DEMOCRATIC SELF-DEFENCE

Confronting Antidemocrats in Theory and Practice

Anthoula Malkopoulou



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Preface

The rise of far-right antidemocratic actors in many consolidated democracies today poses a unique challenge. Political parties and leaders who enjoy popular support risk tearing apart the democratic fabric through tactics that appear lawful and are often invisible. What options do democracies have to defend themselves against such actors?

Democratic self-defence, i.e. actions aimed at preventing, containing, resisting, or repairing democratic backsliding caused by domestic antidemocratic forces, can take many forms: from restrictions on candidacy rights to hate speech laws, and from street protests to welfare reforms. Political parties may exclude antidemocratic parties from coalitions, or they may choose to include them while seeking to moderate their positions. Alternatively, they may focus on expanding social protections in order to address the structural injustices that antidemocratic actors exploit. Such choices raise difficult normative questions. This book offers conceptual tools for making these choices intelligible and brings to light the principles that animate them.

Political theorists addressing these issues have paid a great deal of attention to justifying repressive measures. Militant democracy, which includes the pre-emptive restriction of political and civil rights, has received so much attention in the past decade that one would be forgiven for thinking there is no alternative. This book is partly a reaction to this one-sided engagement with repressive measures. It examines less-known approaches to democratic self-defence that prioritise toleration and social integration respectively, strategies that are used as much, if not more, than militant restrictions.

The three rationales of democratic self-defence that emerge –militant, tolerant, and social– are presented as ideal types. Unlike much theorising on democratic self-defence, which is prescriptive and advances a single normative framework, this book adopts a deliberately comparative approach that examines the strengths and weaknesses of each ideal type, as well as their connections and contrasts. It proposes conceptual definitions and analyses the normative justifications underpinning each type. The aim is to clarify the principles embodied in practices of democratic self-defence, enabling actors to better understand the normative commitments behind their choices and

to make decisions that are ethically justified, democratically legitimate, and consistent with the values they seek to defend.

The book also seeks to move the discussion beyond legal instruments and state responses by bringing broader societal and public actors into view. At the same time, it remains focused on agency: on both defenders of democracy and those who seek to undermine it. In doing so, it resists the tendency to portray democracy as a quasi-natural system whose resilience must simply be enhanced. Unlike many studies framed around the concept of democratic resilience, this book foregrounds human agency and the diverse actors who actively defend democracy across multiple spheres. Decisions about whether and how to confront antidemocratic actors do not fall exclusively on any single category of actor. They concern government authorities, courts, state agencies, municipal leaders, business actors, journalists, academics, and others. Democratic self-defence should therefore be understood as a form of agency distributed across a variety of actors.

This book grew out of an article I co-authored in 2017 with my dear colleague Ludvig Norman, 'Three Models of Democratic Self-defence: Militant Democracy and Its Alternatives' published the year after in *Political Studies*. In that article, Ludvig and I challenged the dominance of militant democracy in debates on democratic self-defence by exploring two alternative perspectives: a tolerant approach (which we then called liberal-procedural) and a social approach, which we ultimately defended. This book builds on and substantially develops that tripartite framework in three ways. First, it provides more conceptually refined definitions of the three ideal types. Second, it examines in greater depth the wide range of normative arguments associated with each paradigm. Third, it moves beyond the task of defending one particular approach or justification, instead offering a comparative analysis that enables readers to navigate the normative landscape of democratic self-defence. The reason for adopting this approach is that there is no single solution applicable to all contexts of democratic threat. Developing rigorous analytical frameworks is therefore as important as advancing critical normative arguments about the proper limits and possibilities of democratic self-defence.

When I began developing the ideas for this book, the neo-fascist party Golden Dawn had entered the Greek Parliament, and its leadership was soon after imprisoned following criminal convictions. Their convictions were fully justified: after the party's electoral breakthrough, violent rhetoric and physical attacks against political opponents, minorities, and immigrants, both inside

and outside Parliament, had become an everyday phenomenon. Yet their status as elected representatives meant that legal action against them was significantly delayed and, while in pre-trial detention, they continued to hold their parliamentary seats. I found this case deeply puzzling. It revealed a striking dissonance between moral condemnation and legal conviction on one hand and the democratic commitment to political toleration on the other.

As this case laid bare, toleration was defensible in principle yet appeared to have produced deeply troubling effects in practice. Still, like many of my compatriots, I was allergic to party bans and restrictions on political rights, and therefore not ready to endorse a militant democratic response that would limit political freedoms on the basis of antidemocratic beliefs. At the same time, it was clear that the rise of Golden Dawn was also a symptom of Greece's profound economic, social, and institutional turmoil. Addressing these underlying conditions seemed essential to reversing the appeal of far-right politics. The dilemma of whether to ban or tolerate antidemocratic parties thus appeared to provide an insufficient framework for thinking about democratic self-defence, while potentially diverting attention from the deeper social roots of the problem. This book and its theoretical framework are my attempt to reflect systematically and critically on these intuitions, by offering a sympathetic yet critical reconstruction of each of the three approaches.

Unfortunately, the experience of autocratising pressures that gave rise to these intuitions is now shared by many people around the world. Democracy defenders everywhere seek to navigate the dilemma of how best to confront antidemocratic actors. My hope is that this book will help them recognise the rationales that shape these confrontations and reflect more clearly on their normative implications.

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Writing this book became possible thanks to a large number of colleagues and friends who have supported me throughout this process. I owe an incredible amount of gratitude and intellectual debt to all of you.

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Four scholars of militant democracy have been immensely influential in shaping the central ideas in this book: Jan-Werner Müller, Alexander Kirshner, Bastiaan Rijpkema, and Benjamin Schupmann. This book's modest aspiration is to continue the conversation that they kickstarted and energised with their brilliant and pioneering work.

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Introduction

Democracy's self-defence dilemma

Anyone can recognise the pattern. A political outsider wins elections by promising to fight corruption and give back control to the people. Years later, their party has a firm grip on government, controls the courts and the media, and has made life difficult for political opponents. It has happened in Hungary, Ecuador, Turkey: a gradual but nonetheless vile democratic backsliding. Faced with such a challenge, many state, public, and private actors may feel the urge to respond. The goal is clear: ensure democracy's survival. Less clear, however, is what exactly needs to be done to achieve this goal. Which way of dealing with antidemocrats is the right way to defend democracy?

Much of this uncertainty stems from the fact that engaging with antidemocrats raises a fundamental dilemma concerning the nature of democracy, a dilemma that manifests itself as a conflict between two opposing strategies: to include antidemocrats in the democratic process or to exclude them.

The first option is neutral: antidemocratic parties should be treated like any other political party. This means that the law should recognise and protect their rights to association and free speech; political opponents may choose either to confront or to cooperate with them; and civil society should engage with them, remain open to dialogue, and peacefully agree or disagree with their views. The entire system must respect, protect, and generally stand firmly behind these parties' right to be heard. But for many, such a neutral option is fundamentally wrong. The problem is that treating 'dangerous' parties as legitimate opponents assumes that they will play by the book. This is not the case, in fact part of the antidemocrat's goal is to break the rules that keep liberal democracy going. Writing in the repentant late 1940s, Karl Popper (2020[1945]) described this as the 'paradox of tolerance': unlimited tolerance leads to the dissolution of tolerance.

The second option is to exclude antidemocratic actors legally, politically, and socially. One should prohibit the formation of such parties or associations, ban their participation in elections and government, censor their messages

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in the media, and closely monitor and punish unlawful street-level activism. In short, they should be treated like the onset of a chronic disease: be fought aggressively early on. But many would argue against this avenue. Banning such parties or removing them from formal or informal political arenas comes at a high cost: it undercuts basic democratic principles of inclusion and participation. Even in the most tempting moments of 1932, when democracy in Europe's most populous state seemed to hang by a thin thread, Hans Kelsen (2006) underlined: a democracy that asserts itself by force is not a democracy. Any type of political exclusion automatically strips a regime of its democratic credentials.

As a way out of this impasse, some suggest that one must resist both the temptation of excluding 'dangerous parties' and the option of over-including them (Müller 2019a). Rather than going in one direction or another, it is better to combine inclusion and exclusion in a more sophisticated way (Rummens and Abts 2010). What needs to be done, most of these mixed approaches say, depends on context. But this comes with its own risk: conditioning inclusion and exclusion on an external criterion does little to settle the internal contradictions that plague each option.

Others go one step further. They argue that one needs to move beyond formal inclusion or exclusion and look carefully at the *social* conditions that make democracies vulnerable to 'dangerous' parties. This means that attention should go to scrapping the structural injustices that antidemocrats exploit and misconstrue to advance their own agenda (Berman and Snegovaya 2019; Fraser 2021; Nässtrom 2021). A greater degree of socio-cultural integration, and the realisation of democratic equality and inclusion in the social realm are the answer (Heller 2000). But this strategy too may raise reasonable objections. Turning democracy into a social project could make it hostage to specific political and ideological ends. After all, addressing social, economic, and cultural grievances and overturning injustices is the goal of partisan struggles. Social integration should be defended in the political arena, not via constitutional or other regulation aimed to defend democracy as such.

In view of these tensions, the question remains open: can democracy be defended without jeopardising its own integrity? This question is crucial to ask, since including, excluding, or socially integrating antidemocrats may facilitate democratic erosion in different ways. Indeed, it remains a puzzle how such different and mutually exclusive strategies of democratic self-defence can all be viewed as being consistent with democratic standards. Even if they all claim to defend democracy, are they really defending the same 'thing'?

Beyond militant democracy

Contemporary theorists have already produced important insights into these questions. They have suggested normative principles and specific criteria to guide actions against extremist parties. What is notable, however, is that most current philosophical thinking is focused on qualifying and thus justifying 'militant democracy', the temporary, conditional but nevertheless direct exclusion from the political arena of actors that threaten the democratic order (Loewenstein 1937; Rummens and Abts 2010; Müller 2016a; Kirshner 2014; Rijpkema 2018; Schupmann 2024). As such, they seem to take for granted that exclusion is the way to go, and that democracy defenders merely need to agree on the timing, scope, or threshold for that exclusion.

The few critics of 'democratic exclusion' have not yet pointed at positive alternatives to exclusion and, as a result, there is little so far that could count as a clear normative defence of democratic inclusion or toleration (Invernizzi Accetti and Zuckerman 2017; Greenberg 2016; Rosenblum 2010). Further, the dilemma between inclusion or exclusion seems to have caused a stalemate that has narrowed the framework for conceptualising democratic self-defence.

Moving beyond the dominant paradigm of *militant democracy*, which commands intolerance towards antidemocrats, this book aims to put it on a par with the other two theories of democratic self-defence: the tolerant and the social. It discusses the norms that underpin all three types of practice: exclusion, toleration, and social integration. The focus is on the distinct set of philosophical considerations associated with each of these types, leaving aside questions of effectiveness which require empirical investigation and fall outside the scope of this book.

Why focus on theory? It may suffice to know that a strategy is effective in containing antidemocrats. But that is not the case. Awareness of the normative dimensions of democratic self-defence must come before any assessment of effectiveness. Determining which strategy is better at containing antidemocrats requires an understanding of whether—and how—the very goal of containment is justified by basic democratic norms. In other words, how democracies confront internal threats is not merely a matter of strategy; it bears directly on norms that are essential for the legitimacy of democratic government. Few questions engage these norms—participation, pluralism, and liberty—as profoundly as this one. Democratic self-defence, therefore, cannot be reduced to asking what works. It also requires a normative evaluation of the goals pursued, the means employed, and the trade-offs they entail. The three

theoretical paradigms presented in this book provide the necessary tools for this evaluation.

How these theories propose to protect contemporary democracies from their internal enemies, and how they reconfigure generally held views about democracy itself, are burning questions in an age of rising antidemocratic movements. This book is the first to examine a broad spectrum of responses from a theoretical perspective. But it does not merely advance abstract ideas: understanding the different ways democracies can respond to their challengers can expand our repertoire of resources for democratic self-defence.

The purpose of the book is therefore twofold. First, it aims to emphasise that exclusion is only one out of several ways of defending democracy—toleration and social inclusion are equally legitimate forms of democratic self-defence. It is erroneous to view democratic self-defence as equivalent to militant democracy or to interpret it as a unidimensional concept. All three types examined in this book stress the importance of defending democracy in the face of autocratic attacks, but they differ substantially in their approaches. Significant variations exist in the framing of the problem of democratic threats, the rationale for addressing it, and the actions that are justified. Hence, as this book argues, there are not merely one or two, but at least three different rationales for responding to antidemocratic parties that can be grounded in normative democratic ideas. This diversity of democratic responses raises a deeper puzzle: how can such fundamentally different responses all be justified in the name of democracy? Are they different vehicles powered by the same democratic engine, or do they run on fundamentally different engines altogether?

The book's second purpose is to explain how such diametrically opposed strategies can all lay claim to be in the service of democracy. The key argument here is that these strategies differ not only in the tools they employ, but also, and more importantly, in how they understand *what is being defended* and *how it is being threatened*. In other words, strategies of democratic self-defence reflect different conceptions of democracy and antidemocracy, i.e. the entity that is to be defended and the acts or actors that threaten it. Their difference is therefore not only a matter of techniques, but also a conceptual struggle over the meaning of democracy.

To support these purposes, the book advances three associated claims. First, it argues that democratic self-defence is a distinct problem in democratic theory with its own set of questions, concepts, and theories. Central to theorising this problem are questions such as how to distinguish attacks on democracy, how to prevent the capture of institutions, and how to defend existing institutions without closing off the possibility of transforming them. Key concepts

are developed to answer these questions, and this book focuses on three such concepts: exclusion, toleration, integration. The resulting theories are autonomous, weaving together concepts, norms, and tools that address this problem.

The second associated claim is that theories of democratic self-defence should not be confined to a single arena. None of the three types analysed in this book is exclusive to any particular set of actors. They can all be employed by both state and non-state actors, including governments, local councils, judges, party strategists, journalists, and ordinary citizens. Democratic self-defence is therefore defined in this book as a principled mode of action that transcends institutional settings and takes concrete form through the actors who employ it. This represents a departure from recent analyses that examine democratic self-defence primarily within a single setting, whether civil society activism (Badano and Nuti 2024) or constitutional design (Schupmann 2024). One of the book's ambitions is to broaden the analysis beyond constitutional theory and offer tools for assessing the normative dimensions of democratic self-defence across different institutional settings.

The third claim of the book is that the three theoretical paradigms are not internally uniform: each encompasses a wide range of arguments and reflects a plurality of positions. As an illustration, it is misguided to view 'militant democracy' as a monolithic concept. There are important differences in how militant democratic theorists conceptualise democracy and the normative justifications they develop. While they all stress the imperative to contain antidemocrats by excluding them, they differ substantially not only in their views on the timing and degree of exclusion, but also with regard to the underlying logic that is employed to justify such exclusion. The same is true of the tolerant and social paradigms of democratic self-defence. While theorists within each paradigm share its central rationale, these approaches are not homogeneous. Highlighting internal differences reveals a plurality of views on how democracy should be defended and, ultimately, on what democracy means.

Defending what?

Democratic self-defence measures are, by definition, intended to defend—what else?—democracy. It is therefore safe to assume that they all share a pro-democratic orientation. In practice, however, there is little consensus about what democracy entails, or even about whether it is democracy itself that is being defended.

In discussions of democratic self-defence, democracy is often understood primarily as *a set of rights-based institutions* whose protection is the central task of defence. These tend to include, first and foremost, free, fair, and periodic elections and a pluralistic multi-party system; a parliamentary assembly that legislates; an accountable executive; an independent judiciary; free media; and an autonomous civil society. This institutional ecosystem exists to realise and uphold fundamental rights such as the political right to vote and the civil rights of freedom of assembly and expression. And these rights ultimately stem from a commitment to the fundamental equality of all human beings. Conversely, it is usually opposition to these institutions, rights, or principles that defines a threat or 'enemy' to democracy.

Admittedly, when the defended entity is outlined in terms of rights-based institutions as the ones described above, it is difficult to distinguish democracy from (institutional) liberalism. Thus, many authors explicitly state that what is actually being defended is 'liberal democracy', i.e. a particular constellation of institutions and principles resulting from the combination of democracy and liberalism (e.g. Galston 2018; Mounk 2018). This is reflected in an elaborate debate on whether democracy and liberalism are separable at all, with many scholars arguing that they are *not* (Plattner 1998; Müller 2016a; Rummens 2017; Urbinati 2019). Brettschneider (2009), for example, argues that democracy requires the protection of certain rights lest the substantive values at the core of democracy are sidelined. Similarly, in Urbinati's words: 'A democracy that infringes basic political rights—especially the rights crucial for forming opinions, and judgements, expressing dissents, and changing views—and that systematically precludes the possibility of the formation of new majorities *is not democracy at all*' (Urbinati 2019, p. 10). Defensible democracies are thus commonly understood as a priori rights-based.

Such is the importance of the liberal and constitutional element of defensible democracies that some would say that what is being defended is not liberal democracy but a kind of liberal constitutionalism. This is hardly stated explicitly but can be inferred from the implicit assumptions of current theories of democratic self-defence. Kirshner (2014), for example, limits the democratic principle to be defended to the human right to participate in representative procedures. He thus designs a democratic defence rationale around this right. But the right to vote is not synonymous with democratic government, since democracies existed long before modern electoral institutions, relying instead primarily on direct decision-making and sortition procedures (Manin 1997). Moreover, the proliferation of electoral autocracies in our time casts further doubt on any supposed natural link between democracy and electoral representation. Thus, unless the entity being defended is defined broadly

enough to encompass the dynamic and self-transformative character of democratic government, what is being defended may be liberal constitutionalism *simpliciter*.

Indeed, the defence of democracy is often construed as the defence of a specific variant of democracy that has already been experienced or, to be more concrete, of those democratic institutions that have become deeply embedded in our collective consciousness throughout our lifetime. The inclination to uphold an extant institutional order (including the principles that sustain it) can be traced back to Carl Schmitt, a prominent figure in the militant democratic canon. Schmitt's primary concern was not with democracy per se, but with a metaphysically predetermined 'concrete order' that ensures political stability and homogeneity (Schmitt 2004). This manifests as a 'constitutional core'. With some important alterations, militant democrats interpret this as *democracy*'s constitutional core (Schupmann 2024). Yet, the leap from a constitutional to a democratic order is by no means straightforward or uncontroversial (see Nitzschner 2023).

Defending democracy as a specific institutional form is problematic because it fails to take account of the institutional variations through which democratic government has been realised, and may continue to develop, across time and place. For example, Australia does not have a bill of rights and Sweden does not have a constitutional court. Direct democracy is prevalent in Switzerland, and has shown promise in Ireland, Iceland, and beyond. And the broader foundational framework of democracies can also vary. From a normative perspective, too, democracies can be deliberative, conditioning legitimate decision-making on deliberation, or epistemic, grounding collective decisions in knowledge and truth-tracking. Thus, a defensible democracy cannot be conditioned by its representative or narrowly constitutional character, or bound to a specific logic and set of procedures. Its definition should remain open and contestable.

Defending democracy against whom? Extremism, populism, and beyond

Talking about democratic self-defence automatically raises the question: What are the defenders of democracy defending democracy against? Today, democracy is under pressure from many different quarters: neoliberalism, climate change, transnational finance, Artificial Intelligence, the threat of nuclear war, online disinformation, international terrorism. These are all very urgent problems. But they are not the focus of this book, which examines threats that arise as a consequence of *political* action, not human action in general. Its concern

is with ideas, speeches, and actions that constitute 'political' activity in the classical sense, and that are proliferating both thanks to and in spite of the consolidation of liberal democratic regimes. These are politically and ideologically motivated activities that consciously challenge central premises, processes, or institutions of democratic government.

More specifically, the kind of challenge to which theories of democratic self-defence typically respond comes from political actors that harbour some kind of antidemocratic ambitions. These include far-right extremists, such as the Greek neo-Nazi party Golden Dawn and the German National Democratic Party (NPD), as well as political groups inspired by white supremacy and religious fundamentalism. These groups are openly hostile to democratic institutions, which makes them formidable enemies of democracy, and easy to spot.

But the challenge can also come from less easily recognisable threats to democracy. The most typical example is authoritarian populism, which encompasses a wide variety of parties in Europe and beyond, such as the *Rassemblement National* and the Sweden Democrats, as well as movements such as Brexit and leaders such as US President Donald Trump. These movements espouse a selective set of democratic principles and simultaneously repudiate others; they may shapeshift before and after assuming power, disguise their authoritarian proclivities behind technical reforms or mask their authoritarian intentions with ostensibly pro-democratic rhetoric. To be sure, it is important to distinguish between populists on one hand and antidemocratic extremists on the other, as the former tend to operate within the confines of legality, making it hard to hold them accountable for breaches of the rule of law *stricto sensu*. And while populists cannot simply be treated as political extremists and may often warrant engagement as ordinary political adversaries, the purposes and limits of such engagement are far more convoluted (Malkopoulou and Moffitt 2023). In both cases, whether the actor is extremist or populist, the capacity of democracy to accommodate its internal opponents is put to the test.

In fact, the categories above are not exhaustive. Although far-right extremism and populism have emerged in new guises in the twenty-first century, they are essentially new variants of a much older phenomenon: authoritarianism. It is against authoritarianism in this broader sense that democracy has long had to defend itself. To track new antidemocratic phenomena and capture the changing forms of democratic threats, theories of democratic self-defence must develop, refine and apply abstract accounts of what or who constitutes a challenge to democracy. These accounts are shaped by underlying assumptions about human nature, agency, and the meaning of democracy as such; as a result, different conceptions of democracy also generate contrasting

definitions of who counts as an 'antidemocratic actor'. What threatens democracy is therefore contingent upon what is being defended and how democracy is understood.

Who defends democracy?

The paradigm of 'democratic self-defence' put forward in this book reflects a focus on political *acts and actors that threaten* democracy, as well as on political *acts and actors that respond* to the former in order to defend democracy. Despite its focus on agency, however, this book does not put forward a normative thesis about who *ought to* defend democracy. In that sense it does not engage in moral theorising about Samaritan, Rawlsian, or other duties to defend democracy advanced in recent accounts of democratic theory (Delmas 2018; Badano and Nuti 2024). Nor does the book offer a distinct argument about why democracy needs to be defended. This book is predicated on the assumption that those who are concerned about democracy and motivated to act in its defence will find inspiration in its pages. The term 'democracy defender' is therefore a deliberately loose category, defined by an actor's self-declared intention and commitment to democratic values and institutions.

The responses against democratic threats are characterised as 'self-defence' on the grounds that the actors engaged in the defence are themselves part of the entity being defended. The book focuses on a number of key responding actors, including the state, government, parliament, courts, and citizens. Such actors may be elected or non-elected, but they are always stipulated in the democratic constitution, and thus technically they remain internal to the democratic framework. As noted above, this book aims to describe democratic self-defence as a frame that extends beyond constitutional design and actions by state authorities. Despite its roots in constitutionalist debates from the early twentieth century, the objective is to establish democratic self-defence as a mode of action that can be undertaken by a diverse set of actors, including civil-society actors.

The actors defending democracy at the centre of this book are domestic, which is why the term 'self-defence' is preferred to the simpler term 'defence'. Technically, the broader term 'defence' encompasses both domestic *and* international actors, such as foreign states, regional organisations like the EU, or the international community. While this book does not examine initiatives by international actors, the theoretical framework developed here could also

be used to assess these (see Feisel 2025, for a selective application). Indeed, some international actors may be directly affected by democratic erosion in particular domestic contexts and may therefore be expected to respond (for example, the EU in relation to democratic backsliding in Hungary). However, as the focus is on domestic, in-house defenders, the narrower term 'democratic *self*-defence' is favoured over the broader term 'democratic defence'.

Democratic self-defence or democratic resilience?

The book's focus on actors —as both agents and objects of democratic self-defence— also explains its choice of terminology. A parallel strand of research on 'democratic survival' typically examines the broader conditions that make democracy endure, for example a minimum per capita income (Przeworski 2019). In this context, the question of how democracies survive is posed irrespective of the specific type of threat or risk that they may face. Indeed, the threat may take any form. By contrast, the objective of this book is to examine responses to a *specific* category of democratic threat: that which is intentional, often ideologically driven, and invariably politically motivated.

Alongside the literature on democratic survival, work in comparative politics, and democratisation studies in particular, has examined a wide range of institutional and citizen responses to democratic setbacks under the rubric of 'democratic resilience' (Holloway and Manwaring 2023; Merkel and Lührmann 2021). Defined as 'the ability of a democratic system . . . to prevent or react to external and internal challenges, stresses, and assaults' (Merkel and Lührmann 2021, p. 874), democratic resilience has become a key organising concept in the academic debate on how democracies resist erosion and collapse.

Despite its powerful role in organising the field, this concept has three major analytical shortcomings. The first is that it conceptualises democracy and its decline exclusively in terms of electoral institutions. Following Robert Dahl's (1989) approach, the criteria it employs to define democracy are universal suffrage, free and fair elections, freedom of expression and associational autonomy. This conception of democracy is based on minimalist and procedural criteria and was popular at the time of Dahl's writing (the 1970s and 1980s). In the contemporary era, however, elections have become the most frequent targets of manipulation, serving to legitimise an autocratic regime rather than the opposite, and are therefore weak indicators of a healthy democratic regime. Besides, as previously stated, democracies are not synonymous with elections, rights, or institutions in general, but should remain open to institutional

transformation. Therefore, theorising about democratic self-defence must be sensitive to the various understandings of democracy and how they inform the targets and tools of democratic self-defence.

A second shortcoming of the concept of 'democratic resilience' is that it is too broad, encompassing responses to threats posed not only by autocratic actors, but also by other phenomena such as disinformation, global health emergencies, economic collapse, migration, and climate crisis. To be sure, it also addresses processes of 'autocratisation', i.e. 'any move away from [full] democracy' (Lührmann and Lindberg 2019: 1099). However, this is a concept so broad that it loses focus on the actors behind such processes. By implication, democratic resilience is about responding to *any* kind of challenge to (electoral) democracy, brought about by an overly diffuse set of causes.

A third problem with the term 'democratic resilience' is that political agency is missing not only from the assessment of threats to democracy, but also from the analysis of how actors respond to them. The focus is on the 'system' and its ability to 'withstand', 'adapt', and 'recover' from challenges without losing its original—democratic—character (Merkel and Lührmann 2021). The terminology and thinking here are explicitly borrowed from the material and behavioural sciences. Democracy is conceived as a functional object, akin to a natural system, that is expected to behave in a largely deterministic manner; the political agency of those who act to defend democracy becomes secondary or absent. As a result, democratic resilience is conceived as a process of discovering or enhancing the 'natural' qualities of democracy, without a clear view of who will drive this process and why.

In sum, studies of democratic resilience and survival address concerns similar to those of this book, but often frame problems and solutions at a broader systemic level. Whereas scholars of 'democratic resilience' may focus on responses to processes of autocratisation whose sources are not always clearly identifiable and which plague democratic regimes as organic entities, this book focuses on threats to democracy and its defence that can be traced back to specific political actors.

On method: theorising democratic self-defence

This book is about theories of democratic self-defence, not theories of democracy as such. Theories of democracy typically offer a distinct and elaborate account of what democracy is, how it works, and why it is worth having. For example, the theory of 'social democracy' posits that democracy requires extending principles of democratic equality beyond political institutions to

social and economic relations, thereby empowering people across social classes. One could of course extrapolate strategies of democratic self-defence from theories of democracy. For example, to defend 'social democracy' from degeneration what is needed is to create obstacles to oligarchic and libertarian actors, who are understood to be social democracy's arch-enemies (at least in its classical formulation). The same process can be performed on all other models of democracy to highlight their differences in defining what threatens democracy and how its defence is envisioned. This book does not engage in such an act of extrapolation, however. If it did, it would cease to be a problem-driven approach to democratic theory and instead become a theory-driven project. Its guiding question 'how to thwart authoritarianism' would be enormously broadened and eventually lost.

By contrast, theories of democratic self-defence offer a philosophically grounded response to a particular problem: how democracy should be defended against antidemocratic movements. The theories analysed here are problem-oriented in the sense that they emerge from and respond to an empirically observable phenomenon —autocratic challenges to democracy (see Warren 2017). The problem of democratic backsliding and autocratisation, and the challenge of preventing, containing, or resisting these phenomena, constitute the common ground of theories of democratic self-defence. Hence, despite their significant differences, all such theories address a shared problem and have, to some extent, a common goal.

True, from a theoretical perspective, neither the meaning of 'antidemocratic actors' nor that of 'democracy' can be taken as a priori given or justified. Their precise meaning remains elusive. Yet the key to uncovering it lies here: the ways in which one defines democracy's enemies and defends democracy are speech-acts that reveal particular understandings of democracy and antidemocracy. Herein lies the principal contribution of this book. Instead of departing from existing theories of democracy to examine how they define their enemies, it works in the reverse direction: it starts from antidemocratic actors as a contemporary problem and moves through theories of democratic self-defence to explore the competing meanings of democracy and antidemocracy that they embody.

The central purpose of the book is to help democrats distinguish between the different ways they can respond to antidemocratic political parties. It does so by linking these responses to normative principles and political-philosophical traditions. Although the focus is on norms, this book is a work of conceptual analysis, and not of normative argumentation. In fact, the debate on democratic self-defence, and perhaps democratic theory more generally, has often been characterised by normative overcommitment and a strong

prescriptive impulse, with scholars seeking to defend a particular response to antidemocratic actors as the most justified. This tendency is valuable for generating sharp arguments and an overall lively discussion, but may ultimately cause unnecessary confusion because, in their effort to get their points across, many theorists tend to under-define fundamental ideas such as the underlying conception of democracy that steers the rationale of its defence. More problematically, they may either generalise from limited empirical assumptions or neglect the contextual conditions that shape democratic challenges and responses, making their theories difficult to apply in policy design and decision-making. This book does not advocate for a single normative theory of democratic self-defence. Instead, one of its ambitions is to do some housekeeping and stocktaking in the rapidly expanding conceptual field of democratic self-defence.

As a result, strategies of responding to antidemocratic actors are described and examined as 'ideal-types': analytical constructs that accentuate one-sidedly certain recurring features of concrete phenomena, without corresponding to any actual or historical case (Weber 2011, pp. 89–103). They emerge from a combination of abstract thinking on concrete political problems and their approximations in political practice. Because the contours of each type are idealised, we find them in various combinations in real life, even within a single constitutional order.

Why focus on such ideal types of democratic self-defence? The benefit of an approach that zooms in on neither exclusively normative nor exclusively empirical perspectives is not only that it offers a new and different system of classification compared to existing ones; its main advantage is that it shows how norms and practices interact in the field of democratic self-defence. Highlighting the explicit and implicit normative justifications behind concrete responses to antidemocratic actors makes it possible to situate these responses within a normatively coherent framework, rather than leaving them to be driven by mere strategy or political opportunism. Second, an ideal-typical analysis can transcend specific historical, national, and institutional contexts, without, however, claiming universal applicability; thanks to its adaptability, it can serve as a guide for action irrespective of when or where the need to defend democracy arises.

Third, illustrating the contingent links between actions and norms can satisfy the demand for norm-guiding behaviour. Various actors draw on normative considerations when they shape their behaviour, including not only institutional or political actors, but also citizens who are wondering how far they should engage with, say, a racist neighbour. In fact, the three varieties of democratic self-defence discussed in this book are reflected not only in

constitutional traditions, but also in party strategies and citizens' behaviour. Knowing the logic behind different types of democratic self-defence can ultimately help anyone to adopt a more informed view on how best to defend democracy regardless of whether they are policymakers, party strategists, or concerned citizens. But it can also offer all those interested in defending democracy an enlightened understanding of why democracy is worth defending. At a minimum, this is what a political theory book on democratic self-defence should aim to provide.

Summary of the book

The book is divided into seven chapters. Each type of democratic self-defence—militant, tolerant, and social—is examined in two chapters, devoted respectively to its conceptual definition and its normative justifications. The final chapter combines these perspectives, offering a comparative and concluding analysis.

Chapter 1, titled 'The Concept of Militant Democracy', describes what 'militant democracy' is and discusses controversies surrounding its meaning. In the classic definition, attributed to Karl Loewenstein, militant democracy is the principle that permits democratic states to impose pre-emptive restrictions on basic rights and liberties in order to protect themselves from internal subversion. Yet, some scholars use a more expansive definition that stretches the concept to cover not only rights restrictions but any type of action that aims to defend democracy. The chapter questions these trends and develops a more narrowly defined conception of militant democracy as a distinct ideal type of democratic self-defence, centred on the principles of *exclusion, exception, and extraordinariness*. At the same time, by replacing the conventional 'legal account' of militant democracy, which binds it to particular legal instruments, with a 'principled account', the chapter shows how this normative definition becomes analytically applicable across a much wider range of institutional contexts. Militant democracy then manifests itself not only in the legal domain—as a practice of rights restrictions—but also in the political and societal domains—as practices such as *cordon sanitaire*, media censoring, social media deplatforming, and a combative civil society. With the help of the principled account of militant democracy, the chapter examines which practices qualify as militant democratic, and why.

Chapter 2, titled 'Justifications of Militant Democracy', focuses on how militant democracy is normatively justified. It distinguishes between three central

justificatory principles: (1) hegemony, (2) reason, and (3) harm. The first conceives of democracy as a hegemonic regime and argues that it may legitimately eliminate its existential opponents. The second grounds militant democracy in the rationality, or public reason, of democracy, which must be defended against the emotionalist techniques or unreasonableness of antidemocratic actors, respectively. The third justifies militancy as a means of preventing the serious harms that a future authoritarian regime may inflict on the rights and livelihood of individuals more broadly. The chapter offers a first systematic attempt to organise and classify these justifications according to the central normative idea that animates them. It concludes by pointing out their differences regarding the entity they seek to defend, but also their shared conception of democracy as substantive and value-driven.

Chapter 3, titled 'Tolerant Democracy as an Alternative', explores the tolerant approach to democratic self-defence, an alternative and in many ways antithetical approach to that of militant democracy. Proponents of the tolerant approach believe that democracies can neither justifiably exclude any single group or actor from democratic politics, nor can they exempt any meta-political principles from the possibility of reform without ceasing to be democratic. Instead, democratic self-defence should be based on maximal political inclusion of all citizens, practices, and ideas. Since the 1930s, this approach has been criticised for being too passive, self-defeating, and ultimately suicidal. Yet, contrary to these dominant negative descriptions of tolerant democracy, this chapter defines it positively as a logic of immunising democracy against various types of abuses regardless of their ideological motive. It explores its normative features: *ordinariness*—threats to democracy are inherent in its nature and thus always 'ordinary'; *consistency*—no exceptions to basic democratic rules are allowed under any circumstances; and *inclusion*—enemies of democracy should have access to all political arenas. The chapter then challenges the common view of tolerant democracy as passive by identifying the practices it mobilises in its own defence—constitutional review, prosecution of common crimes, electoral system design, term limits, civic education, and political engagement. Together, these practices underline the active aspect of tolerant democracy. The chapter concludes by underlining the overall philosophy of tolerant democracy: to immunise fundamental democratic structures from erosion without prohibiting any values, ideas, or practices.

Chapter 4, titled 'Rationales for Tolerating Antidemocrats', goes into the reasoning behind tolerant democracy and explores its different normative justifications. Central among them is the principle of democratic proceduralism.

Its pioneer, Hans Kelsen, argued that free and equal procedures are the best way to protect the plurality of values rooted in individual freedom. After the Second World War, proceduralism became associated with minimalist understandings of democracy, which placed a high premium on unobstructed, and therefore highly tolerant, competition for votes among elites. Democratic toleration also finds support among liberal free-speech theorists, from J. S. Mill to First Amendment libertarians, who conceive of democracy as a marketplace of ideas that must circulate freely at all times. In more recent years, the inclusion of as many perspectives as possible has been defended on the grounds that it makes democracy either more legitimate, or more cognitively diverse and therefore likelier to reach good decisions. The inclusion of antidemocrats has also been defended for instrumental reasons, to repair the torn social fabric that underlies the emergence of extreme views, to prevent the spread of unreasonableness, or to moderate those who hold such views. The latter thesis operates on the assumption that democratic participation has transformative effects: it creates pragmatic incentives for populists to politically and ideologically compromise and form coalitions. The overall philosophy of the tolerant model is this: democracy's enemies must be prevented from undermining fundamental democratic structures, but without imposing nominal restrictions, exclusions, and limits on the representation or free expression of anyone.

Chapter 5, titled 'A Third Approach: Defending Democracy Socially', begins by clarifying that the social defence of democracy is not equivalent to defending social democratic ideology, but refers instead to a particular ideal type of democratic self-defence. Its general premise is that democratic breakdown is caused by economic crises and experiences of social injustice. It does not, however, assume that poor and marginalised groups will turn to extremism as a matter of course, as is sometimes implied. The mechanism is usually more complex, involving unholy alliances between economic elites, on the one hand, and lower- and middle-class groups, on the other. Moreover, this approach rejects the tendency to blame support for extremism solely on irrational voters or fraudulent politicians. Instead, social structures and the logic of social organisation are the real culprits of democratic regression. In addition to offering *a sociological diagnosis* of the causes of political extremism, this ideal type offers a materialist type of response, namely *socio-economic reforms* of varying scale and degree. These reforms have a specific goal: the elimination of social disadvantages. Historically, this was achieved through policies of mass employment and universal welfare, which were described as anti-extremist weapons in inter-war Sweden and post-war Europe. The equivalent proposals today focus either on political strategies that increase support for left-wing

parties, or on policies that correct the severe inequalities caused by present-day capitalism. Despite their differences, all converge on the general idea that democracy is best defended through social change.

Chapter 6, titled 'The Rationale for Defending Democracy Socially: From Hermann Heller to the Present', explores the relevance of the Weimar jurist Hermann Heller in uncovering a social understanding of why democracies are challenged by autocratic forces, and what they need to do to counter them. Writing in the 1920s and early 1930s, Heller astutely pointed out that fascism, Nazism, and the democratic breakdown that followed were precipitated by a deep economic crisis and the experience of social injustice. Therefore, he argued, the defence of democracy should include structural socio-economic reforms. The goal should not be formal equality or mere equality of opportunity, but effective social integration and the elimination of gross inequalities. These would inspire a commitment to democracy among the population at large. Heller introduced an ideal type of democratic self-defence through social reform that has been echoed by contemporary political theorists, though without direct reference to Heller himself and with very different emphases. Some stress the civic-nationalist aspect, others the existential-security aspect, others the statist aspect, and still others the populist aspect. Despite their profound differences, however, they all share the basic idea that both the cause and the solution to autocratic tendencies lie in social transformation.

Chapter 7, titled 'A Critical Appraisal of Exclusion, Toleration, and Integration', is the final chapter and contains three parts. The first part summarises and translates the book's insights into a comprehensive theoretical framework where the three ideal types—militant, tolerant, social—correspond to a different diagnosis of the problem, different means of defending democracy, and a different objective. It then analyses various actors that engage in democratic self-defence and constructs an ideal typology of responses to antidemocratic threats, based on the ideal type of democratic self-defence and the type of actors who initiate the response (state, political, civil society). The second part analyses the strengths and weaknesses of each of the three main types of democratic self-defence and compares them with each other. To illustrate, one critique of militant democracy is that it is too costly from a normative and political perspective, while tolerant democracy is seen as too passive and defeatist, and a social defence of democracy is viewed as too slow or too ideological. The third part of this chapter examines the complementarities or incompatibilities of the three types and explores the possibility of hybrid approaches to democratic self-defence. It argues that while

it is perfectly possible to put together an eclectic set of responses to democratic threats, this strategy will suffer from inherent normative tensions and contradictions that arise from the different ways in which each of the three approaches understands democracy and the threats it faces.

The book concludes by emphasising the importance of grounding democratic self-defence in justifiable norms, particularly in the face of future and unforeseen challenges to democracy. Rather than offering a single formula for defending democracy, it shows why making the principles behind different responses explicit is essential to navigating the dilemmas of democratic self-defence.

1
The Concept of Militant Democracy

1.1 Militant democracy's first coming

The idea of militant democracy may be as old as democracy itself. We know that ancient Athenians had in place a number of measures for defending democracy. Some of them were very extreme, such as *tyrannicide*, the permission to assassinate an existing or aspiring tyrant. Another was *ostracism*, a voting procedure through which Athenian citizens expelled a political figure from the city-state for 10 years.[1] In modern times, no democratic country grants impunity for extra-judicial homicide or sends individuals to involuntary exile on political grounds. Yet, to a certain extent, these extreme measures share the same principle of intolerance that permeates the logic of militant democracy, duly adapted to a modern setting.

As a modern constitutional principle, militant democracy emerged during the 1920s as a bulwark against Nazism and fascism. It was further systematised in the 1930s when Karl Loewenstein first coined the term in 1937. A trained lawyer, Loewenstein had fled Germany in 1933. Deeply affected by the collapse of the Weimar Republic, he committed himself to preventing similar historical accidents in the future. His main sources of inspiration were the inter-war examples of Belgium, Finland, and especially Czechoslovakia. Unlike his native Germany, these countries had 'refrained from being over-legalistic' in the face of a growing fascist challenge. As early as 1923 the Czechoslovaks had in place an act for the 'protection of the Republic'. With the rise of National Socialism in neighbouring Germany, this law was further strengthened by a 1933 statute empowering the government to dissolve subversive parties and associations and curtail the rights of their members and sympathisers. To address the more immediate threat posed by the pro-Nazi Sudeten German party, a new 1936 statute was introduced that allowed more or less the imposition of martial law in peacetime (Loewenstein 1937b, pp. 641–643).

[1] For an analysis of the procedural sophistication of ostracism, the shifting types of threats it targeted and its conceptual relationship with militant democracy, see Malkopoulou 2017.

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Borrowing from the Czechoslovak approach, Loewenstein developed an anti-fascist blueprint for liberal elites the world over, centred on the systematic restriction of the rights and freedoms of democracy's enemies. Not long after he settled in the United States, he became an influential CIA adviser tasked with the fight against proto-totalitarian tendencies around the world in the context of the Cold War (Greenberg 2015). In the decades that followed, militant democracy was formally recognised and embedded in many states' constitutional systems. The German Constitution of 1949 features prominently among them, which partly explains why the German-language terms *wehrhafte* or *streitbare Demokratie* are often (but mistakenly) thought to predate the English term.

While the second half of the twentieth century was the prime time when militant measures saw the light of the day, it is effectively after the turn of the twenty-first century and especially in the 2010s that militant democracy became a key subject of philosophical debate. This late interest is of course triggered by specific political developments within our immediate historical context: the global rise of far-right populism. As the electoral support for parties that challenge fundamental democratic principles in one form or another has continued to grow, the question of how to respond to them has become increasingly urgent. Yet, as Loewenstein's work shows, neither the general idea of containing democracy's enemies nor the legal provisions associated with militant democracy are new. What is new is the eagerness to study the norms that animate these provisions, especially in view of contemporary mores and the concrete exigencies of our time. It is in this light that militant democratic thinking has made a comeback.

1.2 The legal account of militant democracy, and its limits

What exactly is militant democracy? Legal scholars tend to see it as a legal, and more specifically constitutional, doctrine, while students of politics understand it as a broader normative construct with concrete institutional implications. In the latter tradition, a generally accepted definition describes militant democracy as *the idea that a democracy can preventively restrict the rights and freedoms of those who intend to subvert it through nonviolent means.* Put differently, a democratic country is militant when it 'takes *restrictive measures* to prevent the change of its own democratic character by the election of antidemocratic parties' (Fox and Nolte 1995, p. 6, emphasis added). As such, militant democracy is a normative framework that addresses a basic structural risk of every democratic government: that its enemies may use the rights to

free speech and equal participation accorded to all citizens indiscriminately in order to work towards the abolition of democracy. Because democracies, like any other regime, must strive for their self-preservation, they have the right to impose pre-emptive restrictions to suspected parties, associations, and individuals, or so the argument goes.

This definition of militant democracy is quite accurate in capturing its institutional expression, but also reflects a predominantly legal understanding of the concept, centred on constitutional restrictions and state action. It contains six constitutive elements, namely: a (1) restriction of rights (2) applied preventively (3) to agents who (4) use nonviolent means (5) with the intention to subvert democracy (6) from within. Let us examine each of these features in turn.

The first element –restriction of rights– is the most important. It concerns the types of actions, initiatives, and measures that militant democracies should adopt in order to defend themselves. In the words of one of its vocal advocates today: 'Militant democracy refers foremost to restrictions of political rights' (Sajó 2004, p. 221). Sometimes these measures are defined more broadly as 'prima facie illiberal' (Müller 2012a, p. 536), or otherwise 'democracy-limiting' (Rijpkema 2018, p. 6). In Loewenstein's formulation, they represent an attempt to meet the fascist technique 'on its own plane and by its own devices' (Loewenstein 1937a, p. 430). In other words, militant democratic measures have by default a restrictive character that is in tension with liberal democratic norms and practices, since even their proponents admit as much.

The second key aspect of this definition is that militant democratic measures are preventive or 'prophylactic' (Loewenstein 1937a, p. 430), i.e. they are put in place *before* the anticipated destruction of democracy, precisely in order to prevent it. Pre-emption is indeed a defining quality of militant democracy (Tyulkina 2015, p. 14). Therefore, the notion of actively defending democracy in a militant manner is discernible in the practice of 'preventive rights restriction' (Sajó 2012, p. 568).

Thirdly, what characterises militant democracy beyond the type of measures it employs is the way it identifies the targets of militant action: *those who intend to subvert democracy through non-violent means*. The main element here is that democratic self-defence is directed towards political 'agents' that are suspected as democracy's enemies, i.e. 'individuals or groups aiming to harm the democratic structures of the state' (Tyulkina 2015, p. 14). This can be contrasted with more neutral defensive mechanisms, which are designed without any particular agent in mind and are characteristic of 'tolerant' democracies, such as high electoral thresholds that limit access to representation without singling out specific actors.

Fourthly, another important trait is that the agents against whom militant measures are directed are 'non-violent'. By contrast, actors that engage in political violence, are by definition liable to criminal law and therefore restricting their rights may not require special legitimation (Rijpkema 2018, p. 5). By contrast, 'militant democracy, by definition, is about conduct *not* already covered by the criminal law' (Müller 2019b, p. 14). Agents who adhere to the letter of the law and employ ostensibly democratic means to undermine democratic processes, those who ingenuously exploit the rights and privileges afforded by an open democratic society, are more challenging to identify and pursue. It is this potential 'legal revolution' (Schupmann 2024) that militant democratic measures are designed to contain.

A fifth element is the focus on the 'intentions' of the agent in question to subvert democracy. Unlike acts committed in the past, which may also be taken into account, intentions concern anticipated future conduct. This considerably expands the range of evidence that may be considered while simultaneously rendering militant measures more vulnerable to subjective interpretation and political manipulation. A legal instrument targeting demonstrably subversive 'acts' is more precise and less arbitrary than one targeting presumed subversive 'intentions', since the former rests on material evidence rather than conjecture about future aims.[2]

Sixth and last, the actors targeted by militant instruments are regarded as 'internal threats' (Thiel 2016a, p. 380). This distinguishes militant democracy sharply from the principles governing military engagement against a country's external adversaries: the threat must originate within the political community itself. Precisely because such actors are neither external enemies nor conventional criminals, however, the characteristics that define them are not easily captured by the categories of criminal or international law and remain relatively elusive.

While a consensus seems to exist about these basic aspects of militant democracy, a lot is still being debated. First of all, scholars disagree about whether the target of militant sanctions should include groups *and* individuals and, if so, which type of individuals. A typical militant-democratic law, such as the relevant clauses in the German Basic Law, allows for restricting the rights of political parties (Art.21), associations (Art.9), as well as individuals (Art.18) (Tyulkina 2015, pp. 43–44). But while extremist associations

[2] Such subtle shifts in legal wording can be very consequential. In 1968, the Greek junta transformed an existing law against communist violence (Law 509/1947) into a constitutional instrument for suppressing any form of political dissent (Const 1968, Art.58#5) by changing only three words: it added 'aims' (opposed to the existing order) as a sufficient ground for banning political parties (whereas the previous law referred only to 'activities') and removed 'violent means' as a necessary condition for classifying behaviour as subversive (Alivizatos 1983, p. 665).

are routinely dissolved in Germany, and party bans are widely accepted as the militant democratic measure par excellence (Rijpkema 2018), the forfeiture of basic individual rights has been more controversial. Müller (2016, pp. 255, 258–259) for example has argued that political parties are agential corporations for democratic will formation and therefore under higher moral obligation to conform to democratic principles than individuals. By contrast, individuals are more vulnerable and powerless public actors compared to parties; hence, limiting individuals' access to the political process harms their legitimate interests in political participation and exposes them to political domination (Müller 2019b, pp. 13–14; see also Kirshner 2014, pp. 40–42). Moreover, the removal of *all* rights from an individual, for example through denationalisation, is *per* Müller not only disproportional as a punishment for the advocacy of antidemocratic principles, but in general unjustifiable because it fails to respect the autonomy of citizens and leaves no room for moderation (Müller 2019b, p. 23).

On these grounds, more appropriate are restrictions that are limited and concern a very specific type of individual. In Bonotti's view, it is *partisans* who have special political obligations compared to ordinary citizens due to their privileged influence on decision-making and public opinion. Therefore, party candidates and elected officials could justifiably be monitored, censored, and sanctioned, including having their candidatures cancelled, in case they campaign on doctrines and through values that are not publicly shared or reasonable (Bonotti 2017, pp. 15–16). For Müller, individual militant democracy should look beyond ideology, and focus instead on 'patterns of action over time', in order to capture those individuals that intend and are able to undermine democracy. Above all, because of individuals' legitimate interests in political participation, prohibitions against them should be more limited and commensurate to the harm inflicted—for instance, by impeaching an incumbent officeholder and restricting only their right to stand for office. Moreover, such restrictions should generally be temporary, since permanent exclusion weakens the normative link between the restricted right and the conduct that justified its restriction (Müller 2019b, p. 17).

Alongside the questions of who should be subject to militant measures and for how long, a further question concerns *when* such restrictions ought to be introduced. Which is the right moment to intervene in order to save democracy? As we saw, preventiveness is a defining characteristic of militant democracy. Militant intervention is not only 'pre-emptive', i.e. initiated 'in response to imminent rights violations' (Kirshner 2014, p. 109), but also 'preventive', in the sense of action taken *before* a significant violation is imminent. Yet, timing militant democratic action is very tricky. If interventions

come too early, they are seen as undemocratic because they restrict the right to free speech and open deliberation that democracies need to thrive; moreover, they represent a disproportionately harsh measure on what at this time would probably be just a harmless political minority. But if interventions come too late, they are not only ineffective, because antidemocrats are already too powerful to stop; they are also seen as undemocratic, this time because they remove a legally elected political force that expresses a majority will.[3]

To solve this puzzle, Rijpkema suggests a simple calculus: 'only when the expected danger to democracy becomes greater than the infringement of democracy represented by a ban is it an opportune moment to ban a party' (Rijpkema 2018, p. 169). In other words, one must weigh the two dangers against each other and decide accordingly. Kirshner also proposes a calculation of the moral costs of action and inaction. For him, action should kick off when 'a party poses a comprehensive threat to the basic mechanisms of representative government' (Kirshner 2014, p. 130). This is to be determined by verifying not only the *intention* of the party to block democratic opposition in the present and the future, but also its *capacity* to do so. This moment is a bit later than Rijpkema suggests.

The focus on capacity brings to mind Rummens and Abts's influential 'concentric model' of defending democracy. This hybrid militant-tolerant model posits that extremist actors should be accorded sufficient leeway to speak and act when they operate informally at the periphery of the public sphere, but tolerance towards them should gradually decrease the closer they get to the centres of power and formal decision-making (Rummens and Abts 2010). As such, it places the premium not only on the actual utterances and intentions of the enemies of democracy, but primarily on their political prospects and their potential to turn them into actual policies and laws. The 2019 decision of the German constitutional court *not* to ban the far-right party NPD drew on similar grounds: that the party had only 'proportionally' minimal influence on mainstream politics played a key role in its decision (Molier and Rijpkema 2018). Hence, an actor's capacity to carry through a threat to democracy has gradually become a core criterion of militant democracy, shaping how target actors are identified.

Disagreement about the best timing and similar considerations around militant democratic interventions do not affect the general framing of the concept.

[3] Critics of militant democracy argue that legitimate democratic intervention can only respond to committed acts and formal decisions: 'Until it becomes policy, a radical political agenda—whether advanced by an individual or a political party—represents freedom of expression and association in action' (Macklem 2006, p. 512).

Indeed, despite a pluralism of views, scholars seem to converge on an understanding that militant democracy involves rights restrictions and other illiberal or undemocratic practices, which are used pre-emptively, against political parties, groups, or individual persons, who use nonviolent democratic means with the intention to subvert democracy.

1.3 What is wrong with (some) current interpretations

Despite this precise and generally accepted definition of militant democracy, the concept has been oftentimes stretched beyond its actual boundaries. As Sartori had warned long ago, the phenomenon of concept stretching can be explained by the temptation to include more cases and expand a concept's range of application (Sartori 1970). But, in this case, it can also be explained by the absence of a clear theoretical framework of democratic self-defence, which would assign to militant democracy its proper place in this broader framework and would offer clear lines of demarcation between different types of democratic self-defence. The absence of such a framework has resulted in two conceptual and two empirical fallacies in the literature on militant democracy, which I discuss below.

The first conceptual fallacy is a maximalist all-out claim that *any* act that aims at defending democracy is an instance of militant democracy. In other words, militant democracy is presented as a proxy term for the broader category of democratic self-defence. This move basically denies the existence of other principles or practices for defending democracy. Tyulkina, for example, claims that:

> Some degree of militancy becomes a natural feature of democratic regimes, such as the institutions of representation and the separation of powers. (Tyulkina 2015, p. 3)

The conceptual stretching involved here is considerable. Representative institutions and the rule of law are features of liberal democracy generally, rather than distinctive instruments of militant democracy. Arguing the opposite risks inflating the concept way beyond its initial meaning and scope (Bos 2017). To be sure, practices such as separation of powers may be a measure of democratic self-defence: dividing the branches of power makes it harder for would-be authoritarians to capture them and enables pockets of resistance within the official state apparatus. But is it a militant measure? It neither resembles an

act of rights restriction, nor does it isolate and target specific actors. Describing such a measure as militant makes of militant democracy a proxy term for all and any type of acts through which a democratic state can defend itself. It is a common move that overlooks alternative avenues of democratic self-defence found in constitutional thought and practice. As this book demonstrates, some democracies reject the logic of militant democracy and have successfully fended off 'dangerous' parties without resorting to prima facie illiberal measures. This is to say that militant democracy cannot stand for the broader phenomenon of democratic self-defence: it is a particular type of democratic self-defence, one that operates under specific norms and carries its own logic.

The second conceptual fallacy is to present militant democracy as 'the legal approach' to democratic self-defence, i.e. to describe as militant-democratic *any legal* instruments aimed at containing antidemocratic threats. Näsström (2021a, p. 376), for example, talks about 'a legal (militant)' model of democratic self-defence, and Bourne construes the category 'militant-legal' as one specific type of intolerant defence of democracy by public authorities, and thus equates the use of law with militancy (Bourne 2023). The problem with describing militancy as 'a legal model' is that it risks a form of conceptual expansion similar to that described above: the concept of militant democracy comes to encompass all types of laws aimed at curbing antidemocratic threats. By contrast, as we have seen, it is only and specifically *rights restrictions* that justifiably fall under this concept. But rights restrictions are not the only legal means through which a democracy can defend itself. It may also introduce laws that prohibit political violence, discrimination, political corruption, or unparliamentary behaviour. And violations can be punished with various sanctions—from fines to imprisonment—that do not affect individuals' basic individual rights. Hence, not all democracy-defending laws are militant. Conversely, militancy is not merely a matter of law.

This conceptual misframing of militant democracy as any act or any law that aims at defending democracy is mirrored by two empirical fallacies. The first empirical fallacy is the assertion that militant democracy is a *universally accepted* principle. Here, the existence of alternative forms of self-defence is acknowledged, yet relegated to the periphery of conventional constitutional beliefs and practices. In this vein, Giovanni Capoccia (2013) asserts that the:

> Value-neutral model of pluralist democracy according to which all political positions should be given equal rights of expression and participation . . . has virtually no supporters today. (p. 211)

In Tyulkina's words:

> Currently there are no realistic alternatives to militant democracy to rescue a democracy when its existence is endangered. (Tyulkina 2019, p. 211)

Capoccia and Tyulkina posit that the theoretical and practical aspects of contemporary democratic self-defence have been subsumed by the tenets of militant democracy. But this assertion is erroneous. In recent years, there has been a notable increase in the number of critics of militant democracy (Invernizzi Accetti and Zuckerman 2017; Malkopoulou and Norman 2018; Ginsburg and Huq 2018). Conversely, there has been a corresponding growth of support for alternative forms of democratic self-defence. The unpopularity of militant democracy is also affecting constitutional practice. In a widely publicised and long-awaited case, the German Federal Constitutional Court refused to ban the extremist party NPD (Molier and Rijpkema 2018). Although the court did not explicitly reject the concept of militant democracy, its reluctance to invoke the relevant clauses reflects a growing scepticism about the legitimacy of these provisions.

The second empirical fallacy is the claim that militant democracy is a *ubiquitous* principle, a practice that is globally a commonplace. 'Democracies are always more or less militant' because militant democracy is only a matter of degree with respect to other types of democracy (Pfersmann 2004, p. 53). In the words of Jan-Werner Müller (2012b):

> It makes little sense categorically to distinguish between militant and non-militant democracies: under certain circumstances any democracy might engage in vigorous acts of self-defence. (p. 1266)

Or, as Thiel notes: 'It is barely conceivable that a country does not have (and never has) taken legal defensive measures to fight' political extremism (Thiel 2016a, p. 384), which effectively renders them all militant democracies. Indeed, most state legislations nowadays include some of these measures, Tyulkina argues. Hardly any modern constitution omits militant provisions, even if the controversial status of militancy sometimes forces them to avoid explicit references to 'the militant character of their state' (Tyulkina 2019, p. 212). But even in such cases, she continues, militant provisions can be found hidden or 'masked' in ordinary legislation, as for example in Spain where the absence of militant provisions in the 1978 Constitution has been compensated by a provision for party bans in the 2014 Law on Political Parties.

Still, the claim that militant democracy is everywhere is analytically mistaken. If we delimit the concept as we should, it is evident that not all contemporary constitutions can be classified as militant. The existing bibliography typically cites the German, Turkish, and Israeli constitutions as examples of the militant variant, but there are numerous others, including those from Sweden, Australia, and the United Kingdom, that do not fall into this category. Fox and Nolte (1995) classify several countries as 'tolerant', that is, as the opposite of militant, based on whether they allow party bans (pp. 22–24, 27–32). Moreover, even if a country has previously employed militant measures, this does not necessarily prevent it from later developing into a non-militant democracy—sometimes precisely in order to break with its militant past—as happened with Greece's rejection of party bans in 1975 (Malkopoulou 2021). *Contra* Thiel and Müller, it is therefore far from useless to distinguish between militant and non-militant democracies. In fact, the term 'militant democracy' should be used with caution and with an awareness that attempts to categorise countries as such on a permanent basis are misguided, a topic that is discussed in more detail in Chapter 7. At this juncture, it is sufficient to recognise that not all instruments, institutions, and laws designed to defend a democratic regime are of a militant nature; and therefore, not all democracies can be described as militant. Alternative approaches do exist.

1.4 A principled account of militant democracy

Despite its precision and analytical detail, the legal account of militant democracy has significant limitations when it comes to explaining the multiplicity and diversity of ways in which democracy can be defended. Firstly, this account assumes that militant democracy is solely about rights restrictions in the legal sense. Consequently, it is described as a distinctive *legal framework* that is relevant only for constitutional design and court-mandated decisions. Secondly, and relatedly, because it is tied to specific legal practices, this account concerns only actions undertaken by state authorities –specifically legislators, who design such laws, executive authorities, who apply them, and courts, who interpret and dispense them. Thirdly, this account may accurately describe and clearly prescribe practices, but it fails to address the normative underpinnings of militant democracy, which have fundamental implications for understanding, accepting, and interpreting these practices. In other words, the legal account cannot capture the substantive logic of militant democracy: the principles on which it is based. The focus in this section is not on the justifications of militant democracy, which will be discussed in detail in

the next chapter. Rather, the aim here is to identify a comprehensive theoretical framework that can capture the essence of militant democracy and its underlying motivations. The question, then, is: what normative rationale unites militant democratic measures? Existing accounts have yet to provide a systematic answer.

In light of the above, current theorising on militant democracy needs two things. Firstly, a more particularistic definition is required which emphasises the specificity of militant democracy and differentiates it from other forms of democratic self-defence. The reason for this is, on the one hand, to enhance its comparable, operationalisable, and measurable dimension, and thereby guide empirical research. In the absence of such an emphasis on its particularity, it is not possible to identify and recognise the militancy inherent in the diverse practices and strategies of democratic self-defence. As a result, discussions are misguided and fall prey to a number of conceptual and empirical fallacies, such as those identified earlier. But the main reason for conceptualising the specificity of militant democracy as an ideal type of democratic self-defence, on the other hand, is to establish an analytical platform that allows access to the underlying normative ideas that inform militant democracy. For example, there is a particular normative understanding of 'democracy' that shapes militant democratic approaches; without distinguishing and reflecting on this, there is a risk of losing sight of what exactly is being defended. A clear view of the norms and institutions that a democratic society seeks to safeguard not only informs the manner in which they should be defended, so that they do not end up doing more harm than good, but also provides insight into the positive vision that underpins that defence. It is therefore necessary to narrow the conceptual boundaries of militant democracy within the broader sphere of democratic self-defence.

Secondly, it is necessary to define militant democracy in a way that is adaptable to spheres outside the law. Why so? One might wonder why a well-functioning militant democracy that uses the law to remove antidemocrats from public life would leave behind possibilities for non-legal militant action. Put differently, what remains for a militant-democratic *politics* once militant-democratic *laws* have effectively contained antidemocratic actors? The answer is: a great deal. First of all, the existence of a militant constitution does not guarantee its successful and timely use. It is naïve to place all hope for defending democracy in the hands of constitutional authorities. Various other actors within the political and societal spheres must take action. The question is then how to categorise democratic self-defence actions by, for example, civil-society actors, some of whom may choose to *act* militantly and others not. This indicates that qualitative differences can be observed not only between

the laws of democratic self-defence, but also between initiatives undertaken by actors other than the state authorities responsible for implementing militant laws. Even a single act by a private individual can be performed in the spirit of militant democracy. Hence, militant democracy functions not only as a constitutional doctrine or legal strategy, but also as a conceptual framework that informs public actions and behaviours in a more general sense. It is therefore necessary to recognise the broader scope of militant democracy, which encompasses initiatives and actions that extend beyond the confines of the law.

But what does militant democratic action really mean? In order to understand both its narrow conceptual meaning and its broad institutional scope, we must first reconstruct the central logic that animates militant democracy. Three questions guide this inquiry:

- How are the actors targeted by militant democratic action identified?
- What distinguishes militant democratic action from other forms of democratic self-defence?
- What does militant democratic action do to its targets?

The first question is widely disputed. What action or pattern of action, utterance, value statement, abuse of rights or other qualifies someone as a 'threat' from a militant democratic point of view? Much has been written about the difficulty of identifying actors who require forceful intervention. Scholars have emphasised the risk of having too broad or too narrow an antenna for considering an actor dangerous (see Rijpkema 2019), and the inadequacy of looking at individual acts rather than their combined effect (Scheppele 2013). Critics argue that militant democrats define popular threats in such an arbitrary way that they can continually include an ever-expanding range of actors (Invernizzi Accetti and Zuckerman 2017). They also stress the risk of false negatives – overlooking antidemocratic actors—and false positives—mistaking democrats for democratic enemies– which may lead to hypovigilance and hypervigilance respectively (Schedler forthcoming). Studies of social media regulation suggest that interventions often struggle to identify target actors because online content is often anonymous.[4] Regardless of these difficulties, what all these actors and their acts have in common as a defining criterion, is that they are identified as *extraordinary* threats. They are not the usual type of political opponent, but an exceptional, abnormal contender for power and influence. In other words,

[4] I thank Malin Holm for this point.

militant democrats treat 'dangerous' parties as an emergency—they see them as 'out of the ordinary', a threat to the existential structure of a democratic state.

This line of thought is indebted to Schmitt's principled distinction between an inviolable core of values worthy of protection and the designation of those who oppose these values as 'enemies', i.e. unconventional adversaries who threaten the very existence of these values. This Schmittian distinction, which will be discussed in more detail in the next chapter, has cast its long shadow over the normative dimension of militant democracy. It provides the key to understanding how antidemocrats are defined: in terms of a substantive and value-based conception of democracy. In most cases, this conception is more or less explicitly stated in a constitution or other binding legal document, and further enriched by subsequent jurisprudence and perhaps customary law. There are significant differences in how democracy is understood in these documents: as an anti-totalitarian or anti-fascist regime, as a regime based on human rights or freedom, or as the rule of law. Since these are all normative descriptions that carry enormous moral (and some would add ideological) force, determining who threatens democracy depends on prior value commitments. Some would disagree and argue that values need not necessarily be involved in deciding who is an antidemocrat. Alternatively, democracy can be seen as a set of procedures and antidemocrats as posing a threat to those procedures. But militant democracies do not punish actors for violating democratic procedures as they would punish other procedural violations. The punishment for violating democratic procedures is disproportionate (e.g. restriction of fundamental rights) precisely because the procedures in question are not merely technical: they embody certain sacrosanct democratic values. Indeed, both procedural and substantive definitions of democracy are grounded in values, procedural and substantive values respectively; to consider that someone is actively opposed to these values necessarily involves a value judgement. In conclusion, the targets of militant democratic action are seen as *extraordinary threats* to a set of democratic values.

The second question asks us to explain what distinguishes a militant democratic practice from a non-militant one. According to the legal account, a militant democratic practice is essentially a practice of restricting rights and freedoms, i.e. an *exceptional practice* of suspending rules and customs that are otherwise religiously upheld in a democratic community. Indeed, militant democrats act by making exceptions to fundamental freedoms, especially the freedom of expression and assembly, and the right to participate in elections or government. They do this, for example, by banning political parties or censoring the public speeches of democracy's enemies. Because these enemies are

considered to be extraordinary, the measures used to combat them deserve to be exceptional too. This is similar to the notion of emergency powers, the idea that unconventional methods must be resorted to as a matter of life and death for democracy—with a sense of 'urgency' often attached to them. Militant democracy thus operates within a prism of exceptionality, both in its identification of threats and in its means of action. But what then is the general effect of using such exceptional means of action?

This leads us to the third question. Banning parties, not admitting antidemocratic actors to election contests, not allowing them to receive state funding, restricting freedom of speech, closing associations, disenfranchising them, depriving them of citizenship—what do these measures produce? They produce *exclusion*: the exclusion of groups and individuals from public life or from the political community as a whole. Antidemocrats are excluded from parties, from elections, from parliament, from parliamentary committees, from local councils, from government coalitions. They are excluded from talk shows, news coverage, public events, neighbourhood meetings, social media platforms. Exclusion can, of course, also occur in other ways: because a party does not meet the technical eligibility criteria for participation in elections; because one is a minor and does not have the right to vote; or because one is a foreigner and does not have citizenship rights. These, however, are not exclusions produced by militant democracy. Exclusion as a result of militant democratic practice has a crucial qualitative difference: it is triggered by opinions, ideas, and (non-violent) actions, not by status or origin. The grounds for exclusion are found in oral speeches (public and sometimes private ones, tracked down by intelligence services) and in written documents. They are gathered by observation and documentation. Militant democratic exclusion is therefore not based on passive characteristics, but on characteristics that involve agency, such as making a (hateful) speech or taking part in a (racist) action. It is a consequence of the opposition that such ideas or actions signal to the political values deemed essential for democracy's existence.

Taken together, these observations allow us to formulate a more abstract account of militant democracy, one that rests on three pillars: the identification of *extraordinary* threats to a value-based conception of democracy; the making of *exceptions* to ordinary democratic rules in order to combat these threatening actors; and the production of their *exclusion* from the public arena. Note here that the criteria used to identify these threats rest on predetermined democratic norms, and that the mechanism that produces exclusion involves a value judgement. We thus arrive at a more informed conception of militant democracy as *an exceptional practice of exclusion of actors conceived as*

extraordinary threats to democracy based on a value judgement that draws on predetermined democratic norms. We can call this 'the principled account of militant democracy'. It can be contrasted with 'the legal account', which merely associates militant democracy with pre-emptive restrictions on rights *tout court*.

On the basis of the principled account, we can now move on to examine which rules and attitudes can be classified as militant democratic, first in the legal domain but importantly also outside it. Some of these practices—the ones that concern laws and prohibitions—match directly the legal account. But as we move towards the non-legal sphere, to strategies adopted by democracy-defending political parties and civil-society actors, the inadequacy of the legal account becomes evident. In these cases, a broader principled account provides an important guide for identifying acts and initiatives that fall under the normative paradigm of militant democracy.

1.5 The practice of militant democracy

According to 'the legal account', militant democracy is the restriction of the rights and freedoms of those who work towards democracy's abolition. It is therefore often seen as primarily a matter of law, as a constitutional and legal doctrine. This tendency is partially indebted to Loewenstein's own legal and practice-oriented approach, which offers a useful starting point for examining militant democratic measures.

In Loewenstein's formulation, militant democracy is indeed a principled commitment of democracies to survive by enacting a range of 'legislative and administrative measures' (Loewenstein 1937a, p. 431). These are presented in a 'Summary of anti-fascist legislation', where he groups them together in fourteen sections (Loewenstein 1937b, pp. 644–656; see also Loewenstein 1938). Fascist movements could be stopped, he argued, by (a) concentrating power in the executive, (b) using emergency powers, and (c) passing ad hoc legislation. The latter should aim to restrict the rights of expression, participation, and assembly. They included laws that banned parties and militias, prohibited political uniforms, restricted parliamentary immunity and free press, denied individuals the rights to assembly, opinion, and speech, as well as access to public office and even threatened them with involuntary loss of citizenship (see also Loewenstein 1938). He also suggested the establishment of a political police to monitor political developments.

Loewenstein did not develop a normative framework that provided a coherent justification for all these measures; as a result, his survey of anti-fascist legislation is an insufficient guide for recognising and designing militant democratic tools. First, as others have noted, his categories are historically dated (Thiel 2016a, pp. 400–401). For example, many measures listed by Loewenstein, such as the prohibition to illicitly produce firearms or form private paramilitary armies, have since been inserted into criminal law and are not considered part of a militant democratic toolkit anymore (Tyulkina 2015, p. 42). Second, the measures described by Loewenstein are loosely sorted and do not follow strict criteria. As a result, contemporary scholars are either too constrained if they follow Loewenstein's list, or the opposite, they can fall back on his broad criterion—of 'fighting fire with fire'—to extend this list indefinitely without further checks (Rijpkema 2018, p. 30).

Another attempt to concretise the content of militant democracy was made by Thiel (2016a), who grouped legal provisions and regulations that exist in various countries today as 'clusters' based on their 'factual connectedness' and loose correspondence to Loewenstein's list. It goes without saying that these categories are primarily inspired by the German Basic Law of 1949, which is considered the most exemplary militant democratic constitution. With the German example as a guide, Thiel (2016a, pp. 401–408) identifies seven such clusters:

1) constitutional protection of an inalienable democratic core;
2) treatment of extremist parties and their members;
3) measures against the misuse of fundamental rights and freedoms;
4) measures against institutions of the state that corrode democratic structures;
5) administrative measures to protect the constitution;
6) 'state of emergency' measures;
7) other uncategorised measures.

Some of these measures are more consistent with 'the principled account' of militant democracy discussed above, which stipulates that militant democratic practices are 'exceptional' and 'exclusionary'. Moreover, each carries distinct normative and moral costs that warrant closer examination. In the discussion that follows, I therefore regroup these measures according to their proximity to this account, beginning with those that most clearly exemplify militant democratic practice.

1.5.1 Restrictions of political rights (party bans)

Today, militant democracy is most often associated with the dissolution and outlawing of political parties that are considered inimical to the democratic spirit of the constitution. Party bans are generally regarded as the most orthodox instrument of militant democracy. In the German Basic Law, Article 21(2) states that political parties that seek to abolish the 'free democratic basic order' or to endanger the existence of the Federal Republic of Germany may be declared unconstitutional by the Federal Constitutional Court. Other constitutions add similar criteria: the pursuit of a totalitarian regime (Chile), disrespect for the constitution and the law (Spain), conflict with human rights (Turkey), the existence of a fascist-type of organisation (Austria), and so on. Other criteria are sometimes included—such as opposition to the territorial integrity or the secular nature of the republic—but these are not directly relevant to democracy (Thiel 2016a, pp. 403–404). Indeed, party bans that prohibit opposition to the 'institutional' foundations of the state should be distinguished from those that prohibit opposition to the democratic system as a whole (Bernatskyi 2024).

As regards the implementation of such bans, the legal competence is almost always in the hands of a higher judicial authority, namely a constitutional court. A declaration of unconstitutionality means that a party—and often any successor party—cannot take part in elections, but it rarely means that the party itself is dissolved, i.e. abolished and not allowed to exist. Nor are party representatives, candidates, or members deprived of their right to vote and be elected (Thiel 2016a, p. 405), although this would not contradict either the principled or the legal account of militant democracy. In some cases, regulations are even softer and only provide for a party to be banned from a particular election (Israel). Other types of restrictions on parties include the removal, suspension, or otherwise limited access to state resources; these are based on a militant logic when they are justified as punishment for speaking or acting against democratic values. By contrast, when used as a sanction for a party's financial misconduct, cuts to party funding are not necessarily a militant tool (see also Chapter 3).

Party bans remain controversial for a number of reasons. Parties are recognised as deserving special constitutional protection because they are fundamental to the democratic system. Banning a party deprives part of the electorate of the possibility of freely choosing its representatives and securing representation in parliament; it thus restricts their right to free suffrage and equal representation (Preuß 2002, p. 106). Normatively, parties are recognised

as the cogwheels of democratic representation: they organise political competition along ideological principles and shared visions, coordinate collective action, link society to government, articulate representative claims, transform them into policy ideas, set political agendas (Urbinati 2015, p. 481; Rosenblum 2010; Muirhead and Rosenblum 2020) and, importantly, provide public justifications, i.e. broadly acceptable reasons for new laws, decisions, and policies (White and Ypi 2016; Bonotti 2017; Müller 2021). Moreover, parties can be seen as an extension of the electorate: collective entities tasked with channelling citizens' voices and holding governments to account. Just as voters' right to vote is disconnected from the content of their vote, parties should have an inalienable right to stand in elections (Malkopoulou 2020). This means that conditioning a party's existence or participation rights on the content of its political message violates the inalienable right to political participation that every democracy must grant its parties. For these reasons, party bans remain a controversial instrument of democratic self-defence, given the high normative costs they entail.

In any case, one thing is clear: party bans are a typical instrument of militant democracy, according to both the legal and the principled account of militant democracy. They involve a restriction of the rights of certain actors, which is carried out preventively in order to defend a democratic system (legal account). They also involve an 'exception' to the fundamental rights of freedom of assembly and participation, and an 'exclusion' of collective entities from the public arena when they are deemed to pose an 'extraordinary' threat to democracy (principled account).

1.5.2 Restrictions of civil rights

Another category of restrictions that is key to militant democracy concerns the civil rights—freedom of association and assembly—of non-party actors. Although many countries include them in the above-mentioned clauses on party bans, the possibility of banning movements, political groups, associations, and other organisations must be (and often is) considered separately, because they do not enjoy the special protection afforded to parties qua fundamental units of democratic representation. It is characteristic, for example, that in most legal systems associations, which meet the same criteria of unconstitutionality as political parties, can often be banned directly by the executive (e.g. the German Minister of the Interior) without the need for judicial involvement. For example, Art.9(2) of the German Basic Law, stipulates

that associations whose aims or activities are, inter alia, directed against the constitutional order are to be prohibited, and defers the ban procedure to the ordinary law on associations (Thiel 2016b, p. 122).

In addition to freedom of association, militant democratic constitutions allow for the forfeiture of a whole range of civil rights if they are used (or, as the legal text puts it, abused) 'to combat the free democratic basic order'. In addition to freedom of assembly and association, these include freedom of expression, press, and teaching, as well as the right to private correspondence, property, and asylum (Article 18 of the German Basic Law). In most countries the list is not so extensive, and even in the German case this clause has never been invoked (Tyulkina 2015, p. 43; Thiel 2016b, p. 118).[5] However, two of these rights are more frequently mentioned and have been the subject of extensive debate.

The first is freedom of speech, which in a militant democratic context is often restricted in order to contain extremism. Hate speech laws are common in many jurisdictions. However, not all restrictions on public speech qualify by default as instruments of militant democracy. For example, the prohibition of speech that incites violence or otherwise constitutes criminal conduct may fall outside the scope of militant democracy, because violence or other forms of aggression against groups or individuals are regular crimes, regardless of whether they carry political content or not. In this context, the US formula, whereby speech can be prohibited only if it incites or produces 'imminent lawless action' (Tushnet 2016, p. 417), falls outside the scope of militant democracy.

The 'principled account' helps elucidate this distinction between hate speech laws, which are common in tolerant democracies, and antidemocratic speech laws, which are common in militant democracies: the former are typically designed to protect potential victims, and do not consider speakers to be extraordinary threats to the democratic system as a whole. In contrast, legislation that prohibits antidemocratic speech is concerned with abstract content that is either explicitly or implicitly contrary to the principles of democratic government. Similarly, incitement to conspiracy, terrorism, or sedition—which involves disorder or violence directed at public authorities—is also prosecuted in non-militant democracies. In such cases, for example in the US, it is the intention of convincing others to commit crimes of violence that

[5] See, however, the petition 'Wehrhafte Demokratie: Höcke stoppen' signed by 1.7 million German citizens, calling for this clause to be used against Björn Höcke, the leader of the AfD in Thuringia, where the party came first in the 2024 regional elections, see https://aktion.campact.de/weact/hocke-stoppen/teilnehmen.

triggers prohibition, rather than the extraordinary threat to the democratic system (Tushnet 2016, pp. 416–418). Militant democracies may also prohibit such speech. However, what distinguishes them from other democracies is that they prohibit speech not with regard to how it enables violence, but because its ideological *content* contradicts basic democratic norms.

A second category of individual rights, whose restriction is a topic of considerable debate between militant democrats is disenfranchisement, temporary loss of citizenship, and denationalisation. Many countries remove the voting rights of convicted prisoners because they are considered to have forfeited their 'moral authority' to engage in community affairs, as an additional form of punishment, or as a means of civic education. In certain instances, however, individuals who have committed acts of political violence are perceived to have themselves ruptured the civic bond. Consequently, there is a sense of reciprocity when a democratic state, driven by security concerns, seeks to disown them and their actions (Müller 2019b, pp. 21–23).

In this context, the practice of denationalising convicted terrorists (except in cases where they are rendered stateless, which is prohibited by international law) has emerged. The legitimacy of this approach is open to question, even when applied to convicted criminals. Its use within a framework of militant democracy also gives rise to controversy. According to Müller, to completely revoke all rights and thus condemn to a state of 'civic death' an individual who espouses antidemocratic principles is not a proportionate response to the threat in question (Müller 2019b, p. 20). The majority of individuals do not present a significant existential threat to a democracy. Other concerns also arise, pertaining to individuals' autonomy, their legitimate interest in political participation, their prospects for non-domination, and their potential for future re-integration (Müller 2019b, pp. 23–24). But, if anything, disenfranchising individuals because they are 'extraordinary' threats to democratic values produces 'exclusion' and constitutes an 'exception' to fundamental rights, thereby rendering it recognisable as a militant democratic practice.

1.5.3 Constitutional entrenchment

Another instrument frequently associated with militant democracy are eternity clauses, which are constitutional provisions that cannot be repealed or amended, even if they meet the procedural requirements for such changes. Examples of eternity clauses include constitutional rights such as the right to human dignity or the republican form of government. Indeed, the principle

of constitutional unamendability is often used to safeguard vital elements of a pluralist democracy, such as multipartyism, minority rights, certain human rights, the rule of law, or republicanism. Article 79(3) of the German Basic Law stipulates, for example, that the federal division of the German state, the principles of human dignity, popular sovereignty, and the rule of law are exempt from amendments (Thiel 2016b).

However, even if eternity clauses are intended to complement militant clauses in safeguarding liberal democracy, their legitimacy and effectiveness are questionable. Suteu (2021, pp. 34–50) identifies a number of problems with their judicial enforcement that may cast doubt on their democracy-enhancing function—a set of problems that, incidentally, may also apply to militant democratic legislation. First, unconstitutional amendments often rely on under-defined concepts—for example 'rule of law'—and involve abstract commitments that must be interpreted by apex courts; in the process, they reflect judicial ideology and may be subject to abuse. In addition, the issues they entrench—for example, 'republicanism'—may have been hotly contested at the time of entrenchment and as such do not reflect a consensual popular will. They also depend on a wider web of constitutional provisions that may contradict them. For example, they may entrench an official language and religion, leaving the rights of linguistic and religious minorities in the void. As such, eternity clauses may end up sustaining a discriminatory status quo. Thus, they may diverge from their actual promise, even if they are intended to protect features of the democratic system.

Eternity clauses frequently co-exist with the possibility of party bans, as observed by Weill (2017). The two mechanisms share historical roots in that they both became prevalent after the Second World War as impediments to antidemocratic forces. They also share a counter-majoritarian disposition, since they set limits to free partisan competition and lawful constitutional change, respectively. Indeed, Weill posits that they can be viewed as reflecting and reinforcing one another: while party bans serve as 'front guards' of the constitutional system, preventing those who seek to subvert it from ever accessing legislative power, eternity clauses act as 'rear guards' that take effect if the ban fails and a constitutional amendment is passed, in which case they invalidate it (Weill 2018, pp. 961–964).

Nevertheless, despite their compatibility and reinforcing effect, the two mechanisms also exist separately. To illustrate, numerous countries, including Greece, may have eternity clauses, but reject party bans (Hein 2018, p. 40). In fact, the rationale behind the implementation of eternity clauses is not a universal or uncontested tenet of militant democratic theory. Like party bans,

eternity clauses may not necessarily safeguard democracy, but rather serve to uphold specific fundamental characteristics of the state. For example, in Italy, Turkey, and France, eternity clauses protect the secular form of government (Thiel 2016a, pp. 401–402). In such cases, they become analytically detached from democracy as such and do not contribute to its preservation. Consequently, in contrast to party bans, they are not the default mechanisms of militant democracy, which is why Loewenstein mentioned them only in passing (Loewenstein 1937a, p. 432; Weill 2018, p. 963). The view that eternity clauses are a *sui generis* instrument that does not necessarily fit the toolkit of militant democracy is not uncommon. Fox and Nolte famously classified systems of democratic self-defence according to two axes, the 'militant/non-militant', which referred to the presence or absence of rights restrictions against antidemocratic parties, and the 'substantive/procedural', which referred to the presence or absence of eternity clauses. The use of 'militancy' and 'unamendability' as two distinct axes in Fox and Nolte's typology illustrates that eternity clauses are seen as independent from the logic of militant democracy.

Constitutional entrenchment is not coterminous with militant democracy, on both the legal and the principled account (for an objection, see Schupmann 2024). In relation to the former, it does not involve a restriction of rights or, in principle, an exception to a regular distribution of rights. Eternity clauses may limit the right of democratic majorities to amend the constitution, but they do so only indirectly, by constraining the exercise of constituent power rather than by restricting individual rights. Nor do eternity clauses produce 'exclusion' from the public arena. They do not prevent any actor from contesting or winning elections; they only limit the laws that elected majorities can enact. It could be argued that this disincentivises antidemocrats from standing in the first place, but there is no direct exclusion caused by eternity clauses as such. Therefore, they cannot be classified as a classic militant democratic instrument under the 'principled account'.

1.5.4 Other measures

Thiel's list includes a number of other militant measures. Supermajority requirements, that is, rules that prohibit certain policy changes by ordinary majorities, can provide an alternative way of entrenching certain aspects of democratic governance. The justification for such requirements resembles that of constitutional unamendability. But whether they serve to defend democracy depends on the content of the specific clause to which they are attached. For

example, they do so when they protect a clause establishing universal suffrage from amendment by a simple majority. If a supermajority requirement applies to *any* amendment of the constitution, it cannot be seen as protecting democracy as such, but the status quo in general. Moreover, as with eternity clauses, because they do not produce exclusion as such, supermajority requirements leave the terrain of militancy and move towards the more tolerant paradigm of democratic defence, which is discussed in Chapter 3.

Another proposed measure is administrative mechanisms for the protection of the constitution, such as the German Federal and State Offices for the Protection of the Constitution, established in 1950, a special investigative unit tasked with gathering intelligence on actors and activities directed against the free democratic basic order (Thiel 2016b, p. 131–133). As Tyulkina (2015, p. 78) reports, this mandate was apparently unspecified and therefore too broad, allowing for excessive discretion for decades. Although it poses risks of misuse, this measure does not entail direct exclusion. Yet, to the extent that it contributes to the enforcement of party bans and other rights restrictions, it can be understood as a secondary militant democratic mechanism.

In addition, constitutions may provide for the possibility of declaring an 'internal state of emergency' if the state faces an extraordinary internal threat (for example, to its free democratic basic order). This would allow the executive to temporarily assume increased powers or short-circuit legislative procedures. It is equivalent to an external state of emergency caused by war or a natural disaster, and as such is subject to the well-known criticisms of 'states of exception': that they are arbitrarily prolonged and risk violating fundamental rights (Agamben, cited in Thiel 2016b, p. 138). Again, to the extent that such a 'state of emergency' permits acts of exclusion and exception to basic rights to counter extraordinary democratic enemies, this too can be seen as a militant democratic mechanism.

Some constitutions also provide for a so-called 'duty of allegiance' to the constitution for civil servants. For example, Article 33(5) of the German Basic Law makes access to the civil service and the exercise of public office conditional on such a duty. Following a controversial decree on the non-employability of radicals in 1972, this Article has been interpreted to include an obligation not only to act in the spirit of the constitution and to refrain from activities hostile to it, but also to actively defend and promote its basic principles. Making such a hard type of loyalty a formal requirement for employment in the public service became a basic method of screening out communists in the 1970s and was criticised, among other things, for creating excessive loyalty requirements that did not even apply to elected political leaders (Thiel 2016b,

pp. 130–131). It also placed an excessive burden on individuals applying for public-service positions and was used extensively, perhaps to compensate for the harder-to-justify party bans (Tyulkina 2015, pp. 78–79). 'Duty of loyalty' provisions exclude individuals, on the basis of whether their activities are in line with abstract constitutional values. They add an exceptional normative criterion to general rules of eligibility, which must normally be universal and non-discriminatory. In this sense, they are closer to the logic of militant democracy than to its alternatives.

Most militant democratic measures have come under criticism, not only on grounds of principle, but also in terms of the effects they produce once implemented. Certainly, a democracy does not have to have all of these measures to become militant. As noted above, some of them, such as party bans and restrictions of rights, may be more clearly associated with the 'principled account' of militant democracy, while mechanisms such as eternity clauses and supermajorities may be more or less distant from it. In all these cases, however, militant democracy is manifested through legal rules and regulations. It is adjudicated by domestic constitutional or supreme courts, and often reviewed by international human rights courts. But is militant democracy really a doctrine that only manifests itself through law? Can we not see it in the use of non-legal instruments that follow the same logic and serve the same purpose as the legal instruments typically associated with militant democracy? In what follows, I question the habit of 'reading' militant democracy only through the lens of law and explore its non-legal potential.

1.6 Militant democracy beyond the law

One may reasonably question whether restricting the rights of those who espouse antidemocratic views represents a sufficient or appropriate response to the challenge of defending democratic processes. In general, legal responses, militant or not, are inadequate for addressing the problem of democratic subversion. Democracy grows and declines in the context of political contestation and social interaction. It is within these arenas, the political and the societal, that antidemocratic pressures are experienced and resistance to them starts to grow. In essence, democracy is unsustainable in the absence of its 'critical infrastructure' (Urbinati 2015; Müller 2021), intermediary powers that operate between the state and its citizens, institutions through which citizens become active and exert political influence: political parties, professional media, social media, and civil-society organisations. These agents face similar dilemmas to

those experienced by state authorities tasked with defending democracy. Who constitutes a threat to democracy, and when is the optimal moment to act to defend it? Which actions are appropriate, and how are they justified? These questions are being debated in party conferences and media-company board meetings, just as they are in government ministries and in courtrooms.

A disclaimer is necessary at this juncture. There are important differences between state and non-state authorities when it comes to implementing measures to safeguard democratic processes. Non-state entities are not bound by moral or legal obligations to defend democracy to the same extent that state authorities are. Furthermore, they may have informal interests that could potentially conflict with the objective of protecting the public's investment in democracy. In certain instances, a private media company may appear to align with the public interest by taking action to restrict hate speech. However, this may be driven by a desire to enhance its public image and, ultimately, its profitability. A case in point is Facebook, which established the Facebook Oversight Board following the Cambridge Analytica data scandal.

In addition to having a different set of responsibilities and motivations, non-state actors occupy a different position in society and exert varying degrees of influence. Some entities may possess both a global standing and substantial resources, which affords their decisions considerable influence. By contrast, other actors, such as individual citizens, may have only a limited impact; a decision to exclude a neo-Nazi family member from Christmas dinner, for instance, is unlikely to have any significant effect on broader processes of democratic subversion. With these caveats in mind, it remains valuable to distinguish between non-state actions that are militant and those that fall within other paradigms of democratic self-defence. The 'principled account' identifies practices beyond the scope of constitutional and public law as militant insofar as they reflect the same logic: diagnosing the threat as extraordinary, resorting to exceptional measures, and producing exclusion.

Firstly, it is possible to identify militancy within the context of party politics. A typical example is the frequently employed, but also fiercely debated, *cordon sanitaire*, which is the practice of deliberately excluding 'dangerous' parties from regular forms of inter-party engagement. Following this logic, when antidemocratic parties are in opposition, other parties refuse to debate them on public platforms. When they are elected to parliament, democratic parties object to forming government coalitions with them or even voting alliances on individual issues. Other forms of militant democratic politics include opposing antidemocratic candidates for positions on committees or governing bodies,

refusing to answer their questions and respond to their remarks in parliamentary deliberations, and even walking out of the room when they take the floor. If we adopt 'the principled account' of militant democracy, all these responses can be clearly described as militant democratic: they constitute exceptions to ordinary politics to confront extraordinary adversaries, and produce *political* exclusion that mirrors the institutional exclusion produced by party bans.

The logic of defending democracy through exclusion is also present in the wider public sphere, outside constitutional and formal politics. This refers, on the one hand, to the way in which 'dangerous' parties are treated by the media, including social media. In this context, a militant logic dictates a special form of self-censorship that differs from the usual ways of editing content in the media. It consists of refusing to invite these parties to political talk shows or to interview them, contrary to internal protocol, precisely because they are seen as an extraordinary threat to the democratic system. State-regulated media, especially public broadcasters, are of course subject to stricter requirements to protect freedom of expression, fair airtime allocation, and proportionate treatment of political parties. For example, for these reasons, the state-owned Hellenic Broadcasting Corporation (ERT) was forced by the national regulatory authority to continue broadcasting the parliamentary speeches of the neo-Nazi party Golden Dawn in the period 2016–2019 (Malkopoulou 2021, p. 197). In contrast, if the country had a militant democratic framework, the public broadcaster could have exceptionally restricted those broadcasts on the grounds that they posed an extraordinary threat to democratic values. But even without violating any formal airtime rights, for example in the case of unelected parties or individuals, public and private media act in a militant democratic manner when they deny communication and visibility to popular actors who are seen as opposed to democratic values.

Even more controversial is the adoption of a militant democratic stance on social media (Holm 2021). Far-right groups and racist movements have successfully used digital platforms, both mainstream ones such as X (formerly known as Twitter), Facebook, YouTube and Instagram, and alternative ones such as Parler, Gab, and Telegram (Nguyen and Scott 2021). The lower threshold of digital platforms for entering public conversations and disseminating political opinions to a wide audience may even explain the emergence and success of these parties (Daniels 2009). More recently, major social media platforms have been suspending accounts of individuals and groups on the far right, or 'deplatforming' them, that is, preventing them from using a platform to share content. This has even included high-profile politicians such as US President Donald Trump, whose social media account was removed following

the storming of the US Capitol in January 2021—with Facebook announcing in June 2021 that it was suspending Trump accounts for two years (Kraus 2018; Rogers 2020). In addition to individual user accounts, new rules may allow for the temporary or permanent blocking of entire alternative platforms. If such exclusions are justified in relation to democratic values, if targets are identified by their antidemocratic content, and if exceptions to regular rules of inclusion are legitimised as necessary to protect democracy from extraordinary threats, then such practices fall squarely within the normative terrain of militant democracy.

Finally, it should be possible to recognise militant democracy in civil society, in the way non-governmental organisations, cultural groups, educational institutions, and other civil-society actors deal with 'dangerous' parties and individuals. Their acts are militant when they aim to restrict the effective de facto exercise of freedom of expression and assembly—they are acts of *indirect* restriction of rights. Bourne (2023, p. 750) describes such 'intolerant' behaviour by civil-society actors as 'coercive confrontation'. A characteristic example analysed by Laumond (2023) is the case of anti-AfD (*Alternative für Deutschland*) activists in Germany, who embarked on a deliberate strategy of obstructing AfD party conferences, specifically targeting the owners of venues where AfD planned to hold meetings. Threats of physical violence, damage to property, and actions damaging their business were directed to venue operators, resulting in the AfD having to contact 170 venue owners to secure a venue for its Berlin party convention. But even then, the event was cancelled in January 2020 by the venue owner, who had been subjected to physical and telephone threats. The Hambacher Schloss and other cultural venues in Germany, both public and private, have subsequently adjusted their visitor rules and regulations to prevent far-right groups from using these venues.

Another tactic, used by the anti-Nazi group 'Clowns against Nazism' in the Swedish municipality of Ludvika, involved removing and vandalising posters of the Nordic Resistance Movement (NRM) and dumping cow manure in front of the stage where the NRM was going to hold a public speech (Lundberg 2021, p. 187). In Greece, the professional association of employees of the state-owned TV channel ERT decided to call short strikes every time ERT was legally obliged to broadcast parliamentary speeches by the neo-Nazi party Golden Dawn, essentially blocking these broadcasts (Malkopoulou 2021, p. 197). Such exceptional strategies by civil-society actors aim to silence, restrict participation, and limit the visibility of extraordinary 'dangerous' actors. As a result, they impede these actors' effective exercise of freedom of speech and

assembly and actively produce exclusion from the public arena. For these reasons, they are consistent with the principled account of militant democracy.

Finally, individual citizens can also act as *vigilant* militant democrats, when they take initiatives that result in the restriction of the rights of others (Müller 2019b, p. 15). These are similar to the tactics of organised and collective civil-society activity, except that they are now carried out by individuals qua 'ordinary citizens' acting on their own initiative. They can involve simple acts, such as refusing to speak to one's neo-Nazi neighbour. This may not result in a violation of the latter's rights, but nevertheless produces social exclusion with profound psychological consequences—a phenomenon that psychologists have aptly described as 'ostracism' (Williams 2007).

Individual militant tactics can also take the form of civil disobedience, i.e. consciously and publicly breaking the law in order to bring an injustice to the attention of the majority. This is even codified in the German Basic Law as 'a right to resist any person seeking to abolish this constitutional order if no other remedy is available' (Art.20 [4]).[6] Of course, there are risks here, such as what guarantees that individuals will correctly assess the necessity of resistance, since they are accountable to no one and, crucially, to what extent they are willing to discontinue their resistance if the majority does not agree with their view of injustice (Müller 2019b, pp. 27–31). Indeed, 'DIY militancy' faces a crucial challenge: distinguishing and defending widely shared democratic essentials from other matters of justice on which there is more disagreement (Müller 2022, pp. 92-93). One way of meeting this challenge is to assign the responsibility for defending democracy to citizens' assemblies, i.e. bodies of randomly selected citizens who are tasked with deciding what action to take against democracy's offenders (Stone and Malkopoulou 2021; Müller 2022). This could ensure a degree of accountability for bottom-up acts of militancy.

But not all actions initiated by individuals to protect democracy are militant. According to the 'principled account', to classify as militant, they must produce de facto exclusion and rights restriction or other exceptions to ordinary treatment for those who pose an extraordinary threat to democratic norms. Citizens' juries are therefore militant only if they produce such an outcome. They may act as juries for courts that decide on rights restrictions or advise state authorities on legitimate targets for such restrictions (Stone and Malkopoulou 2021). But even without such a formal role, citizens become militant only when they act in ways that produce exclusion in defence of

[6] Many legal scholars consider this right to be an outdated remnant of the 1960s with only symbolic power, see Müller 2019b, p. 30.

democracy. When they engage with antidemocrats in a more deliberative and accommodating way, they implement less militant, more tolerant modes of democratic self-defence. This applies equally to organised civil society, traditional and social media, and political parties: it is the nature of their activity vis-à-vis antidemocrats that qualifies them as 'militant' democrats, not the fact that they are engaged in democratic self-defence as such.

1.7 Conclusions

In this chapter, it was proposed that the majority of interpretations of militant democracy are both too expansive and too limited. They cast the net too widely when they include in the concept all actions aimed at defending democracy, irrespective of their intrinsic qualitative characteristics. But they also define its scope too restrictively when they associate it exclusively with legal measures. In order to counteract these tendencies, a classic 'legal account' of militant democracy as a practice of pre-emptive rights restrictions has been contrasted with a 'principled account' that defines its operational logic in more abstract ideal-typical terms. According to this account, the logic of militant democracy entails a process of value judgement that identifies *extraordinary* threats to democracy through their opposition to predefined democratic norms. These actors are subsequently *exempted* from the usual treatment as parties, associations, or citizens, which allows for, but is not limited to, a restriction of their fundamental rights. The objective is to *exclude* them from the public arena or even the political community as such. The principled account demonstrates that militant democracy extends beyond the domain of constitutional politics and legal measures, manifesting itself in the broader political, public, and societal spheres.

Those who adhere to the tenets of militant democracy pursue a laudable goal: to prevent the demise of democratic government. Nevertheless, their actions may also have disruptive effects on democratic life. Although they ostensibly act in the interests of democracy, such actions can appear to conflict with some of its fundamental principles. How can this apparent contradiction be justified? What principled arguments reconcile these seemingly antithetical dimensions of militant democracy? Which conceptions of democracy are put into practice through it? To address these questions, Chapter 2 examines the normative arguments that ground the principle and practice of militant democracy. The concluding Chapter 7 returns to these tensions by examining in greater detail the potential benefits and costs of militant democracy.

2
Justifications of Militant Democracy

2.1 Introduction

The resurgence of militant democracy has attracted the attention of a fair number of scholars, including political and constitutional theorists. While taking stock of older theories of militant democracy, contemporary scholars have produced their own sophisticated philosophical justifications for militancy. In doing so, they have diverged from the more draconian measures proposed by Karl Loewenstein, which is why these more recent theorists can be described as 'neo-militant' (Malkopoulou and Norman 2018). To be sure, the older theories continue to exert significant influence over contemporary discussions. Original justifications of militancy are repurposed, adapted, and integrated with newer ones in highly creative ways. As a result, between the Weimar years and today, militant democratic theories have been expanded, enriched, and diversified.

The main objective of this chapter is to examine the different ways in which established and emerging theoretical perspectives on militant democracy justify the imposition of restrictions on fundamental rights in the name of defending democratic institutions. These theories address a fundamental contradiction inherent to the concept of militant democracy: the limitation of democratic rights in order to preserve the system that protects these rights. How can rights be withheld in the name of these very same rights? This contradiction, which can be labelled the 'puzzle of militant democracy', requires a robust normative grounding to prevent it from becoming an absurdity. This chapter presents a critical examination of the most influential normative arguments that offer solutions to this puzzle. It presents the first classification of theories of militant democracy into three distinct analytical groups, based on the central principles that inform them: hegemony, reason, and harm. These three topoi are illustrated by reference to relevant authors.

The second objective of this chapter is to elucidate how theories of militant democracy conceptualise the object that deserves defence: democracy. Militant democracy is inherently contradictory only insofar as democracy is conceived as an inclusive and pluralistic form of government that guarantees

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maximal inclusion and unconditional freedom of expression and assembly. It may be the case that theories of militant democracy provide an insight into hitherto unexplored aspects of this definition, and offer an alternative perspective on democracy in the process. It is also possible that the concept of democracy as presented in these theories is substantially different. In light of this apparent contradiction, it is crucial to examine the conception of democracy that militant democrats seek to defend. Hence, this chapter first examines the normative justifications for 'militancy' and then the meaning of the term 'democracy' in militant democratic theories. This conceptual analysis offers a robust basis for assessing militant democratic theories on their own terms.

The imposition of restrictions on civil liberties cannot be justified by a random collection of policy-specific arguments. Given that such restrictions affect fundamental rights, they have to be justified by broader philosophical principles. One such principle is the idea of democracy as a hegemonic regime, to which the following section turns.

2.2 Hegemony-based justifications

Most theorists of militant democracy would immediately recognise the relevance of Carl Schmitt, as he developed the most far-reaching constitutional theory that justifies the suspension of political rights for the sake of protecting substantive principles. In his 1932 article 'Legality and Legitimacy' (2004 [1932]), Schmitt argued that constitutions contain two distinct parts: on one hand, the constitution's essence, an unalterable core that captures a political community's identity and results from the sovereign decision of the constituent power (the people); and, on the other, the constitution's procedural rules including certain individual rights that are subject to amendment or suspension. The idea was that elected representatives should not be able to alter the constitution's core, even if they could amend other parts of the constitution. This core encompassed the democratic character of the state, which was thereby protected from the whims of ephemeral political majorities.

Despite his determination to defend democracy, Schmitt understood democracy as grounded not in egalitarian procedures, but in the identity of ruler and ruled. This identity has an existential quality; it corresponds to the political unity of the people (Schmitt 2008, pp. 264–265), constituted through the distinction between themselves as 'insiders' and others as 'outsiders'. A people that is homogenous and equal in these substantive existential terms

will have codified this identity in the constitution. As a consequence, a constitution would implicitly or explicitly determine who the enemies of a specific political community are. For example, Schmitt argued that the Weimar Constitution (and specifically its Second Principal Part that contained extensive value commitments) established its identity as a *bourgeois Rechtsstaat* that guarantees bourgeois individualism and particularly: 'personal freedom, private property, contractual liberty, and freedom of commerce and profession' (Schmitt 2008, p. 169). Conversely, parties that opposed such bourgeois rights, including the NSDAP and the Communist Party of his time, could be considered as opposed to the Weimar Constitution and had to be contained. But a containment of proponents of anti-constitutional values would run counter to what Schmitt calls the First Principal Part of the Weimar Constitution that was committed to value neutrality and provided institutional guarantees and equal opportunities for 'any goal, however revolutionary or reactionary, disruptive, hostile to the state or to Germany, or even godless' (Schmitt 2004, p. 48). To resolve this contradiction, Schmitt argued that a constitution cannot be a compromise between value neutrality and value assertion and should in fact opt for the latter. In other words, those opposed to the substantive values of the constitution were described as 'extraordinary' threats to democracy, because they opposed the values that expressed the identity of the sovereign people. Rather than ordinary political opponents, they were 'enemies' of a democracy understood as the political unity of the sovereign people, a unity articulated and codified through these values.

Schmitt's interpretation of the dual nature of constitutions—substantive and procedural—opens the way for conditioning the scope of certain rights in order to protect others. Basic rights, i.e. rights that guaranteed the negative liberty of persons such as those protected by the Weimar Constitution as part of its bourgeois political identity, were considered superior. In fact, opposition to these rights would constitute a reason to declare someone an enemy of the constitution. By contrast, rights of political participation, which emanated from democratic legislative procedures, were less central since democracy was a matter of identity rather than procedure. Hence, such rights could be legitimately restricted to prevent actors from violating more fundamental rights and substantive liberal commitments enshrined in the Constitution (Schupmann 2017, pp. 212, 183–184).[1]

[1] To think of Schmitt as a defender of liberal rights runs, of course, counter to our dominant perception of him as an archenemy of liberalism. Highlighting his defence of *economic* liberal rights over *political* liberal rights, Schupmann rightly notes that it is more accurate to label him an 'authoritarian liberal' (Schupmann 2017, p. 175).

Rather surprisingly, given his critique of the Weimar Republic, Schmitt offered specific recommendations of how to shield the Weimar Constitution from its enemies. One solution was to resort to a democratic dictator, i.e. a dictator whose goal is to renew the Constitution in the name of the people who hold the constituent power. A second was some form of civic education. More technical yet crucial guarantees were the constitutional entrenchment of articles that defined the political identity of the state, as well as restrictions on negative majorities and their possibilities to use a no-confidence vote to dissolve the parliament. Finally, he also suggested stronger federalism and party bans (Schupmann 2017, pp. 189–197). The latter were to be understood as an extension of his distinction between basic rights and participatory rights; just as the participatory rights of individuals were dispensable in an emergency, so the corresponding democratic rights of political parties fell outside the realm of substantive and thus defensible rights. It was clear for Schmitt that the emergence of enemies of democracy constituted an emergency, an existential threat for a constitutional state; for this reason the measures to be adopted had to be 'exceptional', involving the suspension of rules of government that applied in ordinary times.[2] And since suspension concerned participation rights and party bans, the principal effect of such actions was 'exclusion'. Alongside the idea of a democratic dictator—and in contrast to the milder policies of federalism and civic education—Schmitt's proposal introduced an authoritarian element into the theory of democratic self-defence.

Schmitt's friend–enemy distinction survived well into the twenty-first century, inspiring contemporary political theory generally and militant-democratic thought specifically. Militant democrats like Benjamin Schupmann explicitly draw on Schmitt to justify restricting political rights for the sake of preserving a people's authentic constitutional identity. For Schupmann (2024), this identity consists in a Rawlsian set of liberal rights. But the first adaptation of Schmitt to contemporary militant democratic theory is found in the work of Stefan Rummens.

Rummens borrows from Chantal Mouffe the Schmittian idea that the sphere of the political is defined by an opposition between friends and enemies, an opposition that is existential in nature. Enemies are seen as a threat to

[2] Note that the term 'exceptional' in this context is not identical to the concept of exceptionality in Schmitt's thought. For Schmitt, an exceptional decision is a political decision 'which cannot be subsumed into any prior norm, and must therefore be established arbitrarily by whoever has the power to enforce it' (Invernizzi Accetti and Zuckerman 2017, p. 186). In contrast, the unavoidable 'exceptionality' of militant democratic measures refers to the suspension of ordinary procedures and political rights, such as the right to participate, which are typically respected within a Schmittian constitutional framework under normal conditions. This suspension can be decided by a court based on a previously established norm, and is therefore not exceptional in the Schmittian sense.

our collective identity and therefore our aim is to engage in an antagonistic hegemonic struggle to eliminate them. By contrast, as Mouffe explains, the political relation with our adversaries who share with us some minimum symbolic commitments, namely the ethico-political values of equality and liberty, is agonistic and non-hegemonic (Mouffe 2005; Rummens 2009, pp. 386–387); it is a conflict about 'the proper meaning and implementation of these shared ethico-political principles' (Rummens 2019, p. 116). On the basis of the above, the gist of Rummens's argument is that 'our *political relationship* with the enemies of tolerance is *qualitatively different* from our relationship with ordinary political opponents' (Rummens 2019, p. 115). Extremist and antidemocratic actors should be seen as enemies within the framework of Schmitt's and Mouffe's friend–enemy distinction. They represent views that are 'incommensurable' with liberal democratic society's view of the basic structure of power relations. These are views that cannot be accommodated within a liberal democratic regime without jeopardising its existence; in this sense, Schmitt's ideas about the 'extraordinary' character of such actors are mirrored in contemporary discussions.

Because the struggle with these actors is existential, it is perfectly legitimate *pace* Rummens to limit the extension of tolerance as a political practice towards them, without compromising the scope of tolerance as a moral value. It is, he says, a matter of realising the 'pragmatic conditions of possibility' (Rummens 2019, p.117) of the value of tolerance. The idea of restricting the extension, and probably also the scope, of tolerance that Rummens suggests mirrors the Schmittian idea of taking action that is exceptional, which is the second characteristic of the principled view of militant democracy.

Rummens advocates restricting the *extension* of tolerance (i.e. the range of actions to which it applies), but not the *scope* of tolerance (i.e. the range of actors to whom it applies), which should remain universal: all members of a political community should be tolerated (Rummens 2019, p. 113). However, he has previously described the 'enemies of tolerance' as existential threats that can legitimately be contained. As a result, the scope of tolerance (to whom it applies) is also being restricted. Moreover, he presents these restrictions on the boundaries of the demos as counter-equivalent to moves that expand these boundaries, such as the enfranchisement of underage voters (Rummens 2019, p. 127). Yet this move fails to register the qualitative difference between expansion qua over-inclusion, on the one hand, and contraction qua exclusion, on the other. Thus, Rummens's account of militant containment produces 'exclusion', which is the third feature of the principled account of militant democracy.

To be sure, Rummens suggests that we should not simply and unequivocally exclude extremists, but adopt an intermediary model of conditional exclusion. According to this so-called concentric model, extremist actors should be accorded sufficient leeway to speak and act when they operate informally at the periphery of the public sphere, but tolerance towards them should gradually decrease the closer they get to the centres of power and formal decision-making (Rummens and Abts 2010). As such, this model places the premium not only on the actual utterances and intentions of the enemies of democracy, which reflect their values and views about basic power structures, but also on their political prospects and their potential to turn them into real policies and laws. This mixed approach addresses some problems, such as over-exclusion, but generates new ones. One problem is that it may incentivise political parties to opportunistically silence their opponents *only* when the political threat has become too hard to thwart by other means. In other words, it transforms extremism from a structural problem for democracies into a pretext for reordering power relations.[3]

Regardless of this additional condition for party bans, however, Rummens's argument still ultimately favours pre-emptive exclusion. He shares with Schmitt an understanding of democracy as being confronted with an 'extraordinary' existential threat and thus justified to use 'exceptional' means of repression with the purpose of eliminating actions and 'excluding' actors that reject the minimum shared ethico-political principles of democracy. At the same time, Rummens' emphasis on tolerating free speech—provided that it does not undermine these principles or gain significant influence—reflects a parallel understanding of democracy as grounded in rational public deliberation. This attention to democratic deliberation provides a bridge to a different set of theories of militant democracy: those grounded in rationality and reason.

2.3 Reason-based justifications

2.3.1 Reason as anti-emotionalism

Loewenstein may not have provided the most original or elaborate exposé of why democracies under threat are legitimised to restrict rights, but he did

[3] Despite the risk of encouraging opportunistic strategies, the concentric approach seems to have inspired the German Constitutional Court in its recent decision (2019) not to ban the NPD on the grounds of its minimal influence on mainstream politics (Molier & Rijpkema 2018). For a further critique of this approach, see Chapter 7.

offer an early rendering of what can be called 'reason-based justifications of militant democracy'. The basic insight behind this view was that democratic government is grounded in reason, whereas fascist parties relied on mobilising emotions. Indeed, what Loewenstein deplored the most was the fascists' use of emotion-inducing devices such as intimidation, terrorisation, and agitation of national sentiment. To do this they relied on military symbolism, propaganda, the cultivation of mystical comradeship, and similar practices of strong emotional effect. In his own words:

> To arouse, to guide, and to use emotionalism in its crudest and its most refined forms is the essence of the fascist technique for which movement and emotion are not only linguistically identical. (Loewenstein, 1937a, p. 423)

This emotionalist technique was a conscious choice of fascist leaders to mislead the masses and garner popular support for their projects (Loewenstein 1938, p. 601). Since antidemocratic actors relied on tactics of emotional manipulation, the masses, which were particularly susceptible 'to primitive emotions and irresponsible demagoguery' (cf. Greenberg 2015, pp. 175–176), needed to be kept at arm's length.

To counter such emotional politics, democratic parties should operate as an extension of constitutional government, the opposite of emotionalist government. In line with the Weberian ideal of rational-legal rule, Loewenstein understood constitutional government as a synonym of rule of law, which guaranteed 'rationality and calculability of administration' alongside private law and basic rights. Constitutional government could only offer legal security, which was 'glamourless' and could not conjure up a mystique equivalent to the psychic forces evoked by fascism:

> As a rational system, democracy can prove its superiority only by its achievements . . . Democratic romanticism is of itself a contradiction. (Loewenstein 1937a, p. 428)

This idea finds an echo in contemporary scholarship. Sajó, for example, sees a danger for democracy in 'emotional politics', defining it as politics 'shaped by emotional manipulation of the masses' (Sajó 2012, p. 563). Regardless of whether it aimed at power-grabbing or at sustaining an already achieved power grip, the fascist technique relied on emotions such as hatred and fear, but also enthusiasm and the desire for identification with the leader. Contemporary democracies are also threatened by the politicisation of such emotions, in the form of religious agitation, radical nationalism, or simply identity

politics (Sajó 2012, pp. 563–564, 571). Religious insignia and national symbols are characteristic elements of such contemporary emotional politics; in that sense, they stand in contradiction to rational deliberation, interest aggregation, pragmatism, and compromise that form the backbone of democratic politics. In Sajó's own words, 'There can be little democracy without reason' (Sajó 2012, p. 567).

Militant democracy then is understood as 'a set of measures directed against radical emotionalism' (Sajó 2012, p. 562). But it cannot do so by launching an equivalent emotional counter-attack. Constitutional government cannot appeal but to reason; its prime mechanisms are de-ideologisation, neutrality, and a rational deliberative process that filters out human passions. Militant democracy intends to safeguard a space for reason-based decision-making (Sajó 2012, pp. 569–570). It is conceived as a solution to the fact that the 'empirical people is emotionally conditioned' (Sajó 2012, p. 571). Therefore, majoritarian decisions, which always carry the potential of being unreasonable, must be limited by anti-majoritarian institutions. Speech rights must be controlled to preserve rational discourse. A rational legal system that employs militant democratic restrictions must be in place to screen out emotionalism both in exceptional and normal times.[4]

2.3.2 Reason as reasonableness

A different justification, but one that still centres on reason, is provided by Rawls. To be sure, he firmly acknowledges that, in the original position and as a matter of justice, all individuals enjoy equal liberties irrespective of their beliefs or values. Yet, he adds, the freedom of the intolerant can be limited for the sake of preserving equal liberty itself (Rawls 1971, p. 219). This is a principle of justice to which the intolerant themselves will have agreed, and thus it is by mere application of previously agreed principles that their freedom can be legitimately contained. Rawls qualifies such intolerant agents as being 'unreasonable citizens', in that they do not view persons 'as reasonable and rational, as free and equal citizens', they refuse to engage in fair terms of social cooperation, do not provide public justifications for their judgements on fundamental political questions and reject the principle of reciprocity (Rawls 2005, pp. 50, 481–482). As a result, the unreasonable doctrines they believe in directly contradict the scope and fundamental values of the liberal democratic project. Such unreasonable comprehensive doctrines must be contained, Rawls states,

[4] Notice that, in addition to anti-emotionalism, both Loewenstein and Sajó do mention harm-aversion as another reason for why democracies must be militant.

'like war and disease—so that they do not overturn political justice' (Rawls 2005, p. 64, n. 19).

Rawls does not specify the details for such containment. But he does discuss when and why a constitutional doctrine may condone restrictions on free speech: only in the case of 'a constitutional crisis in which democratic institutions cannot work effectively and their procedures for dealing with emergencies cannot operate' (Rawls 2005, p. 354). He assumes that such a situation can never arise in 'a country with a vigorous tradition of democratic institutions' lest it stems from outside the country, which we understand occurs in the case of war or international terrorism. But war or other emergency situations are not, by themselves, sufficient conditions for restricting free speech, since they do not necessarily produce the kind of constitutional crisis described above. There must be a 'clear and present danger', as stipulated in US jurisprudence, which Rawls reads closely. He understands such a danger as a substantive evil, namely the loss of basic liberties, in circumstances where no alternative other than restricting free speech can prevent that loss.

How does this proposition hold in respect to his theory of justice and public reason? Quong explains that Rawlsian principles do illustrate the circumstances under which such containment is permissible. To be sure, tolerance he says is the default position in a liberal democracy that celebrates reasonable pluralism. Although persons who reject these positions do not deserve to receive public justifications, they are still entitled to the benefits of citizenship and their irrational beliefs are generally worthy of toleration (Quong 2004, p. 322). Quong also agrees with Jeremy Waldron that citizens have the right to do wrong, i.e. they can appeal to their liberal rights in order to make choices some of which may be morally wrong. However, the crucial difference that Quong underlines is that citizens do not have the moral right to be unreasonable. By being 'unreasonable' he means choosing 'alternatives that do not respect the freedom and equality of persons' (Quong 2004, p. 332). One cannot claim a right that contravenes such principles, because these are the foundations upon which the very idea of justice and liberal rights are based. Hence, one has no right to advocate doctrines based on principles of inequality and unfreedom, such as slavery or racism. Conversely, containing such doctrines—'like war and disease'—would be permissible as it does not involve a violation of a moral right (see also Fennema and Maussen 2000).

The only exception that Quong can see is 'partial citizens' (such as the Amish), who wish to be left alone and make no effort to spread their views. These citizens represent no real threat to the 'normative stability' that grounds a liberal democratic regime (Quong 2004, pp. 328, 334). This is to say that, even if there is no moral right to be unreasonable, the state should have good

reason to intervene—a condition that is not met in the case of 'partial citizens'. In conclusion, Quong adds, the rights of citizenship should be usable only to pursue conceptions of the good life that are compatible with the ideal that all citizens are free and equal. This is an unusually strong statement, as it would make it possible to restrict not only basic freedoms but even citizenship rights on the grounds that an individual promotes unreasonable doctrines.

A different justification of containment, drawing on Rawls, is offered by Matteo Bonotti, who claims that partisans have special political obligations compared to ordinary citizens, arising from their privileged influence over public opinion and decision-making (Bonotti 2017, pp. 15–16). In particular, they are bound by legal and ethical norms of partisanship and, more specifically, by what Rawls calls the 'duty of civility'. This implies an obligation for partisans to argue for their goals in terms of values that are either broadly shared or otherwise accessible to all (reasonable) citizens, even if some may disagree with those goals (p. 71). Contrary to Rawls, who thinks that such a duty should not be legally enforced (p. 73), Bonotti believes that it should: elected officials and candidates should be required to provide public reasons for their proposals, with their manifestos reviewed by a control body. This body could remove references to comprehensive doctrines or impose fines on candidates, but could even go so far as to cancel candidacies or ban parties from participating in one or more elections.

Badano and Nuti also use a Rawlsian framework but move the discussion on the containment of antidemocratic threats from state institutions and legal strategies to citizens and their moral duties. Unless these threats are exceptionally urgent, they reject rights infringement as a potential source of further instability and underline the importance of acting *before* threats to the stability of liberal institutions become imminent and serious. Their argument in a nutshell is this: although supporters of right-wing populist parties actually *are* unreasonable, there is a duty to discursively engage with them; this involves both a duty to talk but also '*a duty to listen* to them' (Badano and Nuti 2018, p. 161; see also Badano and Nuti 2024).

Badano and Nuti's strategy of containment revolves around a citizen's *duty of pressure*, i.e. a duty to discursively engage with right-wing populism supporters. These are described as typically 'unreasonable' in a Rawlsian sense, for they 'deny the bases for the status of equal persons to many who should count as equal' (p. 150). The duty to save them from their unreasonableness is premised on the demands of 'liberal legitimacy' á la Rawls, namely the importance of settling fundamental state decisions on the basis of public reason (and not, say, on the basis of sectarian beliefs). As explained above, public reason is understood as a shared conception of persons as free and equal and of society

as a fair system of cooperation. Because public reason is the key to stability and already grounds another moral duty—Rawls's duty of civility—the goal of reversing the spread of unreasonableness can justifiably befall on citizens as an imperfect moral duty.

While Rawls demands that citizens provide public reasons in public forums, Badano and Nuti expect reasonable citizens to pressure unreasonable persons that they privately know and to do so with the help of 'certain rhetorical devices' (p. 148). More specifically, they argue, when reasonable citizens encounter fellow citizens—'relatives, friends, and colleagues'—who support right-wing populism in non-public forums, such as bars, family gatherings, or social media, they 'should harness the persuasive potential of tailored engagement' to push them to revise their political views (pp. 155–157). This involves making use of personal knowledge about the interlocutor, appealing to their 'allegiances, identities, and personal histories' (p. 167). But it also involves a duty to be open to their grievances and ready to consider endorsing some of their concerns.

Badano and Nuti's approach respects the autonomy of both reasonable and unreasonable citizens but identifies a special role for the former in the service of the ideal of public reason. It does, however, set the bar very high. Not only does the 'duty to pressure' rely on a critical mass of *ideal* citizens, who accept the burden of advancing reasonableness and to manage their private conversations accordingly, it also presumes that supporters of right-wing populist parties are willing to debate on public-reason terms and to bracket away identity issues, disinformation, or conspiracies that tie them to these parties. On a more generic plane, it is unclear how the defence of liberal justice translates to a defence of democracy. If the aim of public discussion is to instill public reason, how can this be reconciled with democratic institutions, like elections, partisanship, and parliamentarism, that disincentivise the use of public reason in favour of passionate adversarial rhetoric? Reinterpreting Rawls's call for containment as a civic duty to prevent the spread of unreasonableness represents a new, behavioural rather than institutional, avenue for containing antidemocrats that mobilises the citizenry. Yet, it moves further away from Rawls' own account of political liberalism as it risks transforming the moral duty of public reason into a project of policing political reasonableness and regulating citizens' interactions, with potentially troubling implications for liberty and pluralism.

The views of Rawls and his contemporary readers examined above are based on the centrality of (public) reason in a liberal democratic state. Unlike the ideas of Loewenstein, it is not rationality as such that is foregrounded as the

fundamental principle of constitutional democracy; rather Rawlsian militant democrats emphasise the role of public reason as a constraint on the exercise of political power. In this sense, the scope of free speech is to make 'free public use of our *reason* in all matters that concern the justice of the basic structure and its social policies' (Rawls 2005, p. 348; emphasis added). But when reason is put to bad use, as in the case of Nazis who use it to advocate against the freedom and equality of all persons—the very foundations of a system of liberal justice—it becomes a form of unreason that can be justifiably contained. On these grounds, the rights and benefits of citizenship, such as the right to free speech, should not be extended to those who pursue unreasonable doctrines. Since public reason is premised on the values of freedom and equality, here too democratic inclusion depends on adherence to substantive values.[5] The logic of exclusion that emerges here differs, however, from the hegemonic-existential justification associated with Schmittian militant democracy. The difference lies in the object of protection: Schmittian accounts defend the political identity of the democratic community against existential enemies, whereas Rawlsian accounts protect the conditions of public justification among free and equal citizens. Yet both accounts share the broader logic captured by the principled account of militant democracy: certain actors are identified as posing an *extraordinary* threat, and *exceptional* measures of *exclusion* become permissible in response.

2.3.3 Epistemic reason

After the Second World War, many social scientists were concerned with the defence of democracy. One of the most prominent voices among them was Karl Popper. An open society, Popper argues, 'the society in which individuals are confronted with personal decisions' (Popper 2020, p. 142) should preserve its democratic constitution and democratic methods, even through the use of violence when necessary (Popper 2020, pp. 276-277). This is a major concession, given that Popper defines democracy precisely in opposition to violence. After denouncing Marxism's and Communism's ambiguous pronouncements regarding the permissibility of violence to perform a social revolution, and even blaming them for paving the way for fascist violence, he concludes that

[5] Of course, the exact meaning each of these values corresponds to is debatable. If anything, liberal theorists like the ones discussed tend to generally understand them in formal terms, i.e. as freedom and equality in front of the law. What matters for my argument is that they amount to a set of substantive values, the endorsement of which conditions the enjoyment of basic civil and political liberties.

democracy is the system where 'the rulers—that is to say, the government—can be dismissed by the ruled without bloodshed': it permits reform without violence. Democracy is not simply the rule of the majority, because a majority can be tyrannical. Democratic institutions must 'secure to the minority the possibility of working for a peaceful change' (Popper 2020, p. 282). However, democratic constitutions should exclude one type of legal change, 'namely the change which would endanger its democratic character' (Popper 2020, p. 282). Therefore, those who violate the law or incite others to perform a violent overthrow of democracy do not deserve protection.

This idea is even more clearly expressed in a lengthy footnote on the paradox of tolerance. Drawing on Plato's view that excessive freedom leads to forms of slavery so that tyranny necessarily is generated from democracy, Popper reaches the conclusion that, *mutatis mutandis*, 'unlimited tolerance must lead to the disappearance of tolerance' (Popper 2020, p. 440). He terms this insight the *paradox of tolerance*. This observation justifies a right to suppress intolerant speech in the case (which is most likely) that the intolerant will refrain from engaging in rational argumentation and opt for the use of force. By doing that, the intolerant place themselves outside the law and, as a consequence, us, the tolerant, ought to criminalise any incitement to intolerance.

To further support his ideas, Popper explains that majority rule is not a panacea, and not even the defining characteristic of democracy. For a majority decision can lead to the dissolution of democracy (the so-called *paradox of democracy*) (Popper 2020, p. 440). Hence, those who have power, the sovereign, should be controlled 'by balancing their powers against other powers' (Popper 2020, p. 109), i.e. through institutional checks and balances. We should, he adds, always prepare for the worst, that bad and incompetent individuals will occupy leadership positions, and design institutions of democratic control accordingly. Democracy is ultimately based on 'the decision . . . to avoid and to resist tyranny' (Popper 2020, p. 110), a form of government that can only be overthrown through revolution. By contrast, democracy is a type of government, where the rulers can be replaced by the ruled without bloodshed, where social institutions provide the means for such a peaceful replacement, and where 'social traditions', which Popper claims mediate between persons and institutions, protect those institutions from being destroyed by those in power. He names elections and representation as the means for such democratic control and highlights the fact that they are 'well-tried', 'reasonably effective' and above all always 'open to improvement' (Popper 2020, p. 111). But is democracy really the most cherished form of life?

Popper answers this question with a resounding no. In an essay published after the Cold War, he explicitly distinguishes the *open society*, which

is described as the ultimate end, from the *democratic state*, which is only the best political means to achieve that end (Popper 2008a, p. 240):

> By an open society, I mean a form of social life, and the values which are traditionally cherished in that social life, such as freedom, tolerance, justice, the citizen's free pursuit of knowledge, his right to disseminate knowledge, his free choice of values and beliefs, and his pursuit of happiness. (sic)
>
> By the democratic state, on the other hand, I mean a set of institutions, such as a constitution, a civil and criminal law, legislative and executive organs, such as the government and the rules by which it is elected; the courts of justice, the civil service, the organs of public health, defence and so on.

Popper is clear about the function of the democratic state: it exists for the sake of the free society, and its purpose is to protect it. This instrumental justification of democracy opens the possibility of suspending majority rule for the sake of values that stand on higher moral ground. As a result, state institutions and democratic procedures can be adjusted and exceptions made in order to protect the open society. For the same reasons, a political party that conspires to abolish democracy or threatens with intolerance should not be tolerated even if it is in the majority (Popper 2008b, p. 315). The line is to be drawn when a party moves from discussing ideas as rational proposals to acting violently (although Popper recognises that it is hard to equate conspiracy with violence and thus to determine what exactly constitutes violent action). In any case, the underlying principle for such militant action is the desire to prevent the suffering of as many individuals as possible: Popper's negative utilitarianism.[6] This emphasis on preventing suffering reflects Popper's broader understanding of democracy. Yet the core of his militant democratic theory is epistemic.

Popper famously portrayed democracy as a method of decision-making akin to the scientific method of trial and error. And since the success of the scientific method relies on 'a readiness to learn from mistakes', the success of democracy conceived as a mirror of science comes from democratic politicians looking out for their mistakes (Popper 2020, p. 135). The keywords are experimentation and readjustment, in order to build step by step—through a so-called *piecemeal* approach—institutions that fight against suffering, injustice and war. Instead of large-scale social engineering, based on utopian blueprints, it is more realistic he claims to find agreement for single institutions that aim at preventing 'the greatest and most urgent evils of society, rather than searching for, and fighting for, its greatest ultimate good' (Popper 2020,

[6] This idea resonates with theories that justify militant democracy as a prevention of harm on others, which are discussed in the third section of this chapter.

p. 132). This fallibilist method is how democracy makes possible the design of new institutions and the adjustment of old ones with 'the use of reason, instead of passion and violence' (Popper 2020, p. 133). In sum, Popper claims that democratic majorities do not produce decisions that are by default authoritative or legitimate; they can produce 'wrong' decisions (such as installing a tyrant), decisions that free citizens have a right to resist in the name of the open society they wish to live in.

Popper's understanding of democracy as a process of trial and error finds perhaps its clearest contemporary expression in the work of Bastiaan Rijpkema. The central argument here is that democracy operates as a system of self-correction, an idea Rijpkema attributes to the largely forgotten Dutch interwar jurist George Van den Bergh. In a democracy, 'policies are tested like hypotheses on reality' (Rijpkema 2018, pp. 134–136) through the criticism of citizens. The key to democracy's success is that all decisions are revocable. As a result, incorrect decisions can be reversed; no majority decision is definitive, since majorities and their decisions are always temporary; and the sovereign is engaged in *a continuous and progressive learning process*. Because democracy's capacity for self-correction is fundamental, an attack on it justifies legal interventions against political parties. To put it differently, all democratic decisions are revocable except the decision to undo the possibility to revoke them. In practice, Rijpkema outlines three principles through which democracy maintains its self-corrective capacity: *evaluation* of decisions made possible through elections based on universal suffrage; political *competition* that guards against power monopolies made possible through freedom of association, passive suffrage, and multi-partisanship; and freedom of *expression* that enables criticism and encourages alternative visions (Rijpkema 2018, pp. 153–154). If any of the procedures associated with these basic ideas is attacked, an intervention in the name of democracy as self-correction is justified.

Rijpkema's Popperian justification of militant democracy relies on the tacit assumption that democracy is an epistemic enterprise. His emphasis on the quality of democratic decisions and the view that some outcomes are 'correct' and others 'wrong' portrays democracy as a regime based on knowledge. But little is said about what moral goal or state of affairs proves a democratic decision to be 'correct' or not. Is it the welfare of the many? The avoidance of war? Public satisfaction? An external standard for measuring the correctness of decisions is assumed, but never specified. Even if Rijpkema himself sees self-correctness as a standard *internal* to democracy,[7] the correctness of particular

[7] I thank Tore Olsen for drawing my attention to this point.

decisions can only be assessed against an external standard applicable to each specific moment of decision-making.

Nor does Rijpkema say what makes criticism so fundamental to democracy and, consequently, what it should look like. Is *any* type of criticism of democratic decisions equally valid and constructive? How, for instance, does a sexist critique of a decision help democracies learn and progress? Thus, Rijpkema's theory lacks a specification of the types of critique that are beneficial for correcting democratic decisions and, more generally, of the epistemic value of critique in a democracy.[8] This omission contributes to a lack of clarity about the standards for evaluating democratic decisions. However, the absence of explicit substantive standards does not mean that a militant democratic theory can dispense with them. Rijpkema's theory may therefore be less procedural than it claims to be: rather than eliminating substantive evaluation, it introduces an additional step—correctness—between democratic decision-making procedures and the substantive content of decisions, which must be constantly 'corrected' to meet the goals of democratic progress.

To be sure, the theory may not need the concept of 'correctness' at all, since this concept requires the kind of external standard that a procedural account seeks to avoid. Democracies could be valued with sole reference to the principle of 'revocability', which is more procedural and self-referential than correctness. It encompasses the possibility to revise, change, or reverse a decision, without the need to give any reasons for such revisions or, indeed, to persuade that they constitute a correcting move. The problem with adapting the theory in this way, however, is that it cannot anymore lay claim to an epistemic conception of democracy as a knowledge-accumulating regime, nor can it draw value for democracy from its supposed capacity to learn and progress. Hence, it departs from Rijpkema's original view that revocability of decisions is a single-handed tool through which democracies improve themselves. Besides, revocability is not a unique feature of democracy; dictators can also revoke their decisions. In sum, revocability alone cannot be a fundamental criterion of democracy, while revocability as a process of correction requires an external substantive criterion to distinguish right and wrong: epistemic reason.

[8] One theory that elaborates on the relation between critique and democratic knowledge is Kari Palonen's *parliamentary theory of knowledge*. Drawing on Max Weber, it argues that political objectivity is the result of examining a political proposal from two opposed perspectives, *pro et contra*, producing competing and dissensual arguments. As the scope of the examination is always bound to the substance of the proposal, this critical cross-examination helps to build knowledge on this specific issue (Palonen 2004).

Other epistemic democrats rely on a similar appreciation for democracy as a *method* that produces knowledge. For example, Helene Landemore (2013) argues that democracy needs cognitive diversity to get at the 'right' decisions. This resonates with Rijpkema's claim that 'the many' provide a rich pool of epistemic resources and a higher probability of identifying bad decisions. While sympathy for the masses makes Rijpkema a champion of universal suffrage and competitive elections, the same claim leads Landemore (2021) to reject elections and support instead a body of randomly selected citizens. Indeed, the value of universal suffrage as a knowledge base for reviewing democratic decisions is not self-evident, especially if we consider the reality of low and unequal turnouts that skew the diversity of the voting public. To explain this, we could assume that Rijpkema is writing in ideal terms, or that he presupposes the use of instruments, such as compulsory voting, that secure the cognitive diversity and representativeness of mini-publics.

In any case, Rijpkema offers the basis for an epistemic theory of democratic self-defence. This is a rare occurrence, as the relation of epistemic theories and democracy is not clear-cut. Whereas *epistemic democrats* like Landemore believe that maximal inclusion produces superior epistemic outcomes, *epistocrats* believe that superior epistemic outcomes are produced by including only those individuals who possess greater knowledge (Brennan 2016). Epistocrats, in general, argue in favour of excluding the 'worst' citizens: those who are ignorant, irrational, unintelligent. How then can epistocratic ideas be translated into democratic self-defence? The key difficulty is that irrational actors are not necessarily antidemocratic actors, although the two categories often overlap. Therefore, epistocrats would only exclude antidemocrats insofar as the latter tend to hold irrational views. However, the epistocrats' goal is to defend a system that generates epistemically founded and just decisions, not democracy as such. This means that they are technically not interested in defending democracy and could readily align themselves with antidemocrats should the latter offer epistemically superior inputs (Malkopoulou 2020, pp. 10–12).

Epistemic democrats may also support procedures that lead to epistemically correct outcomes but, unlike epistocratic arrangements, these procedures are maximally inclusive (*pace* Landemore). Therefore, they would stand opposite to the idea of excluding certain actors for the sake of defending democracy.[9] Still, epistemic democrats find themselves in an awkward position whenever

[9] Epistemic democrats are therefore more likely to support toleration and thus a procedural type of democratic self-defence, which is discussed in detail in Chapter 4.

universal and equal participation does not produce epistemic correctness—according to epistocrats, this is regularly the case. Rijpkema's theory underlines this possibility: equal participation can produce the 'incorrect' decision of abolishing democracy's self-correcting capacity. As a response, he argues that participation ought to be restricted when it undermines democracy's possibility of achieving epistemic correctness. His argument is proof that epistemic correctness (an extra-democratic standard) or the method that produces it might, when necessary, trump the principle of democratic inclusion.

Militant democrats can find even more support among epistocrats. Although strictly speaking the latter do not fight autocracy but epistemic ignorance, these two phenomena frequently overlap: those who challenge liberal democratic arrangements tend to hold irrational views that are epistemically unfounded, biased, or even conspiratorial. Hence, epistocrats would be willing to support restricting the participation rights of such actors, and they often do so. Like epistocrats, militant democrats too rely on competent judges to evaluate whether a political message represents a democratic threat. But unlike epistocrats, this transfer of power to non-majoritarian agencies is not justified because citizens are ignorant, misinformed, and otherwise unable to make epistemically correct decisions. The reason for militant democrats is that citizens are disloyal to the democratic project, i.e. they fail on moral grounds as agents entrusted to make choices that guarantee the stability of democratic government. Hence, for militant democrats the guardians of a democratic constitution need not be merely experts, e.g. constitutional judges, but ethically committed to the democratic project (Malkopoulou 2020, pp. 10–17). Otherwise, they cannot be trusted to correctly assess who is an extraordinary enemy of democracy, and to activate exceptional and exclusionary measures against them.

Surely, the thread that connects epistemic justifications of militant democracy with the ones offered by Loewenstein, Rawls, Popper, and their contemporary heirs is a long and probably perforated one. One cannot simply claim that because Rawls valued reasonableness he was in favour of expert rule. Yet, what connects all these seemingly unrelated justifications for militant democracy is the recourse to reason and rationality. Loewenstein believed that emotional politics needed to be countered with extraordinary, hyper-rational means. Rawls thought that unreasonable citizens must be contained for the sake of political justice. Popper supported containment of majorities that used violence and passion, in order to save a reason-based method for changing governments. In all these theories, the primacy of reason features as a decisive explanation for supporting drastic containment measures.

All three approaches can thus be described as reason-based justifications of militant democracy. Through appeals to anti-emotionalism, public reason, and epistemic knowledge, they designate certain ideas and actors as posing extraordinary threats that may warrant exceptional forms of exclusion from ordinary politics. In this respect, reason and rationality offer one possible philosophical foundation for the logic captured by the principled account of militant democracy.

2.4 Harm-based justifications

A third type of justification for militant democracy can be loosely associated with approaches grounded in the principle of harm. With some caution, these can be traced back to John Stuart Mill's classic formulation of the harm principle. In *On Liberty*, published in 1859 (2012), Mill argues that individual liberty may justifiably be restricted only to prevent harm to others, with one well-known exception: when someone tries to sell himself as a slave. The latter is impermissible because it would extinguish the very freedom it presupposes: by selling oneself into slavery a person 'foregoes any future use of it, beyond that single use' (Mill 2012, p. 184). More generally, however, the harm principle holds that individual freedom may be limited only when necessary to prevent harm to others, and not because a person's views, choices, or way of life are considered mistaken, irrational, or immoral.

It is this general principle of harm that informs some of the most recent accounts of militant democracy. For Jan-Werner Müller (2019b), the justification for militancy is 'the prevention of major harm' that a future authoritarian regime may inflict on its people, more specifically 'the harm done to individuals in the course of massive human rights violations after a take-over of a democracy by authoritarian forces' (Müller 2019b, p. 31). Democracies must resist such authoritarian takeover through 'political prohibitions that exclude certain actors from the political process'. Which actors does Müller have in mind? 'Political associations that *systematically*, as a matter of political mobilisation, deny the standing of other members of the polity as free and equal *are* candidates for banning' he says (Müller 2021, p. 167, emphasis in the original).

For Müller, the reason that political intervention should take place preemptively is that harm is inflicted even before democracy crumbles, particularly during elections. Much like Rummens, he sees elections as moments of political mobilisation that shape people's self-perceptions. The harm on

people's self-perception is two-directional. On one hand, those on the receiving end of such 'systematic or structured denigration' will be victimised. Unless the state intervenes on their behalf, its inaction may signal that organisations competing for political power are permitted to spread messages of hate against them. Müller places special emphasis on the ability and likelihood of such organisations (as opposed to individuals) to cause harm through their public speeches (Müller 2019b, p. 31). But it is not only the victims' self-perception that must be protected. The victimisers too, if systematically engrossed in projecting such messages of denigration, will form lasting political identities, based on the projection of such denigrating and dehumanising ideas. To prevent cultural racism, whose electoral support may open the door to political racism and an eventual shift of the entire political spectrum, Müller argues, strategies of political exclusion are called for.

Rummens's proposal also refocuses the problem of democratic threats on the level of harm that antidemocratic actors can inflict on democratic societies. For him, however, speech alone, especially when it is far removed from centres of official power, cannot inflict sufficient harm to warrant formal state intervention, even if it expresses fascist or other antidemocratic views. Two objections can be raised to these claims. First, many would hold that speech alone, especially in the electoral arena, can seriously harm the human dignity and equal worth that democratic societies ought to guarantee to their citizens (Issacharoff 2015, p. 37; Müller 2021, p. 159). This concern is even stronger when such speech occurs in public forums, where it reaches larger audiences and acquires greater audibility (Norman and Beckman 2024). Hence, the sharp distinction that Rummens draws between the harmlessness of informal speech and the harmfulness of formal political decisions is less convincing than he assumes.

Second, even if we agree that hateful public speech should remain as unregulated as possible in general, we may qualify this in relation to *who* speaks. Is speech uttered by party figures to be assessed on the same grounds as public speech in general? According to some theorists of partisanship, there may be situational duties that apply to officially registered political parties and their leaders, spokespeople, and elected members (Bonotti 2017). These duties may involve a higher threshold of civility in their speeches, given the greater influence they wield over public discourse and agenda-setting. Other political parties may take up their cues in order to address the same electoral audiences, as is often the case. Hence, the perlocutionary effects of speech acts by partisan actors may be amplified compared to those of other actors, even if they are presumably still far from holding positions of official

power. But, absent a normative distinction between programmatic speech that expresses political commitments and pre-legislative speech that directly precedes decision-making, using a tolerant approach for powerless actors and a militant approach for powerful ones is insufficiently justified.[10] Nevertheless, focusing on the effects of speech-acts on others ultimately places harm at the centre of the justification for militant restrictions.

Although Müller appeals to harm as a rationale for militant measures, he does not develop a broader normative theory of militant democracy. By contrast, the most comprehensive theory of militant democracy that builds—albeit not as directly—on questions of harm is that of Alexander Kirshner. Kirshner starts by asking why if at all we need to take militant action against antidemocrats. His answer is very pragmatic: simply because the alternative, judicial review of undemocratic legislation, is not sufficient. Drawing on two real cases from apartheid South Africa and Weimar Germany, he shows that 'by the time democracy's opponents have institutional wherewithal to pass sweeping antidemocratic legislation, it may well be too late for democracy' (Kirshner 2014, p. 14). If they notice judicial intransigence, they can manipulate court administrations or pack the judiciary with loyalists. This is no wild or outdated scenario as post-2010 developments in Hungary and Poland indicate. Furthermore, he adds, the implementation of courts' decisions anyway depends on a national government's willingness to make state authorities obey. Therefore, he concludes, attention should go to antidemocratic actors themselves, who must be blocked *before* they develop the capacity to overcome a judicial decision that seeks to contain them.

Unlike Loewenstein, Kirshner (2014) grounds the necessity for militant restrictions on a clear normative rule: the principle of universal participation. Those who ought to be stopped by militant action are actors who have the capacity and the intention to violate the right to participation of a particular group. Indeed, states have an obligation to intervene when one group is about to violate the participation rights of another group. Such intervention in defence of the rights of a group is essentially a reformulation and specification of Mill's harm principle. Kirshner's theory is conceived as an intervention on behalf of other citizens, those who are targeted by antidemocratic parties and those who are most vulnerable to them. In this respect, it is concerned with the *defence of democratic citizens*, not of democracy as such. Drawing on the

[10] I do not necessarily endorse these objections to Rummens's model, which merely highlight points requiring further elaboration. My own critique of the concentric model, developed in the final chapter, focuses on the normative tension between toleration and militancy, two approaches based on mutually exclusive commitments.

principle of reciprocity, it proposes that the perpetrators should be deprived of the same rights they sought to deprive others of. On these grounds, Kirshner argues, formal exclusion in the form of restricting the rights of parties to contest elections on their own terms is justifiable.

Nevertheless, Kirshner, wary of drawing the category of possible perpetrators too broadly, specifies that militant intervention is *not* justified against (1) entities that merely advocate antidemocratic ideas (Kirshner 2014, p. 93), (2) entities that merely do not honestly value the principles that animate the democratic process, or (3) those that oppose a central element of a regime's identity (e.g. secularism). These categories are ordinary actors. They simply do not fall under the criterion for exclusion that he proposes: the capacity and intention to violate the participatory rights of others. It is only on the basis of this criterion that an actor can be classified as an extraordinary threat.

Kirshner adds a further obligation for democrats: to pay the normative costs of intervention by seeking to reintegrate those excluded as soon as possible. This attempt to self-limit exclusion temporally is an indirect recognition of how controversial and risky the practice of democratic exclusion is. Excluding antidemocrats *is* an exceptional measure for Kirshner. It comes with severe normative costs which must be carefully acknowledged and offset; but it is nonetheless justified for extraordinary cases, namely groups whose intentions are to violate the fundamental democratic principle of universal participation. Hence, Kirshner's harm-based theory is in line with the principled definition of militant democracy as a paradigm based on extraordinariness, exceptionality, and exclusion.

Because of its focus on the protection of other citizens from harm, Kirshner's theory is reminiscent of theories about the ethics of inclusion and representation. According to Suzanne Dovi (2009), the deliberate marginalisation of 'those who seek to dominate and oppress others' is justifiable for the purposes of reversing historical structures of injustice and ensuring the effective inclusion of historically underprivileged and vulnerable citizens. Democratic citizens, she argues, act correctly and defend the legitimacy of democratic institutions when they 'limit the influence of those who refuse to acknowledge and respect the political equality of certain citizens' (p. 1183). In this sense, democratic representatives must exercise the virtue of 'good gatekeeping' and 'exclude the unjust excluders' (Dovi 2012, pp. 145–178), namely those who either actively oppress others or benefit from their oppression. However, for Dovi, this exclusion is informal and does not involve restricting their formal rights of participation. It is rather a 'deliberate use of power to limit or even

eliminate the capacity of specified agents to act effectively in politics' (Plotke 2006, p. 21).

Certainly, the scope of theorising about ethical action is different from that of theorising about constitutional principles. Nevertheless, the ethics of representation shares many concerns with militant democratic theory in its broader sense. These include a horizontal logic, espoused by some militant democratic theorists, according to which the exclusion of some citizens is justified by the protection of other citizens from further oppression and harm. Whether this theory, as well as all the other militant democratic theories discussed so far, rely on a distinctive conception of democracy is the subject matter of the next section of this chapter.

2.5 What do militant democrats really defend?

It should now be clear that there are not one or two, but several different theories of militant democracy that scholars have developed to date. In this chapter, these theories have been classified according to the overarching principles that animate their justifications, namely hegemony, reason, and harm. In the first case, the sovereign hegemony of a people functions as a license for extraordinary restrictions on the enemies of their democratic constitutional identity. In the second, it is assumed that the dictates of reason call for restrictions on emotional or 'unreasonable' attacks aimed at eliminating democracy's ability to reach 'correct' decisions. In the third case, the ambition to shield democratic citizens from the harm that future autocrats will inflict on them justifies an early intervention. All three categories find reasons to justify restricting the rights of parties or individuals who have not visibly breached any criminal law or used violence to achieve their goals. The central motive of all these theories is presumably the defence of democracy. But it is far from obvious that the direct beneficiary of such defensive measures is indeed democracy.

A closer look reveals that democracy is at best an 'intermediary' beneficiary of militant measures, which are otherwise geared towards defending some superior end-goal. In most cases, the democracy they aim to defend is not democracy as, say, popular self-government, but a very particular type of democracy. Take for example Loewenstein—and Sajó for that matter. What needs to be defended is, for them, constitutional government, i.e. liberal or constitutional democracy that ensures rational deliberation and reason-based decision-making rather than majoritarian institutions themselves. In fact, it has been argued that, in Loewenstein's case, the defensible regime was a

'cold-war type' of liberal democracy (Greenberg 2015), or even some kind of authoritarian or 'decisionist liberalism' (Invernizzi Accetti and Zuckerman 2017). Some commentators openly acknowledge that militant democracy defends both democracy and liberalism, but when the two conflict it tends to defend liberalism *against* democracy (Wagrandl 2018, pp. 151–154). To put it differently, when majoritarian decisions encroach on the rule of law, constitutional rights, separation of power and other such basic liberal safeguards, then militant democracy shows its real face, which is basically 'militant liberalism'.

A similar logic can be discerned in Schmitt's defence scheme. Indeed, some commentators have characterised his normative project as a form of 'authoritarian liberalism' (Schupmann 2017, p. 184). Schmitt prioritised liberal 'bourgeois' rights—such as the right to privacy, property, and religious freedom—over democratic participation rights, making the latter conditional on the preservation of the former. Nevertheless, there is a reason why Schmitt is generally interpreted as a defender of democracy rather than liberalism. For him, what really matters is a democracy's constitutional core, which is an expression of how a political community identifies itself and, especially, who it identifies itself against. That identity has an existential dimension, as does the struggle against those who threaten it. On this view, rights restrictions are a price that the political community must be willing to pay to preserve its own existence. Because this identity results from the sovereign decision of the constituent power (the people), it is, in Schmitt's terms, quintessentially democratic. Hence, one could argue that democracy as such is being defended, provided that one accepts Schmitt's peculiar definition of democracy as a sovereign expression of an existential political identity—a conception that is incompatible with the liberal and pluralist theories of democracy that prevail today. In other words, in Schmitt's theory, it is democracy qua *communitarian sovereign identity* that trumps democracy qua *individual equal participation and representation*. Thus, what is really being defended is the former: a 'concrete order' of a sovereign community manifested in the constitution through a set of fundamental values (Schupmann 2017; Croce 2024a).

By contrast, Popper sees the doctrine of sovereignty as a pathway to autocracy.[11] But even if he rejects democracy qua sovereign identity, he does not put the highest premium on democracy qua equal participation. What he cares

[11] Precisely because popular sovereignty could authorise regimes that are anything but democratic (e.g. communist regimes), Popper rejects it. Sovereignty, he argues, always contains a claim to unchecked power, which is what makes it so inclined to evade institutional control. In fact, the right to not tolerate the intolerants is for Popper inspired by the realisation that unchecked sovereignty is by itself dangerous. Hence, his theory negatively mirrors Schmitt's, who argued that, because the people are sovereign, they have the right to defend their constitutional identity against any attack, even a

about is the 'open society'. By this he means 'a form of social life' which is animated by a set of values such as freedom, tolerance, justice, and knowledge. Democracy is merely a set of state institutions, such as legislative assemblies, courts, the civil service, and so on, whose purpose is to enable and protect the open society. It is a system that allows for reform and change without bloodshed; its majoritarian elements are valuable only as long as they facilitate peaceful change. The key to this conception is democracy's capacity to learn, and to keep learning, from its mistakes. Drawing on this idea, Rijpkema describes democracy as *a self-correcting method of decision-making*. From this perspective, preventive militant measures should be imposed to protect democracy's capacity to learn, so that it can maintain its ultimate goal: an open society.

Likewise, Rawls and the Rawlsian varieties of militant democracy also do not look up to democracy as such as the ultimate object of protection. In their case, what deserves protection is a regime based on a particular conception of liberal justice. It is 'political justice', or *'the justice of the basic structure'*—and the 'normative stability' of a regime based on this structure—that needs to be defended. Granted, this ideal of justice includes democratic rights; it is based on a conception of persons as free and equal; and the regime in question is a liberal democratic one. But the Rawlsian normative project is conjured up less directly in relation to democracy as such than to a principled conception of a just society based on public reason. The normative link between Rawlsian political liberalism and democracy is implied but not justified.

Finally, Kirshner grounds militant measures in the need to defend the participation rights of all citizens, especially those of vulnerable minorities. His theory is shaped by a rather horizontal understanding of both democracy and the defence of democracy. The democracy to be defended is not an abstract set of principles and procedures or a faceless regime, but an *aggregation of individuals who have the right to determine their own laws and policies*. It is these individuals and their rights that are threatened by antidemocratic actors, and it is these individuals and their rights that must be protected through the use of militant measures. Clearly, then, the definition of what exactly is being defended varies considerably from author to author, but some common elements can be deduced.

Based on this overview, it can be said that, despite individual differences, militant democratic theories share two common grounds that shape their

majoritarian one. For Schmitt, militant restrictions are justified *because* the people are sovereign. For Popper, they are justified *in order to restrict* the people's sovereignty.

different conceptions of democracy. The first is that democracy is understood in substantive terms. This point becomes clearer when contrasted with conceptions of democracy as a set of procedures that embody key democratic standards, such as majority rule and universal participation. For procedural democrats, as long as these procedures are in place, a polity can be considered democratic regardless of its outcomes. A substantive understanding of democracy, on the other hand, means that *the content* of democratic decisions must be consistent with a predetermined set of values (so-called outcome values). Thus, if a decision taken by a democratic majority violates basic democratic principles, such as its sovereign identity, then that decision cannot be considered democratic even if it was taken without violating formal democratic procedures. On this substantive reading of democracy, it is permissible to block antidemocratic decisions even if they are supported electorally, and to exclude antidemocratic actors even if they observe ordinary laws and procedures. A democratic act is not one that is procedurally democratic, but one whose consequences are themselves democratic.

Militant democracy rests by default on such a substantive logic. This logic begins with Schmitt and his view of democracy as a set of normative values that reflect the historical institutions of a political community. The purpose of a constitution is to guarantee these institutions and make them impossible to change. This substantive view of the constitution continues with Loewenstein. To be sure, Loewenstein valued power-allocating institutions and liberal procedures over and above the existential and normative ends of a constitution (Croce 2024b). But protecting these institutions from change transformed them into a substantive core, to be shielded from simple majorities. The very notion of exempting certain elements of the constitution from change by a democratically elected parliament implies that democracy—understood as popular sovereignty and democratic participation—is conditional on the preservation of these elements. This understanding of democracy as bounded, either by existential norms or by power-allocating procedures, is an essential aspect of militant democracy.

A second and related shared outlook is that democracy's meaning is defined in relation to a set of concrete political values. This idea has two implications. On the one hand, it implies that normative principles and values confer democratic status on a regime, either directly or channelled through certain procedures. These are values to which institutions must conform; an example is equality before the law, which requires among other a non-discriminatory setup of judicial power. They may also operate as autonomous (outcome) values, against which not only institutions but also decisions can be measured and

evaluated. For Schmitt, for example, these values were conservative, derived from historical tradition, while for Loewenstein they were liberal, derived from a belief in human reason. In both cases, democracy was theorised through the prism of specific political values.

On the other hand, seeing democracy always in relation to values is a move that has wider social consequences: it creates hierarchies of political status, where those citizens who support certain values may be seen as more precious to democracy than others. This is, for example, when citizens voting for antidemocratic parties are dismissed as irredeemable and dispensable, raising the question of whether they have 'a duty to abstain'. Similarly, a value-specific conception of democracy risks allowing citizens who share these underlying political values to paternalistically determine how others should think and act. This creates the conditions for fundamental inequalities. Democracies may tolerate a certain degree of inequality of social, economic, and cultural capital. But they are unlikely to tolerate the idea that citizens are unequal with respect to their chosen political values, especially if this affects the extent to which they can be characterised as enemies of democracy. It is worth asking whether a substantive and moralised definition of democracy is a sound basis for deciding how to defend it. This and other criticisms of militant democracy are presented in more detail in the final chapter of this book.

2.6 Conclusions

This chapter makes three central claims. The first is that old and new theories of militant democracy are consistent with the principled understanding of the term, which was presented in the preceding chapter. Indeed, all the theories discussed here share this common conceptual basis: they see certain actors as posing an extraordinary threat to democracy because of their actions, ideas, or intentions; they see these actors as justifiably excluded; and their exclusion is seen as an irregular, exceptional measure to be used sparsely and with caution. There is therefore a minimum common denominator that links all militant democratic theories.

The second claim of this chapter is that there are significant differences between existing militant democratic theories. This observation is based on the justificatory principles that animate them. Three overarching principles have been identified—hegemony, reason, and harm—according to which they can be divided into three broad groups. There is still diversity within each group, especially between theories that draw on reason, as they can be

further subdivided according to whether they conceptualise reason as anti-emotionalism, epistemic reason, or public reason. In any case, this diversity serves to illustrate that militant democratic theory is not a unified field, but rather comprises a multitude of disparate perspectives and approaches.

The third claim of this chapter is that militant democratic theories, and indeed any other theories of democratic self-defence, are predicated on different understandings of what democracy is. This is significant because it demonstrates that they not only draw upon disparate philosophical traditions, but also advance these traditions in their own distinct ways. In other words, the concept of democracy as embodied in each theory is perpetuated, enacted, and circulated through these theories. A certain amount of philosophical vigilance is therefore necessary here. Agreement with a particular militant democratic theory may, whether implicitly or unconsciously, involve endorsement of the concept of democracy on which it is based. There are multiple ways of conceptualising democracy, just as there are multiple ways of conceptualising democratic self-defence. To better appreciate the specificity of militant democracy, it is useful to contrast it with a different, more tolerant, type of democratic self-defence, which is the focus of the next chapter.

3

Tolerant Democracy as an Alternative

3.1 Introduction

The entire field of democratic self-defence has been under the spell of militant democracy since the 1930s. The advocacy of a repressive approach to the enemies of democracy has been hegemonic among democracy scholars, as documented by the examination of the problem exclusively through the lens of militant democracy, especially in recent years (Sajó 2004; Müller 2012b; Malkopoulou and Kirshner 2019; Bourne and Rijpkema 2022). As a result, despite the efforts of empirical researchers to highlight the importance of non-repressive attitudes and mechanisms (e.g. Capoccia 2019), there have been few attempts to theorise tolerant strategies of democratic self-defence.

The result of this inattention has been not only a lack of knowledge about this ideal type of democratic self-defence, but also the establishment of a pejorative understanding of 'tolerant democracy' as at best a mere negation of militant democracy, and at worst a self-defeating and naïve approach to popular threats. The intuitive belief that democracies cannot 'afford' to tolerate their enemies because the latter will manipulate and eventually undermine their rules and institutions has spread as a bitter lesson from Weimar that should not be forgotten.

But this view of tolerant democracy is one-sided and far removed from the current common experience of accommodating far-right challenges. In contrast with the expectations of many democratic theorists, the prevalence of tolerant approaches can be seen in the collaboration of mainstream parties with far-right populists, as well as in numerous instances around the world where far-right parties and candidates have not only been permitted to contest elections, but have also secured decisive victories and assumed positions of power. Far more common today are cases where a political system refrains from banning controversial parties. Even a neo-Nazi party was allowed to enter parliament in Greece in the 2010s, while the controversial Donald Trump was elected US president twice.

It is therefore high time to examine the ideal-typical characteristics of a tolerant defence of democracy, including its historical origins, core rationale,

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and operating potential. Although tolerant democracy is presented in a rather positive light, the aim is not to promote it as a superior form of democratic self-defence normatively speaking, but to understand it on its own terms and rehabilitate it as an alternative approach to militant democracy. Readers interested in the problems, risks, and a general critique of tolerant democracy are advised to turn to Chapter 7.

3.2 Democracy and toleration

Toleration is 'the conditional acceptance of or non-interference with beliefs, actions, or practices that one considers to be wrong' (Forst 2017). Tolerant democracy is the idea that toleration is a fundamental value of democracy and must guide strategies to defend democracy against its internal enemies. Its proponents believe that democracies cannot justifiably exclude any single group or actor from democratic politics, nor can they exempt any meta-political principles from the possibility of reform without ceasing to be democratic. Instead, democratic self-defence should be based on the maximum political inclusion of all citizens, values, practices, and ideas in public life. The overall philosophy of tolerant democracy can be summarised as an attempt to immunise basic democratic structures against erosion without a priori prohibiting particular ideas or excluding those who advocate them. As such, tolerant democracy represents an alternative and, in many ways, antithetical approach to democratic self-defence in comparison to that of militant democracy.

A normative link between toleration and modern democracy was first established, on instrumental grounds, in The Federalist No.10 written by James Madison and published in 1787 (see Sabl 2008, p. 230). Madison thought that the only way to stop rival political groups from persecuting each other once they get to power is to allow all to multiply freely so that none of them will become predominant. Unable to form a stable majority or predict future political alliances, all the groups would lose the ability and the motive for persecuting their opponents (Madison 2001). This instrumental support for democratic toleration did not remain unchallenged at the time (see Forst 2014, p. 1). But it set the tone for a long period in which democracy was seen as inseparable from pluralism, as opposed to the moral absoluteness of divine right that sustained the monarchies of the past.

The aspiration to move away from intolerant regimes explains how theorists came to develop an intrinsic link between democracy and toleration in the early decades of the twentieth century. Hans Kelsen, a leading advocate

of the dominant school of legal positivism, defended objectivity and neutrality as a secure foundation for democracy. So, when the question of tolerating extreme political views became urgent in the 1930s, he came out with a forceful defence of democratic toleration. For Kelsen, toleration was a corollary of value pluralism, the idea that the world is constituted by a multitude of incompatible values, none of which can be shown to be superior to the others. Conversely, substantive constitutional principles rested on value absolutism, which he regarded as the hallmark of authoritarianism (Kelsen 2013, p. 103). Democracy, he argued, is legitimate and safe as long as it has in place clearly established, value-neutral, legal procedures that promote negative freedom.

The normative convergence between democracy and toleration was effectively removed from the canon of liberal political theory after the Second World War. The motive was none other than 'the Weimar problem', the—rather misguided—belief that the downfall of the Weimar Republic was intellectually caused by laissez-faire views on moral values and adjacent political ideas (Lassman 2011, p. 60). In this context, no theorist was willing to defend the view that democracies should tolerate extreme political ideas. Moreover, by the end of the twentieth century, the debate about toleration had come to focus on the issue of identity differences, particularly 'sticky' group-based identities, rather than competing political ideas. The main preoccupation has been how to accommodate differences rooted in gender, culture, or religion. For example, Rawls discussed the treatment of intolerant groups in connection with religious toleration, although he noted that 'with appropriate alterations' his argument could be extended to other instances (Rawls 1999, p. 190). Even recent debates on toleration, if not explicitly focused on religious identity, elaborate the concept in connection to ethical truths and moral reasoning rather than political perspectives (Forst 2017). To this day, philosophical debates on toleration focus on *moral* challenges of fundamental *liberal* principles, and less explicitly on *political* challenges of fundamental *democratic* principles.

This is not the case with empirical political science, which has developed a separate interest in *political tolerance* as such, i.e. the degree to which democratic citizens tolerate radical political views. The behaviouralist approach that has blossomed since the 1950s has examined individual attitudes to tolerance by asking relevant questions in comparative mass surveys. It studied for example whether the US electorate was intolerant of communists; the effects of education and other variables on the likelihood of such tolerant/intolerant attitudes; and the consequences of such attitudes for policy support. In these studies, tolerance was taken for granted as a democratic norm, and elites seen as more likely to support it. As a result, these studies tended to identify

democracy with an unconstrained competition of ideas, where the main protagonists were elites (Capoccia 2019, pp. 137–138). To regard democracy as an elite-driven 'marketplace of ideas' became a behaviouralist convention. Hence, although the study of political behaviours kept the interest in political tolerance alive, it did not offer any resources for critically assessing and problematising the relation between democracy and toleration.

In short, the normative relation between toleration and democracy has fallen under the radar of contemporary liberal political theory and comparative political science. The otherwise rich pool of ideas and behavioural research on toleration failed to sustain analysis of the meaning and role of toleration for democracy. As a result, within the debate on democratic self-defence, democratic toleration has been perceived as a mere negation of militant interventions (and nothing more). More fundamentally, the notion that toleration provides a distinct avenue for defending democracy has remained poorly articulated, frequently misunderstood, and at times even treated with derision, as the discussion below illustrates.

3.3 The conventional 'negative' account

Already in the 1930s, the politics of toleration was ridiculed by Karl Loewenstein. He scorned the support for 'formal equality' and maximal inclusion as being a synonym of 'democratic fundamentalism', 'legalistic blindness', and an 'exaggerated formalism of the rule of law' (Loewenstein 1937a, p. 424). He added that these 'obsessions of the republican authorities . . . paved Hitler's way to "legal" power' (Loewenstein 1938, p. 602). The fear of unrestricted parliamentary supremacy, already recognised by the drafters of the Weimar Constitution, was confirmed by the collapse of this emblematic constitutional order (Müller 2011, p. 148). The name of the game was now 'militant democracy', the disciplining of antidemocratic forces through legal measures such as party bans and rights restrictions. Consequently, toleration as a mechanism for defending post-war democracy was not only seen as illegitimate; it became a proxy term for denying the default choice of a 'disciplined democracy', and as such a synonym of non-disciplined—and by implication unruly and disorderly—democracy.

Indeed, parallel to re-describing it as the antipode of militant democracy, tolerant democracy was charged with pejorative connotations. Void of any acceptable philosophical justification, it was perceived as a passive,

unresponsive, and ultimately helpless type of democracy in the face of extremist danger. A haunting quote by Hitler's propaganda minister, Joseph Goebbels, epitomised the view that tolerant democracy is helpless: 'This will always remain one of the best jokes of democracy, that it gave its deadly enemies the means by which it was destroyed' (Goebbels 1935, p. 61).[1] But fascists were not alone in ridiculing tolerant democracy as dormant. Loewenstein spoke of 'legalistic self-complacency' and 'suicidal lethargy' and identified it with inaction and 'mere acquiescence' (Loewenstein 1937a, p. 431). Kelsen's own quote in his essay on democratic defence was partly responsible for these fatalist connotations:

> One must remain true to his colors, even when the ship is sinking, and can take with him into the depths only the hope that the ideal of freedom is indestructible and that the deeper it has sunk, the more passionately will it revive. (Kelsen 2006, p. 237)

The idea of maximum political tolerance, after a long period of triumph, fell into disrepute after the Second World War. The experience of Nazi brutality, which dominated post-war political thought, threw its shadow over the principle and its value, and caused a paradigmatic change of perspective. To a large extent, this resulted from the diagnosis that the party fragmentation of the Weimar Republic was 'a concrete expression of a more general pluralism of values' (Kennedy 1984, p. 113). Liberal values such as relativism and legal positivism were mistakenly blamed for having paved the way for Hitler, when in reality it was the supporters of substantive moral principles like Schmitt that had provided support to the fascist project. At the end of the day, the language of liberalism was 'rejected as relativistic or simply unsuitable for the age of mass democracy' (Müller 2011, p. 129).

In the post-war context, the new goal was stability. To prevent a return of the totalitarian past, post-war intellectuals and political leaders turned their backs on all that, which in their view, facilitated totalitarianism: 'limitless political dynamism, unbound masses, and attempts to forge a completely unconstrained political subject' (Müller 2011, p. 128). The whole post-war order was built on a distrust of popular sovereignty. As a result, parliaments were weakened and executives strengthened, themselves put under judicial

[1] In the remainder of the passage, Hitler's chief propagandist explains that privileges such as immunity from police prosecution, a greater freedom of speech than ordinary citizens, and even the possibility to transfer the costs of their actions to their enemies, gave the previously persecuted members of parliament of the NSDAP a 'free ride'. This 'democratic stupidity', he added, was soon discovered by other members of the party and encouraged them to join.

and administrative oversight that now became paramount (Müller 2011, p. 148). In this context of 'disciplined democracy', renouncing tolerance was seen as a prudent move and a direct lesson of the past.

The post-war philosophical zeitgeist was marked by a critique of pluralism as a form of relativism and by attempts to rationalise foundational principles. Even the most courageous defender of pluralism in the post-war years searched for 'unshakeable foundations of objective values' (Müller 2011, p. 148): 'a scale of values by which the majority of mankind and in particular western Europeans—in fact live' (Berlin 2013, p. 146). These are the values that, according to Isaiah Berlin, constituted a 'sane' human being and whose pursuit or non-pursuit was a sign of rationality (Berlin 1964, p. 223). By acknowledging the limitations of pluralism, Berlin was able to reconcile it with a constrained form of liberalism. Therefore, even if pluralism remained a topic of interest in contemporary Anglo-American political theory, it was contingent upon the acceptance of dominant values, and thus compatible with the containment of radical ideas. The opposite was simply unthinkable. Allowing fringe ideas from the right and left to float around was seen as a recipe for disaster.

Even at the dawn of the twentieth century, its most prominent liberal theorist criticised the absence of containment as excessively passive: 'Justice does not require that men must stand idly by while others destroy the basis of their existence' (Rawls 1999, p. 192). Hence, the rejection of tolerant democracy went hand in hand with the view that it amounted to inaction and passivity.

Support for *democratic* toleration did not subside entirely in the latter part of the twentieth century but was scattered into various parallel projects. On one hand, as hinted at above, toleration as a concept was owned by liberal political philosophers, whose theories were focused on justice, and only secondarily on democracy (e.g. Rawls). On the other hand, the democratic theorists that did endorse toleration did so only in light of their own key principles, such as polyarchy or deliberation (e.g. Dahl). None engaged in a sustained discussion of whether toleration can be an antidote to extremism and, if so, how. Besides, all evidence seemed to point to the opposite direction. Democratisation scholars argued that tolerating autocratic parties was a bad move that hinders the consolidation and viability of democracy (see Miller 2021). In this context, tolerant democracy has been overlooked or deliberately dismissed as an independent avenue of democratic self-defence. As a result of its scant theorisation, many came to view it through Loewenstein's lens: merely as a negative type that rejects restrictions on rights. In the words of a contemporary militant democrat, tolerant democracy, i.e. the entitlement of all political views to

the same rights of expression and association, is an 'old' and 'neutral model of liberal democracy' (Capoccia 2013).

However, as will be illustrated in this chapter, tolerant democracy is not merely the rejection of militant democracy. It constitutes a distinct and even proactive form of democratic self-defence, with its own conceptual and analytical characteristics. Because academic debate has been monopolised by proponents of its rival concept—militant democracy—the latter's simplified and often pejorative description of tolerant democracy has become widely accepted. Yet this description is both one-sided and analytically misleading. As a consequence, the normative potential of tolerant democracy remains largely unknown and untapped, making a meaningful comparison with militant and other forms of democratic self-defence difficult. The concept of tolerant democracy needs to be rescued. The aim is not to defend it normatively as a superior form of democratic self-defence, but to rehabilitate it as a distinct approach and bring out its theoretical potential. For this purpose, it must be described in clear and affirmative terms. The following section offers such a definition.

3.4 A 'positive' account of tolerant democracy

Contrary to the belief that this approach basically implies a lack of principles or systematic practices for defending democracy, tolerant democracy has its own ideal-typical logic: the logic of immunising democracy against various kinds of abuses regardless of their political or ideological characteristics. To further specify the *ideal-typical conception* of tolerant democracy that is based on this logic, its conceptual properties are examined in oppositional symmetry to the logic of militant democracy. Recall that the latter, as an ideal type, relies on three basic features: extraordinariness (of threats), exception (to fundamental rights), and exclusion (as a general aim). Conversely, tolerant democracy, a democracy that builds its self-defence on the principle and practice of toleration, has, as an ideal type, three corresponding features: *ordinariness*, *consistency*, and *inclusion*. Each of them will be discussed in turn.

First, tolerant democracies are based on the central assumption that domestic political threats are inherent in democracy and therefore always *ordinary*. This assumption is both pragmatic and normative. The pragmatic view is derived from the debate on constituent power. It has been argued that it is impossible for a court to decide who is an enemy of democracy in a nonarbitrary way, as such a decision lies beyond its authority to adjudicate between

equal members. The question of who a legitimate political agent is 'is implicitly a question over who is to be considered a member of the political entity itself', (Invernizzi-Accetti and Zuckerman 2017, p. 189). Put differently, banning a political party effectively results in the exclusion of individuals from the polity, as it precludes them from the possibility to exercise self-government. Consequently, a party ban is a redrawing of the boundaries of the demos. This constitutes an exercise of arbitrary and discretionary power, given that a court is not explicitly authorised to redraw these boundaries. Therefore, Invernizzi-Accetti and Zuckerman conclude that a democracy must, by definition, refrain from banning political actions and actors and, by implication, treat them all as ordinary.

In addition to this argument, there is also a large normative tradition that argues for accepting all political opposition as legitimate by default. It starts from a rejection of the Schmittian scheme, according to which some political opponents are existential enemies of the entire political community. Chantal Mouffe argued in this direction when she transformed Schmittian enemies, who must be destroyed, into adversaries, who must be confronted; antagonism into agonism (Mouffe 1999, pp. 4–5). According to her, democracies are campsites of 'agonistic' pluralism; all opposition within them must be accepted as legitimate dissent. In other words, political conflict, even in its most extreme form, is a natural phenomenon within a healthy democracy. It is the lifeblood of democratic politics and should be aimed at establishing hegemony, not destruction. Antidemocrats, in this view, are themselves part of this democratic constellation and should be recognised as legitimate opponents.

Mouffe's ideas resonate with a broader tendency to regard crisis not as an exception, but as a constitutive element of democracy. According to this view, democracies, unlike autocracies, stay the course not in spite of their mistakes but because of them (Runciman 2018). While these scholars do not deny that challenges and crises—often very serious ones—occur, they accept them as part of the regular life of democracy. These interim failures only confirm a longer-term organic process, through which democracies evolve, learn, and adapt. What supports their ability to survive is a belief that, although action is needed, no threat is too great to warrant a change in the general direction of democracy. The crises that a democracy constantly faces are its normal way of being. On the basis of this view, one could argue that antidemocrats are no more exceptional than any other 'democratic crisis' and must therefore be treated accordingly: as 'ordinary' political opponents.

The second ideal-typical characteristic of tolerant democracy is *consistency* with the existing legal-democratic framework. Consistency refers to

the unconditional application of basic democratic rights that guarantee free speech, free assembly, equal participation, and fair elections. It is the idea that these rights should *always* be applied, with no exceptions under any circumstances. Again, there are both pragmatic and normative arguments in support of this view. First, there is the pragmatic fear that once the possibility of making exceptions to democratic rights and procedures is established, there is no guarantee that it will not fall into the wrong hands, those who intend to abuse it. A now classic lesson of constitutional design is the anticipation that rules and laws, in order to be soundproof, must be tested against their use by non-benevolent rulers (Waldron 2012). Exceptions to fundamental rights typically fail this test.

From a more normative standpoint, the problem with exceptions on fundamental rights is that they normalise subversion. According to Kelsen (2006, pp. 229–237), any system of guardianship that allows for formally unequal access to power (e.g. by excluding or obstructing the participation of some parties or individuals) does not deserve the label 'democracy'. For him, it is the consistent application of democratic rules, procedures, and norms (equality, freedom, majority will) that distinguishes democracies from the arbitrary rule of autocracies. In this sense, party bans are both illiberal and undemocratic; illiberal because they threaten the purchase of negative freedom, and undemocratic because they seek to ascertain democracy against the will of the majority (Kelsen 2006, p. 237). Thus, democracies can only be maximally inclusive, allowing participation even by parties that promote unacceptable, even antidemocratic views.

In fact, the argument against exceptions on basic rights borrows from the argument against emergency rule *tout court*. Like with the politics of last resort, exceptions on rights must be rejected not only on symbolic grounds, but also on practical, as a 'strategy of resistance' to external pressure (Gross 2003, p. 1048). Gross describes this as a 'business as usual' model:

> According to this model, ordinary legal rules and norms continue to be followed strictly with no substantive change even in times of emergency and crisis. The law in times of war remains the same as in times of peace. (p. 1021)

This position reflects the idealist view 'that legal systems must not, under any condition and regardless of circumstances, recognise emergencies as deserving of special treatment and accommodation' (p. 1043). While acknowledging that crises and emergencies do occur, any response must be accommodated within the existing normative and legal framework.

The 'business as usual' model is based on two principles: constitutional absolutism—the view that constitutional limitations on power and protections of rights are fully applicable, even in times of war; and constitutional perfection—the belief that 'the constitution includes within its purview all the powers that government might need to exercise in order to carry out its functions and duties' (pp. 1046–1048). Another way to justify this model is to reject the possibility of neatly separating circumstances of normalcy and emergency, in part because emergencies can become entrenched and prolonged, creating precedents that allow for expansive use of emergency rules and structural modifications that persist long after the crisis has ended. A contemporary critic of emergency politics further adds that such a politics is evidence of a weak de facto political authority that seeks to assert itself through a politics of last resort (White 2019). All of these reasons speak for an approach that does not allow for exceptional measures (Gross 2003, pp. 1089–1096).

From this perspective, the only available mechanism for defending democracy is *inclusion* and accommodation, the idea that enemies of democracy should be granted broad access to political activity and public life. There are numerous normative justifications for including democracy's enemies, which are examined in the next chapter. For now, it is sufficient to recognise it as the main consequence of this ideal type. It requires that antidemocrats be allowed to participate in elections, take their seats in parliament, committees, and the presidium, and receive party funding. It also requires that they be granted access to both conventional and digital media, as well as to public and private venues for party events, and that they not be discriminated against in any other political forum. Likewise, civil society should engage with antidemocrats, remain in dialogue with them, and agree or disagree with them through peaceful means. The underlying idea is that we should respect and protect the right of antidemocrats to be heard.

Note that tolerant democracies do permit certain types of exclusions, for example on the basis of voting age, or residence status. But these exclusions are always based on objective and measurable criteria. They never target opinions and ideas, which are by default free in a tolerant democratic society, lest it cease to be democratic. Another thing to note is that, in tolerant democracy, inclusion is only formal. Democratic actors retain a wide range of options as long as the antidemocrats' right to inclusion is respected: to cooperate with them, to confront them, or even to neglect them.[2]

[2] This formal inclusion can be contrasted with a more substantial social inclusion that is discussed in Chapter 5. The critique of toleration as hegemonic power is discussed in Chapter 7.

Some conclusions follow from the above observations. First, a tolerant defence of democracy tends to target actions rather than the actors themselves. There is no a priori description or identification of potential enemies of democracy. Rather, the focus is on the soundproofing of political procedures or, as has been noted, on 'immunising' democracy (Pedahzur 2004).[3] Second, there are no abstract substantive principles to which political actors must commit themselves. Attacks on democracy are not recognisable by their political values or ideological motivations, but only by violations of specific procedures (which, importantly, are always consistent with the protection of rights). For this reason, this approach is broadly speaking a 'procedural' approach (Malkopoulou and Norman 2018).

Based on these conclusions, tolerant democracy is not only an alternative to militant democracy but also a strategy that is robust and analytically sound. Its three ideal-typical characteristics described above—ordinariness, consistency, and inclusion—define the manner in which tolerant democracies defend themselves. However, a key question remains: how precisely are they doing this? Through which practices do they prevent an antidemocratic majority from causing the erosion, decay, or collapse of democracy itself?

3.5 Tolerant mechanisms of democratic self-defence

To thwart the threat of democide, tolerant democracies rely on four main pillars: constitutional review, criminal law, institutional checks and balances, and civic education. These are hard institutional, legal, and policy-based strategies undertaken by state actors, that are worth examining in their own right.[4]

3.5.1 Constitutional review

The practice of constitutional review is a key mechanism of tolerant democracy because it perfectly instantiates the three structural features of tolerant democracy. First, it treats enemies of democracy as *ordinary* political actors,

[3] Tolerant democracy may resemble models premised on the avoidance of state capture or executive aggrandisement. Although democracies must indeed guard against power monopolies (see Bagg 2024), state capture is not the same as democratic collapse, just as a state is not a synonym of democratic government. A technocratic or libertarian state that lacks democratic credentials may also seek protection against the concentration of power.

[4] Tolerant democracy may also guide initiatives by other actors, such as political parties, the media, and civil society at large. What tolerant democracy expects from these non-state actors is examined in the last section of this chapter, as well as in Chapter 7.

who can legitimately contest and acquire power; limits are posed only on the kinds of laws and executive orders they can issue. Second, it makes no exceptions to basic rights; these are applied *consistently* and their application is even strengthened by holding off legislation that violates them. Third, the general practice is that of *including* 'dangerous' actors in the legislative process. Even if constitutional restrictions are imposed on what legal changes can be made, no one is technically or essentially denied access to public life. One could object that being restricted in this way is akin to being excluded. Yet, the scope for legislative change and policy-making by a party sitting in parliament is effectively much wider than that of a banned party. Thus, constitutional monitoring is not repressive in the same way and to the same extent as militant democratic instruments. On the contrary, it has a unique democracy-protecting function that, according to some constitutional scholars, has helped to consolidate democracy in many places around the world (Issacharoff 2007).

3.5.1.1 Normative views on constitutional review

It was Kelsen, who founded the idea and promise of tolerant democracy on the practice of constitutional review. In his view, the constitution had several functions in relation to democracy. First, it established clear, fair and objective procedures and non-essential norms—as opposed to essential norms that expressed a community's moral identity (Kelsen 2006). The point of constitutional legality was after all to provide political legitimacy to democracy. As skilfully described by Lars Vinx, it served as 'a template for an ongoing practice of lawful mediation of conflict' between antagonistic social groups (Vinx 2007, p. 160). Second, the constitution secured certain fundamental rights that were essential for the well-functioning of democracy. These democracy-enabling rights served to counterbalance the potential perils of majoritarianism and had to be constitutionally protected (Vinx 2007). Third, acknowledging the fact of value pluralism, a democratic constitution expressed a temporary and contingent compromise between antagonistic groups in a democratic society (Kelsen 2013, p. 73); it should therefore be open to revision and amendment should the terms of interest conflict and compromise among these (or other relevant) groups change.

Above all, Kelsen advocated the creation of national constitutional courts, i.e. special tribunals that exist outside the regular judiciary to provide a 'constitutional defence' against unconstitutional legislative actions (Mazák 2006). Their mission was to review pieces of legislation for their consistency with constitutional texts and invalidate them if found to be unconstitutional. These

independent courts would prevent legislators from introducing antidemocratic laws in constitutional democracies. The main reason for having them was to provide legal constraints on unilateral exercises of legislative power, constraints that provided legitimacy and 'a guarantee of legality' to the legislative process and its outcomes. According to Vinx (2007, p. 146), Kelsen viewed constitutional norms as providing the legal conditions for the valid exercise of legislative and governmental authority in constitutional democracies. To check the conformity of laws and executive decisions with constitutional norms and thus effectively apply the general principle of constitutional legality, a monitoring authority must exist that is detached from the legislative and executive organs themselves. For him, all exercises of public power, including the highest organs of government, must be subject to legal control by means of independent judicial review.

Kelsen's support for constitutional courts was an attack on Schmitt's view that the president of the Weimar Republic should act as the guardian of the constitution. For Schmitt, the adjudication of constitutional conflicts led to 'political' rather than legal decisions; yet, courts did not have the legitimacy to make political decisions because they did not embody sovereign power. In a democracy, Schmitt argued, the sovereign head of state—acting above party and expressing the unity and collective will of the people—must have the ultimate power to interpret the constitution. In practical terms, Schmitt was defending the Weimar Constitution of Germany, Article 48 of which gave the president emergency powers to dissolve legislative bodies for constitutional violations and to call a plebiscite to actualise the political will of the people (Jabloner 2000, p. 71).

But this view, according to Kelsen, was a remnant of constitutional monarchy, a regime that aimed at limiting the legal constraints on the monarch's power. Many modern republics were modelled on this regime and developed strong presidential powers. In a constitutional democracy, however, it was meaningless to make a hard distinction between 'political' and 'legal' decisions, Kelsen claimed. Legislation and execution (namely adjudication and administration) were not two contrasting functions of the state, but merely two different levels in the process of the creation of law. The former produces general norms, while the latter more specific ones; both are involved in a process of 'continuous concretization' of the law. Legality is then the 'relation of conformity' between the different levels of a legal order (Kelsen and Schmitt 2015, pp. 1486–1488). Judicial decisions have a 'political' character only in this broad sense. Thus, a constitutional court is legitimated to resolve constitutional conflicts and thereby produce new norms.

3.5.1.2 Constitutional review in practice: strengths and weaknesses

Kelsen's ideas significantly influenced the development of constitutional review, materialising in the constitutions of Austria and former Czechoslovakia in 1920, which he partially drafted, and inspiring other countries like Spain. Following the Second World War, the adoption of constitutional review spread to a majority of democratic nations, which now includes about 80 per cent worldwide, more than half of which have a constitutional court (Ginsburg and Huq 2018, p. 187). There are two primary models for constitutional review: the European model, characterised by centralised and abstract review conducted solely by designated constitutional courts and issuing decisions with general effect (Mazák 2006), and the American model, which employs decentralised and incidental review by ordinary courts in specific cases. The former may examine a law even before its promulgation, whereas the latter functions only retroactively, when a controversy between parties arises. Kelsen favoured the European model for promoting legal certainty, avoiding the risk of many divergent opinions (Kelsen and Schmitt 2015).[5]

It is important to note, however, that having one or another constitutional review system in place does not automatically qualify a country as tolerant democracy. First, constitutional review takes place even in countries that are not democracies, such as Iran. Second, constitutional review can exist without problem alongside militant constitutionalism—as a paradigmatic case, Germany's 1947 constitution has express provisions both for constitutional review and for party bans and rights restrictions. Moreover, a tolerant democracy may lack strong-form constitutional review provisions, as for example the United Kingdom. Hence, constitutional review is not a unique identifier of a tolerant democracy. It is merely one central tool through which countries in this tradition tend to act to defend themselves against antidemocrats who have taken power and try to 'legislate away' the laws and institutions that keep democracy afloat.

There are many examples of cases where constitutional review has successfully halted democratic backsliding. In 2010, Colombia's Constitutional Court rejected a constitutional amendment that would have allowed President Uribe to run for a third term. During his second term, Uribe had started to rule as a strongman, concentrating political power in his own hands, and aggressively

[5] The European model (also called Austrian or Continental model) is more prevalent across continental Europe, while the American model originates in the United States. Nordic countries, the United Kingdom, and the Netherlands employ weaker or limited forms of constitutional review. In addition, many countries have adopted a mixed model, e.g. Ireland, Greece, and Mexico (Cappelletti 1970).

targeting his political opponents. Although the court faced a difficult challenge in justifying its decision (Issacharoff 2015, pp. 146–151), it succeeded in stopping Uribe's dangerous third candidacy and returned Colombia to a more democratic path. Courts exercising judicial review have formally blocked controversial executive orders by populist-right leaders in many places, including the United States, India, Turkey, and Brazil (Barroso 2022). For example, US courts have repeatedly ruled against a number of reforms that the 2016–20 Trump administration tried to implement on environment, immigration, and other matters. Most of these rulings accused the administration of violating administrative procedures, by changing policy abruptly or without sufficient explanation (Barbash and Paul 2019).

However, an important weakness of constitutional review is that it constitutes a very 'late' type of intervention, coming in only after antidemocrats have risen to power and have captured a parliamentary or governing majority that allows them to introduce laws. Courts are also unable to enforce their judgements by themselves and must rely on those who control the public administration to do that. Take for example the EU's attempt to force national legislation to comply with EU law. In 2012, the European Court of Justice—and, before it, the Hungarian Constitutional Court—ruled against the Hungarian government's decision to force judges, many of whom were not loyal to the Orban government, into early retirement by invoking EU age discrimination rules.[6] The Hungarian government complied with the decision and offered compensation to the individuals affected yet did not reinstate them in office (Blauberger and Kelemen 2017).

The greatest risk is indeed that antidemocratic governments will meddle with the composition of constitutional and supreme courts, limit their independence, and co-opt their ability to exercise genuine judicial review.[7] 'Emptying, capturing, and rigging supreme courts' has been a signature practice of authoritarian leaders around the world, past and present. (Barroso 2022, pp. 276–279) Concrete methods in this direction include: 'packing' the courts with submissive judges, impeaching existing judges, forcing them to retire, or increasing the number of chairs, as well as approving constitutional amendments and legislation that remove powers from the courts, or hinder their performance. The use of constitutional review is contingent on the fact that autocrats have not yet had the opportunity to remove or obstruct these forms of power control, as occurred in countries such as Hungary after 2010 and Venezuela under Chávez and Maduro.

[6] See the European Commission's MEMO/12/832 of 6 November 2012.
[7] This problem is why Kirshner (2014) and other militant democrats reject tolerant democracy.

In addition, antidemocratic law-making may be so complicated and technically sophisticated that it can easily fall under the radar or outside the scope of constitutional review tribunals. 'Autocratic legalism', the tendency of autocrats to deploy the law in order to dismantle the liberal constitutional systems (Scheppele 2018) has in fact intensified in recent years, uncovering the vulnerability of tolerant democracies that rely for their defence only on constitutional review. Autocrats around the world systematically engage in 'abusive constitutional borrowing', the use of judicial review and other liberal democratic constitutional tools and norms for antidemocratic ends (Dixon and Landau 2021, p. 36). Possible solutions, such as the establishment of independent judicial councils responsible for managing appointments and other aspects of the judiciary, are themselves vulnerable to capture. It has been suggested, however, that combining such insulating devices with a constitutional protection of judges against removal from office may hold some promise for the independence of the judiciary, and consequently for the possibility of blocking antidemocratic legislation (Ginsburg and Huq 2018, pp. 190–191).

3.5.2 Criminal justice mechanisms

Another tool with which tolerant democracies can defend themselves is the use of ordinary law. This involves active prosecutors conducting regular lawful checks on individual political leaders or party members, as on any other legal subject, and non-state actors reporting them for involvement in various kinds of offences that are regulated by law. These could be laws designed to combat political violence, harmful and offensive hate speech, or racial discrimination. For example, members of Italy's M5S were convicted for defamation and forging documents (Campo 2023); and former US President Donald Trump was found guilty of falsifying business documents and other offences (34 felony counts in total).[8] Punishments are usually fines or imprisonment and may not affect the political rights of the accused.[9] The aim is not to exclude guilty politicians or parties from public life, but to hold them accountable for their actions

[8] The 34 New York State felonies, for which Trump was found guilty in May 2024, are offences perpetrated by Trump as a private citizen. They should be distinguished from the indictments he faced for acts committed in his official capacity, namely conspiracy, making false statements, obstruction of official proceedings—related to his interference in the 2020 federal and Georgia election results—and wilful retention of national defence information (espionage). 'Tracking the Trump criminal cases', *Politico*, 2 August 2024. Available at: https://www.politico.com/interactives/2023/trump-criminal-investigations-cases-tracker-list/#classified-documents

[9] Of course, the effect is different in countries where convicted felons lose their political rights temporarily or permanently. In this case, the use of criminal law produces political exclusion and democratic self-defence transforms from tolerant to militant.

and to force them to 'play by the rules'. In the same way that any individual, regardless of their professional status, is punished for breaking the law, they too must stand trial. Criminal law is so central to the tolerant type of democratic defence that some authors refer to it as the 'criminal justice model' (Pedahzur 2001, p. 342).

For example, party leaders and party organisations may be sanctioned for misuse of finances and other ordinary-law violations (e.g. cases of sexual harassment) that may occur within the party itself. In 2020, the AfD party received a hefty €402,900 fine for irregular campaign donations that involved free advertising services from a Swiss-based company for two of the party's candidates during regional election campaigns in 2016 and 2017 (Laumond 2023).[10] Likewise, Marine Le Pen was accused in 2018 and 2022 by the EU's anti-fraud agency of misusing European Parliament allowances to pay for events and staff working for her party *Rassemblement National* (formerly *Front National*), and was convicted by a French court in 2025.[11] Such charges may damage a party financially or reputationally. Because they are unrelated to the party programme, ideas, or speeches, and do not involve a value-based exclusion as such, such sanctions are in principle compatible with democratic toleration.

As a further illustration, between 2012 and 2019, over a period of less than seven years, the Greek Parliament revoked the parliamentary immunity of Golden Dawn MPs at least 11 times following a request by criminal prosecutors.[12] The neo-Nazi party's deputies were charged for: overruling authority and damaging third-party property (18.10.2012), carrying illegal weapons (4.6.2014), group robbery (22.10.2014), illegal videotaping (10.12.2014), inciting to violence (13.2.2015), hate speech (12.5.2015), racist law offenses (10.2.2016), public-service disruption and illegal violence (25.1.2017), ID card falsification (4.10.2017), embezzlement of funds (30.1.2019), and disregard for authorities (20.2.2019) (Malkopoulou 2021, p. 197). Certainly, Golden Dawn was among the most extreme parties entering a democratic parliament in

[10] 'Germany's AfD hit with hefty fine in donations scandal', *Politico*, 16 April 2019. Available at: https://www.politico.eu/article/germanys-afd-hit-with-hefty-fine-in-donations-scandal/. AfD's parliamentary group co-leader was also under investigation between 2018 and 2021 for receiving and not declaring illegal campaign donations. 'Legal proceedings dropped against AFD's Alice Weidel over alleged donations', SWI Swissinfo.ch, 20 September 2021. Available at: https://www.swissinfo.ch/eng/legal-proceedings-dropped-against-afd-s-alice-weidel-over-alleged-donations/46962818.

[11] '15 years of legal troubles for Marine Le Pen's RN', *Le Monde*, 7 July 2026. Available at: https://www.lemonde.fr/en/les-decodeurs/article/2026/07/07/15-years-of-legal-troubles-for-marine-le-pen-s-rn_6755244_8.html. The decision to temporarily ban Le Pen from office based on these charges was an unusual, militant departure from an otherwise non-militant procedure.

[12] This list does not include the lifting of their immunity in relation to the much graver charges that are discussed below: that of directing and participating in a criminal organisation.

the last decade, and therefore their crimes are unusually grave. Nevertheless, some of these crimes are often perpetrated by antidemocratic parties, and are discussed in detail below.

Far-right politicians are frequently charged and convicted for *hate speech offences*—statements that incite discrimination, hatred, or violence against a specific group of people. In 2005, Jean-Marie Le Pen, then leader of France's far-right Front National party, was fined 10,000 euros for inciting fear in the Muslim community—a decision that was upheld by the European Court of Human Rights. Five years later, his successor and daughter Marine Le Pen was charged (albeit unsuccessfully) on the same grounds, for 'inciting religious hatred' after making disparaging remarks about Muslim prayers. And in 2015, she was charged (again unsuccessfully) with 'inciting terrorism' after posting on social media gruesome ISIS images following a mass terrorist attack in Paris (Jacobs and van Spanje 2020). Similar hate speech charges are being brought against far-right politicians by prosecutors around the world. Perpetrators typically challenge such charges as a violation of their freedom of expression. This implies that restrictions of free speech are by default militant democratic since they involve a restriction of fundamental individual rights in the name of democracy. But this is not the case. In fact, tolerant democracies also put limits on expression, but they do so on different grounds.

As explained in Chapter 1, there is a crucial distinction to be drawn between different types of hate-speech laws depending on what is prosecuted and why. Prosecuting speech because it contradicts 'basic democratic values' falls squarely within the paradigm of militant democracy. In this case, speech is restricted on the grounds of political-ideological attacks on democratic principles and institutions, for example calls for abolishing elections in favour of one-party rule or calls for limiting the franchise to those who, say, paid a lower amount of taxes in the last year. On the other hand, sanctioning speech because it incites violence, discrimination, or hatred towards groups of people, and thus encourages attacks against them, falls within the scope of regular criminal law; such speech is regarded as criminal regardless of whether it carries political content, but solely on the basis of its (real or plausible) effects on others.

The qualitative difference of tolerant hate-speech laws (as opposed to militant free speech restrictions) boils down to a question of harm against persons. Does the speech in question cause direct or indirect, physical or psychological, harm to specific individuals or groups of individuals? In the 'tolerant' context of the United States, for example, legal action against political parties is permitted only inasmuch as they pose a 'clear and present danger of an evil

outcome' that involves 'harm' to other groups or individuals.[13] Free speech and free assembly enjoy strong protection; they can only be restricted if they incite or produce 'imminent lawless action' that involves criminal conduct as stipulated by ordinary criminal law (Issacharoff 2007, p. 1416). The type of harm that offensive speech may cause is often understood as a violation of the equal dignity owed to individuals, and can range from psychological harms to actual discrimination, incitement to violence, and even genocide.[14]

In addition to hate speech, prosecuting acts of *racist discrimination* perpetrated by organised political parties is another area where tolerant democracies tend to be proactive. For example, from 2012 onwards, Golden Dawn MPs organised a number of activities, including blood donations, medical services, job placements, and free food distributions, that were explicitly advertised and available 'only for Greeks' (Koronaiou and Sakellariou 2013). To make sure that beneficiaries were only 'Greek' they recorded names and checked identity cards. These practices were illegalised shortly after, through a 2015 law that punished the provision of goods or services in case this provision was excluding persons due to characteristics such as race, skin colour, and religion (Greek Criminal Code, 361B).[15] Similar anti-racist laws exist elsewhere, drawing on a long-established principle of international law. The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), in force since 1969 and ratified by 182 states (as of 27 July 2026), offers a first-class legal basis for introducing anti-racist laws. Hence, there is ample scope for punishing acts of racist discrimination through criminal law, without restricting the political rights of parties or individuals.

Finally, tolerant democracies tend to use the criminal justice system to contain *political violence*. Far-right parties are often accused of links to perpetrators of such crimes, which in the case of Greece occurred more or less on a daily basis when the neo-Nazi Golden Dawn was in parliament.[16] Far-right political violence typically includes street crime, intimidation and harassment in the cyber-sphere, physical assaults on persons and property, vandalism and

[13] 'To satisfy the clear and present danger standard, the risk of harm must be severe, probable, and so imminent that it could occur before discussion of the matter'. See Whitney v. California, 274 U.S. 357 (1927).

[14] The latter was the case in Rwanda in 1994, when the two directors of the Hutu radio station RTLM were found guilty of inciting the killing of Tutsis through their broadcasts (George 2015, p. 4).

[15] The law was however repealed from the new 2019 Code, and absorbed into a general provision (Art.184, par.2) that punishes incitement to hatred based on the same criteria. See European Commission (2019), *Repeal of Article 361B of the Greek Criminal Code*, Flash Report, 19 July. Available at: https://www.equalitylaw.eu/downloads/4940-greece-repeal-of-article-361b-of-the-greek-criminal-code-pdf-79-kb

[16] See the Annual Reports of the Racist Violence Recording Network (RVRN) in Greece, operating under the auspices of the UNHCR, which cover the years 2014-2023. Available at: https://rvrn.org/en/category/reports/

arson of religious institutions, asylum centres, or migrant residences, as well as more extreme forms, such as bombings, assassination attempts, murders, and terrorist attacks. Because criminal liability for violent acts is straightforward, even extremist political parties often condemn them, distance themselves from them or at least conceal them as best they can.

Sometimes, however, the involvement of official parties in acts of violence is exposed. This was the case with Greece's Golden Dawn, which in 2020 was formally declared a 'criminal organisation' operating 'under the guise' of a political party, which had orchestrated or attempted murders, violent attacks, and other serious crimes. As a result, all elected MPs and several other leading members were given long prison sentences for either leading or joining a criminal organisation. Interestingly, however, their political rights were initially unaffected—although in practice they were often denied leave from prison to carry out their parliamentary activities. This was because, as explained above, tolerant democracies do not, in principle, allow restrictions on political rights.

What they may allow, however, without contradicting their own logic, are laws that formally prohibit the *abuse of political office* as a cover for criminal activity, with appropriate sanctions such as loss of political office and ineligibility for elected office until the perpetrators have served their prison sentence (see the discussion in Malkopoulou 2021, pp. 198–200). It was for this reason that the party's state funding was suspended (and later cancelled), through a new law that restricted state funding for an elected party on the condition that 'one-fifth of its leadership is under prosecution or on remand for organised crime or terrorist activities' (Law 4203/2013). The cuts were justified without any reference to democratic values or political stability, but in order to prevent 'the possibility of direct or indirect abuse of state funding' to support criminal activities. Greek lawmakers walked a fine line between toleration and militancy and have increasingly shifted toward the latter. But, considering that a similar sanction to prevent criminal behaviour would apply to any non-political organisation (e.g. a religious or cultural one), this approach is compatible with the logic of tolerant democracy.

To be sure, the conviction of Golden Dawn is not easy to replicate, as the criminal case against it relied on evidence that the political party itself functioned as a criminal organisation. In other cases, political leaders have been accused of colluding with external terrorist groups with which they share political goals and have been found 'complicit' in acts of violence committed by these groups. Such allegations have been made against separatist parties such as Herri Batasuna in Spain, which was banned in 2003 on charges of being a front organisation for the Basque terrorist group ETA. Likewise, Sinn Féin in Ireland is often accused (especially in 2005) of being 'inextricably linked' to the

IRA.[17] In Germany, there was a clear division of labour between political party and criminal group, and thus separate proceedings: criminal proceedings for the far-right terrorist group NSU (2013) and constitutional proceedings for the far-right party NPD (2003 and 2017). In all three countries—Spain, Ireland, and Germany—party leaders never openly admitted knowledge of or responsibility for acts of violence allegedly committed by extra-parliamentary groups beyond their reach.

Of course, Germany and Spain are by no measure tolerant democracies. But monitoring and sanctioning criminal activity linked to a political party is not the sole domain of militant democracy. One can support criminal sanctions without dissolving parties, imposing rights restrictions, or excluding someone from public life. In other words, prosecuting ordinary criminal offences does not necessarily go hand in hand with constitutional proceedings against a political party. Tolerant democracies may prosecute crimes but refrain from using constitutional law to pre-emptively block 'suspicious' political action. In reality, however, laws do not always clearly distinguish between criminal activities and loyalty to democratic values. The Spanish 2002 Law on Political Parties is a good example. There, the possibility to ban political parties is framed in a way that combines opposition to democracy with a list of criminal activities (Tyulkina 2015, pp. 132–133).[18] Terrorist acts or speech that enables violence are said to 'violate democratic principles'. Although, the link to criminal justice is apparent, the justification of sanctions by reference to democratic values, together with the use of party bans as the principal sanction, classifies this law as militant democratic. Thus, although distinctions are not always easy to make, criminal laws in tolerant democracies do differ from militant ones both in substance (they do not protect values and institutions) and in practice (they do not include party bans or exceptions on basic rights).

3.5.3 Institutional checks and balances

Tolerant democracies typically bolster their defence mechanisms by having in place an institutional architecture that makes it hard for would-be autocrats to access or consolidate power. These procedures do not depart from a preliminary value-based description of the political profiles or messages that are to

[17] Fitt, Lord G. (2005) 'Political Parties, Elections and Referendums Act 2000', *Hansard: House of Lords debates*, 31 January, vol. 669, col. 71. Available at: https://hansard.parliament.uk (Accessed: 27 July 2026).

[18] They include attacks on life and dignity, exclusion of others on racist grounds, enabling violence and supporting terrorist activity (2002 *Ley de Partidos Políticos*, Art.9[2]).

be excluded. In fact, their purpose is not exclusion as such. The aim of these types of measures is rather introvert: to insulate a democratic regime from an individual's or group's attempt to concentrate decision-making power and irreversibly capture the system regardless of the political views that motivate these agents. As has been previously put in very succinct terms: the aim is to 'immunise' democracy (Pedahzur 2018).[19]

One way to immunise democracy without reference to the political characteristics of the prospective threats is to design *electoral systems* in a way that blocks out radical change altogether. It is characteristic that Loewenstein called proportional representation 'the gravest mistake of the democratic ideology' (Loewenstein 1937a, p. 424). First-past-the-post (FPTP) systems, the use of high thresholds for electability in proportional systems, larger electoral districts and generally decreased proportionality play exactly such a screening-out role, as do more specific electoral regulations, or constituency divisions depending on context. The aim behind them is to minimise how popular support for extremist parties translates to legislative representation for them. For example, majoritarian systems (and high thresholds) are known to impact negatively the share of seats that extremist parties gain (Norris 2004). In other words, if extremist parties win 5 per cent of the vote, in an FPTP system this will translate into no seats or fewer seats than in a proportional system. This is a mechanical effect of the electoral system, that assumes political extremism is supported by a minority of voters (at least in the beginning).[20] An alternative explanation is that FPTP systems incentivise parties to ideologically cluster near the centre of electoral space, thus making extremist positions less likely (Dow 2011). Other electoral mechanisms rely instead on mobilisation and broader inclusion, in the hope that these will contain the influence of fringe groups. They include high participation quorums in referenda and popular consultations in general (Martinico 2022, pp. 176–177), as well as compulsory voting, both of which are expected to dilute the electoral advantage of highly mobilised extremist groups (Malkopoulou 2020). Either way, electoral system design is a response mechanism that, technically, does not single out and exclude specific parties on ideological grounds.

[19] Strictly speaking though, Pedahzur's immunised democracy is not the equivalent of the 'tolerant democracy' ideal type presented here.

[20] At the same time, of course, it blocks out *any* small party, including less malevolent ones that may represent a suppressed ethnic, cultural, or religious minority, a marginalised sub-national region, an issue that requires urgent attention (e.g. the environment or gender inequality), or simply a non-extremist political minority. Besides, recent evidence has challenged this theory. As many far-right leaders have won FPTP elections and captured presidential power, majoritarian electoral systems may carry a significant risk of a boomerang effect.

A similarly important principle for immunising democracies is that of institutional checks and balances, i.e. the distribution of governmental power among diverse authorities so that none has ultimate power over government. This concerns first and foremost the *division of power* between executive, legislative, and judicial authorities, in a way that they monitor each other. Because the distinction between government and parliament is clear in *presidential systems*, these systems are also thought to deliver in this respect. Likewise, the existence of a *bicameral system*, that splits the law-making procedure between two independent legislative bodies offers an additional check against power concentration.

Another critical instrument for distributing power is *federalism*, whereby subnational regions are vested with substantial regulatory capacity. The idea that federalism would operate as an 'alternative to tyranny' has been, for example, a key topos in US political history because it controls key aspects of state power such as the election administration and a significant part of the legislative process (Wechsler 1954). Still, none of these mechanisms offers a soundproof guarantee. Federal states, for example, can resist democratic erosion at the federal level by providing platforms for anti-authoritarian politicians and by slowing down the implementation of federal law; but they can also be a laboratory for authoritarian coalitions and policies that spread to other states (Ginsburg and Huq 2018, p. 149). Federalism and other institutional checks and balances are important procedural safeguards for democracy, but they can also have adverse effects.

Finally, tolerant democracies can protect themselves by facilitating and securing the *alternation in power*. Since Athenian times, rotation in office has proven to be a basic staple of democratic equality: it secured equal chances to access power against the privileges of incumbency. A particular problem here concerns 'executive overstay', which can be resisted by hard term limits. This is especially important in presidential democracies. The problem is acute in Latin America, where elected presidents have time and again tried to overstay their term in office and alter the constitution to allow them to do so. An incumbent's avoidance of term limits is a common marker of authoritarian politics because it threatens the free competition of parties. It has been suggested that it even generates a 'cycle of non-compliance' where executives who evade or extend term limits threaten the legitimacy of the constitution, which in turn is necessary to guard against excesses of executive power (Elkins 2022, p. 190). But term limits are also not a panacea. Przeworski offers empirical evidence that over time presidential systems are less stable than parliamentary ones, perhaps precisely because term limits may remove from office a very popular

president and replace them with someone less popular (Przeworski 1999, p. 50). Moreover, one could argue that term limits restrict electability and access to office and thus limit a democratic right.[21] But the problem that term limits are supposed to solve may be more serious and frequent than their side-effects.

Typically, countries in the common-law tradition belong to the tolerant model. For example, in the United States, institutional checks involve presidentialism combined with a majoritarian electoral system; a clear division of power among executive, legislative, and judicial authorities that control each other (through judicial review of legislation, congressional oversight of the executive, and presidential veto powers); a bicameral legislature; and a federal system that prevents the concentration of power.[22] Besides these institutional mechanisms, tolerant democracies tend to invest in programmes of civic education and actions that fall outside the ambit of formal institutional architecture.

3.6 Tolerant mechanisms beyond the law

3.6.1 Civic education

Although civic education measures are present in other forms of democratic self-defence as well, tolerant democracies place much greater emphasis on them. The importance of civic education as a democratic self-defence tool is grounded in the belief that legal provisions alone 'cannot save a democracy which lacks a sufficient number of citizens with firm democratic convictions' (Müller 2012b, p. 1266). In other words, citizens' minds matter. A public pedagogy that aims at impregnating the masses with a strong democratic ethos is premised on inclusion, and is therefore an indispensable measure of a tolerant approach to democratic defence. It is thus justified to claim that 'the educational system can be a powerful instrument for the diffusion and transmission of democratic values and practices, as well as for the eradication of antidemocratic ones' (Capoccia 2005, p. 53). It is in this vein that the German chancellor Gerhard Schröder called—in rather elitist terms—for an 'uprising of the decent' after an attack on a synagogue in 2000, which was followed by an increased pro-democratic activity by civil-society organisations often financed by the government itself (Müller 2022, p. 6). In addition to civic education in

[21] Elkins (2022) argues that term limits fall within the logic of militant democracy.

[22] For a more detailed description of the current strengths and weaknesses of the American approach to democratic self-defence, see the brilliant analysis in Ginsburg and Huq 2018.

schools and support for civil-society movements, these 'long-term strategies' may involve 'information campaigns or actions through the media' (Rummens and Abts 2010, p. 655). Critics call such social-educational interventions 'soft' and deem them as insufficient measures of 'self-healing and self-help' (Frankenberg 2004, p. 131). Liberals, on the other hand, are likely to reject them as an expression of paternalistic propaganda.

The importance of civic education for democracy has been clearly established, at least since campaigns for universal suffrage went hand in hand with advocacy for mass schooling and republican education. Educational reforms were introduced in Germany after the Second World War to clear its authoritarian heritage (Capoccia 2005, p. 54). More recently, civic education policy became prominent in the 1990s, when the discovery of the critical link between democracy and social capital inspired state initiatives to construct 'a democratic political culture' through education programmes (Frazer 1999, p. 6). Topics such as multiculturalism, minority integration, and anti-racism were then introduced into many school curricula in democratic countries.

Education policy geared towards democratic self-defence can take different directions. It can focus on teaching citizens about democratic structures, procedures, and rights. For some, this is insufficient and should give way to an emphasis on democratic and liberal values instead. In this latter case, civil-society organisations can play an active role, as they work to promote inter-cultural understanding and tolerance by designing extra-curricular programmes for children, young people, adults, as well as for foreign-born residents, as, for example, in eastern Germany since the early 1990s (Pedahzur 2018, p. 186). A third possible dimension of pro-democratic education involves a broader menu of history, science, and technology classes 'that provide the population with critical-reasoning skills and a basis for choice'; in fact, the paucity of such classes in the American education system and the general decline of civics knowledge among the American public have been blamed by some for the rise of populist demagogy in the 2010s (Cole 2016).

Educational and training policies that promote democratic values can also take place through international programmes of 'democracy promotion'. These are aimed both at the general public, who are therefore offered knowledge about democratic institutions and their rights and duties as citizens, and at individuals in key positions, such as political party officials, parliamentarians, judges, police officers, bureaucrats, journalists, and activists (Capoccia 2005, p. 54). Although these initiatives are generated at a different level and

tend to be directed from foreign 'donor' countries to recipient 'democratising' countries, they represent a significant proportion of civic education worldwide.

3.6.2 Civil society, social movements, and citizens

Tolerant democracies tend to rely largely on public deliberation and ordinary politics as resources for curbing antidemocratic challenges. This presupposes that citizens not only have the knowledge and training to play their democratic role but are also socialised in democratic practices and accustomed to public discussion. A strong civil society is thus indispensable as a primary weapon against extremism.

At this point, a qualitative distinction must be made between tolerant civil society and intolerant civil society. The latter, as mentioned in Chapter 1, adopts a combative stance aimed at de facto restricting the rights of antidemocrats. Tolerant civil societies, on the other hand, adopt a more rights-based, inclusive, and egalitarian approach. Antidemocrats are treated as partners-in-conflict, i.e. 'as equals even in the face of deep and persistent conflicts' (Müller 2022, p. 9). They are engaged in good faith, their arguments listened to, and their concerns addressed in public debate, their electoral victories accepted and read as a sign that more effort is needed to win over their supporters.

In this context, even counter-demonstrations can be tolerant, if they aim at doing exactly that—*demonstrating* the fearmongering, racism, and intimidation tactics promoted by antidemocrats (Müller 2022, p. 7). This means bringing to the attention of wider audiences, as well as to professional journalists and legislators, the concrete wrongs that antidemocrats perpetrate. A recent example is the 'Sardines' movement in Italy, which started in November 2019 in Bologna, when protesters adopted the tactic of packing city squares with large crowds (like 'sardines') to protest the far right and specifically Matteo Salvini (Tondo 2019).

Civil-society organisations play an especially leading role in tolerant democracies. They can promote tolerance and make it harder for extremist politicians to mobilise wide support from the population. For example, months before the national elections of September 1998 in Germany, the German post officers' trade union asked the Federal Government to take action against the delivery of racist mail through the postal system. In the same year, the organisation of Christian churches asked parliamentarians to refrain from using xenophobic

comments in their election campaigning. And larger trade unions asked their members not to vote for extreme right-wing parties and take action against the rise of xenophobic violence. Likewise, in the United States, grassroots activities in local communities as well as established interest groups have been active in promoting tolerance both at street level and by supporting legislative initiatives (Pedahzur 2018, pp. 187–188).

The value of *tolerant* civil-society action—described by scholars as 'adversarialism' as opposed to 'coercive confrontation' (Bourne 2023)—is not only symbolic. It is also practical. Civil-society groups can perform an informal fact-finding and monitoring role, as exemplified by the Anti-Defamation League in the United States, which provides information, legal expertise, financial assistance and other forms of support to combat racist activity; or the Golden Dawn Watch, an initiative by several Greek civil-society organisations that followed and recorded daily the criminal proceedings against the neo-Nazi party Golden Dawn.[23] Civil society can be described as tolerant when it engages in media campaigns, exposing misinformation, and countering disinformation and hate speech, especially online. This is done without interfering with free-speech rights. For example, in May 2020 Twitter started adding warning signs next to Trump tweets claiming election fraud in California, which were marked by a light blue exclamation point icon with the message 'Get the facts'.[24]

Finally, individual citizens act as tolerant democrats when they engage in a similar rights-respecting, peaceful confrontation with antidemocrats. Engaging in a debate about the harmful effects of discrimination with your racist uncle at a family gathering qualifies as such an act. Responding to your Islamophobic former schoolmate on Facebook is another possibility. Another possibility is to partake in Citizens' Assemblies aimed at combatting extremism; their stance can be tolerant as long as their engagement is inclusive, accommodating, and deliberative. Such Assemblies could debate claims about justice, as well as the content of democratic essentials, deliberations that could engage a wide range of citizens (Müller 2022, pp. 10–11). The overall aim of such deliberations is to keep the public discussion going and, if possible, filter out non-deliberative claims, considering the risk that political polarisation may get derailed to more intolerant and violent channels of action. The point is

[23] See https://www.adl.org/about/mission-and-history; https://goldendawnwatch.org/?lang=en

[24] 'Twitter labels Trump's false claims with warning for the first time', 27 May 2020, The Guardian, Available at: https://www.theguardian.com/us-news/2020/may/26/trump-twitter-fact-check-warning-label. Trump's Twitter account was permanently suspended following the storming of the Capitol on 6 January 2021—which is a more poignant militant practice.

that avoiding such derailment does neither mean 'standing idly by', nor necessarily adopting a militant, combative stance; it means that action should have a different character that is consonant with the value of toleration.

3.7 Conclusion

This chapter began as an attempt to rehabilitate toleration as a weapon against antidemocratic threats after decades in which it had been de-legitimised and neglected. It was de-legitimised because of the mistaken belief that value pluralism and toleration had caused the Weimar collapse and its disastrous consequences. And it has been neglected because the debate on toleration has focused on religious and cultural difference and has been discussed in relation to theories of justice and recognition rather than democracy and political extremism. As a result, tolerant (or accommodating) approaches to democratic self-defence have often been defined and valued negatively by militant democracy advocates: as mere aversion to militant restrictions, which is ineffective and naïve.

Departing from these conventional negative accounts, this chapter has identified the defining analytical features of tolerant democracy: the treatment of antidemocrats as *ordinary* opponents, the *consistent* application of democratic procedures and rights, and the intentional political *inclusion* of antidemocrats. These ideal-typical features distinguish tolerant from militant practices of democratic self-defence in the constitutional, institutional, and public spheres. The central claim is that tolerant democracies are mistakenly assumed to entail a passive attitude towards antidemocrats. Instead, they justify a range of active measures that differ qualitatively from militant ones.

As a result, tolerant democracy represents an ideal type of democratic self-defence that is potentially proactive in nature. The range of actions it proposes is grounded in the principle of toleration. But how can such actions be normatively justified? What is the theoretical basis of the relationship between democracy and toleration, and of the claim that democracy should be defended with, rather than without, toleration? Different theories offer different perspectives on the concept of democracy and its relation to toleration. Chapter 4 examines these normative perspectives in greater detail.

4

Rationales for Tolerating Antidemocrats

4.1 Introduction

In practice, antidemocratic parties are far more likely to be tolerated than the militant democratic literature suggests. The previous chapter examined what constitutes a tolerant approach to the enemies of democracy. It pushed back against the militant democrats' systematic hetero-definition of tolerant democracy as defeatist, and attempted to rehabilitate its basic analytical features: that it regards democracy's enemies as ordinary threats, protects their inclusion, and treats them in a manner that is consistent with fundamental norms. But conceptual clarification is not the same as normative evaluation. Just as militant democratic theories provide normative justifications for excluding democracy's enemies, theories of tolerant democracy require a solid normative foundation to justify inclusion. This chapter is devoted to an in-depth examination of the philosophical arguments that provide a rationale for democratic toleration.

Many scholars have spoken in favour of tolerating authoritarian populists. There are calls for 'engaging in an honest dialogue' with populists (Rovira Kaltwasser 2017, p. 502), or for listening to the social-cultural and material grievances of populist sympathisers in a serious way because we have 'a basic democratic duty to engage in reasoning' (Müller 2016b, p. 16) and must argue against populists 'with the best arguments and evidence available' (Müller 2016b, p. 113). Others seem to be prepared to acknowledge the legitimacy of some populist grievances, especially those that refer to severe existing injustices and failures of the democratic system (Reid 2022). However, normative accounts that explicitly and thoroughly advocate tolerant democracy are sorely lacking.

Which normative ideas underpin a defence of democracy based on toleration? Can they reverse the popular notion that 'too much tolerance leads to the dissolution of tolerance'? Looking back, one can see that the normative link between toleration and democratic survival was established while postwar democratic theory was under pressure from two sides. On the one hand,

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responses to antidemocrats had to be bolder than in the pre-war period in order to prevent a second coming of Nazism. On the other hand, liberal rights had to shine brightly over the darkness of the eastern communist regimes. Navigating between these two opposite ends left its mark on the debate on toleration. After the war, support for toleration continued to grow. But to the limited extent that it was discussed in relation to democratic self-defence, it was seen as a principle worth suspending in order to preserve it in the long term. Toleration, paradoxically, became the very reason for intolerance.

Nevertheless, some theorists have developed an unconditional defence of toleration as a fundamental pillar of democracy, suggesting that the defence of democracy must be based on this principle. This chapter examines some of the key normative justifications that have been offered in support of unconditional inclusion and pluralism. It argues that justifications for tolerant democracy vary because they start from different axiomatic principles and pursue different goals. Three such principles are identified: freedom, truth, and pedagogy. Justifications differ according to which of these principles prevails, how it is interpreted, and the role it plays in conditioning the relationship between democracy and toleration.

Each normative justification for tolerant democracy examined in this chapter is built on a broader rationale that relates to a particular strand of democratic theory. They therefore involve different intermediate goals for democratic toleration and different means of achieving them. However, they are all based on the assumption that the enemies of democracy are ordinary challengers who should not be excluded, but instead should be treated in a manner consistent with existing norms and rules. The chapter concludes with a comparative analysis of the different conceptions of democracy supported by each of these theories. It thus builds into the general argument of the book that there are many theories of democratic self-defence, each proposing not only different solutions but also different conceptions of what is to be defended. The first of these conceptions is that of democracy as a set of procedures that implement the fundamental norm of freedom.

4.2 Fairness-based justifications

4.2.1 Democratic proceduralism

Support for tolerant democracy was by nobody expressed more emphatically than by procedural theorists of democracy, with first among them the

inter-war Austrian jurist Hans Kelsen.[1] One of the many legal positivists of his time, Kelsen believed that law was posited by people (not some natural or metaphysical entity) and fulfilled a function in the real world (not in ideal terms) (Kelsen 1967). In the context of a democratic society, law was the 'temporarily sedimented outcome of an earlier conflict of interest that has been settled by way of compromise' (Vinx 2007, p. 165). Therefore, no law was definite, all laws including the constitution should be open to revision.

Democracy, Kelsen argued, is characterised by the competition between interest groups, which is unavoidable since politics is characterised by pluralism and disagreement. In this positivist and pluralistic world, the procedure by which laws are made matters more than their substance. Procedures are fundamental to democracy because they embody democratic principles and translate them into political processes. In the words of two key contemporary defenders of democratic proceduralism:

> The proceduralist vision insists that equal political liberty is the most important good for which democracy should strive. And it posits that the modern democratic procedure—based on every individual's equal participation in fair and competitive elections for selecting political representatives and thereby contributing to the production of decisions via majority rule—is the best way of respecting equal liberty in a context of pluralism and dissent. (Saffon and Urbinati 2013, p. 442)

The key idea is that, because democracy's sense of purpose is to protect the equal liberty of persons, it must tolerate all opinions unconditionally. Otherwise, it is impossible to determine the majority will. Indeed, in democracies—as opposed to autocracies—laws have to result from the majority will, in the production of which each person participates as an equal. This method protects individual freedom: coercive legal norms are legitimate only if those subjected to them have contributed to making them. Thus, unlike autocracies, predicated on external authority, democracies are predicated on individual autonomy (Kelsen 2013, pp. 28, 74; Urbinati and Accetti 2013, pp. 5–6). Democracy requires fair procedures, i.e. procedures which respect the equal individual liberty of all citizens.

[1] Proceduralism is associated with a variety of approaches, including Kelsen's support for parliamentary democracy, Schumpeter's conservative elitism, Habermas's theory of deliberation, as well as more recent epistemic conceptions of democracy defended by David Estlund and others, see Scheuerman 2016. I treat these theories separately on account of their different basic normative premises, aiming to find out if these differences also obtain when they think about democratic self-defence.

But majority rule is not unlimited. Majorities cannot be determined without the presence of minorities—hence, for Kelsen, suppressing a minority is conceptually impossible within a majoritarian democracy. But it is also impossible from the point of view of social reality, because the parliamentary process requires a compromise between antithetical positions and such compromise cannot be reached if the views of the minority are unknown (Kelsen 2013, pp. 67–70; Lagerspetz 2017, p. 170). Majority rule requires open-ended procedures to verify whether a decision or government enjoys majority support, as well as whether it *continues* to enjoy majority support. Conversely, according to Kelsen, a democracy that seeks to assert itself against the will of the majority by force ceases to be a democracy, no matter what the consequences of the majority will might be. One has to show unyielding loyalty to the democratic flag 'even when the ship is sinking' (Kelsen 2006, p. 237).[2]

Later authors took over and enriched this understanding of democracy as a system based on fair procedures. Robert Dahl described democracy as a process of self-governance premised on the equal consideration of the interests of all (Dahl 1997, pp. 207–209). He identified five criteria against which procedures are to be evaluated to count as democratic: effective participation, voting equality at the decisive stage, enlightened understanding, control over the agenda, and inclusion (Dahl 1989, pp. 108–114). Democracies can never be perfect or ideal regimes; what they can do is to operate with procedures that approximate as best as possible these five criteria. When these criteria are violated, then a choice is implicitly made that the governing process ought not to be democratic. For example, whenever a majority tries to deprive a minority of its political rights—and this example could include both far-right radicals disenfranchising an ethnic minority and militant democrats disenfranchising a political minority—they are not acting democratically. The people have indeed the power to destroy democracy. The only safeguard against this is a people committed to the democratic process, who believe that such a process is desirable and make this belief part of their political culture (pp. 171–172).

Dahl openly disputed the authority of constitutional courts to use the protection of substantive rights as a means of preventing the overthrow of

[2] Issacharoff argues that this 'quietism' found in Kelsen and other tolerant democrats, that democracy cannot really be saved if its people decide to abolish it, is itself a ground for opposing suppression. A very succinct description is offered by Justice Holmes, who claimed that the judiciary cannot stand in the way of popular sentiment: 'if my fellow citizens want to go to Hell I will help them. It's my job.' Letter from Oliver Wendell Holmes to Harold J. Laski (4 March 1920), cited in Issacharoff 2007, p. 1412. But this fatalism is not a normative standpoint explicitly endorsed by Kelsen. Unless one establishes a link with a more principled belief in a democratic people's entitlement to abolish its constitution, as Issacharoff does by citing Alexander Hamilton, the claim that Kelsen's position is 'quietist' rests on insufficient grounds.

democracy by a fascist dictatorship. His disbelief was grounded in a rejection of substantive outcomes; because no one could claim to have an enlightened understanding of other people's interests, substantive standards should always be seen with suspicion (p. 174). Besides, guardianship that supposedly protects a people from 'mistakes'—such as electing autocrats—is for him paternalistic. Hence, Dahl ends up defending such mistakes as an opportunity to learn. Democratic mistakes, he argues, represent an opportunity for an entire people to develop their moral capacities and assume responsibility for their mistakes (pp. 78–79). In times of crisis, the solution is not to opt for substance over procedure. Antidemocratic outcomes are always a sign that the democratic process has failed; solutions should be focused on improving the operation of the democratic process, 'to make it more truly democratic' (p. 174).

Like Dahl, who emphasised the democratic process, Norberto Bobbio suggested that democracy needs to be seen as 'the body of rules (the "rules of the game") which must be observed if political power is to be effectively distributed among the majority of the citizens' (Bobbio 2005, p. 31). He argued that democratic procedures and fundamental personal rights are mutually dependent: one is required to safeguard the other. The best way to protect those rights from possible suppression or limitation by those who govern is to invest citizens with the capacity to defend themselves against abuses of power. In his own words:

> The best available remedy against all possible forms of abuse of power . . . is the direct or indirect participation of citizens, and of the greatest possible number of citizens, in the formation of the laws. (Bobbio 2005, p. 38)

Bobbio makes one further interesting distinction. He explains that, in non-democratic regimes, the safeguard of liberal rights depends on the natural rights of resistance to oppression (á la Locke). By contrast, in democratic regimes, which are based on popular sovereignty, the best safeguard of the rights to liberty is active citizenship. When people participate in great numbers, the risk of power abuses is minimised.

Following Bobbio, Saffon and Urbinati explain that rights-based and meaningful equal participation in politics is an intrinsic characteristic of procedural democracy.[3] 'We are autonomous under democracy because we obey our own laws, and also because we "set the agenda" concerning the types of problems

[3] Mackie has argued that democratic procedures are characterised not only by procedural equality, i.e. the fact that they give a fair and equal chance to every citizen to influence policy choice (Mackie 2011, p. 450), but also by majoritarianism, which makes this choice matter. In other words, the outcome is positively responsive to the input that voters provide, and that is an intrinsic quality of the procedure.

that we want to decide upon' (Saffon and Urbinati 2013, p. 450).[4] But in addition to equal influence over outcomes, democratic procedures are also valuable for their positive responsiveness: they select what most people want and, in that sense, what is thought best for the collective (Mackie 2011, p. 450). Both 'the equal opportunity to express one's voice in politics, and the equal weight given to that voice in decision making' (in the form of majority rule) make up equal liberty, which is procedural democracy's 'foundational value and guiding principle' (Saffon and Urbinati 2013, p. 460). In other words, procedural democracy is appreciated precisely 'because of its potential for expanding and strengthening political freedom, so as to assure it equally to all those concerned' (p. 459). Thus, by virtue of their design principles, modern democratic procedures manage to safeguard freedom while channelling political conflict.

Proceduralists are in favour of political antagonism. Dissent and disagreement are understood to be central features of social relations. In ancient as in modern democracies, they are 'the main factual conditions requiring democracy to fulfill liberty' (p. 445). Indeed, for Saffon and Urbinati, openness and contestation are among the five main features of procedural democracy—along with uncertainty, participation and emendation, responsiveness, and nontriviality. The democratic game must be 'truly open' and ensure meaningful opposition so that rival forces can keep each other in check (p. 461). Political procedures ought to reflect pluralism 'meaningfully' (p. 442). Institutions must preserve partisanship, so that no one can excessively influence decision-making and undermine the presumed uncertainty of outcomes. To be sure, one could argue that, because all these conditions—openness, uncertainty, pluralism—are so vital for democracy, it is justified to a priori exclude actors who speak or act against them.[5] But Saffon and Urbinati resist the temptation to turn equality or liberty into an outcome value, which would require measuring all decisions with regard to whether they respect and promote equal liberty. Instead, the two authors hold that democratic procedure is where this value best materialises. This makes proceduralists the arch-defenders of tolerant democracy.

After all, Saffon and Urbinati state clearly that 'in a context of pluralism and dissent, following (instead of transgressing) the democratic procedure is

[4] This claim is reminiscent of republicanism, which likewise argues that only laws agreed upon and equal participation in their making can ensure non-domination. Republicans like Pettit also see democracy as a set of structures to keep those in power in check; without an equal share in forms of control and civic engagement, these structures collapse (Pettit 2012). Republicans may therefore share the conclusion that citizens need to be empowered, especially when some of them challenge the status quo, as antidemocrats typically do.

[5] This is in fact the argumentative line of many contemporary militant democrats, especially Rijpkema and Kirshner, see this book Chapter 2.

the best way of achieving or approaching equality without violating freedom' (p. 442). The only requirement is that the procedure is 'accessible to all and that its application does not entail any unjustified advantage or preferential treatment for anyone' (p. 459). Under this scheme, no one can be rightfully excluded in a democratic process. Along the same lines, other proceduralists have argued that democracy should not proscribe actors, but only certain actions (Invernizzi and Zuckerman 2017, pp. 13–14).

In general terms, the proceduralist justification of tolerant democracy can be summarised as follows: because excluding certain actors from the democratic game on the basis of their goals or ideologies undermines the ability of procedures to recognise the normative equal freedom of persons, there can be *no such exclusions* and exceptions. Democracy can only be defended by the *consistent* application of fair, i.e. liberal-egalitarian procedures, not because they produce certain outcomes, but because they can protect certain values. Antidemocrats must therefore be treated as *ordinary* political opponents. Thus, proceduralism is perfectly compatible with the normative account of tolerant democracy developed in Chapter 3.

4.2.2 Democratic minimalism

If anything explains why democratic proceduralism survived and became popular through the second half of the twentieth century, albeit in distorted form, it is its appropriation by theorists of minimal democracy.[6] In his magnum opus published during the Second World War, Joseph Schumpeter offered a lifeline for proceduralists. The cost was a shift from Kelsen's value relativism to value nihilism. Democracy, now completely detached from values, was described as a *method* that obtained wherever 'individuals acquire the power to decide by means of a competitive struggle for the people's vote' (Schumpeter 1942, p. 269). In short, democracy involved nothing more than electoral competition for leadership. Schumpeter's view was based on the elitist assumption that citizens had a reduced sense of responsibility and increased levels of ignorance in political matters. Their opinions and preferences were formed by the campaign propaganda of leaders and parties. In that sense, the common will of the people was an aggregation of individual wills manufactured by leaders

[6] In fact, procedural democracy has been for long wrongly conflated with these minimalist or Schumpeterian theories of democracy, e.g. by Habermas 1996, pp. 332–333.

and thereafter accepted by their followers (Schumpeter 1942, pp. 261–264).[7] To survive, democracies needed to ensure the free competition between available political forces, and offer them a fair chance to win. Democracy was thus reduced to free and fair election procedures.

In fact, for Schumpeter, electoral competition does not only epitomise the democratic process. Competition for the popular vote, but also competition among elected members for cabinet positions, is also democracy's self-correcting mechanism against abuses of power. Politicians in office are constrained by the electorate not because they seek to approximate the common will, but because of their self-interested desire to be re-elected. The reason why competition prevents a closing-off of the political space is because political preferences are driven by interests (and beliefs), which are often in conflict (Przeworski 1999, p. 31). Elections serve to limit violent conflict by providing information about the distribution of power; this information, and the prospect of alternation as such, has a moderating effect both on winners and losers. For incumbents, it raises the costs of violating electoral rules, and for voters, the costs of disregarding electoral results (Przeworski 1999, pp. 48–49).

Yet, competition has also side-effects, among them the danger that mostly preoccupied Schumpeter: excessive polarisation. Therefore, in addition to competition, Schumpeter notes, what is needed is 'democratic self-control'. The main ingredient for that is citizens and politicians who are endowed with certain moral and intellectual virtues, such as moderation, patience, and willingness to compromise (Schumpeter 1942, pp. 294–296; see also Selinger 2015, pp. 137–141). One necessary quality is toleration: people must be able to 'stand by patiently while someone is attacking their most vital interests or offending their most cherished ideals' (p. 295). Genuine respect for different opinions and 'a willingness to subordinate one's own opinion' is key for democracy's survival. If people refuse to compromise, Schumpeter thought, democracy cannot survive.[8] Moreover, citizens and politicians need to accept the legitimacy of the democratic process and exhibit patience with

[7] According to Mackie, this descriptive understanding of democracy, useful for comparative regime research, acquired with time the status of a normative justification for democracy. It started to lose traction only when it became an undeniable fact that many regimes fitting this 'electoralist' definition had little resemblance to actual democracies and were in fact electoral autocracies (Mackie 2011, p. 441). As Mackie (2009) notes, Schumpeterian proceduralism not only catered to an elitist agenda but was also 'insufficient' on its own terms.

[8] Schumpeter ends this section by adding that there are situations when all democracies 'with practical unanimity' find it 'reasonable' to suspend the democratic principle of competitive leadership for a limited time and confer to some individual a monopoly of power (p. 296). This Schumpeterian nod to Schmitt has been analysed in Scheuerman 1999, pp. 183–208. Schumpeter notes Schmitt's claim that 'tolerance never is and never can be absolute' and his acknowledgement that a would-be-leader may be 'lawfully excluded' (p. 295). But he offers no further comment in this direction. So, it would be fair to

it. Politicians should refrain from challenging governments, and voters should do the same with regard to their elected politicians. Everyone should exercise self-restraint and basically mind 'their own business'.

How could these qualities be cultivated in a population? Schumpeter commented that historically these civic qualities emerged thanks to aristocratic and bourgeois traditions. Technically, virtuous politicians emerge as a class via a process of social selection (p. 291). As for voters willing to exercise self-restraint and tolerate opinions they did not share, they are easier to find among the bourgeois, who are absorbed by their private concerns (p. 298). In short, Schumpeter did not place much importance on education. The development of the civic qualities required for democratic survival could only result from supporting a social class that encouraged such qualities.

Last but not least, Schumpeter highlighted two institutional constraints that were required for democratic survival. One was the presence of independent institutions that can offer advice to politicians, with chief among them being independent bureaucracies. The second was an admission by politicians that 'the effective range' for political decision-making would extend only to the point, where technical knowledge had to take over. After that, 'government and parliament will have to accept the specialists' advice whatever they may think themselves' (p. 292). This is why certain institutions, such as central banks, courts, and state universities had to maintain their independence and not be subject to the state's 'political method'. In sum, Schumpeter placed his hope on the institutional and attitudinal conditions for democracy's survival. The key to that was free electoral competition. Even though he advocated self-control and self-restraint, he assumed these to be loose non-material conditions that should not pose any institutional limitations on the otherwise ultimate democratic good of competitive elections.

In comparison to democratic proceduralism, this view offers a distinct justification for toleration. According to Schumpeter and those who endorse his minimalist definition of democracy, all views must be tolerated and included in the elite competition for power. Election candidates should be regarded as ordinary rivals, regardless of their views, and procedures regulating competition should be respected. Unlike the democratic proceduralists discussed above, however, Schumpeter is less concerned with legitimacy through equal participation than with the stabilising effects of elite competition. Toleration prevents the abuse of power, widespread disobedience, and violent conflict. Leaders with a solid popular power base and the expectation of a new election

say that Schumpeter offers solid justifications for tolerant democracy, but had also sympathy for states of exception and militant solutions.

after a defeat will have little incentive to undermine the regime. As with democratic proceduralism, toleration is justified as a condition of democratic survival, although here it is understood primarily as a mechanism for producing stability rather than as an instantiation of equal freedom.

4.3 Truth-and-legitimacy-based justifications

4.3.1 Free speech as an instrument of truth and progress

Schumpeterian democracy is often described as 'a marketplace of ideas', a term borrowed from a strand of American liberal tradition that celebrates the right of free expression protected by the US Constitution's First Amendment. This tradition offers a distinct justification of tolerant democracy. It was US Supreme Court Justice Holmes, who first used the market metaphor when, along with Justice Brandeis, he issued a famous dissenting opinion in a court case about the right of free speech. He argued:

> [t]hat the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.[9]

Both Schumpeter and Holmes were in favour of a free market where the consumers choose the best among many available goods. Ideas are like goods to be consumed by voters, so that at the end the best ones would become the most popular. But why should ideas be treated as products in a market and allowed to circulate freely? One could assume that Holmes believed in the existence of a 'cognitive Invisible Hand' that produces an equilibrium of opinions, so that freely traded ideas will always correct themselves in the direction of maximising welfare. But more accurately, Holmes was inspired by J. S. Mill and his principle of fallibilism. The reason to support free expression is not to sustain a self-equilibrating system of ideas, but the belief that we do not have an a priori insight into the truth, that 'no matter how elegant and coherent the explanation and supportive of current data, we might be wrong' (Blasi 2004, p. 19). It was experience that had proven this; time had led many to revise earlier knowledge. Therefore, there was no certainty in certitude (Holmes 2001, p. 329). Ideas and practices required 'ongoing evaluation and modification in

[9] *Abrams v. United States* 250 US 616, 630 (1919) (Holmes, dissenting)

the light of criticism, evidence, experience, changing conditions, and changing "felt necessities"' (Blasi 2004, p. 21). Without free expression we end up in intellectual absolutism, which is a terrible ill.

It is not accidental that the 'marketplace of ideas' expression is often anachronistically attributed to J. S. Mill, who is credited as the key philosopher of free speech. For Mill, free speech allowed error to come to the surface given human natural fallibility (Mill 2012). Independent thought allows individuals to learn from error and self-develop, a process that ultimately supports human progress. If ideas that are true are worth expressing because they enlighten us, those that are false or partially true are also worth voicing because they allow us to sharpen our views in the process of defending, explaining and justifying them against these false ideas. Hence, every idea must be 'fully, frequently, and fearlessly discussed' (Mill 2012, p. 64).

Fallibilism in J. S. Mill is not only a truth-seeking device, but also a democracy-enabling one. Although Mill does highlight the importance of truth, he does not assume that the most truthful ideas always prevail. In a democracy, just as in the marketplace, it is the most popular views, those with majority support among the people, that win the day. Free expression offers the condition for the best, not necessarily the most truthful, ideas to prevail (Gordon 1997, p. 241). The problem is that, in such conditions, numerical majorities have the tendency to oppress minorities. The latter are under the threat of a 'tyranny of the majority' not only in terms of direct legal restrictions, but also from indirect social pressure that majorities may exercise. The undesirable result of such oppression of opinion is prejudice, mediocrity, and conformity, which halt human progress. Therefore, it is very crucial to protect minority opinions. In a system with two opposed political worldviews, he claimed:

> If either of the two opinions has a better claim than the other, not merely to be tolerated, but to be encouraged and countenanced, it is the one which happens at the particular time and place to be in a minority. That is the opinion which, for the time being, represents the neglected interests, the side of human well-being which is in danger of obtaining less than its share. (Mill 2012, pp. 86–87)

Truth is after all a matter of 'reconciling and combining of opposites' and therefore it requires 'a chance of fair play to all sides' (Mill 2012, pp. 86–87). Thus, free expression is not sufficient. Minority views have to be fostered and stimulated.

Based on these views, the best antidote to bad speech is more speech. This corresponds to the marketplace metaphor where the best reaction to bad products is more and better products. Suppression of speech is not only ineffective, but perhaps even counterproductive. For Mill even harmful ideas need to be expressed, because their harmfulness is not beyond doubt and must be debated. Only the most tremendous and immediate threat justifies suppression. Justice Brandeis defended this strategy in these terms:

> No danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.[10]

Mill and others believed that a democracy that encourages minority expression serves the ultimate goal of human progress. Whether Mill's support for free speech was instrumentally premised on the search for truth, or on the contrary, inherently served the individuals' moral progress has been the subject of debate (O'Brink 2013). Whether Brandeis misread Mill or not, his own strand of free speech liberalism, which has become a fundamental staple of US political culture, draws on a tradition that regards free speech as an instrument of self-correction and truth.

4.3.2 Free speech as the basis of justice and legitimacy

A distinct support for the 'viewpoint neutrality' protected by the First Amendment can be attributed to a tradition that starts with John Rawls. Although Rawls's claim for containing unreasonable doctrines and his defence of public reason has primarily fed justifications of militant democracy, he has also offered a very spirited and radical defence of free speech. Recall that, as discussed in Chapter 2, Rawls argues for free speech restrictions only in the case of a most extraordinary constitutional crisis, where democratic institutions and procedures for emergency resolution have been debilitated (Rawls 2005, p. 354). War or other emergencies are not sufficient conditions for free-speech restrictions. Only a 'clear and present danger', as stipulated in US jurisprudence, which Rawls understands as the total loss of basic liberties, is such a condition. In *Theory of Justice* (1971), he writes that an intolerant sect's

[10] Whitney v. California, 274 US 357, 377 (1927) (Brandeis; concurring).

freedom should be restricted 'only when the tolerant sincerely and with reason believe that their own security and that of the institutions of liberty are in danger' (Rawls 1971, p. 219). In other words, Rawls places the bar for free-speech restrictions so high that he can be seen as an advocate of tolerant democracy.

Rawls seems to agree with US jurisprudence that subversive advocacy, i.e. advocacy of the use of force or of law violation should be permitted except when it is directed to 'inciting or producing imminent lawless action' and when this result is likely (*Brandenburg* decision, see Rawls 2005, p. 344). He understands lawless action to indicate crimes such as murder or arson. By contrast, advocacy of revolution or resistance should be permitted because this 'is always part of a more comprehensive political view' (such as socialism), and of some groups' belief that the basic structure is unjust and oppressive—these are political views that need to be discussed as they involve judgements about the justice of the basic structure (p. 346). They need to be voiced and taken into account, so as to prevent them from growing underground and then bursting out with uncontrolled force. Following Locke, Rawls accepts the idea that persons have by nature the capacity to judge when they need to revolt against an oppressive structure. In summary, Rawls defends free speech as a vehicle that validates the justice of a given system.

This connection of free speech, just government, and democratic legitimacy becomes even more pronounced among other liberal political philosophers. Ronald Dworkin argued that decisions are coercive and illegitimate unless those subjected to them have had the opportunity to voice their opinion on them (Dworkin 2009). Following the Danish Mohammed cartoons controversy, Dworkin reacted forcefully by grounding democracy on free speech:

> Free speech is a condition of legitimate government. Laws and policies are not legitimate unless they have been adopted through a democratic process, and a process is not democratic if government has prevented anyone from expressing his convictions about what those laws and policies should be. (Dworkin 2006)

Therefore, he continues, 'in a democracy no one, however powerful or impotent, can have a right not to be insulted or offended' (Dworkin 2006). Similarly, the legal scholar James Weinstein has argued extensively along the same lines that the American doctrine of free speech is logically co-extensive with democratic participation (Weinstein 2009; 2017). It is the central condition of legitimacy. Even antidemocrats have the right to disobey decisions when they have not had the right to object to them in advance (Weinstein 2009, p. 47).

Similar radical defences of free speech are often pronounced in public debates today. Among them are decisions for inviting controversial speakers on university campuses, permitting neo-Nazi demonstrations, or allowing offensive and racist speech to circulate on social media, often based on a libertarian advocacy of strong individual rights. For example, in 2019 Trump signed an executive order requiring colleges to respect free speech, and in 2022 techno-millionaire Elon Musk bought Twitter (and renamed it X) in order, as he claimed, to enforce his free speech absolutism.[11] Free speech is the go-to motto of alt-right supporters (Hackett and Rivera 2020). However, insofar as any justifying principles are invoked, mainstream US free-speech advocacy has often relied on a classical Millian support of free expression as a condition of human progress. Because democracy is the regime that maximises the number of people that can self-develop and contribute to human progress, the argument goes, it should be governed by the principle of free speech and refrain from repressing 'dangerous' voices. In this respect, free speech theories offer a distinct justification of tolerant democracy.

4.3.3 The epistemic value of inclusion

Engaging with antidemocrats as a distinct strategy of democratic self-defence is justified not only by appeals to legitimacy or truth, but also by the epistemic benefits of inclusion. Epistemically good and informed outcomes are a guiding principle for contemporary epistemic democrats, who alongside procedural or minimalist liberals argue for open-ended democratic procedures. But unlike the latter, this strand of theorists argues that the value of democracy relies on its epistemic superiority, which emanates from its knowledge-aggregating and truth-tracking properties, its ability to produce 'correct' decisions and 'better' outcomes (Estlund 2008; Ober 2010; Landemore 2013). For the purposes of our analysis, it is not necessary to explore in detail how epistemic democrats establish their standard of correctness or truth. What matters here is that, for them, outcomes, decisions, or laws are generated cognitively and appreciated epistemically.

On this functionalist account, democracy is based on the collective intelligence of the people in politics. What Landemore calls 'democratic reason'

[11] Trump, D. J., Executive Order 13864, Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities, 21 March 2019. Available at: https://www.federalregister.gov/documents/2019/03/26/2019-05934/improving-free-inquiry-transparency-and-accountability-at-colleges-and-universities; Van de Kerkhof, J., Musk, Techbrocracy, and Free Speech. *Verfassungblog*, 17 January 2025. Available at: https://verfassungsblog.de/musk-techbrocracy-and-free-speech/

arises primarily from the cognitive diversity of the individuals taking part in the decision and not from their average individual ability. In this light, citizens should be included as political equals, because a diversity of perspectives and interpretations is the key to collective intelligence (Landemore 2013, p. 90). To the extent that including more people in decision-making increases this type of diversity, Landemore argues, more inclusive groups are bound to generate smarter decisions (2013, p. 104). This happens through a variety of mechanisms, such as in-group brainstorming, a process that makes participants raise more critical questions to each other than they would in isolation and thus get at better answers. Therefore, the safest way to make democracy work is by increasing the number of people who participate in decision-making, rather than empowering the smartest or excluding the 'dangerous'. The solution to democratic crisis is thus more inclusion.

Many epistemic democrats recognise themselves as proceduralists: they hold that exceptions to inclusive procedures diminish the legitimacy of democracy. But unlike proceduralists, epistemic democrats emphasise that the legitimacy of democratic procedures depends on a minimal epistemic performance (Estlund 2008) rather than the fairness or equal liberty. Even so, their views are compatible with tolerant democracy. As advocates of the epistemic superiority of democracy, they could argue that excluding antidemocrats inhibits cognitive diversity because it decreases the number of democratic participants and removes experiences and perspectives from the decision-making process.[12] Inclusion of antidemocrats becomes necessary to epistemically legitimise democratic institutions.

On these grounds, Landemore suggests that the ills of current democracies are due to a history of bad institutional design, which prioritised elections over lottocratic assemblies. This rejection of lottocracy decreased the diversity needed for good decision-making and perpetuated inequalities between the people. It excluded them from the direct exercise of power. People were reduced to giving their consent to alternating elites, the very elites that can turn against democracy and work towards its abolition. The solution is a different institutional design that relies more on the collective intelligence of people and less on oligarchic elites (Landemore 2021, pp. 211–213). In short, the general response to democratic ills is more inclusion, not less. And since

[12] The support for inclusion on the basis of the value of diverse perspectives resonates with theories of democratic inclusion, whose main concern however is the parliamentary presence of underrepresented groups such as ethnic minorities, immigrants, and women, rather than political groups that challenge democratic norms, see Phillips 1995, Mansbridge 1999, Williams 2000, Young 2000. Theories of inclusion cannot be directly translated into support for tolerant democracy. As discussed in Chapter 2, one can find inclusion theorists arguing in favour of excluding antidemocrats (i.e. 'those who seek to dominate and oppress others'), see Dovi 2009, p. 180.

antidemocratic pressures are one of these ills, by implication the response is to increase inclusion and tolerate them. Yet, epistemic democrats have not explicitly developed this argument about how democracies ought to defend themselves. Should epistemic democracies include antidemocrats because doing so maximises cognitive diversity? Or should they exclude them because their participation risks making collective decisions epistemically worse?

4.3.4 Inclusive deliberation and legitimacy

Theories of epistemic democracy have grown out of a broader deliberative tradition in democratic thought, which offers the ground for a distinct argument for tolerating antidemocrats. Deliberative democracy's general premise is that the legitimacy of laws and policies derives from the *reasoned* exchange of arguments among free and equal citizens. In the words of one of its founding figures, deliberative democracy is about:

> Making collective decisions and exercising power in ways that trace to the reasoning of the equals who are subject to the decisions: not only to their preferences, interests, and choices, but to their reasoning. (Cohen 2007, p. 220)

The immediate implication is that democracies should provide the procedures that enable citizens to deliberate as free and equal. In authentic deliberation, it is 'the force of the better argument' that matters, as famously described by Habermas. This implies that the process must remain undistorted from unequal political, economic, or other sources of power. The aim is a rationally motivated consensus and, if this is not achieved, majority voting. A central requirement is that 'citizens or their representatives actually seek to give one another mutually acceptable reasons to justify the laws they adopt' (Gutmann and Thompson 2004, p. 100) The background assumption is the fact of 'reasonable pluralism'—a point shared with Rawls—i.e. the existence of incompatible worldviews, which must strive to live together on terms acceptable to all (Cohen 2007).

Do deliberative perspectives on democratic self-defence differ from epistemic ones? Like epistemic democrats, deliberation scholars draw their inspiration, among other, from Dewey's experimentalist account of democracy. Understood as the collective exercise of practical intelligence, democracy is valuable inasmuch as it features an institutional capacity for experimentation, the capacity to revise its decisions on the basis of the experience of their consequences. But for deliberative democrats, what matters

is the structure of communication as such, its capacity to produce reasoned arguments. The epistemic component, and with it the search for truth, is secondary—or even irrelevant—to the process of collective will formation. Indeed, for Habermas (1996), deliberation is the process by which a sovereign people produce a collective judgement upon which laws and governing practices are based. Moreover, unlike epistemic democrats, who are often criticised for prioritising outcomes over procedures, deliberative democrats are more committed proceduralists.[13]

Therefore, discursive structures and conditions for debate and persuasion are what matters most and should be secured through legal arrangements (Habermas 1996, p. 304). It is crucial that citizens abide by the rules of reason-based communication, to welcome dissent and diversity and respectfully hear each other out (Anderson 2006, pp. 13–15). With this in mind, what if anything does deliberative democracy have to say about democratic self-defence as such?

Due to their limited intervention in the debate, one can deduce certain standpoints by implication. Deliberative democrats are well known for their emphasis on fair and equal procedures as conditions for insulating the deliberative process from external influences. Moreover, inclusion is a crucial guarantee for deliberations to be democratic (Gutmann and Thompson 2004, pp. 9–10). This concerns not only formal rules of inclusion, but also informal norms on what counts as proper deliberation, which should be as extensive as possible. Commenting on the case of France and the challenge of engaging the Front National in the 1990s, here is how two deliberative democrats describe the benefits of deliberating with them:

> A debate with extremists offers the possibility to recognize social problems, to increase the legitimacy of government, and to reflect upon the quality of the political system. It may bring to light irrationalities and prejudices in public opinion, it may serve to commit extremists to democratic procedures, and may eventually convince the adherents of the extremist parties of the superiority of democratic values. Even if only some of these aims are realized, this will strengthen the democratic process. (Fennema and Maussen 2000, p. 398)[14]

[13] That said, they have been naturally sceptical towards Schumpeterian/elitist strands of proceduralism, see Habermas 1996, pp. 332–333. For a detailed analysis of the deliberative democrats' relation to procedural democracy, see Saffon and Urbinati 2013, pp. 443–445.

[14] Contrary to their own observations, Fennema and Maussen (2000) end up suggesting certain limits on public deliberation and a conditional exclusion of non-conforming actors, such as the Front National. Their arguments, based on their reading of Habermas and Rawls, are echoed in present-day debates among Rawlsians on whether the unreasonable need to be excluded.

In addition to persons, deliberative democrats recognise also no limits as to the *issues* that should be subject to deliberation; even the most constitutionally sacred principles and practices are thus open to challenge on moral terms if there is limited confidence in their hitherto justification (Gutmann and Thompson 2004, p. 53). Restricting the articulation of opinions and ideas in the public sphere is in principle harmful and undermines the democratic quality of decisions because not all existing opinions are taken into account (Sunstein 1995). Hearing the other side is, after all, vital for deliberation to even occur. There are additional deliberative principles that support the inclusion of antidemocratic views: the need to make them public in order to make societal conflicts visible and therefore possible to resolve; and the need to hold those who hold such views accountable by putting their claims for representation to test (Fennema and Maussen 2000, pp. 382–383). On the basis of these considerations, it is safe to assume that deliberative democrats in principle favour the inclusion of antidemocrats in public deliberations. Rather than excluding antidemocrats, their focus is on improving the quality of public debate, for example by preventing misinformation and media polarisation (McSwiney et al. forthcoming).

In an article co-authored by 20 well-known deliberative democrats, strengthening deliberative procedures is presented as the solution to recent democratic crises (Dryzek et al. 2019). More deliberation is the best remedy against what they diagnose as the source of democracy's ills today: 'a crisis of communication' marked by a 'decline in civility and argumentative complexity' among elected representatives that trickles down to citizens. It is argued that more deliberation is the solution because it leads to more considered judgements by which citizens can counteract elite manipulation and resist populism. Against critiques that deliberation induces polarisation, they cite an experimental study to support their view that groups engaging in deliberation become less extreme, especially when they engage different sides (see Grönlund et al. 2015). Of course, the deliberation they have in mind presupposes some procedural standards, such as the existence of discussion rules, the use of moderators, and the provision of balanced information to all participants. Like with Landemore's lottocratic solution, such a stylised deliberative system is a way to institutionalise tolerant democracy, but a highly demanding one at that.

At the same time, there are elements in deliberative theories, in Habermas for example, that shed doubt on their commitment to toleration. They concern on one hand the focus on the 'ideal speech conditions', which could justify a

regulation of real political processes so as to attain this ideal.[15] If one values rational argumentation and the deliberative quality of agreements above all else, a logical conclusion could be that actors who are unable to meet these requirements or obstruct the deliberative process must be excluded. This line of thinking applies even more to Rawls, who posited the goal of a just society and the common good over and above procedures that enable political competition among rival political groups. But, unlike Rawls who has been a source of inspiration for many militant democrats today, deliberative democrats have so far steered clear of supporting rights infringements for antidemocrats.

4.4 Pedagogical justifications

4.4.1 The 'moderation' thesis

The last but perhaps most vocal defence of tolerant democracy today is provided by Nancy Rosenblum. Like with deliberative democrats, the key in her view is the moderating potential of inclusion. But, unlike them, her thinking relies on the broader pedagogical functions of participation. This view was widespread in the nineteenth century. It was shared, for example, by J. S. Mill, who described participation as a 'positive exercise' of liberty. Likewise, nineteenth-century French republicans argued in favour of compulsory universal suffrage on the grounds that participation *makes citizens cognisant of their responsibilities* as members of a broader political community (Malkopoulou 2015, pp. 118–121). The idea mirrors an ancient democratic tradition that required all Athenian citizens by law to take sides in a factional dispute, in the hope that broad civic mobilisation would raise the costs of conflict and thereby deter potential instigators (Malkopoulou 2015, pp. 50–52).

Following this line of thinking, Rosenblum argues that antidemocratic actors must be included in democratic politics on the same terms as anyone else because participation has *transformative* effects: it creates pragmatic incentives for populists to politically and ideologically compromise and form coalitions (Rosenblum 2007). For her, the reason for maximal inclusion is a belief that 'electoral political competition, like any strong institutional practice, is formative' (Rosenblum 2010, p. 290). She cites social-scientific talk

[15] See a critique of Habermas along these lines in Saffon and Urbinati 2013, pp. 443–444.

about a 'virtuous cycle', the fact that regulated rivalry brings about political integration. Participation teaches citizens to act democratically, argue for the public good, 'cast their demands in terms that apply beyond themselves' (Rosenblum 2010, p. 290), compromise and accept majority decisions. Hence, when antidemocratic parties are drawn into the electoral game and forced to compete within it, they 'may reformulate their objectives in ways that are consistent with democratic partisanship' (Accetti and Zuckerman 2016, p. 14). This view, premised on a 'faith in politics', assumes that more inclusion, rather than exclusion, will strengthen an ailing democracy, precisely because this will domesticate antidemocrats, and induce in them a lasting style of peaceful political socialisation.

Sheri Berman has further specified the potential dynamics of this indirect process of moderation. She offers three possible explanations for the moderation thesis, which are worth describing in detail: a Downsian, a Michelsian, and a 'pothole theory' of democracy (Berman 2008, p. 6).

The first dynamic draws from observations made by the economist Anthony Downs regarding the way electoral incentives work. When parties join an electoral race, they are progressively targeting a median voter, because this is a broader category that can bring more votes, as opposed to narrow parts of the population attracted to sectarian or extremist appeals. As a result, extremist parties will gradually adopt broader and more moderate electoral platforms in order to extend their support base outside their core constituency.

A second explanation of why inclusion induces moderation draws from Robert Michels's sociological analysis of political parties. He showed that any party deciding to participate in elections, including a rebellious one, is forced to set up a bureaucratic machinery in order to organise and manage diverse activities, such as funding, campaigning, and policymaking. In the process, party leaders become more absorbed by these organisational aspects than by earlier underground operations and focus on developing their down-to-earth administrative skills as opposed to their readiness to propagandise, plot, or incite rebellion.

A third reason why included extremists might moderate their views has to do with the practical demands of day-to-day government, or, as the saying goes, filling 'potholes'. Once they gain or stand to gain public office, parties are pressed to offer solutions to citizens' daily problems and gain credibility for that. They 'must be able to convince voters and constituents that they can "deliver the goods" or "get the trash picked up"'. Parties that are busy 'fixing

cracked sidewalks, and upgrading faulty sewage systems', Berman continues, 'tend to have little time left over for ideology, political rigidity, or radicalism' (Berman 2008, p. 6).

The moderation-through-participation hypothesis—at least in its current state—mostly relies on empirical evidence. Berman assesses the strength of her suggested mechanisms by examining the behaviour of pre-war and post-war communist parties, in Germany, France, and Italy. She finds that moderation did occur in post-war times, but not so before the war. The key difference, she argues, was the strength of democratic states, within which this moderation was supposed to occur. In her words:

> Without strong states able to enforce the 'democratic rules of the game' and punish extremist forces, and without large, robust parties fully committed to democracy and therefore able to make others pay an electoral and political price for sectarianism and antisystem activity, the dynamics that optimists count on to stimulate moderation—Downsian, Michelian, and pothole—operated weakly or not at all. The result was that communists (and other radicals, including Fascists and National Socialists) faced few incentives to abandon radicalism during the interwar years. (Berman 2008, p. 15)

Besides such endogenous factors, however, one must add to Berman's analysis the effect of the Cold War context, including political, diplomatic, and intelligence activities that effectively shrank both the ambitions and the pragmatic potential of European communist parties after 1945. Empirical studies of populist radical-right parties today are equally inconclusive. They have produced rather mixed evidence about whether including populists has turned them into more moderate versions of themselves. For example, Akkerman and Rooduijn (2015) note that collaboration does not 'tame the dragon': populist radical-right parties do not tend to amend their radical nature nor their ideology when they enter into office or join coalitions with mainstream parties. Inclusion does not fall far beyond exclusion in the fight against radicalisation, they argue. If excluding populist radical-right parties does not stimulate moderation, including them does not seem to help a great deal either. In short, the pedagogical case for moderation-through-participation is contingent on favorable conditions. It is a functionalist argument with limited normative force. In that sense, it contrasts with the view of deliberative democrats, which is grounded in normative ideals of participation rather than empirical predictions about the effects of participation.

4.4.2 Counter-speech theories

A more recent strand of theory has focused attention on the importance of counter-speech—responding publicly to objectionable speech. People who express radically opposed views should be allowed to do so, not in order to discover the truth, but in order to reinforce democratic social relations. Drawing on John Dewey's conception of democracy as an ethical ideal of associated life, these views regard inclusion as a tool for forging communities based on equality, reciprocity and ongoing contestation. The purpose of free speech is, for them, to sustain the conditions of democratic engagement and, as a consequence, political stability.

From this perspective, open public discourse is paramount. Yet, simply 'sharing' reasons in public deliberations is not sufficient, as some groups may be systematically excluded or dominated. Therefore, it is important to also welcome—or at least not block out—emotionally charged speech, especially expressions of profound anger, in divided democratic societies. These expressions bridge epistemic divisions between groups with unequal access to resources for public discourse and register injustices that would otherwise be left unnoticed. According to Maxime Lepoutre, public 'expressions of anger can help rebuild trust and goodwill between alienated social groups' (Lepoutre 2021, p. 240). Arenas of public encounter should remain open and free, in order to incorporate all narratives into public discourse, especially those that challenge injustice, even when expressed imperfectly and at the risk of causing harm to others.

Therefore, the remedy to harmful speech is not to ban it, but to engage in counter-speech. Some argue that citizens should drive strategies of counter-speech, for example as a 'Samaritan' duty to rescue others from the risk of harm (Howard 2021) or because citizens are somehow accountable for how they use their discursive agency. This agency includes their capacity to facilitate or prevent hate speech as 'hearers' that license, standardise, or confirm public utterances (Fumagalli 2021, pp. 1029–1034). Others argue that the task to defend democracy through counter-speech belongs to states, rather than individual citizens. Characteristic of this approach is the argument offered by Brettschneider (2012): the state, he says, should be neutral in protecting the right to free expression of all viewpoints or beliefs in order to uphold the ideal of free and equal citizenship. But in order to serve the same ideal, the state itself should *not* be neutral in the values it supports and expresses. States must not transgress democratic values, but ought to actively promote them whenever they can.

The ongoing debate on the moral duties of democratic states and citizens, as well as on the role of counter-speech, is not always connected to clear conceptions of democracy. Drawing on Brettschneider's value-based theory of democracy and the democratic ideal associated with John Dewey, counter-speech theories can be understood as advancing a relational and substantive conception of democracy. In what appears as a shift away from purely proceduralist visions of democracy, they foreground substantive values beyond fair procedures. Importantly, they also shift attention from legal-institutional responses and state actions to civic ethics and the moral responsibilities of individual agents in less formal domains.

4.5. Conclusions

Tolerant democracy, the idea that, to avoid antidemocratic subversion, democrats must defend rather than block the political rights of antidemocrats, has not been extensively analysed by political theorists. Although there are several currents of political thought—including procedural, minimalist, liberal, epistemic, deliberative, pedagogical, and counter-speech theories of democracy—that offer elaborate justifications for unconditional inclusion, in the face of the ongoing surge of far-right populism contemporary advocates have been very modest. In addition to contextual and circumstantial factors, one problem is that tolerant democrats have been very divided and never subscribed to a joint project of advocating tolerant democracy. This fragmentation is due to conceptual and analytical differences, not least in how they understand democracy, its normative value and institutional expression. I briefly rehearse these differences below.

For procedural democrats, democracy is understood as a set of fair decision-making procedures that best protect certain values, chief among them equal liberty. Mechanisms must be in place to prevent the abuse of such procedures and preserve majority rule. In the face of danger, procedures must be consistently followed and, if anything, improved, expanded, and strengthened. An inclusive political culture shaped by fair procedures is the best response to internal attacks on democracy.

Unlike democratic proceduralists, minimalists think of democracy as a method void of values such as equality. Instead, its purpose is to prevent violence. Bullets are replaced with ballots, and elites acquire power through a free and fair electoral competition for votes. To fend off excessive competition (and one can imagine antidemocratic activism to fall within this category), a

democratic society must be structured so as to promote the virtues of toleration, compromise, and self-restraint. But, most importantly, it must preserve the unimpeded functioning of inclusive electoral procedures and respect for their outcomes.

Toleration also finds support in arguments for freedom of speech. For free-speech advocates, democracy must be tolerant not so much to avoid violent conflict, but to enable human progress. Humans learn and develop through the free exchange of ideas. While doing so, they err. Their mistakes offer them an opportunity to learn. Human fallibilism is both a factual condition and a justificatory principle for the unimpeded flow of ideas. Open contestation is a *sine qua non* for the betterment of human societies. Therefore, minority opinions (including the most extreme ones) are not only worthy of protection but valuable per se, because they provoke more discussion and eventually better chances to discover the truth. In this reading, democracy is a system of government whose laws result from a free exchange of ideas.

Democracy has a different meaning for epistemic democrats. For them, it is a regime that produces high-quality decisions thanks to its truth-tracking and knowledge-creating properties. Inclusion produces collective intelligence and is therefore a requirement of epistemic democracy. Antidemocrats should be exposed to more informed speech, but be included nonetheless. In fact, their rise may not even have occurred if democracies were more lottocratic and less electoral, i.e. if decisions relied more on the collective wisdom of the people and less on the selection of alternating elites.

Inclusion is also of paramount importance for deliberative democrats. It ensures the free and equal exchange of reason-based arguments, which shape a sovereign people's collective judgement and is therefore the only legitimate route for law-making. Democracy relies after all on a set of discursive structures and conditions that produce laws through reason-based communication. From this perspective, exclusion distorts the collective will and diminishes the democratic quality of decisions. Therefore, democracies must be maximally inclusive of persons, discourses, and issues, even of the most extreme ones, in order to put them to the test and confront them with reason-based arguments. Antidemocrats are thought to become more moderate once they participate in processes of deliberation, because hearing out opposite views and trying to offer considered arguments has a 'civilizing' effect.

The belief that participation has moderating effects on citizens, including those hostile to democracy, reflects a broader view of democracy as an institutionalised pedagogical process. Citizens learn by doing. Once they are forced to join a regulated political competition, they start playing by its formal and

informal rules and gradually become 'democratic' partisans. This may be due to structural incentives, organisational pressure, or the force of competition, and is empirically observable, though only conditionally true. Regardless, the solution to extremism is, in this view, more inclusion under clearly set out regulations for fair play.

Finally, unobstructed public discourse and the acceptance of angry or harmful speech is justified as a tool that bridges segregated groups in society. This occurs when avenues for conversation remain open and retain a continuity rather than giving way to structures of mutual alienation. Engaging with antidemocratic opponents through counter-speech may be beneficial for the wider society. Both the state and citizens should throw themselves behind this task. A Deweyan ideal of democracy as a way of associative life lies behind this paradigm.

In sum, these theories offer numerous distinct justifications for tolerant democracy. Those who challenge democracy should be engaged with as regular political opponents. This can be justified by the following principles: procedural fairness, the principle of alternation in power, liberal-democratic legitimacy, the epistemic quality of outcomes, discursive legitimacy, faith in politics, and discursive integration (Table 4.1). For each of these six justifications, maximal inclusion—of democrats as well as antidemocrats—serves a different goal: to protect equal liberty or prevent abuses of power and violent

Table 4.1 Justifications for toleration, their underlying principles and the theories of democracy they correspond to

JUSTIFICATION FOR TOLERATION	UNDERLYING PRINCIPLE	THEORY OF DEMOCRACY
To protect equal liberty and prevent abuses of power	Fair procedures	Procedural democracy
To avoid violent conflict	Alternation in power	Minimalist democracy
To support human progress	Truth	Liberal democracy I
To produce acceptable decisions	Legitimacy	Liberal democracy II
To improve cognitive diversity	Epistemic quality of outcomes	Epistemic democracy
To enhance deliberation	Discursive legitimacy	Deliberative democracy
To bring about moderation	Faith in politics	Pedagogical democracy
To maintain trust and social bonds	Discursive integration	Counter-speech democracy

conflict; to spread reasonableness, support human progress, and improve cognitive diversity; to enhance deliberation and induce moderation.

Tolerant democracy is *not* a distinct theory of democracy. It is a theory of democratic self-defence, concerned solely with how democracy deals with its domestic enemies. It does nevertheless borrow from existing and fully comprehensible theories of democracy. Some of these theories share a common objective. Both free-speech and epistemic theories are driven by a search for truth, while both deliberative and pedagogical theories expect to achieve moderation. But they also have substantial differences: proceduralists care for egalitarian procedures, while epistemic democrats are interested in 'smart' outcomes. Despite their differences, all theories of tolerant democracy converge in the view that democracy must be maximally inclusive and keep even its own enemies inside the democratic game. This implies that laws must be designed to prevent political exclusion on the basis of ideas; governments must listen to antidemocrats; other parties should engage and confront them politically, and the same holds for civil society. Nevertheless, in arguing for this approach, one ought to be ready to endorse one or more of the justifications for tolerant democracy discussed above, and their accompanying theoretical premises. This does not preclude, of course, the possibility of discovering or developing new justifications of tolerant democracy.

The preceding discussion has shown that tolerant democracy rests on diverse normative foundations, including procedural equality, truth-seeking, and the transformative potential of participation. Yet these arguments also expose the limits of toleration as a strategy of democratic self-defence as it is focused only on formal inclusion. The next chapter examines a third ideal type—social defence—which focuses not on the treatment of antidemocratic actors alone, but on the social conditions needed to sustain democracy.

5

A Third Approach

Defending Democracy Socially

5.1 The first coming

In contrast to militant and tolerant democracy, which are concerned with civil and political rights and their limitations, social democratic self-defence extends beyond the realm of these rights to include social and economic rights, as well as the overall social structures that govern everyday life. Antidemocratic movements and parties are treated not only as political interest groups, but as phenomena rooted in society and its economy. It is not surprising, therefore, that social defence mechanisms are seen as having a different scope from the other two ideal types of democratic self-defence. This explains why political and constitutional theorists have avoided examining them on an equal footing, or at all.

A social defence against antidemocratic subversion is based on the belief that, for democracy to endure, popular control must extend to economic life. This idea, sidelined by liberal conceptions of democracy, survived in Marxist thought. Karl Marx himself advocated democracy, which he understood not as a set of bourgeois political rights and procedures, but as an egalitarian form of society that ensures meaningful citizen agency (Springborg 1984; Niemi 2011). Marx's sociological understanding of democracy was itself inspired by Aristotle's view of democracy as the rule of the 'poor'/many over the 'rich'/few (Cartledge 2016, p. 18). The same idea, that democracy must extend to social relations and the economy, was also present in the British and American radical-left movements of the nineteenth century (Niemi 2011, p. 41). This social conception of democracy provides a background for understanding why many twentieth-century scholars viewed social reforms and economic interventions as the most effective barriers to political extremism.

As with the militant and tolerant approaches, the social approach to democratic self-defence only became more concrete with the rise of fascism and Nazism in the 1920s. Even non-Marxists at the time explained fascism in terms

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of rising social needs and the failure to satisfy them (Mannheim 1940; Hammersley 2023). Hermann Heller, a leading figure in German jurisprudence, was among the first to identify the socio-economic logic of fascism, and to outline an appropriate response. Following a research trip to Italy in 1928, he published an insightful sociological analysis of Italian fascism, comparing it to the authoritarian liberalism prevalent in Germany (Heller 1992c). He argued that both operated through acute forms of social and economic exploitation, such as state corruption, party clientelism, and the de-funding of welfare policies (Kennedy 1984; Malkopoulou 2022). Based on these observations, he asked: How should Weimar democratic parties respond to such a mix of economic and political suppression? Contrary to the dominant Marxist perspective, Heller did not propose resorting to the dictatorship of the proletariat, but instead advocated preserving the political institutions of the republic, which should be reconstituted as a 'social rule-of-law state' (*sozialer Rechtstaat*). According to Heller, in order to prevent people from embracing authoritarianism, it was crucial for the rule of law to regain its lost legitimacy. This could be achieved by effectively addressing social conflicts, taking into account how individuals experience objective realities and material constraints in their daily lives.[1]

Heller, who died in exile in Spain in 1933, did not live to see how much his ideas influenced post-war German political science. In the legal and constitutional debate on democratic self-defence, however, the principle of militant democracy overshadowed his approach. By contrast, the social and economic roots of Nazism and other authoritarian movements became a central concern of Frankfurt School theorists in the 1940s. For them, authoritarianism 'revealed what was already inherent in liberalism': fundamental inequalities concealed under the illusion of democratic freedom (Horkheimer 1943). Despite their internal disagreements, the general proposal of wartime critical theorists was to strive for an economically efficient democratic society that would defeat the fascist or totalitarian state economy (Harcourt 2020; Fischer 2018). This would take the form of a social democratic planned economy (Pollock 1941) or an economy governed by the 'oppressed masses' (Neumann 1942). Their belief that authoritarianism required socio-economic restructuring was subsequently echoed by other critical theorists.

Today, theorists do not extensively discuss social responses to far-right populism, although critiques of neoliberalism as a source of contemporary authoritarian tendencies are widespread (Fraser and Jaeggi 2018; Brown 2019;

[1] Heller's ideas are examined in closer detail in Chapter 6.

Wilkinson 2021). Similarly, political scientists have debated the importance of socio-economic conditions for the rise of far-right movements in contemporary societies (Minkenberg 2000; Rodrik 2018). Indeed, comparing contemporary socio-economic conditions with those that led to the rise of German Nazism has become commonplace in academic (Eichengreen et al. 2012; Klapsis 2014; Funke et al. 2016) and public discourse (Mudde 2014; Judis 2016; Wolf 2019). Many of these comparisons are accurate and helpful. At the same time, there is a risk of making generalised assumptions and inferences about the link between economic stagnation and the success of the far right. In what follows, I will attempt to outline and deconstruct some of these risks.

5.2 Three myths worth dispelling

Many people intuitively believe that support for antidemocratic parties increases when the economy is in decline. This assumption is widespread among both laypeople and scholars and has been repeatedly examined in empirical research. Analyses of inter-war developments in Europe and Latin America have underlined that economic crisis is related to democratic breakdown when certain structural conditions such as weak democratic legacies and political radicalisation obtain (Cornell et al. 2020, p. 112). The paradigmatic case is of course Germany, where both communists and fascists saw their share of the vote rise sharply with the onset of the Great Depression in 1929: the Nationalist Socialist Party received 18.3 per cent of votes in 1930, whereas two years earlier they had received a meagre 2.6 per cent. This increase of extremist voting due to dire economic conditions was a generalised pattern observed in many other countries in the inter-war years (De Bromhead et al. 2013), and beyond.

The most recent example to prove that economic crisis produces political radicalisation has been Greece during the Great Recession (Vasilopoulou and Halikiopoulou 2015, pp. 23–29). The country experienced its worst economic downturn, losing a quarter of its GDP between 2008 and 2016, and suffering unemployment rates of up to 28 per cent according to Eurostat (Stournaras 2019). Simultaneously, it saw a sudden rise of Europe's most extreme party, the neo-Nazi Golden Dawn, which went from 0.29 per cent in 2009 to being elected with 6.92 per cent in June 2012 (Ellinas 2013; Klapsis 2014). Mass unemployment not only pushed voters to reject mainstream parties (Georgiadou et al. 2018), but also made them susceptible to 'scapegoating' rhetoric and to promises of quick fixes to their socio-economic problems (Angouri and

Wodak 2014). Allegedly, the example of Greece confirmed a general pattern, according to which 'far-right parties increase their vote share by 30% after a financial crisis' (Funke et al. 2016). Golden Dawn's electoral breakthrough far exceeded this average pattern.

These observations can fuel a wrong impression that it is the poor and unemployed who tend to flock to antidemocratic parties. For example, the rise of radical-right parties is seen as the result of a 'working class revolt', attributing shock electoral outcomes such as the Brexit vote to a neglected working-class constituency (McKenzie 2017). A classic trope in this debate is the distinction between globalisation 'winners' and globalisation 'losers' (Rodrik 2018; Norris and Inglehart 2019). The latter are said to be negatively affected by increased competition in global markets and by the spread of liberal and multicultural values. Mapping cultural identity onto economic precariousness even further, Goodhart (2017) attributes far-right support to the antagonism between a social group composed of ordinary people who are culturally rooted (the 'Somewheres') and a social group of highly educated people who are not firmly tied to particular places (the 'Anywheres').

There are several problems with such analyses. For example, they neglect country context, as these effects of globalisation only occur in rich countries (De Bromhead et al. 2024), or cultural capital, as economically precarious groups with high cultural capital do not necessarily vote for right-wing populist parties (Antonucci 2018, p. 189). The greater risk, however, is that these analyses misrepresent the lower social classes as supporters of far-right parties, when research points to a different pool: the 'squeezed middle', i.e. the middle classes whose financial position is rapidly deteriorating. Indeed, economic insecurity is said to affect more groups than the ordinary working class (Gallie et al. 2017), and it is the sudden loss of income, rather than the level of economic prosperity, that best correlates with far-right voting (Georgiadou et al. 2018). At the same time, cultural drivers of far-right support are also highly relevant. One example is social-status anxiety, i.e. the subjective sense of threat to the previously dominant status of white men in Western societies due to increased job insecurity and the empowerment of women and minorities (Gidron and Hall 2017). Another driver is the real or discursive attribution of economic insecurity to the sudden flux of migrants (Georgiadou et al. 2018). In sum, while support for far-right parties may be related to disaffected material interests, it is conditioned by several additional factors, such as gender, social perceptions, regional differences, as well as the extent to which economic hardship is intertwined with (and blamed on) immigration.

A second myth concerns allegations about why voters tend to support far-right parties when it is not entirely clear how their victory will improve their

socio-economic situation. Brennan (2016) describes these voters as either 'hooligans' who vote on the basis of habit, prejudice, and partisan identification rather than on the basis of informed and reasoned decisions. Achen and Bartels (2017) claim to provide empirical evidence of voter ignorance. Their verdict is similar to Brennan's: individuals tend to vote based on arbitrary group identities—'tribal loyalties'—rather than their rational economic interests. If these theories are correct, then the reasons for far-right support are not socio-economic and structural, but individual, emotional, and cognitive. The problem with this argument is not only methodological—as studies of political behaviour may not offer a sound basis for making normative claims (Frega 2020)—but also interpretive. Even if we accept the controversial claim that some voters exhibit cognitive failures and 'poor' political judgement, this phenomenon is likely to be related to declining educational quality or unequal access to education. And even if we accept that voters vote on the basis of social and cultural identities, these identities may have themselves a material basis. Voting on the basis of identity cues is often a rational thing to do, a shortcut for political information and a way of coordinating a group's political influence (Malkopoulou and Hill 2022, p. 170). Paradoxically, material conditions shaping voter behaviour receive limited attention in these 'realist' theories. Instead, their focus on the failures of individual voters overshadows the underlying structural causes that drive support for far-right parties.

A third, relatively minor, risk is to place too much emphasis on the agency of political elites, a move common, for example, among constructivists. For Lisa Disch, for example, far-right parties gain strength because of the way elites mobilise constituencies, and the rules of political engagement—namely lobbying and party financing rules—that enable them to do so (Disch 2021, pp. 56–57). Constituencies are shaped and mobilised through the rhetorical framing of issues by political elites within a given organisational context that favours certain types of conflict over others (Disch 2021, pp. 8–9, 71–89). The risk here is that social circumstances and lived experiences are recognised as politically significant only when they are framed and mobilised by influential political actors, while those lacking such representation remain neglected and silenced. Certainly, forms of political organisation and campaign messages matter. However, to suggest that politicians alone determine cleavages and frequently manipulate voters overemphasises individual agency—this time of politicians rather than voters—over social context. And while Disch recognises the impact of structures on political mobilisation, the focus is mainly on the structures of the political system, not the socio-economic ones.

Empirical studies that focus on explaining support for far-right parties therefore have several shortcomings. Sociological and economic analyses

rightly identify socio-economic conditions as underlying causes, but risk being overly deterministic in the role they assign to social or cultural identity as an automatic key that unlocks political choices. As a result, some of them generalise the composition of voting groups (e.g. globalisation 'losers') without due attention to other characteristics (gender, or social-status anxieties) or class nuances (the 'squeezed' middle-class, or the highly educated underclass). Second, scholars who point to civic incompetence as an explanatory factor for far-right support fail to consider the relevance of social conditions that drive either voter ignorance or voter choice as such. In any case, they do not provide a convincing argument either for or against a more sociological diagnosis of the success of authoritarian parties. Third, constructivists may place too much emphasis on agency, potentially underestimating how social structures, lived experiences, and material injustices create the conditions for mobilisation. By focusing on the mechanisms of political articulation and the role of political actors in shaping constituencies, they may risk downplaying the underlying socio-economic grievances that drive political demands. Admittedly, experiences of structural injustice do need to be politically framed and represented in order to be translated into political action. But for advocates of a social defence of democracy, these experiences constitute more than background conditions: they are central to explaining the rise of discontent and support for antidemocratic parties.

5.3 The concept of a socially defended democracy

What do we mean when we talk about a *social* defence of democracy? How do we recognise a democracy that deals with its internal enemies by promoting social integration? Defining this ideal type is the first step towards distinguishing it from both militant and tolerant democracy. Unlike the latter two, this type does not defend democracy simply by excluding its enemies or by immunising its institutions and procedures. Instead, it focuses on the interplay between political phenomena and social structure.

There is a danger that, because of the weight given to society and the economy, this type of democracy will not be understood as a socially defended democracy, but as a defence of 'social democracy' *tout court*. In this case, the adjective 'social' would not characterise the type of defence, but the type of democracy being defended, a democracy identified *ex ante* with a specific ideology. Social-democratic ideas have flourished since the early twentieth century, when socialists embraced universal suffrage as a strategic tool that would allow masses of workers to bring workers' parties to power. After the Second

World War, social democracy evolved into a principled support for civil and political liberties as a means of protecting society from totalitarianism.

However, social democracy is not the same as 'socially defended' democracy. Firstly, the latter is narrower in scope: it refers specifically to how democracy responds to internal enemies. In this respect, it shares the same problem-orientation as militant and tolerant democracy. Secondly, the defensible entity—'democracy'—is not defined through a specific ideological perspective that views democracy primarily as an instrument for achieving socialism. Thirdly, it relies on a broader conception of democracy as a form of government grounded in popular self-rule, which is further specified by each variant of social democratic self-defence. In Chapter 6, my focus returns to how the various proponents of a social defence of democracy perceive and conceptualise democracy, many of whom do indeed embrace a social-democratic conception. But this connection is neither self-evident nor necessary—one can believe in the social defence of democracy and be either a social democrat, a social liberal, or a social conservative, each of whom conceptualises democracy in different ways. To avoid confusion, we need a term that is distinct from the ideologically loaded term 'social democracy' and, like the adjectives 'militant' and 'tolerant', refers exclusively to how a democracy deals with internal political enemies—by socially integrating them (or those who vote for them) rather than restricting or tolerating them. Thus, in what follows, the term 'social-defensive democracy' will be used as a proxy for *a democracy defended by transforming the social conditions that generate support for antidemocratic movements.*

A more precise and complete ideal-typical definition of a social-defensive democracy should encompass three relevant dimensions: the diagnosis of 'internal threats' on which it relies, the nature of the interventions it envisages, and the effect it seeks to achieve through these interventions. The same three dimensions—diagnosis, means, outcome—defined the features of militant and tolerant democracy in the earlier chapters of this book. To recapitulate, militant democrats diagnosed the *threats as extraordinary*, used *exceptional measures* to tackle them, and produced *exclusion*, while tolerant democrats diagnosed the threats as *ordinary,* employed *non-exceptional measures*, and produced *inclusion*. What this triptych yields in the case of social-defensive democracy is examined below, drawing loosely on various authors who have argued for this ideal type. The focus here is on developing the conceptual parameters of this ideal type. A more critical and detailed engagement with these authors and their normative arguments will appear in Chapter 6.

5.3.1 The diagnosis

Within the social paradigm of democratic self-defence, political threats to democracy are understood as phenomena arising from underlying social and economic processes. They are seen as symptoms of deeper socio-economic dynamics. According to this view, democratic vulnerability emerges when socio-economic conditions deteriorate—particularly when large segments of the population experience economic insecurity. These conditions typically include mass unemployment, loss of income, a decline in GDP, heightened risk of poverty, intensified competition for jobs, and unfair taxation. Such socio-economic pressures create a fertile environment for disillusionment, resentment, and ultimately the appeal of extremist or antidemocratic movements.

From this perspective, the rejection of democracy is treated as an epiphenomenon; the real problem lies in the deeper socio-economic dysfunctions underlying it. Antidemocratic parties and their leaders are understood as actors who capitalise on existing social grievances and economic anxieties, selectively framing and distorting them to advance their own political agendas rather than addressing the structural conditions that gave rise to these problems in the first place. The underlying assumption is that democracy can function effectively only when popular control and core democratic principles, such as equal freedom, meaningfully extend to economic life.

Indeed, proponents of social-defensive democracy not only see extremism as an effect of socio-economic dysfunction, but also believe that political forces that threaten democracy do so by causing socio-economic ills *in addition to* undermining political institutions. The authoritarian actions of these forces, for example the extent to which they restrict participation or undermine the independence of the judiciary, coincide with a certain socio-economic rationale. In Heller's words, they tend 'to order the economy in an authoritarian way' (Heller 2015, p. 299). The Italian fascists, for example, falsely claimed to promote social welfare through corporatism; in reality, they used trade unions to control the job market, rule through nepotism, and make party loyalty a condition of economic security (Heller 1992c).[2]

This pattern has persisted over time. In the 2010s, for example, MPs from the Greek neo-Nazi party Golden Dawn supported powerful economic interests

[2] According to Heller, fascism's claim to combine nationalism and socialism was in fact a deliberate act of manipulation, which replaced socialism with a generalisation of capitalism (*Verallgemeinerung des Kapitalismus*) (Heller 1992c, p. 567).

by blocking investigations into large-scale tax evasion and repeatedly opposing the taxation of wealthy shipowners, not to mention launching violent attacks on dockworkers' unions, in exchange for campaign donations (Psarras 2015, p. 36).[3] The problem lies not in the antidemocrats' support for free-market or oligarchic policies per se, but in their involvement in corruption and economic crime. This is exemplified by the case of Hungary, where the illiberal regime of Viktor Orbán essentially became a regime driven by patronage networks, nepotism, and high-level corruption that went unprosecuted to such an extent that it became systemic (Krekó and Enyedi 2018).

The complicity of antidemocratic actors with economic power is not so surprising. Far-right parties are in principle in favour of 'natural' inequalities, including socio-economic inequalities. Radical-right populist parties differ in this respect as they often advocate more egalitarian economic policies (Mudde 2014, p. 98). But, in reality, many radical-right populist parties are not anti-elitist per se, especially not in a socio-economic sense: they primarily oppose an established *political* elite, who can 'impose their will and interests on all through the coercive system of the state' (Urbinati 2019, p. 50). Socio-economic elites are not despised per se; more often than not, they themselves become leaders of right-wing populist parties, with billionaires Donald Trump and Silvio Berlusconi serving as prime examples. The corrupt deals between radical right-wing populist parties and oligarchs are a key feature of the diagnosis offered by those who believe that democracy must be defended through structural reforms.

5.3.2 The means

The socio-economic diagnosis of extremism is the first step in defending democracy socially. The second aspect concerns the tools on which this ideal type relies. Remember that militant democrats resort to exceptional measures, such as suspending basic rights, while tolerant democrats consistently apply universal norms and procedures and bolster them even further. By contrast, social-defensive democrats shift the focus away from exclusively legal and political solutions towards transforming social structures. Their aim is to

[3] See the legal documents and reports by JailGoldenDawn, an initiative established in 2013 by volunteer lawyers who supported the civil proceedings against Golden Dawn. https://jailgoldendawn.com/wp-content/uploads/2014/11/YPOMNHMA_POL_AGWGHS_TELIKO.pdf; https://jailgoldendawn.com/2015/07/21/ποιοί-είναι-οι-3-εφοπλιστές-που-συναντή/

produce economic security, employment, and social welfare. This means that responses primarily take the form of socio-economic reforms and policies.

Of course, focusing on policies does not preclude the use of legal and political means. Policies can be implemented by establishing new laws that regulate socio-economic relations. For example, these laws could relate to matters such as taxation, housing, education, or welfare provisions. They can also involve more fundamental changes. Heller, for instance, advocated the establishment of a 'social rule-of-law state' (*sozialer Rechtsstaat*): a legal and normative order based on social justice. This would allow the state to control and plan the economy, among other things. A comparable structural change that has been put forward today is to establish a new justice system, based on Rawlsian principles of reciprocity and difference. Authoritarian populism can be defeated, it is argued, when economic inequalities only benefit the most disadvantaged groups in society (Scheffler 2019). Ultimately, the idea is that policies, laws, and norms should alleviate economic anxieties and other social issues that fuel the rise of antidemocratic resentment.

5.3.3 The outcome

Finally, in order to conceptualise a social defence of democracy, we need to understand the outcomes that it intends to produce. What does this approach 'do' to extremists? What position does it leave them in within the public sphere and society? Remember that militant democracy results in exclusion, whereas tolerant democracy results in legal and political inclusion. By contrast, a social defence of democracy aims to produce equal *social* inclusion. This involves integration of all into social and economic life, the undoing of structural economic disadvantages, and the fair distribution of resources, opportunities, and burdens. If we accept that large inequalities are the driving forces of extremism, income redistribution should be the way to combat it. Social inclusion is of course a complex phenomenon that encompasses employment, welfare, education, housing, health, and many other areas, not all of which can be listed here. The exact policies depend on the context, and on more concrete normative arguments. For example, Sofia Näsström primarily argues for universal social rights such as free school lunches and benefits against sickness and unemployment (Näsström 2021b, pp. 189–191), whereas Lisa Herzog calls among other things, for 'a combination of an inheritance tax and a capital grant for young people who do *not* inherit' (Herzog 2025, p. 94, emphasis in the original). Regardless of the specific policy, the logic remains the same:

democracies need to offer not only equal social opportunities, but also effective social integration of all groups in society in order to appease supporters of authoritarian parties.[4]

In a nutshell, social-defensive democracy encapsulates an ideal type of democratic self-defence that understands antidemocratic politics as socially generated. It uses structural reforms to counteract these politics, and strives for greater social equality and inclusion. As such, it involves a distinct set of practices. These practices may, of course, vary between different periods, countries, and regions, and are context-bound. Historical and recent experiences provide several examples of social forms of democratic self-defence, some of which are discussed below.

5.4 Social defence in practice: historical examples

The idea that egalitarian policies are successful in defending democracy has been tried out in practice in the not-so-distant past. Two prime examples are relevant here. The first example is Sweden in the 1920s and 1930s, where the successful implementation of a social democratic economic agenda saved the country from the waves of authoritarianism that swept across the rest of Europe. The second example is the 'social democratic moment' in Western Europe after 1945, when Keynesian political economics played a significant role in the continent's anti-extremism strategy following the Second World War.

Inter-war Sweden was one of the few European countries where Nazism did not take root. The key mechanism that diminished the attractiveness of authoritarianism during the Great Depression was, according to political historian Sheri Berman, effective welfare and employment policies (Berman 2006, pp. 169–173). Sweden's Social-Democratic Party or SAP (*Sveriges Arbetarparti*) managed to push forward Keynesianism *avant la lettre* in a crisis programme that responded to the economic depression of the late 1920s. More specifically, to solve the problem of high and increasing levels of unemployment, SAP officials resisted the capitalist sirens that called for lowering wages and opted for stimulating aggregate demand through state-sponsored work programmes (Berman 1998, p. 165). A leading force behind this economic policy was SAP's finance minister between 1932 and 1949, Ernst Wigforss. He described this

[4] Note that many supporters of antidemocratic parties, not least their leaders, are part of the economic elite. The social inclusion discussed here does not concern *them*, but the lower- and middle-class workers who support these parties. Greater social inclusion could reverse antidemocratic sentiment among disadvantaged groups, who would then see that democracy 'delivers', and indirectly among elites, who would appreciate the social stability that is beneficial for business.

policy in 1928 in simple figurative terms: 'If I want work for 100 people I do not need to put all 100 to work' for 'if I can get an unemployed tailor work, he will get the opportunity to buy himself new shoes and in this way an unemployed shoemaker will get work' (cited in Berman 1998, p. 165). In other words, Wigforss blamed capitalism for letting productive resources go to waste, thereby lowering demand and slashing living standards for the majority of citizens. These resources had to be put back to use through government-initiated jobs. He added that, contrary to dire predictions that this policy will encourage inflation, the total purchasing power would not exceed what was produced, and so the prices of goods would remain stable.

This economic policy was regarded as the key strategy for combatting radical political alternatives. Per Albin Hansson, who became SAP's chairman in 1928, described the party's flagship programme unequivocally as a defence of democracy: 'the best way to strengthen and protect the democratic order is to make sure that all citizens feel secure and comfortable under it'; at the moment, he continued, workers, farmers, and the middle class felt their security indeed threatened (cited in Berman 1998, p. 167). SAP's crisis programme was uniquely designed to reverse this insecurity. The party deliberately distanced itself from the divisive class struggle of orthodox Marxism by assuming the responsibility to care for all those who were suffering without distinguishing between the working and the bourgeois classes, between white- and blue-collar workers, or between industrial workers and farmers. Thus, SAP cast itself as a people's party and its economic programme as a true democratic policy. At the same time, despite supporting free trade, the party distanced itself also from the individualism of classical liberalism. It did so by using the power of the state to control the market, and by offering support to capitalism's victims, those who suffered from the adverse effects of private enterprise.

SAP's 1932 electoral victory and its formation of a socialist-agrarian governing alliance enabled them to put all these policies to work. More concretely, the crisis programme it presented to the Swedish parliament in 1932 included various proposals centred around a demand-stimulus strategy and policies designed to multiply its effects on the economy. The main mechanism behind this strategy was the introduction of state-sponsored work programmes that paid workers market-level wages. The party also proposed replacing annual budgets with economic-cycle budgets. This policy would maintain the goal of a balanced budget, while basing calculations on the budget's impact on economic cycles (Berman 1998, p. 170). SAP's programme proved to be successful in overcoming the economic crisis—admittedly aided by international economic trends—and thereby laid the basis for a social democratic hegemony in

Sweden. Importantly, it continued to be defended as the key through which democracies could compete with dictatorships amid severe economic crises. In 1934, one SAP manifesto declared that:

> In the long term the most effective measure against the anti-democratic contagion is to conquer its foundation and that will happen through effective welfare policies that conquer the economic crisis, help those suffering from it and provide hope and confidence to the people. (cited in Berman 2006, p. 174)

In times of economic hardship, the party argued, voters sought leadership and assurance; SAP's economic package was designed to provide exactly that. Leadership became bolder in order to compete effectively with authoritarian parties, not by concentrating executive power, but by delivering a strong and assertive socio-economic policy. And so, after the war, the belief that socio-economic inclusion helps democracies consolidate spread to the rest of Europe, which provides us with a second historical example.

The post-war economic order in Europe was founded on the belief that fascism and Nazism were socially generated. They were seen as a product of economic crises, social divisions and inequality caused by unmoderated capitalism. To avoid the mistakes of the past, the new economic order was a 'tempered or limited capitalism' (Berman 2019, p. 400). The goal was not only pragmatic, i.e. to cancel out the economic grievances that had driven voters to various antidemocratic parties. It was also symbolic, to eliminate the belief, shared by left- and right-wing radicals as well as many liberals themselves, that liberal-capitalist democracies catered only for the few, and should therefore be replaced by illiberal regimes that claimed to be the only true representatives of 'the people' (Berman 2019, p. 403).

Against this background, post-war liberal democracies became fertile ground for Keynesian economics and welfare-state politics. Following Keynes, Christian Democrats in Germany and other right-wing parties across the continent adopted firm state policies aimed at preventing the Great Depression of the 1930s through a basic principle: the state had to control the markets and protect society from the most malign effects of capitalism (Berman 2019, pp. 294–301). And by 'society' they meant not only the poor: the rationale of post-war European welfare states was to protect all social classes from economic distress. In Britain, its crown jewel was the newly established National Health Service, which benefited almost everyone, above all the middle classes who had suffered from intense inflation and had been highly attracted to extremist solutions (Müller 2011, p. 131). But the welfare state also worked against

extremist ideologies in symbolic ways, by replacing the liberal organisation of society—its 'anomie, dislocation, and atomisation' that were so disastrous in the inter-war years—with a sense of community, kinship, and solidarity (Berman 2019, pp. 296–297). According to Berman, this move represented a new 'social contract' in which governments promised to provide economic security to citizens in return for their support of the liberal democratic system.

More concretely, each country used its own set of policies to forge this new post-war social contract. In France, it was implemented through nationalisation and planning; in Britain, by expanding the welfare state, committing to full employment and nationalising parts of the economy; in Italy, via a large public sector and an enshrinement of social protection in the constitution; in Germany, through state interventionism, welfare-state expansion, and policies that afforded workers a say in business decisions; and finally, in Sweden, through a centralised system of wage bargaining that promoted both productivity and equality, alongside a universal welfare state with high-quality public services for health care, education, and child care (Berman 2019, pp. 297–299). These policies, supported by both centre-left and centre-right parties,[5] succeeded in promoting economic growth and equality, ending social divisions and thus supporting the consolidation of democracy. In Berman's view, the social democratic post-war order defeated three different challenges: liberal fears that democracy would lead to a tyranny of the poor and uneducated; Marxist predictions that universal suffrage would mark the end of bourgeois society; and 'fascism's claim that only dictatorships could produce national cohesion and social solidarity' (Berman 2019, p. 301). As such, it gave perfect expression to the idea that democratic consolidation 'required not merely reforming political institutions and relationships but social and economic ones as well' (Berman 2019, p. 302).

Together, the two examples of post-war Europe and inter-war Sweden showcase how socio-economic policies have been successfully used to defend democracy from authoritarian movements. Relevant policies that were tried out included state-sponsored work-creation, state interventionism, universal welfare state, a large public sector, nationalisation and economic planning, and workplace participation. Both the suitability and feasibility of each policy depended on context. What worked in one country or period was not necessarily going to work everywhere. But the general logic was similar. Hence, as will be shown in Chapter 6, advocates of a social defence of democracy today support measures that resemble these historical policies to different degrees.

[5] I thank Fabio Wolkenstein for drawing my attention to this point.

A second important lesson to be learnt from these historical examples is that these social reforms were implemented by political parties coming from different ideological traditions. In the inter-war years, Sweden's social reforms were led by the Social Democratic Party, which explicitly campaigned for the necessity of such policies for democratic survival. Yet, after the war, in the rest of the continent, it was primarily Christian Democratic parties such as the Christian Democratic Union in Germany that initiated these reforms. In doing so, they adopted the same logic that guided the Swedish Social Democrats before the war: democracy required a high degree of socio-economic equalisation. The different party families that adopted social-defensive democracy confirm that this type of self-defence is not strictly tied to a specific political ideology but has a broader meta-ideological appeal. More than a class-specific or ideologically narrow perspective on democracy, the principle of defending democracy socially employs a set of norms that transcend partisan, geographical, and even temporal boundaries. It is thus a recurring form that can be observed even in the present day, with the rise of the neo-Nazi party Golden Dawn in austerity-hit Greece being a highly characteristic case.

5.5 A contemporary example

The key to a social defence of democracy is the diagnosis that economic crisis functions as a breeding ground for authoritarian parties. There is much to suggest that the neo-Nazi Golden Dawn's electoral success was linked to the financial crisis that hit Greece in 2008, plunging millions into misery, poverty, and unemployment. Many analysts note that Golden Dawn, which for decades had an extremely small base of support, was catapulted to centre stage in Greek politics because it seized the political opportunity created by the financial crisis (Ellinas 2013: 544; Vasilopoulou and Halikiopoulou 2015; Christodoulaki 2020). The party adapted its political message to appeal to voters who were en masse disillusioned with the political establishment. Its rhetoric had always centred on nationalism and nativism, but now these ideas gained new force. Nationalism was validated as an opposition to Greece's foreign creditors. For example, the rejection of 'the memorandum' (i.e. Greece's loan agreement with foreign creditors and its austerity conditions) became central to the political speeches of its leader, Nikos Michaliolakos (Paraskeva-Veloudogianni 2015, pp. 98–102). And nativism was reaffirmed in relation to the pressure that immigrants allegedly exerted on the ailing domestic labour market.

However, Golden Dawn portrayed the financial crisis as only the tip of the iceberg of a much broader crisis that is political, cultural, moral, and national. According to Vasilopoulou and Halikiopoulou (2015, p. 106), the party succeeded in transforming the blame for the financial crisis into a rejection of the entire political system by adapting common fascist myths of 'social decadence' and 'national resurrection' to the contemporary Greek context. In other words, they interpreted the financial crisis as a sign of a wider moral, cultural, and political decay caused by 'bourgeois' democracy, individualism, and class conflict. Nationalism could transcend these divisions and cleanse society of these 'impure' elements: external enemies, such as immigrants and eurozone creditors, and internal enemies, namely the entire political class and all ideological opponents of nationalism (pp. 59–60).

Thus, Golden Dawn adopted a wholesale opposition to the constitution and to representative democracy, one that was characteristically couched in economic terms. Representative democracy was described as "the child of capitalism', an instrument through which capitalism dominates the popular masses' (Vasilopoulou and Halikiopoulou 2015, p. 57). Conversely, the authoritarian rule of Ioannis Metaxas (1936-41), was retrospectively rehabilitated and credited with a number of 'successful' economic and social policies: the integration of the agricultural and the working classes, the establishment of the welfare state, national insurance, a six-day working week, and a minimum wage. The focus on social welfare was also reflected in the party's social activism. This included the establishment of a number of grassroots social services that sought to fill gaps left by the inefficient official state services, including health provision centres, blood banks, employment hubs, and soup kitchens. Crucially, these services were intended 'for Greeks only' (pp. 58–59).

Golden Dawn's pro-welfare image was strategic rather than principled, and contradicted the party's parliamentary record of supporting big business (Psarras 2015, p. 36). Regardless of this double economic agenda, there is little doubt that Golden Dawn turned the financial crisis into a *discursive opportunity* to gain political momentum and expand its previously small group of supporters. Indeed, studies of the party's voter profile show increased support among people from working-class backgrounds and with low education who are disillusioned with the political system (Vasilopoulou and Halikiopoulou 2015, pp. 31–49). Other studies demonstrate the link between rising unemployment, loss of income (or the fear of it), and sudden increases in immigration at the regional level to explain support for far-right parties. For these reasons, they suggest that directing resources towards the labour-market integration of immigrants in specific regions experiencing sudden

increases in immigration could effectively counter political extremism (Georgiadou et al. 2018, pp. 113–114). In other words, a mix of socio-economic and political grievances seems to have been the main factor driving support for this authoritarian party.

Key figures from the other Greek political parties publicly argued that support for Golden Dawn was provoked by the dire circumstances of the national economy. For example, in a controversial bid to attract far-right voters in the second round of the 2014 local elections, left-wing Prime Minister Alexis Tsipras famously argued that, contrary to the party's leadership, Golden Dawn *voters* were not neo-Nazis but were driven by 'a feeling of injustice and social depression' and had been misled into thinking that Golden Dawn was an anti-system party—which Tsipras argued it was not, given its links to the centre-right government and those with great financial power (Kovaios 2014).[6] In a similar vein, the centre-right Minister of Public Order and Citizen Protection, Nikos Dendias, argued that the party's success—and imminent demise—was directly linked to the course of the Greek financial crisis: 'If the political system manages to steer the country back to growth, then they will become yesterday's joke [. . .] The prospect of renewed prosperity will dramatically shrink the appeal of Golden Dawn' (quoted in Palaiologos 2014).

The idea that Golden Dawn's success was due to the financial crisis was widely held in Greek public debate. A study of social-media discourse shows that the party was presented both as a 'product' of the crisis and as a force that 'mobilises against' it, in a complex nexus of blame attribution (Angouri and Wodak 2014). In sum, political leaders on the left and right, citizens on social media, as well as social scientists, seemed to agree that the driving force behind Golden Dawn's success was the failure of the political system to address the socio-economic crisis that began in 2009. This ability of the party to 'own' the issue of anti-systemic revolt (Vasilopoulou and Halikiopoulou 2015, p. 45; Georgiadou 2015, p. 228) explains why, even after party cadres were arrested for involvement in serious crimes and the trial process was widely publicised, the party continued to enjoy support in the polls (van Versendaal 2013).

To be sure, the broad consensus that support for this neo-Nazi party grew because of a deep economic crisis was not sufficient to justify a socio-economic response to the problem. The diagnosis of attributing the rise of antidemocratic parties to socio-economic developments is not always taken to its logical

[6] In April 2019, left-wing presidential candidate Bernie Sanders, then campaigning for the 2020 Democratic nomination, replicated the same move by reaching out to Fox News viewers, who are typically associated with conservative and far-right politics (Lehrer 2019).

conclusion. In the Greek case, the state and political actors reacted in a variety of ways, initially using a mostly tolerant arsenal, but increasingly adopting militant positions and measures (Malkopoulou 2021). At the same time, policies to end the acute socio-economic crisis, for example through job creation, were adopted by a wide range of parties and justified not only in the name of general economic welfare, but also as a means of reversing the rise of the extreme right. However, social reforms were weak and very slow in reversing social exclusion. It is difficult to assess the impact of these reforms in containing the Golden Dawn, especially since other, more forceful, legal measures were mobilised for this purpose. Nevertheless, the Greek case serves as a contemporary example of how social inequalities fuel support for far-right parties, and how the failure to address these inequalities may contribute to the continued success of these parties and their offshoots.

5.6 Conclusions

The social approach to democratic self-defence has a long and dignified history on the European continent. It is also making a dynamic comeback today. However, contemporary scholarship linking democratic resilience to socio-economic reform is often misguided. One mistaken assumption is that support for antidemocratic parties is driven by the poor and uneducated masses, when in fact it is often the middle classes, led by economic elites, that drive democratic regression. Another mistake is to place too much blame on individual agency, either irrational voters or deceitful politicians, while ignoring the fundamental role of social structures in generating 'irrationality' and a negative predisposition towards democracy. These considerations point to the need for a more careful account of the social conditions that sustain or undermine democracy.

Social-defensive democracy constitutes a third ideal type of democratic self-defence, distinct from the militant and tolerant types. It combines a diagnosis of antidemocratic movements as rooted in structural injustices, a solution centred on socio-economic reform, and an intermediate goal of achieving the equal social inclusion of previously excluded groups. This social-economic logic in the fight against extremism has been adopted in the past, for example in inter-war Sweden and in post-war Western Europe. It was channelled through policies that reversed mass unemployment, improved living standards for the majority of citizens and provided them with security against economic hardship.

Advocates of this approach to authoritarian parties may share a commitment to the principle of social-defensive democracy, but from there they shoot in many different directions. What explains these differences, both in terms of conceptual frameworks and normative commitments? Are there subgroups within this broader ideal type of democratic self-defence? The next chapter addresses these questions, complementing the present chapter's discussion of specific policies and measures with an examination of the deeper normative principles and justifications that underpin them. Furthermore, Chapter 7 addresses two common criticisms of this ideal type: that it ties democracy to particular political and ideological ends, and that it is incompatible with liberal principles of justice.

6

The Rationale for Defending Democracy Socially: From Hermann Heller to the Present

6.1 Introduction

Contemporary views on the idea of defending democracy socially are scattered and centrifugal. They are not part of a unified debate, comparable to the one that unites scholars of 'militant democracy', whether proponents, critics, or sceptics of militancy. To some extent, this dispersion can be attributed to the belated interest in the subject, with scholars only recently explicitly discussing a social response to antidemocratic actors. Another reason for this fragmentation is the absence of a central, coherent, unifying concept that can be used to bring these views together. Thus far, the concept of a democracy that employs socio-economic measures to combat its enemies has lacked a clear and coherent definition. In the absence of a unified theoretical framework, these reflections have been unable to produce a coherent narrative.

The preceding chapter sought to identify this narrative and proffer a minimalist definition of a social-defensive democracy. The present chapter is doing the opposite, namely examining the discrepancies between the various rationales within this now hopefully more identifiable camp. It aims to elucidate the plurality of perspectives on what it means to defend democracy socially and, in particular, why this is a justified and legitimate path to take.

The different perspectives explored in this chapter are classified according to the traditions of thought to which they are closest. Most important among them is the broader tradition of social-democratic thought, which has long grounded democracy in socio-economic principles. Beyond this common ideological background, however, the ideas in this group vary considerably. For Hermann Heller, for example, antidemocratic tendencies stem from authoritarian liberalism, namely the tendency of liberalism to promote a capitalist form of economy via authoritarian means; to respond, democrats must push back against the entrenchment of capitalism. For other thinkers

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in this tradition, liberalism is not the culprit, but part of the solution; what needs to be done is to ground national communities in liberal values and strengthen social cohesion. While the greatest part of the chapter is dedicated to the social-democratic tradition, justifications stemming from different traditions of thought—Christian democracy, radical democracy and critical theory—are also discussed. The broader aim is to highlight that the concept of defending democracy socially is meta-ideological and spans different and often incompatible ideological traditions. This journey begins with Hermann Heller, whose work provides the historical inspiration for the social-defensive ideal type developed in this book.

6.2 Hermann Heller and the quest for social integration

6.2.1 Heller's ideas in context

The writings of German constitutional theorist and Weimar social democrat Hermann Heller are central to understanding the relationship between democratic self-defence and social rights. Active in the critical Weimar years, his ideas were responses to the intellectual, political, and social developments of his time: economic depression, political polarisation, and mounting challenges to constitutional democracy. The economy was marked by extreme inequalities, episodes of hyperinflation, deteriorating working conditions, weakening trade union power, and, following the onset of the Great Depression in 1929, severe unemployment, all of which fuelled growing social tensions. Politically, he witnessed not only the dynamic rise to power of the Nazis but also a highly fragmented parliamentary left, split between a passive Social Democratic Party, which 'tolerated' authoritarian decision-making and anti-social reforms, and a revolutionary Communist Party that spread fears of an imminent 'dictatorship of the proletariat' firing up passionate anti-Communist propaganda (Wilkinson 2025). Intellectually, Heller developed his arguments in opposition to his colleagues Carl Schmitt and Hans Kelsen, whose constitutional theories he polemicised. He accused Schmitt of legitimising a permanent state of exception and abuse of power, and criticised Kelsen's legal formalism as the veil (or even the cause) of de facto inequality (Dyzenhaus 1996). For Heller, these theories failed to address the real causes of democratic decline, which were rooted in everyday social conflict.

Heller was not alone in seeing the causal link between deteriorating economic conditions and antidemocratic trends. In the inter-war years, much

was riding on the observation that European fascism was the result of economic collapse. For example, in 1935 the sociologist Karl Mannheim (1940) argued that fascism grew, among other things, out of Weimar's economic pressures and deep-seated conflicts between centres of economic and political power (Hammersley 2023). In 1938, Max Lerner also attributed the growth of Hitler's movement to 'the collapse of the economic structure—creating unemployment and monetary chaos, cutting the ground from under the habitual patterns of everyday life, filling even those who had jobs with a sense of insecurity' (Lerner 1989, p. 37). One did not have to be a Marxist to recognise that it was these underlying structures of economic exclusion and insecurity that had opened the gates to fascism.

A second condition for the growth of fascism, as noted by many authors at the time, was its support by large sections of capital (Lerner 1989, pp. 38–39; Maddox 2019). In the eyes of Social-Democratic (SPD) jurist Ernst Fraenkel (2017), capitalists supported the Nazis because the new regime promised to preserve a part of the old technical and economic order that suited capitalist interests. Another SPD theorist and later member of the Frankfurt School, Franz Neumann (1942), offered a retrospective analysis of the political economy of the Nazi regime that underlined this connection. He described it as a combination of monopoly capital control and a command economy—a 'totalitarian monopoly capitalism'[1] —that allowed unfettered capital accumulation and thus reinforced support for the dictatorship. Heller had recognised these political economic foundations of Nazism from the outset.

Even before the rise of Nazism, Heller criticised the 'authoritarian liberalism' that was taking hold in Germany. He described the political programme implemented by the von Papen cabinet in 1932 and inspired by Schmitt's ideas as an 'attempt to order the economy in an authoritarian way' (Heller 2015, p. 299): it involved the state withdrawing from the economy, while ruling with strong authority over the military and manipulating the means of mass communication. For Heller, the primary aim of this programme was to dismantle the Weimar welfare state. It removed state funding from health and unemployment insurance, cultural policy and, in particular, compulsory education, the cost of which now disproportionately burdened individual households.[2] At the same time, however, this separation of state and economy did not apply to

[1] As such, Neumann rejected Friedrich Pollock's description of fascist political economy as 'state capitalism'. Because Pollock was a central figure in the exiled Frankfurt School, his perspective became dominant, whereas Neumann's remained peripheral (Harcourt 2020).

[2] To justify all this, Heller argued, work was no longer defined as 'a right', but was rhetorically redefined 'as a duty', emphasising its 'psychological' importance. Paradoxically, this gave the authoritarian state the image of a 'social state' (Heller 2015).

the business sector; state subsidies were shamelessly handed out to big banks, big industry, and big agriculture. Heller argued that these authoritarian-liberal policies harmed 90 per cent of the German population, who lived on very low incomes, while creating large benefits to the few owners of capital.[3]

6.2.2 How severe inequality breeds authoritarianism

According to Heller, these large disparities were a ticking bomb for a democratic society. In the opening lines of his 1929 essay *Was bringt uns eine Diktatur?* ('What brings us a dictatorship?'), Heller wrote that democratic will formation was threatened by 'the great socio-political antagonisms' (Heller 1992b, p. 437; my translation). The cardinal problem of our times, he adds elsewhere, is the conflict of social classes, and the tendency to quash the demands of the working class. The reason why class antagonism has led to an acute political crisis and, thus, the real danger for mass democracy is *gross economic and intellectual disparity* (Heller 1992c, p. 468). This disparity creates a domino effect. First, it enlarges the distance between rulers and ruled. Although political representatives are always at some distance from the people, with acute class conflict this distance becomes unbridgeable. As a result, the representativeness of political and social organs dwindles, and the masses start distrusting their rulers. The working class loses any hope of co-shaping a future society that better corresponds to their ideas and interests. They also lose the possibility of learning through experience how to deal with urgent problems in a democratic system (Heller 1992c, p. 608).

The broader consequences for democracy are enormous, Heller claimed. Importantly, once the ties between rulers and ruled are broken, the conditions for shaping a common political will and crafting a community of shared values disappear. In parliamentary democracies, the absence of a sense of political community diminishes a much-needed common basis for discussions. The talking, negotiating, understanding, and deliberating between groups, which is the quintessential parliamentary method for making and re-making a common political will from the bottom up, becomes unfeasible. In this context, the principle of majority rule loses its meaning, and decisions and laws lose their legitimacy. Heller puts it emphatically: 'The less the communal ties between

[3] According to Wilkinson, Heller nevertheless supported SPD's 'policy of toleration' towards Brüning's authoritarian cabinet as a barrier to Nazism because Heller was more worried about economic *liberalism* than about *authoritarianism* (Wilkinson 2021, p. 32; see also Thornhill 2000, p. 112), even though he later regretted not seeing that the 'neutral state' on which he placed so much faith was effectively a capitalist state.

the governing and the governed, the stronger the awareness of unfreedom and inequality' (Heller 1992c, p. 468, my translation). Furthermore, without shared political values, the state itself has no firm foundations. What follows is a loss of trust in the fairness of the state.

Heller concludes that, under these conditions, the working class is drawn to support undemocratic solutions:

> Once the proletariat believes that the democratic equality of its ever-powerful opponent condemns the democratic form of class struggle to hopelessness, it resorts to dictatorship. (Heller 2015, p. 262)

Heller's central idea, that democracy loses its support from the masses when it ceases to serve them, is only partially correct, if at all. The events that led to the rise of Hitler proved that authoritarianism was not supported by the working class, but by big business allied to the middle classes: it was not a dictatorship *of* the proletariat but a dictatorship *over* the proletariat that triumphed in Europe, as Wilkinson (2021, p. 58) eloquently explains. The antidemocrats' true goal was not to revolutionise existing power structures but to preserve and entrench them, quenching the growing social discontent.

At the same time, Heller was not entirely wrong. When he expressed fears that the impoverished and disillusioned masses would turn their backs on democracy, what he meant was that they would seek *left-wing* authoritarian solutions and embrace communism. This in turn will alarm the middle classes, who will abandon the liberal institutions that normally serve them—parliamentarism, separation of powers, etc.—in favour of a dictatorship that guarantees capitalism and right-wing economic policies (Scheuerman 1994, p. 44). In the end, it was conservative military and industrial elites that helped bring Nazism to power, viewing it as an effective barrier against socialist revolution. Thus, without the high levels of social discontent that fascist leaders expressively harnessed to justify their paternalistic economic policies, authoritarianism would have no grip. At the end of the day, in the eyes of a contemporary observer, even as it was driven by the groups that owned wealth, fascism had a tendency to expand to all social groups:

> Fascism, which starts as the personal project of a small group of gangsters and adventurers, extends its scope gradually until it includes a substantial minority, drawing heavily upon every class of the population, and to an extent even upon the workers. (Lerner 1989, p. 39)

Even if active support for fascism did not come from the oppressed but from the oppressors, the effect of unresolvable economic tensions on the political turmoil that paved the way for fascism was hard to deny. It was not only hyper-inflation, which caused rapidly rising prices and a loss of confidence in the currency, but also widespread unemployment, the loss of savings, poverty, food shortages that produced long queues at grocery stores, housing shortages that contributed to rising homelessness in urban areas, and high crime rates. In addition, political instability and the inability of Germany to repay war reparations and foreign loans were causing even more economic uncertainty and financial stress, which was further exacerbated by the Great Depression (Weitz 2018, pp. 129–168).

Economic hardships disproportionately affected the working and middle classes, whereas industrialists, landowners, and financial elites held significant wealth and power to weather the storm. In this context, the labour movement was radicalised, while financial elites tried to protect their economic interests; as a consequence, class conflict became intense. There were numerous protests, strikes, and demonstrations organised by various social groups, trade unions, or the Communist Party, often meeting fierce resistance by employers and involving clashes with police.

But the conflict was not only over resources and policies. Constitutional issues and basic norms and values were also fiercely debated. For example, one emblematic conflict concerned judicial review. Liberal judges claimed a right to strike down laws, which challenged private property rights and the banks' right to collect debts; the leaders of the SPD argued that this was an attempt to roll back hard-won legislation for economic equality enacted by the republican regime in the early 1920s. They disputed fundamental economic concepts, such as property rights, as well as constitutional ones, such as who best represented the legislative will in a democracy. The inter-war German debate on the meaning of judicial review discussed in Chapter 3 must be assessed in light of these unique historical circumstances.

6.2.3 'Social homogeneity' as social integration

For Heller, overcoming these tensions required a high degree of social equalisation, which he somewhat misleadingly referred to as 'social homogeneity' (Heller 2000, p. 260). To explain his concept of homogeneity, Heller usefully contrasted it with two neighbouring concepts. On the one hand was 'formal-legal political homogeneity', the formal equality of all persons before the law

(a nod to Kelsen). The problem with this type was that, under conditions of social and economic inequality, it is undermined and transformed into a most radical form of inequality (p. 262). Indeed, Kelsen had famously defended judicial review, which in the context of Weimar, had become a vehicle for the entrenchment of bourgeois interests. On the other hand, Heller argued, there was Schmitt's 'absolute' or 'substantive homogeneity', a primordial natural or cultural unity of the people, a community of blood. This form had no normative significance; it could not by itself produce organised political unity, which, according to Heller, was always a product of conscious human activity (Heller 1996, pp. 1165–1166).[4]

In contrast to these two alternatives, Heller argued for an understanding of social homogeneity as a kind of egalitarian and communitarian integration. In his own words:

> Social homogeneity is always a social-psychological state in which the inevitably present oppositions and conflicts of interest appear constrained by a consciousness and sense of the 'we', by a community will that actualizes itself. (Heller 2000, p. 261)

This social sense of togetherness is the key to overcoming major differences, tensions, and antagonisms. An exemplary manifestation of this togetherness, he continues, are shared rules for discussion in parliamentary systems, and the possibility of *fair play*, which allows political rivals to come to an agreement. Produced in multiple, overlapping spheres, this consciousness consists in people recognising as their own the economic, ethical, and intellectual foundations of laws and state decisions. This dynamic type of conscious togetherness and co-creation cannot be replaced by religious, economic, cultural, or social conventions. Thus, although a community of norms underpins homogeneity á la Heller, this community is not based on primordial ties, but is entirely socially constructed, and is feasible in the present material world. It is a 'relative homogeneity',[5] not aspiring to absolutist and total homogeneity, and rejecting extreme heterogeneity, which he understood as a proxy for disparity and inequality. Social homogeneity in this sense, as an egalitarian and pluralist community of norms, a shared ownership of pre-legal principles, is indispensable for political unity.

[4] The term *Homogenität* was used by other German jurists at the time as a synonym of shared interests and views, or community, or uniform social living conditions, so much so that Schmitt switched to a different term—*Gleichartigkeit*—to denote biological sameness and ethnic identity (Buchstein 2024, pp. 112, 260, 509).

[5] For the use of the term 'relative homogeneity', see Heller 1996, p. 1165.

Heller's 'social homogeneity' has opened up distinct interpretations. Some understand the concept as a portal to Heller's espousal of a sort of nationalism based on shared cultural norms, a social nationalism that was conceived as a response to Nazism (Heller 1992a; see Kennedy 1984; Näsström 2021a).[6] Sofia Näsström, for example, claims that Heller is one step closer to authoritarian populists in foregrounding unity over pluralism. Ellen Kennedy attributes Heller's culturalism to his influence by 'Herder's and Fichte's theories of the nation as *Kulturgemeinschaft*' (Kennedy 1984, pp. 123–125). She claims that his attention to nation was an attempt to shorten the distance between national and republican values, and find a common reference point that would cut across class divisions, offer emotional solace to the desolate city workers, and bridge a cultural divide among regions. According to this interpretation, Heller highlighted national identity for instrumental reasons. However, nationalism does not sit easily with two central ideas in Heller's work. For him, social homogeneity grounds cultural community, and not the other way around as Kennedy argues. He explicitly declares that 'common speech and a common culture and political history' are not sufficient anymore (Heller 2000, p. 261). Secondly, reading Heller as a champion of national unity, even one founded on constitutional patriotism and social inclusion,[7] misses the point that pluralism and socio-political antagonism are not simply important for him, but fundamental for political unity.

A more accurate reading of Heller's 'social homogeneity' is offered by critical legal scholars. A key to understanding this interpretation is to pay close attention to the synonyms Heller uses: 'social equalisation' and 'we-consciousness'[8] (Heller 2000, pp. 261–262). Dyzenhaus helpfully describes the concept as 'a plateau of social equality sustained by a culture of commitments to maintaining and enhancing equality' (Dyzenhaus 1997, pp. 189–190). Wilkinson (2021, p. 57) rightly describes it as equality grounded in socio-economic reality, as opposed to Kelsen's formal-legal equality.[9] Social homogeneity is best

[6] This support for nationalism was shared by Heller's peers, who like him belonged to the right wing of the *Sozialdemokratische Partei Deutschlands* in the mid-1920s, the so-called *Hofgeismarer Kreis*.

[7] I have argued elsewhere that Heller's 'thick' culturalism should be read as support for shared ethical political values, similar to constitutional patriotism, rather than cultural or religious identity. This interpretation rejects the authoritarian connotations that the term 'homogeneity' allegedly carries (Malkopoulou 2022, p. 197).

[8] Alternate terms that Heller uses are 'social-psychological equalisation of consciousness', and 'relative equalisation of the social consciousness'.

[9] However, Wilkinson's use of the term 'substantive equality' to redescribe the concept is potentially misleading, as it overlooks Heller's emphasis on equality as a shared ethical and political commitment. Moreover, the term 'substantive' suggests that equality is primarily an idealised outcome, rather than a process through which equality is pursued. It is not clear that Heller drew such sharp distinction or prioritised outcomes over processes. Finally, the term 'substantive' also echoes Schmitt's own conception of homogeneity as a substantive, that is, nativist, concept, and may therefore create unnecessary confusion.

understood as combining two ideas: the norm of social equality and a meta-consensus about this norm. It expresses both an aspiration to achieve equal social inclusion and the shared ethical commitment through which it can be achieved and sustained.

Central to these more sympathetic interpretations is that they see in Heller's social homogeneity not only the primacy of equality but also an anti-authoritarian democratic resource: it neither eliminates nor renders excessively polemical the social conflict that Heller describes as 'the necessarily antagonistic social structure' (Heller 2000, p. 261). For Wilkinson, social homogeneity is 'both a precondition and prospect of democracy; both cause and effect' (Wilkinson 2021, p. 57). Heller, he argues, adapts the classical Rousseauian conundrum of forging 'a general will' in conditions of social heterogeneity to a modern political and economic context, in which parliamentary democratic institutions channel social challenges to capitalist interests. In such a political system, when socio-economic and ethical disparities loom large, not only is 'political power unequally acquired and utilised by the ruling class to maintain its own position' but the ability of liberal democracy to deliver 'the *minimal* conditions for a tolerable degree of social harmony' is seriously called into question. Under these conditions, electoral democracy is 'deemed inadequate for, or even an obstacle to, the necessary solidarity and social equality for society to politically constitute and reconstitute itself' (Wilkinson 2021, p. 57). Only increased socio-economic equality, especially 'between rulers and ruled', can guarantee the formation of a democratic will. In this sense, social homogeneity becomes the key to preventing the collapse of parliamentary democracy.

In practice, what Heller was arguing for was the social and intellectual integration of the working classes. This was in line with the general interest of the time in integrating the working classes into the centres of economic and political power (Strote 2017, pp. 40–45). Their social integration would improve their living conditions and reduce their material inequalities. This presupposed a real possibility for them to express their socio-economic demands, and a genuine responsiveness of political actors to these demands. In terms of their ethical-cultural integration, Heller supported the civic education of the working classes—for example, through the adult education (*Volkshochschule*) movement to which he was deeply committed after 1919. This priority responded to Carl Schmitt's (and later Karl Mannheim's) concern that the working classes had little experience of political participation and little understanding of the complexities and constraints on political decision-making, given that they had been newly enfranchised (e.g. German women workers in 1919); as a result, new voters made great demands that were

difficult to satisfy, thereby feeding the growth of radical parties (Hammersley 2023, p. 324). Recognising that Schmitt's concern was shaped by a conservative bias, and wary of the upper classes patronising uneducated workers, Heller urged that the process of civic learning should be co-shaped by the participants themselves (Heller 1992c, p. 467). Thus, socialism was not only about satisfying material concerns, but also an ethical project, aimed at creating a sense of togetherness and overcoming the isolation and individualism created by capitalism (Heller 1992c, p. 476; Kennedy 1984, p. 124). It was a project of social integration, based on an equitable distribution of economic and educational resources and effective political and ethical equality.

6.2.4 A statist approach to democratic self-defence

For Heller, the basic institutional framework for easing socio-economic tensions was none other than *the state*. Heller's unwavering 'statist' position sharply distinguished him from other leftist thinkers and political opponents, who followed a stricter anarchist, collectivist, or broadly utopian Marxist tradition. In that sense, Heller's state was not a 'class state'—capitalist or socialist—but a 'neutral state', understood as 'the expression of community' (Thornhill 2000, p. 112).[10] More specifically, it was a legal state, a state based on the rule of law (*Rechtsstaat*) (Dyzenhaus 2000, p. 250). Such a state was the best framework for defending democracy, because it provided greater predictability in social relations, as they were guided by norms that resulted from compromise (Heller 1930, p. 4). By contrast, unpredictable arbitrariness in law-making was what produced a heightened sense of unfreedom and insecurity. Heller adopts a classical republican justification of freedom through law, whereby socially situated agents must have a say in law-making to prevent their domination (for Heller's republicanism, see Llanque 2019).[11] The unfreedom that results from arbitrary lawmaking, according to Heller, was widespread in the fascist state, which was a negation of a state based on the rule of law. But neither was a state 'strong' when it controlled the media and

[10] Such he believed was the Weimar state, which is why he maintained his faith in it throughout the dramatic 1920s. Yet, by 1932 he realised that in effect Weimar was a class state, and in fact *a capitalist state*, with an in-built opposition to socialism and democracy (Wilkinson 2021, p. 33).

[11] Kennedy (1984) aptly describes Heller's conception of freedom as 'acceptance of a law one has made for oneself' (p. 123). However, drawing on his earlier work on nationalism, she attributes this view primarily to the influence of German Romantic liberalism, which emphasised the primacy of individual expression. By contrast, taking into account Heller's later work, it is more accurate to recognise it as a reflection of his republican belief that non-arbitrary lawmaking is the only barrier to domination (see Llanque 2019; Caldwell 1997, pp. 127-133).

army and supported large economic interests à la Schmitt. A 'strong state', in his view, should support an economy that cares for the needs of its citizens, and secures their loyalty *thereby*, while at the same time it acts strongly vis-à-vis large banks, industry, and agricultural entreprises (Heller 2015, p. 300).

In fact, having rejected the bourgeois *Rechtsstaat* that protected private rights and was founded on purely logical norms, Heller supported a law-bound state oriented towards social equality or, for short, a social rule-of-law state (*sozialer Rechtsstaat*).[12] Its core idea was that social equality was realisable within a state that was based on law, materially and procedurally. The two central pillars of a social rule-of-law state à la Heller were socio-economic rights and democratic decision-making procedures (Malkopoulou and Norman 2018, p. 454). A constitutional protection of socio-economic rights involved specific provisions on taxation and public spending, as well as 'the actual capacity to shape the socio-economic order through collective decisions' (Menéndez 2015). Such a state would defend democracy by assuring that (1) laws were legitimate because all social classes were represented in law-making; (2) citizens were loyal because the economy catered for the needs of the many; and (3) the sense of community was genuine because all members of society co-shaped the political culture (Malkopoulou 2022, p. 196).

In assessing the value of Heller's ideas as a basis for a different approach to democratic self-defence, it is important to bear in mind significant differences in historical context. Heller was writing at a time when political parties mapped neatly onto distinct social classes, and the latter were indeed mobilised by class-specific frames, which is not the case today. Social groups were treated as closed political constituencies with direct links to political parties. In addition, the social and political integration of the working class was a priority at the time, because workers were newly enfranchised. Not only did they have to learn the skills that corresponded to their elevated political status, but they increasingly became a very important constituency. This is not the case today, where the discourse on integration is primarily concerned with newly arrived immigrants and refugees. Contemporary reconstructions of Heller's ideas would have to adapt his ideas to circumstances that are more relevant today. Despite these differences, Heller's thinking represents a

[12] Note that the term *sozialer Rechtsstaat* has been translated with great variation: by Kennedy (1984, p. 117) as 'social justice state', by Chris Thornhill (2000) as 'social-legal state', by David Dyzenhaus (2000, p. 250) as 'a state based on the social rule of law', by Peter C. Caldwell as 'social rule of law' (Caldwell 2019, p. 6), by Marcus Llanque (2019) as 'socially oriented legal state', and by Wilkinson (2021, p. 54) as 'social democratic state'. The term used in this book—'social rule-of-law state'—resembles closely Dyzenhaus'term.

monumental shift in the understanding of democratic self-defence as linked to the reform of socio-economic conditions and not just formal political rights.

Hermann Heller's justification of a social defence of democracy is based on the view that democracy requires deep social and political integration in order to withstand its internal challenges. Without a focus on social cohesion, political tensions will erupt that may lead to the rise of extremism. By contrast, support for antidemocratic movements would fade when citizens become politically, culturally, and socially integrated, contrary to what capitalism (and, today, neoliberalism) does to them. In this context, democratic self-defence is not exclusionary as in the militant type. Nor is it inclusionary *only* in formal terms that pertain to civil rights and political procedures, as in the Kelsenian tolerant type of democratic self-defence. It is a type of democratic self-defence that is inclusionary in both political *and* social terms ensuring that social conditions generate effective equality of rights and faith in democratic institutions.

6.3 Contemporary accounts that echo Heller's ideas

6.3.1 The social voice perspective

Heller's account has not been explicitly received in contemporary scholarship on democratic self-defence; rather, its relevance must be reconstructed through resemblances and the recurrence of certain themes and tropes. Because these affinities are neither acknowledged nor uniform, traces of Heller's thinking can be found across otherwise dissimilar accounts of democratic self-defence. In some cases, these parallels reflect a limited aspect of his theory, namely the need to incorporate social demands into democratic politics. Such is, for example, the view that we ought to listen to (authoritarian) populists because they voice distinct social demands, or put differently, demands that emanate from a distinct social situatedness. Rovira Kaltwasser's (2012) proposition that populism is not simply a 'threat' but can under certain conditions function as a 'corrective' to democracy can be interpreted in this light. It is a call to socially integrate populists because they express legitimate social discontent and engage social sectors that have previously been ignored in political processes (Mudde and Rovira Kaltwasser 2017, pp. 79–96). We can call this the 'social voice' perspective, as it emphasises maximum inclusion precisely because it brings to the decision-making table the plurality of social groups and social demands that exist in society.

6.3.2 The liberal nationalist perspective

A different perspective of democratic self-defence that echoes the ideas of Heller, specifically his views on founding social equality on a we-consciousness, can be found in William Galston's and Yascha Mounk's proposals for a general restructuring of society to address the populist 'problem'. Galston (2018), for example, proposes a series of policies aimed at fostering inclusive economic growth and redistribution, as well as efforts to bridge the urban–rural divide. In addition, he advocates for an immigration system that is based on economic contribution, and a civic-nationalist 'cultural shift' to counteract the rise of far-right populism. Similar solutions are offered by Mounk, who argues that populism can be defeated by liberals 'reclaiming' nationalism, 'renewing civic faith', and providing civic education so that people can debunk lies when using social media (Mounk 2018). Much of Galston and Mounk's proposed response hinges on countering far-right nationalism by reviving 'liberal nationalism'. In their view, states should take the lead in forging a national identity that is multi-ethnic and non-racial, but also based on a set of liberal values that a state is justified in actively promoting. In other words, states should invest in the development of a shared constitutional or civic identity that would replace exclusive nationalism with inclusive patriotism (Mounk 2018, pp. 208–215). Hence, we can call this the 'liberal nationalist' echo of Heller's social-defensive approach.

Both Galston and Mounk are reminiscent of Heller in emphasising the role of social and economic adjustments in defending democracy from populism. Moreover, the importance of having robust communities with shared values that can withstand antidemocratic pressures thanks to their sense of togetherness and civic consciousness brings to mind Heller's ideas about shared democratic norms and convergence of values. Yet, Heller did not emphasise identity as much as social cohesion as the glue that keeps a democratic community together. In fact, the foregrounding of a liberal civic identity can be misleading, as it does not challenge exploitative capitalist practices, which, according to Heller, are the ones that translate experiences of precarity and inequality into negative views of democracy. In contrast, the enforcement of a liberal civic identity is not only patronising, but actually provides capitalism with a cultural consensus that is beneficial for producing the kind of privatised, competitive individual on which neoliberalism thrives (see Brown 2015). In fact, Mounk and Galston's proposals are based on a liberal fragmentation of society into empowered yet isolated individuals, who are encouraged to take 'responsibility' for their choices. This programme stands in contrast to Heller's

interest in an inclusive process of norm formulation that breaks social isolation and creates a sense of community.

6.3.3 The neo-statist perspective

A third example of how Heller resonates with contemporary theories is through the central role afforded to the state. Today, a similar appreciation of the state is shown by theorists of neo-statism. According to them, neoliberalism has been in retreat since the 2010s, since it is unable to deal with emerging social problems, some of which it has caused. Multiple crises—the 2008 financial crisis, the ongoing climate crisis, and the Covid-19 pandemic crisis—have underlined an urgent need for direct state interventions, to which politicians and citizens have become increasingly open. As a result, these theories stress that 'the state is increasingly called on to manage risks at the systemic level through large-scale technocratic governance mechanisms' (Gerbaudo and Klein 2022, p. 18).

It is argued that this renewed acceptance of state interventionism can create barriers to right-wing populism, by solving social problems and mediating uneven exposure to risk and precarity. The implicit assumption is, of course, that these social problems drive support for right-wing populism. As such, we can call this the 'neo-statist' echo of Heller's social-defensive approach. Neo-statism can carry solutions such as taxing the rich and large corporations, improving the social-welfare protection of workers and the poor, increasing public funds for education and health, stimulating public consumption, even nationalising strategic areas of the economy: in other words, 'a new public economy' (Gerbaudo 2021, pp. 219–223). Yet, a reinvigoration of state power has also its dark side. In the wrong hands, it can embolden politicians to insulate the state from democratic demands.

Neo-statism may reflect Heller's faith in the state as a centre of gravity, which neutralises the social inequalities that feed antidemocratic attitudes. But it does not reflect a commitment to democracy as the one embedded in Heller's *sozialer Rechtsstaat*. In fact, democracy is invisible in the neo-statist framework, and appears only as a background condition that enables the staging of political conflicts. The rule of law (*Rechtsstaat*) is not central to neo-statism as it was for Heller: what tends to become central is the political status quo, which is preserved through a managerial approach. As a result, neo-statism carries the risk of bypassing the political conflicts that should inform policy decisions (Gerbaudo and Klein 2022, p. 23). However, it also has the potential

to adopt distributionist policies similar to those advocated by Heller. In this case, the state's powers can be harnessed not to displace but to mediate political conflicts and to address justified social grievances.

None of these contemporary perspectives make explicit references to Heller and his ideas. Yet, Heller offered a first comprehensive and powerful springboard for conceptualising and justifying a defence of democracy through socio-economic means. His own perspective was centred on the principle of social integration and unfolded through the state and the rule of law. Other social democrats, however, even in his own time, adopted different views about why and how democracies should be defended socially. The following section examines one such competing historical rationale, and its contemporary revival.

6.3.4 The social-security perspective

The normative connection between democratic self-defence and social security is incisively developed by Sofia Näsström, building on the insights of inter-war Swedish social democratic thinkers. During this critical period, there was widespread concern about how to fend off the dual threats of social or political revolution, even in a country like Sweden where fascism was not an imminent threat. Democracy based on universal suffrage was not a strong enough check against popular agitation. It had to be complemented with universal social rights, or so thought Swedish social democrats in the late 1920s and 1930s. A prominent figure of this tradition, Gustav Möller, explained that the great curse of their times was not poverty, need, or workers' alienation, but *economic insecurity and uncertainty* (Möller 1928 in Näsström 2021a, p. 384). To live in constant fear of losing one's job, house, and ability to provide for one's family, because of occupational redundancies, old age, accident or sickness, caused a level of anxiety that was destructive for political and social stability. It was destructive because it was not confined to only the working class but spread to other classes, causing hostility among them and unrest, Möller argued. According to another Swedish social democrat, the 'lack of a secured existence' sharpened social conflict, made politics existential and undermined 'solidarity with the public good' (Hansson 1928 in Näsström 2021a, p. 385). As such it opened a wound in society that authoritarians, Bolsheviks, and fascists could exploit for antidemocratic purposes.

The solution to the problem of economic uncertainty was social security. It safeguarded democracy by removing the fodder used by those who were

opposed to it. Furthermore, it served to mitigate and moderate the conflict between social groups (Hansson 1935 in Nässtrom 2021a, p. 386). Social security needed to be universal and include all classes because uncertainty affected everyone, not just the poor or workers. To create the solidarity that reduced social tensions and made democracy workable, social protection had to be extended to everyone. This thinking laid the basis for a universal social scheme including 'social insurances (against unemployment, sickness and old age), social services (healthcare, elderly care, and schools), benefits (child benefits and study grants), and basic income protection' (Nässtrom 2021a, p. 386). Social disparities still figured as a problem for society and democracy, but a secondary one: once income, care and other social goods were secured to everyone, disparities would be smoothed out and could not cause much damage to the social fabric.

Universal social security was described as a mechanism against society's great ills and, indirectly, as a way to defend democracy. It protected the latter insofar as it eased the social tensions that made individuals and groups vulnerable to antidemocratic forces (the authoritarian right, Bolsheviks, fascists). To put it another way, social security was presented as a reason for people to feel confident enough to accept the majority view, and to concede defeat to one's opponents if necessary, without worrying about the future.

Nässtrom argues that this perspective offers a promising avenue for defending democracy today. What undermines commitment to democracy, according to her, is 'individual and collective anxiety', fear for one's basic social existence, and a lack of security. By contrast, social security increases toleration and peace among members of society. 'It makes you ready to live through huge social and political changes, and do the hard work of finding common ground' (Nässtrom 2021a, p. 386). This explains why the growth of social-security systems in post-war Europe contributed to the consolidation and stability of democracy. Moreover, social security, she says, is compatible with a pluralism of identities and ideas. The proof is that social welfare and strong democratic institutions developed in parallel in the Nordic countries, confirming the positive link between social and political democracy.

Nässtrom's democratic argument for social security is enlightening, offering a valuable counterpoint to Heller's focus on social homogeneity. Yet, it risks providing only a half-hearted defence of democracy. Universal social security can alleviate the existential anxieties caused by capitalism, but it can coexist with significant socio-economic inequalities. These inequalities tend

to spill over into other areas of society, creating unequal access to power. As Lisa Herzog puts it, 'money *does* buy political influence. But only those with spare money can buy it [. . .] Money buys many other things, as well. It buys better lawyers, better education, access to better healthcare' (Herzog 2025, p. 88). Large socio-economic inequalities can undermine support for democratic institutions, even if most people are secure against illness and unemployment. As Heller observed, this is because democratic institutions may be perceived as mere window dressing, perpetuating social and economic inequalities that eventually lead to inequalities in rights, political power, and civic personhood. Providing social security alone, without implementing measures to achieve greater equality, may do little to transform the broader structures that create conditions of injustice.

Finally, Näsström plays down Heller's commitment to political pluralism and emphasises instead his commitment to nationalism. She suspects his concept of social homogeneity of being an anti-pluralist call for conformity to a national culture and therefore a catchphrase that can serve authoritarian populist agendas. But Heller unequivocally defended political pluralism, particularly in his writings on fascism and democracy (Caldwell 1997, pp. 127–133). The social and intellectual community that he envisioned did not emerge through a top-down process of unification that eliminates social and political plurality and political conflict. It is forged through an interactive process, in which different social groups co-create a shared map of civic values. His concept of social homogeneity is best understood not as cultural conformity, but as egalitarian and horizontal social *integration*, driven by the elimination of large socio-economic inequalities.

6.4 Contemporary accounts that emphasise partisan politics

A divergent group of scholars, drawing on the social-democratic tradition but also on radical democracy and critical theory, conceptualise the social defence of democracy in agonistic terms. In contrast to the theorists discussed above, less emphasis is placed on ethics and norms and more on the kind of *partisan politics* that is required to defend democracy socially. The focus here is on campaigning for a political agenda that promotes greater social equality. This involves engaging in *political* competition with far-right parties by offering voters an alternative 'supply' of socio-economic reforms. Examples of this approach include left populism, a return to traditional social democracy and emancipatory and progressive politics more broadly.

6.4.1 The populist perspective

In her characteristically activist disposition, Chantal Mouffe (2018) posits that the only viable strategy for combatting far-right populism is through the establishment of a left-wing populist project. In practice, this has resulted in her influencing and publicly supporting political parties such as La France Insoumise, SYRIZA, and Podemos, especially in the 2010s. According to Mouffe, the capitulation of social-democratic parties to neoliberalism and their inability to articulate a progressive alternative have created an opportunity for left populist parties, whose task is to defend democracy by reclaiming legitimate democratic grievances from far-right populists and articulating them around more egalitarian objectives (Mouffe 2018, pp. 17–24). Mouffe's proposal is consistent with her comprehensive view of politics as a domain that requires a robust and constructive political struggle. Nevertheless, replacing the far right's conception of sovereignty as an exclusive, nationally or racially defined, 'people' with a left-wing populist idea of an inclusive 'people' opposed to oligarchy may not entirely address the problematic aspects of populism. Even left-wing populism is not without its own democratic shortcomings. It often includes a denial of the complexity of the 'people' as a historical and sociological construct, as well as extreme personalisation and poor treatment of those in opposition (Moffitt 2020, p. 113). Therefore, it is reasonable to be sceptical about left populism as a *lasting* political answer to far-right populism. Although it may have 'corrective' tendencies in the short term, its long-term democratic prospects are sometimes questionable. This is evidenced, for example, by the negative track record of the populist leaders in Latin America, most notably in Venezuela, which descended from left populism into full-scale authoritarianism.

6.4.2 The social-class perspective

Like Mouffe, Sheri Berman blames Third Way social democracy for the success of far-right populism. She advocates a 'back to basics' approach, calling for a return to social democracy's original roots. Whereas Mouffe proposes replacing class essentialism with an appeal to the heterogeneous demands of 'the people', Berman asserts that the left can challenge the far right by increasing the salience of class identities (Berman and Snegovaya 2019, p. 16). While Berman's approach eschews the critique directed against left populism and Mouffe, it nonetheless has other weaknesses. These include an anachronistic

emphasis on class that does not reflect the demographics of radical populist support or the complex, intersectional grievances of the present day. There is also insufficient attention given to the potentially irreparable loss of credibility of social democratic parties as advocates for the underprivileged. Limitations aside, insofar as Berman's and Mouffe's proposals seek to counter populism by addressing structural social problems, they exemplify the idea of defending democracy socially, focusing on how to do so through a certain type of political mobilisation.

6.4.3 The emancipatory perspective

A third and distinct call for more egalitarian political parties to assume a leading role is made by Nancy Fraser and Rahel Jaeggi. The critique of present-day capitalism advanced by these authors is not explicitly geared to defending democracy against extremism, authoritarianism, or far-right populism. Nevertheless, they concur that authoritarian or reactionary populism is 'a symptom of some underlying crisis, problem, or contradiction within the recent development of neoliberalism' (Jaeggi 2018, p. 198). Fraser is distinctive in attributing the ascendance of authoritarian populism to 'progressive neoliberalism', which repackaged regressive redistributive policies with a progressive rhetoric of recognition. This combination has resulted in the establishment of a neoliberal hegemony that operates through expropriation and fraudulent exploitation. She posits that present-day capitalism has flourished because it has been—and still is—unjustly expropriating the unpaid or underpaid manual labour of people of colour, the social-reproductive labour of women, the resources of peripheral communities (including the Global South), and natural resources. This ongoing exploitation gives rise to justifiable grievances, and a legitimate demand for enhanced social protection that reactionary populists claim to be able to provide, but in fact do not.

Fraser makes a case for abandoning neoliberal financialised capitalism, which is now in crisis, in favour of democratic socialism. This entails 'democratizing fundamental decisions about societal development', including the relationship of production to social and natural reproduction (Fraser 2021, p. 93). She posits that a mere adjustment of capitalism will prove inadequate, given that the evolution of capitalism—characterised as 'a crisis-driven process'—is inclined to accumulate dysfunctions that periodically emerge and give rise to struggles between emancipatory and regressive projects. For Fraser, the path towards democratic socialism lies in the embrace of 'left populism'.

She defines populism as a 'transitional formation' centred on the rejection of elites, and its left variety as the preferred one: a necessary and accessible counter-hegemonic force that can mobilise the masses and win elections. Unlike Mouffe, however, she admits that the idea of left populism is analytically imprecise and lacks political cohesion and a transnational orientation. In contrast, the logic of radical emancipation she proposes is best captured by democratic socialism. Granted, this political vision is primarily conceived to address the existing socio-economic crisis, not democracy's survival. However, it also aims to serve as a safeguard against antidemocratic forces, which are seen as a by-product of the broader socio-economic crisis.

Rahel Jaeggi offers a similar perspective. She argues that *ressentiment* (a form of envious and angry politics born out of perceived powerlessness) is problematic because it represents 'a mode of regression'. It is fuelled by a sense of 'entitlement' among certain groups who believe that 'others' are receiving things they do not deserve. Importantly, the groups expressing ressentiment may actually have more resources or power than the groups they resent. That means that the problem cannot be solved by giving them more resources. In her own words, 'simply fulfilling the demands of the ressentiment-driven by providing (material or immaterial) resources would not resolve the issue at hand' (Jaeggi 2022, p. 512).

A large part of the problem is that this sense of entitlement grows out of an inegalitarian mindset and is strengthened by social structures that weaken solidarity. Because of its nature, *ressentiment* tends to lead to scapegoating—irrationally blaming certain groups for broader problems (Jaeggi 2022, pp. 516–517). Since these accusations are irrational, Jaeggi thinks it is equally pointless to try to directly argue against them.

For her, the most urgent task for society is to prevent the harmful consequences of racism, xenophobia, and misogyny, which threaten progress towards emancipation. This leads Jaeggi to prioritise different solutions from those suggested by Nancy Fraser. While Fraser calls for an alliance between right-wing and left-wing populists against a 'rigged economy', Jaeggi argues that the left should instead work with *progressive neoliberals* to defend existing progress on cultural issues. Yet, ultimately, like Fraser, Jaeggi focuses on political activism as a strategy for confronting the exploitative dynamics underlying contemporary capitalism that breed support for regressive movements.

In comparison to other scholars working within the framework of a social defence of democracy, Mouffe, Jaeggi, Fraser, and Berman demonstrate a greater focus on partisan politics. Their proposals focus on the revival of social democracy and the development of alternative, progressive leftist approaches,

capable of reshaping political competition. These critical and radical democratic approaches are less concerned with the specific mechanisms of social integration required to defend democratic systems and more with altering power structures and forging alliances that can diminish the appeal and influence of antidemocratic forces. In this sense, they conceive of democratic self-defence primarily as a project of political reorientation: one that seeks to mobilise democratic contestation towards social transformation rather than merely alleviating the symptoms of social disaffection through policy measures.

6.5 Conclusions

This chapter has attempted to show that there is considerable variation in the theories associated with a *social* defence of democracy. Some of the proposed solutions focus on partisan strategy and political activism, while others are presented as top-down solutions that can address the social roots of antidemocratic politics. Some solutions may even seem too illiberal in the long term (for example, Mouffe's left populism), while others are not sufficiently distanced from the neoliberal economic paradigm that is often held responsible for the rise of extremism (for example, Mounk's liberal nationalism). Furthermore, the provenance of these variants is markedly disparate. They encompass a broad spectrum of political and intellectual currents, from conservative and traditional social democrats to left populists and critical theorists.

The second objective of the chapter was to emphasise the importance of Hermann Heller as the pioneering figure in the social approach to democratic self-defence. Writing in the context of the Weimar Republic, which has since served as a foundational exemplar of how democracies can collapse, Heller developed his own understanding of how Italian fascism and subsequently German Nazism emerged as a result of economic degradation and capitalist hegemony. Heller emphasised that the key to addressing these issues was social and intellectual integration. This would enable all sections of society to collectively shape and influence the norms and standards that govern a law-bound society. Heller's views offer a compelling source of inspiration for scholars engaged in the contemporary discourse on the social defence of democracy. They offer important insights and a historical perspective, provided that due care is taken to consider different historical contexts and new evidence. Despite his intellectual legacy being subject to contrasting interpretations and opening up divergent paths, this diversity of insights underlines

how inspiring Heller's work can be. It also reinforces the point raised above: that there is no singular route to the social defence of democracy.

Despite their profound differences, what all the proposals that were examined in this chapter have in common is that they are inscribed in a specific framework of democratic self-defence, which is sharply distinguished from the two alternative frameworks of militant and tolerant democracy. The arguments and ideas presented in this chapter reflect a specific diagnosis, prescription, and intended outcome in the fight against political extremism that has a distinctly social character. Although it was not a topic of discussion when interest in militant democracy emerged fifteen years ago, there is now growing interest and new perspectives on how to defend democracy socially. This development has the important advantage of challenging the dominance of militant democracy, which had long shaped academic and political debates on democratic self-defence. The next chapter places this approach alongside militant and tolerant democracy, critically assessing the assumptions, strengths, and limitations of each paradigm.

7

A Critical Appraisal of Exclusion, Toleration, and Social Integration

7.1 Introduction

Responses to actors challenging the democratic acquis are often erratic and haphazard. Rather than a systematic and normatively consistent approach, they resemble a collage of initiatives by a range of different actors with sharply divergent views on how to deal with these challengers. Often these initiatives have a strategic motive: they are driven by partisan interests and an assessment of electoral dynamics. But when strategic considerations are the sole basis for decisions that affect fundamental democratic principles, such as which party is eligible to run in elections, they suffer from a lack of legitimacy and are very likely to backfire. Take, for example, the December Agreement in Sweden in 2014, when the two main coalitions competing for power decided to unconditionally support each other's budget proposals in order to deprive the (still small) far-right Sweden Democrats of their kingmaker role—the deal collapsed under heavy criticism less than a year later.

The chosen responses to the far right are not only determined by political dynamics. Historical precedents largely dictate which alternatives are more viable, which are feasible, i.e. supported by existing institutional mechanisms, and which are uncontroversial for the wider public. But institutional conditions and popular preferences can change, sometimes within a short period of time. Take Greece, for example, where until the early 2010s the vast majority of constitutional scholars were opposed to banning the neo-Nazi Golden Dawn—fast forward 10 years and the idea of banning a far-right party is now widely accepted. Such major shifts in the treatment of authoritarian parties are often poorly reflected upon and are justified only in terms of urgent circumstances and necessities. As a result, they are marred by uncertainties about whether a shift is justified or merely short-sighted, failing to take into account issues that fall beyond the immediate political context.

In other words, both strategic and historical reasons for choosing one response over another lack a firm foundation. This foundation can be found

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in the norms, ideas, and principles that ground democratic societies. The present chapter summarises the norms and theoretical principles examined in this book, which are grouped into the ideal types of militant, tolerant, and social-defensive democracy, and recast as a concise theoretical framework of democratic self-defence. It then links them to specific policies categorised by the actors who implement them. The reason for focusing on actors is not simply to organise the wide range of practices into manageable units. Rather, actors and their situated agency are considered essential for understanding the diversity, force, and potentiality of any practice of democratic self-defence. After comparing this actor-centric typology with other previously developed typologies, the final part of the chapter evaluates the three types based on their respective strengths and weaknesses. It also examines how they relate to each other and addresses the important question of whether they are compatible, in principle or in practice.

7.2 The theoretical framework in brief

This book presents a theoretical framework that classifies responses to antidemocratic actors based on three distinct ideal types. These types differ in terms of:

(a) how they diagnose the problem of antidemocratic threats;
(b) the means through which they address the problem; and
(c) the projected aim of using these means.

The *militant* type relies on diagnosing antidemocratic challengers as extraordinary adversaries; using exceptional measures that suspend basic rights; and producing exclusion.

The *tolerant* type relies on diagnosing antidemocratic challengers as ordinary adversaries; using conventional measures that are consistent with fundamental rights; and producing inclusion.

The *social* type relies on diagnosing antidemocratic challengers as a symptom of socio-economic crises; using social structural reforms; and producing social integration. The three ideal types are summarised in Table 7.1.

Although the three ideal types can be empirically distinguished, it is ultimately their very different normative justifications that allow us to draw clear boundaries between them. Each type rests on its own philosophical assumptions and therefore stands as an autonomous paradigm. As I have argued

Table 7.1 A theoretical framework of democratic self-defence

Features/Ideal Types	Militant	Tolerant	Social
Diagnosis	Extraordinary problem	Ordinary problem	Socially generated problem
Means	Exceptional measures	Conventional measures	Social measures
Aim	Exclusion	Inclusion	Social integration

in previous chapters, each ideal type represents a distinct—and often much broader—tradition of political thought. These traditions are not developed to address a single political problem, such as home-grown threats to democracy. Instead, they articulate wider principles and justifications for democratic government. Accordingly, they often come to different understandings of what democracy is. This is reflected in their interpretation of how democracy's internal enemies emerge and in the logic of democratic survival that they endorse.

At the same time, although each of the three broad types has its own identifiable characteristics, none of them is internally homogeneous. Each contains a plurality of normative justifications—for instance, on why antidemocrats should be tolerated, or on which social reforms might curb antidemocratic support. Yet despite this internal diversity, the normative justifications within each ideal type tend to converge on a shared set of general features regarding the diagnosis, means, and aims of democratic self-defence. To illustrate, supporting the inclusion of antidemocrats because it encourages them to behave more 'responsibly', or because it makes the democratic system as a whole 'smarter', are two seemingly unrelated arguments that nevertheless converge in endorsing maximal inclusion. Because each ideal type exhibits such minimal coherence, it can serve as a normatively grounded and action-guiding paradigm.

7.3 Actors and actions of democratic self-defence

The challenge of defending democracy is experienced by anyone committed to democracy. Yet, the scope of this challenge does indeed differ vastly

between public and private actors.[1] One reason is that they operate under different *circumstances*. Citizens do not have to make political or legal day-to-day decisions that affect the access to power of antidemocratic actors or the broader appeal of antidemocratic ideas. There is also a difference in amount and type of *resources*, since a private individual cannot undertake actions such as formally disbanding an antidemocratic party or suspending its social media accounts. The level of political *responsibility* also differs, with single individuals not bearing a weight that is commensurate with that of constitutionally mandated authorities and publicly accountable institutions.

As a result, the scope for defending democracy varies between public and private actors, with the former operating under a much wider scope. At the same time, some private actors whose circumstances, resources, and responsibilities are comparable to public actors are faced with dilemmas of democratic self-defence more frequently than ordinary citizens. Owners and CEOs of gigantic social media companies managing millions of accounts that may spread antidemocratic ideas fall famously within this category. In principle, however, it is *primarily* public actors who face such dilemmas, because of the scale and magnitude of what they *can* do to defend democracy, and of the scale and magnitude of what *can* happen in case they do not.

The typology presented below identifies three broad categories of public actors that are most relevant for democratic self-defence: state, political, and civil-society actors. For each of them, a distinct set of actions is available depending on which frame of democratic self-defence they operate in.

State actors include courts, presidents, governments, local officials, and bureaucrats. Although they differ in the range of actions they can take to address antidemocratic threats, they all have access to powerful resources—such as making and implementing laws and policies, issuing executive or judicial orders, granting licenses and permits, and distributing circulars or official guidelines. How these resources are ultimately used can be better understood and evaluated through the theoretical framework of democratic self-defence.

State actors operating within a militant paradigm typically employ measures such as party bans or other restrictive policies, for example, prohibiting antidemocratic groups from using public squares for campaign events. Indeed, militant democracy is traditionally conceived as an arsenal of measures employed by courts and executive authorities (Loewenstein 1937a;

[1] For a recent emphasis on actors in the literature on democratic self-defence, see the Introduction to this book, as well as Bourne 2023; Tomini and Gerschewski forthcoming, Malkopoulou et al. forthcoming.

Schupmann 2024). By contrast, state actors committed to a tolerant paradigm do not suspend rules that protect universal and pluralist inclusion. Instead, they rely on neutral checks and balances and hold antidemocratic actors accountable through ordinary legal mechanisms. In the third, social paradigm, state actors pursue social reforms and redistributionist policies aimed at addressing underlying social injustices that are seen as directly or indirectly fuelling antidemocratic sentiment. Thus, depending on the normative framework they follow, state actors will adopt responses with distinct qualitative characteristics.

Another key set of actors in democratic self-defence are *political parties*, which routinely confront rival parties that challenge the democratic acquis. The role of large, systemic parties in shaping the trajectory of democracy-challenging actors has long been acknowledged (Capoccia 2005; Müller 2021). Scholars have paid particular attention to the responsibility borne by mainstream right parties in enabling the rise of the far right (Invernizzi Accetti 2019; Wolkenstein 2022). Parties' capacities to make or break governments or multi-party coalitions, to steer political debate, and to frame, promote, or silence political issues constitute critical resources that can be deployed in various ways to defend democracy. If we accept this book's central premise—that militant, tolerant, and social responses transcend constitutional practice and can guide the actions of any actor committed to defending democracy—then political parties, too, can respond to their antidemocratic competitors in ways informed by the norms of democratic self-defence.

More specifically, political parties that adopt a militant stance take initiatives aimed at exclusion. The typical practice here is the *cordon sanitaire*: the systematic isolation of antidemocratic parties by excluding them from coalition talks or even coordinated block votes. By contrast, tolerant political parties reject such isolation and treat antidemocrats as ordinary competitors with whom they may agree or disagree on policy matters. They engage with them through standard inter-partisan struggles, which may involve varying degrees of confrontation, accommodation, or collaboration.

Compared to these two modes, the approach of parties operating within the social paradigm of democratic self-defence is entirely different. For them, defending democracy means systematically advancing a robust social agenda aimed at eliminating structural injustices. Accordingly, scholars writing within this paradigm often advocate strengthening social-democratic or left-wing populist parties as a countermeasure to democratic backsliding (Berman and Snegovaya 2019; Mouffe 2018; Fraser 2018). This paradigm places no inherent obstacles to forming coalitions with parties that endorse

the same social agenda. Paradoxically, this can even include collaboration with populist right-wing parties, provided they are willing to support policies that address socio-economic conditions underpinning antidemocratic sentiment—for example, the 2015–19 coalition government in Greece between the left-populist SYRIZA and the right-populist ANEL (Markou 2021). In this sense, whether social defenders exclude or include antidemocrats ultimately depends on whether the latter are prepared to co-sponsor a social defence of democracy—whether out of opportunism, or because their authoritarian commitments are only circumstantial.

Principles of democratic self-defence can guide not only state and party responses, but also the actions of *civil-society actors*, i.e. actors operating outside the formal political arena. Some of these are collective public agents, such as registered civil-society organisations, public broadcasting agencies, and trade unions; others are private entities, such as print and online media companies. Civil society also encompasses individuals—public figures like experts, celebrities, influencers, and business leaders, as well as ordinary citizens. This heterogeneous group naturally differs widely in its opportunities and resources for responding to antidemocratic actors, and each subgroup faces distinct ethical considerations and positional duties. Nevertheless, situating their actions within the three-tiered framework of democratic self-defence can help classify and better understand them.

Civil-society actors adopt a militant stance when, for example, antifascist or trade union activists sabotage events and initiatives by antidemocratic actors or attack their premises. This occurred, for instance, when the Greek journalists' union went on strike whenever the state-owned Hellenic Broadcasting Corporation (ERT) was required by law to air a parliamentary speech by the neo-Nazi party Golden Dawn, effectively blocking the broadcast through their strike. Other examples include Facebook and Twitter cancelling Donald Trump's social media accounts; and a German business owner declining to rent out a venue to the Alternative for Germany (AfD) party.[2]

By contrast, civil-society actors act in tolerant ways when they engage in peaceful counter-demonstrations, invite far-right politicians to interviews or public debates in the media, or provide their business services to such actors as they would do to anyone else. Finally, the social approach to democratic defence involves civil-society actors focusing, in public or in private, on bread-and-butter issues such as housing, education, and welfare, rather than solely on defending civil and political rights. This can range from micro-level initiatives,

[2] These examples of militant responses are discussed in Chapter 1.

Table 7.2 A typology of actors of democratic self-defence, and examples of actions

Actors/Ideal Types	Militant	Tolerant	Social
State actors	Party bans	Checks and balances	Social reforms
Political actors	Cordon sanitaire	Cross-party cooperation	Support for social egalitarian policies
Civil-society actors	Censorship	Inclusive deliberation	Social egalitarian activism

such as charity programmes for the poor, to long-term solutions addressing systemic injustices affecting large segments of the population. Table 7.2 provides a cumulative summary of broad categories of actors and examples of actions they are likely to take, depending on which normative framework of democratic self-defence they adhere to.

7.4 Comparison with other typologies

This typology offers an analytical tool for understanding and assessing various initiatives and responses to antidemocratic political actors. Although it is not the first attempt at classifying responses to antidemocratic actors, it differs from earlier typologies in two respects. First, existing typologies are primarily descriptive attempts to classify empirically observed real-world responses into different categories. For example, one of the earliest classifications of *democratic states*' responses is by Capoccia (2005, pp. 47–69), who distinguishes between 'repressive' and 'accommodative' strategies on one hand, and between short-term and long-term strategies on the other.

Many classifications concern exclusively how *political parties* behave towards democratic challengers. For example, Meguid (2005) adopts a three-tier scale to classify party-political responses into dismissive, adversarial, and accommodative strategies, while Downs (2012) shows that party-political strategies can revolve around engagement and disengagement to varying degrees. Corroborating and building on state and party responses, Ellinas (2020) is using a typology focused on the *public domain* in which initiatives towards democratic challengers emerge; thus, he distinguishes between legal, political, and societal initiatives. Likewise, Bourne and Olsen (2023) distinguish tolerant and intolerant approaches according to whether they are

adopted by *state*, *political*, or *civil-society actors*.[3] All of these typologies map anti-extremist responses in a way that closely reflects dynamics on the ground.

Compared to these inductive systems of classification, the typology suggested here is an ideal-typical classification not only of observed but also of imagined responses, based on their conceptual and normative differences. The categories *militant*, *tolerant*, and *social* in Table 7.1 are not descriptive but prescriptive, based on the principled diagnosis and normative justification of means and objectives that they rely on. The benefit of this ideal-typical approach is that it offers the basis not only to review and compare, but also to suggest, project, and devise new responses guided by principles and inspired by normative ideas. In addition, this top-down typology connects democratic self-defence to a broad framework that extends beyond institutions and can inform how a wide range of actors—including citizens themselves—respond to the enemies of democracy. Finally, the emphasis on norms makes this typology easy to adapt to various national contexts and thus relevant for international comparisons.

To be sure, there are other typologies that are at least partly theory-driven and base their distinctions on categories informed by normative considerations. One of the first such typologies is the one by Fox and Nolte (1995), who distinguish between *substantive* and *procedural* democracies, with reference to whether their constitutions entrench key democratic values or whether they permit normatively limited constitutional amendments (p. 24). A second axis of their typology, orthogonal to the substantive–procedural distinction, is whether a country has a record of restricting the rights of antidemocrats (*militant*) or refrains from imposing such restrictions even if it has the legal means to do so (*tolerant*). This model then produces four types of democracies based on how they treat antidemocrats: tolerant-procedural (e.g. the United Kingdom), militant-procedural (e.g. the United States), tolerant-substantive (e.g. France) and militant-substantive (e.g. Germany).

Fox and Nolte's scheme uses philosophical reflections and constitutional principles to establish the differences between 'substantive' and 'procedural' democracies. This theoretical input is then complemented with more empirical observations of how countries have *actually* behaved towards antidemocrats in the post-war years. It is both normatively and empirically attractive, and very useful as an analytical framework. Yet, a major

[3] This actor-based typology was jointly developed during the project 'Populism and Democratic Defence in Europe' (2020–2024), in which Bourne, Olsen, and myself were co-investigators.

shortcoming of their scheme is that it assumes a certain path dependency in the way states defend democracy. Shifting strategies are not easy to accommodate within their explanatory model. Furthermore, they focus only on state actors and thereby miss the wider political and societal dimensions of democratic self-defence.

Another theoretically nuanced classification of democratic self-defence laws, which incorporates normative ideas, is offered by Peter Niesen (2002). He proposes three paradigms, defined primarily by how dangerous opponents are identified, but also by how rights restrictions are justified and which conception of democracy they presuppose. The first model, labelled 'anti-extremism', identifies democracy's enemies by their rejection of democratic institutions and values, and justifies their exclusion by appealing to a shared foundation of values whose violation renders democratic dissent illegitimate. In this framework, both left- and right-wing actors can be targeted—an important feature that distinguishes it from the next model.

Niesen's second model then identifies democracy's opponents more narrowly 'based on their identity or essential affinity to those responsible for a past regime of injustice' (p. 31). Only parties with a documented and thus undeniable antidemocratic record, such as the German Nazis or the Italian Fascists and their successors, should be subject to party bans. This perspective, known as 'negative republicanism' and embodied in Italy's post-war constitution, avoids the well-known problem of identifying democratic enemies in abstract and predictive terms—criteria that can be applied arbitrarily, as occurred in Germany's early post-war years. The problem here, Niesen argues, is that we live in an era where information flows and experiences are increasingly transnational, hence political attitudes transcend particular national-historical borders. For these reasons, negative republicanism runs the risk of anachronism and provinciality.

Niesen therefore discusses a third and perhaps more promising, 'civic-society' paradigm. This model defines dangerous opponents morally, based on their violation of democracy's basic condition of equal recognition and the harm they pose to grassroots civic processes that lie at the centre of a contemporary democratic form of life. A democratic civil society is described as bearing a duty to uphold this minimum democratic requirement and thus protect minorities and individuals whose integrity is harmed by 'manifestations of disregard, disdain, superiority and contempt' (p. 29). The advantage of this paradigm is of course that it is not limited by historical events, and moreover that it is sensitive to the widespread problem of racism today. The problem that

Niesen attaches to this paradigm, however, is its potential over-inclusiveness as to what constitutes a dysfunctional political activity, as well as its obvious contradiction to unlimited freedom of expression.

Niesen offers a compelling typology of democratic self-defence, grounded in both normative theory and constitutional practice. In addition, he carefully and critically evaluates each approach instead of advocating a single, prescriptive defence. Yet, the three paradigms in question only regard militant democratic restrictions, and more specifically party bans. This is a severe limitation, which becomes even more circumscribed when one realises that, at least in the first two paradigms, the focus is only on state actors and even more narrowly on constitutional legislators. Niesen does not reflect on the broader array of options for defending democracy that stretch beyond the legal and constitutional domain, involve a variety of relevant actors, and take a form that is not necessarily restrictive and militant. In fact, there is little in his theory that explains why it is specifically measures of exclusion and repression that follow from his considerations rather than democratic self-defence more broadly conceived.

In comparison, the scheme suggested in this book does not focus solely on state or political actors. *Civil-society actors* are recognised as relevant actors across all three types of responses, not just in one. As suggested by Niesen's third type, civic actors are vital to make democracy work. Moreover, they are increasingly important for dealing with today's chameleonic threats to democracy, which often lie beyond the reach of legal remedies and are politically divisive. In contexts where autocratic parties are already in power, civil society may in fact serve as the primary force of resistance.

A second advantage of the democratic self-defence framework presented here is that it is not merely two-tiered—i.e. tolerant and intolerant—nor a hybrid of the two, such as Rummens and Abts' 'concentric' model (see Chapter 2 for a more detailed critique of this model). Instead, it incorporates *a third, social dimension*, an ever-present yet largely underexplored form of resistance. This dimension is often omitted from similar schemes for several reasons, chiefly because it is difficult to justify social policies as direct responses to democratic threats or to measure their effectiveness in containing them. Admittedly, the 'social' dimension differs in scope from the other two, which can collectively be described as 'civic' approaches to democratic self-defence. Nevertheless, as I have argued in Chapters 5 and 6, both empirical and theoretical considerations support the inclusion of a social type in an ideal-typical framework of democratic self-defence.

7.4.1 Democratic self-defence as a mode of action

A third advantage of the framework developed in this book is that it uses political and ethical principles to examine not just constitutions, but sets of actions by real agents, who have diverse situational potentialities and obligations. The framework is not aimed at merely characterising legal or institutional systems as belonging to one or the other type. Countries do not fit neatly in one or the other category. They can be tolerant with regard to how their legal systems address democratic threats, but social in the way the political-party environment approaches democratic self-defence, and militant in the way civil society addresses extremists. This is exactly the mix that unfolded in Greece over the 2015–19 period. The country's traditionally *tolerant* legal order did not allow for the banning of the neo-Nazi party Golden Dawn (Malkopoulou 2021); at the same time, the SYRIZA government consistently framed extremism as a *social* problem; while a large part of civil society, especially the media and antifascist organisations, *militantly* opposed Golden Dawn, even to the point where a left-wing urban guerrilla group assassinated two Golden Dawn party members (Malkopoulou 2025b). The framework suggested here enables such a sector-specific characterisation of actions as militant, tolerant, or social. It recognizes the co-existence of different approaches within a single national context. The rationale for such a framework is that democratic self-defence is not a matter of exclusive concern for legislators or courts, but of many different actors who share a common concern for democracy's survival, yet may be driven by different norms and ethical choices.

In fact, democratic self-defence is conceived here as *a mode of action* that can be adopted by a state actor, but also by a political, civil-society, or private actor. It does neither denote the permanent character of a national or supra-national institutional system nor does it describe an opportunistic or haphazard strategy that a party or individual may change overnight. The militant, tolerant, and social ideal types concern and characterise a set of actions that are neither fully permanent nor entirely ephemeral. As a result, there is ample scope for mixing the three types, not only from the perspective of a division of tasks among different types of actors, but also from the perspective of a single type of actor (e.g. political parties) who may shift their approach to antidemocratic actors in time. For example, the Swedish Moderate Party acted in a very militant fashion when in concert with other parties it imposed a strict *cordon sanitaire* against the Sweden Democrats in 2014 (via the so-called December Agreement). Yet, less than a decade later, in 2022 the same party invited the Sweden Democrats

into a government coalition in a clear move of toleration. In sum, actors are not bound to one or another type of democratic self-defence for eternity.

In fact, even constitutional laws change, except perhaps for 'eternity clauses' which are not possible to abolish or amend. But this is not always necessary. States can switch from militant to tolerant modes and vice-versa based on how laws are interpreted and applied. Hence, even if legal and institutional systems tend to display the characteristics of a certain type, their interpretation and applicability by actors acting in the present affect the reach of such laws. For example, the current Greek Constitution does not contain militant democratic clauses, as they were explicitly rejected during its drafting process. Yet, after the rise of the neo-Nazi party Golden Dawn, existing constitutional clauses have been interpreted in a new, militant, light and were eventually found by the courts to be compatible with the introduction of party bans in electoral laws (Malkopoulou 2021).[4]

These examples highlight that a country or actor may shift its approach to democratic self-defence, and these shifts may happen even in the short term and sometimes rapidly. They are of course driven by strategic considerations, calculations of efficiency or the political balance of power. Yet, democratic self-defence cannot be reduced to a matter of political manoeuvring. Because it involves fundamental rights and concerns the survival of democratic institutions, it must be guided by norms and principles. This book has identified three broad ideal types that illuminate the normative implications of different practices of democratic self-defence, each firmly grounded in philosophical reasoning. The next section is dedicated to comparing these three normative frameworks.

7.5 Assessing and comparing the three types

Given the relative freedom of selecting an approach to democratic self-defence, especially for parties and civil-society actors, how is one to choose between the three types? To offer some guidance in this respect, this part of the chapter analyses the strengths and weaknesses of each of the three main types of democratic self-defence and compares them with each other. The comparison is not centred on their effectiveness, which must be determined empirically. Theorists can nevertheless assess the likelihood of desirable effects and the value of

[4] However, this radical re-interpretation of the constitution is highly problematic, as it undermines legal certainty—jeopardising both the internal consistency of the legal system and the predictability of legal consequences.

objectives that an ideal type sets out to achieve. Nor is the aim of this comparison to criticise legal systems and agents for opting for one or another approach to democratic self-defence, as these choices depend a lot on context. Germany's historical experience with Nazism explains why it adopted a strict militant democratic constitution, whereas Greece's Cold War experience of communist repression explains its decade-long allergy to party bans. Hence, the aim of this chapter is neither to evaluate the reasons for adopting one or another approach nor to judge agents for doing so.

Instead, this comparison focuses on the normative qualities of each ideal type. It contrasts the respective advantages and disadvantages—the *pros* and *cons*—of the three paradigms in relation to the *shared* problem they address: the defence of democracy. In addition, the normative benefits and critiques associated with each paradigm are examined in light of contemporary challenges, such as the rise of far-right populism. Particular attention is paid to the normative implications of concrete measures derived from each approach. Are there any internal tensions, contradictions, or unintended consequences that arise in practice? Which other norms are upheld or compromised through processes of exclusion, inclusion, or integration?

7.5.1 Militant democracy: pros

When Karl Loewenstein introduced the concept of militant democracy in 1937, he defended it in no uncertain terms. Militant democracy represented 'a better grasp of realities': it offered a concrete method for overcoming the three structural disadvantages that democratic regimes of his time had vis-à-vis fascist movements (Loewenstein 1937a, p. 431). The first was the impossibility of rational democratic government to stir up emotions, generate passionate mobilisation, and resuscitate a *mystique* that could compete with and win over the emotionalism of fascism. Such emotional formulas may have been available to the defenders of early liberalism, but were buried for good now that liberty seemed secure and even mundane. In Loewenstein's mind 'the fascist technique' differed in essence from the comprehensive ideologies and rational tools that parties had hitherto mobilised to attract support or claim authority (p. 428). In that specific sense, contemporary far-right populism offers a similar challenge. The use of discursive tropes, strong performative elements, and direct appeals to the people, alongside disinformation campaigns and other mechanisms of deceit and polarisation, suggests that the attacks on democracy operate through channels of communication that are

unavailable to pro-democratic actors, and possibly unethical and dishonest. In sum, a fundamental advantage of militant democracy is that it can address an *asymmetrical* challenge that targets the inherent vulnerabilities of democratic government.

The second structural democratic disadvantage that Loewenstein thought militancy could overcome was slightly more contingent to the political circumstances of his time. It concerned the difficulty of anti-fascist forces to form a joint political front, to fight their common enemy politically. Centrist liberal and leftist parties may have had a common goal vis-à-vis the defence of democracy, yet disagreements and mistrust persisted and made this collaboration unrealistic and precarious (p. 429). The same problem of inter-partisan coordination appears to persist today, with pro-democratic parties reluctant to compromise for fear of undermining their party identity or alienating their core supporters.

Finally, the third difficulty that militant democracy could overcome, according to Loewenstein, was the absence—in the 1930s—of a strategic transnational alliance of democracies capable of coordinating and launching a concerted international 'war of doctrines' against fascism (p. 430). This problem is less pronounced today, as several international organisations and regional instruments (such as the EU, the ECHR, and the UN) are actively working to counter autocratisation in their member states. Nevertheless, the risk persists, particularly as powerful countries with significant influence in these organisations, increasingly adopt autocratic practices.

More merits for militant democracy can be added here. One obvious advantage is that repression is a fast and expedient tool to block dangerous actors' road to power. It minimises their direct impact immediately and is efficient in the short run. Although their effectiveness is a matter of contention as is discussed below, repressive measures are generally seen as effective in preventing such parties from winning votes, influencing public agendas and policies, and obstructing parliamentary debates. They also indirectly protect vulnerable minorities who could otherwise be targeted by far-right policies, actions, intimidation strategies, and harmful public rhetoric. Rijpkema cites various examples that indicate that party bans can be effective in this immediate sense. He further credits militant democracy with three more pragmatic merits (Rijpkema 2018, pp. 99–100). The first is symbolic: militant prohibitions signpost the boundaries of what is politically acceptable and assert the democratic system. The second is that it has a preventive and deterring influence on parties that are tempted to test the limits of tolerance. The third is 'didactic' assuming that the very act of repressing anti-extremists opens up a discourse about

the nature of democracy and as such contributes to the renewal of democratic culture. These and similar reasons to prefer militant democracy are indeed mostly pragmatic. On the other hand, as discussed below, most of the criticisms against militant democracy concern its normative features.

7.5.2 Militant democracy: cons

A first critique against militant democracy can be described as 'proceduralist', as it highlights militant democracy's incompatibility with procedural guarantees inscribed in the very definition of democracy. The protagonist of this critique and first opponent of militant democracy was, of course, Hans Kelsen himself. Writing in 1932, he condemned the authoritarianism and self-contradiction that permeated calls for illiberal rule in the name of democracy. A democracy that tries to impose itself by force, or even violently, against the will of the majority, Kelsen argued, ceases to be a democracy; rule by the people cannot exist and is not viable if it is directed against the people (Kelsen 2006, p. 237). The use of illiberal means threatens the fundamental value of negative freedom, on which liberal democracy is based, and it harbours a value absolutism that is a precursor to authoritarian politics (Kelsen 2013, p. 103). As such, militant democracy strips a legal-political system of its democratic legitimacy. A similar scepticism can be anchored on the all-subjected principle, developed much later by Robert Dahl, which holds that all those subjected to the laws of a country must be rightfully included in the process of making these laws (Dahl 1989); mutatis mutandis, excluding people who will be subject to these laws is by default undemocratic. Based on these views, militant democracy can be seen as *undemocratic* and absolutist, a stigma that it has carried from its inception.

This Kelsenian spell against militant democracy is echoed today by Invernizzi Accetti and Zuckerman (2017). In their view, banning parties is by default an exercise of arbitrary decisionism, and therefore an example of abuse of discretionary powers. Militant democracy essentially 'internalises' and 'legitimises' a state of exception (Frankenberg 2014). Party bans correspond to 'an exclusion from the political entity itself' and thus draw the boundaries of the demos anew without explicit authorisation to do so. Such exclusionary decisionism, Invernizzi Accetti and Zuckerman argue, is impossible to delimit to specific situations, hence it tends to continuously expand to other categories of actors, some of them fully committed to democracy, as the ban on religious parties openly confirms. One may add secessionist parties

as a further category of potentially pro-democratic parties to which such bans tend to expand (Weill 2018).

A more cynical version of the arbitrariness argument is the political opportunism that repression mechanisms are likely to channel, leading to a targeted exclusion of political opponents only if and when they represent an electoral threat to incumbent parties. Governments may be tempted to use the law as a political instrument or as a justification for state violence. Even when repressive actions are justified, they risk appearing partisan and thereby losing a crucial source of legitimacy (Plotke 2006, pp. 22–24). Worse yet, militant democracy tends to 'moralise' political struggles and dehumanise the opponent turning them from a political adversary into a moral enemy (Mouffe 2005). In sum, militant democracy appears as *too risky*, since it relies on an ad hoc process that gradually closes off the space of free political action.

A different, more 'structuralist' criticism of militant democracy is the one launched by Hermann Heller. Heller viewed the suppression of political groups, including undemocratic ones, as an assault on the democratic validity of the law. For him, law had to be firmly grounded on ethical norms that were the result of a compromise between antagonistic social classes. Denying groups their free political expression and excluding them from the legislative process meant that the ideas and values of some parts of society, which they developed based on their distinct social experiences, would not be reflected in this compromise; as a result, the norms and laws they inspired would be *unrepresentative* and therefore unstable. In other words, repression was not only authoritarian but also destructive of the socio-legal foundations of a democratic community (Heller 1930).

Ludvig Norman and I developed a novel version of this criticism. We argued that exclusion of groups and repression of political rights are fundamentally at odds with principles of non-domination and republican freedom (Malkopoulou and Norman 2018). Irrespective of whether militant measures are put to use or not, constitutionalising them establishes a structural relationship characterised by a subjection of everyone to the sovereign's arbitrary will. Citizens end up in a continuous state of domination. They are dominated *by default* because state actors retain a constitutional possibility to interfere with their freedom of speech and assembly. Even if authorities are benevolent and hardly ever make use of such means of repression, the mere possibility to interfere with rights of political participation renders all political subjects unfree (Pettit 2012, p. 62). In case militant measures are used against them, they are even dominated *factually*: once excluded from political participation they will be subject to laws that were made without their consent, i.e. without

giving them a chance to freely express their dissent. In other words, militant democracies over-empower state authorities and place them in a position of domination over citizens.

A second strand of this structural criticism argues that this domination comes with a certain social bias. State authorities tend to represent a political and social elite that stands to benefit from being over-empowered. Militant democracy allows this elite to entrench its superior place in the societal hierarchy by suppressing political ideas that question the status quo. As in the inter-war period, so today, judges and state representatives tend to entertain an upper-middle class bias, which is transposed into a bias against subversive politics. This is evident in Loewenstein's infantilising description of the masses as irrational and emotionally unreliable, echoed today by, for example, András Sajó.

The people, Sajó states, 'is passionate, is easily manipulated to follow identity agendas, or is prone to fear [. . .] it is emotionally conditioned' (Sajó 2012, p. 571). Even as he admits that a conflation of 'people' and 'masses' is arbitrary and may echo assumptions about mob rule that often betray class bias and racism, his justification of militant democracy is grounded in a clear elite-versus-people dichotomy. It assigns to the former the exclusive role of protectors of democracy, and to the latter the role of passive spectators and helpless victims that fall prey to antidemocratic sirens. The problem with this elitist view of democratic self-defence is that it does not really defend a democracy but an anti-participatory elite system with an electoral facade. This paternalistic attitude towards the citizenry reveals a historical and logical connection between militant democracy and other forms of governance that rely on limited popular involvement in decision-making, such as technocracy and epistocracy (Malkopoulou 2023).

A further critique of militant democracy as a priori biased against open forms of rule has been developed by Patrick Nitzschner (2023). Based on a historical and normative analysis, Nitzschner argues that theories of militant democracy are tied to existing institutions in a way that either hinders democratic transformation or limits it within the boundaries of the institutional status quo. Both substantive—as exemplified by Schmitt—and procedural—as exemplified by Kirshner—varieties of militant democratic thought are criticised for setting problematic limits to radical democratic change. It is an inevitable side-effect of militant democracy that it restricts the exercise of popular sovereignty to the confines of the existing legal order, thereby inhibiting potential institutional improvements and democratic innovations (Nitzschner 2023, p. 43). This form of 'institutional conservatism' among

militant democratic thinkers can be understood as a consequence of limited engagement with theorising ideal democratic institutions. This is problematic because existing democratic institutions are de facto imperfect and may even be complicit in the ongoing structural inequalities that fuel support for extremist parties. Militant democracy per Nitzschner defends these imperfect institutions, but also blocks the possibility of improving them.

A related problem of militant democracy is that, alongside autocratic and subversive claims, they also cancel out antidemocrats' *other* claims. Parallel to their extremist views, antidemocrats may hold legitimate interests and opinions that are prevented from being expressed when a party gets a blanket prohibition to compete in elections (Kirshner 2014). For example, they may prefer limited suffrage, which may be an impermissible claim to make, but they may also have specific views about how taxes should be distributed, which may be a perfectly reasonable and even promising claim. Parties rarely come forward with single claims, but with a package of ideas, of which some may deserve attention. At the same time, party styles and ideologies may themselves be difficult to dismiss as antidemocratic per se. Populism, which has an ambiguous and rather problematic relation to liberal democracy, also has a productive side; it represents both a threat and a corrective (Rovira Kaltwasser 2012). It may be a channel for grievances and public concerns that may be misconstrued, racist, and destabilising; but it may also channel other concerns that may have some truth to them. For example, the claim that 'all media is corrupt', for all its falsehood, does point at real feelings of social and cultural exclusion of certain sectors of the population from powerful structures of mass communication. This does not, of course, justify unconditionally permitting statements that are excessively harmful to others. It merely acknowledges that a democracy which blocks out and silences these concerns misses out on the opportunity to reflect on what may be wrong with current social and political structures. Restricting participation and voice artificially displaces these concerns and hinders the dynamic development of a democratic society.

Finally, there are of course criticisms of militant democracy from an empirical viewpoint, arguing above all that it is *ineffective*. Parties can reorganise, run under different names, find ways to navigate the hurdles that the system may place on them. Opinions do not change through prohibitions. Worse yet, it has been suggested that party bans may backfire and turn extremists into martyrs who denounce the defenders of democracy as self-serving and hypocritical; fear of prosecution will push them to go underground or to become more elusive and strategic, curate their public image, become double-faced and stealthy (Downs 2012, p. 109). In a similar vein, it has been suggested that repression leaves a legacy of bitterness and antagonism among those with

social and familial ties to antidemocrats and so produces a spiral of polarisation and radicalised conflict (Plotke 2006, pp. 22–24). To be fair, empirical political science has produced mixed results on this front (for a discussion, see Rijpkema 2018, pp. 93–101). Mudde convincingly states that there is not a one-size-fits-all solution. Repression is often ineffective against far-right groups merely because their agendas, issues, and policies are co-opted by other parties. Hence, what is effective or not depends on many cultural and organisational factors (Mudde 2019, p. 79).

It could also be argued that militant democracy may be *insufficient* for a different reason: it only offers a quick superficial fix to a problem that is more complex. It fails to offer substantial long-term solutions to the problem of extremism, and misdirects attention and resources from the more promising route of engaging the real, profound, and complex causes of the problem. The many pragmatic and normative limitations associated with militant democracy can then naturally be translated into advantages for alternative approaches to democratic self-defence, especially for its counter-type: tolerant democracy.

7.5.3 Tolerant democracy: pros

The main benefits of tolerant democracy can be described as negative: it does *not* suffer from the normative and performative contradictions from which militant democracy suffers. In other words, it does *not* contradict the democratic principles of negative freedom and pluralism; it does *not* lead to an arbitrary and expansive definition of democratic enemies; it does *not* risk being misused to go after political opponents; it *neither* produces misrepresentation that undermines the democratic validity of law *nor* domination; it does *not* reproduce elitist and paternalistic views of the people and does *not* offer support for anti-participatory forms of rule. This negative line of support for tolerant democracy has been widely prominent since Kelsen.

On the more positive side, a major benefit is that tolerant democracy is *a democracy that 'grows' and 'learns'* by incorporating radical new ideas. A repressive approach may shut off ideas that could indirectly or in the long run correct the defects of an imperfect democracy. By contrast, tolerant democracy is a more dynamically developing system that constantly moves on, including through hardships. Crises become opportunities to take care of, repair, and mend neglected and hitherto undetected issues. For example, when views that challenge democratic principles or practices emerge, their defenders need to sharpen existing arguments or develop new ones to counter these new

challenges. This way new aspects are illuminated, a new potential is revealed, and new and ideally better directions open up. This optimism within tolerant democracy constitutes a key objection to the usual accusation that tolerant democracies suffer from self-destructive pessimism.

For others, interested in pragmatic benefits, the strongpoint of tolerant democracy is its effectiveness. As mentioned earlier, the debate on which approach is *by default* more effective is not only inconclusive, but unhelpful as effectiveness depends on so many other contextual and organisational factors. But for the sake of illustration, it is worth bringing to the table the distinct route to *effective* democratic self-defence that tolerant democracies supposedly take. It has been suggested that allowing antidemocrats to run for parliament and get involved in government will expose their low deliberation and government skills and damage their popularity. Alternatively, it will subject them to the 'cost of governing', the likelihood to be punished at the next polls not only for unpopular policies but also for having lost the purity of their original message (Van Spanje 2011). According to one proponent of tolerant democracy, 'there is some evidence that responsibility-laden incumbency can expose the ineptitudes of niche parties, induce internal divisions, and take the luster off of politicians whose popularity derived from the comparatively easy task of expressing what—and who—they dislike' (Downs 2012, p. 146). The post-incumbency decline of antisystem actors such as Italy's *Movimento 5 Stelle* and Finland's Finns Party (after their first participation in government) suggest that including antisystem actors into governing processes may, under certain conditions, reduce their oppositional appeal. A different version of this argument is that the political integration of antidemocrats will force them to play by the rules, teach them by practice how to compromise and bring them closer to the mainstream. This may not necessarily damage their popularity, but it will presumably alter their attitude and will result in less damage for democratic government as is. In both cases, the assumption is that democracy will be better off including rather than excluding antidemocrats.[5]

7.5.4 Tolerant democracy: cons

Tolerant democracy has frequently been the subject of criticism due to its perceived shortcomings. One particularly scathing assessment was offered by

[5] Various practices that fall under the tolerant paradigm, e.g. an activist citizenry and alert prosecutors, may be vulnerable as individual practices, but may complement each other so that the cocktail of them taken together may offer enhanced protection. But, as it happens, tolerant democracy has its own shortcomings and limitations.

Karl Loewenstein in 1937. In his analysis, Loewenstein ascribed a series of pejorative connotations to the concept, namely: 'legalistic self-complacency', 'suicidal lethargy', and 'mere acquiescence' (Loewenstein 1937a, p. 431). This 'negative account' of tolerant democracy (see this book, Chapter 3) inaugurated a tendency to view tolerant democracy as synonymous with inaction, passivity, and unresponsiveness to a pressing danger. In line with Loewenstein, it was described by many inter-war actors as naïve, helpless, and ultimately fatal. In 1935, Hitler's chief propagandist described the permissiveness of the Weimar Republic as 'democratic stupidity' (Goebbels 1935, p. 61), citing it as an enabling factor for the Nazi Party's use of intimidation tactics. In recent times, this perception has persisted, with Rawls associating the absence of containment with idleness, and a failure to uphold justice (Rawls 1999, p. 192). While these views do contain a criticism that toleration is ineffective, they go beyond that and accuse it of being illusionary and dangerous.

To elaborate further, the damage caused by toleration can be attributed to the presence of antidemocratic ideas and tactics within the public sphere. In the absence of constraints or filters on political discourse, extremist rhetoric, which typically intimidates and stigmatises vulnerable parts of the population, will inevitably become normalised and accepted (Norman and Beckman 2024). The public will soon become inured to the harmful claims made by extremist parties and, in the long term, political identities will be forged based on these claims (Müller 2021). Due to this normalisation effect, it is unsurprising to see so many mainstream parties tempted to collaborate or co-opt the agendas of their antidemocratic peers (Van Spanje and De Graaf 2018). Furthermore, the style of discourse and symbolic politics espoused by these parties may also have a corrupting effect on the broader civic culture that democracy relies on. Democratic culture often relies on the virtues of respecting others as equals, prioritising rational and truth-based arguments over those that are irrational, manipulative, and disorienting, and sharing a minimum set of political values that structure discussions and disagreements about public matters. Toleration can result in subtle yet vicious transformations of the mores of political deliberation and civic association.

Further illustrative instances of the inadequacy of a strategy of toleration have been identified in recent times. Pointing at Hungary under Viktor Orban, Kim Lane Scheppele elucidates how illiberal parties in government devised a blueprint for the gradual erosion of liberal democratic systems, while maintaining a veneer of formal legality and a nominal respect for free and democratic elections (Scheppele 2018). Such destructive actions frequently remain undetected and are often too technical in nature to incite a broad

public outcry or protest. They constitute acts of 'legal revolution': formally legal yet substantively revolutionary changes to the public legal order that tolerant democrats simply do not address (Schupmann 2024, pp. 31, 76). Consequently, it can be argued that tolerant democracies are ill-equipped to defend democracy against contemporary threats that rarely launch direct assaults on democratic institutions.

However, even when attacks are more overt and violent, the tools that tolerant democracies have at their disposal—such as the conviction of criminal or terrorist activities—may be of limited efficacy. Antidemocrats have been known to adapt quickly and learn which rules *not* to break in order to stay under the radar, to engage in lawfare against active prosecutors, to frame legal cases against them as ideological witch hunting, and to spin public discourse in ways that increase their popularity. Unless there is broad support or symbolic triggers that mobilize the defence of democracy, legal instruments can be counterproductive. As evidenced by the handling of the neo-Nazi party Golden Dawn by the Greek authorities, it is imperative that democratic institutions are robust and that civil society is vigilant in order to guarantee that toleration of political views will not lapse into exoneration of racist crimes and a green light for human rights abuses (Malkopoulou 2021).

Very different from the criticism of tolerant democracy as an inefficient or naïve system is the critique of tolerance as a discourse that perpetuates existing power relations and engenders subordination and exclusion (Brown 2006). Wendy Brown argues that tolerance has been used as a colonialist and imperialist method by which certain nations have claimed to be civilised and superior, while simultaneously categorising others as 'acceptable' barbarians, yet barbarians nonetheless. It has represented a superficial method for regulating aversion. In reality, it depoliticises questions of racial equality and religious freedom. Conflicts are contained by confirming the generous spirit of a majority culture and thereby its superiority.

This approach is aligned with the critique that tolerant democracy, like militant democracy, is institutionally conservative (Nitzschner 2024). According to this view, there is little in the way of a positive normative vision of democratic institutions, and as a result, tolerant democrats tend to articulate a defence of institutions that are currently in place. The idea of preservation betrays such conservatism. The goal of toleration is to integrate antidemocrats into existing structures, socialise and assimilate them, give them a stake in the existing system so that they are encouraged to exchange their radical opposition with an acceptance of the current order. According to this critical account, tolerant democracies foreclose the possibility of a radical transformation of the

existing democratic order into a new one that is different and more just than the current one.

This critical view is an exception to the more widespread tendency to disapprove of tolerant democracy primarily on empirical grounds. Its main weakness, according to most critics, is pragmatic: it cannot effectively contain the threat of extremism and, as a result, leaves minorities as well as democratic institutions exposed and vulnerable. What tolerant democracy does is to 'sacrifice democracy's future to maintain it in the present' (Schupmann 2024, p. 77). By the time tolerant mechanisms like judicial review kick in, 'it may well be too late for democracy' (Kirshner 2014, p. 14). The normative strength of tolerant democracy corresponds to its weakness in practice: it fully respects free participation and expression—even for antidemocratic actors. In this sense, it exhibits the inverse qualities of militant democracy: whereas militant democrats fail to protect extremists, tolerant democrats fail to safeguard minorities and democracy itself.

Both approaches can, however, be seen as overly formal and legalistic, emphasising primarily rights and the moral foundations of justice. This opens the door to praising the third—social—approach, which may appear to avoid such criticism. Yet, as will be shown below, a distinct set of risks applies in this case.

7.5.5 Social-defensive democracy: pros

For a proponent of the social approach to democratic self-defence, its advantage is clear. Compared to approaches that debate the place of abstract values in democratic constitutions and their consequences for rights protection or repression, the social approach brings in a *more materialist, lived-in, and thus realistic* perspective into the problem. It pays attention to the social, economic, and cultural tensions that underlie the attacks on democracy and puts under the microscope the neglected real-life grievances that explain political turmoil. Here, the demands put forward by extremists are not shut off, hence *respect for their democratic rights* is upheld; but their demands are also *not taken at face value*: they are neither accommodated nor rejected as such. Instead, they are read with 'sociological' lenses, to see in what way they reflect real, existing day-to-day social problems.

A contiguous benefit of this more realistic approach is that it treats the roots of the problem of extremism, which are assumedly to be found in socio-economic life. And because eradicating the roots is a more efficient way to treat

a disease, it also lays claim to a *more actual, effective, and long-lasting success* in dealing with the problem at hand. In addition, the view that extremism is an epiphenomenon of socio-economic frictions, or that it is correlated with specific socio-economic conditions, is backed by social-scientific evidence (see this book, Chapter 5); therefore, this approach claims to be more rational, scientific, and *epistemically grounded*.

Importantly, the social approach is compatible with a more open-ended conception of democracy because it can accommodate legitimate demands for a radical transformation of existing democratic orders. Whereas militant and tolerant defences conceptualise democracy in a limited way as bound to an existing constellation of institutions and practices, the social response to antidemocratic threats *allows for institutional experimentation and even demands structural change* for the purpose of saving the social pillars on which democracy stands (see Nitzschner 2024). In fact, a parallel benefit of this approach is that the means it uses—policies that promote emancipation—are a good in themselves from the perspective of a politics of social justice. This implies that they will not only have zero negative side-effects, but on the contrary can lead to *other positive domino effects* on society. If extremism is only a symptom of a deeper social crisis, then addressing the roots of this crisis will eradicate also its other symptoms—such as precarity, marginalisation, and so on. According to this view, by adopting such a social stance to democratic self-defence a democratic society stands to gain broader benefits that extend beyond the narrow goal of eradicating antidemocratic parties and movements.

7.5.6 Social-defensive democracy: cons

Concurrently, however, there are a number of issues with the social approach, both in terms of its normative and pragmatic implications. A central normative objection is that this approach is *excessively ideological*. It politicises democratic self-defence, which should ideally be neutral and grounded in meta-political rather than political preferences. A commitment to socio-economic justice and redistribution corresponds to specific political worldviews and ideological prescriptions. Consequently, appealing to these in order to defend democracy essentially glosses over their political-ideological specificity, forcing them into becoming a meta-political norm and thereby turning content into form. Badano and Nuti express this concern when they argue that social approaches to democratic self-defence impede reasonable pluralism, which they understand as 'the orderly contest' between reasonable conceptions of

justice. Social approaches impose 'a strong commitment to socio-economic justice on liberal citizens who reasonably reject it in favour of weaker principles' of justice (Badano and Nuti 2018, pp. 155–156). In other words, the imposition of a single social-egalitarian conception of justice as the sole criterion for democratic self-defence precludes the antagonism between different conceptions of justice that—liberals believe—a democratic society is obliged to foster (see Malkopoulou 2025a for a response to this critique).

Other possible objections to this approach are largely based on empirical assumptions. The most common objection is that social defences of democracy are *only long-term* measures, which may take too long to materialise, and may also require an unavailable number of resources. Moreover, the implementation of these measures *may depend on the contingent circumstance of having a left-wing party in power*, as these parties are more prone to engage in materialist interpretations of and solutions to extremism. Consequently, until the requisite circumstances are present, extremists can continue to operate freely, intimidating vulnerable groups and subverting democratic processes. Therefore, this approach is seen as an unreliable remedy for countering a rapidly rising and emboldened extremist threat.

Finally, a more erudite critique contests the scientific analysis on which the social approach is based. The supposition that poverty and economic turbulence are concomitant with democratic regression appears to imply that it is the 'unwashed' masses who precipitate this regression, and thus that extremists flourish among the impoverished and uneducated classes. However, this assumption is deemed to be erroneous for reasons that have been explained in Chapter 5. Firstly, the far-right populism that challenges democratic commitments today is not driven by the poor; rather it is driven by a new elite that often has low cultural capital but not necessarily low economic capital (take, for example, Donald Trump). Secondly, even in the context of inter-war Germany where an economic crisis preceded the collapse of the Weimar Republic, it was not the lower-class voters who precipitated this collapse. Rather, it was the bourgeoisie, or powerful industrialists, who handed over power to the NSDAP in order to ensure the protection of their economic interests (Wilkinson 2021). Accordingly, these critics contend that the purported link between poverty and extremism is tenuous and inconclusive. There is no clear-cut socio-economic rationale for, or solution to, the phenomenon of political extremism. In conclusion, the social defence of democracy is perceived as potentially epistemically flawed.

Considering the serious normative and pragmatic problems that plague not only the social approach to democratic self-defence, but also the militant and

tolerant one, addressing the problem of illiberal antidemocratic parties would require some sort of compromise or combination of these approaches. The last section of this chapter examines the complementarities or incompatibilities of the three types and explores the possibility of hybrid approaches to democratic self-defence.

7.6 Is it possible to combine the three approaches?

As noted, many of the advantages and shortcomings of each type of democratic self-defence concern their pragmatic consequences. A central contention in this book, however, has been that each type is not built on ad hoc, strategic only, or opportunistic considerations; it implicates constitutional and political thinking and involves specific principles and norms. Hence, this comparison will focus on the broad strokes that characterise each ideal type, rather than on the details of practical, institutional design. A central proposition is that, while it is perfectly possible to put together an eclectic set of responses to democratic threats, this bricolage will suffer from inherent normative tensions and contradictions that arise from the different ways in which each of the three approaches understands democracy and the threats it faces.

A possible start is to ask if some or all of these ideal types contradict each other in *analytical* terms. Or are they compatible with each other on at least some aspects? The answer is (mostly) negative. Militant democrats are diametrically opposed to tolerant democrats on certain fundamental aspects. Militant democrats are of the view that basic laws must be value-specific and that parties who attack them should be banned. Tolerant democrats on the other hand support value-free legal orders and oppose party bans in principle and practice. For their part, social defenders of democracy argue that legal orders must be value-free except for the general norm of social egalitarianism, which must permeate the entire legal system. Although they argue that legal principles should result from political antagonism and not be imposed from the top down, social egalitarianism is central to this approach and may set limits on constitutional amendments. Hence, the militant and social type may jointly rest on a substantivist conception of constitutionalism, whereas the tolerant on a proceduralist conception.[6]

If we are to compare only the tolerant and social approaches, we can see that their difference may only concern the area on which integration should

[6] I thank Ben Schupmann for drawing my attention to this point.

focus. The former underlines formal, political, and civic integration, while the latter emphasises social, economic, and educational integration *in addition to* political-civic integration. In this light, the two types may be compatible. The social approach accepts that all parties—even the most extreme ones—should be included, but not because their exclusion undermines negative liberty; they should be included because they are platforms for voicing social concerns and therefore indispensable for the social legitimacy of the law.

Yet, despite this apparent joint rejection of party bans, the social approach does not explicitly oppose them. Instead, it places emphasis on reframing this normative legal problem (to ban or not to ban) into a struggle of political forces within a specific social environment. In fact, social defenders may object that the tolerant emphasis on formal integration may reinforce a liberal positivist understanding of the law and its role in regulating human relations, and silence more materialist legal perspectives, leading in practice to a distraction from efforts to address social conditions linked to the rise of extremism. In other words, Heller's materialism rejects Kelsenian formalism and, instead, grounds constitutionalism in socio-political realities. From this perspective, even seemingly compatible measures may be channelling ideas that directly or indirectly are at odds with one another.

Perhaps, it would make more sense to leave aside philosophical differences and focus on the practices that each approach puts forth. Could we not think instead of the different *stages* in which an autocratic challenge unfolds, and consider whether each type has a different temporal scope within a process of autocratisation? For example, social measures would work best in the long run, targeting the underlying causes of extremism, whereas militant and tolerant measures in the short term, aiming to halt the rise and immediate effects of extremism. One can think of a further division of labour based on the *intensity* of the threat, with militant measures being more meaningful against threats that are imminent and possibly lethal. On these grounds, it is possible to adopt a mixed approach: in anticipation of a threat, democracies should be immunised with checks and balances and similar neutral safety nets; once a dangerous party manages to break through these barriers then more militant measures should kick in; after the threat is temporarily contained, social measures should be activated to eradicate the roots of the problem. Leaving aside the more principled differences between these ideal types, and assuming that policymakers agree to such a mixed approach, different practical combinations can emerge.

Things start becoming even more flexible, if we move to the political arena. There, it is possible to see governments combine practices in a carrot-and-stick

approach, where bans are combined with more benevolent attitudes. It is also possible to see strategies alternate in time, with strategies of exclusion being subsequently replaced by strategies of inclusion based on shifts in political dynamics, key figures, and public opinion. Parties may favour different strategies based on their ideological background, with left parties favouring social remedies, liberal parties preferring toleration and mainstream right parties supporting militancy. A constitution resulting from political compromises or driven by a coalition government that includes parties with different preferences on democratic self-defence can thus produce mixed approaches.

A risk here is that these approaches may include parts that cancel each other out, are adopted merely based on opportunistic calculations or without due attention to their consequences. To illustrate, some scholars have suggested a carrot-and-stick approach, encouraging certain actions by antidemocratic actors and discouraging others. Van Spanje and De Graaf (2018), for example, propose an intra-partisan strategy of 'parroting the pariah', which engages with the policy demands of voters of pariah parties, yet at the same time keeps such actors at bay by excluding them from cooperation in government. Rummens and Abts (2010) suggest a 'concentric model' of conditional inclusion and exclusion, according to which problematic actors should be accorded sufficient leeway to speak and act when they operate informally at the periphery of the public sphere, but tolerance towards them should gradually decrease the closer they get to the centres of power. While these mixed approaches may be promising as they combine the merits of two approaches, they nevertheless also inherit the problems of both approaches.

Indeed, such mixed approaches risk exacerbating the problems associated to both repression and toleration. Not only do parroting and concentric strategies carry the normative costs of exclusion, but they over-politicise the process of drawing the line between what is tolerated and what is not, which adds an extra layer of arbitrariness. In the parroting-model case, adopting some of the policy demands of antidemocratic forces leaves it up to competing parties to decide which of these demands would be popular to adopt, with the impending and very real risk of amplifying and expediting their less-than-legitimate (e.g. racist) key demands; moreover, in the long term, this may result in a 'mainstreaming' of antisystem attitudes even if antisystem actors themselves are kept at bay. In the concentric-model case, tolerating minor but not major antisystem parties creates an opportunistic incentive for mainstream political forces to act in defence of democracy and silence antidemocrats only when the latter threaten their own political prospects. In short, intolerant

methods, whether conditional or not, have a high chance of missing the target. Democratic self-defence risks devolving into a tool of partisan competition.

As a result, the more principled a party's stance towards democratic self-defence, the more likely it is to adopt a coherent and robust strategy. But at the same time, if all parties adopt principled stances, the likelihood of them agreeing becomes ever so distant. A flexible attitude where different approaches are mixed and adapted may be desirable, but is unrealistic especially in times of autocratisation, typically marred by intense polarisation and possibly social conflict. It has been succinctly identified as the 'real' paradox of militant democracy, but it applies as well to democratic self-defence more broadly: democratic polities that most need to defend themselves are least likely to agree on how to do so, while those that can agree on a defence plan are unlikely to need it (Müller 2019b, p. 18). Agreement on such a fundamental issue is a sign of a well-functioning democracy, able to manage conflict before it gets out of hand.

7.7 Conclusions

In theory, there are irreconcilable differences between a democratic self-defence based on exclusion, toleration, or social integration. In practice, however, the policies that underpin them and the instruments that flow from them are open to more combinations than this chapter can enumerate. What binds them together is that they all address the same problem and have the same goal. The problem is that political parties, be they far-right, extremist, antidemocratic, or illiberal, pose a threat to the democratic process and the rights of individuals, particularly those who are vulnerable. They seek to undermine the authority of democratic institutions and to challenge the very norms that underpin democratic society.

The objective of the three central approaches discussed in this book is to defend democracy against these parties. This means preventing, containing, or resisting processes of 'democratic regression' and 'democratic backsliding', through which these parties gradually dismantle a democratic system and its life form. Nevertheless, despite their professed shared focus on defending democracy from its internal enemies, each approach frames both the system that requires protection and the source of the problem in fundamentally different terms. The book's concluding note makes explicit how the three approaches differ in the concept of democracy that they defend.

Afterword

Those who take it upon themselves to defend democracy are frequently confronted with a practical dilemma: to support repressive measures against those who challenge the fundamental tenets of democracy, or to engage with them as if they were ordinary adversaries. This book has proposed that the defence of democracy should move beyond the dichotomy of toleration or non-toleration and frame the problem in a more nuanced way. Indeed, the emphasis on militant and tolerant approaches has obscured a third possibility: that of examining the social injustices that fuel antidemocratic sentiment. Such a social logic of democratic self-defence is often predicated on the characteristics of autocratic tendencies. Contemporary authoritarian populism, for example, is the result of a combination of factors, with social malaise being the primary contributing element. The question of whether to engage or to repress it diverts attention from the social roots of authoritarian populism and similar movements that challenge democratic principles.

A second lesson indicates a need to extend the scope of democratic self-defence. Law, and especially constitutional law, has long been regarded as a pivotal mechanism for regulating political rivalry in a manner that safeguards the democratic system. Despite the fact that the dilemmas of democratic self-defence manifest initially as constitutional concerns, it has now become imperative to transcend the limitations of constitutional models and to broaden the scope of democratic self-defence to encompass other institutional settings. Militant, tolerant, and social instruments are not merely aspects of a constitutional infrastructure; they are modes of action that manifest in numerous domains of democratic society. The ideas that emerge from constitutional dilemmas inspire many other fields of action, including ordinary legislation, public policies, political initiatives, formal and informal decisions, as well as citizen activism.

The view that the defence of democracy begins with the constitution is often associated with a tendency to equate democracy with liberal constitutionalism. But democracy does not live, thrive, or erode in the courtroom. It is embedded in and dependent on democratic society. It is therefore time to look beyond the courts for guardians of democracy and to consider non-state actors, such

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as political parties or civil-society actors, as primary defenders of democracy. To be sure, political and civil-society actors do not have the same types or scale of resources and opportunities to deal with challengers to democracy, nor do they feel the same degree of pressure and responsibility to contain democratic threats. However, people in different positions want to defend democracy, and they are fairly capable of doing so. And democracy, especially when it is in crisis, needs everyone. So the question is not *who* ought to defend democracy, but *how* those who want to defend democracy can do so.

A theoretical framework for democratic self-defence is useful if it can offer guidance to as many actors as possible. The framework proposed in this book attempts to do this by distinguishing between modes of action based on their diagnosis of the nature of the democratic threat, the means that correspond to this diagnosis, and their objective. Threats can be treated as extraordinary and urgent; as ordinary and conventional; or as an epiphenomenon of social pathologies. They can be addressed by exceptional measures, by measures consistent with a democratic framework, or by social interventions. The aim of these measures may be to exclude and isolate the target actor, to include and engage with them; or to include them in a social-egalitarian sense. Thus, an action can be classified as militant, tolerant, or social according to the logic adopted at the levels of diagnosis, means, and objectives, rather than by the sphere in which it occurs, or the identity of its actors.

Characterising an action as militant, tolerant, or social immediately situates it within a set of normative justifications and criticisms associated with that ideal type. Each of the three broad ideal types of democratic self-defence is supported by distinct kinds of normative arguments. Militant action may be justified by appeals to the protection of constitutional identity, requirements of rationality, or the severity of the harm posed by a threat. Toleration, by contrast, is often grounded in commitments to fair procedures and freedom of speech—understood as promoting truth, legitimacy, or better decision-making—as well as in the moderating effects of participation and the value of counter-speech. Social responses, finally, are justified by democracy's dependence on egalitarian social integration, meaningful social representation, material constitutionalism, social security, and the political struggle against capitalism. Together, these normative arguments reflect broader philosophical and ideological positions that serve as a mental compass when difficult ethical-political choices must be made.

Actions in defence of democracy need to be based on principles that extend beyond mere strategic considerations because they can backfire or be

fiercely contested. Accusations of either political opportunism when dangerous actors are over-excluded, or complicity with them when they are not, can severely undermine democratic self-defence. Anticipating accusations like these is particularly important in times of democratic polarisation and erosion. In such circumstances, robust norms and principles to guide action are paramount.

Indeed, to better evaluate responses to democratic backsliding and authoritarian populism, it is important to focus not only on the efficiency of responses, but also on their legitimacy and credibility. One problem with questions of efficiency, for example, is that they often take for granted who are the prodemocrats and who are the antidemocrats. But the lines between these two categories are becoming increasingly blurred. In recent years, for example, authoritarian populists have become increasingly mainstream, while mainstream actors have themselves adopted elements of populist politics. This makes the question of who can legitimately target whom more difficult to answer.

The boundary between democratic and antidemocratic politics is difficult to draw with precision, largely because defenders of democracy do not share a single understanding of what 'democracy' means. Their differing conceptions of democracy shape both how they identify legitimate targets of containment and how they believe challenges to democracy should be addressed. Conceptions of democracy vary not only across ideal types, but also within individual ideal types themselves.

Militant democrats, in general, draw on a tradition that prioritises constitutional commitments over popular participation. These views become more specific when attention shifts to specific sub-variants of militant democracy. For instance, one influential militant democrat understands democracy as a self-correcting system. On this view, what must be protected above all is democracy's capacity for self-correction. This definitional starting point also determines who or what counts as a fundamental threat—namely, actors or actions that undermine that capacity. Justifications for militant democracy, as well as views on how democracy should be defended and against whom, therefore vary considerably depending on the underlying conception of democracy endorsed.

The same logic applies to all the normative traditions discussed in this book. For example, a tolerant democrat who regards freedom of speech as a foundation of political legitimacy would seek to defend democracy primarily by protecting free expression. At the same time, such a democrat would identify

a fundamental threat to democracy in actions or actors that restrict freedom of speech. From this theoretical perspective, even free-speech absolutism that allows antidemocratic messages to proliferate and gain influence without restriction would ironically qualify as a form of 'defence of democracy'.

From the viewpoint of social defenders, on the other hand, democracy is closely tied to social inclusion. For example, one prominent proponent of this view argues that the most important democratic safeguard is universal social security. Actors or actions that threaten this fundamental pillar are seen as indirectly undermining democracy, even if the connection between antidemocratic and antisocial policies is neither direct nor immediately visible. Social defenders may recognise institutional abuses, such as court packing, as antidemocratic, but interpret them as symptoms of deeper social disintegration that pose a greater threat. In this context, court packing would be condemned, but the primary focus of defence would be to restore universal social security, thereby sustaining citizens' commitment to the democratic project.

Enemies of democracy have existed in the past, continue to operate in the present, and will inevitably emerge in the future. Theories of democratic self-defence offer both normative guidance and analytical tools: they justify various types of responses, indicate how these responses can be combined and adapted to specific contexts, and help anticipate potential threats before they fully materialise. Central to these theories is the principle that what is essential to the survival of democracy is also what must be defended; it serves as the key marker that should trigger action whenever it is under threat. For this reason, democratic self-defence requires a clear foundation in well-defined understandings of democracy.

More than a means of shielding democracy from harm, democratic self-defence can also serve as a project of renewal. By engaging with its vulnerabilities and recognising its imperfections, these theories transform potential weaknesses into opportunities for improvement. In this way, the very features that make democracy fragile also provide opportunities for repairing, strengthening and guiding it towards a more resilient, inclusive, and adaptive form, one that can respond to both present challenges and future uncertainties while remaining true to its fundamental principles.

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