

**Does the Rule of Law Habitus Exist?**

Cultural Conditions for the Functioning  
of the Rule of Law

Doctoral Theses

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## Research Objectives

‘I believe the way out is not in eliminating or relativizing content, but in renewing it. Worn-out concepts and ideas gain strength when placed in new contexts.’<sup>1</sup> The aim of my research is to reposition of a ‘worn-out concept’, the rule of law, in new contexts, hoping that this theoretical work will also contribute to renewing the power of the rule of law as a social concept. The research has gradually organized itself around this goal, partly in response to the ongoing public law transformation, and the literature review and empirical experience have made the legal culture of the legal profession the most important issue under study. Overall, my research explores the role of the rule of law habitus in the formation, daily operation, and erosion of the constitutional institutional system through the sociology of law approach required by the topic.

The thesis is therefore primarily concerned with the historical and contemporary aspects of the culture of the rule of law in Hungary. The examination of the legal culture of legal professionals is particularly emphasized because this professional group is not only subject to the law as every member of society does but also actively shapes and influences it as lawmakers and even as legal practitioners. Moreover, legal work has its own professional rules, similar to construction or medicine, and the professional ethos requires lawyers to practice their profession to the highest standards of service, in the Weberian sense of professional ethics.<sup>2</sup> Professional dedication, therefore, has ethical content, and since the foundation of professional rules for legal professionals is based on the principles of the rule of law, their professional ethics cannot be understood without a commitment to the rule of law. It is a 'code' of jurisprudence that cannot be replaced by syllabi of efficiency, public sentiment, or political will.

Considering all this, the concept of the rule of law is a key element in the study of legal culture, and it is no coincidence that the reflection on the concept is a recurring element in the thesis. As the theoretical grounding shows, the requirements of the rule of law have changed over time and place, and this constitutional principle, in the now widely accepted substantive – power-limiting – sense, consists of multiple elements. The law imposes a constraint on arbitrary exercise of power, political elites, or the mere will of another person simply by existing: this formal requirement, i.e. the predetermined, predictable, unambiguous nature of the law, is one of the earliest – and still the most emphasised in domestic legal culture – elements of the rule of law. But

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<sup>1</sup> István EÖRSI: *Időm Gombrowiczcsal* (Budapest: Pesti Szalon 1997) 308, quoted by Gábor Attila TÓTH: „Szemben az árral” *Élet és Irodalom* 31 October 2019, <https://www.es.hu/cikk/2019-10-31/toth-gabor-attila/szemben-az-arral.html>

<sup>2</sup> On the ethical content of the profession, see Max WEBER: *Protestant Ethics and the Spirit of Capitalism* (Budapest: Gondolat 1982)

the other, substantive element is equally important: the executive power must be genuinely limited, supported by institutional guarantees and, not least, the culture of operation, the enforcement of both written and unwritten rules. In addition to the meaning of the rule of law, the relationship between the rule of law and a number of elements that are part of the context of the concept (constitutionalism, democracy, autonomy, etc.) also needed to be clarified. By synthesising the formal-content and contextual features thus identified, it became clear that the study of the rule of law required a focus on the sociological aspect of it.

The hypothesis of the research suggests that this sociological aspect is best captured by expressing the rule of law in Pierre Bourdieu's concept of habitus. His concept of habitus includes past, present and future – the history of the social environment 'incorporated' through socialisation, as well as present patterns of perception and evaluation and anticipations of the future – primarily in a pre-perceptual, unreflected state. However, habitus is not a rigid, habitual adherence to tradition, nor is it the realm of rational decision-making; it is a system of ingrained dispositions that allow both concerted social practices and a flexible, creative relationship with the world. I considered the rule of law as one deeply embedded component of this multifaceted mental structure, a conception and consequent practice from which a culture of the rule of law of a political community can be built.

According to this hypothesis, therefore, reactions in situations with a stake in the rule of law are not spontaneous, momentary responses, nor are they the result of rational considerations or the mere pursuit of a set of values, but the combined effect of several components, primarily the combined influence of socially predisposing factors prone to reproduction. The sociological concept of the rule of law, particularly its interpretation as habitus (on a macro level as social practice), broadens the conventional legal and political approach, supplementing their institution-centric concept of the rule of law by sociological and social-psychological determinants thus interpreting it as a perceptual, evaluative, and action schema. Alongside the habitus concept, I also interpreted the rule of law as a field, outlining a meta-field emerging as an intersection of several subfields (legal-bureaucratic, political, cultural, social, economic), capable of representing all aspects of the sociological perspective.

The starting point of the research was thus that the components of the rule of law habitus can be identified in relatively constant elements. As explained in the thesis, I have identified personal and professional autonomy as such elements, in addition to the substantive notion of the rule of law. From this hypothesis, numerous research questions can be formulated, but due to temporal and spatial constraints, this thesis focuses on three subthemes: the consequences of legal

professional division arising from different concepts of the rule of law in stabilizing autocratic systems, as primarily demonstrated through the analysis of the public law debate before the 2022 elections; everyday coping strategies for adapting to the existing system, revealed through life-course interviews with legal professionals; and as a contrasting pole, the potential system-breaking role of the rule of law habitus, also emerged in the empirical studies.

## **Research Methods**

The theoretical part of the research discusses the conceptualization of the rule of law and related terms (legal consciousness, legal culture, habitus, autonomy, etc.) according to different fields of science. It presents legal dogmatic, legal philosophical, conceptual-historical, political science, and legal sociological concepts based on literature sources and the domestic public discourse.

The empirical section of the thesis employs a novel methodology resulting from the novel conceptual approach, because the nature of the rule of law habitus as described above cannot be captured by the necessarily oversimplified perspectives of democracy or the rule of law indices, nor by the predetermined and essentially hypothetical options in questionnaires. The functioning of the rule of law habitus can be observed in narratives, in everyday practices that often unconsciously report on the real situation. I therefore tried to explore the rule of law culture of lawyers through semi-structured interviews, in contrast to the traditional questionnaire method, while the discourse analysis of the public law debate preceding the 2022 elections provided an exceptional opportunity to examine the broader professional understanding of the rule of law. The first examination thus revealed the components of legal professional socialization, attitudes, and ethos through life-course interviews, uncovering experiences embedded in stories. In this context, the research questions focused on legal professionals' concept of the rule of law, their related attitudes, and practices, identifying, case by case, their everyday coping strategies of living under an authoritarian regime. In the case of the public law debate, the same criteria were examined through documentary analysis of articles and speeches on the topic.

## **Results of the Research**

### *1. The Concept and Descriptiveness of the Rule of Law Habitus and the Rule of Law Field*

The rule of law habitus appears to be able to capture more effects compared to the traditional sociological category of legal consciousness, since the historical experiences embedded in habitus

refract the effects of state regulation as a much more complex filter that goes beyond legal knowledge and conscious volitional-emotional reactions. Habitus carries a socially derived component which activates in legal compliance, for example, the disposition towards opportunism, reconciliation with the powers traceable to generational experiences. Or even inclining towards legal avoidance also based on a social experience of unenforceable fundamental rights. The unconventional methodology of examining legal habitus through semi-structured interviews made it possible to uncover precisely such motives: the hopelessness of changing the existing order – institutional, political, cultural – was, for example, an almost unconsciously given explanation in the narratives of many situations with a rule of law dimension.

The rule of law field, defined as an intersection of political, legal-bureaucratic, cultural, social, and economic fields, also proved to be a realistic model. Both theoretical overviews and empirical analyses supported the crucial role of these fields in promoting the rule of law. Besides the prevailing of political and legal logics, the significance of the cultural embeddedness of the rule of law idea was evident from historical examples and the analysis of interviews and the public law debate. Social and economic resources facilitate the assertion of rights among laypeople, enabling consistent representation of allegiance to the rule of law among professionals, for example, through the establishment of existential independence, the importance of this condition was also confirmed in the interviews with lawyers. The significance of the bureaucratic field lies in the operation of the institutional background of the rule of law, as demonstrated, for example, in theoretical conclusions and empirical findings on the advancement of professional agents, deployable capital, institutional and personal safeguards for checks and balances.

## *2. Empirical Demonstrability of the Existence of the Rule of Law Habitus*

According to the hypothesis formulated in the introduction, there exists a rule of law habitus that can serve as a counterbalance to institutional structures. Whether this will indeed be the key to change can only be answered by the future. However, the crucial role of habitus in rule of law processes has been indicated by the many connections examined in my thesis. According to Bourdieu's theory, the legitimacy of the existing system is caused by a habitual factor, the feeling of 'aesthetic satisfaction', which is based on the prereflexive harmony between socially institutionalized mental forms and the reality of things. Since structures are thus constantly reproducing themselves, change is also to be expected primarily from habitus. This insight from Bourdieu was supported by analyses of significant events in Hungarian history, reviews of the antecedents and the post-transition situation of the rule of law have always indicated the alignment

of historical decisions, the practices of the ruling elite playing a role in them and the society subjected to them.

The recommended institutional reforms to solve the crisis of the rule of law and also the strengthening of direct democracy are inconceivable without the support of mental structures, this conclusion is drawn, among others, from the chapters on the future of the rule of law. The history of ideas provides a wealth of historical experience to show that democracy and the rule of law require the people's commitment to freedom, that it is not the lack of a written constitution that undermines the rule of law in the long term; rather, it is the habitus of uncritical subordination. Acceptance of pluralism and the ability to coexist with uncertainty are essential for developing resistance to autocratic promises and adapting continuously to changing circumstances. Civilization, the ability for self-regulation, sensitivity to the values and interests of others, the 'trust model', and the 'revolution of souls' are all building blocks of a political system based on the symbolic capital of sociality and cooperation. Furthermore, according to the action-theoretical starting point of the postmodern conception of science, individual action unfolds in the free playground of the gaps between different normative systems, also reflecting the social role of habitus in this approach. The new understanding of legal culture and legal pluralism explicitly builds on the idea of a legal system that allows for the expression of different habitus. Another important element of community-building mechanisms is the existence of common belief systems, corresponding to Bourdieu's concept of doxa. Science must also preserve its autonomy to preserve the notion of the rule of law and to continually reinforce it in society. And this autonomy, like any institutional operation, is largely a function of the habitus of the agents involved, too.

### *3. The Determining Role of the Rule of Law Habitus in the Domestic Fate of the Rule of Law*

The elements of habitus that play a role in the operation of the rule of law emerge from the analysis: perception of reality, openness to change, and a certain degree of firmness in the idea of the rule of law are necessary for these dispositions to mobilize rule of law responses. Therefore, the two empirical studies presented in the second part of the thesis focused on identifying these habitual elements (self-respect and entrepreneurial spirit formulated as personal and professional autonomy and the rule of law concept of legal professionals).

Due to the small sample size of the lawyers' life-course interviews, definitive conclusions cannot be drawn, but each of the 14 narratives supported the alignment of attitudes identified above for those who mobilised rule of law strategies and the absence of an element for those who did so only under the influence of compelling circumstances (e.g. moral conflict) or not at all. For

methodological reasons, the second empirical study analysing the public law debate only allowed for the exploration of one assumed element of the rule of law habitus, the rule of law concept, the processing of proposals for solving the situation is still pending. However, it can be inferred from what has been seen so far that the formal legal concept of the legal profession is a significant obstacle to dismantling the existing autocratic regime.

Overall, the examinations within the legal profession suggest that the habitus of this professional group in many respects dynamizes the field of the rule of law as described in Bourdieu's theory: their family, university, and workplace socialization imprint a certain concept of the rule of law on them for the long term, which then functions as a guiding principle controlling evaluations and actions later in their careers. However, the resistance of the rule of law habitus is largely limited to patterns of thought, for strategies adapt to the game space precisely indicated by anticipations. The field of action is larger in spheres less dominated by the political field, and it is in these spheres that the rule of law habitus is at work: local government administration challenges government instructions, attorney practices resist immoral state orders.

The same dynamic can be observed in the space of forces emerged among participants in the public law debate and the authorities. The concept of rule of law fundamentally influences the criteria by which the participants in the debate form opinions about the system, as well as about the reaction (stigmatisation, sanction or even existential benefits), according to their anticipations guided by the established power structures, their speech will provoke from the power holders. Here, the influence of the rule of law habitus was primarily in shaping the opinions of others, it could only begin its work of system-disrupting in mental structures. However, this debate most clearly demonstrated the efforts of agents to change the rules of the field, this was in fact the stake of the debate. Three years of debate also provided a unique opportunity to observe a 'revolution' in the field because it was not about the daily positional struggle following the rules of the field, but about the struggle to change the rules themselves. That is, the 'subversive' nature of the rule of law habitus was demonstrated in its classical purity.

The innovative, subversive element of habitus in this autocratic system was thus carried by a scientific definition, the concept of the rule of law. In this thesis, therefore, great emphasis has been placed on the interpretation of this concept, including the sociological layer of meaning that has been at the forefront of academic and political struggles. Paradoxically, it is precisely the scientific debate on the concept that has become the main obstacle to the idea's ability to develop its protective effect against arbitrariness, because within the domestic field of the rule of law, not only have individuals from the realms of science and politics come into conflict, but the clash of



different perspectives around the concept has divided also the representatives of science. Thus, the conception of the rule of law divided the positions within the legal field not into two, but into three parts. This, together with making the political representation unsure, significantly reduced the chances of restoring the rule of law, thereby confirming Bourdieu's proposition that in maintaining the *status quo*, the prereflexive harmony between objective and mental structures is a force greater than any pure intention or moral consideration.

Regarding the domestic legal culture, the overall conclusion of the research is that in the current autocratic environment, a non-rule-of-law approach feels natural, requiring no effort. Habitus is a 'practical knowledge', and therefore the rule of law habitus can only fully acquire, 'incorporate' rule of law strategies through use and thus apply them with unreflective ease. The experience of the analysis shows that when autonomy is compromised, incoherent attitudes prevail, but these attitudes are coherent in another aspect: they serve as adequate means of adapting to the transitional period. Meanwhile, signs of another process are also apparent: adherence to the European sense of the rule of law is occasionally capable of thwarting authoritarian intentions. And the images of the rule of law that are part of the professional habitus have become rather sharply divided between 'subversive', legitimist dispositions and positivist attitudes being inadvertently in harmony with the system. The cultural reasons for this primarily lie in the fundamentally different approaches to the legal theoretical tradition.

#### *4. Summary of the Research Results and Their Further Applicability*

The originality of the thesis lies, on one hand, in the sociological concept of the rule of law, and in particular in its understanding as a habit (on a macro-level as a social practice). On the other hand, the novelty of modeling the rule of law as a field lies in the fact that it encompasses not only the law itself but also its enforcement within its logic. The empirical examination of the domestic rule of law culture, especially the application of novel methods in researching the rule of law, adds another layer of originality to the thesis, shedding light on the Hungarian rule of law culture directly in operation.

Based on all of the above, the question posed in the title of this paper can be answered – as a first conclusion drawn from the research conducted so far – that there *exists* a rule of law habitus both in theoretical and domestic experiential terms. To confirm this, it is advisable to further investigate the research topics briefly mentioned in my paper on a larger sample and across various social groups, following the three directions mentioned in the introduction: it is necessary to explore rule-of-law concepts and coping strategies among laypeople, as the authoritarian system's

inclination towards subjugation demands daily mental adaptation from them as well. The dynamics of professional divisions could be examined through focus group interviews, tracking the direct impact of arguments for both the formal and substantive understanding of the rule of law and the underlying assumptions that are likely to emerge. Exploring the system-disruptive possibilities within the legal culture of the legal profession could be instructive when compared with international or even historical case studies, although finding suitable analogies is heavily constrained by the unprecedented and legalistic nature of the autocracy in Hungary. Even seemingly obvious cases, such as the regime changes during the second or third waves of democratization, may not serve as guidance, since the Hungarian situation would be analogous to instances where the regime change did not occur voluntarily through the political will of the reformist wing of the power elite or, at the very least, with their forced cooperation. In our case, we are dealing with a regime that is strongly attached to power and therefore uncooperative even after a possible electoral defeat, as was clearly demonstrated by the far-sighted outsourcing of economic resources and decision-making powers.

The research has shed light on the serious tension created by the clash between the internal logic of law and the political logic challenging it in non-rule-of-law systems. However, nothing precludes the ethos of law from serving a genuine rule of law in Hungary one day. With this in mind, the hoped-for outcome of this research is a performative demonstration of the possibilities of the culture of the rule of law in the process of strengthening the rule of law and the democratic functioning that is inseparable from it.

### The Author's Publications on the Topic of the Dissertation

SZENTES, Ágota: „Közhely vagy közös érték? A jogállamisági vita európai uniós szemmel” *Fundamentum* 2021/4, 63–68.

SZENTES, Ágota: „Számot adni belső rendetlenségekről” *BUKSZ* 2022/1, 3–12.

SZENTES, Ágota: „Profán tudomány, szent politika. A jogállamiság diskurzusa Merton tudás- és tudományszociológiájának tükrében” *Themis* 2022/2, 72–110., DOI: <https://doi.org/10.55052/themis.2022.2.72.110>

SZENTES, Ágota: „Az elgondolható jogállam” *Jogelméleti Szemle* 2022/3, 109–143., DOI: <https://doi.org/10.59558/jesz.2022.3.109>

SZENTES, Ágota: „»A többi, ahogy Hamlet mondaná, néma csend.« Jogászi életpálya-stratégiák a jogállami mezőben” *MTA Law Working Papers* 2023/5, 1–75.

SZENTES, Ágota: „A pluralizmus politikája. Az egyéniség szabadságának társadalomelméleti és politikai filozófiai megközelítései” *MTA Law Working Papers* 2023/10, 1–49.

SZENTES, Ágota: „A pluralizmus joga. Az egyéniség szabadságának jogelméleti és jogszociológiai megközelítései” *MTA Law Working Papers* 2023/11, 1–32.

SZENTES, Ágota: „Hogyan nem jöttünk ki ebből?” *Jogtudományi Közlöny* 2023/1, 49–53.

SZENTES, Ágota: „A jogállam legitimitása. Vázlat a közjogi vita elemzéséhez” *MTA Law Working Papers* 2023/13, 1–14.

### Multi-Author Monograph on the Topic of the Dissertation with the Author's Participation

BÁRÁNDY, Péter, Zoltán FLECK, Ágota SZENTES et al.: *A jogállam helyreállításának kísérlete* (Budapest: Oriold és Társai 2023)