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Mahir Muharemović

THE ILLUSION OF ORDER: RETHINKING THE STRUCTURAL RELATIONSHIP BETWEEN FORMAL LAW AND INFORMAL NORMS

This article challenges legal formalism's assumption that rule of law emerges from perfecting constitutional texts and statutory drafting. Instead, it demonstrates that legal order requires dynamic alignment between formal state institutions and informal social norms—what the article terms “virtuous equilibrium.” Drawing on evolutionary psychology, institutional economics, and legal pluralism theory, the analysis reveals that law functions not as self-executing machinery but as a coordination mechanism embedded within dense networks of informal institutions. The article synthesizes theoretical frameworks from Hart, Dworkin, Tamanaha, Weber, and Krygier to show how mechanical jurisprudence fails due to law's inherent “open texture” and the necessity of interpretive judgment. Using the Helmke-Levitsky typology, it demonstrates how informal institutions can complement, accommodate, compete with, or substitute for formal law. The North-Wallis-Weingast framework explains elite resistance to impersonal legal order in “limited access orders,” while path dependence theory illuminates why inefficient legal systems persist despite reform efforts. Examining judicial discretion through the lens of Sally Falk Moore's “semi-autonomous social fields,” the article distinguishes virtuous from vicious informality in legal practice. It concludes that effective rule of law exists only within a “narrow corridor” where state capacity and social norms counterbalance one another, requiring cultivation of legal culture rather than mere institutional transplantation. Without this alignment, formal law remains an empty shell—an illusion of order masking either despotism or state failure.

Key words: Rule of law; informal institutions; social norms; legal pluralism; semi-autonomous social fields; open texture; institutional equilibrium; normative friction

1. INTRODUCTION: THE FORMALIST ILLUSION

In the halls of parliament, the boardrooms of international development agencies, and the lecture rooms of law schools, there exists a seductive and persistent belief in the omnipotence of the written word. We often assume that the “rule of law” is a technical achievement, a feat of social engineering similar to building a suspension bridge or designing a microprocessor. The prevailing logic suggests that if we can just draft the precise statute, design the perfect constitution, or train a sufficient number of police officers, then order, justice, and prosperity will naturally follow. This formalism is the dominant religion of modern governance. It fuels a multi-billion-dollar industry of “rule of law promotion” that treats legal systems as modular kits that can be exported from the Global North to the Global South, often ignoring the messy local realities that determine whether those laws will actually take root (Carothers 1998).

Yet, history, empirical data, and current global events tell a much different and more troubling story. Across the world, we see nations with sophisticated legal codes that are routinely ignored by both citizens and leaders. We see courthouses that gleam with marble but function as marketplaces for political influence rather than bastions of impartial justice. We see distinct, often gaping gaps between what the law commands and what people actually do. This discrepancy exists because we consistently mistake the map for the territory. We view the rule of law as a problem of institutional design and ignore the messy biological, psychological, historical, and social realities that actually drive human behavior.

This article posits that the primary constraint on the rule of law is not a lack of technical legal expertise or insufficient funding. It is a fundamental misalignment, what might be termed ‘normative friction’, between formal legal structures and informal social norms. As Hodgson notes, formal institutions are inherently limited if they do not resonate with the informal constraints of a society (Hodgson 2025). Law does not operate in a vacuum. It functions, or it fails, within a dense and invisible web of unwritten rules, cultural habits, and deep-seated evolutionary drives. When the formal law clashes with these informal realities, it is almost always the law that breaks.

Yet this observation requires theoretical sophistication to avoid falling into crude anti-formalism. The mechanical jurisprudence assumed by many rule of law promoters, wherein judges function as mere ‘mouthpieces of the law’ deriving correct answers through deductive logic, has been comprehensively discredited by successive generations of legal scholars. H.L.A. Hart’s analytical positivism demonstrated that

law comprises not commands backed by threats but a union of primary rules (governing conduct) and secondary rules (governing recognition, change, and adjudication), with legal validity grounded in officials' acceptance of a 'rule of recognition' rather than brute force (Hart 1961). Ronald Dworkin (1977, 1986) further challenged legal formalism by showing that legal reasoning necessarily involves moral principles alongside rules, requiring interpretive judgment that cannot be reduced to mechanical application. Brian Tamanaha's (2001) socio-legal approach emphasizes that law exists always as 'law in society,' its operation contingent on social contexts that pure formalism ignores.

However, it would be a fatal mistake to dismiss formal institutions as irrelevant or powerless. Formal law possesses immense power to coordinate complex human interactions that informal norms cannot handle. The challenge is not to choose between the formal and the informal but to understand their dialectic relationship.

Max Weber's sociology of law provides crucial foundations for this inquiry. Weber (1930) recognized that modern legal rationality, characterized by calculability, consistency, and formal procedural correctness, represented both an achievement and a problem. While rational-legal authority enabled coordination at unprecedented scales, it simultaneously generated an 'iron cage' (*stahlhartes Gehäuse*) of impersonal rules that could alienate individuals and stifle human agency. Weber distinguished formal rationality (*Zweckrationalität*: means-ends efficiency, logical systematization) from substantive rationality (*Wertrationalität*: value adequacy, realization of ethical commitments), observing that legal systems could be formally rational (predictable, logically consistent) while substantively irrational from perspectives of justice or human welfare (1978). This tension between formal legal equality and substantive inequality remains central to understanding why formally perfect legal systems may fail to achieve their purposes.

Martin Krygier's concept of the rule of law as 'tempering' arbitrary power offers a productive alternative to both legal formalism and its critics. Rather than viewing law primarily as limiting or restraining power, Krygier (2016) emphasizes law's role in channeling, moderating, and rendering power predictable and accountable. Like the tempering of steel, which both strengthens and introduces controlled flexibility, legal 'tempering' of power involves both constraint and enhancement (King 2019). The rule of law, on this view, emerges not from technical perfection in statute drafting but from cultivating complex institutional ecologies wherein power remains effective yet sufficiently constrained, predictable, and accountable to avoid arbitrariness.

By utilizing the typologies provided by Helmke and Levitsky (2004), integrating

the historical analysis of North, Wallis, and Weingast (2009), and applying the concept of path dependence developed by Pierson (2000), while drawing on Sally Falk Moore's concept of semi-autonomous social fields to understand legal pluralism (Moore 1973), this research aims to show that true legal order requires a "virtuous equilibrium" where the formal law provides the structure and informal norms provide the mortar. Without this synthesis, the rule of law remains a hollow shell, an illusion of order that masks a reality of chaos or tyranny.

2. THE BIOLOGICAL AND SOCIAL SUBSTRATE

2.1. Wired for Norms

Before there were kings, constitutions, or courts, there were rules. Humans are, as Fukuyama argues, "rule-following animals by nature" (Fukuyama 2011). This is not a learned behavior acquired in law school or through civic education. It is a biological imperative wired into our neural architecture. We are born with the cognitive machinery to identify social norms, to conform to them, and to infuse them with transcendent meaning.

Crucially, the most enduring of these norms are not arbitrary; they are typically "other-regarding," meaning they account for the welfare of the broader group rather than the individual alone. We generally possess an innate preference for utilitarian norms (such as keeping commitments or treating others fairly) because they promoted group survival in our evolutionary past (Drobak 2006). This biological foundation is driven by powerful and automatic emotions. We feel a flush of anger when we see a rule violated. We feel the burning sensation of shame when we break a rule ourselves. We feel a swell of pride when we uphold the community standard against our own self-interest. These are not intellectual calculations or philosophical deductions. They are "autopilot mechanisms" that evolved to promote survival in a dangerous world (Fukuyama 2011). In the small hunter-gatherer groups of our ancestors, cooperation was not a lifestyle choice. It was a strict necessity. The individuals who could internalize group norms and punish free-riders survived to pass on their genes. Those who could not were bred out of the human lineage (Krebs 2008).

2.2. The Cognitive Friction

While this evolutionary “software” is powerful, it has a significant limitation relative to modern governance. It was designed for small, face-to-face groups based on kin selection (favoring genetic relatives) and reciprocal altruism (favoring those who can return the favor). It was not designed for the modern nation-state. Our biological impulse is to trust our family and our tribe, not to trust a stranger or an abstract bureaucracy.

This creates a cognitive friction when we try to implement the modern rule of law. The rule of law demands that we treat the stranger exactly the same as we treat our cousin. It demands that a bureaucrat deny a favor to his brother in the name of “meritocracy.” To the primitive part of our brain, this feels wrong. It feels like a betrayal of the primary biological directive. Therefore, the “rule of law” is an artificial construct that requires us to override our natural instincts. It is a fragile achievement that constantly fights against the gravity of our evolutionary history. This tension between particularistic loyalties and universalistic legal norms represents what Weber (1930) identified as the conflict between substantive and formal rationality: formal legal equality demands impersonal treatment, yet substantive social commitments pull toward preferential treatment of kin and community members.

The persistence of nepotism and tribalism in modern politics is not an aberration. It is the default setting of the human species reasserting itself against the artificial constraints of the state. Consequently, when we analyze corruption or clientelism, we are not merely looking at “criminal” behavior in the legal sense. We are looking at behavior that makes perfect sense from an evolutionary perspective.

Yet this biological framing must be balanced with recognition that humans possess remarkable capacity for cultural learning and institutional adaptation. Legal systems do succeed in generating impersonal norms—the question is under what conditions and through what mechanisms. This requires examining not just biology but the social construction of legal order.

3. THE INSTITUTIONAL DIALECTIC: FORMAL LAW AND INFORMAL NORMS

3.1. The Power of Coordination

If informal norms are so powerful, why do we need formal law at all? Why not rely on the self-governing capacity of communities as described by Elinor Ostrom? Os-

trom (1990) famously demonstrated that local communities can often manage “common pool resources” like forests or fisheries more effectively than the state through complex, informal agreements.

However, the answer lies in the problem of scalability and transaction costs. Informal norms work brilliantly in small villages where everyone knows everyone else. In such a setting, the threat of gossip or ostracism is sufficient to enforce contracts. However, as societies scale up, these informal mechanisms fail. One cannot rely on village gossip to enforce a commercial contract with a corporation in another city or to regulate the safety of food produced on another continent.

This is where the true power of formal institutions lies. Formal law, when effective, acts as a “coordination device” that lowers transaction costs (North 1990). It allows strangers to trade, interact, and live together by providing a predictable set of “rules of the game” that are enforced by a third party.

Yet the success of this coordination depends heavily on the underlying cultural matrix and the relationship between formal law and informal norms. Sally Falk Moore’s concept of ‘semi-autonomous social fields’ illuminates this dynamic. Moore defined such fields as social spaces that “can generate rules and customs and symbols internally, but that [are] simultaneously set in a larger social matrix which can, and does, affect and invade [them]” (Moore 1973: 720). Legal systems do not simply impose rules on passive populations; rather, formal state law enters into complex negotiations with existing normative orders, like customary practices, religious law, commercial customs, professional standards, that possess their own rule-making capacity yet remain embedded in and constrained by state legal structures. Whether formal legal innovations succeed depends substantially on whether they align with or disrupt norms prevailing in these semi-autonomous fields (Moore 1973).

This recognition requires engagement with legal pluralism: the acknowledgment that multiple, overlapping normative orders routinely operate simultaneously within any given social space, each claiming authority to regulate behavior and resolve disputes (Griffiths 1986; Merry 1988; Tamanaha 2021). Formal state law represents merely one among numerous normative systems coexisting with customary law, religious law, professional norms, and community standards. Understanding how law actually works requires examining interactions among these plural legal orders rather than assuming state law’s automatic supremacy.

However, to make legal rights meaningful, networks of both formal and informal supporting institutions are needed. Cultural values significantly influence both institutional design and effectiveness. Research indicates that cultures emphasizing au-

tonomy and egalitarianism are more likely to promote and respect the rule of law, as they view individuals as distinct agents with rights deserving equal protection. Conversely, cultures prioritizing “embeddedness” and traditional authority may be less inclined to support a robust rule of law, often seeking guidance from sources other than formal legal systems (Licht, Goldschmidt & Schwartz 2007). This relationship is reciprocal. While culture shapes institutions, institutions also shape cultural development over time (Brinks 2008).

Formal institutions thus have the capacity to create “focal points.” These are universally recognized standards, like driving on the right side of the road or respecting a property deed, that allow millions of people to coordinate their actions without speaking to one another. Therefore, the state is not merely a predator as some libertarian theorists might suggest (Rothbard 2009). It is a necessary provider of the “public good” of order. But for the state to provide this good, its formal institutions must possess what Acemoglu and Robinson call “state capacity,” which is the actual ability to enforce rules across the territory (Acemoglu & Robinson 2019). A state without the power to enforce its formal laws is not a state. It is merely a suggestion box.

3.2. Four Types of Interaction

The relationship between formal and informal institutions is often presented as a binary conflict. However, Helmke and Levitsky (2004) provide a much more sophisticated framework for understanding this interaction. They identify four distinct types of relationships which help us diagnose the health of a legal system. This typology is essential for understanding why law fails or succeeds.

Before examining these types, conceptual clarity is essential. Formal institutions consist of officially promulgated rules embodied in constitutions, statutes, and regulations. Informal institutions comprise socially shared rules, usually unwritten, created and enforced outside officially sanctioned channels (Helmke & Levitsky 2004). These include social norms (behavioral regularities based on shared expectations), customary practices, clientelistic networks, and unwritten conventions governing political and legal behavior. The key analytical question is not whether informal institutions exist—they exist in all legal systems—but how they interact with formal institutions.

a. Complementary Institutions:

Here, informal norms fill in the gaps of the formal law and improve its performance. An example is the unwritten norm of “civility” in a parliament or the expectation that

the loser of an election will concede. These norms are not written in the constitution, but without them, the formal legislative process halts. This is the ideal state for the rule of law. It implies that the formal rules and the social norms are pointing in the same direction.

Examples abound in well-functioning legal systems: judicial norms of collegiality enable judges with differing views to work together; legislative norms of reciprocity facilitate vote trading; bureaucratic norms of professional integrity ensure officials serve public rather than partisan interests even when formal oversight is limited. Complementary institutions represent ‘virtuous alignment’-formal and informal institutions supporting rather than undermining one another.

b. Accommodating Institutions:

These arise when formal rules are restrictive, but actors find informal ways to work around them without directly violating the spirit of the system. Informal power-sharing agreements in divided societies often fall into this category. They stabilize the formal order by making it livable. The Chilean practice of *blanqueo* (ignoring certain strict laws to allow functionality) is a classic example. Here, the informal institution helps the system survive by softening the rigidity of the formal rules.

Accommodating institutions occupy ambiguous normative space. They may stabilize otherwise dysfunctional formal systems, preventing rigid rules from generating crises. Yet they also create opacity, privileging insiders who understand informal arrangements over outsiders who rely on formal rules. Whether they strengthen or weaken legal order depends on whether they preserve formal institutional purposes through flexible application or hollow out formal rules while maintaining façades of compliance.

c. Competing Institutions:

This is where the friction causes heat. In this scenario, informal institutions command a different behavior than the formal law. The most common example is clientelism, corruption, or mafia justice. If the formal law says “do not steal,” but the informal norm says “you must steal to feed your patron,” the individual faces a crisis of loyalty. In weak states, the informal usually wins because the sanctions (social ostracism or violence) are more immediate than the state’s penalties.

Competing institutions generate ‘normative friction’: the clash between formal legal requirements and informal social expectations creates uncertainty, raises transaction costs, and undermines predictability. Individuals cannot rely on formal rules

alone because informal institutions systematically deflect formal law's operation. This dualism typically benefits those who understand both systems while disadvantaging outsiders lacking access to informal networks—often foreigners, minorities, and marginalized groups.

d. Substitutive Institutions:

These emerge when the state has completely failed. The formal institutions exist on paper but are irrelevant. In their place, informal structures, such as village councils, religious courts, or vigilantism, take over the functions of the state. In these zones, the “rule of law” is effectively replaced by the “rule of the tribe.” This is not lawlessness in the sense of chaos, but it is an order completely divorced from the state.

Where state courts and police fail to provide security or resolve disputes, communities may develop informal enforcement mechanisms that substitute for non-functioning formal institutions. Business communities facing weak formal contract enforcement develop reputation mechanisms and trade association arbitration enabling commerce without reliable state law (Bernstein 1992, 2001). While these substitutive institutions demonstrate social resilience, they signal formal institutional failure and often perpetuate inequality, lacking accountability mechanisms present in formal legal systems.

Understanding this typology is critical for reformers. We cannot simply “erase” informal institutions. We must analyze which category they fall into. Are they supporting the edifice of the law, or are they termites eating the foundation?

4. THE ROOTS OF STAGNATION

4.1. Limited Access Orders vs. Open Access Orders

Why do some societies succeed in establishing a rule of law that applies equally to elites, while others fail? North, Wallis, and Weingast (2009) argue that the answer lies in how societies control violence. In “Limited Access Orders” (which characterize most of human history and most developing nations today), the state does not have a monopoly on violence. Powerful elites (warlords, generals, tribal heads) possess the capacity to disrupt order. To keep the peace, the ruling coalition creates a system of rents, meaning exclusive privileges, monopolies, and legal immunities, that are distributed to these elites.

In such a system, the rule of law is impossible by design. If the law were applied equally, it would strip the elites of their privileges, leading them to rebel and unleash violence. Therefore, in Limited Access Orders, the law is intentionally discriminatory. It is a tool for distributing rents, not justice.

Courts may enforce contracts among elites while ignoring violations by elites against non-elites. Property rights may be secure for those connected to power but precarious for outsiders. Regulations may be stringently enforced against competitors while overlooked for regime favorites. Law in limited access orders is particularistic by necessity, not accident.

The transition to an “Open Access Order,” where the rule of law applies impersonally to all, is exceptionally difficult because it requires elites to voluntarily give up the rents that ensure their survival (North, Wallis & Weingast 2009). This explains why formal legal reforms often fail. They threaten the delicate political equilibrium that prevents civil war. The elite resistance to the rule of law is not just greed. It is often a strategy for political survival.

What appears as corruption or poor implementation from a reformer’s perspective may represent rational behavior by elites whose survival depends on maintaining rent-distribution systems incompatible with genuine rule of law. International donors advocating impersonal legal institutions, like independent judiciaries, merit-based civil services, transparent procurement, threaten these systems. Elites may formally adopt reforms to secure aid while ensuring they remain hollow through non-enforcement or informal workarounds.

4.2. Trapped by History

Even when the political will exists to change laws, societies often find themselves trapped by history. Paul Pierson’s (2000) concept of “path dependence” explains why inefficient legal institutions persist. Institutional development is characterized by “increasing returns.” Once a society adopts a certain legal or social path, such as a specific type of property right or a specific court system, the costs of switching to a different path increase over time.

Actors adapt their skills, expectations, and investments to the existing system. Lawyers learn the corrupt procedure. Businesses pay the bribe as a line item in their budget. Citizens learn to rely on the patron for protection. Changing the formal law disrupts these huge investments. Therefore, even if a new legal code is theoretically

“better,” the social and economic cost of transition creates a powerful inertia. The “illusion of order” provided by the old, dysfunctional system is often preferred to the uncertainty of reform. This suggests that the constraints of the rule of law are not just spatial (culture vs. law) but temporal (past vs. present). The dead hand of the past weighs heavily on the decisions of the present.

These path-dependent investments explain why legal reforms often fail even when formally adopted. Changing statutes is relatively easy; changing the surrounding institutional ecology is far harder.

5. THE JUDICIARY AS THE BATTLEGROUND OF NORMS

5.1. The Chain of Meaning

A central myth of modern formalism is that law can be applied mechanically. We often crave a system where judges are mere mouthpieces of the statute, functioning like vending machines that dispense the correct judgment when a coin is inserted. Yet this is linguistically and logically impossible. Legal rules have what scholars call “open texture” (Claes, Devroe & Keirsbilck 2009). No amount of detailed drafting can cover every future eventuality or every nuance of human conflict.

This recognition traces to H.L.A. Hart’s (1961) seminal work. Hart acknowledged that legal rules possess ‘open texture’: they cannot exhaustively specify their application and will inevitably encounter borderline cases not clearly covered by their terms. This indeterminacy arises from both semantic vagueness (terms like ‘reasonable care’ lack precise boundaries) and our inability to foresee all circumstances to which rules might apply. In such cases of indeterminacy, judges must exercise discretion to resolve ambiguities. This discretion remains constrained by professional norms and requirements of reasoned justification, but it is not mechanically determined by pre-existing rules.

The fundamental challenge lies in the fact that laws do not apply themselves. They depend entirely on human agents to interpret and enforce them. Since legal meaning is often unclear, the way laws are interpreted plays a massive role in whether they fulfill their intended purposes. As legal philosopher Charles Peirce (1931–1958) noted, the legal system involves an “infinite chain of interpretations” where meaning is built, layer by layer, through actual use rather than abstract definition. Anne Wagner similarly points out that ideas of what is “fair” or “legal” are inextricably shaped by local traditions, shared experiences, and historical memory (Wagner 2025). This

means that the original intention behind a law may never be the same as the meaning it ends up having in practice.

Ronald Dworkin's (1986) interpretive jurisprudence demonstrated that legal reasoning necessarily involves moral principles alongside rules. When rules run out or conflict, judges engage in 'constructive interpretation' balancing fit with existing legal materials and justification (making law morally the best it can be given constraints of fit). Legal judgment involves practical wisdom and contextual sensitivity resisting reduction to algorithmic rule-following.

Consequently, modern legal interpretation increasingly relies on teleological approaches. This involves interpreting laws based on the goals they aim to achieve rather than just their literal wording. This is especially important when constitutional rights or principles conflict, requiring courts to apply proportionality tests. These tests consider whether legal measures actually achieve their goals, whether less restrictive alternatives exist, and whether the benefits outweigh the costs.

This shifts our understanding of the legal system itself. According to Antonio-Martín Porrás-Gómez (2025), law is always constructed with a purpose in mind. It is not static. It is shaped by political and judicial decisions, and its language remains open to interpretation. In today's fast-changing world, law should not be seen as a fixed reflection of past values but as a flexible tool designed to meet present and future challenges. For this to work, legal decisions must consider not just doctrine but also empirical data regarding how laws actually affect people. In the end, applying law should produce solutions that are legally sound and effective in real life. This demonstrates that the rule of law is not just about having rules. It is about applying them in ways that build a fair and well-functioning society.

5.2. Virtuous Informality

Informality in the judiciary is often viewed negatively as a failure of the system. However, recent scholarship suggests a more nuanced view. Smekal (2023) argues that informal judicial institutions can be "positive" and virtuous. Informal practices, such as judges consulting peers on difficult cases or developing unwritten norms of efficient case management, often serve as the lubricant that keeps the rigid machinery of the formal system from seizing up.

For example, a formal rule might demand a rigid deadline that would cause a miscarriage of justice in a specific case. An informal norm among judges to grant "reasonable extensions" preserves the legitimacy of the system by ensuring substantive

fairness. In this sense, informal norms can “humanize” the formal law and make it palatable to the citizenry. Without this flexibility, the formal law would be so brittle that it would shatter under the pressure of reality. The “virtue” of informality here lies in its ability to uphold the spirit of the law against the tyranny of the letter.

Such practices strengthen rather than weaken rule of law by maintaining public confidence that courts will reach reasonable decisions. Informal judicial councils developing consistent interpretive approaches, or informal mentoring of junior judges by senior colleagues transmitting professional norms, exemplify virtuous informality.

5.3. Vicious Informality

The danger, of course, is that this discretion can be captured. We must distinguish between a system governed by the “rule of law” and one governed by the “rule of norms” (Anghel 2023). When informal institutions incentivize behavior that contradicts the public interest, such as political favoritism, nepotism, or elite capture, they become parasitic.

Šipulová and Kosař distinguish between “decay” and “erosion.” Democratic decay acts like rot from the inside. It results from a long-term incongruence between formal rules and the informal values of the judiciary. It is a slow, endogenous process where the actors within the system stop believing in the principles they are sworn to uphold. Erosion, by contrast, happens when the positive informal norms that sustain democracy are worn away (Šipulová & Kosař 2023: 1577).

Consider the informal norm of “judicial self-restraint.” There is no law that says a Supreme Court cannot strike down every single law passed by parliament. But if they did so, the system would collapse. It is only the informal norm of restraint that prevents this constitutional crisis. When populist leaders attack the judiciary, they are often attacking these invisible pillars. Once the informal norms erode, the formal constitution provides little protection against tyranny.

6. DYSFUNCTIONAL INTERACTIONS AND THE “EMPTY SHELL”

6.1. The Failure of Over-Regulation

In a desperate attempt to eliminate the risks of discretion and capture, modern states often turn to hyper-regulation. They try to write a rule for every possible scenario to

bind the hands of officials. As Philip Howard (2011) notes, this approach turns law into an instruction manual that suffocates common sense.

Over-regulation creates a paradox where the more rules you have, the less law you have. Complexity becomes a weapon for the wealthy and powerful. They can hire expensive lawyers to navigate the maze of regulations, while the poor are trapped by technicalities they cannot understand. Furthermore, when rules are so detailed and strict that they cannot realistically be followed, everyone becomes a sinner. This gives officials arbitrary power to enforce the law selectively. The rule of law transforms into a tool of blackmail rather than a shield of liberty. An official can always find a rule you have broken if they look hard enough (Stuntz 2011).

This echoes Weber's (1930) concern about the 'iron cage' of bureaucratic rationalization. When legal systems become so complex that compliance is impossible and enforcement necessarily selective, formal law paradoxically undermines rather than supports legitimate order. Formal legal equality coexists with substantive inequality when access to legal expertise systematically advantages some groups over others.

6.2. The Tragedy of Legal Transplants

This dysfunction is particularly evident in the phenomenon of legal transplants. Developing nations often adopt "best practice" laws from Western democracies, hoping to replicate their success. However, these laws are often transplanted without the underlying soil of informal norms that made them work in their country of origin.

As Hodgson emphasizes, formal institutions cannot simply be dropped into a new context and expected to function (Hodgson 2025). A law that promotes market competition in a culture of individualism may be completely ineffective in a culture of strong kinship obligations.

This reflects the dynamics Sally Falk Moore (1973) identified: formal legal rules entering semi-autonomous social fields will be selectively incorporated, reinterpreted, or resisted depending on compatibility with internal norms and power relations. External legal rules do not simply impose themselves but enter into complex negotiations with existing normative orders. Whether state legal innovations succeed depends substantially on alignment with norms prevailing in the social fields they seek to regulate.

The result is what Pritchett and Woolcock (2004) describe as "isomorphic mimicry." The state looks like a state. It has the laws of a state. It has the ministries of a state. But it functions like a tribe. The formal institutions are "empty shells" that pro-

vide cover for the continuation of traditional, often predatory, informal practices. This leads to the emergence of “weak” or “despotic” states rather than the “inclusive” states necessary for prosperity (Acemoglu & Robinson 2017).

Thomas Carothers (1998) critiques this approach as “legal formalism,” noting that changing the law on the books is easy, but changing the law in the mind is a generational project. He argues that the international community has spent decades focusing on the “hardware” of the law (courts, computers, codes) while ignoring the “software” (culture, habits, expectations). The result is often a shiny, modern legal system that sits unused, like a supercomputer in a room with no electricity.

7. SOCIAL TRUST AND THE FOUNDATIONS OF COMPLIANCE

7.1. Making Institutions Work: The Role of Social Capital

Why do formal institutions function in Northern Italy but fail in Southern Italy, despite operating under the same national laws? Robert Putnam’s seminal work suggests the answer lies in “social capital,” which refers to the networks of norms and trust that facilitate coordination (Putnam 1993). In societies with high social capital, citizens view the law as a cooperative enterprise. They pay taxes and obey traffic laws because they trust that their neighbors will do the same.

In low-trust societies, the law is viewed as an imposition by a hostile “other.” Rothstein (2011) argues that the quality of government is inextricably linked to this generalized trust. When trust is low, the state must resort to coercion to enforce even basic rules, raising transaction costs to unsustainable levels.

Bo Rothstein extends this analysis, arguing that government quality and generalized trust form a reciprocal relationship. Impartial, effective government generates trust by demonstrating that institutions treat citizens fairly and that others generally comply. This trust enables voluntary cooperation, reducing enforcement costs. Conversely, corrupt, ineffective government erodes trust, making cooperation difficult and requiring heavy-handed enforcement that further erodes legitimacy—a vicious cycle difficult to escape (Rothstein 2011).

This creates a “social trap.” Citizens want a rule of law state, but no individual finds it rational to be the first to obey the law while everyone else is cheating. Breaking this cycle requires more than new laws. It requires the rebuilding of the social contract itself.

Legal reforms that ignore this coordination problem, by simply changing formal rules while leaving trust levels unchanged, predictably fail. Escaping requires establishing credible belief that others will comply, typically through combinations of visible enforcement, voluntary leadership by respected actors, and gradual trust-building through successful small-scale cooperation (Ostrom 1990).

7.2. The “Narrow Corridor”

This brings us to the ultimate constraint. The Rule of Law is not the natural state of human society. As Acemoglu and Robinson (2019) argue, it exists only in a “Narrow Corridor.” On one side of the corridor is the “Cage of Norms,” where informal institutions (tradition, caste, tribe) stifle progress and individual freedom. On the other side is the “Despotic Leviathan,” where the formal state is so powerful it crushes society.

The Rule of Law thrives only in the middle, where a strong state is balanced and shackled by a strong, vigilant society equipped with robust, democratic social norms. This balance is not static. It is a constant struggle. If the state becomes too weak, the informal norms of the “mafia” or the “tribe” take over (Substitutive institutions). If the state becomes too strong and unmoored from social norms, it becomes a tyranny (Competing institutions). The illusion of order appears when we have a strong state on paper, but a weak society that cannot hold it accountable, or a strong society that refuses to grant the state legitimacy.

8. CONCLUSION: CULTIVATING A RULE OF LAW CULTURE

The constraints of the rule of law are not defects that can be patched with better software or more foreign aid. They are the reality of the human condition. We cannot legislate away our evolutionary heritage. We cannot draft a statute that eliminates the complexity of human social life. The attempt to create a perfect, gap-free system of formal rules is an intellectual error that leads to the illusion of order, not order itself.

This analysis has demonstrated that effective legal order cannot be achieved through formal institutional design alone. The persistent failure of rule of law promotion efforts reflects fundamental misunderstanding of how law functions. The the-

oretical frameworks examined, from Hart's recognition of open texture and the rule of recognition, through Dworkin's emphasis on interpretive judgment, to Tamanaha's insistence on law's social embeddedness, converge on a central insight: mechanical jurisprudence is impossible. Legal rules cannot be applied algorithmically because language is indeterminate, circumstances infinitely variable, and principles conflict in ways requiring judgment.

Weber's analysis illuminates law's dual character: simultaneously enabling coordination and risking alienating formalism. The 'iron cage' of bureaucratic procedure remains a persistent danger where complexity renders law inaccessible. Yet formal rationality enables impersonal treatment essential for modern economies. The challenge is cultivating forms of legal rationality preserving benefits of formal rules, like predictability, consistency, constraint on arbitrary power, while avoiding rigid formalism.

Krygier's concept of law as 'tempering' power provides a productive framework. Rule of law emerges not from technical perfection in statute drafting but from cultivating institutional ecologies wherein power is channeled, moderated, and rendered accountable. This requires both formal institutions with genuine capacity and informal norms that constrain, guide, and legitimate institutional action.

Legal pluralism theory, particularly Moore's concept of semi-autonomous social fields, reveals that formal state law always operates within and alongside other normative orders. Understanding how law works requires examining interactions between state law and the customary practices, professional norms, commercial customs, and community standards that constitute semi-autonomous fields. State law penetrates these fields variably and unpredictably, with local norms sometimes reinforcing, sometimes resisting, sometimes transforming legal rules in practice.

Realizing the rule of law requires a fundamental shift in perspective. Reformers must stop viewing the rule of law only as an exercise of prescribing rules from the top down. Instead, they must become gardeners of culture. As McKay argues, we need to build a "rule of law culture" (McKay 2015). This means aligning formal statutes with the moral intuitions of the community. It means recognizing that the unwritten rules of judicial restraint, professional ethics, and public service are just as important as the written rules of civil procedure.

As Brian Tamanaha (2004) reminds us, the rule of law is not just a set of institutions. It is a shared belief that the law is superior to the will of any individual. This belief cannot be imported or imposed. It must be grown. Through patient cultivation of professional standards, public legal consciousness, and institutional cultures em-

bodying commitment to legality. Tamanaha emphasizes that law exists always as ‘law in society’—its operation fundamentally contingent on social contexts. Effective legal development requires cultivating not merely legal rules but the social ecology within which rules can take root.

If the gap between the law on the books and the law in the reality becomes too wide, the system breaks. The formal institutions may continue to exist. Judges will sit on benches. Parliaments will pass acts. Police will wear uniforms. But they will be hollow shells.

To avoid this fate, we must cultivate what this article terms ‘virtuous alignment’: a configuration wherein formal institutions and informal norms mutually reinforce rather than undermine one another. We must build trust. We must respect the necessary role of judgment. We must understand that in the end, the law lives not in the library but in the habits and hearts of the people. Only by cultivating this delicate ecology of formal institutions and informal norms working in concert can societies achieve not the illusion of order, but order itself.

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ILUZIJA REDA: PREISPITIVANJE STRUKTURNOG ODNOSA IZMEĐU FORMALNOG PRAVA I NEFORMALNIH NORMI

Sažetak:

Ovaj članak osporava pretpostavku pravnog formalizma da vladavina prava proizlazi iz usavršavanja ustavnih tekstova i izrade zakona. Umjesto toga, pokazuje da pravni poredak zahtijeva dinamičko usklađivanje između formalnih državnih institucija i neformalnih društvenih normi. Oslanjajući se na evolucijsku psihologiju, institucionalnu ekonomiju i teoriju pravnog pluralizma, analiza otkriva da pravo ne funkcioniše kao samoizvršavajuća mašinerija, već kao koordinacijski mehanizam ugrađen u guste mreže neformalnih institucija. Članak sintetizira teorijske okvire Harta, Dworkina, Tamanaha, Webera i Krygiera kako bi pokazao da mehanička jurisprudencija ne uspijeva zbog inherentne "otvorene tekture" prava i nužnosti interpretativnog prosuđivanja. Koristeći tipologiju Helmke-Levitsky, pokazuje kako neformalne institucije mogu dopunjavati, prilagođavati se, konkurirati ili zamijeniti formalno pravo. Okvir North-Wallis-Weingast objašnjava otpor elite bezličnom pravnom poretku u "porecima ograničenog pristupa", dok teorija zavisnosti od puta osvjetljava zašto neefikasni pravni sistemi opstaju

uprkos naporima za reformu. Ispitujući sudsku diskreciju kroz prizmu “poluautonomnih društvenih polja” Sally Falk Moore, članak razlikuje vrlinu od opake neformalnosti u pravnoj praksi. Zaključuje se da efektivna vladavina prava postoji samo unutar “uskog koridora” gdje se državni kapacitet i društvene norme međusobno uravnotežuju, zahtijevajući kultiviranje pravne kulture, a ne puku institucionalnu transplantaciju. Bez ovog usklađivanja formalno pravo ostaje prazna ljuska – iluzija reda koja maskira ili despotizam ili neuspjeh države.

Ključne riječi: vladavina prava; neformalne institucije; društvene norme; pravni pluralizam; polu-autonomna društvena polja; otvorena tekstura; institucionalna ravnoteža; normativno trenje

Author's address

Adresa autora

Mahir Muharemović

University of Tuzla

Faculty of Law

mahir85@gmail.com