

JAMES ALLAN, *DEMOCRACY IN DECLINE: STEPS IN THE WRONG DIRECTION*, MONTRÉAL & KINGSTON, MCGILL & QUEEN'S UNIVERSITY PRESS, 2014

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Canada, Australia, the United States (US), the United Kingdom (UK), and New Zealand; what do these five countries have in common other than being Anglo-American democracies? According to James Allan, these nations have suffered varying degrees of decline in democracy over the last few decades. This argument is the central tenet of James Allan's book, which is the focus of this review. Democracy, in the context of this book, is presented as "a thin or unvarnished or procedural understanding of democracy"¹ or rather letting the numbers count, majoritarian democracy, which according to Allan delivers the best consequence on average. In democratic societies, serious moral issues will arise, such as whether abortion and euthanasia should be legal, and the population must take a majority stance as to how to deal with these issues. In the context of contemporary society, *Democracy in Decline*, serves as a critique and comment on how external factors, such as judges, international law, supranational organizations and the undemocratic elite, have slowly, but steadily eroded true democracy in five of the oldest most stable democratic nations. This provocative book is not all negative, and rather purports an optimistic outlook that this deterioration can be reversed if the causes for decline are acknowledged and reduced.

The author of this book, James Allan, has published widely in the area of legal philosophy and constitutional law, and holds the oldest named chair at the University of Queensland School of Law in Australia.² Furthermore, Allan has had sabbaticals at the Cornell and Dalhousie Law School, and has participated in a great number of lectures, debates and talks.³ Prior to his presence in Australia, Allan taught at the University of Otago in New Zealand and lectured law in Hong Kong.⁴ With his extensive experience, travel and expertise in constitutional law, it is no surprise that Allan succinctly canvases the causes for decline in the aforementioned democracies.

The approach in this book is critical, comparative and even satirical at times, using a large array of examples and scenarios to illustrate how democracy has declined of late. Allan draws not only on legal research, statistics, voting habits, case law and political conflicts from each nation, but he also illustrates an uncanny

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¹ James Allan, *Democracy in Decline: Steps in the Wrong Direction*, Montréal & Kingston, McGill-Queen's University Press, 2014 at p viii [Allan].

² University of Queensland Australia School of Law "James Allan, Biography" (2014), online: University of Queensland Australia School of Law <<http://www.law.uq.edu.au>> [U of Queensland].

³ *Ibid* at "Research and Publications".

⁴ *Ibid*.

knowledge of each distinct population. The book targets all those who claim to embrace democracy, but will be most influential to academics that have lost sight of what letting-the-numbers-count democracy should look like. Finally the book is arranged comparatively to highlight the advantages and disadvantages of each nation and divided between what Allan believes to be the main reasons for the regression of democracy.

Democracy in Decline begins with the very poignant line, “this book is part lament and part call to arms”;⁵ this line succinctly demonstrates the book’s tone and precept, which is that things may be dire now, but they may improve. The book attempts to have its reader step away from the morally pregnant view of “democracy” as one that is inherently good, or rights respecting, to a procedural view of democracy, which is focused on *how* decisions are made and not *what* is decided, thus a letting the majority count approach; this distinction is unfailingly referenced throughout the book. Drawing on this aspect of majoritarian democracy, Allan argues with conviction, that smart, nice, well-informed people will, and do, regularly disagree, and democracy does not guarantee good outcomes, but it will on average have a better outcome than any other way of making decisions.⁶ Furthermore, Allan demonstrates that letting the majority of individuals vote on a moral polemic is the only democratic option.⁷ The strongest aspect of Allan’s argument is in his thoroughness in proving that democracy is an objective concept, and that its decline can be charted and measured based on whether the numbers of the population count towards making decisions. Allan effectively links the degeneration in majoritarian democracy to several key causes of decline as well as other more tangential causes and concludes that decline has indubitably occurred, but need not be permanent. Allan acknowledges and defeats many counterarguments, but the greatest weakness of this book is that at no point are strong arguments established in favour of democracy, rather it is merely acknowledged to be the best system so far.

In regards to structure, the book is efficiently divided into four thematic sections. The first, “Countries in Decline”, inspects the five Anglo-American countries starting with the US and followed by New Zealand, Canada, the UK and Australia. Allan discusses the democratic and undemocratic aspects that structure each nation, such as the election of the executive, legislative and judiciary branches, the voting systems, the adoption of a bill of rights and finally, the system of internalizing international law.

The second and longest part of the book is called “Causes of Decline” and builds upon the distinct aspects of each country to establish the substantive arguments as to *why* democracy is in decline. The section is divided further into four subsections starting with “Judges”. In this first subsection it is argued that there is an increasing trend to grant more influence and power to judges at the expense of elected, majoritarian decision-making. The reasons for this change are attributed to the

⁵ Allan *supra* note 1 at p vii.

⁶ *Ibid* at p ix.

⁷ *Ibid* at p 3.

adoption of more expansive and less constraining approaches of how to interpret legislation, where judges can essentially rewrite and block certain legislation, especially in the context of constitutional law, though judges represent an unelected and thus undemocratic group. The central argument in this section concludes that the undemocratic nature of judges stems both from their manner of election and power over interpreting legislation.

In the second subsection “International Law” Allan once again touches on the subject of judges and argues that international law lacks democratic legitimacy. In this section it is argued that judges use international treaties as, “filters for interpreting the written constitution”;⁸ also discussed is the use of unratified treaties in judiciary decisions, which results in the internalization of international law without democratic approval. Customary international law is equally mentioned as a cause for decline, as academics and members of the United Nations (UN), who are not elected by a democratic process, are the ones to construct this law. This subsection thereby illustrates that international law is undemocratic, as decisions are imposed on a population without a vote or a choice, thus the numbers do not count.

The third subsection is entitled “Supranational Organizations”, and is closely related to themes seen in the previous subsection, though the UK and its relation with the European Union (EU) is the predominant subject of discussion. Allan illustrates the undemocratic nature of the EU as citizens of the UK have decisions imposed upon them that can be more authoritative than national law. The commissions of the UN are also cited as a cause for decline as their reports can undemocratically influence a nation, though the population is never consulted.

Finally, Allan claims the last cause of decline is the “Undemocratic Elite”, which refers to human rights activists and special interest promoters, lobbyist, bureaucrats and all those who believe they cannot convince their brethren in an election, and therefore opt to put their question to a single federal court judge.⁹ This is obviously seen to be undemocratic by the author as one judge is asked to decide in place of the majority; this last subsection further builds upon the critique of judges seen in the first subsection. Allan argues that questions of moral interest must be put to the people and won by earning votes and not the opinion of one judge. Finally, Allan even argues that a hard decision would be educational as individuals, who are not happy with an outcome, would recognize their implicit participation and responsibility for that decision.¹⁰

The third part of the book builds on the causes for decline and contains several counter arguments as to why one could argue democracy is secure, it is entitled “Complications Masking Decline”. Allan uses this section to illustrate that democratic decline is largely unnoticed and unaddressed because it is cleverly concealed by other issues, which he denotes as “ploys”. These ploys include individuals believing that Allan is wrong on the facts, which is difficult to discount if

⁸ *Ibid* at p 90.

⁹ *Ibid* at p 121.

¹⁰ *Ibid* at p 125.

one accepts that democracy is a numbers game. Allan provides a series of other arguments such as, democracy is imperfect, or more than a numbers game or that statutory bills do not reduce democratic decision-making. Furthermore, Allan states a common ploy as one where individuals see disaccord on moral issues as belonging only to uneducated, right wing fanatics, rather than accepting that reasonable individuals will disagree. Interestingly, the author contends that there is a possible argument in favour of this decline, as the population may value other elements above democracy; regrettably this reasoning is dismissed with little discussion. Lastly, the author deconstructs these ploys to prove that democracy has declined whether one admits it or not.

The last part of the book is the shortest and draws upon the other sections of the book to provide tangential arguments to bolster the author's thesis that democracy is in decline, it is entitled "Challenges Threatening More Decline". Four subsidiary points are made in this section as causes of further erosion of democracy, first the attack on free speech, which is an important forum for democracy; second, intolerance which can cause disagreement based in bias rather than fact; third, the trend of greater internalization of international law, which is discussed in an earlier section, and the final factor is mass illegal immigration that allows a large population to exist without the right to vote or have their opinion count.

The greatest strength of *Democracy in Decline* is its unwavering tenacity to illustrate the very clear and well-documented fact that democracy has deteriorated at varying levels, in five of the strongest democracies in the world. The structure of the book is clear and easy to follow its short focused sections and subsections allow one to make connections between democracy as a numbers game and its recent decline. Allan never loses sight of his main argument and this concise work concludes by convincing its reader that the power of the majority has been siphoned off and deposited into the hands of powerful, yet unelected players, such as judges and the undemocratic elite. Simultaneously Allan allows one to recognize that the factors that have led to the debilitation of democracy can all be reversed if one were to impose more strict interpretative limits on judges, not internalize un-ratified international law, refrain from blindly following the recommendations of supranational organisations, and finally force lobbyist to win their battles in the public forum and not a court room. Conclusively, Allan urges society to return to a more democratic way of making decisions in letting the numbers count and he gives the readers the steps and optimism to achieve this change. Unfortunately one element lacking in this book is a discussion as to the positive elements of democracy, more than merely stating that as a system it is better than most. This lack of elucidation on the benefits of letting-the-numbers-count democracy makes one pause and wonder if there are things more important than democracy. This element of the debate is mentioned in passing and acknowledged as a valid argument, although one the author rejects. The book would be more convincing if it built upon the importance and quality of democracy and followed by a survey of the decline of this system. However, even without any strong arguments for democracy one does sense the passion and rigueur in which Allan seeks to defend democracy and challenge any institution that minimizes its strength.

In conclusion, *Democracy in Decline* is an exciting, often unsettling book. In very few pages readers must admit that democracy cannot be anything other than a numbers game, and this letting-the-numbers-count democracy has decreased. In illustrating the causes for erosion this book allows one to recognize that one has disregarded true democracy in favour of a subjective, left wing, rights enforcing view of democracy that cares little for *how* a decision is made, but its *rightness*. This book allows one to decide to support democracy or accept its decline in favour of other factors, but in no way can one ignore that the numbers do not always count when it comes to large scale decisions made by nations, and this decline in democracy will not be reversed unless change is initiated and soon. Ultimately the author concludes by illuminating the factors of decline, and demonstrating that this degeneration will only worsen unless we, the population of these great nations, are willing to act.