

Impact case study (REF3)



Institution: Middlesex University
Unit of Assessment: 18 LAW
Title of case study: Challenging Rule of Law Backsliding in the European Union
Period when the underpinning research was undertaken: Professor Laurent Pech: 1 January 2000 – Present Dr Joelle Grogan: 1 October 2012 – Present Research conducted collaboratively at Middlesex: 2016-2020
Details of staff conducting the underpinning research from the submitting unit:



- (i) Demonstration that all core components of the “rule of law” need to be fully justiciable;
- (ii) Exposure of shortcomings in the EU’s available instruments for external promotion of the rule of law;
- (iii) Assertion that the “rule of law” deficit in the EU’s constitutional framework was largely remedied by the Lisbon Treaty;
- (iv) Evidence that the EU faces a “clear and present danger ” in an increasing number of EU countries, in what Pech defined as “rule of law backsliding” (4) (a 2017 article ranked as the most downloaded article from the *Cambridge Yearbook of European Legal Studies* site).

Grogan’s published research insights include:

- (i) Identification of commonality but also tension between national and EU conceptions of the rule of law;
- (ii) Assessment of strengths and deficiencies in responses to “rule of law backsliding”;
- (iii) Highlighting of rule of law issues associated with UK withdrawal from the EU, especially delegated legislative power, the separation of powers, and the impact of Brexit on the framework for UK rights protection (6);
- (iv) Diagnosis of rule of law issues in EU states’ responses to COVID-19 and their remedy.

By making their research widely accessible, through blogs and media interviews, Pech and Grogan have maintained a continuous public research presence. Pech’s Twitter has ~ 9,500 followers across Europe; Grogan contributes legal updates and commentary to the *Verfassungblog* and *LSE Brexit Blog*, among others, and has ~2,100 followers. Grogan has also distilled her “rule of law” analyses into an accessible public legal education project, “StickyTrickyLaw”, a format with a social media following of ~2,100. Together Pech and Grogan curate an open access Article 7 databank of materials related to measures tackling rule of law backsliding under DEM-DEC (<https://www.democratic-decay.org/article-7-eu>).

3. References to the research

Key outputs:

- 1) Pech and Grogan, ‘Upholding the Rule of Law in the EU: What Role for the EUFRA’, in R. Byrne and H. Entzinger (eds), *Human Rights Law and Evidence-Based Policy. The Role of the EU Fundamental Rights Agency* (Routledge, 2020).
- 2) Pech and Grogan et al, *Meaning and Scope of the EU Rule of Law*, RECONNECT Deliverable 7.2, 30 April 2020: <https://reconnect-europe.eu/wp-content/uploads/2020/05/D7.2-1.pdf>.
- 3) Pech, ‘Judicial independence under threat: The Court of Justice to the rescue’ (2018) 55 *Common Market Law Review* 1827-1854.
- 4) Pech and Kim Lane Scheppele, ‘Illiberalism Within: Rule of Law Backsliding in the EU’ (2017) 19 *Cambridge Yearbook of European Legal Studies* 3-47.
- 5) Pech and D Kochenov, ‘Better late than never: On the European Commission’s Rule of Law Framework and its first activation (2016) 54(5) *Journal of Common Market Studies* 1062-1074.
- 6) Grogan, ‘Rights and Remedies at Risk: The Future Post-Brexit’ [2020] *Public Law* 683.



4. Details of impact

Users and beneficiaries of the research include policy-makers at national and European levels; national judiciaries; professional bodies; civil society groups and the broader public. Evidence of impact can be demonstrated as specific changes and citation as authority in cases; in other instances, it is also evidenced by testimonial because of the confidential nature of some legal consultations (Sources 1-5).

Conceptual impact

From the RECONNECT project, research recommendations made by Pech and Grogan (Sources 7 and 8) have been cited as part of the European Parliament's research agenda and efforts to combat false narratives within rule of law backsliding. Sources (2) and (8) were cited in Source 10. Pech's work in (3) was cited by courts including the European Court of Justice in A-G Tanchev's Opinion in Case C-619/18. Two articles published before the current period (in 2009 and 2010) continue to be extensively cited, including by the Dutch Council of State and the Supreme Administrative Court in the Netherlands in their 2011 report on the legal meaning of the rule of law in Dutch and European Law (p141). The EU Commission's (2014: 158) definition of the rule of law tracks Pech's published formulation precisely in its wording, though the Commission Communication does not, as a matter of procedure, refer to sources. Conceptual influence is also evident in how Pech's concept of "rule of law backsliding" gained public traction following the publication of (2): altmetric data available via the CYELS website show how a sharply rising in BS.2 ed (s) 2 (w) 19.62 (5) (a) Tj 6.6 (1) 5.272 0 Td 2006 (1) 2.6 (s)-2 T&D: 0.007

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Further, indirect impacts on legal proceedings have also occurred, including that the law relating to access to EU documents has begun to be reshaped as a result of Pech's initiation of proceedings against the European Council, in Case T-252/19 Pech v Council
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62019TN0252&from=EN>

Policy-making impact

