

The rule of law and corporate actors: measuring influence



Transformative role of law

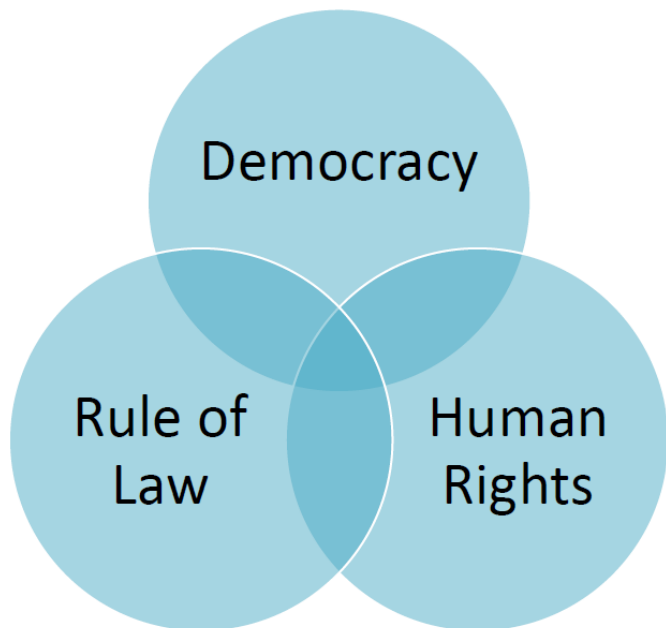
- Corporations and responsibility. The state ability to protect human rights
- Beyond profit maximization
- Stakeholder versus shareholder primacy

[Corporations are not merely economic but also social and political institutions with respective responsibilities. ... Corporations are profoundly engaged in shaping society, fulfilling various public, political and governance functions, which a one-dimensional economic view of the firm cannot account for.]



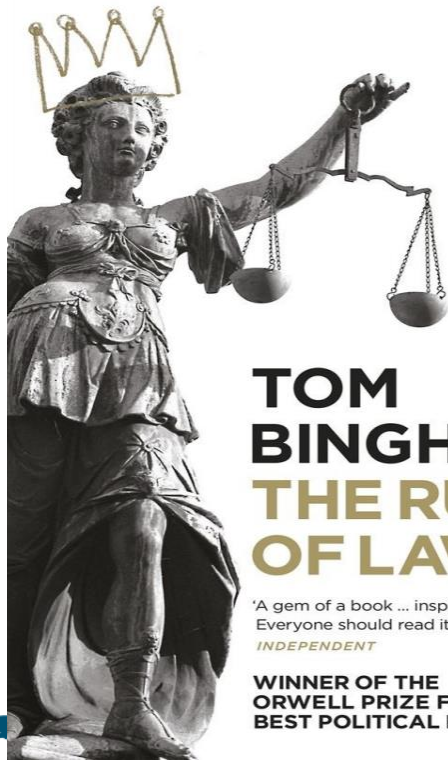
Content

1. Corporate power and the rule of law
2. Methodology of measuring the corporate actors' impact on the rule of law environment
3. Conclusions



Tom Bingham, *The Rule of Law* (2010)

‘The core of the existing principle is, I suggest, that all persons and authorities within the state, **whether public or private**, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.’



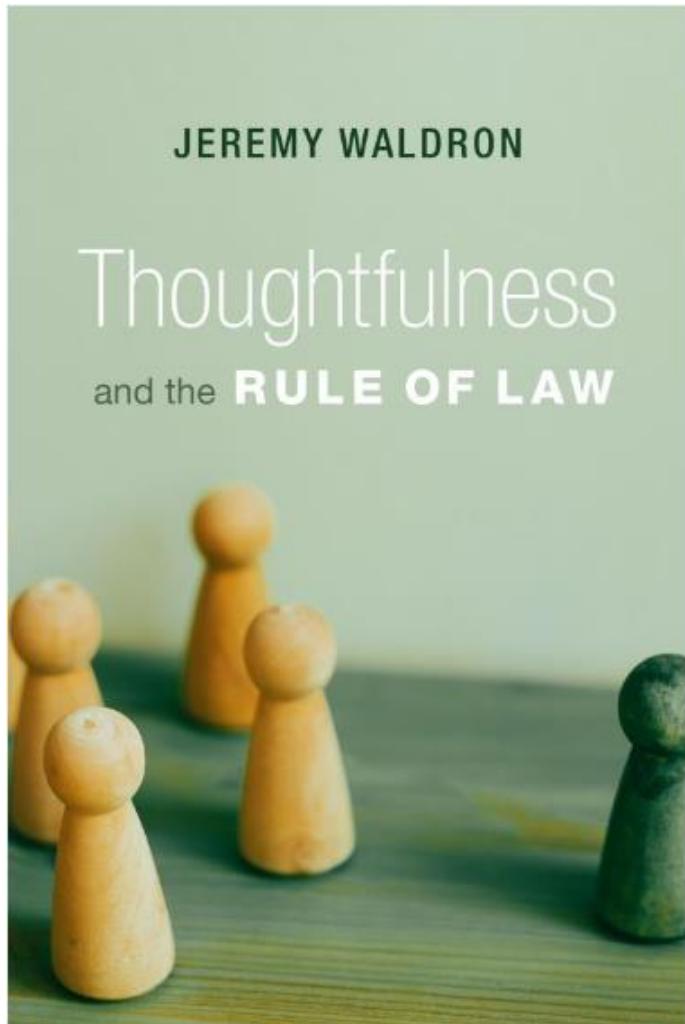
TOM BINGHAM THE RULE OF LAW

‘A gem of a book ... inspiring and timely.
Everyone should read it’

INDEPENDENT

WINNER OF THE
ORWELL PRIZE FOR
BEST POLITICAL BOOK 2011

Jeremy Waldron, Thoughtfulness and the Rule of Law (2023)



‘It must apply to the main ways in which ordinary people and businesses are subjected to and affected by the exercise of power in society (certainly by the exercise of public power and maybe by big centers of private power as well).’

Rule of Law Checklist

Core elements are:

- (1) Legality, including a transparent, accountable and democratic process for enacting law;
- (2) Legal certainty;
- (3) Prohibition of arbitrariness;
- (4) Access to justice;
- (5) Respect for human rights; and
- (6) Nondiscrimination and equality before the law.



UN Global Compact Business for the Rule of Law Framework

BUSINESS FOR THE RULE OF LAW FRAMEWORK



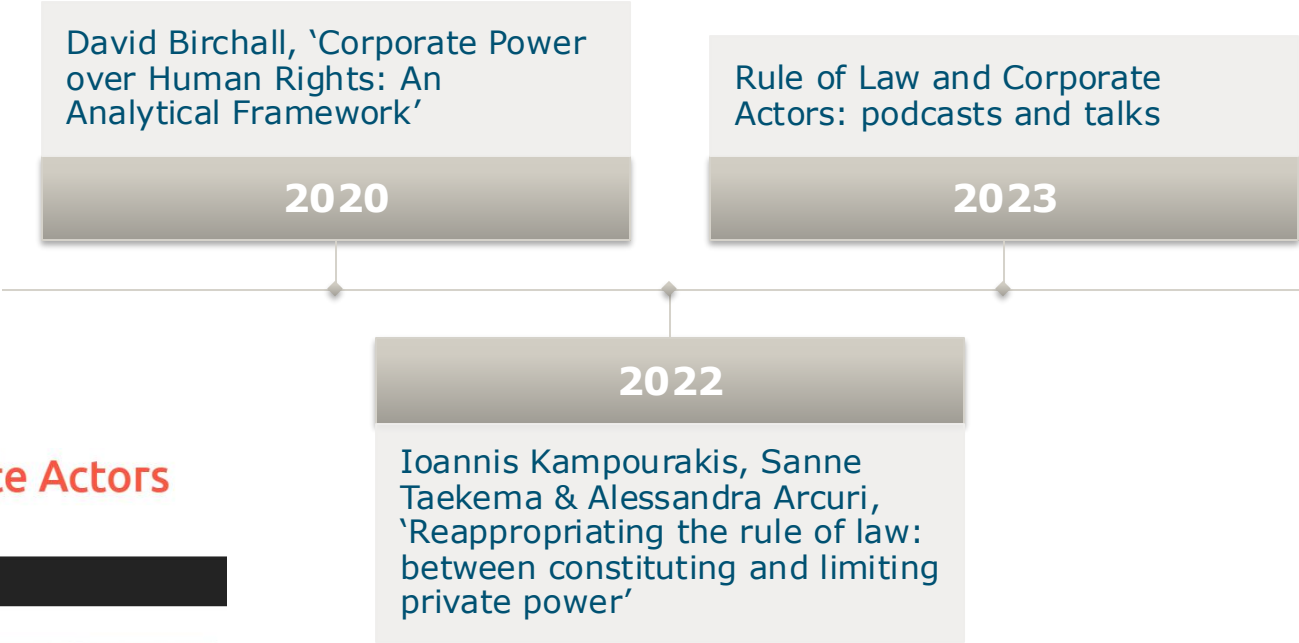
Positive impact (‘responsible business to support the building/ strengthening of legal frameworks and promotion of more accountable institutions’) **vs**
Negative impact

Ensuring business respect for human rights in the political and regulatory sphere and preventing "corporate capture"

Report of the Working Group on Business and Human Rights (2022)

- The report aims to delineate between modes of corporate political engagement that are responsible and rights-respecting and those that are likely to lead to or enable business-related human rights abuses.
- The global human rights community is increasingly documenting links between some forms of corporate political engagement and human rights abuses.

Corporate power



Rule of Law and Corporate Actors

Business and Human Rights Lenses

- HOME
- PODCASTS
- TALKS



Business and Human Rights: A New Lens on Rule of Law and Access to Justice

November 6, 2023

The rule of law is fundamentally about regulating the conduct of powerful actors, be they states or corporations. Just as states are bound by rules that protect human rights, corporations, given their significant influence on our lives, should also adhere to these rules. [...]



Business case for rule of law

October 8, 2023

In this podcast episode, the intricate interplay between the rule of law and corporate actors takes center stage. Through a discussion centered around the Volkswagen emissions scandal, insights are provided into how businesses both rely on and influence the rule of law. [...]

The Rule of law assessments

- The United Nations Rule of Law Indicators (2004): 135 indicators grouped under three institutions: the police (41 indicators); the judicial system (51 indicators); and prisons (43 indicators). No Index
- The European Rule of Law Mechanism: four pillars – 1) Justice systems: civil, administrative and criminal, all instances, all branches, all stages (including prosecution and enforcement of judgments); 2) Anti-corruption framework; 3) Media pluralism and media freedom; 4) Other institutional issues related to checks and balances. No Index
- World Justice Project the Rule of Law Index.



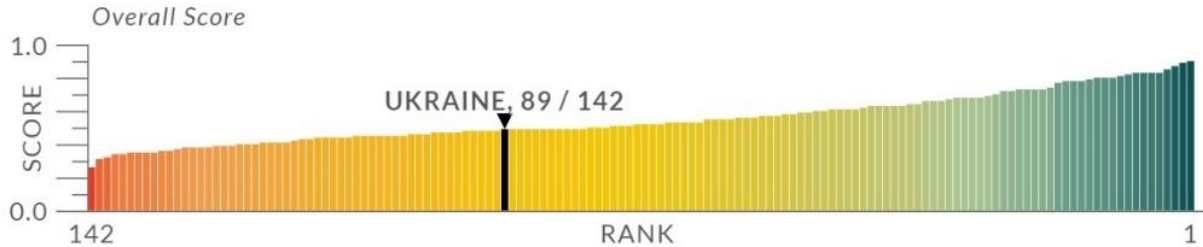
The Global Rule of Law Recession Continues

The 2023 WJP Rule of Law Index® evaluates 142 countries and jurisdictions around the world. For the sixth year in a row, the rule of law has declined in most countries.

Ukraine Ranked 89th Across 142 Countries, 2023

Compare 2023 score rankings for Ukraine by toggling between global, Eastern Europe & Central Asia regional peers, and Lower Middle income peers.

GLOBAL REGION INCOME GROUP



Ukraine

REGION Eastern Europe & Central Asia INCOME GROUP Lower Middle

OVERALL

CHANGE OVER TIME

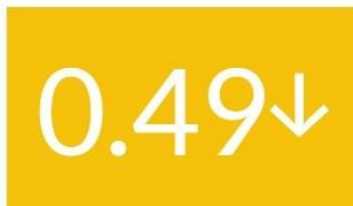
RANK

SUB-FACTORS

Ukraine Overall Score, 2023

Arrows signify year-to-year change

OVERALL SCORE



GLOBAL RANK

89/142↓

REGIONAL RANK

9/15↓

INCOME RANK

12 / 37 ↓

RANK CHANGE

-11↓

SCORE CHANGE

-0.01↓



The Rule of Law Index



- Started in 2008
- 142 countries
- 8 factors
- 44 sub-factors

World Justice Project RoL: factors

- limited government powers;
- absence of corruption;
- order and security;
- fundamental rights;
- open government;
- regulatory enforcement;
- access to civil justice;
- effective criminal justice;
- and informal justice (the last one was not used in the 2022 and 2023 Indexes)



The Global Development Policy Center (Boston University) raises the question of *'measuring corporate power'* in the paper *'Corporate Power in a Global Economy'* (2023)



Global Development Policy Center
Economics in Context Initiative

Corporate Power in a Global Economy

By Brian Roach

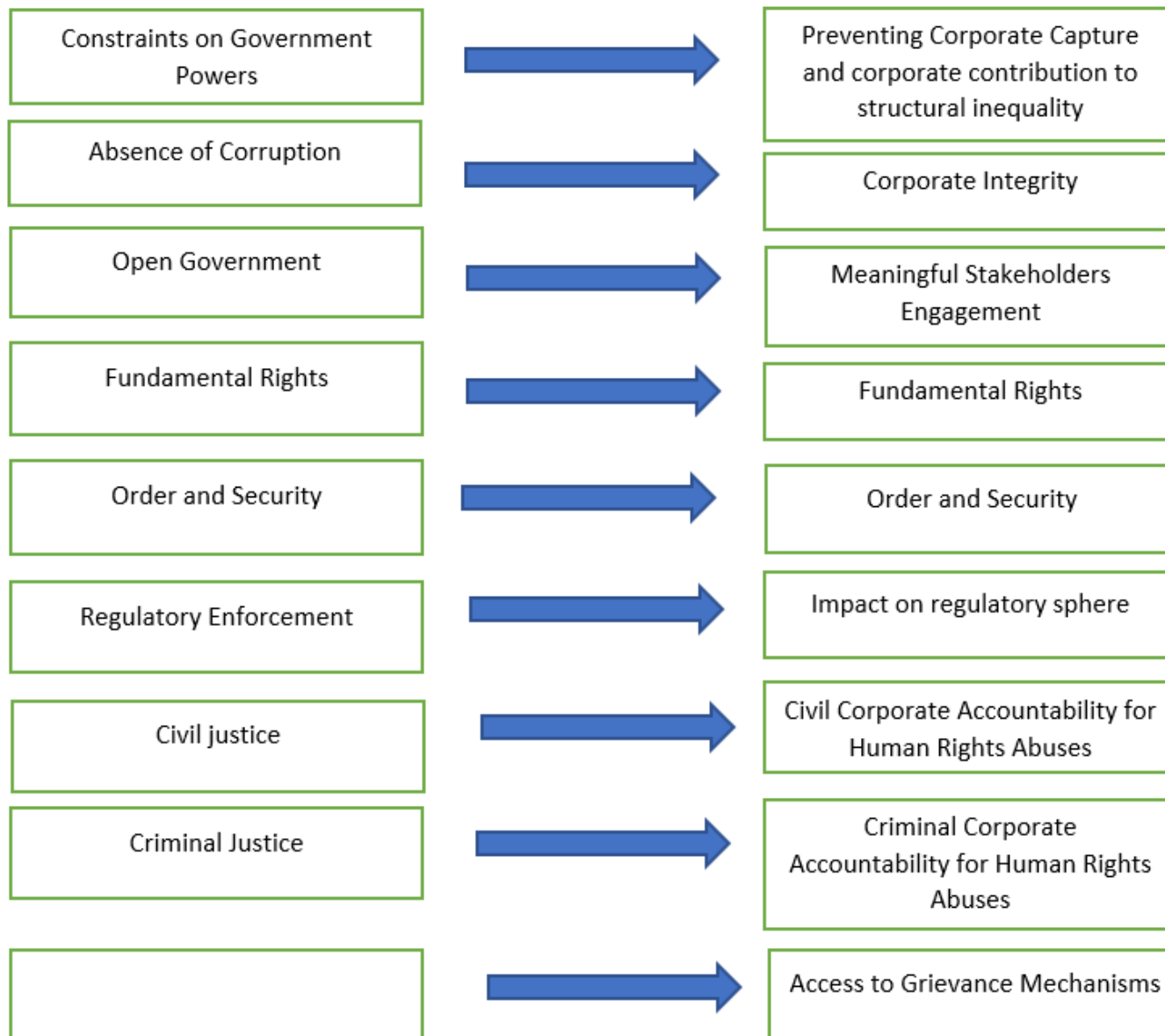


An ECI Teaching Module on Social and Environmental Issues in Economics

- corporate power can be assessed by looking at the strength of countervailing forces that oppose the concentration of corporate power and seek to limit their influence
- to measure their ability to reduce their tax burden
- ...

Rule of Law Index by the World Justice Project

Rule of Law and Corporate Actors Index by the REBALANCE



Corporate capture and corporate contribution to structural inequality

To what extent state's measures prevent corporate political activities that may undermine the state's ability to protect human rights?¹

- 10** State's measures are fully effective.
- 9** Lobbying/conflict of interest transparency and disclosure mechanisms are used to provide greater transparency into corporate political activities.
- 8** For the most part, state's measures are effective.
- 7**
- 6**
- 5** For the most part, state's measures fail to prevent corporate political activities that may undermine the state's ability to protect human rights.
- 4**
- 3**
- 2** State's measures enable corporate political activities that may undermine the state's ability to protect human rights.
- 1**



In general terms, would you agree that in your country companies may engage in lobbying against measures or laws that protect people from human rights impacts, for example lobbying against: (increased) minimum wage laws, affecting, inter alia, the right to just and favorable conditions of work, including decent remuneration; and / or Indigenous title to land affecting, inter alia, Indigenous people's rights; and / or restrictions on emissions into land, sea and air, affecting the right to an adequate standard of living; and / or laws that support informed choice, affecting the right to health

Strongly Agree

Agree

Disagree

**Strongly
Disagree**



WAGENINGEN UNIVERSITY

WAGENINGEN UR

How would you rate the likelihood of such a scenario in your country (where 0 means such a scenario is impossible to imagine and 10 means such a scenario is very likely in your country).

Over the years of active gold and mineral mining in the country, the transnational company has repeatedly become the main target of serious clashes. The main reason was how the huge, multi-million dollar profits from gold mining were distributed. The company made attempts to independently control all processes for generating profits. At the initial stages, the company entered into a bilateral agreement with the government to create a joint company with the state. However, because of corruption, most of the profits went to the transnational company. At the same time, local communities suffered seriously from the negative impact of the company's operations.

1 2 3 4 5 6 7 8 9 10

