



By: Jan-Werner Mueller

Can democracies bear the price of banning anti-democratic parties?



One major lesson from the political catastrophes of the 20th century appears paradoxical: Democracies sometimes must pursue seemingly undemocratic measures against those who would cynically exploit the system to gain power and then abolish democracy altogether.

The problem, of course, is that such measures invite charges that democracy has already abolished itself.

This apparent dilemma has returned with the rise of far-right populist parties, many of whose leaders claim, with a straight face, to be the true champions of democracy.

But contrary to what some commentators would suggest, the paradox can be resolved. Consider the far-right Alternative for Germany (AfD).

Given the threat that it poses to Germany's constitutional order, there is a strong case for banning the AfD outright.

In the 1930s, the German-Jewish exile **Karl Loewenstein** was among the first to argue that democracies should restrict the fundamental rights of those using democratic means to pursue authoritarian ends.

In the face of fascist parties' supposedly unstoppable rise, he urged democracies to "fight fire with fire."

Even then, it was understood that democracies engaging in *prima facie* undemocratic conduct might prove **self-destructive**.

The AfD case

Nonetheless, the idea was picked up in the post-World War II period and operationalized in the West German Basic Law.

The German Federal Constitutional Court applied it by prohibiting a successor party to the Nazis, and then by barring the German Communist Party in the 1950s.

More recently, the same court rejected an attempt to outlaw the tiny neo-Nazi National Democratic Party (NPD, later renamed Die Heimat), on the grounds that it had no serious prospect of gaining power.

The court suggested, however, that lawmakers amend the constitution to deny state financing to parties that have been officially designated as hostile to democracy, and the Basic Law has since been amended accordingly.

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Unlike the NPD, the **AfD might well form a government** in one of eastern Germany's states later this year.

Anticipating this possibility, a highly regarded team of specialists recently published a **massive report** on whether a ban might be approved by the Constitutional Court.

The authors analyze not only the AfD's official party programs but also the long record of statements made by party leaders and their followers (including 2.9 million social media posts).

Jurists evaluating the report have been broadly positive about its rigor, even if some doubt that the AfD's discriminatory policy proposals cross the legal threshold of threatening human dignity.

The costs of a ban

But the political picture is murkier than the legal one. Many commentators worry that banning a party that might garner as much as 40% of the vote in an eastern state—and which currently tops national polls—amounts to excluding a large segment of citizens from the political process.

They warn that a ban could leave many voters disillusioned with democracy altogether, as

well as allowing the far right to claim the mantle of martyrdom.

But these concerns are overblown. Size matters, but if a ban cannot be placed on a party that is too small to win power, you cannot then argue against a ban on a party that is large.

Obviously, the larger the anti-democratic party is, the greater the **threat it poses to democracy**.

The costs of a ban, however, are not necessarily higher. Yes, some citizens may feel disenfranchised. But that will always be the case.

Democracy is not a utopia in which everyone's special requests are always honored.

The fear that far-right figures will become martyrs is misplaced, because far-right populists already present themselves that way

For some political goals to win out, others must lose. And sometimes, one's preferred program must be prohibited in order to uphold the polity's fundamental commitments to democratic governance, the rule of law, and human dignity.

The central imperative is to keep free and fair political competition going over time.

One might object that if a far-right government enacted laws undermining the **equal standing** of certain minorities, the courts would strike them down.

But people would suffer in the meantime, and even allowing a party to advocate openly for anti-democratic ends would damage a country's politics, by signaling to citizens that such goals might be acceptable.

The fear that far-right figures will become martyrs is also misplaced, because far-right populists already present themselves that way.

Their standard playbook consists of persuading citizens that a nefarious establishment is holding them down, and that they are the only ones speaking truth to power.

Just listen to **Marine Le Pen** in France or Nigel Farage in the United Kingdom. Even when they can freely compete politically (despite apparently having **broken basic rules**), they portray themselves as victims of elite shenanigans.

Far right leaders want to have their power unchecked

One more serious objection remains. If the charge against the far right is that it seeks to exclude people from political competition or rig the democratic contest (a case also made against the AfD), it does seem paradoxical that defending democracy would require keeping a party out of the running.

But this argument, too, overlooks a crucial point. The far-right tends to reject the basic democratic bargain that everyone else has accepted.



Far-right figures who win power—from Viktor Orbán and Jarosław Kaczyński to Donald Trump—have consistently tried to tilt what should be a level playing field in their favor.

Democracy depends on a mutual willingness to be governed by whoever wins elections, but many far-right leaders have made it clear that they would not honor this agreement.

They want to have their power unchecked, and they refuse to accept being ruled by a supposedly corrupt establishment or any representatives of minorities whom they do not count among “the real people.”

This point is not merely speculative. Far-right figures who win power—from Viktor Orbán in Hungary and Jarosław Kaczyński in Poland to Donald Trump in the United States—have consistently tried to tilt what should be a level playing field in their favor.

Give a far-right party enough time and power and it is likely to usher in “**competitive authoritarianism**”: a system in which elections are still held, but are no longer fair.

This is why it is wrong to complain of a double standard between democrats and authoritarians.

One side wants to preserve political competition; the other wants to eliminate it permanently.

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