This Update was issued on 1 October 2018. It is based on new publications and suggestions from users of the Democratic Decay Resource (DEM-DEC) at www.democratic-decay.org.

Bibliography updates are issued on the first Monday of each month. They should be read in conjunction with the main bibliography on DEM-DEC (finalised 24 June 2018).

www.democratic-decay.org
About DEM-DEC

Created by Dr Tom Gerald Daly (Melbourne Law School) and supported by a range of leading public law and policy organisations, the Democratic Decay Resource (DEM-DEC) is an online resource aiming to provide useful information on the deterioration of democratic rule worldwide through a mixture of curated, collaborative, and user-generated content including a Bibliography, Experts Database, Events Database, Links, and Concept Index.

DEM-DEC’s core purpose is to bring scholars and policymakers together in a collaborative project to pool expertise on democratic decay, in a context where many experts are talking in silos, or past one another, where the literature is rapidly expanding, and events and projects are proliferating across the world.

www.democratic-decay.org
democraticdecay@gmail.com

Dr Tom Gerald Daly

Tom is an academic and consultant in the area of democracy-building, public law, and human rights.

He is Associate Director of the Edinburgh Centre for Constitutional Law (ECCL), MLS Fellow at Melbourne Law School, and Co-Convenor of the Constitution Transformation Network (Melbourne Law School). As a consultant he has worked on European Union, Council of Europe, African Union, International IDEA and Irish government projects.

His current book project concerns the role of public law in countering ‘democratic decay’ worldwide. He has written on democratic decay as a columnist for the I-CONnect blog and tweets @DemocracyTalk.

Partners

DEM-DEC enjoys the support of a range of partners, which are leading organisations in public law and policy worldwide:

- Centre for Comparative Constitutional Studies (CCCS)
- Centro de Estudos sobre Justiça de Transição (Study Center on Transitional Justice (SCTJ), Brazil)
- Constitution Transformation Network (Melbourne Law School)
- Constitutionally Speaking (blog – South Africa)
- Democracy Reporting International (DRI)
- Democratic Erosion: A Cross-University Collaboration (USA)
- Edinburgh Centre for Constitutional Law
- ICON-S-Israel
- International Association of Constitutional Law (IACL) Blog
- International Institute for Democracy and Electoral Assistance (International IDEA)
- International Journal of Constitutional Law (I-CONnect) Blog
- School of Transnational Governance (European University Institute)
- Verfassungsblog

Want to be a Partner?

E-mail Dr Tom Daly at democraticdecay@gmail.com
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Have Your Say!

Send suggestions and information on new publications for the November monthly update by filling out the form at www.democratic-decay.org or e-mailing democraticdecay@gmail.com

and don’t forget to subscribe to the Mailing List for updates

Sign up using the Subscribe box on the homepage

Or e-mail democraticdecay@gmail.com
Introduction

The DEM-DEC Bibliography

The DEM-DEC Bibliography is provided on the Democratic Decay Resource (DEM-DEC) at www.democratic-decay.org, which was launched on 25 June 2018 and which aims to provide useful information to academics and policymakers concerned with the creeping deterioration of democratic rule worldwide.

The 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 political science, as well as policy texts.

Third monthly update since DEM-DEC was launched

Updates to the Bibliography will be issued on the first Monday of each month. This is the third monthly update provided and was issued on 1 October 2018, 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.

Comprehensiveness

It is impossible to be comprehensive given the broad scope of the subject. However, the updates here have been collated from suggestions by scholars worldwide, a broad search of academic journals worldwide, as well as information collated on leading public law blogs, including the weekly round-up ‘What’s New in Public Law’ on the I-CONnect Blog (blog of the International Journal of Constitutional Law), which is a DEM-DEC Partner. Blog posts, media articles, and (with some exceptions) policy documents are not covered.

Period covered by this update

As this is a monthly update, the main items here are from September 2018. Items suggested by DEM-DEC users are mainly from earlier in 2018 and late 2017. In addition, a number of items from recent months, which were not covered in the September Update, have been included in this update.

Global Coverage

The Bibliography updates aim for global coverage. However, it should be borne in mind that the Bibliography, at present, collates information exclusively in the English language.

Hyperlinks

For full collections of articles, the hyperlink to the collection is provided rather than individual hyperlinks for each article. Where a small number of articles from a particular journal are provided, a specific hyperlink is generally provided for each item.

Acknowledgments

Sincere thanks to all who have suggested additions and sent key information for this update.
Key Themes from this Update

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.

1 Democratic Decay as an Increasingly Central Focus of US Scholarship

Various items in this Update, and the last two Updates, emphasise that democratic decay is increasingly becoming a central preoccupation of US scholarship (albeit under a variety of rubrics). A landmark book, Aziz Huq and Tom Ginsburg’s ‘How to Save a Constitutional Democracy’ will be published on 5 October, examining the possible threats to US constitutional democracy on the basis of wide-ranging comparative analysis: see an author interview here. Many other items in this Update confirm this preoccupation, including September 2018 articles in the Cardozo Law Review’s online De Novo publication on Brett Kavanaugh and the judicial confirmation process. Additions suggested by DEM-DEC users for this Update include a special collection in the Pepperdine Law Review (March 2018) on the US Supreme Court strongly focused on how the Court can be depoliticised. Gerrymandering and race is the focus of a special issue of the William & Mary Law Review (April 2018).

2 Sweden: A Lesson in Avoiding Alarmism?

Since the last Bibliography Update was issued on Monday 3 September, much-anticipated general elections were held in Sweden. With the far-right Sweden Democrats rising in the polls, commentary became increasingly fevered in the week before the vote that the SD would become the second-biggest or even biggest party in parliament. As it happens, the party made gains, achieving 17.6% of the vote. However, this fell far short of many predictions and parties that took a strong anti-SD stance, such as the Centre Party, performed strongly. Two additions in this Update can be read together. A research paper by Ernesto Dal Bó et al., published at the end of August, analyses the rise of the ‘radical right’ in Sweden on the basis of a broad range of data. A much earlier article from 2002 by Jens Rydgren – suggested for addition by a DEM-DEC user – predicted the possible rise of authoritarian populist forces in Sweden, showing that – as elsewhere – contemporary developments have deep roots.

3 The Impact of Populism on International Law

The rise of authoritarian populism is having an impact on international law, most clearly in the EU setting, as an article in the latest issue of the Journal of Common Market Studies discusses. Addressing the US context, a new addition to the ‘Forthcoming Research’ section is Harold Koh’s book on the ‘battle’ between the Trump administration and international law. He argues that international law is proving relatively resilient, by examining various fields: including immigration and refugee law, human rights, climate change, denuclearization, trade diplomacy, and relations with North Korea, Russia and
Ukraine. Two other items in this Update take a broader tack. Ingrid Wuerth’s *Texas Law Review* article (December 2017) on *international law in a “post-human rights world”* discusses the end of an era of human rights expansion – partly due to the resurgence of authoritarianism – and argues that this is not necessarily a bad thing. *Eric Posner in an Arizona State Law Journal article* (September 2017) – an addition suggested by a DEM-DEC user – argues that the “populist backlash” poses the most acute threat to liberal international legal institutions since the Cold War, and that the public trust in technocratic rule by elite actors, on which international law is dependent, has been called into question by a series of international crises. This picks up the central themes of Tom Nichols’ book on the role of experts in democratic governance, discussed below.

### 4 The Role of Experts in Liberal Democratic Governance

The role of experts in liberal democratic governance is a theme running – explicitly or implicitly – through much of the literature on democratic decay, whether one is discussing courts and judges, technocratic governance within and beyond the state, or the need for an informed and adequately functioning media. In an April 2017 book suggested for addition for this Update by a DEM-DEC user, Tom Nichols analyses the ‘Death of Expertise’ and mounts a strong defence of the need for expert knowledge in democratic societies. Tying the rise of anti-expertise sentiment and anti-intellectualism to the openness of the internet, the emergence of a customer satisfaction model in higher education, and the degeneration of the news industry into a “24-hour entertainment machine”, Nichols argues that when ordinary citizens believe that no one knows more than anyone else, democratic institutions are in danger of succumbing either to populism or technocracy-or a combination of both.

### 5 The Intensifying Focus on ‘New’ Authoritarianism

The urgent need to better understand the nature of new forms of hybrid authoritarianism has been seized with renewed vigour by constitutional law and political science scholars. Two articles in the *Hague Journal on the Rule of Law* (September 2018) address authoritarianism in different ways. The constitutional theorist Gábor Attila Tóth discusses how the “false justification” of new hybrid types of authoritarian rule can be identified through constitutional markers, which permits constitutional democracy to be distinguished from authoritarianism. The comparative politics scholar Radoslaw Markowski focuses on the dismantling of liberal democracy in Poland since the victory of the Law and Justice Party in the 2015 elections, and what drove the Law and Justice success in the first place.

(Nota: For more discussion of concepts, see the [Concept Index](#) on DEM-DEC).

### 6 Revisiting Key Texts: Judith Shklar on the ‘Liberalism of Fear’

A useful list of key texts on liberalism, published by The Economist on 29th August, reminds us that gaining better understanding of democratic decay requires not just engaging with new research, but also revisiting older texts to mine them for every insight they offer. A particular text that warrants renewed focus is Judith Shklar’s 1989 book chapter on ‘The Liberalism of Fear’, in which she argues for an understanding of democratic government as a necessary shield for individuals, especially those with little power, from the abuses of the state — such as the armed forces and the police. Her ‘liberalism of fear’ rests on two pillars: freedom from cruelty and the division of powers.

(Nota: For more discussion of concepts, see the [Concept Index](#) on DEM-DEC).
Additions Suggested by DEM-DEC Users

Note: Where possible, hyperlinks are provided directly to the text

Books


Bakke E & Peters I (eds), 20 Years Since the Fall of the Berlin Wall: Transitions, State Break-up and Democratic Politics in Central Europe and Germany (BWV Verlag, 2011)

Book Chapters


Journal Special Issues


Special Issue on Gerrymandering


Foley EB, ‘The Gerrymander and the Constitution: Two Avenues of Analysis and the Quest for a Durable Precedent’.

Green R, ‘Redistricting Transparency’.

Hassen RL, ‘Race or Party, Race as Party, or Party All the Time: Three Uneasy Approaches to Conjoined Polarization in Redistricting and Voting Cases’.

KARLAN PS, ‘Reapportionment, Nonapportionment, and Recovering Lost History of One Person, One Vote’.

KATZ ED, ‘Section 2 After Section 5: Voting Rights and the Race to the Bottom’.


MORLEY MT, ‘Prophylactic Redistricting? Congress’s Section 5 Power and the New Equal Protection Right to Vote’.

STEPHANOPoulos NO, ‘The Causes and Consequences of Gerrymandering’.

TOKALI DP, ‘Gerrymandering and Association’.


Symposium: The Supreme Court: Politics and Reform

This issue was published as a special issue in Volume 45, after issue 2. As published, it does not have a numerical designation.

McCONNELL MW, ‘What Are The Judiciary’s Politics?’.


BRYANT AC & BREEDON K, ‘How the Prohibition on "Under-Ruling" Distorts the Judicial Function (and What To Do About It)’.

BARTRUM I, NYMAN K & OTTO P, ‘Justice As Fair Division’.

SEGALL EJ, ‘Eight Justices Are Enough: A Proposal To Improve The United States Supreme Court’.

JOHNSON A, ‘Hearing the States’.

Articles


Working Papers


Policy Reports & Guidelines


Additional Resources

September 2018: New Publications

Note: Some items listed below were published at the very end of August 2018


Hague Journal on the Rule of Law: First Online Articles (September 2018)

Journal of Common Market Studies (September 2018)
Special Issue: The JCMS Annual Review of the European Union in 2017

Human Rights Law Review: Vol. 18, No.3 (September 2018)
Cardozo Law Review De Novo (Online): September 2018


Santa Clara Law Review: Vol. 58 No. 2 (September 2018)


Lewis & Clark Law Review: Vol. 22 No. 2 (August 2018)


Special Issue: The Supreme Court and American Politics


“This is an important book—probably the most impressive marshaling of comparative literatures I have seen on this crucial set of issues. Using a wide range of examples, Ginsburg and Huq show how healthy democracies can mutate into autocratic or oligarchic systems, and they offer an incisive account of how this might happen in the United States. A cautionary tale told with case studies from around the world, this is a sobering analysis of our trying times.”

—Jack M. Balkin, Yale Law School

“This book makes a huge contribution to our understanding of how democracies erode and what institutional reforms would make it harder for authoritarian populists to entrench their power. It should be required reading for anybody who seeks to bolster the stability of embattled democracies around the world.”

—Yascha Mounk, Harvard University

Available now from University of Chicago Press

Cloth $35.00 / E-book $35.00
Selected Earlier Publications

Note: The following are additional items that were not included in the September Update but which are of clear relevance to democratic decay

**Monograph:** TOOZE A, Crashed: How a Decade of Financial Crises Changed the World (Penguin UK, August 2018).

**Edited Collection:** TOMINI L & SANDRI G (eds), Challenges of Democracy in the 21st Century: Concepts, Methods, Causality and the Quality of Democracy (Routledge, April 2018).

Seton Hall Law Review: Vol. 48 No. 4 (August 2018)


Michigan Law Review Online: Volume 117 (August 2018)


Cardozo Law Review De Novo (Online): July 2018

Stasis: Vol. 6 No. 1 (July 2018)

Harvard Law Journal: Vol. 131 (June 2018)

George Washington Law Review: Vol. 86 No. 1 and No. 2 (January and March 2018)

Texas Law Review: Vol. 96 Nos. 2 & 3 (December 2017-February 2018)

North Carolina Law Review: Vol. 96 No. 4 (May 2018)

UC Hastings Law Journal: Vol. 69 Issue 6 (May 2018)

Democratization: Vol. 25, No. 8 (Summer 2018)
Forthcoming Research

Books

GINSBURG T & HUQ A, How to Save a Constitutional Democracy (University of Chicago Press, 2018; due for publication on 5 October 2018).

KOH HH, The Trump Administration and International Law (Oxford University Press, due for publication 15 October 2018).


Book Chapters


Journal Special Issues


Articles


DEM-DEC

Bringing Democracy Defenders Together