Democratic Decay Resource (DEM-DEC): First Monthly Bibliography Update-August 2018

Tom Gerald Daly

08.08.2018 doi: 10.17176/20180808-135810-0

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 by Dr Tom Gerald Daly (Melbourne Law School) and is supported by a range of partners, including Verfassungsblog (see the list of partners here). DEM-DEC 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.

Updates to the Bibliography will be 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.

First monthly update since DEM-DEC was launched

The first monthly update provided was issued on 6 August 2018 and is now available on DEM-DEC.

Additions in the August Update include:

- New Research Worldwide from July 2018
- Key Items from January-June 2018
- Additions to the Bibliography suggested by DEM-DEC Users
- Forthcoming Research

Identifying Themes

Each monthly bibliography update will include 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. Six key themes emerging from this update are set out below.

1Liberalism, Illiberalism and Populism

The meaning and contours of liberalism, illiberalism, and populism are addressed in a variety of new publications and suggested bibliography additions. Jacques Rupnik discusses the 'crisis of liberalism' in the new (July) issue of the *Journal of Democracy*; Péter Krekó and Zsolt Enyedi analyse Hungary as a 'laboratory of illiberalism' in the same issue; while Bojan Bugarič and Alenka Kuhelj map varieties of populism in Europe in the latest edition of the *Hague Journal on the Rule of Law* (April 2018). An edited collection from 2017 suggested for addition (Bień-Kacała et al., Liberal Constitutionalism: Between Individual and Collective Interests) contains chapters on 'Illiberal constitutionalism' in Hungary and Poland, and 'controlled' referenda in Poland. Another suggested addition is Mark Tushnet's *Florida Law Review* article from 2017,'The Possibility of Illiberal Constitutionalism?', arguing that such a system is conceptually possible but may be quite difficult to sustain over time. Finally, the 2017 edition of the *ICONnect-Clough Centre Global Review of Constitutional Law* (issued in July 2018) focuses on the 'state of liberal democracy' in 61 jurisdictions worldwide.

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

2Courts as democratic safeguards

Courts are a clear focus, not only as a safeguard against democratic decay, but also as a driver of such decay. Regarding courts as a democratic safeguard, Lasse Schuldt in a special edition of the *German Law Journal* on the subject (July 2018), analyses the

converging (but still divergent) standards applied by the German Constitutional Court and the European Court of Human Rights regarding the application of political party bans, while Gelijn Molier and Bastiaan Rijpkema provide a case-note on the German Court's most recent decision on party bans in the *European Constitutional Law Review* (June 2018). Armin von Bogdandy and co-authors in a Max Planck Institute for Comparative Public Law & International Law Research Paper (June 2018) look ahead to two key forthcoming decisions of the Court of Justice of the European Union regarding the validity of controversial laws in Poland concerning the judiciary and judicial independence. In the US context, Charlie Stewart in the *Michigan Law Review* (June 2018) discusses state court litigation as the 'new front' in the war against partisan gerrymandering. The Supreme Court and State courts in the US are also the focus of debate in an Online Symposium on the *NYU Law Review* (April 2018) on 'Courts Under Pressure: Protecting Rule of Law in the Age of Trump' – which also includes a comparative perspective on courts as bulwarks against 'democratic erosion' by Aziz Huq.

3Courts as victims and drivers of democratic decay

Courts also feature as victims and drivers of democratic decay. In a Cardozo Legal Studies Research Paper No. 548 (July 2018), Matthew Seligman addresses 'court packing' in the US, arguing that reform of the judicial appointments process has never been more needed. Regarding courts as a driver of democratic decay, Emilio Peluso Neder Meyer, in the same July edition of the *German Law Journal* as Schuldt (see Note 2, above), discusses how judges and courts are 'destabilizing constitutionalism' in Brazil; while Wojciech Sadurski in the *Hague Journal on the Rule of Law* (June 2018) describes how the Polish Constitutional Tribunal has transformed from an activist Court, to a 'paralysed Tribunal', and finally to an 'enabler' of the anti-democratic Law and Justice government.

4Elections

Elections are (unsurprisingly) a clear focus across the research presented in this update, from a variety of angles. The issue of lying in electoral campaigns is the focus of one section of the *Oklahoma Law Review* Symposium (July 2018) on 'Falsehoods, Fake News, and the First Amendment'. The issue also arises in the context of partisan gerrymandering, and more obliquely in the banning of political parties (see the discussion under 'Courts as democratic safeguards', Note 2 above).

5 Technology and Democracy (including fake news, social media, and cybersecurity)

A variety of authors address the challenge technology poses to democratic governance. The latest (July 2018) edition of the *SUR – International Journal on Human Rights* is devoted to 'The SUR File on Internet and Democracy', including articles by Cass Sunstein asking whether social media is good or bad for democracy, and Márcio Moretto Ribeiro and Pablo Ortellado defining fake news, and analysing how to address it. The *Oklahoma Law Review* Symposium on 'Falsehoods, Fake News, and the First Amendment' (July 2018) addresses the issue from a variety of perspectives, including how old frameworks can govern new realities, degrees of 'fakeness', and even whether the President can be sued for First Amendment violations.

The latest edition of the *UC Hastings Law Journal* (June 2018) is based on the Symposium 'Cybersecurity, Fake News & Policy: Dis- and Mis-Information', with a keynote address by Justine Isola, and other articles including David Howard asking 'Can Democracy Withstand the Cyber Age?', while Tessa Jolls and Michele Johnsen argue that media literacy is a 'foundational skill' for citizens given a dramatically altered media landscape. Finally, in his foreword to the latest edition of the *European Journal of International Law* (May 2018), Eyal Benvenisti asks what role the law of global governance can play in upholding democracy in the face of the challenges posed by new technologies.

6 Economic considerations

We see a strong focus on economics (and inequality in particular) as an explanatory factor for democratic decay, in suggested additions to the bibliography and new publications. Inequality is a dominant focus in a June Symposium of the *Indiana Law Journal* on 'The Future of the U.S. Constitution'. More specifi-

cially, we also see the discussion of economic tools to address democratic decay: see Wojciech Sadowski in the *Common Market Law Review* (July 2018) on protecting the rule of law in the EU through investment treaty arbitration.

Two recent books (from 2017) and one working paper (from 2016), suggested by DEM-DEC users for addition, are also key. Ginesh Sitaraman (regarding the USA) argues that the US constitutional system is predicated on sufficient economic equality and that growing inequality is provoking a constitutional crisis. Conversely, Frank Mols and Jolanda Jetten in their book *The Wealth Paradox*, and Ronald Inglehart and Pippa Norris in a 2016 working paper, also added (which forms the basis of their forthcoming book) argue against the tendency to place the focus exclusively on economic factors. Sitaraman's book was also the focus of a *Boston University Law Review* online symposium in May 2018.

Suggest Additions and Subscribe to the Mailing List

You can suggest additions for the next Update (to be issued on 3 September 2018) by filling out the form on DEM-DEC, or by emailing 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 going to the Subscription button on the DEM-DEC homepage (below the introduction video).

ABOUT THE AUTHOR

Tom Gerald Daly

Tom Gerald Daly is the Director of Democratic Decay & Renewal (DEM-DEC) and a Professor at Melbourne Law School.Tom Gerald Daly is Deputy Director at Melbourne School of Government, and Director of the project COVID-DEM, which curates and publishes analysis of how the pandemic is affecting democracy worldwide.

SUGGESTED CITATION

Daly, Tom Gerald: Democratic Decay Resource (DEM-DEC): First Monthly Bibliography Update-August 2018, Verfassungsblog, 08.08.2018, doi: 10.17176/20180808-135810-0.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20180808-135810-0.