Party Bans and Populism in Europe

Angela Bourne[1]

In the latest episode in a decades-long conversation about militant democracy, the growing electoral success and radicalization of Alternative for Germany have relaunched debates about the appropriateness of restricting the political rights of those who might use those rights to undermine the liberal democratic order. While it is typical for dictatorships to ban parties, democracies also do so, but for different reasons and with compunction. Party bans respond to varying rationales which have evolved over time. However, as my research on responding to populist parties in Europe shows, a ban on the right-wing populist Alternative for Germany would be out of step with more general patterns of opposition to such parties in Europe. Those who disagree with populist parties typically deploy a wide repertoire of opposition initiatives which only rarely take the form of exclusionary measures of militant democracy like party bans.

What kinds of parties are banned in democracies?

Party bans can take several different forms, varying in the extent to which they exclude a party from the public sphere. The harshest form is *dissolving* a party, preventing it from participating in elections, and obtaining positions of authority, and denying it the right to participate in public life. Its assets will be seized by the state, its offices closed, membership of the party prohibited and efforts to reestablish the party punished. A party can also be banned from participating in political life through *non-registration.* Many democracies require new parties to be formally registered before acquiring permission to participate in elections, or access associated public goods such as party funding or broadcast time. Refusing to register means that the state *a priori* denies a new party the right to formally exist. A third form of prohibition involves the partial *denial of rights*. Such measures short of a ban can damage a party's ability to do well in elections; when the rights denial prohibits a party from participating in elections, it is the functional equivalent of banning a party. Party bans can also take the form of *lapsed bans* when a party is formally prohibited, but the state has failed to prevent its reemergence under a different name.

In a study I conducted with Fernando Casal Bértoa mapping variation in party ban practices, we found that 20 out of the 37 European democracies we studied

[1] Dr. Angela Bourne is Professor (With Special Responsibilities) in European Politics at Roskilde University in Denmark.

banned over 50 parties between 1945 and 2015.[2] Banned parties were antisystem parties clustering around a small number of ideological categories and usually minor in terms of their vote share. Parties of the extreme right and left were well-represented among banned parties in our study, including the Communist Party of Greece (1947), Socialist Reich Party in Germany (1952), the Communist Party of Germany (1956), the Dutch Peoples Union (1979), Centre Party '86 (1998), National Democratic Party in Austria (1988), Flemish Bloc (2004), and the Czech Workers' Party (2010). Substate nationalist parties, some of which were linked to terrorist groups, were also an important category of banned parties, including Sinn Féin banned in the UK (1956), the Serbian Democratic Party banned in Croatia (1995), the United Macedonian Organization Ilinden-Pirin banned in Bulgaria (2001), Herri Batasuna and successors banned in Spain (2003), and Kurdish parties such as the People's Democracy party banned in Turkey (2003). Several Islamist parties were banned in Turkey, notably the Welfare Party (1998) and the Virtue Party (2001). In terms of size, notable exceptions included bans on the radical Basque nationalist party Herri Batasuna and its successors; the Welfare Party in Turkey, and former fascist authoritarian parties banned by successor regimes, in Italy the National Fascist Party (1947) and in Austria German National Socialist Workers Party (1945), and following the fall of the Soviet Union, communist parties banned in Latvia, Lithuania, Moldova and Ukraine in 1991. More of the party banning we examined took place in "new" or "incomplete" democracies than in established ones.

Why ban parties?

Over the long period we studied, Casal Bértoa and I observed that official rationales for banning parties tended to evolve over time, from what Bligh has called the *Weimar paradigm* to the *legitimacy paradigm* of party ban rationales.[3] According to Bligh, Weimar-inspired rationales justify banning "parties that seek to abolish democracy wholesale" and aim to "prevent anti-democratic parties from coming to power and implementing their anti-democratic agenda". This rationale also referred to as the *militant democracy paradigm,* captures bans on the Nazi, fascist, and communist parties in our study and, more recently, bans on Islamist parties in Turkey on the grounds that they sought to dismantle democratic regimes. According to Bligh, this rationale fails to capture the substantial number of bans on parties which do not openly promote such clearly anti-democratic ideologies, or which are banned even though they had very little chance of winning

[2] Angela Bourne/Fernando Casal Bértoa, Mapping 'Militant Democracy': Variation in Party Ban Practices in European Democracies (1945-2015), in: European Constitutional Law Review 2017, No. 13, p. 221-247.

[3] Gur Bligh, Defending Democracy: A New Understanding of the Party-Banning Phenomenon, in: Vanderbilt Journal of Transnational Law 2013, Vol 46 No. 5, p. 1335-1336.

the votes necessary to come to power. The *legitimacy paradigm*, he argues, better captures such cases, justifying bans on parties which do not pose an imminent threat to liberal democracy but nevertheless "threaten certain elements within the liberal constitutional order, such as the commitment to equality and non-discrimination, the absolute commitment to a nonviolent resolution of disputes or secularism". Rather than regime protection, these bans aim to "to deny extremist parties the forum of institutional expression, legitimacy, and the aura of respectability that is naturally granted to political parties in modern democracy". This rationale better captures party bans targeting contemporary parties of the extreme right, such as Flemish Block (2004), the Czech Workers Party (2004) the Slovak Community-National Party (2006) and the radical Basque nationalist party Herri Batasuna and its successors (2003).

While party bans may be more common than expected, there are still many democracies that never ban parties, even where parties of similar types to those banned elsewhere can be found. As such, it is important to look beyond official rationales for banning parties to find reasons why some democracies ban parties, but others do not. Studying this question, I identified four main reasons.[4] Arguably, much depends on how the nature of the purported threat is framed in public debates. Parties seen to represent an existential threat to the physical security of individuals or the state, to the democratic community, prevailing social identities or the political system are more likely to be banned. That threat needs to be deemed sufficient to warrant emergency measures that clash directly with core democratic rights like free association and free speech. Parties with more-or-less open links to groups directly using political violence to pursue political goals, such as terrorist groups, or less indirectly linked to political milieu with a propensity for political violence, such as hooligan or neo-Nazi groups, are easier to frame as an existential threat than those stringently insisting on nonviolence. Party bans are regulated by law in all democracies, and as institutional theory tells us, it matters who the veto players are. Courts typically have the final say in party ban decisions, but partisan veto players represented in parliamentary majorities or party-controlled public authorities, like interior ministries, can prevent a potential candidate for party bans from coming to trial in some countries. The gravity of banning a party from a constitutional point of view and the possibility that it might backfire, calls for cautious use of party bans, typically as a matter of last resort. As such, parties are likely to be banned if alternative forms of marginalization are not effective.

[4] Angela Bourne, Democratic Dilemmas, Why Democracies Ban Political Parties, 2018, Routledge.

Party bans and populist parties

Party bans are, however, rarely used to respond to populist parties like Alternative for Germany. In a project funded by the Carlsberg Foundation on Populism and Democratic Defence (CF20-08), my colleagues and I collected data on responses to governing populist parties Fidesz in Hungary and Law and Justice in Poland, to longer-standing parties like League in Italy, the Danish People's Party and the Sweden Democrats, and the new parties Vox and Podemos in Spain, the Five Star Movement in Italy and Alternative for Germany.[5] Populist parties mobilize on claims to better represent the "common people" against "a corrupt elite". They have become increasingly successful in Europe, winning an increasing vote share and often taking on a governing role. There is an ambiguous relationship between populism and democracy. Sometimes, appeals to popular sovereignty reflect projects which seem to genuinely seek to improve democracy. Sometimes elites are corrupt and should be opposed. Other times, populism seems to justify dismantling constitutional constraints on the will of the majority. Populists in power can damage the quality of democracy and dismantle liberal constraints on executive power by undermining the rule of law, controlling the media, and harassing political oppositions.

The electoral success and the ambiguous orientation of populist parties to liberal democracy make party bans unlikely. In some cases, populist parties or their supporters are veto players. While populists polarize politics, sharpening social divisions between the "good" people and the "corrupt elite" or "unworthy others", they typically have many supporters. In most cases, populist parties in Europe win seats and come to office following internationally recognized free and fair elections. Together with doubts sowed by populist appeals to political sovereignty, the legitimacy obtained by winning over citizens in large numbers makes it difficult to persuade many that populist parties are an existential threat to the democratic community.

Instead, as our research has shown, the direction of travel is away from intolerant or *exceptional* measures like party bans, or even ostracism by political parties, towards what I call tolerant or *normal politics*.[6] While *exceptional politics* suspends rights, privileges, and respect that political parties would usually enjoy, either by law or in practice, because of their representative role in a democratic society and/or as a governing party in the international sphere, *normal politics* observes or upholds them. Although Germany remains something of an exception,

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5 See Angela Bourne/Tore Vincents Olsen, Tolerant and intolerant responses to populist parties: who does what, when and why?, in: Special issue Comparative European Politics 2023, Vol. 21, p. 725-741.

6 Angela Bourne, Responding to Populist Parties in Europe: The Populist People vs the Other People, 2023, Oxford University Press.

and those who disagree with populist parties still often use the language of democratic defence, opponents are much more likely to use *ordinary legal controls*, including the initiation of legal proceedings in both national and international courts, applying constitutional *checks and balances* to limit the ability of populist parties to implement illiberal or anti-democratic policies, and using *judicial controls* to safeguard rights of others, enforcing ordinary laws on racism, hate speech, or against corruption. Our research also shows just how far the political competitors of populist parties have travelled from the more-or-less systematic practice of *ostracism* to embracing collaborative relationships with populist parties in both government and parliament. While there are still important cases where parties refuse on principle to cooperate with mainly right-wing populist parties – in Germany, France, and Belgium, for example – more often than not, ostracism is contemplated when new populist parties emerge but soon dropped once their vote share grows. Such strategies may pursue many goals, but integration rather than exclusion may, in some cases, lead to political moderation, socialization to democratic norms, or even incumbency costs weakening voter support.[7] Other parties may also use *oppositional politics* deploying ordinary parliamentary procedures to block legislation or pose no-confidence votes to limit the ability of populist parties to implement illiberal or anti-democratic policies. Although it varies from country to country, populist parties often face backlash from civil society actors, sometimes in mass public protests demonstrating the strength of disagreement and showing solidarity with vulnerable communities. Similarly, monitoring, investigating, and reporting on the activities and claim-making of anti-democratic parties by a wide range of national and international agencies, institutions, and civil society groups is used to cast a light on mismatches in what populist parties say and do, and the veracity of their claims. Presumably, this menu offers better alternatives for responding to parties like Alternative for Germany when they challenge liberal democracy principles and values.

[7] See for example, Joost van Spanje, Keeping the rascals in: Anti-political-establishment parties and their cost of governing in established democracies, in: European Journal of Political Research 2011, Vol. 50, No. 5, p. 609-635; Tjitske Akkerman/Sarah L. de Lange, Radical Right Parties in Office: Incumbency Records and the Electoral Cost of Governing, in: Government and Opposition 2012, Vol. 47, No. 4, p. 574-596; Tjitske Akkerman/Sarah de Lange/Matthijs Rooduijn (Hrsg.), Radical Right-Wing Populist Parties in Western Europe: Into the Mainstream?, 2017, Routledge.