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BITE ME, DEMOCRACY

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INTRODUCTION

We need to limit democracy, in the name of democracy.

Currently, twenty percent of the Member-States of the European Union are deemed to be in the process of 'autocratization.' This fact undergirds our policy paper, which we have written to demonstrate that it is essential for the Member States of the European Union (EU) to focus more on protecting democracy.

This paper is motivated by two important contextual factors: (1) The war in Ukraine, and (2) the proliferation of radical right-wing populist parties across Western Europe. These two realities have pushed us to reconsider our European democracies, to investigate their safety from inimical actors, and to propose how we might better defend them.

In this paper, we revisit the concept of 'militant democracy', whereby democratic safeguards are built into a political architecture such that the polity can defend itself against assaults from hostile political actors who would exploit democratic protocol to seize power, and then do away with democracy entirely. The idea was first proposed by German political scientist in exile, Karl Loewenstein, on the eve of the Second World War. In the nearly 90 years since Loewenstein coined the idea, there has been much scholarly debate about the justiciability of militant democracy. In this article, we revisit Loewenstein's idea (and the literature that has been released in the meantime) and evaluate its applicability to our current European political landscape. In short, we seek to demonstrate how democracy in Europe can be strengthened in a non-arbitrary, justiciable manner.

We conduct this analysis by evaluating the current state of democracy on the continent, particularly through the lens of militant democracy. We will begin by expounding a theoretical framework, in which we will consider the early theory of militant democracy as originally posed by Karl Loewenstein. We will then consider the implications of his theories, and show how militant democracy, as initially postulated, contains a degree of arbitrariness that hampers its effectiveness as a justiciable tool. We propose a reconceptualization of militant democracy from an exclusion of inimical *actors*, which we show unloads a slew of thorny irresolvable problems, to *actions*, which we show to be a much more agreeable (and workable) target for militant democratic defenses.

We also aim to study the impact of the Russian invasion on Ukraine, to understand how democracies are changing in this context. We consider a case study, to understand how a political party whose presence was consented to by the governed can be sanctioned. The correlated problem we seek to understand is the threshold for the legitimacy of policies is— is it enough for a policy's promulgators to have been elected to democratically legitimize a policy? Or do we require some degree of normative adherence in order for our policies to be considered legitimate? The implications of these questions are fundamental to our conceptions of the role of the modern state in policy making, and all the more relevant now, as the war in Ukraine continues unabated.

To understand these questions, we examine the case of the Alternative for Germany (AfD) party. We chose the AfD because of its prominence in the political sphere, considering the seats it gained in 2017, as well as the support it has in regions of eastern Germany. Moreover, considering Germany's specific 20th century political history, it is interesting to analyze this party in the light of Germany's democratic and authoritarian past. There are many political parties that can be considered extreme right or populist with a strong presence in the political sphere, such as *Fratelli d'Italia*, which now holds power in Italy. Nevertheless, we wanted to investigate how the state can legally react to the existence of these parties, in order to protect itself and its democracy against unwanted and undemocratic onslaughts from parties for whom the democratic political form is essentially disposable.

Our main question, then, is to what degree it is defensible to limit democracy in the service of protecting it. Which is to say, is there a limit to what the *demos* can consent to in a functional democracy? A limit which, once surpassed, will render a democracy either no longer functional or no longer democratic? If such a limit is to be found, how can we manage it in a way that does not pose arbitrary censure on parties with whom one disagrees ideologically? It is always a risky business to speak for more than oneself, and we try to avoid that here. But, in the same way that this paper was written in a particular historical and political context, so too, are we living and experiencing that context ourselves, as young researchers

and students. We hope that our perspectives on the immense pressures European democracies are facing will have enriched the discussion of democracy theory. And we hope too, that with younger eyes, we will have been able to present a fresh orientation for this problem.

PART I: MILITANT DEMOCRACY THEORY

*Would it not in that case be easier
for the government
To dissolve the people
And elect another?*

Introduction

In this section, we advance our reconceptualization of militant democracy from a set of procedural protections aimed at neutralizing baleful political *parties* to those aimed at baleful political *actions*. We explain why we find this alternative to be more justiciable, fair, and generalizable.

To proceed, we situate militant democracy in its politico-ideological context. Where did this idea come from? Why was it relevant when it was posed in 1937, and why is it especially relevant now, nearly 90 years later? Next, we examine the assumptions that underlie an effective politics of militant democracy. We identify and contest the value-neutrality of democracy—its existence as a purely formal political architecture, rather than as a set of values as well. Setting this assumption straight is fundamental to justifying this militant prescription. The aim is to preserve both the democratic *form*, and its *moral* substance. We proceed by anticipating possible criticisms of our idea, and preemptively responding to them.

What is Militant Democracy?

During the late 1930's, fascist regimes sprung up across Europe. It's no coincidence that the states where these regimes took root had previously been democracies. Fascism proved remarkably capable at weaponizing emotional appeals to hijack democratic protocol. Convincing enough voters that theirs was the best alternative, fascist parties claimed power in a democratically legitimate way (before jettisoning their state's democratic institutions entirely).

The question thus posed to democracies was how to insulate themselves from anti-liberal, or indeed fascist forces that, using the democratic process itself, could legitimately rise to power. The problem

of defending one's democracy from hostile parties that would, by legal methods sanctioned under that very democratic regime, amass power, and then use that power to discard the democratic scaffolding of the state entirely, has a long pedigree. In fact, the question was first posed by German political philosopher in exile, Karl Loewenstein, in 1937. Loewenstein saw the National Socialist and Communist parties that were threatening European democracies around him and argued that democracy, if it was to mean anything at all, must be able to become militant—which is to say, to protect itself from hostile actors who did not have its best interests at heart. His prescription was especially urgent, as Nazis like Joseph Goebbels infamously said that “[I]t will always remain one of the best jokes of democracy that it provided its mortal enemies itself with the means through which it was annihilated.” So how would democracy protect itself? According to Loewenstein, the answer is banning the inimical parties, effectively limiting the democratic nature of the regime.

Loewenstein describes how, “Democracy and democratic tolerance have been used for their own destruction. Under cover of fundamental rights and the rule of law, the anti-democratic machine could be built up and set in motion legally.” The point was clear: democracy could be used as a value-neutral tool to secure power by appealing to the people. It is a frightening conclusion because it suggests that democracy lacks a consistent political ideology, leaving it vulnerable to abuse by any party savvy enough to get votes.

The problems Loewenstein describes are, in many ways, baked into the democratic cake. The point is that democracy is not an ideology; it is a political form. But our modern conception of democracy, in different ways, takes for granted that it is a form to ensure *liberalism only*. By assuming that liberalism and democracy are conjoined twins (albeit hostile twins at times), we ignore democracy's inherent vulnerabilities; vulnerabilities which—if one looks at the radical right-wing populist frenzy afflicting Western-European democracies, and indeed also the USA—are showing just how disposable the ‘liberal’

part of 'liberal democracy' really is.

Since the fall of the Berlin wall, liberalism and democracy have been conceived of as mutually reinforcing phenomena. After the collapse of the Soviet Union, all political alternatives to western liberal democracy had been exhausted. Francis Fukuyama described, for example, how liberal democracy seemed to be the last man standing, and argued that the entire world would bend to the inevitable state "that emerges at the end of history [which] is liberal insofar as it recognizes and protects, through a system of law, man's universal right to freedom, and democratic insofar as it exists only with the consent of the governed." Fukuyama conflates liberalism and democracy, arguing that, insofar as human government is concerned, liberal democracy was so self-evidently just, that it couldn't but be "universaliz[ed]." Fukuyama's analysis may have made contextual sense, given that the Soviet Union was on its death bed when he wrote his article, but his analysis may be considered rather cocky: So powerful a cocktail did liberal democracy make, Fukuyama argued, that even China, a country that "could not... be described in any way as a liberal democracy," would get drunk on democracy's spirits once its 20,000 college students returned from America.

The inevitability of democracy and liberalism to follow each other, like left and right feet of the same organism, is an extremely problematic idea however, because it takes for granted the fact that liberalism is the only ideology that democracy can foster. The truth is that democracy is primarily a political form. It is a method and set of rules that regulate how parties and people rule, and how they implement their particular ideology. But that set of formal rules exists on an entirely different plane from the prescriptive normative position of the political actors who are playing the democratic game.

Loewenstein posed the question most canonically as: "It is the exaggerated formalism of the rule of law which under the enchantment of formal equality does not see fit to exclude from the game parties that deny the very existence of its rules." The idea

is that democracy cannot at once exclude inimical parties from politics (i.e. restrict people's choice) while remaining democratic (i.e. give people the power to choose). Since democracy rests on the valorization of political consent, it follows that the people must be able to exercise this consent even if in favor of oppressive or tyrannical regimes. Loewenstein saw this in those fascist regimes springing up across Europe in the early 20th century, and argued that democracy had to be willing to fight fascism on "its own plane." That is, democracy had to be given teeth: "If democracy believes in the superiority of its absolute values... it must live up to the demands of the hour, and every possible effort must be made to rescue it, even at the risk and cost of violating fundamental principles." That distinction—between formal, procedural democracy, and its prescriptive, political players—relies on a number of assumptions. Assumptions to which we will now turn in the service of evaluating the degree to which militant democracy is a practicable and justiciable political safeguard.

Militant Democratic Assumptions

Loewenstein's militant democracy implies, first, that democracy is in fact value neutral—capable of being hijacked by the most cunning salesman. But there is no reason to accept this premise. Can one have democracy without equality, for instance? Can one have democracy without a free exercise of speech or marketplace of ideas? We slowly see that a set of substantive norms seems to inhere in democracy. If democracy is taken only as a value-neutral set of procedural rules, then it is conceivable that even Fascist regimes could qualify as democracies in a certain sense: Giovanni Gentile, the foremost philosopher of Italian Fascism, said that a Fascist state is "a people's state, and, as such, the democratic state *par excellence*."

But if democracy is understood to include the substantive conditions—like uncorrupted elections, a free press, and freedom of speech, for instance—that allow for its flourishing, then Gentile's quip is, at best, a specious equivocation of what we

understand democracy to mean in the modern West. For a true democracy must afford the people the right to cast out a party or a leader with whom they disagree. And no fascist regime can avoid the troubling fact that, should its power be threatened because the people prefer an alternative, the formal democratic elements of its rule will be the first to go. Sure enough, in Gentile's Italy, wide-spread voter intimidation by Fascist *squadristi* helped Mussolini win a landslide victory that guaranteed his coalition party a two thirds super majority in parliament. By a purely procedural understanding of democracy, holding a two thirds majority in parliament is a legitimate political mandate. Of course, when a party secures such a sanction by means of intimidation, subterfuge, and a whole menagerie of deception, its mandate is anything but legitimate. Socialist politician, Giacomo Matteotti, understood just this when he denounced the *squadristi's* tactics. Mussolini promptly had him assassinated.

From the substantive conception of democracy as a set of both rules *and* norms, Mussolini's Italy doesn't pass the test. Not even close. Even from the supposedly value neutral, formalist conception of democracy as a mere set of rules allowing people to express their consent in elections, the fascist case falls flat. It's true that the case of Fascist Italy is conspicuously anti-democratic. But parties that would threaten democratic protocol won't necessarily trounce democratic norms so flagrantly.

Even if one grants that democracy contains a set of substantive norms that inhere in it, the difficult question is how to respond to political actors devoid of or hostile to those norms in a justiciable and non-political manner. The trouble is to avoid equating political actors with whom one disagrees *ideologically*, with political actors whose lack of adherence to democratic normative principles constitutes a *threat* to the democratic system itself.

Making that distinction is especially tricky given that the "definitions of the supposed enemies of democracy have become much more diffuse"

since the fall of the Berlin Wall¹. Let us recall that Loewenstein made his militant democracy prescription in 1937, when Communist and National Socialist parties were the obvious political challengers of Europe's constitutional democracies. But now, the categories of these obvious political dangers are blurrier. And that lack of clarity makes the business of identifying threats to democracies and removing them all the more troublesome, as the militant democratic defense is presumably supposed to kick in *ex-ante*, which is to say, before the inimical party ever amasses electoral support.

Towards a Re-conception? Actors vs Actions

These difficulties make quite the case against militant democracy. If the purpose of militant democracy is to ban, as Loewenstein prescribed so many years ago, inimical *parties*, but we cannot, in a justiciable or fair manner, identify them, the tool appears ineffective at best, and authoritarian at worst. Must we, then, throw away the baby with the bathwater? Not so fast. In order to vindicate militant democracy, we need to make a few key pivots.

One way of juking the criticism of militant democracy as an essentially arbitrary and thus non-justiciable defense is by shifting its target. So far, we have considered militant democracy in the form of party bans, which are, as Duke Political Science Professor, Alexander Kirshner, notes, "the paradigmatic example of militant democracy"². Policies that would ban parties based on their ideology or beliefs have proven especially difficult to adjudicate fairly. But if militant democracy defenses were triggered by specific anti-democratic *actions*, instead of *actors*, we could sidestep the problem of "re-politicizing the... membership within the political entity"³.

1 Jan-Werner Müller, "A 'Practical Dilemma Which Philosophy Alone Cannot Resolve'?" pg. 537. *Rethinking Militant Democracy: An Introduction*

2 Alexander S. Kirshner. "Militant Democracy Defended." In *Militant Democracy and its Critics*. Pg. 56.

3 Invernizzi Accetti, and Zuckerman, 186.

The question then is what are the democratic principles, actions in abrogation of which ought to inspire the militant democratic defense? One principle is surely, the principle of maximal political participation. As Kirshner notes, “taking democratic rights seriously means taking action when citizens violate others’ core interests in participation”⁴. Kirshner’s statement gives a good summary of this fundamental assumption of militant democracy aimed at actions, rather than actors: We ought to maximize participation in a functioning democracy. Logically, then, we can justify governmental retaliation in the name of democracy when we identify actions that abrogate this principle, which is to say, actions that arbitrarily limit others’ participation in the democracy.

But even once we’ve identified a justiciable principle whose abrogation ought to trigger a militant democratic retaliatory measure, the question of governmental retaliation requires a positive justification. Because one might argue that the cost of retaliation outweighs the cost of the anti-democratic actions. Such criticisms often argue that a democracy’s value-neutrality is of the utmost importance, and that a government’s intervention, even if on behalf of its democracy, would jeopardize the legitimacy of the democracy more than it would save it.

Our pro-militant democracy position is that limited governmental intervention on behalf of justiciable principles, like that above of maximizing democratic participation, is better than a government’s non-action. This position requires the assumption that value-neutrality in democratic outcome is inferior, and actually more *unjust* than a militant democratic alternative.

And we believe this assumption is right on the money, so to speak. The problem of non-action is related to whose rights the state ought to defend. Do people in a democracy, for instance, have the right to curtail someone else’s rights? What if enough

of those rights curtailers voted for a party that got enough seats to propose a bill that would do just that—say, arbitrarily disenfranchise a portion of the population. In this hypothetical, the state has to conduct a kind of outcome assessment of its putative militant response: to whom does it have a bigger obligation? To protect the right of equal participation of this disenfranchised group, or to protect the rights of party voters who exercise their political consent at the expense of others.

If the state were to refrain from acting, the outcome would be net neutral in terms of state intervention. The state would essentially refuse to make a judgement. But the result would be absurd in terms of democratic propriety—a democracy in which a majority were tyrannizing a minority by means of the very democratic process itself. This is the exact moral evaluation that it is the state’s business of conducting, as German political philosopher Carl Schmitt said, “conscientious value neutrality means a denial of values”⁵. And indeed, militant democracy takes the fundamental assumption that “neutral outcomes” are misleading. This is because they exist in relation to alternative outcomes, namely, those which would be brought about by state intervention. If that same state, for example, had intervened, annulling the law and curtailing the majority’s rights to offend the participatory rights of its fellow citizens, the state would have ensured an outcome that, indeed, would not have been value neutral (which is to say, it would have made a positive decision to defend a group’s rights at the expense of others), but it would also have restored democratic legitimacy to its citizens, which we believe produces a more just and democratic outcome. The point is that, when weighing the costs of a state’s action, it must always be vis-à-vis the outcome resulting from its inaction, and vice-versa.

4 Kirshner, *op. cit.* pg 85.

5 Schmitt, *Legality and Legitimacy*, 2004. 47.

Conclusion

The purpose of this extensive theoretical review is to reevaluate the merits of Loewenstein's argument for our modern political landscape. Across most of Western-Europe, the proliferation of radical right-wing populist parties has placed immense pressure on democratic polities. Parties like Fratelli d'Italia, and la Lega, in Italy, Rassemblement National in France, the AfD in Germany have all revealed an intention to convert nation states into ethnic silos, trampling on the human rights commitments their countries made decades ago. In this section we have tried to show that contesting these parties' participation in the democratic arena, is not only non-political, and non-arbitrary, but it also strengthens the democratic character of those national political systems. In the section that follows, we will conduct a more detailed analysis of Germany's AfD party, and evaluate the applicability of the principles we have laid down to the German case.

PART II: THE ALTERNATIVE FOR GERMANY (AFD)

Introduction

As mentioned in the introduction, we will take the AfD party as our case study, seeking to answer our question and prove our hypothesis. We chose this case study because the party exemplifies this paper's central problem: whether there can be justiciable limits in a democracy, limits despite a party having been democratically elected and even being in first place in some German regions. To assess the AfD, we will analyze its policy proposals, mainly as expressed in its 2017 and 2021 electoral manifestos. Moreover, we will evaluate how individual members of the party's leadership and policies vis-à-vis their rhetoric and speeches. While studying the AfD, we aim to understand whether all the party's principles are constitutional and if our philosophical concept of democracy can allow for parties like the AfD in the political landscape.

AfD: The Anatomy of a Democratic Threat

The Alternative for Germany (AfD) won its first seats in the Bundestag in 2017. With 12.6% of the vote, the party was guaranteed 91 seats, and in the elections of 2021, the AfD fell only 2 percentage points⁶. Despite this modest fall, the AfD still holds significant support in the eastern regions of Germany.

In a recent decision by the Cologne Court, it was stated that there are "sufficient indications of anti-constitutional goals within AfD"⁷. The Court authorized the German Intelligence Services to record the party's communications and granted them access to the AfD's information. Members of the party responded arguing that their most extreme members, like Björn Höcke, who created a more extreme-right-wing faction, were no longer part of the AfD. In 2017, Höcke made a speech

about the Holocaust and the Berlin monument in which he stated that, "Germans are the only people in the world who plant a monument of shame in the heart of the capital". A phrase which, according to Höcke, was misunderstood. This example, on its own, demonstrates that members of the AfD contest facts, tending towards a more radicalized discourse and ideology.

The author Thomas Kilkauer argues that to properly understand the AfD's goals, examining the party's manifestos and proposals is not enough, considering that these programs have been "white-washed to avoid possible legal actions against the party"⁸.

Sure enough, the AfD is losing support nationally, and some members wonder whether it should become less radical, moving more towards the center of the political aisle to survive. This was what Italy's *Fratelli d'Italia* achieved successfully in the 2022 elections, where it won the lion's share of government seats, after it deradicalized its policies (the party now aims to pursue relations with the European Union, for instance, a stance seemingly unconscionable to Giorgia Meloni's party before the presidential campaign). Whether these moves to become more moderate involve fake promises, and whether the AfD would moderate solely to win itself more seats before radicalizing again, are open questions. But should these questions be left open? Should we not reform a political system in which a radical party can gain a majority of seats in parliament, bringing with its victory the resurgence of xenophobic anti-immigration or anti-Islamic policies, among other proposals? What are the limits to a party's actions that a democracy should tolerate?

In the AfD manifesto of 2021, one policy proposal states that there should be "Humanitarian admission only for people in need of protection who have been selected by the Bundestag and for whose selection a cultural and religious background that is compatible with the German system of values and society is

6 Schultheis, Emily, "Germany's far-right AfD loses nationally, but wins in the East", POLITICO 2021. Available in: <https://www.politico.eu/article/german-election-far-right-afd-loses-nationally-but-wins-in-east/> (27th March 2023);

7 The Guardian "German court rules far-right AfD party a suspected threat to democracy", The Guardian, March 2022. Available in : <https://www.theguardian.com/world/2022/mar/08/german-court-rules-far-right-afd-party-a-suspected-threat-to-democracy> (27th March 2023);

8 Germany's new populist party- p.79;

an important criterion⁹. The AfD rejects quotas and general disembarkations at European ports, only opening the possibility to apply for asylum if the asylum seekers can prove their identity and nationality. Beyond this, the party refuses even family reunification for refugees, and aims to reduce the benefits of the welfare state for the asylum seekers, based on the Austrian model: “the full amount of benefits could also be made dependent on the achievement of good languages skills”¹⁰.

In other aspects, such as the concept of family, we can see in their 2021 Manifesto that the AfD defends the idea of a family consisting “of [a] father, mother and children”. This is an extraordinarily reductive view and contradicts many legal texts, such as the law approved in 2017 in Germany, where the definition of a family can include homosexual partners. Additionally, it reduces the protection of other types of families and aims to impose a politicized, heteronormative model of what a family is. In its 2017 Manifesto, the AfD mentioned that the concept of family that they seek to protect, is being exploited by mainstream gender policies and the fact that “the economy is calling for women as part of the workforce. There is a misconceived view of feminism, which favors women with a career above mothers and housewives. The latter often experience less recognition and are financially disadvantaged”¹¹. These proposals seek to regulate in an invasive manner the private sphere of the citizens. In the lines of Islamophobia that are associated with the party’s ideologies, we can find in the 2017 Manifesto a mention that “Islam does not belong to Germany”, which is an obvious affront to religious pluralism and state secularism.

Moreover, during the height of the Covid-19 pandemic, the party pursued anti-vaccination and anti-lockdown rhetoric¹². As mentioned by authors, Michael A. Hansen and Jonathan Olsen, the AfD has

adapted its cocktail of policies over time, beginning with Euroscepticism in 2013, shifting to targeted immigration policy in 2017, before later focusing on Covid-19¹³.

We should have a better look at the Court case from 2022, which allowed the surveillance of the party by Germany’s Federal Office for the Protection of the Constitution (Bundesamt fuer Verfassungsschutz). This decision was taken in March because the Court considered that the party had gone “against the Basic Law”, this being the German Constitution¹⁴. Ever since its creation, the party has been divided between liberal economists, national conservatives and right-wing populists. The party’s most extreme faction, „Der Flügel” (the Wing), triggered this decision by the Court¹⁵. The party’s ideology, considered to be against the German Constitution and a threat to democracy, has been expressed mainly by the fact that AfD—albeit primarily its more extreme faction—aims to protect the ethnic integrity of Germany and of German people. But practically, it is unclear what this policy would even mean. The integrity of which ethnicity needs protection, for instance? Considering that Germany is not composed of a single ethnicity, the AfD’s position is spurious at best.

The upshot is that the AfD does not seek to respect and comply with human rights, such as the right to private life or human dignity. It also voices explicit Islamophobia in its discourse and Manifestos. In the 2017 Manifesto, for instance, the AfD argues that Germany should be “German as Predominant Culture instead of Multiculturalism”¹⁶. This discourse of German ethnocentrism and German cultural supremacy demonstrates the party’s goal of creating of a culturally homogenous society—a goal that corresponds neither to the current

9 AfD, Manifesto 2021, <https://www.afd.de/wahlprogramm-asy-einwanderung/> (free translation), 27th March 2023;

10 Ibid;

11 AfD “Manifesto for Germany, 2016, p.40. Available in : https://www.afd.de/wp-content/uploads/2017/04/2017-04-12_afd-grundsatzprogramm-englisch_web.pdf,

12 Ibid, p.4;

13 Hansen, Michael A, Olsen Jonathan, « The Alternative for Germany (AfD) as Populist Issue Entrepreneur: Explaining the Party and Its Voters in the 2021 German Federal Election”, German Politics, DOI, 2022, p.5

14 The Local DE, “German court authorises surveillance of far-right AfD”, 2022, <https://www.thelocal.de/20220309/german-court-authorises-surveillance-of-far-right-afd>

15 Witting, Wolter, “Germany’s far-right AfD marks 10 years since its founding”, DW, February 2023. Available on : <https://www.dw.com/en/germanys-far-right-afd-marks-10-years-since-its-founding/a-64607308>;

16 AfD “Manifesto for Germany, 2016, p.46;

demographic layout in Germany, nor to our broader conventional conception of what a country ought to be. Furthermore, the party attempted to perform a “coup d’état” in 2022, in which 25 people were detained. It is open knowledge that some of the people involved were current and former members of the AfD party¹⁷.

The point is not that we disagree *politically* with the party’s prescription of cultural homogeneity, nor that we find morally reprehensible the party’s involvement in a coup d’état. Our political position on these matters is entirely irrelevant to the fact that the party’s pursuit of such policies would entail a broad denial of human rights protections and democratic participation to large swaths of German society. These deprivations we *do* find objectionable, and, we argue, can be addressed with the militant democratic tools we outlined in the previous section.

This political-neutrality point is important because assailants of Militant Democracy launch a perennial critique that alleges that the concept of defending democracy is only ever discussed when proponents disagree with the political program of those actors to whom they prescribe militant democratic intervention. In our case, these same assailants might accuse us of political animus against the AfD, and argue that given our political persuasion, of course we would prescribe militant democratic retaliation to the AfD specifically.

But the idea is that the AfD is a generalizable example. We chose the party not because of its position on the political spectrum, but because of the anti-democratic implications the realization of its policies would entail. It is also true that the AfD is not the only party being surveilled by the German state. The German High Court has also sanctioned surveillance by the German state to other parties considered not respecting the Constitution, ranging from left-wing to right-wing parties. We could

have just as easily focused our study on any of them as well.

Conclusion: AfD Case Study

Taking into consideration the elements of policies, programs, and manifestos of the AfD, and also the mechanisms that Germany is already putting in place to assess whether the AfD aims to undermine democracy through democratic means, we find that democracies need more profound protection. This is all the more relevant in light of Russia’s invasion of Ukraine.

A balance needs to be found between aiming for more protection of democracies—employing constitutional standards to assess whether a party follows the principles enshrined in the constitutions—while also leaving space for the conventional democratic process to breathe and live on its own. Considering the aforementioned AfD policies and ideologies, which target primarily immigration, Islam, gender policies, the concept of family, as well as the idea of what it means to be “German”, (which a German court has considered unconstitutional), we were curious if Germany’s democracy could defend itself against the AfD—whose very extremism would give rise to unconstitutional actions—*before* it got elected? Perhaps the requirements for being elected ought to be stricter to prevent parties and leaders who question the defense of fundamental human rights from running on the ballot, for instance, as one can witness in Bolsonaro’s Brazil.

The AfD, considering the opinions expressed by the German Court, is not a democratic party and is exploiting the German Constitution. In that sense, this party, which has a seat in the parliament and a strong presence in some regions in Germany is undermining German democracy. Germany ought to be able to respond to such a threat before it can seize power and establish itself more firmly within its government, whence it will be considerably more difficult to uproot.

¹⁷ Simsek, Ayhan, “Germany’s AfD party drifting to extreme right, intelligence chief warns”, AA, December 2022. Available on: <https://www.aa.com.tr/en/europe/germany-s-afd-party-drifting-to-extreme-right-intelligence-chief-warns/2769548>;

With our case study, we wanted to demonstrate that there are parties in the democratic system, elected and represented, which are undermining democracy. Although our case study is specific to Germany's AfD, it is not exclusive to Germany, and is in fact visible in other countries. For example, in Portugal, the right-wing party, Chega, has seen its statutes rejected by the Constitutional Court due to its concentration of powers in the party leader¹⁸. This rebuke by the Court affirms that even if Chega has not explicitly limited the fundamental rights of Portuguese citizens, it still undermines the democratic principle of the separation of powers enshrined in the Constitution.

Moreover, Vox, the Spanish sister-party to the AfD and Chega, while not having been directly condemned by the Courts as unconstitutional, has promulgated particularly divisive policies which are leading to a broad polarization in Spanish society. That polarization itself enfeebles Spanish democracy, and thus casts Vox in the same radical-right wing phenotype we've described vis-à-vis Chega and the AfD. This is relevant because large degrees of polarization can lead to the "potential for micro and macro aggressions against the established social outgroups. This further detracts from democratic institutions like mutual toleration and acceptance, weakening Spanish democracy"¹⁹.

Like with the AfD, Vox focuses on anti-immigration policies which tacitly define the ethnic contours of Spanish civil society. As we have tried to show with the AfD, we take no issue with a party's immigration policy *per se*. But we object to those immigration policies that assert that one group (especially when such a group is defined in ethnic terms) of society is more worthy of democratic participation than others. These policies, in our view, ought to trigger the militant democratic defenses we have outlined in this paper.

In Italy, as we mentioned briefly above, the *Fratelli D'Italia* party is also a prime example of what we aimed to demonstrate with our case study. Indeed, *Fratelli d'Italia's* policies target the principles of the rule of law, accountability, and equality, which, when taken together, endanger Italy's "democratic qualities", and therefore, could presumably trigger the same militant democratic defenses as we've argued the AfD should²⁰.

18 Santos, António Pedro, "Tribunal Constitucional obriga Chega a tirar poder a André Ventura", November 2022. Available on : <https://www.dn.pt/politica/tribunal-constitucional-obriga-chega-a-tirar-poder-a-andre-ventura-15340033.html>;

19 <https://www.democratic-erosion.com/2022/11/28/vox-populism-and-polarization-a-potential-threat-to-spanish-democracy/>

20 <https://theloop.ecpr.eu/is-italian-democracy-at-risk/>

CONCLUSION

The upshot is that we need to attend to democracy as its own coherent mechanism for political power. Even if we don't agree on the ideological end of democracy, it is still true that without providing democracy with an internal defense system (even if those defenses are antithetical to liberalism itself) democracy can just as easily be hijacked (and plausibly so) by anti-liberal forces. What Fukuyama failed to consider was that without making democracy "militant," as Loewenstein argued, its liberal character is anything but a foregone conclusion.

As present by the report of Varieties for Democracy from 2022 which focused on an analysis of 202 countries, "the level of democracy enjoyed by the average global citizen in 2021 is down to 1989 levels. The last 30 years of democratic advances are now eradicated"²¹. This is demonstrated more specifically in Europe and mainly in the European Union with the affirmation by Viktor Orban himself that Hungary represents an "illiberal democracy" and with the backsliding on rule of law in Poland. More than that, a year after the invasion of Russia on Ukrainian soil, we ask ourselves what lessons we have learned? Do we think that our societies are safe from "falling asleep in a democracy and waking up in a dictatorship"? Considering the current political landscape, are people more or less prone to support and vote for an illiberal or unconstitutional political party? In terms of figures (2020), there are currently more autocratic regimes than democracies in the world for the first time in the last 20 years²².

Nevertheless, one can ask whether the current political situation will be a turning point in the illiberal/unconstitutional discourse. Considering the Russian invasion of Ukraine, which demonstrates that autocracies cannot be trusted, and taking into account the fact that most of the far right and populist parties in Europe followed Russia and Vladimir Putin's ideologies, we might be facing a

changing of views²³. This connection has happened with a few parties in Europe that shared the values of Russia's government²⁴. Looking at the behavior taken by the leader of Russia as an invader who not only disrespects International Law, but also disregards International Humanitarian Law in the attacks it conducts, one has to wonder whether the parties which share his ideologies or support him still plan to do so.

We wonder what has changed to throw so much of Eastern Europe into what appears to be a perennial democratic attrition? In our case, crisis perhaps provides the best answer. More radicalized members of (particularly Eastern) European countries saw a window of opportunity during the migration crisis to voice their politics, just as they did during the Covid-19 pandemic, and earlier during the Eurocrisis. As mentioned by Karina Moss, Daniel Nowack and Julia Leininger, "Unlike the traditional, coup-driven way of overthrowing a government, the processes we are observing at present are marked by the steady erosion of democratic institutions rather than their sudden collapse. Affected countries gradually transform into hybrid regime types. Although they hold regular elections, these countries neither respect nor protect citizens' rights, civil liberties or the rule of law".²⁵

Now, a different sort of opportunity has presented itself. This time, to reconsider democracies themselves, and how we seek to protect them. Ultimately, these illiberal parties, like the AfD, that have sprung up and gained influence all across Europe are evidence of the fact that we must protect the normative *substance* of Democracy in order to safeguard the political *form* of Democracy. Our argument has been to revive and modify Militant Democracy, shifting its target from actors to actions.

21 Report, 12

22 <https://www.idos-research.de/en/the-current-column/article/we-need-democracy-protection-to-counter-autocratisation/>

23 <https://www.geopoliticalmonitor.com/ukraine-war-an-end-of-history-for-europes-populist-parties/>

24 <https://www.geopoliticalmonitor.com/ukraine-war-an-end-of-history-for-europes-populist-parties/>

25 Mross, Karina, Nowack, Daniel and Leininger, Julia, "We need democracy protection to counter autocratisation", German Development Institute, September 2020, <https://www.idos-research.de/en/the-current-column/article/we-need-democracy-protection-to-counter-autocratisation/>

We believe these are the teeth democracy needs to defend itself from inimical actors who would gain power democratically, and then do away with democracy entirely.

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