

THE RISE OF THE EXTREME RIGHT AND THE CRIME OF TERRORISM: IDEOLOGY, MOBILIZATION, AND THE CASE OF GOLDEN DAWN

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The past decade has witnessed the rise in popularity of organizations and political parties founded on the extreme nationalism and populism that characterized the interwar period's fascist and Nazi parties. These organizations have become known as the "alt-right" and include white supremacists, neo-Nazis, neo-fascists, and other extreme right-wing fringe groups. Extreme right-wing political parties have also enjoyed electoral victories while promulgating xenophobia and hatred based on race, religion, ethnicity, nationality, and sexual orientation. This article examines the resurgence of such extreme right-wing political parties and the relationship between right-wing extremism, political parties, and terrorism. The goal of this article is to shift the discussion from one of political analysis of right-wing extremism to one of legal evaluation of the activities involved within the ambit of the recent advances in the criminalization of terrorism. Could the mobilization of extreme right-wing political parties be classified as terrorism? This article begins to answer this question by assessing the definitional problem of terrorism and critically analyzing the most recent legislative developments in the EU. The article focuses on the uneasy relationship between the legal nature of political parties and the crime of terrorism. It then applies insights from this debate to the specific case of Greece's popular extreme right-wing political party: Golden Dawn. It discusses Golden Dawn's development and political mobilization under the framework of terrorist statutes and argues in favor of a constitutional interpretation that gives political parties the necessary legal personality in order to incur collective criminal liability for such activities.

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INTRODUCTION

The past decade has been marked by a steep revival and increased popularity across the globe of organizations and political parties founded on ideals rooted in the extreme nationalism and populism that characterized the interwar period’s fascist and Nazi parties. The United Nations Secretary-General underlined that neo-fascism and neo-Nazism are gaining ground in many countries especially in Europe.¹ The “electoral victories of extreme right parties advocating xenophobia, attacks on ethnic, national and religious minorities, and racial or ethnic purity in the countries where they are active” demonstrate this trend.² Most recently, the US has witnessed a similar re-energization of groups that make up what has become known as the “alt-right” and include white supremacists, neo-Nazis, neo-fascists, and other extreme right-wing fringe groups.³

The sudden popularity of these parties within local or national government coupled with the varied and self-selective terminology used to

1. Press Release, Secretary-General, at Second World War Exhibition, Calls Resurgent Nazi Ideologies ‘Cancer That Is Starting to Spread Again’, Stressing ‘Duty’ of Defeating Them, U.N. Press Release SG/SM/19024 (May 9, 2018).

2. Hans-Georg Betz, *The Growing Threat of the Radical Right*, in *RIGHT-WING EXTREMISM IN THE TWENTY-FIRST CENTURY* 76 (Peter H. Merkel & Leonard Weinberg eds., 2003). See also A. James Gregor, *Fascism’s Philosophy of Violence and the Concept of Terror*, in *THE MORALITY OF TERRORISM* 153–65 (David C. Rapport & Yona Alexander eds., 1982) (describing the violent terrorism committed by various fascist groups in the twentieth century).

3. Liam Stack, *Alt-Right, Alt-Left, Antifa: A Glossary of Extremist Language*, N.Y. TIMES, (Aug. 15, 2017), <https://www.nytimes.com/2017/08/15/us/politics/alt-left-alt-right-glossary>. “The ‘alt-right’ is a racist, far-right movement based on an ideology of white nationalism and anti-Semitism; ‘*Alt-Right*, THE SOUTHERN POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/ideology/alt-right>. (last visited Feb. 10, 2018). “The Alternative Right, commonly known as the ‘alt-right,’ is a set of far-right ideologies, groups and individuals whose core belief is that ‘white identity’ is under attack by multicultural forces using ‘political correctness’ and ‘social justice’ to undermine white people and ‘their’ civilization.”

describe, classify, and define them have caused confusion around these political units' identities and the nature of the general political phenomenon of which they are a part. Terms ranging from extreme, far, and radical right, to populist, nationalist, neo-Nazi, neo-fascist, and alt-right have been used interchangeably by the organizations and political parties themselves, as well as by the national constituencies and the media.⁴ This terminology, however, is somewhat disorienting. The terms that attach to a political left-right continuum are situational considering that politically "left" and "right" may vary from country to country and include issues and trends that even transcend the left-right binary itself.⁵ The alternative labels of fascism, nationalism, and Nazism, are arguably too narrow to encompass the wide array of movements that fall within the spectrum and are perhaps even outdated.⁶ Finally, the alternative concept of 'hate parties' in reference to 'hate crime' isolates the criminal aspect of the phenomenon from the potentially wider political context of non-criminal activities.⁷

This article examines the resurgence of the extreme right-wing political parties in Europe in general and Greece in particular as well as the relationship between right-wing extremism, political parties, and terrorism. The first part of this article explores historical and terminological nuances of right-wing extremism and argues that right-wing extremism is the product of a delegitimization process against the political status quo. It further contends that these new political parties, founded on interwar extreme right ideologies, are different in their rhetoric and approach towards representative democracy than their predecessors, making them fundamentally more threatening to the liberal state. Then, the article moves on to analyze the potential of these parties' activities to qualify as terrorist activities. To achieve this end, the article presents the definitional problem of terrorism internationally as well as in the European Union (EU) and critically analyzes the most recent EU Directive on combatting terrorism and its contested endangerment requirement. The second part of this article focuses on the uneasy relationship between established political parties and the crime of terrorism. It applies this debate to the specific case of Greece's popular

4. Jim Wolfreys, *The European Extreme Right in Comparative Perspective*, in VARIETIES OF RIGHT-WING EXTREMISM IN EUROPE 19, 19 (Andrea Mammone et al. ed., 2013).

5. JONATHAN WHITE, LEFT, RIGHT AND BEYOND: THE PRAGMATICS OF POLITICAL MAPPING, in LSE 'EUROPE IN QUESTION' DISCUSSION PAPER SERIES, 2010 5-6 (LEQS Paper No. 24, 2010).

6. See ROGER GRIFFIN, THE NATURE OF FASCISM (1991); Gilbert Allardyce, *What Fascism is Not: Thoughts on the Deflation of a Concept*, 84 AMERICAN HISTORICAL REVIEW 367, 367-89 (1979); FASCISTS AND CONSERVATIVES (Martin Blinkhorn ed., 1990); RENZO DE FELICE, FASCISM (1976); RENZO DE FELICE, INTERPRETATIONS OF FASCISM (Brenda H. Everett trans., 1977); FASCISM IN EUROPE (S.J. Woolf ed., 1981).

7. TERROR FROM THE EXTREME RIGHT (Tore Bjørge ed., 1995).

extreme right-wing political party: Golden Dawn. The article discusses Golden Dawn's development and political mobilization in relation to terrorist statutes transposing the recent EU Directive into domestic law and argues in favor of a constitutional interpretation that gives political parties the necessary legal personality in order to incur collective criminal liability for terrorist activities.

PART I

A. The History and Political Ideology of Extreme Right-Wing Parties

Wilhelm Heitmeyer describes right-wing extremism as an ideology rooted in the assertion of a natural inequality between people, coupled with recognition of violence as a legitimate archetype for political action.⁸ For the purposes of this article and for reasons of efficiency, I use the term "extreme right" as comprising political ideology, activist policies, and the potentially violent and criminal activity that attach to the extreme right of the political spectrum.⁹ One of the modern forms of terrorism is the particular kind of terrorism produced by right-wing movements adhering to the politically ideological schools of fascism and Nazism.¹⁰ Between the 1920's and 1940's, Europe witnessed an insurgence of such movements with the Italian fascists and German Nazis succeeding in taking official governmental power and control over their countries.¹¹ The fascist and Nazi leaders and ideologues exalted the use of violence as an integral element of governance, a kind of violence that quickly converted into a form of massive terrorism that was both targeted and indiscriminate.¹² The prewar and interwar fascist and Nazi parties felt little need to justify the use of violence to their constituencies. Violence instead was understood and preached as an intrinsic element of the fascist and Nazi *Weltanschauung*, or worldview, making it equally self-evident and necessary, requiring no explanation or

8. Wilhelm Heitmeyer, *Right-Wing Extremist Violence*, in INTERNATIONAL HANDBOOK OF VIOLENCE RESEARCH 399, 399–436 (Wilhelm Heitmeyer & John Hagan eds., 2003); Wilhelm Heitmeyer, *Right-wing terrorism*, in ROOT CAUSES OF TERRORISM 141, 141–53 (Tore Bjørgo ed., 2005); see also Hans-Georg Betz, *The Growing Thread of the Radical Right*, in RIGHT-WING EXTREMISM IN THE TWENTY-FIRST CENTURY 74, 74 (Peter H. Merkel & Leonard Weinberg eds., 2003).

9. See Tore Bjørgo, *Introduction*, in TERROR FROM THE EXTREME RIGHT 1, 1–13 (Tore Bjørgo ed., 1995).

10. See Ehud Sprinzak, *Right-Wing Terrorism in a Comparative Perspective: The Case of Split Delegitimization* 7(1) TERRORISM AND POLITICAL VIOLENCE 17, 17–43 (2007) (analyzing the unique characteristics of right-wing terrorism).

11. *Id.* at 23.

12. PETER MERKL, THE MAKING OF A STORMTROOPER 299–305 (1987); ERNST NOLTE, THREE FACES OF FASCISM 260–63 (1965).

justification.¹³ Additionally, their politically and territorially expansive agendas created “satellite” parties and organizations across Europe, which, akin to their original counterparts, adopted violence as an essential part of their political ideology.¹⁴

In order to fully understand the current resurgence of the extreme right in Europe and beyond, it is important to address its ideological foundation. Ideology represents “a conceptual frame of reference, which provides criteria for choice and decision by virtue of which the major activities of an organized community are governed.”¹⁵ All ideologies rely on political axioms for the provision of a conceptual foundation consisting of ideals held to be self-evident to its adherents.¹⁶ Fascism and Nazism are ideologies that were generated on political axioms in direct opposition to democratic ones and essentially developed as polemical forms of anti-ideologies. They developed as a reaction to the modern democratic creed that was based on liberal individualism and constitutionalism. Fascism and Nazism arrived on the political scene at a time when liberal democracy was experiencing its first difficulties and its political parties were seen as dismissive of issues that certain social groups considered of high importance, often relating to financial crises, corruption, immigration, and social inclusion.¹⁷ The fascist and Nazi ideologies grew from these circumstances rather than a set of preceding ideas, owing their appeal to action and mobilization instead of political doctrine and dogma.¹⁸ It is therefore helpful to depart from the traditional doctrinal approaches to fully comprehend and analyze the ways in which these political formations function. Instead, we should approach them with both the circumstantial context of each era in which they came

13. See Betz, *supra* note 2, at 74–89 (describing the worldview of modern fascist parties).

14. See MARK MAZOWER, *HITLER’S EMPIRE: HOW THE NAZIS RULED EUROPE 137–78* (2008) (describing Hitler’s occupation of eastern Europe).

15. HERBERT KITSCHELT in collaboration with ANTHONY J. MCGANN, *THE RADICAL RIGHT IN WESTERN EUROPE: A COMPARATIVE ANALYSIS* 29 (The Univ. of Mich. Press, 1995) citing ZEER STERNHELL, *Fascist Ideology*, in *FASCISM. A READER’S GUIDE* 326 (Walter Laqueur ed.s, 1976).

16. Meindert Fennema, *Populist Parties of the Right*, in *MOVEMENTS OF EXCLUSION: RADICAL RIGHT-WING POPULISM IN THE WESTERN WORLD* 1, 4 (Jens Rydgren ed., 2005). The political axiom of the democratic ideology is well expressed in the American Declaration of Independence which claims that “all men are created equal, that they are endowed by their Creator with certain inalienable rights”. The fact that this is indeed a political axiom is shown in the outset of the sentence “we hold these truths to be self-evident.” *THE DECLARATION OF INDEPENDENCE*, para. 2 (U.S. 1776).

17. See P. Papasarantopoulos, *To big bang ths Xrysh Avgis [Golden Dawn’s big bang]* 23 *THE BOOKS’ J.* 12–19 (2012).

18. ROBERT O. PAXTON, *THE ANATOMY OF FASCISM* 17 (2005). As Mussolini put it: “the Democrats of Il Mondo want to know our program? It is to break the bones of the Democrats of Il Mondo. And the sooner the better”.

into being as well as the axiomatic sociopolitical references these political entities have manifested.¹⁹

For the fascists and Nazis, social inequality forms the cornerstone of a political ideology that legitimizes itself by reference to nature. Starting from the endogenous hierarchical nature of the existing society, these political entities point to the “natural” plausibility of inborn differences between people, instilling the social fact of societal inequality with a “moral” significance and a sense of ultimate efficacy.²⁰ The theorists of fascism and Nazism identify four overarching themes in the parties’ doctrines: (1) ethnic nationalism; (2) anti-materialism; (3) anti-parliamentarism; and (4) conspiracy theory.²¹ First, stemming from the natural causes of inherent social inequality, “the nation” is no longer defined in political terms. Instead, it becomes a metaphysical conception of a nation tied to a biological bond and prescribes that only those who biologically belong to a certain ethnic community form part of it.²² Membership is restricted to *jus sanguinis* and expressed both in terms of blood and culture.²³

Second, anti-materialism developed opposite to the individualist materialist culture that flourished in 18th century writings.²⁴ Fascist and Nazi anti-material dogma attacks liberalism for advocating the pursuit of individual interest and fragmenting society, and critiques Marxism for its insistence on class warfare, as it may lead to national destruction.²⁵ Attacking both the rational choice of liberalism and the egalitarian propositions of Marxism, Nazism and fascism created a political doctrine of ‘socialist nationalism’ in which the individual is subordinate to the people who form the nation.²⁶ For reasons that draw from both the ethnic nationalist and anti-material positions, fascism and Nazism stand in direct opposition to

19. See Wolfreys, *supra* note 4, at 19–34 (taking a comparative view of differing extreme right parties).

20. Fennema, *supra* note 16, at 4. “By rejecting the authority of the individual and replacing it by the numbers of some momentary mob, the parliamentary principle of majority rule sins against the basic aristocratic principle of Nature, though it must be said that this view is not necessarily embodied in the present-day decadence of our upper ten thousand.” ADOLF HITLER, *MEIN KAMPF*, vol. 1, ch. 3 (trans.) (1943), http://www.hitler.org/writings/Mein_Kampf/mkv1ch03.html.

21. Fennema, *supra* note 16, at 5.

22. *Id.*

23. *Id.*

24. Zeev Sternhell, *The ‘Anti-materialist’ Revision of Marxism as an Aspect of the Rise of Fascist Ideology*, 22 J. CONTEMP. HIST. 379, 392 (1987).

25. B. MUSSOLINI, *LA DOCTRINE DU FASCISME* 67 (1952).

26. See KITSCHELT, *supra* note 15, at 29 (“Fascism opposed the dominance of markets and bureaucracy and instead advocated an authoritarian, hierarchical, and communitarian order under leadership of charismatic individuals.”); Fennema, *supra* note 16, at 5 (describing ethnic, or cultural, nationalism in fascist ideology).

liberal democracy. They attack what they consider to be the “elitist” nature of the representational system and view majority rule as a futile attempt to shield the individual from political responsibility. Partisan political classes in democracies represent egotistic and self-interested entities prone to corruption. Instead, these parties and their adherents advocate for a ‘true democracy,’ the kind that is launched in the direct name of the people by the people.²⁷

Finally, under a heavy populist discourse, these ideologies claim that there is an international conspiracy against the nation from both internal and external enemies that interchangeably take the face of all that is foreign and alien to the nation.²⁸ According to these ideologies, these enemies attack the well-being, health, and survival of the nation, therefore endangering its “biological” future.²⁹ Issues such as low birth rates, abortion, contraception, economic dearth, as well as less conventional forms of interpersonal relationships such as homosexuality, singleness, and feminism, suddenly become threatening because they cap the ability of the nation to grow in numbers.³⁰ The external threat comes from immigration. These ideologies are premised on a high degree of national homogeneity and base their political claims on emphasizing the nation’s differences and superiority to other nations.³¹ They usually derive from a shared biological or cultural heritage and historic past, something that immigrants do not have in common with the nation therefore threatening national cohesion. Immigrants are seen as outsiders, a population within society that is foreign to the nation, and which, just like a ‘foreign body,’ penetrates the homogenous social body threatening its health and balance.³² And because, for these ideologies and

27. See Jérôme Jamin, *Two Different Realities: Notes on Populism and the Extreme Right*, in *VARIETIES OF RIGHT-WING EXTREMISM IN EUROPE* 38, 40–46 (Andrea Mammone, Emanuel Godin et al. ed., Routledge, 2012) (defining populism and nationalism on the extreme right).

28. See Fennema, *supra* note 16, at 7–8 (describing the prevalence of conspiracy theories in fascist ideologies).

29. BEYERCHEN, A. D. SCIENTISTS UNDER HITLER (Yale Univ. Press, 1977); Falger, V. S. E., *Sociobiology and political ideology: Comments on the radical point of view*, *J. HUM. EVOL.* 129, 129–35 (1984); GASMAN, D. THE SCIENTIFIC ORIGINS OF NATIONAL SOCIALISM. (1971); ZMARZLIK, H.-G. SOCIAL DARWINISM IN GERMANY SEEN AS A HISTORICAL PROBLEM (1972); George J. Stein, *Biological Science and the Roots of Nazism: The Promotion of Racist Doctrines in the Name of Science*, 76 *AM. SCI.* 50, 50–8 (1988).

30. Jamin, *supra* note 27, at 46.

31. E.G.T. Green, O. Sarrasin, N. Fasel & C. Staerklé, *Nationalism and Patriotism as Predictors of Immigration Attitudes in Switzerland: A Municipality-level Analysis* 17(4) *SWISS POL. SCI. REV.* 369, 370 (2011).

32. See Jens Rydgren & Joop van Holsteyn, *Holland and Pim Fortuyn: A Deviant Case or the Beginning of Something New?*, in *MOVEMENTS OF EXCLUSION: RADICAL RIGHT-WING POPULISM IN THE WESTERN WORLD* 41, 46 (Jens Rydgren ed., 2005) (describing the effect of concerns about asylum seekers and other perceived outsiders on politics in the Netherlands); T. Blank, P. Schmidt, *National*

their adherents, the democratic political system is technically incompetent and morally corrupt, it is unable to protect the nation from those enemies. By claiming that they will solve the problems that the present indirect democracy is unable to solve by introducing a more direct and hands-on kind of democracy, these extreme right wing parties are able to infiltrate the social web.³³

While ideology and doctrine were an important part of the development of fascist and Nazi movements, these movements also derived a large part of their appeal from emotion that grew out of their symbols, rituals, rallies, culture of violence and voluntarism.³⁴ However, movements are not static phenomena, but instead develop and morph over time and in reaction to the particular constituencies they pledge to serve.³⁵ From the mid 20th century through the past decades, these movements have undertaken a significant constructivist turn in their public discourse and stance towards democracy. Current political parties that embrace openly or implicitly the ideological positions and axioms of fascism and Nazism largely refrain from systematically attacking parliamentary democracy and focus their ferocious critique on the individually elected representatives instead.³⁶ Rather than rejecting democracy wholesale, these parties push the claim that *they* are more democratic than the present political establishment and therefore will not hinder democracy but will enhance it. The next section explores exactly how these new political parties identify and position themselves in relation to the existing democratic establishment.

B. The Rise of New Extreme Right-Wing Parties and Political Delegitimization

Mainstream political parties tend to quickly dismiss the emerging extreme right as ‘fascist,’ indirectly suggesting that they lack legitimacy by

Identity in a United Germany: Nationalism or Patriotism? An Empirical Test with Representative Data, POL. PSYCHOL. (2003) (for an empirical connection between nationalism and immigration); M. COENDERS & P. SCHEEPERS, ASSOCIATIONS BETWEEN NATIONALIST ATTITUDES AND EXCLUSIONIST REACTIONS IN 22 COUNTRIES (2004).

33. See Rydgren & van Holsteyn, *supra* note 20, at 46 (describing the political rise of the far right in the Netherlands).

34. WOLFREYS, *supra* note 4, at 21; DONATELLA DELLA PORTA, CLANDESTINE POLITICAL VIOLENCE (2013); Jeff Goodwin, *Review Essays: What Must We Explain to Explain Terrorism?* 3 SOC. MOVEMENT STUD. 259, 259–65 (2004).

35. See generally LUCIANO CHELES, NEO-FASCISM IN EUROPE (1991); WALTER LAQUEUR, FASCISM: PAST, PRESENT, FUTURE (1996); MARTIN A. LEE, THE BEAST REAWAKENS: FASCISM'S RESURGENCE FROM HITLER'S SPYMASTERS TO TODAY'S NEO-NAZI GROUPS AND RIGHT-WING EXTREMISTS (1999). For a dissenting position, see DIETHELM PROWE, FASCISM, NEW-FASCISM, NEW RADICAL RIGHT 305–24 (R. Griffin ed., 1998).

36. Fennema, *supra* note 16, at 8.

default. There is a strong temptation to equate this new wave of extreme right with the old version of the fascist and Nazi parties from the 1930s and 40s.³⁷ However, I argue that, although that view is intuitively appealing, under closer examination, the new extreme right parties are distinct from the old ones. This is, in part, due to the circumstances within which they have evolved and around which they constructed their political discourse in order to gain popularity and legitimacy.

Recent advances in our interpretation of those extreme right-wing movements suggest that they wish to be understood as a radical form of nationalism, which is aimed at mobilizing national resources towards rehabilitating the vulnerable and at times decayed state.³⁸ The traditional fascist and Nazi regimes of the 1922–1945 period were movements that derived their identity from essentially being “anti-movements”: anti-liberalist, anti-democratic, anti-communist, anti-capitalist, anti-bourgeois.³⁹ Although the new extreme right continues to be anti-bourgeois, the rise of the middle class in Europe and increased global interconnectedness have shifted its polemic antipathy from the bourgeoisie, now a social minority, to those that constitute “alien” parts of the society: immigrants and refugees, especially those coming from different ethnic and racial backgrounds. When juxtaposed with traditional fascist and Nazi parties, the most prominent characteristic of the new extreme right parties is their espousal of ethnopluralist notions of cultural protectionism, which is founded on ideas of national purity and incompatibility of intercultural mixing.⁴⁰ Though among the contemporary extreme right parties one may still be able to identify splinter groups that are vocally hostile to liberal and parliamentary democracy, the majority is not openly anti-democratic. On the contrary, they actively embrace in their popular rhetoric the democratic liberal system and engage with it both in terms of participation, as well as by seizing the resources it provides, and by attempting to play by the rules of the pre-established game.⁴¹ Nonetheless, these parties strongly express, at least implicitly, anti-systemic ideas and attitudes and can be described as anti-

37. Betz, *supra* note 2, at 76.

38. See Interview with C. Bouchet, Far-Right Journalist, Open Revolt! (Aug. 14, 2011) (discussing the beliefs and aims of revolutionary nationalism).

39. Michael Minkenberg, *The Renewal of the Radical Right: Between Modernity and Anti-Modernity*, 35 GOV'T AND OPPOSITION 170, 180 (2000).

40. See Sprinzak, *supra* note 10, at 23–25 (summarizing the evolution of the extreme right since the early twentieth century).

41. See Jamin, *supra* note 27, at 46–47 (describing the common analysis of the extreme right as being “anti-X, anti-Y, etc.”).

egalitarian and anti-pluralist, and therefore are fundamentally opposed to the founding principles of the democratic political system.⁴²

Extremist political organizations and parties usually develop in social conditions that fuel the delegitimization of the political *status quo*.⁴³ While the specifics of this process may vary between countries and across time, it typically involves three consecutive stages: (1) a crisis of confidence; (2) a conflict of legitimacy; (3) and a crisis of legitimacy.⁴⁴ Each of these stages refers to the relationship cultivated between a certain political organization and its followers, both individually as well as collectively *vis-a-vis* the established political regime. The delegitimization process affects the identity of the group, which is usually made of ideological, behavioral, and psychological components.⁴⁵

Political delegitimization begins with a crisis of confidence, which is the earliest and most moderate stage of group radicalization. In this stage, a certain group begins to lose confidence in the governmental structure, leading to a conflict with specific rules and policies adopted or implemented by the government. The crisis of confidence occurs when the ideological discrepancies between the structure and the agent, in this case the political *status quo* and the group, rise to such a level that the group no longer feels comfortable abiding by the rules of the system.⁴⁶ This gives rise to a critique of the establishment in ideological pronouncements, symbolic resistance, and provocative – often even illegal – language and action.⁴⁷ The process of radicalization continues with a conflict of legitimacy, which involves the emergence of a different ideological system designed to prevail over the present structure as an alternative. This is done in the name of improving the political system and benefiting society, while manifesting itself through intense political action ranging from fierce demonstrations and protests to

42. Ehud Sprinzak, *The Psychopolitical Formation of Extreme Left Terrorism in a Democracy: The Case of the Weathermen*, in *ORIGINS OF TERRORISM* 79 (Walter Reich ed., Cambridge University Press, 1990).

43. *See id.* at 78 (arguing that terrorism is “the behavioral product of a prolonged process of delegitimization of the established society or the regime”).

44. Ehud Sprinzak, *The Process of Delegitimization: Towards a Linkage Theory of Political Terrorism*, 3 *TERRORISM AND POL. VIOLENCE* 50, 54–55 (1991).

45. *See id.* at 56 (“The evolution of the conflict of legitimacy is not marked by ideological, symbolic and psychological changes only. It is equally manifested by intense political action that ranges between angry protest (demonstrations, confrontations, and vandalism) and the application of small scale intentional violence against the regime.”).

46. *See* Fouad Bou Zeineddine & Felicia Pratto, *Political distrust: the seed and fruit of popular empowerment*, in *POWER, POLITICS, AND PARANOIA: WHY PEOPLE ARE SUSPICIOUS OF THEIR LEADERS* 106, 113 (Jan-Willem van Prooijen & Paul A.M. van Lange eds., 2014) (discussing the delegitimization of hierarchical structures).

47. *See* Sprinzak, *supra* note 42, at 66 (citing the pronouncements of the small radical group ‘the Weathermen’).

low-scale scattered violence.⁴⁸ Finally, in the last stage of the delegitimization process, the previous two stages culminate with the conflict morphing into a crisis of legitimacy. Here, the entire social order, including the individual agents comprising it, is depersonalized and dehumanized by the group. It is considered corrupt, immoral, and incapable of representing and efficiently governing, therefore becoming the enemy of the adherents of that certain group.⁴⁹ Both the government as well as those that it appears to be protecting, shielding, or simply not appropriately handling, are derogated to a lower level of personhood, which makes them susceptible to becoming targets of extreme violence. The group then focuses its efforts towards ridding society of what it considers to be a rotten regime and all the ills the regime has failed to fix through systematic, unconventional attacks against them.⁵⁰

This delegitimization process reflects the way extreme right-wing organizations and parties emerge and develop. In political systems that have reached the second or the third stage of the delegitimization process wherein these groups have increased popularity, they usually resort to *sui generis* forms of vigilante terrorism against both the political *status quo* and most importantly the individuals and groups that they consider a threat to society. These vigilantes begin to fight private wars against these individuals and groups, incorporating a form of particularistic terrorism that does not undermine the regime as a universal structure but instead attacks those individual components of it that form part of the radical group's polemic agenda.⁵¹ They therefore fight private wars against immigrants, racial, ethnic, and religious minorities, homosexuals, communists, corrupt politicians, and all classes of people they consider 'inferior' to the nation that they are trying to protect from the perceived threats these groups pose.

Vigilante terrorism thrives when people believe that the government is inadequately performing its functions, especially its obligation to protect its constituency from this group's perceived threats, and to make and enforce the laws necessary to establish order.⁵² Usually, in the name of self-defense, vigilantes see themselves as enforcers of the law and executioners of justice, something that often carries high social appeal in situations and areas that are in fact facing problems due to governmental negligence or

48. *See id.* at 66–67 (describing the protests of the Weathermen in Chicago).

49. *Id.* at 82.

50. *Id.*

51. *See e.g.* Sprinzak, *supra* note 44, at 64 (noting that the violence of the Nazi SA and SS and of the KKK was not directed against the regime but against specific individuals).

52. Sprinzak, *supra* note 10, at 29–31.

incompetence.⁵³ Though vigilantism is “by no means [always] synonymous with terrorism,” and vigilantes do not always resort to terrorist activities in order to pursue their goals,⁵⁴ certain vigilante groups, whether as a matter of consistent policy or action, do resort to acts that could plausibly amount to terrorist activity. Thus, a thin line demarcates certain types of vigilante acts from terrorism, and we must examine whether a given activity crosses the line on a case-by-case basis. However, when authorities fail to respond to such vigilante attacks as terrorism, this failure may dangerously fray the fabric of society and further delegitimize the status quo.⁵⁵

C. The Definition and Scope of Terrorism and Terrorist Activity

According to social constructivism, social conditions shape agents and social structures.⁵⁶ Conversely, agents and social structures also shape social conditions.⁵⁷ Terror is a subjective condition of fear for one’s personal well-being irrespective of the source of the fear. Insofar as terror takes place in institutional settings it is bound to be a social phenomenon.⁵⁸ Terrorism is a derivative of the social condition of terror when a specifiable agent inflicts it to an individual or a group. But the co-constitution of agents and structures implies that terrorism is bound to be what we say it is through our social action and interaction with terrorist activities. It equally implies that identifiable agents also contribute to the making of what terror and terrorism are as they form parts of social structures. Finally, it denotes that identifiable social structures are the ones that confer the power to agents in order to engage in or disengage from acts of terrorism.⁵⁹ The complexity of terrorism as a derivative of social structures coupled with its often-politicized nature has made it particularly difficult to reach a consistent definition both in the

53. See H. Jon Rosenbaum & Peter C. Sederberg, *Vigilantism: An Analysis of Establishment Violence*, 6 COMP. POL. 541, 550 (1974) (noting instances where vigilantes targeted drug traffickers due to distrust in the government’s ability to act).

54. Sprinzak, *supra* note 10, at 29.

55. See Benjamin Ward, *Divided We Fall: Intolerance in Europe Puts Rights at Risk*, HUMAN RIGHTS WATCH, (Feb. 14, 2013), <https://www.hrw.org/news/2013/02/14/divided-we-fall-intolerance-europe-puts-rights-risk> (discussing the widespread violence against perceived outsiders by extremist groups in Europe).

56. See generally Bourdieu, Pierre and Richard Nice. 1977. Outline of a theory of practice. Vol. 16; PIERRE BOURDIEU ET AL., THE CRAFT OF SOCIOLOGY. EPISTEMOLOGICAL PRELIMINARIES. (Beate Kraus ed., 1991); JOSÉ LÓPEZ & JOHN SCOTT, SOCIAL STRUCTURE (2000); Porpora, Douglas. “Social Structure: e future of a Concept”. In Sing Chew & David Knottneurs (Ed.), *Structure, culture and history: recent issues in social theory*. Boston: Rowman & Little eld, (2002): 43-62; JACQUES RANCIÈRE, DISAGREEMENT. POLITICS AND PHILOSOPHY (1999).

57. Nicholas Onuf, *Making Terror/ism*, 23 INT’L REL. 53, 54 (2009).

58. *Id.* at 53.

59. *Id.* at 54.

domestic as well as the international contexts.⁶⁰ This section will give an overview of the legislative actions in the EU in relation to the criminalization of terrorism and terrorist activities. It will then analyze the legal requirements for the qualification of an offence as terrorist under the existing legal frameworks.

Progressively, we understand terrorism as ranging from threatening or infringing upon the individual right to life and personal inviolability to the destruction of public and private property, rendering efforts to establish a definition and a comprehensive framework for its criminalization rather difficult. The first efforts to systematically suppress “terrorism” in Europe go back to the Council of Europe, under the European Convention on the Suppression of Terrorism of 1977. One of the purposes of this Convention was to separate political offences from violent acts that were triggered by political motive, which it addressed through the listing of a series of acts labeled as terrorist offences.⁶¹ Inasmuch as the European Convention addressed a series of terrorist acts, it shied away from offering a definitive definition of terrorism as a crime. The 2001 terrorist attacks on the U.S. promulgated the revision of the Convention extending several of these acts and their scope.⁶² The later Convention on the Prevention of Terrorism of 2005 by the Council of Europe included a more elaborate listing and description of acts that constitute terrorist activity but also failed to offer a conclusive definition of terrorism.⁶³ In a similar vein, the European Council and the European Commission issued a proposal followed by a Council Framework Decision on combating terrorism with the specific purpose of harmonizing Member States’ domestic legislation with regard to terrorist

60. Ben Saul, *Defining ‘Terrorism’ to Protect Human Rights* 18 (Fundación para las Relaciones Internacionales y el Diálogo Exterior, Working Paper No. 20, 2006). Ben Saul, in his Working Paper for FRIDE, after studying several (mostly policy) definitions and taking into account the quality standards set for legal definitions, proposed the following definition: “1. Any serious, violent, criminal act intended to cause death or serious bodily injury, or to endanger life including by acts against property; 2. where committed outside an armed conflict; 3. for a political, ideological, religious or ethnic purpose; and 4. where intended to: a. create extreme fear in a person, group or the general public; and b. seriously intimidate a population or part of a population; or c. unduly compel a government or an international organization to do or to abstain from doing any act. 5. Advocacy, protest, dissent or industrial action which is not intended to cause death, serious bodily harm or serious risk to public health or safety does not constitute a terrorist act.”

61. Council of Europe, European Convention on the Suppression of Terrorism, Jan. 27, 1977, ETS No. 90, art 1 in Table 1 of Appendix I [hereinafter Convention on the Suppression of Terrorism].

62. See Council of Europe, European Convention on the Suppression of Terrorism, Jan. 27, 1977, ETS No. 90, as amended by the 2003 Protocol (“Following the terrorist attacks of 11 September 2001, the Council of Europe undertook a revision of this Convention, in order to enhance its effectiveness.”).

63. Council of Europe, Convention on the Prevention of Terrorism, May 16, 2005, CETS No. 196.

offenses in accordance with the Treaty of the European Union (TEU).⁶⁴ This Framework Decision was finally replaced by a European Parliament and Council Directive issued in 2017 on combatting terrorism with an implementation deadline for Member States on September 8, 2018.⁶⁵

Under the Treaty on the Functioning of the European Union (TFEU), Directives are a form of EU legislation used as a tool of harmonization of Member States' substantive law.⁶⁶ Directives allow Member States certain discretion in terms of the means they will choose to implement directives into domestic law. The Directive on combating terrorism is aimed at providing a uniform legal framework across EU Member States for the prosecution of individuals responsible for terrorist activity.⁶⁷ It is, therefore, the central legal instrument of the EU's battle against both domestic and international terrorism on the basis of a common definition of terrorist offenses and establishing means for Member States to cooperate in prosecuting them.

Attempting to institute a common definition for terrorist activity within the EU, the Directive distinguishes two distinct types of offenses: terrorist offenses,⁶⁸ and offenses relating to a terrorist group.⁶⁹ Article 3 of the Directive provides an extensive list of terrorist offenses for the criminalization under national law due to their potential to seriously damage a country or an international organization (IO).⁷⁰ The Directive also includes an element of intent for terrorist activities requiring that the perpetrator aim at "i) seriously intimidating a population, ii) unduly compelling a Government or IO to perform or abstain from performing an act, or iii) seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization."⁷¹

The most contested element of Article 3 is what has become known as the requirement of endangerment. The question of whether the provision in

64. Tamar Meisels, *Defining terrorism – a typology*, 12 CRITICAL REV. OF INT'L SOC. & POL. PHIL. 331, 331–51 (2009).

65. Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on Combating Terrorism and Replacing Council Framework Decision 2002/475/JHA and Amending Council Decision 2005/671/JHA, 2017 O.J. (L 88) 6.

66. Consolidated Version of the Treaty on the Functioning of the European Union art. 288, May 9 2008, 2008 O.J. (C115) 47.

67. Directive 2017/541, Preamble, *supra* note 65.

68. *Id.* art 3.

69. *Id.* art 4.

70. *Id.* art. 3.

71. Elisabeth Symeonidou-Kastanidou, *Defining Terrorism*, 12 EUR. J. CRIM. L. & CRIM. JUST. 14, 24 (2004).

Article 3, “which, given their nature or context, may seriously damage a country or an international organization,” should be regarded as an objective requirement for qualifying an act as a terrorist offense has been heavily debated since the inclusion of the same wording in the earlier Framework Decision.⁷² Interpreting endangerment as an objective requirement would essentially suggest that, in order for a certain activity to be qualified as terrorism, one must assess the given circumstances in which it took place and the extent and seriousness of damage caused or threatened to a country or IO. This requirement of endangerment is essentially what distinguishes terrorist and non-terrorist criminal behavior. However, whether the Framework Decision and Directive drafters intended for this element to be an objective element is unclear. The English text gives little guidance as to the nature of the second element.⁷³ In the German and Dutch versions of the text, the phrase could be understood as a dependent subordinate clause to the first requirement and not as a separate requirement.⁷⁴ Under this interpretation, all acts listed in Article 3 are intrinsically so grave that they may seriously damage a country or IO provided that all other elements are met.⁷⁵ In this light, this element would not be considered an objective one in qualifying punishable behavior as terroristic. Thus, examination of the text in its different languages provides conflicting interpretations with none being authoritative.

These different and conflicting approaches yield two possible ways of qualifying a criminal act as terrorism. First, if the endangerment element of Article 3 of the Directive is understood as an objective element, this would essentially mean that a punishable offense could be committed with terrorist intent but would not qualify as a terrorist offense if the degree of endangerment threatened or caused did not cross the threshold of seriously damaging a country or IO. However, this first objective interpretation begs the question of whether the endangerment requirement was intended to be so strictly construed that it would be applicable only to the most heinous and dangerous acts. There is nothing to suggest that such a limited scope should

72. Council Framework Decision 2002/475/JHA of 13 June 2002 on Combating Terrorism 2002 O.J. (L 164) 3, 4; European Union: Council of the European Union, Council Framework Decision 2002/475 on Combating Terrorism (June 13, 2002), 2002/475/JHA. *See, e.g.*, Symeonidou-Kastanidou, *supra* note 71, at 26; Sussanne Voigt, *Der EU-Rahmenbeschluss zur Terrorismusbekämpfung – ein wirksames Mittel der Terrorabwehr*, in *DIE EUROPÄISCHE UNION IM KAMPF GEGEN DEN TERRORISMUS: SICHERHEIT VS. FREIHEIT?* 201, 225 (Erwin Müller & Patricia Schneider eds., 2006).

73. Directive 2017/541, art. 3, *supra* note 65.

74. *Id.*

75. *See* Thomas Weigend, *The Universal Terrorist: The International Community Grappling with a Definition*, 4 J. INT'L CRIM. JUST. 912, 928–32 (2006) (discussing the problem of defining terrorism and interpreting the laws that address it).

be attributed to the Directive, or the earlier Framework Decision, especially given that what constitutes “serious damage” is in itself unclear.⁷⁶ Realizing the drafting ambiguity, Weigend attempted to provide a different explanation, arguing that a sensible interpretation of this clause might take as the point of reference any ‘damage’ on the ability of the state to credibly fulfill its main functions of providing basic means of survival and infrastructure as well as fundamental public security to its citizens.⁷⁷ These functions can be damaged “through large-scale interference with the provision of water, energy, and traffic routes, but also through random attacks on individuals, which endangers the state’s ability to provide protection for life and limb.”⁷⁸

Conversely, opting for a flexible interpretation of the endangerment requirement while giving courts the liberty to decide against a certain background whether an offense is likely to seriously damage a country or an IO could create a more viable framework for assessing the nature of said offense.⁷⁹ The existence or absence of terrorist intent can be incorporated as the criterion determining the terrorist nature of an offense. In this light, the endangerment criterion still remains relevant to the extent that it is incorporated in the categories of behavior listed in Article 3, which themselves are understood to cause serious damage to a country or an IO. Under this reading, it is the perpetrator’s intent that becomes the decisive point of determining the qualification of the offense as terroristic.

Despite the obvious difference between these two approaches, there is also a certain degree of cohesion between them. In interpreting the requirement of endangerment, it is imperative that terrorist intent be taken into consideration. Similarly, the existence of terrorist intent may be inferred from the objective nature of the offense itself, making it the decisive factor. While the one approach is objective and the other subjective, they both indicate that a strictly narrow interpretation of the endangerment requirement as an objective element runs counter to the aims of the Directive as a whole and the construction of Article 3.

76. Matthias J. Borgers, *Framework Decision on Combating Terrorism: Two Questions on the Definition of Terrorist Offences*, 1 NEW J. EUR. CRIM. L. 68, 72 (2012).

77. Weigend, *supra* note 75, at 930 n.79.

78. *Id.*

79. Borgers, *supra* note 76, at 73.

PART II

A. Political Parties & Terrorism

Historically, terrorism linked to political parties was exemplified by the fascist and Nazi politics of the interwar era. For these parties in Europe, a *sine qua non* condition of existence was the “incorporation of paramilitary units specializing in the use of violence against” perceived threats to the party.⁸⁰ Though such paramilitary groups were definitely violent, it is questionable whether their violence would amount to terrorist activity under today’s vague and restrictive legal standards. However, such groups commonly carried out semi-clandestine “punitive expeditions” against symbolic political targets in order to intimidate and terrorize not only the immediate victim but also a much wider audience, which this target represented. Some went on to describe and analyze these operations as terrorist.⁸¹

Generally, political parties and terrorist groups stand on the extreme, opposite ends of the spectrum. Political theorists conceive political parties to be integral to democracy, playing an indispensable role in the democratic political process.⁸² Democracy operates through political parties because they grant citizens the opportunity to influence and participate in political life. Political parties also facilitate checks and balances within the government because they can be held accountable by the public for the way they perform their political acts and duties.⁸³ On the other hand, terrorist organizations are defined on the basis of unjustified, often unaccountable and illegal violence directed against the government or individual members of the public. Instead of engaging in the logic of persuasion, usually conveyed by political parties, they operate under the logic of coercion, which they employ to meet their ideological or pragmatic goals. If political parties are

80. LEONARD WEINBERG & AMI PEDAHZUR, *POLITICAL PARTIES AND TERRORIST GROUPS* 12 (Roger Eatwell & Cas Mudde eds., 2003).

81. *Id.*

82. See Richard Gunther & Larry Diamond, *Types and Functions of Parties*, in *POLITICAL PARTIES AND DEMOCRACY* 3, 7–9 (Larry Diamond & Richard Gunther eds., 2001) (describing the functions of political parties); S. C. Stokes, *Political Parties and Democracy*, 2 *ANN. REV. POL. SCI.* 243, 263–64 (1999) (discussing political parties as an “unavoidable” aspect of democracy). See generally RUSSEL J. DALTON ET AL., *POLITICAL PARTIES AND DEMOCRATIC LINKAGE: HOW PARTIES ORGANIZE DEMOCRACY* (Hans-Dieter Klingemann & Ian McAllister eds., 2011).

83. See ALAN WARE, *CITIZENS, PARTIES AND THE STATE: A REAPPRAISAL* 184–214 (1988) (discussing the power wielded by political parties); Wolfgang C. Müller, *Political Parties in Parliamentary Democracies: Making Delegation and Accountability Work*, 37 *EUR. J. POL. RES.* 309, 329–31 (2000) (noting the institutional checks within political parties); Kaare Strøm, *Delegation and Accountability in Parliamentary Democracies*, 37 *EUR. J. POL. RES.* 261, 272–82 (2000) (discussing the oversight mechanisms in parliamentary democracies).

the ones constituting democracy, then terrorist groups are the ones attempting to tear it apart.⁸⁴

Nonetheless, this distinction becomes blurry when these two forms of political organization operate under questionable and problematic — for democracy’s sake — circumstances, where the legitimacy of both the entire political structure, as well as of the sub-parties comprising it, is questioned both by the circumstances and by the people. Under such circumstances, the roles may reverse.⁸⁵ In times when organizations that were marginalized in the past for their recurring use of violence and terrorizing activity take on mainstream roles and even rise to the form of political parties, they call into question the legitimacy of the political structure itself. Commonly, political parties become involved in terrorist activity when a faction emerges on the extremist end and begins perpetrating violence. Conversely, the party itself may be the product of mainstream support it has received in the past as an organization whose principal mode of expression was in a specified spectrum of violence.⁸⁶ The group’s methods receive the support of the public vote, which deceptively gives it the impression of legitimization. This further blurs distinctions between political parties and terrorist activities when they “take advantage of conflicts and promote terrorism in order to” gain popularity and votes.⁸⁷

Due to this lack of distinguishability, terrorism ought not to be understood as an identity but as an activity. The fluidity that ordinarily characterizes organizational structures, such as groups of people that rely on violence as a means of political expression, may often generate different identities for the given group at given times. Terrorist activity may be the primary form of operation for a group over a period of time, and it may be abandoned and re-employed at a later time when such need arises. In order for a group to be considered as performing terrorist activity, this activity need be neither constant and uniform throughout time nor the only weapon in the group’s arsenal. It is possible for a certain group to employ terrorist activities in conjunction with mainstream political activity at different levels of centralization and diffusion.⁸⁸

84. WEINBERG & PEDAHZUR, *supra* note 80, at 12–13.

85. See Thomas Perry Thornton, *Terror as a Weapon of Political Agitation*, in INTERNAL WAR 71, 89–95 (Harry Eckstein ed., 1964) (discussing the role of terrorism within a political structure).

86. WEINBERG & PEDAHZUR, *supra* note 80, at 37.

87. *Id.* at 57.

88. See generally European Comm’n for Democracy Through Law, *Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures*, VENICE COMMISSION 8–16 (Jan. 10, 2000), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(2000\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2000)001-e).

In terms of accountability, the Council of Europe Venice Commission for Democracy through the Law has stated that “[a] political party as a whole cannot be held responsible for the individual behavior of members not authorized by the party,” though it accepts the possibility of constitutional bans on openly violent groups.⁸⁹ Article 17 of the Directive on combatting terrorism spells out the liability incurred by legal persons for terrorist activity as should be implemented by Member States.⁹⁰ Under Article 17 of the Directive, legal persons shall be held liable for any of the offenses that fall under the substantive provisions of Articles 3 to 12 and 14 of the Directive committed “for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person” based on power of representation, decision-making authority, or authority to exercise control with regards to the legal person.⁹¹ As a corollary, legal persons shall be held liable when the lack of the above supervision or control “has made possible the commission of any of the offences referred to in Articles 3 to 12 and 14 [of the Directive] for the benefit of that legal person by a person under its authority.”⁹² While the first paragraph creates a particularly high threshold for attribution, the second paragraph leaves a much larger margin of appreciation relating to both what constitutes a “lack of supervision or control” and its measurability.⁹³ Through Article 17, the Directive allows potential liability and prosecution not only of individuals but also of entities with legal personality, which could at times include political parties depending on the constitutional provisions of the state in which they operate.

One of the activities often perpetrated by such extreme right-wing entities and often correlated to terrorism is hate crimes.⁹⁴ Empirical research often labels hate crimes as a “close cousin” to terrorism based on a target selection that takes place according to a victim’s group identity instead of individual behavior, but also based on a desired effect to wreak terror on a wider number of individuals beyond those specifically targeted.⁹⁵ This assertion is strengthened through similar empirical findings demonstrating a causal relationship between economic conditions, hate crimes, and

89. See Roger Eatwell, *Introduction: The New Extreme Right Challenge*, in WESTERN DEMOCRACIES AND THE NEW EXTREME RIGHT CHALLENGE 1, 4 (Roger Eatwell & Cas Mudde eds., 2004) (citing the Council of Europe’s Venice Commission for Democracy through the Law (1999)).

90. Council Directive 2017/541, art. 17, 2017 O.J. (L 88) 6, 16.

91. *Id.*

92. *Id.*

93. *Id.*

94. Alan B. Krueger and Jitka Malečková, *Education, Poverty, Political Violence and Terrorism: Is There a Causal Connection?* 10–13 (Nat’l Bureau of Econ. Research, Working Paper No. 9074, 2002).

95. *E.g., id.* at 4.

terrorism.⁹⁶ Both empirical research and theory have attempted to address whether the two crimes that are legally distinct but conceptually overlapping have only similarities or whether there is a stricter bond of correlation or causation between them. In some empirical studies, perpetrators of hate crimes are seen as having questionable plan-setting, blurry culpability, or as lacking the ideological and political affiliation inherent to terrorist activity, distinguishing their crimes from the planned nature of terrorist activity and its association with ideological or political groups.⁹⁷ Other studies consider terrorism as an “upward crime” involving perpetrators that belong either to a lower socioeconomic status than the victim or to a minority group that is acting against the majority.⁹⁸ By contrast, hate crime perpetrators are often members of the majority group in society, rendering it a downward crime.⁹⁹ These types of distinctions help taxonomize but do not address the question of the correct classification of crimes perpetrated in ways that do not necessarily fall within mainstream understandings of either hate crimes or terrorism.

Despite the legal and conceptual distinction between terrorism and hate crimes, there is an ever-evolving position in both empirical research and scholarship arguing that a closer connection between the two exists. Hate crime scholars often assert that the two offenses entail an intrinsic “desire to terrorize a broader social group,”¹⁰⁰ an argument espoused by the U.S. Supreme Court when discussing the constitutionality of hate crime laws in *Wisconsin v. Mitchell*.¹⁰¹ Ethnographic research on neo-Nazi groups has explicitly linked hate crimes and terrorism by implementing a theory of domestic terrorism in explaining active involvement in extremist right-wing

96. See Christopher J. Lyons, *Community (Dis)Organization and Racially Motivated Crime*, 113 AM. J. SOC. 815, 846–51 (2007) (examining the relationship between community structures and racial violence). *But see* Donald Green et al., *Defended Neighborhoods, Integration, and Racially Motivated Crime*, 104 AM. J. SOC. 372, 394–98 (1998) (determining that there is no link between economic conditions and racial violence); Krueger & Malečková, *supra* note 94, at 10–13 (finding no empirical link between economic deprivation and racial strife).

97. Helmut Willems et al., *Fremdenfeindliche Gewalt: Eine Analyse von Täterstrukturen und Eskalationsprozessen*. Forschungsbericht im Auftrag des Bundesministeriums für Frauen (1993); Gary LaFree & Laura Dugan, *How Does Studying Terrorism Compare to Studying Crime?*, in TERRORISM AND COUNTER-TERRORISM: CRIMINOLOGICAL PERSPECTIVES 53, 57–61 (Mathieu DeFlem ed., 2004).

98. Donald Black, *The Geometry of Terrorism*, 22 SOC. THEORY 14, 18–20 (2004); Roberta Senechal de la Roche, *Collective Violence as Social Control*, 11 SOC. F. 97, 100–15 (1996).

99. Kathleen Deloughery, Ryan D. King & Victor Al Asal, *Close Cousins or Distant Relatives? The Relationship Between Terrorism and Hate Crime*, 58 CRIME & DELINQ. 663, 665 (2012).

100. Donald P. Green, Laurence H. McFalls & Jennifer K. Smith, *Hate Crime: An Emergent Research Agenda*, 27 ANN. REV. SOC. 479, 483 (2001).

101. 508 U.S. 476 (1993).

organizations.¹⁰² Certain scholars go even further, asserting that hate crimes and terrorism are simply two sides of the same coin and constitute different manifestations of the same underlying phenomenon.¹⁰³ Combining the bias motivation of hate crime attacks with the intent of sending a message not only to the targeted individuals but also to the group that individual represents often allows hate crimes to function as a particular form of terrorism.¹⁰⁴ This overlapping nature of hate crimes and terrorism becomes all the more evident through an examination of the crime of terrorism in the European context through the lens of one such political party: Greece's Golden Dawn.

B. Golden Dawn's Background

After the end of the Second World War, the legacy of authoritarianism limited the electoral demand for extreme right political groups and parties in Europe.¹⁰⁵ When and where such groups emerged, they were quickly dismissed by mainstream politics and were either absorbed by right-wing parties or marginalized to the fringes of the political system. Despite the sporadic successes of extreme right-wing political parties in the past decades, not much attention was paid to a potential wave of extreme right resurgence taking place in Europe until after the fact. But the recent increased popularity of extreme right parties has escalated with the growing pattern of mounting electoral success they have received. The mainstream wave of these parties began with Jean-Marie Le Pen's French National Front run-off ballot success in 2003 and the British National Party seeing unprecedented success in electing several councilors since 2001.¹⁰⁶ Golden Dawn's successes in the latest consecutive Greek parliamentary elections and Hungary's Jobbik European and Hungarian Parliamentary electoral results followed.¹⁰⁷ Most

102. MARK S. HAMM, *AMERICAN SKINHEADS: THE CRIMINOLOGY AND CONTROL OF HATE CRIME* 209–18 (Steven A. Egger ed., 1993).

103. Deloughery, King & Asal, *supra* note 99, at 675–83.

104. Gregory M. Herek, Jeanine C. Cogan & J. Roy Gillis, *Victim Experiences in Hate Crimes Based on Sexual Orientation*, 58 J. SOC. ISSUES 319, 336 (2002).

105. See ANTONIS A. ELLINAS, *THE MEDIA AND THE FAR RIGHT IN WESTERN EUROPE* 12–19 (2010) (discussing the minor political role of the far right in 1950s Europe); PIERO IGNAZI, *EXTREME RIGHT PARTIES IN WESTERN EUROPE* 196 (2003) (noting the failure of extreme right parties to gain a foothold in recently democratized countries); KITSCHOLT, *supra* note 15, at 32–35 (discussing factors and coalitions supporting far right parties).

106. For a popular account along these lines see CLAIRE STERLING, *THE TERROR NETWORK* 25–48 (1981). See also Cas Mudde, *The 2014 Hungarian Parliamentary Elections, or How to Craft a Constitutional Majority*, WASH. POST, Apr. 14, 2014, <https://www.washingtonpost.com/news/monkey-cage/wp/2014/04/14/the-2014-hungarian-parliamentary-elections-or-how-to-craft-a-constitutional-majority/> (discussing the recent success of far right political candidates in Hungary).

107. Mudde, *supra* note 106.

recently, Marine Le Pen had major success in the 2014 European Parliamentary election finishing first and also advancing to the second round of the most recent French Presidential elections.¹⁰⁸ The Party for Freedom in The Netherlands won 20 out of 150 seats in the Parliament,¹⁰⁹ the Alternative for Germany became the third leading party in the Bundestag,¹¹⁰ the Austrian People's Party emerged as the largest in the National Council,¹¹¹ and Italy's Lega Nord obtained its best ever results in the 2018 general election.¹¹² The new trend in voters' psychology of moving away from traditional partisan allegiances to being highly influenced by party positions on immigration, economic struggle, and law and order, gives space to populist claims. The recent rise in the numbers of ethnic and social minorities in Europe, coupled with growing concerns about the future of democracy triggered by political delegitimization, have emptied the arsenals of mainstream political parties and have created more space for the populist extreme right to establish itself.¹¹³

Despite these developments, the electoral success of Golden Dawn in Greece took many by surprise. Before the 2012 Greek elections, Golden Dawn received 0.29% of the vote in the 2009 elections, a percentage that accounted for an almost negligible number of votes.¹¹⁴ It is therefore important, in assessing both its political profile and the reasons why it attracted such a large piece of the electoral pie so suddenly, to briefly trace the evolution of Golden Dawn.

People's Association Golden Dawn or, as ordinarily referred to, Golden Dawn, was founded in 1983 by Nikos Michaloliakos, who still serves as the leader of the party.¹¹⁵ According to its founding documents, the party is self-

108. Shehab Khan, *Marine Le Pen Temporarily Steps down as Front National Leader to Concentrate on Presidential Bid*, THE INDEPENDENT, Apr. 24, 2017; John Mark & Leila Abboud, *Far-Right National Front stuns French Elite with EU 'Earthquake'*, REUTERS, May 25, 2014; Adam Mossiter, *Why Macron Won: Luck, Skill and France's Dark History*, N.Y. TIMES, May 7, 2017.

109. *VVD de Grootste, Zwaar vVerlies PvdA*, DE TELEGRAAF, March 16, 2017.

110. *CDU/CSU Remains Strongest Parliamentary Group in the Bundestag Despite Losses*, DEUTSCHER BUNDESTAG (Oct. 13, 2017), <https://www.bundestag.de/en/documents/textarchive/election-2017/527284>.

111. Noah Barkin, *What Austria's Election Says About Europe's Political Landscape*, REUTERS, Oct. 15, 2017.

112. Alessandro Sala, *Elezioni 2018, i Risultati: M5S Primo Partito, nel Centrodestra la Lega Supera FI – Lo Spoglio in Tempo Reale*, L'ITALIA AL VOTO, Mar. 4, 2018.

113. Eatwell, *supra* note 89, at 3.

114. Antonis A. Ellinas, *The Rise of Golden Dawn: The New Face of the Far Right in Greece*, 18 SOUTH EUR. SOC'Y & POL. 543, 548 (2013).

115. *Id.* at 547.

declared to base its “faith on the ideology of nationalism.”¹¹⁶ The party’s flag is black, red, and white, like that of the original Nazi Party of Germany, with a swastika-like emblem at the center, which Golden Dawn claims is the symbol of the Greek meander. For about a decade after its creation, the party remained inactive. It seized upon the opportunity to reemerge in 1993 amidst the nationalist fervor undertaking Greece over the naming dispute between Greece and the Former Yugoslav Republic of Macedonia (FYROM).¹¹⁷ Through the 1980s, Golden Dawn openly flirted with ideas of national socialism and fascism.¹¹⁸ In the 1990s they decided to ideologically side with popular nationalism and to avoid explicit reference to interwar ideologies as much as possible.¹¹⁹ Nevertheless, Golden Dawn’s manifesto calls for the creation of a People’s Nationalist State, which does “not ignore the law of diversity and difference in nature” and asserts that “[b]y respecting the spiritual, ethnic and racial inequality of humans we can build equity and law in society.”¹²⁰ Golden Dawn used to be synonymous with violent attacks against minorities across the board that led to social marginalization of the party. Golden Dawn received hardly any support throughout the 1990s and until the few most recent general elections in Greece it remained a fringe group.¹²¹

In 1998, Antonios Androutsopoulos, the party’s number two in the leadership, was convicted and sentenced to 21 years in prison for attempted murder against three left-wing students.¹²² Golden Dawn briefly suspended its operations and remained under the radar until the 2009 European and national elections where it received 0.46% and 0.29% of the votes respectively. The first electoral success of Golden Dawn came in 2010 in the municipal elections shortly after the aftershocks of the financial crisis began in Greece. There, Golden Dawn’s leader received a surprising 5.29% of the vote and a seat on the Athens city council.¹²³ Two years later, in its campaign for the 2012 general elections, Golden Dawn not only openly

116. Golden Dawn, *Katastatiko Toy Politikoy Kommatos me Tēn Epōnymia “Laikos Syndesmos Chrysē Aygē,”* [Statutes of the Political Party with the name “Popular Association - Golden Dawn”], art. 2 (2012), www.xryshaygh.com/enimerosi/view/to-alhthino-katastatiko-ths-chrushs-augh.

117. See generally *Tauómta*, CHRYSĒ AYGĒ, www.xryshaygh.com/kinima (last visited Oct. 5, 2018) (discussing Golden Dawn’s rise in Greece).

118. Ellinas, *supra* note 114, at 548.

119. DIMITRIS PSARAS, *Ē MAYRĒ BIBLOS TES CHRYSĒS AYGĒS* [Golden Dawn’s Black Bible] 250–51 (2012).

120. See HUMAN RIGHTS WATCH, *HATE ON THE STREETS: XENOPHOBIC VIOLENCE IN GREECE* 37 (July 2012), <https://www.hrw.org/sites/default/files/reports/greece0712ForUpload.pdf> (citing *Tauómta*, CHRYSĒ AYGĒ, www.xryshaygh.com/kinima (last visited June 6, 2012)).

121. Ellinas, *supra* note 114, at 546.

122. Psaras, *supra* note 119, at 84–139.

123. Ellinas, *supra* note 114, at 548.

issued threats of violence against parliamentary deputies who opposed its policies, but its members were also allegedly involved in numerous violent attacks across Greece.¹²⁴ Though the party officially denies such involvement, public incidents of violence, such as Golden Dawn's spokesman assaulting two female politicians on national television during a live debate, suggest otherwise.¹²⁵ Leading up to the 2012 election, Golden Dawn campaigned on the slogan, "So we can rid this land of filth," speaking directly and openly about violence against immigrants. As in the case of extreme right parties elsewhere in Europe,¹²⁶ its original breakthrough combined with its growing popularity "became the springboard for [Golden Dawn's twenty-fold electoral growth]" in the 2012 and 2015 elections.¹²⁷

But to comprehend the factors that generated this hefty realignment of the Greek electorate, it is vital to appreciate both the nature of the modern Greek political system as well as the effects of the recent financial crisis in contributing to a delegitimization of the *status quo*. The Greek political system has long been thought to be in crisis,¹²⁸ suffering from high levels of corruption, a clientele-based election system, and populist trends.¹²⁹ While these longstanding problems of the Greek political system had often been identified, they were heavily tolerated and nurtured as they provided a predictable way of 'getting things done' both on the part of the politicians as

124. See, e.g., (in Greek): *Serious clashes with three wounded on the Zografou university campus*, TO VIMA, Mar. 29, 2012; *Clash of anarchists and Golden Dawners in Livadia*, PROTO THEMA, Mar. 29, 2012; *Nationalists "hit" an ANTARSYA stall at Chania*, PROTO THEMA, Apr. 25, 2012.

125. Helena Smith, *Greek Golden Dawn MP assaults female politicians on TV talkshow*, THE GUARDIAN (June 7, 2012), <https://www.theguardian.com/world/2012/jun/07/greek-golden-dawn-mp-assaults-females-tv>.

126. See KITSCHULT, *supra* note 15, at 99–102 (1995) (discussing long-term growth of right wing parties in Europe).

127. Ellinas, *supra* note 114, at 549.

128. See generally I. KONTIADIS & C. ANTHOPOULOS, *KRISEI TOU HELLEINIKOU POLITIKOU SYSTEIMATOS?* (2008); C. SIMITRIS, *DEMOCRACY IN CRISIS?* (2007); X. KONTIADIS, *DEFICIENT DEMOCRACY: STATE AND PARTIES IN MODERN GREECE* (Sideris, 2009); CHARAS KASTANIDIS, *KRISI KAI METARRYTHMISA TOU POLITIKOU SYSTAMATOS* (2009); TH. VEREMIS & H. TSOUKAS, *THE ANATOMY OF CRISIS* (Skai Publications, Neo Faliro 2011).

129. See Christos Lyrintzis, *Political Parties in Post-Junta Greece: A case of 'Bureaucratic Clientelism'?*, 7 WEST EUROPEAN POL. 99, 99–116 (1984) (discussing the development of the Greek party system following the junta government in 1974); DIMITRI A. SOTIROPOULOS, *POPULISM AND BUREAUCRACY: THE CASE OF GREECE UNDER PASOK, 1981-1989* (1996) (discussing trends in Greek politics in the 1980s); TAKIS S. PAPPAS, *MAKING PARTY DEMOCRACY IN GREECE* (1999) (discussing Greek political development); Apostolis Papakostas, *Why is There no Clientelism in Scandinavia? A Comparison of the Swedish and Greek Sequences of Development*, in CLIENTELISM, INTERESTS, AND DEMOCRATIC REPRESENTATION: THE EUROPEAN EXPERIENCE IN HISTORICAL AND COMPARATIVE PERSPECTIVE 31, (Simona Piattoni ed., 2001) (discussing clientelism in Greece in a comparative perspective). See generally Mike Featherstone, *An Introduction*, in GLOBAL CULTURE 1, 1–12 (Mike Featherstone ed., 1990) (describing the globalization of culture).

well as their constituencies. All this, until the financial crisis hit and, in an abrupt way, forced the political system to face its endemic problems.

However, financial crisis alone does not explain the rise of Golden Dawn. Despite popular belief, right-wing extremism is not necessarily bolstered during periods of financial recession, nor is it caused by periods of financial recession.¹³⁰ Commentators and scholars rush to cite Hitler's 1930 Weimar Germany as a paradigmatic example of how financial crises lead to electoral victories of the extreme right as people abandon rationality and resort to radical populism.¹³¹ While this is one possible factor, I argue that financial crises do not exist in isolation from other sociopolitical conditions under which these political parties come to power. Instead, they occur in tandem with sociopolitical issues such as unemployment, intolerance, fear of immigration, higher crime rates, and of everything that appears *alien*. The financial crisis is only the tip of the iceberg in a much deeper and multidimensional crisis over national identity, culture, and way of life, which leads to a conflict and, arguably, a crisis of legitimacy within the political system.¹³²

The Greek political system now finds itself at a crossroads. The period beginning with the end of the military junta in 1974 and the restoration of democracy has been defined by a relatively stable bipartisan system that secured the country's path towards membership in the EU, an enhancement of civil rights and freedoms, an expansion of the welfare state, and increased levels of development and growth.¹³³ On the flip side, this period was also characterized by systemic corruption, public administration failures, and a

130. *But see* Alex Rosenberg, *Turn right at the crash: Financial crises boost right-wing candidates, German study finds*, CNBC (Nov. 23, 2016), <https://www.cnn.com/2016/11/23/turn-right-at-the-crash-financial-crises-boost-right-wing-candidates-german-study-finds.html> (discussing the electoral boost enjoyed by the extreme right in Europe following financial crises); Manuel Funke & Christoph Trebesch, *Financial Crises and the Populist Right*, 15 *ifo DICE report* 6, (2017), <https://www.cesifo-group.de/DocDL/dice-report-2017-4-funke-trebesch-december.pdf> (noting that "financial crises of the past 30 years have been a catalyst of right-wing populist politics"); Simon Oxenham, *What explains Brexit, Trump and the rise of the far right?*, NEWSIDENTIST (July 4, 2016), <https://www.newsidentist.com/article/2095975-what-explains-brexit-trump-and-the-rise-of-the-far-right/> ("Over a period of nearly 150 years, we have seen that every financial crisis was followed by a 10-year surge in support for far right populist parties").

131. *See* Audrey Sheehy, *The Rise of the Far Right*, HARV. POL. REV. (Feb. 11, 2017), <http://harvardpolitics.com/world/rise-of-far-right/> (noting that far-right figures are validated by the actions of others with similar views, creating a domino effect); Antonis Klapsis, *Economic Crisis and Political Extremism in Europe: From the 1930s to the Present*, 13 EUR. VIEW 189, 195–98 (2014) (drawing parallels between Hitler's rhetoric of economic recovery with modern extreme right figures).

132. P. Papasarantopoulos, *To big bang ths Xrysh Avgis [Golden Dawn's big bang]*, 23 THE BOOKS' J. 12–19 (2012).

133. *See* ARIS TRANTIDIS, CLIENTELISM AND ECONOMIC POLICY: GREECE AND THE CRISIS 1–12 (2016) (describing increased growth and development in Greece).

large accumulation of public debt.¹³⁴ The financial crisis that fully broke out in Greece in 2008 generated a political transition reflected in the sudden reduction of the two main political parties', Panhellenic Socialist Movement (PASOK) and New Democracy, electoral shares. The two parties witnessed their shares drop from a cumulative average of 80% to an unprecedented low of 32% in May 2012, 42% in the repeat elections of June 2012, and 32% in September 2015.¹³⁵ This sudden and vast change in electoral results reflects a general sentiment of delegitimization towards democratic institutions. Institutions were no longer seen as carriers of public representation but of corruption, and radical action was considered necessary to repair them.¹³⁶ This mentality and sociopolitical framework has since dominated the discourse within the Greek political system. This shift has allowed direct attacks against core democratic institutions and their representatives, but also a rupture of the social fabric with a rise of hate crimes against and marginalization of minorities, such as immigrants, refugees, and members of the LGBT community.¹³⁷

This new climate of delegitimization of the Greek political system combined with its failure to provide alternative routes of political participation explains in part the increased legitimization enjoyed by the extreme right and their use of violence as a tool for expression of political dissatisfaction. This new political culture manifests itself through the mainstreaming and normalization of right-wing extremism within Greek society. Golden Dawn was best positioned to reap the benefit of this realignment of the Greek political electorate. Being at the margins of political culture and far outside parliamentary politics in the past, Golden Dawn was able to turn its pariah status into an emblem of political purity and desire for a radical transformation of past and present Greek politics.¹³⁸ Golden Dawn, a self-identified nationalist party and described as a right-wing extremist, even fascist, neo-Nazi party, received 7% of the national vote and 18 seats in the Parliament during the last election, making it the

134. Roman Gerodimos, *Greece: Politics at the Crossroads*, 4 POL. INSIGHT 16, 16 (Apr. 2013).

135. *Id.*

136. See Theofanis Exadaktylos & Nikos Zahariadis, *The lack of public trust in political institutions is a massive obstacle to public policy change in Greece*, THE LONDON SCHOOL OF ECON. AND POL. SCI. (Jan. 17, 2013), <http://blogs.lse.ac.uk/euoppblog/2013/01/17/greece-trust-institutions/> (demonstrating growing public distrust of the government in Greece); Costas Azariadis & Yannis M. Ioannides, *Thinking About Corruption in Greece* (Feb. 20, 2015) (unpublished discussion paper, Tufts University) (on file with Tufts University Library system) (discussing public corruption in Greece).

137. Gerodimos, *supra* note 134, at 17–18.

138. See Ellinas, *supra* note 114, at 557–58 (discussing how Golden Dawn took advantage of growing xenophobia in Greece to capture the electorate).

third largest party represented in the Greek Parliament.¹³⁹ Golden Dawn won votes not only in the large urban centers where its supporters “stage pogroms against immigrants and do battle with leftist youths and anarchists” but across the country and varying demographics.¹⁴⁰ This normalization and institutionalization of what until a few years ago was an organization that epitomized anti-democratic rhetoric and openly promoted violence as a form of political expression showcases how intrinsically linked the partisan political system is to micro-social civic culture.¹⁴¹

To understand the identity of Golden Dawn as a political party, it is necessary to look into the party’s official policies as reflected on its position documents as well as the public rhetoric and activity it pursues. In terms of its official ideology, Golden Dawn embraces nationalism as “the third major ideology of history,” juxtaposing it to communism and liberalism.¹⁴² As a typical extreme right-wing party, Golden Dawn effectively equates the nation with the state and ethnicity with citizenship. It understands democracy to mean “rule of the people, and therefore the society that is comprised of people of common origin.”¹⁴³ Though Golden Dawn firmly denies accusations that align it with the interwar period ideologies, it is a proponent of a form of biological nationalism very much akin to those of fascism and Nazism. For Golden Dawn, “[n]ationalism sees people not only as a numerical entity of individuals but as a qualitative synthesis of people with the same biological and spiritual heritage.”¹⁴⁴ The establishment of an ethnically pure state is not only a goal in itself but will also bring, according to Golden Dawn, the “radical renewal of the obsolete and counterfeit social values” that will save the nation from national decadence.¹⁴⁵ Furthermore, Golden Dawn believes that “nationalism is the only absolute and true

139. Gordon Fairclough, *Far-Right Party Taps Greek Anger: Anti-Immigrant Golden Dawn Makes Gains with Voters Frustrated with the Political Establishment*, WALL ST. J. (Oct. 16, 2012), <https://www.wsj.com/articles/SB10000872396390443624204578056661472836612>.

140. George Kassimeris, *Greece: The Persistence of Political Terrorism*, 89 INT’L AFF. 131, 142 (2013).

141. Gerodimos, *supra* note 134, at 17–18.

142. *Information*, POPULAR ASSOCIATION GOLDEN DAWN, <http://www.xryshaygh.com/en/information> (last visited Nov. 15, 2018).

143. *Id.*, para. 6.

144. *Id.*, para. 12. Party documents point out that ‘the people’ is born from the race, and, according to party MP and political council member Elias Panagiotaros, the Greek race has particular standards. According to Golden Dawn, the party does not ignore the law of diversity and difference in Nature. Respecting the intellectual, national, and racial inequality of humans we can build a just society based on equality before the law. In the Greek Parliament, Golden Dawn legislator Eleni Zaroulia, who is Michaliolakos’s wife, accuses the political establishment of ‘equating Greek expatriates with every sort of subhuman that invaded our country, with various diseases he carries’ Greek Parliament, Minutes of the plenary session of the Greek parliament (Oct. 18, 2012) 59.

145. *Id.*

revolution because it seeks the birth of new ethical, spiritual, social and mental values.”¹⁴⁶ For that reason, Golden Dawn “is not looking to salvage anything from the installed economic and social interests that lead nations, peoples and cultures in decline.”¹⁴⁷

Finally, Golden Dawn attacks the “corrupt political establishment” which it sees as selling off Greek sovereignty through the series of agreements made with the EU and International Monetary Fund to resolve the issue of the Greek debt crisis.¹⁴⁸ In the ideal nationalist state Golden Dawn strives to establish, “political authority belongs to the People, without party patrons,” making direct reference to an ideal political system without space for political parties or parliamentary democracy.¹⁴⁹ On the issue of immigration, Golden Dawn has a firm position of demanding the immediate deportation of all undocumented immigrants, as well as the criminal prosecution of those employing immigrants illegally.¹⁵⁰ For Golden Dawn, only people of Greek descent ought to have political rights and the rest should only have civil rights.¹⁵¹ Party leader Nikos Michaloliakos has made it clear that the party’s relationship with democratic politics is only tenuous. At a rally where the party supporters chanted, “blood, honor, and Golden Dawn”—an adapted Nazi slogan—Michaloliakos declared: “If they want us to, we can abandon it at any given moment and take to the streets. . . . There, they shall see what the Golden Dawn is really about, they will see what battle means, they will see what struggle means, they will see what bayonets sharpened every night mean.”¹⁵²

In terms of mobilization, Golden Dawn and its members are alleged to have contributed to the rise of violence against immigrants and anti-immigrant crime in Greece.¹⁵³ Perhaps one of the most pressing challenges for Greek domestic security is the sudden increase in activity of violent extreme right militia-like groups and gangs who target migrants and perceived migrants.¹⁵⁴ Since 2009, Greece has faced what NGOs have

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Information*, POPULAR ASSOCIATION GOLDEN DAWN, <http://www.xryshaygh.com/en/information> (last visited Nov. 15, 2018).

151. *Id.* (“The ownership of land and property is only for those with full political rights; for those who only have civil rights, property automatically belongs to the state after the 99th year.”)

152. Eliza Griswold, *Dawn of the Dead*, 243 *NEW REPUBLIC*, Nov. 8, 2012, at 23.

153. HUMAN RIGHTS WATCH, *supra* note 120, at 36–41 (July 2012).

154. Sappho Xenakis, *Violent Extremism in Greece: Focusing on the Far-Right*, *OPEN DEMOCRACY* (Mar. 28, 2013), <http://www.opendemocracy.net/sappho-xenakis/violent-extremism-in-greece-focusing-on-far-right>.

labeled as “the steepest ascent in racist violence in Europe.”¹⁵⁵ Within the first half of 2011, NGOs in Athens report to have treated at least 500 victims of “racist attacks,” the equivalent of hate crimes in the Greek criminal code, with more than 200 additional racist attacks recorded between October 2011 and December 2012.¹⁵⁶ In late 2012, the UNHCR called the level of racist violence “alarming,” while the US Embassy in Athens went so far as to warn US citizens residing in or travelling to Greece of a heightened risk of attack for those whose complexion “might have them perceived as foreign migrants.”¹⁵⁷ While several Golden Dawn candidates and Members of the Parliament have been detained by the police and brought to trial for attacks against immigrants during ‘cleansing’ operations throughout Athens, the party officially denies any direct involvement in these violent incidents.¹⁵⁸ These operations include many organized acts of violence that commonly cause serious bodily harm and are typically perpetrated by black-clad vigilante groups who identify with the party.¹⁵⁹ Golden Dawn’s leader Michaloliakos told Human Rights Watch that while “there is no organic relationship between Golden Dawn and these groups, we support their activities. Not illegal activities, however ... [m]any of their members voted for us, and members of Golden Dawn belong to these groups, but the crimes don’t come from these groups.”¹⁶⁰

The foray into parliamentary politics did not cause Golden Dawn to tone down its fierce rhetoric and alleged violent activities, which have since escalated. Golden Dawn’s leading figures are alleged to have taken part in violent attacks and persistent accusations have been made that Golden Dawn is the mobilizing force behind these attacks.¹⁶¹ Party members have also been implicated in specific attacks. Party Member of Parliament Elias Kasidiaris gained worldwide notoriety when he assaulted two female political opponents on national television.¹⁶² MPs George Germenis, Elias

155. *Id.*

156. *Id.*

157. *Id.*

158. E.g., *Golden Dawn Trial Enters Next Phase*, EKATHIMERINI (Feb. 8, 2018), <http://www.ekathimerini.com/225644/article/ekathimerini/news/golden-dawn-trial-enters-next-phase>; Dimitris Christopoulos, *The Golden Dawn Trial: A Major Event for Democracy in Greece and Beyond*, OPENDEMOCRACY (Jan. 26, 2018), <https://www.opendemocracy.net/dimitris-christopoulos/he-golden-dawn-trial-major-event-for-democracy-in-greece-and-beyond>; *The Trial: Documentation and Monitoring*, GOLDEN DAWN WATCH, http://goldendawnwatch.org/?page_id=420&lang=en (last visited Oct. 21, 2018).

159. Xenakis, *supra* note 154.

160. HUMAN RIGHTS WATCH, *supra* note 120, at 40 (citing Human Rights Watch interview with Michaloliakos, Athens, January 12, 2012).

161. GOLDEN DAWN WATCH, *supra* note 158.

162. Smith, *supra* note 125.

Panagiotaros and Constantinos Barbarousis led a group of Golden Dawn members in Rafina and Mesologgi against immigrant merchants.¹⁶³ After forcefully requesting the merchants to verify whether they had permits, the Golden Dawn members overturned market stalls with their Greek flagpoles.¹⁶⁴ Themis Skordeli, one of the three people standing trial for the September 2011 stabbing of an Afghan asylum seeker, was on the Golden Dawn ballot in the most recent municipal elections but was not elected.¹⁶⁵ Two MPs were detained, along with the daughter of a Golden Dawn leader, and questioned by the police in connection with anti-immigrant violence during a Golden Dawn rally though they were released without charge.¹⁶⁶ Golden Dawn has distributed flyers outside gay clubs in Athens reading, “after the immigrants, you’re next.”¹⁶⁷ Finally, following an investigation into the murder of Pavlos Fyssas in 2013 by a Golden Dawn supporter, the leader and several Golden Dawn MPs were arrested in 2015 on suspicion of forming a criminal organization, and are currently awaiting trial.¹⁶⁸

Despite, or perhaps partially because of, these acts of violence, Golden Dawn’s popularity is substantial. Its perceived role in ‘cleaning up’ neighborhoods of urban centers that have been settled by immigrants and protecting Greek residents from crime is often cited as one of the party’s success factors.¹⁶⁹ Moreover, in the eyes of its voters and supporters, Golden Dawn has assumed some of the social services that have been abandoned by the Greek state, which has been in a tumultuous financial situation since 2008. Golden Dawn has been reported to provide its supporters with medical and legal aid, medication, and security, escorting pensioners to banks to cash

163. Giannis Papadopoulos, *The Raid was Considered a Ceremonial Visit*, KATHIMERINI (Nov. 24, 2014), <http://www.kathimerini.gr/793173/interactive/epikairothta/ereynes/h-efodos-kri8hke-e8imoty-pikh-episkeyh>.

164. See Griswold, *supra* note 152, at 23 (“In the town of Rafina, they overturned market stalls belonging to anyone who didn’t have white skin.”).

165. HUMAN RIGHTS WATCH, *supra* note 120, at 39.

166. *Id.*

167. Griswold, *supra* note 152, at 23.

168. Helena Smith, *Golden Dawn Leader Jailed Ahead of Greek Criminal Trial*, THE GUARDIAN (Oct. 3, 2013), <https://www.theguardian.com/world/2013/oct/03/golden-dawn-leader-jailed-nikos-michaloliakos>; Helena Smith, *Golden Dawn leaders’ trial adjourned until next week*, THE GUARDIAN (May 7, 2015), <https://www.theguardian.com/world/2015/may/07/golden-dawn-leaders-resume-trial-greece>.

169. See Liz Alderman, *Greek Far Right Hangs a Target on Immigrants*, THE NEW YORK TIMES (Jul. 10, 2012), <https://www.nytimes.com/2012/07/11/world/europe/as-golden-dawn-rises-in-greece-anti-immigrant-violence-follows.html> (discussing growing violence and threats against immigrants and the failure of the government to address such attacks). See generally DANIEL TRILLING, *LIGHTS IN THE DISTANCE: EXILE AND REFUGE AT THE BORDERS OF EUROPE* (2018).

their pensions in order to prevent muggings.¹⁷⁰ A separate section on unemployment on Golden Dawn's website states that the main reason for the increasing national unemployment is the large influx of illegal immigrants who entered Greece mainly in the 1990s, claiming that "for every foreign worker is a Greek unemployed."¹⁷¹ Unquestionably, Golden Dawn appeals to demographics that not only appreciate its "charitable" social activism but also support the violent activities its name is allegedly tied to. While Golden Dawn's presence in the Parliament could offer a disturbing veil of legitimacy and even *carte blanche* over these actions, its activities increasingly flirt with those stipulated in the criminal acts sections of the European Framework Decision and Directive on combating terrorism as they have been transposed in the Greek Criminal Code.¹⁷²

C. A Constitutional Ban or Criminal Liability for Terrorist Activity?

The approach taken throughout Europe in order to stall the growth and activities of extreme right-wing organizations espousing Nazi or fascist ideologies is to constrain them through the legal and constitutional provisions in place.¹⁷³ European constitutions generally guarantee individual, civil, and political rights such as freedom of speech and association granting their citizens the necessary space for the exchange of ideas, the establishment of necessary unions and organizations, and the expression of approval or opposition through public association and demonstration.¹⁷⁴ These guarantees are also present in the European Convention of Human Rights that serves as a supra-constitutional umbrella.¹⁷⁵ However, contrary to the wide scope of the First Amendment in the U.S. Constitution, regarding rights of speech and association, European constitutions impose limits on speech and association rights through the constitution itself or through specific laws that delineate the

170. Alexandra Koronaiou & Alexandros Sakellariou, *Reflections on 'Golden Dawn', Community Organizing and Nationalist Solidarity: Helping (Only) Greeks*, 48 COMM. DEV. J. 332-338 (2013).

171. *Id.* at 334.

172. POINIKOS KODIKAS[P.K.][CRIMINAL CODE] [Greek Penal Code] 187A.

173. *E.g.*, GRUNDGESETZ[GG][BASIC LAW], art. 21 para. 2, *translation at* https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0125; Paul Franz, *Unconstitutional and Outlawed Political Parties: A German-American Comparison*, 5 B.C. INT'L & COMP. L. REV. 51, 56 (1982); Fernando Casal-Bértoa, Daniela Romée Piccio & Ekaterina Rashkova, *Party Law in Comparative Perspective*, WORKING PAPER SERIES ON THE LEGAL REGULATION OF POLITICAL PARTIES, No. 16 (2012); Peter Niesen, *Anti-extremism, Negative Republicanism, Civic Society: Three Paradigms for Banning Political Parties*, GER. L. J. 81, 81-112, 94-97 (2002).

174. *E.g.*, BASIC L. FOR THE FED. REPUBLIC OF GER. [CONSTITUTION]; CONSTITUTION OF OCTOBER 4, 1958 (FR.); THE CONSTITUTION OF THE KINGDOM OF THE NETHERLANDS 2008; CONSTITUTION OF THE ITALIAN REPUBLIC.

175. Y.B. EUR. CONV. ON H.R., https://www.echr.coe.int/Documents/Convention_ENG.pdf.

boundaries of permissible action.¹⁷⁶ What is more, all EU member states have enacted laws that prohibit various forms of racism, discrimination, incitement to hatred, and racial violence.¹⁷⁷

In a similar vein, EU Member States allow for the possibility of constitutional bans on Nazi or fascist parties. All states in Germany had all agreed in an attempt to ban the National Democratic Party, accused of having neo-Nazi links in 2003 and 2017.¹⁷⁸ The European Commission against racism and intolerance of the Council of Europe has recommended that Greece consider banning Golden Dawn.¹⁷⁹ However, despite the understandable temptation to ban extremist political parties, such a decision would not come without consequences. It raises obvious issues regarding balanced restrictions on freedom of speech as well as political assembly and participation. Banning such political parties may do little to change the minds of these parties' supporters or decrease their influence. If anything, a ban could drive such parties underground, giving them much more space for the pursuit of illegal and violent activities, and could end up strengthening the fanaticism of their supporters. It could plausibly further increase the attractiveness of violence as a form of political expression if the party is no longer given the opportunity to participate in democratic politics and peaceful alternatives to violence.¹⁸⁰ Instead, if the party is not banned from political participation, Golden Dawn political leaders involved in criminal activity could have their parliamentary immunity withdrawn, where appropriate, for individual prosecutions to take place. While it is certainly debatable how effective such prosecutions would be in addressing the threats of violence and terror by members and supporters, this does not mean that prosecutions are an ineffective tool for addressing such incidents. It may also be necessary to implement additional special measures or restrictions that would facilitate effective prosecutions and to sanction any unconstitutional

176. *Banning the NPD: German Governors Agree on Legal Challenge*, SPIEGEL ONLINE, Dec. 6, 2012, <http://www.spiegel.de/international/germany/german-governors-agree-on-legal-bid-to-ban-far-right-npd-party-a-871440.html>.

177. Council of Eur., *Anti-Racism Monitors Urge Action against Greece's Neo-Nazi Golden Dawn Party* (Dec. 11, 2012), <http://www.humanrightseurope.org/2012/12/anti-racism-monitors-urge-action-against-greece%E2%80%99s-neo-nazi-golden-dawn-party>.

178. Melissa Eddy, *German Court Rejects Effort to Ban Neo-Nazi Party*, N.Y. TIMES, (Jan. 17, 2017), <https://www.nytimes.com/2017/01/17/world/europe/german-court-far-right.html>.

179. *Leaked Council of Europe Report Suggests Greece Could Ban Golden Dawn*, EKATHIMERINI (Apr. 15, 2013), http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_15/04/2013_493932.

180. See Bert Klendermans & Nonna Mayer, *Context, alliances and conflict*, in *EXTREME RIGHT ACTIVISTS IN EUROPE* 28, 30–31 (Bert Klendermans & Nonna Mayer eds., 2006) (discussing the political opportunities of extreme right parties).

speech or activities and expressions of terror and hostility on behalf of the party.¹⁸¹

Golden Dawn is a party whose members dress in black and use rhetoric of violence and imagery that is reminiscent of Nazism and fascism while being openly skeptical about parliamentary democracy. The party publicly expresses opinions of racism, anti-Semitism, and homophobia. But is this enough to make the argument that Golden Dawn performs terrorist activities? For Golden Dawn's activities to qualify as criminal terrorist activities in accordance with Article 3 of the Directive on combating terrorism, Golden Dawn needs to be recognized as a legal person and its attributed activities must align with those enumerated in the Directive as it has been transposed in Greek criminal law.¹⁸² For purposes of harmonization, Greece has implemented the provisions of the earlier Framework Decision in Article 187A of the Greek Criminal Code.¹⁸³

Human Rights NGOs have long campaigned for the Greek state to recognize and treat extreme right-wing violence as a danger to security and public safety. Nonetheless, public officials have, for the most part, rejected the idea that such violence is a serious problem despite the growing number of incidents reported by NGOs. They have failed to monitor and effectively address such attacks by arresting and prosecuting perpetrators or by compensating victims.¹⁸⁴ It was not until NGOs drew international attention to extreme right-wing violence in Greece in the global media that the Greek state appointed a special prosecutor in January 2013 to deal with these crimes.¹⁸⁵ On the Athenian streets however, it is now common knowledge among Greeks and immigrants alike that black clothes are the unofficial uniform of Golden Dawn. Some of the violent acts have been captured on video and have conveniently been posted on Golden Dawn's official YouTube channel, thus confirming the reported attacks from NGOs.¹⁸⁶

Unquestionably, many of the acts attributed to Golden Dawn could serve the aim of threatening or seriously intimidating a population and are often attacks against a person's life as well as physical integrity, thus meeting the intent requirement of terrorism under the Directive.¹⁸⁷ Under the flexible interpretation of the endangerment explained above, the acts listed in Article

181. *See id.* at 33 (discussing the political legal environment in European countries).

182. *See* Directive 2017/541, *supra* note 65, art. 3 (defining "terrorist offences" under the Directive).

183. Poinikos Kodikas [PK] [Penal Code] 187A (Greece).

184. Sappho Xenakis, *Violent Extremism in Greece: Focusing on the Far-Right*, OPEN DEMOCRACY (Mar. 26, 2013), <http://www.opendemocracy.net/sappho-xenakis/violent-extremism-in-greece-focusing-on-far-right>.

185. *Id.*

186. Griswold, *supra* note 152, at 22.

187. Directive 2017/541, *supra* note 65, art. 3.

3 of the Directive are inherently able to seriously damage a country or go against a state's ability to provide protection for life and limb towards its citizens.¹⁸⁸ The perpetrator's intent represents the decisive point in determining whether an offense may be qualified as terrorism, which ought to be determined by a court in order to establish criminal liability. To do so, a court would first have to decide whether political parties have legal personality in order to incur criminal liability for terrorist offenses. Under Greek Constitutional Law, there is no concrete definition for either the form or actions of a political party but only a general legal framework within which the political party ought to serve the democratic regime.¹⁸⁹

Greek scholarship and jurisprudence are divided over the issue of whether political parties have legal personality. Dominant jurisprudence holds that political parties are not legal persons but instead public law institutions subject to special rights, responsibilities and action through their organs.¹⁹⁰ This is because legal persons under Greek law are only those that become so after a specific typical procedure as is required by law.¹⁹¹ No such provision can be found in either constitutional or civil law to support the existence of legal personality for political parties. Additionally, a combination of historic and teleological interpretation of the Greek Constitution shows that the legislature, under the shadow of the 1974 military junta, intended to entrust political parties with as much freedom of organization and activity as possible. Any additional legal provision imposing specific procedures of organization and activity would infringe upon such freedom. Under this understanding, political parties are neither legal persons nor simple unions but instead *sui generis* political institutions subject to specific rights and responsibilities under public law that attach to the goal of their original establishment as contributors to the democratic regime.

Against this dominant theory, the argument has been raised that political parties are, in fact, legal persons. First, this argument interprets Article 29 of the Greek Constitution in conjunction with other Constitutional and legal provisions as specifying a procedure for the acquisition of legal personality by political parties.¹⁹² Accordingly, Article 72 of the Constitution proscribes the procedure for the adoption of a law regarding the

188. *See id.* (listing acts that constitute terrorist offenses, including "attacks upon a person's life which may cause death" and "interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life").

189. 2008 Syntagma [Syn.] [Constitution] 3 (Greece).

190. 2145/79 STE decision, 600.

191. Astikos Kodikas [A.K.] [Civil Code] 4:61 (Greece).

192. *See* 2008 Syntagma [Syn.] [Constitution] 2, 3 (Greece); Diatagma (1974:59) Presidential Decree, art. 1 (Greece); Diatagma (1974:650) Presidential Decree, art. 3, 34, 37 (Greece).

operation of political parties.¹⁹³ Additionally, under Greek law, political parties may not undertake any activity until the deposition by the leader of the party to the Supreme Court of Greece declaring the party's opposition to any act that could overturn the democratic regime or reflect violent acquisition of power.¹⁹⁴ This procedure could indeed be seen as establishing a process similar to the acquisition of legal personality or it could merely be interpreted as a guarantor framework for Article 29 of the Constitution, which establishes the procedures for establishment and organization of political parties.¹⁹⁵ Similarly, other legal procedures refer to political parties' obligations to declare their name and emblem to the President of the Parliament as well as the Supreme Court in order to be given permission to partake in upcoming elections.¹⁹⁶ As a political party may not merely be a union, the principles of procedural safeguards could dictate the necessity for political parties to bear legal personality.

Second, this argument is also based on the original silence of the Constitution regarding the legal nature of political parties. Accordingly, this silence is not to be interpreted as purposely avoiding a strict legal framework but instead as foreseeing the need for progressive development of the notion of political party in order to enjoy legally guaranteed structures for its activities not only in the field of public law but also in private law. Naturally, this institutional framework could not interfere with the political parties' freedom of action toward their democratic goals, but so long as there is no infringement on this freedom, political parties ought to enjoy legal personality. Until the issue is clarified through constitutional amendment or law, the potential liability of political parties for terrorist activity as prescribed by Article 3 of the Directive on combating terrorism currently remains only an argument of speculation.

If we were to assume, *arguendo*, that political parties indeed enjoy legal personality, then provided the act in question meets the definitional requirements, a test of attribution would be necessary in order to link the act to the political party. Naturally, the level of attribution is dependent on the potential perpetrator and his or her level of active contribution towards the party in order to satisfy the first attribution element of Article 17 of the

193. 2008 Syntagma [Syn.] [Constitution] 3 (Greece)

194. Diatagma (1974:59) Presidential Decree, art. 2 (Greece).

195. 2008 Syntagma [Syn.] [Constitution] 2 (Greece).

196. See, e.g., Andrew Marszal, *Golden Dawn Free to Appear on European Parliament Election Ballots in Greece*, TELEGRAPH, (May 11, 2014), <https://www.telegraph.co.uk/news/worldnews/europe/greece/10823857/Golden-Dawn-free-to-appear-on-European-Parliament-election-ballots-in-Greece.html> (discussing the Greek Supreme Court's decision to recognize Golden Dawn as a political party).

Directive.¹⁹⁷ However, under the second attribution element of Article 17, legal persons are also to be held liable by omission, if their lack of supervision or control led to the commission of the terrorist act.¹⁹⁸ Even if the higher attribution standard of direct link could not be met for either evidentiary reasons or lack of leadership participation in the act, liability by omission could be established. If political parties were considered to be legal persons, activities that fall within the scope of Article 3 of the Directive could not only lead to individual liability, but they could also lead to collective liability on the part of Golden Dawn as an organization bearing legal personality provided the necessary attribution standard is met.

CONCLUSION

This article has sought to draw attention to the resurgence of extreme right-wing parties and the relationship between right-wing extremism, political parties, and terrorism. In this light, the article set out to substantiate three primary claims. First, it argued that right-wing extremism is the product of a delegitimization process against the political status quo. This delegitimization created fertile ground for the institutionalization and mainstreaming of political organizations reflecting extreme right-wing ideologies. These new or evolved political organizations have a different approach and rhetoric towards liberal democracy than their predecessors, one that is not directly against it but rather capitalizes on the benefits offered by the liberal state to advance their agendas. Second, this article argued that several of the activities of these political organizations may qualify as terrorist offenses despite the definitional ambiguity of the crime of terrorism using the most recent EU Directive on combatting terrorism, and liberally interpreting its endangerment requirement. Finally, the article focused on the illustrative case of Golden Dawn and its association with nationalist violence in order to examine a constitutional interpretation that would grant political parties in Greece the necessary legal personality in order to incur collective criminal liability for such criminal activities.

Naturally, the issues raised in this article are not only legal but also heavily social and political. However, this article, if nothing else, has attempted to shift the discussion from one of descriptive analysis of right-wing extremism to one of legal evaluation of activities within the ambit of the recent criminalization of terrorism. Continued disregard for the new political developments threatening liberal democracy and a lack of a systematic approach through the criminal justice system to the criminal and

197. Directive 2017/541, art. 17, *supra* note 65.

198. *Id.*

terrorizing activities of these political organizations threaten to legitimize and perpetuate cultures of violence that can destabilize and delegitimize liberal institutions and democratic values.