

Welcome back to our series on the values of liberalism.

In the last article, we have looked at liberals' innate skepticism about power to some of you one of the most surprising values of liberalism. Because you might have wondered: How can politicians be skeptical about power? But hopefully, you remember that liberals do not reject all kinds of authority. They are just very well aware of the potential dangers that come with power: dangers, such as exploitation, abuse, and domination. Phenomena that we do not only know from history; but phenomena that we can still observe today.

And it is not enough to keep a critical mindset when it comes to power . We also need tools. And the most powerful tool to limit power will be the topic of this article: the Rule of Law. You might wonder why such a technical term like the rule of law classifies as a value. Indeed, this is a good question. Because usually, when we think of the rule of law, we think about judges and big books of dry legal text. But what we have in mind here is more fundamental than that. At its core, the Rule of Law is the idea that principles, rules, laws, and constitutions ought to constrain the decisions of those people that we grant power They limit the powers that an individual can exercise over others.

In other words, the rule of law covers the institutions that protect us from the arbitrary whim of any ruler no matter how good the intentions of these rulers are. And this is important to recognize. Because liberals even if they are in power themselves will recognize the priority of rules & laws.

If you remember, in the last article we were talking about the “sweets cent of power.”

Liberals are very aware of the transformative force of being in power. And this means that even if liberals are in power, we should remain “skeptical.” Because liberals know that even the best leaders, even the ones from our “own camp” can fail the test of power. So, instead of putting all our hopes on just one person (or a few people), we rely on processes and institutions. And that’s the essence of the “Rule of Law.” So far, we made the rule of law sound awesome and infallible. But in fact, we know many laws and constitutions that are fundamentally flawed or unjust. This poses the question of whether we have to follow every law.

And indeed, this is a common misconception about the rule of law.

The “rule of law” does not mean “rule by law”. In fact, this is an important distinction. The rule by law means that we have to follow the law because it is the law. However, that’s not what liberals want. Because mindlessly following a principle seems to go against the critical mindset that liberals endorse. And, as we have said above, the rule of law is a value and not only a technical textbook element. And this means that liberals treat the rule of law in a moral sense as an element of justice. Just making something a law does not make it moral or just. The rule of law can only emerge through the institutions and processes of liberal democracy. Believe us, there is so much to say about this. But we do not want to focus on the technicalities of the separation of powers and the checks& balances that hold democratic systems together.

It is more important to see that this idea of the rule of law and the role that institutions take go far beyond our legal texts. Now we know that the rule of law is not just the rule of any law book, but of a very specific set of rules that came about in a legitimate and transparent process. But we still do not know what the rule of law then looks like.

What are its exact features? Well, that is a difficult question as the formulation of the law can be context specific. But there are general features that apply to any country ruled by the Rule of Law. These features are: Generality this means that laws apply generally for everyone for each member of society and in each circumstance equally. There are no exceptions. The most powerful, the most well-connected, or the richest cannot be treated differently than ordinary citizens under the rule of law.

No one is above the law and no instances are too important” that they can override the law. We are all equals in front of the law. Clarity The law ought to be formulated in a way that is understandable for everyone, not only for lawyers or legal nerds. This means that ordinary citizens should be able to navigate the law without the necessary assistance from a legal professional. Of course, it might sometimes be necessary to seek advice from lawyers but in general the law needs to be formulated in a way that prevents public officials and politicians to hide behind the obscurities of the law and finding new loopholes in the vagueness of the legal language.

Publicity Moreover, the law needs to be made publicly available and easily accessible. Each citizen should be able to know which laws apply to which context. This will ensure that the general public can easily recognize when politicians, public officials or other members of society overstep the law and can therefore hold them accountable. It also ensures the democratic legitimacy of law. Only if citizens are aware of the rules of their societies, they can uphold them and act upon them.

Stability Laws in the Rule of Law are stable. This means that the law cannot change from one day to another. Citizens can rely on the permanence of the law and set their expectations accordingly. Of

course, that does not mean that legal norms cannot change. They certainly can. But only if they go through the process of checks & balances. Remember? The law cannot be changed according to the whim of the ones in power. And here you have them. The five core features of the rule of law.

Liberals have always treated the rule of law with special respect. In this article, we tried to explain why. For liberals, the rule of law is not only an institution. It is a moral institution. It reflects the idea that rules and principles should have priority over the decisions of the ones that are in power. The law, therefore, serves as an important protection mechanism. We have also seen that the rule of law only works if the law emerges through the institutions of liberal democracy. Only then can it be guaranteed that the rule of law does not turn into a rule by law where unjust rulers can use the law to their advantage. And lastly, we had a look at the five core features of the Rule of Law: generality, clarity, publicity, stability, and prospectivity.

And remember: these are not some conceptual gimmicks that only apply to the rule of law. These are the principles of social cooperation. And that is essentially what the Rule of Law does: It gives us the foundation, the rules for how to build a society together!

In the next article, we will now turn to another tool for social cooperation. One that will ensure social peace and stability: toleration.