Right-Wing Populism and the European Parliament's Agonistic Politics

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Abstract

How is it that the European Parliament (EP), the only directly elected institution of the European Union (EU), has both empowered right-wing populist politicians in the UK and France, and helped challenge the right-wing populist governments of Hungary and Poland? Part of the response lies in institutional rules shaping the EP’s elections and its authority, which this article discusses critically. The paradoxical impact of the EP on European right-wing populism leads to another question: Should the EP privilege the rights of right-wing populist and anti-system actors; or, to the contrary, should it “protect democracy against democracy”? This article draws from political theorist Chantal Mouffe’s agonistic politics to assess comparatively the measures the EP majority has taken to limit the influence of right-wing populists within the chamber and beyond in EU member states. It critiques the exclusionary cordon sanitaire within, and conditionality and the “judicialization of conflicts” without, which the EP discusses passionately also.

Keywords


1 Introduction

Right-wing populist parties have grown in strength in Europe in the last decade and govern in several European Union (EU) member states, including Poland,
Hungary, and Slovenia. Although these parties reject partly or totally the EU and its elites for disregarding the popular sovereignty of EU member states, they run for elections to the European Parliament (EP), and in the 2019 election they won 192 seats out of 751. Therefore, an increasing number of Europeanist scholars probe the impact of right-wing populism on the European Parliament. This article contributes to this scholarship by examining an empirical paradox little discussed so far: how is it that the EP, the only directly elected institution of the EU, has both empowered right-wing populist politicians in the UK and France, and helped challenge the right-wing populist governments of Hungary and Poland? Part of the response lies in institutional rules shaping the EP’s elections and its authority. The paradoxical impact of the EP on European right-wing populism leads to another question which cannot be answered by factual evidence alone and which calls for ethical and theoretical reasoning: Should a political institution such as the EP privilege democratic representation and protect the rights of radical right and anti-system parties; or, to the contrary, should it “protect democracy against democracy”? To address these questions, this article turns to academic studies of populism and the EP and to political theorist Chantal Mouffe’s agonistic politics. Mouffe theorizes a form of democratic politics that thrives on conflict, and she wrestles philosophically with the political dilemma the EP is confronting: How to maintain democratic

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interactions in the midst of ceaseless conflicts? Which conflicts threaten the very existence of democracy and which conflicts, to the contrary, are essential to democratic health?

In the last decade the EP majority has taken diverse measures to limit right-wing populists’ influence both within the chamber and across the EU. Most scholarly assessments discuss either the EP internal measures or the EP legislative decisions, which affect all EU member states. This article is an original attempt to discuss both sets of measures comparatively. Section 2 offers a brief theoretical discussion of European populisms and the author’s definition of populism, and it discusses the relevance of Mouffe’s theory to interpret EP politics related to right-wing populism. Section 3 notes the gradual empowerment of the EP over the last 60 years and argues that two institutional features must be considered to explain the paradoxical role of the EP in facilitating the growing influence of right-wing populist parties in Europe: the proportional electoral system whereby members of the European Parliament (MEPs) are elected, and the formation of political groups based on partisan affiliation rather than nationality. Section 4 offers two case studies of these institutional features by examining the rise to political leadership of Nigel Farage of the UK and Marine Le Pen of France. Section 5 critically discusses, in light of Mouffe’s agonistic politics, the measures mainstream MEPs have taken to constrain their right-wing populist colleagues. Section 6 explains how the EP has used its power of the purse to help challenge right-wing populist governments, in Poland and Hungary especially, through a new Conditionality Regulation (EU law). Section 7 assesses this regulation and the judicialization of politics, which the EP is promoting with other EU institutions. Section 8 discusses a recent performance of agonistic politics at the EP and concludes.

2 Thinking through European Populisms and Mouffe’s Agonistic Politics

It is not exceptional for scholars to write of populism without even defining the notion. Indeed, populism’s meanings and its practices are numerous. Nevertheless the Oxford Handbook of Populism singles out three scholarly approaches to populism: the ideational approach which focuses on ideas and concepts, the political-strategic approach which studies leaders, and the socio-cultural approach which discusses issues of identity.4 Rather than ideational

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This article focuses on right-wing populism exclusively and does not discuss Mouffe’s endorsement of left-wing populist struggles against neo-liberalism. Right-wing populist parties exist in all European regions and all share strongly Eurosceptic convictions. Some seek exit from the EU and others reforms within the EU, but they agree on an absolutist view of popular sovereignty and national traditions, the rejection of outsiders (and immigrants), and of the rule of law. The article's approach focuses on institutional rules and leaders' actions to explain the role of the EP in promoting and challenging the rise of right-wing populism across the European Union. But its definition of populism follows definitions broadly accepted in the scholarship. 

Populism consists of a monist set of claims, strategies, and governance methods, which thrives on exclusionary and simplistic binaries, the chief one being a set of moral distinctions between the “pure people” and the “corrupt elites.” It negates pluralism, be it the pluralism of the “people” or the pluralism of interests or of institutions. What political association could be more “plural” than the EU, with its 27 member states and 24 official languages, its complex institutions and policies, and muddled attempts to combine unity with diversity? Jan-Werner Müller considers European populisms a major danger for democracy, not because of their critique of the EU, but because their exclusionary approach denies the legitimate right of others to disagree. Another danger is that populism appeals to people through moral claims rather than empirical arguments. Thus British MEP Nigel Farage celebrated the Brexit vote by claiming a “victory for real people,” implying that the 48% who voted against Brexit were “less than real.”

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8 Ibid., 21–22.
9 Whether there is a left-wing populism in Europe is a much-debated issue. Müller argues that left-wing populism as “somehow progressive” is largely “an American (North, Central, and South) phenomenon.” He considers “the demand for a specific left-wing populism” ... in many parts of Europe to oppose austerity policies” to be “either redundant or dangerous.” Op. cit., 11, 98. Chantal Mouffe argues, to the contrary, that a “populist moment” has arrived, and that “left populism wants to recover democracy to deepen and extend it.” Mouffe, For a Left Populism (London, New York: Verso, 2018) 5 and 24.
of Brussels, regardless of differences on other policies regarding issues such as abortion, gay marriage, transgender rights, and the economy.

Mouffe began theorizing agonistic politics at the turn of the twenty-first century to counter a tendency among some political theorists, such as Ulrich Beck and Anthony Giddens, and social-democratic politicians, to blur the frontiers between the political left and right. She warns against a “depoliticized democracy,” which provides fertile ground for right-wing populists’ appeals to passion and collective forms of identification based on essentialist notions of race, ethnicity, and religion. With Carl Schmitt (and against Jürgen Habermas) she forecloses “any possibility of a final reconciliation, of any kind of rational consensus, of a fully inclusive ‘we’ in democratic politics, as passions as well as reason moves political actors. What matters most to democracy is that conflict does not take the form of an antagonism (struggle between enemies), but of an agonism (struggle between adversaries). The us/them relationship and its exclusionary logic cannot be eliminated because this relationship is constitutive of political identity. A moment of decision with closure, and winners and losers, arises. Thus, hegemony is unavoidable although renewed struggles can transform the hegemonic order democratically.

Mouffe is well aware that envisaging political confrontation in a friend/enemy mode rather than in terms of adversaries may lead to violence and even civil war, means of action she opposes. Rather, she aspires to the transformation of antagonistic politics into an “agonistic model of democracy” where conflicts are legitimate and regulated by a set of rules, and thus not destructive of the pluralist democratic order. Her agonistic politics rests on a “conflictual consensus” over procedures and institutions. Therefore, far from endorsing

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16 Ibid., 5–9; 14–15; 138–9.

an exodus from parliamentary institutions, she asks for engagement: “It is through representation that collective political subjects are created and they do not exist beforehand.”18 She writes of “the creation of the European Union” as “a very good example of keeping antagonism at bay by constructing an agonistic configuration” that would make it less likely for France and Germany to treat each other as enemies, a precondition for lasting peace.19 She cites Northern Ireland’s peace as another example of the transformation of antagonistic politics into agonistic politics.20

Cas Mudde calls Mouffe one of the “smartest scholars who have written about populism.”21 But Ferdinando G. Menga raises a crucial question, which haunts both practitioners and theorists of European populism: What is the fine line separating an agonistic conflict (to be embraced) from an antagonistic one (to be rejected)? Menga notes “Mouffe’s insufficient account of the structural divergence between antagonism and agonism” and her “necessarily ambiguous use of the notion of antagonism in the elaboration of her notion of plural agonism.”22 In other words, Mouffe does not provide clearly theorized standards to distinguish agonistic adversaries who enliven democratic politics from antagonistic enemies who threaten to destroy it. Danny Michelsen also critiques her lack of empirical attention to institutions and institutional innovation.23 Indeed Mouffe’s “agonistic approach to the future of Europe” recommends somewhat vaguely a multilevel plurality of sites for political debates and decisions, including the local and regional, without mentioning the European Parliament once.24

In spite of theoretical and empirical weaknesses, Mouffe’s anti-essentialist political theory insightfully captures the hegemonic and conflictual nature of

every kind of political order; and it articulates the complex political practices “whose aim is to establish order in a context of contingency” in a manner relevant to discussions of European integration.25 There is no final reconciliation in Mouffe’s agonistic politics. Nor was there one for the founders of the first European Communities, seasoned as they were by the tragedies of two world wars.26 Mouffe’s theory is an “analytical model,” not a political project.27 The distinction between agonistic and antagonistic actors serves as an original heuristic device to analyze the behavior of right-wing populist actors and their adversaries (or enemies) in EP politics.

3 Agonistic or Antagonistic Politics at the European Parliament: Institutional Rules That Give Voice to Right-Wing Populists

The Common Assembly of the European Coal and Steel Community (ECSC) whose members were drawn from the six member states’ parliaments, started as a mere consultative chamber, beside the High Authority (predecessor of the current Commission) and the Council of Ministers representing the member states in 1952.28 Its successor institution, the European Parliament (EP), owes its current status of co-legislator with the Council to many agonistic struggles, which were mostly inter-institutional.29 The desire to gain power prompted the EP’s largest political groups, the Progressive Alliance of Socialists and Democrats (S&D), the conservative European People’s Party group (EPP), and the Liberals (ALDE, today Renew Europe) to act consensually and demand direct elections and legislative powers for the sake of democratic representativeness and accountability.30 But it took three legislative drafts of the ECSC Assembly and ten years of agonistic back and forth between the Assembly and national leaders to get a decision and a date, 1979, for the first direct election of the EP.31

26 The Memoirs of Jean Monnet, one of the founders of European integration, ends with a question: “Have I said enough that the Community we have created is not an end in itself? It is a process of change.” In Monnet, J. Memoirs (New York: Doubleday, 1978), 524.
One important issue arose: which electoral system to choose? Would it be proportional representation or the British single plurality system, or a mixture of the two as in France?32 Eight out of the nine member states made the pragmatic decision in 1979 to stick to the various forms of proportional representation governing their national elections. The UK did not, and only shed its “first-past-the post-system” in 1999. This proved to be a game changer. Once a UK candidate did not need 51% of the votes to be elected, unconventional politicians, who did not belong to the Labor or Conservative parties, became eligible. The EP proportional representation electoral system gave an early boost in France to the far-right Front National and the Greens.33 When a wave of populism hit national politics across the EU, proportional representation allowed Eurosceptic left-wing and right-wing populist candidates to win seats to the EP in 23 of the 28 member states, gaining 31% of the total seats in 2019, with 18% of the seats going to right-wing populists.34

Another institutional feature, the organizations of parliamentarian political groups, strengthened the voice of right-wing populists in the EP.35 The European founders believed that trans-European institutions could contribute to the shifting from national to European commitments. Thus the EP rules of procedure and allocation of resources encouraged MEPs to join transnational political groups according to partisan rather than national affiliations.36 Today it takes 23 MEPs from at least seven countries to form a group. Seats on the EP’s twenty standing parliamentarian committees, which draft the major legislative reports, are allocated among the seven political groups according to their strength in Parliament as are leadership positions. Political groups access supplementary funds by forming alliances in Europarties and affiliated foundations, which are funded by the EU.37 During the 1990s European right-wing

32 Political scientists ponder which electoral system is most representative, but also guarantees the best governance. See Arend Lijphart for a strong pro-proportional representation argument in Patterns of Democracy (New Haven: Yale University Press, 2012).
36 Author of this article (2021), 111–113; Dinan, D. Op. cit., 245. MEPs keep their national allegiances, but rarely vote as a national group as some MEPs may belong to the opposition and others to the government of a specific member state.
populists had made sporadic efforts to organize across Europe, which failed. This changed in 2014 when right-wing populist Nigel Farage and Marine Le Pen took full advantage of the parliamentarian group’s structure and founded two new EP groups, Europe of Freedom and Direct Democracy (EFDD) and Europe of Nations and Freedom (ENF), respectively. More moderate conservatives and some radical right MEPs joined a third group, the European Conservatives and Reformists (ECR).

4 Being MEPs: Nigel Farage and Marine Le Pen

There is a danger in discussing populist movements in terms of leaders, which reduces the explanation of complex political events to the agency of single actors. However, this is well within the spirit of populism. Farage and Le Pen’s political ascensions illustrate the importance of institutions in explaining the rise of right-wing populism across the EU. The UK single-member plurality and the French mixed electoral systems are not designed to give anti-system candidates much of a chance. Farage unsuccessfully stood for elections to the House of Commons, but was elected to the EP in 1999 upon his first try and re-elected four times before the Brexit agreement severed the ties between the UK and the EU in 2020. Marine Le Pen was a MEP for thirteen years until she won a seat in the French National Assembly (NA) in 2017.

Nathalie Brack provides an interesting typology of Eurosceptic MEPs according to the four different “roles” they play in the EP. Placing Le Pen and Farage within this typology helps us contextualize their actions. The most disengaged MEPs are the “absentees” who spend most of their time in their country. Their participation in European elections is largely driven by utilitarian considerations, and the European mandate “seen as an opportunity to get attention at the national level and a platform to increase visibility and gain legitimacy, while only being minimally involved in the EP.” The second role,

41 Right-wing populist parties “have a greater tendency than other parties to be dominated by their leaders and to personalise communication around them.” McDonnell, D. and A. Werner. Op. cit., 26.
which Farage and Le Pen played artfully, is that of “the public orator.” Public orators are more present in the EP than absentees but vote against the vast majority of legislative proposals and are rarely involved in committee work. They have poor relations with other MEPs as their speeches serve to disseminate negative information about the EU and the EP. Le Pen’s ENF group and Farage's EFDD group “blocked” the work of other MEPs by “introducing bogus amendments” that slowed down the legislative process.42 The other two roles are “the pragmatists” and the “participants” who are much more involved in group and committee work and practice “constructive opposition,” and are more often soft Eurosceptics and left-wing populists.43

Interventions in the EP plenary sessions are the most visible face of right-wing populists.44 Farage and Le Pen’s seats in the EP provided them not only with a comfortable salary and a few assistants, but, more importantly for these outstanding public speakers, with a public platform. Given the boring and technical nature of many EP parliamentary debates, the two populist leaders attracted media attention through witty, nasty, and easily quotable speeches made during the plenaries. One primary strength of Farage was the “consistency” of his message, which convinced his hearers of his authenticity compared to other more mainstream politicians.45 There can be little doubt that Farage became an influential public face of the pro-Brexit campaign thanks to his seat in the EP, although the scholarship on Brexit enumerates other causal variables for the referendum’s leave result as well.46 The proportional electoral system allowed 23 other United Kingdom Independence Party members (UKIP) to win seats in the EP 2014 elections, more than both Conservative and Labor party members. To counter UKIP’s rising popularity, prime minister David Cameron promised a referendum on the UK membership of the EU,

which he narrowly lost in 2016. Farage resigned from the leadership of UKIP soon thereafter to establish the Brexit Party. The new party won 29 EP seats in 2019 at the expense of UKIP, which was left with none.

In 2014, Le Pen’s party won 25 seats in the EP, and her Rassemblement national (RN) has 23 seats in the current legislature.\textsuperscript{47} After forcing her father out from the French National Front’s leadership, Le Pen de-demonized the party by expelling members accused of racism, antisemitism, and Petainism,\textsuperscript{48} and in 2018 renamed it Rassemblement national (or National Rally, NR). Cleverly, she adopted a progressive agenda on issues of gender equality and gay and religious minority rights, thus undermining parties of the center-right and the left. Support for the NR grew rapidly among women, gays, lesbians, people of different religious orientations and other minorities.\textsuperscript{49} Influenced by Le Pen’s efforts, the ENF political group was also de-demonized.\textsuperscript{50} Already during the 2014–19 legislature, Le Pen’s group, the Dutch PVV, the Austrian FPÖ, and the German AfD

Set out to establish themselves as successful political practitioners by challenging the more moderate EP alliances’ claim to competence. Their fraternization on the European stage has been a balancing act between presenting themselves as a right-wing alternative to centre-right parties, while at the same time avoiding engagement with the extreme right EP members of the Golden Dawn, the German Nationalist Party or the Hungarian Jobbik, which would undermine rather than support their claim to political competence.\textsuperscript{51}

After Brexit, right-wing populist MEPs reorganized themselves into one single group, the Identity and Democracy Group (ID) for the 2019–2024 legislature. ID is the fifth-largest group in the EP after the Greens, with 70 MEPs from ten member states.\textsuperscript{52} Duncan McDonnell and Annika Werner expect right-wing populists to act as a stronger and more ideologically homogenous group at the EP in the coming years around one chief concern, immigration, which is perceived first and foremost as a European issue. The ID MEPs will present themselves “not just as

\textsuperscript{48} Taggart, P. Op. cit., 251 and 258.
\textsuperscript{51} Ibid., 901.
\textsuperscript{52} https://www.idgroup.eu/members (accessed October 13, 2021). Numbers have fluctuated slightly over time.
saviours of their nations, but of Europe.”53 Exiting the EU is no longer a pertinent issue for a majority of EU citizens given the Brexit travails. As right-wing populists have joined governmental coalitions in several EU countries, they have gained influence in the Council and Commission also. McDonnell and Werner conclude, “The EU created the stage to bring these [right-wing populist] parties together at the European level. And now they are finally stepping onto it.”54


Agonistic politics assumes a “conflictual consensus” over the rules of engagement. How do mainstream MEPs respond to the antagonistic politics of the more radical right-wing populists, who spurn rules and participation? Between 2010 and 2019 EU mainstream political actors evolved from a “logic” of democratization to develop a transnational European party system to increasingly “protective” policies to safeguard the European political order from right-wing and anti-systemic parties, according to Ludvig Norman. They have invoked EU values and laws to justify their standards of judgment and resorted to means of containment, which are both formal and informal.55

Formally, the EP gradually altered its Rules of Procedure (RoP) to accommodate its expanding powers and the larger number of MEPs after the EU enlargements from 15 to 27 member states. (There are 705 MEPs at the time of this writing). It introduced new principles of conduct and sanctions in the Rules to protect “the dignity of Parliament.” Thus Farage lost ten days of allowance for insulting EU president Van Rompuy in a plenary and refusing to apologize.56 Penalties were strengthened in 2017 and xenophobic, defamatory and racist language, and banners were banned.57 Other rule changes empowered the larger political groups, especially the Progressive Alliance of Socialists and Democrats (S&D) and the centrist and conservative European People’s Party group (EPP), and marginalized non-attached MEPs and smaller groups.58 Individual MEPs have the right to ask questions in plenaries and to make one-minute speeches. But their questions are now limited in length and number

54 Ibid., 233.
57 Ibid., 127–128.
58 Ibid., 116 and 115–145.
and cannot provoke a debate. Time for open debate has shrunk in order to increase legislative efficiency. There is little possibility for a filibuster or tabling amendments, except if a political group or at least 40 MEPs act together. The EP’s most important work takes place in the policy committees under the leadership of rapporteurs who propose legislative texts. Because the reports’ allocation is decided by proportionality, the largest political groups have the most input.\(^5^9\)

In order to prevent abuses of funds, the EP committee for Constitutional Affairs collaborated with the Commission and the Council to frame new formal policies for the registration and financing of transnational political parties. During the 2014–19 legislature, Le Pen’s ENF and Farage’s EFDD groups broke the rules and misspent EU funds on exclusively national objectives, such as the UKIP campaign during the 2015 UK general election and the work of a Le Pen parliamentarian assistant in Paris instead of Strasbourg and Brussels.\(^6^0\)

As renewed emphasis was placed on the defense of EU values, left-wing and right-wing populist and other MEPs expressed concern over who would assess compliance (or lack thereof) with EU values. Some suggested it should be the European Court of Justice, others the Commission, others the EP. In the end, an independent group called the Authority for European Political Parties and Political Foundations was established, but its statutes were revised continuously, until a 2019 regulation increased its scope and added more criteria defining breaches of EU law.\(^6^1\)

Informal rules added another layer of restrictions on right-wing populists MEPs.\(^6^2\) A cordon sanitaire was set up against Le Pen’s ENF and Farage’s EFDD during the 2014–2019 legislature.\(^6^3\) This French-language expression dates back to the medieval period when it was deployed by political authorities to protect European cities from the plague. At the EP, the cordon sanitaire meant “that those who belonged to the Europe of Nations and Freedom (ENF) or Europe of Freedom and Direct Democracy (EFDD) groups were seen as outsiders, or

59 Ibid., 120.
even outcasts, and generally excluded from legislative work” and parliamentary leadership positions.\textsuperscript{64} Because the *cordon sanitaire* is an informal policy, not a written rule, it is interpreted differently by different actors; some MEPs always vote against right-wing populists, others not, especially on matters of employment and social policy.\textsuperscript{65} Ariadna Ripoll Servent and Laura Panning argue that the *cordon sanitaire* is “not effective when Eurosceptic and extreme voices come from inside mainstream groups.”\textsuperscript{66} Centrist members of the EPP group spent years of efforts to get new rules on European values approved, given the backsliding on the separation of powers and freedom of the press in Hungary. The Hungarian Fidesz MEPs finally left the EPP group on March 3, 2021, in order not to be expelled.\textsuperscript{67}

Internal contestation within the chamber remains high. For Eugenio Salvati, the rise of hardline Euroscepticism has improved the “representative” function of the EP, even though its members are anti-system. Brack also welcomes the “politicization” of EU politics: “A political community exists only insofar as the opposition is present in the system.”\textsuperscript{68} Norman wonders, however, whether the rise of anti-systemic political forces in Europe, and the “protective” measures mainstream parties are taking at the EP could “spur reactions that may work to counter-act the democratic development of the EU.”\textsuperscript{69} Polish MEP Ryszard Antoni Legutko, a member of the ECR group, accuses the “same coalition” (the three center-right European People’s Party, center-left Socialists and Democrats, and Liberal groups), which has governed the EP “from time immemorial ... to have no understanding for dissent.” The coalition “has managed to establish a tyranny of the majority that controls everything, from administration to the distribution of the key political positions.... Despite what one can see in the Parliament and in the Commission, might is not right.”\textsuperscript{70}

\begin{thebibliography}{9}
\bibitem{69} Norman, L. Op. cit., 734.
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In contrast, agonistic politics engage actors with one another. Brack’s “Pragmatists” and “Participants” unlike the “Absentees” and “Public Orators” accept the formal and informal rules of the EP in order to exert influence. In this case, even conflictual interaction between MEPs creates opportunities for influence and “contagion.”\textsuperscript{71} In the end, the actions of mainstream and some Eurosceptic groups are “mutually reinforcing as much as mainstream parties need to decide whether to engage or ignore Eurosceptic groups, the latter also face choices between participating or not in the EU’s legislative process.”\textsuperscript{72}

Mouffe argues that the fate of democracy hangs on political actors’ ability to treat one another as adversaries rather than enemies. However, it may be possible for a political actor be both an enemy and an adversary. MEP Farage declared in his farewell speech to the EP, “We love Europe, but we hate the European Union.... You are going to miss us. But we look forward to working with you as sovereign.”\textsuperscript{73} Is this hater of the EU but lover of Europe an antagonistic actor who wishes for the destruction of the EU or an agonistic political actor who will engage, but on his own terms? This is an ambiguous case which Mouffe does not consider, and which rigid rules of procedure cannot address.

The EP majority has taken formal and informal measures to limit the influence of right-wing MEPs. Whereas formal measures are spelled out and can be challenged, the danger of informal measures is their ambiguity and apparent arbitrariness. Mouffe critiques the \textit{cordon sanitaire}, which “good democratic parties” wish to establish “in order to stop the return of what they see as the ‘brown plague.’” When conflicts are defined in moralistic rather than political terms, opponents cannot be seen as adversaries but only as enemies. “With the evil ones, no agonistic debate is possible. They have to be eliminated.”\textsuperscript{74} Responding to the agonistic politics of right-wing populist MEPs with exclusionary measures, which are not written down, is a tempting short-term option for mainstream MEPs. In the long term, however, \textit{à la carte} exclusion undermines the ethical and political ground, explicitly stated laws, and values on which the EP stands to challenge the rise of authoritarianism in Central European member states.

This section and section 6 focus on the external interventions of the EP to limit anti-system right-wing populism in the EU. In the last six years, the EP, the Commission, and certain member states within the Council have expressed growing criticism of the populist Polish Law and Justice and the Hungarian Fidesz governments for infringing upon the independence of the courts, the separation of powers, the freedom of the press, and the activities of opposition parties and minority groups, such as the LGBT community. The Commission initiated several infringement procedures against Poland and Hungary for breaches in the rule of law, but with little success. In 2018, the Commission, acting upon an EP recommendation, proposed a new “conditionality mechanism” according to which EU funds can be withheld from a member state in breach of EU law. Although the Council was hesitant, the EP asked for inclusion of the conditionality mechanism in the EU seven-year Multiannual Financial Framework (MFF), which also sets yearly budgets.

It is difficult to measure the EP’s specific influence on EU decisions, but research shows that the EP’s “influence” goes well beyond veto power. This is another story of change in institutional rules. Thanks to treaty changes, the Parliament today shares budgetary authority with the Council. In this case the EP collaborates with three other institutions: the Commission, which...
proposes legislation and the budget; the Council, which co-approves; and the European Council (heads of government), which sets EU political priorities. Due to the COVID-19 pandemic, the 2021–2027 MFF is exceptional in size. Together with a new recovery instrument called NextGenerationEU and a budget of €750 billion, the EU plans to provide €1.824 trillion of funding over the next seven years to support recovery from the pandemic as well as several long-term priorities of the EU. Recovery funds are being disbursed on the basis of a credible plan for investment from each member state, by approval of the Commission. These recovery funds are available along with cohesion funds – regional aid distributed across the EU to qualifying regions based on per capita income. In the past Poland and Hungary received the lion's share of the cohesion funds, which represent about 33% of the EU annual budget. Under the current MFF and the recovery program, Poland should receive some €120 billion and Hungary €38 billion over the next seven years.

The EP was not in the room in July 2020 when the European Council reached a political agreement on the 2021–2027 MFF and NextGenerationEU after almost five days of nonstop, heated debates. But the negotiators knew that the Parliament could use its power to withdraw consent if the “conditionality mechanism” was not included. On December 16 and 17, 2020, the EP and the Council approved the MFF and a Conditionality Regulation (EU law) to protect the rule of law in member states. Inclusion of the regulation marked a turning point in EU legislation by establishing for the first time a formal legal link between the disbursement of EU funds and the Lisbon Treaty's (EU constitution) article 7 on the respect for EU values and the rule of law. Moreover, the regulation can be triggered by a qualified majority instead of unanimity in the Council, which means that individual member states have lost their veto power.

The Conditionality Regulation, which is now part of the EU legal order, is one formal expression of what Mouffe calls a “conflictual consensus”: It targets potential adversaries of the EU rule of law, not enemies to be destroyed. For

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example, several EP amendments were included in the regulation to “tackle potential problems of perceived legitimacy” and protect recipients of EU funds, such as students, researchers, companies, and NGOs, who might be adversely affected if their government is penalized. The regulation also establishes an “independent panel of experts,” which will monitor all EU member states through an annual rule of law review. For the governments who feel targeted, however, the new regulation is antagonistic. Hungary and Poland have challenged the legality of the Conditionality Regulation in the European Court of Justice. Their case is being reviewed, just as the Polish government is envisaging new judicial reforms that would reinforce rather than decrease executive control over the Polish courts.

7 Antagonistic or Agonistic Politics of the EP? The “Conditionality Mechanism”

The impact of conditionality on policy and politics is contested. On one hand, the sheer threat of conditionality may change policies. After the Commission threatened to block cohesion funds intended for regional projects in Poland, three Polish regional parliaments withdrew their resolutions against “LGBT ideology” which breached EU anti-discrimination laws. On the other hand, as John Bachtler and Carlos Mendez write, “conditionalities are problematic to implement, due to conflicts over objectives and ownership, and they can have negative consequences in terms of perceived legitimacy and fairness.” Contrary to pre-accession conditionality, which incentivized candidate countries to comply with EU law with the promise of accession, the Conditionality Regulation is “negative.” It will punish with the suspension of EU funding in cases of violation of EU values or law rather than reinforce

compliance with “rewards.”88 Michael Blauberger and Vera Hüllen argue that the effectiveness of negative conditionality hinges on the formality of the rule, the size and speed of the sanction and the likelihood of its application. The domestic context of application and perceived legitimacy matter also. Moreover, it is important to add an emotional element to the idea of cost-benefit calculations. “Research on international sanctions shows that the ‘warmth of prior relations’ shapes their effectiveness.” Friends are more likely to give in to external pressure than enemies.89

What might it mean to act as a friend rather than an enemy to confront democratic backsliding? Blauberger and Hüllen review a few “promising mechanisms for influencing domestic politics.” Technical or financial assistance could be directed either at state institutions or non-state actors to facilitate an exchange of ideas and learning in transnational networks. Assistance could help build “capacities for acting as ‘watchdogs’ in domestic politics.” Another mechanism might involve attempts at social pressure or persuasion; even negative conditionality procedures could be used to generate social pressure through naming and shaming if the results of a “systematic monitoring” by an “impartial institution” were published. To sum up, in addition to conditionality, the EU should try to maintain “channels of contact that allow for ‘a depoliticized setting and a highly deliberative quality of interactions with the target government’.”90

The effectiveness of lawsuits to solve conflicts over democratic backsliding is also contested. The Commission, partly under the influence of the German government and despite the EP’s repeated pressures, has failed to draft guidelines to implement the Conditionality Regulation.91 In October 2021 the EP majority lost patience and took the Commission to court for not enforcing the conditionality mechanism. At the same time, and upon the Commission’s request, the European Court of Justice hit Poland with a fine of €1 million a day – its largest-ever daily penalty – for failing to dismantle its Disciplinary Chamber.92 As a result of earlier infringement procedures, the Commission

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89  Ibid., 7.
90  Ibid., 14.
is also withholding from Poland €24 billion in grants and €12 billion in low-interest loans in pandemic recovery funds until the Polish government dismantles the Disciplinary Chamber and reinstates unfairly dismissed judges.\(^93\) It is withholding recovery funds from Hungary, as well, for breaching judicial independence, LGBTQ and refugee rights, and media freedom.\(^94\)

Michael Blauberger and R. Daniel Kelemen warn against excessive use of judicial instruments, which risk “unduly politicizing the EU judiciary” and encouraging “political leaders to shirk their responsibility to stand up against democratic backsliding.”\(^95\) They critique EU heads of government for their “silence,” and praise the EP for issuing reports and resolutions criticizing developments in Hungary and Poland, in spite of the EP’s divisions along partisan lines.\(^96\) According to Tomasz Tadeusz Koncewicz, “the Polish experience constitutes an existential challenge for the EU.” The Polish government, by rejecting some rulings of the European Court of Justice, is challenging the primacy of EU law. Yet there is no “systematic and coordinated action” in the European Council, which instead is avoiding conflict.\(^97\) The EU was established to overcome deadly antagonisms, as Mouffe notes. The multiplication of lawsuits brought by the EP against the Commission and by the Commission against the Polish and Hungarian governments signals a European model of agonistic politics under stress. For Mouffe, the increasing role played by the juridical sphere has “very negative consequences for the workings of democracy ... because there are no impartial solutions in politics.”\(^98\)


Conclusion: The EP as a Space of Agonistic Politics?

This article has discussed the contradictory role of the EP, which has both strengthened the voice of right-wing populism and taken energetic measures to contain it within the chamber and across the EU. It has assessed the EP’s measures in light of Mouffe’s distinction between agonistic and antagonistic politics, and it notes the fragility of the “conflictual consensus” over the rules of engagement in the EP and other EU institutions. It agrees with Mouffe that a “politicization of the European project” is needed. This “would allow the citizens of the various demois to engage in an adversarial confrontation between different ways to envisage the nature of the EU and its place in the world.”

According to Mouffe, this confrontation should take place both in the streets and in Parliament. Indeed, neither political parties nor social movements can transform a situation on their own; they must work in “synergy.” The role of movements is to make demands, and the role of parties to propose solutions in representative institutions. Agonistic democracy, at its best, offers “alternatives.”

Every so often a “synergy” occurs in real life. On October 7, 2021, the Polish constitutional court challenged the primacy of EU law over national laws and constitutions by ruling that some articles in the EU Treaty might be inconsistent with the Polish constitution if interpreted in a certain way.

Tens of thousands of Poles demonstrated against the ruling in the streets of Warsaw and Gdansk. Two weeks later, Polish Prime Minister Mateusz Morawiecki, EU Commission President Ursula von der Leyen, and over 90 MEPs debated the primacy of EU law, Polish judicial reforms, and the conditionality mechanism.

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for four and a half hours in a tense EP plenary, which was immediately posted on Facebook and the EP homepage.\textsuperscript{103}

In this debate, Polish Prime Minister Morawiecki defended the Polish constitutional court’s ruling and challenged the principle of EU law primacy over member states’ national constitutions. He complained bitterly about the EU “financial blackmail” and added that if the EU wanted to become a “superstate,” the people of Europe should decide on this by referendum. This declaration was in keeping with the populist preference for plebiscitary democracy to adjudicate complex political issues. The MEPs, who spoke on behalf of the seven political groups and in their own name, raised many questions. Should the EU law have primacy over all national laws or only over areas specifically covered by the Lisbon Treaty? Is the Polish government ignoring the separation of power between the executive and the judiciary branches? Does the EU have the right to intervene in societal questions not covered by the Lisbon Treaty such as the decriminalization of abortion? Should the EU “punish” the Polish government by withdrawing funds or should it take the Polish government to the European Court of Justice? Isn’t the cordon sanitaire imposing a tyranny of the majority at the EP? Why are the thousands of Polish demonstrators ignored by the Polish government?

President von der Leyen succinctly outlined the three tools at the Commission’s disposal to reaffirm the primacy of EU law. The Commission can use infringements to challenge the judgment of the Polish constitutional court; it can use the conditionality mechanism or other financial tools; and it can trigger the Article 7 procedure that can curtail a country’s voting rights in the EU if the Council approves the procedure by unanimity.\textsuperscript{104} To the dismay of several MEPs, von der Leyen did not express the Commission’s preference. As a “proponent of dialogue,” she stated how she “deeply regretted” this situation, which “can and must be resolved,” because, “Poland, you are, and you will always be at the heart of Europe.” When Morawiecki reiterated his government’s


commitment to disband the controversial Polish Disciplinary Chamber, von der Leyen replied that the Commission would assess implementation.105

This EP debate was complex, multilingual, and agonistic. Even one-minute speeches were eloquent. Questions were often answered with other questions challenging the previous speaker. The adversarial confrontation had started under public eyes. Despite strong disagreements, no one questioned the right of others to speak up and no one uttered personal insults. Unfortunately the plenary was not easy to follow, not only because of its length, but also because monotone translations flattened out any expression of emotion, and the multilingual transcripts were difficult to access.106 Some MEPs deliberately used English to be understood by a wider audience, but most media reports focused on Morawiecki and von der Leyen’s speeches and ignored the MEPs’ comments. These flaws in communication explain why “the EP’s empowerment has been inversely proportional to the attention it generates among citizens.”107

Yet the October 19, 2021, debate demonstrates that the EP is an important debating chamber in addition to being an influential legislative assembly. Legal experts, politicians, and citizens will argue for many years over the exact meaning of the terms EU rule of law, the primacy of EU law, and EU values, and how these constructs should be applied at the EU level and in member states.108 Such controversies far exceed the boundaries of this article. What is available to us, however, is Mouffe’s helpful distinction between adversaries and enemies, which speaks to the effectiveness and legitimacy of highly controversial measures such as the cordon sanitaire and the Conditionality Regulation. The EP is like a laboratory where measures to contain anti-system actors within the chamber and beyond are being crafted and tested. Its majority has chosen


106 I thank Yasmina Yakimova, press officer at the European Parliament, for her efficient assistance.


to stand up to Poland and Hungary’s breaches of law. Do the measures taken to protect democracy against democracy effectively encourage Europeans to behave as political adversaries rather than enemies? The messy experiments of the EP do not provide simple or definitive answers to these questions. This article has critiqued informal measures taken against right-wing populist MEPs and the judicialization of EU conflicts. Indeed, such practices may heighten antagonisms rather than encourage political actors to confront their conflicts agonistically. How to deal agonistically with an antagonistic partner is a very difficult question, which the EP is wrestling with and which Mouffe fails to ask and answer. Part of the response lies in “societal resources,” and in civil society and free elections, as Blauberger and Hüllen write.\textsuperscript{109} The EP, however, must continue to engage resolutely in conflicts over values and policies. It offers the one political space where disagreements are being debated among representatives of 27 EU member states, and where hegemonic orders are challenged publicly. At its best it is a space of agonistic politics.