Usual Suspects

Militant Democracy's Party Problem

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Democratic self-defence has become a global constitutional habit. Militant democracy in particular, that is the idea that "pre-emptive, prima facie illiberal measures to prevent those aiming at subverting democracy with democratic means from destroying the democratic regime" can be justified,[1] has been central to this development. The model, however, has travelled with a European pedigree that has long viewed political parties with suspicion, once as agents of division and now as agents of anti-democratic subversion. I call this party-centrism, that is the assumption that anti-democratic political parties are the primary source of danger for a constitutional democracy and therefore the proper subject of militant regulation.

In many non-European contexts, parties are neither the main form of political organisation nor the main source of threat. The fall of the Arab Spring exposed the futility of searching for anti-democratic forces at party headquarters. But party-centrism is not a "that's a you problem" for the South, and it simply does not fit a neat North-South divide. Even where politics is organised along party lines, as in the United States (US), much of the assault on democracy runs outside of, or alongside, party politics.

Thinking reflexively about militant democracy requires us not only to point to party-centrism as a flaw, but to take the opportunity to revisit the doctrine as a whole, particularly since it matters to every democratic society facing anti-democratic threats of various kinds. Below, I trace and define party-centrism and argue more narrowly that moving beyond it is valuable not only because it brings more actors into view, but because it extends to them the same level of protection that parties already receive.

Obsessed Much?

For the longest time, political parties have played the main villain in our discussion of militant democracy. Naturally, the electoral arena, where parties are assumed to prey on an "irrational and emotionally unreliable" mass,[2] became the main stage for militant intervention. The democratic defence literature holds that the modern threat is, "in many ways, a party threat."[3] As Olsen and Tuovinen advise, "[a]nyone concerned with democracy should thus be concerned with the democratic nature of parties."[4] Party banning, then, has grown to be the archetypical instrument of militant response where parties are routinely "investigated, infiltrated, delisted, and outlawed" in the name of democracy. [5]

Why parties in the first place? The theory holds that while political organisation takes many forms, parties alone "bring opposition into the frame of government."[6] It acknowledges that individuals can hold anti-democratic views, but only group-level organisation can wage that war against democracy.[7] Putting a target on the back of parties is, understandably, more convenient. Ethically, banning a party is easier to justify than banishing an individual subverter. Legally, the party is a legible target for a mass movement. It rests on state recognition, and

[1] Jan-Werner Müller, *Militant Democracy*, in: Michel Rosenfeld and András Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press, 2012), DOI: 10.1093/oxfordhb/9780199578610.001.0001, p. 1253.

[2] Anthoula Malkopoulou and Ludvig Norman, *Three Models of Democratic Self-Defence: Militant Democracy and Its Alternatives*, Political Studies, 66 (2018), DOI: 10.1177/0032321717723504.

[3] Tom Gerald Daly and Brian Christopher Jones, *Parties Versus Democracy: Addressing Today's Political Party Threats to Democratic Rule*, International Journal of Constitutional Law, 18 (2020), DOI: 10.1093/icon/moaa025.

often on state funding. It is an *entity*, and entities can be easily regulated by law.

There is also another answer than that of convenience. Long before parties were a subject of militant regulation, anti-partyism had established them as the category in which political danger appears. Early modern political thought cast parties as factions, pathological intrusions that corroded the body politic rather than organised it.[8] That suspicion shaped state-building on both sides of the Atlantic. The French Revolution, Rosenblum observes, "was the occasion for both constitutional creation and renewed anti-partyism."[9] In the US, Madison warned against the "mischiefs of faction" while conceding that parties would have to be tolerated, on the condition that the government check them rather than the reverse.[10] By the nineteenth century parties had been largely normalised. Even totalitarian movements that displayed open hatred toward other parties took the form of a party themselves since the party had become the instrument through which power was won. It was the failure of Weimar and interwar Europe at the hands of anti-democratic parties that produced their rehabilitation after 1945, when rebuilding German democracy, for example, was understood as "above all a question of the relationship of the German people to their parties."[11] In a way, the long hostility toward parties was never abandoned. It was narrowed to a particular *type* of party.

Today however, elections are no longer the only arena for undermining democracy, and parties are not the only actors whose democratic behaviour should concern us. Dismissing the role of other actors is costly. Müller and others have already taken up the question of individual militant democracy, extending the list of suspects beyond parties to capable individuals.[12] Yet the doctrine has remained party-centric, and the extension has not been followed through into what it asks of the framework.

Stranger Danger?

Any account of the current global democratic crisis that treats it as a party problem is already too narrow. In several parts of the world, parties are not the main mode of political organisation. The Arab World's failed transition was closed by establishment figures, sectarian networks, and foreign patrons, and none of them fell within reach of the party-banning provisions the new constitutions had just adopted.

My intention is not to dismiss party threats, least of all while the Alternative for Germany (*Alternative für Deutschland*, AfD) is surging in Germany.[13] But the view that democratic defence belongs to parties alone is mistaken, even where party politics is the default. Democracy is undone not just at party venues and election polls, but also at hate marches, Twitch streams and bot farms, fundraising receptions, and campus booths. Anti-democrats are thriving, and aiding and abetting anti-democratic agendas in the public sphere should not be treated as less serious than campaigning on them.

The past three years in the US make this plain. There is certainly a self-perpetuating, anti-democratic agenda carried out by the party in power, but alongside it sit financiers, courtiers, and foot soldiers who answer to no party and stood before no voter. The richest man in history, Elon Musk, has backed anti-democratic parties across Europe and the Americas, amplified far-right voices online, and promised million-dollar give-aways to voters in a Wisconsin Supreme Court election, all from inside a federal post with sweeping reach over the civil service. Bill Ackman financed the campaign against university presidents after the war on Gaza, helped reshape campus policy on student and academic freedom, and has since pledged to bankroll

[4] Tore Vincents Olsen and Juha Tuovinen, *Between Militant Democracy and Citizen Vigilantism: Using Citizens' Assemblies to Keep Parties Democratic*, Global Constitutionalism, 13 (2024), DOI: 10.1017/S2045381723000382.
[5] Alexander S. Kirshner, *A Theory of Militant Democracy: The Ethics of Combatting Political Extremism* (Yale University Press, 2014), DOI: 10.2307/j.ctt5vkwpg, p. 72.
[6] Russell Muirhead and Nancy L. Rosenblum, *The Political Theory of Parties and Partisanship: Catching Up*, Annual Review of Political Science, 23 (2020), DOI: 10.1146/annurev-polisci-041916-020727.
[7] Lars Vinx, *Democratic Equality and Militant Democracy*, Constellations, 27 (2020), DOI: 10.1111/1467-8675.12467.

anyone willing to challenge New York's mayor. Neither has a reported party affiliation.

This is not just the usual story of money and influence. Others have wielded informal power and used it to reshape public institutions and set the national agenda, through having the ear of the President or his allies, as erratic influencers like Laura Loomer and Christopher Rufo do, or long-game architects like Leonard Leo of the Federalist Society. Tellingly, Loomer lost two congressional races and ended up with more power than a seat would have likely given her. On the streets, Jake Lang in the US and Tommy Robinson in the United Kingdom (UK), both with convictions to their name, have mobilised mass protest around anti-immigration causes without running through any party organisation.

The point is that even in a stronghold of party politics like the US, every one of these actors would survive if the country decided to go militant tomorrow. Dismantling democracy is no longer a party scheme. It has become a joint venture, and while its participants may all favour the same party, none of them belongs to it or depends on it.

Rights, Not Parties

The problem runs deeper than the distinction between parties and non-parties. Even a fully equipped militant democracy would struggle to constrain the figures above, and not only because they are not parties. Militant democracy's logic is *electoral*. It triggers scrutiny when someone runs for office or forms a party to do so, and the figures above did neither. What they exercised instead were rights that can be just as subversive and have never been treated as militant democracy's concern.

Part of the trouble is how we define the object of regulation. I propose we think of militant democracy as a category of state action rather than a particular instrument of party control. Simply put, it is the constitutional capacity for pre-emptive restriction of political rights on democracy-protection grounds. It becomes a question about rights restriction rather than a question about parties. This is less of a departure than it sounds. Militant democracy, as Loewenstein envisioned it in 1937, was never *only* about party banning, and his catalogue was wider and agnostic to the form of organisation. Germany, which embedded the doctrine in its Basic Law, has a dormant constitutional provision aimed at individuals specifically.[14]

In practice, states already reach past parties. The UK has proscribed a protest group (Palestine Action), the US has designated a movement with no membership or structure to speak of (Trump's anti-antifa orders), and lone figures have been debanked and deplatformed (Nick Fuentes, though largely at the hands of private actors rather than the state). These cases differ considerably, and none was framed as militant democracy, but they show that actor legibility, the ease with which a target can be identified and served, is a problem states have already overcome. States do restrict the political rights of actors beyond parties, and largely at will, without the demanding safeguards that make militant democracy defensible in the first place.

Opening the category means militant democracy can pursue those who subvert democracy through any political right at their disposal. Troy can now watch for the Greeks in whatever shape they arrive. And this carries an important implication. Militant democracy is not only a licence to restrict. It carries constraints

[8] Terence Ball, *Political Parties and the Legitimacy of Opposition*, in: Hans-Erich Bödeker, Clorinda Donato and Peter Hanns Reill (eds.), *Discourses of Tolerance and Intolerance in the European Enlightenment* (University of Toronto Press, 2008), DOI: 10.3138/9781442687882-007.

[9] Nancy L. Rosenblum, *On the Side of the Angels: An Appreciation of Parties and Partisanship* (Princeton University Press, 2008), DOI: 10.1515/9781400828975, p. 94.

[10] James Madison, *The Federalist Papers No. 10*, 23.11.1787, https://avalon.law.yale.edu/18th_century/fed10.asp, last accessed 08.10.2026.

[11] Karl Friedrich Kindler, quoted in: Ruth Bevan, Lothar Probst and Susan Scarrow, *Anti-Party Discourses in Germany: Three Essays*, Institute for Advanced Studies, Political Science Series 22 (1995), p. 3.

[12] Jan-Werner Müller, *Individual Militant Democracy*, in: Anthoula Malkopoulou and Alexander S. Kirshner (eds.), *Militant Democracy and Its Critics: Populism, Parties, Extremism* (2019), DOI: 10.1515/9781474445627-004; Eraldo Souza dos Santos, *Marginalia on Militant Democracy, (Un)Civil Disobedience, and the Right to Resistance*, in: Adam Burgos (ed.), *Philosophizing Contestation: Refusal, Disobedience, Resistance, Decolonization* (Bloomsbury Academic, 2026), p. 45; Amos N. Guiora and Kristine J. Ingle, *Militant or Bystander: How to Protect Democracy*, Brigham Young University Journal of Public Law, 33 (2019).

too, normative considerations and procedural safeguards, and there is no reason these should not travel from parties to individuals and other groups. Applied properly, it would be demanding, and it would mean that when a state reaches past the party, as it already does, it meets the same burden it meets when it reaches a party.

In substance, addressing party-centrism closes an important doctrinal gap. A billionaire is no longer restriction-proof, and a protest movement gets the same protections and safeguards a party would receive. But the project carries a broader significance. The Southern story that animates this inquiry treats the Global South neither as a laboratory for testing militant democracy nor as a recipient of the latest democratic innovations, but as an interlocutor and a source of conceptual insight, relevant to Europe, the United States, and democracies everywhere.

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[13] Cas Mudde, *The AfD's Win in Germany Is a Dark Day for Europe: Time Is Running Out to Stop the Far Right*, The Guardian, 07.09.2026, https://www.theguardian.com/commentisfree/2026/sep/07/afd-win-germany-far-right-europe-democracy, last accessed 14.09.2026.

[14] Konstantin Kipp, *A Fragile Constitution? In Conversation with Dieter Grimm*, The Review of Democracy, 27.03.2025, https://revdem.ceu.edu/2025/03/27/fragile-constitution, last accessed 14.09.2026.