Nordic Summer University

EHU
European Humanities University

Proposal for a New Study Circle 2017-2019
Patterns of Dysfunction in Contemporary Democracies
Impact on Human Rights and Governance
A Joint Venture Between NSU and EHU.

This circle endeavours to study different patterns of dysfunction in contemporary democracies and in particular the insidious processes which undermine the traditional canons of liberal democracy, notably encapsulated in the rule of law and human rights.

Whether the insidious processes are illiberal depends partly, however, on which conception of democracy one cherishes. Defenders of representative democracy would consider as populist a too ready use of referendums, while supporters of some kind of direct democracy would consider it a democratic deficit not to do so. (http://www.bbc.co.uk/news/world-38002820) Defenders of the separation of powers would look gravely on attempts on the part of legislators to interfere with particular cases and judicial decisions, while staunch defenders of popular sovereignty would see few problems in this. Defenders of the rule of law would be concerned about the intrusion of values into government and administration. The defence of civilization, liberty and democracy would tend to overrule respect for law and individual rights. Depending on the point of view taken, evaluations about dysfunctions in democracy would differ. We should therefore be aware that the very conception of democracy we are using is part of the problem studied.

Many factors are involved in these insidious processes and the state of the various democracies can be seen as nodal points between different factors that are criss-crossing and thus creating a unique constellation: populism, nationalism, corruption, fear, social isolation, ignorance, poverty, luxury, injustice, rootlessness in its various forms are signs of unbalances within democracies on both the global, national and local levels.

Studying this theme, we will put a special emphasis on the situation in the Nordic and Baltic Countries and subsidiarily Eastern Europe. We will do this as a joint venture between the NSU and

EHU. With our respective roots in the Nordic area and the Baltics/Belarus, our two institutions will be able to contribute with their particular experiences. We think that the eroding processes in the established democracies of the Nordic area and those accompanying the democracy building in the Baltic/Eastern European area can illuminate each other. Provocatively, one might wonder whether they are not converging toward some kind of illiberal democracy.

State of the Art

The number of democracies in the world has been growing steadily. According to the Polity project the number of democracies started to outnumber autocracies sometime in the 1990s and since the tendency has been upwards though stagnating toward 2014.

Source: http://www.systemicpeace.org/polityproject.html
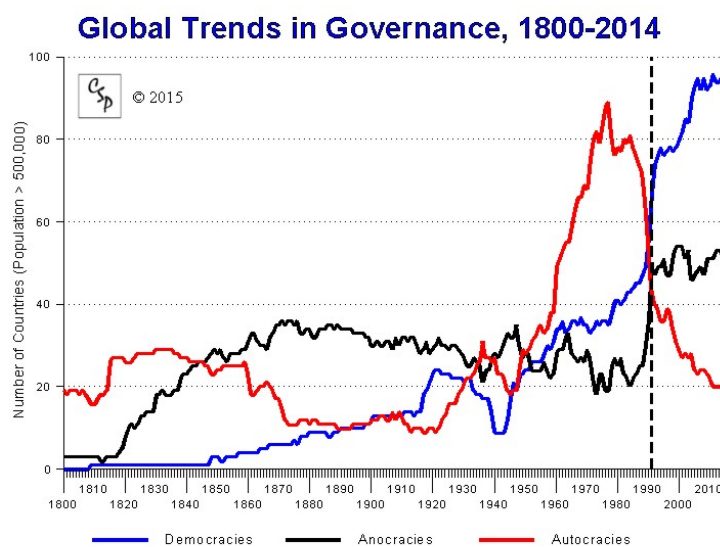
Paradoxically, according to Economist Intelligence Unit, only 20 countries were full democracies in 2016. The number of flawed democracies was much bigger, namely 59. Hybrid regimes and autocracies accounted for 37 and 51 countries. We note therefore that a large number of democracies are flawed, but even full democracies are challenged in these days, and this actual or emerging dysfunctioning of today's democracies will be the subject of this circle. This subject will allow us to stretch out to questions about human rights, fundamental rights and constitutional law, as well as civil society issues, market economy and labour law. We will touch on questions of governance at the national, transnational or global level.
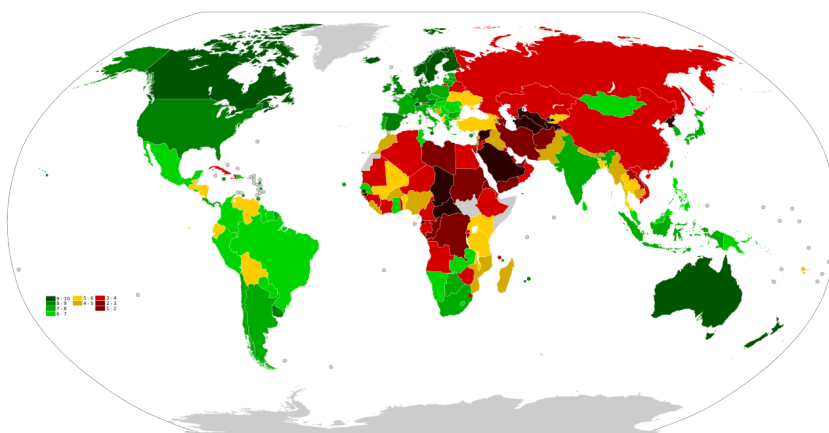
Source: Based on Economist Intelligence Unit data – https://commons.wikimedia.org/wiki/File:2015_Democracy_Index.svg Other rankings exist: Freedom House Democracy Index of the US watchdog https://freedomhouse.org/report/freedom-world/freedom-world-2016 ; the Democracy Ranking by the Democracy Ranking Association http://democracyranking.org/wordpress/rank/democracy-ranking-2015/ (since 2008), Polity (I, II, III, IV) by a group of authors http://www.systemicpeace.org/polity/polity4.htm (since 1974); and the Bertelsmann Transformation Index by the Bertelsmann Stiftung https://www.bti-project.org/de/index/status-index/ (since 2003; covers developing and transition countries). Different types of criteria are used in literature to evaluate democracies: substantive criteria, procedural

criteria, as well as constitutional criteria and process-oriented criteria. All these indexes have different criteria, often in different combinations. (Tilly 2007, 8ff) We have here reproduced the Economist's ranking combining substantive, procedural and process-oriented criteria.

Even though the number of democracies is rather high, we can still pose the question whether democracy is not in decline, if the quality of these democracies is on the decline. Despite different points of view on democracy there is probably widespread agreement about the harmful effects of corruption, ballot stuffing and other kinds of electoral fraud, restrictions of the free press, etc. The Economist Intelligence Unit uses five headings to evaluate the democratic quality of a regime: the electoral process and pluralism; civil liberties; the functioning of government; political participation; and political culture. Surely, democracy is not only about the formal election procedures. Their proper function depends on a wider social and economic context. This poses the question of what the necessary conditions are for a well-functioning democracy. A large middle class has often been advanced as a necessary prerequisite, but is this really necessary or sufficient? Is market economy necessary or harmful for democracy? Does democracy needs a certain amount of wealth, near full employment or a certain level of education? What is the relation between the labour market and democracy? Understanding the prerequisites might give a hint of the reasons for the decline in democracy in some particular place. Which role does key processes in the sphere of citizenship, civic engagement and citizenship education have in contemporary democracy? Which perspectives can we see for new theories of constitutionalization and constitutional patriotism?

There are, on the other hand, certain situations and processes, where democracy does not function. During last 50 years we have seen multiple cases of failed democratic reforms and transfers of democratic institutions. It seems that people should share some common views in order to make it function. Robert A. Dahl speaks about a republic A with a high degree of consensus and few conflicts. In republic B there are many more conflicts, but the minority differs according to issues. The same persons are in turn members of the majority and the minority. In republic C the divides are such that the minority is always the same and this might lead to a permanent dominance of the minority by the majority. (Dahl, 1982: 88.) The last case we often see in countries divided along ethnic or national affiliations. If the major conflicts of interest follow these divides, the majority can use democratic decision procedures to systematically thwart the minority. Here democracy becomes unfair and the need for minority protection is evident. Some would object that democracy includes minority protection, so this is not a democracy at all. One could say so, but theses processes are often subtle and these things can happen even with normal protection of the individual. It is very important to keep an eye on these insidious processes, where the political culture changes and old assumptions disappear.

Eastern Europe is central in order to understand what is happening in Europe at the moment. Many trends in contemporary European politics started here. In the second half of the 20th century Eastern Europe endeavoured to re-create civil society and develop solidarity anew. The failure of the democratic reforms of the 1990s is the key to understanding modern democracy in the grips of new undemocratic regimes. Here we see the consequences of equal and common citizenship without civic education and civic engagement, and of weak institutions, poor people without any chance of real political participation, lack of solidarity and governments depoliticizing society.

There are several models of democracy in Eastern Europe. The Baltic States and Poland are the most advanced of the constitutional reform countries. (Anna Gwiazda 2015) We have nevertheless seen that a new Polish government dominated by conservative Catholics has changed the rules for the Supreme Court, diminished the independence of the state media and replaced a

large number of civil servants. Is this legitimate in a democratic polity? To what extent are you allowed to reshape the government and state institutions in this way?

Besides the advanced countries there are others like Russia, Belarus and Ukraine, which pretend to belong to a specific model of political order establishing democracy on non-western grounds. This particular model emerged from a failure to implement the main principles of constitutional order in these countries. What is happening in Eastern Europe is not a process of liberalization. Eastern European countries use the language of political interests and goals, not of values and principles. (Andrew Roberts 2010) They criticize western democracy as a corrupt system with double standards. Many people think like this in the Baltic region and in Eastern Europe and it will be important further seize this state of mind.

The Baltic States are to some extent split communities with large Russian-speaking minorities among others. At first these democracies tended to exclude these minorities, but with the insistence of the European Union they were accorded protection. (Schimmelfennig *et al.,* 2003) With tensions growing between the Baltic states and Russia, this split could be accentuated and pose a problem for democracy. Those tensions are not accidental. They are connected with deep social, historical and cultural processes in the region that merits further investigation.

This is probably the reason why Russia, Belarus and other Eastern neighbours of the Baltic States have turned to majority democracy and populist democracy with a new social agreement between the state and the majority. During the Soviet period the communists developed the specific version of nationalism based on cultural and ethnic elements, but without the civic elements. It allows mobilizing the masses and creates an entirely loyal population (Alexander Wöll and Harald Wydra, 2008). It is difficult to establish a culture of trust (Papakostas 2012). There is a deficit of civic practices and real participation and engagement. Persistent poverty and dramatic increases in crime and corruption coupled with the withdrawal of state social-welfare provisions have created a panorama of "violent democracies" (Arias and Goldstein 2010) or security states. Its constitution is democratic, but it is effectively governed by an elite which is oriented toward the demands of a majority of "simple people". They control the media, elections, society, religious organizations, trade unions and even the NGOs, and they decide what kind of information the public get access to. A number of laws restrict the operation of NGOs, the right to demonstrate, the social media and the internet. (Egupova, 2012)

How did Russia and Belarus get there? What is the reason why Ukraine cannot provide effective reforms? What kind of insidious processes undermined Russian democracy? What kinds of circumstances explain the fate of the constitutional reforms in these countries since 1985? Which specific attitudes to independence, freedom, wealth, property, community, collaboration, state and co-operation do we find in these countries? Why is it that these countries cannot subscribe to the subsidiarity principle? What processes have here destroyed the connection between democracy and the rule of law? Is it possible to develop a culture of trust in institutions and media in a post-authoritarian state? Which chances are there for democratic development in Eastern Europe? What is the role of the European Union in the democratization and contextualization processes in Eastern Europe? What kind of role should other international actors and international legal standards have?

These tendencies are not absent from the Nordic countries. Nordic countries are conspicuous by the fact that they have no dedicated constitutional court. Nordic democracy has generally counted on legislators to show self-restraint, the Nordic supreme courts has nonetheless in varying degree taken on the function of constitutional review. (Bårdsen 2015) We are very far from the US constitutional court and Nordic supreme courts thinks twice before they oppose the legislature. This is easily explained by a strong attachment to popular sovereignty. As the argument goes, judges have no democratic mandate. This argument has also been directed against the implementation of human

rights law. Some politicians even demand a revision of the ECHR. The former culture of self-restraint has seemingly given way to a more assertive legislative. What does this mean for the political culture?

The legislature also takes a growing interest in particular cases normally the prerogative of the executive. This phenomenon is partly due to the media. Most people only know their politicians through the principal media outlets. Together with the proportional electoral system this makes parties top-down governed. To be elected politicians depend on the overall score of the party, and this depends on how leaders perform in the Media. This gives party leaders extensive powers and it makes constituency and party membership less important, but it also makes the Media extremely important brokers of the political process. This probably explains, at least partly, the interest in particular cases, but it also illuminates a weak point since the Media inevitably twists information according to their proper concerns. What will be the consequences for the functioning of democracy? The new social media can, to some extent, re-create direct contact with politicians, but is this sufficient to assure a large well-informed electorate or is it quite the contrary?

The limits of democracy also show itself in relation to the welfare state. The Nordic welfare states developed when nation states were still in control of movements of peoples and capital. They implemented a high degree of national solidarity, but these universalist principles are challenged by intra-EU migration and human rights principles. Solidarity was only intended for nationals, but this collides with non-discrimination principles and human rights law. Free movement of capital on a global scale also undermines the fiscal policies necessary to maintain such a welfare state. It seems that in such a situation democratic decision-making is limited. How does this affect the political culture? What will be the consequences of all sorts of attempts to circumvent these consequences for the rule of law and transparent government?

We will study these themes in 6 sessions as follows:

1. Populism and democracy

The reason for populist movements are many and we have probably not understood these movements properly yet. Reasons vary from country to country, but there seems to be some standards such as hostility to globalization and distrust of the so-called establishment. There is a strong wish to be heard, that one's vote count, and a feeling that they have been forgotten. In many countries populism has been fuelled by fear of immigration and social instability. It is often seen as a challenge to representative democracy. This was clearly illustrated by the Brexit referendum, where a parliamentary majority to remain was defeated by a popular vote to leave.

Rosanvallon argues that bureaucracy together with the judiciary, the regulatory bodies and electoral representation have its own kind of legitimacy which is part of our general notion of democratic legitimacy. (Rosanvallon 2008) Populism, on the other hand, pretends to appeal directly to the people against politicians and technocrats, and research does confirm a gap between citizens and leaders. (Startin & Krouwel 2013) It has been argued that populism and technocracy actually reinforce each other by a common critique of party politics. (Bickerton & Accetti 2015, Leonard 2011) From a left-wing perspective Laclau proposes to short-circuiting party politics by constructing a political subject from a large range of social demands which is construed as the people and supposed to subvert and reconstruct society. (Laclau 2005) In its turn, this view has been criticized as the construction of an imaginary people without any fixed contours. (Zarka 2016)

Lately populism has surged as a consequence of the migration crisis. Elections in Austria and Germany have given very high scores to populist anti-immigration parties. Support for these parties is also high in Sweden, Norway, Denmark, Holland and France. What are the ideological

suppositions of these parties? How should we understand them? It is puzzling that Mecklenburg-Schwerin, which receives so few refugees and experience an economic upturn (though still one of the poorer parts of Germany), is so anti-immigration? Are the Media responsible or should we look for some other reason?

2. Globalization and democracy

Economic globalization is made responsible for the loss of jobs; critics claim that benefits have been taken away by the elite. Who profited from globalization and where certain stretches of society abandoned along the road? What would the European societies have looked like without globalization? Politically, free trade and liberalization of capital movements have prompted some to ask whether democratic decision-making decides anything any more. Are politicians only adapting to circumstances they do not control. This reproach has been directed against globalization as such and the EU in particular. The EU treatises have established free trade and movements of goods, services and persons as a basic principle. The WTO imposes rules of free trade on all its members. Does this engage the member countries in fierce competition leading to lower levels of pay and working conditions? Are democratic institutions no longer able to decide about the kind of society which should be instituted? How should we cope with this in terms of justice? (http://opendemocracy.us1.list-manage.com/track/click?u=9c663f765f28cdb71116aa9ac&id=1b0a762d04&e=20c21a5d20) Are governments powerless faced with multinational corporations such as Google? The latest EU tax complaint against Google will say something about the balance of power between government and corporations.

This problem also concerns labour law and collective bargaining. Existing structures are challenged by competition from the outside and it is difficult to maintain higher standards, if products, services and persons from the outside can propose cheaper solutions. This was poignantly illustrated by the Polish plumber during the French referendum on the EU Constitution Treaty. The fear of the Polish plumber probably decided for a no to the treaty. Should democracies then be autarchic republics as Plato recommends in the Republic? They have, of course, never been like that, but support for democracy, political participation and interest in politics can wane if democratic decision-making is no longer seen as pertinent.

3. The Digital Revolution and democracy

Will digital, AI, robotic and other technologies maintain or advance democracy, or will they constitute an indispensable tool for emerging autocracies or totalitarian ideologies? The digital revolution enables global gossip, plebiscites, polls and populism which challenge representative democracy. The careful scrutiny of proposals for new legislation and its consequences, which at least ideally is part of representative democracy, is run over by various direct expressions of popular sentiment. Can these expressions no longer be channelled through these representative processes? Is the speed of the information flow simply too fast and reactions too immediate for representative democracy to connect with people? (See Andrew Sullivan http://nymag.com/daily/intelligencer/2016/04/america-tyranny-donald-trump.html) Is the huge importance of the media fuelling this process, and what kind of manipulation does control of media allow within these processes to the detriment of democracy. Enormous amounts of money and investments are involved in the news and information services so crucial for the good functioning of democracy. In the early times of European democracy the press was generally motivated by political interests in this or that party or part of the population. Today the media might have a stand, but they are often more preoccupied with the audience. To this it will be said that media has to be

independent and private ownership secures this independence. This independence should secure pluralistic sources of information, but if all are running after some statistical idea of the audience, information delivery could become rather monotone.

4. Security and democracy

Terrorism, social instability and other threats have considerably augmented measures of control and surveillance leading to growing interference in the private life of citizens. The scandal surrounding the NSA monitoring of internet activity and collection of big data concerning telephone conversations did attract much attention, but other measures such as increasing video surveillance, checking of credit card data and the like has considerably enhanced the monitoring of the individual as well. Will such measures fragilize the citizen in relation to the control the very same citizen should exercise on its own democratic institutions and politicians? Are we about to construct the infrastructure for authoritarianism ready for take over when the political situation is ripe or have we found a reasonable compromise between security concerns and democracy? (Priest & Arkin, 2011; Andersen, 2016)

5. Democratic Deficit in the EU and Global Governance

Several Nordic countries and all the Baltic countries are members of the EU. Questions of democracy in these countries are therefore linked to the EU. Is the EU undermining national democracies? How does EU participate in the regional and local levels? Many authors have argued that the European Institutions have a democratic deficit (for example Føllesdal & Hix 2005), but others like Moravcsik (2002) and Majone (1998) have maintained that Europe is sufficiently democratic and compares reasonably well with democratic institutions elsewhere like those in the US. (Cf. Kreppel 2006) Arguing that the EU is legitimate or could become legitimate by some odd reform will not necessarily be sufficient to make people believe that it is legitimate. Normative ideas about legitimacy like the one's espoused by Simmons (1999) and Buchanan (2002) are, of course, interesting in their own right, but they will not necessarily tell us very much about the challenges facing the EU. One might very well wonder whether a more democratic Europe or other institutional changes would silence Eurosceptics or make them enthusiastic followers. It seems like their real grievances lies elsewhere even though any argument ready at hand will be brought to use. The real problem might not be that there is any particular fault with the EU institutions, but rather that some other source of legitimacy is more appealing to many people. Many Eurosceptics to the right or the left sees the EU as an obstacle to their own project whether it is socialist one hammering into the single market and globalization in general, or Catholic conservative blaming EU for upholding a secular society protecting abortion and equal rights, or a nationalist one protecting home grown culture and community through sovereign rights.

One way to get around difficulties concerning unity and cultural diversity is through the implementation of the subsidiarity principle which has potential for a better understanding of the evolution of democracy. Subsidiarity creates an area of public action for the individuals giving them both responsibility and a definite personality. This important principle of EU law should be implemented creatively. It is an important fact that the subsidiarity principle is uncommon in Eastern Europe, something which merits further investigation.

Global governance as it is today is not democratic. The UN has, of course, a general assembly, but the Security Council has the last word. Should we try to democratize this institution or heed Kant's words that a universal republic would be the worst tyranny? (Kant, 1917) Could global governance be democratized in other ways, through social movements, ONG's or other? Should we

rather count on some kind of global constitutionalism? (Peters, 2015) Others like Thomas Pogge and Allen Buchanan would consider global governance in terms of justice rather than democracy. (Pogge, 2002; Buchanan, 2004) Are there limits to democracy and how should democracy fit into global governance? It seems that some people feel estranged from a complex and opaque global system, which impacts their daily life in ways which are difficult to discern. Are there limits to how global we can get, or should we accept that democracy has a limited applicability?

There are important difficulties in the system of representation on the global level. What kind of representation should one use in the global system of governance? What is the connection between social complexity and global governance? How can global actors participate in global governance? How should religious communities and churches participate in global governance?

6. The Elite-People Gap

To conclude we should consider the elite-people gap. Does it really exist? Who are the elite? Is this just a manipulating term? Do we rather have split societies, where some parts have profited while others were left behind? Is this phenomenon generational? Is it rather due to new yearnings of democracy, which the traditional model cannot fulfil? Should we consider new forms of democracy or political participation? Do illiberal democracies manage to fill the gap trading security (social, internal, external) against obedience? Is the elite-people gap somehow inherent in liberal democracies?

Specific Outcomes

1. Regarding publication, we have a close co-operation with the Journal of Constitutionalism and Human Rights in Vilnius (Lithuania) and with the journal Nordicum-Mediterraneum in Akureyri (Iceland). Papers from the predecessor circle have already been published in both journals. We also envisage a collective paper print publication.
2. In the predecessor circle we have had a substantial number of PhD students. They have used the circle to present papers and thus improve their skills in a context where they can get international response on their work from senior research fellows in a secure and informal environment, thus preparing them for entry into the international community of scholars. We will continue this effort.
3. As in the predecessor circle we will endeavour to unite field workers with scholars such that practical concerns and scholarly interests can mutually enrich each other. This should lead to a more informed practice and more practically minded scholarly research.
4. Within the framework of the circle it will be possible to elaborate a new discipline "The Edges of Contemporary Democracy", which will be proposed as a part of the study programmes in partner Universities.
5. Winter sessions: We have the possibility to organize our winter sessions at EHU in Vilnius. We also have the possibility to do one session at the Danish Institute of International Studies in Copenhagen. We are envisaging collaboration with the Department of Global Studies at Gothenburg University.

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