



Subordination, conformity and alignment: lack of professional community

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Abstract

Can a judiciary operating in an autocratic political system be expected to defend the rule of law? What are the implications of the relative autonomy of the judges in such an environment? The main reason why judges are unable to affirm the values of the rule of law is that several conditions of resistance are lacking. Organizational, structural and cultural factors all play a role. The lack of professional solidarity is particularly important. The display of collective power by judges requires particular effort and is not supported by any tradition. The Hungarian political regime has severely eroded the internal culture of the judiciary in its post-2010 reforms of the judiciary. As a result, it is clear that the judicial system, which has received special European attention, cannot be expected to halt the deterioration of the rule of law. An understanding of the culture of subordination and conformity can contribute not only to the analysis of autocratic regimes but also to the reflection on the reconstruction of the rule of law.

Key words

Rule of law; judiciary; judicial integration; legal profession; legal culture

Resumen

¿Puede esperarse que un poder judicial que opera en un sistema político autocrático defienda el Estado de Derecho? ¿Cuáles son las implicaciones de la relativa autonomía de los jueces en un entorno así? La principal razón por la que los jueces son incapaces de afirmar los valores del Estado de Derecho es que faltan varias condiciones de resistencia. Influyen factores organizativos, estructurales y culturales. La falta de solidaridad profesional es especialmente importante. El despliegue de poder colectivo por parte de los jueces requiere un esfuerzo particular y no está respaldado por ninguna tradición. El régimen político húngaro ha erosionado gravemente la cultura interna del

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poder judicial en sus reformas de la judicatura posteriores a 2010. Como resultado, está claro que no se puede esperar que el sistema judicial, que ha recibido especial atención europea, detenga el deterioro del Estado de Derecho. La comprensión de la cultura de subordinación y conformidad puede contribuir no sólo al análisis de los regímenes autocráticos, sino también a la reflexión sobre la reconstrucción del Estado de Derecho.

Palabras clave

Estado de derecho; poder judicial; integración judicial; profesión jurídica; cultura jurídica

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1. Introduction

The judgment of the Court of Justice of the European Union in case C-132/20 raised the question of whether a judge who was not brought up in a democracy or appointed by a non-rule of law measure can be independent (*BN, DM, EN v. Getin Noble Bank S.A.* 2022, Wójcik 2022, Filipek 2022). The practical legal answer seems simple, since historical experience shows that the collapse of dictatorships does not involve a significant reassessment of judges. As long as the autocratic regime persists, there are strong arguments for questioning the legitimacy of judges appointed outside the rule of law. After the democratic turn pedigree doesn't matter much. I'm not arguing for legal and political accountability, since the moment is passed, however the question is not trivial sociologically. The current decline of democracies is clearly rooted in the mentality inherited from autocracies. But how is it possible, after more than three decades, that old routines are being revived? Several questions emerge: what is the difference between generations and what role does professional ethics play? How and by what factors does the mentality of judges change? The typical figuration of modern democracies is rule of law and rule of law cannot function without independent judiciary. Thus the judicial habitus stands at the core of the issue of consolidating democracy. According to Bourdieu, habitus as an internalized external constraint, an embedded history, a structure reproduced in the agent is essentially reflexive, it does not exclude change, and thus the question can be raised how the institutional transformation of the rule of law was followed by the habitual transformation of the practitioners (Bourdieu 1990). It may be that we need to rethink the problem of change and continuities in Post-Communist states using these classic sociological concepts. Below, I touch on some of the structural links between the court and the rule of law: (2.). Mere institutional considerations also dispel hopes about the protective effects of judicial independence on the rule of law. But taking cultural factors into account can give a fuller picture of the rule of law's achievements (3.). Finally, by the help of some examples from the life of Hungarian judiciary points 4. and 5. stress the role of organizational culture, professional solidarity and integration of judges. I argue that the lack of internal integration also has serious consequences for the legal professions. But there is more in the deep of some sceptic assumptions on the idea of strengthening judiciary as panacea for new authoritarianism. Structural and cultural factors equally play roles.

2. Institutional aspects

2.1. Structural ambiguities

Any critique about the strengthening judicial power should be cautious. If we do not want to be seen as supporters of illiberalism. Since the status of critical viewpoints concerning judiciary are dubious, the misunderstanding is easy and similar to the position of criticizing liberal legalism. Mere adherence to liberal constitutionalism and the integrity of its institutions can hardly save liberal democracy. The "militant rule of law", militant constitutionalism and radical legal rigor may be used to discomfort the power-holders and oligarchs, but it is unlikely to reconstitute democracy and the rule of law (Gutmann and Voigt 2023). Formal legal and political concepts and logics are miles away from the most burning issues of citizens living in late modern societies. It is difficult to appear as a friend of the rule of law by criticizing the blindness of the legal profession.

The same hardship emerges in cases of questioning judicial relevance in fighting against destroying rule of law.

It's not the judiciary's overreach that is the problem, it's not the judges that are a threat to democracy. Nor are they saving it. The classic notion of Ran Hirschl (2007) suffered serious ideological distortions in the mouths of autocratic leaders and their professional supporters. Juristocracy became a politically used buzzword, even weapon against the judges who claim autonomies. However, supporters of liberal constitutional values can have good causes to be skeptical about judicial contribution to revival of rule of law.

We all know that judicial independence serves as a kind of cornerstone of rule of law, what's more judges seem for some as final bastion of constitutional values and liberties. Enough academic and practical evaluations emerged through constitutional literature supporting this imagined role. Judiciary in this logic as a neutral third branch surrounded by an aura of objectivity functions as a necessary non-majoritarian brake on the distorted machine of modern democracy. Illiberal democracy as a contemporary embodiment of the autocratic distortion might have reasons to eliminate judicial independence. At the same time, there is an autocratic interest in not being completely liquidated, as they may need the remnants of legal rationality (Popova 2012). For bold autocrats the least dangerous branch can cause harms, but makes legitimacy. In the light of the events in autocratic states it seems more real to assume that judges are not strong defender of rule of law. Mostly they function as guardians of some legal formalities. They are open paths for using legalism, which is the valuable tool in the strong hands of autocrats and their lawyers.

History doesn't contradict skepticism. After the understandable and functional unbalanced positive picture of judges as victims of non-democratic rule originally suggested by Radbruch, later historical studies shed lights on the seriously contradictory roles judiciaries fulfilled in dark times (Rüthers 1969/2022, Graver 2015). While history is not something out there, these continuously regenerating experiences are simply part of the story we are dealing with now. "Darker legacies" are relevant corners of our modern professional milieu (Habermas and Leaman 1988, Joerges and Ghaleigh 2003). Even being modern and European in itself is insufficient for escaping the burden of the shameful lessons (Weller 2021). What we can certainly conclude is that the performance of the judiciary depends on the political, social and cultural context. Strengthening the rule of law is not an inherent part of judicial power.

One can take a step toward a more realist expectation from judiciary facing new authoritarianism with taking seriously the sociological factors behind the growing power of judges. Judicialization of politics and politization of judging are phenomena of the structural transformation of political decision-making in highly complex and turbulent contexts. The increase in the powers of the judiciary stems from the complexity of the areas requiring decisions and legal settlements, the limitations of general legislation and the increased need for individual decisions (Tate and Vallinder 1997). The need for judicial control of the executive and of the parliament, which sanctions the will of the government majority, derives from the strong mandate of the executive and the limited capacities of the parliament. Thus a general restructuring of the political power because of the disturbed balance among powers lies behind the constitutional claims and expectation concerning judicial authority. The same developments helped

autocratic populists in concentrating, centralizing and legitimating their power by crying for more power for the majority, that is government.

But beyond this it is also worth clarifying the relations between judicial power and democracy, it is truism, that judges do not collect authorities for their own institutional or oligarchic interests against democratic decision-making. It is also evident, that democratic political progress and ruptures are not the outputs of judicial activities. Judges make no history in this sense. As they never or rarely overthrow dictators, at most their local vassals.

While the importance of judicial power increases in democracies, democracy is rather a precondition for a strong judiciary. Even under democratic conditions, the chances of “political” involvement and judicial activism depend on the legal, organizational and professional culture of the state. Taking seriously the norms that prescribe a distance from politics does not always help to keep constitutional values alive. The apolitical attitude adopted, the non-interference (conformity, reticence, formalism) is also political in nature. During the long communist period, a typical means of self-defense by the lawyers was the formalistic retreat behind the legal text. This routine was only partially broken by the democratic turnaround and can be relied upon by the new autocrats.

Judicial protection of the values of the rule of law depends on a combination of structural and cultural conditions. The court, especially in autocratic setting, can also be a weak institution: irrelevant, unambitious, its decisions are not implemented or do not influence behavior. Enforcement of court decisions does not work because there is no political will to impose or enforce them, or the social environment is not conducive to enforcement. To what extent have some progressive court rulings banning school segregation succeeded in changing the reality in Hungary? When neither the holders of governmental and municipal power nor majority opinion supported ethnic mixture (Farkas 2020).

The instability of judicial practice is also brought about by a legislative environment that is changing at super speed. Especially when the text of statutes, and even of the Basic Law, is wide open to the current interests of the powers that be. Such a political environment is a favorable breeding ground for Potemkin-courts, window-dressing constitutional institutions, selective enforcement and extra-legal alternatives of official decision-making.

Rule of law in the heads of autocrats is part of the political arsenal for keeping power. Intentional, deliberate misunderstandings on rule of law help autocratic institutionalization. Legalism eliminates the chances of limiting the exercise of power, because it focuses on the formal boundaries of institutions rather than their substantive meaning (Krygier 2008). The guarantees of judicial independence are insufficient because abusive legalism can turn any constitutional institution against the rule of law principles. Without a complex, cultural program to mitigate power, the formal maintenance of a particular legal subdivision will be of doubtful success. Modern autocrats do not destroy institutions, but seize them and put them at the service of the concentration of power. The judiciary, like all legal institutions, tends to play this new role. Especially when the cultural, mental, professional elements of the rule of law are weakly embedded.

2.2. *Hopes*

In post-communist Hungary, hopes for strengthening liberal constitutionalism seemed well-founded, since the Hungarian legal system was the heir of the continental legal tradition, and all modern legal institutions were at least formally well known to jurists. The legal system was at least partly Western, and later accession to the common law of the European Union did not present any obstacles. Despite all previous hopes deep-seated elements of the authoritarian past remained intact. After 2010 it turned out, that the institutional skeleton of Hungarian democracy is seriously sclerotic, unable to resist autocratic pressure.

As in the case of any institutional setting, the possible outcome of judicial empowerment as strategy of rule of law reconstruction is doubtful. All the desperate attempts by friends of constitutionalism could lead disheartening results. However, there are some serious positive consequences. It is true that inside the autocratic state courts are the only organized authority without political origin. The Hungarian Judicial Council, for example is elected autonomously by judges themselves. Helping this organization and widening its authorities seems hopeful strategy of saving some rule of law. If voting judges feel the same way. It is also true that there are always some good judicial decisions which make some people's life better or easier. The total lack of autonomous decisions, we know well from the darker times, is practically non-sense. Theoretically court cases can be focus points, meeting opportunity for the legal complex (cooperation between legal professions) and cooperation with civil organizations too. Legal complex might be a strong defense web for the practicing lawyers in case of political pressures (Halliday *et al.* 2007). As in Poland, judicial resistance and the appearance and symbols of defending constitutionalism on the streets could serve as a model for citizens. Bravery of professionals sends powerful messages of encouragement for fellow-citizens. Lawyering for good causes, with little help from pro-democratic media, if there is such thing, can question the status quo, exert transformative force, affirm minority positions. It is always a possibility that judges give another meaning to the metaphor of mouth of the law by protecting weaker social actors and speaking to power (Abel 1998). Courthouses are natural places of rights-centered approaches, emancipations, voicing normative arguments against the harsh criminal politics. Under the seventh amendment of the Hungarian Fundamental Law in 2018 homelessness became a crime despite the fierce criticism by experts in- and outside the country (Kazai 2018). Many judges decided not to impose a disproportionate and unjust sentence. Injustice seemed unacceptable in the eyes of some judges. However, these brave decisions did not enjoy enough publicity. Using the public openness of judicial processes even individual cases could serve healthy justice narratives.

2.3. *Disappointments*

All these factors legitimize properly the strategies of defending judicial independence as the principal, most of the time only way of fighting against autocratic power. However, the optimism is clouded by serious factors. We know for sure from the modern historical experiences, that judges most of the time do not make changes, judicial organizations and judiciaries are easy prey for authoritarian executives. Moreover, in politically non-relevant cases, in matters that do not interfere with the circles of the power elite

independent, good decisions create legitimacy for any regime. As regards the basic structure of the judicial activities, decisions are bound to the written law, constitutional interpretations have natural limits. The same legal constraint leads mechanical interpretation which gives good hiding place for non-resistant, “average” judges. This is not simply a coward answer to the autocratic challenge, but a general feature of the continental legal culture. Legal instrumentalism, the most useful hobbyhorse of the modern autocrats makes judiciary a sheer administrator, executor of the political intent codified into the legal body. Due to the formal division of power even in authoritarian states, nomination and selection of judicial administrators remain constitutionally in the hand of other powers. And they use them. In autocracies parliamentary majority functions as stabilizer of the government, legitimate rubber-stamping machine, consequently parliamentary elections of presidents of the apex courts, constitutional judges and other court administrators constitutionally are also used for the sake of power-stabilization. Then politically selected judicial leaders efficiently reshape the judicial culture and enforce conformity and collaboration, even submission. Judicial resistance is structurally limited, as a rare consequence of the everyday attacks against autonomies.

It also follows from all this, that strengthening autonomy from outside is a near impossible venture, judges are integral part of the political state. Which is understood as a strong unit for higher aims, especially in nationalist, populist autocracies. Non-conformity can be easily depicted by governmental media as signs of hatred of the community, whatever this may mean. Judiciaries are by default not progressive, most of the time represent the stabilizing force of the status quo. Authoritarian, non-democratic context is even worse condition of progressive turn. Being the target of government propaganda is an unpleasant situation. A judge who used CJEU for defending independence of Hungarian judges became the enemy of the people on the pages of pro-government media (Vadász 2019, Hungarian Helsinki Committee 2022).

Sociologists know that policy approaches and law enforcement are structurally linked. The need for separation has always led to limited results. The application of law ensures that the political will prevails. The respect for judicial independence in the rule of law is fraught with tensions: judges must simultaneously satisfy the particular, national political will and the universal demand for the enforcement of legal principles. In the case of an autocratic member state of the EU, these two needs are most likely to clash in relation to the judiciary. The considerable European attention to the judiciary, thanks to the policy of integration through law and judicialization is therefore understandable, even if it leads to limited results (Bois and Dawson 2023).

Those working for the redemption of the rule of law expected from judges should take into account the historical differences in the weight of the legal professions. In Central Europe, under German and partly French influences, it is not the judges who are the essential source of law, not the actors who determine the content of the legal system, but the legislator, with the help of jurisprudence in certain periods (Caenegem 1992). The European legal-political structure poses a challenge to the continental courts and requires a significant change in their traditional role (Kelemen 2011).

3. Cultural arguments

3.1. *Cultural doubts*

A common explanation for the lack of stability of democratic or rule-of-law values is the absence of supportive traditions in different places, organizations and society in general in the new democracies. The little or relatively weak experience of independent judiciaries makes it unlikely that a culture of independence can be achieved simply by changing the law. Textualist, formalistic legal interpretation is a general feature of post-communist legal culture (Kühn 2011). Bureaucratic mentality fits well to the instrumentalist mindset, legal measures are pure means to achieve the political will. It is true, that all of these and the institutional closeness are in sharp contradiction with the importance and high symbolic values of judicial power in contemporary democracy. Yet it is not so simple that the socialist legal tradition has survived (Uzelac 2010). What we can find in the present-day authoritarian practice is rather political similarities with the Communist exercise of power: autocratic political inclinations, executive dominance, low separation of power, intensive use of the secret police, tendency of criminalization, fights against civil organizations, narrow definition of politics, corruption, low prestige of autonomies, curtailing judicial interpretation, state paternalism, ideological elements in the constitution, centralized, military-style prosecution, primacy of duties over rights. These cultural remnants burden the political culture, and partly general features of all modern-day autocracies, not socialist law (Markovits 2007).

Despite the fact that the judicial habitus is a product of history, it is capable of change through appropriate efforts. The change is improbably difficult if the objective conditions and structures remain stable (Bourdieu 2018). Similar to the durability of male dominance, is bureaucratic subordination able to resist change because it is reproduced by essential structural elements and mechanisms. Autocratic judicial habitus is incorporated in lawyers' mind and during the confrontation with objective structures after the breakdown of communist power independence, autonomy, accountability and responsiveness failed to displace it from the ruling judicial mindset. One particular condition of habitus change is usually neglected in the literature. The post-2010 collapse of liberal democracy in Hungary has sharply raised the question of why subversive judicial habitus is absent or why is it so limited compared to the Polish case. The development of solidarity has not been part of the institutional changes that have led to habitual change. The neglected aspect is the community of judges, cooperation and collectivity. Habitus as social space presupposes a collectivity, interactional practices, emotional bonds, sense of the own and others' places, anticipation of the behavior of others (Hillier and Rooksby 2016). Thus "sense of the game", awareness of being a member of a professional collectivity can be expected. A subversive habitus can emerge from the collective practices and sense of togetherness. Moving away from the learned, incorporated elements of the old habits, natural inclination to follow the paths, living and working according to the known system and adapting to something new is demanding. Habitus might be split (Friedman 2016). However, "habitus clivé" is the source of change.

Lack of community and solidarity is the principal element of the everyday context of being a judge in the middle of the 20th century in Hungary. From this point of departure

judicial role, professional socialization and institutional development could gain different meanings. Pressures on judges in non-democratic regimes have long-lasting effects when professional collectivity is weak. The stress on judges is more disruptive in case of loneliness (Graver and Čuroš 2021).

3.2. *Crises of democratic culture*

Since the collapse of communism, the argument that the historical traditions of Eastern Europe threaten the stability of democracy has been well known (Sztompka 1993). It is not difficult to find justifications for cultural pessimism, different variations of historical determinism, based on the political events of the last few years (Mazmanyán 2012). While low cultural support for democratic rules and rule of law values played an important role in the failure of consolidation without doubt, we need more detailed explanations if we want to understand the mechanisms of autocracy. Among other things, we need to understand the ways in which a lack of democratic culture functions in social arenas like the judicial system. All the more so, because it is a privileged focal point for rule of law values and behaviour.

The present global degeneration of democracy is multifaceted, but in new autocracies such as Hungary, the social divisions are fatally deep. The social division, exclusionary practices are the general context of “rigged democracy” in Hungary (Calhoun *et al.* 2022). The absence of communities and the deliberate destruction of social solidarity facilitated the building of autocracy. The atomization inherited from the communist era (without of its possible advantages) provided the basis for the institutionalization of exclusionary populism based on the principle of majority rule (Rév 1987). Impenetrable division lines, low level social integrity, intolerance and extreme nationalism characterize the imagined majority.

The shallowing of human contacts and interactions, the lack of communities, the fading of the “human condition” is a general consequence of late modernity, to which the new democracies with a communist past were able to adapt without friction. The administrative isolation caused by the Covid epidemic was only a temporary form of a general everyday experience. As Donati and Archer argue:

Late modern society is systematically based on immunization against social relations and leads to the repression of social relations. The inability of individuals to acknowledge social relations has become the illness of the century (...). To emerge out of loneliness becomes an enormous enterprise – and often a hopeless one. (Donati and Archer 2015, 14)

But while we have strong concepts and explanations for the alienation of citizens from the law, we are reluctant to confront the alienation of the internal legal culture, of lawyers, from their work and their environment (Hertogh 2018). Social science, especially jurisprudence, tends to exacerbate the situation by interpreting the world of legal functioning in terms of methodological individualism or institutional formalism.

We talk about legal (professional) alienation in the sense that legal practice, which is constantly used as a tool, loses its motivating power, the individual no longer actively participates in shaping his environment, distances himself from its action-events and moves into the position of a neutral observer (Honneth 2008). The dismantling of the rule of law has been greatly facilitated by the fact that the judiciary and the legal

profession in general have tended to play this role of observer as opposed to a cooperative subject of active participation. Most of the time Hungarian judges are escaping from the public, evading open discussions and disputes. Running from the public spaces is backed by the undifferentiated legal ban of judicial voice and the unclear demarcation line between public issues and politics. Today, it is also difficult to obtain permission for a judge to attend a professional conference that is not organised by the public authorities. In such circumstances, professional debates, discussion of the social context of legal decisions and, in particular, the thematisation of judicial independence, have disappeared from the judicial scene. Thus what is lacking is not simply the courage to oppose autocracy, but the capacity for interested participation.

In contrast to the dehumanized vision of some modern social sciences social relationship is a core concept of critical realism (Donati and Archer 2015). Relations among actors are based on warmth, caring, commitment, relational goods which are promoting social integration. Not cold transactions of homo economicus or mechanical norm-compliance of homo sociologicus, but the socially connected individual with plural identity is the core concept of the possible understanding of judicial behavior. Judges, lawyers, as people in general function as individuals related to others. For court researchers, this means that it is not the lone judge, nor the court as a collective actor, but the interconnections of those in the legal field that are worth paying attention to. The internal socialization of judges is not simply a matter of learning the rules and customs of the profession and the hierarchy, but of fitting into a collegial, supportive environment, which is only partly filled by professional communication. An integral part of occupational identity is the collegial human relations system, the colorful and changing informal structure of the organization. Habitus and everyday situations, different domains of existence and activity, non-deterministic view of the actor (multi-socialized), real-life situations are the issues open for analysis searching the cultural conditions of judicial independence (Lahire 2011). The homogenizing, reduced concept of the profession, legal institutions and organization is as hollow as the similar concept of sociality.

The question arises: in what way is the legal regulation of the judiciary, its organizational and procedural arrangements, the definition of independence and autonomy related to this living texture? What are the organizational forms and mechanisms that strengthen rather than destroy the relationships between the actors?

Understanding all this (working in team, collaboration with others, professional and informal bonds, conditions of new forms of association) is not only of academic importance, it can have very practical implications too. "When we become aware of all of this, social change can begin. New processes aimed at re-evaluating relations with others emerge" (Donati and Archer 2015, p. 14).

Such phenomena as alienation, passivity, subordination cannot be understood by the social analysis which neglects the social character of human individuality and relationality. The relationality opens easily to operationalization with the small group, the microstructures of social life (Goffman 1972). Microstructures of social life, small groups as tiny public serve as the source of social capital, guarantor of identity and basis on which individuals and their groups can have an impact on other groups, shape the broader social discourse. Groups with common identity and history ("we-groups") are

the meso-level of social analysis: “Social relations are organized through a network of groups, and these tiny publics provide the action spaces in which society and communities are constituted and inequality and social differentiation are created” (Fine 2012, p. 2) Small or larger judicial professional groups as tiny republics with their flourishing communication, accepted styles are functioning in the legal field and create the essential relationships, interactional order necessary for social (judicial) order. As we know, this interaction order is necessary for both past and future: nourishes the narrations of the common (shared) past and the visions (belief) of a common future. Professional teams are investing in each other, share their stories, problems and strategies: collaborate. Members share a system of knowledge, patterns of behavior, beliefs from which further interactions emerge, interacting groups create specific idiocultures. Creating a shared narrative, common frame is the meaning-making process, specific “world-making” (Goodman 1978). In the context of judicial organization we must pose the question: how do these small cultures fit into institutional arrangements?

Judges have peculiar functions in society, in the eyes of citizens they represent the state power, at the lower level judges are public encounters, actors of social order who have a strong influence on what citizens think about the law (Hupe 2022). Through this path, which is not only the official process and decision-making, but the style, appearance and mood of communication, elements of “legal world” are transferred to the everyday life. The inner “judicial world” emerged from the discourses of official staff is a rhetorical resource connected to the discourses in which people individually and collectively construct their relationship to the legal system. Law is experienced through organizations that enable people to acquire resources for participating in the jungle of the legal norms. It is also important in this respect that the courts as local spaces of construction of talk how could shape legal culture. The state of the internal discursive world of judges has an impact on the external world. The active resistance of Polish judiciary and its organizations against the powers that are destroying the rule of law is an important reference for social actors in the democratic struggle (Puleo and Coman 2023).

A small-group culture incorporates norms and ideology into other cultures if relations between group members are based on dense communication, solidarity and, as a result, a shared narrative past and vision of the future.

Society depends on group action, groups to which we are firmly attached. Social fields linked actors with shared concerns and commitments, working together. “Citizens develop a civic imagination through which they address issues, but they rarely do this alone” (Fine 2021, p. 2). It is reasonable to hypothesize that the social conditions within judicial organizations, the level of professional and human integration directly influence the likelihood of collective action in defense of the rule of law. Integration within professional groups is presupposed by integrative relations between professions, by the functioning of the legal complex (Halliday 2023). The primary interest of autocratic power structures is to impede the internal integration of the legal professions, to divide and atomize the judiciary and to complicate the relations between professional groups. The poor condition of the “socio-cognitive micro-environments” of legal professions

hinders coordination of actions, sharing aims, mutual understanding, emergence of common values and paralyzes collective behavior.

We have got a lot of excellent imaginations about the forms and tools of judicial resistance, aims of self-defense, standing for rule of law and autonomy – but what could be the source of this resistance? The simple answer on culture seems too thin without further resolution the broad concept. The source of energies necessary for the working, functioning autonomy or fighting for freedom became important puzzle for researchers and legal experts. During my research work, conducting interviews with judges I have experienced a peculiar dark mood, loneliness, strong alienation, a depressing attitude on working environment. The narratives of the judges were dominated by loneliness within the organisation, infrequent personal communication, the breakdown of informal relationships and the predominance of conformity to bureaucratic, hierarchical expectations (Fleck 2019). The alienation of the judges was mainly perceived in two aspects in these interviews: on the one hand, in the loss of human, professional relations within the organisation, and on the other hand, in the relationship with the judicial work as a result of the loss of professional autonomy. It led to the topic of some micro aspects of judging.

4. Sociology of judicial autonomy

4.1. Micro foundations of judicial autonomy. Stories from courtrooms – the neglected aspect

Two major research and public policy issues have recently emerged in relation to Hungary. The more specific one relates to judicial behavior: Why is there no such resistance by the judiciary to governmental practices destroying the rule of law as there is in Poland? Resistance by judges means collective demonstrations and voice against governmental pressures, and also individual legal actions. There are many possible explanatory factors at play: political and public law differences, different autocratic strategies, organizational factors, historical traditions, experiences, resistant capacities. But one important factor remains overlooked: the everyday life of the courts, the everyday emotional, ‘civil’ relations between the actors, which go beyond the professional life. These elements might trigger a change in habitus of Polish judges. Social and professional connections, networks, mutual help, solidarity produce proper soil for change in attitudes, dispositions and behavior. But in the background, another, even bigger question looms: how is it possible for democracy to collapse so decisively, to slide back into authoritarian regimes? The two problems are strongly linked. On the one hand, the fight for judicial self-defense and autonomy could go some way towards preventing the finalization of autocracy. On the other hand, the weakness of judicial self-defense and poor democracy stems from the same root: the lack of communities.

In his book published in 1996 Michel Maffesoli gave a new meaning to the concept of tribe (Maffesoli 1996). In our mass society different micro-groups play relevant roles in organizing everyday interactions. One cannot grasp the social reality of such complex system of human collaboration as judicial work without observation of norms, solidarity, habitus, shared values emerging from collectivities. Consequently, researching judiciary should concentrate on collegial groups beside such macro phenomena as profession. Even the so important ethical rules emerge from collectivities,

everyday discussions and interactions, a court is the place of integration and inclusion too. This power of tiny publics can liberate from alienating, *tribus* (tribes) have strong dis-alienating, liberatory potential. I am speaking about real communities, discursive situations, stories, experiences, human relationships, the deep foundation of everyday life. I guess that the dominant elements, macro categories of judging as division of labor among legal professions, court architecture, administration and statistical gaze distract from the day-to-day life of the organization. These categories have some a priori determinations, stress the forms, structures instead of empathy, concentrate on mechanical instead of organic features of courts. By researching solely the official routes instead of informal communication, administrative hierarchy instead of networks and collegial allies researchers of judiciary tend to neglect the effectual dimensions, the 'élan vital' (Bergson), 'social divine' (Durkheim) or 'puissance' (Maffesoli 1996). Puissance means something opposite to political or administrative power, the vital force of individuals and their communities which is necessary for any resistance, collective and individual equally. A new research program should focus on the micro-relations in judiciary and would be labelled as 'puissance juridique'. Which also gives an answer to the question of who is the relevant actor of resistance and defending values. Most of the time researchers of judiciary try to follow and understand the functionality of judiciary or the behavior of the judge, but neglect the human community, the emotional, informal groups inside courthouses. In reality individuals can only find fulfillment in relations with others, micro-groups. Emotional community is not residual category, not sheer aggregate of individuals.

A review of the research tradition on judiciary and courts reveals two distinctive, loosely related trends: the institution-centered tradition, which focuses on the organizational relations of the judiciary, and the behaviorist tradition, which focuses on the roles of judges. These are well-known concepts: judicial administration, regulation of the status of judges, organizational independence, sociological characteristics of the legal profession, judicial role conceptions, organizational and psychological conditions of individual autonomy. Even organizational culture and socialization are presented as impersonal, institutional processes. The sociology of internal group relations, the meso-level, is conspicuously absent. It is as if the dichotomous logic of the lawyer's way of speaking: individual and organizational independence, obscures the dense reality of everyday life.

The language of judicial organization and documents is impersonal, courts as collective organizational actors do or do not meet expectations, shape practice, interpret legal policy expectations correctly or incorrectly. Leaders speak for and in the name of the judiciary, taking particular care to maintain the appearance of unity. This language of institutional thinking is independent of political systems and eras. But the sociological reality is different. It is a mix of individual performances, of different role perceptions, of hierarchical and non-hierarchical positions, of social spaces and networks of interactions. Before describing examples of violations of this lively social world, I would like to make clear why human relationships, cooperation, solidarity and communication within the judicial organization are important.

4.2. *Structural antinomies*

In a non-democratic environment, the antinomies of judicial power are sharpening. The tensions are sharper the more alone the individual is in the face of them. Professional and civil relationships, communities can relieve the burdens that arise from these contradictions. Judges are struggling with the following tensions:

1. Officially recognized, legitimacy-creating, significant role and low prestige. Even the most vicious dictators need the courts' decisions, without them political programs cannot be implemented. But decision making independent of government power can never have the same prestige as that of the leader and his immediate entourage. Material and symbolic undervaluation can be compensated to some extent by a friendly, collegial working environment. Lack of community makes this tension more drastic.
2. Officially, in paper recognized independence and attempts to influence. Autocracies seek to disguise their nature, maintaining the appearance of judicial independence. Exposing attempts at influence, judicial self-defense is easier in a lively social environment. It is typical for pro-government media to exert political pressure on judges, the consequences of which can be mitigated by professional solidarity. A lone judge has no voice.
3. Freedom of interpretation is part of judicial autonomy, but the political centre tends to narrow it and to reduce judicial decision-making to the limits of "official interpretation". Legal development is a collective professional challenge, and professional debate and communication can give the decision-maker more confidence. Close professional communication leads to good, progressive solutions.
4. In an autocratic environment, individual independence and organizational control are more likely to come into conflict, especially if the presidents of the judiciary are selected on political grounds. Resisting bureaucratic constraints and rejecting bureaucratic role perceptions is easier in a collective way, with the help of peers. Internal independence is easier to defend under collegial conditions and trust.
5. The judiciary is expected not to be detached from its social environment and to remain socially embedded. But in an autocratic environment, power differentials are more pronounced and the position of authority is more difficult to avoid. A more interconnected environment may have a deterrent effect for those who prone to accept autocratic judicial positions.
6. The court is in principle responsible for maintaining the moral basis of the law in the face of a legislator interested in the technical efficiency of regulation. However, this function is hampered by low professional morale and a bureaucratic mentality. Everyday professional and private communication can maintain and develop a sense of morality and exercise control over the authoritarian approach. Judicial mind is a collectively created element of the judgecraft.

When the issue of defending some rule of law values against political, governmental power arises, as in the case of the Polish and Hungarian courts, there is a serious tension between the expected apolitical role and the task of defending the values of the rule of

law (Widlak 2019, Matthes 2022). It is in the interest of any autocratic power to treat arguments concerning the rule of law as political in nature and to remove them from the field of judicial power defined as apolitical. This struggle is impossible to fight by individual means, especially if the political loyalty of judicial leaders is assured.

Of course, judges, the judiciary, are an integral part of the prevailing conditions and culture of society, and in a polarized environment there is little trust and little incentive to cooperate. Political attitudes, lifestyles, identities and historical grievances hinder civilized interactions even in the private sphere.

Stereotyping and dehumanization, blaming and victimizing are the consequences of the politically motivated reactionary-exclusionary polarization, which helps to emerge a delegitimizing and populist rhetoric, the militant anti-liberalism (McCoy and Somer 2019). For the judicial culture not only the constant practice of packing the accountability institutions with party-loyalists and using these authorities contrary to their constitutional functions are damaging, but the illiberal meaning of democracy too. Since illiberal means unlimited executive power. The clear breakup with liberalism was openly announced by the Prime Minister in 2014 (Orbán, cited in Tóth 2014). Illiberal state is hostile to autonomies, in this political formation checks and balances have no meaning, no place for controlling the executive, since the elected government is the sheer representative of the majority, the Prime Minister is the voice of the Hungarians. In reality, illiberal recalibration of politics completely hollowed out constitutional institutions and dressed the system in democratic robes (Krastev 2020). Law and legal machinery in Hungary is not tempering power (Krygier 2017). Thus the ruling political ideology and institutional practice stands in clear contradiction with the constitutional calling of autonomous judiciary too. Consequently defending autonomies, standing up for independence and rule of law values are political behavior which is forbidden in case of judges. It is not only an easy opportunity for reproach against “non-comfort”, deviant judges, but freeze the communication inside courthouses.

5. Culture of solidarity

5.1. *Judicial culture rephrased*

The civility of judiciary, as the civil society itself, means a lot of things: public sphere, civic engagement, culture (Xu 2022). Hungarian legal system of illiberal democracy is based on cheating: legal formalities are used for autocratic and corrupted aims. Legally covered arbitrariness is produced by extensive law-making and governing by orders. “An illiberal democracy knows how to behave and, contrary to communism or even Russia today, it cheats only to the extent that is necessary” (Sajó 2019, 372). Living in lies became an everyday experience of lawyers under the aegis of wholesale “constitutional chicanery”, in which corrupt friends are protected from prosecution on formal rule of law grounds, regime relies on the disapplication of the law rather than non-law. Formal rule of law mechanisms are in use in public procurement cases, but all state moneys go to the same group of oligarchs. At the same time injustices, for example dismissing disloyal people, occur beyond the reach of the law. Cheating is everywhere in public sphere (Sajó 2021).

What are the public spaces for community use, for free discussion in palaces of justice under these circumstances? They hardly exist, the typical space is the private working room and the courtroom. What are the possibilities for free organization? How likely is the creation of judicial associations, advocacy and professional organizations in a political context in which there is an open war against NGOs and any NGO dealing with policy-related issues is illegitimate because it wants to take away the process of making politics from the competent state bodies? In recent years in Hungary, the training of judges excludes civil rights activists. Amid attacks from the government media, court leaders simply banned NGOs from training judges.

But what does culture mean in connection to judiciary? I am afraid that judicial culture traditionally is something to do with professional practice and not with everyday, private communications and cooperation among judges. An attempt should be made to give a more operational approach to judicial culture, to reformulate the concept of culture of civil society for "judicial civility". At least four elements of this can be distinguished:

1. *Culture in structure* means symbols, meaning, moral principles, values and cognitive categories to what a good judge should be. For this there should be a common language, which is not only the official legalist code. After a series of unsuccessful attempts in recent years, the Hungarian Judicial Council adopted a code of ethics which strengthened the right of judges to express their opinions. This development has been publicly and strongly challenged by the President of the Curia saying, that judges must be silent in all questions.
2. *Culture in action* means collective reactions to situations, mobilizing skills, cultural meanings enacted in action. When a community of judges listens to their own leaders' reports, accepts reward practices, acts collectively to change working conditions, they mobilize practical skills. Unfortunately, in Hungary for example the experience of collective advocacy is so shallow that no definitive tool-set has emerged from it.
3. *Culture in interaction* means ways in which individuals and groups engage in interactions in different situations, it means norms of discussion, art of listening to others. The typical connections and communication in judicial organizations (as in any other legal institutions) are hierarchical, using the official channels is a general expectation. Any other forms of discussion count as gossip, irrelevant subjective opinion.
4. "*Culture in object*" means objectified elements of organizational communication, common reference points, highly valued texts, material environment, rites of belonging.

Using the phrases of Bin Xu in *The Culture of Democracy* we can summarize culture of judiciary in the following way: the culture of judiciary refers to values of professional judicial life, imagining of a democratic, autonomous, independent collectivity, and democratic norms of their interactions, all of which are involved and realized in their concerted effort to build an autonomous profession. All this comes amid conflict and ongoing disputes, it has a peculiar dynamic, full of contradictions. The discourses, local conversations, mediated discourses and even formal deliberations are forming this culture by the help of constant activities of cooperating individuals.

To illustrate this, I share some typical stories from the recent history of the Hungarian judicial system. These stories show the weakness and destruction of the judicial culture.

In the year before the breakdown of the Communist regime, the last communist government prepared the legal system for a political turnaround. The Minister of Justice, the well-known scholar Kálmán Kulcsár, wanted, among other things, to strengthen the independence of the judiciary. He believed that the guardianship of the ministry and its control over the judiciary should be radically reduced and that this administrative void should be filled by judicial self-government. A judges' association was set up, with the help of a few young judges who were ready to take action, to initiate debates on the need for judicial reform, and their plans were published in the *Judges' Journal*. However, there was no broad professional communication, and the presidents of the courts, with the tacit support of the majority, slowly squeezed out the grass-roots initiatives. A specific hierarchical collegiality, and a strong tradition of narrow entitlement prevailed: the cooperation of the presidents. They successfully filled the void left by the government's withdrawal. The activation of the judiciary has been delayed. Two familiar elements dominated the interpretation of independence: a significant increase in judicial salaries has constitutional significance as a condition for freedom from corruption and independence, and judges are not influenced in their decision-making. The closed-door metaphor, which in retrospect legitimized the operation of the judiciary during the dictatorship, was reinforced: "I closed the door behind me and did not let any outside influence in." What is up to the judges is only individual independence, the intransigence of judging, everything else is a political, organizational task, to be ensured from above. It is solved by the constitution and legislation. And at most, the administrative leaders are involved in the preparation and opinion of regulating judicial administration and status of judges. The regime-change and the establishment of the rule of law quality of judicial independence did not activate the judiciary. The society of young judges was disbanded, their voices were lost and their individual fates took tragic turns.

5.2. Destroying solidarity

The other stories are from the recent past and may have happened because a strong collective identity of the judiciary based on discursive practices, a common judicial consciousness, has never been established. The forced retirement of judges has been a well-known legal controversy, it is known that this rule of the political majority is contrary to European law, judges who were forced to retire early received the compensation they deserved, but no senior judge was reinstated (Halmai 2017). The government has achieved its goals, judicial high positions are filled with loyalists. The message was clear: there was no meaningful legal defense against the state's intentions, not even from European courts. Less well known is the damage done to the judicial community by this same action: forced retirement opened the door to promotion for many younger judges, who became interested in implementing a government measure that violated judicial independence. The greatest damage was done to the integration of the judiciary. Individual career advancement has silenced the voice of collective interests, if any were articulated at all.

In relation to the trial of unlawful police actions during the 2006 riots, the right-wing Fidesz, after coming to power, brutally violated the previously respected principle of separation of powers (Kenes 2020). Parliament passed a resolution that final judgments based on police testimonies would be overturned and the cases must be retried. A parliamentary commission of inquiry has been appointed to question judges and court leaders on the conduct of the trials. The theoretical, political interpretation was clear to all as unacceptable in a rule of law system, but few knew that this event had also caused a serious rift in judicial circles that had hitherto trusted the professional leadership. If a judge is willing to subject himself to political accountability for specific judgments, she cannot be expected to stand up for the independence of judges. So it is not only the systematic and politically motivated replacement of judicial leaders that has caused disintegration and loss of confidence, but also this serious political incident.

Since years the Judicial Council is the only public body capable of standing up for constitutional principles, resolute and committed to upholding the rule of law. But the judiciary is finding that it is being ignored in public decisions affecting the judiciary, and its members are under political attacks. Neither salaries nor working conditions are expected to improve as a result of this conflict, and it might be better to be on good terms with central power and its representatives in the courts. Collective bargaining does not pay.

The perception of the Kádárist era shows an endurance that spans the ages: relative independence is behind closed doors, with at most individual routes of self-defense.

6. Conclusions

Serious obstacles would have to be overcome by anyone who wanted to reverse the destruction of the rule of law at the milestone of judicial independence. The committed politicians of the European Union and their benevolent legal supporters remain steadfastly committed to the fundamental *modus operandi* of European integration. But integration through judiciary seems harder than anyone previously imagined. Both structural and cultural factors should be taken into account. Despite the fact that changing the cultural components is considered by many to be unbearably slow and cumbersome for good reason, it seems to be the only viable way forward in this historic struggle. However, an account of the difficulties and a clear analysis of the causes of past failures are inevitable prerequisites. Mobilizing more and more energy, time, money and political pressure to at least respect the independence of the judiciary will not achieve a breakthrough for the autocratic centre of power. Autocracy can fail suddenly and unexpectedly, but it is unlikely that the sudden cause will have anything to do with judicial power. In order to stabilize the rule of law values, partly irrespective of the democratic and rule of law quality of the current government, the slow path is the way to go. The cumbersome mechanisms of cultural transformation.

If we understand the nature of rule of law failure, we have a better chance of overcoming it.

References

Abel, R., 1998. Speaking Law to Power: Occasions for Cause Lawyering. *In*: A. Sarat and S. Scheingold, eds., *Cause Lawyering. Political Commitments and Professional*

- Responsibilities* [online]. Oxford University Press, 69–117. Available at: <https://doi.org/10.1093/oso/9780195113198.003.0003>
- BN, DM, EN v. Getin Noble Bank S.A.* (2022) 9, judgment of the Court of Justice (Grand Chamber) of 29 March 2022, EU:C:2022:235.
- Bois, J., and Dawson, M., 2023. Towards a legally plausible theory of judicialization in the European Union, *Journal of European Integration* [online], 45(5), 823–842. Available at: <https://doi.org/10.1080/07036337.2023.2190104>
- Bourdieu, P., 1990. *The Logic of Practice* [online]. Redwood City: Stanford University Press. Available at: <https://doi.org/10.1515/9781503621749>
- Bourdieu, P., 2018. Habitus. In: J. Hillier and E. Rooksby, eds., *Habitus: A Sense of Place*. London: Routledge, 43–49. (Originally published in 2005).
- Caenegem, R.C., 1992. *Judges, Legislators and Professors: Chapters in European Legal History*. Cambridge University Press.
- Calhoun, C., Gaonkar, D.P., and Taylor, C., 2022. *Degeneration of Democracy* [online]. Cambridge, MA/London: Harvard University Press. Available at: <https://doi.org/10.4159/9780674276024>
- Donati, P., and Archer, M.S., 2015. *The Relational Subject* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9781316226780>
- Farkas, L., 2020. The EU, Segregation and Rule of Law Resilience in Hungary. *VerfBlog* [online], 8 March. Available at: <https://dx.doi.org/10.17176/20200308-214541-0>
- Filipek, P., 2022. Drifting Case-law on Judicial Independence: A Double Standard as to What Is a ‘Court’ Under EU Law? (CJEU Ruling in C-132/20 Getin Noble Bank). *VerfBlog* [online], 13 May. Available at: <https://dx.doi.org/10.17176/20220513-182117-0>
- Fine, G.A., 2012. *Tiny Publics: A Theory of Group Action and Culture*. New York: Russell Sage.
- Fine, G.A., 2021. *The Hinge. Civil Society, Group Cultures, and the Power of Local Commitments* [online]. The University of Chicago Press. Available at: <https://doi.org/10.7208/chicago/9780226745831.001.0001>
- Fleck, Z., 2019. Bírói magatartások. Szociológiai vázlat a jogállam romlásához. *Mozgó Világ* 12–19.
- Friedman, S., 2016. Habitus clivé and the emotional imprint of social mobility. *The Sociological Review* [online], 64(1), 129–147. Available at: <https://doi.org/10.1111/1467-954X.12280>
- Goffman, E., 1972. *Encounters. Two Studies in the Sociology of Interaction*. London: Allen Lane.
- Goodman, N., 1978. *Ways of Worldmaking* [online]. Indianapolis: Hackett. Available at: <https://doi.org/10.5040/9781350928558>

- Graver, H., and Čuroš, P., 2021. Judges Under Stress: Understanding Continuity and Discontinuity of Judicial Institutions of the CEE Countries. *German Law Journal* [online], 22(7), 1147–1158. Available at: <https://doi.org/10.1017/glj.2021.73>
- Graver, H.P., 2015. *Judges Against Justice. On Judges When the Rule of Law is Under Attack* [online]. Berlin/Heidelberg: Springer. Available at: <https://doi.org/10.1007/978-3-662-44293-7>
- Gutmann, J., and Voigt, S., 2023. Militant constitutionalism: a promising concept to make constitutional backsliding less likely? *Public Choice* [online], 195, 377–404. Available at: <https://doi.org/10.1007/s11127-021-00874-1>
- Habermas, J., and Leaman, J., 1988. Concerning the Public Use of History. *New German Critique* [online], 44, 40–50. Available at: <https://doi.org/10.2307/488145>
- Halliday, T.C., 2023. *Judges Under Stress: Legal Complexes and a Sociology of Hope* [online]. Available at: <https://doi.org/10.2139/ssrn.4482114>
- Halliday, T.C., Karpik, L., and Feeley, M., eds., 2007. *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism*. Oxford: Hart.
- Halmay, G., 2017. The Early Retirement Age of the Hungarian Judges. In: F. Nicola and B. Davies, eds., *EU Law Stories: Contextual and Critical Histories of European Jurisprudence* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/9781316340479.024>
- Hertogh, M., 2018. *Nobody's Law. Legal Consciousness and Legal Alienation in Everyday Life* [online]. London/New York/Shanghai: Palgrave. Available at: <https://doi.org/10.1057/978-1-137-60397-5>
- Hillier, J., and Rooksby, E. 2016. Introduction to First Edition, In: J. Hillier and E. Rooksby, eds., *Habitus: A Sense of Place* [online]. London: Routledge, 19–42. Available at: <https://doi.org/10.4324/9781315253701>
- Hirschl, R., 2007. *Towards Juristocracy. The Origins and Consequences of the New Constitutionalism*. Cambridge, MA/London: Harvard University Press.
- Honneth, A., 2008. *Reification. A New Look at An Old Idea* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/acprof:oso/9780195320466.001.0001>
- Hungarian Helsinki Committee, 2022. *Smear Campaign Against a Hungarian Judge, the Spokesperson of the National Judicial Council (NJC)* [online]. 14–20 August. Available at: <https://helsinki.hu/wp-content/uploads/2023/01/Annex-I-Smear-Campaign-against-NJC-Members-First-Wave.pdf>
- Hupe, P., ed., 2022. *The Politics of the Public Encounter. What Happens When Citizens Meet the State* [online]. Cheltenham: Edward Elgar. Available at: <https://doi.org/10.4337/9781800889330>
- Joerges, C., and Ghaleigh, N.S., eds., 2003. *Darker Legacies of Law in Europe. The Shadow of National Socialism and Fascism over Europe and its Legal Traditions*. London: Bloomsbury.

- Kazai, V.Z., 2018. Guilty of Homelessness – The Resurgence of Penal Populism in Hungary. *VerfBlog* [online], 31 October. Available at: <https://doi.org/10.17176/20181102-110856-0>
- Kelemen, D., 2011. *Eurolegalism. The Transformation of Law and Regulation in the European Union* [online]. Cambridge, MA/London: Harvard University Press. Available at: <https://doi.org/10.4159/harvard.9780674061057>
- Kenes, B., 2020. Viktor Orbán: Past to Present. *ECPS Leader Profiles. European Center for Populism Studies (ECPS)* [online]. 2 August. Available at: <https://doi.org/10.55271/lp0001>
- Krastev, I., 2020. Eastern Europe's Illiberal Revolution. The Long Road to Democratic Decline. In: B. Vormann and M.D. Weinman, eds., *The Emergence of Illiberalism. Understanding a Global Phenomenon* [online]. London: Routledge. Available at: <https://doi.org/10.4324/9780429347368-12>
- Krygier, M., 2008. The Rule of Law: Legality, Teleology, Sociology. In: G. Palombella and N. Walker, eds., *Relocating the Rule of Law* [online]. Oxford: Hart, 44–69. Available at: <https://doi.org/10.5040/9781472564634.ch-003>
- Krygier, M., 2017. Tempering Power. In: M. Adams, A. Meuwese and E.H. Ballin, eds., *Constitutionalism and the Rule of Law: Bridging Idealism and Realism* [online]. Cambridge University Press, 34–59. Available at: <https://doi.org/10.1017/9781316585221.002>
- Kühn, Z., 2011. *The Judiciary in Central and Eastern Europe: Mechanical Jurisprudence in Transformation?* [online] Leiden: Martinus Nijhoff. Available at: <https://doi.org/10.1163/9789047429005>
- Lahire, B., 2011. *The Plural Actor*. London: Polity Press.
- Maffesoli, M., 1996. *The Time of the Tribes. The Decline of Individualism in Mass Society* [online]. London: Sage. Available at: <https://doi.org/10.4135/9781446222133>
- Markovits, I., 2007. The Death of the Socialist Law? *The Annual Review of Law and Social Science* [online], 3, 233–253. Available at: <https://doi.org/10.1146/annurev.lawsocsci.3.081806.112849>
- Matthes, C.Y., 2022. Judges as activists: how Polish judges mobilise to defend the rule of law. *East European Politics* [online], 38(3). Available at: <https://doi.org/10.1080/21599165.2022.2092843>
- Mazmanyan, A., 2012. Failing Constitutionalism: From Political Legalism to Defective Empowerment. *Global Constitutionalism* [online], 1(2), 313–33. Available at: <https://doi.org/10.1017/S2045381711000128>
- McCoy, J., and Somer, M., 2019. Toward a theory of pernicious polarization and how it harms democracies: Comparative evidence and possible remedies. *ANNALS AAPSS* [online], 681(1), 234–271. Available at: <https://doi.org/10.1177/0002716218818782>

- Popova, M., 2012. *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9781139055345>
- Puleo, L., and Coman, R., 2023. Explaining judges' opposition when judicial independence is undermined: insights from Poland, Romania, and Hungary. *Democratization* [online], 31(1), 1–23. Available at: <https://doi.org/10.1080/13510347.2023.2255833>
- Rév, I., 1987. The Advantages of Being Atomized. How Hungarian Peasants Coped with Collectivization. *Dissent*, 335–349.
- Rüthers, B., 2022. *Die unbegrenzte Auslegung - Zum Wandel der Privatrechtsordnung im Nationalsozialismus*. Tübingen: Mohr Siebeck. (Originally published in 1969).
- Sajó, A., 2019. The Rule of Law as Legal Despotism: Concerned Remarks on the Use of “Rule of Law” in Illiberal Democracies. *Hague Journal on the Rule of Law* [online], 11, 371–376. Available at: <https://doi.org/10.1007/s40803-019-00097-z>
- Sajó, A., 2021. *Ruling by Cheating. Governance in Illiberal Democracy* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/9781108952996>
- Sztompka, P., 1993. Civilizational Incompetence: The Trap of Post-Communist Societies. *Zeitschrift für Soziologie* [online], 22(2), 85–95. Available at: <https://doi.org/10.1515/zfsoz-1993-0201>
- Tate, N., and Vallinder, T., eds., 1997. *The Global Expansion of Judicial Power*. New York University Press.
- Tóth, C., 2014. Full text of Viktor Orbán's speech at Băile Tușnad (Tusnádfürdő) of 26 July 2014. *The Budapest Beacon* [online], 29 July. Available at: <https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/>
- Uzelac, A., 2010. Survival of the Third Tradition? *Supreme Court Law Review* [online], 377–396. Available at: <https://ssrn.com/abstract=2498760>
- Vadász, V., 2019. A Hungarian Judge Seeks Protection from the CJEU – Part II. *VerfBlog* [online], 7 August. Available at: <https://doi.org/10.17176/20190807-201241-8>
- Weller, S., 2021. *The Idea of Europe. A Critical History* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/9781108784252>
- Widlak, T., 2019 Judges' Virtues and Vices: outline of a Research Agenda for Legal Theory. *Archiwum Filozofii Prawa i Filozofii Społecznej. Journal of the Polish Section of IVR* [online], 2(20), 51–62. Available at: <https://doi.org/10.36280/AFPiFS.2019.2.51>
- Wójcik, A., 2022. Keeping the Past and the Present Apart: The CJEU, the Rule of Law Crisis, and Decommunization. *VerfBlog* [online], 26(4). Available at: <https://doi.org/10.17176/20220426-182140-0>
- Xu, B., 2022. *The Culture of Democracy*. London: Polity Press.