Struggling Challenges of Right-Wing Extremism and Terrorism within Democratic Boundaries: A Comparative Analysis

Ami Pedahzur
Department of Political Science
University of Haifa
Mount Carmel, 31905
Haifa, Israel
Tel: 972-4-8240045
Fax: 972-4-8257785
e-mail: pedahzur@poli.haifa.ac.il
Struggling Challenges of Right-Wing Extremism and Terrorism within Democratic Boundaries: A Comparative Analysis

Extremism, political violence and terrorism tainted the last decade of the millennium. It takes only a quick glance at the western scene to conclude that the re-emergence of radical right-wing tendencies was the source of many of these manifestations.

In many European parliaments the power of far right-wing parties emerged dramatically. In Austria, for the first time since the Second World War, a party of an extreme right-wing nature became a major coalition member. Even more drastically, many countries were hit by brutal violent and terrorist campaigns. In the US, far-right activists were in charge of the bombing of the Federal building in Oklahoma city on April 1995. In Israel, a former member of the Quasi-Fascist ‘Kach’ party, Dr. Baruch Goldstein, opened fire with an automatic weapon, aiming at Muslims praying at the Tomb of Patriarchs, causing a devastating massacre.¹ In Germany, Neo-Nazi gangs were engaged in an ongoing violent campaign against foreigners and asylum seekers.²

 Democracies, by their nature, open their gates to debate, political activity, and struggle over resources and power. Most of the citizens in western democracies see these freedoms as the moral basis for the legitimacy of the regime. Others, fewer in number, exploit the same freedoms for challenging the political order, sometimes to the degree of putting it in serious danger.³ These challengers present a grave dilemma for democratic leaders. Can a democracy that aspires to maintain its stability declare a war against its challengers or, alternatively, in accordance with the democratic spirit, should it let them operate freely even at the potential cost of undermining the foundations of the regime?
These dilemmas are not new. They have preoccupied liberal philosophers for centuries. Among those who have written about these issues we may find John Locke, John Stuart Mill, Alexix De Tocqueville and more recent philosophers like John Rawls. Although they were profound and extensive, these debates did not come to a unitary conclusion but created different schools and approaches which continue to nourish current philosophical works.

Piero Ignazi pinpointed that the philosophical debate was not the only perspective, through which the limits of tolerance within democratic boundaries were examined. He called this level of analysis the theoretical-normative one. Yet, he mentioned another level, of no lesser importance, but which gained less attention – the institutional-political one.4

An examination of the literature which may be gathered under the institutional-political category, reveals two major research directions: the legal one – the struggle against extreme political parties and movements with legal measures (legislation, court decisions), and the military-operative one – strategies and tactics of counter-terrorism within a democratic state. Such partial references cannot serve as the basis for establishing a theory. Yet, some scholars such as Chalk, Cohen-Almagor, Crelinsten & Schmid and Crenshaw did make successful attempts to include wider aspects of the phenomena in their studies and to connect more effectively between the theoretical-normative and the institutional-political levels.5 These works may serve as fertile ground for presenting a more cohesive theory of the democratic response to challengers of an extreme right-wing nature.
Militant and Defending Democracies

While addressing the question of how much freedom a democracy should allow its challengers, scholars as well as politicians tend to make use of the terms ‘militant democracy’ and ‘defending democracy’. Though used very often, these terms suffer from a certain degree of vagueness. Even a close look at the definitions of the concepts as they appear in the relevant literature does not help to clarify the picture.

The term ‘militant democracy’ is recognized with post war Germany and is derived from the German concept of wehr-hafte Demokratie. Its short definition: “militant democracy is one that does not open its doors to acts of subversion under the cover of legitimate parliamentary activity”, leaves much room for different kinds of interpretations. Even Carlo Schmidt, who made an attempt to clarify the idea of the militant democracy, does not assist in shifting it to an operational level:

“It is not part of the concept of democracy that it creates the preconditions of its own destruction. I would even like to go further. I would like to say: democracy is more than a product of utilitarian considerations only in those places where the courage exists to believe it as something indispensable for the dignity of man. If this courage exists, we should also have the courage to be intolerant towards those who wish to use democratic system in order to kill it off”.

Moving to the ‘defending democracy’ concept does not help in promoting the clarification of the concepts nor in understanding the differences between them. The definition, as presented by Cohen-Almagor, is as follows: “the state possesses an implied power, similar to self-defense, to fight against subversive attempts designed to destroy it”. Though it sounds ‘softer’ or more liberal than the ‘militant democracy’, Israeli judge Sussman, who made extensive use of the concept, gave it a
rather militant interpretation. “Just as a man does not have to agree to be killed, so a state too does not have to agree to be destroyed and erased from the map. Its judges are not allowed to sit back idly and to despair from the absence of a positive rule of law when a plaintiff asks them for assistance in order to bring an end to the state. Likewise, no other state authority should serve as an instrument in the hands of those whose, perhaps sole, aim is the annihilation of the State”. ⁹

Even Horowitz and Lissak, two of Israel’s leading political sociologists, chose to leave the concept without clear operational aspect. A ‘defending democracy’, according to them, is “a democracy which excludes from the democratic game groups which aims or actions may endanger the state, its political regime or its basic national consensus”. ¹⁰

So what are ‘militant’ and ‘defending’ democracies? How do they differ from each other? Are there any other concepts that may describe a democracy that fights for its life? And how can these concepts be of assistance in analyzing democracies’ responses to their far right challengers?

This paper will first try to address the aforementioned questions then, by following the Weberian tradition, it will offer a theoretical framework which is based upon three ideal types;¹¹ finally this framework will be comparatively tested on three cases: The US, Germany and Israel.

The Challenge of Defining: Militant, Defending and Immunized Democracies

Before trying to answer what ‘militant’, ‘defending’ are we would like to present a third concept, the ‘immunized democracy’ and to stress that all these concepts cannot be accounted as types of regimes (i.e. liberal democracy, consociational democracy or ethnic democracy). They apply only to routes taken by democracies in their struggle
for survival. The suggested interpretation of the concepts ‘militant’, ‘defending’ and ‘immunized’ democracies, as it will appear in this paper, can be characterized, as mentioned earlier, as of an ‘ideal type’ nature. Two steps were taken before classifying these types. First, the challenges, which stand in front of the regimes, had to be identified. Second, the analytical dimensions, which separate the models, had to be developed.

**Identifying the Challenges**

Two distinct levels of far right challenges may be identified. Borrowing from Sprinzak’s vivid description we may refer to the tip of the iceberg and its infrastructure. At the tip of the iceberg the agents of extremism and violence may be found – political parties, social movements and violent organizations. The infrastructure level is the society in which high levels of intolerance, ethnocentrism, xenophobia, racism and other radical views may be found and serve as a reservoir of resources (electoral, moral and even organizational) for the agents of extremism.

**Analytical Criteria for Establishing the Model**

Two distinct variables might be used in order to classify both theoretical and empirical literature regarding democracies’ responses to their challengers: **scope** and **intensity**. While referring to the scope, the question that should be raised is to what extent does a democracy try to cope with the challenges facing it? Is it dealing only with the agents of extremism and violence, or rather adopting a more comprehensive approach, which is not limited only to the brokers of extremism but is aimed at the infrastructure level as well?

As for intensity, two modes of operation are commonly used by democratic regimes battling for survival. Crelinsten refers to these strategies as the ‘war model’ and the
‘criminal justice model’. Although he alludes mainly to challenges of terrorism, these models may be applied for other challenges as well.

The most important element which distinguishes the ‘criminal justice model’ from the ‘war model’ is the commitment to the ‘rule of the law’. While under the ‘war model’ challengers are perceived as enemies and thus treated with all the powers held by the state, under the ‘criminal justice model’ any act taken by the state against its enemies should be limited by the boundaries of the law and should stand for judicial criticism. However, it does not imply that choosing the ‘criminal justice model’ automatically immunizes democracy against infringing on basic liberal rights.

In order to identify more clearly the operational aspects of the two models with regard to coping with extreme parties, as well as social movements and terrorist organizations, we may need to define several categories of barriers presented by the state in the path of such political movements:

**Improvised and Administrative Barriers** – Under this category, all cases should be collected in which a democracy acts towards its challengers as if it is operating in a battlefield. In this category it would be useful to differentiate between improvised barriers imposed upon political parties, and the administrative barriers, which relate to the notion of the ‘war model’, and are relevant for non-parliamentary organizations.

As for political parties, it is very rare to find cases where a democratic regime arbitrarily (i.e. without a specific constitutional or legal authorization) excludes a party from the political game. Yet it does happen. An example is the case of the socialist list in Israel which ran in the 1965 elections. Both the Central Elections Committee and the Supreme Court decided to ban the party from taking part in the elections although the law did not specify the means to do so. It is also not that
common to find a democracy which improvises regulations against a party. Again, Israel can serve as an example. When Rabbi Meir Kahane led his racist party – ‘Kach’ into the Knesset (the Israeli parliament), the state found itself in an unfamiliar situation. For the first time in its history a racist right-wing party gained representation in the legislature, and there were neither laws nor regulations as to how to confront this new situation. The political system panicked and improvised new rulings. Kahane was prevented from proposing new laws. His immunity, as a parliament member, was restricted. He was prohibited from using the Knesset’s postal service. He was forbidden from moving freely in several districts and was ignored by the national broadcast authority. Such barriers reflected the concern of the Israeli political elite with the Kahane Phenomena. Yet, they were improvised, and arbitrary and thus were criticized by the court.

As for social movements and violent organizations, administrative barriers represent the essences of the ‘war model’. On the formal level, such organizations may be treated with administrative detentions and the outlawing of political organization not in accordance with the constitutional arrangements. On the operational level, such organizations and even individuals may become targets for military Special Forces or security services surveillance, interrogations, and in extreme situations even violent attacks. The use of such barriers dramatically distances a state from liberal frameworks and may bring the regime to a legitimization crisis.

**Legal and Judicial Barriers** – While discussing legal and judicial barriers extra caution should be used. The fact that different types of operations are anchored in legislation does not imply that they correspond with liberal values. As stressed by Crelinsten and Schmid: “it is primarily by the criminal justice route that Western responses to terrorism have moved away from democratic acceptability”.

Thus, even
within the frame of the ‘rule of the law’ democracies may impair their liberal character. Therefore, even within the ‘criminal justice model’ there is a need to differentiate between two main levels: extended and narrow. The extended model refers to democracies which do not want to adopt the ‘war model’ for their struggle against extreme and violent organizations. However, they do see extreme and violent acts which derive from a political motivation, as different from ordinary crimes. Therefore, they adopt special legislation against organizations and individuals, which manifest extreme views or violent acts.

An interesting example for extending the ‘criminal justice model’ may be found in the reaction of the Japanese legislature to the ‘Aum Shinrikyo’ organization. This group, which was responsible for a nerve gas attack in Tokyo’s underground, caused the Japanese parliament to adopt special legislation against organizations which were involved in mass killing. These laws allow the special agency for protection of the public to monitor any organization which was involved in severe crimes. According to the law, such a group should report its actions every three months, state agencies are allowed to inspect compounds of the group frequently and restrict it from buying land or other assets.20

Another example may be found in the case of the German ‘Republikaner’ party. Although never officially outlawed, the party and its activists were declared hostile to the constitution, and thus were put under continuous surveillance by the Federal Bureau for Protection of the Constitution (BfVS).21

Hence, although they believe that their operations are defined within the boundaries of the ‘rule of law’, many regimes tend to use wide support in parliament or in other cases authorization granted by the constitution, in order to lead a campaign against
extreme elements in the society. The price for such acts is the undermining of basic liberal rights.

The narrow ‘criminal justice model’ refers to cases in which democracies decide to adhere to the perception that the criminal justice system has all the means to cope with political subversion and violence. One example for such a case may be found in Israel. Though in the early 1990s’ Israel was referred to by Mearrari as a country which adopted a rigid ‘war model’, later in this decade it has proven to be much milder in its response to violent challenges. In 1994 Israel had to confront what was called by the chief of police at the time, “a type of extreme nationalistic terrorist organization never known in Israel till now”. Rabbi Uzi Meshulam, a charismatic and mysterious person who demanded an inquiry into the disappearance of children of Yemenite origin in the 1950s’, led this group of armed people to a violent confrontation with the state authorities. Despite heavy pressure from the public as well as politicians, the state of Israel decided to cope with the Meshulam group within very narrow boundaries. No special legislation took place and the response for this violent challenge was left in the hands of the police and the criminal justice system.

To conclude, the traditional dichotomy between the ‘war’ and the ‘criminal justice’ models does not seem sharp enough in the dawn of the new millennium. The fact that both models can end in the same result demands a more discriminating distinction between them.

Social Barriers – Another type of barrier that rarely appears in the relevant literature, at least not as a coherent category, is social. The lack of interest in the social level seems rather strange in light of the fact that society serves as the infrastructure for the emergence of extreme and violent movements. Indeed, numerous studies on extremism and counter terrorism stress the potential active role of the state in
reducing the support for extreme right-wing views or even for violent acts, mainly through the education system and the mass media. Yet, it is impossible to find reference to the role of the ‘civil society’ in demolishing such manifestations.

Hence, we will refer to two levels of social barriers: **barriers from above** and **barriers from below**. Under the first category – barriers from above – the acts taken by the state in order to immunize its society should be taken into account. The most prominent role of the state in this regard is socializing for democratic values and tolerance. Early writings in the field, mostly by politologists, exhibit high levels of confidence in the state’s ability to create a stable democratic society. Merriam, for example, who conducted a comparative study in Italy, England, the US and Germany argued “That school emerges as the heart of the civic education of the political community”. Thirty years later with the same amount of confidence V. O. Key stressed “...all national educational systems indoctrinate the oncoming generation with the basic out-looks and values of the political order”. Yet, more recent studies, especially empirical ones, do not support these optimistic views. These studies have shown that civic education had very little effect on students’ attitudes towards society and democracy. The academic debate regarding the real effects of civic education continues, but as for the democratic regimes, till another solution is found, civic education remains the only relevant solution for countering any expanding extremism.

The second category – barriers from below – strictly relates to the ‘civil society’ concept. According to Dryzek civil society contains all social activities which are not subjected to state rule, and which exist outside the familial or the primordial framework. Civil society activity may be divided into three main configurations: interest groups, social movements and grassroots groups. The role of civil society with regard to extremism and violence is complex. On the one hand, civil society may
manifest extremism and violence. On the other hand, it can be the cure for the disease. By borrowing images from the world of medicine, we can refer to extremism manifested by individuals, movements and groups, as malignant cells metastasizing in the body, while other cells within the same body are fighting them prior to the outbreak of the disease. All the configurations of civil society that were mentioned earlier are relevant for this fight. 1. Well-institutionalized interest groups may address the legislators and the media with a demand for legislation and campaign against such manifestations. 2. Social movements are characterized as less consolidated bodies, but at the same time attract citizens, who do not belong to the political sphere. These citizens are motivated by a specific idea with which they identify. Social movements may express citizens’ resentment against extremism and violence through demonstrations, rallies and other activities. 3. Grassroots activity may be notably important as well. Such activity does not necessarily aim for lasting social change, it stems from personal cause and is related to one’s immediate surroundings. Grassroots activity is indispensable either when manifestations of extremism find their way into small communities or when they affect national politics. For example, in February 2000 many Austrian citizens, who do not usually tend to take part in political activity, went out onto the streets of Vienna and other smaller cities to express their rancor at the fact that the far right Freedom Party had been invited to join the coalition.

To conclude, these three categories of barriers should serve as the cornerstones in building the ideal type models. The following table introduces the classification of the barriers according to the relevant challengers and with regard to the criteria of scope and intensity. This classification allows introducing the following three ideal type models: militant, defending and immunized democracies.
Militant democracy – This route is relevant mainly for regimes which either suffer from continuous attacks of extreme violent challengers, or democracies that are not founded upon strong liberal tradition (for example: Herrenvolk or even ethnic democracies).\textsuperscript{32} Such routes will be characterized by an uncompromising struggle against the challengers, even at the cost of harming basic democratic and liberal rights.\textsuperscript{33} A regime of that kind will be preoccupied with the response to challenges and will put no efforts into confronting the motivations of extremism and violence on the social level.

Defending democracy – The defending route is much closer to the liberal tradition. It reflects democracies, which adopt liberal ideas, and thus adhere to the ‘rule of law’ concept. However, when under attack, such regimes might consider flexing the boundaries of ‘the rule of law’ to enable a proper response to the challenges. Democracies of this sort may exclude political parties from taking part in elections as long as there is a constitutional or legal authorization to do so. In their reaction to extra-parliamentary actors they will prefer the ‘criminal justice model’ in its extended version. According to Crelinsten and Schmid “in the criminal justice model, terrorism is treated as crime and the onus response is placed upon criminal prosecution and punishment within the rule of law. The problem is that the political nature of most terrorism has strained the procedural controls imposed by the rule of law and has led in certain cases where the terrorism has been particularly severe – or perceived to be particularly severe – to serious departures from conventional judicial processing and sentencing”.\textsuperscript{34} Indeed, the fact that the ‘criminal justice model’ allows such flexibility may endanger basic liberal rights and while consequences rather than intentions are measured, the defending route might be found quite similar to the militant one. Weak
social antidotes also characterize the ‘defending democracy’ to extremism. Hence, it must impose strong barriers from above i.e. civic education, the effect of which, as mentioned earlier, is questionable. Again, such barriers do not always correspond with liberal perspectives. In his book, On Liberty, John Stuart Mill presents the principles of ideal freedom “…society and undoubtedly the state must not interfere in the areas, which are self-regarding, that is, which concern the individual him/herself. Every human being is the sole custodian over his/her body and mind; one’s freedom must not be compromised, and one should be encouraged to express his/her personal desires”.35 Hence, ‘defending democracy’ corresponds better with the term ‘visionary state’ than ‘service state’. The ‘visionary state’ evokes a political process, which is anchored in a sense of missionary vision. Under these circumstances, the main function of the state is to educate its citizens in line with the central values upon which the state was founded.36 According to Apter, when a state lacks sufficient means for dealing with crises, it must exhibit patronage, that is, must not allow idealistic ‘market forces’ to thrive without supervision, but rather must project its value system as a means of mobilizing the resources necessary for its survival.37

Therefore, the ‘defending’ route is closely connected to liberal ideas, especially those, which advocate the utilitarian thought, according to which, in order to guarantee the rights of most people, there is a moral right to limit those of the few. Moreover, the ‘defending’ route reflects another revisionist version of the liberal thought – the welfare one. According to this approach the state has a positive role and thus it may penetrate society in different ways in order to secure the common good, for example, the obligation of the state to interfere in the social sphere by means of education.

Immunized Democracy – The ‘immunized democracy’ is an ideal type, which leans on a liberal approach closer to John Locke’s ideas, i.e. minimal penetration of the
state into the social sphere. This route takes into consideration not only threats to the
stability of the regime but also the potential damage that may spread as a result of
adopting a rigid response to such threats, whether it is anchored in a legal frame-work
or not. Such routes would be characterized by a delicate mechanism of ‘checks and
balances’. This mechanism would have to be applied to both the level of the agents of
extremism and the society. Yet, one precondition is crucial prior to the adoption of
this route – the existence of strong barriers from below i.e. strong civil society, which
will confront extremism and violence in the social sphere. Once society possesses
such antidotes, the regime would suffer less from brutal attacks and hence would be
able to react slower and after considering all the possible consequences. In its
approach towards extreme subversive parties the ‘immunized’ route would operate
within the boundaries of the law and under consistent judicial examination. Prior to
banning a party from taking part in free elections, the judicial branch should take into
account the crucial role of free speech and the right to establish organizations which
promote different political ideologies. Then it should be proven beyond any
reasonable doubt that such an organization constitutes a clear and present danger to
the regime and consequently to the society. Hence, the right to exclude a party should
be treated with a ‘fine tuning’ approach and be subject to various limitations. As for
the struggle against extra-parliamentary political organizations, the immunized route
would adopt Chalk’s perspective. This approach refers mainly to countering terrorist
organizations but may be broadened and applied for other extreme and violent actors
as well. According to this perspective three principles should guide the confrontation:
1. The response needs to be limited and well defined; 2. The response needs to be
credible – the general populace has to be convinced that the state’s action is both
necessary and effective in producing results; 3. The invocation, use and continuance
of all counter-terrorist measures need to be made subject to constant parliamentary supervision and independent judicial oversight. It is absolutely essential that the state is held publicly accountable for its actions and that adequate mechanisms exist for the redress of grievances.\textsuperscript{38}

To sum up, the ‘immunized’ route goes one step further than the ‘defending’ one. The assumption underlying this approach is that when states reach a phase when civil society is an almost independent powerful actor, the risks for the regime are higher due to the potential evolution of subversive groups in the civil sphere. However, when such a strong civil society is endorsed by high levels of ‘social capital’ that society posses strong antidotes against extremism and may eliminate such phenomena before transferring into political action.\textsuperscript{39}

In order to compare the three ideal types it would be useful to use, once again, the analogy to medical terms. The ‘militant’ route might be compared to an aggressive treatment to a disease that was discovered while in a very advanced condition. In such case the attempt to save the very ill patient may lead the physicians to use heroic measures that under different circumstances would not even be considered. Treatment is so aggressive that this affects healthy vital organs as well. However, according to the doctors, it is worthwhile saving the body even at the cost of leaving it weak and crippled. The ‘defending’ route applies to a milder treatment. In this case the eruption of the disease was less dramatic since the patient had undergone preventive treatment for years. Hence, there was no need to use the most aggressive medications, yet, even this milder treatment may weaken the body to a large extent. The third route, the ‘immunized’ one, relates to a very healthy body with powerful antidotes. When a disease attacks such a body the initial struggle takes place within the blood circulation prior to the appearance of the first symptoms. In many cases the body itself may
defeat the disease before its outbreak. However, even in cases when the patient starts to suffer from the symptoms, they are not too severe and thus require only light treatment. Such treatment does not leave painful scars on the patient’s body and he may return to normal function quickly.

This analogy was used to illustrate the possible social and political outcomes of the three different routes. While, the adoption of the ‘militant’ route may lead society to a legitimization crisis and might even end up in the collapse of the regime, the consequences of the other two routes would be much milder. It is highly likely that the ‘defending democracy’ will maintain its stability, yet will be the subject of much criticism, mostly from liberal circles. The ‘immunized democracy’ seems most like the model that will be beneficial both for the state and the society but will require much effort and restraint on the state’s behalf, as well as a supportive society.

From ‘Militant’ to ‘Immunized’ Democracies – A Comparative Analysis

The aforementioned ideal types may serve the purpose of classifying democratic regimes in their struggle against their extreme and sometimes violent challengers. Moreover, they could serve as an axis, which may allow revealing the dynamics and changes in democracies’ structures and policies towards such challengers in the course of several years.

Three democracies were chosen for this study: The US, Germany, and Israel. Though they differ in terms of history, structure of government and political culture, a comparison between these three cases could be very beneficial for this study. All of these countries have had to confront threats of extremism and terrorism of a right-wing nature during the last few decades.
One crucial element that differentiates these three countries and should be discussed prior to the analysis of their modes of operation while coping with their challengers, is basic constitutional arrangements.

Israel, aside from Britain, is the only democracy which does not have a written constitution that promises basic individual rights, among them the rights of free speech and association. Yet, the state adopted a tangled web of regulations, which restrict basic individual rights. The most prominent among those are the emergency regulations (1945) which allow the authorities to severely harm basic individual freedoms in matters of security.

Contrary to the Israeli situation, both the US and Germany have written constitutions. However, these constitutions differ with regard to the issue of protecting the regime. While the American constitution puts forward the freedom of the individual, the German does recognize the importance of such liberties yet emphasizes the importance of a stable democratic regime and thus allows the authorities more space in their attempts to defend the state. Actually, German anxiety about the possibility that history will repeat itself is so high that, according to clause 79 (3) in the constitution (the ‘perpetuity clause’), clauses 1 (civil rights) and 20 (the democratic nature of the country) may not be amended under any circumstances. Furthermore, the German constitution refers to domestic emergency situations and grants the authorities permission to deal with them in a more rigid manner than other constitutions allow. Indeed, the history of the last decades indicates that the German policy towards subversive elements both from both left and right-wing political camps might be characterized as harsh.

In order to achieve a comprehensive comparative analysis, the following discussion will be divided into the three levels, the same as those which served as the basis for
the construction of the three ideal types (i.e. political parties, social movements and terrorist groups, society).

**Political Parties**

Prior to discussing the administrative and legal barriers imposed by democracies on extreme parties, an extra latent structural barrier – the electoral system, should be mentioned. This barrier is not intended to block extreme parties from gaining representation. However, different electoral systems or the level of the representation threshold may become crucial variables in explaining the success or failure of parties. Therefore, it should be noted that while considering the electoral and party systems variables, the US with its strong two-party system, and Germany with its 5 percent representation threshold, enjoy good structural protection from extreme elements in parliament. Israel, on the other hand, with its low representation threshold (1.5 percent) and the split ticket voting system, enjoys no such protection.

Despite the almost non-passable blocks posed in front of small parties in the US, a National Socialist Party (NSPA) was established and was even brought to the forefront of the public debate in April 1977, during its struggle for marching in Skokie, Illinois. The Skokie affair has major importance in this discussion since it signaled the stance of the US Judiciary towards the restrictions that should be imposed upon far right parties. Following a long judicial discussion, in January 1978, the Illinois Supreme Court, in a seven-to-one decision, ruled in favor of the Nazi march. “The main argument was that content neutrality rule, according to which political speech shall not be abridged because of its content, even if that content is verbally abusive. Speech can be restricted only when it interferes in a physical way with other legitimate activities; when it is thrust upon a captive audience, or when it directly incited immediate harmful conduct. Otherwise, no matter what the content of
the speech, the intention of the speaker, and the impact of the speech on non captive
listeners, the speech is protected under the First Amendment to the US
Constitution”. In this ruling the court reinforced the US constitutional commitment
to the most broadened liberal approach. This ruling was extremely important in light
of the far less liberal approach of the American authorities in the 1940s and 1950s,
especially towards the Communist Party.

The US liberal approach towards the NSPA might be explained by two variables: a
socio-historical one – the American tradition of sanctifying the freedom of the
individual. The other variable is the practical one – the fact that due to the structural
barriers, the party did not stand a real chance to become an influential political actor.
Yet, other far right organizations found their paths into the legislature and policy-
making procedures mainly through the Republican Party. Despite the limited
success of David Duke and other extreme leaders of the right, the American
authorities never faced a dramatic emergence of such forces and hence did not adopt
any special measures to confront the phenomena.

Though structural and social conditions in Israel and Germany themselves are hardly
similar, the two countries dramatically differ from the US in two major senses. First,
both countries have variations of multi-party system, and second, both had adopted
legislation aimed at preventing the representation of extreme parties in their
parliaments.

Clause 21 in the German Basic Law from May 8th 1949 stresses: “1. The political
parties shall participate in the forming of the political will of the people. They may be
freely established. Their internal organization shall conform to democratic principles.
They shall publicly account for the sources and use of their funds and for their assets;
2. Parties which, by reason of their aims or the behavior of their adherents, seek to
impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall decide on the question of unconstitutionality; 3. Details shall be regulated by federal statutes”. 47

Similarly, in 1985 following the election of the racist Rabbi Meir Kahane to the Israel Parliament (The Knesset), parliament adopted section 7A of Basic Law: The Knesset (1958). According to the amendment “A list of candidates shall not participate in Knesset elections if any of the following is expressed or implied in its purposes or deeds. 1. Denial of the existence of the State of Israel as the state of the Jewish people; 2. Denial of the democratic character of the state; 3. Incitement to racism”. 48

Reality reveals that although the German and especially the Israeli laws give the state the authority to massively disqualify parties, they both chose not to do so. In post-war Germany only two parties were banned according to clause 21, The Communist Party (KDP) and the predecessor of the Nazi Party (The Socialist Reich Party – SRP), both during the 1950s. According to the ruling of the constitutional court, the SRP was an unconstitutional party. It did not exhibit its commitment to civil rights, the rule of the law, pluralism and equal opportunities for all the political actors. Consequently, the court rules that such a party has no place in the political arena and ordered its dismantling and the confiscation of all its assets. 49

In Israel, likewise, only two extreme right-wing parties were disqualified, Kahane’s party Kach and its splinter Koach. Both were banned on the grounds of being anti-democratic and racist.

Despite these disqualification moves by both Germany and Israel, the two countries demonstrated rather high commitment to liberal values. In the following years,
extreme right-wing parties emerged in both places. In Germany there were the NPD (Nationaldemokratisch Partei Deutschland) that was established in 1964, the DVU (Dutsche Volksunion) established in 1971, and the REP (Die Republikaner) established in 1983. The authorities and the parties committed themselves to several ground rules. While the state did not express eagerness to disqualify the parties, they themselves were very careful with their language concerning issues such as liberal democracy and foreigners. The same thing happened in Israel. Following the disqualification of Kach and Koach, both the Central Elections Committee and the Supreme Court were very careful in using the banning weapon against other parties. Even Moledet, which advocated transfer of Arabs from the occupied territories or Yemin Yisrael, an ultra-nationalistic party, (many of its founders were former Kach members), were allowed to participate in the elections.

However, although they were not disqualified, the German far-right parties were not allowed to act freely. The Republikaner, for example, was defined by the BfVS as a radical party and hostile to the constitution. Thus although it was not disqualified, the authorities took the constitutional liberties to limit the freedoms of the party and its members. The same thing happened in the case of the NPD. In a formal publication of the party the following complaint was found: “Like his predecessor as NPD chairman, Gunter Deckert Voight is being hounded by the German government because of his political views. He is currently the subject of police investigation for alleged ‘defamation of the state and its symbols’, which is a criminal offense under the current German regime. His offense was a statement he made at the NPD party congress on May 1, 1996. Voight compared German democracy with the Communist system in the former German Democratic Republic in its suppression of nationalist political activity across Germany: ‘We live once again in a police state in which we
have no right of freedom of speech…Those who criminalize people for voicing their opinions are themselves criminals.” In comparison, Israel’s policy is not to limit the liberties of parties which were not disqualified from participating in elections or were outlawed. However, once a party was banned, and in the cases of Kach and Koach even declared as terrorist organizations, liberal considerations become almost irrelevant. Former party members and activists became a primary target for both the police and the security services.

Hence, it may be concluded that the policy of the US towards extreme parties is almost irrelevant due to the structural barriers imposed upon small parties. Yet, even in cases where such parties were active, the authorities’ attitude towards them tended to be very liberal. In Germany and Israel a far less liberal approach was taken, although there are signs of a dynamic towards liberalization. In both countries extreme right-wing parties were disqualified in accordance with constitutional and legal arrangements. Over the years the disqualification weapon was almost neglected, yet both regimes kept monitoring the activities of subversive parties. Therefore, Israel’s as well as Germany’s policies may be characterized as close to the rigid legal approach, though before the 7A amendment, Israel did not hesitate to adopt improvised barriers, some of which were subject to severe criticism from the supreme court.

Social Movements and Terrorist Groups

Struggling against a social movement, even a violent one, within democratic boundaries is harder than coping with a political party, due to the simple fact that a social movement does not aspire to gain parliamentary access and thus is not bound by the rules of the electoral game. Moreover, social movements which enjoy a loose
organizational structure do not have to register and are free to act within the social sphere, including sending inputs into the political arena.

In the US the activity of such movements is a central element in the political culture and is widely protected by the First Amendment to the constitution. Even at the beginning of the 19th century the importance of such movements was so high that in his book Democracy in America, Alexis De Tocqueville praised the high levels of decentralized communal organization and the freedom of association. Thus, although such associations may present grave challenges to the authorities, their important role in the American democracy makes it almost impossible to restrict their actions.

These political and cultural settings encouraged the American authorities to stick to a narrow interpretation of ‘the criminal justice model’ in their response to political violent acts. Smith’s description of the acts that were taken during the 1980s against several extremist right-wing movements confirms this assumption. These acts were proven to be successful in terms of countering terrorism, and at the same time did not cross liberal boundaries. Even the anti-terrorism legislation that was passed following the Oklahoma City bombing does not seem to exceed the limitations of the liberal version of the ‘criminal justice model’, especially following the assessment of its constitutionality by the Supreme Court. The notion that the US policy complies with the narrow ‘criminal justice model’ was reinforced, once again, by the words of the director of the F.B.I himself in the summary report for the years 1993-1998. “In the past five years, I have established core values for all FBI employees: Obedience to the constitution, respect for the dignity of all protected by the FBI, compassion, fairness, and total integrity”. Even the reform which was adopted in late 1999 and was aimed at allowing the F.B.I. wider authorities in responding to terrorism, does not
seem to bring a radical change in the agency’s actions. According to Deputy Director Robert M. Bryant, the new policy will not change the F.B.I’s long tradition of respecting civil rights.  

Germany and Israel exhibit very different policies from those of the US in their attempts to repress political violence. Since the late 1960s Germany presented a very rigid version of the ‘criminal justice model’, while as mentioned earlier, Israel was one of the few democracies that tended to favor the ‘war model’ approach.

The German version for the ‘criminal justice model’ raised a lot of criticism. Although, according to Finn, this counter terrorist policy was restrained by the constitution and thus committed to civil rights, Loewenstein argued that this policy was “probably among the most repressive anti-terrorist legislation existence in a liberal democracy”. Such criticism emerged as a result of the emergency regulations of 1968, which gave the federal government extended authority to fight terrorism within the states. These regulations also gave extra powers to the BKA (Federal Criminal Police office) as well as the BfVS. The left-wing terrorist attacks, which Germany faced between 1974-1978, encouraged the adoption of even more rigid legislation against subversive and terrorist acts. These new regulations included the Penal Code 88a, according to which a crime against the constitution may result in three years imprisonment. This law was subject to severe criticism and thus was made void in 1981. Further expansion of the ‘criminal justice model’ might be found in amendments numbers 129 and 129a to the penal code, the purpose of which was to impose higher limitations on the formation of terrorist organizations. Moreover, the German government adopted the ‘Radicals Decree’ policy, which was aimed at harming radical political activists. This regulation prevented many Germans from being employed in the public sector and many others faced unpleasant
interrogations. Over the years this regulation underwent several liberal reforms that nullified its powers.

The reality of the 1980s and the 1990s reveals that although Germany had in its possession various means to cope with the challenges of politically motivated violence, it tended not to make extensive use of them. For example, during the 1990s only 11 neo-nazi organizations were declared illegal, while the number of far right movements and organizations in 1998 stood at 114. According to Anderson the government’s, as well as the criminal justice system’s, responses to the violent challenges of the far right were hesitant at first, however, when the volume of violent events grew more effective measures were taken. In recent years German policy towards the right-wing violent organizations is more vigorous. The federal government follows the publications of the groups and is constantly trying to minimize their circulation. In the sub-federal level, local authorities, for example, in Brandenburg and Saxonia established special task forces trained to quickly respond to violent events of neo-nazi nature. Thus, the German modus-operandi against such challengers of an extra-parliamentary nature resembles the extended ‘criminal justice model’.

Israel’s struggle against terrorism, as mentioned earlier, followed the ‘war model’. This was mainly a result of the Arab-Israeli conflict. However, Jewish radicals had to face some features of this policy as well. The most interesting fact about the Israeli approach towards the right-wing militants was the lack of consistency. This non-coherent policy may be described as a ‘pendulum policy’. Most of the times, the chosen strategies were closer to an extended version of the ‘criminal justice model’ i.e. joint activity of the security forces and the police with the purpose of bringing the offenders to trial. Yet, in several instances and especially with regard to the Kahane
gang, the state of Israel did not hesitate to adopt the pure ‘war model’. In the early 1980s’ Rabbi Kahane himself was sentenced to four months in prison without facing accusations or standing trial. This administrative detention was made possible due to the emergency regulations under which the state of Israel has operated since its formation. Over the years, Kahane and his followers were constant targets for the security services and were subject to many administrative measures. In 1994, following the Massacre in the Tomb Of Patriarchs that was carried by a former follower of Kahane, Dr. Baruch Goldstein, both Kach and Koach, which in 1988 and 1992 were banned from taking part in the national elections, were outlawed and declared as terrorist organizations. This step was taken with accordance with the Prevention of Terrorism Ordinance (No. 33 of 1948). According to the ordinance, being a member in a terrorist organization or even delivering a speech or propaganda on behalf of such an organization could bring severe imprisonment penalties. This was one of the most repressive steps ever taken towards a Jewish political movement in the history of the state of Israel. It is interesting to mention that the same authorities took a totally different route towards another Jewish Terrorist organization within the same period of time. As mentioned earlier, in early 1994, a violent religious gang, led by charismatic Rabbi Uzi Meshulam, established itself in the Rabbi’s house in the city of Yahud. Although this group was referred by the chief of police at the time, Asaf Hefetz, as the most dangerous terrorist organization Israel had ever known, the authorities decided to treat it within a very narrow interpretation of the ‘criminal justice model’. Hence, both the Rabbi and his followers were taken into custody through a police operation. All of them faced criminal charges and were sentenced to long periods in jail in accordance with the penal code. The paradoxical consequence was that while the Meshulam group seized to exist, the followers of Kahane are still
operating mainly in spreading his racist ideology and provoking violence against Arabs. The outlawing step had almost no effect on the movement. To sum up the Israeli policy, although it exhibits pendulum features, it mostly revolves around the extended ‘criminal justice model’. Only time will show whether there is a dynamic towards a narrower version of this model.

To conclude, both Germany and Israel tend to put security considerations in the forefront of their counter violent activities and, as a result, from time to time, are subject to criticism concerning the offense of liberal rights. The US tends to stick to the narrow interpretation of the ‘criminal justice model’ and thus is much more closely related to the liberal perception. Another interesting and somewhat surprising conclusion derived from the above discussion concerns the effects of the different policies with regard to their ability to reduce the levels of violence. The conclusion is that the severe policies such as the ‘war model’ or the extended version of the ‘criminal justice model’ are usually less effective than more moderate ones. The cases of Germany and Israel show that the rigid policies have a weak effect, while when a moderate yet comprehensive approach is taken, the effect is dramatic. A prominent neo-nazi activist ridiculed that outlawing policy saying ‘If the authorities ban all organizations, it will backfire on them. We will just go underground’. Almost the same words were said by one of Kach’s former leaders, Itamar Ben-Gvir, in a personal interview. Indeed, the Kahane gang in Israel, although declared as a terrorist organization, is operating almost freely.

Society

As mentioned earlier, the effects of the barriers from above, i.e. civic education, are still under debate. Nevertheless, most democracies acknowledge the need for socializing their future citizens to the rules of the democratic game. Comparative
research findings with regard to extreme right-wing attitudes indicate that such barriers have an effect, to a certain extent. According to Farnen, national stereotypes can be changed over a relatively short period of time with a minimum amount of effort. With respect to anti-Semitism, it appears that a modicum of classroom instruction (which helps to increase knowledge and interest in World War II, the Holocaust and the Jewish Diaspora) can reap many rewards. However, when xenophobia is based on economic competition for jobs, influence and status, it may be a harder obstacle to overcome. The German example illustrates that whatever its cause, right-wing extremism and xenophobia help to define some western and eastern German youth today. Hence, extremism is a result of various strong factors, such an effect cannot be blocked solely by education.

Xenophobia, Stereotypes, Racism and even violence should thus be regarded as almost structural parts of the modern democratic society. Henceforth, the answer to these problems should come from the same sphere – the social, rather than from the political. Vigorous activity against these views and activities within the boundaries of the society may prevent further escalation and the diffusion of such views into the political sphere. An immunized society will make it far harder for leaders of extreme right-wing parties to mobilize wide support from the population. Moreover, an active civil society may serve as a linkage agent between the state and its citizens. Interest Groups, Social Movements and even single activists may send signals and inputs to the political system. Such signals may indicate the levels of extremist notions to be found in the society and offer new routes and suggestions for moderating disturbing high levels.

Both in the German and US experiences of the last years, examples may be found for dynamic civil activity with regard to challenges of an extreme right-wing nature.
Following the success of the DVU in the Sachsen-Anhalt elections in April, 1998, the German post office workers union asked the federal government to find ways to prevent the use of the German postal system from delivering racist mail. This step was taken before the national elections of September 1998 and reflected the fear of the possibility that the party would enter the national parliament. Prior to the 1998 elections many parliament members were addressed by the organization of Christian churches in Germany. This organization asked that the politicians should not use xenophobic rhetoric during the election campaign. Both the employers (DGB) and the employees (UVB) unions in Berlin invoked their members not to vote for extreme right-wing parties. Moreover, they asked them to act openly to stem the rising violence against foreigners.  

The American tradition of a strong civil society found its expression in the struggle against racism and extremism as well. Such activity may be detected in all levels of civil society. Beginning with grassroots acts inside the local community and ending with continuous activities of strong interest groups. For example, when in New Town Pennsylvania violent far-right activists broke a window only because a Hanukkah Menorah stood behind it, the local community organized and Menorahs were placed in almost every house in the neighborhood. A similar example might be found in the neo-nazi graffiti attack in the District of Columbia. When the newspapers wrote that the city did not have enough resources to clean it, the local communities decided to take on this task and wiped out these drawings themselves. Yet, according to the long American tradition, the most active members in the American civil society are the more institutionalized organizations, especially interest groups. Among the most prominent groups acting against racism, xenophobia and hate crimes are the Anti-Defamation League, The American Jewish Committee, the Simon Wiesenthal Center
as well as many interest groups which represent other minorities. In such cases, the
groups themselves bring society closer to the state by initiating joint activities. In
1998, the ADL cooperated with the state of New-Jersey in proposing prizes for those
who exposed racist graffiti perpetrators. In 1999, the same organization, jointly with
the NY police department, published a handbook for local communities. The purpose
of the book was to help the members of the community to react to racist violence.\(^75\)
These organizations do not restrict themselves to local activities, but aim at the
legislative level as well. The ‘hate crimes’ laws adopted by many states in the US are
a direct consequence of the ADL’s efforts to find a way to fight racist and xenophobic
crimes within the constitutional boundaries and following that, a concentrated effort
of the organization to establish lobbies to support such legislation.\(^76\)
Contrary to Germany and the US, the Israeli civil society is far weaker, though in
recent years there are some signs of strengthening.\(^77\) In the forefront of the Israeli civil
society stand the nonprofit and philanthropic organizations (AMUTOT), yet, though
numerous organizations declared their commitment to the promotion of civil rights
and democratic values,\(^78\) the intensity of their activity does not resemble those of the
American or German groups. As for grassroots activities, although, according to
Lehman-Wilzig, Israelis tend to take part in protest activities more than citizens seem
to do in Western democracies, including Germany and even the US,\(^79\) such activities
are limited in time. For example, when Kahane was elected as a Knesset member,
many Israelis came to his rallies to protest. Yet, ever since Kahane stepped down from
the political arena in Israel, it is very hard to find strong elements of civil society in
the fight against extremism and violence. It may be concluded that Israelis are willing
to take action, however, not for the collective good. According to Yishai, “after fifty
years of struggle and sharing of fate, there is a tendency for seclusion and
individualism, as many of the Israelis lend importance only to their private domains and not to the national home”.

To conclude, all three countries under consideration tend to present civic education programs and thus are committed to a certain extent to presenting barriers from above. Germany’s history made this country specifically more aware of that need in comparison to Israel or the US. As for barriers from below, while Germany and especially the US civil society take a major role with regard to coping with violence and other manifestations of right-wing extremism, Israeli society is still too preoccupied with security as well as identity problems and the fragile fabric of its society. The engagement in such issues prevents the ascendance of strong civil activity against expressions of hate and violence.

Conclusions

The first question that was posed at the beginning of this paper was, should a democracy let its challengers act freely while attempting to undermine the foundations of the regime. On the philosophical level this question remained open, though most of the liberal thinkers gave a resolved answer – a democratic regime has a moral obligation to protect itself from its enemies. The bigger problem, of course, is how can a democracy protect itself without subverting its own moral foundation and bring society to the edge of a legitimacy crisis. By using three ideal-type models, representing distinct different reactions of democracies to far right challenges in the parliamentary, extra-parliamentary and social arenas, the paper tried to evaluate the US, German and Israeli responses. It may be concluded that the US mild policies, which were supported by strong civil society, brought it very close to the ideal ‘immunized democracy’ model. This does not imply that in the future, US citizens will not suffer from demonstrations of extremism or violence of an extreme right-
wing nature, yet, both state and society have all the required means to deal with such challenges effectively and within liberal democratic boundaries. Germany and Israel are much more vulnerable to far-right challenges and thus were forced to adopt more militant approaches. By calculating the responses of these countries to the aforementioned challenges according to the three units of analysis, a dynamic process may be detected. While Israel started as a ‘militant democracy’ and Germany exhibited features of a ‘defending democracy’ with a tendency to adopt some features of the ‘militant’ model, over the years this situation has gone through some changes. In the beginning of the year 2,000 Germany may be described as a country in transition, moving from the ‘defending’ to the ‘immunized’ route. This country seems quite successful in its attempts to monitor right-wing extremism with only few deviations from the liberal framework. Israel is more hesitant in shifting its policies, and moreover, is not backed by a strong civil society. Thus, it may be assumed that over recent years, the Israeli response to the extreme right tends to correspond with the ‘defending’ route. However, it still seems that this society is very vulnerable to different challenges of the right and therefore may regress to much less liberal policies in its fight for survival.

Finally, on the theoretical level, an attempt was made in this paper to integrate and clarify concepts that are commonly used but lacked operational dimensions. Moreover, it was intended to present a more comprehensive observation on the struggle of democracies against their challengers. Therefore, the framework took into consideration three levels of analysis and adopted both deductive and inductive points of view. The final aim was to present theory of a taxonomic nature that will serve both as a solid ground for analysis and will provide the analytical units that will enable a comparative study of different cases. Further developments of the theory
may shift it from the taxonomy to the explanatory levels and thus add another
dimension.
<table>
<thead>
<tr>
<th></th>
<th>Militant Democracy</th>
<th>Defending Democracy</th>
<th>Immunized Democracy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope</td>
<td>Narrow</td>
<td>Medium</td>
<td>Wide</td>
</tr>
<tr>
<td>Intensity</td>
<td>High</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td>Political parties</td>
<td>Improvised barriers</td>
<td>Rigid legal barriers</td>
<td>Flexible legal barriers</td>
</tr>
<tr>
<td>Social movements and violent organizations</td>
<td>War model</td>
<td>Extended criminal justice model</td>
<td>Narrow criminal justice model</td>
</tr>
<tr>
<td>Society</td>
<td>Weak barriers from above</td>
<td>Strong barriers from above</td>
<td>Strong barriers from above</td>
</tr>
<tr>
<td></td>
<td>Weak barriers from below</td>
<td>Weak barriers from below</td>
<td>Strong barriers from below</td>
</tr>
</tbody>
</table>


Ibid.


Chalk, 1995 (note 5) P. 17.


Tamara Traubeman and the News Agencies, January, 21. 2000. ‘Aum Shinrikyo is going through metamorphosis and will be called Aleph’. Ha’aretz.


Ariel Merari, ‘Coping with Insurgent Political Violence: The Israeli Experience’ Terrorism and political Violence.

Reuven Shapira, February, 17. 1995. ‘Mesihulam’s People have Prepared List of People that should be Killed among those: Peres, Shalah, and Ben-Porat – Chief of Police: this is a type of extreme nationalistic terrorist organization never known in Israel till now’. Ha’aretz.

On matters of extremism see for example Cohen-Almagor, 1997. (note 5) on matters of counter terrorism Crelinsten and Scmid, 1992. (note 5)


Yael Yishai, 1998. Civilian Society in Israel Towards the Year 2000 Between State and Society. The Hebrew University of Jerusalem. P. 10

Ibid. pp. 10-14


Chalk. 1995, (note 5) P. 17

Crelinsten and Alex P. Scmid, 1992 (note 5), Pp. 332-333.


Ibid. P. 19.


Chalk, 1995 (note 5) P. 36.


In Germany the constitution is called ‘Basic Law’ (Grundgesetz).


Ibid. p. 33.


Finer, Bogdanor, Rudden, 1996. P. 137-138


During the summer of 2,000 the idea of disqualifying of the extreme right-wing party the NPD was reintitated, but it is still in a very initial stage.


http://npd.net/npd-pv/sprachen/englisch/eng2.htm

At this point it should be mentioned that in Israel, the Socialist Party, an Arab left-wing party was banned in 1965 without any specific legal authorizations.


Quoted in Finn, 1991. P. 206

Finn, 1991. 207-212.
66 http://www.tau.ac.il/Anti-Semitism/asw98-9/germany.htm
71 Author’s Personal interview with Itamar Ben-Gvir, Marc 1, 1999.
73 http://www.tau.ac.il/Anti-Semitism/asw98-9/germany.htm
77 Yishai, 1998. (Note 31)
78 See: http://www.givingwisely.org.il