

Social resilience as an enabler for the rule of law resilience

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December 2022

1. Introduction

The rule of law is a system of legal norms and institutions that establishes a framework for a functioning democratic regime. Laws perform an important role in every society, promoting social cohesion, resolving disputes, and regulating the functioning of the state. Yet, legal regulations are also social constructs, the products of complex societies. Law is not autonomous and, since it is shaped by changing culture and social norms,¹ must always be analysed as such. Laws are only as effective as their practical enforcement. This is no different for the rule of law. To develop and endure, such a system needs a stable habitat, one that secures boundary conditions over time. A non-aggressive environment can facilitate the resilience of the rule of law by preventing social unrest, violence, and disorder.

This RESILIO snapshot analysis looks at social resilience: managing diversity and inclusion as well as developing a sense of community in societies. These factors can be powerful enablers for the rule of law by means of social inclusion and democratic participation that prevent social

segregation and polarisation. We assume that fewer systematic inequalities and lower structural exclusion are linked to a deeper feeling of belonging; the more entry points to participate in democratic process, the more trust in democratic procedures; and the lesser the frustration with current status quo, the stronger the resistance to hostile regime change.

2. Social resilience and the rule of law

In divided societies, the proclamation of a common constitution can have a profound conciliatory effect of overcoming past injustice and conflict through empowering suppressed groups. Two schools of thought exist on how to overcome ethnic, racial, religious, or cultural differences through constitutional design. The accommodation approach recommends the institutionalization of differences, for example by means of administrative decentralization, legal pluralism, or minority rights. The integration approach aims to blur divisions, for example by introducing bills of universal human rights or making electoral systems more inclusive for members of minority groups,

¹ Lynn Mather (2011). Law and Society, in: Robert E. Goodin (ed.) The Oxford Handbook of Political Science.

securing their political representation and participation in decision-making.² Clearly, a functioning rule of law – its equal and fair application, granting fundamental rights enforced by independent judicial review – can foster social inclusion and peaceful coexistence. Yet this also gives rise to the following question: what is the impact of high social diversity on the resilience of the rule of law?

The social and cultural preconditions of democracy usually receive less scholarly attention than the disruptive potential of economic inequalities. But economic shocks or disparities do not always lead to the collapse of democratic regimes. History has shown that discrimination and relative deprivation can undermine trust in democratic institutions, that widening social distances can result in the fragmentation of societies, and that dissatisfaction with representative democracy can increase the readiness to compromise democratic procedures in favour of a strong, charismatic leadership. All these developments can threaten the rule of law. Therefore, it is worth considering not only the supply side (the existence of populist parties and hostile ideologies), but also the demand side of democratic deficit (that is, when societies tolerate flawed legislation or the abuse of power). In addition to economic enablers (such as prosperity) and political enablers (such as the civility of public discourse), social resilience can also play an important role for the resilience of the rule of law against hazardous events and incremental threats.

While researching social and cultural aspects of resilient democracies, it is crucial to obtain a broader picture of the existing social distances, structural discrimination, and concentration of power and influence within the society. The RESILIO model defines social resilience as the ability of a society to deal with shifting demographics by means of improved integrity and participation in the democratic process that help overcome systemic exclusion of minorities. We have identified the objective and subjective dimensions aspects of social resilience for further reflection. On the one hand, we look at diversity and inclusion, understood as population composition and political repre-

sentation, reflecting the complexity of society and serving as a proxy for successful inclusion. On the other hand, we explore a more abstract yet rudimentary normative sphere of attitudes: the sense of community, understood as a sense of belonging and interdependence despite social distances, existing inequalities, and value divergence. We consider these aspects to be the enablers of rule of law resilience in contemporary societies.

2.1 Diversity and inclusion

Diversity refers to the composition of a given population in respect to ethnic, racial, religious and other socio-cultural characteristics. As such, diversity can have a mixed impact on societies, depending on how it is managed by inclusion and integration policies (such as facilitating equal chances and social mobility, or preventing ghettoization). Every democracy has the aspiration to include all its citizens in decision-making processes and power structures. In the context of strengthening the resilience of the rule of law, it is important to look at how the level of diversity in a given society is reflected at the institutional level in order for decisions and policies to be seen as legitimate, inclusive, and just.

Socio-economic, ethnic, and religious forms of diversity are sometimes perceived as an obstacle to social cohesion, as provoking disagreement or confrontation. The conflict theory of diversity claims that diverse populations are less able to collaborate in the pursuit of social and political goals. In particular, a 2007 paper by Robert Putnam cemented the opinion that even if economically beneficial in the long run, “immigration and ethnic diversity tend to reduce social solidarity and social capital.”³ Putnam’s constrict theory suggests that diversity could reduce both in-group and out-group solidarity, both the bridging and the binding potential of social capital.⁴ The study was later criticised for being ethnicity blind.⁵

² Sujit Choudhry (2007). Constitutionalism in divided societies, in: *Icon International Journal of Constitutional Law - ICON INT J CONST LAW*. 5. 573-575. 10.1093/icon/

³ Robert D. Putnam (2007). *E Pluribus Unum: Diversity and Community in the Twenty-first Century: The 2006 Johan Skytte Prize Lecture*, *Scandinavian Political Studies* 30 (2), URL: <https://doi.org/10.1111/j.1467-9477.2007.00176.x>.

⁴ *Ibid.*, p. 144.

⁵ Maria Abascal and Delia Baldassarri (2015). Love Thy Neighbor? Ethnoracial Diversity and Trust Reexamined, in: *American Journal of Sociology*, 121 (3), pp. 722-782, URL: <http://www.jstor.org/stable/10.1086/683144>.

Other research has shown that ethno-linguistic diversity can be more beneficial for the state of democracy than religious diversity,⁶ with the latter possibly creating cleavages due to conflicting values and worldviews. A study on religious diversity and democracy in Germany demonstrated that for the successful coexistence of people with and without a migration background, tolerance is fundamental. What erodes social interaction and democratic culture is the “othering” of particular social groups, regardless whether this is based on individual reactions to first-hand experiences or the inclination towards stereotyping and collective identification of in-groups and out-groups. Fear and hostile representation of particular minorities, like Muslims or Jews, undermine social cohesion and democracy.⁷ Meanwhile, it is a common practice among populist and illiberal leaders to identify and present minority groups as scapegoats, such as ‘globalists,’ ‘libs,’ the Roma community or immigrants. This strategy of intimidation was successfully employed by Donald Trump and is still pursued in countries such as Hungary or Poland, where governments have recently incited moral panics against local LGBTIQ communities.⁸

One tangible proof of embracing diversity is political representation: participation in decision-making processes. This is not only a matter of fairness. Just as monocultures are more vulnerable to economic shocks, politically homogenous communities are more susceptible to political failures.⁹ Taking the effects of women’s political participation as an example, there is a positive correlation between female leadership and improving living conditions of their communities as well as exercising a governance style aiming at collaboration, rather than partisan competition.¹⁰

These observations from India, Norway, Canada and many other countries prove that diversity of experience and perspectives does help identify complex problems

and find more comprehensive and inclusive solutions, benefiting all members of society.

In summary: it is not diversity per se that can negatively affect social bonds, such as solidarity and trust, but its structural and functional dimensions. This extrapolates to the complex intersections of race, ethnicity, religion, gender, sexual orientation, correlated with the socio-economic status of citizens or social groups. Effective integration policy and social mobility, as well as positive political narratives built around diversity in public discourse can have a positive effect on the state of democracy because they cushion divisions and strengthen integrity, citizen trust, and participation. This contributes to an amenable habitat for the functioning of the rule of law and its institutions, such as courts or representative bodies, for example elected parliaments or local councils. In other words, “[d]iversity is not the problem. The problem is segregation.”¹¹

2.2 A sense of community

The sense of community can be described as a feeling of solidarity and mutual trust, the low perception of social distances, and low polarization between particular social groups. It not only refers to class solidarity or perceived and existing social distances, but also reflects the understanding of the state as a common political project, one that is not necessarily rooted in any particular ethnicity, race, or creed.

The sense of community can indirectly strengthen the resilience of the rule of law by averting divisions and polarization in society. Social polarization is usually illustrated by such measures as poverty levels, inequality of opportunity, or the divide between cosmopolitans and communitarians. Divisions within societies resulting from class and

⁶ J. Gerring, M. Hoffman, and D. Zarecki (2018). The Diverse Effects of Diversity on Democracy, in: *British Journal of Political Science*, 48(2), pp. 283-314. doi:10.1017/S000712341600003X.

⁷ Gert Pickel (2019). *Weltanschauliche Vielfalt und Demokratie. Wie sich religiöse Pluralität auf die politische Kultur auswirkt*, Bertelsmann Stiftung, Gütersloh, p. 94.

⁸ European Commission (2021). EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people, 15 July press release, URL: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668.

⁹ Ryan Muldoon (2018). Diversity is not what divides us. Division is what divides us, Knight Foundation, p. 6, URL: https://kf-site-production.s3.amazonaws.com/media_elements/files/000/000/189/original/Ryan_Muldoon_KnightFoundation.pdf

¹⁰ UN Women, Facts and figures: Women’s leadership and political participation, <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>; Edwin Ng and Charles Muntaner, The more women in government, the healthier a population, 9 1.19, the conversation, URL: <https://theconversation.com/the-more-women-in-government-the-healthier-a-population-107075>.

¹¹ Muldoon, Diversity is not what divides us.

race manifest in different living conditions and life experiences. In turn, political polarisation is understood as diverging positions on public policies and other relevant political issues among voters or between the working class, middle class, and elites. The more radical positions are shared in a society, the greater the polarisation. These social and political distances can be determined by worldview conflicts, or result from opposing standpoints taken by political leaders on certain issues, which then spread among their sympathizers and affect public debate.¹² They can also result from experiences of social deprivation and loss of status. Research suggests that if coupled in addition with high economic inequalities, the immediate result is low trust in others and low cooperation potential.¹³

Both radicalization and polarization do not need populist actors to occur. Yet it is often populists or political newcomers who capture societal grievances and give dissatisfied people a new political identity. Populist actors also are often polarizing, regardless of whether they are radical or moderate.¹⁴ Available research on the polarizing effect of populist parties yields mixed conclusions: some authors suggest that populist parties can undermine social cohesion by attacking multiculturalism and democratic institutions, or by spreading conspiracy theories. Others conclude that their impact is limited on issues such as tolerance or attitudes towards migration.¹⁵ Therefore, polarisation is ambiguous in character. As such, it can have a positive effect on the state of democracy if it contributes to pluralisation of the political scene, offering voters a choice. Some extent of disruptive polarisation can prevent the convergence of political parties and enrich public debate. It can also mobilize the otherwise “silent majority” to act against potential threats to the existing democratic system, such as symbolically, in the case of 2018 “Wir sind mehr” demonstrations to show the popular resistance against right-wing violence in Germany, or practically, in terms of voter mobilization. Simultaneously, there is a risk of opening doors to populists by falling into the trap of polarizing logic that can degrade the political scene and public discourse. The targeting of concrete groups instead of grievances, or

calling for direct action, poses the threat of uncivility in public debate, not to mention politically driven violence or hate crimes.

To sum up: the sense of community refers not only to overcoming differences and polarisation within a society, but also developing a common understanding of the state as the interdependence of all citizens and their shared agency to decide its future. In this respect, the resilience of societies to overcome hazardous events or incremental threats lies in their integrity and immunity to hostile, divisive ideologies. For this reason, Robert Putnam’s aforementioned initial conclusion is correct: successful societies only emerge from developing more encompassing identities and creating “a new sense of ‘we.’”¹⁶ This new “we” must be constructed as a diverse yet cohesive and solidary community.

3. Conclusions

The RESILIO model assumes that the resilience of the rule of law depends not only on its institutional design anchored in the legal system, but also relies on the overall socio-economic circumstances exercising pressures on societies. Inclusion and a sense of community are the building blocks of a resilient society. They can positively affect the resilience of the rule of law when diversity is managed through effective integration policies creating opportunities; the provision for minorities to access decision-making processes and democratic representation; and the feeling of belonging that is strengthened by closing social distances and preventing political polarisation.

More research is needed on exploring the psychological, cultural, and societal preconditions of democracy. Yet, the following are significant findings: firstly, diversity can generate challenges in the short-term for integration policies, yet in the long run, it can also contribute to moderating the general mood in society and developing more in-

¹² Juan Russo (2021). Polarisation, Radicalisation, and Populism: Definitions and Hypotheses, in: *Politikon IAPSS Journal of Political Science* 48, pp. 7-26. DOI:10.22151/politikon.48.

¹³ B. De Courson and D. Nettle (2021). Why do inequality and deprivation produce high crime and low trust?, in: *Sci Rep* 11, 1937, URL: <https://doi.org/10.1038/s41598-020-80897-8>.

¹⁴ Russo, Polarisation, Radicalisation, and Populism.

¹⁵ M. Caiani and P. Graziano (2022). The Three Faces of Populism in Power: Polity, Policies and Politics. *Government and Opposition*, 1-20. doi:10.1017/gov.2022.4.

¹⁶ Putnam, *E Pluribus Unum*.

clusive, tolerant attitudes. Secondly, successful integration that enhances participation in democratic processes leads to developing more inclusive policies which, in turn, help foster social cohesion and cushion social inequalities, including those resulting from the intersection of race, ethnicity, and religious background. Thirdly, class and race conflicts erode social resilience. They can contribute to the emergence of polarization and segregation in societies, potentially threatening the stability of a democratic regime. On the contrary, a strong sense of community embracing such socio-cultural and socio-economic differences makes societies less susceptible to radicalization and safeguards social peace.

Therefore, what we call social resilience is one of the enabling elements of a non-aggressive, favourable environment in which the rule of law has a chance to function undisturbed. On the one hand, through inclusion resulting in increased social mobility, equal chances, and representation of

minorities in power structures, social resilience can contribute to increasing trust in fairness and the legitimization of a political system and its institutions, including the judiciary, law enforcement, and the executive. On the other hand, by countervailing growing social distances and fragmentation within a society, it can strengthen the democratic culture by leaving no space for hostile, divisive ideologies. Social cohesion can therefore furnish not only the institutional but also the normative foundations for a resilient rule of law.

About the author

Dr Maria Skóra is research associate at Institut für Europäische Politik and leading researcher in the project „RESILIO – Resilience observatory on the rule of law in Europe”, responsible for its implementation of as well as supporting outreach activities. She holds an MA in sociology and PhD in Economics.

About the project

[RESILIO](#) aims to identify institutional and societal factors that make the rule of law more resilient, thus adding a constructive contribution to academic and policy debates. It draws on a “thick” definition of the rule of law, understood as closely connected to democracy and fundamental rights. The resilience of the rule of law means that the rule of law can experience hazardous events or incremental threats without losing its core function, structure and purpose.

About the paper

This paper is part of the #RESILIOsnapshot series, a collection of compact analyses that explain ties between resilience factors of the rule of law in the European Union, identified within the RESILIO model.

RESILIENCE FACTORS



RESILIO offers a multi-layered model of the rule of law resilience. Systemic dimension (orange) reflects upon the resilience of the legal setup; subsidiary dimension (green) looks at the phenomena and tendencies present in societies as possible facilitators; and contextual dimension (blue) analyses the broader habitat, determined by structural and systemic variables like economic growth, social cohesion, and general political climate. **RESILIO** also takes into account the horizontal effects of unpredicted and unprecedented crises that can affect all dimensions of rule of law resilience with different intensity. While each factor is necessary for a resilient rule of law, they are only sufficient in combination.

The considerations in this paper are compatible with the developed conceptual model of the resilience of the rule of law. They focus on **social resilience** as a contextual factor strengthening the rule of law.

RESILIO is implemented by Institut für Europäische Politik in Berlin and funded by Stiftung Mercator.