'Democracy without politics' in the European Commission's response to democratic bvcksliding: from technocratic legalism to democratic pluralism

Oleart, A.; Theuns, T.

'Democracy without Politics' in the European Commission's Response to Democratic Backsliding: From Technocratic Legalism to Democratic Pluralism

ALVARO OLEART[1] iD and TOM THEUNS[2] iD
[1]Maastricht University [2]Leiden University

Abstract

The debate on EU responses to democratic backsliding in EU member states has mostly been anchored on technocratic appeals to the rule of law and judicial independence, and on Poland and Hungary. In this article, we ask: What understandings of democracy have shaped the European Commission's response to democratic backsliding in recent years? After developing an understanding of pluralist democracy, we uncover the way in which the European Commission conceives of democracy through a discourse analysis of European Commissioners' speeches (2018–21) and a normative-theoretical analysis. We identify the Commission's conception as a form of 'democracy without politics', and argue that it matches the EU's policy choices in regard to democratic backsliding. We argue that a fuller, healthier and normatively more attractive conception of democracy encompasses more attention to political pluralism, agonistic contestation and the vibrancy of civil society.

Keywords: European Union; democracy; democratic backsliding; pluralism; European Commission

Introduction

Much has been said about democratic backsliding within the European Union (EU), and the EU's response to it (for example, Bárd, 2018; Gora and de Wilde, 2020; Kelemen, 2017; Kochenov and Pech, 2015; Pech and Scheppele, 2017; Priebus, 2022; Theuns, 2020). The central aspect of the political debates have been anchored so far on the rule of law and judicial independence, and on Poland and Hungary. However, while the rule of law is a necessary condition for a democratic polity, it is not a sufficient one. In our view, an overemphasis of 'legalism' in responding to democratic backsliding both hampers the potential efficacy of the EU's response to democratic backsliding and fails to adequately communicate the EU's commitment to democracy.[1] Recently, as we show in this paper, there has also been more attention to the media, particularly to media freedoms and freedom of speech. While this captures an important aspect of democracy, the way that EU actors have engaged the role of the media in democratic backsliding remains framed in a largely legalistic and technocratic manner. Here again, a more holistic conception of democracy is missing.

Our driving research question is: What understandings of democracy have shaped the EU's response to democratic backsliding in recent years? We address this question through a qualitative and normative-theoretical analysis. We empirically analyse the

---

Both authors contributed equally to the article, and the order merely reflects an alphabetical criteria for it.
[1]Inter alia in Article 2 of the TEU.

European Commissioners' speeches from the Juncker and von der Leyen Commissions, and connect the Commission's discourse with its policy responses to democratic backsliding. The link between the European Commission's framing of democracy is relevant, as it matches the EU's policy responses to democratic backsliding in EU member states. We do not aim at establishing direct causal mechanisms at play that explain the Commission's policy choices. Rather, we are interested in how the Commission's discourse of 'democracy without politics' reflects the philosophy behind the policy choices. We show how democracy is conceived by the Commission in a largely depoliticized manner, prioritizing a 'technocratic legalistic' perspective over a democratic pluralist one. This depoliticized understanding of democracy and the legal toolbox deployed to counter democratic backsliding misses important aspects of democracy, such as ideological pluralism, democratic contestation and the recognition of the role of a legitimate opposition. Incorporating these elements would, we argue, reflect a healthier and normatively more attractive conception of democracy.

After this introduction, in Section I we lay out our normative-theoretical framework of 'pluralist democracy'. In Section II, we describe and motivate the qualitative methodology of our empirical analysis, based on a discourse analysis of recent speeches of European Commissioners. In Section III, we present and analyse the speeches, illustrating how the European Commission tends to embrace a technocratic, legalistic and depoliticized understanding of democracy. In the discussion of our findings in Section IV, we show how this narrow understanding of democracy matches the EU's responses to democratic backsliding, and in Section V critique this conception based on our alternative normative ideal of pluralist democracy. We conclude the article by summarizing it and considering avenues of further research on the EU's response to democratic backsliding.

I. Democracy beyond the Rule of Law: A Pluralist Normative-Theoretical Framework

The numerous crises that followed the 2008 financial crisis have raised normative questions about democracy, and particularly about the 'democratic backsliding' of some EU member states (Bellamy and Kröger, 2021; Müller, 2015; Theuns, 2020, 2022; Wolkenstein, 2020). The wider political and academic debate about democracy being in a state of crisis is well established in recent years (for example Levitsky and Ziblatt, 2018; Mounk, 2018; Runciman, 2018). At the core of this debate there is an overwhelming focus on executive overreach and the rule of law. This tracks with a broadly liberal conception of democracy that emphasizes the separation of the branches of government – particularly the independence of the judiciary. This focus on the rule of law is especially true in the EU, since the internal constitutional diversity of EU member states challenges a more substantially developed conception of democracy. Indeed, it is in part this conceptual ambiguity combined with the constitutional pluralism of EU member states, that has allowed Hungary's Prime Minister Viktor Orbán to present his vision for Hungary as an 'illiberal democracy'.

It is in this context that we are interested in the EU's response to democratic backsliding. We conceive democracy as much more than a set of liberal constitutional principles, important as they are. Democracy is a normative and political response to the demands

and realities of political pluralism, and as such must nurture and protect this pluralism (Theuns, 2021). One aspect of democratic pluralism is a vibrant public sphere in which political alternatives are confronted. In line with Gora and de Wilde (2020), we consider the degradation of pluralism in the public sphere of some EU member states to be an underrepresented feature of democratic backsliding in the EU. We argue in the empirical analysis that this underrepresentation tracks an impoverished conceptualization of democracy in the European Commission.

Pluralist Democracy in Europe

The purpose of this section is to sketch out the normative presuppositions of pluralist democracy, our normative-theoretical framework. Pluralist democracy starts from the vantage point of recognizing that democracies do not arise from vacuums. Democratic states gain in democratic authority by constitutionalizing procedures whereby their subjects gain a formally equal share in sovereign power. As such, those previously subjected to arbitrary rule – the '*populus*' – progressively become a '*demos*' or democratic People, settling disagreements over policy and law via democratic contestation. Crucially, the pluralist democratic ideal holds that such disagreements can be settled in a procedurally fair manner; no member of the demos (citizen) has any more formal weight in the democratic process than any other, and all are eligible to be elected.

Plural democracies are justified, normatively speaking, in that they constitute an advance towards the civic freedom and formal equality of citizens in a democratized polity, relative to the prior state of subjection to arbitrary rule. Advances towards the standards of fully equal civic freedom (when 'all those subjected'[2] to the law have equal democratic rights) thus constitute relative advances in democratic legitimacy, which is why pluralist democracy is 'non-ideal'.[3]

The normative salience of pluralist democracy has an empirical and a philosophical underpinning. It builds on an empirical claim regarding the *possibility of value pluralism*, and adds to this the normative demand that citizens in a democratic community ought to be recognized as equal sources of political value.[4] This is crucial, for if we accept only the empirical claim, we are left with no normative justification for democratic rule; citizens' putative differences of opinion need not, in the absence of such a standard, be settled democratically. On the contrary, if we accept only the normative standard of treating citizens as equal sources of political value, but not value pluralism, then we may consider that some political projects do not require such neutral arbitration.[5]

Pluralist democracy therefore takes as the starting point the possibility of value pluralism – deep and potentially incommensurable disagreements over the norms and values that ought to guide public policy and law – and channels this into *political* pluralism,

---

[2]In democratic theory this standard is known as the 'all subjected principle' (Beckman, 2014; Scherz, 2013; Theuns, 2022).
[3]The term 'non-ideal theory' comes from political philosopher John Rawls. We use it here to denote a normativity focused on addressing historical injustices incrementally rather than theorizing a utopian end-state. For an overview and discussion of 'non-ideal' versus 'ideal' normative theorizing see Zala et al. (2020).
[4]This demand of political equality ought not be confused with what one might call an 'equal value claim'—the idea that different and contrasting political and ideological views have, as a matter of normative fact, equal value.
[5]Specifically, political projects for whom there is a broad consensus. In EU studies literature we can see an analogue to this idea in Giandomenico Majone's argument that the EU as a 'regulatory state' does not need democratic legitimation; Majone, 2007.

characterized by free and fair competition between political parties that mobilize contrasting political ideologies (Theuns, 2021). As Lise Esther Herman writes, 'The People is neither static nor monolithic. Plurality, contradiction and change characterize any free political community: the People debates, judges, changes its mind, and holds its leaders accountable' (Herman, 2019). It is precisely the fact that citizens disagree with one another that motivates and guides the pluralist democratic project.

Understood this way, pluralist democracy shares some theoretical space with Chantal Mouffe's conception of 'agonistic democracy' as well as Jürgen Habermas' idea of the 'public sphere'. Although Mouffe (2013) situates herself as opposed to the Habermassian understanding of democracy, they both follow a similar logic of democratic politics. While Habermas conceptualized the public sphere as a space of struggle and 'political confrontation' (Habermas, 1989, p. 27) where the executive power of governments is challenged, Mouffe (2005, 2013) has argued that passion and conflict are central to democracy:

> [b]elief in the possibility of a universal rational consensus has put democratic thinking on the wrong track. Instead of trying to design the institutions which, through supposedly 'impartial' procedures, would reconcile all conflicting interests and values, the task for democratic theorists and politicians should be to envisage the creation of a vibrant 'agonistic' public sphere of contestation (Mouffe, 2005, p. 3).

Mouffe argues that democracy cannot exist without a conflictual battle of ideas between political rivals. Such 'agonism' can be democratic – and politically productive – if and when rivals recognize the each other's legitimate existence. 'Agonistic democracy' is therefore a democratic political logic based on pluralism, and ideological conflict, rather than on consensus. For Mouffe, pluralism can only exist if we recognize conflictual relations between actors holding fundamentally different and opposing views of how society should be. Plural here not only means that there are different political views in society, but that they are in conflict with each other, and often cannot be reconciled.

Habermas' notion of the public sphere, in turn, requires that four conditions are met. First, citizens must be able to act as active agents in a discursive and deliberative political process. Second, the public sphere must have spaces to facilitate such interaction independent from state control. Third, it requires the existence of pluralistic mass media able to operate independently of the state. Fourth, resting on these three preconditions, the public sphere must be characterized by deliberation, in the context of Habermas' notion of intersubjective communicative rationality (Habermas, 1989; Graham, 2009, p.8). Pluralist democracy can therefore be cast in terms of Mouffian agonism and a Habermassian public sphere in which citizens are actively involved and in which different political alternatives are confronted as essential features of healthy democratic politics (Conrad and Oleart, 2020).

The pluralist democracy perspective is well tailored to the longstanding critique in the academic literature that the EU's conception of democracy and political dynamics have a tendency towards depoliticization and often miss a government-opposition logic (Mair, 2007). This critique is supported by Dahl's (1969) emphasis on the importance of political opposition for democracy, and our article is broadly aligned with this view, yet applied empirically and normatively to the current EU context, in which democratic backsliding has become one of the main political and policy priorities.

II. An Ideational Methodological Approach: A Framing Analysis of EU Commissioners' Speeches on Democracy

Given the ever increasing salience of democratic backsliding in the EU context, it may be surprising that the academic literature has not paid much attention to the underlying conception of democracy that has informed EU institutions' policy choices. Instead, the literature is dominated by political scientists and legal scholars that describe (and criticize) the appropriateness of EU policies vis-à-vis backsliding member states. These studies have enhanced our understanding of democratic backsliding in the EU context, but they have not problematized the Commission's ideational conceptualization of democracy. Through a framing analysis of EU Commissioners' speeches between September 2018 and March 2021, we hope to contribute to filling this gap in the literature. EU Commissioner speeches are an appropriate corpus for this endeavour (see De Ville and Orbie, 2014) given their central role in constructing meaning by the European Commission in the public sphere, as the speeches are given not only to the specific audience but also to the public at large, since they are later published online. The framing analysis in this article is meant to 'problematise what is usually seen as given; to contest that which is uncontested; to interrogate the familiar' (Diez, 2014, p. 322), in this case the idea of democracy. The framing analysis performed on the Commission's speeches departs from the understanding of framing as 'adopting an interpretive framework for thinking about a political object' (Pan and Kosicki, 2005, p. 177). In this case, the 'political object' is democracy, and we analyse the interpretive framework that European Commissioners mobilize when making sense of it. In accordance with this definition, the framing analysis was undertaken inductively through successive rounds of coding.

The rationale for doing so in this way is that the meaning-making process constructed discursively not only facilitates the understanding of political action, but also shapes it. The literature on the role of ideas in politics helps us to understand that the obstacles to political action are not only institutional, but also ideational (see Gofas and Hay, 2010). Thus, understanding these obstacles might be helpful to overcome them, and different political proposals might flow from changing the understanding of democracy. This is not a directly causal argument, but rather a way to look at the interplay between discourse and institutional policy-making (see Schmidt, 2010, on 'discursive institutionalism'), and how ideas underpin the EU's actions and policies. There is a rich literature on the role of ideas in shaping the EU's policies (Crespy, 2010; Fairbrass, 2011), yet our article contributes from this perspective to the specific policy domain of (countering) democratic backsliding, as the literature has, so far, prioritized a legal perspective.

In order to trace the way in which the European Commission conceives of 'democracy', we have selected all the speeches given by European Commissioners and the Commission Presidents in which the term 'democracy' is present, retrieved through the 'Advanced Search' function of the Commission's Press corner website. Obviously, the choice of Commissioner speeches as the main unit of analysis has its limits in terms of what these speeches can tell us about the Commission's understanding of democracy. The Commission exists beyond EU Commissioners, and the conceptualization of democracy between Commissioners is neither monolithic nor wholly stable over time. Furthermore, by their nature, speeches present only a 'public' discourse and may mask aspects of the speaker's attitudes. Nevertheless, they are a suitable empirical material for the purpose

Table 1: Number of Speeches Collected by Commission Term

Commission term	Number of speeches collected
Juncker (2014–19)	104
Von der Leyen (2019–24)	34
Total	**138**

of the article, since we can trace the mobilisation of the term in different contexts, by different Commissioners and with a wider perspective than other documents (for example legal resolutions).

The time frame for the corpus of speeches we analyse departs from the European Parliament's vote on 12 September 2018 to trigger the Article 7 procedure against the Hungarian government's attacks on democratic institutions (which also coincides with the 2018 State of the Union address by Commission President Juncker), up until the von der Leyen Commission's referral of Poland to the CJEU on, 31 March 2021, for passing a 2020 law imposing disciplinary measures on Polish judges. The specific chronology was chosen to gather a manageable data set of speeches for in-depth qualitative analysis while also taking into account a meaningful time frame related to EU institutions' actions responses to democratic backsliding. To be sure, the timeframe does not mean that Poland and Hungary are our 'case studies'; rather, we justify our empirical choices based on the fact that the conflict between EU institutions and the Polish and Hungarian governments has fed most of the democratic backsliding debate in the EU. The resulting data set (see Table 1) is composed of 138 speeches by a wide range of Commissioners and two Commission Presidents, which allows for a systematic analysis of the way in which the European Commission's leaders mobilize the idea of 'democracy' over this period. The dataset comprises a similar time frame for the Juncker and von der Leyen Commissions, although there are many more speeches from the former than the latter (104 and 34, respectively).[6] Arguably, we are over-inclusive in terms of the selection of Commissioner speeches. We could have selected documents that explain or justify specific actions that the Commission has taken in regard to democratic backsliding, but that would miss the broader purpose that the article aims for: to trace how the Commission conceives of 'democracy' at large.

A variety of Commissioners mobilize the term 'democracy' in their speeches, and Commission President Ursula von der Leyen (19 speeches) and the two-term Commissioner Věra Jourová (26 speeches) are the most frequent speakers using it. The results therefore reflect mainly their speeches, which is relevant given their central role in the European Commission in general, and in relation to the issue of democratic backsliding in EU member states in particular.

The framing and discourse analysis of Commissioner speeches comprises one branch of our multi-methods research,[7] where the other branch comprises our

---

[6]This was mainly due to the fact that the global pandemic Covid-19 drastically reduced the number of events in which Commissioners participated, and thus the number of speeches they made.
[7]This term is more often used to describe research methodologies that use several different qualitative or quantitative data/data analysis. But we feel it is important to revindicate the idea that political theory also uses methodology, and that papers that combine an explicitly political-theoretical approach with an empirical approach are thus 'multi-method'.

Figure 1: Number of Speeches in which the Different Frames are Referenced by Commission (out of 138 Speeches) [Colour figure can be viewed at wileyonlinelibrary.com]
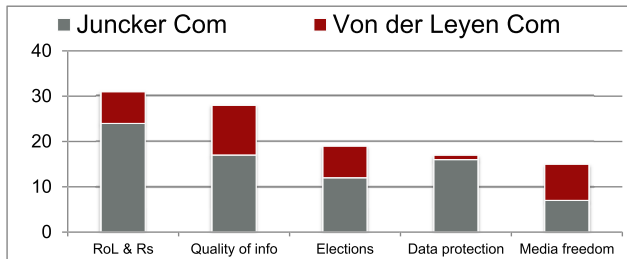
normative-theoretical framework and prescriptive recommendations. Prescriptions or recommendations are often given at the end of empirical papers. These are usually based on *implicit* metrics of evaluation supposedly shared between the researcher and the audience. However, our commitment to democratic pluralism has bite here too—we cannot assume without argument that readers share the normative presuppositions that inform our analysis. It was therefore essential to lead with the normative-theoretical model that serves as a critical lens to reflect on our empirical findings. It is for this reason that our methodology extends beyond the qualitative analysis to include a critical-theoretical element. The broad principles of policy prescription that come in the last section of this paper integrate both the empirical and normative-theoretical elements.

III. The European Commission's Depoliticized Framing of Democracy: The Rule of Law as the 'Bedrock of Democracy'

In this section, we first describe the democracy frames mobilized by the Commission between September 2018 and March 2021, and later relate the framing of democracy with the policy choices made in regard to democratic backsliding in EU member states. The frames have been constructed on the basis of each reference to 'democracy' made by the Commissioners, and the different frames are not necessarily in competition with each other. They tend to select different aspects of democracy, which is understandable given that Commissioners deal with different policy portfolios. In this way, most of the frames can be seen as complementary. However, the goal of the framing analysis is to trace the elements that the different frames have in common. The relative distribution of the frames throughout the corpus provides an overview, yet the core of the qualitative analysis is found by analysing which elements are shared throughout the main frames, as well as the absence of other dimensions. We argue the main frames share a rather depoliticised conception of democracy that is at odds with democratic pluralism.

Figure 1[8] illustrates the most common democracy frames mobilized by the European Commission during the last period of the Juncker Commission and the first one of the

---

[8]There are a number of other democracy frames that are not included in Figure 1, such as 'Cybersecurity', 'Pluralism', 'International cooperation' or 'Respect for minorities', given their proportionally minor weight in the data set.

von der Leyen Commission. Broadly, the understanding of democracy maintains a similar proportion across the two data sets analysed, which allows for a unified analysis.[9]

Out of the 138 speeches analysed, 'democracy' is most often connected by European Commissioners to the frame we label 'Rule of Law (RoL) and (fundamental or human) Rights' (RoL & Rs). This frame emphasizes the 'liberal' dimension of liberal democracy, framing democracy as a set of liberal legal principles centred around the separation of the branches of government. The frame articulates democracy as being on at least an equal footing with the rule of law. Frans Timmermans, the Commissioner in charge of Rule of Law and Fundamental Rights during the Juncker Commission, explicitly situated the rule of law as a precondition for democracy: 'The rule of law has a particular role: it is a prerequisite for the protection of all the other fundamental values, including for fundamental rights and democracy. Without the rule of law you cannot really protect them' (Timmermans, 2019). Commissioner Vera Jourová summarized well the way in which the Commission tends to articulate the rule of law in relation to democracy:

> *The rule of law is the bedrock of our democracy.* Without it, the free press will eventually be attacked and labelled as fake news. Consumers will not be able to challenge the well-connected businesses, and we all will not be able to enforce our rights, either against the government or the companies who cheat on us or abuse our data. (22 November 2018, emphasis added)

The second most common interpretive framework to conceive 'democracy' by the European Commission is 'quality of information'. This frame emphasizes the importance of a fact-based political debate, and the threat that disinformation poses to democracy. The following quote by Josep Borrell, the High Representative of the Union for Foreign Affairs and Security Policy in the von der Leyen Commission, is illustrative:

> Democracy is a system that is fueled by information. Information is the raw material of democracy. If people do not have the right information, it is going to be difficult for them to make the right choices. Their choices have to be based on quality information, fairness and trust in facts and figures. Facts are one thing and opinions are another. Opinions are free; facts are facts. We have to fight for the facts to be the right and true ones in order to fuel a fair democratic system. (Borrell, 2020)

Closely connected to 'quality of information', we find the 'media freedom' frame. While the two frames relate to one another, the latter emphasizes the protection of journalists, while the first one tends to highlight the growing role of social media companies in (manipulating) public debates. Commissioner Jourová, who has disinformation as one of her key policy dossiers, repeatedly refers to media freedom, arguing for instance that 'media freedom is the foundation of our free and democratic society. Journalists must feel safe to work in Europe. If not, democracy as we know it will be under threat' (Jourová, 2020a).

Interestingly, the 'media freedom' frame is in some cases also connected to the 'Rule of Law and Rights' frame. For instance, when discussing the government attempts to silence free media in Poland, Hungary and Slovenia, Jourová argued the following: 'Media are not just an economic sector, but an important pillar of democracy and the rule of law'

---

[9]The main difference between the two data sets is the much lower number of references to the 'data protection' frame in the Juncker Commission, and the higher number of 'media freedom' references in the von der Leyen Commission.

(Jourová, 2021). This is an interesting argument to make that reflects the overall conceptualization of 'democracy' by the European Commission. Rather than treating media freedom as a matter of political *pluralism*, the Commission has shifted the political arena towards legal institutions by connecting media freedom with the rule of law.

Another interpretive framework that the European Commissioners mobilize concerns 'elections'. References to this democracy frame are often related to European elections,[10] as well as policy initiatives such as the Digital Services Act (DSA) and the European Democracy Action Plan (EDAP). Interestingly, even when deploying 'elections' as a democracy frame, which one may imagine is closely connected to the ideological pluralism in party competition that is key to pluralist democracy, Commissioners also tend to prioritize technocratic or geopolitical lenses. For example, when explaining the DSA and the EDAP, Commissioner Jourová argued that, 'The aim is to improve accountability and responsibility of online players, to help improve the resilience of our democracies and to address threats, including of external interference in European elections.' (Jourová, 2020b). There is a particular emphasis on the Russian government's activities in spreading disinformation and 'interfering' in democratic processes: '[…] Russia has been identified as one of the main sources [of disinformation]. We cannot stay idle when the enemies of our democracy use modern technologies to manipulate our elections' (Jourová, 2018).

'Data protection' is also a salient democracy frame by the Commission, mainly due to the establishment of the General Data Protection Regulation (GDPR), one of the leading global regulations for digital private that entered into force in 2018. For instance, Commissioner Jourová argued that 'after Cambridge Analytica and other scandals, there is no doubt that strong data protection is a must – not only for individuals, but also for democracy' (Jourová, 2019).

A less salient democracy frame emphasizes the European Parliament (EP), sometimes described as the 'beating heart of European democracy' (Juncker, 2019). On the occasion of the debate on the review of the Juncker Commission in the European Parliament, Commission President Juncker argued that 'to have the trust of this House and to be able to rely on the trust of European elected representatives reflecting European democracy is, for all those who receive that trust, an enduring honour' (22 October 2019). This is unsurprising, given that the EP is considered the main body that holds the Commission accountable. Yet, importantly, the references to the EP as a democracy frame are mostly abstract, conceiving the EP as a *symbol* of European democracy, rather than emphasizing the ideological confrontation between competing political groups or the political pluralism it facilitates.

What brings together the different democracy frames of the European Commission is their *depoliticized* nature. We conceive depoliticization as the process by which political choices are presented as if they are purely 'technical' or 'administrative' (Hay and Rosamond, 2002), thereby removing 'the political character of decision-making' (Burnham, 2001, p. 128). This characterizes to a great extent what the European Commission does when mobilizing the term 'democracy' in the data set we have examined. In most of the Juncker and von der Leyen's Commission's discourse, democracy has little to do with *politics*. The frames related to the 'rule of law and rights', 'quality of

[10]This is unsurprising given that the data set covers the run-up to the 2019 European elections and its aftermath.

information' or 'media freedom' are normatively important, yet share, in the Commission's discourse, a common technocratic and legalistic nature. The 'rule of law and rights' dimensions of democracy are addressed by observing whether there are violations of the separation of powers or legal accountability. The 'quality of information' frame addresses disinformation campaigns that circulate on social media, which the Commission suggests ought to be addressed by the regulation of social media companies. Media freedom in turn is addressed by protecting the safety of journalists, mainly through the improvement of law enforcement mechanisms. All these democracy frames share an overall coherent technocratic and liberal understanding of democracy and lack a pluralist perspective. In this sense, the Commission seems to conceive itself as a sort of 'Ombudsman' of the EU, rather than the main *political* EU executive actor.

To be sure, there are some exceptions in which pluralism is indeed conceived as central to democracy, such as when Commissioner Thyssen argued that 'the strength of democracy is pluralism. Our democracies are only strong if all voices are heard. If the needs and hopes of all people are taken into account' (Thyssen, 2019). However, these references appear in dribs and drabs and represent a much smaller sample of the democracy frames in comparison to the ones outlined earlier. That said, as the Commission is not a unitary actor, we could hypothesize that not all the Commission's Directorates-General (DGs) have the same conception of democracy. Our data tends to point in the direction that those DGs that are generally more open to civil society and trade unions, such as DG Employment, Social Affairs and Inclusion (the DG formerly led by Commissioner Thyssen) or DG Climate Action, as opposed to for instance DG Trade or the European External Action Service (see Coen and Katsaitis, 2013), have a more pluralist understanding of democracy. However, this hypothesis would require further empirical research, which we are unable to provide in this article.

The findings are not necessarily surprising, since presenting political issues as 'technical' tends to be the Commission's general modus operandi. But this actually underlines the pertinence of the analysis rather than undermining it. It is not by an external constraint of legal determinism that the Commission must interpret its role in a largely technocratic way, it is precisely its own conception of democracy that hinders the Commission's capacity to act politically. Indeed, the fact that the Commission depoliticizes issues by presenting them as 'technical' does not mean that it is not a (transnational) political actor with a wider capacity to operate politically than it allows itself.

The Match between the Commission's Framing of Democracy and its Democratic Backsliding Policy Choices

Political pluralism requires more than the 'rule of law', 'quality of information' and 'media freedom'. Stripped of democratic contestation, these frames imply an administrative understanding of democracy. As argued in Section I, the contestation of political ideas in the public sphere is at the core of a democratic polity. So far, the European Commission's conception of democratic backsliding has been centred around its legal dimension. The most famous of these is the much criticized (but nevertheless underused) Article 7 TEU procedure, whereby the Council of the EU can – in theory, if not in practice – determine 'serious and persistent' breaches of the EU fundamental values listed in Article 2 TEU. Article 7 proceedings were launched against Poland in

December 2017 and against Hungary in September 2018. The proceedings cannot realistically lead to sanctions, however, given on the one hand an alliance of support between the governments of Poland and Hungary and, on the other, a unanimity requirement in Article 7.

Since 2013, all EU member states are assessed by the European Commission for the 'efficiency of justice', of their judicial systems and the rule of law, resulting in the 'EU Justice Scoreboard'. A Commission-led monitoring and dialogue procedure – the 'Rule of Law Framework' was added to this in 2014, essentially adding steps prior to a Commission recommendation for Article 7 to be activated against a backsliding member state. The appetite for monitoring was not exhausted, and, in response to resolutions adopted in the European Parliament in 2016 and 2018, the Commission published its first 'Rule of Law Report' – evaluating all member states' performance on rule of law criteria in September 2020. In December 2020, the European Parliament and the Council adopted the rule of law 'Conditionality Regulation'. This regulation facilitates some economic conditionality as a response to rule of law backsliding in member states, but was held hostage to Polish and Hungarian threats of vetoes to the EU's Multiannual Financial Framework (for which unanimity is required). It thus passed only with strict (and possibly illegal) instructions from the European Council, limiting the European Commission's scope for applying and interpreting the regulation. Concurrently, the European Public Prosecutor's Office was launched on 1 June 2021 to 'help promote a coordinated judicial response' to 'protect the EU's financial interests if there are generalized deficiencies linked to the rule of law' (an euphemism for wide-scale corruption concerning the use and disbursement of EU funds by backsliding member states).

Thus, the Commissioners' framing of democracy matches the policy choices made in regard to democratic backsliding. We conceive the Commission's approach as 'technocratic legalism', insofar as democracy is framed in a depoliticized way (hence the strong technocratic component), facilitating a legal toolbox to address democratic backsliding. This is not a causal argument; we do not aim at establishing the causal mechanisms at play that explain the Commission's policy choices. Rather, we argue that the Commission's depoliticized understanding of democracy reflects the *philosophy* behind the policy choices. A different conception of democracy would justify a different toolbox, a point we develop in Section IV.

What we see in the European Commission's speeches is a vision of 'democracy without politics'. Political contestation is largely left outside of the scope of democracy, with few exceptions. Rather than democracy being about the confrontation of plural voices about how society should be organized, the Commission's discourse emphasizes the safeguarding of the 'quality of information', 'media freedom', 'elections' in which there is no 'foreign interference', and a constant amalgamation of democracy and the rule of law and fundamental rights. Obviously, this is not to say that democracy is unrelated to the dimensions mentioned above. Indeed, they are *necessary conditions* for a democratic polity to exist. However, they are not sufficient in themselves, and incorporating the missing aspects of democracy (ideological pluralism, contestation, the recognition of the role of a legitimate opposition, etc.) would reflect a fuller, healthier, and normatively more attractive conception of democracy. Moreover, these missing frames track similar lacunae in the Commission's policy response to democratic backsliding.

IV. A Normative Critique to the Mainstream Understanding of Democracy in the EU

In this section, we show how the normative ideal of democracy that we endorse, which we call 'pluralist democracy', contrasts from the Commission's approach. These contrasting ideals inform alternative pathways for responding to democratic backsliding in EU member states. The traditional output-oriented approach to legitimacy of the EU (de Jongh and Theuns, 2017), and particularly the European Commission, can be clearly identified in how the Commission frames democracy in Commissioner speeches. It aligns the Commission towards taking narrow and legalistic positions, and focusing more on the 'management' of rule of law backsliding than on robust responses to it (Priebus, 2022). To be fair, the rule of law is not overly narrowly conceived – Commissioners do point to media freedom as an important element. However, 'media freedom' is not equivalent to 'media pluralism'. The mere fact that journalists do not fear for their lives—while clearly essential for democracy to function – does not mean that there is pluralism, nor that a healthy democratic public sphere is prioritized.

The Commission's conception of 'democracy without politics' can be clearly seen to track their technocratic-legalistic responses to democratic backsliding in EU member states. The Commission has developed myriad legal monitoring tools to assess member states' judicial systems and the rule of law (see the previous section for more details). Yet, none of these mechanisms assess the ailing health of the public spheres of backsliding member states, the suppression (through death by regulation, co-option, and intimidation) of critical voices in academia, civil society and the media, or the disadvantages increasingly stacked against opposition actors and parties to compete as equals. Sanction mechanisms are focused on cutting off EU funds to backsliding states who use them corruptly, and the eventual exclusion of backsliding parties from EU political decision-making via Article 7 TEU. These may be important elements, not least to try to contain the influence of budding autocrats on EU legislation (Theuns, 2022) and to reduce the complicity of the EU in member states' backsliding (Theuns, 2020), but they do little in themselves to protect pluralist democracy and foster a healthy public sphere.

The normative-theoretical lens of pluralist democracy would draw attention to some of the lacunae of the Commission's current approach. For democracy to be vibrant, processes of representation and contestation must include real alternative visions of society, and open deliberation on these alternatives in civic spaces that facilitate such exchanges – in other words, in healthy public spheres. Quality of information is of course important, but an over-emphasis on the quality of information – of the role of 'facts' in public discourse – depoliticizes democracy. It is in the contestation and negotiation of which facts are salient for a public policy, on how to interpret, contextualise and use those facts, and on what to do about them that a democratic polity's politics is forged. Pluralism is a feature of democratic politics, not a flaw.

From the perspective of pluralist democracy, EU actors should do more to think about how they can support the domestic opposition to backsliding governments, stimulating more vibrant democratic contestation where democratic pluralism is at stake. This wider understanding of democracy in the EU context need not only address extreme cases such as Hungary and Poland. Adopting a pluralist conception of democracy suggests the Commission ought not to be content with buttressing legal processes (notwithstanding the

importance of a robust legal-democratic framework), but should also encourage democratic contestation in the public spheres of EU member states, especially where these are moribund. At the very least, the Commission would need to ensure that its activities in protecting democracy in Europe do not have the effect of further depoliticizing the sphere of member state politics, a concern that has been around for some time (for example Mair, 2007). Accordingly, revising the understanding of democracy in the context of democratic backsliding is not only a conceptual question, but one that would have real political and normative implications for the EU's response to democratic backsliding.

While the task of this paper cannot be to flesh out pluralist responses to democratic backsliding systematically, several illustrations suffice to sketch the broad differences with the Commission's current approach. For instance, one option to address democratic backsliding while not taking a purely legalistic path may be to encourage transnational flows of communication that move away from EU intergovernmental decision-making processes. A more diverse range of actors (for example political opposition, civil society, and trade unions) could be called to the table, in such a way that a voice is given to non-executive democratic actors (see also Beetz, 2021). While this is especially urgent in member states where the executive has cemented control, this could also extend beyond backsliding countries such as Hungary and Poland, to address the 'opposition deficit' of the EU (Rauh and De Wilde, 2018). The European Commission should be bolder in speaking out against the erosion of civil society and the public sphere of backsliding member states. In line with its legalist-technocratic conception of democracy, it does this (albeit to a limited degree) when it comes to concerns with judicial independence, checks and balances and the rule of law. Extending such 'discursive pressure' (Beetz, 2021, p. 9) to resist the erosion of civil society and the public sphere could help undermine the political support for actors involved in backsliding, and would certainly be a powerful signal of the Commission's commitment to democratic values. It may also encourage other actors in the multi-level EU political system (for example national parliaments from other EU member states) to put further discursive pressure on backsliding governments, and to support pluralist contestation in member states where this is under threat. Therefore, in addition to the positive impact this might have for democracy at the national level in backsliding states, adopting a pluralist conception of democracy would also stimulate and reinvigorate the EU as a more integrated and democratic polity, potentially leading towards an 'empowering dissensus' (Bouza and Oleart, 2018; Oleart, 2021) for European integration.

While we might hope that our approach is also more effective in containing and potentially even reversing democratic backsliding in EU member states, adding a pluralist approach would be normatively valuable *irrespective* of its efficacy in reversing democratic backsliding. This is because it would communicate a commitment to (the value of) democracy in its full sense. It is valuable in its own right to reaffirm the importance of EU fundamental values and to commit to them. This is not to say that legal processes against governments leading democratic backsliding are necessarily inadequate on their own terms, for what they are worth. Rather, our view is that the blinkered focus on legalism and the rule of law misses important things, and recommendations based on that limited perspective will miss opportunities to deepen and extend democracy within the EU.

Conclusion

While much has been said in regard to the EU's response to democratic backsliding, the literature has so far barely addressed the normative conception of democracy underpinning the EU's policy choices. This article has departed from a normative-theoretical framework in which we conceptualize pluralist democracy. Such a vision of democracy goes beyond a technocratic concern with the quality and accuracy of public discourse and the formalism of a narrow focus on the rule of law. Instead, it emphasizes the importance of pluralism the public sphere and a vibrant civil society that holds government to account.

We next analysed the Juncker and von der Leyen European Commissioners' speeches on 'democracy', uncovering the ways in which the Commission frames democracy, and the relationship between the Commission's rather depoliticized conception and the policy choices made in relation to democratic backsliding. We argue that the mostly legal toolbox deployed by the Commission is related to its discourse, which we conceive as 'democracy without politics'. We then put forward a normative critique to this conception of democracy based on our normative-theoretical framework of 'pluralist democracy'. An alternative policy approach to democratic backsliding fertilized by the notion of pluralist democracy would be better than the Commission's current approach, we argue, because it would target a normatively preferable conception of democracy. Additionally, although we can only hypothesize this at this stage, it is likely that it would also be more effective. Further empirical research is needed to explore the scope and felicity conditions of a pluralist democratic agenda to respond to EU democratic backsliding.

We recognize that our normative argument faces obstacles. The main one is that legalistic understandings of democracy are a better fit with traditional consensus-oriented EU political dynamics (see the exchange between Hix and Bartolini, 2006). There may also be a worry that a focus on more political pluralism may lead European integration towards a 'constraining dissensus' (Hooghe and Marks, 2009). However, we argue that there are significant risks to the European Commission maintaining its aversion towards politicization by emphasizing its 'technical' and 'non-political' role (see Haapala and Oleart, 2022). Blocking agonistic forms of politicization and democratic contestation opens the door towards antagonistic forms of conflict as illustrated by the populist appeals of, for instance, Orbán or Le Pen. The solution to political heterogeneity and disagreement is more democracy, not less.

Our research has important political and academic implications. Much scholarship has (rightfully) paid attention to the 'rule of law' breaches by Poland and Hungary, yet, similarly to the European Commission, some scholars have tended to take a 'political science without politics' approach. This is not to say that the rule of law is not an important pillar of democracy, but rather that it is not the only pillar. The goal of an objective and value-free political science is misguided in this context; we must be clear about what is valuable about democracy to be able to critically assess (and even identify) violations of democratic ideals, and to evaluate policy responses to the deterioration of democratic government in some member states. Consequently, we think academics should engage the debate on democratic backsliding departing from a full and healthy conception of democracy that situates pluralism at its centre. Our article in part fills this gap in the literature. If our conception of pluralist democracy is convincing, it gives us both a normative

framework to assess democratic backsliding in EU member states, and an ideal to aim for when developing a policy response that goes beyond legal mechanisms. So far, most political, policy and academic analyses of democratic backsliding have overemphasized the rule of law, the separation of powers and executive overreach, to the detriment of adequate attention to the degradation of political pluralism and the public sphere. A fuller and healthier conception of democracy is needed to protect what is valuable in European democratic life.

Acknowledgments

Correspondence: Alvaro Oleart, Department of Political Science, Maastricht University, Grote Gracht 90-92, Maastricht, 6200 MD, The Netherlands.
email: alvaroleart@hotmail.com

References

Bárd, P. (2018) 'The Rule of Law and Academic Freedom or the Lack of it in Hungary'. *European Political Science*, Vol. 19, pp. 1–10.

Beckman, L. (2014) 'The Subjects of Collectively Binding Decisions: Democratic inclusion and extraterritorial law'. *Ratio Juris*, Vol. 27, No. 2, pp. 252–270.

Beetz, J.P. (2021) 'A Democratic European Union should protect Liberal Democracy in its Member States: A Democratic Perspective of EU Intervention in Backsliding Member States' [Paper Presentation]. Politicologenetmaal, online conference.

Bellamy, R. and Kröger, S. (2021) 'Countering Democratic Backsliding by EU Member States: Constitutional Pluralism and 'Value' Differentiated Integration'. *Swiss Political Science Review (early view)*, Vol. 27, pp. 619–636.

Borrell, J. (2020) Response to disinformation around COVID-19: Remarks by High Representative/Vice-President Josep Borrell at the Read-out of the College meeting. Retrieved 9 April 2021 from: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1036

Bouza, L. and Oleart, A. (2018) 'From the 2005 Constitution's 'Permissive Consensus' to TTIP's 'Empowering Dissensus': The EU as a Playing Field for Spanish Civil Society'. *Journal of Contemporary European Research*, Vol. 14, No. 2, pp. 87–104.

Burnham, P. (2001) 'New Labour and the Politics of Depoliticisation'. *British Journal of Politics & International Relations*, Vol. 3, No. 2, pp. 127–149.

Coen, D. and Katsaitis, A. (2013) Chameleon pluralism in the EU: An empirical study of the European Commission interest group density and diversity across policy domains. *Journal of European Public Policy*, Vol. 20, No. 8, pp. 1104–1119.

Conrad, M. and Oleart, A. (2020) 'Framing TTIP in the Wake of the Greenpeace Leaks: Agonistic and Deliberative Perspectives on Frame Resonance and Communicative Power'. *Journal of European Integration*, Vol. 42, No. 4, pp. 527–545.

Crespy, A. (2010) 'When 'Bolkestein'is Trapped by the French Anti-liberal Discourse: A Discursive-Institutionalist Account of Preference Formation in the Realm of European Union Multi-level Politics'. *Journal of European Public Policy*, Vol. 17, No. 8, pp. 1253–1270.

Dahl, R.A. (1969) 'Political Opposition in Western Democracies'. In Blondel, J. (ed.) *Comparative Government* (London: Palgrave), pp. 229–234.

De Ville, F. and Orbie, J. (2014) 'The European Commission's Neoliberal Trade Discourse since the Crisis: Legitimizing Continuity through Subtle Discursive Change'. *British Journal of Politics and International Relations*, Vol. 16, No. 1, pp. 149–167.

Diez, T. (2014) 'Setting the Limits: Discourse and EU Foreign Policy'. *Cooperation and Conflict*, Vol. 49, No. 3, pp. 319–333.

Fairbrass, J. (2011) 'Exploring Corporate Social Responsibility Policy in the European Union: A Discursive Institutionalist Analysis'. *JCMS*, Vol. 49, No. 5, pp. 949–970.

Gofas, A. and Hay, C. (eds) (2010) *The Role of Ideas in Political Analysis* (Oxon: Routledge).

Gora, A. and de Wilde, P. (2020) 'The Essence of Democratic Backsliding in the European Union: Deliberation and Rule of Law'. *Journal of European Public Policy*, pp. 1–21.

Graham, T. (2009) What's Wife Swap got to do with it? Talking politics in the Net-based public sphere. Doctoral dissertation, Amsterdam School of Communication Research, University of Amsterdam.

Haapala, T. and Oleart, A. (2022) *Tracing the Politicisation of the EU: The Future of Europe Debates Before and After the 2019 Elections* (London: Palgrave).

Habermas, J. (1989) *The Structural Transformation of the Public Sphere* (Cambridge, MA: MIT Press).

Hay, C. and Rosamond, B. (2002) 'Globalization, European Integration and the Discursive Construction of External Economic Constraints'. *Journal of European Public Policy*, Vol. 9, No. 2, pp. 147–167.

Herman, L. E. (2019) 'The Slow Death of Hungarian Popular Sovereignty'. LSE Blog: https://blogs.lse.ac.uk/europpblog/2019/01/16/the-slow-death-of-hungarian-popular-sovereignty/

Hix, S. and Bartolini, S. (2006) 'Politics: the Right or the Wrong Sort of Medicine for the EU?' Notre Europe Policy Papers No. 19.

Hooghe, L. and Marks, G. (2009) 'A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus'. *British Journal of Political Science*, Vol. 39, No. 1, pp. 1–23.

de Jongh, M. and Theuns, T. (2017) 'Democratic Legitimacy, Desirability and Deficit in EU Governance'. *Journal of Contemporary European Research*, Vol. 13, No. 3, pp. 1283–1300.

Jourová, V. (2018) Speech by European Commissioner Jourová at Seimas (Lithuanian Parliament) on New Unity or Old Divisions – Europe at the Crossroads. Retrieved 9 April 2021 from: https://ec.europa.eu/commission/presscorner/detail/en/speech_18_6528

Jourová, V. (2019) Speaking points by Commissioner Jourová on the occasion of the first anniversary of the General Data Protection Regulation (GDPR). Retrieved 9 April 2021 from: https://ec.europa.eu/commission/presscorner/detail/en/speech_19_2697

Jourová, V. (2020a) Opening speech of Vice-President Věra Jourová at the conference 'Disinfo Horizon: Responding to Future Threats'. Retrieved 9 April 2021 from: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_160

Jourová, V. (2020b) Speech of Vice President Věra Jourová on countering disinformation amid COVID-19 'From Pandemic to Infodemic'. Retrieved 9 April 2021 from: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1000

Jourová, V. (2021) Opening remarks by Vice-President Jourová at the European Parliament Plenary debate on 'Government Attempts to Silence Free Media in Poland, Hungary and Slovenia'. Retrieved 9 April 2021 from: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_1116

Juncker, J.C. (2019) Speech by President Juncker at the European Parliament on the occasion of the debate on the review of the Juncker Commission. 'Europe: A Matter of the Heart'.

Retrieved 9 April 2021 from: https://ec.europa.eu/commission/presscorner/detail/en/speech_19_6145

Kelemen, R.D. (2017) 'Europe's Other Democratic Deficit: National Authoritarianism in Europe's Democratic Union'. *Government and Opposition*, Vol. 52, No. 2, pp. 211–238.

Kochenov, D. and Pech, L. (2015) 'Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality'. *European Constitutional Law Review*, Vol. 11, No. 3, pp. 512–540.

Levitsky, S. and Ziblatt, D. (2018) *How Democracies Die* (New York: Crown).

Mair, P. (2007) 'Political Opposition and the European Union 1'. *Government and Opposition*, Vol. 42, No. 1, pp. 1–17.

Majone, G. (2007) 'The Rise of the Regulatory State in Europe'. *West European Politics*, Vol. 17, No. 3, pp. 77–101.

Mouffe, C. (2005) *On the Political* (Abingdon: Routledge).

Mouffe, C. (2013) *Agonistics: Thinking the World Politically* (London: Verso).

Mounk, Y. (2018) *The People vs. Democracy: Why Our Freedom Is in Danger and How to Save It* (Cambridge, MA: Harvard University Press).

Müller, J.-W. (2015) 'Should the EU Protect Democracy and the Rule of Law Inside Member States?' *European Law Journal*, Vol. 21, No. 2, pp. 141–160.

Oleart, A. (2021) *Framing TTIP in the European Public Spheres: Towards an Empowering Dissensus for EU Integration* (Cham: Palgrave).

Pan, Z. and Kosicki, G. (2005). 'Framing and understanding of citizenship'. In Dunwoody, S., Becker, L.B., McLeod, D.M. and Kosicki, G. (eds.) *The evolution of key mass communication concepts: Honoring Jack M. McLeod* (New York: Hampton Press), pp. 165–204.

Pech, L. and Scheppele, K.L. (2017) 'Illiberalism Within: Rule of Law Backsliding in the EU'. *Cambridge Yearbook of European Legal Studies*, Vol. 19, pp. 3–47.

Priebus, S. (2022) 'The Commission's Approach to Rule of Law Backsliding: Managing Instead of Enforcing Democratic Values?' *JCMS*, online first.

Rauh, C. and De Wilde, P. (2018) 'The Opposition Deficit in EU Accountability: Evidence from over 20 Years of Plenary Debate in Four Member States'. *European Journal of Political Research*, Vol. 57, No. 1, pp. 194–216.

Runciman, D. (2018) *How Democracy Ends* (New York: Basic Books).

Scherz, A. (2013) 'The Legitimacy of the Demos: Who Should Be Included in the Demos and on what Grounds?' *Living Reviews in Democracy*, Vol. 4, pp. 1–14.

Schmidt, V.A. (2010) 'Taking Ideas and Discourse Seriously: Explaining Change through Discursive Institutionalism as the Fourth 'New Institutionalism''. *European Political Science Review*, Vol. 2, No. 1, pp. 1–25.

Theuns, T. (2020) 'Containing Populism at the Cost of Democracy? Political vs. Economic Responses to Democratic Backsliding in the EU'. *Global Justice: Theory, Practice, Rhetoric*, Vol. 12, No. 2, pp. 141–160.

Theuns, T. (2021) 'Pluralist Democracy and Non-Ideal Democratic Legitimacy: Against Functional and Global Solutions to Boundary Problem in Democratic Theory'. *Democratic Theory*, Vol. 8, No. 1, pp. 23–49.

Theuns, T. (2022) 'The Need for an EU Expulsions Mechanism: Democratic Backsliding and the Failure of Article 7'. *Res Publica*, online first.

Thyssen, M. (2019) Keynote speech at Annual Convention for Inclusive Growth, Brussels. Retrieved 9 April 2021 from: https://ec.europa.eu/commission/presscorner/detail/en/speech_19_7104

Timmermans, F. (2019) Speech by First Vice-President Frans Timmermans at the Committee of the Regions' plenary session on fundamental rights and EU values. Retrieved 9 April 2021 from: https://ec.europa.eu/commission/presscorner/detail/en/speech_19_7048

Wolkenstein, F. (2020) 'Partisan Complicity in Democratic Backsliding'. *Global Justice: Theory, Practice, Rhetoric*, Vol. 12, No. 1, pp. 127–140.

Zala, M., Rippon, S., Theuns, T., de Maagt, S. and van den Brink, B. (2020) 'From Political Philosophy to Messy Empirical Reality'. In Knijn, T. and Lepianka, D. (eds) *Justice and Vulnerability in Europe* (Cheltenham: Edward Elgar Publishing), pp. 37–53.