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Bourne, A.K.; Rijpkema, B.R.

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# Militant Democracy, Populism, Illiberalism: New Challengers and New Challenges

Angela K. Bourne\* and Bastiaan Rijpkema\*\*

Introduction to the Special Section – ECPR 2021 Joint Sessions ‘Militant Democracy: New Challengers and Challenges’ – metamorphoses of a Cold War concept – new challengers intensify challenges for militant democracy – evaluation of the effects and effectiveness of militant democracy – new conceptual and normative approaches broaden concept of militant democracy – risk of ‘concept stretching’ – minimal common recognisable core

## FURTHER METAMORPHOSES OF A COLD WAR CONCEPT

The idea of ‘militant democracy’ is usually traced back to Karl Loewenstein’s interwar work on combatting fascism and communism in Europe.<sup>1</sup> Militant democracy, in most definitions, concerns legal measures that restrict political rights to protect liberal democratic institutions. According to Müller, ‘the typical object of militant democracy during the Cold War was an association that declared its intention to replace democracy with something supposedly better

\*Angela Bourne is Professor (with Special Responsibilities) at Roskilde University, Denmark.

\*\*Bastiaan Rijpkema is Professor of Jurisprudence and Endowed Professor of Tolerance (Uytenbogaert Chair) at Leiden University.

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<sup>1</sup>K. Loewenstein, ‘Militant Democracy and Fundamental Rights, I’, 31 *The American Political Science Review* (1937) p. 417; K. Loewenstein, ‘Militant Democracy and Fundamental Rights, II’, 31 *The American Political Science Review* (1937) p. 638.

but did not perpetrate violent acts; typical responses were banning political parties and associations and restricting free speech'.<sup>2</sup> Cold War objects of militant democracy were 'easily recognised by their relationship to totalitarianism, whether fascist or Soviet Communism'.<sup>3</sup>

At the end of the Cold War, the threat from militant democracy's traditional targets declined. Old-style fascist movements were largely seen as illegitimate, and the collapse of the Soviet Union limited the appeal of orthodox communist movements. The concept of militant democracy, however, re-emerged, propelled by two developments.<sup>4</sup>

The first can be found in counterterrorism. In the post-Cold War period, some of liberal democracy's most important challengers, such as religious extremists or other groups using terrorist tactics, generally pursued their goals at least partly outside existing political institutions. Thus, 'militant democracy' seemed to have evolved into a post-Cold War 'preventive state' as theorised by Sajó.<sup>5</sup> The second, later, development is the rise of populist parties and illiberal challengers, in some cases even becoming governing parties, in countries such as Turkey, Hungary, Poland, and the United States. While their pursuit of power through democratic institutions seems to link them to the traditional militant democracy paradigm, the difficulty of deploying militant measures against parties in government and their more ambiguous orientation to democratic politics makes the fit of this paradigm problematic.<sup>6</sup>

With this renewed interest, the field rapidly diversified. New research sought to address variations in militant democratic practices across different legal systems,<sup>7</sup> and

<sup>2</sup>J.-W. Müller, 'Protecting Self-Government from the People? New Normative Perspectives on Militant Democracy', 19 *Annual Review of Political Science* (2016) p. 249 at p. 250.

<sup>3</sup>J.-W. Müller, 'Militant Democracy', in M. Rosenfeld and A. Sajó (eds.), *The Oxford Handbook of Comparative Law* (Oxford University Press 2012) p. 1253 at p. 1255.

<sup>4</sup>A. Ellian and B.R. Rijpkema, 'Introduction', in A. Ellian and B.R. Rijpkema (eds.), *Militant Democracy – Political Science, Law and Philosophy* (Springer 2018) p. 1 at p. 2–7.

<sup>5</sup>A. Sajó, 'From Militant Democracy to the Preventive State', 27 *Cardozo Law Review* (2005) p. 2225, see also Müller, *supra* n. 3, p. 1255–1256, on the nexus of counterterrorism and militant democracy, and B.R. Rijpkema, 'Local Militant Democracy: Exploring the Relevance of Subnational Democracy for Normative Militant Democracy Theory', in A. Ellian et al., 'Terrorism and Counterterrorism after the Caliphate' (Eleven International Publishing 2020) p. 71 at p. 73.

<sup>6</sup>C. Rovira Kaltwasser, 'Militant Democracy Versus Populism', in A. Malkopoulou and A. Kirshner (eds.), *Militant Democracy and Its Critics* (Edinburgh University Press 2019) p. 72.

<sup>7</sup>See e.g. M. Thiel (eds.), *The 'Militant Democracy' Principle in Modern Democracies* (Ashgate 2009); M. Klamt, *Die Europäische Union als streitbare Demokratie: rechtsvergleichende und europarechtliche Dimensionen einer Idee* (Herbert Utz Verlag 2012); A. Bourne and F. Casal Bértoa, 'Mapping "Militant Democracy": Variation in Party Ban Practices in European Democracies (1945–2015)', 13 *EuConst* (2017) p. 221.

in the European and international arena.<sup>8</sup> The normative debate took off with novel militant democracy theories justifying militant measures,<sup>9</sup> critiques of these positions or militant democracy as such,<sup>10</sup> and explorations of new fields for normative study within militant democracy such as subnational democracy.<sup>11</sup> Another strand of research sought to understand how exactly law was 'weaponised' in the exemplary democratic breakdown case of Weimar, informing debates on the current misuse of law in backsliding democracies.<sup>12</sup> Others studied defences against related challenges to secularism;<sup>13</sup> separatism;<sup>14</sup> and the constitutionally enshrined 'identity of the state'.<sup>15</sup> In short, the field of militant democracy significantly evolved in recent years.

This Special Section sheds light on the further metamorphoses of the Cold War concept of militant democracy. The articles address questions about the evolving concept of militant democracy, its applicability beyond the state (to, for instance, the European Union), the emergence of new challengers and the effectiveness of militant measures combating them. It brings together interdisciplinary, state of the art research by new and established legal scholars, political theorists, and political scientists working at the conceptual and empirical frontline of the field. The

<sup>8</sup>See e.g. Klamt, *supra* n. 7; several contributions by Müller, such as J-W. Müller, 'Defending Democracy within the EU', 24 *Journal of Democracy* (2013) p. 138; C. Closa and D. Kochenov (eds.), *Reinforcing Rule of Law Oversight in the European Union* (Cambridge University Press 2016); C. Walter, 'Interactions between International and National Norms: Towards an Internationalized Concept of Militant Democracy', in Ellian and Rijpkema (eds.), *supra* n. 4, p. 79.

<sup>9</sup>For example, A. Kirshner, *A Theory of Militant Democracy: The Ethics of Combatting Political Extremism* (Yale University Press 2014); B.R. Rijpkema, *Militant Democracy: The Limits of Democratic Tolerance* (Routledge 2018); B.R. Rijpkema, 'Militant Democracy and the Detection Problem', in Malkopoulou and Kirshner, *supra* n. 6, p. 169; for an overview see Müller, *supra* n. 2.

<sup>10</sup>See generally Malkopoulou and Kirshner, *supra* n. 6; A. Malkopoulou and L. Norman, 'Three Models of Democratic Self-Defence: Militant Democracy and its Alternatives', 66 *Political Studies* (2018) p. 442; C. Invernizzi Accetti and C. Zuckerman, 'What's Wrong with Militant Democracy?', 65 *Political Studies* (2017) p. 182.

<sup>11</sup>Rijpkema, *supra* n. 5.

<sup>12</sup>I. Ermakoff, 'Law against the Rule of Law: Assaulting Democracy', 47 *Journal of Law and Society* (2020) p. 164, see earlier, although primarily focusing on internal party processes: I. Ermakoff, 'Frail Democracy', in Ellian and Rijpkema (eds.), *supra* n. 4, p. 47.

<sup>13</sup>N. Rosenblum, 'Multiculturalism and the Anti-discrimination Principle', 1 *Law and Ethics of Human Rights* (2007) p. 1; P. Macklem, 'Guarding the Perimeter: Militant Democracy and Religious Freedom in Europe', 19 *Constellations* (2012) p. 575; S. Tyulkina, *Militant Democracy: Undemocratic Political Parties and Beyond* (Routledge 2015); G. Bligh, 'Defending Democracy: A New Understanding of the Party-banning Phenomenon', 46 *Vanderbilt Journal of Transnational Law* (2013) p. 1321.

<sup>14</sup>R. Weill, 'Secession and the Prevalence of Both Militant Democracy and Eternity Clauses Worldwide', 40 *Cardozo Law Review* (2018) p. 905; Bligh, *supra* n. 13; A. Bourne, 'Why Ban Batasuna? Terrorism, Political Parties and Democracy', 13 *Comparative European Politics* (2015) p. 325; A. Bourne, *Democratic Dilemmas: Why Democracies Ban Political Parties* (Routledge 2018).

<sup>15</sup>Bligh, *supra* n. 13.

main focus of the Special Section is on the rise of populist and illiberal parties in Europe.

In the following, first the new (and some older) *challengers* of democracy that feature in this Special Section are briefly introduced. Second, several new *challenges* this Special Section deals with are highlighted, combined with a brief overview of the analyses the contributions offer. The overview is synthesising in nature. It focuses on how the articles in this Special Section speak to a series of challenges in the field of militant democracy.

### CONFRONTING NEW CHALLENGERS

Liberal democracies have long had to live with the existence of extremist and anti-system parties and movements. These challenges remain, but what is distinctive about the last 10–15 years has been the growth of populist and illiberal parties. These parties have won significant vote shares in many democracies and in epoch-defining referenda such as the UK's Brexit referendum in 2016. Populist and illiberal parties are now often large enough to play significant governing roles, sometimes as junior coalition partners, sometimes dominating the government or winning presidential office outright.

Populist parties characteristically pitch the sovereign 'people' against an 'evil' or unresponsive elite.<sup>16</sup> While there is debate about whether populists are a 'threat' and/or a 'corrective' to democracy,<sup>17</sup> populist appeals to 'the people' and democracy often adopt a majoritarian conception of democracy which devalues liberal institutions such as courts, and mistrusts institutionalised opposition. While populism and illiberalism cannot simply be equated,<sup>18</sup> there are many overlaps, especially with regard to their pursuit of policies that tend to be primarily illiberal (and not so much antidemocratic) in nature. This is clearest in policies targeting 'minority rights, pluralism, and the rule of law'.<sup>19</sup> In addition, would-be populist

<sup>16</sup>C. Mudde, 'The Populist Zeitgeist', 39 *Government and Opposition* (2004) p. 541; C. Mudde and C. Rovira Kaltwasser, *Populism: A Very Short Introduction* (Oxford University Press 2017); J.-W. Müller, *What Is Populism?* (University of Pennsylvania Press 2016).

<sup>17</sup>C. Mudde and C. Rovira Kaltwasser, 'Populism: Corrective and Threat to Democracy', in C. Mudde and C. Rovira Kaltwasser (eds.), *Populism in Europe and the Americas: Threat or Corrective for Democracy?* (Cambridge University Press 2012) p. 205.

<sup>18</sup>See for instance P. Blokker, 'Populism and Illiberalism', in A. Sajó et al. (eds.), *Routledge Handbook of Illiberalism* (Routledge 2021) p. 261; 'Cas Mudde on Threats to Democracy and the Far Right in the United States', in M. Laruelle (ed.), *Conversations on Illiberalism: Interviews with 50 Scholars* (Illiberalism Studies Program, George Washington University) p. 8 at p. 8.

<sup>19</sup>C. Mudde, 'Europe's Populist Surge: a Long Time in the Making', 95 *Foreign Affairs* (2016) p. 25 at p. 28, also discussed in Ellian and Rijpkema (eds.), *supra* n. 4, p. 4–7.

(and other) autocrats tend to legitimise their rule with appeals to success in electoral contests.<sup>20</sup>

Populist and illiberal discourses paying lip service to an ideal of ‘democracy’ complicate normative debates about the appropriateness of militant democracy in a way that we have not witnessed hitherto.<sup>21</sup> The popularity of such parties, in Europe and elsewhere, sharpens the democratic dilemmas underpinning militant democracy. Rights restrictions become harder to justify when more and more of ‘the people’ consider the parties targeted by militant democracy as the authentic representation of their interests.<sup>22</sup> There is also the question whether the concept of militant democracy can and should be stretched to also include the defence of the *liberal* in ‘liberal democracy’ (democracy under a *rule of law*)?<sup>23</sup> Moreover, the entry of (even more successful) populist and illiberal parties into government challenges the application of militant democracy’s instrument *par excellence*, the party ban. This instrument was conceived of, at least implicitly, as a tool aimed at preventing extremist *oppositional* parties from taking over governmental power (a prominent exception being the 1998 ban of the then governing *Refah*-party in Turkey).<sup>24</sup> And with ‘constitutional capture’ looming or in progress, state authorities themselves may no longer even be the only or most effective agents of militant democracy,<sup>25</sup> putting further stress on the levels ‘above’ and ‘below’ the state: supranational authorities, as the European Union and the European Court of Human Rights,<sup>26</sup> and civil society.<sup>27</sup> Both are increasingly conceived of as agents of militancy, assisting the state in confronting new challengers.

In Europe we can observe various new (and older) challengers, as several articles in this Special Section shed light on these new challengers.

<sup>20</sup>S. Levitsky and L.A. Way, *Competitive Authoritarianism: Hybrid Regimes After The Cold War* (Cambridge University Press 2010); B. Klaas and N. Cheeseman, *How to Rig an Election* (Yale University Press 2018); N. Bermeo, ‘On Democratic Backsliding’, 27 *Journal of Democracy* (2016) p. 5; K.L. Scheppele, ‘Autocratic Legalism’, 85 *The University of Chicago Law Review* (2018) p. 545.

<sup>21</sup>Mudde and Kaltwasser, *supra* n. 16, p. 108-109.

<sup>22</sup>Rijkema (2018), *supra* n. 9, p. 107-109.

<sup>23</sup>See e.g. Rijkema (2019), *supra* n. 9.

<sup>24</sup>See Ermakoff (2020), *supra* n. 12, p. 185, and the banned parties discussed in Bourne (2018), *supra* n. 14; Bourne and Casal Bértoa, *supra* n. 7.

<sup>25</sup>J.-W. Müller, ‘Rising to the Challenge of Constitutional Capture: Protecting the Rule of Law within EU Member States’, *Eurozine*, 21 March 2014.

<sup>26</sup>See e.g. Rijkema (2018), *supra* n. 9, p. 156-160; Closa and Kochenov, *supra* n. 8; Walter, *supra* n. 8.

<sup>27</sup>See M. Thiel, ‘Comparative Aspects’, in M. Thiel (ed.), *The ‘Militant Democracy’ Principle in Modern Democracies*, (Ashgate 2009) p. 380 at p. 418-419; J.-W. Müller, *Constitutional Patriotism* (Princeton University Press 2007) p. 114-117.

**Brandmann** explores the effects of surveillance measures by the Federal Office for the Protection of the Constitution on Alternative for Germany, the first radical right populist party in Germany to win seats in the Bundestag in the post-war period. **Olsen's** article also examines Alternative for Germany but indirectly, through the lens of civil society responses to the party, a case the author compares with civil society reactions to Matteo Salvini's League. This party has been a mainstay of Europe's radical right populist parties, evolving from a regionalist to a nationwide party and exercising governing roles on and off since the 1990s.<sup>28</sup> **Feisel** examines EU initiatives aimed at the challenges coming from Hungary and Poland, which gained particular currency after Victor Orbán's Fidesz party came to power in Hungary in 2010 and began to systematically engineer what several scholars have called autocratisation or democratic backsliding.<sup>29</sup> Following its electoral success in 2015, the Law and Justice Party followed a similar path in Poland. In an indication that traditional targets of militant democracy have not disappeared, **Steuer's** article examines party and movement ban proceedings in relation to extreme and far right challengers in three Central European countries: the Workers' Party (Czech Republic), the Slovak Togetherness–National Party and the People's Party Our Slovakia (both from Slovakia), and the Hungarian Guard in Hungary.

## DEALING WITH NEW CHALLENGES

The new challengers raise, or intensify, challenges for the theory and practice of militant democracy. First, these take the form of theoretical and empirical challenges; and second, they pose conceptual and normative challenges. All articles in the Special Section address questions related to one or both challenges.

### *Theoretical and empirical challenges*

An important theoretical and empirical challenge concerns how to evaluate the effects and effectiveness of militant democracy. Such questions have long been a core issue in public debates about how to respond to contemporary challengers, particularly with reference to repressive measures like party bans or the prohibition of offensive speech. These issues are intensified as democracy's new populist and illiberal challengers garner unprecedented levels of support and even enter into government.

<sup>28</sup>See e.g. G. Passarelli, 'Extreme Right Parties in Western Europe: the Case of the Italian Northern League', 18 *Journal of Modern Italian Studies* (2013) p. 53.

<sup>29</sup>A. Lührmann and S.I. Lindberg, 'A Third Wave of Autocratization is Here: What is New About It?', 26 *Democratization* (2019) p. 1095; Bermeo, *supra* n. 20.

On the one hand, there is a concern that repressive measures will be counter-productive, reinforcing anti-establishment critiques, and strengthening or radicalising targeted political actors.<sup>30</sup> On the other hand, as an act of communication in the public sphere, high-profile instances of militancy may clarify standards of expected behaviour in democratic politics, and may provide incentives for political moderation.<sup>31</sup>

While these arguments are easily recognisable and frequently rehearsed in public debates in many established democracies, they have received fairly limited attention in the literature.<sup>32</sup> **Brandmann** and **Steuer**'s articles in this special section deepen our knowledge on these questions. **Brandmann** examines the interaction between the Alternative for Germany party and the potentially damaging and stigmatising surveillance of the Office for the Protection of the Constitution. Drawing on work by Donselaar and Art, the author demonstrates how the party responds to militant measures by utilising 'frontstage-moderation', portraying a more moderate image of itself when under scrutiny. By accentuating a 'moderate frontstage', Alternative for Germany can cast doubt on the legitimacy of the Office for the Protection of the Constitution, 'as instrumentalised by the government' against 'democratic activists'. Far from being a 'passive recipient' of measures, the party is shown to have prepared itself long in advance. **Steuer**'s article contributes to the study of militant democracy's effectiveness by drawing our attention to the functioning of the courts, tying Kritzer's notion of 'craft' in legal spheres<sup>33</sup> to discussions of militant democracy. More specifically, on the basis of an analysis of party ban cases from Central Europe, he argues that a stronger emphasis on what kind of 'judicial craft' (broken down into four interrelated components) adjudicating militant democracy cases requires, will add to democracy's resilience. Steuer's contribution emphasises how a country's *actual* degree of

<sup>30</sup>W. Downs, *Political Extremism in Democracies: Combating Intolerance* (Palgrave Macmillan 2012); T. Bale, 'Are Bans on Political Parties Bound to Turn Out Badly?', *Comparative European Politics* (2007) p. 141; T. Bale, 'Will it All End in Tears? What Really Happens When Democracies Use Law to Ban Political Parties', in I. van Biezen and H.M. ten Napel (eds.), *Regulating Political Parties: European Democracies in Comparative Perspective* (Leiden University Press 2014) p. 195.

<sup>31</sup>R. Koopmans, 'Repression and the Public Sphere: Discursive Opportunities for Repression in Germany in the 1990s', in C. Davenport et al. (eds.), *Repression and Mobilization* (University of Minnesota Press 2004) p. 58.

<sup>32</sup>See also the discussion and overview in Rijpkema (2018), *supra* n. 9, p. 93-101, and, for instance, the work by Joost van Spanje and several co-authors on hate speech prosecutions of politicians, see e.g. recently R. Rekker and J. van Spanje, 'Hate Speech Prosecution of Politicians and its Effect on Support for the Legal System and Democracy', *52 British Journal of Political Science* (2022) p. 886.

<sup>33</sup>H.M. Kritzer, 'Toward a Theorization of Craft', *Social & Legal Studies* (2007) p. 321.



democratic resilience is the formula of (at least) its legal framework *plus* the capacity of courts to actually deal with questions militant measures raise.

The articles by **Bourne** and **Van der Meer and Rijpkema** both add to the theoretical side of the empirical challenges by designing new conceptual devices for the further study of the effectiveness of militant and non-militant measures. **Bourne** advances our understanding of the range of initiatives deployed by states against populist parties by designing a typology to categorise and compare different kinds of legal and political approaches to these parties, elucidating what states are doing within and *beyond* the traditional framework of militant democracy. **Bourne's** article hints that, in the case of European populist parties at least, the paradigm of militant democracy has reached its limits. Opposition to populist parties more often than not deploys the tools of 'normal politics', with exceptional measures of militant democracy clearly taking second place. **Van der Meer and Rijpkema's** article cuts through traditional explanatory frameworks for cross-country analysis when it comes to electoral laws, such as parliamentary versus presidential, and proportional versus majoritarian systems. They argue for a focus on *features* over systems, allowing for a more nuanced study of the impact of electoral laws on democratic resilience. The core message is that democracies should gear their electoral design towards reducing system features that induce a 'minority to majority' effect, an effect that places overriding power in the hands of a (electoral) minority.

### *Conceptual and normative challenges*

The new conceptual and normative challenges dealt with in this Special Section concern what kinds of contemporary initiatives, undertaken by what kind of political actors, still fit with the paradigm of militant democracy, and if so, whether they are legitimate. It is reasonable to expect, as we have seen in the past, an evolution of the concept of militant democracy in response to new kinds of challengers to the liberal democratic system.

Various articles in the Special Section study how militant democracy might evolve through these responses. **Feisel** analyses EU legal and political initiatives within the framework of militant democracy, including provisions for sanctions against EU member states undermining EU values (Article 7 TEU), party regulation in the European Parliament and EU institutional checks and balances. Feisel is critical of EU endeavours when it comes to militant democracy, arguing that the specific nature of the EU polity is hard to square with certain militant measures against member states.

**Van der Meer and Rijpkema** explore how militant democracy should pay attention to electoral systems design. Their argument gains force given the way democracy's new populist and illiberal challengers deepen the dilemmas of

militant democracy. They argue that *if* electoral design impacts democratic self-defence, measures concerning electoral system design might complement, or even take precedence over, traditional militant democratic measures, given their non-discriminatory and thus less far-reaching character (i.e. no 'verdict' is rendered on party content).<sup>34</sup>

The same goes for the, respectively, empirical and normative frameworks **Bourne** and **Olsen** offer to understand the under-researched role of civil society actors, focusing on new types of non-state initiatives characterised by persuasion, protest, and, in some instances, coercion. These relatively 'new' kinds of initiatives have the potential to broaden the concept of militant democracy.

What is less clear, however, is what this evolution will mean for our understanding of the concept of militant democracy. The conceptual challenge here is that the addition of new attributes to the concept to reflect changing practices might lead to 'concept stretching', where it becomes difficult to distinguish instances of the phenomenon under investigation from non-instances.<sup>35</sup>

Some scholars have sought to deal with this problem by adopting a minimal definition of militancy as one type of response to anti-system parties among others, often relabelling the broader field as democratic (self-)defence.<sup>36</sup> Militant democracy, then, is a *species* of the *genus* democratic (self-) defence. **Bourne's** article in this special issue follows such a strategy. Bourne develops a typology of initiatives opposing populist parties, which distinguishes between initiatives by public authorities, political parties, and civil society initiatives on one dimension, and tolerant and intolerant modes of engagement on the other. In this typology, measures commonly associated with militant democracy, typically initiated by public authorities and involving the suspension of certain political rights, constitute only one of six types of initiatives (i.e. rights restrictions). The article by **Van der Meer and Rijpkema** follows a different route by discerning between 'formal' militant democracy measures, i.e. content-specific instruments (party bans, hate speech regulation and such), and 'informal' militant democracy measures, lacking the content-specific character. The article goes on to show how electoral law design might be considered such an 'informal' militant democracy measure, while in Bourne's conceptualisation, it would be an instrument within the broader concept of democratic (self-)defence.

<sup>34</sup>See e.g. A. Malkopoulou, 'Greece: A Procedural Defence of Democracy against the *Golden Dawn*', 17 *EuConst* (2021) p. 177; L. Vinx, 'Democratic Equality and Militant Democracy', *Constellations* (2020) p. 1.

<sup>35</sup>G. Sartori, 'Concept Misformation in Comparative Politics', 64 *The American Political Science Review* (1970) p. 1033; see also A. Bourne, 'The Proscription of Political Parties and the Problem with "Militant Democracy"', 7 *Journal of Comparative Law* (2012) p. 196.

<sup>36</sup>G. Capoccia, *Defending Democracy: Reactions to Extremism in Interwar Europe* (John Hopkins University Press 2005); Downs, *supra* n. 30; Malkopoulou and Norman, *supra* n. 10.

**Olsen's** contribution on non-institutionalised actors, i.e. civil action, and illiberal democracies in turn operates at the very boundaries of the concept of militant democracy, as the concept is usually associated with responses by public authorities in established democracies.

Naturally, definitional issues do not have to be part of a normative argument. **Van der Meer and Rijpkema**, for instance, situate their argument in the broader field of militant democracy, pointing to normative implications, without defending a specific normative conception of what militant democracy should be – at least not in this contribution.<sup>37</sup> In other cases, authors in this Special Section do depart from an argument of what a militant democracy *should* be, not as a field of study, but as a concept, if it is to be legitimate. Definition and distinctions, then, are the result of a normative argument. **Feisel's** article contains such a normative analysis based on conceptualisations of EU militant democracy, drawing the legitimacy of acting militantly in defence of democracy from these conceptualisations. **Olsen** builds on militant democracy, next to other literatures, to devise a framework to distinguish legitimate and illegitimate civil society action, arguing for an 'escalation ladder' of 'civil intervention'.

The contributions in this Special Section certainly still adhere to a (minimal) common recognisable core of militant democracy: the defence of democracy against challenges to its democratic system. Also, 'traditional' instruments such as the party ban and surveillance measures still feature prominently in this Special Section. Nevertheless, several conceptions of militant democracy adopted by contributors clearly show the broader reworking of the field of militant democracy that is under way, branching out to non-discriminatory instruments (versus traditionally, content-based interventions), and to civil society actors and supra-national actors, such as the EU (versus traditionally, state actors).



<sup>37</sup>Rijpkema (2018), *supra* n. 9, offers such a normative theory.