

Conference

organised by the

Institute for Legal Studies, Centre for Social Sciences

in collaboration with

re:constitution

Rule of Law, Resilience and Erosion The Interplay Between Institutional Design and Everyday Practice

12-14 October 2022.

Institute for Legal Studies, Centre for Social Sciences

Budapest, Hungary

(with the possibility to participate via zoom)

re:constitution is a joint program of:

Forum
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Concept

The conference concerns the institutional prerequisites of the resilience of the rule of law. The rule of law can be threatened and eroded by several, often overlapping forces. On the one hand, the instrumentalization of the law has long been viewed as a threat to law's integrity and legitimacy. Yet the need for rule of law should not lead to stasis: law shall also retain its flexibility in order to respond efficiently to regulatory challenges. This tension between flexibility and integrity has long been a dominant topic in theoretical reflections of both the rule of law and the Rechtsstaat traditions since the emergence of the modern administrative state. Yet this literature, mostly tailored as a liberal-conservative critique of the regulatory and the welfare state, might be ill-suited to respond to recent new forms of instrumentalization, such as the legal system or indeed the constitution being constantly changed via tools such individualized and omnibus legislation, to pursue short-term political gains. The conference aims to provide a theoretical reflection on old and new forms of instrumentalization and discuss the institutional prerequisites of the resilience of the rule of law under such threats.

On the other hand, not only the legal system itself needs to be resilient under such threats, but also its everyday administration. Instrumentalization can proceed through formal legal changes to the law, but also via instrumentalization of the administrative and judicial process. Such interventions also need to be carefully balanced, however, in order not to destroy law's legitimacy. There is a considerable body of literature in comparative constitutional law, legal sociology and legal anthropology, utilizing a wide variety of theoretical approaches, that successfully and convincingly challenged the notion that law is purely instrumental and that the judiciary completely lacks autonomy even in overtly autocratic and authoritarian states. On the contrary: there are many functions of the (quasi-) rule of law that are crucial to regime's stability and legitimacy. This also means that there remains a space even in autocratic countries, such as the socialist Hungary or apartheid South Africa, where rule of law resilience can be cultivated and reproduced. This does not work everywhere, however: some countries appear to be more resilient than others. Why? What are the institutional and cognitive factors that influence rule of law resilience? How can this resilience nurtured and supported? This is the second major topic of the conference.

Conference Program

Wednesday, 12 October 2022 – Institute for Legal Studies and online

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/85864798391?pwd=MmlVVFltUm1GQWtrN0pnTTgvSXh2QQT09>

Passcode: 175693

16h30: Plenary Discussion

Between Responsiveness and Instrumentalism: Conceptualizing Law's Resilience During Rule of Law Erosion

Moderator: Márton Matyasovszky-Németh, External Researcher, Institute for Legal Studies, Assistant Professor, ELTE University, Centre for Law and Society

Fruzsina Gárdos-Orosz, Director, Institute of Legal Studies

Matthias Goldmann, Professor of International Law, EBS University Wiesbaden

Zdenek Kühn, Professor of Political Science and Law, Charles University Prague

Mark Tushnet, William Nelson Cromwell Professor of Law, Emeritus, Harvard Law School

Csaba Varga, Professor of Legal Philosophy, Institute for Legal Studies

Thursday, 13 October 2022 – Institute for Legal Studies and online

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/87686769097?pwd=bVpVd2tybys1eIB5eXJQVjgxSzR2Zz09>

Passcode: 541268

9h00 – 9h15: Opening remarks: Introduction and Concept of the Conference

Fruzsina Gárdos-Orosz, Director, Institute of Legal Studies

László Detre, academic advisor, re:constitution

Csaba Győry, Researcher, Institute of Legal Studies, Assistant Professor, ELTE University, Centre for Law and Society

9h15 – 11h40: First Session

Moderator: György Gajduschek, Senior Research Fellow, Institute for Legal Studies

9h15 – 9h40: Maria Popova, Jean Monet Chair, Associate Professor of Political Science, McGill University: *Weaponized Legalism, Low Trust in the Judiciary, and Rule of Law Backsliding*

9h40 – 10h00: Discussion

10h00 – 10h25: András Sajó, Professor of Comparative Constitutional Law, CEU: *On Some Inconveniences of the Rule of Law*

10h25 – 10h45: Discussion

10h45 – 11h00: coffee break

11h00 – 11h25: Jothi Rajah, Research Fellow, American Bar Foundation: *Authoritarian Rule of Law: Design, Discourse, and the Everyday*

11h25 – 11h45: Discussion

11h45 – 13h15: lunch break

13h15 – 16h30: Second Session

Moderator: Zoltán Szente, Research Professor, Institute for Legal Studies

13h15 – 13h40: Zdenek Kühn, Professor of Political Science and Law, Charles University Prague: *Centralized Judicial Review as a Challenge to Liberal Democracy alas “the Road to Hell is Paved with Good Intentions*

13h40 – 14h00: Discussion

14h00 – 14h25: Jens Meierhenrich, Professor of International Relations, LSE: *Is the Authoritarian Rule of Law an Oxymoron?*

14h25 – 14h45: Discussion

14h45 – 15h00: coffee break

15h00 – 15h25: Nino Tsereteli, Researcher, Masaryk University Brno; Legal officer, Democracy Reporting International: *Autocratic legacy, institutional change, rule of law and judicial independence in the post-soviet space: the case of Georgia*

15h25 – 15h45: Discussion

15h45 – 16h10: Oscar Vilhena Vieira, Getulio Vargas Foundation, School of Law at Sao Paulo: *Autocratic Infralegalism*

16h10 – 16h30: Discussion

Friday, 14 October 2022 – Institute for Legal Studies and online

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/82421238091?pwd=TzZUazVEb0FqVG1pMndxcTZTTktBQT09>

Passcode: 782313

9h00 – 10h00: Keynote

Mark Tushnet, William Nelson Cromwell Professor of Law, Emeritus, Harvard Law School

Between Responsiveness and Instrumentalism: Conceptualizing Law's Resilience During Rule of Law Erosion

10h00 – 11h45: Third Session

Moderator: Mátyás Bencze, Senior Research Fellow, Institute for Legal Studies

10h00 – 10h25: Lisa Hilbink, Professor of Political Science, University of Minnesota: *Revisiting the Origins of Positive Judicial Independence: Incentives, Ideas, and Integrity*

10h25 – 10h45: Discussion

10h45 – 11h00: *coffee break*

11h00 – 11h25: Csaba Győry, Researcher, Institute of Legal Studies, Assistant Professor, ELTE University, Centre for Law and Society: *Political Intervention as Institutional Logic: the Dual State Reconsidered*

11h25 – 11h45: Discussion

11h45 – 13h00: *lunch break*

13h00 – 16h30: Fourth Session

Moderator: Márton Varju, Senior Research Fellow, Institute for Legal Studies

13h00 – 13h25: András Jakab, Professor of Constitutional Law, University of Salzburg: *Informal Institutional Elements and the Failure of Building a Constitutional State in Hungary*

13h25 – 13h45: Discussion

13h45 – 14h10: Hanna Debska, Assistant Professor of Law and Sociology, Pedagogical University of Cracow, **Tomas Warczok**, Professor of Law and Sociology, Robert Zajonc Institute of Social Studies, University of Warsaw: *Variable Geometry of Legal Legitimacy: The Polish Constitutional Court and the 'Populism' Revolution*

14h10 – 14h30: Discussion

14h30 – 14h45: coffee break

14h45 – 15h10: Zoltán Fleck, Professor of Law and Society, ELTE: *Revolution of the Everyday - Transformation of the Norms. Transformative Failure - Deep Structures of Backsliding*

15h10 – 15h30: Discussion

16h15 – 16h30: Wrap-up by :

Csaba Győry, Researcher, Institute of Legal Studies, Assistant Professor, ELTE University, Centre for Law and Society

The conference takes place in a hybrid format. The venue at the conference is the Institute for Legal Studies (Tóth Kálmán str. 4. 1097 Budapest). **The conference will be live streamed via zoom.**

Mandatory registration: János Rékasi (JTI.Titkarsag@tk.hu)