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Do all democracies need party dissolution mechanisms?

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by Brian Christopher Jones

Although it may appear harsh or severe, the ability of many democracies to dissolve political parties based on the (supposedly) “unconstitutional” or “anti-democratic” nature of their existence is an inherent constitutional feature of many states. Democracy, it appears, must at times protect itself from threat or collapse. Perhaps the most prominent example is that of Germany, where the Federal Constitutional Court (the Bundesverfassungsgericht) possesses the power to perform such dissolutions. This authority was viewed as a necessity after the rise of National Socialist German Workers' Party and the tumultuous Second World War.

While contemporary societies may believe that such threats are for the history books, the dissolution of political parties remains an active democratic concern. The problem of “anti-democratic” or “unconstitutional” parties and bans on such parties is nothing new; the European Commission on Human Rights addressed it in the 1950s. Yet the problems have continued into the present day, as Turkey, Spain, Israel, Greece, as well as the Council of Europe, have all addressed these issues in recent years.

Importantly, these powers are only to be exercised against political parties that threaten the very fundamental basics of democracy. Political activity that runs contrary to state principles, or that challenges the current structure of the state, is not considered “anti-democratic,” and cannot be challenged. However if a political party does not respect the very basic rules of democracy, intervention can be taken. This sets a high bar; given that democracy requires pluralism and acceptance of a wide range of viewpoints, the bar should indeed be high. Yet modern democratic politics around the globe appears to be testing the limits of democratic tolerance.

The New York Times recently documented the European shift to far-right parties. In France, the National Front won 28 per cent of the vote in 2015; the far-right Alternative for Germany party is currently polling at 13 per cent, and likely to win seats in the 2017 Parliamentary elections; the Sweden Democrats, who have past links to white supremacy, now have 49 seats in Parliament; and in Greece the Golden Dawn party—described by many as fascist and neo-Nazi—won 18 seats in Parliament last September. Indeed across Europe citizens appear to have embraced a wide distrust of mainstream political parties. But such developments have also occurred outside of Europe.

When commenting on (presumably sanctioned) extra-legal killings under his tenure as mayor of Davao City, President-elect of the Philippines Rodrigo Duterte has said that he would like the number increased from 1,000 to 100,000, in order to “fatten the fish in Manila Bay.” He has also warned those involved in organized crime that there will be a new shoot to kill policy, exclaiming, “Shoot to kill for organized crime. You heard that? Shoot to kill for every organized crime.” Presumably “every” even applies to non-violent organised crime, such as cybercrime and financial crime.

But such provocative statements have also hit closer to home. Infamously, Donald Trump proposed banning all foreign Muslims from entering the US, and has advocated violence against those that protest at his campaign events. But do the statements from Duterte or Trump, especially if put into action by the state, threaten the fundamental basics of democracy? As regards Duterte’s comments, a strong case could be made that some basic democratic elements (such as the right to life and the right to due process of law), are being infringed. Trump’s

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assertions prove thornier, but a basic argument that his statements violate democratic principles of “equality” and freedom from discrimination may be put forward; a case could also potentially be made that they violate the first amendment (enacting a temporary prohibition of religion). But both of these examples could be deemed to run contrary to a violation of state principles, and arguably not against the fundamental basics of democracy.

In fact, when states are interested in incorporating or employing such dissolution mechanisms, this is where it gets tricky: what should be included as “threatening the very fundamental basics of democracy”? Supporting terrorism likely crosses that threshold, and has recently been used by states for party dissolution: Spain dissolved the Basque party, Batasuna, in 2002 on such grounds. Some states retain de facto dissolution mechanisms. While the UK falls short of a formal party dissolution mechanism, it does possess legislation that sanctions political parties/groups supporting terrorism. Under the Terrorism Act 2000, all members of “proscribed organisations” are subject to custodial sentences and fines; even citizens who “invite support” for a proscribed organisation or who wear a uniform demonstrating support are subject to the same penalties. Other justifications for party dissolution or actions against parties have been: racism, denial of the state, or non-democratic internal party mechanisms (e.g., because of a party’s anti-democratic organisation and structure).

In any democracy the threat from other forms of government—such as authoritarianism and totalitarianism—can never be completely eradicated; and further, it is contrary to fundamental democratic principles to fetter civil liberties such as freedom of expression and association, which is why any restrictions—let alone dissolution—must be balanced against the threat posed by the party. Another major question rests on when to employ such powers: the longer a state waits, the more powerful an anti-democratic party may become. Conversely, early dissolutions based on speech or tenuous connections to terrorism could invite significant, and perhaps warranted, criticism.

Let me be clear: I am not advocating that any party mentioned above, especially the US Republican Party, should be dissolved based on current circumstances (even if Mr Trump wins the Presidency, for that matter). This piece asks a larger, more difficult, question: should democracies attempt to protect themselves from anti-democratic forces? If states decide in the affirmative, such powers certainly need to be closely monitored and shared between state bodies (rather than provided to a single court), in order to discourage and protect from abuses of power. Ultimately, history demonstrates that some threats to the fundamentals of democracy are powerfully—and tragically—real. Party dissolution mechanisms, although certainly imperfect, may provide a reasonable answer in some (extreme) cases.