

The Importance of the Rule of Law for a Robust, Functioning Democracy

KEY POINTS:

- *The Rule of Law is a necessary and defining requisite of Liberal Democracy*
- *The Rule of Law and Electoral Democracy are distinct but empirically reinforcing aspects of governance*
- *There is no optimal sequence between the Rule of Law and Electoral Democracy and both are important for human development*

DEFINITIONS:

- *The Rule of Law means that laws are general, possible to obey, and fairly applied.*
- *Electoral Democracy means that access to political power is determined by free, fair, and inclusive elections under the condition of freedom of expression and association.*
- *Liberal Democracy is the combination of electoral democracy and adherence to civil liberties, checks and balances, and the rule of law.*

According to the United Nations General Assembly, the rule of law and democracy are interlinked and mutually reinforcing, and they belong to a set universal and indivisible core values and principles. Democracy and the rule of law, however, are both essentially contested concepts. There is widespread agreement about their positive value, but there is also significant disagreement about their particular meanings. What is more, the relationship between rule of law and democracy can be conceived in different ways. On the one hand, the rule of law is a defining attribute of Liberal Democracy together with free and fair elections, liberal freedoms (such as freedom of expression, association, and religion), and checks and balances. On the other hand, based on a thinner definition of Electoral Democracy, democracy and the rule of law can be seen as distinct phenomena that are empirically related.

There is a conceptual but also functional overlap between the understanding of democracy in the liberal tradition and the rule of law (O'Donnell 2004). The rule of law is an essential part of what is meant with the encompassing view of liberal democracy for two reasons. First, the enjoyment and exercise of democratic rights depends on the degree to which such rights are recognized in practice.

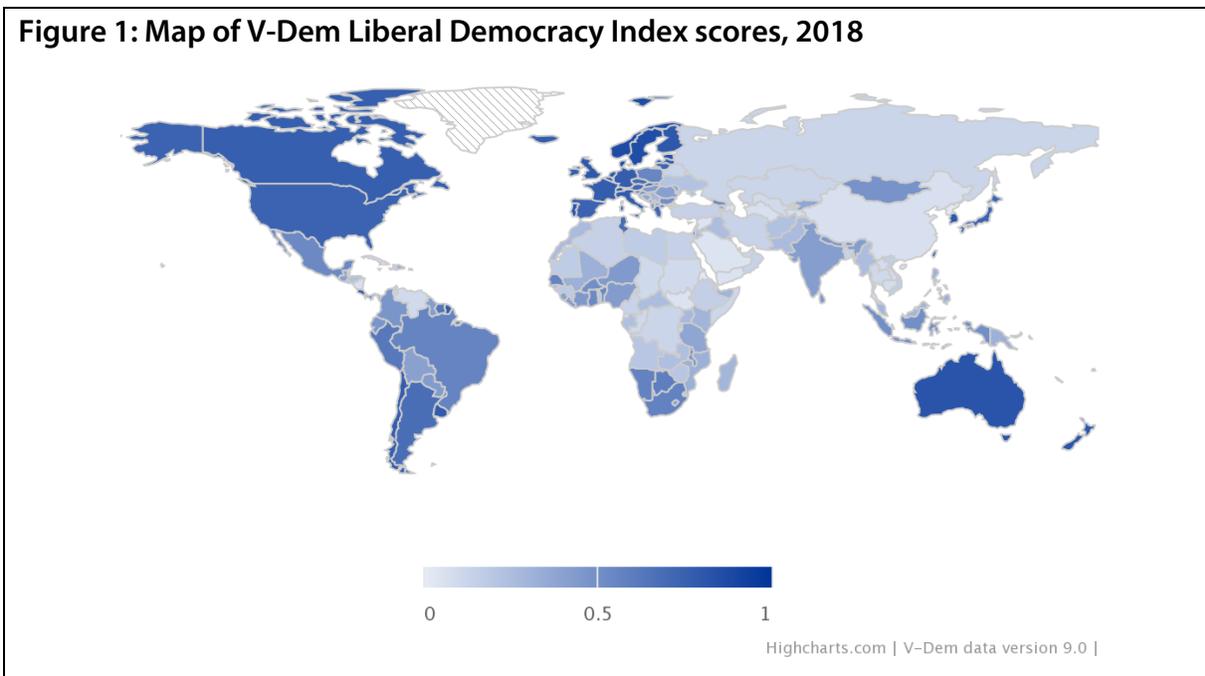
Rule of Law is a necessary and defining requisite of Liberal Democracy

Elections are not meaningful from a democratic point of view if citizens are denied access to voting or elections are manipulated in others ways. Many countries in the world have freedom of expression (including media freedom) proscribed by law, but absent rule of law these freedoms are in reality not ensured in countries like Russia, Turkey, or Nicaragua.

Adherence to the rule of law thus supports and is a critical requisite of the democratic process and popular sovereignty more generally. By safeguarding the autonomy, freedom, and security of individuals, the rule of law safeguards the free expression of political opinions and engagement in voluntary collective mobilizations (e.g., peaceful demonstrations) and organizations (e.g., political parties and NGOs). In countries where the citizens cannot rely on continuous protection from state repression, democratic involvement and influence is undermined. Moreover, adherence to the rule of law is necessary for an effective and continuous control of the political representatives – also

between elections. A functioning rule of law including autonomous judicial institutions, is critical to the existence of liberal democracy if and when political actors engage in illicit actions.

The second reason to recognize the rule of law as an essential pillar of (*liberal*) democracy is the fact that popular rule is not established merely by vesting the decision-making power in elected representatives. Whatever decisions they take must also be implemented. Only when the rules based on the consent of the people are implemented in an impartial, law-abiding manner, popular rule is a reality.



Note: The V-Dem Liberal Democracy Index reflects the degree to which electoral democracy is complemented by liberal rights and institutions (i.e., individual rights and the rule of law and judicial and legislative constraints on the executive).

All citizens should be equal under the law. No one may be discriminated against on the basis of social status or identity, and the enactment of

rules should not be distorted by corruption and nepotism. Only under the rule of law, the goal of democratic responsiveness can be reached.

Accordingly, democracy does not only concern the access to political power and decision-making. It also concerns the exercise of political power and implementation of policy (Møller & Skaaning 2011). This is sometimes referred to as the “throughput and output side” of governance. The regularity, impartiality, and personal safety associated with the rule of law constitute important and, indeed, necessary conditions for a well-functioning democracy.

Figure 1 demonstrates that the combination of electoral and liberal rights and institutions is relatively rare. Nowhere is the ideal completely achieved, and only few countries achieve high scores on Liberal Democracy. Furthermore, there is a lot of variation between as well as within world regions as illustrated by the flagrant differences between Venezuela and Uruguay, South Sudan and Botswana, Saudi Arabia and Tunisia, China and Japan, and Belarus and Norway.

Yet, many scholars and policy-practitioners prefer to treat democracy and the rule of law as distinct (see Møller & Skaaning 2011). This choice is often justified by a wish to analyze their empirical relationship rather than taken it for granted. Moreover, the covariation is not perfect – neither historically nor today.

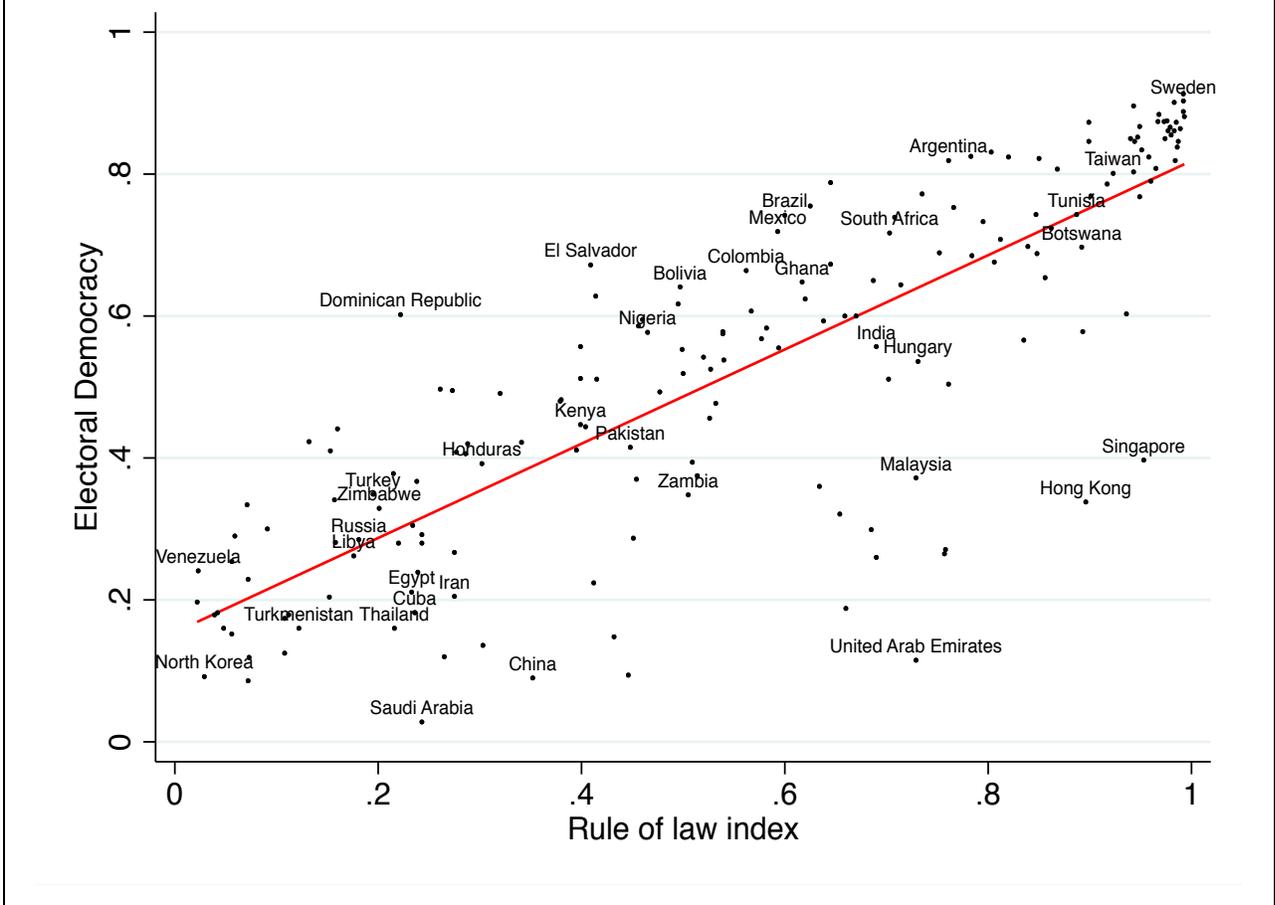
From **Figure 2** we see that countries with high scores on V-Dem’s Rule of Law Index generally have high scores on the Electoral Democracy Index and vice versa. It is important, however, to note that none of the countries with

high levels of electoral democracy register low levels of rule of law. There are no countries in the upper-left part of Figure 2. Nevertheless, there are a number of countries and semi-autonomous political units such as Hong Kong, Singapore, Oman, and the United Arab Emirates, which do rather well regarding the rule of law but have very low scores on electoral democracy. One *can* have rule of law without electoral democracy (but it is very rare), but not high levels of democracy without rule of law.

The true nature of the causal relationship between the rule of law and electoral democracy is much debated in the literature. Classical liberals and conservatives used to envisage a negative trade-off between the political inclusion of the masses on the one hand and stability and the protection of liberal rights (or upholding of valuable traditions) on the other hand. The presence of such a trade-off is generally not supported by empirical studies, though. The findings instead reveal a positive association and indicate that rule of law and democracy are mutually reinforcing (Møller & Skaaning 2014). However, the extent of covariation varies over time (with a tendency to increase), and despite hundreds of studies it is still unclear how they relate to socioeconomic development and culture: Are they causes, consequences, or both? The relationships are so complex and intertwined that empirical analyses have so far been unable to deliver robust results that could settle this issue.

Rule of Law and Electoral Democracy are distinct but empirically reinforcing aspects of governance

Figure 2: Scatterplot between V-Dem's Rule of Law index and Electoral Democracy index, 2018



Note: The V-Dem Electoral Democracy Index captures the degree to which suffrage is inclusive, elections are clean, officials are elected, and the freedom of expression and association are respected. V-Dem's Rule of Law Index captures the degree to which public authorities, including the court system, are impartial and rule-abiding.

Unfortunately, this conclusion also applies to the academic discussion about sequencing. It has been suggested that it is better to postpone (*electoral*) democratization until the rule of law has been firmly established. It is argued that new democracies are otherwise likely to face bad economic performance, violence,

There is no optimal sequence between the Rule of Law and Electoral Democracy, and both are important for human development

instability, and popular dissatisfaction (see Mazzuca & Munck 2016 for a critical overview). This position has, however, been challenged on theoretical as well as empirical grounds. First, in most cases it is naïve to expect autocrats to promote the rule of law since successful attempts would end up constraining their powers, and even where the will is

present, the capability might not be (Carothers 2007). Second, it is hard to convince citizens that they should abstain from exercising their democratic rights for any longer period in an era where multi-party elections have spread to all corners of the world (Carothers 2007). Third, the suggestion to develop rule of law first and only then democratize is not easy to justify in the light of new research indicating that many problems associated with political openings primarily apply to situations where elections are not free and fair (e.g., Bartusevičius & Skaaning 2018). In fact, many success stories in terms of countries that have moved from a bad situation in which both aspects are wanting to a society

characterized by strong rule of law as well as a functioning electoral democracy have been characterized by the either the simultaneous, mutually supportive development of these dimensions of good governance or that electoral democracy actually developed first (Mechkova; Lührmann & Lindberg 2019). Finally, valuable outcomes such as human development in terms of decreasing infant and maternal mortality, increasing health and life expectancy, higher levels of education, etc. are more likely when both factors are present (Grundholm & Thorsen 2019).

RECOMMENDED READINGS

- Bartusevičius, Henrikas & Svend-Erik Skaaning (2018). "Revisiting Democratic Civil Peace: Electoral Regimes and Civil Conflict." *Journal of Peace Research* 55(5): 625-640.
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