HOW CAN EMPIRICAL MEASUREMENT HELP THE RULE OF LAW FLOURISH?

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Abstract: *Meeting the principles and satisfying the demands posed by the rule of law is essential for any legal system to function well in society. The article introduces an analytical framework of empirically measurable constructs of legal consciousness and legal literacy consisting of formal and substantive components and shows how they resemble the demands and principles of the rule of law. It further describes, using illustrative examples, how the measurement of individual components can assist the rule of law doctrine. Finally, it suggests specific measures for enhancing the level of the rule of law, namely the incorporation of legal consciousness and legal literacy measurement into the regulatory impact assessment, use of specific and partially empirically-based intelligibility tests in constitutional review, periodic measurement of accordance between the axiological core of the legal system and the moral framework of its addressees and empirically evaluated projects in broad-spectrum legal education.*

Keywords: *Rule of law, Legal consciousness, Legal literacy, Legal knowledge, Legal awareness, Attitudes towards law*

INTRODUCTION

The rule of law (RoL) is built on two presuppositions. To claim and maintain legitimate authority, the state needs the regulatory power provided by law. Concurrently, to claim and maintain regulatory potential, the law needs the coercive power provided by the state.[2] The coercive power, however, is not the sufficient explanation of law being obeyed by its addressees. The relationship between law and the individual is far more complex. In other words, law is not a self-explanatory entity existing in an endless void. On the contrary, the legal system was developed in our societies for a reason which is to effectively regulate our behavior. The purpose of RoL is therefore to define the conditions and pose the demands necessary for the legal system to function well within society.[3]

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[2] BARBER, N. W. *The principles of constitutionalism*. Oxford: Oxford University Press, 2018, pp. 112–116; WEBER, M. *The Vocation Lectures*. Indianapolis: Hackett Publishing, 2004, p. 34; DICEY, A. V. *Introduction to the Study of the Law of the Constitution*. London and Basingstoke: Macmillan, 1979, pp. 183–184.

[3] The broadness of these demands depends on the specific approach to RoL. Formal and minimalist approaches are generally less stringent on this matter than substantive ones (BARBER, N. W. *The principles of constitutionalism*. pp. 85–119; CRAIG, P. Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework. *Public Law*. 1997, No. 3, p. 487.

A large amount of the RoL literature is devoted to theoretically analyse and explain these demands.[4] However, it is not sufficient to rationally assume under what conditions should law be accepted and followed by its addressees, especially when, as this article demonstrates, it is possible to empirically find out how precisely individuals response to law. Ignoring or overlooking the real and objectively measured level of legal and law-related constructs in the population might have far-reaching consequences which might result in the most extreme form in the loss of both the legitimacy of the legal system and the compliance of people with legal rules.

Even though there have been numerous attempts[5] to implement the empirical measurement and data into the RoL debate, we believe that these attempts share some common shortcomings which should be solved. Even the most comprehensive and methodologically developed measurement tool,[6] i.e. the World Justice Project Rule of Law Index[7] does not objectively measure the real level of RoL in the general population. As every other RoL measurement tool, it is focused on the subjective opinion of legal professionals about the level of individual RoL factors and subfactors in their country. In addition the World Justice Project Index also uses the General Population Poll[8] which is a step forward in the sense that it is also distributed to ordinary people. However, even this poll does not analyse the level of RoL objectively since it only consists of self-reported items and hence investigates the subjective opinions of respondents.

In other words, even the most developed RoL measurement tools lack the ability to objectively gather the real data in the general population. The aim of this article therefore is to demonstrate how objective empirical data can substantially help not only determine but also increase the degree to which the demands of RoL are satisfied in the legal order.[9]

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[4] Generally, we can distinguish the formal RoL demands that the law should be possible to obey and use, which requires it to be intelligible, i.e. clear, prospective, non-contradictory, understandable, intelligible, etc. (FULLER, L. L. *The morality of law*. New Haven and London: Yale University Press, 1969; RAZ, J. *The Authority of Law. Essays on Law and Morality*. Oxford: Oxford University Press, 1979, p. 214) and the substantive RoL demands that the law should be accepted and supported in the community to flourish (BARBER, N. W. *The principles of constitutionalism*. p. 90; DICEY, A. V. *Introduction to the Study of the Law of the Constitution*. p. 90).

[5] Especially interesting are the various indexes measuring the RoL in last decades (see e.g. SKAANING, S.-E. Measuring the rule of law. *Political Research Quarterly*. 2010, Vol. 63, No. 2, p. 450; BOTERO, J. C., PONCE, A. Measuring the Rule of Law. *World Justice Project Working Paper Series Nr. 1, November 2010*, available at VERSTEEG, M., GINSBURG, T. Measuring the rule of law: a comparison of indicators. *Law & Social Inquiry*. 2017, Vol. 42, No. 1, pp. 100–137).

[6] See URUEÑA, R. Indicators and the Law: a case study of the Rule of Law index. In: Sally Engle Merry et al. (eds.). *The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law*. Cambridge: Cambridge University Press, 2015, pp. 75–102.

[7] The latest report of the Index is World Justice Project Rule of Law Index 2020. In: *World Justice Project* [online]. [2021-11-22]. Available at: <https://worldjusticeproject.org/our-work/publications/rule-law-index-reports>.

[8] BOTERO, J. C., PONCE, A. *Measuring the Rule of Law*. pp. 18–19.

[9] cf. TAEKEMA, S. Methodologies of Rule of Law Research: Why Legal Philosophy Needs Empirical and Doctrinal Scholarship. *Law and Philosophy*. 2021, Vol. 40, No. 1, pp. 33-66, HORÁK, F., LACKO, D. Triangulation of Theoretical and Empirical Conceptualizations Related to the Rule of Law [online pre-print]. *SocArXiv*. 2021. In: *doi* [online]. [2022-03-25]. Available at: <https://doi:10.31235/osf.io/z73pn>.

The article first offers the conceptualizations of legal consciousness (LC) and legal literacy (LL) constructs which have recently been frequently and varyingly[10] discussed (chapter 1). The unification of the two hitherto rather separately analyzed concepts provides a broadest possible theoretical background for the empirical analysis of the relationship between the individual and law.

The article also explains how these constructs are related to RoL and how the empirical measurement of these constructs can significantly enhance research of RoL by combining the two aforementioned perspectives (chapter 2).

The article finally shows how the diverse aspects of LC and LL resemble the demands posed by RoL and identifies the problematic issues reducing the degree to which these demands are satisfied in the legal system and offers concrete measures which should assist the legal order in overcoming those issues (chapters 3 and 4).

1. ANALYTICAL FRAMEWORK OF LEGAL CONSCIOUSNESS AND LEGAL LITERACY

LC and LL are often defined considerably vaguely, extensively and even mutually contradictorily in the literature[11] and therefore evoke far-reaching connotations consisting of various more or less law-related phenomena.[12] We argue that only empirical approach towards LC and LL allows to maximize their practical significance to the legal order and RoL.

The empirical view of legal constructs naturally determines (and also restricts) their definitions and understanding, however. Any legal construct, if approached empirically, should consist solely of measurable facets (i.e. those already measured in the population with satisfactory evidence of reliability and validity). Hence, we introduced the following conceptualization, which omits the purely theoretical aspects of LC and LL. Based on the various original empirical studies of LC and LL,[13] we created a comprehensive analytical framework for identifying the individual components of these two constructs, which have been hitherto studied rather separately and the conceptual approaches towards them varied significantly.

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[10] CHUA, L. J., ENGEL, D. M. Legal consciousness reconsidered. *Annual Review of Law and Social Science*. 2019, Vol. 15, pp. 335–353; HALLIDAY, S. After hegemony: the varieties of legal consciousness research. *Social and Legal Studies*. 2019, Vol. 28, pp. 859–878; PERRY-HAZAN, L., TAL-WEIBEL, E. On legal literacy and mobilization of students' rights from a disempowered professional status: The case of Israeli teachers. *Teaching and teacher education*. 2020, Vol. 90, pp. 1–11.

[11] EWICK, P., SILBEY, S. S. *The common place of law: Stories from everyday life*. Chicago and London: University of Chicago Press, 1998; NIELSEN, L. B. Situating legal consciousness: Experiences and attitudes of ordinary citizens about law and street harassment. *Law & society review*. 2000, Vol. 34, No. 4, pp. 1055-1090; SILBEY, S. S. After legal consciousness. *Annual Review of Law & Social Science*. 2005, No. 1, pp. 323–368; FREUDENBERG, B. Beyond Lawyers: Legal Literacy for the Future. *Australian Business Law Review*. 2017, Vol. 45, No. 5, pp. 387–404; ZARISKI, A. *Legal literacy: An introduction to legal studies*. Edmonton: Athabasca University Press, 2014; WHITE, J. B. The invisible discourse of the law: Reflections on legal literacy and general education. *University of Colorado Law Review*. 1983, Vol. 54, No. 2, pp. 143–159.

[12] HORÁK, F. et al. Legal Consciousness: A Systematic Review of Its Conceptualization and Measurement Methods. *Anuario de Psicología Jurídica*. 2021, Vol. 31, pp. 9–34.

[13] For review, see Ibid.

Both constructs share their knowledge-based components. The papers analysing LC[14] and LL[15] agree that both contain the elementary knowledge of legal system and its procedures. Besides this component, which is called *general legal knowledge*, LL[16] and LC[17] assume the individuals to also possess more detailed *ad hoc legal knowledge* applicable to particular legal situations they might come across. Additionally, some authors stress that "to know" is not enough, one also needs to "understand" the acquired facts and information.[18]

In addition, legally literate[19] and legally conscious[20] citizens are expected to possess a set of important legal skills,[21] since any legal information itself can become utterly useless without a capability to properly use it when necessary. This component is called *legal skills* or *legal awareness*.

The scope of LC and LL however exceeds legal knowledge and skills. It also contains components focused on the attitudes towards law[22] (in LL research) which are further distinguished between rationally-based (i.e. *opinion about law*)[23] and emotionally-based (i.e.

[14] See CRAWFORD, E., BULL, R. Teenagers' difficulties with key words regarding the criminal court process. *Psychology, Crime & Law*. 2006, Vol. 12, No. 6, pp. 653–667; CAVANAGH, C., CAUFFMAN, E. What they don't know can hurt them: Mothers' legal knowledge and youth re-offending. *Psychology, public policy, and law*. 2017, Vol. 23, No. 2, pp. 141–153.

[15] See MARZOOGHI, R. et al. Comparative Study of Legal Literacy Level of the Elementary and Secondary School Teachers. *Journal of Politics and Law*. 2016, Vol. 9, No. 9, pp. 119–125.

[16] See DOL, N. et al. Consumer Legal Literacy, Values and Consumerism Practices among Members of Consumer Association in Malaysia. *Asian Social Science*. 2015, Vol. 11, No. 12, pp. 18–199; SNOOK, B. et al. Advancing legal literacy: The effect of listenability on the comprehension of interrogation rights. *Legal and Criminological Psychology*. 2016, Vol. 21, No. 1, pp. 174–188.

[17] See GRISSO, T. et al. Juveniles' competence to stand trial: A Comparison of adolescents' and adults' capacities as trial defendants. *Law and human behavior*. 2003, Vol. 27, No. 4, pp. 333–363; HSIAO, L. H. C. A Study on marketing mix strategy, law awareness, and repurchase intention of imported tobacco. *Актуальні проблеми економіки*. 2013, Vol. 143, No. 5, pp. 501–511.

[18] HANNAH, M. A. Legal literacy: Coproducing the law in technical communication. *Technical Communication Quarterly*. 2010, Vol. 20, No. 1, pp. 5–24; ZARISKI, A. *Legal literacy: An introduction to legal studies*. p. 19.

[19] See NORHAFIFAH, S. et al. Domains and Indicators of Consumer Legal Literacy in Malaysia. *Pertanika Journal of Social Sciences & Humanities*. 2018, Vol. 26, No. 2, pp. 659–674; STEININGER, K., RÜCKEL, D. Legal literacy and users' awareness of privacy, data protection and copyright legislation in the web 2.0 era. In: R. Alt – B. Franczyk (eds.). *Proceedings of the 11th International Conference on Wirtschaftsinformatik (WI2013) Vol. 2*. Leipzig: University Leipzig, 2013, pp. 1651–1665.

[20] See KIM, K. K. et al. Perception of legal liability by registered nurses in Korea. *Nurse Education Today*. 2007, Vol. 27, No. 6, pp. 617–626; LOGALBO, A. P., CALLAHAN, C. M. An Evaluation of teen court as a juvenile crime diversion program. *Juvenile and Family Court Journal*. 2001, Vol. 52, No. 2, pp. 1–11.

[21] For instance, legally literate citizens should be able to recognize when a problem is a legal one, know how to find legal information, read and sometimes also fill in basic legal documents, recognize when they need professional help and know how to find it (AX-FULTZ, L. J. Igniting the Conversation: Embracing Legal Literacy as the Heart of the Profession. *Law library journal*. 2015, Vol. 107, No. 3, pp. 421–439; ROMIG, J. M., BURGE, M. *Legal Literacy and Communication Skills: Working with Law and Lawyers*. Durham: Carolina Academic Press, 2020; WHITE, J. B. *The invisible discourse of the law: Reflections on legal literacy and general education*. p. 143).

[22] See PRESTON SHOOT, M., MCKIMM, J. Exploring UK medical and social work students' legal literacy: Comparisons, contrasts and implications. *Health & Social Care in the Community*. 2013, Vol. 21, No. 3, pp. 271–282; WAGNER, P. H. An Evaluation of the Legal Literacy of Educators and the Implications for Teacher Preparation Programs. Education Law Association 53rd Annual Conference, 2007. In: *Education Law Association* [online]. 16. 11. 2007 [2020-12-22]. Available at: <https://files.eric.ed.gov/fulltext/ED499689.pdf>.

[23] See MAGUIRE, E., JOHNSON, D. The structure of public opinion on crime policy: Evidence from seven Caribbean nations. *Punishment & Society*. 2015, Vol. 17, No. 4, pp. 502–530.

trust in law)[24] attitudes (in LC research). The LL construct contains one more component. In contrast with a legally conscious person, a legally literate person not only knows the law, is able to use it and agrees or disagrees with it but also willingly *a)* wants to comply with the legal system, *b)* intends to use and effectively apply the acquired legal knowledge and skills and *c)* means to transform the disapproval of or distrust in the legal system into lawful action with the objective to improve or change it. We called this last component contained exclusively in the concept of LL *intention to act within the law*.[25]

One more (and the most abstract) component can be also found exclusively in the LC construct. It is called *legal identity*[26] and describes whether and to what degree individuals identify themselves with the axiological core (i.e., the system of basic values and principles often explicitly protected by the constitution) of their legal system.

The main difference between both constructs therefore lies in their last components. *Legal identity* allows LC to reach a higher level of abstraction and to exceed the axiological core of the legal system, whereas the *intention to act within the law* allows LL to focus on individual and collective actions within the current axiological core of the legal system, which brings legal research closer to the real functioning of law in society. The complete analytical framework is depicted in Fig. 1:

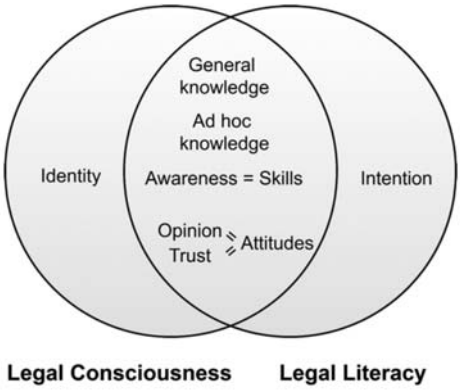

Fig. 1: The schema of Legal Consciousness and Legal Literacy components

[24] See FARRELL, A. et al. Juror perceptions of the legitimacy of legal authorities and decision making in criminal cases. *Law & Social Inquiry*. 2012, Vol. 38, No. 4, pp. 773–802; HENDLEY, K. Who are the legal nihilists in Russia? *Post-Soviet Affairs*. 2012, Vol. 28, No. 2, pp. 149–186.

[25] See JIANG, S. et al. Citizens' obligation to obey the law: An empirical study of Guangzhou, China. *International journal of offender therapy and comparative criminology*. 2013, Vol. 57, No. 4, pp. 495–518; PRESTON SHOOT, M. et al. Readiness for legally literate medical practice? Student perceptions of their undergraduate medico-legal education. *Journal of Medical Ethics*. 2011, Vol. 37, No. 10, pp. 616–622; PRESTON SHOOT, M., MCKIMM, J. Perceptions of readiness for legally literate practice: A Longitudinal study of social work student views. *Social Work Education*. 2012, Vol. 31, No. 8, pp. 1071–1089; RAMIREZ, R. R., PALOS-SANCHEZ, P. R. Willingness to Comply with Corporate Law: An Interdisciplinary Teaching Method in Higher Education. *Sustainability*. 2018, Vol. 10, No. 6, pp. 1–21.

[26] See PRESTON SHOOT, MCKIMM, J. *Perceptions of readiness for legally literate practice: A Longitudinal study of social work student views.*

The provided analytical framework represents a hitherto broadest and most complex theoretical background for objective examination of the relationship between the individual and law using real data gathered in the population.

2. EMPIRICALLY MEASURABLE RULE OF LAW?

Although RoL is a broad and multi-layered phenomenon,[27] various approaches towards it can be classified into two major groups.[28] The first group consists of formal approaches addressing the need to eliminate the arbitrariness of public power[29] and identifying the minimal demands concerning the form and structure of legal rules which need to be satisfied to permit the bare existence of law (clarity, prospectiveness, promulgation, etc.).[30] The second integrates substantive approaches which in addition analyse the substantive content of legal rules and their social, cultural and political context.[31] Hence, the substantive RoL works with a broader spectrum of demands aimed at separating "good" laws from "bad" laws.[32]

Examining the demands articulated by the first group, we can see a resemblance to the demands stemming from three of the LC and LL components, namely general legal knowledge, ad hoc legal knowledge and legal skills (formal components). These demands generally aim at the capability of law to guide human behaviour which presupposes the legal order to be intelligible, understandable, comprehensible, etc.[33] To satisfy these demands, addressees need to be provided with sufficient knowledge and understanding of the legal rules and the appropriate skills to use law to their advantage (i.e. the level of formal components in the population needs to be maximized; see chapter 3).

Analogously, the demands posed by the second group of approaches to RoL correspond to the other three LC and LL components, namely attitudes towards law, legal identity and the intention to act within the law (substantive components). To support and willingly obey law, addressees need to perceive it as rationally, intuitively and axiologically acceptable and easily accessible (i.e. the level of substantive components in the population needs to be maximized; see chapter 4).[34]

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[27] BARBER, N. W. *The principles of constitutionalism*. pp. 85–119.

[28] CRAIG, P. *Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework*; RADIN, M. J. Reconsidering the rule of law. *Boston University Law Review*. 1989, Vol. 69, pp. 781–819; TAMANAHA, B. *On the Rule of Law*. Cambridge: Cambridge University Press, 2004, pp. 91–113.

[29] DICEY, A. V. *Introduction to the Study of the Law of the Constitution*. p. 188.

[30] SUMMERS, S. R. A Formal Theory of the Rule of Law. *Ratio Juris*. 1993, Vol. 6, No. 2, pp. 127–142; FULLER, L. L. *The morality of law*; RAZ, J. *The Authority of Law. Essays on Law and Morality*.

[31] ALLAN, T. R. S. *Constitutional justice: A liberal theory of the rule of law*. New York: Oxford University Press, 2003; HAYEK, F. A. *The political ideal of the rule of law*. Cairo: National Bank of Egypt Printing Press, 1955; RAWLS, J. *A Theory of Justice*. Cambridge: Belknap Press, 1971, pp. 235–243.

[32] BARBER, N. W. *The principles of constitutionalism*. pp. 94–96; ALLAN, T. R. S. *The Sovereignty of Law: Freedom, Constitution and Common Law*. Oxford: Oxford University Press, 2013, pp. 88–132.

[33] RAZ, J. *The Authority of Law. Essays on Law and Morality*. p. 214.

[34] DICEY, A. V. *Introduction to the Study of the Law of the Constitution*. p. 328; BARBER, N. W. *The principles of constitutionalism*. p. 90; BARBER, N. W. Must Legalistic Conceptions of the Rule of Law Have a Social Dimension? *Ratio Juris*. 2004, Vol. 17, No. 4, pp. 474–488.

Moreover, the demands stemming from the formal and substantive components[35] and the formal and substantive approaches to RoL are interconnected and therefore affect each other. For instance, clarity, understandability and intelligibility of legal rules enhances the legal certainty of citizens, which is one of the core principles of the formal RoL.[36] However, for example Dicey, Rawls or Raz argue that legal certainty is also one of the important preconditions of liberty[37] and autonomy,[38] which are the values typically used in the substantive RoL approaches.[39] Similarly, a lack of legal certainty can deprive the individual of their ability to act as a subject within the legal order, making them rather an object of the law in the Kantian sense.[40] Such a situation can infringe on the value of human dignity,[41] which is also a part of the substantial rather than formal RoL.

The interplay between formal and substantive demands changes the point of view on RoL itself. The principles and demands of RoL, Barber observes,[42] cannot be understood as a dichotomous variable, but rather as a discrete scale with many various degrees.[43] Consequently, the question arises of "how to determine the precise degree of clarity, intelligibility or social and moral acceptability of the legal order?".[44] The greatest advantage of an objective empirical measurement surfaces at this point. Provided that the demands posed by RoL resemble those emerging from the LC and LL components, the degree to which the principles of RoL are satisfied equals the empirically measured level of the LC and LL components in the population.

3. MEASUREMENT OF FORMAL COMPONENTS AND THE INTELLIGIBILITY OF LAW

Examining the level of formal LC and LL components in the population, five major problematic aspects which make the current legal systems less intelligible can be identified.

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[35] LEBLANG, T. R. et al. The Impact of legal medicine education on medical student's attitudes toward law. *Journal of medical education*. 1985, Vol. 60, No. 4, pp. 279–287; CARTWRIGHT, C. et al. Palliative care and other physicians' knowledge, attitudes and practice relating to the law on withholding/withdrawing life-sustaining treatment: Survey results. *Palliative Medicine*. 2015, Vol. 30, No. 2, pp. 171–179; HORÁK, F., LACKO, D. New Contributions of Multidisciplinary and Empirical Approach to Legal Consciousness. *The Lawyer Quarterly*. 2019, Vol. 9, No. 3, pp. 248–261).

[36] BARBER, N. W. *The principles of constitutionalism*. p. 97.

[37] DICEY, A. V. *Introduction to the Study of the Law of the Constitution*. pp. 206–269; RAWLS, J. *A Theory of Justice*. pp. 235–243.

[38] RAZ, J. *The Authority of Law. Essays on Law and Morality*. pp. 219–223.

[39] RADIN, M. J. *Reconsidering the rule of law*.

[40] KANT, I. *Groundwork of the Metaphysics of Morals. A German–English Edition*. Cambridge: Cambridge university press, 2011, pp. 78–109.

[41] RAZ, J. *The Authority of Law. Essays on Law and Morality*. pp. 221–222.

[42] BARBER, N. W. *The principles of constitutionalism*. p. 96.

[43] RAZ, J. *The Authority of Law. Essays on Law and Morality*. pp. 222–223.

[44] FULLER, L. L. (*The morality of law*. pp. 79–80) for instance considers the exact assessment of legal stability as impossible. Similarly, Endicott (ENDICOTT, T. A. O. The Impossibility of the Rule of Law. *Oxford Journal of Legal Studies*. 1999, Vol. 19, No. 1, p. 18) asserts that *"vagueness is unquantifiable"*.

1) The legal system contains too vague legal rules. Even though a certain degree of vagueness is necessary due to the normative and general nature of legal rules,[45] vagueness cannot rise indefinitely, because extremely vague legal rules can be interpreted in multiple (and often even contradictory) ways and are therefore not able to guide human behaviour reliably.[46] Extreme vagueness consequently deprives the law of the capacity to eliminate the arbitrariness of public power,[47] which is the primary goal of RoL.[48] The natural cure for excessive vagueness is to increase the precision in expressing legal rules. However, the four remaining problematic aspects show that a legal system can be easily overdosed by such "medicine".

2) The legal system is too extensive and unstable. The number of created and novelized legal rules (i.e. legislative inflation) is often so high and the extensiveness of the laws so overwhelming[49] that even legal professionals often find it difficult to keep up-to-date nowadays. An ordinary citizen, naturally, might find themselves rather lost or need to spend an unimaginable amount of time and energy to catch up with developments in the legal system.[50]

3) The legal system is too complex. Modern legal systems are highly complex and multilayered phenomena consisting of international, regional (e.g. European), constitutional,[51] statutory, sub-statutory and judge-made layers. To truly know and understand law, therefore, means to combine knowledge and understanding of all the overlapping layers simultaneously, which represents a true challenge for lawyers, not to mention laypersons.[52]

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[45] One cannot foresee every possible situation in the real world and regulate it in advance using the legal system (ENDICOTT, Ibid.).

[46] Good examples of the problematic nature of extreme vagueness can be observed in the void-for-vagueness doctrine applied by the US federal courts [see *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *Kolender v. Lawson*, 461 U.S. 352 (1983); *Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416 (1983); *Fed. Commc'n Comm'n v Fox Television Stations, Inc.*, 567 U.S. 239 (2012)] or the German federal constitutional court's clarity of law doctrine (see BVerfGE 113, 348; BVerfGE 120, 378; BVerfGE 141, 220).

[47] ENDICOTT, T. A. O. The value of vagueness. In: Vijay K. Bhatia et al. (eds.). *Vagueness in normative texts*. Bern: Peter Lang, 2005, pp. 39–40.

[48] DICEY, A. V. *Introduction to the Study of the Law of the Constitution*. p. 188; FULLER, L. L. *The morality of law*. pp. 63–65.

[49] The Supreme Court of the United States, for instance, ruled that in the cases of extreme extensiveness and complexity the ignorance of law *is* a valid excuse [see *Cheek v. United States*, 498 U.S. 192 (1991)].

[50] This development can be described using two separate problems: *a)* the legal regulation of areas of society and social behavior which have not yet been regulated (e.g. ZAMBONI, M. The Social in Social Law: An Analysis of a Concept in Disguise. *Journal of Law and Society*. 2008, Vol. 9, pp. 63-99) and *b)* the increasing amount and complexity of legal norms regulating a specific area, caused by the gradual novelization of legal rules (ŠULMANE, D. "Legislative Inflation" – An analysis of the Phenomenon in Contemporary Legal Discourse. *Baltic Journal of Law & Politics*. 2012, Vol. 4, No. 2, pp. 78–101; ENG, S. Legislative Inflation and the Quality of Law. In: Luc J. Wintgens (ed.). *Legisprudence: A New Theoretical Approach to Legislation*. Oxford and Portland: Hart publishing, 2002, pp. 65–80).

[51] It is fairly challenging even for legal professionals to decide which law (or which court) actually has final say nowadays. For instance, in the European context, three possible options are available – the Court of Justice of the European Union, the European Court of Human Rights or the national constitutional courts (see VON BOGDANDY, A. Pluralism, direct effect, and the ultimate say: On the relationship between international and domestic constitutional law. *International Journal of Constitutional Law*. 2008, Vol. 6, No. 3-4, pp. 397–413; OETER, S. Rechtsprechungskonkurrenz zwischen nationalen Verfassungsgerichten, Europäischem Gerichtshof und Europäischem Gerichtshof für Menschenrechte. *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer*. 2007, Vol. 66, pp. 361–391).

[52] TORRENT, R. The Contradictory Overlapping of National, EU, Bilateral, and the Multilateral Rules on Foreign Direct Investment: Who is Guilty of Such a Mess. *Fordham International Law Journal*. 2011, Vol. 34, No. 5, pp. 1377–1399.

4) The legal system is (at least partly) esoteric. Even when citizens actually manage to be aware of the legal regulation, they have almost no possibility of familiarizing themselves with the specialized and highly complex mechanisms and methods for interpreting and applying the legal rules in specific cases by administrative bodies and courts. In other words, laypersons only have a small chance to know exactly how legal professionals think about legal matters,[53] which further limits their ability to understand the legal system and use it effectively.

5) Laypersons can barely speak the legal language. The aforementioned problematic aspects are further strengthened by the specifics of legal language, also called *legalise*, which is rather incomprehensible to ordinary citizens, making their awareness of legal rules even shallower.[54] Legal professionals who speak the legal language understand each other and therefore the legal system more easily than laypersons, which makes the law an even more exclusive system.[55]

To conclude this argument, the intelligibility of law is endangered by both extremes: the excessive abstractness of the legal system, which makes it too vague, and the excessively high precision, making the legal system too extensive and complex. All of these problematic aspects decrease the level of formal LC and LL components in the population and consequently also the degree to which several demands[56] of RoL are satisfied by the legal system.

These problematic aspects of modern legal systems lead to important consequences. Extremely vague or extremely detailed law easily escapes beyond the reach of the individual's ability to act within the legal environment. Consequently, citizens become dependent on professional legal aid since they are neither able to act for themselves nor assess whether their professional representative acted appropriately. They can therefore be easily manipulated into both financially and legally disadvantageous decisions.

Moreover, the inability to understand the legal system and the dependency on professional legal help significantly jeopardizes the ability of the individual to legally act as an autonomous subject. The individual therefore *de facto* loses his status of autonomous subject in the Kantian sense[57] and gradually becomes merely an "object" of complex and unintelligible legal regulation. This effect is even strengthened by the generally accepted *ignorantia legis non excusat* principle, which prevents individuals from defending them-

[53] SCHAUER, F. *Thinking like a lawyer: a new introduction to legal reasoning*. Cambridge and London: Harvard University Press, 2009.

[54] ZARISKI, A. *Legal literacy: An introduction to legal studies*. pp. 88–89.

[55] WILLIAMS, C. Legal English and plain language: An introduction. *ESP across Cultures*. 2004, Vol. 1, No. 1, pp. 111–124; CHARROW, R. P., CHARROW, V. R. Making legal language understandable: a psycholinguistic study of jury instructions. *Columbia law review*. 1979, Vol. 79, No. 7, pp. 1306–1374.

[56] The most important unsatisfied demands are the clarity of law and the relative stability of law (RAZ, J. *The Authority of Law. Essays on Law and Morality*. pp. 214–215; FULLER, L. L. *The morality of law*. pp. 63–65, 79–81). An extreme violation of these requirements can even infringe on the principles of legal certainty and legitimate expectations, which are the core principles of RoL (MAXEINER, J. R. Some realism about legal certainty in the globalization of the rule of law. *Houston Journal of International Law*. 2008, Vol. 31, No. 1, pp. 27–46; ZOLO, D. The rule of law: A critical reappraisal. In: Pietro Costa, Danilo Zolo (eds.). *The Rule of Law History, Theory and Criticism*. Dordrecht: Springer, 2007, pp. 3–71).

[57] KANT, I. *Groundwork of the Metaphysics of Morals. A German–English Edition*. pp. 78–109.

selves by proving that they were not aware of or did not understand the concerned laws. Consequently, law gradually transforms from the entity which protects our rights, freedoms and certainty into an entity which we need protection against[58] since it collides with due process rights,[59] autonomy,[60] human dignity[61] and the principles of legitimate expectations and legal certainty.[62] Since these rights, values and principles stemming from the formal and substantive RoL are often constitutionally protected, the aforementioned problematic aspects of modern law can also become the source of unconstitutionality.

To satisfy the demands of RoL to the highest possible degree and to avoid the aforementioned unconstitutionality caused by the extremely low intelligibility of law requires continuous and careful balancing between a too low and too high level of precision in the legal order. Since such balancing requires as precise data as possible, an empirical approach based on measurement of LC and LL in the population offers crucial help.

How the data obtained from the empirical measurement of formal LC and LL components can be used to maximize the level of intelligibility of law and consequently satisfy RoL demands can be illustrated using the following example:[63] Cavanagh and Cauffman[64] performed a robust study with a large sample size, gathered and analysed the data with respect to the legal knowledge of the mothers of juvenile offenders. They used a 44item legal knowledge test with satisfactory reliability.[65] The study measured the mothers' knowledge of juvenile procedure and showed which areas of the procedure they easily understood (e.g. questions regarding courtroom procedure) and where most of them struggled (e.g. the roles and duties of the probation officer and plea decisions).[66] They also calculated sets of regressions using structural equation modeling to identify the potential predictors of not only the mothers' legal knowledge but also their participation in the Court and youths re-offending. Their analyses revealed that the level of the mothers' legal knowledge

[58] LUBAN, D. The Rule of Law and Human Dignity: Re-Examining Fuller's Canons. *Hague Journal on the Rule of Law*. 2010, Vol. 2, No. 1, pp. 10–11.

[59] One cannot defend effectively against charges of violating the law when it is not clear what the law requires or forbids. Moreover, one cannot defend effectively before the court when one does not understand and consequently cannot use the means of defence provided to them by procedural laws. See *Hedges v. Obama* (1:12-cv-00331).

[60] RAZ, J. *The Authority of Law. Essays on Law and Morality*. p. 220; DICEY, A. V. *Introduction to the Study of the Law of the Constitution*. pp. 206–269; ALLAN, T. R. S. *Constitutional justice: A liberal theory of the rule of law*.

[61] When a person does not understand and consequently act within its own legal environment, their autonomy and human dignity in the Kantian sense are severely jeopardized (RAZ, J. Ibid., pp. 221–223).

[62] As RAZ, J. (Ibid., p. 214) writes, *"if the law is to be obeyed, it must be capable of guiding the behaviour of its subjects. It must be such that they can find out what it is and act on it."*

[63] It is worth mentioning that due to the lack of sufficiently broad and comprehensive analytical framework, all of the illustrative examples presented in this article provide us only with partial results, since they focus solely on single individual aspects of the entire LC and LL phenomena (often unintentionally because their aim was not to analyse these constructs at all). The potential of truly complex empirical analysis of the relationship between the individual and law therefore still remains unfulfilled.

[64] CAVANAGH, C., CAUFFMAN, E. *What they don't know can hurt them: Mothers' legal knowledge and youth re-offending*.

[65] Ibid., pp. 145–146.

[66] Ibid., p. 147.

was positively associated with their participation in the children's juvenile procedures (i.e. the lower their knowledge, the lower their willingness to actively use the legal system).[67]

This kind of methodology, data processing and statistical analyses can therefore significantly help to identify problematic areas of law which are rather less intelligible to its addressees (in this case, the roles and duties of the probation officer and the plea decisions) and find ways to improve the intelligibility of these areas. We offer two instruments to address these situations.

First, we suggest developing empirically evaluated standards for the intelligibility of passed laws. Currently, most legislative procedures incorporate mechanisms pre-emptively examining the potential effect of legal regulation on, for example, the market, the environment, human rights, equal opportunity or the state budget (i.e. regulatory impact assessment; RIA). Given the importance of intelligibility of law to its addressees, the effect of regulation on the formal LC and LL components should also become a mandatory part of the RIA. The most intelligible version of the examined law should be selected and passed. Excessively unintelligible laws should be simplified, restructured or at least more precisely explained[68] to the citizens before they enter into force. Even though some issues are truly complicated and may be difficult to express in a simplified manner, many others may take a form understandable to a layperson without losing much or indeed any of its precision.

To continue our illustrative example, Cavanagh and Cauffman[69] reported that only 20–29% of respondents answered correctly the questions regarding the roles and duties of the probation officer and the plea decisions. Had such information been available during the legislative procedure, the legislators would have known that the aforementioned areas of legislation were rather more difficult to understand for its addressees[70] and could have improved the intelligibility of laws governing juvenile criminal proceedings before the laws entered into force and started causing difficulties. Including the formal LC and LL components' measurement into the RIA can therefore significantly lower intelligibility problems already during the legislative procedure.

Second, since the RIA procedures typically only have a recommendatory character, the final decision is dependent on the autonomous will of the legislative body. Hence, not every unintelligible legislation would be avoided pre-emptively. Therefore, we propose that the constitutional courts shall be given the competence to invalidate or not apply legislation which is so excessively unintelligible that its application would infringe the aforementioned constitutional rights and principles.

What remains to be answered is how to identify the extreme cases which could potentially be invalidated or at least not applied because of their unconstitutionality-for-unin-

[67] Ibid., pp. 148–149.

[68] See ENGBERG, J. Legal terminology: On intelligibility and strategies for dissemination. *Synaps*. 2013, Vol. 29, pp. 18–30.

[69] CAVANAGH, C., CAUFFMAN, E. *What they don't know can hurt them: Mothers' legal knowledge and youth re-offending*. p. 147.

[70] Moreover, the described ignorance of legal knowledge was not saturated by mothers' degree of education (=.00002), which even amplifies the need to improve the intelligibility of concerned provisions (Ibid., pp. 147–148).

telligibility (i.e. how to find out whether the unintelligibility of law is extreme enough to infringe the aforementioned constitutional rights and principles). We suggest using the two (less and more stringent) modified versions of the well-known rational basis[71] and proportionality[72] tests, which we have called intelligibility tests.

The less stringent version should be used when unintelligibility jeopardizes only the individual and rather marginal provisions of the examined law. The first step (desirability check) examines the legitimacy of the legislative purpose. If the law regulates the area of social reality which has not yet been legally regulated, is such a regulation desirable? If the law replaces the former regulation with a more robust and complex one, is such a change desirable? If so, the second step follows.

The second step (rationality check) examines whether the level of intelligibility of the law is (even though not optimal) rational with respect to the criteria of *a)* the complexity of a regulated area of social reality and *b)* formal LC and LL components levels of the expected addressees of the examined law. The important point here is that the level of "still rational unintelligibility" changes depending on the aforementioned criteria. The capital market act, for instance, can be more complex and yet "still rationally unintelligible" compared to the provisions of the civil code which regulate the neighbourhood relationships and disputes, since the capital market is expectedly a more complex area than these relationships and since a typical addressee of the capital market act (i.e. a person who voluntarily takes part in rather complicated economic activities) would likely possess a higher level of formal LC and LL components than "an ordinary neighbour".[73]

If a regulation or its reform were desirable and the level of complexity of the examined law could still be perceived as rational given the aforementioned circumstances, the law would not be unconstitutionally unintelligible and thus should not be invalidated.

The more stringent version of the intelligibility test should be applied when unintelligibility jeopardizes the fundamental principles and provisions of the examined law. The first step of the test (necessity check) is similar to that of the less stringent version. The aim is to determine whether a regulation or its reform is necessary.[74] When it is indeed necessary, the second step (adequacy check) follows. Its purpose is to determine whether the law achieved its regulatory purposes adequately (i.e. remained as intelligible as possible). In other words, we should ask whether we can apply an alternative way of regulating the examined matters with equal efficiency yet less negative effect on the level of formal LC and LL components of the expected addressees of the examined law.[75] Finally, when the law passes through both of these steps, we apply the third step (proportionality check).

[71] BICE, S. H. Rationality Analysis in Constitutional Law. *Minnesota Law Review*. 1980, Vol. 65, No. 1, pp. 1–62.

[72] ALEXY, R. Proportionality and Rationality. In: V. C. Jackson – M. Tushnet (eds.). *Proportionality. New Frontiers, New Challenges.* Cambridge: Cambridge University Press, 2017, pp. 13–29; BARAK, A. *Proportionality: Constitutional Rights and their Limitation.* Cambridge: Cambridge University Press, 2012.

[73] BARBER, N. W. *The principles of constitutionalism.* pp. 96–97; ENDICOTT, T. A. O. *The value of vagueness.* pp. 35–40.

[74] Contrary to the desirability check, the new regulation or its novelization must not only be desirable but also necessary.

[75] Contrary to the rationality check, the rational level of (un)intelligibility is not enough to pass the check. The level of (un)intelligibility must not only be *rational* but also *optimal* (i.e. the least unintelligible one).

In this step, the benefits arising from achieving the goal of necessary regulation are weighted against the harms caused by the infringement of constitutional rights and principles mentioned above. An examined law should not be invalidated only when the benefits outweigh the harms.

To use the illustrative example again, if the court had applied the intelligibility test to the law governing juvenile criminal proceedings and had used the results provided by Cavanagh and Cauffman,[76] it would have known precisely which provisions (i.e. those regulating the roles and duties of the probation officer and the plea decisions) and the degree (20–29% of respondents were not able to answer the questions correctly) to which they were less intelligible to the juveniles and their mothers.[77] Consequently, the court would have been able to decide whether the unintelligibility of these provisions was still rational (in the case of a less stringent version) or whether there was a more intelligible way of regulating the juvenile criminal proceeding and whether the harms caused by the unintelligibility of the examined law outweighed the benefits of achieving the regulative purpose (in the case of a more stringent version).

4. MEASUREMENT OF SUBSTANTIVE COMPONENTS AND THE ACCEPTABILITY AND ACCESSIBILITY OF LAW

The problematic aspects of modern legal systems emerge when we examine not only the formal LC and LL components but also the substantive components. Many of these problems, however, are well known and discussed, which allows us to analyse them more briefly.

1) The legal system is not able to gain support from its addressees. Every legal system, in order to be effective,[78] needs to avoid situations when the majority of people criticize and eventually distrust the system, its institutions or individual laws and decisions, especially if the disagreement or distrust becomes permanent.[79]

Since the state gradually takes on more responsibilities and functions,[80] law tends to grow and enter into hitherto unregulated areas of social reality, which not everybody might welcome. Furthermore, some areas of regulation (substance misuse, abortion, euthanasia, rate of tax progression, affirmative action, LGBT rights, environmental issues, etc.) are not as politically or ideologically neutral as others and can, therefore, stir up more disagreement or distrust. Moreover, liberal democracy typically (and most desirably)[81] allows disagreement to be heard and even flourish within society. The legal system, consequently, must find ways of increasing or at least sustaining the level of attitudes towards law, since, as Barber points out, *"the rule of law needs the support of a community if it is to flourish"*.[82]

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[76] CAVANAGH, C., CAUFFMAN, E. *What they don't know can hurt them: Mothers' legal knowledge and youth reoffending*. 14.
[77] Ibid., p. 147.
[78] BARBER, N. W. *The principles of constitutionalism*. pp. 91–92; TYLER, T. R. *Why People Obey the Law*. Princeton and Oxford: Princeton University Press, 2006, p. 162.
[79] BARBER, N. W. Ibid., pp. 90–93.
[80] LYBECK, J. A., HENREKSON, M. *Explaining the growth of government*. Amsterdam: Elsevier, 2014.
[81] see DICEY, A. V. *Introduction to the Study of the Law of the Constitution*. pp. 238–269.
[82] BARBER, N. W. *The principles of constitutionalism*. p. 90.

Fortunately, the liberal democratic institutional and procedural framework inherently contains measures to avoid a significant or long-standing decrease of attitudes towards law in the population. The legitimacy of law is repeatedly renewed by elections, in democracies typically based on universal, free, equal and secret suffrage, through which legislative institutions are constituted.[83] Most laws should, therefore, have the support of the majority of citizens, since the desire of re-election motivates legislators not to significantly divert from the attitudes of voters.[84] The regularity of elections makes it possible for a new majority to elect new representatives and thus influence the character of passed laws. The mechanism for preventing the decrease of attitudes towards law in the population is thus incorporated in the nature of the democratic procedure.[85]

Nevertheless, LC and LL allow us to suggest an improvement of the democratic process. Legislators may use the possibility to empirically measure the level of attitudes towards law concerning laws before they enter into force, because their measurement can be (as with the formal LC and LL components) included into the RIA.

To provide a concrete example of this approach, we refer to the work of Maguire and Johnson,[86] who empirically measured citizens' attitudes towards criminal laws in seven Caribbean countries. They performed a robust study with a large, representative sample.[87] The purpose of their research was to examine whether the attitudes towards criminal law were rather punitive or progressive. They examined a three-factor structure solution (support for punitive solutions, support for extrajudicial solutions and support for progressive solutions) on nine items with an exploratory factor analysis.[88] They found that progressive measures were generally more accepted in the population than the punitive and extrajudicial measures. On the basis of their descriptive statistics, the respondents had ambivalent attitudes towards the death penalty (63.5% agreed or strongly agreed) and rather negative attitudes towards, for example, the prerogative of the police to break the law in order to better control violent crimes (21.2% agreed or strongly agreed) or the competence of the police to kill criminal gunmen freely (30.9% agreed or strongly agreed). On the contrary, the respondents, rather interestingly, supported harsher punishments for criminals (83.2% agreed or strongly agreed).[89]

Had the legislative body had such results available during the legislative procedure, it could have used them to reconsider the problematic provisions of the criminal laws and to find a compromise between the purpose of the regulation and the attitudes of its addressees. Such data could even be an indicator that a discussion on the novelization of criminal laws should be open. The empirical measurement of attitudes towards law can

[83] SINGER, P. *Democracy and Disobedience.* Oxford: Clarendon Press, 1973, p. 45.
[84] SARTORI, G. *The Theory of Democracy Revisited. Part One: The Contemporary Debate.* Chatham: Chatham House Publishers, 1987, pp. 28–31, 86–89, 96–110.
[85] DAHL, R. A. *Democracy and its critics.* New Haven and London: Yale University Press, 1989, pp. 83–132.
[86] MAGUIRE, E., JOHNSON, D. *The structure of public opinion on crime policy: Evidence from seven Caribbean nations.*
[87] Ibid., p. 512.
[88] Ibid., pp. 514–519. Their analyses would have been even more reliable, had they established measurement invariance across countries.
[89] Ibid., p. 513.

therefore significantly help legislators stay in closer contact with the interests and needs of citizens and maintain a satisfactory degree of public support for passed laws.

2) The axiological core of the legal system is not in accordance with the axiological and moral framework of the population. Although it is possible and on certain occasions indeed necessary to pass a law with a lower level of attitudinal LC and LL component, the discrepancy between law and the society has an absolute limit stemming from the legal identity component. Indeed, the decrease of elementary consensus on the fundamental values upon which the legal system is constructed[90] can lower community support for the system significantly.[91] The narrower the gap between the values and beliefs within society and those in the core of the legal system, the lower the risk that protest movements attempting to deconstruct and replace the legal (and the political) system emerge or strengthen their influence on the society.[92]

Two possible causes to the decrease of the *legal identity* in the population emerge. Either the values and principles of the constitution are not in accordance with the moral framework of the society, or they are in accordance, but the laws or judicial and administrative decisions are in conflict with them.

The solution of the latter cause is usually found in constitutional review mechanisms adopted nowadays by the majority of the states.[93] The solution of the former cause is more difficult, however. It requires a cautious balancing between the rigidity and flexibility of the constitution. The constitution shall not only be flexible enough to allow for the gradual adaptation of the legal system's axiological core to the changing social, cultural, ethical, religious, economic and other environments, but also sufficiently rigid to make sure that only such changes which are reasonable and supported by the sufficient majority of the society are adopted.[94] However, solving the problem of balancing between constitutional rigidity and flexibility is not the purpose of this article.

To illustrate beneficial contributions of the empirical approach in this case is more difficult, because no sufficient example of empirical measurement of the indentitary LC component is available.[95] Nevertheless, Preston-Shoot and McKimm[96] empirically measured legal identity at least to some extent. They performed a cross-sectional study with a medium unrepresentative sample size to analyse the differences between undergraduate and postgraduate social work students across seven UK universities. Participants were

[90] For the relations between these values and RoL, see ALLAN, T. R. S. *Constitutional justice: A liberal theory of the rule of law*.

[91] TYLER, T. R. *Why People Obey the Law*. pp. 161–169.

[92] As RAZ, J. (*The Authority of Law. Essays on Law and Morality*. p. 261) puts it: *"A man who is confident that the law is just and good believes that he has reason to do as the law requires."*

[93] GINSBURG, T. The Global Spread of Constitutional Review. In: Gregory A. Caldeira et al. (eds.). *Oxford Handbook of Law and Politics*. Oxford: Oxford University Press, 2008, pp. 81–98.

[94] BENZ, A. Balancing rigidity and flexibility: Constitutional dynamics in federal systems. *West European Politics*. 2013, Vol. 36, No. 4, pp. 726–749; BEHNKE, N., BENZ, A. The politics of constitutional change between reform and evolution. *Publius: The Journal of Federalism*. 2009, Vol. 39, No. 2, pp. 213–240.

[95] cf. HORÁK, F. et al. *Legal Consciousness: A Systematic Review of Its Conceptualization and Measurement Methods.*

[96] PRESTON SHOOT, M., MCKIMM, J. *Perceptions of readiness for legally literate practice: A Longitudinal study of social work student views.*

taught law in eleven courses during their participation. The authors performed sets of Fisher's exact chi-square tests on each item.[97] They used a self-report questionnaire to measure social workers' attitudes towards law. Besides various other items, only one statement was abstract enough to measure legal identity rather than attitudes, namely *"law compounds inequality"*. They found that first year students (52%) agreed with this statement statistically significantly more than final year students (43%).[98]

Although the inference statistics provided by this article are rather scarce, they indicate a certain level of discrepancy concerning the perception of equality between the respondents and the legal system. Such a discrepancy should be examined and analysed both more broadly (i.e. on a larger and more general sample) and deeply (i.e. to find out how exactly the respondents understand equality and why they feel that law compounds it). Such data could potentially amplify the need for the reinterpretation of equality-related principles and provisions in certain laws or even the legal system as a whole to allow legislative and judicial bodies to react adequately.

3) The legal system is not sufficiently accessible to its addressees. To regulate social reality effectively (i.e. to be followed and actively used by its addresses in their everyday lives), law needs to motivate people to act within it rather than discourage them. The more people are convinced that the law is an easy way of *a)* achieving their lawful ends within society and *b)* solving the conflicts of their interests, the more they are willing to act within the law.[99]

The intention of people to act within the law can be increased in two complementary ways. First, the legal system should adopt measures to objectively increase its accessibility (i.e. make itself an easy and effective tool for achieving lawful ends and solving disputes). Among these measures belong especially the accessibility (e.g. financial and geographic) of judicial and administrative bodies,[100] the properties of proceedings before courts and public offices (e.g. procedural justice,[101] reasonable duration)[102] and the properties of judicial and administrative decisions (e.g. congruence with declared laws and their correct and predictable application,[103] sound and convincing reasoning).[104]

Second, measures can be adopted to subjectively strengthen the accessibility of law in the eyes of its addressees (i.e. make people more capable of using it rather than making itself easier to use). The obvious measure here is a broad-spectrum legal education to in-

[97] Ibid., pp. 1074–1075. Unfortunately, they did not provide any correction for multiple testing.
[98] Ibid., p. 1077.
[99] GENN, H. et al. *Paths to justice: what people do and think about going to law*. Oxford and Portland: Hart Publishing, 1999; PLEASENCE, P. et al. *Causes of Action: Civil Law and Social Justice. The Final Report of the First LSRC Survey of Justiciable Problems*. Norwich: The Stationery Office, 2004.
[100] RAZ, J. *The Authority of Law. Essays on Law and Morality*. p. 217.
[101] Ibid., p. 217; TYLER, T. R. Procedural justice, legitimacy, and the effective rule of law. *Crime and justice*. 2003, Vol. 30, pp. 283–357.
[102] UZELAC, A. The rule of law and the judicial system: court delays as a barrier to accession. In: Katarina Ott (ed.). *Croatian accession to the European Union. Vol. 2: Institutional challenges*. Zagreb: Institute of Public Finance, 2004, pp. 105–130.
[103] RAZ, J. *The Authority of Law. Essays on Law and Morality*. p. 217; FULLER, L. L. *The morality of law*. pp. 81–91.
[104] GOLDING, M. P. *Legal reasoning*. Peterborough: Broadview Press, 2001, pp. 6–11.

crease people's confidence in using the law (i.e. subjective legal empowerment),[105] and consequently, their intention to act within it.[106]

The level to which people intend to act within the law and the effectiveness of legal education in increasing people's confidence in using the law can be, again, empirically measured through longitudinal and pre-post experimental research designs.

As an illustration, the already described study by Preston-Shoot and McKimm[107] can be applied. Besides legal identity, the authors also measured students' confidence in skills to practise law in relation to social work. The authors found that first year students were statistically significantly less likely to answer positively the questions concerning the confidence to act within the law than final year students. First year students especially reported more difficulties in *"identifying legal rules in Acts, regulations and guidance"* (44% no or few difficulties), *"applying these legal rules to cases"* (46% no or few difficulties), *"consulting lawyers"* (46% no or few difficulties), *"challenging other organisations in their interpretation of the law"* (30% no or few difficulties) and *"making decisions—when, why and how to act, using legal powers and duties"* (39% no or few difficulties) than final year students (68%, 58%, 59%, 40% and 60% no or few difficulties, respectively).[108]

Such results lead to two important conclusions. First, even final year social work students who were, contrary to the general population, more deeply trained in legal matters, reported rather low confidence in performing basic legal tasks. This could indicate the need for improvement concerning the legal system's accessibility. To find out the causes of this result would require a broader and deeper examination, however. Second, there may be an association between education and the level of the intention to act within law, as final year students reported less difficulties than first year students. However, since the authors did not perform pre-post experimental design with a control group, it is hard to conclude this finding as a causal influence of legal education on the increase of the intention to act within law.

CONCLUSION

While LC and LL are traditionally studied separately and defined in many, often contradictory ways, this article brings these closely related concepts together and therefore introduces the hitherto broadest analytical framework for empirical examination of the relationship between the individual and law. This framework allows to show how the LC and LL constructs resemble the demands posed by RoL and also how the empirical mea-

[105] See KHAIR, S. Evaluating legal empowerment: problems of analysis and measurement. *Hague Journal on the Rule of Law*. 2009, Vol. 1, No. 1, pp. 33–37; GRAMATIKOV, M. A., PORTER, R. B. Yes, I can: Subjective legal empowerment. *Georgetown Journal on Poverty Law and Policy*. 2011, Vol. 18, No. 2, pp. 169–199.

[106] WINTERSTEIGER, L. Legal needs, legal capability and the role of public legal education. *Law for Life: Foundation for Public Legal Education. 2015* [2020-12-22]. Available at: <https://www.lawforlife.org.uk/wp-content/uploads/Legal-needs-Legal-capability-and-the-role-of-Public-Legal-Education.pdf>.

[107] PRESTON SHOOT, M., MCKIMM, J. *Perceptions of readiness for legally literate practice: A Longitudinal study of social work student views.*

[108] Ibid., p. 1079.

surement of LC and LL can profoundly aid in determining and enhancing the degree to which those demands are satisfied in the legal order.

While many authors writing about LC and LL remain on the theoretical level or empirical but subjective level, this article is based on the available objective empirical data. The article therefore not only identifies and describes several concrete measures whereby the level of the rule of law can be increased, but also demonstrates their application by illustrative examples from already conducted empirical research.

The potential benefits of empirical measurement of LL and LC are indeed enormous. The article described ways in which modern legal systems may turn their bright side to their addressees and be more accessible, intelligible and acceptable by the majority of citizens and help them understand and use the system more effectively. If current legal systems are to sustain a sufficient level of legitimacy and support in the population, the need for those designing and running the system to truly understand the people becomes even more urgent. The greatly unsatisfactory reaction of individual states and the international community to the global pandemic is only a further illustrative example of the choking effect of distrust to any society. Empirical data, when properly gathered and analysed, offer a crucial insight into how people experience and evaluate the system and allow legislators to tailor regulation more to the true needs of people and society. The alternative approach, consisting of not collecting the objective data or ignoring their message, threatens to further deepen distrust towards the system and the principles on which it operates, including that of RoL.