it cause? It is not difficult to predict that the mindset of the social democratic self-defence towards the phenomenon of party closure will differ radically from the views of militant democracy and procedural democracy. The rationale of social-democracy accepts the phenomenon of closing a party as an end-product. Therefore, it states that thinking about the main factor that brings out this phenomenon is necessary to resolve the issue in a democratic and egalitarian manner. For the mentality of social democratic self-defence, this central element which should be examined in depth (to reach a sustainable solution to the problem of closure of a political party) is political extremism. Understanding the phenomenon of extremism, which is considered as an immediate reflection of the economic inequalities existing in the social sphere, is the core element of the success of democratic self-defence. At this point, the rationale of social democracy argues that both the views of militant and procedural democracy overlook these socio-economic relations. Both approaches tend towards short-term and daily solutions by missing or ignoring socio-economic dynamics. As a matter of fact, discussions on the closure of a political party in a social formation where social equality and social justice are not provided and therefore always suitable for political extremism, will not provide a permanent solution. In such a socio-economic formation, extremism will continue to exist in the political sphere as an immanent element. Relatedly, the objection that the question of "which democracy is worth protecting" in a democracy that does not centre on the elements of social equality and social justice precedes the following question: "Should a political party be dissolved or not?" will also be among the arguments of the mindset of social democratic self-defence. That is because the mindset of social democratic self-defence claims that the legitimacy of democracy not based on the idea of social equality will be controversial. The legitimacy of a democracy that cannot achieve social homogeneity at the point of not having an equal right of political expression and representation due to existing economic inequality is doubtful. When understood this way, Herman Heller's argument that ensuring social homogeneity is the best

defensive position to be formed towards the question of political extremism seems much more understandable. Therefore, in a democracy based on social justice and social equality and able to guarantee social homogeneity, the problem of political extremism and the paradox of dissolution of a political party will find a solution.

What does looking at the phenomenon of the closure of a political party with such a lens promise? We think the mindset of social democracy offers a more comprehensive analysis of the notion of democratic self-defence through bringing the social elements to the centre. The proposition of the rationale of social democracy that the conception of a political sphere free of socio-economic determinations always risks generating everyday solutions for both the rationale of militant and procedural democracy seems extremely convincing. Although it is impossible to describe a direct relationship between social inequalities and political extremism, it is almost undeniable that socio-economic inequality is quite deep in many conjunctures where violence is easily functionalized to provide political benefits.[69] When understood in this way, the long-dated but promising reflex of the mindset of social democratic view that it will reach a more effective and permanent solution in the long run, seems as the most considerable promise. In a social formation in which one has overcome the limitations s/he encounters in accessing the mechanisms of representation with a more fair and egalitarian redistribution of wealth, the discussions on "dissolution of a political party" are much less likely to come to the fore.

What could be the most crucial shortcoming of this mentality, which suggests a much more permanent solution in the long run? The answer, we guess, is hidden in the phrase "in the long run." As can be easily noticed, the rationale of social democratic self-defence envisages a mediated response to the question of dissolution of a political party, in stark contrast to militant rationality. While it is

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[69] At this point, Heller's argument that economic inequalities make democracies more vulnerable to different social and political crises is very convincing. Relatedly, Heller (2015; cited in Malkopoulou & Norman, 2018: 454) argues, economic and social inequality also opens the door to political radicalization and instability.

almost certain that the ideal of a democracy based on social equality will create an extremely positive ambiance in the political atmosphere, it is also highly doubtful whether democracies can, by its very nature, wait for such a long-range strategy. It is possible to define politics as a mechanism which requires showing quick reflexes to rapidly changing conditions. Understood in this way, it is not difficult to predict that a reflex based on the rationale of social democracy will be found to be highly mediated. Such criticism is perfectly reasonable. Indeed, as it stands, this criticism will, in our opinion, reveal the most crucial shortcoming of a reflex based on the mentality of social democratic self-defence.

However, in such a political climate where today's populist authoritarian leaders mark one of their hallmarks as their ability of quickly decide, a minor objection to this reasonable criticism also becomes perfectly proper. Clearly, many populist authoritarian leaders, who have become the most basic signifier of today's politics, complain about the clumsiness of parliamentary structures and their inability to make quick decisions. In a political atmosphere where, parliamentary control is weakened by constantly strengthening the executive branch, it is evident that such a criticism, which is directed at the rationale of social democracy over the notions of "speed and time" deserves to be reconsidered. When it is remembered that the demands of these leaders from the society in the construction of a more authoritarian regime are generally calling for urgency, it becomes clear that taking decisions quickly will not provide a self-evident benefit.

Finally, what can we say about the paradox of closure of a political party, considering both the general characteristics of the three different rationalities that we underlined in the previous chapters of the study and the possible promises and limitations of each approach we envisaged in the conclusion chapter?

Crucial thing to say is that different alternatives are always possible and it is necessary to think about these alternatives in all circumstances. It was the

suspicion[70] in this proposition that made this work possible. In other words, a belief that the militant democracy, which was constantly referred when the practice of closing a political party came to the fore, could not be the only answer in this field, made this study possible. Certainly, although the rationality of militant democracy is not a response that should be abandoned altogether and has important promises in the context of democratic self-defence, it is not the only mentality that can reflect in this debate. In contrast to this rationale, which tends to discuss the closure of a political party on legal and constitutional grounds, it should be noted that both rationale of procedural and social democracy reveal how this issue can be handled from either a political or social perspective. We tried to show that the legal and constitutional discourses regarding the closure of a political party is not without an alternative and that the political perspective has important promises regarding this issue.

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[70] What compelled such a belief was that while doing some readings at the very beginning of this study, I came across the proposition in the preface part of the book *İltica ve Bölücülüğe Karşı Militant Demokrasi* by Vural Savaş, who initiated the lawsuit for the dissolution of the Welfare Party in 1998 as the head of the Constitutional Court at the time, Savaş (2000:8) ended the preface of his book, in which he explained at length the reasons for the dissolution of the relevant party, saying that "every Kemalist is unconditionally in favor of militant democracy." This statement made us think that the most crucial trump card of the rationale of militant democracy could be to describe itself with a strong emphasis that there is no alternative. This study is the product of such a search to understand whether the rationality of militant democracy in this field is really without alternatives.

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A. TURKISH SUMMARY / TÜRKÇE ÖZET

Hiç kuşku yok ki, modern siyaseti en temelde özgün bir temsiliyet rejimi olarak tanımlayan liberal demokrasiler açısından, bu temsiliyetin yetkili temel mekanizmaları olan siyasi partilerin kapatılabilmesi ciddi bir gerilim ve çelişki yaratır. Bu gerilimin merkezinde ise liberal demokrasilerin, ifade ve örgütlenme özgürlüğü, farklılıklarla birlikte bir arada yaşam ve tolerans gibi kimi nitelikleri kimliğinin temel unsuru olarak belirlemiş olması yatar. Bu haliyle kabul edildiğinde, belki de liberal düşüncenin politik zemindeki en dolayımsız izdüşümlerinden olan siyasi partilerin, kapatılabilmesi liberal demokrasiler açısından haliyle bir paradoks yaratır. Zira, tarihsel olarak Nazilerin demokratik kanalları manipüle ederek iktidara gelmiş olması ve daha sonrasında demokratik rejimi lağvetmesi, liberal demokrasilerin içkin niteliklerinden olan tolerans olgusunun sınırlarına dair ciddi tartışmaları beraberinde getirmiştir. Siyasi partilerin kapatılmasına ilişkin tartışmalar da işte tam olarak böylesi bir gerilim hattı üzerinde cereyan eder. Bir tarafta ilgili siyasi partilerin kapatılması yönünde alınacak olan bir kararın demokrasi açısından maliyeti, diğer tarafta ise kapatılmaması durumunda ilgili partinin demokrasiyi manipüle ederek yıkma mücadelesinde alabileceği muhtemel yolun kestirilememesi, olguyu oldukça katmanlı ve karmaşık bir hale getirir. Bu çalışmanın en temel motivasyonlarından birini de tam da bu katmanlı ve çetrefilli meselenin hangi kavram setleri ile siyaset teorisi bağlamında tartışılageldiğini tespit etmek ve serimlemek oluşturuyor. Böylesi bir motivasyonun ön ayak olduğu bu çalışmada cevabı aranan sorular ise şunlar olacak: Meşru temsiliyet kanalları olarak siyasi partilerin kapatılması liberal demokrasiler için ne anlama gelir? Nasıl bir gerilim yaratır? Bu gerilimi aşmak için hangi yöntemler kullanılır? Böylesi bir pratiği meşrulaştırmak için kullanılan baskın bir rasyonaliteden söz edilebilir mi? Demokrasiler hangi baskın rasyonalite ile parti kapatmayı meşrulaştırır? Bu

baskın meşrulaştırıcı rasyonalite, yaygın olduğu ölçüde haklı mıdır? Bu yaygın yaklaşım, en radikal biçimi bir siyasi partinin kapatılması olan demokratik meşru müdafaa olgusuna ilişkin ne vaat eder? Bu baskın yaklaşımın başlıca kısıtlılıkları nelerdir? Bu baskın meşrulaştırıcı rasyonaliteye alternatif olarak başka hangi yaklaşımlar ortaya çıkmıştır? Bu alternatif yaklaşımların ilgili baskın rasyonaliteye yönelik eleştirileri nelerdir? Söz konusu demokratik meşru müdafaa olduğunda bu alternatif yaklaşımlar nasıl bir yol tasavvur eder? Bu yolu takip etmenin vaatleri ve kısıtlılıkları nelerdir? Bu sorular çalışma boyunca cevaplarını serimlemeye çalıştığımız sorular oldu.

Bu soruların ve ilintili olarak doğabilecek irili ufaklı birçok sorunun cevabını bulmak için yöneldiğimiz literatürde ise demokratik öz savunma ve tolerans paradoksu kavramları dahil olacağımız kavramsal çerçevenin temel unsurları olarak öne çıktı. Daha önce de ifade ettiğimiz üzere, demokrasiyi korumak adına kimi koşullarda demokratik olmayan kararların alınıp uygulanabilmesi ciddi bir gerilime yol açar. Demokratik öz savunma kavramı da tam olarak böylesi bir gerilime cevap olma amacı taşır. Demokrasilerin kendi demokratik gerekliliklerini ihlal etmeden kendilerini nasıl koruyabilecekleri sorusuna verilen üç temel cevap ise farklı demokratik öz savunma modelleri olarak işaretlenebilir. Sırasıyla militan demokratik öz savunma, prosedürel demokratik öz savunma ve sosyal demokratik öz savunma şeklinde belirtilen bu üç farklı modelin vaatlerinin, kısıtlılıklarının ve birbirilerine yönelik eleştirilerin tespiti ve serimlenmesi bu çalışmanın en temel amacını teşkil eder.

Demokrasilerin demokrasiyi manipüle eden anti-demokratik güçler tarafından bertaraf edilebilme riskinin neredeyse bir zorunluluk olarak ortaya çıkardığı demokratik öz savunma modellerinin en yaygın ve baskın olanı ise militan demokratik öz savunma biçimidir. Başka bir ifadeyle, siyasi partilerin kapatılması pratiğinin siyaset teorisi bağlamında ele ne şekilde alındığını anlamak niyetiyle yönelinecek olan bir literatürde, karşılaşılacak olan ilk yargının *militan demokrasi siyasi parti kapatılmalarının temel meşrulaştırıcı*

söylemi olarak belirir şeklinde olmaması neredeyse imkansızdır. Peki militan demokrasi ne anlama gelir?

Militan demokrasi kavramı demokrasilerin kendilerine yöneldiklerini hissettikleri anti-demokratik tehditlere yönelik temel hak ve özgürlükleri ihlal edecek biçimde dahi olsa önleyici ve kimi zaman ekstra-yasal tedbirler almalarının her koşulda meşru ve yasal olduğu düşüncesine dayanır. Devlet aklı perspektifini oldukça anımsatan ve güvenlik-özgürlük ikileminde sarkacın ısrarla güvenlik sahasında salınması gerektiğine inanan bu yaklaşım tıpkı diğer tüm rejimler gibi demokrasilerin de kendilerini müdafaa etme hakkına içkin bir biçimde sahip olduğunu iddia eder. Dolayısıyla, demokrasiler kendilerine yönelecek tehditleri algıladıklarında ve tespit ettiklerinde, sert ve önleyici tedbirler almaktan imtina etmemelidirler. En radikal formu, ilgili bir siyasi partinin kapatılmasını öngörecek dahi olsa bu tedbirler son derece meşru ve yasaldır. Zira, böylesi bir denklemde göz önünde bulundurulması gereken, hayata geçirilecek bu tedbirlerin demokrasinin gerekliliklerine yönelik olası maliyetlerinden öte, hayata geçirilmemeleri halinde demokrasilerin bizzatihi varlığını sürdürememe ihtimalidir. Dolayısıyla, militan demokrasi rasyonalitesine göre, demokrasilerin kendini tehdit altında hissettiği bir denklemde, kimi temel hak ve özgürlükler demokrasilerin varlığını sürdürme noktasında ihlal edilebilir. Zira, demokratik gerekliliklere her koşulda bağlı kalmayı ve dolayısıyla kimi temel hak ve özgürlükleri hiçbir koşulda ihlal etmemeyi öngören bir müdahele etmeme seçeneğinin yol açacağı maliyet çok daha yüksek olabilir. Bu maliyet, demokrasilerin, demokratik kanallları işlevselleştirerek demokrasiyi tehdit eden "içeriden" düşmanlarca ortadan kaldırılma riskidir. Dolayısıyla, militan demokrasi rasyonalitesi, bariz biçimde bu merkezi riskin her ne pahasına olursa olsun elimine edilmesi gerektiğini ifade eder. Haliyle, demokratik rejimin varlığını garanti altına alma bağlamında güvenlik, meşru temsiliyet kanalı olarak siyasi bir partinin, kapatılmamasını öngörme bağlamındaki özgürlüğü önceler. Bu nokta, aynı zamanda militan demokrasi rasyonalitesinin siyasi parti kapatılması olgusunu salt anayasal bir zeminde ele alma eğilimi çok baskın olan bir rasyonalite olduğu gerçekliğini

ortaya koyması bağlamında da son derece önemlidir. Militan demokrasi yaklaşımı, çalışma boyunca sık sık altını çizdiğimiz üzere, gerçekten de gerek özel olarak siyasi parti kapatılması pratiğini gerekse de daha genel olarak demokratik öz savunma olgusunu salt anayasal bir zemine hapsetmeye çalışır. Meselenin politik ve sosyal dinamiklerini göz ardı etme eğilimi son derece belirgindir. Böylesi bir tutumun ortaya çıkmasında ise hiç şüphesiz kavramın kurucu figürü olarak kabul edilen Karl Loewenstein´in etkisi çok büyüktür.

Bu çalışmada muhtemelen ismi en sık tekrar edilen figür olan Loewenstein, Nazilerin iktidara gelmesiyle üniversitedeki kürsüsünden edilen ve bu olayla birlikte göç etmek zorunda kaldığı Amerika´da etkili bir politik figüre dönüşen bir anayasa hukukçusudur. Nazilerin demokratik kanalları istismar ederek yükselişinin canlı tanığı olan Loewenstein, 1937´de ele aldığı ve daha sonra ilgili literatürde kurucu metinlere dönüşen iki makalesinde, rasyonel bir algılayışın bir örneği olarak ele aldığı liberal demokrasilerin, kendilerine yönelen duygusal (dolayısıyla da irrasyonel) tehditlerin açtığı ateşe ateşle karşılık vermesi gerektiğini iddia eder. Zira, Loewenstein´e göre, liberal demokrasiler kendilerine yönelen totaliter tehditlerden ötürü büyük bir varlık krizi içerisindedir ve haliyle çok acil bir biçimde sert tedbirler almak zorundadır. Bu tedbirlerin demokratik karakterine yönelik duyulacak kaygının bu aciliyeti gölgelemesine müsaade edilmemelidir. Zira, Loewenstein´e göre, kriz dönemlerinde yasallık uzun bir tatile gönderilir. Dolayısıyla, demokrasiler kendilerine yönelecek anti-demokratik tehditlerle mücadele her ne pahasına olursa olsun etkili olmak için gerekirse düşmanlarını taklit edebilmek zorundadır. Zira, demokrasilerin demokrasi düşmanlarından öğrenmeye başlaması son derece doğaldır ve bu yüzden suçlanmaları anlamsızdır. Dolayısıyla, demokrasilerin temel güdüsel öz savunma mekanizması olarak ele alınması gereken militan tedbirler son derece yasal ve meşrudur. Gerekçelendirilmeleri kendinden menkuldür. Meşru ve yasaldırlar zira gereklidirler.

Loewenstein´e göre demokrasi, savunulması yalnızca kitleler olarak tanımladığı halka bırakılmayacak kadar kıymetlidir. Ve demokrasilerin kaderi yalnızca

halkın iradesine bağlanamaz. Zira, Loewenstein için halk, duygusal propagandaya son derece açık olması sebebiyle oldukça kolay bir biçimde manipüle edilebilecek olan irrasyonel bir kitle anlamına gelir. Demokrasinin korunması ve varlığını sürdürebilmesi ise rasyonel bir unsurun veya müdahalenin gerekliliğini şart koşar. Bu bakımdan, militan demokrasi tam da böylesi bir rasyonel aklın tecessümü olarak resmedilir. Haliyle, Loewenstein için, militan demokrasi bir bakıma rasyonel olanın duygusal olana hükmetmesinin meşruluğunu ifade etme aracına dönüşür. Ve Loewenstein ikonikleşen bir ifadeyle, demokrasinin işleyişinin düşmanın şehre gizlice girmesine olanak veren bir Truva atına dönüşebileceğini ifade eder. Loewenstein'in bu şekilde sınırlarını belirlediği militan demokrasi yaklaşımının güncel savunusuna ise Gregory Fox ve Georg Nolte, Svetlena Tyulkima ve de Andreas Sajo'da rastlanabileceğini düşünüyoruz. Dolayısıyla bu isimleri militan demokrasi düşüncesinin güncel savunucuları olarak işaretlemenin yanlış olmadığı kanaatindeyiz. Bu isimlerin ortak özelliklerini ise şu şekilde sıralayabiliriz:

Öncelikle bu isimler arasında Loewenstein'in takındığı temel tutumun kolaylıkla benimsendiği ve sürdürüldüğü görülür. Tıpkı Loewenstein gibi bu isimlerde de militan demokrasi düşüncesinin içkin bir biçimde meşru ve yasal olduğu kabul edilir. Bununla birlikte, yine Loewenstein'in militan demokrasi düşüncesinin en merkezi unsurlarından biri olan kitlelerin duygusal karakterinden ötürü halka duyulan derin şüpheciliğin de devam ettirilme eğilimin son derece yüksek olduğunu tespit etmek mümkündür. Bu isimler Loewenstein'in özgün yaklaşımının yeniden değerlendirilerek bugünün özellikle aşırı sağ tarafından yükseltilen irrasyonel taleplerine yönelik hatırlanmasının yerinde olacağını belirtir. Bu bakımdan yalnızca çoğunluğun belirlenimi ile yol alan bir demokrasi tasavvuruna militan demokrasinin güncel bir savunusunu verme niyetindeki bu isimler tarafından da ciddi bir şüpheyle yaklaşılır. Loewenstein'in tutumuna yönelik takınılan tavır son derece kritiktir. Zira, tutunulan tavırın karekteristiği militan ve neo-militan yaklaşımlar arasındaki temel farkı belirginleştirir. Bu bağlamda, neo-militan yaklaşımların en temelde Loewenstein'in argümanlarına

yönelik eleştirel yaklaşımları ile militan düşünürlerden ayrıldığını tespit etmek mümkündür. Bir başka ifadeyle, neo-militan yaklaşımın birer örneğini sunduğunu düşündüğümüz Alexander Kirshner, Bastian Rijpkema, ve de Stefan Rummen ve Koen Abts'in tam da militan demokrasi düşüncesini prensip olarak meşru ve yasal kabul etmelerine rağmen, Loewenstein'in militan demokrasi düşüncesine yönelik güçlü bir gerekçelendirme sağlayamadığı şeklindeki tutumlarıyla neo-militan yaklaşımların birer temsilcisi olarak adlandırılmalarının daha yerinde olacağını düşünüyoruz. Neo-militan yaklaşımın diğer ayrışma noktalarını da şu şekilde tespit etmek mümkündür: Bugünün anti-demokratik tehditlerine yönelik Loewenstein'in zayıf bir gerekçelendirmeye sahip militan demokrasi tutumunu sürdürmek oldukça zordur. Militan demokrasi her ne kadar prensipte meşru ve yasal olsa da çok daha güçlü bir gerekçelendirmeye ihtiyaç duyar. Loewenstein'in saptadığı militan tedbirlerin demokratik maliyeti son derece yüksektir ve bu maliyet muhakkak minimize edilmelidir. Dolayısıyla, neo-militan figürlere göre militan demokrasi tam da bu türden bir minimize işlemini mümkün kılacak yeni araçlarla donatılmalıdır. Ve bilakis, siyasi bir partinin kapatılabilmesi en zor koşullarda başvurulabilecek bir militan tedbir olarak algılanmalıdır. Bu bağlamda, neo-militan perspektife göre, demokratik maliyeti bir hayli yüksek olan böylesi sert bir tedbirin teorik gerekçelendirilmesi son derece güçlü yapılmak zorundadır. Kirshner, Rijpkema ve de Rummens ve Abts da tam da böyle bir iddia ile yola çıkarlar ve güncel militan demokrasi savunusundan belirttiğimiz noktalarda keskin bir biçimde ayrışırlar.

Çalışmamızda militan demokrasi yaklaşımının temel önermelerin ve çerçevesini belirtip, kurucu figürünün, güncel savunucularının ve güncel eleştirel savunucularının düşüncelerine yer verdikten sonra ise militan demokrasi düşüncesine yönelik duyulan temel teorik şüphelerin altını çizmeye çalıştık. Bu bağlamda, prosedürel demokrasi yaklaşımının militan demokrasi fikrine yönelik ilk sistematik ve kapsamlı karşı koyuşu ifade ettiğini belirtmek gerekir. Prosedürel demokrasi düşüncesi demokrasinin hiçbir koşulda kendi demokratik gerekliliklerine ihanet edemeyeceği ve dolayısıyla demokratik olmayan hiçbir yönteme başvuramayacağı temel önermesine dayanır. Zira, demokrasi ancak ve

ancak çoğunluğun kararına riayet edildiği ölçüde demokrasidir. Demokrasi yalnızca düşmanları tarafından değil, düşmanlarına karşı demokrasiyi savunacağı iddiasındaki kesimler tarafından da manipüle edilmeye son derece açıktır. Dolayısıyla, demokrasinin en temel koruyucusu demokrasiyi koruma tekelini eline alma niyetindeki bir kesim veya gruptan ziyade halkın kendisidir. Hans Kelsen'in kurucu figürü olarak yön verdiği prosedürel demokrasi yaklaşımı gerçekten de radikal bir biçimde demokrasinin kendi kendisi idame ettirebilme kapasitesine güvenir. Zira, Kelsen'e göre demokrasiyi diğer tüm rejimlerden ayıran temel özellik halka ve siyasete derin bir güven beslemesidir. Dolayısıyla, Kelsen demokrasinin kimi olağanüstü koşullarda demokratik olmayan biçimlerde korunması önerilerini kategorik olarak reddeder. Ve demokrasinin tolerans olgusuna kurban edilebileceğine yönelik duyulan aşırı kaygının kendisinin demokratik yaşam için bir tehdide dönüşebileceğini iddia eder. Zira, demokrasi fikirlerin göreceliğini kabul etmek zorundadır ve bu göreceliğin ifade edilebileceği eşit düzlemi yaratmak zorundadır. Demokrasinin mutlak bir tanımına sahip olduğu iddiasıyla yola çıkan ve rahatlıkla demokratik/anti-demokratik ayrımını belirleyebilenlerin unutmaması gereken şey şudur ki yalnızca kendilerinin değil kendileriyle çelişen düşüncelerin de kendilerini birgün mutlak ilan edebilme seçeneğine sahip olduğudur. Bu bağlamda, Kelsen militan demokrasi fikrinin disipline veya substantif bir demokrasi formu olduğunu düşünür. Kelsen'in demokrasinin kendi kendini düzenleyebilme kapasitesine duyduğu derin güven gerçekten de oldukça ilgi çekicidir. Zira, Kelsen demokrasinin, militan demokrasi düşüncesinin belirttiği biçimde lağvedilmesinin mümkün olduğunu kabul eder. Fakat bu yine de çoğunluğun kararının hiçe sayılmasının meşru bir gerekçesi olamaz. Zira, demokrasi ve özgürlük ideali yıkılmaz ve yenilmezdir. Birgün en kötü senaryonun gerçekleşmesi durumunda bu idealin batması da son derece ihtimal dahilindedir fakat kesin olan şudur ki bu ideal daha büyük bir tutkuyla geri dönecektir.

Prosedürel demokrasinin temel önermelerini tespit ettikten sonra ise bu yaklaşımın doğrudan birer temsilcisi olarak kabul edilmeleri her ne kadar sakıncalı olsa da yine de bu yaklaşımdan fazlaca etkilenmiş ve militan demokrasi

rasyonalitesine yönelik çok güçlü eleştiriler vermiş olan isimlere bakmakta fayda var. Bu isimlerin başında ise hiç kuşkusuz militan demokrasi düşüncesinin içkin bir biçimde keyfi bir karekteristiğe sahip olduğu iddiasını oldukça güçlü bir biçimde savunan Carlo Invernizzi Ancetti ve Ian Zuckerman gelir. Oldukça etkileyici makalelerinde Ancetti ve Zuckerman militan demokrasinin en temelde düşman olarak belirlenecek olan grubun belirleneceği karara odaklandığını belirtir. Fakat bu kararın kendisi mutlak bir biçimde keyfi olarak alınır. Carl Schmitt'in temel ayrım olarak işaretlediği ve her koşulda istisnai bir yetkiyle belirlendiğini iddia ettiği dost-düşman ayrımının militan demokrasi düşüncesi açısından da yeniden üretildiğini iddia ederler. Dolayısıyla, militan demokrasi fikri, Ancetti ve Zuckerman'a göre, içkin bir biçimde bir keyfiyet yönetimine dönüşme riskini taşır. Çünkü Loewenstein'in militan demokrasinin gerekçelendirilmesinde belirttiği duygusal ve rasyonel ayrımı son derece zayıftır. Zira, iktidar mücadelesi veren ve duygusal taktik ve yöntemlere başvurmayan bir politik aktörden söz etmek imkansızdır. Militan demokrasi, haliyle, en temelde politik topluluğa dahil edilme sorununu politize eder ve demokratik düzenin kendisine dışsal olan otoriteryen unsuru bu karar sürecine dahil eder. Bir başka deyişle, militan demokrasi demokrasinin düşmanını tespit etme noktasında, meşru ve işlevsel bir kriter sağlamaktan oldukça uzaktır ve bu biçimiyle, kararları herhangi bir üst norm tarafından kontrol edilemeyen mutlak merciyi adeta çağırır.

Militan demokrasi düşüncesine yönelen bir diğer ilintili ve güçlü eleştirinin de altını çizmek gerekir. Anthoula Malkopoulou ve Ludvig Norman militan demokrasi düşüncesinin aynı zamanda içkin bir biçimde elitist bir varsayıma dayandığını iddia ederler. Militan demokrasi düşüncesi, faşizmin tek dayanağının çoğunluk kararının mutlak bir biçimde kabul edilmesi olduğu şeklindeki son derece kusurlu bir tespite dayanır. Faşizmin çoğunluk kararına eşdeğer hale getirilmesi şeklindeki bu denkleştirme militan demokrasinin en temel özelliklerinden biridir. Bu kusurlu varsayım, militan demokrasi fikrindeki içkin elitist önermenin meşrulaştırıcısı şeklinde işlevselleştirilmeye calışılır. Malkopoulou ve Norman, Loewenstein'in tüm metinlerinde bu elitist unsura

rastlamanın mümkün olduğunu iddia ederler. Nitekim bu konuda son derece haklıdırlar zira Loewenstein bu elitist tutumu gizleme ihtiyacı duymaz. Derin bir güvensizlik duyduğu ve kolayca kandırılabilir bir kitle olarak algıladığı halka biçtiği en temel vazifenin seçkin ve sorumlu aydınlara güçler ayrılığı ve bireysel özgürlüğü koruma mücadelesinde ihtiyaç duyulması halinde yardımcı olmak olduğunu ifade eder. Ve son kertede, liberal demokrasilerin uluslararası arenadaki bir grup politik aristokrat için en uygun yönetim olduğunu belirtir. Bu haliyle, Malkopoulou ve Norman, oldukça isabetli bir biçimde, Loewenstein'in yaklaşımının özgürlük ve demokrasinin bekası için kaygılandığı ölçüde, temel demokratik değerleri ihlal ettiğini gösterir.

Militan demokrasiye yönelik duyulan teorik şüphelerden bir diğerini ise militan tedbirlerin etkiliğini sorgulayan eleştiri olarak işaretlemek mümkündür. Michael Minkenberg farklı konjektürlerde incelediği siyasi parti kapatılması veya siyasi yasak getirilmesi gibi militan tedbirlerin daha sonraki süreçlerdeki yansımalarını incelediği çalışmasında, militan tedbirlerin verili bir biçimde etkili olamayabileceği sonucuna ulaşır. Hatta, Fransa ve Almanya özelinde incelediği aşırı grupların, militan bir tavırla meşru politik zeminin dışına itilmekle birlikte radikalleşme eğiliminin artabildiğini ortaya koyar. Bu bağlamda militan demokrasi karşı üretken bir etki yaratma riskini yine içkin bir biçimde barındırır. Zira, militan tedbirler maruz kalan ilgili grup veya parti için getto bir oluşum kurma eğilimini ve içine kapanıp daha kapalı bir cemaat gibi hareket etme refleksini güçlendirebilir. Dolayısıyla, militan demokrasi aksi yönde bir etki yaratma riskini içkin bir biçimde taşır. Aynı zamanda, katı militan tutumun kendisi, ilgili radikal gruplar için demokrasinin işlevsizliğini dile getirebilecekleri bir propaganda zeminini de aralamış olur. Bu haliyle, militan demokrasi liberal demokrasilerin temel varsayımı olan ikna etme ve dahil etme unsurlarını göz ardı ederek katı bir dışlama pratiğine dönüşme riski ile karşı karşıya kalır.

Bu teorik şüpheleri serimledikten sonra ise, bu şüphelerin son derece yerinde olduğuna örnek olarak gösterilebilecek olan ve militan demokrasi fikrinin reel

siyasetteki yansımalarını oldukça çarpıcı bir biçimde ortaya koyan bir çalışmanın altını çizmek gerekir. Udi Greenberg, İkinci Dünya Savaşı ve Soğuk Savaş dönemlerinde Amerika dış politikasını belirleyen figürlere yer verdiği kitabında militan demokrasi fikrinin ilgili dönemde atılan birçok anti-demokratik adımın temel meşrulaştırıcısına dönüştüğünü ortaya koyar. Greenberg'e göre, dönemin oldukça saldırgan olarak tanımlanabilecek olan liberal tutumun en önemli kaynaklarından birisi militan demokrasi düşüncesidir. Zira, Loewenstein de ilk kez militan demokrasi düşüncesini hayata geçirme fırsatına Amerika'da kavuşmuş ve özellikle dönemin Amerika yönetimlerinin potansiyel suçlular listesi hazırlanmasından, sivil nüfusun toplu bir biçimde sürülmesine ve Latin Amerika'daki bir çok ülkede çalışma kampı benzeri yapıların oluşturulmasına kadar birçok hak ihlalinin önericisine dönüşmüştür. Benzeri birçok anti-demokratik hak ihlali Loewenstein'in rapor ve analizleri doğrultusunda demokrasiyi militan bir biçimde savunma zorunluluğunun bir gereği şeklinde meşrulaştırılmaya çalışılmıştır. Bu bakımdan, Greenberg'in çalışmasının militan demokrasi düşüncesinin iktidarların elinde muhalefete yönelen bir Demokles kılıcına dönüşmesinin ne denli mümkün olduğunu göstermesi açısından son derece önemli olduğunu belirtmek gerekir.

Militan demokrasi fikrine yönelik geliştirilen bir diğer sistematik karşı koyuşun ise sosyal demokratik öz savunma olduğunu belirtebiliriz. Diğer iki temel model olan militan ve prosedürel yaklaşımlara kıyasla oldukça ihmal edilen bir model olan sosyal demokratik modelin, demokratik öz savunmanın istenilen sonucu vermesinin sosyal dinamikleri merkeze alan bir perspektifin geliştirilmesine bağlı olduğu önermesine dayandığını görmek mümkündür. Bu bakımdan sosyal demokratik model, her şeyden önce radikalleşme sorununun ancak uzun erimli ve kapsayıcı bir model ile aşılabileceğini iddia eder. Zira demokratik öz savunma en temelde bir radikalleşme sorunudur ve toplumsal radikalleşmeyi belirleyen en asli unsur toplumsal refahın bölüşümündeki eşitsizliktir. Bu bakımdan, militan ve prosedürel yaklaşımların aksine, sosyal demokratik model radikallik ile mücadele repertuvarına ekonomik ilişkiler ağını dahil eder.

Herman Heller'in kurucu figürü olarak kabul edildiği bu temel rasyonaliteye göre siyasi partilerin kapatılması da dahil olmak üzere tekil militan tedbirleri tartışmak pek de anlamlı değildir. Zira, bu tartışmaya geçmeden önce sorulması gereken soru demokrasiyi korumak adına ne yapılmalıdır sorusundan ziyade hangi demokrasi korunmaya değerdir sorusudur. Sosyal adalet ve sosyal eşitlik unsurlarını merkezine alan yeni bir demokrasi kavramsallaştırması demokratik öz savunmanın en etkili biçimi olacaktır. Zira, böylesi temel unsurları garanti altına alamayan ve yalnızca formel düzeyde işleyen bir demokrasi modeli, her zaman için militan tedbirlerin gerekliliğini ifade eden yüzeysel tartışmalarla meşgul olacaktır. Demokrasi yalnızca toplumun tüm dezavantajlı kesimlerinin de demokrasiye derin bir bağlılık hissetmesi yolu ile varlığını garanti altına alabilir. Bunun yolu ise, toplumun tüm kesimlerine yayılan bir sosyal adalet ve sosyal eşitlik algısının güçlenmesinden geçer. Bu bakımdan sosyal demokratik modele göre, demokrasinin sağlıklı bir biçimde işlemesini daimi bir biçimde teminat altına alacak olan bir model, potansiyel olarak zararlı görülen bir uzantının istisnai yetkiler ile ısrarla tedavi edilmeye çalışılmasından çok daha güvenilir ve meşrudur. Bu bakımdan, açık biçimde, sosyal demokratik model, militan demokrasinin önleyici ve aceleci tedbir önerisinin tam karşısında yer alarak uzun erimli ve kapsamlı bir demokratikleşme sürecini öngörür. Bu iki yaklaşım arasındaki bir diğer temel ayrım noktasını ise halka duydukları güven belirler. Militan demokrasi radikal bir biçimde, halka güvensizliği temsil ederken, sosyal demokrasi demokrasinin sağlıklı bir biçimde işlemesinde halka ve bireye temel kurucu bir rol atfeder. Bu aynı zamanda, sosyal demokratik yaklaşımının siyasi parti meselesini militan demokrasi tarafından hapsedildiği salt anayasal bir zeminin ötesinde tartışma eğilimini açıkça ortaya koyar. Bu bakımdan, siyasi bir partinin kapatılmasını gündeme getiren sürecin başlangıç noktasında bir eşitsizlik ilişkisi yatar ve bu ilişkinin çözümü dışında ifade edilen öneriler bu eşitsizlik ilişkisini yeniden üretmenin ötesine geçemez.

Bu üç temel demokratik öz savunma modelinin karekteristiğinin sınırlarının belirginleşmesi ile birlikte, bu perspektiflerden her biri ile siyasi parti kapatılması olgusuna yaklaşmanın vaatlerinin ve kısıtlılıklarının altını çizmek

mümkün hale gelir. Bu bağlamda, siyasi parti kapatılması pratiğine militan demokratik bir rasyonalite ile yaklaşmanın en önemli vaadinin önleyici olma ve erken tedbir alabilme olacağını belirtebiliriz. Bu şekilde, demokratik hayata tehdit olarak işaretlenen bir grup veya partinin tüm siyasal yaşamı "zehirlenmesinin" önüne geçilebileceği argümanı militan demokrasi düşüncesi açısından en temel vaat olarak görülebilir. Bununla birlikte, bu istisnai karar merci yaratma ve bir an önce harekete geçme telaşının otoriterleşme eğilimindeki bir iktidar için oldukça uygun söylemsel zemini de yarattığı açıktır. Demokrasiye tehdit olarak işaretlenecek olan partinin belirlenmesinde takınılması son derece muhtemel keyfi tutum, yine bu otoriterleşme eğitimini açık bir biçimde destekleyecektir. Militan demokrasi düşüncesinin bu riskleri bertaraf edecek bir gerekçelendirmeye yönelmemiş olması yaklaşımın en temel kısıtlılığı olarak işaretlenebilir. Siyasi parti kapatılması pratiğine prosedürel demokratik bir perspektifle yaklaşmanın en büyük getirisi olarak ise demokratik gerekliliklere sıkı sıkıya bağlılığı sürdürmenin isaretlemesi gerektiğini düşünüyoruz. Bu perspektifin siyasi parti kapatma konusundaki bariz isteksizliği demokrasiye duyulan inancın tüm kesimlerce pekiştirilmesi noktasında son derece önemli bir işleve sahip olabilir. Dışlamadan ziyade ikna etme ve dahil etme pratiklerini önceleyen bu perspektif demokratik kültürün güçlenmesinde de oldukça etkili olabilir. Bununla birlikte, bu yaklaşımın en temel eksikliğinin ise siyasi parti kapatılmasını meselesini salt politik bir düzlemde ele almabilme eğilimi olabileceğini öngörebiliriz. Bu ise yalnızca formel düzeyde işleyen bir demokrasi olgusunun güçlenmesine yol açabilir. Siyasi parti kapatılması pratiğine sosyal demokratik öz savunma rasyonalitesi ile yaklaşmak ise meselenin çok daha köklü bir çözümünü vaat eder. Siyasi parti kapatılması olgusunun ne tek başına anayasal bir düzlemde ne de tek başına politik düzlemde bir çözüme kavuşturulamayacağını belirten bu yaklaşım sosyal dinamikleri meselenin ana kaynağı olarak tespit eder. Sosyal demokratik rasyonalitenin, demokrasiyi istisnai yetkilerle tabiri caizse kapalı kapılar ardında koruma tutumundan ziyade toplumun tüm kesimlerinin dahil olduğu güçlü bir demokrasi inşa etme sürecinin kendisiyle korumanın çok daha güvenilir olduğunu belirtmesi en önemli vaadi olarak işaretlenebilir. Bununla birlikte, bu yaklaşımın bu denli köklü bir çözüm

önermesi ciddi bir kısıtlılığa dönüşme riskine de sahiptir. Bu risk, bu kapsamlı inşa süreci için öngörülen sürenin son derece uzun olabilecek olması olarak işaretlenebilir.

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