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Advocacy for a citizen-centric rule of law agenda: How do we bring the rule of law to life?

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Abstract

How do we best defend the rule of law against its attackers, both within the European Union and outside of it? Often, the rule of law has been perceived as a domain belonging to jurists, lawyers, bureaucrats, or politicians. Yet at its most fundamental, the rule of law needs to be thought of from a citizen's perspective. When enforced, it guarantees freedoms and liberties for citizens and enables us to live peacefully. In this article, we propose a citizen-centric rule of law agenda based on a deep conviction that it is if and when it becomes a citizen-based societal principle that its many attackers are best countered. We discuss the challenges and necessities of rule of law promotion and propose an assessment approach called the "living list". We close with a call for citizen-scholars to fight for the rule of law, the most precious human invention of all time.

1 | INTRODUCTION

Courageous people around the world fight for the rule of law every day: journalists who take their duty as the "fourth estate" seriously and are thrown in jail or killed for their reporting; NGO activists who expose inhumane treatments of prisoners; members of minorities who fight against daily discrimination and the denial of their fundamental rights by the society at large. All these rule of law foot soldiers are well known to us, academics or politicians, yet they tend to be absent from our own thoughts for the most part. We are generally aware that they exist and usually think that they do a good job, yet their struggles for the rule of law and justice seems far from our own daily lives.

More prosaically, imagine being a pensioner denied your pension because you supported the wrong party in the election. Or inheriting your family's estate only to find that you cannot actually own it, as the state claims ownership "for the public benefit" so that a shopping centre can be built. Or imagine being a grandmother on whose land the authorities have built a church illegally yet refuse to take it down, despite courts injunctions. In these examples, the question of the rule of law now becomes more tangible, closer to the everyday experiences of many citizens in countries where the rule of law is supposed to prevail.

Our starting point is a very simple one, well known to rule of law activists. A fundamental aspect of the rule of law is that its importance becomes visible only "in the breach". When it prevails, we tend not to appreciate its

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bounties. Yet when it is lacking, its absence not only affects our livelihoods but actually destabilises our deepest beliefs in justice, fairness and equality—principles on which our liberal democratic societies are built. The rule of law protects citizens from unwarranted governmental action, from the tyranny of mafia godfathers, and from the irrational will of the majority. It serves as the backbone for what Judith Shklar called "liberalism of fear",[1] i.e. the notion that human beings should have the possibility to take as many decisions as they possibly can without fear or justification, as long as these decisions are compatible with the liberties of other human beings. The rule of law is what provides this liberty and sustains its role in a liberal democratic society. In short, as our little *Citizen's Guide to the Rule of Law* proclaims, this is *the most precious human invention of all time*.[2] And this is why citizens at large must make it their own, their own struggle.

We start from the premise that far too often, the rule of law has been perceived as a domain belonging to jurists, lawyers, bureaucrats or politicians.[3] As this rich and enlightening special issue attests, the domain is broad and deep, and has been conceptualised and contested along many lines of enquiry. Yet, most generally, the "state of the rule of law" is assessed by its guardians in the political or administrative world of benchmarking with reference to court proceedings, jurist training, waiting times for applications to be processed, or the effects of particular decisions on judicial independence and the interplay of the separation of powers. These are all important, essential questions, no doubt. Yet at its most fundamental, the rule of law needs to be thought of from a citizen's perspective. For not only does the rule of law, when enforced, guarantee freedoms and liberties for citizens and enable us to live peacefully, but it is if and when it becomes a citizen-based societal principle that its many attackers are best countered. Only if we as citizens understand the concrete value of the rule of law, only if we grasp its contours, content and practical manifestations, will we be ready to forcefully defend it against even the most minute breaches in our daily lives and thus prevent the creeping escalation of unnoticed breaches up to a point when fundamental rights and democracy have become irretrievable. The aim is to equip citizens with a repertoire of arguments and concepts to help them make their case.[4]

Moreover, we argue that a citizen-centred approach to the rule of law must start at home—our home—in the European Union. In recent years, a number of European governments have imposed limits on the freedom of media and expression, actively sought to undermine the independence of the judiciary, decriminalised certain acts of corruption, changed statutes of limitations to suit particular individuals, or ordered police forces to investigate certain crimes while ignoring others. These exactions may be egregiously most prevalent in Hungary and Poland, countries that have attracted many words but few deeds from their EU counterparts, but we all know that other EU countries are not innocent by-standers here. All power tends to be abused. Few resist the temptation, especially when holding the reigns of the state.

We write armed with the conviction that there is no need for another contribution to the already plethoric theoretical literature on the rule of law but that a citizen-centric perspective on the rule of law can best help sustain it everywhere. To be honest, neither of us trained in legal theory, although we have both been faithful *companion de route* for much of our lives. Adis has been working on the establishment of stable, liberal democratic regimes in the Western Balkans for more than a decade now. In his political science doctorate at the University of Zurich, he analysed the effects outside intervention has on the functioning logics of consociational democracy in Bosnia and Herzegovina, where this concept was applied after the end of the 1992–1995 war. In subsequent research at Oxford, he focused on European integration policy and, on a theoretical level, the interplay between liberal democracy, rule of law and human rights, for he is convinced that it is this combination that will ultimately create an economically prosperous, stable and democratic Western Balkans region. It is the experience of the suspension if not

[1]J. Shklar, 'Liberalism of Fear', in N. Rosenbaum (ed.), *Liberalism and the Moral Life* (Harvard University Press, 1989).
[2]A. Merdzanovic and K. Nicolaidis, *A Citizen's Guide to the Rule of Law: Why We Need to Fight for the Most Precious Human Invention of All Time* (ibidem Press, 2021).
[3]On this premise, see ibid.
[4]Ibid.

destruction of life as we know it in times of war that has forged in him the belief in the necessity to reflect upon the conditions for a process of socio-cultural appropriation of the rule of law as the ultimate bulwark against barbarity.

Kalypso has been working on ideas of recognition, radical pluralism and legal empathy, as well as, more technically, trade law since the early 1980s, first as a master's student at Sciences Po writing on legal integration in the EU, other regional organisations and the WTO, a research programme she has pursued to this day at Harvard, Oxford and now EUI. Throughout, she has been concerned with the continued balance between legitimacy and effectiveness in all things transnational. In parallel, she has worked on colonial legacies and their impact on the EU's relations with candidate countries, the broader neighbourhood and the wider world, which led her to work inter alia with her doctoral student Rachel Kleinfeld, now a rule of law expert at Carnegie, on whether a post-colonial power can export the rule of law.[5] This work was taken up by both the European Parliament and the OECD, where she served as councillor for SIGMA on enlargement and the rule of law in 2010–2012.[6] On a more personal note, her early political awareness was shaped by her father's exile during the Greek junta (1967–1974) and her involvement with the struggles for human rights in Latin America in the 1970s, which led her to create the Human Rights League at Sciences Po. As a critical social theorist, she believes in the transformative vocation of academia and the ideal of the citizen-scholar.

In short, the rule of law is interwoven in the intimate fabric of our lives and struggles as citizens. We believe that raising what we could call "rule of law awareness" is the necessary condition for empowering citizens and allowing the rule of law to survive and strive once under attack. These short autobiographical notes hopefully convey what this intervention in a world that is not ours is about: translation.

2 | WHY THE RULE OF LAW MATTERS TO CITIZENS: THE "DEEP CONCEPT"

The first task we take up in our book is to explain why it matters for citizens directly. In this respect, as most contributors and readers of the *ELJ* would probably agree, the very idea of "rule of law" is a somewhat tricky concept for the non-initiated to wrap their head around, for definitions, if such we find, tend to conceptualise it as a "rule about the importance and priority of legal rules", which "carries a whiff of paradox, a circular sense of justification".[7] If the rule of law is simply a command to obey the laws of the land, as legal positivists have claimed, the concept is indeed a domain of lawyers, judges and politicians. It stays among the elites who interpret and apply legal edits as they wish.

Yet, even within the Platonic ideal of philosopher kings, this elitism is problematic for at least three reasons. Firstly, and arguably most importantly, there is the problem of accountability. Laws and rules are applied to the citizenry at large who usually can only vote for politicians, not the lawyers or bureaucrats. As a result, they are subjected to a machinery they cannot really control. Furthermore, elites tend not to like limits on what they can or cannot do, so many among them (not all, thankfully!) tend not to like the cathedral of limitation that is the rule of law. Many have claimed, for example, that politicians in Western Balkan countries have seen the fate of Croatian prime minister Ivo Sanadar—who introduced laws against corruption only to face prosecution and sentencing based on these laws after leaving office—as a cautionary tale.[8] Second, there is the problem of effectiveness. When we rely only on elites to care for the rule of law, its effective application can become hostage to intra-elite quarrels and factions at war

[5]R. Kleinfeld, *Advancing the Rule of Law Abroad: Next Generation Reform* (Brookings Institution Press, 2012); R. Kleinfeld and K. Nicolaïdis, 'Can a Post-colonial Power Export the Rule of Law? Elements of a General Framework', in G. Palombella and N. Walker (eds.), *Relocating the Rule of Law* (Bloomsbury Publishing, 2008), 139–169.

[6]K. Nicolaidis and R. Kleinfeld, 'Rethinking Europe's "rule of law" and Enlargement Agenda: The Fundamental Dilemma', SIGMA Papers No. 49, (OECD Publishing, 2012); republished as Jean Monnet Working Paper 12/12, NYU School of Law.

[7]N. Walker, 'The Rule of Law and the EU: Necessity's Mixed Virtue', in G. Palombella and N. Walker (eds.), *Relocating the Rule of Law* (Bloomsbury Publishing, 2009), 120.

[8]'Ex-Croatia PM Guilty of Corruption', *BBC News*, 11 March 2014, http://www.bbc.com/news/world-europe-26533990.

whose quarrels get out of hand—as when a government seeks to limit judicial independence (bad!) only to be confronted by an opposition who defends it because they had captured the judiciary the last time they were in power (also bad!). And thirdly, there is the problem of democratic sustainability: those in power obviously do need public support when and if they seek to entrench the rule of law, and that support requires that the people feel responsible for it.

Take the example of Poland, where "judges involved in politically sensitive cases, or who have expressed opposition to challenges to judicial independence, are frequently threatened with disciplinary proceedings and even criminal charges, and in many cases, subjected to state-led campaigns of intimidation".[9] With judicial independence threatened, the people of Poland took to the streets to protest governmental repression and disregard for their rights and ultimately their dignity, be it as women, members of the lesbian, gay, bisexual, and transgender (LGBT) community, the media, or indeed the judiciary. So when they were joined in January 2020 by judges from all over the European continent, who "wearing their robes, the judges, along with thousands of demonstrators from across the country, were marching against repressive new measures aimed at Polish judges that the president of the supreme court warned could lead to Poland's eventual departure from the EU",[10] the multi-national, multi-sectional, multi-generational crowd was not marching in defence of an obscure principle. Their collective object of desire is intensely more precious and worth fighting for than the "rule by law" as rule of law books would have had it.

In short, in order to see the rule of law through the citizens' lens, we cannot rest content with a positivist frame, and must look instead to the (dare we say?) existential normative commitments at its very core. And nowhere is such an existential normative core better apprehended than in societies where the rule of law is both very present in its absence while this absence also serves as a referent for denying these societies a prize perceived as paramount by its citizens, namely entry into the EU. This was true for the 1970s enlargement to the former Mediterranean dictatorships, although in this case democracy may have been a requisite, but 'rule of law' conditionality had not been codified yet, as became the case with the 1993 Copenhagen criteria. In the case of the so-called Balkans, the accession process is designed to help formerly socialist countries answer the aspiration of their citizens and reform their constitutional, economic, political and societal orders so as to be compatible with the (arguably not yet fully achieved) ideal of Western liberal democracy, symbolised by the triptych rule of law, human rights and democracy. While citizens understand intuitively that each of these principles has its unique characteristics, it is their interplay that ultimately makes the deeper concept of the rule of law understandable by all those who march in the street to defend it. At the same time, however, the EU has rightly been perceived by these same citizens as adopting a paternalistic or even neo-colonial approach to the promotion of its fundamental values, in part because they are considered as objects to be rescued as opposed to subjects to be empowered through strategies fully cognisant of local contexts.[11] Unless EU institutions acknowledge the sanctity of the rule of law as its aspiring citizens' political desire, it will continue to be seen as a technical object and the realm of lawyers only.

3 | HOW TO PROMOTE THE RULE OF LAW: AMBITION AND HUMILITY

What, then, does this "holy trinity" mean in practice, and especially with respect to making the importance of the rule of law tangible to the citizenry at large? And what does it mean to promote such a deeper concept of the rule of law? In our book, we take the example of the EU's efforts to promote the rule of law within the accession process to bring our arguments to life. While this is clearly an area where the EU can bring its political and financial capital to bear and exert meaningful influence, it is also an area from which all else follows. On the one hand, it is in part because the accession process is too disconnected from life post-accession, and that this transition was mismanaged

[9]C. Davies, 'Judges Join Silent Rally to Defend Polish Justice", *The Guardian*, 12 January 2020, https://www.theguardian.com/world/2020/jan/12/poland-march-judges-europe-protest-lawyers.
[10]Ibid.
[11]See Kleinfeld and Nicolaidis, above, n. 5.

for the latest enlargement to east and central Europe, that we find countries like Hungary, Poland but also Slovakia, Romania or Bulgaria wanting on the rule of law front. What lessons can we draw with hindsight on how rule of law reform can be more sustainable throughout? On the other hand, one of the biggest obstacles to the promotion of the rule of law in the context of enlargement is the claim of double standards between old and aspiring members, a sense that if you have been a Member State since before the rule of law was turned into a condition for accession, you can much more easily get away with violations.[12] In short, accession countries offer a fulcrum through which we can observe the bigger picture, in and beyond Europe, all while constituting fascinating cases in and of themselves.

Our argument, then, starts with the somewhat contradictory idea that in order to promote the rule of law on all these various fronts effectively, the EU needs to be both more ambitious and more humble at the same time. More ambition calls for disaggregating our approach to the rule of law into different levels. The first level concerns the "laws on the books". It pays tribute to the traditional notion that what is needed for a society to thrive are good laws.[13] Laws shape the behaviour of citizens, business owners or politicians, so one needs to design the laws in a manner that provides positive incentives. In this sense, it is right to concentrate on "the laws on the books", as long as one follows up by paying attention to the implementation and adherence to them. This is particularly important when new laws come into effect, as they change the rules of the game and need special attention. But while "laws on the books" are important as the key to legal certainty, the "rule of law" cannot be reduced to "rule by laws," as twentieth-century European history has amply demonstrated.

So we turn to the second level, which concerns the institutions of justice, i.e. the rules, procedures, written and unwritten behavioural guidelines that govern the actions of judges, bar associations, police officers and so on. These institutions are where the "laws on the books" get shaped, applied and enforced, where they acquire their proper contours. But these "institutions" tend to develop their own idiosyncratic cultures. As Marko Kmezić has shown, in the Western Balkans "the judicial culture is shaped by communism, [and] the authoritarian phase following the 'second democratic revolution' in 2000". In the old regime, judges had been the bearers of socialist ideology and "already trained to follow party ideology", thus they were "easily reprogrammed by the authoritarian regimes of the 1990s to establish a new pattern of clientelism", which means that the application of a deep concept of the rule of law constitutes "an unprecedented challenge for the judiciary".[14] How, then, can we guard against institutions being captured?

The question leads us to the third layer of the rule of law: politics and the power structures at play. To continue with the theme of clientelism, powerful elites and dominant politicians tend to resist the rule of law, sometimes for personal, sometimes for communitarian reasons, and sometimes because of simple power politics. Patterns found within administrative bodies tend to reflect behaviour practised at higher political echelons, as with the example of "telephone justice", where elected politicians call up judges to tell them how to decide a particular case. To make the rule of law in its deep form sustainable, one needs to address the pathologies embedded within power structures at hand. If the challenges are found in the different parts of the administration, horizontal checks and balances need to be introduced. If the challenges come from outside the state system, i.e. from oligarchic structures, state structures need to be strengthened. And if, for example, the state and its political and administrative bodies are captured by business and criminal interests, civil society actors and reformers need to be empowered. Each challenge thus warrants a particular approach.

But in the long run, even questioning existing power structures might not entrench the rule of law in a particular country without addressing underlying socio-cultural realities, the fourth and last layer that needs to be targeted

[12]Obviously, the rule of law criteria for accession have evolved through time. As state above, it may not have been used in the context of accession by former dictatorships such as Greece (1981) or Spain and Portugal (1986), but it was at minimum the implied consequence of their commitment to bolster their democratic credentials. Moreover, even in the case of Central and Eastern Europe, a monitoring mechanism was introduced for Romania and Bulgaria which did not exist yet for Hungary and Poland.

[13]W. Channell, 'Lessons Not Learned: Problems with Western Aid for Law Reform in Postcommunist Countries', *Carnegie Papers* (Washington, DC: Carnegie Endowment for International Peace, 2005), https://carnegieendowment.org/2005/04/26/lessons-not-learned-problems-with-western-aid-for-law-reform-in-postcommunist-countries-pub-16820.

[14]M. Kmezić, *EU Rule of Law Promotion: Judiciary Reform in the Western Balkans* (Routledge, 2016), 44.

here. A participant from the Western Balkans at a debate in London once remarked that he was not frustrated by the fact that he had to bribe someone, but rather by the fact that he did not know whom he had to bribe. While fighting for the noble principles of transparency and accountability at the macro (governmental and administrative) and meso (within and between different organisations, elites of society) levels is important, ultimately it is the micro level of citizen behaviour and values that makes the rule of law sustainable. If the rule of law fails to become the personal obligation of every citizen, part of what Rousseau called the "civic religion" of every individual, its fate will be fleeting. "The institutionalised norms need to count as a source of restraint and a normative resource", "usable, and with some routine confidence used, in social life".[15] Clientelism, corruption, discrimination, petty abuses of power, favouritism or clientelism are all plagues in the everyday life of citizens. But only education and political activism can connect all of them and their daily reality as part of one single whole: assaults on the rule of law.

Attempting to address together all four levels of rule of law constitutes the "more ambitious" approach to its promotion. As the EU steps up its game with the introduction of rule of law conditionality when it comes to the disbursement of recovery funds, it will need to keep all four levels in play as target for its assessment, even if its formal reference will be the attempt to subvert the use of these funds for political gains.

The "humbler" side of the argument consists in recognising the flipside of the argument, namely that the EU cannot and should not pretend that it can easily and consistently turn into an uncontested champion of the rule of law. For what is the European rule of law standard? Certainly, EU countries which approximate rule of law standards present with distinctly different legal systems, and sometimes, legal standards can differ within a country, for example between Scottish and English legal traditions. In some countries, judges passively listen to arguments presented, while in others they actively seek to ascertain the facts. Different countries envision a different role for the state and different patterns of state–society relations. The European Union itself has never clearly offered a conceptual definition of a common legal standard, for understandable reasons. By their very definition, legal rules can be interpreted differently, which is why judges are necessary. The contestability of rules is a key aspect of the rule of law in practice, especially when rules are applied in areas in which different interests have to be weighed against each other. But for this very reason, there is no such thing as a "Euro-wide" rule of law—which makes it hard for the EU to say: follow our example.

Indeed, the rule of law means different things in different countries because of the diversity of national traditions. Judges from different countries will offer different legal reasonings, even when they come to the same decision. Generally, these traditions differ on the role played by rights (are they inherent to the rule of law or are they given by governments who can limit them); the relationship between the state and the law (is the law above the government or not); or the sovereignty of parliament (is parliament constrained by law or sovereign in its decisions).

In turn, because European states' legal systems have developed over a long period of time and thus bestow specific characteristics, it is hard to argue against the need to respect national autonomy as much as possible when it comes to the rule of law. In fact, autonomy is a necessary feature for a successful socio-cultural appropriation of the rule of law and for the necessary reciprocal adaptation between states. European states had fully-fledged legal systems in place allegedly capable of fulfilling the requirements and duties of membership before joining the EU. As such, the general assumption was that they could generally be trusted to act in an autonomous way when questions of legal standards arose that fell outside of the well-defined EU parameters. National autonomy is thus part of the EU's DNA as much as it can and should be. Country actions, especially by Poland and Hungary in recent years, have led to important questions regarding this relationship between national autonomy and EU legal standards, a question we will not delve into. The upshot of it all on this side of the equation is simply that the EU also needs to be humble when it claims to be the guardian of the rule of law.

[15]M. Krygier, 'The Rule of Law and "The Three Integrations"', (2008) 1 *Hague Journal on the Rule of Law*, 21–27, 26.

4 | RULE OF LAW PROMOTION IN PRACTICE: THE LIVING LIST

These twin imperatives of ambition and humility may make sense in theory, but what do they mean in practice? What are the necessary steps to safeguard the rule of law and how can they meaningfully be taken up? Assessment here is key. Assessing a situation allows us to delineate the issues at stake and then proceed to formulating and implementing strategies designed to address these issues. Yet assessments in the area of the rule of law have so far suffered from an overly formalistic approach, concentrating on well-intentioned benchmarks. These benchmarks have usually been proposed by legal professionals and bureaucrats and they have tended to look at specific aspects of the rule of law while neglecting others. Not only have they missed much as a result, but those who attack the rule of law have learned how to circumvent traditional assessment benchmarks. For this reason, we must ask how to target the four levels described above while keeping in play the reasons why the EU must stay humble.

In order to do so, we propose the setting up by the EU, by one of its institutions or agencies, of a website offering a so-called "living list" for rule of law assessment that focuses on the ends pursued rather than means adopted with operationalisable indications to guide strategies. We recognise that a number of incipient mechanisms of accountability already exist at the EU and national level. But these are usually quite opaque and hard to comprehend as well as fragmented across issues. The goal of such a list will be to move the conversation from statements such as "This state respects the rule of law because of the conditions prevailing in the political system and the constitutional and judicial setup" to statements such as: "This state respects the rule of law because its citizens enjoy the benefits of the rule of law". Our list is therefore citizen-centred and breach-centred. Such a list would be "living" in that it would be updated and amended in real time to conform with continuous input by citizens about the kind of breach they are confronted with in their daily lives.

The living list could consist of citizen-centric rule of law principles that should govern rule of law assessment and guide rule of law promotion strategies. Adapting various textbook definitions as well as the work of the Venice Commission, these principles could be:

1. *Citizens are free from the arbitrary use of power*. Breach example: Citizens are subjected to arbitrary action by the state.
2. *Citizens benefit from legal certainty*. Breach example: Citizens are not warned that a law will apply to them.
3. *All citizens are treated as equal before the law*. Breach example: Citizens belonging to a minority are victims of discrimination.
4. *All citizens are granted accessible and effective justice*. Breach example: Citizens are not granted access to courts, or court rulings are not respected.
5. *All citizens can claim their rights, including a substantial degree of law and order*. Breach example: Citizens fall prey to state violence.

A living list of citizen-centred assessment criteria focuses the mind on the problems where they occur. It is, furthermore, inherently flexible to include new developments and challenges to the rule of law. It is relevant to every country, irrespective of EU membership. It directs our attention to where the problems are and how they can be solved. In terms of how the list should work in practice, we suggest a five-step approach:

1. Assess "ends" in the breach, identify zones of non-law, and employ strategies to curb violations.
2. Disaggregate the problem at hand in its political, judicial, societal and cultural dimensions, and tackle them individually.
3. Determine new indicators, evaluation targets and measurement goals specifically applicable to the problems at hand.

4. Identify agents of opposition and support; try to neutralise the former by actively supporting the latter.
5. Continuously assess actual reforms taken and design assistance measures and programmes in lockstep.

Much could be said about each of these steps, and we refer the reader here to our book.[16] The key point here would be to create a repository of experiences and insights coming from citizens that other citizens can understand, refer to and be inspired by. Societal ownership matters if we are to make rule of law reform sustainable. Only if the rule of law becomes an ordering principle of society and an inherent conviction of every citizen can it be the protective Iron Man suit within liberal democratic regimes.

5 | WHO SHOULD FIGHT FOR THE RULE OF LAW?: THE CITIZEN-SCHOLAR

In order to promote the rule of law through our citizen-centric, breach-oriented living list and uphold the principles of the rule of law, we need to start by acknowledging that previous promotion efforts have suffered from being too narrowly focused on institutions and political elites. Discussions have taken place in closed circles, using vocabularies and approaches understandable to the very few, those in the know. Citizens were involved as conceptual constructs, as recipients of the benefits, not as actors with an agency of their own. The conviction that this state of affairs has to change is shared by countless individuals and activists throughout the EU and beyond. Our decision to write a citizen's guide to the rule of law[17] was inspired by their engagement, commitment and dedication to the cause. We specifically sought not to fall victim to our own pre-conceived notions, or ways of thinking, and vocabulary, but sought instead to open up the debate and focus on its practical implications.

Taking this agenda seriously involves connecting with and supporting those who fight on the ground for the respect of the rule of law in new ways and with new approaches. Firstly, it tasks citizens with taking up their end of the bargain and defending the rule of law as a principle of peaceful coexistence. This means understanding why it matters and how it can be made to fulfil the goals it needs to fulfil. Secondly, it demands a new approach from the EU in its promotion of the rule of law. Simple benchmark systems and box-ticking exercises cannot do the trick—an ends-based approach needs to be employed instead. In strategic terms, it would be crucial to support the independent bodies and genuine civil society organisations that need funding, yet cannot get it if they criticise governments and donors. The EU must seek out genuine partners in the fight for the rule of law, and empower them by targeting the top of society and signalling that respect for the rule of law suffers no special dispensation.

As academics, we stand on the shoulders of giants who came before us, as Newton once remarked. We can rely on a vast literature ranging from philosophy and politics to law and ethnography to conceptualise and build our arguments. But in addition, we can and must be inspired by the many activists and non-governmental organisations that tirelessly fight against breaches of the rule of law, to the point of risking their lives in the process. It was our goal to draw on what the extant scholarship on the topic has to offer and provoke a broader conversation with citizens. Such an approach is not without peril. From an academic point of view, we have certainly simplified the manifold arguments that constitute the field. From a practitioner's point of view, our arguments may have been too theoretical at times. Yet we hope to offer a call to action for all citizens interested in living together peacefully thanks to practicable, actionable approaches. And in this spirit, we hope that rule of law scholars and practitioners, brilliantly represented in this special issue of the *ELJ*, and rule of law activists, fighting for the same principles on the ground, can better join their efforts to defend the most precious human invention of all time.

[16]Merdzanovic and Nicolaidis, above, n. 2.
[17]Ibid.

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