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- Pedahzur, A. 2004. The defending democracy and the extreme right: A comparative analysis. In *Western democracies and the new extreme right challenge*, ed. R. Eatwell and C. Mudde. London: Routledge.
- Rensmann, T. 2003. Procedural fairness in a militant democracy: The 'uprising of the decent' fails before the Federal Constitutional Court. *German Law Journal* 4 (11): 1117-1136.
- Rosenblum, N. 2007. Multiculturalism and the anti-discrimination principle. *Law and Ethics of Human Rights* 1 (1): 1-59.
- Rustow, D. 1970. Transitions to democracy: Towards a dynamic model. *Comparative Politics* 3: 337-363.
- Sajó, A., ed. 2004. *Militant democracy*. Utrecht: Eleven International Publishing.
- Sartori, G. 2001. The party effects of the electoral system. In *Political parties and democracy*, ed. L. Diamond and R. Gunther. Baltimore: Johns Hopkins University Press.
- Stoss, R. 1991. *Politics against democracy*. New York: Berg.
- Thiel, M. 2009. *The militant democracy principle in modern democracies*. Farnham Surrey: Ashgate.
- Tsebelis, G. 2002. *Veto players*. NJ: Princeton University Press.
- Van Donselaar, J. 1993. Post-war fascism in the Netherlands. *Crime, Law and Social Change* (19): 87-100.
- Van Spanje, J. 2010. Parties beyond the pale. Why some political parties are ostracized by their competitors while others are not. *Comparative European Politics* 8 (3): 354-383.
- Van Spanje, J., and W. van der Brug. 2007. The party as pariah: The exclusion of anti-immigration parties and its effect on their ideological positions. *West European Politics* 30 (5): 1022-1040.

Chapter 3

Frail Democracy

Ivan Ermakoff

Abstract This article elaborates the argument that a group committed to a democratic mode of governance is likely to experience incapacitating collective action problems when caught off guard by an authoritarian bid to state power. Unless they have a mandate to this effect, office holders cannot a priori presume the capacity or the right to determine the group stance. The rank and file for their part are likely to make their behavior conditional on one another's in order to fend off the risks inherent to a critical decision. In these conjunctures, democratic renunciation may arise from collective irresolution and indeterminacy. Investigating collective action challenges in times of authoritarian threats complements militant democracy arguments about legal and constitutional tools for democratic self-defense.

Keywords Center party · Collective action · Coordination · Commitment · Democracy · Regime transition · Renunciation · Weimar republic

3.1 Introduction

When caught off guard by an authoritarian challenge, democratic groups and institutions have to surmount collective action problems that originate from their mode of governance. Democracy in such circumstances experiences the frailty of its own making. The reason, I argue in this essay, is to be found in the type of power transfer constitutive of democratic governance: constituents in this type of setting *conditionally* devolve the right to regulate various action domains to elected office holders. They agree to transfer control over their action to an office holder conditional on their capacity to put an end to the devolution if they see fit. This modality is embodied in the institutional practice of periodic and competitive electoral contests. Were the devolution unconditional, office holders would not regularly submit themselves to the possibility of being dismissed through such contests (§3.2).

I. Ermakoff (✉)

EHESS-Cespra & University of Wisconsin-Madison, Madison, WI, USA
e-mail: ermakoff@ssc.wisc.edu

Democratic governance impedes collective action in times of an authoritarian challenge as a result of two factors (§3.3). First, office holders cannot presume the ability to determine a collective response to the challenge *unless* they have been explicitly granted a mandate for this purpose. Second, given the stakes and the risks inherent to taking a stance in such a conjuncture, individuals facing the challenge have an incentive to make their actions conditional on one another's. Both factors are conducive to irresolution and indeterminacy at the very moment when time is the essence and circumstances call for action. Collective irresolution in turn opens up the range of possible outcomes including the possibility that the group collapses as a site of collective action or that it acquiesces to the prospect of relinquishing the institutional setting of democratic governance.

The present essay explores empirically this last point—the possibility of democratic renunciation arising from collective irresolution and indeterminacy—in light of two related examples. The first one is the decisional challenge faced by the members of the German Center party (*Zentrumspartei*) when Nazi activists throughout Germany were on a political rampage to take over local and regional organs of government in the wake of the March 5, 1933 parliamentary elections. The second example is the collective dynamics that emerged among the parliamentary delegates of the same party when these delegates became confronted with Hitler's request for a constitutional enabling bill on March 21–23, 1933 (§3.4).

Explicit acts of democratic renunciation by highly visible actors—political leaders, representative assemblies, parliamentary delegations, executive committees, or organization boards—have two characteristics that make them highly consequential. For one thing, they make the reshuffling of the state structure formally legal. In these conditions, it is difficult for groups and actors abiding by a norm of legality *not* to align. Second, since these acts of democratic renunciation are highly public events, polity members can assume these events to be part and parcel of their common knowledge and to signal the likelihood of their own collective allegiance (§3.5).

The analytical focus on collective action problems brings into relief issues of strategies and collective response that complement arguments about constitutional and legal provisions central to the militant democracy perspective.¹ Underlying this shift in focus is the claim that constitutional provisions without political clout—that is, without groups' mobilizing for the enactment of these provisions—have no leverage. Hence, the issue at stake is not only whether law provides resources to combat and defuse authoritarian bids. It is also whether groups that have a stake in democratic governance—either because they subscribe to a norm of self-governance or because democratic governance is conducive to the fulfillment of their group interests (e.g. ethnic or religious minorities)—have the collective capacity to engage in strategies of democratic resistance and consolidation.

Democratic groups take up the cudgels by preparing themselves for such collective action challenges. Doing so requires a twofold diagnosis regarding, first, the possibility of an authoritarian bid to state power and, second, the perils inherent to

¹Loewenstein 1937, p. 638–658; Rossiter 2002, p. 291–294; Finn 1991, Chap. 1.

democratic governance when a bid of this kind comes to the fore. For both the rank and file and the group office holders, an authoritarian bid generates a collective conjuncture marked by the salience of a “critical decision”: the choice is rife with individual and collective risks, and it commits the future by irretrievably altering the cost structure of subsequent choices.² As they ponder upon alternative courses of action and await a collective stance, rank and file and office holders lend themselves to equivocation and paralysis. They undercut the prospect of being trapped in such indecision by agreeing to pre-commit to a devolution mechanism vesting office holders with the mandate to take actions geared to the preservation of democratic governance (§3.6).

3.2 Democratic Governance

In the framework of this essay, a mode of governance designates a way of exercising control. The notion applies to any collective—a group, an organization, or a polity—in which individuals endowed with a decisional capacity affecting the collective as a whole (the “office holders”) are differentiated from the rank and file. Governance is democratic when the rank and file have the last say regarding who is entitled to hold office. It is authoritarian when the rank and file are deprived of this capacity.

Whether governance is democratic or authoritarian, it implies a transfer of control from the rank and file to an office holder. No governance is possible without such a transfer. The rank and file *de facto* transfer control over their actions to the office holder.³ However, depending on the type of governance at play, the modality of this transfer of control differs. In a democratic setting, the rank and file are entitled to repudiate the office holder if they see fit. “Under democracy, people invest governments with the power to rule because they can remove them”.⁴

Three consequences follow. First, the office holder's right to rule, that is, her formally recognized capacity to edict directives, explicitly rests on the rank and file's endorsement. Absent this endorsement, the office holder cannot hold on to her office. Her ability to rule is effective insofar as the collective validates this ability through active consent. Second, the transfer of control to the office holder is conditional on this endorsement. By way of consequence, it is conditional on the formally recognized ability to dismiss the office holder. Third, the transfer of control is bound to be subject to reassessments. If not, it would become one-sided and unconditional.

²Ermakoff 2008, p. xi; Ermakoff 2014, p. 236.

³This point parallels Coleman's analysis of collective behavior and leadership as resulting from a set of actors' voluntarily transferring the right to control their action to an actor or an organization, thereby endowing this actor or this organization with the factual capacity to orient or direct their behavior: Coleman 1990, p. 35–36, Chap. 9.

⁴Manin et al. 1999, p. 13.

Open, periodic and competitive electoral contests institutionalize these modalities of the transfer of control.⁵

1. Periodic electoral contests amount to periodic recalls. The office holder has to prove that she can pass the test. This institutional feature conveys a straightforward political message: no office holder is entitled to permanently claim her office or position.
2. In submitting herself to the possibility of being dismissed, the office holder makes herself accountable to the rank and file. Periodic recalls institutionalize accountability.⁶
3. The uncertainty inherent to open and competitive contests makes clear that in a democratic setting the transfer of control between the rank and file and the office holder by design is conditional on the rank and file's endorsement.

Quite different is the transfer of control in an authoritarian setting. Neither the office holder nor the rank and file assume that the transfer can be periodically reconsidered and questioned. The rank and file submit themselves to the prospect of following orders. There is no formal procedure enabling the rank and file to dismiss the office holder. In short, the transfer of control is unconditional.

3.3 Authoritarian Bids

Let us now examine a situation in which a democratic group, i.e., a group operating according to a democratic mode of governance as described above, is confronted with a threat to its integrity, its basic interests or its collective capacity. The challenge is high-stake and decisional. The situation calls for action. Group members cannot decide not to decide. Whichever behavioral stance they adopt, their choice will commit their future and they know it. They also know that this choice entails individual and collective risks. The decision is "critical" in the sense that it will be highly consequential and that the consequences at stake can prove very costly for the group as a whole and for individual decision-makers.⁷

Faced with a critical decision, group members develop a dramatic interest in coordinating their beliefs, actions and justifications. This interest in coordination gives way to acute uncertainty if the stance of the group appears to be indeterminate or open to question. The challenge motivates individual actors to make their line of conduct conditional on one another's in a situation in which their collective behavior remains undecided. The indeterminacy of each reflects, and intensifies, the

⁵Przeworski 1991, p. 10; Manin 1996, p. 224–233.

⁶Manin et al. 1999, p. 10.

⁷Ermakoff 2008, p. xi, xxvi, 332.

indeterminacy of all.⁸ Insecurity and ambivalence undercut the prospect of collective action.⁹

Authoritarian bids to state power generate critical challenges of that kind. These bids are high-stake. If successful, an authoritarian claimant to state power has leeway to call individual and group rights into question. In addition, this claimant can be expected to crack down on democratic groups. How then shall those who have a stake in democratic governance react to an authoritarian bid? Passivity amounts to acquiescence. Opposition implies exposing oneself to retaliatory violence. Renunciation means reneging on the capacity for self-defense.

A case in point is the political situation created by the Nazi activists' attempt to take control of local and regional representative institutions in the immediate wake of the March 5, 1933 parliamentary elections in Germany. On Election Day, Nazi leaders did not achieve a parliamentary majority as they had hoped despite coercive measures targeting opponents affiliated with the political center and the left.¹⁰ Yet, Nazi party activists throughout Germany interpreted the results as the green light to take over city councils and regional assemblies.¹¹

For the members of the so-called "Weimar parties," that is, the parties that were endorsing the democratic principles of the Weimar Republic (the German Social Democratic Party, the Center Party, the German State Party), the Nazi offensive was a direct assault upon the rule of law, individual rights and the federal structure of the Weimar Republic. They had to figure out how to respond to such a challenge. Given the Nazis' propensity to resort to violence and intimidation, individual responses were particularly risky. The response needed to be collective.

Still, group members who lack an agreed-upon script for dealing with such challenges cannot rely on the shared presumption that they know what to do. Shall they oppose frontally the authoritarian claimant and his agents? Shall they attempt to negotiate the possibility of a deal? Shall they acquiesce? Consider the situation faced by both the rank-and-file members of the Center party and their parliamentary representatives in March 1933. Although not a confessional party, the German Center party was commonly viewed as representing and defending the interests of the Catholic minority. During the electoral campaign for the March 5 parliamentary elections, party officials denounced plans for dictatorship and pledged themselves to the defense of the Weimar constitution.

On March 18, 1933, the general secretariat of the Center party for the Rhine region located in Cologne sent out a circular letter worded as follows: "In this time

⁸Ermakoff 2015, p. 100.

⁹The coordination dilemmas generated by critical decisions are to be distinguished from the lack of cooperation resulting from (1) the centrifugal tendencies of a "polarized pluralistic" political system, (Capoccia 2005, p. 180); and (2) the divide-and-conquer strategies of would-be autocrats (Weingast 1997, p. 249). Actors experiencing a decision as critical develop an interest in coordination. By contrast, the failures of cooperation analyzed by Capoccia (2005) and Weingast (1997) result from the emergence of an incentive structure pulling apart constituencies that have much to lose from an authoritarian takeover.

¹⁰Evans 2003, p. 340.

¹¹Allen 1965, p. 170–181.

of political decisions, it is our strongest desire to discuss the consequences resulting from the present situation as soon as possible with our collaborators and friends. *We ask for your understanding* if this is not possible yet. We hope to be able to extend to you an invitation to such a discussion in the next few days, after some negotiations have been concluded".¹² Obviously, the party rank and file was calling for guidance. Given their commitment to an orderly and legalist conception of politics, developments on the ground since Election Day were particularly troubling and destabilizing. It was unclear which stance they should adopt.

On March 21, 1933, the Hitler cabinet released the text of the enabling bill conferring on the chancellor (Hitler) extensive executive and legislative powers, including the ability to enact constitutional changes, without the supervision or control of parliament. Since the bill opened the way for constitutional changes, it could not be passed without a two-third majority in parliament. The Nazis and their conservative allies did not command such a majority. The outcome of the vote crucially hinged on the stance adopted by the Social Democratic party and the Center party parliamentary delegations. Were the Social Democrats to vote against the bill, the vote of the Center party delegation would become pivotal.

Upon taking cognizance of the content of the bill, Eugen Bolz, member of the Center party executive committee, wrote to his wife: "Whatever we do, it will be fateful ... The content of the enabling bill surpasses all expectations" (letter dated March 21, 1933).¹³ The next day, the Center party delegate Clara Siebert acknowledged to her colleague Georg Schreiber: "I cannot come to terms with the events. I no longer have the strength. I can only pray."¹⁴ In his personal notes, Josef Wirth evokes a "time, in which probably no one had ever been more deeply shaken ...".¹⁵

The terms of the dilemma become clearer when we pay attention to the decisional features of the challenge. First, the choice entailed individual risks. The Nazis had made clear that they were resolute to use violence for political purposes.¹⁶

¹²Emphasis added. "Rheinische Zentrumsparlei Generalsekretariat, Köln, den 18. März 1933 Ew. Hochwohlgeboren! Es ist unser dringender Wunsch, sobald wie eben möglich in dieser Zeit politischer Entscheidungen mit unseren Mitarbeitern und Freunden die sich aus der gegenwärtigen Lage ergebenden Folgerungen zu besprechen. Wir bitten Sie, dafür Verständnis zu haben, wenn das im Augenblick noch nicht möglich ist. Wir hoffen aber, Ihnen schon in den nächsten Tagen eine Einladung zu einer solchen Besprechung zukommen lassen zu können, nachdem gewisse Verhandlungen zum Abschluß gekommen sind" (Stadtarchiv Düsseldorf; Abteilung XXI-4: Rheinische Zentrumsparlei).

¹³"Was wir auch tun, ist verhängnisvoll ... Der Inhalt [des Ermächtigungsgesetzes] übertrifft alle Erwartungen" (Hauptstaatsarchiv, Stuttgart, Nachlass Eugen Bolz, Q 1-25, 7, handwritten letter dated March 21).

¹⁴"... sagte ich zu Prälat Schreiber, ich könne mich nicht auseinandersetzen mit den Geschehnissen, ich habe die Kraft nicht mehr, ich könne nur beten" (Kommission für Zeitgeschichte, Bonn, Tagebuchaufzeichnungen von Clara Siebert; reproduced in: Becker 1961, p. 208).

¹⁵"In dieser Stunde, in der wohl niemand nicht im tiefsten aufgerüttelt war ..." (Bundesarchiv, Coblenz, Nachlass Wirth N1342/133, "Die historische Reichstagssitzungen vom 21 und 23 März 1933", p. 7).

¹⁶Aycoberry 1999, p. 17.

Voting against Hitler's enabling bill meant exposing oneself to Nazi retaliations. Conversely, voting for the bill meant taking the risk of being viewed as a sellout by peers and constituents. The more isolated any of these two stances would be, the greater the risks.

Second, the bill was to have far-reaching consequences bearing upon the Center party's constituency and, more broadly, the fate of Germany. The constitution of Weimar had been a bulwark of minority rights. Many in the Center party viewed this constitutional setting as particularly congenial to the defense of the cultural and political interests of the Catholic minority in Germany. If, through their vote, the Center party delegates discarded these constitutional warrants, they undermined the party capacity to preserve, or act on behalf of, these interests.

Third, the decision would irremediably alter future options. Turning down the bill would deprive Hitler's bid for total power of the seal of legality. Passing the bill would endow Hitler with a blank check to legislate and remodel the state. Down the line, it would make the prospect of collective resistance futile. In a letter to his wife written on the eve of the vote, Bolz acknowledged the dilemma and the need for a collective stance: "Here *we* are, *every man for himself*, struggling with the position we should take regarding this unprecedented enabling bill. I cannot write the pros and cons. The constraints *we* face will probably lead us to vote for the bill" (letter dated March 22, 1933).¹⁷

3.4 The Possibility of Renunciation

In these highly volatile and indeterminate situations, different outcomes are possible. The absence of collective action can soon give way to splits and defections. The group then collapses as a site of collective agency ("collapse"). Alternatively, the group remains a locus of agency and adopts a collective stance. The content of this stance can be strikingly different though. A "resistance" scenario describes the group mobilizing against the authoritarian bid for state power. In a "renunciation" scenario, the group acquiesces to the authoritarian bid and, in so doing, compromises its commitment to democratic institutions. This multiplicity of outcomes invites us to investigate the interactional dynamics elicited by the shared experience of a high-stake challenge and, more specifically, the etiology of alignment processes.¹⁸

Two broad types of alignment processes underlie group behavior in times of challenge. One depicts individuals being influenced by those who have already

¹⁷Emphasis added. "Hier ringen wir, jeder für sich, mit der Stellungnahme zu dem unerhörten Ermächtigungsgesetz. Das Für und Wider kann ich nicht schreiben. Die Zwangslage wird uns wohl zu einer Zustimmung bringen" (Hauptstaatsarchiv, Stuttgart, Nachlass Eugen Bolz, Q 1-25, 7, handwritten letter dated March 22, quoted in: Miller 1951, p. 450).

¹⁸Ermakoff 2008, Chap. 6.

opted for a course of action. Alignment is sequential. Actors observe how many of their peers have committed to a line of conduct. If, given the circumstances, they feel that this number is high enough to motivate their joining the bandwagon, they align as well. The scope of the phenomenon is a function of two group parameters: (a) the proportion of first movers and (b) the distribution of individual propensities for one course of action.¹⁹

A quite different type of alignment is based on inference-making and expectation coordination. Actors who remain uncommitted and uncertain because they do not find enough safety in the numbers of those who have joined a bandwagon in one direction or another, seek to anticipate how the group as a whole will behave. Since these uncommitted actors make their choice conditional on each other's, they seek to coordinate their behaviors and, for this purpose, to form convergent expectations. Alignment takes place when these actors become confident that they share a congruent assessment of the group's future behavior.

The public stances of highly visible group members play a key role in this process. A highly visible actor is for her peers strategically convenient in conjunctures of mutual uncertainty because her profile and political inclinations are common beliefs. Consequently, group members can presume that this actor's public stances will allow them to collectively gauge how she assesses the group's action preference. For instance, a prominent actor known for her opposition to authoritarian schemes decides to remain silent or to keep a low profile. Her peers have reasons to interpret this silence as revealing her belief that the group favors renunciation. They also have reasons to believe that this interpretation of her silence has wide currency among themselves. In so doing, group members tacitly coordinate their beliefs about their own future collective behavior.

To flesh out the significance of these dynamics, let us examine the collective behavior of the Center party parliamentary delegation on March 23, 1933. Personal accounts and testimonies underline the impact of two public stances. One was the party chairman's, Ludwig Kaas'. In his memoirs, Heinrich Brüning, former chancellor and member of the Center party executive committee, mentions the "great impact of [Kaas'] statement in the delegation meeting" and his ability to tip the scales.²⁰ Hélène Weber, who was parliamentary delegate in March 1933, reported to Paul Bausch that she viewed Kaas as "the main culprit for how things turned out. He had fallen prey to the promises Hitler had actually made in the parliamentary session."²¹ Her colleague Heinrich Krone implicitly traces the delegation's stance to

¹⁹ Granovetter 1978, p. 1421.

²⁰ Brüning 1970, p. 658.

²¹ „[Kaas] sei der Hauptschuldige an der ganzen Entwicklung gewesen. Er sei auf die Versprechungen Hitlers, die er tatsächlich in der Reichstagsitzung gemacht habe, hereingefallen" (Bausch 1969, p. 117). Bausch mentions in these memoirs that he was very close to Hélène Weber and that she often talked to him about these few days.

Kaas²² while Johannes Schauff, another parliamentary delegate, identifies him as the staunchest supporter of the enabling bill.²³

The other stance was Brüning's. Jakob Kaiser, a parliamentary delegate, observes: "Brüning was seating next to Kaas and remained silent."²⁴ Clara Siebert makes the same observation: Brüning "did not speak a lot."²⁵ This observation is key. Kaas and Brüning were the most prominent members of the parliamentary delegation. Kaas had been party chairman since 1928. He had publicly criticized the Nazis and could not be suspected of ideological sympathies for them. In the previous months, he had been actively involved in various attempts to find a way out of the political crisis. Brüning had been chancellor between March 1930 and May 1932. The prominence he had gained through his chancellorship was undisputed. Furthermore, in the eyes of the rank and file delegates, both Kaas and Brüning were conservatives. They stood for the party mainstream.²⁶ In terms of visibility and political profile, thus, Brüning was on a par with Kaas.

The Center party delegation met twice on March 23, 1933. The first meeting, in the morning, preceded Hitler's presentation of the enabling bill in the Reichstag. During this meeting, Brüning expressed his doubts and suspicion vis-à-vis the prospect of signing Hitler a constitutional blank check. The second meeting took place in the afternoon, before the deputies were called to vote. It is at this second meeting that Brüning's silence struck his peers. Was not his silence indicative that much to his despair he expected a vote of acquiescence to prevail among his colleagues? Wirth alludes to this interpretation in his personal notes: "The whole thing was for him so dreadful that he wanted to see no one."²⁷ Clara Siebert's unpublished account of this meeting is explicit about the importance she was granting to Brüning's public demeanor: "What I was doing now was a depersonalized action relying on what Brüning was doing. Beyond all subjective considerations, beyond all bitter grief, above all the will to confess 'I cannot' stood now 'I do what Brüning does'".²⁸

²² Archiv der Konrad Adenauer Stiftung, Sankt Augustin, Nachlaß Krone, I-028, 006/5: interview with Knopp and Gotto, p. 10.

²³ Draft of an interview with Kusch, Institut für Zeitgeschichte, Munich, Archiv Johannes Schauff, ED 346 Nr. 24.

²⁴ Bundesarchiv, Coblenz, Nachlaß Kaiser N1018/246, p. 53: "Brüning hat geschwiegen."

²⁵ "Brüning sprach nicht viel in dieser Stunde" (Kommission für Zeitgeschichte, Bonn, Tagebuchaufzeichnungen von Clara Siebert, p. 111).

²⁶ "Brüning was a conservative, who from the start strove to bring the new social-Christian conservatism to victory" (Joseph Wirth) (Bundesarchiv, Coblenz, Nachlaß Wirth N1342/18, III.22).

²⁷ "Brüning ... nahm die Sache so furchtbar ernst, daß er niemand sehen wollte" (Bundesarchiv, Coblenz, Nachlaß Wirth N1342/18, III.29).

²⁸ "Jetzt war, was ich tat, entpersönlichte Handlung im Vertrauen auf das, was Brüning tat. Über allen subjektiven Erwägungen, über allem bitteren Leid, über allem drängenden Willen zum Bekenntnis: 'ich kann nicht' stand jetzt 'ich tue was Brüning tut'" (Kommission für Zeitgeschichte, Bonn, Tagebuchaufzeichnungen von Clara Siebert, p. 112–113).

3.5 Regime Transition

The passing of Hitler's enabling bill on March 23, 1933 was an explicit act of democratic renunciation—a "constitutional abdication".²⁹ In legalizing an authoritarian bid, a constitutional abdication makes it utterly difficult for democrats to invoke the rule of law as a prime political motivation. The formal legality of the transition lends credence to the belief that consent will be widespread. Moreover, the visibility of acts of abdication contributes to their impact in a context marked by collective indeterminacy, in the same way a prominent actor's public acquiescence to an authoritarian bid gives way to the shared belief that the group is not ready for a fight.

The "horrendous" speed and the easiness with which the Nazis consolidated their grip over state institutions and German society in the spring of 1933 take on their significance in this light.³⁰ Within a few days, administrators, judges, and police officers became dutiful enforcers of a Nazi order.³¹ It took a few weeks for organizations, associations, groups and parties to dissolve or shift their allegiance.³² We cannot explain how quickly the Nazis were able to assert their political hegemony unless we relate the behavioral and ideological alignment that took place on a large scale in the spring of 1933 to the constitutional abdication that in the eyes of the polity as a whole sanctioned Hitler's bid for total power. By making the transition to a Nazi dictatorship formally legal, this event elicited shared expectations that acquiescence would prevail.

3.6 Coordination and Commitment

Investigating how democratic governance in times of crisis is likely to yield collective action problems has three implications for strategies of democratic self-defense. First, this line of inquiry complements the critique of a strict and formal adherence to democratic principles in such conjunctures.³³ The frailty of democratic groups and institutions faced with an authoritarian challenge can be traced to an in-built aversion for any form of executive command outside the bounds of a well-defined

²⁹ Ermakoff 2008, Chap. 2.

³⁰ Welzer 2005, p. 58.

³¹ Bracher 1970, p. 197; Winkler 1989, p. 906.

³² Bracher 1962, p. 261–278. German Catholics and Center party members were not immune to this process. As early as April 25–26, 1933, representatives of Catholic associations convening in Berlin mentioned widespread adhesions to the Nazi party among their constituents, Stasiewski 1968, p. 91; in his memoirs, Brüning 1970, p. 664, makes the same observation.

³³ Loewenstein 1937, p. 423–424; Finn 1991, p. 164.

mandate. In a democratic setting, no transfer of control can be deemed unconditional. Exceptional powers become acceptable, and thus legitimate, if endorsed through a process of collective decision-making.

The urgency inherent to high-stake confrontations, however, renders this decisional equation almost intractable. Not only is there little time for collective deliberation and decision-making. The stakes of the confrontation are moreover conducive to collective indecision and indeterminacy even when the members of the group under challenge expect to meet and deliberate, as the case of the Center party delegation in March 1933 illustrates. That is to say, the very logic of democratic governance jeopardizes its viability when it is under attack. It is by deviating from it that groups with a stake in this mode of governance can hope to salvage it.

This brings me to the second point: what is to be done? The focus on issues of collective agency underscores the need to prevent at once coordination problems within the democratic camp as well as the pusillanimity of elected office holders. In situations of collective indeterminacy prominent actors who, thanks to their political profile, become informative focal points, have the capacity to move the group in one direction or another. Their prominence makes them focal points and their political profile putative sources of information about the group's likely behavior insofar as their peers view them as staking their stance on the group's. Consequently, their public stand can decisively shape the dynamics at play.³⁴

The importance acquired by these actors in such conjunctures is of course paradoxical in two respects. For one thing, group members overcome their indecision by making themselves extremely dependent on the signals of prominent actors. Lo and behold, in putting their collective fate in the hands of those who can direct them by eliciting the coordination of their behavioral stances, group members relinquish the ability to hold prominent actors accountable. The second paradox relates to the profile of prominent actors who acquire the capacity to direct: their peers view them as testing the waters before they take a stand. The situation is therefore one in which, due to the specifics of the conjuncture, the least committed might become the most influential.

Given the hazards of this type of relational configuration, it is worth considering how rank and file and office holders might avoid the trap of mutual uncertainty and collective indeterminacy in the first place. Office holders and the rank and file can agree *ex ante* on a devolution mechanism whereby office holders take upon themselves the responsibility to orient the group's collective action for the purpose of preserving its democratic setting. A pre-agreement of this kind has two advantages. On the one hand, it gives credence to the expectation that the group as a whole will preserve its capacity for collective action. On the other hand, it makes it more difficult for office holders to waver or take refuge in ambiguous stances.

The third point regarding democratic self-defense concerns the scope of the pre-agreements I have just mentioned. This point parallels the theory of constitutional dictatorship.³⁵ Devolution mechanism in situations of political emergencies should

³⁴ Ermakoff 2008, Chaps. 8, 9, Appendix A.

³⁵ Rossiter 2002, p. 8.

not be confused with unconditional transfers of control. In the same way the practice of constitutional dictatorship can be assessed in light of several validity criteria³⁶, mechanisms of power devolution within groups or institutions remain subject to two primary conditions. First, their only *raison d'être* is to fend off the vital threat posed by an authoritarian bid for power. Second, and correlatively, they are to be terminated when the threat has been overcome. In explicitly stating both requirements, rank and file and office holders reaffirm the basic tenet of their democratic commitment.

3.7 Conclusion

Individuals committed to democratic governance do not unconditionally transfer the right of control over their action to an office or one actor, in contradistinction to individuals abiding by an authoritarian power structure. As a result, in times of unexpected authoritarian challenge, actors operating in a democratic setting are more likely to make their actions conditional on one another's and to experience collective indeterminacy. In other words, groups and institutions operating according to rules of democratic governance may find themselves incapacitated at the very moment when action and counter-mobilization are most needed given the nature of the threat they face.

The possibility of inconsistent or irresolute stances on the part of democratic groups and institutions has been a staple of the critique of democracy, harkening back to Hobbes' observation that in representative assemblies "the absence of a few, that would have the Resolution once taken, continue firme [...] or the diligent appearance of a few of the contrary opinion, undoes today, all that was concluded yesterday".³⁷ Although analysts of collective decision disagree about how frequent and consequential such voting inconsistencies might be,³⁸ the fact is that their possibility is inherent to the collective character of decision-making in democratic settings.

This essay has pursued a different, although related, line of inquiry by examining how the conditional character of power transfers in such settings magnifies collective action problems when group members face a critical decision. This analytical focus invites us to consider self-defense strategies not only in terms of repressive measures³⁹ and their normative underpinnings,⁴⁰ but also with regard to the factors allowing constituents and office holders to overcome moments of collective indecision and, in so doing, the possibility of their own democratic renunciation. Democratic consolidation is not simply a matter of judicial resources. Ultimately, it

³⁶Rossiter 2002, p. 296–306.

³⁷Hobbes Thomas, *Leviathan*, Oxford: Oxford University Press, p. 123.

³⁸E.g. Riker 1982; Mackie 2005.

³⁹Loewenstein 1937, p. 644–654; Capoccia 2005, p. 50–53, 55–62.

⁴⁰Kirshner 2014, p. 33–60.

rests on the political capacity of those who have a stake in the preservation of a democratic mode of governance.⁴¹

Archival Sources

Archiv für Christlich-Demokratische Politik, Konrad-Adenauer-Stiftung (ACDP), Sankt-Augustin

Nachlaß Heinrich Krone

Bundesarchiv, Coblenz:

Nachlaß Jakob Kaiser

Nachlaß Joseph Wirth

Institut für Zeitgeschichte, Munich

Nachlaß Johannes Schauff

Hauptstaatsarchiv, Stuttgart

Nachlaß Eugen Bolz

Kommission für Zeitgeschichte, Bonn (KfZ):

Tagebuchaufzeichnungen von Clara Siebert

Stadtarchiv Düsseldorf

Abteilung XXI-4: Rheinische Zentrumsparlei

References

- Allen, William S. 1965. *The Nazi seizure of power; the experience of a single German town, 1930–1935*. Chicago: Quadrangle Books.
- Ayçoberry, Pierre. 1999. *The social history of the third Reich, 1933–1945*. New York: New Press.
- Bausch, Paul. 1969. *Lebenserinnerungen und Erkenntnisse eines schwäbischen Abgeordneten*. Körtal: Selbstverlag. Hobbes, Thomas. *Leviathan*, Oxford: Oxford University Press.
- Becker, Josef. 1961. Zentrum und Ermächtigungsgesetz 1933, *Vierteljahrshefte für Zeitgeschichte* 9: 195–210.
- Bracher, Karl Dietrich. 1962. Stufen der Machtergreifung. In *Die nationalsozialistische Machtergreifung. Studien zur Errichtung des totalitären Herrschaftssystems in Deutschland, 1933–34*, ed. Karl Bracher, Wolfgang Sauer, and Gerhard Schulz, 31–348. Cologne and Opladen: Westdeutscher Verlag.
- . 1970. *The German dictatorship: The origins, structure, and effects of national socialism*. New York: Praeger.
- Brüning, Heinrich. 1970. *Memoiren 1918–1934*. Stuttgart: Deutsche Verlags-Anstalt.
- Capoccia, Giovanni. 2005. *Defending democracy: Reactions to extremism in interwar Europe*. Baltimore: The Johns Hopkins University Press.
- Coleman, James S. 1990. *Foundations of social theory*. London: Harvard University Press.
- Ermakoff, Ivan. 2008. *Ruling oneself out. A theory of collective abdications*. Durham: Duke University Press.

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- . 2014. Exceptional cases: Epistemic contributions and normative expectations. *The European Journal of Sociology* 55 (2): 223–243.
- . 2015. The structure of contingency. *American Journal of Sociology* 121 (1): 64–125.
- Evans, Richard J. 2003. *The coming of the third Reich*. New York: Penguin Press.
- Finn, John E. 1991. *Constitutions in crisis: Political violence and the rule of law*. Oxford: Oxford University Press.
- Granovetter, Mark. 1978. Threshold models of collective behavior. *American Journal of Sociology* 83 (6): 1420–1443.
- Kirshner, Alexander. 2014. *A theory of militant democracy: The ethics of combatting political extremism*. New Haven: Yale University Press.
- Loewenstein, Karl. 1937. Militant democracy and fundamental rights II. *The American Political Science Review* 31 (4): 638–658.
- Mackie, Gerry. 2005. *Democracy defended*. Cambridge: Cambridge University Press.
- Manin, Bernard. 1996. *Principes du gouvernement représentatif*. Paris: Flammarion.
- Manin, Bernard, Adam Przeworski, and Susan Stokes. 1999. Introduction. In *Democracy, accountability, and representation*, ed. Adam Przeworski, Susan C. Stokes, and Bernard Manin, 1–25. Cambridge: Cambridge University Press.
- Miller, Max. 1951. *Eugen Bolz. Staatsmann und Bekenner*. Stuttgart: Schwabenverlag.
- Przeworski, Adam. 1991. *Democracy and the market, studies in rationality and social change*. New York: Cambridge University Press.
- Riker, William H. 1982. *The art of political manipulation*. New Haven: Yale University Press.
- Rossiter, Clinton. 2002/1948. *Constitutional dictatorship: Crisis government in the modern democracies*. With a new introduction by William J. Quirk, New Brunswick.
- Stasiewski, Bernhard, ed. 1968. *Äkten deutscher Bischöfe über die Lage der Kirche, 1933–1945*. Mainz: Matthias-Grünwald.
- Weingast, Barry. 1997. The political foundations of democracy and the rule of law. *American Political Science Review* 91: 245–263.
- Welzer, Herald. 2005. Unter Mitarbeit von Michaela Christ. In *Täter. Wie aus ganz normalen Menschen Massenmörder werden*. Frankfurt am Main: Fischer.
- Winkler, Heinrich August. 1989. *Der Weg in die Katastrophe: Arbeiter und Arbeiterbewegung in der Weimarer Republik 1930 bis 1933*. Berlin: J. H. W. Dietz.

Chapter 4

How Does Militant Democracy Function in Combating Right-Wing Extremism? A Case Study of Slovakian Militant Democracy and the Rise of *Kotleba – People's Party Our Slovakia*

Miroslav Mareš

Abstract This chapter examines how militant democracy functions in countering right-wing extremism. A case study of the Slovakian extreme-right party Kotleba's – People's Party Our Slovakia (L'SNS) is used to explain the difficulties in using militant democracy to confront right-wing extremism. First, the history of militant democracy combatting right-wing extremism is outlined, including Karl Loewenstein's legacy of counter fascist measures from the interwar period. The situation in the Federal Republic of Germany is analysed and some critiques of political scientists and legal experts relating to militant democracy are discussed. Second, the author, building on this discussion, develops a conceptual framework for analysing the impact of militant democracy on right-wing extremism. He elaborates three scenarios that can play out after banning a political party or association: a positive "white scenario" (the elimination of right-wing extremism), a grey scenario (the rise of right-wing *populism*, instead of right-wing extremism) and two black scenarios (the recurrence of a party very similar to that which has been banned and the rise of new, effective organisational structures within the extreme-right scene). Third, to conclude, the author analyses the L'SNS and the countermeasures of Slovak militant democracy, a confrontation still in progress, against the backdrop of the three scenarios.

Keywords Right wing extremism · Militant democracy · Slovakia · Political parties · Freedom of association · Freedom of speech

M. Mareš (✉)

Department of Political Science, Masaryk University (FSS MU), Brno, Czech Republic
e-mail: mmareš@fss.muni.cz