

# Generals Can Sometimes Be More Pro-Democratic Than Politicians

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Ozan O. Varol, [The Democratic Coup d'État](#), 53 *Harv. Int'l L.J.* 292 (2012).

How do liberal democracies deal with threats to liberal constitutionalism, when those threats come from political parties willing to use the existing mechanisms of liberal constitutionalism to gain power—and then eliminate liberal constitutionalism? This question was a concern for scholars of constitutionalism several generations ago. More recently, the phenomenon has been captured in the slogan, “One person, one vote, one time,” associated with some positions taken at the first stage in a transition away from authoritarianism—though perhaps only to another form of authoritarianism. Transitional situations are one thing, though; established liberal democracies are another. The experience of Weimar Germany was taken as an illustration—perhaps inapt in detail but useful for thinking through the problem—of the use by antidemocratic forces of democratic means to attain power.

After World War Two Germany responded by embedding in its Basic Law the idea of militant democracy, developed during the war by the exile political theorist Karl Loewenstein. Many other nations have followed suit. Militant democracy extends to political parties the idea that nations can permissibly use force against subversive individuals. According to the idea of militant democracy, liberal democracies can permissibly ban antidemocratic political parties and deny their members the ability to serve in public positions, even in the bureaucracy (because they might use their discretion to favor their antidemocratic comrades). Militant democracy is constitutionalism’s resolution of the problem in political theory of whether and why we should tolerate the intolerant. And, like that problem, the one militant democracy addresses is difficult to resolve. Power-holders may well misdescribe political opposition as a threat to democracy itself, and seek to suppress political parties that are “merely” forceful opponents of their programs.

Liberal constitutionalism addresses the possibility of mistaken exercises in militant democracy through various forms of constitutional review lodged in independent courts. Let’s assume that constitutional courts mostly get things right. Still, relying on constitutional courts to enforce militant democracy may be insufficient. They might make what we can concede would be a rare mistake and reject an effort to suppress a political party—with disastrous consequences. Or, the ordinary mechanisms for securing compliance with judicial orders allowing an effort to suppress a political party— in particular, deference to the courts’ judgments because of their legal legitimacy—might be insufficient in the face of a threat to liberal constitutionalism that has already attained significant power.

Here’s where Ozan Varol’s article comes in. He shows that the sword—that is, the military—can sometimes intervene to support democracy against imminent victories by antidemocratic political parties using democratic means. As Varol points out, liberal constitutionalists typically shudder at the prospect of military coups—properly so, in some sense, because often, perhaps in a large proportion of instances, military coups are truly antidemocratic. But, Varol shows, sometimes coups are pro-democratic.

Varol offers three case studies: Turkey in 1960, Portugal in 1974, and Egypt in 2011. (It’s worth observing that the Egyptian story continues to develop, and that the ability of the Turkish military to

intervene against extreme Islamist politics has been broken over the past decade.) Those military coups, Varol argues, were pro-democratic in the long run, though of course antidemocratic to the extent that they either displaced democratically chosen political leadership or blocked the possibility that elections rather than a coup could displace the authoritarian regime in place or prevent one from taking power.

Varol recognizes that identifying a military coup as pro-democratic is always tricky, because military officers, if they have any sophistication whatever, will almost always claim that they are stepping in to save the nation from itself. A key feature of the pro-democratic coup is that the military “facilitates fair and free elections within a short span of time.” This is problematic as a criterion for real-time evaluation because, again, a reasonably sophisticated military will always assert that its intervention is limited to a period of pressing emergency, and that it will step aside once fair and free elections occur. As I have noted elsewhere, this complicates the phenomenon addressed in a forthcoming article by Vicki Jackson and Rosalind Dixon, of international “enforcement” of a nation’s compliance with its own constitution.

In light of the obvious fact that some military coups are antidemocratic and a few pro-democratic, Varol’s provocative article opens up a line of inquiry into the conditions under which the military will be pro-democratic. I’m sure that such inquiries would have to say something about military recruitment of commanders and soldiers on the lines, and about the education in constitutionalism received by recruits at both levels. A scholar of constitutionalism should note that the possibility—and occasional necessity—of pro-democratic military intervention means that the American instinct, shared widely among liberal constitutionalists (I think), that civilian control of the military is a fundamental principle of constitutionalism, might have to be rethought.

Finally, I find Varol’s article valuable beyond its specific contributions about coups d’état. I think it should be understood as a contribution to a literature, which I hope will grow, that pluralizes the notion of normative constitutionalism. By that, I mean the development of some way of thinking about constitutionalism as a gradient rather than a binary. Instead of “liberal constitutionalism versus authoritarianism” (or “authoritarianism versus systems in transition to liberal constitutionalism”), we might begin to think about the possibility of “less liberal constitutionalism but not authoritarian either.” Varol’s discussion of the pro-democratic coup d’état will be an important part of such a literature.

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