

CORE, PERIPHERAL, AND SUPRANATIONAL CORRELATES OF THE RULE OF LAW: EMERGING SYNERGIES AND TENSIONS

ROLPERIPHERAL International Conference 2023

West University of Timișoara, Faculty of Law

In cooperation with New Europe College, Bucharest

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ROLPERIPHERAL (Rule of Law at the European Periphery: (Dis)incentive Structures and Conceptual Shifts, <https://nec.ro/programs/rolperipheral/>) grapples with centre/periphery interplays in the evolution of rule of law (RoL) conditionalities. The concepts of *centre* and *periphery*, as used here, build on a **formal distinction, constitutive of the Enlargements and arguably still relevant in many ways**. Post-Copenhagen Criteria Enlargement was predicated upon a neat and realistic dividing line separating the EU-15 of 1995 (predominantly Western, stable liberal democracies) from peripheral candidates (poorer, postcommunist, unstable). Romania and Bulgaria, until recently, were additionally subject to a *sui-generis post-membership* conditionality, the CVM. The instruments assumed that EU Enlargement was/is civilizational, that it should spread “democracy, the rule of law, fundamental rights”. In time, the “rule of law” became the dominant narrative of action and reaction towards the periphery (rule of law crises, rule of law backsliding, rule of law monitoring/mechanism/conditionality, CJEU jurisprudence pegged unto the rule of law element -value- of Art 2 TEU). Current general-applicability soft-law (RoL Mechanism) and hard-law instruments (Regulation 2020/2092) arguably reformulate procedural forms, standards, normative and policy representations constructed/tested vis-à-vis the periphery, via Copenhagen or CVM monitoring.

In the EU, if the status of new member states and candidate countries as **peripheral** was entrenched as a predicate of the Enlargement, **the hypothetical/presumptive Centre was**

normatively designed at the intersection of supra/international level RoL standard-setting. Specific standards partly originated in Western models but were then not representative of common EU-15 practice. Starting from both Western blueprints and international trends and conformities (anticorruption), the Commission as “master of conditionalities”, in synergy with Council of Europe organs, proffered specific reforms.

The concreteness of policies advanced as peripheral panacea under the canopy of the rule of law does not square the conceptual and contextual circles. Rather, it raises new questions. Is, for example, anticorruption, when promoted as *the rule of law*, conducive to peripheral *rule of law*, as traditionally understood in central jurisdictions? Otherwise put, is this policy creating a higher degree of systemic political probity or does it induce, particularly in peripheral systems, pathologies? Does an insistence on particular institutional frameworks, adapted to perceived reform needs at the periphery (e.g., enhanced prosecutorial autonomy or judicial councils) result in systems that function according to (ideal-typical/idealized) representations concerning a functional Western liberal-constitutional justice (rule of law!) system? Furthermore, can reforms created for peripheral stabilization purposes be reserved for the periphery or will they produce ratchet and boomerang effects? Should not all EU jurisdictions be encouraged, prodded, cajoled to adopt the council model, prosecutorial independence, anticorruption watchdogs? If they do not, what could be the justification? How much can be left to contextual determinations and how much should be formalized and generalized, according to EU formal premises of state equality and Fullerian expectations of uniformity (i.e., “the rule of law as a law of rules”).

The conference invites colleagues to submit papers related to these overarching hypotheses and questions, subsumed primarily under the topics and their (non-exhaustive) exemplifications below:

1. Centre and periphery dynamics in EU rule of law creation (including 1. issues regarding the configuration of RoL conditionalities; 2. the balance between soft and hard law in RoL construction; 3. The correspondence of the newly-emerging supranational understanding of the RoL (and its correlates) with classical national representations of the RoL (and their correlates))

2. Anticorruption and/as the rule of law (which could include 1. theoretical approaches concerning possible tensions between rights- and guarantees-based understandings of the RoL and the ethics- and efficiency-driven logic of repressive anticorruption 2. case studies on EU-driven/monitored anticorruption RoL reforms in Romania, Bulgaria, Croatia, Ukraine, Moldova, Albania, as well as comparative studies including endogenous anticorruption campaigns in Brazil or Italy or 3. The Conditionality Regulation as an anticorruption instrument)

Other paper topics, responding to question related to the main conference theme are possible, e.g., 1. Is the RoL in and of itself and/or in actual practice, if severed from its significant conceptual others (as in: *sozialer Rechtsstaat*) prone to instrumentalism and ideological sloganisation (as Judith Shklar put it, „this bit of ruling class chatter”)? Is this truer, if it is at all true, in peripheral settings? or 2. Are peripheral rule of law crises *just rule of law crises*? **Core-periphery categories are in and of themselves objects of interrogation. We are interested in a variety of viewpoints and methodological points of ingress.**

A limited number of travel and accommodation grants are available upon need and request. We kindly ask participants to send rough drafts **by early September**, for circulation within panels. This year’s annual conference is organized in Timișoara (**European Capital of Culture in 2023**) by kind agreement of the Faculty of Law of the West University of Timișoara to co-organise and host the event. Please address your correspondence to both conveners, Bogdan IANCU, Associate Professor (University of Bucharest) and PI (ROLPERIPHERAL) bogdan.iancu@unibuc.ro and Raluca BERCEA, Professor (West University of Timișoara) and Senior Researcher (ROLPERIPHERAL) raluca.bercea@e-uvvt.ro