Democratic Decay Resource (DEM-DEC): Fifth Monthly Bibliography Update-December 2018

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DEM-DEC Launch Podcast

The panel discussion to formally launch DEM-DEC on 22 October was broadcast by ABC Radio National's 'Big ideas' programme on 27 and 28 November and is now available as a podcast.The launch programme and details are on DEM-DEC.

The DEM-DEC Bibliography

The DEM-DEC Main Bibliography (finalised on 24 June 2018) presents a global range of research on democratic decay. It has a strong focus on research by public lawyers – spanning constitutional, international and transnational law – but also includes key research from other disciplines, as well as policy texts. Updates to the Bibliography are issued on the first Monday of each month, based on new publications and suggestions from users of DEM-DEC. All updates should be read in conjunction with the main bibliography on DEM-DEC.

Fifth monthly update since DEM-DEC was launched

This fifth monthly update was issued on 3 December 2018 and is now available on DEM-DEC.

Additions in the November Update include:

- New Research Worldwide from November 2018
- A significant list of additions suggested by DEM-DEC Users
- Selected list of short texts on left-wing populism
- Forthcoming Research

Identifying Themes

Each monthly Bibliography Update includes a section identifying themes from the update. The aim is simply to provide 'added value' by helping users to navigate the update, and to provide some limited commentary, especially on very recent research. Although it is impossible to capture every dimension of the issues covered in this Update, six key themes can be picked out.

1The Many Varieties of Populism: Left, Right, Nationalist, Anti-Pluralist

Every Bibliography Update addresses a dimension of populism as a concept. This is aimed at highlighting the multiple meanings of the term and to encourage greater specificity in its usage. Four items are of interest in this Update. Cathrine Thorleifsson's new book, on 'Nationalist Responses to the Crises in Europe' (November 2018) combines analysis of the discourses of key populist radical right parties – the UK Independence Party, Fidesz and Jobbik in Hungary, and the Norwegian Progress Party – with analysis of the fears and concerns of these parties' supporters. Based on fieldwork in England, Hungary and Norway, Thorleifsson explores the material conditions, historical events and social contexts that shape distinct forms of xenophobia and intolerance toward migrants and minorities, to develop broader conclusions about the drivers and character of populist nationalism and the way in which these differ across national contexts. In *Democratization* (November 2018) Duncan McDonnell and Luis Cabrera analyse the right-wing populism of the ruling BJP Party in India. Elsewhere, on 6 November Dr Niklas tweeted a list of short texts (see p.18), which highlight that left-wing populism spans democracy-threatening Chavismo in Venezuela and non-threatening movements such as Podemos in Spain – the latter not bearing the hallmark of anti-pluralism (analysed by Galston in his March 2018 book). There are crucial distinctions to draw between different varieties of populism.

(Note: For more discussion of concepts, see the Concept Index on DEM-DEC).

2Academic Freedom

In a month that saw the Central European University (CEU) in Hungary come ever closer to being hounded out of Budapest by the sitting Fidesz government under Prime Minister Orbán, it seems important to highlight analysis of academic freedom in this Update. Daniel Stockemer and Mikyoung Kim, in a recent (May 2018) article, suggested for addition by a DEM-DEC user, provide comparative analysis of academic freedom in Turkey, Hungary, and Japan. They not only highlight that academics are often the first target of governments seeking to constrain free speech and freedom information, but also discuss the many ways academic freedom can be attacked: discrediting individual non-conforming scholars; attacking universities as elitist or corrupt; forcing scholars to teach a prescribed ideology or vision of the state; firing them; or in extreme scenarios, imprisoning and torturing them. Their conclusion ends with a lapidary statement: "We should … be vocal in our writings and media interventions of any infringement of academic freedom that we know of regardless of whether it happens at our own university or a university 10,000 miles away." Stockemer and Kim draw on data collected by DEM-DEC's new partner, V-Dem (Varieties of Democracy): see their latest dataset here. A link to the Scholars at Risk Network has also been added to DEM-DEC. Take a look.

3Gender and Democratic Decay

Two books suggested for addition by DEM-DEC users concern the gender dimensions of democratic decay. The most recent, an edited collection on 'Anti-Gender Campaigns in Europe' (March 2018), contains useful chapters on Poland and Hungary in particular. A 2016 collection edited by Michaela Köttig, Renate Bitzan and Andrea Petö addresses the role of women, and the identity and organisation of female extremists, in far right politics in Europe. Gender is a cross-cutting dimension: it is notable that the attacks on the CEU in Hungary, discussed under 'Academic Freedom' above, have also been accompanied by removal of gender studies programmes from Hungarian university curriculums. New items in the 'Forthcoming Research' section also promise to address gender from different angles, including Amy Erica Smith's forthcoming book on 'Religion and Brazilian Democracy', which analyses how religious politics pushes Brazilian politics rightward. Finally, on a broader note, it is clear that female experts on democratic decay too often get overlooked: you can find lists of female experts on Women Also Know Stuff. Scholars such as Cas Mudde (@CasMudde) also regularly tweet useful lists of female experts.

4Exclusion: Minorities, Immigrants, and Political Outsiders

Another clear dimension of exclusion and marginalisation – and of attack by anti-democrats – covered by multiple items in this Update concerns minorities and immigrants. As well as Thorleifsson's new book on national populism in Europe, discussed above, In the latest issue of the *UC Davis Law Review* (November 2018) Jennifer Chacón discusses citizenship and belonging, casting light on the ways that immigrant communities may be conceptualizing and reconfiguring collective understandings of citizenship in today's USA, following a long tradition of minorities rethinking citizenship in a more inclusive direction. A useful companion piece is Johanna Kalb and Didi Kuo's article in the *Michigan Law Review Online* (listed in the November Update) on 'The Enduring Challenge of Racial Exclusion', which questions whether, viewed from the exclusion of ethnic minorities, US democracy was ever as healthy as was claimed. The issue of the marginalised is also addressed by Bertrall Ross, among others, in the *Columbia Law Review*'s symposium on equality and free speech (November 2018). Ross discusses how the latest challenge to gerrymandering before the Supreme Court (in *Gill v. Whitford*) has failed, laying the blame on how the Court's case-law has turned the First Amendment from a protection for political outsiders to one for political insiders.

5The Incompetent Citizen?

A range of materials in this Update address the very competence of citizens to participate in the democratic system. The political psychology scholar Shawn Rosenberg has a range of research that skewers the very idea of the rational citizen. His 2017 article 'Unfit for Democracy?', for instance, argues that political thinking "is mostly preconscious, automatic, and

recall driven. Consequently, it is vulnerable to contextual cueing, preexisting biases, and biological and genetic predispositions." Ilya Somin also tackles this competence issue, in his 2016 book suggested for addition by DEM-DEC users. Somin's work on 'political ignorance' in the US context has raised serious questions for democratic theory and the proponents of deliberative democracy, and his view that 'a major increase in political knowledge is unlikely in the foreseeable future' appears right. That said, in many cases such ignorance is at least partly the result of long-term government policies impoverishing civic education (see a short discussion here). Claudia Chwalisz in her 2017 book argues that adding informed citizen voices to public decision-making leads to more effective policies. Moreover, if we think of the attacks against the CEU in Hungary, and the wider development of grassroots democracy defence movements across Central and Eastern Europe (e.g. the 'Konstytucja' ('Constitution') movement in Poland; see here), it seems that another side of the story is the capacity of the citizen to lead and demand constitutional government.

6Judges as Democracy Defenders and Authoritarian Assistants

The August Bibliography Update included 'Courts as safeguards' a specific theme. Many items in thus Update return to this theme but with a greater focus on the judge as individual, as opposed to depersonalised analysis of the role of courts as institutions. The role of the judge comes to the fore in the Chief Judge of the State of New York Hon. Janet Difiore's Brennan Lecture, published in the *New York University Law Review* (November 2018). She expresses alarm at the ongoing attacks against individual judges and the rule of law more widely and warns against complacency:

[W]e cannot be complacent. The vibrancy, vitality, and viability of the rule of law can never be taken for granted. We find ourselves living in a historical moment … when the rule of law is threatened on many fronts, including by unjust and irresponsible attacks on the independence of our judges and law enforcement institutions. (…)

Never in our lifetimes have so many long-cherished norms, once considered universal, been treated so dismissively or abandoned altogether by political leaders, leaving many of us who have devoted our professional lives to the law as judges, law professors, and members of the bar feeling deeply uneasy about the future of our democracy. As Ron Chernow, the biographer of Alexander Hamilton, observed: "democracy can be corrupted, not by big, blaring events, but by a slow, insidious, almost imperceptible process, like carbon monoxide seeping in under the door."

Every one of us must be vigilant in protecting our cherished democracy. Each one of us has an obligation to defend our democratic institutions against these attacks.

It is also important to remember that judges can hasten democratic decay, sometimes unintentionally. The role of courts as sometimes active agents of democratic deterioration is strongly suggested by the *Columbia Law Review* Symposium on equality and the first amendment, with many pieces taking the Supreme Court to task for distorting the right to free speech and, thereby, the democratic system as a whole. Concerning more intentionally authoritarian adjudication, Hans Petter Graver has addressed the position of the judge in detail. His 2015 book on 'Judges Against Justice' considers three questions: What happen when states become oppressive and the judiciary contributes to the oppression? How can we, from a legal point of view, evaluate the actions of judges who contribute to oppression? And, thirdly, how can we understand their participation from a moral point of view and support their inclination to resist? Brannon Denning in the *William & Mary Law Review* (published in late October) argues that one tactic is for lower court judges to read problematic Supreme Court judgments narrowly. The argument, to some extent, mirrors analysis of the Polish context by Tomasz Koncewicz (in the DEM-DEC Main Bibliography) suggesting lower courts may operate to limit the damage done by the 'captured' Constitutional Tribunal.

Suggest Additions and Subscribe to the Mailing List

You can suggest additions for the next Update by filling out the form on DEM-DEC, or by emailing items directly at **democraticdecay@gmail.com**.

You can also Subscribe to the DEM-DEC mailing list to receive updates of all new additions to the Resource by usingthe Subscription button on the DEM-DEC homepage (below the introduction video) or by e-mailing democraticdecay@gmail.com.

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