

## **Transnationalism, Authoritarianism, and Militant Democracy**

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### **1. Introduction**

After WWII, and increasingly so over the last three decades, countries have started to accommodate their democratic institutions to their citizens beyond: today, the majority of countries world wide have extended their right to vote to these citizens in spite of their non-residence.<sup>1</sup> On a theoretical level, this extension implies a loosening of the traditional Westphalian triangular relationship between state institutions, citizenry, and territory.<sup>2</sup> More tangibly, this entails, at least for countries with sizeable non-resident citizenries, an incentive to commence mobilizing political support abroad. At the same time, the hope that after the fall of the Berlin wall political systems would converge towards a liberal-democratic consensus<sup>3</sup> has proven vain. This we are pressed to acknowledge in view of the rise of various ‘new authoritarianisms’ in recent years.<sup>4</sup> These two trends – paradoxically – at times intersect. The Turkish case is instructive: Turkey has in recent years begun to bid its adieu to liberal democracy, and has started to engage its extraterritorial citizenry in this project. Besides an array of empirical questions, at the intersection point of these trends, an intriguing *normative* question arises too: How should liberal-democratic host countries respond to transnational politics on their territories when these are perceived as authoritarian or antidemocratic? Stand by idly? Obstruct? Here we are confronted with a transnational variation to a problem that has been at the centre of democratic theory since

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<sup>1</sup> Caramani, D. & Grotz, F. (2015), ‘Beyond citizenship and residence: Exploring the extension of voting rights in the age of globalization’, *Democratization* 22:5, p. 805

<sup>2</sup> Ibid.

<sup>3</sup> Fukuyama, F. (2006), *The End of History and the Last Man*, New York: Free Press

<sup>4</sup> E.g.: Levitsky, S. & Way, L. (2010), *Competitive Authoritarianism: Hybrid Regimes after the Cold War*, Cambridge: Cambridge University Press

at least Plato's *Republic*: the possibility that a democracy might sow the seeds of its own abolishment.

This is not a mere theoretical problem. On the evening of 16 April 2017 the streets of Berlin – as those of a number of other European cities – coloured red and white. The results of the 2017 Turkish Constitutional Referendum had just come in, and it was pronounced that the constitutional changes up for ballot were accepted by a small margin. 'Yes'-voters, far beyond Turkish territory, went out into the street and celebrated. The referendum result was salient for at least two reasons. First, the choice for the constitutional amendments was perceived by many in the West as one against democracy; the constitutional amendments – widely and strongly criticized by legal experts and laymen alike – would transform the Turkish parliamentary system into a presidential one in which the president would attain a disproportionate amount of unchecked power. Second, the result was effectuated partly outside Turkey; by non-resident Turkish citizens voting and campaigning in Western-European countries, as well as by Turkish officials venturing out to these countries to campaign for their cause. The role of host that befell on countries with sizeable Turkish populations in Europe was one that was played with considerable discomfort.

That host countries were at loss as to how to relate to Turkish politics on their territories is not surprising, seeing we seem to lack the conceptual framework for thinking about problems that arise when authoritarianism ventures abroad. Yet, as I will argue in this paper, this is a *seeming* lack only, for the concept of 'militant democracy' provides valuable guidance for navigating the 'hospitality dilemma'. While the normative pitfalls and dilemmas of restricting rights *internally* in order to protect democracy from *internal* perils have been much and long debated (militant democracy proper), little – if anything – has been said about the normative difficulties of restricting rights *internally* in the context of *another country's* politics. The blurring of the lines between internal and external in this regard makes need for venturing into another conceptual domain. Therefore, in order to assess the applicability of a militant democracy logic transposed to a transnational context, I will engage with sociological work on the concept of (political) transnationalism. Incorporating the advances made in this domain into the discussion on militant democracy will, I believe,

yield valuable insights into how democrats could think about responding to transnational politics deemed malignant.

The structure of the paper is as follows. In section 2, I give an introductory sketch of how the 2017 Turkish Constitutional Referendum was perceived and responded to in the Netherlands and Germany. The aim is not to show that the purpose of the referendum was indeed authoritarian or antidemocratic, or to prove that Turkey is not a liberal democracy anymore. Rather, what I aim to show is simply that the perception was such, and that, although never mentioned explicitly, the language and logic of militant democracy were implicitly present in the debates and arguments used to justify restricting certain Turkish activities. Those familiar with the context of the referendum are invited to proceed to the next section. In section 3, I sketch the contours of the concept of militant democracy. Lastly, in section 4, I address the applicability of militant democracy to transnational political activity. Concretely, I argue that transnational (political) activity is not, as some authors like it, 'post-national' or 'deterritorialized'. Rather, it is *bi*-national or *bi*-territorial. For a potential transnational application of militant democracy therefore two questions must be considered first: (i) 'Who's rights are being restricted?', and (ii) 'Which democracy is being defended?'

## **Part I: Background**

### **2. The 2017 Turkish Constitutional Referendum: reception and response abroad**

As noted, the Turkish Constitutional Referendum was decided by a small margin in favour of the constitutional changes (51,41%). Because Turkey had in 2012 smoothed the possibilities for non-resident citizens to vote from abroad, Turkish non-resident citizens could, on occasion of the General Elections in 2014, for the first time cast their votes from abroad at designated polling stations.<sup>5</sup> As could they on the occasion of the constitutional referendum. The overseas results were more favourable towards the adoption of the

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<sup>5</sup> Elger, K. & Gezer, Ö., 'Turks in Germany get the vote', *Der Spiegel*, 6-8-2014, via: <http://www.spiegel.de/international/germany/turks-in-germany-allowed-to-vote-for-first-time-a-984624.html> (last visited 5-4-2019)

constitutional changes (59,09%). If we are to believe the numbers – and they are contested<sup>6</sup> – the non-resident citizenry did not however tip over the vote.<sup>7</sup>

Notwithstanding, the role of the non-resident citizenry and the overseas campaign (a practice prohibited by Turkish law<sup>8</sup>) was important for the government-backed Yes-camp. For one, it provided the Yes-camp with a widely televised and reported-on, international platform to showcase themselves. Moreover, this put in a spotlight the new extra-territorial nationalist course the AKP had set for itself in the previous years. Contrary to the stances previous Turkish governments had taken with regards to its citizenry abroad, and in particular those in Western Europe, the AKP had made it a pillar of its foreign policy to fare a more inclusive course. Whereas previous governments had at times viewed them with great suspicion, even labelling some factions of them as enemies of the Turkish state, the AKP posited itself as protector of Turks abroad against xenophobia, marginalization and the ‘forced’ shedding of Turkish cultural values in the West.<sup>9</sup> An image that not only does well within many of the Turkish communities in the West, but assumedly also with the electorate in Turkey. Furthermore, one might argue, that providing Erdoğan and his associates with a democratic platform to campaign for their cause to a certain degree legitimized their cause; it was apparently not objectionable enough to categorically refuse them the freedom to assemble and hold rallies. By the same token, as we will see hereafter, at times when this platform was denied, Ankara could rhetorically turn the tables and put into question the democratic standards of those deniers, as well as their authority to lecture Turkey on what is democratic and what is not.

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<sup>6</sup> The main reason for this is the decision by the Turkish Supreme Board of Election to, in defiance of the Law on Basic Provisions on Elections and Voter Registers, count as valid ballots that were unstamped. See: Acar, A., ‘The Constitutional Referendum in Turkey: A far Stretch from Right to Free Elections to Referenda?’ *Verfassungsblog*, 1-6-2017, via: <https://verfassungsblog.de/the-constitutional-referendum-in-turkey-a-far-stretch-from-right-to-free-elections-to-referenda/> (last visited 5-4-2019)

<sup>7</sup> Had their votes not counted the result would have been 51,18% in favour, via <http://www.ysk.gov.tr/doc/dosyalar/docs/2017Referandum/2017HO-Ornek135.pdf> (last visited 5-4-2019)

<sup>8</sup> OSCE, ‘Republic of Turkey – Early Presidential and Parliamentary Elections – 24 June 2018’, via: <https://www.osce.org/odihr/elections/turkey/385671?download=true> (last visited 5-4-2019)

<sup>9</sup> Öktem, K. (2014), ‘Turkey’s new diaspora policy: The challenge of inclusivity, outreach and capacity’, *Istanbul Policy Center Policy Paper*

With a view on the altitude to which tempers ran, and on the ways in which the Turkish overseas campaign met with resistance abroad, the cases of the Netherlands and Germany are instructive to look at in this regard.<sup>10</sup>

## 2.1 *The Netherlands*

Of the around 400.000 people of Turkish descent living in the Netherlands about 250.000 were eligible to vote in the referendum. Around half of those voted in polling stations that were set up in Amsterdam, Deventer and The Hague.<sup>11</sup> A striking 70,94% voted in favour of the constitutional changes.<sup>12</sup> The referendum and the role of Dutch-Turkish citizens therein spawned much debate. Public discourse broadly revolved around two issues. First, many wondered whether the strong Dutch support for Erdoğan had to be interpreted as the failure of the integration of Turkish minorities into Dutch society.<sup>13</sup> The implicit thought was that a vote for the Yes-camp equaled a vote against (Dutch) liberal democratic values ('they live in freedom here, yet vote against freedom and democracy elsewhere').<sup>14</sup> The second, more concrete, issue was the question of what the Dutch response should be with regards to the Turkish politics taking place in the Netherlands. Should a democratic platform be provided to those that are eroding their democratic system? Should posters of Erdoğan be allowed to hang in the public domain? Should municipalities put up bilingual road signs that show the way to the Turkish polling stations? On the whole, the Dutch government was not opposed to the referendum taking place in the Netherlands. The Ministry of Internal Affairs

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<sup>10</sup> Germany and the Netherlands were not the only countries that put limitations to overseas Turkish political activities. Switzerland, Denmark, and Austria too had prevented certain campaign activities from taking place. Much of these limitations, however, were prompted by events that took place in the Netherlands and Germany, and, in any case, took the same forms as the limitations Turkish politicians met in the latter two countries. Discussing all countries therefore would have no added value.

<sup>11</sup> 'Bijna de helft Turkse Nederlanders stemt in referendum' NOS, 10-4-2017, via: <https://nos.nl/artikel/2167522-bijna-de-helft-turkse-nederlanders-stemt-in-referendum.html> (last visited 5-4-2019)

<sup>12</sup> 'Wat zegt de uitslag van het Turkse referendum over de integratie?' NOS, 17-4-2017, via <https://nos.nl/artikel/2168762-wat-zegt-de-uitslag-van-het-turkse-referendum-over-de-integratie.html> (last visited 5-4-2019)

<sup>13</sup> Ibid.

<sup>14</sup> E.g.: Wagendorp, B., 'Turkije is democratischer geworden - Erdogan heeft gewoon de betekenis van democratie veranderd' *De Volkskrant*, 18-4-2017, via: <https://www.volkskrant.nl/nieuws-achtergrond/turkije-is-democratischer-geworden-erdogan-heeft-gewoon-de-betekenis-van-democratie-veranderd~b3fde047/> (last visited 5-4-2019); Van het Reve, J., 'We moeten ophouden steun voor Erdogan te nuanceren' *De Volkskrant*, 18-4-2017, via: <https://www.volkskrant.nl/columns-opinie/we-moeten-ophouden-steun-voor-erdogan-te-nuanceren~bb391f7d0/> (last visited 15-7-2018); Tosun, S., 'Erdogan, ik ben niet uw pion' *NRC*, 22-3-2017, via: <https://www.nrc.nl/nieuws/2017/03/22/erdogan-ik-ben-niet-uw-pion-7510261-a1551404> (last visited 5-4-2019)

declared that the Netherlands welcomed the idea of accommodating democratic processes, and for this reason it granted the Turkish government permission to set up a number of polling stations in consultation with local Dutch governments.<sup>15</sup> It were these local governments that had set up bilingual road signs (in Dutch and Turkish) that showed the way towards the polling stations. A move that prompted a number of MPs and news outlets to criticize the government for indirectly supporting anti-democratic currents in Turkey.

The stance with regards to the campaigning of politicians of the AKP was characterized by less lenience. Dutch Foreign Minister Bert Koenders had told his Turkish counterpart Çavuşoğlu that the latter's intended presence at a Yes-rally in Rotterdam was unwanted and that the Netherlands would not welcome and facilitate him in any official way. Koenders stated 'public order and the safety of the Dutch' as reasons for his stance. Further, and somewhat ambiguously, he cited another reason:

'We live in a free country. Our core values ensure that everyone is free to make their own choices and to assemble. We do, however, find the visit of a member of the government of Turkey to our country to conduct a political campaign undesirable. We will therefore not cooperate.'<sup>16</sup>

A diplomatic crisis between the two countries ensued after Çavuşoğlu, who was on his way to the Netherlands to attend the rally nevertheless, was denied permission to land on Dutch territory.<sup>17</sup> Turkish Minister of Family and Social Policies Kaya, who came to the Netherlands unannounced by car from Germany to stand in for Çavuşoğlu, was met by a group of specialized Dutch police units in front of the Turkish consulate in Rotterdam, and was

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<sup>15</sup> *Kamerstukken II*, 2017-2018, 2018-0000122156

<sup>16</sup> 'Koenders geeft Turkse minister geen harde 'nee' voor bezoek aan Nederland' *Elsevier*, 9-3-2017, via: <https://www.elsevierweekblad.nl/nederland/achtergrond/2017/03/koenders-geeft-cavusoglu-geen-harde-nee-voor-bezoek-aan-nederland-466601/> (last visited 5-4-2019)

<sup>17</sup> 'Minister Koenders belt Turkse minister', *Rijksoverheid*, 9-3-2017, via <https://www.rijksoverheid.nl/actueel/nieuws/2017/03/09/minister-koenders-belt-turkse-minister> (last visited 5-4-2019)

consequently escorted out of the country.<sup>18</sup> After the expulsion of Kaya riots erupted in Rotterdam among the Dutch Turks who clashed with police. In response to these happenings Erdoğan accused the Dutch of being fascists, remnants of the Nazis, and responsible for the ‘massacre of 8.000 Bosnians’ in Srebrenica.<sup>19</sup> After the incident, Ahmed Aboutaleb, the mayor of Rotterdam who had given the order to expel Kaya from the country, ordered the removal of a number of Erdoğan posters that were hanging in the public domain. He cited public order concerns.<sup>20</sup> Lawyers criticized Aboutaleb for restricting freedom of speech on vague grounds.<sup>21</sup> Dutch-Turkish organizations criticized him for a lack of empathy. In response, Aboutaleb stated that they were apparently lacking in ‘democratic upbringing.’<sup>22</sup> The late mayor of Amsterdam, Eberhard van der Laan, said he had been expecting minister Kaya to also attend a rally in Amsterdam. Van der Laan stated that he, contrary to the mayor of Rotterdam, would have given her a ‘warm’ welcome: while he was willing to allow her to give her speech, he had been organizing to disrupt her performance with a firework show held next to it at the same time. He furthermore said it was a travesty that Erdoğan, in light of the referendum and the powers he was seeking to attain as president, was appealing to freedom of speech in the Netherlands.<sup>23</sup>

In the aftermath of the referendum and in the run-up to the Turkish Presidential and General Elections in June 2018 similar debates continued. With regard to Erdoğan’s announced intention to campaign in the Netherlands for the Presidential and General

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<sup>18</sup> Mayor Aboutaleb of Rotterdam told the Dutch current-affairs tv-show *Nieuwsuur* he had given his policemen permission to shoot if anything went wrong during the expulsion of minister Kaya and her security personnel from the country: ‘It was scary that she had brought along twelve men. Broad men, of whom we did not know whether they were armed or not. This led us to call in very specialized units. So that we would be sure that, if it came to a clash, we would come out on top. The permission to shoot was given.’ See: ‘Aboutaleb: er was toestemming om te schieten’, *NOS*, 13-3-2017, via: <https://nos.nl/nieuwsuur/artikel/2163022-aboutaleb-er-was-toestemming-om-te-schieten.html> (last visited 5-4-2019)

<sup>19</sup> ‘Recep Tayyip Erdoğan: ‘We know Dutch from Srebrenica massacre’ *The Guardian*, 14-3-2017, via: <https://www.theguardian.com/world/2017/mar/14/turkish-sanctions-bizarre-as-netherlands-has-more-to-be-angry-about-dutch-pm> (last visited 5-4-2019)

<sup>20</sup> ‘Verwijdering posters van Turkse president Erdogan mist juridische basis’, *NRC*, 25-3-2017, via <https://www.nrc.nl/nieuws/2017/03/25/verwijdering-posters-van-turkse-president-erdogan-mist-juridische-basis-7509267-a1551589> (last visited 5-4-2019)

<sup>21</sup> *Ibid.*

<sup>22</sup> ‘Consul annuleert gesprek met Aboutaleb’, *NRC*, via <https://www.nrc.nl/nieuws/2016/08/26/consul-annuleert-gesprek-met-aboutaleb-4017722-a1518263> (last visited 5-4-2019)

<sup>23</sup> ‘Van der Laan: speech Kaya verstoren met vuurwerk’ *Het Parool*, 15-3-2017, via: <https://www.parool.nl/amsterdam/van-der-laan-speech-kaya-verstoren-met-vuurwerk-en-muziek~a4474682/> (last visited 5-4-2019)

elections, Prime Minister Rutte said during a press conference that he considered this undesirable:

'It is a fact that we have freedom of expression and freedom of association and assembly. But this is not unbounded. [...] The [Turkish] elections seem to have been pulled forward. Turkey is on the wrong track when it comes to the development of democracy.'<sup>24</sup>

Some members of the governing Liberal-Conservative Party were not satisfied with the rather ad-hoc and incoherent position the Netherlands had taken in the face of the above-discussed happenings, and started pursuing legislation that will prohibit *tout court* incoming political campaigns from 'unfree and undemocratic countries'.<sup>25</sup>

## 2.2 Germany

Of the estimated 3 million Turkish-Germans approximately 1,4 million were eligible to cast their vote in the referendum. This made Germany, after Istanbul, Ankara and Izmir, the largest Turkish constituency. 63,07% of the around 600.000 people that actually voted, voted in favour of the amendments.<sup>26</sup> Like the Dutch government, the German government had lent Turkey permission to set up polling stations across the country. It was initially also not opposed to Turkish campaign activities. Indeed, Germany had hosted a number of Turkish rallies in previous years. Germany being Turkey's fourth largest constituency, and the AKP sailing an inclusive course with regards to its citizens abroad, the AKP had started 'investing' in Turks in Germany for quite some time. Testimony to this is the creation of the Union of European-Turkish Democrats (UETD) in 2004 in Cologne, an AKP-affiliated lobby

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<sup>24</sup> 'Rutte: onwenselijk als Turkse politici hier campagne komen voeren', NOS, 20-3-2018, via <https://nos.nl/artikel/2228282-rutte-onwenselijk-als-turkse-politici-hier-campagne-komen-voeren.html> (last visited 5-4-2019)

<sup>25</sup> *Kamerstukken II*, 2017-2018, nr. 2591

<sup>26</sup> '63 Prozent der Türken in Deutschland stimmten für Erdogans Reform' *Der Spiegel*, 16-4-2017, via: <http://www.spiegel.de/politik/ausland/tuerkei-referendum-wie-tuerken-in-deutschland-abstimmten-a-1143557.html> (last visited 5-4-2019)



group that amongst others organizes Turkish politicians' campaign rallies.<sup>27</sup> Testimony to this are also the rallies Erdoğan attended in Germany prior to the referendum campaign: in Cologne in 2008 and 2014, in Dusseldorf in 2011, and in Karlsruhe in 2015. Despite some of Erdoğan's statements during these events that sparked controversy (e.g., 'assimilation is a crime against humanity' and 'Turkish children should first learn Turkish, then German'<sup>28</sup>), and the violent clashes between opponents and supporters of Erdoğan at some of these rallies, Germany had not been disallowing these events.

Some of this lenience was shed when in July 2016 Erdoğan was not allowed to 'attend' an anti-coup protest in Cologne via a video live-stream. Both the Higher Administrative Court in Münster and the German Constitutional Court decided that foreign heads of state and government cannot as such appeal to the right to assembly on German territory. They decided that it is ultimately a political decision, one up to the federal government to make, whether and under what conditions foreign leaders can use the German public space to express themselves politically.<sup>29</sup> Turkey's EU affairs minister responded: 'The German Constitutional Court's decision on the anti-coup rally in Cologne is an utter backsliding in freedom of speech and democracy.'<sup>30</sup> Still, Turkish officials have not generally been banned from making political appearances in Germany, as shows for example the Yes-campaign rally of Turkey's prime minister Yildirim in Oberhausen in February 2017.<sup>31</sup> But, as the crackdown after the coup in Turkey intensified, and as the implications of the proposed constitutional changes became clearer, ever more critique – from Greens and Lefts, to Christian Democrats and Alternatives – befell on the German government for providing a stage to anti-democrats. It was also in early March that a number of campaign events in which high-ranking AKP officials would make an appearance were cancelled. In the small town of Gaggenau an event organized by the UETD in which

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<sup>27</sup> 'Erdogans Berliner Lobby-Truppe', *Der Spiegel*, 16-9-2011, via <http://www.spiegel.de/politik/deutschland/migrantenpartei-big-erdogans-berliner-lobby-truppe-a-786207.html> (last visited 5-4-2019)

<sup>28</sup> 'Erdogans Rede erzürnt deutsche Politiker' *Welt*, via <https://www.welt.de/politik/deutschland/article12665248/Erdoğan-Rede-erzürnt-deutsche-Politiker.html> (last visited 5-4-2019)

<sup>29</sup> OVG Nordrhein-Westfalen, Beschluss vom 29.07.2016 - 15 B 876/16, §12

<sup>30</sup> 'Turkey condemns Germany's decision to ban Erdogan's video address at Cologne rally' *Deutsche Welle*, 31-7-2016, via <https://www.dw.com/en/turkey-condemns-germanys-decision-to-ban-erdogans-video-address-at-cologne-rally/a-19440277> (last visited 5-4-2019)

<sup>31</sup> 'Yildirim wirbt für Ja zum Präsidialsystem' *Der Spiegel*, 18-2-2017, via: <http://www.spiegel.de/politik/ausland/binali-yildirim-in-oberhausen-a-1135243.html> (last visited 5-4-2019)

the then Turkish Justice Minister Bozdağ was invited to speak was cancelled last-minute. The reason? Not enough space and parking-spots, according to the mayor of Gaggenau. According to Bozdağ freedom of speech and assembly were being ignored. 'What kind of a democracy is this?', he lamented during a press-conference.<sup>32</sup> That same week in Cologne an event in which Turkey's Economy Minister Zeybekçi would make an appearance was cancelled. 'This event cannot and will not take place here', Cologne authorities proclaimed. The reason? The UETD had last-minute changed the purpose of the event from a 'cultural event' to an 'informational event'.<sup>33</sup> Similarly, an event in Hamburg that was to be attended by Foreign Minister Çavuşoğlu was cancelled last-minute because the hall was not found to be fire-safe.<sup>34</sup> 'Please stop giving us lessons in human rights and democracy', Çavuşoğlu responded. 'Does this fit with human rights? Does this fit with rights of assembly?'<sup>35</sup> According to Erdoğan, indeed, this had little to do with good democratic standards. He, as he did the Dutch, accused the Germans of using Nazi-methods.<sup>36</sup> Needless to say, after Erdoğan's latter remark relations between the countries swiftly deteriorated. No more Turkish overseas campaign events followed in Germany.

In the aftermath of the referendum the German federal government was criticized for not taking a stand and letting lower-level governments solve its problems. On 30 June 2017 the federal government responded with a ban on all future foreign campaign activities, including opposition activities, from non-EU countries less than three months prior to elections.<sup>37</sup> A further interesting debate sparked up in response to Erdoğan's declared willingness to hold a referendum on the reintroduction of the death-penalty. The prospect of such a referendum and the accompanying campaigning to that end taking place in

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<sup>32</sup> 'Gaggenau untersagt Auftritt des türkischen Justizministers' *Der Spiegel*, 2-3-2017, via <http://www.spiegel.de/politik/deutschland/gaggenau-auftritt-des-tuerkischen-justizministers-bekir-bozdag-verboten-a-1137068.html> (last visited 5-4-2019)

<sup>33</sup> 'Gaggenau und Köln stoppen türkische Wahlkampfauftritte', *Zeit*, 2-3-2017, via <http://www.zeit.de/politik/deutschland/2017-03/gaggenau-sagt-auftritt-von-tuerkischem-justizminister-ab> (last visited 5-4-2019)

<sup>34</sup> Holscher, M., 'Türkischer Außenminister in Hamburg: Problem?' *Der Spiegel*, 8-3-2017, via <http://www.spiegel.de/politik/deutschland/hamburg-mevluet-cavusoglu-kritisiert-bei-auftritt-deutsche-regierung-a-1137772.html> (last visited 5-4-2019)

<sup>35</sup> 'Türkischer Außenminister greift Deutschland bei Auftritt in Hamburg scharf an' *Welt*, 7-3-2017, via <https://www.welt.de/newsticker/news1/article162660640/Tuerkischer-Aussenminister-greift-Deutschland-bei-Auftritt-in-Hamburg-scharf-an.html> (last visited 5-4-2019)

<sup>36</sup> Ibid.

<sup>37</sup> 'Deutschland verbietet Wahlkampf ausländischer Politiker', *Deutsche Welle*, 30-6-2017, via <https://www.dw.com/de/deutschland-verbietet-wahlkampf-auslaendischer-politiker/a-39493078> (last visited 5-4-2019)

Germany caused considerable outrage, prompting Merkel to declare that campaigning for the death-penalty would not be allowed in Germany. According to the Chancellor, there is no place in Germany for campaigning 'for a cause, which we absolutely reject, like the death-penalty.'<sup>38</sup> Stephan Mayer, spokesman of the Interior Ministry, said that *voting* for such a referendum would not take place in Germany, because '[t]he death-penalty contradicts blatantly and deeply fundamental European, Christian, and humanitarian values'.<sup>39</sup> In response, Gökay Sofuoğlu, chairman of the Turkish Community in Germany, criticized German officials: 'Just because a question is not liked, one cannot simply forbid such a referendum in Germany. This would contradict the Constitution.'<sup>40</sup>

What is there to distill from the way in which the referendum was perceived and responded to in the Netherlands and Germany? We have seen that in both countries a concerted and principled effort to tackle the issues they were confronted with was lacking. Responses were diffused over different levels of government, with central governments, municipalities, and mayors each at times proceeding to restrict certain activities. We have also seen a level of incoherence and ambiguity as regards the precise reasons for not welcoming all Turkish activities. Different argumentations – often conflating – have been employed to justify certain moves. First, there were the pragmatic (and somewhat banal) reasons employed by for example the local governments in Gaggenau (not enough parking-spots) and Cologne (event wrongly registered). Secondly, there were the public order concerns. In the context of the referendum the fear of a disrupted public order seems at least in part to have been linked to the fear of importing tensions that exist between groups in Turkey. Needless to stress, appealing to public order could coat an endless variety of other, good or bad, motives. Thirdly, there were the diplomatic reasons for not allowing Turkish rallies. In particular after Erdoğan's allusions to Nazi-methods, ties with Turkey got cold and both the Netherlands and Germany cited these deteriorated ties as reasons for disallowing further

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<sup>38</sup> 'Merkel würde Werbung für Todesstrafe verbieten', *Zeit*, 9-5-2017, via <https://www.zeit.de/politik/ausland/2017-05/tuerkei-angela-merkel-recep-tayyip-erdogan-todesstrafe> (last visited 5-4-2019)

<sup>39</sup> 'Angela Merkels Türkei-Politik ist krachend gescheitert', *Welt*, 6-5-2017, via <https://www.welt.de/politik/article164318981/Angela-Merkels-Tuerkei-Politik-ist-krachend-gescheitert.html> (last visited 5-4-2019)

<sup>40</sup> 'Türkische Gemeinde stellt Forderung an Bundesregierung', *Welt*, 9-5-2017, via <https://www.welt.de/politik/deutschland/article164389609/Tuerkische-Gemeinde-stellt-Forderung-an-Bundesregierung.html> (last visited 5-4-2019)

campaigning. Lastly, and most interestingly, we have seen that in both countries at times allusion was made to the idea that democracy in Turkey is in peril, and that no platform will or should be provided to anti-democrats. This has not, however, been brought forward unequivocally, and has consistently been conflated with some of the other reasons discussed above.

Conversely, we have seen Turkish officials accusing the Western European countries of anti-democratic behaviour for cracking down on rights of free speech and assembly. The choice of words at times employed by Ankara – fascists, Nazi-remnants, and the like – gives credence to the argument made by many commentators, namely that Turkey benefited from conflict with the West – a variation to one of the oldest tricks in the book: creating an external enemy with a view on mustering support and unity at home. It attests, of course, also to bad style. Be it as it may, if we were to strip the Turkish accusations of their bad garments we would find that at the core they are not wholly absurd. Insofar democracy's default position is that *all* views may circulate in the claims-making arena, restricting democratic rights is problematic and requires principled justification. To the extent that such justification is absent, incoherent, or inconsistent, to that same extent rights-restrictions are theoretically problematic, and restrictors are acting undemocratically.

Does this mean that democratic countries, in order to continue to be rightfully called democratic, should categorically refrain from restricting rights employed to malignant ends at home or abroad? A possible answer to this question in the negative, and a possible neutralization of the Turkish accusations at the address of the Netherlands and Germany, we find in the concept of militant democracy.

## **Part II: Militant democracy and political transnationalism**

### **3. Militant democracy**

#### *3.1 Militant democracy and the double meaning of self-defence*

Militant democracy, in short, refers to the restriction of democratic freedoms of those who misuse those freedoms to the detriment of democracy itself, either by aiming to get rid of democracy or by significantly harming it. In his two-part article 'Militant Democracy and Fundamental Rights', published in 1937, Karl Löwenstein took a good look around him and discerned that democracies around the world were losing ground to authoritarianism, if not outright fascism.<sup>41</sup> In short, Löwenstein asked himself the question how democracies could protect themselves from their enemies within, from enemies that used democratic procedures in order to subvert them. 'Fire', so wrote Löwenstein, 'is fought with fire.'<sup>42</sup> And so democracy, like its enemies, must become *militant*.

When is a democracy militant? Can we say that a democracy is militant when it restricts democratic rights? It seems rights-restriction as such cannot be a defining condition. All democracies restrict rights. For example: although in a democracy everyone in principal has to right to vote, this right is restricted when it concerns underage persons or the mentally impaired. Assumedly no one would want to attribute the label militant on a democracy merely on account of this. How about the willingness of a democracy to restrict rights in order to defend itself against threats to its continuation as a democracy as such? This too seems to stretch the concept militant democracy beyond its distinctive meaning. As Müller points out, 'crime, foreign aggression, or terrorism' can be said to be such threats as well.<sup>43</sup> All democracies, as indeed all political systems, defend themselves against such threats. Still, democratic self-defence, or self-protection, is an element that never goes unmentioned in reviews of militant democracy. The notion of democratic self-defence, in the context of militant democracy, I posit, should be understood as having a double meaning: not only protecting oneself, but also protecting oneself *from oneself*; the democratic right used against the democratic order is as it were of the same substance as that order. Hence, there runs a substantive link between the democratic order that gives, and that which is given. In a militant democracy, the receiving citizen has a restricted playing field in the sense that he cannot, normatively speaking, use the rights received

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<sup>41</sup> Löwenstein, K. (1937), 'Militant Democracy and Fundamental Rights, I', *The American Political Science Review* 31:3; Löwenstein, K. (1937), 'Militant Democracy and Fundamental Rights, II', *The American Political Science Review* 31:4

<sup>42</sup> Löwenstein, K. (1937), 'Militant Democracy and Fundamental Rights, II', p. 656

<sup>43</sup> Müller, J-W. (2012), 'Militant Democracy', In: Sajó, A. & Rosenfeld, M. (2012), *The Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University Press, p. 1262

against the giver, which is to say against itself. If he does, he might meet repression/militancy. In the search of finding a defining feature of the militant in militant democracy, much debate has been dedicated to the question of whether certain *forms* of self-defence – heightened thresholds for constitutional amendment, legally entrenched anti-extremist provisions, judicial party bans, *et cetera* – determine whether a democracy is militant or not. Nolte & Fox, for example, devise a well-known typology of democracies along the two axes of militant/tolerant and substantive/procedural democracies. In this typology, the UK is considered a tolerant, procedural democracy because the legislature is not substantively bound by the constitution and because of a lacking willingness to ban political parties.<sup>44</sup> Germany, on the other hand, is a militant substantive democracy because it is willing to ban certain political parties and because it has an immutable constitutional core (the eternity clause).<sup>45</sup> In Klamt's typology of militant democracies, for instance, constitutionally entrenched democratic symbolism and the ability of governments to declare emergency states are also features that may determine whether a democracy is to be considered militant or not.<sup>46</sup> These discussions, however, structurally speaking, operate on a lower, more specified level than ours: they are concerned with different *conceptions* of militancy, rather than the broader *concept* militancy or the broader *concept* militant democracy.

It is worth noting that although militant democracy, at first glance, is about how to relate to the question of potential 'democratic suicide'<sup>47</sup>, the debate on militant democracy is somewhat obscured by the fact that too little discernment is made between what are in fact three different conceptions of militant democracy.<sup>48</sup> The first is concerned with the possibility that a majority might choose to get rid of democracy, and choose to live under dictatorship instead. In the second conception, militant democracy also protects certain

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<sup>44</sup> Fox, G.H. & Nolte, G. (1995), 'Intolerant Democracies' *Harvard International Law Journal* 36:1, p. 22/23

<sup>45</sup> *Ibid.*, p. 32-34

<sup>46</sup> Klamt, M. (2007), 'Militant democracy and the democratic dilemma: different ways of protecting democratic constitutions', In: Bruinsma, F. & Nelken, D. (eds.), *Explorations in legal cultures*, The Hague: Reed Business, p. 133-158.

<sup>47</sup> There is something to be said against the analogy between a democracy abolishing itself and suicide. For one, by committing suicide one ends only one's own life; a democracy abolishing itself by majority decision concerns potentially many generations to come. On this, see Cliteur, P., and Rijpkema, B. (2012), 'The Foundations of Militant Democracy' In: Ellian, A., and Molier, G. (eds.) (2012), *The State of Exception and Militant Democracy in a Time of Terror*, Dordrecht: Republic of Letters Publishing, p. 257/258

<sup>48</sup> Cliteur & Rijpkema, to my knowledge, are the only ones who clearly distinguish these three. See: Cliteur, P., and Rijpkema, B. (2012), 'The Foundations of Militant Democracy' In: Ellian, A., and Molier, G. (eds.) (2012), *The State of Exception and Militant Democracy in a Time of Terror*, Dordrecht: Republic of Letters Publishing

liberal tenets of the system. Hence, a far-right neo-nazi party that is not against democracy as such, yet is of the opinion that a segment of the population should be disenfranchised on the basis of race, shall also be met with rights-restrictions. One could call this militant *liberalism*. In the third conception, militant democracy is about the more general question why democracy, not just one's own, is to be preferred over other systems of government – and how democracies, in the external sense, should relate to non-democracies. This third conception is nearly always disregarded in debates on militant democracy. This is understandable, for it seems redundant to have to explain at every corner why democracy is the way to go, especially since the great contenders to democracy – fascism, communism – seem to have withered. On the other hand it is salient, seeing that Löwenstein in his original article clearly distinguished the other two conceptions from this one when he lamented the lack of cooperation between democracies and called for democracies around the world to unite to combat the 'fascist International of the multi-colored shirts'.<sup>49</sup> I shall return to this third conception later.

As shown by Capoccia, most countries today – albeit in different ways and to varying degrees – have installed democracy-defending provisions into their constitutions.<sup>50</sup> The most paradigmatic example is the German Basic Law (*Grundgesetz*). It is instructive to have a quick glance at how a doctrinally fairly coherent militant constitution looks like. The Basic Law first of all contains a so-called eternity clause in art. 79.3 (*Ewigkeitsklausel*) that provides that a number of fundamental principles (dignity of man, democracy, rule of law, etc.) of the democratic order are immutable, even immune to the will of parliament.<sup>51</sup> On the basis of art. 18 individuals that aim to undermine the liberal democratic order can be stripped of their basic political rights. Art. 9.2 makes it possible to dismantle anti-democratic associations, whereas art. 21 does the same with regards to political parties. Notwithstanding the highly delicate and complex nature of the task of determining when exactly a party is anti-democratic, or when an individual is trying to subvert the liberal democratic order, the basic idea is simple: instead of providing the enemies of democracy with the tools to subvert it, there is a cut-back on the freedoms of those that oppose it.

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<sup>49</sup> Löwenstein, K. (1937), 'Militant Democracy and Fundamental Rights, I', p. 417

<sup>50</sup> Capoccia, G. (2013), 'Militant Democracy: The Institutional Bases of Democratic Self-Preservation', *Annual Review of Law and Science* 9

<sup>51</sup> *Ibid.*

Clearly, which militant measures are opted for, which institutions may decide to restrict rights, which rationales are applied to justify restricting rights, how courts interpret rights-restricting provisions, and so on, are all highly contested questions – and to a large degree dependent on national-historical context.<sup>52</sup> Nonetheless, the instinct of self-protection that lies at the heart the concept of militant democracy is singular.

### 3.2 Critique

Löwenstein's work was primarily diagnostic and prescriptive of nature. He diagnosed a threat, and proscribed a potion – and, indeed, coined a catchy term for a much older intuition that it might be a good idea to afford the enemies of freedom a bit less of it.<sup>53</sup> Although not unaware of the conceptual and normative difficulties of reaching for repression in order to protect democracy, Löwenstein did not bother justifying militancy theoretically.

The most fundamental critique of militant democracy revolves around what has been coined the paradox of militant democracy.<sup>54</sup> If you resort to fire in order to fight fire, do you not become fire yourself? The notion of paradox, some will say, is misleading. Rather than a paradox – a seeming contradiction – militant democracy is an actual contradiction: the two terms are categorically incompatible. The debate one whether a contradiction or a (soluble) paradox is best viewed as one placed along the divide between procedural as opposed to substantive views of democracy.

In the substantive view the democratic process is not an end-in-itself. Rather, it is instrumental to realizing certain fundamental values – say liberty and equality – in the best possible way. A worldview that runs through democracy's procedural channels in a formally correct manner yet opposes the underlying values of liberty and equality might become a legitimate target for repression. In this way, militancy is then *justified*, and the issue seems more like a soluble paradox than a contradiction.

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<sup>52</sup> Capoccia, G. (2013), 'Militant Democracy: The Institutional Bases of Democratic Self-Preservation' *Annual Review of Law and Science* 9

<sup>53</sup> Müller in this regard writes that 'the intuition behind militant democracy is at least as old as St. Just's famous principle: 'No liberty for the enemies of liberty.'" See: Müller, J-W. (2012), 'A "Practical Dilemma Which Philosophy Alone Cannot Resolve"? Rethinking Militant Democracy: An Introduction', *Constellations* 19:4, p. 536

<sup>54</sup> Kirshner, A. (2014), *A Theory of Militant Democracy: The Ethics of Combating Political Extremism*, New Haven, CT: Yale University Press, p. 2



The proceduralist, like Hans Kelsen, will say militant democracy is a sheer contradiction. According to Kelsen, 'the metaphysical absolutist worldview corresponds with an autocratic stance [...] the critical and relativist worldview corresponds with a democratic stance.'<sup>55</sup> For Kelsen, then, the only 'absolute' value was the democratic process. A democracy that does not treat all views equally, even if these are anti-democratic, ceases to be one. This, alas, is the tragic fate of democracy.<sup>56</sup> Kelsen was consistent in his logic and drew the inescapable conclusion:

'Popular rule cannot maintain itself against its own people [...] whoever is for democracy, cannot let himself be caught in the fateful contradiction of reaching for dictatorship to save democracy. One has to remain faithful to one's flag, even when the ship is sinking; and in the abyss one can only carry the hope that the ideal of freedom is indestructible, and the more deeply it sinks the more it will one day return to life with greater passion.'<sup>57</sup>

In a contemporary version of this critique Invernizzi Accetti & Zuckerman argue that militant democracy fails on its own terms to justify the exclusion of democracy's enemies from the democratic game. This is a serious point. For the decision on inclusion/exclusion with regards to political participation is a decision on the boundaries of the demos. These authors point out that 'the decision as to what constitutes an enemy of democracy touches upon the boundaries of the political entity itself and therefore cannot be subsumed under any prior democratic norm.'<sup>58</sup> Since such a decision cannot be taken democratically, so posit Invernizzi Accetti & Zuckerman, any form of militancy results in arbitrary decisionism, that is, in authoritarianism.

This is necessarily a somewhat simplified sketch of the issue at play. But to attempt to end the debate on militant democracy's legitimacy here once and for all would be, to

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<sup>55</sup> Kelsen, H. (2002), 'On the Essence and Value of Democracy' In: Jacobson, A. & Schlink, B. (eds.)(2002), *Weimar: A Jurisprudence of Crisis*, Berkeley and Los Angeles: University of California Press, p. 107

<sup>56</sup> Kelsen, H. (2006), *Verteidigung der Demokratie: Aufsätze zur Demokratietheorie*, Tübingen: Mohr Siebeck Verlag, p. 237

<sup>57</sup> Ibid.

<sup>58</sup> Invernizzi Accetti, C. & Zuckerman, I. (2016), 'What's wrong with militant democracy?', *Political Studies* 65:1, p. 3

paraphrase Jorge Luis Borges, neither the first time it was tried nor the last time it would fail.<sup>59</sup> Too many varieties of attempts to solve the paradox exist to discuss here, and none of them are uncontested.<sup>60</sup> Rather, in this paper, I will proceed from the observation that such a hardline procedural view like Kelsen's is hardly shared by anyone today; most theorists, as indeed most democracies, share the position that it is justified to resort to repression against anti-democratic views or actors – in one way or the other.<sup>61</sup> Of interest here will be how this stance holds in a transnational context.

#### **4. The complicating transnational factor**

It seems that in order to assess the applicability of militant democracy targeted not at national, but at *transnational* political activity, we need to say something about the concept of transnationalism to begin with. Concretely, we would need to ascertain whether, and if so how, such activity differs significantly from 'regular', singularly national political activity. In this section, therefore, I delve into the concept of transnationalism, and discuss two claims that have been put forward about the nature of transnational (political) activity: the claims of 'deterritorialization' and 'post-nationalism'.

##### *4.1 The spatial dimension of transnationalism*

The spatial dimension – whether understood geographically, institutionally, or otherwise – of militant democracy has never been a serious source of confusion: militant democracy, traditionally understood, belongs to the domain of the nation-state (understood here as the Westphalian, triadic relationship between state institutions, territory, and citizenry) and is concerned with threats to national democracy coming from within. Some confusion however is bound to manifest when this traditional spatial conception is disrupted. Such

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<sup>59</sup> Borges used this line as an introduction to his attempt at understanding the bi-directional reading (first line from left to right, second line from right to left) of the Kabbalah. Borges, 'A Defense of The Kabbalah' In: Weinberger, E. (2002)(ed.), *Jorge Luis Borges: Selected Non-Fictions*, New York: Penguin Books, p. 83

<sup>60</sup> Müller, J-W. (2016), 'Protecting Popular Self-Government from the People? New Normative Perspectives on Militant Democracy', *Annual Review of Political Science* 19

<sup>61</sup> Capoccia, G. (2013), 'Militant Democracy: The Institutional Bases of Democratic Self-Preservation' *Annual Review of Law and Science* 9

seems to be the case when we speak of militant democracy in a transnational context. For what is, after all, the transnational space?

The concept of immigrant transnationalism emerged from the fields of anthropology and migration studies in the beginning of the 1990s.<sup>62</sup> Its development was driven by a dissatisfaction about the unidirectionality and staticity embedded in concepts like 'immigration', 'immigrant', and 'migrant'.<sup>63</sup> Basch *et al.*, the authors that popularized the concept, thus lamented that:

'Our earlier conceptions of immigrant and migrant no longer suffice. [...] Now, a new kind of migrating population is emerging, composed of those whose networks, activities and patterns of life encompass both their host and home societies. Their lives cut across national boundaries and bring two societies into a single social field. [...] [A] new conceptualization is needed in order to come to terms with the experience and consciousness of this new migrant population.'<sup>63</sup>

Hence, these authors proposed the following, still widely used, definition of transnationalism:

'[T]he processes by which immigrants forge and sustain multi-stranded social relations that link together their societies of origin and settlement. We call these processes transnationalism to emphasise that many immigrants today build social fields that cross geographic, cultural, and political borders. An essential element is the multiplicity of involvements that transmigrants sustain in both home and host societies[.]'<sup>64</sup>

Although since its formulation various nuances to this definition have been suggested, the main thrust of this definition quite steadily persist, namely that the concept of

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<sup>62</sup> It is true that an earlier mention of the term transnationalism is found in for example Randolph Bourne's essay 'Trans-national America' from 1916. Still, the proliferation of term, and its promotion to a steadily applied analytical tool in the social sciences, occurred in the beginning of the 1990s. On this, see e.g.: Lafleur, J-M. (2013), *Transnational Politics and the State: The External Voting Rights of Diasporas*, New York: Routledge, p. 2

<sup>63</sup> Glick-Schiller, N., Basch, L. & Blanc-Szanton, C. (1992), 'Transnationalism: A New Analytical Framework for Understanding Migration', *Annals of the New York Academy of Sciences* 645:1, p. 1

<sup>64</sup> Basch, L., Glick-Schiller, N. & Blanc-Szanton (1994), *Nations Unbound: Transnationalized Projects and the Deterritorialized Nation-State*, New York: Gordon & Breach, p. 6

transnationalism pertains to linkages that are *sustained* and *cross-border*. These elements, then, provide analytical benefit that concepts like diaspora, immigration, migrant, and the like, lack. Characterizations of the latter kind don't hinge on a sustained abridgement of 'here' with 'there'. With regards to the concept of diaspora, for example, Faist writes that 'diasporas do not necessarily need concrete social ties. It is possible that the memory of a homeland manifests itself primarily in symbolic ties.'<sup>65</sup> In other words, transnationalism differs from these other concepts in that it is *bi/multidirectional* and *dynamic*, instead of *unidirectional* and *static*.

Despite this analytical leverage, the 'cross-border'-element in particular has caused a considerable fog to blur the discourse on transnationalism. The blurring of the lines between internal/external, or here/there, namely, has led some authors to infuse the debate with higher levels of abstractions, arguing that transnationalism is somehow neither 'here' nor 'there', but is unbounded by such dichotomies. Transnational actors, so goes the claim, live in a 'deterritorialized space'. In this vein, for example, Argun coins the term *Deutschkei* (an amalgam of *Deutschland* and *Türkei*) to denote the space Turkish migrants in Germany inhabit.<sup>66</sup> Similarly, writers like Glick-Schiller *et al.* have put forward the thesis of 'deterritorialization' in their book with the telling title *Nations Unbound: Transnational Projects, Postcolonial Predicaments, and Deterritorialized Nation-States*.<sup>67</sup> 'In their daily activities', they write, 'transmigrants connect nation-states and then live in a world shaped by the interconnections that they themselves have forged.'<sup>68</sup> Related to the claim of deterritorialization is the claim of the 'post-nationalists', who claim that national citizenship is waning in relevance, seeing that migrants nowadays, so goes the claim, are decreasingly dependant on the nation-state for effectuating their social and political rights, and do so increasingly at the European or global level. Both the claims of deterritorialization and post-nationalism are relevant for our discussion on militant democracy, for, if correct, both seem to narrow down states' radius of action.

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<sup>65</sup> Faist, T. (1998), 'Transnational social spaces out of international migration: evolution, significance and future prospects', *European Journal of Sociology* 39:2, p. 222

<sup>66</sup> Argun, B.E. (2003), *Turkey in Germany: The Transnational Sphere of Deutschkei*, New York: Routledge

<sup>67</sup> Basch, L., Schiller, N., Blanc, C. (1994), *Nations Unbound: Transnational Projects, Postcolonial Predicaments, and Deterritorialized Nation-States*, London & New York: Routledge

<sup>68</sup> *Ibid.*, p. 8

Although it is undeniable that the triadic congruence between state institutions, citizenry, and territory of the nation-state model is less tight of a congruence in the age of globalization than it was, say, 200 years ago, it seems that calling the 'emancipation from territory' is questionable, and suggesting the demise or irrelevance of the nation-state model premature. In an empirical study on migrants' claims-making in the UK, the Netherlands, and Germany, Koopmans & Statham challenge the post-national claim by showing that although there clearly exist examples of migrants' post-national claim-making, percentually examples are minimal.<sup>69</sup> It has also been argued that the existence of transnational human rights might be construed as supporting the post-national claim, but that, in the end, human rights are integrated *into* liberal constitutions – not by force, but by choice.<sup>70</sup> A final point to make on the post-national claim is that even if the claim is correct, which is to say that the effectuation of rights is increasingly possible, and done so, at levels beyond the state-level, the same would then hold for non-transnational, i.e. singularly national (political) actors. A decreased possibility for, or impossibility of, militancy due to an alleged 'post-national constellation' therefore would relate to national and transnational political activity equally. As we have seen in our discussion on militant democracy, however, countries simply do, in one way or the other, and whether we like this or not, restrict democratic rights out of self-protection. The 'post-national constellation' does not, in principle, stand this in the way. Why, then, would it stand in the way of militancy in a transnational context?

How about the thesis of deterritorialization? Dissenting from this thesis, a more critical strand of authors have pointed out that we ought to be aware of the ways in which the transnational hinges on and is shaped by the national.<sup>71</sup> Waldinger & Fitzgerald, for example, write that:

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<sup>69</sup> Koopmans, R. & Statham, P. (2003), 'How national citizenship shapes transnationalism: A comparative analysis of migrant claims-making in Germany, Great Britain and the Netherlands', In: Joppke, C. & Morawska, E. (eds.), *Toward Assimilation and Citizenship: Immigrants in Liberal Nation-States. Migration, Minorities and Citizenship*, London: Palgrave Macmillan

<sup>70</sup> Joppke, C. (1998), *Challenging the Nation-State. Immigration in Western Europe and the United States*, Oxford: Oxford University Press

<sup>71</sup> Koopmans, R. & Statham, P. (2003), 'How national citizenship shapes transnationalism: A comparative analysis of migrant claims-making in Germany, Great Britain and the Netherlands', In: Joppke, C. & Morawska, E. (eds.), *Toward Assimilation and Citizenship: Immigrants in Liberal Nation-States. Migration, Minorities and Citizenship*, London: Palgrave Macmillan; Bauböck, R. (2003), 'Towards a Political Theory of Migrant Transnationalism', *The International Migration Review* 37:3; Waldinger, R. & Fitzgerald, D. (2004), 'Transnationalism in Question', *American Journal of Sociology* 109:5

'[W]hat immigration scholars describe as transnationalism is usually its opposite: highly particularistic attachments antithetical to those by-products of globalization denoted by the concept of "transnational civil society." Moreover, migrants do not make their communities alone: states and state politics shape the options for migrant and ethnic trans-state social action. International migrants and their descendants do repeatedly engage in concerted action across state boundaries, but the use, form, and mobilization of the connections linking "here" and "there" are contingent outcomes subject to multiple political constraints.'<sup>72</sup>

In a similar vein, Guarnizo & Smith 'underline the actual mooring, and, thus, boundedness of transnationalism by the opportunities and constraints found in particular locations where transnational practices occur[.]'<sup>73</sup> I concur with these authors. To resort to a metaphor befitting our age, transnationalism thus seen resembles less a satellite than an aeroplane: always dependant on the infrastructure of airports, always in need of fuel in order to connect 'here' with 'there', and, not to forget, always in need of permission to land – permission that can be denied. Such seems to be the case when we speak of *political* transnationalism in particular. A Turkish-German dual citizen can vote in Turkish elections because Turkey has accommodated its democratic institutions to non-resident citizens. A Turkish-German citizen campaigning for a Turkish referendum in Germany can do so because German citizenship grants him the right to free speech and assembly. If this person gets assaulted by a contra-protester it will not be the police of *Deutschkei*, but the German police that has the obligation to offer him protection. Therefore, in our context, the notion of deterritorialization must be rejected. It must be acknowledged that the transnational (political) actor operates (also) in the traditional realm of the nation-state, and that militancy therefore cannot be excluded from the outset on account of an alleged escape from the bondages of territory.

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<sup>72</sup> Waldinger, R. & Fitzgerald, D. (2004), 'Transnationalism in Question', *American Journal of Sociology* 109:5, p. 1177

<sup>73</sup> Guarnizo, E.L. & Smith, M.P. (1998), 'The Locations of Transnationalism', In: Smith, M.P. & Guarnizo, E.L. (eds.), *Transnationalism from Below*, New Brunswick: Transaction, p. 12/13

## 4.2 Duality

If transnational political activity does not hover above ground, is the fact that it is rooted in two grounds then potentially problematic? A Turkish-German dual citizen voting and campaigning in Germany for a referendum in Turkey is exercising his Turkish right to vote and his German right to free speech and assembly. When Germany disallows him to campaign for his cause, is Germany then concerned with the German or the Turkish democratic order? And which democratic order is Germany concerned with when it prohibits a vote on this topic? Indeed, militancy in a transnational context as opposed to in a singularly national context comes with a complicating factor: duality. Transnational actors enjoy rights and duties in (at least) two legal spheres, and are of potential harm to (at least) two democratic orders. Rather than speaking of *deterritorialization* or *post-nationalism*, it seems more in tune with this reality to speak of *bi-territoriality* or *bi-nationalism*. The element of duality, I submit, requires us to consider two questions. One: Whose country's rights are being exercised and could potentially be restricted? The rights of German citizens (campaigning) or Turkish citizens (voting)? Two: Whose democracy needs defending? Turkish democracy, or German democracy? In terms of militant democracy, a constellation of four ideal-typical options present themselves:

- (i) Defending one's own democracy by restricting one's own citizens' rights;
- (ii) Defending one's own democracy by restricting the rights of another country's citizens;
- (iii) Defending a foreign democracy by restricting one's own citizens' rights;
- (iv) Defending a foreign democracy by restricting the rights of another country's citizens.

### 4.2.1 Restricting whose rights?

(i) With regards to the first option, we've seen in the debate on militant democracy that the militant in militant democracy refers to a democratic order's ability and willingness to defend itself. The notion of democratic self-protection should be understood as having a

double meaning: not only protecting oneself, but also protecting oneself from oneself; the right used against the democratic order is of the same substance as that order. So when the German right to free speech and assembly are exercised to the detriment of the German democratic order, whether practiced in the context of a German, Turkish, or Norwegian political event, restricting the exercise of those rights is justified by ways of self-protection. The argument could then be that that which is campaigned for – say, the reintroduction of the death-penalty or the abolishment of democracy elsewhere – is of such a nature that the mere spreading of the message in the public domain of the host country might constitute a danger to democracy or to the host society's normative stability. There seem to be no good grounds for arguing that the particular context – be it national or transnational – in which the exercise of free speech and assembly takes place should take away the host country's right of democratic self-protection. In this sense, this option is on par with 'regular' democratic militancy.

(ii) The substantive link between giver (the democratic order) and received (the democratic right) is absent however when it concerns the rights of the citizens of country B, albeit exercised in country A, that are restricted not by the giver of those rights (country B) but by country A. So can Germany, normatively speaking, restrict the Turkish right to vote of Turkish non-resident citizens in Germany? One answer would be to say 'no': seeing that the German democratic order does not attribute Turkish political rights, it has no legitimation to restrict them – only Turkey may potentially do this. Since the link between giver and received is absent, there can be no talk of self-protection in the double sense mentioned above. If militant democracy is justified by ways of self-protection, and if self-protection means not only protecting oneself but also protecting oneself from oneself, then obstructing another country's right to vote is unjustified militancy. In other words, talking of militant democracy in the absence of mentioned substantive link between giver and received would stretch the concept beyond its distinctive meaning. This is not to say, however, that country A is thereby condemned to undergo what it might consider as a threat to its democracy. In fact, the 'normative cost' of restricting another country's rights in order to protect oneself, I would argue, is less than when it concerns one's own rights. We have earlier mentioned that militant democracy is normatively problematic in view of the 'boundary problem'. Deciding who is included/excluded from the democratic game is in a way a decision about the



boundary of the demos. Deciding on these boundaries, however, presupposes a delineated demos in the first place. For this reason critics of militant democracy, like Invernizzi Accetti & Zuckerman, argue that militant democracy is inherently decisionistic and arbitrary.<sup>74</sup> This critique dissolves however when it are the rights of another country's citizens that are being restricted – say, when Germany would disallow a Turkish vote to take place on German soil if, for whatever reason, Germany deems this a threat to the German democratic order. Defending oneself in this way might not be called democratic militancy in the proper sense, but could nevertheless be justifiable, and would be on par with defending oneself against other external threats.

#### 4.2.2 *Defending who's democracy?*

(iii), (iv) Lastly, country A could potentially restrict rights, whether its own or another country's, with the aim of protecting country B's democracy. We can imagine the argument that posits Germany should not have let a vote on the constitutional referendum take place on German territory, knowing this vote would most probably turn out in favour of the yes-camp, and would contribute to the erosion of (liberal) democracy in Turkey. Such a position would imply that for militancy neither the relationship between giver and receiver of rights is necessary, nor is it necessary that one's own democracy is under threat. The notion of democratic *self*-protection, in the double meaning of the word, that underlies the traditional idea of militant democracy, seems condemned to lose its meaning.

But, one could say, that within the 'self' of 'self-protection' falls not only one's own liberal democracy, but, in fact, also another country's. This would be to say that the values of liberty and equality are not confined to one's own national territory, that they have universal meaning. This position is taken by Cliteur & Rijpkema, according to whom we should not only not shy away from militantly defending democracy, but for whom it is also an absurdity to proclaim liberty and equality as universal values, but only with applicability within one's own borders; if you truly believe, you must be willing to defend democracy

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<sup>74</sup> Invernizzi Accetti, C. & Zuckerman, I. (2016), 'What's wrong with militant democracy?', *Political Studies* 65:1

everywhere.<sup>75</sup> In this view the decline of Turkey's democracy is Germany's concern; they participate, in a sense, in the same liberal democratic story. The universalist argument is then a way out of the critique brought forward against Germany for, for example, wanting to prohibit a Turkish vote on the death-penalty on German soil. The universalist perspective, hence, would neutralize this critique and would keep intact, structurally speaking, the idea of democratic self-defence with its double meaning. Wagrاندl makes a similar point, from a legal perspective, when he argues that countries that are part of the Council of Europe must consider militancy against transnational politics of member countries that are eroding their democracies, because they are co-members of an organization that legally obliges its members to uphold liberal democratic rights.<sup>76</sup> A more fundamental point can be made when it is said that they are co-members in liberal democracy as a universal phenomenon. The question of absolute and universal values is obviously one too vast to address here. Suffice it to say that for the universalist it does not matter that Turkish rights (or German rights for that matter) are restricted by Germany with the aim of protecting Turkey's democracy – this would in fact be a commendable, if not necessary, thing. This brings us back to Löwenstein's other conception of militant democracy, namely the *external* one. Löwenstein, himself a universalist, passionately called for all democracies to unite and form a common front to combat authoritarianism externally as well:

'[W]hile the Fascist International seemingly operates according to a strategic plan on trans-national lines, very little has been accomplished toward establishing a closer cooperation of democracies internationally. Democracies still adhere to the belief that a war of doctrines must be avoided at all costs. The existence of a common danger is not fully recognized.'<sup>77</sup>

Needless to stress that there is much to be said against a democratic missionary zeal when it is in the form of sending 'troops for democracy' to invade foreign sovereign states

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<sup>75</sup> Cliteur, P., and Rijpkema, B. (2012), 'The Foundations of Militant Democracy' In: Ellian, A., and Molier, G. (eds.) (2012), *The State of Exception and Militant Democracy in a Time of Terror*, Dordrecht: Republic of Letters Publishing

<sup>76</sup> Wagrاندl, U. (2018), 'Transnational militant democracy', *Global Constitutionalism* 7:2

<sup>77</sup> Löwenstein, K. (1937), 'Militant Democracy and Fundamental Rights, I', *The American Political Science Review* 31:3, p. 430

deemed authoritarian or undemocratic. But when the politics of those other sovereign states come pay a visit, and hurdles that would otherwise prevent states from barging in on one another are absent, it seems that the liberal democratic host country is standing in front of a fateful dilemma: either to accept the universalist character of liberal-democratic principles, or to adopt a moral relativist stand. The former which would justify, perhaps even urge, defending another country's democracy 'militantly', the latter which would justify standing by idly.

## **Bibliography**

Acar, A., 'The Constitutional Referendum in Turkey: A far Stretch from Right to Free Elections to Referenda?' *Verfassungsblog*, 1-6-2017, via: <https://verfassungsblog.de/the-constitutional-referendum-in-turkey-a-far-stretch-from-right-to-free-elections-to-referenda/>

Argun, B.E. (2003), *Turkey in Germany: The Transnational Sphere of Deutschkei*, New York: Routledge

Basch, L., Glick-Schiller, N. & Blanc-Szanton (1994), *Nations Unbound: Transnationalized Projects and the Deterritorialized Nation-State*, New York: Gordon & Breach

Borges, 'A Defense of The Kabbalah' In: Weinberger, E. (2002)(ed.), *Jorge Luis Borges: Selected Non-Fictions*, New York: Penguin Books

Caramani, D. & Grotz, F. (2015), 'Beyond citizenship and residence: Exploring the extension of voting rights in the age of globalization', *Democratization* 22:5

Capoccia, G. (2013), 'Militant Democracy: The Institutional Bases of Democratic Self-Preservation', *Annual Review of Law and Science* 9

Cliteur, P., and Rijpkema, B. (2012), 'The Foundations of Militant Democracy' In: Ellian, A., and Molier, G. (eds.) (2012), *The State of Exception and Militant Democracy in a Time of Terror*, Dordrecht: Republic of Letters Publishing

Faist, T. (1998), 'Transnational social spaces out of international migration: evolution, significance and future prospects', *European Journal of Sociology* 39:2

Fox, G.H. & Nolte, G. (1995), 'Intolerant Democracies' *Harvard International Law Journal* 36:1

Fukuyama, F. (2006), *The End of History and the Last Man*, New York: Free Press

Glick-Schiller, N., Basch, L. & Blanc-Szanton, C. (1992), 'Transnationalism: A New Analytical Framework for Understanding Migration', *Annals of the New York Academy of Sciences* 645:1

Guarnizo, E.L. & Smith, M.P. (1998), 'The Locations of Transnationalism', In: Smith, M.P. & Guarnizo, E.L. (eds.), *Transnationalism from Below*, New Brunswick: Transaction

Invernizzi Accetti, C. & Zuckerman, I. (2016), 'What's wrong with militant democracy?', *Political Studies* 65:1

Joppke, C. (1998), *Challenging the Nation-State. Immigration in Western Europe and the United States*, Oxford: Oxford University Press

Kelsen, H. (2002), 'On the Essence and Value of Democracy' In: Jacobson, A. & Schlink, B. (eds.)(2002), *Weimar: A Jurisprudence of Crisis*, Berkeley and Los Angeles: University of California Press

Kelsen, H. (2006), *Verteidigung der Demokratie: Aufsätze zur Demokratietheorie*, Tübingen: Mohr Siebeck Verlag

Kirshner, A. (2014), *A Theory of Militant Democracy: The Ethics of Combating Political Extremism*, New Haven, CT: Yale University Press,

Klamt, M. (2007), 'Militant democracy and the democratic dilemma: different ways of protecting democratic constitutions', In: Bruinsma, F. & Nelken, D. (eds.), *Explorations in legal cultures*, The Hague: Reed Business

Koopmans, R. & Statham, P. (2003), 'How national citizenship shapes transnationalism: A comparative analysis of migrant claims-making in Germany, Great Britain and the Netherlands', In: Joppke, C. & Morawska, E. (eds.), *Toward Assimilation and Citizen*

Lafleur, J-M. (2013), *Transnational Politics and the State: The External Voting Rights of Diasporas*, New York: Routledge

Levitsky, S. & Way, L. (2010), *Competitive Authoritarianism: Hybrid Regimes after the Cold War*, Cambridge: Cambridge University Press

Löwenstein, K. (1937), 'Militant Democracy and Fundamental Rights, I', *The American Political Science Review* 31:3;

Löwenstein, K. (1937), 'Militant Democracy and Fundamental Rights, II', *The American Political Science Review* 31:4

Müller, J-W. (2012), 'A "Practical Dilemma Which Philosophy Alone Cannot Resolve"? Rethinking Militant Democracy: An Introduction', *Constellations* 19:4

Müller, J-W. (2012), 'Militant Democracy', In: Sajó, A. & Rosenfeld, M. (2012), *The Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University Press

Müller, J-W. (2016), 'Protecting Popular Self-Government from the People? New Normative Perspectives on Militant Democracy', *Annual Review of Political Science* 19

Öktem, K. (2014), 'Turkey's new diaspora policy: The challenge of inclusivity, outreach and capacity', *Istanbul Policy Center Policy Paper*

Wagrandl, U. (2018), 'Transnational militant democracy', *Global Constitutionalism* 7:2

Waldinger, R. & Fitzgerald, D. (2004), 'Transnationalism in Question', *American Journal of Sociology* 109:5