

The Rule of Law: on Rights, Risks and Responsibilities

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This conference addresses Europe's autonomy, a rather distinct notion of collective and cooperative, and shared, independence, beyond the conventional understanding of sovereignty, and today's challenges to it. Many aspects, many experts. However, there is a need to address an underlying question as to the rule of law. This is what I want to talk to you about, and in fact call on you to act, because it is urgent. In short: The rule of law is in bad shape, or at least endangered, and therefore, it is high time to explain and defend it.

And yes: this may be a bit tricky. Officially, you like the law, and you are all for it. But to be honest, law is not always your best friend.

In economics, some even say that law does basically disturb markets, and that good economics would do much better. Without law? Not really. So this is either ideology or naivité – and I am sure you are not into that.

Then, today, law is fragmented, or “fractured”, which is a specific challenge to the European “Verbund”. But this is no reason to denounce the law, ignore or circumvent it. You may call for changes, better and sometimes less regulation, and coordination, but when it is there, you must treat law as binding.

Yet even then, some of you, in the world of banking and monetary politics, may be ... well ... sometimes a bit annoyed. In fact, there is a persisting rumor that “Karlsruhe” was not a favored term around the ECB for a while. However, when the German Federal Constitutional Court rendered its decision on the PSPP in 2020, it talked to the ECJ, at least primarily, and insisted on judicial review, thus, as has been called for at this conference as well, on supervision, and insisted on proportionality, because it is “of great importance with regard to the principles of democracy and the sovereignty of the people”.²

Objections? Criticism? The tone? The argument? That is ok. Court rulings are not authoritarian orders that may not be criticized. But disagreement, or at best, productive critique, is no reason to dismiss a court, or constitutionalism, or the rule of law entirely.

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² GFCC, Judgment of the second Senate, May 5, 2020, 2 BvR 859/15 u.a.: “A programme for the purchase of government bonds only satisfies the principle of proportionality if it constitutes a suitable and necessary means for achieving the aim pursued”. The Court stated that it can only control for stark violations of EU law, which sounds harsh, but in fact is a sign of restraint, in that the Court does not exercise close scrutiny, which is left to the ECJ, or accepted as an element of ECB independence. Doctrinally, one may look for ultra vires acts, or ask whether exceeding a mandate violates fundamental rights.

Thus, I call on you to defend that: independent courts, democracy, and fundamental rights. This is the rule of law - not as formal minimalism, but as a substantive foundation of who we are, and who we want to be. And I call on you because it is urgent. So why does the law matter to us, to you? What is it exactly that matters here today? And what can you – and should you - do?

Why law matters

Why does the rule of law matter - to you?

Talking to you at a conference of the European Central Bank, the easy answer is short: Lisa Cook. The U.S. Federal Reserve Governor received a letter last week from the White House to notify her of her dismissal.³ Does this endanger sound monetary politics? Maybe. But the key message is that no one is safe, and that we need law to prevent that. This is why law matters.

The longer answer is that we all need law, all the time, not as an abstract idea, but for real.

How did you get here? The ticket, the passport – they all work because there are laws to make sure they do. Specifically, if you do not look like the majority on a train, or at the border, or in a shop, you want to trust authorities to rely on law, not prejudice, or xenophobia. So law matters.

Why do you trust the chair you sit on not to fall apart, and if it does, that someone will cover the cost of the accident, take care of your backpain after you fell, and cover the hospital fee? There are laws you rely on.

Why do you think you will return to your office, and not be fired, or removed from your position – like Lisa Cook,? Because you are not female and not black, and not otherwise marked? Remember the U.S. judge handcuffed in her courtroom, or all the civil servants fired under the heading of efficiency, or the researchers with no funding to even finish an experiment, or store important data? I hope you live in a context where law matters, with truly independent courts to control government, not serve it, thus the rule of law in action.

Finally, why do you think markets work, if they do? Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, recently reminded us that “the connection between the rule of law and a thriving economy is well-established”, backed up by several Nobel Prizes in Economics, as is the connection with democracy, and “Central banks are a crucial part of this mutual dependence.”⁴ Indeed they are. And here as well, not everything is perfect. Greening

³ <https://www.presidency.ucsb.edu/documents/letter-federal-reserve-governor-lisa-cook-notifying-her-her-dismissal-from-office>

⁴ <https://www.ecb.europa.eu/press/key/date/2025/html/ecb.sp250609~3b37304c9f.en.html>. He also stated: “The rule of law is not merely the bedrock upon which lawyers, judges and legal scholars build their work. In recent years, its pivotal role in fostering economic prosperity has come to the forefront of public debate”. And “by fostering predictability and stability, it provides the essential foundation for robust economic analysis and informed monetary policy decision-making.”

markets is urgent⁵, neo-colonialism is not just a theory⁶, and the increase of economic inequality in fact endangers democracy, because it feeds populism.⁷ But even more so, law is one instrument to do better. And if there is no supervision, as many stated at this conference, it does not work.

Therefore, as lawyers, be it in practice or the academy, as bankers or into bankings, and banks, and as people, you have reason to care for the rule of law.

What is the rule of law, exactly?

The rule of law is an old concept.⁸ Paradigmatically, the EU is build upon it, in that it was conceived by its founders as a 'community of law', popularised by Walter Hallstein – and yes, my mother worked for him as a secretary, and my parents met in Brussels – so I am somewhat indebted to it. But it is contested, under pressure, eroding, sometimes captured, attacked.

The classic threat to the rule of law is to reduce it to a mere formality. However, this is a no-go. Law is, when reduced to formalism, but a tool. Then, it may be used for anything, including injustice. But this is not the idea. After all, the rule of law is a sign of modernity because it replaces arbitrariness, and ruling by intuition, mood, temper, greed, etc., which in fact means to ensure equal liberties.⁹

Certainly, this is the historical lesson in Europe. Therefore, the never again after 1945 embraces more than formalism – enshrined in constitutions and in the Universal Declaration of Human Rights, as in the current version of the basics in the European Charter of Fundamental Rights. After all, the German Nazis did not only commit the Holocaust, but regulated it, administered it, legislated it, did it by law. Thus, an

⁵ The EU seeks a Green Deal, and it may well be argued that the ECB has the mandate, and may even be obliged, to green its measures to ensure price stability, as much as climate disaster poses economic risks. For more, see Mathews, John A., and Arkebe Oqubay (eds), *The Oxford Handbook on the Greening of Economic Development*, Oxford Handbooks (2025). However, the very concept of greening the economy, or markets, must address the notion of growth, and its assessment of prices, to capture a wide range of effects, based on a substantive notion of the rule of law including fundamental rights.

⁶ Elderson referred to Daron Acemoglu, Simon Johnson and James Robinson (2001), "The colonial origins of comparative development: An empirical investigation", *American Economic Review*, Vol. 91, No 5, pp. 1369-1401; Acemoglu, D. and Robinson, J.A. (2012), *Why nations fail: The origins of power, prosperity and poverty*, Profile Books, London, pp. 45-47.

⁷ There is an intense discussion on the connection between autocratic populism and social inequality, i.e. Gradstein, Mark (2004): Social status inequality and populism. *Journal of Comparative Economics* 52.2, 434-444; on methodological challenges Stoetzer, Lukas /Giesecke, Johannes /Klüver, Heike (2021): How does income inequality affect the support for populist parties? *Journal of European Public Policy* 30(1), 1–20.

⁸ Note the broad definition of the ECB: "The rule of law is a basic ingredient of justice. The ECB itself declares it is committed to it: "The rule of law requires that public authorities act in accordance with constitutional norms, including fundamental rights, and general rules that have been laid down by democratically elected organs, as well as that they actively ensure that the law is observed by private actors.", Commission's Communication on further strengthening the Rule of Law within the Union. A central bank perspective.
https://www.ecb.europa.eu/pub/pdf/other/ecb.other190731_commission_rule_of_law~7bb04806d3.en.pdf

⁹ One important contribution comes from the Venice Commission of the Council of Europe, including the call for an update by Klotilda Bushka, AS/Jur (2025) 05, of the Committee on Legal Affairs and Human Rights, with references.

instrumental formal emphasis on law is not enough. The rule of law is a commitment to democracy and fundamental rights as well.

Now you think this the Nazi reference is too farfetched?

Well. I wish we would be further away from Weimar, but there are indicators why we are not.

Take the unmarked armed people dragging people from the street into unmarked vans these days, driving to unknown places, or putting them in planes defying court orders, as in the U.S. There is arbitrariness all over. Certainly, this is not 1933: The world is a different one today. But purely formal commitments to any law, or decree, is even more of a threat today.

Please also note that current autocracies are often not based on military coups or violent revolutions, but use legal “reform”. There is law, but purely instrumental. Once in office, after autocratic populists abuse the tolerance of democratic societies, these autocrats “amend” laws and eventually the constitution, to then undo democracy.

So when elected presidents say that you may not have to vote again, an infamous statement by the current U.S. President – take it seriously.

When autocratic authorities go after the “other”, be it refugees or other foreigners, or transpeople (there is list in the playbook¹⁰), be alarmed: they may come to you too, eventually.

And when that one person is fired, solidarity is in order anyways, but it may also be you next.

Also note that this is no “erosion” or “natural backsliding”, or a “swinging pendulum”, a valley right before we reach new heights. Instead, these are deliberate, aggressive and often smart attacks on our foundations. Democracies do not die (that was an urgent warning¹¹), they are murdered. Carefully planned and executed. A frog in a pot of boiling water, a chicken plucked feather by feather – there are many metaphors. And there is the reality:

The threat today is that autocrats turn things upside down, and steal our labels. Take Putin’s “managed” or “sovereign” democracy, or Orban’s “illiberal democracy” – a clear contradiction in terms, or take US Vice President JD Vance turning it all upside down at the Munich security conference when he lectured Europeans on free speech in a democratic society, to de facto defend hate and side with a tech bro new masculinity.¹² These autocrats not only dismiss or ignore the rule of law, but try to capture and destroy it.

¹⁰ Many have outlined the autocrat’s playbook, used by ethno-nationalist political movements in Europe, best implemented in Hungary, with variations to adapt to context. To educate, there is also The Authoritarian Playbook for 2025 available online, a report by “United to Protect Democracy”.

¹¹ The update is Levitsky, Steven, and Daniel Ziblatt (2024). *Tyranny of the minority: Why American democracy reached the breaking point*.

¹² Mellström, Ulf/ Dag Balkmar/ Anne-Charlott Callerstig (2023): Tracing the superheroes of our time: Contemporary and emergent masculinities in tech entrepreneurship. *Routledge Handbook on Men, Masculinities and Organizations*, 417-429; Sandberg, Berit (2025): Startup Culture as a Masculinity Contest: An Exploratory Study on Prevalence and Gender Dynamics. *Social Sciences* 14.7: 438.

Instead, and taken seriously, the rule of law, l'état de droit, or Rechtsstaat, is the indispensable ingredient of democracies that deserve the label. It is the legal frame and structure of a society governed based on elections that are really fair and free, leading to changes of government that are peaceful – no January 6 in the US, no storm on the German Reichstag, no Argentinian chainsaw –, and a society that cares for all human beings to be respected – because “dignity is inviolable” –, in which all have a fair chance in life – because there is equality, to live the way they want – as their liberty –, the fundamental triangle.¹³ That is the never again, the grand idea, to inform, allow for, and protect vibrant societies.

But today, the law is carelessly ignored, arrogantly dismissed, snottingly criticized, and most dangerous of all, deliberately undermined and attacked, captured or destroyed, merely a decorative shell. This is a rather recent development. After 1989, at least in Europe, most people thought we got it: Democracy, equal liberties, freedom. But today, there is much reason to worry. Terror and war, both offline and online, atrocities, corruption, unhindered greed in mafia politics - the world and many people on it suffer. And the law suffers as well.

International law and the hope for a peaceful world order – is this gone? World Trade with reliable rules – is it an illusion? Independent, courageous, seriously supervisory courts? These days, judges at the International Criminal Court need protection. Even as a German constitutional court justice, I was stalked, my family exposed, my private life invaded – and me: scared. Talk to judges at the ECHR, or in national courts, and talk to those judges who have been called “enemies of the people” (UK), or “not in tune with what people think” (Germany), or a “kangaroo court” (one of the funnier comments of the U.S. President), or “illegitimate” (right wing politicians from the AfD, Germany), and the like. It is the sound of destruction. It delegitimizes institutions, it takes away trust, it destroys the law.

To do away with the rule of law, machine guns are not needed. Instead, smaller acts accumulate to risk and disaster. There are the dismissive comments. There are also responsible actors that ignore laws – and the law –, thus break it, be it competences or a mandate conferred upon them by law, or substantive limits like fundamental human rights, and everytime, this feeds the autocrat's agenda. Also, there are formerly cooperating actors that cancel contracts, states withdraw from treaties, leave or stop funding multinational organisations, all formally legal but a crisis for the rule of law.

Or take the letter from the White House to Lisa Cook: “Dear Governor Cook”, it says, in an orderly letter, to state the constitutional authority of the President and reasons for dismissal based on law. It shall look ok, formally. “Thank you so much for your attention to this matter”, is the last sentence. Substantially, there is good reason to assume this breaks the law. And yes, Lisa Cook is not just any Governor, but a woman and Black, which makes her a first target, but not the only or the last one.

¹³ There is a long history of such a holistic understanding of rights, different from isolated or hierarchical understandings that usually privilege autonomous liberty, instead of addressing people as living together, in always relative freedom. On the trias, see Baer, Susanne (2009): Dignity, liberty, equality: A fundamental rights triangle of constitutionalism. *University of Toronto Law Journal* 59.4, 417-468.

Sadly, there is already more to put on that list. But I think you know what I mean. The world is not in great shape, nor is the law, and in some contexts, we seem to be nearing a tipping, or breaking point.

Action

What should we, what can and should you do about that?

Law is not the only concern. Erosion, attacks and destruction target all the institutions that are essential for democracies to work, they start with who is weak and vulnerable but do not stop there, and they play on prejudice and resentment, including yours, to enlist acquiescence, or even support.

It starts with politicians and parliaments: “not up to it”, they “have no clue” – dangerous comments, feeding a populist chorus.

It hits on independent media, culture and education: “woke” and “not neutral” – there are way too many out there who simply sing along, and also feed a dangerous trend.

It denounces academic freedom in teaching and research, first: “gender studies” – is this even a discipline?, then all humanities, but also medicine – too much research on vaccines?, eventually even economics and law – “one-sided” and “biased”, to now allow for “alternative” approaches – and this destroys our trust in facts.

It seeks to limit human rights, proposing some are important, and some not, we should not have too many anyways, no “inflation”, no more “rights talk” – as if the grand promises would be a reality already, and ignore the suffering.

Again, it targets courts by destroying trust which is very difficult to rebuild, and eventually the legal system, including law firms, with the same strategy: hit some to silence others.

And eventually, also, autocrats do target central banks, as part of a planned, funded and orchestrated strategy.

So again, what is there to do? There are many people and projects out there already defending democracy, and the rule of law. It may be a good idea to profit from their expertise, invite them, talk and learn. More generally, don’t be fooled, do not delegate, there is no time to relax right now but a necessity to do good and talk about it. And step up for the rule of law.

Let me explain.

Don’t be fooled. Autocrats hit on the weakest first, as the “other”, to enlist prejudice and resentment, but no one is safe. Also, autocrats steal terms, but their “democracy” is none, their “freedom” protects only privilege, their “independence” or “autonomy” is pure unhindered power, and their “law” is only instrumental, a tool. So whenever things are turned upside down, be clear about it: If measures are illegal, they are that not just unconventional.¹⁴ That needs to be said, early.

¹⁴ Also, when a court is captured, this is not only age discrimination, as held by the ECJ (case C-286/12), even if the capture is implemented by laws lowering the retirement age. To not be fooled, courts should address abuses of law to eventually destroy the rule of law as what they are.

Do not delegate, because it is on all of us to act. Some people think that it is for politicians to defend democracy, and take care of the law. But politics have enough to do to fight the widespread consumer version of democracy, a risky reduction because elections are not online shopping. And politics cannot do it all. Then, some call on courts, especially highest domestic courts, transnational or global ones. This is (please pardon my bias) certainly a good idea, because courts are quite special places. But courts also have their limits. They are responsive actors in that they only answer when properly asked, there is very little room for PR and limited remedial powers. As such, courts are merely referees of games others play, waving red flags.¹⁵ As safety belts, courts cannot ensure the very basics of their task.¹⁶ Also, it takes too much time to wait for education, and the next generation. We do not have the time. So it is on you, too, the legal community, lawyers. Elderson also said that “central banks do have specific responsibilities in this context.” I add that all of us do.

In fact, this is not a time to relax. These days more than ever, you must, we all must respect and implement the law, whether you like it or not. A relaxed attitude, “whatever it takes”, “pragmatism” or “flexibility” – all within the legal boundaries, even and maybe even exactly in times of crisis. Otherwise, you allow for autocrats to follow suit, and risk the rule of law entirely. Also, dismissive or snotty remarks are not in order. “Overregulation”, “bureaucratization”, “judicial activism”, “constitutionalization”, “rights inflation”, or “those” politicians – whether you like it or not: Do not join the autocrat’s populist chorus of “common sense” and the “true will of the people”. They seek to replace law with their version of efficiency, and this may be tempting in economics, including monetary politics, but I am sure you can withstand the temptation. And again, criticism is fine, and any attempt to enhance the legal system. But snotty dismissals are not.

Finally, do good and talk about it. Elderson said that the rule of law is “laying the very foundations for, and safeguarding trust in, money”, be it coins, paper, or digital numbers only, to deliver on your mandate and protect your independence. He is right. But this is also not enough. Just as other actors, including courts, need to get better in explaining what they do, to justify the power they are entrusted with, central banks need to explain what they do, and why, in the field, and to the general public. It is easier said than done, but independence is no license for silence. Independence, under the rule of law, also means accountability. This calls for good, fair and transparent internal practice¹⁷, as much as it calls for best external practice. Namely, since central banks, similar to constitutional and human rights courts, are designed “to mitigate a time-inconsistency problem”, and navigate in a multi-level system of governance, a

¹⁵ The ways courts work must earn the trust they need, and the independence they enjoy, similar to central banks. I describe the practice of the German Federal Constitutional Court in Baer, Susanne (September 15, 2025). Rote Linien. Wie das Bundesverfassungsgericht die Demokratie schützt.

¹⁶ In German constitutional theory, this is known as the “Böckenförde Diktum”, by former Justice Ernst-Wolfgang Böckenförde („Der freiheitliche, säkularisierte Staat lebt von Voraussetzungen, die er selbst nicht garantieren kann“.), originally referring to the secular nature of the state.

¹⁷ It is leading by example. This is why a letter from the chair of the ECB staff committee accusing the ECB of becoming an “unaccountable legal fortress”, because of “widespread complaints of favoritism, high burnout rates and the vulnerability of many colleagues working under temporary contracts” (<https://dailyhodl.com/2025/07/30/central-bankers-at-ecb-accused-of-behaving-in-anti-democratic-way-refusing-to-respect-rule-of-law-report/>) is more than an internal matter.

“Verbund” of actors inextricably linked to each other¹⁸, they must accept all checks and balances, and explain what they do, how and why.

All in all, you need to stand up, and if needed step up, for the rule of law, as a necessary ingredient of democracy including fundamental rights, and be sure all of it deserves the label. Counter the populist chorus and do not allow autocrats to enlist you, but explain and defend the law, specifically when it is in your way, too.

When there is little enforcement of rules - demand it. When there are too many, revise, but do neither circumvent nor denounce. Wrong way.

When people criticize rules, or courts, fine – go talk about it, argue, but do not easily dismiss, or attack. Make the law and courts do better, but defend democracy, the rule of law, dignity and equal liberty, for all. So when courts are called “overly activist” (and imagine what a passive court would be: not doing its job!) – explain the system. Maybe argue for an upgrade (but not withdrawal, no generally lighter touch, but a nuanced commitment to the law) but ultimately defend it. When courts are called “illegitimate”, or “lacking democratic legitimation”, or when law is called “ignorant” or “obviously wrong” (because lawyers have “no clue” about finances, the economy, money) – explain why lawyers are not bankers, but that bankers are bound by law, and defend the rule of law if needed.

We are all in one boat. To quote Elderson again: “Populist, anti-establishment, and anti-expertise approaches that challenge independent institutions, focusing on their lack of direct connection with the “will of the people”, often fuel general mistrust against such institutions and target them sweepingly.” Media, education and research, courts and, eventually banks – we all have reason to worry. As lawyers, in whatever function, you are needed now. As citizens with a voice – you are needed very much right now. As human beings, as people with empathy who care – you are very much in demand.

So do not wait for a polite but devastating letter. The rule of – not any, not only instrumental law – is indispensable, in and for Europe, and beyond, for real people. Do not allow us to get near tipping points. Act now.

¹⁸ This link is not a hierarchy but more similar to a mobile, an image used by Renate Jaeger. The concept of a “Verbund” applied to constitutional courts has been featured by Andreas Voßkuhle (2009): *Der europäische Verfassungsgerichtsverbund*, TranState Working Papers, No. 106, Universität Bremen. Important EU law rulings are ECJ, *Ilmārs Rimšēvičs and European Central Bank v Republic of Latvia*, Joined Cases C-202/18 and C-238/18, para. 69; *European Commission v Republic of Slovenia*, C-316/19, para. 83.