

A reflexive theory of defending democracy

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This paper develops a theory of 'reflexive democratic self-defence' based on a Forstian theory of justice, democracy and toleration. The first part of the paper justifies why democracy may be legitimately defended against political attacks that cut to the core of its principles. Democracy has a distinct, moral grounding in the basic right to justification. As a form of government, it institutionalises the demand of general and reciprocal justification, through which the normativity of mutually binding rules is discursively established. Hence, democracy ought to be understood as the political precondition for the respect for individual moral autonomy. The democratic demand that each person has an equal right in (co-)determining the fundamental structures of their political community can be translated into three concrete, legal-institutional pillars: basic individual freedoms, democratic procedures and (both formal and informal) institutions of justification. These pillars are co-determinative in forming a democratic polity's basic structure of justification, giving legal-political expression to the respect for individual moral autonomy. On the flipside, political attacks on one or several of the pillars of a basic structure of justification ultimately represent attacks on moral autonomy. Through various legal and political assaults on a given polity's basic structure of justification, authoritarian parties to date aim to turn democratic citizenship into a form of 'illiberal spectatorship' devoid of political agency. 'Illiberal spectatorship' represents the polar opposite of the conception of the person – and, by consequence, the democratic citizen – in a Forstian normative frame. From this point of view emerges a (moral) demand to defend democracy against such political attacks. In a next step, the second part of this paper engages with the question of how to defend democracy. A reflexive theory of democratic self-defence allows for accommodating and at the same time clearly circumscribing militant democracy as one (particularly controversial) legal practice for defending democracy. While a Forstian conception of toleration allows for establishing the prima facie justifiability of restrictive democratic self-defence, this does not render militant democracy the instrument of first resort. Even in the case of outright anti-democratic actors who cannot make a normative claim to political tolerance, militant democracy measures, in practice, inevitably come with democratic costs. In this regard, a theory of reflexive democratic self-defence develops a number of 'intermediate principles' that ought to guide the legal design and application of restrictive measures for defending democracy. Lastly, this paper engages with some principled dangers inherent in the very idea of defending democracy. When faced with a political threat, there is a risk for any democratic polity to lose sight of the fact that its laws and institutions give themselves only a contingent and necessarily imperfect expression to normative democratic principles. Therefore, democratic self-defence may not lead to foreclosing political innovation and unduly cementing an institutional status quo. The defence of democracy would itself betray democratic principles if it were to go at the expense of the self-critical, reflexive and dynamic nature of 'democracy as democratisation'.