

Democracy despite Itself: Liberal Constitutionalism and Militant Democracy

Benjamin A. Schupmann

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Democracy and international society have seen better times. With radical internal factions on both the Left and Right, and major powers like China and Russia, *Democracy despite Itself: Liberal Constitutionalism and Militant Democracy* emerges as a crucial read. Benjamin A. Schupmann, an Assistant Professor at Yale-NUS College, and contributor to this Journal (Schupmann 2022), tackles the urgent question: How can we defend democracy without compromising its principles? This book explores the delicate balance between safeguarding democratic institutions and upholding liberal constitutionalism. By synthesizing John Rawls' political liberalism with Carl Schmitt's state theory, Schupmann introduces a provocative new perspective in political theory and normative International Relations (IR) theory – offering a liberal normative theory of militant democracy.

In essence, Schupmann's political and legal thinking asserts two fundamental components. Firstly, it emphasizes that basic liberal rights are indispensable for democratic constitutionalism. Secondly, it argues that these rights must be constitutionally entrenched and vigorously defended. The state's primary duty is to ensure the perpetuation of democratic constitutional essentials to secure legitimacy for future generations. Schupmann argues that achieving this goal requires three principal mechanisms for defending democracy against legal subversion: explicit constitutional unamendability, restrictions on political rights, and the establishment of a constitutional guardian (pp. 137–203). These mechanisms are inspired by the design of the German Basic Law (*Grundgesetz*), renowned for its robust approach to pre-

venting legal avenues for undermining the democratic integrity of the constitution.

This liberal normative theory of militant democracy draws on the ideas of two major thinkers. John Rawls' political liberalism provides the substance of its normative theory. Rawls demonstrates how democratic societies, acknowledging pluralism and skepticism, can conclude that basic liberal rights are authoritative norms. However, Rawls' focus was procedural, lacking a robust institutional justification for entrenchment against internal threats. To complete a liberal normative theory of militant democracy, Schupmann turns to Carl Schmitt's constitutional theory, despite Schmitt's non-liberal stance. Schmitt's concept of the political justifies constitutional entrenchment to preserve a state's political identity. This theoretical framework provides the rationale for democratic states to adopt militant measures (*streitbar, wehrhaft*), however, he argues, without undermining what requires effective protection—liberal democracy (pp. 81–104).

Schupmann adeptly guides his readers through a multifaceted exploration of the challenges—political, legal, and moral—faced by democracies today. Organized into three parts, *Democracy despite Itself* begins by laying a robust foundation in Part I. Chapter 1 introduces a clear and concise typology of legal revolutionary methods: direct, indirect, and erosion. These methods are employed globally by anti-democratic factions to exploit formally valid legal procedures in undermining democratic principles. Chapter 2 delves into a critical examination of existing normative theories of

militant democracy. Schupmann scrutinizes the viability of these theories, questioning whether democracies can effectively embed legal mechanisms preemptively designed to thwart attempts by anti-democratic forces to transform democracy into autocracy.

In Part II, Schupmann meticulously develops the normative foundations for an alternative liberal theory of militant democracy across two pivotal chapters. Here, he introduces an unexpected intellectual pairing as both Rawls and Schmitt come into focus. Chapter 3 delves into Schupmann's argument that Rawls' political liberalism plays a fundamental role in defining the essence of democracy. He argues that basic liberal rights are indispensable to democratic societies and must be constitutionally guaranteed, even if societal support wanes due to the proliferation of unreasonable doctrines (pp. 82-84). Chapter 4 marks a significant shift where Schupmann draws on Schmittian state and constitutional theory. Here, he builds a case for the legitimacy of a polity to safeguard its political identity through militant democratic measures, aligning with Schmitt's (controversial) framework of political theology.

The third and final part of *Democracy despite Itself* addresses three principal militant mechanisms aimed at solidifying a polity's democratic identity against legal revolutions: unamendability, political rights restrictions, and the establishment of a constitutional guardian. Chapter 5 justifies unamendability as a crucial mechanism to fortify the constitution against antidemocratic laws, emphasizing its role in signaling a steadfast commitment to democratic principles. Chapter 6 examines the legitimate use of political rights restrictions, particularly the prohibition of anti-democratic parties, as a means to safeguard the constitution against subversive political entities. In Chapter 7, Schupmann advocates for the constitutional court as the guardian of the constitution. This role positions the court as the ultimate authority, ensuring checks and balances over the legislative and executive branches to preserve and enforce democratic norms.

In conclusion, *Democracy despite Itself* systematically and innovatively unpacks the problem of "democratic cannibalism" (p. 205) and proposes strategies to confront various anti-democratic challengers, making it essential reading for undergraduate and graduate courses in democracy theory and normative IR theory. While classical liberals in the Kelsenian tradition, including this reviewer, may raise eyebrows—especially regarding the book's Schmittian approach—and argue that countering anti-democratic forces should primarily occur through political rather than legal means, this debate revolves around relative priorities. Nevertheless, Schupmann's work effectively challenges conventional thinking on democratic theory and practice, offering scholars, policymakers, and citizens a compelling perspective on the

proactive—militant—defense of democracy in an increasingly contested global and domestic landscape.

References

- Schupmann, Benjamin A. (2022). Hans Kelsen's Political Theology: Science, Pantheism, and Democracy. *Austrian Journal of Political Science* 51(3):42-51.