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& Development



# Evaluating the Rule of Law in Democracies under the Pressure of COVID-19

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# Content

1. Introduction .....	4
2. Case selection.....	5
3. evaluating the rule of law .....	6
4. Gathering data.....	7
5. Data structure.....	10
6. results.....	11
6.1 Results Interpretation .....	13
7. References.....	14

## 1. INTRODUCTION

The Covid-19 has been a global pandemic for over a year. Over 80,808,913 cases have been confirmed worldwide in 222 countries, and over 1,766,796 people have died from the Covid-19 virus. Still, the pandemic effects differently on the rule of law in different countries. Disease outbreaks and political institutions have been understudied in comparative politics and in comparative Law. To better understand the effect of the COVID- 19 on democratic institutions, we collected and analyzed data on different elements of the rule of law. Thus, this paper aims to demonstrate the relationship between the intensity of the pandemic, the different political systems and rule of law. Preliminary findings indicate that intensified picks of the pandemic have significant negative effect on judicial review and access to courts in Parliamentary democracies.

## 2. CASE SELECTION

Our sample includes seven sovereign democratic territories (The United States, including New York & Texas, New Zealand, Germany, including North-Rhine Westphalia, Italy, the United Kingdom, Israel, and Austria). This sample enables the comparison between federal and parliamentary systems alongside with different level of centralization. In addition, this sample contains countries that were well prepared for the pandemic and were managed to handle the crisis (e.g., New Zealand) and countries that experienced a multi-level disaster (e.g., Italy). In other words, our sample varies on the independent variables to test the different effects on the rule of law factors.

### 3. EVALUATING THE RULE OF LAW

As we explained in previous paper, the evaluation of the rule of law in states of emergency should rely on two interconnected foundations: the validity & application of legal norms and the legal framework as a whole in states of emergency, and additionally, division of powers, predominantly between the three main branches of government (Wolf, Dagan and Yarkoney-Sorek 2020). In short, these foundations of evaluating the rule of law, particularly in times of crisis, are called, somewhat reductively, the normative question and the institutional question.

In practice, the normative and the institutional questions are hardly severable. This entanglement is evident in the coercive measures taken by democratic states in the course of this public-health crisis. More than 80 cities enforced lockdown policies where, in many places, just one person in each household was allowed to leave every other day (Fang, Wang, and Yang 2020). Quarantines generally refer to isolating asymptomatic individuals who are thought to be incubating a disease. But in COVID-19, entire countries and states or provinces have been given orders to stay home or the avoid assemblies to different extents. These unique measure poses the question of whether the public-health coercion are the result of the pandemic intensity alone and whether we see the variation in these measures resulting from the capacity of the democratic institutions.

The evaluation of the rule of law during this period of global emergency is based on the constitutional guarantees in democratic legal systems, inclusive of both the normative and the institutional components. Each component is measured by four indicators, that is 8 indicators in total. The normative component is represented by fundamental rights. For the purpose of this research four rights were chosen. Those rights have been commonly interfered with around the world by governmental acts aiming at containing the pandemic or slowing its spreading. The rights chosen as indicators in this research are: Property & Freedom of Vocation, Privacy, Freedom of Movement and freedom of political expression.

Similarly, four indicators are employed to measure the institutional sturdiness in this crisis. All indicators assess the division of powers between the executive, which prevalently becomes stronger and gets more powers in states of emergency, and the legislature or the judiciary. The performance of the legislature and its functions is assessed through two indicators. First, the legislative function is directly measured through the type of legislation used to set general and rights-limiting legislation and the identity of the legislator – the legislature as against the executive. Second, the overall parliamentary activity with special emphasis on its supervisory role are measured through the number of plenary and committee sessions. The performance of the judiciary is also measured using two indicators. The first indicator measures the overall activity of the courts during the relevant period. This indicator examines whether to courts as a whole remained active and whether the access to justice was retained. The second indicator focuses on constitutional and administrative review by the judiciary. The second indicator concentrates on judicial oversight of the governmental activity, i.e. the determination whether or not the government acts lawfully.

## 4. GATHERING DATA

Data for this study was collected over the course of three months by three research assistants. In addition, we used external databases for comparison, control and complementary information. Data was collected from seven sovereign territories (The United States, including New York & Texas, New Zealand, Germany, including North-Rhine Westphalia, Italy, the United Kingdom, Israel, and Austria). This data can be split into two categories: political data and health data. The political data is comprised of indicators which track a country’s legislation, parliamentary activity, judicial review, judiciary activity, privacy, and freedom of assembly (for the list of indicators, see Table 1). Due to the lack of relevant indices, these data were collected from several different sources. Most of the data was collected from the official government websites of the relevant sovereign territories. What remained was gathered from other official government documents, research institutes, and journalistic sources.<sup>1</sup>

Table 1 – Political Variable Indicators

Variable	Indicators
Legislation	Emergency regulations, type of legislation, and which of the political variables did the legislation affect
Parliamentary Activity	Plenary sessions, committee sessions, and pandemic-dedicated committee sessions
Judicial Review	Changes in the arrangements of constitutional and administrative review, and the types of measures taken
Judiciary Activity	Changes to the access to and the regular activity of the courts, and the types of measures taken
Privacy	Electronic surveillance, type of electronic surveillance, legal requirements to disclose personal information, and what

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<sup>1</sup> [Our World in Data COVID-19 dataset]

	kind of legislation required divulgence of that information
Freedom of Assembly	Legal restrictions on gathering, and the types of measures taken

The health data was comprised of two variables which were chosen to evaluate the effect of Covid-19 on the healthcare systems of the selected sovereign territories. These two variables were the impact to and response of the healthcare system. These two variables were comprised of several indicators as well. The former was defined from the number of Covid-19 cases and the number of resulting deaths. The latter was defined by calculating the number of Covid-19 tests and hospitalizations, as well as the number of doctors and nurses working during the pandemic (for the list of indicators, see Table 2). This data was mostly collected from the *Our World in Data* COVID-19 dataset.<sup>2</sup> The exceptions were New York and Texas, whose data was collected from state-specific indices, and New Zealand, whose data was collected from the New Zealand Ministry of Health and the Medical Council of New Zealand.<sup>3</sup>

Table 2 - P=Health Variable Indicators

Variable	Indicators
Covid-19 Impact	Covid-19 cases, and Covid-19 deaths
Covid-19 Response	Coid-19 tests, Covid-19 hospitalizations, and the number of doctors and nurses

Four control variables were included in this model. The first control variable was governmental system. This variable was included to control for the type of government in a sovereign territory – federal or unitary. Similarly, the second variable was legal system. This tracked in which category – civil law or common law – the sovereign territories fell. The third control was the number of days a sovereign territory spent in lockdown. This data was gathered

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<sup>2</sup> Roser, M., Ritchie, H., Ortiz-Ospina, E., & Hasell, J. (2020). Coronavirus (COVID-19) Hospitalizations - Statistics and Research. Retrieved from <https://ourworldindata.org/covid-hospitalizations>

<sup>3</sup> Medical Council of New Zealand · Te Kaunihera Rata o Aotearoa. (2020, December 09). Retrieved from <https://www.mcnz.org.nz/>



from several journalistic sources.<sup>4</sup> The final control categorized each territory based on whether or not they were a part of the United States. According to the literature, the US is a sufficiently unique case to warrant this control.

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<sup>4</sup> COVID-19 Alert: Germany Lifts Lockdown of Gutersloh District, North Rhine-Westphalia, Germany as of July 7. (2020, July 07). Retrieved from <https://www.worldaware.com/covid-19-alert-germany-lifts-lockdown-gutersloh-district-north-rhine-westphalia-germany-july-7/>; Henden, A. (2020, April 17). Germany lockdown: When did Germany go on lockdown? Why is Germany death rate so low? Retrieved from <https://www.express.co.uk/news/world/1270472/Germany-lockdown-when-did-Germany-go-on-lockdown-why-is-Germany-death-rate-so-low>; Balmer, C., & Piovaccari, G. (2020, May 18). 'A beautiful day' in Italy, as shops and bars finally reopen. Retrieved from <https://www.reuters.com/article/us-health-coronavirus-italy-idUSKBN22U11R>; Osborne, H. (2020, June 24). Coronavirus lockdown eased: What you can and can't do from 4 July. Retrieved from <https://www.theguardian.com/money/2020/jun/24/coronavirus-lockdown-eased-4-july-england-pub-hairdresser-gym>; Times of Israel Staff (2020, April 16). Cabinet eases Bnei Brak lockdown, extends Jerusalem neighborhoods closure. Retrieved from <https://www.timesofisrael.com/cabinet-eases-bnei-brak-lockdown-extends-jerusalem-neighborhoods-closure/>; Policy Responses to COVID19. (n.d.). Retrieved November 1, 2020, from <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19>; Newshub. (2020, May 11). As it happened: Prime Minister Jacinda Ardern reveals if New Zealand will shift to COVID-19 alert level 2. Retrieved from <https://www.newshub.co.nz/home/politics/2020/05/livestream-prime-minister-jacinda-ardern-reveals-if-new-zealand-will-shift-to-covid-19-alert-level-2.html>

## 5. DATA STRUCTURE

Data was collected between March 1st and August 31st, 2020 and was structured in a bimonthly manner. The dates between the first and fourteenth day of each month, as well as all other data that fell within that range, was placed in the category of the first half, and the rest of the month was coded as the second half. Data from the different sovereign territories was grouped together so that any possible effects resulting from location could be elucidated.

Initially, all the countries' data was combined into a single dataset. Preliminary results, however, revealed no significant results. What was found was a significant difference between federal and unitary systems. Thus, the dataset was altered to only include unitary jurisdictions. In order to test the difference between systems of government, a second dataset was constructed which included data from one federal and one unitary country (the United States and Israel).

## 6. RESULTS

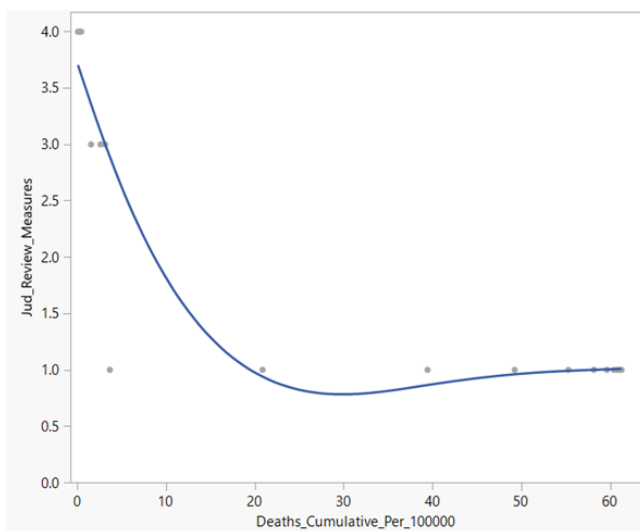
To test the effects of various indicators of the COVID-19 pandemic on judicial review, access to the courts, and surveillance, several linear regression models were calculated. The first nine regressions were estimated using a dataset that only comprised countries with a parliamentary or unitary government. Both parliamentary and federal countries were initially included, but statistical analysis yielded no significant results. The final regression is based on a dataset which included one federal country (the United States) and one parliamentary country (Israel). This was an attempt to account for possible differences in governance between the two systems.

The first regression,  $F(17,2) = 17.07, <0.0001$ , tested the effects of new Covid-19 cases and time on judicial review. The results show that both independent variables have a significant, negative relationship with judicial review. The second regression,  $F(17,2) = 17.27, <0.0001$ , which tested the effects that new deaths resulting from Covid-19 and time had on judicial review, showed similar results. Both independent variables were negatively related to judicial review. The third regression,  $F(18,1) = 37.53, <0.0001$ , found that cumulative cases also had a negative relationship with judicial review. The same relationship was found between cumulative deaths and judicial review in for the fourth regression,  $F(18,1) = 45.25, <0.0001$ . The final regression which dealt with judicial review estimated how it was affected by cumulative cases, cumulative deaths, and cumulative COVID-19 tests,  $F(16,3) = 19.7, <0.0001$ . Only cumulative Covid-19 tests had a significant impact on judicial review. This relationship was positive.

Four regressions were calculated to estimate the relationships that access to the courts had with several indicator of the Covid-19 pandemic. The results of the first regression,  $F(37,1) = 16.06, <0.001$ , show that cumulative cases had a negative relationship with access to the courts. The same relationship was also identified between the dependent variable and cumulative deaths in the second regression,  $F(37,1) = 6.29, <0.001$ . The third regression,  $F(37,1) = 16.06, >0.05$ , indicate that cumulative tests had a negative relationship with access to the courts. In the final regression,  $F(35,3) = 8.92, <0.001$ , cumulative deaths were found to have a negative relationship with access to the courts. The other variables were not significant.

The regression which estimated the effects of cumulative deaths on surveillance,  $F(31,1) = 5.6, <0.05$ , found a negative relationship between the two variables.

**Figure 1 Judicial Review by Cumulative Deaths**



### Parliamentary Data

	<i>Judicial Review (M1)</i>	<i>Judicial Review (M2)</i>	<i>Judicial Review (M3)</i>	<i>Judicial Review (M4)</i>	<i>Judicial Review (M5)</i>	<i>Access to the Courts (M1)</i>	<i>Access to the Courts (M2)</i>	<i>Access to the Courts (M3)</i>	<i>Access to the Courts (M4)</i>
(Intercept)	5.16 (0.54)* **	4.48 (0.45)* **	3.66(0.3) ***	3.34 (0.24)* **	3.48 (0.29)* **	3.18 (0.23)** *	3.08 (0.22) ***	3.08 (0.29)* **	3.45 (0.27)***
Time	-0.36 (0.07)* **	-0.32 (0.07)* **							
New Cases	-0.03 (0.03)* **								
New Deaths		-0.16 (0.04)* **							
New Tests									
Cumulative Cases			-0.01 (0.001)** *		-0.01 (0.003) )	-0.002 (0.001) ***			-0.002 (0.001)
Cumulative Deaths				-0.04 (0.01)	-0.02 (0.02)		-0.03 (0.01)* **		-0.02 (0.01)**
Cumulative Tests					0.0001 (4.443e-5)*			- 0.0001(2.748e-5)**	-1.17e-5 (3.714e-5)

## 6.1 RESULTS INTERPRETATION

In the initial attempt to empirically examine the effects of the Covid-19 pandemic on the rule of law, as defined by several indicators (judicial review, judiciary activity, and privacy), no significance was found. Thus, we controlled for the governmental system and analyzed separately the parliamentary cases. Analysis revealed no significant effects of the pandemic on rule of law in federal countries. While this may suggest that federal countries were unaffected, these results are likely imprecise due to the small amount of data. Similarly, the fact that no statistically significant effects on privacy for either form of governance was found may be due to insufficient data.

In parliamentary countries, however, significant, negative effects of the pandemic on judicial review and judiciary activity were found. These findings suggest a novel understanding of the effects of widespread viral outbreaks on democratic institutions. These findings, while preliminary, indicate substantial changes to the functioning of democracy that may have imminent and long-lasting repercussions. As such, further research using more data is necessary if the extent of these changes is to be fully understood. This need is only augmented by the unprecedented number of public health measures which may have further long-term implications.

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