

**Multi-Disciplinary Approaches in Rule of Law Focused
Civic Education Programs**

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I would like to thank the PROLAW faculty for giving me the opportunity to delve into my long-held rule of law interests. For over six years I have tried to bring validity to the below described less popular rule of law perspective.

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I am sure every student says this, and PROLAW faculty probably get tired of hearing it, but this has been the most enriching year of my life – academically, professionally, and personally. I feel like I have grown several years over the past 13 months.

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Table of Contents

Executive Summary	4
Introduction	5
The Existing Decay & Future Projections	7
Non-Traditional ROL Program Implementation – A Second-Generation Approach	9
Social Capital – Its Cohesion and Norms	10
Harnessing Youth as Safeguards and Champions of the Rule of Law	11
Theory of Change II	14
Summary Statement	14
Problem Statement	14
Overall Goal.....	15
Theory	15
Actors	16
Assumptions.....	16
External Risks/Context	16
Conclusion	17
References	19

Executive Summary

In an attempt to avoid sampling too many bodies of thought and running the risk of concocting a recipe for incoherence – the main purpose of this document is to examine the role of rule of law-focused civic education as a mechanism for addressing rule of law challenges and mainly discussing the limitations of the espoused traditional model. A number of interconnected bodies of thought are highlighted throughout this document at an attempt to combine these thoughts in a manner that sheds light on the benefits of developing rule of law programs aimed at changing social behaviors and attitudes about the rule of law in youth through educational initiatives and settings. With the inclusion of two separate theories of change laid out, intended to retroactively examine one non-governmental organization's¹ efforts to deploy rule of law-focused citizenship education in the United Kingdom (UK)² and a second more wide-reaching theory of change with a multidisciplinary approach targeting underlying social behaviors and attitudes. To undertake this study a qualitative research methodology was adopted. **Due to privacy agreements made with the collaborating organization, the first theory has been removed.**

¹The Bingham Centre for the Rule of Law forms part of the British Institute of International and Comparative Law. Launched in 2010, the Centre is an academic institution devoted to the study and promotion of rule of law, comparative research, discussion and training. This includes the 2014 launch of its first phase of Citizenship Education and the Rule of Law project for schools in the United Kingdom.

²This document does not claim to give definitive answers on the Bingham Centre's efforts in citizenship education.

Introduction

There are varying scholarly definitions of what constitute the rule of law, generally, most descriptions return to a basic premise: that laws within a state are clearly defined, followed, and equally applied to all, regardless of position or status. In all cases, the limits of power will be followed. Furthermore, government must have complete understanding of the laws within its state and exercise self-restraint when extending its power over citizens and noncitizens alike. For the purposes of this document, the laws themselves must also preserve fundamental human rights.³

Despite the multifaceted nature of the rule of law, the primary mode of operation when crafting approaches toward the advancement of the rule of law occur through a legal lens at the structural and institutional level – efforts aimed directly at reform, establishing new mechanisms, and the creation of various initiatives⁴. The lack of intentional integration between philosophical, sociological, and legal lenses is an opportunity missed. This document aims to highlight one of the rule of law's less tangible but important lenses, the sociological lens. Cognitive socioemotional experiences, skills, and underlying social behaviors and attitudes in individuals within institutions are often overlooked at the onset of program design. The sum of these individuals' deeply held attitudes and beliefs play either a favorable role in strengthening or hindering the rule of law. Rule of law practitioners will find themselves hard-pressed to discover

³Thomas Carothers, *The Rule of Law Revival*, 77 *Foreign Affairs* 95 (1998)

⁴Stein, Danielle and Craig Valters (2012) 'Understanding Theory of Change in International Development', JSRP Paper 1 (JSRP and TAF collaborative project), August, [http://www.theoryofchange.org/wp-content/uploads/toco_library/pdf/ UNDERSTANDINGTHEORYOFChangeSteinValtersPN.pdf](http://www.theoryofchange.org/wp-content/uploads/toco_library/pdf/UNDERSTANDINGTHEORYOFChangeSteinValtersPN.pdf).

that they are often unable to replace or create the momentum necessary to entrench these virtues into a state's foundation despite holding trainings, roundtables, workshops, and study tours.⁵

Oliver Wendell Holmes Jr., an Associate Justice and Acting Chief Justice on the United States Supreme Court in the early 1900s, stated, "The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics."⁶ Judges and prosecutors play a key role in the defense of constitutional law, safeguarding the abuse of individual rights; the prevention of the politicization of justice; and, overall deterrence of excesses by elected officials. However, citizenry resilience in the form of civil society organizations (CSOs), protests, participation in multilateral bodies, and overall active monitoring of ethical standards of public service make for an energetic and legitimate opposition to those that attempt to encroach upon the rule of law.⁷ A resilient citizenry is capable of recognizing trespasses that may endanger the fabric of the rule of law only when it is educated in the basic tenants of the rule of law. John Dewey, an American philosopher and psychologist, influential in American education and social reform stated:

A society which makes provision for participation in its good of all its members on equal terms and which secures flexible readjustment of its institutions through interaction of the different forms of associated life is in so far democratic. Such a society must have a type of education which gives individuals

⁵ Robert Cooter, *Do Good Laws make Good Citizens? an Economic Analysis of Internalized Norms*.(Symposium: *The Legal Construction of Norms*), 86 Va. Law Rev. 1577 (2000)

⁶ Oliver Wendell Holmes, *The Common Law* (1881)

⁷ Freedom House, *Democracy in Retreat*, [2019]), available at

https://freedomhouse.org/sites/default/files/feb2019_FH_FITW_2019_Report_ForWeb-compressed.pdf

a personal interest in social relationships and control, and the habits of mind which secure social changes without introducing disorder.⁸

The Existing Decay & Future Projections

Particularly in an era where trust in democratic institutions is waning while a rise in populism and a rejection of international institutions takes hold across the globe. Democracies around the world are deconsolidating and moving toward other, less democratic, forms of rule supported by large numbers of their citizens¹⁸. This document does not equate increased rule of law-focused civic education as an antithesis to populism, however, it is important to note that populism has been previously equated with a weak critical civic society. Freedom House defines populism as:

. . .a mystically unified ‘nation’ against corruption ‘elites’ and external enemies, and claims for a charismatic leader the power to voice the will of the nation. It is therefore fundamentally illiberal, rejecting diversity of identity and of opinion within society and discarding basic principles of modern constitutional thinking: that democracy requires constraints on the will of the majority and checks on the decisions of the executive.¹⁹

A variety of extraneous factors have resulted in sustained attacks on institutions safeguarding the rule of law and democracy. Economically fragile nations, with deep seated class or ethnic conflicts have undergone the growing pains of an everchanging globalized world, where stable jobs are lost to technological advances and competition. As large swaths of citizens are left behind, the swelling anger and frustration in combination with flawed political behavior such as corruption and lack of transparency, has created a perfect storm occasion for classic

¹⁸ Ronald Inglehart, *The Age of Insecurity: Can Democracy Save itself?* 97 Foreign Affairs 20 (2018)

¹⁹ Nate Schenkkan, *Nations in Transit 2017: The False Promise of Populism* available at: https://freedomhouse.org/sites/default/files/NIT2017_booklet_FINAL_0.pdf

political strongmen to take advantage and take hold.²⁰ In addition, the steady and stark rise of migration continues partly due to the long-ignored effects of climate change. These migratory flows compound distrust and engender “otherness” both of which are detrimental to the culture of lawfulness necessary for strong rule of law to flourish.

Rising tensions among and within countries are having a stark effect on the amount of aid distributed from public sector funds. Donor priorities must be aligned with states who seek to exempt themselves from the existing international order in which their perception of compromise on the international playing field is detrimental to an already vulnerable and fragile national situation. Sweden, for example, has found itself forced to redirect funding from international development assistance to integrating the large groups of asylum seekers, migrants, and refugees flowing into their states.²¹

As critical situations continue to unfold across the globe, individuals are likely to tolerate and welcome authoritarian transactions promising to protect their safety. Across the globe, constitutional laws permit the overreach of power during emergency situations. These ambiguities were not created with the intent of enabling a consolidation of power, however flawed institutions and political actors take advantage of these to infringe on the rule of law.²² Classic political strongmen rely on dissatisfaction, uncertainty, and fear as they offer simple scapegoat solutions to complex multifaceted economic problems.

²⁰ Yascha Mounk, *Pitchfork Politics: The Populist Threat to Liberal Democracy*, 93 *Foreign Affairs* 27 (2014)

²¹ Boris Podobnik et al., *Predicting the Rise of EU Right-Wing Populism in Response to Unbalanced Immigration*, 2017 *Complexity* (2017)

²² *Ibid.*

Non- Traditional ROL Program Implementation - A Second-Generation Approach²³

Ironically, once a beacon of hope regarding freedom and democracy the United States has also consistently fallen in ranks across a number of indexes measuring these markers such as the World Justice Project's Rule of Law Index. The index indicates the United States has consistently lost one spot in the total rankings per year²⁴. Regardless, the United States remains one of the largest donors of governmental aid across the globe, yet its efforts to promote the rule of law abroad have often yielded little progress. Traditional program design contains a carte du jour of standard selections previously implemented in other countries across several decades. These options include but are not limited to the following: technical assistance with themes focused on institutional capacity building, judicial and police reform, alternative dispute resolution, continued legal education, constitutional legislation drafting, among others. In the United States specifically, these programs are largely a consequence of congressional budgets demanding quantitative-based results, where the targets measured are oftentimes irrelevant to the desired overall impact and outcomes.

First generational approaches to rule of law reform, defined in 2012 by Rachel Kleinfeld views "weak institutions as the primary problem – particularly institutions that comprise judicial systems. Framing this first-generation approach is the antiquated perspective that at the highest levels of the judicial system are judges whose decisions are the judicial systems' only "product".²⁵ Naturally, an emphasis is then placed on judges and their instruction all the while ignoring the many actors across and array of disciplines that make the sum of the judicial system

²³ Rachel Kleinfeld, *Advancing the Rule of Law Abroad : Next Generation Reform* (2012)

²⁴ World Justice Project Rule of Law Index, available at, <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019>

²⁵ Waleed H. Malik, *Challenges of Forging Civil Society Partnerships for Judicial Reform*, [2000]), available at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/VenezuelaPaper.pdf>

– legal professionals, forensic scientists, sociologists, and among other key actors and users.

While this antiquated approach oftentimes attempts to duplicate Western institutions, the difficulties lie chiefly in the broader relationship between the state, society, and their shared “social contract”.

Kleinfeld urges changes in the structures of power and popular support for the rule of law to achieve fundamental reforms. Garnering such support is possible through institutions within civil society including institutions of education. This document does not intend to discount the vast efforts put forth by rule of law professionals and international assistance institutions thus far, however, given the ongoing and impending global changes experienced, including the aforementioned decline in democracy and overall rule of law, practitioners are long overdue for an innovative strategic approach.

Social Capital – Its Cohesion and Norms

The Organization for Economic Cooperation and Development (OECD) findings on social capital’s inherent role in a state’s well-being clearly demonstrate the long-term benefits of social investment in children through education via the coordination of different policy domains²⁶. Social capital is defined as, “networks together with shared norms, values and understandings that facilitate co-operation within or among groups”²⁷. Social cohesion, a term that is often seen as ambiguous and difficult to measure is a concept relevant to rule of law practitioners and remains of interest to politicians and policy makers²⁸. Many of the populist sparks igniting a desire to return to the past around the world, whether through slogans such as,

²⁶ Tom Healy, *The Well-being of Nations : The Role of Human and Social Capital* (Sylvain Côté et al. ed., 2001)

²⁷ Cooter, *Do Good Laws make Good Citizens? an Economic Analysis of Internalized Norms.*(*Symposium: The Legal Construction of Norms*), 1577

²⁸ Nan Lin, *Social Capital* (1. publ. in paperback ed. 2010)

“Make America Great Again” or “Take Back Control”, can both be linked, in part, to a lack of social cohesion²⁹. Although societal trust and respect for the government is generally left to citizens’ social networks to encourage civic virtue³⁰, encouraging societal trust and respect between citizens is different. Understanding the relationships between social structures, institutions, and how internalized values are distributed is paramount to crafting or influencing the social determinants, unwritten rules, and intangible necessities that both glue society together and either bolster or hinder the rule of law. As described above – individuals across the globe are leaning into isolated and removed notions of identity rather than toward the previous resilient principles of integration. Principles put in place after the creation of the now loosening international order.

This document does not intend to signal that the strengthening of these is the panacea or only factor to consider when designing rule of law programs. It is well understood that social capital, cohesion, and norms are never spread evenly socially or geographically. Income inequality, scarce resources, and failure to meet basic needs are the first determinants that undermine and erode social capital.

Harnessing Youth as Safeguards and Champions of the Rule of Law

By expanding both the understanding and responsibility to protect the rule of law to include youth, one brings new actors, not yet tainted with disillusion. Actors that will understand, from an early age, the indispensable civic goods enabled and guaranteed through the rule of law

²⁹ Jane Jenson, *Identifying the Links: Social Cohesion and Culture CIRCLE-CCRN Round Table 2000*, 27 Canadian Journal of Communication 141 (2002)

³⁰ Ibid, Cooter, *Do Good Laws make Good Citizens? an Economic Analysis of Internalized Norms. (Symposium: The Legal Construction of Norms)*, 1577

as well as inculcating attitudes and behaviors toward one another and themselves that ensure its impermeability.

A joint publication by UNESCO and the UNODC titled *Strengthening the Rule of Law through Education: A Guide for Policymakers* explores the important nexus between education and promotion of the rule of law and building new forms of engagement based on an idea of global citizenship, human rights, and inclusion. This report delves quite heavily, potentially more than any other major intergovernmental body has in the past, into the social transformation required to obtain long-term sustainable rule of law strengthening. This report further bolsters Kleinfeld and others who have, in recent years, begun to point to the consideration of underlying social behaviors and attitudes.

In addition, another insightful report published just two months after the release of the above-mentioned UNESCO/UNODC report supported by JUSTRAC focusing on rule of law norms transitioning societies, particularly in post-communist Eastern Europe. Their findings indicate that cultural norms and habits created under authoritarian rule, will hold long-lasting effects that are counterproductive to a culture of lawfulness. The report points out the lack of clarity regarding support for the rule of law in people's everyday lives – particularly in schools which function as “community hubs”.³¹

The need for a more practical focus in development programs, including education initiatives, on the social underpinnings of sustainable change. A clear understanding of relationships between social structures, institutions, and how internalized values are distributed

³¹ E. Doyle Stevick, *How can Schools Promote Rule of Law Norms in Transitioning Societies?*, April 2019, available at, <http://justrac.org/wp-content/uploads/2019/04/Stevick-How-Can-Schools-Promote-Rule-of-Law-Norms-in-Transitioning-Societies.pdf>

among citizens is crucial in deciphering how attitudes and behaviors are shaped and proliferated to then create programs and spaces to alter these.

“The only way to keep a democracy from slipping into corruption, tyranny, and degeneration was the careful education of all its participants . . . every citizen also had to be a decent person”³² Such safeguards do not arise without careful cultivation, through growing societal cohesion and agreement around social norms. Can education in young children provide the means to instill such values of ‘decency’? Hobbes and Bentham acknowledge that due to human nature being "deficient in altruism," people require some "threat of coercion to encourage them to seek majority interest rather than their own.”³³ In working towards the objective of fostering social capital and appreciation for the rule of law, civic education programs must balance some degree of coercion with a sense of community and communality.

If such civic education programs center on instilling values of equality while deconstructing gender norms, racial divides, and assumptions of "otherness," these programs would inevitably encounter opposition from traditionalist attitudes embedded in the home and school settings. In Donnelly's examination of the nexus between law and social change, he acknowledges the challenge of identifying rights norms shared across the “within the horizons of different cultures”.³⁴ Any civic education program which aims to build consensus and connection to a set of norms to be regarded as foundational across society would therefore require a high degree of buy-in from stakeholders in all sectors.

³² Sherry Schwartz, *The Origins of History's Mission in America's Schools: A Case Study of Hannah Adams*, 29 *Theory & Research in Social Education* 212 (2001)

³³ Barbara A. Misztal, *Trust in Modern Societies : The Search for the Bases of Social Order* (1996)

³⁴ Samuel J. M. Donnelly, *Reflecting on the Rule of Law: Its Reciprocal Relation with Rights, Legitimacy, and Other Concepts and Institutions*, 603 *Ann. Am. Acad. Pol. Soc. Sci.* 37 (2006), available at <http://www.jstor.org/stable/25097756>

Rule of law implementers abroad have experienced success in using the rationale of economic growth to promote awareness and respect for rule of law as a public good. In regard to programs centered on the cultivation of egalitarian norms; this type of concrete justification might prove most effective in expanding the model of technical assistance provision to include such undertakings.

Theory of Change II

To undertake this study a qualitative research methodology was adopted to construct two separate theories of change. These theories seek to explain how an intervention is assumed to contribute to a chain of results that produce the intended or actual impacts.⁹ Due to privacy agreements made with the collaborating organization, the first theory has been removed.

The second theory of change presented draws from the above-mentioned theories, data, and highlights that point toward a more innovative potential nexus between the use of education to instill the premise of rule of law in society's next generations.

Summary Statement

IF the program increases knowledge of the rule of law and its components through theory driven design with a focus targeting socio-emotional learning, empathy, self-efficacy, and a removal of otherness among young students of different backgrounds **THEN** an increased understanding in the rule of law coupled with an increase in social cohesion or a desire for cohesion among the students will lead to a more robust culture of lawfulness and future positive impact on rule of law strengthening.

Problem Statement

The problem described is two-fold. While the onus is largely on countries to protect the rule of law and human rights. It is also important to imbue a basic understanding of the rule of law within citizens (described in introduction). Without this, they are unable to recognize when they

are being pitted against one another and their constitutional rights curtailed. This statement does not suggest that obedience to authority within the classroom be inculcated in children, but that children firstly come to respect and understand one another. Citizens' inability to counter the untrue narratives and their acceptance of authoritarian forms of rule disables them from identifying the true aggressor.

Likewise, this statement identifies that although traditional components of rule of law programming are not without their importance, they are ever-weakened by a refusal to acknowledge and lend space to the social underpinnings required to catalyze long term change. Individuals comprising institutions and communities contain within them the capacity to become agents of change. Without inciting change within these individuals, long-term impact may prove impossible.

Overall Goal

Enhancing students' knowledge of the rule of law dependent on their age (ie: above mentioned "character education programs" at the elementary grade level). Removal of otherness aiming to increase critical thought and social cohesion among students. And ultimately, imbuing long-term attitudinal and behavioral shifts toward one another creating a cooperative culture of lawfulness.

Theory

Drawing from Durkheimian theory regarding "the noncontractual basis of contracts", there exist small windows of opportunity through which the introduction of certain values or critical thought may positively influence how actors typically engage with institutions, politics, law, and each other. Embedded assumptions implicit between actors have the potential to change in a way that instills certain social norms conducive to upholding the rule of law.

Actors³⁵

<i>Intended Beneficiaries</i>	Students Larger citizenry as student ...
<i>External Stakeholders</i>	Existing rule of law-focused civic education initiatives. Policy makers within the realm of social studies and civic education in the program's respective country of implementation. Rule of law practitioners, both academic and implementers. Experts in social sciences/civic education.

Assumptions

- This approach assumes that there exists sufficient ground for collaboration across different disciplines.
- Assumption that teachers will have the experience and resources available to implement the proposed immaterial aspects of the program.
- Assumption that time and funding exist for a lengthy process of research and development of a design and strategy for implementation.
- Assumption that immaterial aspects of the program will have accurate enough proxies to measure impact attributed to the program.

External Risks/Context

- Areas of disagreement where social norms and capital may differ for religious, political, and other reasons may threaten the fabric of the overarching goal.
- Education and investment in youth generally fall low on governmental agendas both strategically and monetarily across the globe³⁶.

³⁵ Implementing actors have been intentionally left out.

Conclusion

Teaching with an aim to imbue a permanent change of character. Programs require more wide-reaching design and implementation through theories and practices shown to successfully address underlying social behaviors, norms, and attitudes among beneficiaries.

This document in no way intends to discredit the creation of a general and universalized manual using more traditional methods of civic education. Particularly as it recognizes the dangers in “social stratification of knowledge” where lack of civic education and information in schools and areas with high-poverty rates contribute to continued division, further inflaming political and ideological divides³⁷.

It does suggest, through two separate theories of change, that organizations that have taken on the uphill battle of civic education, and other education initiatives in general, should also take into consideration the potential within children to truly understand and internalize behaviors toward themselves and one another that they may later carry through to their adult lives. Values and behaviors that may catalyze them into action or dissent, or; at the very least, a clear understanding of when those in power attempt to utilize otherness and fear for their gain.

The JUSTRAC supported report analyzing post-communist states and the hindering cultural and social habits created by communist rule, provides concrete activities that rule of law

³⁶ Brookings Institution, *Seven Facts About Global Education Financing*, (2014), available at, <https://www.brookings.edu/blog/education-plus-development/2014/02/20/seven-facts-about-global-education-financing/>

³⁷ Elizabeth R. Hinde, *Civic Education in the NCLB Era: The Contested Mission of Schools*, 2 *Journal of Curriculum and Instruction* (2008)

practioners might consider when attempting to change these. They make a clear distinction between traditional “civic education” courses and “civic learning” which should permeate every aspect of a students’ life so as to encourage them to make self-efficient and ethically sound decisions³⁸. Through the design and implementation of multidisciplinary or cross-sectoral programs, these initiatives might have more sustainable long-term impact. There exist formal means of engagement between the citizenry and government, but substantively enabling people to trust their institutions and the society they inhabit will necessitate change on a cultural and social level in which the benefits of the law are understood, respected, and promulgated³⁹.

Given the current polarization and general politicization experienced globally, one may think such a proposal as radical. Humanity may be at the brink of experiencing another momentous pivot in history where a radical proposal may be timely. There exists, of course, the impossibility of planning given the spontaneity of intricate relationships amongst humans, institutions, and global occurrences. However, dedicating time and resources to the betterment of society are resources well spent. Particularly as international organizations, academics, and individuals are clearly beginning to brainstorm and publish concrete suggestions for instilling these crucial “unwritten norms and intangibles”. Creating a society of “good humans” and attempting to instill virtues over a lifetime begins in formative years, when children have the potential to participate and become enthralled with the systems and individuals around them.

³⁸ Ibid.

³⁹ UNESCO/UNODC, A guide for policymakers, *Strengthening the Rule of Law through Education*, https://www.unodc.org/documents/e4j/UNESCO/2795_18_Global_Citizenship_Education_for_the_Rule_of_Law_gris_complet.pdf

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