**Reconstructing the Administrative State in an Era of Economic and Democratic Crisis.**
**Harvard Law Review, Vol. 131 (2018)** (online at HLR [**here**](https://harvardlawreview.org/2018/04/reconstructing-the-administrative-state-in-an-era-of-economic-and-democratic-crisis/) or on SSRN [**here**](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3160966).)
[Reviewing Jon Michaels' **Constitutional Coup**].

This Review engages Michaels’s important work, situating it in context of these wider economic and social battles to sketch a broader claim. The defense of the administrative state, this Review argues, is not just about assuring checks and balances; it is about preserving democracy — the idea that, through political institutions, we the people expand our capabilities and capacities to remake social and economic systems that are otherwise beyond the scope of individuals, associations, or ordinary common law. It is also about democracy in its substantive connotation: through the administrative state, we make possible the realization of substantive democratic values of equality and inclusion.

**Policymaking as Power-Building. Southern California Interdisciplinary Law Journal**, Vol. 27 (2018) (online [**here**](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3039733))

The problem of balancing power through institutional design — always a central concern of constitutional theory — has taken on even greater salience in current scholarship in light of contemporary concerns over economic inequality and failures of American democracy today. This paper extends these concerns into the realm of administrative law and the design of regulatory policy. I argue that in an era of increasing (and increasingly interrelated) economic and political inequality, we must design public policies not only with an eye towards their substantive merits, but also in ways that redress disparities of power. In particular, we can design policies to institutionalize the countervailing power of constituencies that are often the beneficiaries of egalitarian economic policies, yet lack the durable, long-term political influence to sustain and help implement these policies over time. This concept of “policymaking as power-building” rests on a descriptive and normative claim. Descriptively, the paper shows how historical and contemporary analyses of administrative governance indicates that regulatory institutions and policies are already involved in shaping and responding to the balance of power among civil society groups. Normatively, the paper argues that this reality should be harnessed to pro-actively design policies that mitigate power disparities, and in so doing promote greater democratic responsiveness through regulatory policy design. The paper develops this argument through case studies of power-balancing policy design in local regulatory bodies around economic development initiatives, and in federal regulation around the case of financial reform. The paper then theorizes a more general framework for designing similar power-shifting policies that are portable across substantive areas of law and policy and across federal, state, or local level administration. This framework should be of interest to policymakers, advocacy groups, and other practitioners designing regulatory policies and concerned about dangers of capture and disparate influence. This account of policymaking as power-building synthesizes literatures in law, social science, and political theory to offer a more institutionally-rich account of power and the interactions between constituencies on the one hand and policymaking institutions on the other. It also extends the current debates on power and public law, law and inequality, and administrative and local government law.

**NB:**Preliminary drafts of this argument were presented at the Scholars Strategy Network and Ford Foundation [**convening**](http://www.scholarsstrategynetwork.org/page/purchasing-power) on "Purchasing Power" [**here**](http://www.scholarsstrategynetwork.org/sites/default/files/rahman_policymaking_as_power_building.pdf).

**Countering adversary threats to democratic institutions : an expert report**

|  |  |
| --- | --- |
| Author: | [Suzanne E Spaulding](http://ned.worldcat.org/search?q=au%3ASpaulding%2C+Suzanne+E.&qt=hot_author); [Eric Goldstein](http://ned.worldcat.org/search?q=au%3AGoldstein%2C+Eric&qt=hot_author); [John J Hamre](http://ned.worldcat.org/search?q=au%3AHamre%2C+John+J.&qt=hot_author) |
| Publisher: | Washington, DC : Center for Strategic & International Studies, 2018 ©2018 |
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| Summary: | "This report, informed by a CSIS-convened Experts Group, calls for a whole-of-nation approach to address the threat to, and improve the resilience of, the country's democratic institutions. The report proceeds in four sections. First, it outlines the nature of the threat posed by the Russian government, building upon what Russia has done in other countries, as well as in the United States. The second section describes how technology has magnified this threat. The third section examines essential elements of a "National Strategy to Counter Russian and Other Foreign Adversary Threats to Democratic Institutions." The final section is  |

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## ****Resilience – like steel****

### [bounce](https://www.thesaurus.com/browse/bounce)

noun. spring

* [animation](https://www.thesaurus.com/browse/animation)
* [bound](https://www.thesaurus.com/browse/bound)
* [dynamism](https://www.thesaurus.com/browse/dynamism)
* [elasticity](https://www.thesaurus.com/browse/elasticity)
* [energy](https://www.thesaurus.com/browse/energy)
* [give](https://www.thesaurus.com/browse/give)
* [go](https://www.thesaurus.com/browse/go)
* [life](https://www.thesaurus.com/browse/life)
* [liveliness](https://www.thesaurus.com/browse/liveliness)
* [pep](https://www.thesaurus.com/browse/pep)
* [rebound](https://www.thesaurus.com/browse/rebound)
* [recoil](https://www.thesaurus.com/browse/recoil)
* [resilience](https://www.thesaurus.com/browse/resilience)
* [springiness](https://www.thesaurus.com/browse/springiness)
* [vigor](https://www.thesaurus.com/browse/vigor)
* [vitality](https://www.thesaurus.com/browse/vitality)
* **SYNONYMS**
* **flexibility**, pliability, suppleness, plasticity, elasticity, springiness, spring, give
* **durability**, ability to last, strength, sturdiness, toughness
* **ANTONYMS**
* rigidity, fragility
* **2***‘she displayed an indomitable resilience in the face of misfortune’*
* **SYNONYMS**
* **strength of character**, strength, toughness, hardiness
* **adaptability**, buoyancy, flexibility, ability to bounce back

In psychological terms, resilience has been most frequently defined as positive adaptation despite adversity. (Kay James …???)

## [Supernormal: The Untold Story of Adversity and Resilience – Meg Jay](https://www.amazon.com/Supernormal-Untold-Story-Adversity-Resilience/dp/1455559156/ref%3Dsr_1_23?ie=UTF8&qid=1535656081&sr=8-23&keywords=resilience" \o "Supernormal: The Untold Story of Adversity and Resilience)

Nov 1

Tennyson – And though we are not now….

The authoritarian resurgence and emergence of illiberal populism have challenged complacent assumptions about the forward march or [future of democracy](https://www.journalofdemocracy.org/sites/default/files/Howe-28-4.pdf). Of course, many of us have long been aware that there is no historical inevitability, that democratic values and institutions must be nurtured, established and defended. But it is equally clear that we have entered what Stanford’s Larry Diamond calls a global “[democratic recession](http://www.journalofdemocracy.org/article/facing-democratic-recession),” while the Journal of Democracy also [cautions](https://www.journalofdemocracy.org/online-exchange-%E2%80%9Cdemocratic-deconsolidation%E2%80%9D) that even “consolidated” democracies may be sliding toward more authoritarian politics.

On the other hand, however, we should not overlook the marked resilience of democracy. International public support for it remains robust, according to a [Pew Research Center survey](http://www.pewglobal.org/2017/10/16/globally-broad-support-for-representative-and-direct-democracy/) conducted in 38 countries. Nearly six-in-ten countries are now democratic, [a postwar high](http://www.pewresearch.org/fact-tank/2017/12/06/despite-concerns-about-global-democracy-nearly-six-in-ten-countries-are-now-democratic/), it adds.

The world has also experienced considerable “**global progress in almost all aspects of democracy** since 1975,” says the International Institute for Democracy and Electoral Assistance (International IDEA), even if the positive trends have flattened out since the mid-1990s, While there are upturns and downturns in individual countries, current trends signify “[democratic steadiness at the highest level in world history](https://www.idea.int/gsod/files/IDEA-GSOD-2017-CHAPTER-1-EN.pdf),” according to IDEA’s Global State of Democracy 2017: Exploring Democracy’s Resilience, an overview of the global state of democracy, 1975–2015.

In the period 1975–2015 **substantial progress was made in four out of five dimensions** emphasized by International IDEA’s comprehensive definition of democracy (i.e. Representative Government, Fundamental Rights, Checks on Government and Participatory Engagement).

“Renewing civil society remains critical for long-term democratic resilience,” the [report adds](https://www.idea.int/gsod/files/IDEA-GSOD-OVERVIEW-EN.pdf).

**Georgia** and **Ukraine** are also [examples of the resilience of democratic aspirations](https://www.ndi.org/our-stories/international-delegation-ndi%E2%80%99s-board-directors-reinforces-support-democracy), says the National Democratic Institute. Georgia’s democracy has continued to evolve through major domestic political upheavals, as well as a 2008 war with Russia and occupation of sizable portions of its territory, NDI notes, while Ukraine’s Revolution of Dignity in 2014 motivated a wave of young activists to enter politics

We see similar examples of democratic resilience and the vibrancy of civil society elsewhere.

The biggest lesson of **Malaysia’s** “election tsunami” for the region is how resilient state institutions can work to democracy’s advantage, can still function even after years of abuse, [the Economist notes](https://www.economist.com/asia/2018/05/26/south-east-asia-lots-of-elections-not-so-much-democracy). The seeds of this democratic movement lie in Anwar Ibrahim's call for reformasi in 1998, but underpinning Malaysia’s seismic power shift, [one analyst writes](https://thediplomat.com/2018/05/the-everyday-activists-behind-malaysias-democracy-struggle/), was the contribution of civil society activists and opposition politicians who were essential to keeping cases of corruption and human rights abuses alive during the decades of de facto one-party rule.

Following its [recent velvet revolution](https://www.economist.com/the-economist-explains/2018/05/25/how-armenias-revolution-has-been-different), **Armenia’s** could become a [laboratory for post-Soviet democracy](http://www.talkmedianews.com/wake/2018/05/29/why-armenia-is-a-laboratory-for-post-soviety-democracy/), analysts suggest. “This [is a wake-up call….a scary message](https://www.demdigest.org/armenia-could-become-laboratory-for-post-soviet-democracy/) for neighboring autocratic states,” said the head of an Armenian thin-tank. If it succeeds in transforming a once-stagnant post-Soviet state into a dynamic and democratic one, the model set by Armenia’s revolution [**could be profound**](http://www.panarmenian.net/eng/news/256067/Why_Armenia_is_a_laboratory_for_postSoviet_democracy_Talk_Media_News), he adds.

But a sustainable democratic transition requires [establishing an ’institutional backbone”](https://www.demdigest.org/armenia-needs-institutional-backbone-sustain-democratic-breakthrough/) to ensure there is no reversion to corrupt, autocratic governance, [says Daron Acemoglu](http://www.armradio.am/en/2018/05/21/daron-acemoglu-says-ready-to-advise-but-cannot-draw-blueprint-for-armenias-change/), a Turkish born Armenian economist. The revolution was widely [hailed as a victory for civil society](https://www.demdigest.org/armenias-pm-steps-victory-civil-society/) – in short, for opposition figures who has maintained their commitment to democracy values and institutions. Civil society groups might find it easier to work with the new government, one analyst suggests, but international experience suggests they [risk jeopardizing their independence, autonomy, and ability](https://www.aljazeera.com/indepth/opinion/armenia-revolution-opportunities-challenges-180510071533024.html) to hold powerful actors to account.

Despite a [low turnout](http://www.dw.com/en/tunisia-low-turnout-as-ennahda-party-claims-victory/a-43678089) among young voters in **Tunisia’s local elections**, more than a third of those who won seats are [under the age of 35](https://www.news24.com/Africa/News/tunisia-islamists-top-municipal-polls-without-majority-20180510). The results [suggest that Tunisia can sustain democracy](http://carnegieendowment.org/sada/76323) despite a difficult economic and political climate, according to one observer, citing a new generation of youth leaders emerging, many of whom were heavily involved in civil society organizations. The elections were a "first [move towards the real decentralization of power](https://www.alaraby.co.uk/english/indepth/2018/5/8/Tunisia-still-has-much-democratic-progress-to-make), and proof that Tunisia's democratic transition continues," said Tunis-based political analyst Youssef Cherif.

**The Gambia** is described as “[the star performer](https://www.economist.com/graphic-detail/2018/01/31/democracy-continues-its-disturbing-retreat)” in the 2017 rankings of the Economist Intelligence Unit’s annual [Democracy Index](https://www.eiu.com/topic/democracy-index), after it moved up 30 places in the rankings, losing its classification as an “authoritarian regime,” ending 22 years of dcstatorial rule The Gambia’s status improved from Not Free to Partly Free as a result of improved political rights and civil liberties, [according to Freedom House](https://freedomhouse.org/report/freedom-world/2018/gambia). The country provides a text-book case for [how to topple an autocrat](https://www.theguardian.com/news/2018/may/22/how-to-topple-a-dictator-the-rebel-plot-that-freed-the-gambia-yahya-jammeh), according to an in-depth analysis in the Guardian. The opposition Resistance put together Blueprint for a New Gambia, a document detailing, step by step, how to bring down dictator Yahya Jammeh.

The European Union recently pledged €1.45bn [EU to reinforce political and financial support](http://europa.eu/rapid/press-release_IP-18-3865_en.pdf) for The Gambia’s democratic transition. "The[#Gambia](https://twitter.com/search?q=%23Gambia) is showing to the world that freedom and democracy are about real people and real lives… [not just abstract concepts](https://eeas.europa.eu/headquarters/headquarters-homepage/45014/gambia-international-conference-mobilises-%E2%82%AC145-billion_en),” said High Representative Federica Mogherini, while Antonio Tajani, president of the European Parliament recently described Gambia’s recent [democratic strides as **an African success story**](http://www.africanews.com/2018/05/24/gambia-s-democratic-change-an-african-success-story-top-eu-lawmaker/).

The Government of The Gambia that took office in January 2017, ending 22 years of authoritarian rule and repressive legislation and practices, has pledged to defend and promote freedom of expression, access to information and media pluralism. The Government has [taken significant steps to implement these commitments](https://eeas.europa.eu/sites/eeas/files/eud_report_freedom_of_expression_media_pluralism_the_gambia_media4democracy.pdf). Adama [Barrow “is going above and beyond](http://allafrica.com/stories/201805290792.html) to restore the rule of law, deepen democracy, advance transitional justice and transform the security sector,” according to one observer.

The recent elections in the country, although plagued by low voter turnout, were indeed free and fair, and Barrow has been [making good on his reform pledges, the Geopolitical Monitor reports](https://www.geopoliticalmonitor.com/lessons-from-gambia/). “President Barrow’s first 100 days have **included some momentous steps** forward for [human rights](https://www.geopoliticalmonitor.com/tag/human-rights/),” said Amnesty International’s West and Central Africa Regional Director.

Elsewhere in sub-Saharan Africa, **South Africa**’s President Jacob Zuma was forced from office following the exposure of [high-level corruption](http://www.demdigest.net/south-africa-corruption-report-released-amid-anti-zuma-protests/) and ‘[state capture](http://www.news24.com/SouthAfrica/News/download-the-full-state-of-capture-pdf-20161102)” raising fears that the country was [degenerating into a kleptocracy](http://www.bbc.com/news/world-africa-22513410). His removal was a consequence of civil society mobilization, not least by the media and civil society watchdogs, and of the assertiveness and integrity of an independent judiciary, confirming that while the country’s democracy has been tarnished, its democratic institutions remain robust and resilient.

Even in Central Asia, long considered a bastion of authoritarianism, things are stirring. Since taking office in September 2016, of [**Uzbekistan**](https://www.ned.org/region/eurasia/uzbekistan-2016/)**’s** President Shavkat Mirziyoye’s “Five Year Strategy of Action” has initiated several reforms, including economic liberalization, providing greater freedom for media and expression, promoting good governance, judicial reform and rule of law, while removing the cult of personality that surrounded the former dictator. The reforms amount to an admission that authoritarianism has failed to deliver, observers suggest.

**Ethiopia’s** ruling EPRDF adopted a China-style developmental state model “as a way to boost its political legitimacy.. **[but]** this [authoritarian developmental model has backfired and is coming to a dead end](https://africacenter.org/spotlight/many-layers-ethiopia-crisis/),” one analyst recently noted. Recent protests over corrupt land transactions quickly expanded into a broader uprising: against elite corruption, government inertia and repression. The protests forced the regime to confront [a perennial question](https://rusi.org/commentary/unstable-ethiopia-wobbles-addis-ababa) in Ethiopian politics: ‘[how to build a modern nation-state?’](https://www.foreignaffairs.com/articles/ethiopia/2016-08-29/behind-violence-ethiopia) **In response, Ethiopia’s prime minister, Abiy Ahmed’s** inaugural speech to parliament in April – described by the FT as [among the more remarkable in Africa in recent times](https://www.ft.com/content/4fe72c04-422b-11e8-93cf-67ac3a6482fd) – made a commitment to engage critics, embark on democratic reform, tackle corruption, guarantee rule of law. And embark on a program of national unity and reconciliation.

In **Nicaragua**, protests against President Daniel Ortega authoritarian rule have continued for over a month, despite at least 76 fatalities and more than 800 injured, [according to the Inter-American Commission on Human Rights](https://www.reuters.com/article/us-nicaragua-protests/rights-commission-condemns-abuses-during-nicaragua-protests-idUSKCN1IM267) (CIDH). The unrest amounts to the “[largest political awakening](http://www.atlanticcouncil.org/blogs/new-atlanticist/nicaragua-s-moment-of-reckoning) since Ortega took office in 2007 and gradually eliminated the democratic system of checks and balances,” according to one account, placing Nicaragua “at an [inflection point](http://www.atlanticcouncil.org/blogs/new-atlanticist/nicaragua-s-moment-of-reckoning) that represents its best chance to finally return to a full democracy.” The protests also signal the collapse of the autocratic social contract – [underpinned by Venezuelan funds](https://www.univision.com/univision-news/latin-america/daniel-inc-how-nicaraguas-ortega-financed-a-political-dynasty) - between the Sandinistas, the church, the military and the private sector, amounting to a “[civic revolution, unprecedented](https://www.reuters.com/article/us-nicaragua-protests-analysis/nicaragua-protests-erode-pillars-of-support-for-ortega-idUSKCN1IT1XX)” in the country’s history. Nicaragua seems to be [on the brink of momentous change](https://www.newyorker.com/news/news-desk/nicaragua-on-the-brink-once-again), some [observers suggest](http://theconversation.com/nicaragua-protests-threaten-an-authoritarian-regime-that-looked-like-it-might-never-fall-95776).

These few examples confirm **the suggestion in a recent Center for Strategic and International Studies (CSIS) analysis,** *Time to Renew the Democracy Playbook***,** thatdemocratic [resilience “comes from strong citizen engagement and sound institutions,”](https://www.csis.org/analysis/time-renew-democracy-playbook) Civil society and journalists play a crucial role in expressing dissent and holding governments accountable, it adds, citing the case of **Burkina Faso** where civil society “was instrumental in overthrowing a corrupt regime.”

But strong state institutions are also vital to resisting newly confident and illiberal forces.

“Democratic resilience demands that citizens do more than bemoan deficiencies and passively await constitutional reform. It requires openness to change and innovation,” says Helmut K. Anheier of the Berlin-based Hertie School of Governance. Such changes may occur incrementally, but their aggregate effect can be immense, he notes, citing powerful examples of [democratic resilience in the brazenly populist regimes](https://www.project-syndicate.org/commentary/democratic-resilience-against-populism-by-helmut-k--anheier-2017-07) of Central and Eastern Europe, not least in [Hungary and Poland](https://www.project-syndicate.org/commentary/leaders-building-illiberal-regimes-in-hungary-and-poland-by-nina-l--khrushcheva-2016-03).

“The more that can be done to [boost the resilience and responsiveness of democratic institutions](http://reports.weforum.org/global-risks-2018/democracy-buckles/), the less likely they will be to buckle under pressure,” according to a recent report from the World Economic Forum. This might require political and constitutional experimentation, it added.