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Article

Deterioration of the Rule of Law and the Effects Over Economic Development – A Comparative Analysis on the United States of America, Singapore and Romania

Abstract: *This paper analyses the relationship between the deterioration of the rule of law and the negative consequences on socio-economic development in the contemporary world. To scrutinize this correlation, quantitative-comparative analysis and secondary data review methods will be used. This aims to determine the extent to which the rule of law has a determining role or not in the development of states and societies. These results can serve as data for the basis of qualitative and sustainable public policies.*

The research aims to compare and contrast countries such as the United States of America, Singapore and Romania and determine the correlation between the deterioration of the rule of law, with a specific focus towards measurable elements such as the absence of corruption, and the consequences over economic development and prosperity. The country case studies have been identified purposefully to reflect different geographical areas, different historical pasts, and various levels of economic development. Despite the differences, the research aims to solely analyse the correlation between the rule of law and economic status.

Keywords: *economic development, legal positivism, parliamentary performance, political economy, rule of law.*

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1. Introduction and literature review

Over the years, there have been many studies and books written about the rule of law and its inherent value for democracy and a stable and prosperous society. As a concept, the rule of law encompasses numerous aspects and it is sometimes very difficult to measure it and therefore utilize it to determine correlations in respect to other variables. There have been countless definitions given to the rule of law, however, one in particular stands out especially as it comes from one of the most prominent legal figures of the common law system, namely The Rt. Hon Lord Bingham of Cornhill KG, House of Lords, who famous-

ly stated that rule of law purports to mean: “all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts” (*The Rule of Law*, 2006 Sir David Williams Lecture in Bingham 2011). Lord Bingham describes the rule of law not as an arid legal doctrine, but as the foundation for a just and fair society, as a guarantee for a responsible government, as a contribution to economic growth and as the best existing instrument for achieving peace and cooperation.

Going beyond a conceptual definition and wanting to measure the rule of law so as to use it as a tool needed to observe correlations with economic development and prosperity, the American Bar Association’s President, William Neukom, set up the World Justice Project in 2007. This endeavour led to the creation of the Rule of Law Index, which is the most relevant and comprehensive measuring tool for rule of law around the world.

In terms of writings on economic development and comparative analysis on the various factors which cause or impede prosperity, one of the most famous books is that of economist Daron Acemoglu and political scientist James A. Robinson, who co-authored the book “The origins of power, prosperity and poverty – Why nations fail” in 2012. The new argument brought forward by the two authors at the time went against the traditional views until that moment, namely that countries’ levels of poverty were due to geography or cultural traits of the people. Their main hypothesis was that economic development and prosperity are due to the quality and robustness of a country’s institutions, coining the term “inclusive institutions”, which benefit the larger social good, and their opposite, “extractive institutions”, used by a narrow political elite for private gains.

At the beginning of 2020, Ted Piccone, an expert of the famous public policy organization Brookings, based in Washington D.C., opined that the rule of law was in danger everywhere. The reasons he cited were inequalities, dislocations, polarization, climate change, diminished resources and others.

2. Overview of the rule of law as a concept

In the work „Politics“, Aristotle asked himself the question whether it is good to be governed by the best people or the best laws. The conclusion from Antiquity, which is still valid today, is that it is desirable to have governance through the best laws, because laws are stable, predictable, previously known and thought in general terms so that they can be applied in particular cases.

Despite the intrinsic qualities of the laws, there are also historical moments when the political regime was the initiator of a repressive, harmful legislation that even endangered entire categories of citizens, otherwise in perfect legality considering that that normative framework allowed for such harmful actions. At present, the world seems to have found a way forward in terms of the rule of law, considering the experience of the two world wars that subsequently pushed towards the need to have a global international law framework. This global consensus later allowed for a climate of peace, despite occasional deviations from some states or political entities.

The first official document in the world that perfected the notion of „rule of law“, meaning that the law is the same for everyone and that no one could be above it, not even the King, was the Magna Carta. This first „constitution“ of the world paved the way to the subsequent liberal democracies, of which the one that was most loyal to this document was the United States

of America, which later founded its own constitution based on the ideas enunciated in the Magna Carta in 1215. Moreover, the Declaration of Independence of the United States is based very much on the principles stated hundreds of years ago and which gave humanity the famous legal concepts stated in clauses 39 „no free man shall be imprisoned or destroyed in any without being legally judged by his peers according to the laws of the country“ or clause 40 „no one will be sold, denied or delayed his right or justice“. These constitutional principles remain valid to this day, remaining as an echo over the centuries of the importance of the rule of law.

Another aspect that can present difficulties is the fact that the notion of „rule of law“ is sometimes understood strictly through the prism of legal philosophy, without being immediately anchored in a measurable reality. But in order to overcome this perspective, means have been developed by which the rule of law can be quantified and thus become tangible. One of the most relevant theories in this regard is that of Professor Joseph Raz, exponent of legal positivism, which claims that the rule of law is a precondition for individual freedom and the means through which individual behaviour is shaped. Some of the attributes of the rule of law that Professor Raz identified and which can serve as measuring units for evaluating the state of the rule of law in a state are the following: laws must be prospective and not retroactive, the language of laws must be clear and accessible to everyone, the stability and consistency of the laws, judicial independence, the courts must be accessible to ensure the existence of these institutions as a guarantor of the supremacy of the law over a discretionary power (Raz, 1988: 50-75; Raz, 2009).

On the other hand, in the book „The Morality of the Law“, Professor Lon Fuller states what are the eight indicators that erode any legal system and some of them are: legislative contradictions, legal instability, divergences between adjudication and legislation (Fuller, 1965: 80-100). Given the central role played by legislation, we will further examine the role played by the legislative power in connection to the rule of law.

3. Research methodology and objectives

The research aims to analyse the relationship between the rule of law and economic development in order to highlight the negative consequences that the deterioration of the rule of law has on the latter. Considering the proposed research theme and the analysis of different national contexts, the main research model used is the quantitative comparative analysis based on empirical evidence. Starting from existing data sets provided by research institutes or international institutions and using the secondary data review method, the goal is to draw some generally valid conclusions.

The research's main objective is to understand the pivotal role played by the rule of law in determining economic development and prosperity, beyond the definitions given by legal positivism and leaning towards practical elements such as meritocracy, parliamentary performance, or absence of corruption. The paper serves as a starting point for more in-depth analysis and country specific scrutiny to provide empirical data and analysis to validate the hypothesis that the deterioration of the rule of law leads to economic decline. Choosing the research theme and analysing the relationship between the rule of law and development is a continuous exercise, since specialized research in this sense has been conducted already, but the theme cannot be categorized as exhausted considering the permanent dynamics.

4. Rule of law – foundation for economic development and good governance

4.1. The relevance of legislative power and good governance

By observing the rule of law, we understand that the observance of the law is supreme and that any citizen or institution is subject to the same set of previously known rules. But the law is conceived and drafted by people and evolves according to the needs of a society, having a living and organic character. Hence, the following question is legitimate: what is the causal relationship in terms of efficiency and quality between legislators and legislation? In democratic societies that are based on the principle of separation of powers within the state, the main legislative attributes rest with Parliament. It is true that the Government also has prerogatives in this sense, but in a more restricted manner and in areas that belong more to the administration through the prism of its executive power. Parliament is therefore the main legislative body. Therefore, considering that compliance with the law is the foundation of a strong and robust rule of law, it is necessary to analyse the way in which the legislation is drafted and the training that those who exercise these prerogatives have, because the final result is directly proportional to the reasoning which was exercised by those who are mandated in this regard, with maximum legitimacy provided by the democratic mechanism of direct elections. Beyond legal positivism, it is essential to understand society's needs for long-term progress and development. Considering the three countries that are subject to analysis in this article, a brief analysis will be made of the mechanisms by which the Parliament of each country is selected and the filters used to ensure excellence in the drafting of laws.

Another particularly important aspect comes from the jurisprudence of the Constitutional Court of Romania but which has generally valid application. In order to have effective legislation this should be drafted in a manner that meets the four criteria of clarity, precision, foreseeability, and predictability so that the legal subject concerned can comply through his/her conduct, so as to avoid the consequences of their non-compliance, otherwise the norm in question is to be declared unconstitutional. It is a *sine qua non* condition for the rule of law to have coherent and predictable legislation, without frequent changes (Bailey, 1963: 3). Also, in a broader context of economic development and the close connection between this aspect and investments in the economy, the private sector needs stability and predictability for long-term development plans.

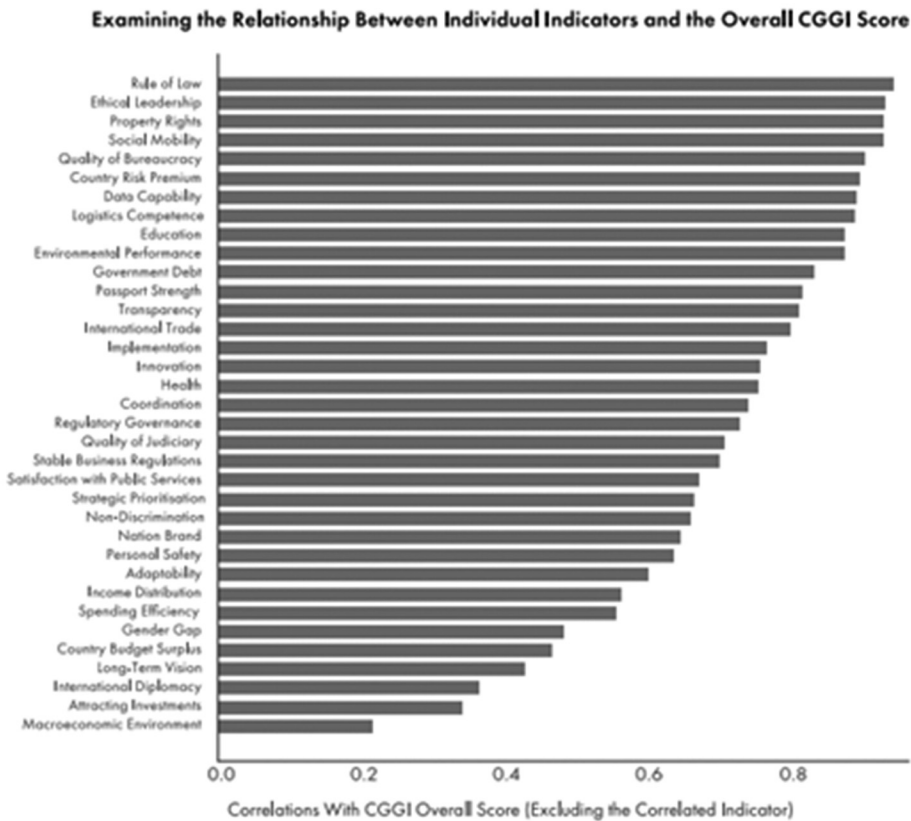
Given all this, the guarantee for a legislation that produces stability and development, based on the principle of the rule of law, must start with the moment and the method by which the direct representatives of the people are elected in the legislative forum. In democratic societies, citizens choose their representatives, ideally having the certainty that the latter will faithfully represent their interests and ensure a climate of good governance, citizens thus being able to coordinate their daily activities without any concern (Tan, 2013: 28-32).

In all three countries under analysis, parliamentary elections take place freely and directly, so the guarantee of legitimacy is satisfied. However, the differences reside in the allocation of human resources for the public function and the academic and professional training of those elected to the national parliaments. The specialized literature until now has focused only on the quantitative analysis of parliamentary activity, following quantitative performance indicators, and has not focused enough on qualitative indicators. Political Science Professor Richard

Schobess from Ghent University proposes a new set of qualitative indicators to determine the performance of parliamentary activity, namely legislative content and efficiency regarding public policy making (Schobess, 2022: 767-790).

In writing this article, no data sets could be identified to measure the efficiency of parliaments at a global level, but starting from the premise that the rule of law is the basis of good governance, and therefore implicitly the quality of the parliament through its legislative prerogatives, there is an instrument of measuring the level of good governance at the global level, namely the Chandler Good Government Index (CGGI). This Index operates on the basis of 50 data sets that are already available globally and measure the capabilities and efficiency of governments in 104 countries based on 35 indicators that are grouped into seven pillars: leadership and vision, robust laws and public policies, strong institutions, financial security, attractive market economy, global influence, and reputation and support for social advancement. Among the most reliable indicators that are in direct correlation to determining the level of good governance are the rule of law, which weighs the most, along with leadership based on ethics (previously identified as the anti-corruption indicator) as well as property rights.

Table 1. Chandler Good Government Index 2023



Source: CGGI, 2023

The results of the 2023 CGGI Index place Singapore on the 1st place, then the United States of America on the 14th place and Romania on the 41st place. This ranking is a recogni-

tion of the merits of the state of Singapore which is positioned on the first place worldwide and beyond the attributes measured by the indicators stated above, meritocracy is a particularly important aspect. This principle is the basis of the state's development and the attributes it has today, and this state of fact is stated by Mr. Lim Sion Guan, former Head of Public Administration in Singapore, who places meritocracy at the centre of the state's development, as a principle according to which „recognition and remuneration must be based on performance and contribution, through integrity and incorruptibility” (CGGI, 2003: 111).

If meritocracy is a fundamental pillar of good governance by ensuring qualified human resources for the public function, then it can be seen by looking at the ranking above, the importance that the states give to this aspect. The difference between Singapore, first place, and Romania, which ranks 41st, is telling and illustrative of the current state of affairs. Leaving aside the historical and political regime differences, the key to moving up the rankings for Romania could be the application of a meritocratic system in public recruitment.

4.2. Rule of law and economic development

In the continuation of the analysis, we will direct our attention to the correlation between the state of the rule of law and the level of economic development in the analysed countries and we will use a series of measurement tools at the global level.

The most extensive Index measuring the state of the rule of law is the World Justice Project Rule of Law Index (2003) which measures 142 countries and jurisdictions through a series of instruments based on global data sets and contributions from experts in the respective countries. The Index measures a series of indicators, namely: constraint on government power, absence of corruption, open government, fundamental rights, order and security, application of the regulatory framework, civil justice, and criminal justice. According to the 2023 Rule of Law Index, the state of the rule of law at the global level has been declining for the last six consecutive years and the ranking for last year showed as follows for the countries under analysis: Singapore on the 17th place, the United States of America on the 26th place, and Romania on the 40th place.

Figure 1. World Justice Project Rule of Law Index 2023



Source: WJP Rule of Law Index 2023

Source: World Justice Project

Building on the World Justice Project’s Rule of Law Index, considering that one of the indicators for measuring the state of the rule of law is the absence of corruption, this data set can be correlated with that of Transparency’s International, which elaborates the Corruption Perceptions Index (CPI) at the global level. The CPI is the most developed tool for measuring the perceptions of corruption at the global level, using at least three sets of data developed by reputable institutions such as the World Bank or the World Economic Forum and which analyses 180 countries. The latest results from 2023 show a worrying state of affairs, with levels of perception of corruption increasing significantly. From the point of view of the ranking in 2023, in order to further correlate with the level of economic development, Singapore ranked 5th place, the United States of America 24th place and Romania 63rd place.

Figure 2. Transparency International Corruption Perceptions Index 2023



Source: Transparency International

Taking into account the differences in geographical area, population, and historical experience regarding the regimes of democratic transition, there is no perfect common denominator between the three countries, but for the precise purpose of this article, we wanted to argue the hypothesis according to which a robust and functional rule of law produces economic development and the reverse. It can be observed that all three countries are in the rather positive half of all the rankings stated above, even if with significant gaps between them, but the same proportionality is also preserved vis-à-vis the level of economic development of the respective countries. Thus, according to the data provided by the International Monetary Fund in October 2023, the United States of America has the highest GDP in the world according to the 2023 ranking, followed by Singapore on the 32nd place and Romania following on the 44th place. It must be kept in mind here that given the physical size of the state of Singapore, this global positioning is a remarkable success. However, a causal relationship can be observed, in the descending order of the ranking by referring to both the CPI Index and the World Justice Project Index regarding the state of the rule of law.

Another factor that determines economic growth, besides the rule of law, is proposed by the theory of professors Daron Acemoglu and James A. Robinson in their book „The origins of power, prosperity and poverty-Why nations fail?“, regarding the difference between extractive and inclusive economies and related institutions. The authors advance the idea that economic success is different depending on the difference between institutions, the rules that govern the functioning of the economy, and the incentives that motivate people. Portraying the theory by offering examples of several diametrically opposed countries such as North Korea and South Korea or the United States of America and several countries of South America, the argument is that this contrast is given by the fact that inclusive economies create a favourable framework for economic activity, production growth, and economic prosperity. The guarantee of property rights is also essential because only on this basis can the intention of economic investment and productivity growth be built (Acemoglu and Robinson, 2012: 75).

In order to further reflect the correlation between the rule of law and economic development, we can take a look at the countries ranking lowest in terms of GDP in 2023, so as to observe extreme ends of the spectrum, and we will notice that all ten of them at the bottom of the ranking belong to the Sub-Saharan continent, which also has one of the lowest scores in the Rule of Law Index.

Going back to the three case studies, one aspect is highly visible. The absence of corruption as a measurable factor to determine the respect for the rule of law has various degrees of implementation in the three countries and this is reflected in the economic development rankings. It is true that no country is free of corruption, however what differs is the degree in which corruption manifests itself. One of the main areas where corruption leads to low economic development performance is public procurement fraud, as this causes misappropriation of public funds which in turn leads to developmental stagnation.

4.3. Liberal democracy and capitalism

Another aspect that must be analysed in the contemporary context is the relationship between liberal democracies and capitalism and how the rule of law can balance this interaction to act in favour of this political ideology. In a present where large multinational companies no longer take into account the borders of a single state and considering their turnover figures that sometimes exceed the gross domestic product of some states, the following question is relevant: to what extent is the rule of law an inherent value for the corporate sector, considering the continuous race for increased profits?

An interesting perspective is offered by the author Naomi Klein in her book „The Shock doctrine – the birth of disaster capitalism“, in which she describes how global corporations wait for a favourable moment for them such as a crisis, whether a natural disaster, war, or economic crisis, for them be able to take advantage of the state of shock in which the population finds itself and thus be able to introduce new ways of action, justified by the need for rapid intervention, without extensive debates or public consultations (Klein, 2009: 20-50).

The author warns about the dangers of the massive concentration of financial resources for the benefit of private entities, because through the privatization of some government sectors, huge profits are gained by companies and thus this deepens the fault between social classes and major imbalances appear. Another problem that derives from this state of affairs is the lack of „checks and balances“ on private entities, compared to state actors who can be held accountable

by their citizens. Returning to liberal democracies, it is obvious that they are based above all on a strongly developed middle class, which in turn is based on predictability and regulation.

From this perspective, the rule of law seems to be under threat in the contemporary world, especially regarding the respect for civil liberties, the protection of which traditionally belongs to the state, but by ceding prerogatives to the private environment, these private entities will not be able to have the collective good in mind as the ultimate goal.

5. Conclusion

In a multi-faceted global world where data shows that more than half of the world's population lives in countries where the rule of law is declining, it is imperative to look at the factors that are causing such a recession and the way this impacts global development. Despite the negative effects on economic development and prosperity, a weakened rule of law can also lead to breach of human rights, rise of authoritarian regimes, and loss of civil and political liberties. The price is to be paid by citizens worldwide and it would seem natural that, following more than half a century of an international law order based global system, the rule of law's importance is to be understood as vital and therefore the applicability of the concept to thrive. However, despite exceptional situations, data and empirical studies show us that the trend is negative. Benefitting from the advance of technology, access to information and comparative studies, countries could benefit from peer-learning and set goals for national development based on real-life examples from other countries who are using the rule of law as a bedrock for democracy and economic development and prosperity.

Positive examples are very much real, and this is the reason why Singapore was chosen to depict this reality, one of a country which went from a developing one to a thriving modern market economy in just one generation. On the other hand, Romania finds itself at a crucial moment in time regarding its future and options for the long term, currently being a candidate for the Organization for Economic Cooperation and Development (OECD) and this will determine the country's future status as a mature economy. And the underpinning foundation for future prosperity seems to be the rule of law.

The research highlighted the risks posed by the weakening of the rule of law in a strongly globalized world, where the negative effects are exacerbated due to the interdependence of states. Moreover, another layer adds on to the complexity of the global situation, namely the private sector and the transfer of power from state entities to large corporations. Given the high volatility of the world's state of affairs and its multiple actors at play, the rule of law seems to be more necessary than ever so as to give stability and predictability to a world in constant evolution.

Conflicts of interest

The author declares no conflict of interest.

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