Review

Democracy Rules

Jan-Werner Müller
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The public sphere today is saturated with alarmist language about democracy: it is 'backsliding,' 'breaking down,' and even 'dying.' This situation begs the question: how can one determine whether democracy is genuinely in crisis? And, when facing a genuine crisis, how can one defend democracy? *Democracy Rules* answer these questions by examining the essentials of democracy. This book feels in some ways like a culmination of Müller's work, tying together earlier writings on democratic theory, populism, democratic erosion, and militant democracy. At the same time, he moves the conversation forward, by examining more closely the role played in democracy by intermediary powers, i.e., parties and the press.

Building on Kelsen and Lefort (pp. 161, 184), Müller argues that the essence of democracy emerges from a relativist worldview: we naturally believe different things about the world and hold different values (p. 100). Those beliefs and values change. Given this fact of pluralism, political legitimacy requires democracy. In particular, it requires 'institutionalized uncertainty' (pp. 71–72): political decisions should be made on the basis of a procedure that equally respects the freedom of each citizen. As long as democratic procedures give every citizen the same chance to see their beliefs and values shape law and policy, then citizens have reason to see the outcomes of those procedures as laws that they have a duty to obey—even if those laws run against their expressed values (pp. 63–64): 'I obey the law because my loyalty lies *first* with the democratic process.'

Müller argues that democracy as institutionalized uncertainty is grounded in two crucial sites: decision-making forums and the public sphere (p. 94). Although he analyzes that first site carefully (participatory rights and representative bodies institutionalize democracy in decision-making forums), Müller's focus is really on the second. He argues that intermediary powers are essential for a healthy public sphere (p. 91). They institutionalize the ongoing formation of citizens' opinions and judgments. Yet precisely because they *mediate* between 'the people' and formal

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decision-making forums, as well as between the people and factual reality, intermediary powers have been underappreciated and denigrated—as conservative, hierarchical, distorting, and divisive. Populists use those reasons to justify attacking representative democracy (pp. xiii, 136–137). To respond to democracy's current crisis, Müller argues, requires rehabilitating intermediary powers' role.

Müller argues that intermediary powers play three invaluable roles: they stage political conflict, cultivate pluralism, and structure political time (pp. 109, 144). Regarding the first, by structuring conflicts and ensuring that minorities remain involved in decision making, intermediary powers keep politics civil (p. 99). Second, politics' complexity can be overwhelming. By outlining platforms based on explicit values and using those platforms to frame policy, intermediary powers create waypoints that citizens can use to navigate politics and develop their worldviews (p. 102). In the process, they cultivate pluralism. Finally, by structuring political time between elections, intermediary powers sustain and elevate public consciousness of democracy (pp. 109–110).

Having clarified intermediary powers' essential role, Müller turns to the question of how to defend them against populist attacks. He answers that two essentials of democracy, the commitment to freedom and equality, and the commitment to facts, must be guaranteed by 'hard borders' (p. 184). Advocating hard borders seems noteworthy because it is a pronounced departure from the Kelsen–Lefort tradition.

Regarding the commitment to facts, democracy cannot survive without a common reality and a shared narrative (pp. 101, 123). Today, rather than mediating facts, some intermediary powers are weaponized against them. For example, oligarchs abuse their ownership of private media to circulate misinformation deliberately, advancing their narrow interests by whipping up an emotionally charged populist base (p. 35). In the process, they degrade not only intermediary powers' mediating function, but democracy itself.

Müller argues that rehabilitating intermediary powers' role in mediating facts requires restoring their democratic accountability. One important way to do so is by limiting the size of donations. Funding limits can be paired with the equal distribution of funding vouchers to citizens, which they would use to fund parties and media outlets of their choice (pp. 145–153). This combination would not only reduce oligarchic control, it would also increase political awareness, as citizens explore where to donate their vouchers. Müller develops an important defense of democracy here. However, these measures fall short of a 'hard' guarantee of the commitment to facts. That may be for the better. I am not sure a democracy can or would want to guarantee facts *absolutely*. But this softer border sets in sharp relief the genuinely hard border that Müller would have guarantee equality and freedom.

The 'hard border' guarantee of equality and freedom is 'militant democracy'—familiar territory for Müller. Militant democracy is defined as the use of preemptive restrictive measures, i.e., political rights infringements like a party ban, against actors committed to the revolution of democracy through legal means (p. 158).

Müller argues that parties, and perhaps even individuals, who threaten freedom and equality can have their political rights validly restricted (pp. xiv, 167, 178). Here too, Müller focuses on how oligarchs wield disproportionate and unfair influence over the public sphere, corrupting the democratic commitment to citizens' equal chance to influence law and policy. Restrictions on political rights are justified in order to prevent parties and individuals from having further opportunities to undermine democracy, based on their demonstrable antidemocratic actions (pp. 169–170).

However, even when used to halt antidemocrats' efforts to legally backslide and revolutionize democratic essentials, restrictions on fundamental political rights are difficult to justify. In deploying militant democracy, the state tramples the very democratic values it purports to defend. That apparent paradox can only be overcome by explaining how militant democracy's rights restrictions are different.

Müller navigates the paradox by requiring that rights restrictions be governed by peer review and discretion (pp. 165–167). Peer review means that only branches of government controlled by parties may initiate the process to ban. Parties should be less likely to abuse their power because they are directly accountable to voters, who would hold them accountable for abuse. Discretion means that there is no *legal* duty to take action against potential threats. Judging whether a threat merits a response, rather than mechanically applying militant mechanisms, should further reduce their use.

The U.S. impeachment process models both principles (p. 166). Elected politicians may initiate impeachment when 'high crimes and misdemeanors' may have been committed. Motivated by their political, rather than legal, duty, they decide, based on the case's concrete particulars.

I agree with Müller that a 'hard border' should be erected to prevent antidemocrats' pursuit of legal revolution. But if impeachment is the model, Trump's second impeachment trial gives me pause. Trump is unambiguously an enemy of democracy. His many antidemocratic actions culminated in the violent insurrection of 6 January 2021. His subsequent impeachment trial failed because, almost without exception, congressional Republicans used the fact that impeachment is a discretionary, peer-review process to dismiss the trial as a partisan-political rather than a legal process. Moreover, although some genuinely believed that Trump did nothing wrong, others found him innocent, despite their personal reservations, because they feared their voters would hold them accountable in the next election.

The failure of Trump's second impeachment challenges Müller's model of militant democracy. Might peer review and discretion instead be liabilities for its deployment? In a highly polarized environment, might democratic accountability be a liability? Even if democrats agree that militant democracy must be institutionalized, there is still more to be said about how best to do so.

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A deeper concern is whether militant democracy can really be reconciled with the Kelsen–Lefort tradition at all. As I see it, militant democracy aims to *de*-institutionalize uncertainty by taking 'undemocratic' outcomes off the table entirely. More seriously, measures of militant democracy do not allow the equal legal expression of all beliefs and values. As such, militant democracy disrespects the fundamental commitment to equal freedom that authors like Kelsen and Lefort argue a legitimate democratic state must guarantee.

Taken to its logical conclusion, I see a dilemma. Either democrats must accept the vertigo that comes from the commitment to institutionalized uncertainty and equal freedom, hoping that voters' better angels prevail. Or, if we believe that hard borders are necessary to guarantee democratic institutions and values, then we need to ground democratic legitimacy on something besides uncertainty and equal chance.

Overall, Müller's *Democracy Rules* is a rich and engaging work which covers a lot of ground—much more than a brief book review could do justice to. Discussions I couldn't touch on here, but wanted to, include the importance of civil disobedience, similarities between epistemic democracy and populism (Müller argues that both are depoliticizing, because both presuppose a single 'right' answer in politics), and the limits of sortition. Clearly, there is much here to engage with. *Democracy Rules* will no doubt offer democratic thinkers much to think about as we continue considering both the essence of democracy and its ongoing crises.

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