

# **How Rule of Law is Affected by a Global Pandemic**

Amelia Hadfield

Brentwood College School - Grade 12

A pandemic, much like any crisis, is an excellent catalyst for authoritarianism. Definitionally, rule of law must be curbed to address a crisis, insofar as “well defined and established laws” (Lexico Dictionaries, 2020) are nearly impossible to create in response to an immediate threat. However, the extent to which the rule of law is infringed upon has more to do with pre-existing politics than the pandemic. Democracies with well-established judicial and governmental systems only see a marginal negative effect on their ability to maintain rule of law compared to those for whom authoritarianism, or at the very least a deteriorating rule of law, was already predicted. This is chiefly exposed by the lack of societal buy-in due to diminished legitimacy, and the increased power of executive branches who were teetering on the brink of authoritarianism. Israel, the United States, Hungary, China, and Canada each serve as excellent examples demonstrating how different political cultures prior to the pandemic affect the degree to which rule of law is undermined.

A strong democratic judicial system requires a high degree of societal buy-in. These are intricately connected and contribute to the broader concept of the “social contract” (Koren, 2020). A state’s ability to handle a pandemic is largely reliant on the strength of the social contract, which, in turn, serves to either reinforce or undermine the rule of law. Much like a Pantheon made of playing cards, these concepts are intertwined in a muddled relationship of cause and effect, in which each part exerts just enough pressure to sustain and be sustained by the others. So, when a pandemic makes the legitimacy of the state waver, the rule of law is likewise disquieted.

When citizens lose their faith in the competence of the government they likewise lose their compliance; At which point there is little basis upon which to establish laws that don't seem arbitrary. Notably, a key component of the rule of law, according to the Oxford Lexicon, is the "restriction of arbitrary power" (Lexico Dictionaries, 2020). However, during such a crisis the government has no choice but to create emergency laws which undermine or circumvent the system of establishments, and thus generate a negative response that diminishes the legitimacy of the system. For example, in Israel, where there were already protests on the overreach of the rule of law, the governmental provisions against the COVID outbreak added fuel to the protestor's flames. The sentiment against the government was solidified. The impact of this loss of respect is twofold: it "is likely to undermine trust," and "increase gaming and circumvention attempts" on behalf of citizens (Koren, 2020). Compliance and trust are vital to maintaining an effective rule of law, since, without them, there is little authority within the judicial system. A crisis that reveals fragilities or causes a country to falter on their established system of rule of law severely exacerbates the issues of legitimacy. Further, as Niva Elkin-Koren, a professor of Law at the University of Haifa, explains in her recent paper on the rule of law in Israel, the "deepen[ed] distrust in government agencies" extends beyond the outbreak and poses lasting legitimacy issues. The outcome of such a decrease in societal buy-in is protest, or, in some cases, vigilantism.

The current environment in the United States is another example of the rule of law losing legitimacy. The anti-lockdown protests—which seem to be exposing a fear and distrust that is an epidemic in itself—are putting the government's ability to rule effectively and fairly to the test. Trump's actions have been erratic, to say the least. There is little cohesion within the levels of

government, which is creating a perception of arbitrary rule. States such as Texas and Ohio have “used the lockdown to try to ban abortions” (Economist, 2020), capitalizing on and exacerbating the shaken and distracted rule of law. Such breaches prompt the citizenry to lose faith in their system’s fairness, as the rule of law becomes less established and more arbitrary. While systems scramble to regain the authority they once held, certain moves, that under normal circumstances could have been stopped, slip through the cracks. Such situations make regaining rule of law all the more difficult. Similarly to Israel, the long term effect is a deeper distrust in government with similar outcomes of disregarding the law, or taking it into one’s own hands. According to Theda Skocpol, a government and sociology professor at Harvard, “Scepticism of the government is a deep strain in America,” (Maqbool, 2020) and these government protests are somewhat of a climax in this distrust. Unfortunately, in such circumstances as this, deep government distrust becomes a bandwagon, and the mass protests extend these sentiments from the fringes of American political culture, where they used to dwell, into the general population.

That said, it is important to note that the pandemic has been a catalyst for the sentiments which were already brewing. In some cases, such as Canada, it can reaffirm good legitimacy, and thus the rule of law. Before the pandemic, Canada was among the top ten countries in the State Legitimacy Index (The World Economy, 2019). According to a poll recently conducted by the CBC, “69 per cent [of Canadians] said they felt their provincial governments were doing a good job handling the pandemic,” which is 18 points higher than the response in March (Grenier, 2020). This increased legitimacy, in part, can be attributed to a general respect for government as well as our comprehensive Constitution, which uses the rule of law to account for such a crisis. Moreover, the Notwithstanding Clause in our Canadian Charter of Human Rights allows for the

government's actions to be backed by rule of law, which bolsters legitimacy in the competent system, rather than curbing it. Although the Israeli constitution has a similar provision in Section 8 of their charter, the way in which the laws were implemented did not respect the stipulations of proportionality (Koren, 2020); hence the deterioration of the rule of law.

In Israel, much like in the 84 other countries where there has been a “vesting of extra powers in the executive”, the greater issue of executives being able to circumvent the rule of law altogether has been and is being actualized (The Economist, 2020). This harkens back to the “restriction of arbitrary power” – or a lack thereof. The loss of independence of the judicial branch and a corresponding overreach of the executive branch is common in times like these; often resulting in long-lasting detriment to the rule of law. Once again, the results are twofold; a more autocratic government that is less responsive to long established rule of law, and a citizenry who finds their freedom of expression, information, and speech curtailed. For example, Victor Orban, the president of Hungary, recently passed a law which allows him to rule by decree and severely limit freedom of information (The Economist, 2020). This, like Israel's government having “bypassed” a refusal to approve a regulation by a government check, is an overt circumvention of the rule of law. In Hungary's case, there is no time clause limiting extension of his powers. During a global pandemic, such actions are difficult to prevent because some aspects of legal red-tape must, arguably, be bypassed for the sake of public health and efficiency. According to the Economist, “it is in this gap between legal theory and political reality that Mr Orban thrives” (Economist, 2020).

Similarly, in China, the global attention that is being paid to the virus has taken international attention away from the continued suppression of rule of law in Hong Kong (Economist, 2020). Likewise, Donald Trump is claiming to have powers which constitutionally he does not hold, and is using this emergency as an opportunity for rule by law, rather than rule of law. A prime example of this is the ‘resignation’ of the Commanding Officer of the *USS Theodore Roosevelt*, due to his early whistleblowing of the disease (Economist 2020); which eerily mimics China’s hushing of its whistleblowing doctors a few months ago. In many countries, citizen’s right to privacy is also being threatened, without due process, in the name of public health. Under normal circumstances, the press would be able to hold the government accountable to the rule of law, even if the judiciary cannot. However, freedom of the press is also undermined as the only close doors journalists are behind is their front door (The Economist, 2020).

This outcome is similarly a test of the independence and tendencies of leaders prior to the pandemic. Orban, Trump, Netanyahu, and Jinping all tended to be blasé with the rule of law before this crisis acted as a catalyst for lasting effects both for the regime and the rights of citizens. Likewise, Canadian, British, and Nordic citizens are generally experiencing a degree of rights and freedoms reinforced by their executive’s cooperation with other branches of government.

For better or for worse, the true nature of the rule of law has been exposed. Some say true character is revealed during a crisis, and, as far as the judiciary is concerned, that couldn’t be more true.

### Works Cited:

The Economist. (2020, 8 April) *Covid-19 takes out an aircraft-carrier, and a navy secretary.*

<https://www.economist.com/united-states/2020/04/08/covid-19-takes-out-an-aircraft-carrier-and-a-navy-secretary>

The Economist. (2020, 25 April) *A pandemic of Power Grabs.*

<https://www.economist.com/leaders/2020/04/23/autocrats-see-opportunity-in-disaster>

The Economist. (2020, 2 April) *How Hungary's Leader, Viktor Orban, Gets Away with It.*

[www.economist.com/europe/2020/04/02/how-hungarys-leader-viktor-orban-gets-away-with-it](http://www.economist.com/europe/2020/04/02/how-hungarys-leader-viktor-orban-gets-away-with-it).

The Economist. (2020, 16 April) *The Paradox of the Pandemic.*

<https://www.economist.com/united-states/2020/04/16/the-paradox-of-the-pandemic>.

Elkin-Koren, Niva. (2020, 18 Mar) *The Rule of Law in the Time of Coronavirus Outbreak.*

Internet Policy Review.

[policyreview.info/articles/news/rule-law-time-coronavirus-outbreak/1450](https://policyreview.info/articles/news/rule-law-time-coronavirus-outbreak/1450).

The Global Economy. (2019) *State legitimacy index - Country rankings.*

[https://www.theglobaleconomy.com/rankings/state\\_legitimacy\\_index/](https://www.theglobaleconomy.com/rankings/state_legitimacy_index/)

Grenier, Eric (2020, 17 March) *As COVID-19 anxiety increases, so is Canadians' trust in institutions: poll*. CBC News.  
<https://www.cbc.ca/news/politics/grenier-ari-coronavirus-poll-1.5500191>

Maqbool, Aleem. (2020, 27 April) *Coronavirus: The US Resistance to a Continued Lockdown*. BBC.

[www.bbc.com/news/world-us-canada-52417610](http://www.bbc.com/news/world-us-canada-52417610).

Oxford. (2020) *Rule Of Law: Definition of Rule Of Law by Lexico*. Lexico Dictionaries.  
[www.lexico.com/en/definition/rule\\_of\\_law](http://www.lexico.com/en/definition/rule_of_law).