

Support for the Rule of Law. The cultural Preconditions of a Strong and Stable Rule of Law

1. Background

After the Second World War, democratisation seemed to be a typical tendency especially in terms of the number of countries transforming from an authoritarian to a democratic system. The last, large wave of this tendency was the transformation of former communist countries; among others: Hungary. It is the sound impression of the general public, politicians, and political analysts that this tendency has reversed in the past decade. (See, for a theoretical overview: Waldner & Lust, 2018, Specifically for Hungary and/or the region: Bogaards, 2018; Buzogány and Varga, 2018; Jakab, 2020; Körösnéyi, Illés, and Gyulai, 2020; Pap, 2017; Szelenyi and Csillag, 2015) This new trend has been named, among others, an ‘illiberal’ turn (on the origins of the concept see Zakaria 1997), ‘populist backsliding’ (Sadurski 2018), or the ‘decline of liberal democracy, and constitutionalism’ (Skapska 2018).

So far, this backsliding has been studied mostly by political scientists relying on theoretical frameworks of political science and focusing particularly on certain political institutions or the democratic arrangement generally. The Rule of Law (*hereinafter: RoL*) was characteristically conceived within this context and, consequently, appears somewhat peripherally in the scientific study of de-democratisation. This may be specifically problematic if elements of RoL, such as judicial review are considered as counter-majoritarian phenomena and as such violate a key democratic principle. (Bickel, 1986; Waldron, 2005)

Legal scholars, on the other hand, whose works reflect more on the RoL, understandably, tend to focus on the – so-called black letter – laws, that is, on formal legal institutions and are frequently unable to catch informal arrangements, networks of personal ties and loyalties, that may be especially relevant in dismantling the RoL. The project proposed here offers a neo-institutional approach to identify the pre-conditions of the RoL, taking into account the above-mentioned extra-legal arrangements.

The vast majority of recent literature attempts to provide a description of backsliding, unravelling its characteristic features and frequently steps further attempting to identify causes of the backsliding. Causes of democratic backsliding are mainly a negative aspect of -preconditions of democracy, an issue addressed already at the early stage of political sociology. The classic analysis by Lipset . (1960). already identified economic, social, political and to some degree cultural preconditions to democracy. Another classic (Verba, & Almond, 1965) called attention to the importance of culture.

Culture as a societal phenomenon has gained an increased, specific interest in social sciences in the past decades. Although it is undoubtedly very difficult to capture 'culture' with social sciences methodology, its explanatory power seems to be especially compelling in such diverse fields as the economic or political system. (E.g. papers in Amin and Thrift, 2008; Grindstaff & Lo & Hall, 2010) In the case of East-Central European countries, experts warned quite early (e.g. Dahrendorf, 1990, 78) that whereas formal institutions of democracy and the legal system may be changed overnight, cultural factors, „the soft tissue of the society” (Sztompka 1999, 205) that serves as a vital background of those institutions change only very slowly.

2. The aim and ambition of the research project

The project proposed here focuses on the relationship between culture, specifically legal culture (*hereinafter LC*), on one hand, and the RoL on the other. The research is based on the presumption that legal culture is a crucial precondition of a well-established system of the RoL. Other, presumably relevant variables, such as economic and social indicators are used as control variables. The project proposed in this plan, thus, **investigates the effect of LC on RoL**. Our hypothesis is that (a) certain cultural layouts are in favour of the RoL whereas others are less so. Furthermore, we presume these (b) layouts and/or attributes of LG can be captured relatively well with the proposed methodology and, thus, a probable causal relationship between RoL and LG may be established.

Very concisely, we define the key notion of LG as ‘values, beliefs and attitudes related to law’, whereas RoL, our dependent variable refers to a list of requirements including both formal-procedural (stability of

legal rules, compliance, unbiased law enforcement, etc.) and material-substantive aspects (protection of fundamental rights, minorities, checks and balances).

The concept of Legal Culture is highly contested in the literature. Prominent scholars of LC find the term complex and difficult to define (Cotterrell, 2013, pp. 83–88; Silbey, 2010; Mankowski 2016). Still, others agree that, despite conceptual difficulties, the concept is highly useful or even essential for understanding law in a wider social context, of which culture is considered a key element (e.g. Nelken 2004; Nelken and Feest 2001; Hertogh 2018; Silbey 2010, p. 470). Below we briefly introduce the contradictions regarding the term LC and then we clarify our position regarding the concept.

The fundamental problem is that the term LC is used with at least two different meanings in the literature (Cotterrell 2013, pp. 83–84). In comparative legal studies LC refers to the type of the legal system (Zweigert and Kötz 1992; Scholler and Tellenbach 2001; Bell 2006; Koch e.a. 2017). In contrast, following Friedman’s (1975) understanding, we interpret LC as *shared values and beliefs related to law* in a society. This usage is consistent with how the term is used in cultural studies; thus, the related literature can be utilised for our research (e.g. Hall et al., 2010; Minkov, 2013; Wyer et al., 2009). In accordance with the majority of the literature, the proposed project identifies two major elements of LC: (a) values that are embedded in the moral system that guide people in issues of right or wrong, norms of socially desirable or sanctioned behaviour (e.g. “policemen/policewomen should not be corrupt”, “laws should serve the public interest”); and (b) beliefs about facts that determine how elements of actual reality are conceived by the people (e.g. “policemen/policewomen are usually not corrupt in this country”, or “laws serve the interest of the public vs. of the elite”, see Kurkchiyan 2011). Attitudes, combine these two elements. Culture is a collective phenomenon (see: “shared”), however, frequently (including in this project) it is measured on an individual level.

An underlying presumptions of this project is that, unlike formal institutions, culture changes only very slowly, frequently over generations. Another crucial presumption that we may identify LC on the national level. Some, eminent scholars (most importantly: Cotterrell 2013, pp. 92–93) question this assumption. Still, comparative cultural sociology typically presumes that there is a significant difference between the LCs of various countries (Hofstede, 2011; Minkov, 2013; Schwartz, 2012; Zubrzycki, 2010). In brief, our working definition of LC, while in accordance with the majority of scholarly literature, is also the most appropriate for the aim and design of the proposed research.

The Rule of Law as a term is just as contested as LC (e.g. a good overview by Timmer, 2013). RoL is mostly defined as a list of various requirements or legal techniques that aim to inhibit the arbitrary use of (state) power. Usually, authors differentiate between formal-procedural (or thin) and material-substantive (or thick) requirements. Somewhat simplistically, the formal-procedural side includes the stability of legal rules, compliance and fair enforcement (independently from the content of the laws), whereas the material-substantive side includes fundamental rights, as well as checks and balances. It is not possible or necessary to delve into the debates about the meaning of RoL here. (On these conceptual debates see for instance: Jakab 2016; Møller and Skaaning 2011; for various causal relationships see Rigobon and Rodrik 2004.) Instead, taking into account the research design elaborated below, we accept – though with the necessary caution – the definitions of the organisations that provide RoL indexes that we will utilise in this project (Møller and Skaaning, 2014, 13–37).

Four indicators are most frequently mentioned in relation to RoL. (a) Assisting historical analysis, the indicator of Freedom House has been in existence for the longest period (available for longitudinal investigation since 1973). However, this indicator has also received the most severe criticism for its methodology (esp. expert selection, conceptualisation). (b) The World Bank’s (WB) Worldwide Governance Indicators are composed of six major indexes (each containing several variables), one of which is RoL. Importantly, other indicators also refer to relevant aspects of the legal system. Criticism suggests, however, that the formation of indicators can be driven by the availability of data rather than a firm, theoretically rooted definition of RoL and its major components (Møller and Skaaning, 2014, p. 60). (c) The Bertelsman Stiftung also publishes a RoL index, but data is only generated for post-transition and developing countries. (d) Currently, the methodologically most advanced RoL index is offered by the World Justice Project (WJP). Conveniently, it includes both the ‘thin’ (formal-procedural) and ‘thick’ (material-substantive) elements of RoL (Jakab and Lőrincz 2017; Møller and Skaaning, 2014, 52), in a manner that is similar to our own understanding. Furthermore, the index reflects how RoL has actually been implemented in reality as opposed to how it just appears in written rules, thereby meeting our neo-institutionalist approach. The index covers 126 countries and jurisdictions and relies on more than 120,000 household surveys and 3,800 legal practitioner and

expert surveys to measure how the rule of law is experienced and perceived. It is comprised of eight main factors and 44 sub-factors. The main factors are (1) Constraints on Government Powers, (2) Absence of Corruption, (3) Open Government, (4) Fundamental Rights, (5) Order and Security, (6) Regulatory Enforcement, (7) Civil Justice, (8) Criminal Justice. As the WJP has only been in existence since 2012 and its methodology has also changed slightly since then, its data is primarily suitable for conducting snapshot-type analyses of recent years and not for undertaking analyses of RoL tendencies. Both the aggregate WJP RoL index and its sub-indicators, which focus on various aspects of RoL, will be utilised in our project.

Importantly, despite sometimes significant differences in their methodologies, RoL indexes strongly correlate. (Møller and Skaaning 2014, 68; Versteeg and Ginsburg 2017, 5) Consequently, RoL is measured with surprising consistency across the different methodologies, *allowing for robust conclusions that are independent of the methods of measurement*.

Our RoL concept has elements that are common to most mainstream (e.g. Merkel 2004) ‘democracy’ definitions (such as fundamental rights, checks and balances), but the concept of democracy is in some respects broader (including elements such as the strength of civil society) and in other respects narrower (excluding most formal-procedural elements of RoL) than our RoL concept.

3. Methodology

A) Operationalization of the main concepts – relevant variables

The following sets of variables are utilised:

1. **Dependent variables:** RoL is measured by the above-reviewed indexes. While we will mainly rely on the World Justice Project (WJP), for the longitudinal analysis we will also utilise the Freedom in the World index of Freedom House. Other relevant indicators will also be collected and used for robustness checks.
2. **Independent (explanatory) variables: LC variables are divided into two main sets for this research**
 - a. **Direct cultural preconditions of RoL (i.e. support for RoL).** By ‘support for RoL’ we mean both support for the generic idea of RoL (e.g. liberty; limitation of state power; preference for formal over substantive justice) and support for its individual components (e.g. support for human rights, or for judicial independence). We presume that this aspect of LC directly influences the strength and stability of RoL. The identification and conceptualization of these variables require theoretical effort. The operationalization (e.g. formulation of survey questionnaire) must ensure both the validity and reliability of the measures while paying special attention to cross-cultural differences. This part is at the heart of the project because it provides information that is not available from other sources and at the same time presents an opportunity to find new ways of capturing support for RoL. There have only been a relatively small number of empirical studies which specifically aimed to measure the support for RoL. The largest number of countries involved in such a study was that of Gibson and Caldeira’s (1996), in which representative samples from 14 EU member states (with separate samples from East and West Germany) were asked the same eight-item question set that was directly designed to measure cultural support for RoL. More recently Gajduszek (2019) reviewed a survey carried out in Hungary, the Netherlands and Serbia (vastly different European countries), where several questions addressed the support for RoL, including but not solely the eight questions of Gibson and Caldeira (1996).
 - b. At the same time, we expect that certain cultural traits, referred to in this project as ‘**indirect cultural preconditions of RoL**’, may be good predictors of whether there is support for RoL. Such variables are available, among others, in the World Value Survey (WVS), in the International Social Survey and – for European countries – in the European Social Survey (ESS), in the European Values Study or in the Eurobarometer, including cultural variables elaborated by Inglehart and his colleagues. (Inglehart 2006; Inglehart and Welzel 2010a; Inglehart 2015). The variables elaborated and measured by Schwartz (Schwartz 2012), Hofstede (Hofstede 2011) and Haidt (Haidt 2007; Graham et al 2009) or the Globe project (Dorfman et al., 2012) .are potentially also highly relevant. For instance, theoretically, it seems evident that a certain level of ‘individualism’ (a cultural dimension of Hofstede) is necessary for the popular support of the idea of human rights, which is then a constitutive part of RoL. Indeed, for instance, Licht et al. (2007) found that individualism and power distance (two cultural variables of Hofstede) or autonomy (a variable of Schwartz) correlate significantly and strongly with the applied RoL indicator.

The main aims of the research is to validly capture the relationship between the two types of LC and the RoL, via grasping the relationship between ‘indirect’ and → ‘direct cultural preconditions’, on one hand, and, next, LC and ‘strength and stability of RoL’, on the other. A better understanding of this intricate relationship may assist us in estimating the correlation between LC → RoL even in countries where only data on indirect preconditions are not available.

3. **Control variables.** We differentiate between two sets of control variables:
 - a. **Individual-level control variables**, such as socio-demographic (age, education, etc.) and some other variables (e.g. personal experience with the legal system, media consumption).
 - b. **Country-level control variables** such as economic indicators will be extracted from the datasets of the World Bank, OECD, while data on the political systems and institutions will come from data sources such as Polity IV (<http://systemicpeace.org/polity/polity4.htm>), Comparative Political Data Set (CPDS) (Armingeon 2019) and the Comparative Constitutions Project database (Elkins, Ginsburg and Melton 2014) or Comparative Agendas Project.

Figure 1 shows a schematic view of how LC and RoL are related. Relationships indicated by the thick arrows are at the core of this project. We also consider individual and country-level control variables as shown with dashed arrows.

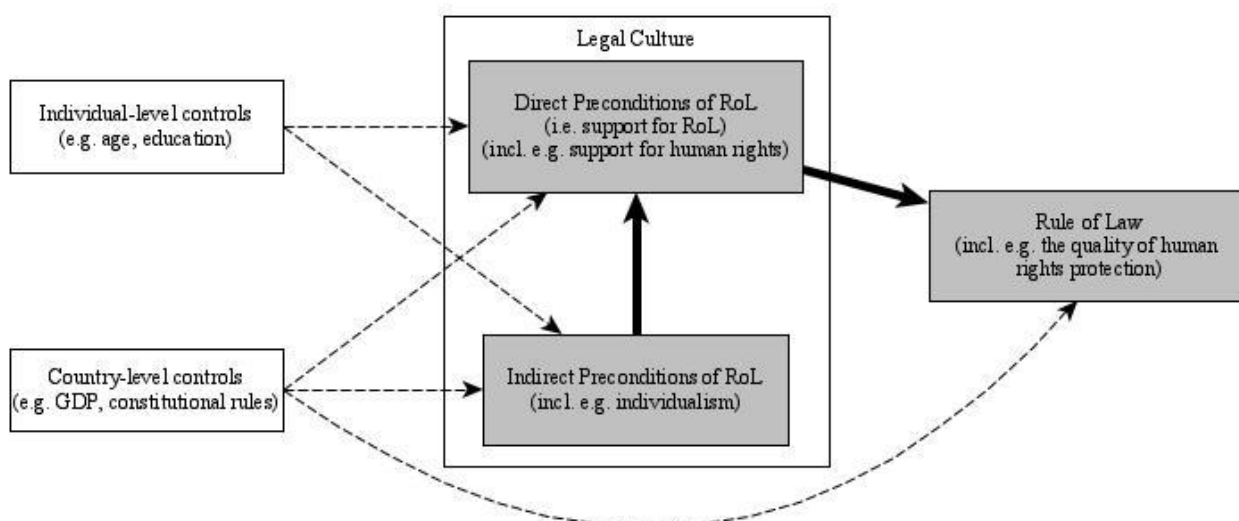


Figure 1: The relationship between Legal Culture and the Rule of Law

B) Data collection

Data collection focuses on two different levels: in the first Work Package (**hereinafter: WP**) data already available from various databases, will be collected and analysed. In WP 2 nine European countries are analysed in depth.

In WP 1, we will first build a database that includes all available data about the widest number of countries, based on major existing databases, embracing the above listed variables. While the target population is all the countries in the world, data availability is expected to restrict this ambition. Data obtained will be stored in the database and structured according to (i) countries and (ii) type of variables. We will attempt to obtain the most recent pieces of information for the countries investigated for the purpose of cross-country comparison, whereas for longitudinal analysis we will attempt to go back in time as much as meaningfully possible in as many countries as possible. RoL indexes, available LC variables (indirect precondition of RoL) and country-level control variables will be utilized at this stage.

In WP 2. and 3. we focus on nine European countries, namely Austria, Germany, Hungary, Italy, Romania, Russia, Slovakia, Spain, and the United Kingdom. The selection of the countries aims to maximize diversity, within the given budgetary constraints. The selected countries vary in terms of the sturdiness of the RoL, on the one hand, and presumed LC attributes, on the other. The earlier is based on the above-mentioned indexes, the latter is on such allegedly relevant aspects as the religious background (though

purely protestant countries are not involved due to financial constraints), or – even more heuristically – the South-East and North-West position of the given country. The EU membership or the lack of it, as well as, the former communist past may be relevant from both RoL and LC. A practical point of the selection was the presumed availability of experts speaking the language of the country. Naturally, we are especially interested in the Hungarian setup. The country played a leading role in the transition, in the democratization process and building the system of RoL in the Eastern European context (Jakab 2020) and undoubtedly played a similar or even more principal role in the process in the dismantling of the RoL.

In WP 2., surveys will be carried out on representative (by age, gender, education and regions within the county) 500 person samples of the population in seven of the above mentioned 9 countries: In the case of Germany and Italy, 1000 person sample is used to differentiate between East (previous communist) and West German population and between North and South Italy. Computer Assisted Web Interview (CAWI) is applied, mostly for budgetary reasons. Although doubts may be raised about the representativeness and reliability of data obtained this way, there are arguments for such methods (vis-à-vis CAPI) and among the 9 countries it was only Romania below 80% internet penetration. (Blasius 2010) It has been shown that “a carefully designed and implemented online panel can produce high quality data at lower marginal costs”. (Blom et al. 2015)

The survey measures both direct and indirect support for RoL, as well as individual-level control variables.

In WP3, comparative country case studies will be carried out in the 9 selected countries by persons (presumably political science Ph.D. students) who speak the language of the given country and are familiar with the research topic, and to some degree with social sciences methodology. These persons will be expected to collect locally available information, including relevant survey results and relevant publications, etc. (frequently available only in the local language). Besides quantitative data (including those collected in WP 2.), country studies rely on interviews (with experts and/or practitioners), document analysis, process tracing, etc. We presume that in countries where opinion polls have been conducted for a longer period, a longitudinal approach to data collection is also viable. A key element of country case studies is the description of the process (process tracing) as RoL has deteriorated: what were the main steps, the techniques applied by power holders and consequent social reactions; what factors could block attacks on RoL, etc.?

The three WPs will be strongly interconnected in terms of data collection and analysis. WP1 offers an opportunity to test the [LC–RoL] relationship on a relatively large number of cases, while it also offers a chance to compare the European countries to other parts of the world. This enables us the answer questions like how much European countries are systematically different or to what extent findings from Europe regarding the [LC–RoL] relationship may be generalised? The exact formulation of the questionnaire for WP2 is partly based on the findings from WP1 about the role of indirect cultural preconditions and partly on suggestions obtained from the early stage of WP3. Later, country case studies (WP3) utilise both quantitative data obtain in WP1 and WP2, and in-depth qualitative analysis, including process tracing indication major causal factors of diminishing or sustaining the RoL. While quantitative methods will help to discover the strength of the relationship between LC and RoL (and their respective elements), qualitative methods shall be especially helpful in understanding the mechanisms through which LC affects RoL.

C) Data Analysis

The research utilises a mixed method design: both quantitative and qualitative methods are applied, depending on the particular research question and the scope of countries that are included in the different parts of the project. Analysis in WP1 and WP2 is primarily quantitative, which will be complemented by qualitative case studies in WP3 which aim to delve deeper into the statistical relationships explored by the quantitative models and to reveal the causal mechanisms.

In the case of **WP1**, variables in the quantitative analysis are measured on the country level. The relationship between variables of 'indirect support for the RoL' and 'RoL indexes' and sub-indexes that are available worldwide is tested by regression analysis.

WP2 complements country data with individual-level observations. On this level, we analyse (a) the relationship between variables of 'indirect' and 'direct support for RoL' variables' relying on regression analysis. We also test the (b) relationship between LC (both 'indirect' and 'direct support for the RoL' variables), on the one hand, and RoL indexes, on the other. Individual-level data from cross-national surveys are aggregated for a country-level analysis, at this stage. The number of countries in the sample allows for the application of Qualitative Comparative Analysis (QCA). (Greckhamer, Misangyi, and Fiss 2013) QCA, first

developed by Ragin (1987), is a technique that is used to determine which logical conclusions the data support. In other words, it is used to explore the causal contribution of various conditions to an outcome, identifying which conditions are sufficient and which are necessary for reaching an outcome. In the proposed project, fuzzy set QCA will assess how important of a role LC plays in the stability of RoL.

In **WP3**, qualitative methods will also be used both to triangulate the results of the quantitative analysis and to complement it with more nuanced approach. Additional information regarding the potential causal arrangements between LG and RoL, based on process tracing will also be analysed in a comparative setting.

During the analysis, we will face the challenge of a type of **endogeneity**: simultaneity bias. Simultaneity bias occurs when it is not only LC that influences RoL, but the other way around: the legal arrangement may, in the long run, influence LC. Indeed, it is a fair assumption that a centuries-long history of the presence of RoL itself has formed LC. We presume that the impact of RoL on LC occurs only over several decades and generations (Alesina and Giuliano 2015, 904; Guiso, Sapienza, and Zingales 2016). With this presumption we are in line with Roland (2004) who described culture as a “slow-moving institution”, and with Putnam (1994) who noted the centuries-long impact of culture in Italy on the emergent social institutions. Despite major changes in legal and economic institutions, Schwartz et al. (2000) reported very little change in national values in East-Central European countries during the 1990s. Analysing World Values Survey data across a number of countries over 15 years, Inglehart and Baker (2000) reach a similar conclusion.

4. Expected results

The research ultimately aims at testing the hypothesis that there is a statistical relationship between the robustness of RoL and LC, dominantly the latter influencing RoL.

Furthermore, we attempt to identify key explanatory LC variables. In this regard, first we test the widely available general cultural indicators and additional variables elaborated by social psychologists that may be relevant. Second, based on previous research we will elaborate variables and adequate survey questions that may directly measure the support for the RoL and apply them in nine European countries. This may yield knowledge on (a) the impact of direct support – as an element of LC – on strength and stability of RoL and (b) assist us to identify relevant indirect cultural indicators that may influence RoL. Specifically, we expect that the research supports our better understanding of the state and tendency of RoL and the underlying factors of LC in Hungary.

The results are planned to be published in leading (Q1) journals of socio-legal study. Such publication is expected regarding the results of WP 1, as a worldwide analysis. Another publication is envisaged at the end of WP 2., reviewing the relationship between direct LC indicators and RoL and between direct and indirect variables of LC. An additional publication may focus on specificity of European countries and countries of the East-Central European region.

Main project results are planned to be published in an edited book by a top publishing company. The book provides a literature overview of the field, describes the project in detail, and reviews major findings obtained in the three WPs. This book also includes the 9 country case studies, which is – besides its relevance – may also motivate those who compile case studies.

A workshop with a limited number of experts, at the earlier stage of the project, and a major conference with well-known foreign guests to review our findings at the end of the project is also envisaged.

5. Organization and personnel

The Core Team of the project consists of three persons.

The principal investigator is György Gajdushek, who has published several articles regarding the Hungarian legal culture both in Hungarian and in English. He has led the OTKA 105552 project (Legal Culture in Hungary - Theory and empirical research; 2012-2016) and served as one of the three-member team in OTKA 125520 that addressed rights consciousness. Both studies contained historical as well as a three-country comparison. He published several papers both in Hungarian and English addressing legal culture, generally and specifically in Hungary

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2006) and Heidelberg (Max Planck Institute for Comparative Public Law and International Law 2003-2004 and 2011-2016). He held a number of visiting and temporary positions in Milan, Luxemburg, Vienna, Heidelberg and Budapest. His main research areas are Constitutional Law, European Law, Legal Theory, Comparative Law.

Zsófia Papp is a senior research fellow at the Centre for Social Sciences. Her work is published in among others Nature Communications, European Union Politics, International Journal of Press/Politics, Political Studies Review and Parliamentary Affairs. She teaches research design and methodological classes at the advanced (PhD and special college) level.

Persons responsible for preparing the nine country case studies will be selected later. The core team will compile a detailed manual regarding the expected content of the case studies and a web-space will be available to discuss any issues raised by one or more persons. An IT expert is contracted for shorter period to create the necessary web site and setting up database structure for WP 1.

A website will be created that provides information for the scholarly and wider on the state of the project and its major results. The more important news will appear also on the site of the Centre for Social Sciences. We plan to inform the scholarly and wider public in other channels as well.

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