

Democratization

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RESEARCH ARTICLE



Individual militant democracy in EU institutions

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ABSTRACT

The literature on whether militant democracy can be used to justify EU sanctions against Member States due to their democratic backsliding has so far focused on EU institutions and Member States as (potential) agents of militant democratic sanctions. Yet, militant democratic measures, in some circumstances, may also be imposed by individual agents on individuals who pose a threat to democracy. At the same time, new work in political ethics explores the duties and opportunities of individual political actors, such as Members of the European Parliament, to respond to backsliding in their collegial relations. In this article, we explore whether a militant democratic framework can justify such individual responses to democratic backsliding. We argue that, in principle, individual political actors such as MEPs, members of the European Council, Member State delegates on the Council, and COREPER officials can justifiably apply militant measures against colleagues who hold mandates or offices in a shared decision-making or supportive body of the EU and are elected in or delegated by undemocratic Member States. Such measures, while they would need to pass a high bar of normative justification, require no institutional reform to be implemented.

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1. Introduction

Over the past two decades, the European Union (EU) has faced an increasingly acute challenge in the form of democratic backsliding among some of its Member States.¹ Countries such as Hungary and Poland have engaged in systematic efforts to weaken judicial independence, curb media pluralism, and erode fundamental democratic rights,² raising fundamental questions about the EU's ability to uphold its foundational values.³ These developments have intensified debates over whether and how the EU should act as a militant democracy – defending European democracy against internal threats, even where such a response may itself pose challenges to democratic values.⁴ The EU has, at various points, attempted to address backsliding through

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mechanisms such as Article 7 of the Treaty on European Union (TEU), infringement procedures using Articles 258–260 of the Treaty on the Functioning of the European Union (TFEU) and making (part of) the EU budget conditional on rule of law performance, for instance through the use of Regulation 2020/2092. However, except budget conditionality, these measures have proven largely ineffective due to high procedural thresholds, political resistance, and the limitations of supranational enforcement.⁵

While much of this discussion on EU responses to democratic backsliding in Member States has centred on the EU as a collective agent capable of imposing sanctions on Member States – and especially on the European Commission and the Court of Justice of the EU⁶ – a significant yet underexplored dimension of this debate concerns the role of individual political actors. This paper develops a theory of transnational EU militant democracy *at the individual level* to advance the argument that Members of the European Parliament (MEPs), members of the European Council, and Member State representatives in the Council of the EU and Committee of Permanent Representatives (*Comité des représentants permanents*, COREPER) may, in principle, be justified in applying robust responses against their colleagues from backsliding states, up to and including individual militant democratic responses.⁷ By shifting the focus from institutional mechanisms to individual agency, the paper seeks to broaden our understanding of how militant democracy may function in the EU and to explore alternative responses to democratic backsliding that are both underexplored and do not require treaty change.

Despite the existence of militant democratic sanctions to protect the democratic character of the EU, some Member States continued to regress on democracy. This led to calls for alternative mechanisms that could respond to backsliding more effectively. Some scholars argued for stronger legal frameworks to condition access to EU funds on democratic compliance,⁸ while others for a mechanism to remove autocratizing states.⁹ Stronger proposals, however, can require both treaty reform and political will, both of which have been in short supply. Given these institutional constraints, a crucial yet overlooked question is whether individual political actors within EU institutions can and should take on a more active role in countering backsliding.

While militant democracy is often conceived as an institutional doctrine, democratic actors, including politicians, civil society leaders, and bureaucrats, may also be legitimate in robustly resisting anti-democratic forces even in the absence of clear institutional mandates. This line of argument resonates both with recent work on the role of specific actors in defending democracy,¹⁰ including an ethics of public administration in the face of democratic backsliding,¹¹ and with recent normative discussions in political ethics, particularly Mráz's¹² work on the moral obligations of MEPs in engaging with colleagues from backsliding states. Building on these insights, this paper argues that MEPs, members of the European Council, and Member State representatives in the Council and COREPER (collectively: "EU officials") are not merely passive participants in EU decision-making but active agents capable of giving substance to the democratic legitimacy of the Union. Our central claim is that EU officials are justified in taking robust action against their colleagues from backsliding states, even, under certain conditions, where such responses challenge ordinary democratic norms of collegiality and cooperation. Such actions may include, i.a., leveraging parliamentary procedures to exclude representatives from backsliding states from

committee leadership positions, blocking them from rapporteur roles, or using party group structures to limit their influence within Europarties.

Our core normative argument here is that, while the legitimacy threshold for such individual militant democratic interventions is high, it is lower than for the better-known types of *institutional* militant democratic action (e.g. party bans or other restrictions on political actors' freedom of association, expression, assembly). Specifically, we argue that, differently from institutional militant democratic measures, individual militant democratic responses in the EU are in principle justifiable if the following criteria are met. First, the targeted EU officials are MEPs or other representatives or officials who have been elected undemocratically or represent a government elected undemocratically – i.e. they have an *undemocratic mandate*. Second, the targeted EU officials are morally culpable in the wrong of democratic backsliding (either by being co-principals or complicit in that wrong) – i.e. they are *agents of democratic backsliding*. Third, the individual measures against them are *necessary*, *productive* and *proportionate* and, fourth, the measures are applied with some *procedural self-restraint*. These criteria are demanding but still less so than justificatory criteria of institutional militant democratic measures, as we shall show.

This argument challenges conventional understandings of militant democracy by suggesting that militant democratic measures against democratic erosion do not have to come solely from formal institutional sanctions but can also emerge from the agency of individual political actors operating within the existing legal and procedural framework of the EU. Indeed, this paper advances the novel claim that militant democratic responses at the individual level have different and, in some cases, lower legitimacy thresholds than institutional-level militant democratic responses. Furthermore, as autocratic influences at the institutional level increase, institutional militant democratic sanctions might be increasingly unrealistic. Depending on the context, individual responses can therefore be complementary or even preferable to institutional militant democratic instruments, or might serve a remedial function where the latter responses fail. Through this lens, individual agency emerges not as an afterthought in the fight against backsliding, but as an integral component of democratic self-defence in an era of growing autocratization.

The implications of this argument are significant for both academic debates on militant democracy and the practical functioning of the EU. First, by shifting the focus from institutional to individual agency, this paper broadens the theoretical scope of militant democracy. This contributes to ongoing discussions in democratic theory about the role of individual responsibility in resisting democratic erosion.¹³ Second, from a policy perspective, this approach theorizes practical mechanisms for responding to democratic backsliding in the EU without requiring formal treaty change. Finally, this discussion raises broader ethical questions about the boundaries of democratic tolerance. If democracy is to defend itself effectively, to what extent should it tolerate the participation of representatives from regimes that do not meet democratic standards? This paper argues that democratic actors within the EU have a reason to recognize and respond to this challenge, even if it means breaking with traditional norms of democratic collegiality and cooperation.

2. Militant democratic theory and the EU

Let us first pin down our understanding of militant democracy. The concept of militant democracy, originally formulated by Karl Loewenstein in the 1930s, is based on the idea that democratic systems should be able to defend themselves against forces that seek to undermine them from within. Loewenstein's argument, made in the context of the rise of fascism in Europe, was that democracies should not tolerate actors who use democratic freedoms to erode democracy itself.¹⁴ Our conception of militant democracy centres on the so-called "paradox of militant democracy": namely, militant democratic measures are those that seek to defend democracy while *prima facie* undermining democratic values such as political equality.¹⁵ In this sense, we depart from a relatively "narrow" conception of militant democracy, when compared to some political and academic discourse that uses the notion to simply refer to all measures of democratic self-defense against extremism.¹⁶

Traditionally, militant democratic theory has been used to theorize the existence – and justification – of sanctions that a democratic state can apply to combat anti-democratic actors in the domestic political system.¹⁷ Typical orthodox militant democratic sanctions include disenfranchizing extremists, disbarring them from seeking political office, or banning anti-democratic parties. Militant democratic sanctions differ from other robust democratic self-defence in that they target the equal civil and political rights of antidemocratic actors, thereby undermining ordinary democratic demands that each political actor has equal civil and political rights.¹⁸ For this reason, the justificatory threshold for militant democratic action is higher than non-militant responses. Specifically, militant democratic responses must minimally meet two justificatory criteria, they must respond to an *existential threat* to the democratic character of the polity and the militant response must be *necessary* to contain that threat.¹⁹

In the European context, this idea of militant democracy has been applied "transnationally" to measures taken by the EU against backsliding Member States that undermine states' political participation.²⁰ In a 2018 article, Ulrich Wagrandl²¹ develops some tools for applying militant democratic theory to the transnational level. He distinguishes between *transnational democracy gone militant* and *militant democracy gone transnational*. *Transnational democracy gone militant* refers to cases where a transnational entity, such as the EU, takes action to enforce democratic standards within its Member States. Examples of this could include, for example, the EU's use of Article 7 of the TEU to sanction EU Member State governments that undermine liberal democracy by disenfranchizing them in the Council of the European Union.²² By contrast, *militant democracy gone transnational* extends traditional militant democracy beyond national borders, to militant democratic measures used to counter domestic threats to foreign democracies. This approach was evident in actions taken by, for instance, the Netherlands to restrict the political activities of Turkish government officials on Dutch territory, even though these actions were not aimed at defending Dutch democracy.²³

Neither of these categories fully captures militant democratic action within the EU aimed at protecting its *own* democratic character.²⁴ While Wagrandl's framework helps conceptualize transnational militant democracy, internal EU mechanisms that seek to protect democracy in the EU itself, operate in a domain that goes beyond his categories, given that also the democratic character of the EU itself (and not only its Member States) is in play. To theorize such responses, a more precise

distinction is needed between *institutional* and *individual* (transnational) militant democracy. The former involves EU institutions using legal and political tools – such as Article 7 TEU against autocratizing governments and Regulation 1141 on European political parties – to try to preserve democracy at the EU level. The latter includes actions taken by individual EU officials targeting specific EU officials who threaten democratic governance within these institutions, even at the cost of compromising ordinarily applicable democratic values and principles such as democratic collegiality and cooperation. Such actions might include exclusion from key parliamentary roles or diplomatic isolation within EU decision-making bodies.

Some individual responses, under some precise circumstances, meet the threshold condition to be categorized as “individual militant democratic measures”, so defined.²⁵ In particular, where individual responses to anti-democratic politics *prima facie* seem to contradict democratic values, specifically by restricting political actors’ opportunities to effectively exercise their rights, then they too raise a “paradox of militant democracy”. For such responses, one can ask whether and when it is justified for individual democrats to act in ways that would ordinarily be impermissible in democratic politics. In other words, our conception of militant democracy is defined by two conjunctive characteristics. First, the unique justificatory challenge captured by the “paradox of militant democracy”. Both institutional and non-institutional means of democratic defence generate this paradox if they appear to be in tension with the values that they aim to defend. Second, unlike narrow conceptions that focus only on legal measures of rights-restriction and exclusion,²⁶ our conception includes individual measures that generate the paradox specifically by restricting political actors’ *opportunities to effectively exercise their democratic rights*.

3. Individual militant democracy in the EU: who can be legitimate targets?

In this article, we focus on individual militant democratic measures that political actors or groups in the EU can take within existing institutional frameworks against those elected or selected in or appointed by undemocratic Member States. Our assumption is that these actors lack democratic authorization if they have been elected or selected in or appointed by Member States that manifest such kinds or levels of democratic backsliding that the procedures in which their representatives or other officials are elected or appointed are no longer democratic.²⁷ Undemocratically elected or selected representatives or undemocratically appointed officials are not democratically authorized to act on behalf of those they claim to represent or their principals. Absent such authorization, they also lack democratic legitimacy – i.e. the moral standing which entails a right to the unimpeded exercise of the rights and privileges of one’s public office.²⁸ Moreover, as representatives or other officials of a government responsible for democratic breakdown, such actors are co-responsible for democratic backsliding in that they are themselves ordinarily co-principals of democratic breakdown, or, minimally, complicit in democratic backsliding, irrespective of the nature and extent of their individual contribution to democratic backsliding.²⁹ This is what makes such representatives or officials apt targets of individual militant democratic measures in the EU.³⁰

First, paradigmatically, in the context of the European Parliament (EP), Members of the European Parliament (MEPs) elected in undemocratic elections held in a Member

State – especially those affiliated with the regime party – can typically be legitimate targets. MEPs affiliated with the governing party in Member States holding undemocratic elections are especially legitimate targets because of their partisan affiliation to the government responsible for democratic breakdown in that state; whether or not this is borne out directly in such MEPs' political activities, they are members of the responsible party and co-partisans of democratic backsliding.

Second, representatives of Member States whose government is formed in the wake of undemocratic legislative or executive elections (in parliamentary vs. semi-presidential systems, respectively) sitting on the Council of the EU are also legitimate targets, as they are not properly authorized representatives. A difference between MEPs affiliated with the governing party of an undemocratic Member State and Council representatives of such a state is that the latter often do not have a mandate through elections. However, the chain of democratic authorization from voters through an elected Parliament to the governing executive is still broken in an undemocratic Member State, just like the broken democratic mandate of such MEPs. While Member State representatives on the Council are not elected specifically for this role (or at all), their office ultimately derives from undemocratic elections. They have become EU officials *ex officio* by virtue of their domestic elected offices, or they were appointed to an EU office by officials elected or appointed domestically. Like the MEPs of parties responsible for democratic breakdown, such representatives of the undemocratic Member State are apt targets by affiliation with its government.

Third, diplomatic officials claiming to represent undemocratic Member States in the lower level bureaucracy of EU decision-making processes – principally, permanent representatives and their deputies in COREPER, the body responsible for preparing Council decisions – can likewise be legitimate targets. Just as their political principals representing the same Member State on the European Council and the Council, they lack democratic authorization from domestic democratic processes, given the serious deficiencies of the latter. Although they are bureaucrats, rather than politically elected legislators or executives (elected or appointed), they typically act in the service of agents of democratic backsliding. If they are not always directly co-partisans in the wrong of democratic backsliding, they are generally complicit in that wrong.

However, on our account, Commissioners of the European Commission from Member States affected by democratic backsliding are not generally legitimate targets of the measures we investigate here, if they act with the independence legally required of them. The reason for this is their source of authorization. Commissioners are not selected in processes that are marred specifically by the democratic backsliding of the Member State that they originate from. Article 17 (TEU) requires them to be “completely independent” and to “neither seek nor take instructions from any Government”. Article 245 (TFEU) requires Member States are required to “respect their independence” and “shall not seek to influence them in the performance of their tasks”. Thus, ordinarily, our normative framework is not applicable to them.³¹ There may be sound moral reasons to call them out, isolate them, or ignore them, and so forth, yet those reasons are not grounded in our account.

4. Individual militant democracy: what kind of measures?

The measures of individual militant democracy are varied but they all include using the existing institutional, legal and political framework to restrict undemocratically

elected, selected or appointed Member State representatives or officials in EU institutions, particularly those who are co-principals or complicit in the wrong of democratic backsliding. Recall that militant democratic action, as reviewed in Section 2, is generally defined by reference to the paradox of militant democracy: i.e. it aims to defend democracy by means that challenge democratic values.³² Individual militant democratic measures are militant in a weak sense: they range from actions that make it merely politically more difficult or less feasible for (illegitimate) officials to pursue their political agendas to actions that seek to interfere with, impede, or prevent such officials exercising the rights and privileges of their office.³³ These measures are nevertheless militant where they *indeed restrict* political actors' opportunities to effectively exercise their democratic rights.³⁴ Thus, they generate a version of the paradox of militant democracy.

Using this definition, examples of individual militant democratic responses in EU politics can include curtailing speaking times less generously for undemocratically elected MEPs, interrupting them, preventing them from taking committee roles, or denying them membership of Europarties and associated privileges. Consider the recent concerted effort of the several Europarties to ensure that the nominees of Patriots for Europe (Pfe), a new Europarty pooling not only far-right political parties but crucially also MEPs affiliated with Hungary's FIDESZ, would not be elected for senior positions of EP committees or as functionaries of the EP such as quaestors in the new EP in 2024.³⁵ Such individual militant democratic actions are weaker than orthodox militant democratic sanctions, however, in that they are not formal rights-restrictions by a sanctioning authority.³⁶

Individual militant democratic measures are weaker, in the above sense, than legal, institutional measures, yet stronger than some other political responses. First, they go beyond the "normal democratic politics" of defending partisan or other alliances and the political competition for positions of power (the *agonism*) normally necessary for democratic actors to promote their agenda. Parties and factions often try to exclude others from scarce positions of power (for instance, committees, parliamentary functionary positions) as they compete for them, but such acts are, usually, examples of competition within the limits of legitimate partisanship.³⁷ Such agonism complies with democratic norms that require some willingness to *compromise* and *respect for pluralism* and *reciprocity* in democratic institutions.³⁸ It does not aim to structurally deny, limit, or undermine pluralism. By contrast, weakly militant individual measures appear to violate such democratic norms, aiming to limit pluralism, even if not ideologically.

Second, such measures also go beyond mere occasional (intentional) violations of democratic norms. Political actors may, for example, occasionally violate reciprocity ("playing hardball"). By contrast, individual militant democratic measures aim to systematically restrict the opportunities of certain political actors to participate in deliberation and decision-making. They intend to limit pluralism and, if successful, are expected to result in limited pluralism within the institutional context. These characteristics distinguish individual militant measures from non-militant political action. It is these characteristics that generate a *justificatory challenge* for such measures that is absent in normal democratic competition.

Finally, individual militant democratic measures are distinct from other, non-militant political acts that similarly aim at democratic self-defence but are non-militant because they do not raise the militant democratic paradox between the aim (defending

democracy) and the means – i.e. restricting the targets’ opportunities to effectively exercise their democratic rights. Non-militant democratic self-defence includes measures such as calling colleagues out as unauthorized representatives, or refusing to engage with them in log-rolling – providing legislative support for proposals undemocratically elected, selected or appointed public officials propose or promote – where such measures do not effectively restrict the rights of opponents. Such non-militant responses may seem to challenge democratic norms of collegiality and cooperation. However, these are not owed to political opponents unconditionally but are conditional on reciprocal and iterative constructive (if agonistic) political relations. Such responses, unlike individual militant responses, do not restrict political actors’ opportunities to effectively exercise their rights. Consequently, the high(er) thresholds for justifying militant responses that we argue for in the following section are not triggered.

Note that undemocratically elected, selected or appointed EU officials are often the first ones to violate democratic norms of compromise and reciprocity. Consider, for example, a long-standing policy of the 2010–2026 governments in Hungary to use or at least threaten to use their veto power in the Council on decisions concerning EU foreign affairs, to blackmail other Member States into a lax approach to democratic backsliding in Hungary and other affected Member States.³⁹ Indeed, such threats feed into the framework we offer for identifying legitimate targets of individual militant democratic responses, which we turn to next.

5. Justifying individual militant democracy in the EU: identifying legitimate targets

Our justificatory framework consists, first, of an account of the legitimate targets of individual militant democratic measures. This account consists of a negative and a positive part that generate two respective justificatory criteria: namely, that the target of individual militant democracy have an *undemocratic mandate* and that they are *agents of democratic backsliding*. The negative part identifies those EU officials to whom ordinary duties of democratic collegiality and cooperation are not owed by default because of their undemocratic mandate. The positive part identifies the legitimate targets of individual militant democratic action as a subset of those with an undemocratic mandate. The two parts of our account jointly show that some EU officials are legitimate targets of militant measures. However, the use of such measures against them is morally permissible or called for (potentially even required) only when the further criteria of productivity, proportionality, and procedural self-restraint are also met (see Section 6 below).

The negative part of our account of legitimate targets departs from the understanding that not all EU officials are created equal: some are properly authorized (elected or appointed) democratic representatives, while others are not. As Mráz⁴⁰ shows for the case of the European Parliament, some EU Member States have gone down far enough on the slope of democratic backsliding that the elections they hold – including EP elections – do not currently meet minimal democratic standards. Elections held in these states are so marred by the deteriorating democratic context and the unequal political playing field that they do not qualify as democratic. Consequently, MEPs elected in such Member States do not enjoy the same moral status as those who have been elected in democratic elections. They do not enjoy democratic authority or legitimacy

as properly elected representatives. Lacking democratic authority, what they say should not be taken to provide reasons to form beliefs about the interests of those they claim to represent.⁴¹ Lacking democratic legitimacy, they have no moral claim-rights against others interfering with the exercise of the rights and privileges that accrue to their office as MEPs.⁴² We can make an analogous argument concerning the lack of democratic authority and legitimacy for all EU officials appointed by nondemocratic Member State governments (i.a. members of the Council and European Council, and officials in COREPER). As both the authority and legitimacy of EU officials are undermined by undemocratic elections (i.e. an individual official cannot have just one but not the other), and because officials' authority and legitimacy jointly ground the democratic norms of how officials should treat each other, we shall discuss authority and legitimacy together in the rest of the argument.⁴³

The lack of democratic authority and legitimacy does not imply that other EU officials never have good reasons, including ultimately moral reasons, to let their undemocratically elected or appointed colleagues exercise the rights and privileges of their office, to treat such colleagues with collegiality, or even to cooperate with them. The crucial insight here is that such reasons are not grounded in the *status* of undemocratically elected or appointed EU officials as democratic representatives. Instead, any duty to refrain from intervention, to defer to such EU officials, or to cooperate with them, is grounded in other moral duties and reasons.⁴⁴ For example, democratically elected MEPs as representatives have a duty to effectively pursue certain policies in an attempt to represent their own constituency – and such pursuits may often instrumentally require cooperation with others in an institution of collective decision-making. The same is true for Member State representatives in the Council and European Council, and their appointed officials in COREPER.

While showing that certain EU officials lack democratic authority and legitimacy does not, in itself, turn these officials into legitimate targets of individual militant democratic measures, it is a major step in that direction. This step removes very significant moral objections – normally based on officials' democratic authority and legitimacy – to taking an exclusionary or confrontational stance vis-à-vis such officials. This still does not in itself entail the moral permissibility of militant measures towards such officials. Rather, it means that if these measures are *pro tanto* permissible for other reasons but would be normatively disabled by the moral status – i.e. the democratic authority and legitimacy – of EU officials, then the latter disabler does not apply in these cases.⁴⁵ We have yet to show, though, that the measures are *pro tanto* permissible.

This is where the “positive” part of our account of legitimate targets enters the picture. This part focuses on some undemocratically elected EU officials being *agents of democratic backsliding*. This has to do with the aims that some of these officials pursue and the potential impact of their use of their European public office – regardless of where and how they were elected or appointed. Being an agent of democratic backsliding in EU political institutions may take several different forms. Below, we briefly outline three types of cases in which European officials can be aptly characterized as agents of democratic backsliding. Notably, those EU officials who are affiliated with the political party or government that played or plays an active role in democratic backsliding at home also remarkably often contribute to undermining democratic processes and institutions of the EU.

First, EU officials may *intentionally aim to undermine the effectiveness of European democracy*. For instance, they may delay, thwart, or subvert the development of instruments to monitor or sanction the violation of the EU's fundamental values, or they may attempt to block or undermine seeking European solutions to common matters within the EU's competence. Where such manipulations undermine the democratic character of either the process or outcome of EU law and policy-making, officials are thus contributing to the wrong of democratic backsliding at the European level. This may be an end (a political agenda item) in itself. The purposeful sabotage of democratic institutions in the EU may also be done, though, for its instrumental benefits for agents of domestic democratic backsliding. The less effective and hence less credible or trustworthy EU institutions appear in the eyes of the public, the less political significance is attached to the critique of Member State backsliding that they express. Moreover, the democratic institutions of the EU, due to their role in rule-of-law enforcement mechanisms, are seen by such agents as constraints on their own party's domestic attack on liberal-democratic values. Whether undermining European democracy is an aim in itself or only a means, its ultimate motivation is to extend the possibilities of authoritarian politics in Europe or domestically.

Second, EU officials may use their European office for other purposes while *foreseeably undermining the effectiveness of European democracy*. For instance, they may blackmail political actors in the EU into backing down on rule-of-law enforcement or supporting other aims that the given domestic political party holds in high esteem. Hungary's relentless and almost exclusive use of its veto power for several years in shaping the EU's foreign relations and budgetary decisions is a case in point.⁴⁶ Instrumentalising a veto-right in an unrelated domain to extort concessions on the monitoring and sanctioning of fundamental values violations undermines Member State duties of solidarity⁴⁷ and sincere cooperation.⁴⁸ In such cases, representatives are acting as agents of democratic backsliding in that they hold European democratic procedures hostage to their national anti-democratic political agenda. While their intention is not to undermine European democracy, they abuse democratic procedures, thereby foreseeably undermining their effectiveness, in the pursuit of further democratic decline domestically.

Third, some individuals are agents of democratic backsliding without the explicit intention to be so. Even without such aims, the very fact that undemocratically elected and appointed EU officials sit in the EP, Council, European Council or COREPER representing undemocratic governments or anti-democratic parties and contributing to deliberation and decision-making on a par with democratically elected and appointed colleagues undermines the democratic character of these institutions. There are two reasons for this. One is that at least one source of the normative legitimacy of EU institutions is the adequacy of the procedures that ultimately lead to the selection of public officials assuming roles in these institutions.⁴⁹ When some of the MEPs, for example, are undemocratically elected, this deteriorates the overall legitimacy of the EP.⁵⁰ The other reason is that the legitimacy of an institution is also conditional on its ability to credibly pursue its political aims. The more officials populating an EU institution have an undemocratic pedigree (both in terms of their undemocratic mandate and their representing antidemocratic parties or governments), the less credibly it can uphold the fundamental values of the EU listed in Article 2 TEU (including democracy and the rule of law). In such cases, the putative target of individual militant democratic action may not be a direct co-principal in the wrong of democratic

backsliding but is nevertheless complicit by their continued membership in a party pursuing democratic backsliding or their continued loyalty to an authoritarian government. This, combined with such EU officials' undemocratic mandate, is sufficient to identify them as legitimate targets of militant democratic responses.⁵¹

The first two forms of contributing to democratic backsliding are not unique to undemocratically elected or appointed EU officials; they are very much part of the daily functioning of non-ideal democratic institutions. Yet, remember that in our case, EU officials without democratic authority or legitimacy are acting as agents of democratic backsliding. While individual militant democratic measures in response to the same conduct might be impermissible when used against agents of democratic backsliding that *do* enjoy democratic authority and legitimacy, such categorical prohibition does not apply to targeting agents of democratic backsliding who have been undemocratically elected, selected or appointed and hence lack democratic authority and legitimacy. The third form of contributing to democratic backsliding through an antidemocratic pedigree is unique to undemocratically elected or appointed EU officials of a party or government that actively undermines domestic democracy.

How can agents of democratic backsliding be identified? Individual militant democracy does not work through judicial, legalized procedures that are based on objective, consensual legal criteria and that operate without collective action. Instead, individual militant democracy takes place in the political arena: it cannot but rely on political actors' interpretations and judgments, and in that sense, carries all the risks of unilateral measures. The principled difference between more legalized, institutional and more political, individual (unilateral) measures of militant democracy should not be overstated, though. Courts restricting the rights of political parties, for example, also need to rely on politically contested legal interpretations of who is a legitimate target.⁵² Judicial decisions may not be less politically contested than political measures. Both kinds of measures are perceived as more or less arbitrary or, contrarily, as justified, based on one's conception of democracy.

Significant procedural differences nonetheless remain between legal and political measures. Legal measures apply specific, objective criteria with procedural guarantees of impartiality. It is these procedural characteristics that, jointly with substantive criteria, make these measures morally justified (rather than merely legal), controversial as they may be. By contrast, political decisions are not entirely politically impartial or based on specific objective criteria. Thus, political, individual measures – especially highly controversial ones – should address the resulting procedural legitimacy gap. These worries are familiar from the literature on direct action or uncivil disobedience, which likewise problematizes unilateral response to injustice or illegitimacy in circumstances where adequate institutional response cannot be reasonably expected or takes unreasonably long.⁵³

However, some *procedural constraints* apply to unilateral responses too. Individual militant democratic measures should be exercised with *procedural self-restraint*. First, they are justified only when non-militant measures appear ineffective but an adequate institutional response is not (yet) available either. This ensures that neither targets nor their voters are disrespected out of purely political spite or arbitrariness.⁵⁴ Second, individual militant measures should, wherever possible, be applied with public, transparent justifications based on rather specific reasons, and they should be applied with consistency to like cases.⁵⁵ Finally, as much as possible, political actors should justify individual militant measures with reference to objective – even if not legally codified –

criteria. Some objective basis for identifying agents of democratic backsliding is necessary for not only principled but also practical reasons. Political, individual measures – unlike legal, institutional ones – exert their impact through several political actors’ interpretations and judgments and their collective efforts to take effective political action on that basis. Thus, they are more effective if diverse and numerous political actors can coordinate their actions, with a broad consensus on who are apt targets. For example, to keep particular MEPs out of committee leadership positions, several other MEPs need to coordinate their voting behaviour. In practice, this coordination problem is hardly insurmountable, though. Targets can be readily identified based on their party’s domestic track record. Such a track record is as good a predictor as possible, even if not direct evidence, that the domestic political party is an agent of democratic backsliding *at the EU level*. If a political party pursues illiberal and antidemocratic agenda at home, there is sufficient reason to assume that it is interested in undermining democratic institutions of the EU either for principled or for strategic considerations. Thus, domestic party track record is a relevant indicator of being an agent of democratic backsliding of the first two types. Track records are subject to different interpretations, and for both principled and practical considerations, EU officials should rely on objective, specific, and transparent criteria in interpreting them and in identifying agents of democratic backsliding, as far as possible. They should rely on public reports of the EP’s relevant committees or create new ad hoc committees.

Further, EU officials should triangulate their determinations with other sources and indicators that minimize (even if they cannot eliminate) political bias, such as the reports of the European Commission for Democracy Through Law (“Venice Commission”) of the Council of Europe, or judgments of the Court of Justice of the EU (CJEU) or the European Court of Human Rights (ECtHR) scrutinizing the domestic legislation and executive action in the hands of the suspected agent of democratic backsliding. Though not an example of militant democratic measures (yet), the resolution in which the EP declared Hungary to be “a hybrid regime of electoral autocracy” is illustrative in this regard.⁵⁶ The resolution refers, *inter alia*, to a mission report by the ad hoc delegation of the EP’s Committee on Civil Liberties, Justice and Home Affairs to Hungary, several reports of the Venice Commission, a final report of the OSCE Office for Democracy and Human Rights (ODIHR) international election observation mission, judgments of the CJEU and ECtHR judgments against Hungary, and UN Special Rapporteurs. These sources supplied rather specific evaluation criteria and facts that fed into these criteria to provide a rationale for the resolution – and sufficient grounds to identify both undemocratically elected, selected or appointed representatives or officials and agents of democratic backsliding among them. We do not claim that reliance on such sources eliminates all political bias. However, where adequate institutional measures to address democratic backsliding are absent, individual measures that are accompanied by good faith efforts to mitigate political bias are adequate.

Agents of democratic backsliding of the third type may seem more challenging to identify in an objective manner. How ought we to distinguish an agent of democratic backsliding based on their complicity-through-association with a political party or government undermining democracy from those officials who hold their mandate *in spite of* democratic decay? In both cases, their democratic pedigree is undermined, given undemocratic (s)election procedures in their Member States. In this sense,

their mere presence in EU institutions can undermine the democratic legitimacy of these institutions. For appointed EU officials representing an EU government, the determination is straightforward: if the appointing government is undemocratic, then the official, as an agent of that government, is an agent of democratic backsliding. But for elected members of the EP, it is more complex. Where there is no wrongful, unlawful, illiberal or antidemocratic action in their or their political party's past or present, they can hardly be considered agents of democratic backsliding. Consider, for example, MEPs affiliated with the parties that act at home as the *opposition* of the domestic agents of democratic backsliding. As with the agents of democratic backsliding of the first and second type, one can point to a flaw in their democratic mandate by highlighting the undemocratic procedures of their election – for example, by determining the ways in which their Member States' EP elections are not democratic. Still, this does *not* imply that individual militant democracy measures are justified against them. That would be a perverse implication that our account avoids.⁵⁷ Indeed, while the very existence of undemocratic elections to the EP directly tarnishes the democratic legitimacy of that institution, in one sense, the personal mandates of such opposition MEPs are *stronger*, as they have been elected despite an unequal playing field (in a fair election they may have received more votes/seats).⁵⁸ The next section clarifies even further reasons why it is unjustified to apply individual militant democracy measures to them.

6. Justifying individual versus institutional militant democratic measures

We have outlined our account of the legitimate targets of the individual militant democratic measures. But when is it justified – permissible or even required – to apply such measures against legitimate targets, i.e. EU officials elected or selected in undemocratic Member States or appointed by authoritarian Member State governments who are agents of democratic backsliding? Militant democracy measures are not applicable to all legitimate targets simply by virtue of them being so.

The standard, orthodox justificatory account of militant democracy measures includes two moral requirements: one concerns the *aim* pursued, while the other the *means* chosen to pursue the aim.⁵⁹ First, militant democratic measures should aim at averting imminent *existential threats* to democracy. Second, their use should be *necessary* to reasonably pursue that aim.⁶⁰ These two conditions set a very high bar for justifying militant democratic measures in response to anti-democratic threats: if they fail either criterion, they are impermissible. But do the same standards apply to public officials of the EU representing an undemocratic Member State? Not quite, as we shall argue.

Concerning both permissible aims and means, the bar is set so high because militant democratic frameworks assume that militant measures are *prima facie* anti-democratic in an important way; they infringe the equal civil and political rights of their targets – the agents of democratic backsliding. Recognizing the equal civil and political rights of those democratically elected, selected or appointed representatives and officials, in turn, is grounded in democratic values. Hence the “paradox of militant democracy”: compromising democratic rights for the sake of democracy. This paradox arises with regard to public officeholders when they have proper democratic authorization – and hence, democratic authority and legitimacy as public officials.⁶¹ Their *pro*

tanto rights as public officials may only be restricted in line with the general framework of restricting basic moral rights.⁶² First, where democratically authorized officials pose minor threats to democratic politics (for instance through radicalized discourse or opposition to some of the fundamentals of democratic politics without the reasonable expectation that these can in fact result in the degradation of the democratic character of the polity), sully democratic rights is unjustified. To warrant responses that infringe the democratic rights of those who pose the relevant threat in particular or democratic values in general, such a threat should be existential. Second, when means that do not infringe on the democratic rights of the targets or democratic values would be sufficient to neutralize the (existential) threat, then militant democratic responses that infringe democratic rights or democratic values are unnecessary means and therefore similarly unjustifiable.⁶³ These, in sum, ground the existential threat and necessity criteria for standard (what we have called “institutional”) militant democratic sanctions.

Yet the same problem of rights-restrictions does *not* arise when considering the justification of *individual* militant democratic responses against agents of democratic backsliding who *do not* have proper democratic authorization. First, such EU officials do not have democratic authority and legitimacy. This implies they do not have the moral right to exercise the rights and privileges of their office and against others’ interference with their exercise of these rights and privileges.⁶⁴ It also means they are not properly (i.e. democratically) authorized representatives of their Member States or the *demos* of those states. Thus, it is misguided to assume that those who voted for or appointed them are harmed in a morally relevant manner by applying individual militant democratic measures to the officials at hand.⁶⁵

Second, individual militant democratic responses, unlike traditional militant democratic responses are not, strictly speaking, sanctions. They are not imposed by a sanctioning legal authority – such as a court or an independent election commission – and do not *de jure* restrict the formal legal and political rights of targets. Rather, they are burdens imposed by other political actors or groups and can have the effect of *de facto* effectively restricting the rights and privileges of their office. Thus, the reasons detailed above for endorsing the existential threat and necessity criteria no longer apply in the same way. Overall, then, justified individual militant democratic responses need not aim to contain an existential threat to democratic politics, while necessity still has a place in the account but it has a *different* rationale here than in institutional militant democracy. It is a condition of justified individual militant democratic measures not because rights should not be unnecessarily restricted but because insisting on necessity is a guarantee of mitigating political bias even when no formal rights-restrictions are at stake (see Section 5 above). Since individual militant measures are usually considered because of the lack of effective alternatives, necessity is quite frequently met. While the justificatory threshold for individual militant democratic responses is lower than institutional militant democratic sanctions, our account specifies stringent requirements.

What are the justificatory requirements then? Analogously to standard, orthodox militant democracy theory, we propose revised requirements concerning both the aims and means. First, the aim of militant democracy measures against agents of democratic backsliding in the EU without democratic authority or legitimacy should be *counteracting democratic backsliding* in the EU. This constraint still realizes the ideal of “democracy defending itself”. Beyond the advantage of staying within the conceptual boundaries of militant democracy, there are substantive normative reasons to

endorse this constraint. This restriction on permissible aims rules out, *inter alia*, using such measures for the sake of mere partisan political gains – which would severely compromise democratic ideals.⁶⁶

Second, individual militant democratic measures against agents of democratic backsliding in the EU without proper democratic authority or legitimacy should be used only when such means are *productive* and *proportionate* to the aim pursued. Counterproductive individual militant democratic responses would be normatively incoherent with the aims of militant democracy measures understood as democratic self-defence. Therefore, counterproductive measures are not even *pro tanto* permissible. This is a forward-looking constraint in our justificatory framework. Proportionality, on the other hand, tracks the complicity of the potential targets, in terms of the wrongness of the act(s) they are complicit with, the significance of their contribution to this wrong, and the costs of avoiding complicity.⁶⁷ Thus, it serves as a backward-looking constraint.

Counterproductive use includes responses that would foreseeably contribute to the targeted EU officials' further backlash against democracy in EU institutions or their increased domestic political support. It would be similarly counterproductive to target MEPs who are affiliated with the party that is the domestic opposition of the primary agents of democratic backsliding. Even if their democratic authority and legitimacy are undermined by undemocratic elections at home, their numbers are low, hence their mere presence affects the legitimacy of the EP rather marginally. More importantly, their role is complex: although elected in undemocratic elections, they are typically active counteragents of democratic backsliding, and their presence in the EP provides them with a political platform as well as legal protection (parliamentary immunity) to more effectively and safely counter democratic backsliding. Furthermore, while their democratic pedigree is tainted by their undemocratic election, their mandates are strong in another sense: they have been elected in a playing field tilted against them, *i.e.* to disadvantage their election. Therefore, targeting them with militant democracy measures of any kind would be counterproductive and unfit to their role in countering democratic backsliding in the EU and in the Member States they were elected in.

The case of the domestic opposition also illustrates the role of proportionality in our framework. Both MEPs who are associated with a party that actively contributed to democratic backsliding in the EU and MEPs who are associated with the domestic opposition of that party and counteracted democratic backsliding in the EU have an undemocratic pedigree. Both can be agents of democratic backsliding – the former necessarily and of the first type, the latter possibly and of the third type – but the latter are, at the same time, agents counteracting it. Thus, the latter are complicit in much more indirect ways with the relevant wrongs, and hence proportionality also counts against targeting them.

The requirements specified above do not give a general license to apply individual militant democratic measures against agents of democratic backsliding who purport to represent constituencies and EU Member States without democratic authority and legitimacy. Even if such measures are *pro tanto* permissible according to these requirements, there may be good independent moral reasons against applying militant measures all-things-considered. Crucially among these, democratically elected, selected or appointed representatives or officials may need to maintain good working relationships with their colleagues to deliver on their duties of

representation.⁶⁸ Thus, individual militant democratic measures that are *pro tanto* permissible or even called for may not be permissible all things considered, let alone required, in all cases. However, such measures can be justified responses to agents of democratic backsliding in the EU with an undemocratic mandate, and, in some circumstances, may even be required to defend democracy in Europe.

Finally, it may be objected that EU officials as public officials bear special responsibility for upholding democratic norms. Thus, they should refrain from using militant measures that violate such norms. In other words, even if the above justificatory framework properly specifies when an EU official is justifiably *targeted* by individual militant democratic measures, this framework does not address the *agents* of such measures. Public official status may prohibit one to engage in such acts. This would be a case of agent-relative prohibitions. Nonetheless, while we acknowledge that public officials may be the addressees of special obligations in upholding democratic norms, such obligations do not support a prohibition on justified militant democratic measures. The criteria above ensure that these, if justified, are reasonably expected to contribute to upholding democratic norms overall.

7. Conclusion

We have provided a justificatory framework for addressing democratic backsliding in the EU with individual militant democracy measures. Such measures are political rather than legal, and they may target specifically those agents of democratic backsliding in the EU who have been elected, selected or appointed for their offices in undemocratic procedures. Against such targets, including MEPs, members of the European Council, Council members and COREPER officials, individual militant democracy measures are justified only if, substantively, they aim to counter democratic backsliding and are necessary, productive, and proportionate to this aim, while also observing some procedural constraints. Although these conditions are rather demanding, the measures we focus on do not involve formal rights restrictions and hence need to pass a lower bar of justification than institutional militant democratic sanctions. Moreover, this bar is lowered further by the fact that the EU officials we focus on have been elected, selected or appointed in undemocratic procedures.

Further research could explore the degree to which these arguments have purchase on European Commissioners and members of the CJEU. While these officials cannot be directly elected or selected by undemocratic procedures, they can be nominated by undemocratic governments. Furthermore, it is certainly possible, and, in the case of Commissioners, arguably already sometimes the case, that these officials violate their duty of independence from Member State governments. In such circumstances, and particularly if institutional responses fail, we could ask what justified individual responses would look like.

In general, within the scope of our study, we propose measures of individual militant democracy to complement rather than replace the repertoire of institutional remedies, such as voting rights restrictions in the Council or budget conditionality mechanisms, which provide a systemic and legalized response to democratic backsliding in the EU.⁶⁹ This also reflects recent empirical findings that specify which kind(s) of actors are necessary to engage for democratic defence in different conditions.⁷⁰ Given the lower justificatory thresholds, there are contexts where individual militant responses are to be preferred over institutional militant responses. Furthermore, for

many individual actors, institutional responses are not available. However, the individual measures explored here do not address the larger systematic issues and root causes of democratic backsliding within Member States, even though they can and do mitigate its effects on the legitimacy of democratic institutions in the EU. Thus, the promise of individual militant democracy in the EU is to serve a more limited aim but do so more effectively, as it focuses on opportunities for action within the present framework of the EU's own institutions and political system.

Notes

1. Bakke and Sitter, "The EU's Enfants Terribles"; Gora and De Wilde, "The Essence of Democratic Backsliding"; Theuns, *Protecting Democracy in Europe*.
2. Bernhard, "Democratic Backsliding Poland Hungary"; Bozóki & Hegedűs, "Externally Constrained Hybrid Regime"; Halmai, "Democracy to Autocracy"; Pech and Scheppele, "Illiberalism Within"; Sadurski, *Poland's Constitutional Breakdown*.
3. Kelemen, *European Union Autocracy Trap*; Scheppele and Morijn, "Money for Nothing?"
4. Feisel, "EU Militant Democracy"; Müller, "Individual Militant Democracy"; Olsen, "European Union Defends Values"; Scherz, "EU Response Democratic Backsliding"; Theuns, "European Union Militant Democracy"; Wagrandl, "Transnational Militant Democracy".
5. Blauberger and Sedelmeier, "Sanctioning Democratic Backsliding"; Coman and Buzogány, "European Union's Response"; Theuns, *Protecting Democracy in Europe*.
6. E.g. Mandujano Manriquez and Pavone, "Follow the Leader"; Olsen, "European Union Defends Values"; Priebus, "Approach to Backsliding"; Scherz, "EU Response Democratic Backsliding"; Theuns, *Protecting Democracy in Europe*.
7. Similar questions arise when domestic democratic actors consider responses to "autocratic enclaves" in processes of democratic restoration. See: Hillion, Pavone and Scherz, "Democratic Frontsliding".
8. E.g. Kelemen, "Europe's Other Democratic Deficit".
9. Theuns, "EU Expulsion Mechanism".
10. Gerschewski and Tomini, van Lit et al., "Countering Autocratization".
11. Hillion, Pavone & Scherz, "Democratic Frontsliding"; Kucinskas, *The Loyalty Trap*; Yesilkagit et al., "The Guardian State".
12. Mráz, "Asymmetrical Political Ethics".
13. Zakaras, "Complicity and Coercion."
14. Loewenstein, "Militant Democracy Fundamental Rights".
15. Kirshner, *Theory of Militant Democracy*; Rijpkema, *Limits of Democratic Tolerance*.
16. Feisel, "Thinking EU Militant Democracy", 390; Theuns, "European Union Militant Democracy", 107–8.
17. Kirshner, *Theory of Militant Democracy*; Rijpkema, *Limits of Democratic Tolerance*.
18. Theuns, "European Union Militant Democracy".
19. Kirshner, *Theory of Militant Democracy*; Rijpkema, *Limits of Democratic Tolerance*; Theuns, "European Union Militant Democracy", 108–10.
20. Feisel, "Thinking EU Militant Democracy"; Müller, "Limits to Constitutional Mutations"; Wagrandl, "Transnational Militant Democracy".
21. Wagrandl, "Transnational Militant Democracy".
22. Theuns, "EU Expulsion Mechanism"; Theuns, "European Union Militant Democracy".
23. Wagrandl, "Transnational Militant Democracy".
24. Feisel, "Thinking EU Militant Democracy"; Theuns, "European Union Militant Democracy".
25. Müller, "Individual Militant Democracy" makes the helpful distinction between militant democratic measures against and those by individuals. The former *target* a specific individual. The latter concern situations where individuals are the *agents* of militant responses. In this paper, we limit our argument to measures that can be taken by political actors (individuals or groups) directly, that is, without relying on a sanctioning authority.
26. E.g. Kirshner, *Theory of Militant Democracy*; Schupmann, *Democracy Despite Itself*.

27. As is always the case when theorizing an analytically hard border between two categories that may be placed on a scale, the (boundary between the) relevant categories – here “democratic” and “non-democratic” – will be both contested and difficult to measure. We put aside these complexities here to focus on other questions but return to the problem of identifying legitimate targets in Section 5.
28. Mráz, “Asymmetrical Political Ethics”.
29. These points are further developed in Section 5. For a detailed analysis of co-principals and complicit actors in wrongdoing see: Lepora and Goodin, *On Complicity and Compromise*, 37–41; also, Theuns, “European Union Militant Democracy”; Theuns, *Protecting Democracy in Europe*.
30. This focus does not preclude the possibility of other types of individual militant democratic action in the EU. For instance, political actors or groups might take militant actions against other actors that, while not representing or appointed by undemocratic Member States, do threaten the democratic character of the EU polity. The normative issues such actions raise, however, differ significantly from those we study in this article, and we do not further address them here.
31. “Ordinarily” because if a Commissioner nominated by an undemocratic Member seeks or takes instruction from the government of their home country in violation of Article 17 TEU, then they too might be agents of democratic backsliding who can be considered “appointees” of the undemocratic government and thus legitimate targets.
32. Theuns, “European Union Militant Democracy”.
33. Cf. Müller, “Individual Militant Democracy”.
34. It might be asked whether a measure such as expulsion might not be preferable to individual militant democratic responses, along the lines argued by Theuns, “European Union Militant Democracy” and Theuns, *Protecting Democracy in Europe*: if targets aren’t allowed to participate on the same terms as others, is it not more democratic to end their inclusion in deliberation and decision-making (Cf. Olsen, “Ejection for Democracy Protection”) However, expulsion is not even a response that is available at the individual level (cf. Mráz, though). Furthermore, as we argue in section 6, the justificatory requirements for individual militant democratic responses are different (less demanding) than those for institutional militant democratic sanctions.
35. See, e.g., Márton Balázs, “No top positions for Fidesz’ PFE in EP committees, while Magyar and two Tisza MEPs elected as vice-chairs”, *Telex*, July 23, 2024, <https://telex.hu/english/2024/07/23/no-top-positions-for-fidesz-pfe-in-ep-committees-while-magyar-and-two-tisza-meps-elected-as-vice-chairs> (accessed June 20, 2025). Some of the PFE candidates for senior positions were elected democratically, and hence this is also an example of individual militant democracy more traditionally understood as applied against ideologically identified threats to democracy. Nevertheless, it illustrates an attempt to curtail the effective powers of undemocratically elected MEPs who are agents of democratic backsliding, too.
36. Kirshner, *Theory of Militant Democracy*; Rijpkema, *Limits of Democratic Tolerance*.
37. Rosenblum and Muirhead, “The Ethics of Partisanship”.
38. Rostbøll, “Democratic Respect and Compromise.”; Schedler, “Democratic Reciprocity”; Mráz, “Voters’ Moral Burdens”.
39. Kelemen, “Europe’s Other Democratic Deficit”; As of December 17, 2023, Tommaso Pavone also made this claim in the Verfassungsblog On Matters Constitutional with the title “The EU’s Faustian Bargain”.
40. Mráz, “Asymmetrical Political Ethics”.
41. Mráz, “Asymmetrical Political Ethics”. In the framework we apply here, the authority of individual EU officials does not mean that they should be obeyed but that they can make authoritative claims on behalf of the populations that they represent, which other officials should at least presumptively defer to.
42. Ibid.
43. As the authority and legitimacy of individual officials are analytically distinct, how do they relate to each other? This more foundational philosophical exploration must await another occasion for lack of space.
44. Mráz, “Asymmetrical Political Ethics”.

45. An act is *pro tanto* morally permissible if there are reasons for its permissibility that may be outweighed by other moral considerations. It is thus permissible, but in a defeasible way. This philosophical notion can be compared to *prima facie* permissible acts: acts that *appear* permissible but are in fact impermissible all-things-considered (and on some understandings, even *pro tanto*). A disabler interferes with *pro tanto* reasons for permissibility but its absence is not a moral reason in itself.
46. Kelemen, *European Union Autocracy Trap*; Pavone, “The EU’s Faustian Bargain”.
47. Karpenstein, Nguyen and Spieker, “A Matter of Solidarity”.
48. Andreu, “Abusive Use of Veto”.
49. While the sociological, descriptive legitimacy (i.e., public approval) of an EU institution may or may not change if undemocratically elected, selected or appointed representatives or officials join their ranks, its normative legitimacy – which is in our focus – is necessarily affected. This need not mean that an EU institution facing this challenge immediately and entirely loses its (normative) legitimacy. But the presence of undemocratically elected, selected or appointed representatives of officials threatens the normative legitimacy of the institution, and above a critical number of them, may entirely deprive it of its normative legitimacy.
50. This is clearly the case when it concerns MEPs who are undemocratically elected as members of a party directly contributing to or complicit in domestic democratic backsliding. But the undemocratic character of the election of MEPs opposing democratic backsliding still taints the EP, even if their personal mandate is stronger. We return to this point at the end of this section.
51. An implication of how these conditions interact is that they do not ordinarily justify targeting domestically regime-oppositional but undemocratically elected MEPs.
52. For instance, the German Federal Constitutional Court designated the political party Alternative für Deutschland (AfD) “confirmed right-wing extremist” in 2025. This implies that German domestic security services are authorized to treat the party as a threat to democracy, and entails consequent restrictions on its rights.
53. Delmas, *A Duty to Resist*.
54. Cf. Müller, “Individual Militant Democracy” 17–18, who argues that individual militant democracy measures should only be applied “[w]here individuals believe that a majority, and, more particularly, the institutions charged with militancy, have genuinely failed to comprehend a threat”, and even then, only “highly constrained acts of civil disobedience might be justified – with a publicly articulated account of under what conditions civil disobedience would rest their case”. We propose such an account, with the understanding that the relevant institutions have failed indeed so far to comprehend the threat.
55. Political actors, unlike courts, have duties to represent their own constituency or Member State, though. Fulfilling these duties may sometimes require refraining from militant measures altogether, while at other times, may require more partiality than is acceptable for judicial decision-making.
56. *European Parliament resolution of 15 September 2022 on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded* (2018/0902R(NLE)), Para. 2.
57. While the presence of undemocratically elected, selected or appointed members does threaten the legitimacy of the entire institution concerned, it is clearly the co-principals and co-operators of democratic backsliding who pose a much larger and more imminent threat.
58. Mráz, “Asymmetrical Political Ethics,” 1081; Theuns, *Protecting Democracy in Europe*, 173; Miklosi, “Perversity, Futility, Complicity,” 8–9. This also applies to all EU officials appointed by a new Member State government after an otherwise undemocratic election in which the former regime opposition manages to win and form a government, against the odds; e.g., consider Hungary’s Council representatives after the formation of the new government in May 2026.
59. Kirshner, *Theory of Militant Democracy*; Rijpkema, *Limits of Democratic Tolerance*. Theuns, “European Union Militant Democracy”.
60. Cf. Schupmann, *Democracy Despite Itself*.
61. A related but distinct “militant democratic paradox” arises when undemocratic public officials claiming to be democratically authorized are denied equal participation rights in political processes that nevertheless (continue to) bind the people whose mandate they claim (Theuns,

“Containing Populism”; Theuns, “an EU Expulsion Mechanism”; Theuns, “European Union Militant Democracy”; Theuns, *Protecting Democracy in Europe*).

62. E.g. Rawls, *A Theory of Justice: Revised Edition*.
63. Theuns, “European Union Militant Democracy”.
64. As of 12 November 2025, Attila Mráz stated this in the Verfassungsblog On Matters Constitutional, “Not All Mandates Equal”.
65. There are very good moral as well as strategic reasons not to unnecessarily restrict even merely apparent moral rights when they turn out not to correspond to any *pro tanto* moral rights (Mráz, “How to Justify Mandatory Electoral Quotas”), as in the case of EU officials representing undemocratic Member States.
66. Cf. Müller, “Individual Militant Democracy”, 18.
67. Theuns, “Protecting Democracy in Europe”, 105.
68. Mráz, “Asymmetrical Political Ethics”.
69. see Mráz, “Asymmetrical Political Ethics”.
70. van Lit, “Countering Autocratization”.

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