Sub-components of the Rule of Law: Reassessing the Relevance of Diminished Subtypes

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Paper prepared for presentation at the ECPR General Conference, Reykjavik, August 24-27, 2011
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Abstract
The rule of law research agenda is still in its infancy – at least vis-à-vis the neighboring literature on democracy and democratization. This is reflected in the fact that no attempt has been made to investigate the empirical relationship between sub-components of the rule law. In this paper, we set out to make such an appraisal. Taking our queue from a recent attempt to get at this relationship using radial types, we show that the consequent diminished subtypes are virtually empty empirically. The predominant dynamics is instead that cases are characterized by either all of the attributes representing the sub-components or that they fall short in every regard. This indicates the existence of a certain kind of relationship characterized by what we refer to as virtuous and vicious circles. These findings can be taken to support, first, the creation of composite measures by aggregating across the rule of law subcomponents and, second, that the virtuous/vicious circles rather than the diminished subtypes merit explanatory attention.
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Introduction

[Int] It is more proper that law should govern than any one of the citizens: upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians, and the servants of the laws.

These sentences were written by Aristotle almost two-and-half thousands years ago (in Politics, 3.16), and they go to show that the ideal of the ‘rule of law’ is ancient. Indeed, listing the philosophers and political thinkers who have celebrated this ideal reads as a ‘who’s who?’ of Western political thought: Plato, Aristotle, Cicero, Locke, Montesquieu, Kelsen, and Hayek to name but a few. Even more strikingly, the ideal can be encountered in the political literature of other civilizations, in particular the Islamic and the Indian (Fukuyama, 2010). As such, the rule of law is closer to being a universal value than, say, that other mainstay of modern thought: democracy (Tamanaha, 2004: 3-4).

What is more, in the latest decades the rule of law has been heavily promoted as a political recommendation for developing countries. Under the headline of ‘good governance’, a concrete set of policies and institutions have been tailored and placed on offer by national developmental agencies and international institutions such as the World Bank and the IMF. In this guise, the rule of law has been construed as a universal cure for almost any political, economic, or social decease (Carothers, 1998; 2006; Economist, 2008).

Indeed, the hype about the rule of law in the first decade of the new millennium almost brings to mind the millenarian hopes of earlier epochs, in particular those associated with developing countries on the fringes of the Western world. Take, for instance, the utopian Russian yearnings of the 19th century so masterfully described by Tolstoy, Dostoyevsky, and Turgenev. In Virgin Soil, Turgenev (1924: 253-254) comprises these into the statement that “we expect everything; some one or something is to come along one day and cure us all at once, heal all our wounds, extract all our diseases like an aching tooth”. Arguably, at least in some quarters of the developmental industry, the same expectations tend to surround the rule of law today.
However, as Giovanni Sartori (1970: 1038) reminded us a generation ago, “[C]oncept formation stands prior to quantification”. To elaborate, we cannot carry out systematic assessments and comparisons without having settled what we are looking at. It is therefore disheartening to note that – at present – little or no consensus exists with regard to defining the rule of law (see Belton, 2005; Hiil, 2007; Møller and Skaaning, 2011a; 2010b; Ríos-Figueroa and Staton, 2008; Skaaning, 2010; Tamanaha, 2004; Waldron, 2002). Here, the field distinguishes itself negatively when compared with the neighbouring literature on democracy. Even though the definition of democracy is still heavily disputed, Joseph A. Schumpeter (1974[1942]) and Robert A. Dahl (1971; 1989) have provided broadly accepted anchorages for subsequent attempts to define or analyse democracy (Collier and Levitsky, 1997).

The literature on the rule of law pales by comparison in other regards, too. Partly due to the lack of consensus about the definition, no systematic attempt has been made to investigate the empirical relationship between the subcomponents of the rule of law. In this article, we attempt to pave the way for such endeavours. Using the Rule of Law Index (henceforth RoLI) created by the World Justice Project¹ and including a sample of 66 countries from all regions of the world in the most recent 2011 version (covering 2010), we assess a recent conceptual attempt to understand the relationship among the sub-components of the rule of law in terms of diminished subtypes. Our analysis shows that very few countries actually inhabit these diminished subtypes. Instead, the cases tend to either be characterized by all or none of the properties connected to the sub-components, meaning that they inhabit the polar types of the consequent typology.

These findings explicitly contradict the notion that the relationship between the subcomponents should be conceived using the logic of diminished subtypes associated with radial concepts (cf. Collier and Mahon, 1993; Collier and Levitsky, 1997). This is important because it has become increasingly popular to think about the rule of law in these terms – and because doing so has important conceptual and explanatory consequences.

**Diminished subtypes of the Rechtsstaat**

A plethora of recent analyses have advocated the use of such diminished subtypes to capture the distinction between different kinds of democracies (see Møller and Skaaning, 2010a) and this practice has recently migrated to the literature on the rule of law. This act of migration is where this paper begins.

Even though no systematic empirical appraisal of the relationship between the components of the rule of law has been carried out yet, a large number of scholars have pointed to tradeoffs between different components of the rule of law. The most general such claim is that a tension exists between majority rule and the rule of law (see Schumpeter, 1974 [1942]; Barros, 2003; Ferejohn and Pasquino, 2003). The reason that this can be considered a trade-off among rule of law components is that ‘consent’ – that the rules are approved by the citizens – is often included as one of the rule of law components (Tamanaha, 2004).

Yet, the notion of tensions among sub-components has further reach. Rachel Belton (2005), who identifies five different ends of the rule of law, clearly reasons in these terms. She does identify the most minimalist end of the rule of law – that the state is subordinated to law – as well as the most demanding, human rights. But she goes on to emphasize that the five ends are often in conflict as a consequence of trade-offs. This fits a radial logic, something that is underlined by Belton (2005: 27) recommending that each end should be measured separately.

The most systematical attempt to employ a radial logic has been offered by Hans-Joachim Lauth and Jenniver Sehring (2009), however, who at the same time offer the conceptual scaffolding for an appraisal of the relationship between rule of law components. Lauth and Sehring’s (2009) conceptual edifice is anchored in the primary – radial – category of the formal Rechtsstaat consisting of certain procedures but excluding the additional features of a material Rechtstaat in the form of binding basic rights. This is an ideal type that subsumes the core characteristics of the different constitutional traditions of the United States (constitutionalism), Great Britain (rule of law), and Germany (Rechtsstaat).2

Based on no less than fourteen defining attributes (or sub-components), Lauth and Sehring use this primary category to tease out four diminished subtypes, viz. ‘inconsistent’, ‘arbitrary’, ‘partly-implemented’, and ‘excluded’. As the nomenclature indicates, the first subtype of the Rechtsstaat is deficient with respect to consistency, i.e., “characterized by a lack of consistency between and within laws, by instability due to frequent changes in the law, and by ambiguous formulation of laws that fosters vagueness” (Lauth and Sehring, 2009: 181). The second subtype is deficient with regard to reliableness, meaning that the legal subjects cannot be sure that they can rely on the core principles of the rule of law due to arbitrariness of rule application. The third kind of deficient Rechtsstaat falls short with regard to implementation as the formally codified

2 For this very reason, we use the term ‘rule of law’ and the Rechtsstaat interchangeably in this paper, albeit with a tendency to use the latter when explicitly discussing Lauth and Sehring’s (2009) conceptual edifice.
principles are irregularly applied. The last subtype lacks generality; here, the government and state institutions themselves are only partly subjected to the principles of rule of law.

As mentioned above, Lauth and Sehring’s typology is based on the formal aspect of the Rechtsstaat only, the argument being that the material Rechtsstaat will suffer by default if deficiencies with regard to consistency, reliableness, implementation, and generality are in existence (Lauth and Sehring, 2009: 180-181).

Generally speaking, this is a thoughtful and systematic attempt to theorize about the relationship between the various subcomponents of the rule of law. Unfortunately, no present dataset allows us to carry out an inclusive empirical appraisal of the extent to which the world’s countries do in fact inhabit the four proposed subtypes of the Rechtsstaat. Indeed, the fourteen attributes identified by Lauth and Sehring are simply not represented by individual indicators in extant datasets with a broad comparative scope, which is mirrored by the fact that Lauth and Sehring attempt no such empirical appraisal themselves.

However, a somewhat more tentative test can be carried out. If we subsume the attributes that must be deficient to make for consistency, reliableness, implementation, and generality, respectively (see Lauth and Sehring, 2009: 182), matters change. The RoLI thus contains four more general components, which can broadly be said to measure these four dimensions: Limited government powers (Factor 1, measuring ‘generality’), absence of corruption (Factor 2, measuring ‘reliableness’), open government (Factor 5, measuring ‘consistency’), and effective regulatory enforcement (Factor 6, measuring ‘implementation’). As the RoLI includes no less than 66 countries, representing virtually every global region and level of development, the dataset therefore lends itself to carry out a tentative test of the extent to which Lauth and Sehring’s (2009) four diminished subtypes are relevant empirically.

One problem remains, though. The scores of the RoLI are standardized (and are not made available on the level of sub-components), which at first sight undermines comparisons across attributes. However, insofar as we can identify absolute thresholds on the four components based on acquaintance with the included countries, distinguishing whether the attribute is deficient or not, we can still order the countries in a more general typology.

Notice here that the exercise – in every other respect than this – does not hinge on being completely accurate with respect to the individual countries. What is important is solely to examine the general relationship across the sub-components, most particularly whether the diminished subtypes contain relatively many cases. We therefore argue that such an appraisal is
meaningful. To appreciate that we are only interested in the general patterns, we operate with two different sets of dichotomous thresholds, both based on identifying the pivotal countries on the sub-component scores, but one being relatively ‘lax’ and one relatively ‘strict’. This is reported in Table 1:

[Table 1 about here]

Some expectations
Before we carry out the consequent empirical appraisal, it is important to note that we do not do so bereft of prior expectations. Fact of the matter is that we doubt that very many countries exhibit the features which make for membership in Lauth and Sehring’s (2009) four diminished subtypes – or other diminished subtypes which could be created on the basis of different conceptualizations of the rule of law, including those of the authors pointing to inherent tradeoffs mentioned above.

What justifies this reservation? Lauth and Sehring explicitly borrow the radial logic of diminished subtypes from the neighbouring democratization literature. As Collier and Mahon (1993: 848) describe in their seminal article on the topic, diminished subtypes are characterized by the fact that “they do not share the full complement of attributes by which we would recognize the overall category … Rather, they divide them”. This is in contrast to what Collier and Mahon (1993: 845) terms a ‘classical categorization’,

in which the relation among categories is understood in terms of a taxonomic hierarchy of successively more general categories … Each category possesses clear boundaries and defining properties that are shared by all members and that serve to locate it in the hierarchy.

Differently put, diminished subtypes are only valuable as data containers insofar as the different subcomponents of the Rechtsstaat combine in particular ways empirically. In a nutshell, the countries should divide the sub-components between them rather than obtain each sub-component in a ranked/hierarchical order or in bundles of absence/presence (more on this below). Otherwise,

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3 The logic is that the same standard – whether lax or strict – is applied across the four sub-components to identify the pivotal country. But exactly because the two standards differ, different countries will function as pivots.
the diminished subtypes are but empty conceptual constructs with scant theoretical import, full of sound and fury but signifying nothing.

In a prior article (Møller and Skaaning, 2010a), we have demonstrated that this condition is not – or at least only to a very limited extent – fulfilled with respect to diminished subtypes of liberal democracy, such as those proposed by Wolfgang Merkel (2004). The clear majority of the countries of the world simply conform to the taxonomic hierarchy of a classical categorization. On this basis, we strongly doubt that the diminished subtype-logic, which requires that one attribute is deficient, whereas the others are not, characterize the rule of law landscape.

The two other scenarios alluded to above seem more probable. First, one possibility is that the ranked hierarchy which we have identified among subcomponents of liberal democracy also characterize the rule of law. Second, the rule of law subcomponents might instead reflect a logic of virtuous/vicious circles, the consequence of which would be that most countries are either characterized by high or low scores on all of Lauth and Sehring’s (2009) four dimensions.

More generally, the premise of our assessment is that the logic of diminished subtypes only has a competitive edge over a classical categorization insofar as two conditions are met. First, and most obviously, no conceptual hierarchy should be in existence, i.e., none of the components should – by definition – be necessary for the presence of the others. Second, the sub-components should not, or only to a limited extent, be interrelated, i.e., the presence of one sub-component should not impact on the quality of the others (or vice-versa in case of its absence). These two conditions can be summed up in the statement that each of the sub-components should be achievable independently of the others, theoretically and empirically.

We have already argued that these conditions cannot be sustained theoretically with respect to the sub-components of democracy – and we have shown that the realities on the ground warrant this assertion (Møller and Skaaning, 2010a). Here, our theoretical point of departure is that the same is likely to be the case with respect to the rule of law.

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4 In 2007-numbers, 122 out of 125 developing countries followed the logic of a hierarchical categorization with the same being the case for at least 180 out of 193 countries on the global level (Møller and Skaaning, 2010a).

5 Of course, there may be a conceptual core which is necessary for all other sub-components and, ipso facto, a logic of diminished subtypes which characterizes the combinations of the other sub-components. Arguably, this is in fact what Collier and Mahon (1993) conjure up in the famous illustration of democracy as a radial concept, in which the sub-component ‘effective political participation’ is present in all of the diminished subtypes. This, however, is not a pure radial logic.
An empirical appraisal

To test the relevance of Lauth and Sehring’s (2009) diminished subtypes, we resort to a simple conceptual typology, which brings together their four subcomponents (or attributes or dimensions) of the rule of law. As this analytical tool may not be familiar to all readers, it is pertinent to briefly elaborate on the nature of such a conceptual mapping.

It was Paul Lazarsfeld (1937; Lazarsfeld and Barton 1951) who originally introduced the formalized typological logic into social research. A typology can be seen as a multidimensional and conceptual classification (cf. Bailey 1994), i.e., it is a property space created by combining serial operations on two or more theoretically relevant dimensions.

The number of cells in such a typology is a direct function of the character of the serial operations (the number of classes) on each attribute. If the attributes are dichotomized using a crisp logic of presence/absence – as we do in this paper – sixteen \(2^4\) types come into existence.

In Table 2, we have shaded six cells (types) in two different nuances. The two polar types, which are defined by the absence/presence of all attributes, are marked by a darker shade of grey. The four diminished subtypes, capturing Lauth and Sehring’s (2009) deficient types, are shaded in a slightly lighter nuance. Notice that the RoLI indicators are, at best, proxies of Lauth and Sehring’s (2009) four dimensions of consistency, reliableness, implementation, and generality, which is why we retain the RoLI nomenclature in the typology.

A few words on the serial operations, which produce the typology, also seem pertinent. As already stated, due to the standardized nature of the data in RoLI, we have had to resort to case-based – and therefore individual – thresholds on each of the four attributes. The logic of this is that we have, based on our knowledge about the cases, identified the ‘last’ case in which the attributes is likely to be deficient/the ‘first’ case in which it is not deficient to impose a threshold. This is of course still somewhat arbitrary – or at least it hinges on our knowledge of the cases – but as explained above we work with both a relatively lax and relatively strict standards to strengthen the robustness of the analysis.

Left is only to situate the 66 cases in the typology. The result of doing so is illustrated in Table 3 and 4 below.
The tables show that only one of the four subtypes – the one in which regulatory enforcement is absent (corresponding to Lauth and Sehring’s ‘partly-implemented Rechtsstaat’) – contains a sizeable number of cases: five and six, respectively. The remaining three diminished subtypes, the ‘inconsistent Rechtsstaat’, the ‘arbitrary Rechtsstaat’, and the ‘excluded Rechtsstaat’, are virtually empty empirically.

The huge majority of the countries – 44 and 43, respectively – instead cluster in the two polar types which are defined by all the four attributes either being present or absent (deficient). These two types might simply, using Lauth and Sehring (2009) conceptual logic, be understood as present versus absent Rechtsstaat/rule of law.

On this basis, two general observations are warranted. First, the diminished subtypes seem largely irrelevant. Second, there is little evidence of any hierarchy across the attributes. Rather, the two typologies conjure up the picture of virtuous/vicious circle pattern. Countries which make it across thresholds on one attribute are thus very likely to also cross the thresholds on the other attributes – and vice versa with countries that fall short on one attribute.

Here, it should be mentioned that Lauth and Sehring (2009: 180) expressly stress that some form of mixed types, rather than pure, diminished subtypes, are likely to prevail in the real world. On this basis, one might claim that the absence of referents in the diminished subtypes does not in itself undermine the value of the conceptual typology. This argument surely has some purchase. But the problem is that the cases do not even cluster in the types adjacent to the diminished subtypes (with the exception of polar type 1). In other words, there seems to be little evidence of even such mixed types.

Based on this very reasoning, a more interesting observation is the fact that quite a number of cases are situated in the types adjacent to the polar type that is defined by the absence of all four features. This equals saying that if this polar types rather than the one comprising the presence of all attributes is used as the primary, radial category, more referents would be situated in the consequent diminished subtypes. This can largely be ignored for our purposes as the Rechtsstaat/rule of law obviously make up the conceptually important primary category, based on
Lauth and Sehring (2009). But it does indicate that the radial logic might be more relevant if used to identify cases which are characterized by the presence (rather than absence) of only one attribute.

**Augmenting the typology**

To pursue the nature of the relationship between subcomponents of the rule of law, and to test the robustness of the reported patterns, we expand the typology with two additional dimensions/attributes, which are often included in rule of law conceptualizations, namely order and security (e.g. Belton, 2005) and fundamental rights (e.g. Tamanaha, 2004; Bingham, 2010). This can be understood as an attempt to go beyond the core of the rule of law (see Møller and Skaaning, 2010b) to include attributes which would be part of broader definitions of the rule of law than that of Lauth and Sehring’s (2009) formal Rechtsstaat. Regarding the fundamental rights, it can also be understood as an attempt to bring aspects of Lauth and Sehring’s (2009) notion of the material Rechtsstaat into the empirical appraisal.

Both order and security and fundamental rights are covered by indicators in RoLI, and a diminished subtype-pattern would seem somewhat more plausible when including attributes that are less intimately linked with each other, in particular the attribute of order and security. Once again, we have worked out two case-based thresholds on these indicators, one lax and one strict. In the case of order and security (Factor 3), these respective thresholds are 0.67 (lax) and 0.75 (strict), in that of fundamental rights (Factor 4), 0.60 (lax) and 0.66 (strict). The consequent typologies are illustrated in Tables 5 and 6.

Unsurprisingly, the patterns become more muddled by augmenting the typology in this way, especially because an even higher number of referents inhabit diverse cells adjacent to the polar type comprising the absence of all six features. Whereas a large number of cases still cluster in polar type 1 (the Rechtsstaat/rule of law type), relatively few are thus – this time around – found in the opposite polar type. This might be taken as yet more evidence to the effect that the radial logic would have more purchase if the primary type was changed from the polar type defined by full presence to the polar type characterized by full absence. In particularly, the type which is defined by
the presence of order and security and the absence of the five other attributes merits attention. It contains 11 and nine cases in the two respective orderings and probably reflects a relatively stable situation of order in the absence of liberal constitutionalism.

If we stay with the present conceptualization, however, we can note that the two additional diminished subtypes are also practically empty, indeed, the one which is defined by the absence of order and security is completely empty. In conclusion, lucid as the radial logic is, its relevance with respect to rule of law subcomponents seems negligible.

This finding is further corroborated if the RoLI is substituted with the so-called Bertelsmann Transformation Index (BTI). This dataset does not allow us to measure Lauth and Sehring’s (2009) four types. However, it contains four other rule of law-subcomponents: separation of powers, judicial independence, prosecution of office abuse, and civil rights. When creating a typology using these attributes, the diminished subtypes are once more virtually empty. More particularly, using the BTI-numbers for 2009, which include no less than 128 countries, only one of four diminished subtypes, i.e., the one characterized by absence of prosecution of office abuse but presence of the other features, contains a significant number of cases (11). This is illustrated in Table 7 in Appendix 1 in which the four sub-components have been dichotomized. We have placed the threshold between the scores 5 and 6, meaning that our cut-off point corresponds to one of BTI’s own qualitative distinctions found in the codebook.  

Conclusions

All roads may lead to Rome, but only one viable road seems to lead to the Rechtsstaat/rule of law, namely the polar type in which all of the attributes included in the conceptualization are present. Virtually all adjacent types are practically empty, indicating that this is a world of all or nothing, not of partial failings. Or, to nuance this assertion, such at least is the case as regards the end of the spectrum defined by the presence of all attributes; as noted several times the end of the spectrum characterized by the absence of all attributes provides a better fit for the diminished subtypes pattern. What are the implications of these findings? Here we need to distinguish between two different levels: the conceptual level (which concerns the way the sub-components can be aggregated) and the explanatory level (which concerns the causes of the rule of law).

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6 This result is mirrored when redoing the analysis for the other years which the BTI covers (2005 and 2007). We refrain from reproducing these results here but interested readers can contact the authors to get them.
Conceptual implications

The point of departure of this paper was the need to create a conceptual edifice which makes it possible to scrutinize the empirical relationship between sub-components of the rule of law. We then presented some theoretical and technical arguments as to why the format of diminished subtypes – recently explicitly proposed as a way to get at the Rechtsstaat by Lauth and Sehring (2009) but also more implicitly by those pointing to trade-offs between rule of law components – was unlikely to capture the empirics well.

This assertion is borne out in the analysis using the RoLI. Needless to say, this is only a tentative attempt to get at the issue, not least because the appraisal could not be based on fourteen specific attributes identified by Lauth and Sehring but only on proxies of the four more general dimensions subsuming them. That said, we feel confident in proclaiming that diminished subtypes seem to be largely irrelevant with respect to conceptualizations of the rule of law, not least because this finding was further corroborated when using the BTI but also because it reflects the results of our earlier work on sub-components of democracy (Møller and Skaaning, 2010a; 2011b).

This has bearing on the way in which the sub-components of the rule of law can be aggregated to create indices. If diminished subtypes are relevant, this in itself constrains the extent to which composite measures can be meaningfully created by aggregating across the sub-components. For in such case we completely miss the distinctions between functionally different diminished subtypes. With an analogy that we use elsewhere (Møller and Skaaning, 2011b: 18-19), the radial logic corresponds to Tolstoy’s families: Happy families are all alike; every unhappy family is unhappy in its own way. If we simply aggregate the degree of happiness/unhappiness across families, we miss this fact, that is, we ignore that each unhappy family is distinctly unhappy. Correspondingly, in the case of the rule of law, we neglect the fact that each diminished subtype is functionally different from the others and that a simple use of differences in degree cannot capture this.

When the relationships across the sub-components are instead characterized by what we have termed a virtuous/vicious circle pattern, it seems much more reasonable to aggregate the various dimensions into a composite index. Returning to the analogy, this is a situation of only happy and unhappy families, which neatly make up two ends of a continuum. Which aggregation rule should be used depends on one’s assumptions about the theoretical relationship between the sub-components and between the sub-components and the core concept (Goertz, 2006; Munck,
Insofar as the virtuous/vicious circle pattern can be underwritten theoretically, much would speak in favor of using simple multiplication.

**Explanatory implications**

Lauth and Sehring (2009) not only flesh out the conceptual typology of diminished subtypes of the *Rechtsstaat* discussed above. They also go on to identify a tripartite typology based on the causes of the deficiencies: lack of capacities, powerful interests supporting alternative rules, and high acceptance of alternative norm systems (Lauth and Sehring, 2009: 185-195).

This exercise of theirs gives us a stepping stone for highlighting some of the explanatory implications of our findings. The very fact that diminished subtypes rarely occur obviously impacts the validity of Lauth and Sehring’ (2009) attempt to explain their occurrence. But the more general point here is that the empirical patterns laid out above would tend to speak against the benefit of explaining the scores on the individual sub-components or a diverse set of combinations of scores on the attributes on their own. The only partial exception to this is the instances in which order and security is present but all other features are absent, which underlines that this dimension seems to be of a different ilk than the others (Møller and Skaaning, 2010b) and, consequently, that the scores on it is likely to have distinct causes. But other than that, our findings indicate that the general explanatory endeavor should be to lay bare the causes behind the virtuous and vicious circles paving the way for the two polar types.

Two general possibilities crave attention here. First, this pattern can be a consequence of an intrinsic causal relationship between the components themselves. Second, it may follow from the fact that exogenous variables tend to exert the same effects across the attributes and dimensions (or, if they exert different effects, compensate for these individual asymmetries when taken together). Future research should be devoted to pursuing these possibilities.
Appendix 1

[Table 7 about here]

Appendix 2: RoLI indicators

**Factor 1: Limited Government Powers**
1.1 Government powers are defined in the fundamental law.
1.2 Government powers are effectively limited by the legislature.
1.3 Government powers are effectively limited by the judiciary.
1.4 Government powers are effectively limited by independent auditing and review.
1.5 Government officials are sanctioned for misconduct.
1.6 Government powers are effectively limited by non-governmental checks.
1.7 Transfers of power occur in accordance with the law.

**Factor 2: Absence of Corruption**
2.1 Government officials in the executive branch do not use public office for private gain.
2.2 Government officials in the judicial branch do not use public office for private gain.
2.3 Government officials in the police and the military do not use public office for private gain.
2.4 Government officials in the legislature do not use public office for private gain.

**Factor 3: Order and Security**
3.1 Crime is effectively controlled.
3.2 Civil conflict is effectively limited.
3.3 People do not resort to violence to redress personal grievances.

**Factor 4: Fundamental Rights**
4.1 Equal treatment and absence of discrimination are effectively guaranteed.
4.2 The right to life and security of the person is effectively guaranteed.
4.3 Due process of law and the rights of the accused are effectively guaranteed.
4.4 Freedom of opinion and expression is effectively guaranteed.
4.5 Freedom of belief and religion is effectively guaranteed.
4.6 The right to privacy is effectively guaranteed.
4.7 Freedom of assembly and association is effectively guaranteed.
4.8 Fundamental labor rights are effectively guaranteed.

**Factor 5: Open Government**
5.1 The laws are comprehensible to the public.
5.2 The laws are publicized and widely accessible.
5.3 The laws are stable.
5.4 The right of petition and public participation is effectively guaranteed.
5.5 Official drafts of laws are available to the public.
5.6 Official information is available to the public.

**Factor 6: Effective Regulatory Enforcement**
6.1 Government regulations are effectively enforced.
6.2 Government regulations are applied and enforced without improper influence.
6.3 Administrative proceedings are conducted without unreasonable delay.
6.4 Due process is respected in administrative proceedings.
6.5 The Government does not expropriate property without adequate compensation.
References


Zeitschrift für Sozialforschung 6: 119-139.


Turgenev, Ivan (1924), Virgin Soil, Heinemann.

### Table 1: Lax and strict thresholds on the four factors

<table>
<thead>
<tr>
<th>Factor 1: limited government powers (generality)</th>
<th>Lax</th>
<th>Strict</th>
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<tbody>
<tr>
<td>Factor 2: absence of corruption (reliableness)</td>
<td>0.60</td>
<td>0.66</td>
</tr>
<tr>
<td>Factor 5: open government (consistency)</td>
<td>0.45</td>
<td>0.50</td>
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<tr>
<td>Factor 6: effective regulatory enforcement (implementation)</td>
<td>0.60</td>
<td>0.66</td>
</tr>
<tr>
<td></td>
<td>Limited government powers (generality) +</td>
<td>Limited government powers (generality) -</td>
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<tr>
<td></td>
<td>Absence of corruption (reliableness) +</td>
<td>Absence of corruption (reliableness) -</td>
</tr>
<tr>
<td>Effective regulatory enforcement (implementation) +</td>
<td>Open government (consistency) +</td>
<td>Polar type (full presence)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Arbitrary <em>Rechtsstaat</em></td>
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<td></td>
<td></td>
<td>Excluded <em>Rechtsstaat</em></td>
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<tr>
<td></td>
<td>Open government (consistency) +</td>
<td>Inconsistent <em>Rechtsstaat</em></td>
</tr>
<tr>
<td>Effective regulatory enforcement (implementation) -</td>
<td>Open government (consistency) -</td>
<td>Partly-implemented <em>Rechtsstaat</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Polar type (full absence)</td>
</tr>
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</table>

*Table 2: The empty conceptual typology*
Table 3: The strict empirical ordering, 2010

|                                          | Limited government powers (generality) + | Limited government powers (generality) - |
|                                          | Absence of corruption (reliableness) + | Absence of corruption (reliableness) - |
| Open government (consistency) +         | 23                                       | 0                                         |
| Open government (consistency) -         | 0                                        | 0                                         |
| Regulatory enforcement (implementation) +|                                          |                                           |
| Open government (consistency) +         | 5                                        | 5                                         |
| Open government (consistency) -         | 0                                        | 3                                         |
| Regulatory enforcement (implementation) -|                                          |                                           |


Table 4: The lax empirical ordering, 2010

<table>
<thead>
<tr>
<th></th>
<th>Limited government powers (generality) +</th>
<th>Limited government powers (generality) -</th>
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Table 5: The augmented empirical ordering, 2010 (strict)

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<td>Absence of corruption +</td>
<td>Absence of corruption -</td>
<td>Absence of corruption +</td>
<td>Absence of corruption -</td>
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Table 6: The augmented empirical ordering, 2010 (lax)

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<td>Open government -</td>
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### Table 7: The empirical ordering based on BTI, 2009

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<tr>
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<td>Prosecution of office abuse +</td>
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