doi:10.1017/aju.2026.10096

SYMPOSIUM ON MEASURING THE RULE OF LAW: CONTESTATION, POLITICS, AND POLICY

INTERVIEWS AS A METHOD FOR RULE OF LAW MEASUREMENT

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Introduction

The rule of law is measured in many ways: through surveys of expert opinions and public perceptions, institutional proxies, and assessment of political, legislative, and judicial events bearing on the rule of law.[1] This essay argues that systematic interviewing of judges and other legal elites belongs in the empirical toolkit of rule of law scholarship.

The methodological literature in political science has solidified best practices for interviewing and has demonstrated that interviews can be a rigorous method for eliciting information when designed with care around selection, design, and reporting.[2] Interviews also draw on comparative advantages that legal scholars possess, including access, shared professional vocabulary about substance and procedure, and the capacity to read silence.[3] Interviews offer empirical access to the inside view of the actors whose decisions other measurement approaches capture only at a distance. We share these insights and apply them to rule of law measurement. To motivate these claims with empirical evidence, and illustrate best practices, we draw on twenty-four on-the-record interviews conducted in 2024 with sitting members of the Court of Justice of the European Union (CJEU).[4]

The Skeptics

Judicial interviewing is viewed with skepticism from opposite ends of the epistemological spectrum. From the positivist side, Lee Epstein warns that "elites are often sources of tremendous bias" who may "have a narrow view of the events in question . . . have inaccurate information . . . or intentionally lie to protect themselves or others."[5] From the interpretivist side, Jens Meierhenrich argues that truly grasping international law requires entering deeply into the webs of significance that practitioners spin—a task he reserves for long-term participant observation.[6]

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[1] On indicator-based approaches, see Mila Versteeg & Tom Ginsburg, *Measuring the Rule of Law: A Comparison of Indicators*, 42 L. & SOC. INQUIRY 100 (2017). On events-based approaches, see Janka Deli, *Improving Rule of Law Impact Studies: A New, Events-Based Approach* (unpublished manuscript).

[2] INTERVIEW RESEARCH IN POLITICAL SCIENCE (Layna Mosley ed., 2013). *See also* Katerina Linos & Melissa Carlson, *Qualitative Methods for Law Review Writing*, 84 U. CHI. L. REV. 213 (2017).

[3] Katerina Linos & Mark Pollack, *Interviewing International Judges* (unpublished manuscript). *See also* Melissa Carlson, Elena Kempf & Katerina Linos, *Qualitative Methods in Comparative Human Rights Law*, *in* THE OXFORD HANDBOOK OF COMPARATIVE HUMAN RIGHTS (Neha Jain & Mila Versteeg eds., forthcoming).

[4] Katerina Linos & Mark Pollack, BORDERLINES PODCAST: *European Union Court of Justice Interviews Archives*; Katerina Linos & Mark Pollack, *Interviewing EU Judges*, VERFASSUNGSBLOG (2024). *See also* Katerina Linos, Mark Pollack & Stavros Gadinis, *Justice in Dialogue: Interviews with the Judges of the CJEU* (unpublished manuscript).

[5] Lee Epstein, *Interviewing U.S. Supreme Court Justices and Interest Group Attorneys*, 73 JUDICATURE 196, 197 (1990).

[6] Jens Meierhenrich, *The Practice of International Law: A Theoretical Analysis*, 76 L. & CONTEMP. PROBS. 1, 32 (2013).

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Both critiques capture something real. Judges operate within tightly scripted professional cultures. They speak about the *délibéré* only obliquely—as Judge Lucia Rossi put it, "We speak by judgments."[7] And they have strong professional incentives to mute controversy. Participant observation would be welcome, but no international court we know of allows academics to shadow its deliberations.[8] Yet neither critique defeats interviewing. The interpretivist objection softens, under conditions of limited field access, where practice theorists themselves concede that "interviews centered on descriptions of activities" become the appropriate second-best.[9] The positivist objection turns into a specification problem: interviews can be designed so that responses are comparable across respondents, triangulated against other evidence, and reported transparently. Judges speak from professional scripts, and that is what makes those scripts informative. What is scripted, what is emphasized, and what is avoided all become data.

Selection, Design, Reporting

Interview-based research stands or falls on three moves: selection, design, and reporting.

Selection. The first question is whether interviewees are *informants* about an event or are themselves the *object of study.* Where the unit of analysis is an episode—a norm contest, a reform, a backlash—purposive sampling across roles (judges, registrars, litigants, officials) predominates. Where the unit of analysis is the judges themselves, representativeness matters, approximated through stratified purposive sampling by court, region, legal tradition, and gender. Jeffrey Dunoff and Mark Pollack's dissent study interviewed eight sitting judges at each of two courts, varied deliberately across East/West, civil/common law, and gender lines.[10] Non-response is the perennial threat. Erik Bleich and Robert Pekkanen urge researchers to report the number of interviews sought, obtained, and declined, because *who* declines matters substantively.[11] In our experience, former academics accept more readily than career practitioners, potentially skewing samples toward one jurisprudential sensibility. Snowball sampling mitigates access problems but risks an echo chamber; multiple diverse "seeds" are the standard remedy, and for a contested concept like the rule of law, seed diversity is not optional. That said, legal academics often have unique access to relevant practitioner communities, which can minimize the non-response problem.[12] Acceptance itself is nevertheless a noisy signal: a judge's willingness to be interviewed can reflect genuine independence or, equally, institutional openness cultivated to project the appearance of it, and the same ambiguity attaches to expressions of criticism on the record.

Design. Structured interviews yield easily coded data but foreclose challenge to the question; unstructured interviews privilege the respondent's worldview but frustrate cross-case comparison. The methodological

[7] Katerina Linos & Mark Pollack, *Episode #7: Interview with Judge Lucia Serena Rossi*, BORDERLINES PODCAST: EUR. UNION CT. JUST. SERIES (Feb. 14, 2025).

[8] The closest academics can get to shadowing the deliberations of an international court, so far as we are aware, is the International Criminal Court's Visiting Professional Programme. Even without sustained participant observation, brief in-person encounters during interviews can be revealing. The desk of Vice President Thomas von Danwitz's chambers, for example, displays editorial cartoons casting him as a protector of privacy rights, a self-presentation he visibly endorses, and a reminder that judges actively curate the public roles they inhabit. *See* Elena Kempf & Katerina Linos, *Shaming the Court: The German Constitutional Court's NGEU Reversal* (May 16, 2024); *see also* Georg Stephan Vanberg, *The Politics of Constitutional Review: Constitutional Court and Parliament in Germany* (Ph.D. dissertation, University of Rochester, 1999).

[9] CHRISTIAN BUEGER & FRANK GADINGER, INTERNATIONAL PRACTICE THEORY 79 (2d ed. 2018).

[10] Jeffrey L. Dunoff & Mark A. Pollack, *The Judicial Trilemma*, 111 AJIL 225 (2017). *See also* Katerina Linos, *How to Select and Develop International Law Case Studies: Lessons from Comparative Law and Comparative Politics*, 109 AJIL 475 (2015).

[11] Erik Bleich & Robert Pekkanen, *How to Report Interview Data*, *in* INTERVIEW RESEARCH IN POLITICAL SCIENCE, *supra* note 2, at 84.

[12] *See, e.g.*, Anu Bradford, Adam Chilton & Katerina Linos, *Building Europe's Digital Superstate: Institutional Dynamics and the Rise of EU Tech Regulation* (working paper) (including interviews with key participants in the development and interpretation of EU technology regulations from Commission, Parliament, Council, Court).

literature converges on a semi-structured design as the Goldilocks solution: open with "grand tour" questions, then follow with targeted probes.[13] The *Borderlines* interviews are organized in three parts—career and background; important cases; major challenges going forward—so the same thematic skeleton underlies every conversation while no two trace the same path. Saturation, as Bleich and Pekkanen describe it,[14] is the right stopping rule: the point at which further interviews reveal no new information and recommendations for new respondents mirror those already interviewed.

Reporting. Full transparency—posting transcripts—solves the reporting problem in principle, and it is the model for the *Borderlines* series, where every interview is released with only minimal editing. But most interviewing runs on confidentiality, and a modest device does much of the work: turn responses into "data-set observations" and report simple descriptive statistics ("six of eight judges spontaneously identified liberal-democratic values as central"). Tommaso Pavone's 353 interviews, catalogued in appendices and cited by role, model this at scale; Karen Alter and Laurence Helfer's Andean monograph does the same.[15] The move is to show the reader the shape of the corpus, not merely its most quotable fragments—the same discipline that credible index-builders document in their codebooks. Reporting in this way also disciplines what interviews can and cannot claim to measure. Interviewing judges yields a particular kind of expert opinion, with all the position-specific bias that entails. Descriptive statistics and triangulation against judgments and other outside sources keep that bias visible rather than hidden.

Evidence from the CJEU

We turn next to patterns from the *Borderlines* corpus that illustrate what systematic judicial interviewing adds to rule of law measurement.

The rule of law is what judges converge on, unprompted. When we asked judges which issues they considered most central to the Court's present work, they turned repeatedly—unprompted—to liberal democracy, fundamental rights, and rule of law, rather than the Court's bread-and-butter internal-market jurisprudence. Advocate General Jean Richard de la Tour said plainly: "Nowadays, our case law is mostly about the protection of fundamental rights."[16] Judge Rossi traced the arc historically: "liberties, freedoms, fundamental rights, and now, in the last years, values. Fundamental values; identity; rule of law."[17] Advocate General Juliane Kokott described the shift as a "transformation to a constitutional Court" that "now focuses on values—EU's identity, the rule of law, fundamental rights."[18] A structured protocol would have missed this convergence because we would not

[13] Julia F. Lynch, *Aligning Sampling Strategies with Analytic Goals*, *in* INTERVIEW RESEARCH IN POLITICAL SCIENCE, *supra* note 2, at 31; Beth L. Leech et al., *Lessons from the "Lobbying and Policy Change" Project*, *in* INTERVIEW RESEARCH IN POLITICAL SCIENCE, *supra* note 2, at 209; Cathie Jo Martin, *Crafting Interviews to Capture Cause and Effect*, *in* INTERVIEW RESEARCH IN POLITICAL SCIENCE, *supra* note 2, at 109.

[14] Bleich & Pekkanen, *supra* note 11.

[15] TOMMASO PAVONE, THE GHOSTWRITERS: LAWYERS AND THE POLITICS BEHIND THE JUDICIAL CONSTRUCTION OF EUROPE (2022); KAREN J. ALTER & LAURENCE R. HELFER, TRANSPLANTING INTERNATIONAL COURTS: THE LAW AND POLITICS OF THE ANDEAN TRIBUNAL OF JUSTICE (2017). On the broader value of interview-based work in European legal studies, see also NINA-LOUISA AROLD, THE LEGAL CULTURE OF THE EUROPEAN COURT OF HUMAN RIGHTS (2007); DANIEL TERRIS, CESARE P. R. ROMANO & LEIGH SWIGART, THE INTERNATIONAL JUDGE: AN INTRODUCTION TO THE MEN AND WOMEN WHO DECIDE THE WORLD'S CASES (2007).

[16] Katerina Linos & Mark Pollack, *Episode #10: Interview with Advocate General Jean Richard de la Tour*, BORDERLINES PODCAST: EUR. UNION CT. JUST. SERIES (Apr. 29, 2025).

[17] *Episode #7: Interview with Judge Lucia Serena Rossi*, *supra* note 7.

[18] Katerina Linos & Mark Pollack, *Episode #13: Interview with Advocate General Juliane Kokott*, BORDERLINES PODCAST: EUR. UNION CT. JUST. SERIES (Dec. 8, 2025).

have known to ask; a pure ethnography would have missed it because we could not have coded its frequency across twenty-four interviews.

Engagement with rule of law questions was extensive, but not uniform. Judge Siniša Rodin insisted that Article 2 of the Treaty on European Union,[19] which establishes the core foundational values of the Union, is "normative" rather than descriptive and that Treaty values "clearly opt for liberal constitutionalism." He estimated that "90%, if not more, of our so-called 'rule of law litigation' concerns judicial independence," while explaining that the concept is "more than that"[20]—a calibration no index captures, and a reminder that judicial independence is one facet of the rule of law rather than the whole. Judge Constantinos Lycourgos discussed the *Lin* case's handling of *nulla poena sine lege*[21] and noted that the Court's judicial-independence case law is "unlikely to not be necessary in the near future."[22] Advocate General Tamara Ćapeta reflected on the moment when, after taking it for granted, the Court was "put in front of explaining" the rule of law to the public, and thereby to itself, suddenly facing a line of cases about the rule of law.[23] By contrast, Vice President Thomas von Danwitz answered rule of law questions through the register of balancing and dual standards—emphasizing the Court's duty to avoid "imposing a certain system" of judicial organization on European Union member states.[24] Vice President Lars Bay Larsen, asked to characterize the arc of the Polish judges' jurisprudence, declined gently: "I'm not sure I want to characterize them."[25] The *distribution* of comfort and discomfort across the bench is itself an empirical finding about how a court understands its rule of law role—one that quantitative coding of judgments would register not at all.

Rule of law was one of two topics many judges volunteered unprompted; the second was LGBTI+ rights. President Koen Lenaerts volunteered an extensive discussion of LGBTI+ rights in response to the final open-ended *Borderlines* interview question: "We have our *Obergefell* case," he emphasized. Advocate General Kokott, flagging a pending Hungarian schools case, observed that "on the occasion of this case, the Court will probably also decide on the question how far values are justiciable."[26] Advocate General Richard de la Tour likewise volunteered, as the most significant of his opinions, the *Mirin* case on the cross-border recognition of a transgender citizen's gender identity, framing the issue as one of free movement and respect for private life under the Charter of Fundamental Rights of the EU.[27] Kokott's prediction was vindicated on April 21, 2026, when the Court ruled against Hungary on the schools law and grounded its judgment directly on Article 2 of the Treaty on European

[19] Consolidated Version of the Treaty on European Union art. 2, 2016 OJ (C 202) 13, 17: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

[20] Katerina Linos & Mark Pollack, *Episode #11: Interview with Judge Siniša Rodin*, BORDERLINES PODCAST: EUR. UNION CT. JUST. SERIES (June 23, 2025).

[21] Case C-107/23 PPU, Lin, ECLI:EU:C:2023:606 (July 24, 2023).

[22] Katerina Linos & Mark Pollack, *Episode #8: Interview with Judge Constantinos Lycourgos*, BORDERLINES PODCAST: EUR. UNION CT. JUST. SERIES (Mar. 14, 2025).

[23] Katerina Linos & Mark Pollack, *Episode #5: Interview with Advocate General Tamara Ćapeta*, BORDERLINES PODCAST: EUR. UNION CT. JUST. SERIES (Jan. 21, 2025).

[24] Katerina Linos & Mark Pollack, *Episode #3: Interview with Vice President Thomas von Danwitz*, BORDERLINES PODCAST: EUR. UNION CT. JUST. SERIES (Nov. 1, 2024).

[25] Katerina Linos & Mark Pollack, *Episode #4: Interview with Vice President Lars Bay Larsen*, BORDERLINES PODCAST: EUR. UNION CT. JUST. SERIES (Nov. 14, 2024).

[26] *Episode #13: Interview with Advocate General Juliane Kokott*, *supra* note 18.

[27] *Episode #10: Interview with Advocate General Jean Richard de la Tour*, *supra* note 16.

Union as a standalone basis.[28] The interview thus captured something no judgment-based or vote-based method could: a prediction, made on the record before the hearing, that subsequent jurisprudence has now confirmed.

Whereas CJEU judges discussed rule of law and LGBTI+ unprompted, often extensively, there were questions on which they declined to speak extensively or in detail, even when prompted. For example, when asked about the Court reversing itself in its jurisprudence, several judges quickly moved to the next question.

Table 1. The Rule of Law in the Borderlines CJEU series

Interviewee	Country
Unprompted mention and extensive discussion of the rule of law	
Judge Constantinos Lycourgos	Cyprus
Judge Niilo Jääskinen	Finland
Judge Jan Passer	Czechia
Judge François Biltgen	Luxembourg
Advocate General Tamara Ćapeta	Croatia
Advocate General Juliane Kokott	Germany
Advocate General Anthony Collins	Ireland
Advocate General Athanasios Rantos	Greece
Unprompted mention and short discussion of the rule of law	
President Koen Lenaerts	Belgium
Judge Ineta Ziemele	Latvia
Judge Octavia Spineanu-Matei	Romania
Judge Lucia Serena Rossi	Italy
Judge Maria Lourdes Arastey Sahún	Spain
Advocate General Nicholas Emiliou	Cyprus
Prompted extensive discussion of the rule of law	
President Vassilios Skouris	Greece
Vice President Thomas von Danwitz	Germany
Judge Siniša Rodin	Croatia
Judge Eugene Regan	Ireland
Judge Irmantas Jarukaitis	Lithuania
Judge Alexander Arabadjiev	Bulgaria
Limited/No mention or discussion of the rule of law	
President of the General Court, Marc van der Woude	Netherlands
Vice President Lars Bay Larsen	Denmark
Advocate General Jean Richard de la Tour	France
Advocate General Laila Medina	Latvia

Coding notes: ***unprompted*** = interviewee mentions the phrase "rule of law" first without interviewers mentioning/asking about it, otherwise ***prompted***; ***mention*** = interviewee mentions the phrase "rule of law" only in passing, does not go into discussion of the concept or Court's relevant jurisprudence; ***extensive discussion*** = interviewee mentions the phrase "rule of law" and engages in discussion of the concept and/or the Court's related jurisprudence. Beyond the 20/24 mentions and discussion of the rule of law, fourteen of twenty-four interviewees mention the independence of the judiciary in some form, ten refer to Article 2 values, six mention "human rights" or "fundamental rights," and three "equality before the law." Mentions of the rule of law and/or judicial independence combined cover twenty-two of twenty-four interviews, which illustrates that additionally accounting for or combining several elements of the rule of law can inflate numbers and decrease the information-value of observations.

[28] Court of Justice of the European Union, Press Release No 59/26 | Judgement of the Court in Case C-769/22, Commission v. Hungary (Apr. 21, 2026).

Implications and Conclusion

Interviews reach the understandings and self-presentations of the actors whose behavior influences the rule of law—what judges converge on unprompted, where their engagement is intense and where it is evasive, how they narrate doctrinal change, even what they predict about the Court's future jurisprudence. The *Borderlines* corpus produced findings of each of these kinds, several of which have already been borne out. Interviews can thus serve as leading indicators of doctrinal change relevant to the rule of law.

These findings carry downstream consequences. Investment tribunals, asylum adjudicators, and development banks routinely make second-order judgments about whether a state's judiciary can protect a foreign investor or a returning refugee. Those judgments depend on how the judges themselves understand their role and their constraints—precisely what interviews are positioned to surface, and what doctrinal coding and aggregate measurement leave out.

Properly designed and reported, judicial interviews can show, with evidence and with discipline, how the people charged with defending the rule of law understand what they are defending, and how. That is the distinctive contribution interviews make, and the reason they belong in the empirical study of the rule of law.