

## *Original Paper*

# Democracy Crisis: Decline of Rule of Law

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### **Abstract**

*World Justice Project (WJP) measures the respect for rule of law globally. Its 2021 report establishes a decline compared with earlier years. For the US the ranking is really down. What does it all mean?*

### **Keywords**

*dictatorship, crisis of democracy, looting, principal-agent*

## **1. Introduction**

Rules and humans constitute the social reality besides the physical and biological reality. Rules are enabling or restraining humans in their efforts. According to humans simply have rights—Locke's natural law belief.

As a matter of fact, the norms governing human communities vary much from one country to another. The evolution of rules into institutions is path dependent.

Originating in Scandinavian customs and English common law, the idea of restraining the exercise of power was upheld in the English and French revolutions. The rule of law doctrine was universally accepted in the UN charter of human rights 1948. The problem is though which countries respect the UN charter in their own country, i.e. implementing the rules. We find enabling rules in the private sector, for example concerning property.

## **2. Rule of Law**

There is no neat and tidy definition of the expression “rule of law”. The Oxford English Dictionary offers the following entry:

“[t]he authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.”

Now, this sounds rather complicated as well as somewhat legalistic: how to measure it in order to compare states?

One may deconstruct this concept with other concepts or criteria like:

- 1) Strong legal formalism promoting equality under the laws;
- 2) Individual rights covering contract, free labour and property;
- 3) Checks and balances, i.e. institutionalized mixed government with countervailing competences between the executive, legislature and judiciary.

A political regime characterized by limited government and countervailing competences may satisfy different institutional models of democracy.

### 3. State and Rule of Law

Let us follow Hobbes and his argument for the necessity of the state. If it is true: *homo hominem lupus est*, then the state must possess a monopoly on legitimate physical force. When much power is vested in the state in order to guarantee order and peace in society, then when runs into the *JUVENAL* problem: *Sed quis custodiet ipsos custodes?*

In the Roman Republic there was a reply: laws and constitution that divided power onto offices. But during the *Principate* rule of law was lost.

One may surmise that humans in general prefer rule of law to dictatorship. Human rights constitute the trump if rule of law regimes. And the *habeas corpus* rights are especially important to humans.

### 4. Democracy

In a democracy there is besides rule of law also a system of popular participation. To accomplish this there must be voting in various elections.

To followers of Rousseau people participation is a *sine qua non*. I am doubtful towards participatory democracy as it cannot replace rule of law. The people can send signals to the political elite using various electoral systems and institutions. But it does not reduce the implications of rule of law. A complete referendum democracy falters on transaction costs. The real rate of participation is just over 50% of the electorate in several counties.

Democracy has two principle components:

- A) Electorate contestation
- B) Rule of law.

They are jointly necessarily and sufficient conditions for “democracy”. I would be inclined to say that B is most important.

Let us look the rule of law globally.

## 5. Global Picture 2021

Spreading democracy around the globe is tantamount to inserting rule of law. The world justice project (WJP) maps the existence of rule of law unpacking a rule of law regime as follows:

- a) Constraints on Government Powers
- b) Absence of Corruption
- c) Open Government
- d) Fundamental Rights
- e) Order and Security
- f) Regulatory Enforcement
- g) Civil Justice
- h) Criminal Justice.

The WJP underlines accountability, judicial independence, legal formalism and balance of power between executive and legislature. It is worth pointing out that democracy is not here mentioned. Rule of law was conceptualized before the advent of democracy after the Great War. Rule of law as legality, rights and countervailing rule may be combined with democracy as popular rule, but it has not always been so.

Table 1 presents the results of the most recent survey of the RL Index for 128 countries around the world, presenting the mean value by region.

**Table 1. Average RL Index by World Region by 2021.**

Region	Min	Average	Max
East Asia & Pacific	0,32	0,60	0,83
Eastern Europe & Central Asia	0,42	0,50	0,61
EU + EFTA + North America	0,52	0,74	0,90
Latin America & Caribbean	0,27	0,52	0,71
Middle East & North Africa	0,35	0,49	0,64
South Asia	0,35	0,44	0,52
Sub-Saharan Africa	0,35	0,46	0,62

Source: (WJP 2021, p. 16)

Not merely Western countries score above 0.6 on this scale. Rule of law countries include: Japan, South Korea, Singapore, Chile, Costa Rica, Uruguay, United Arab Emirates, Mauritius and Namibia as well as Rwanda.

## 6. Dictatorship

Dictatorships are more numerous than democracies. Why?

Because it is feasible to subjugate a whole people by means of naked power. It all depends upon the solution to the political agency question. Sed quis custodiet ipsos custodes? The response to Roman Juvenal's question is: rule of law and citizen or people responsiveness. When Madison wrote the American constitution, he targeted rule of law but missed out on people participation—an omission never fully undone. For Trump, rule of law was very much negotiable.

## 7. CUI BONO?

Modern dictatorships have a conspicuous economic face. It is driven by the search for material advantages like luxury lifestyle and the accumulation of wealth and properties. Nowhere is this motivation more apparent than in the former USSR and the Gulf monarchies.

Let me call this human drive “looting”. It is closely connected with the orientation of dictators and their entourage towards the family and kin.

Max Weber writes in his famous article “Politics as a vocation” that politics is all about power. No, I would say. In dictatorships economic benefits is the end and policy the means, whereas in political life economic policies are the means and power the end.

The Weber focus is power, as ends and means. Nowhere does he talk about economic motives. Instead he opposes the ethics of *righteousness* with that of *realism*.

In a democracy politicians and bureaucrats are openly paid a fixed salary in combination with strict rules about the public and private. In looting dictatorships things are entirely different. Even in ad hoc dictatorship established by coup d'état the political elite engages in embezzlement. In stable dictatorship the private control of the dictator and his entourage or kin may include banks and firms, resources and finance as well as foreign trade and finance.

## 8. Basis of Looting

Government is basically the management of the public sector. The principal is the nation or the people/citizens. They hire managers to handle state affairs by sending signals like voting, laws, constitution and opinion polls. In a dictatorship these restraints are few and not taken seriously. Instead the dictator employs them with myths about the will and needs of the state or the ordinary man and woman. In the end the agents become the principal.

## 9. Conclusion

The remuneration of politicians may get out of hand. This is very much the case when looting occurs. It is feasible in any dictatorship—actually its main reason.

Weber stated that a regime based upon *naked* power was instable. And Lenin argued that the revolution need an agency—the party *vanguard*. Both were wrong. The agents can sit for a long time embezzling the principal. Only rule of law and competitive politics can stop looting.

When a country displays disrespect for rule of law, democracy falters.

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