

Original Paper

Development Is Rule of Law

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Abstract

In development theory one searches for a method to order the nations of the world into more or less developed. Higher degree of development is a macro property. In the dominant approach by M. Nussbaum (2011) development refers to micro capabilities. This is for the individual to promote in a country with rule of law.

Keywords

development theory, capability, micro-macro, rule of law, WJP

1. Introduction

Some countries like Russia, China and Myanmar have never experienced rule of law. Russia and China hover between autocracy and rule by law. Myanmar, this unlucky country, cannot get rid of the arbitrary state.

2. Regime Development

In the earliest annals of the political history of mankind, we find evidence of autocrats, occupied with warfare, looting and exploitation. To bolster the regime religion was manipulated, and rules written down into law. The first institutions of rule by law are created in some civilizations—e.g., the law code of Hammurabi. But we do not observe rule of law. There are still autocrats today for instance in military rule like Myanmar and Egypt, personal autocracy like Kazakhstan or Angola and Gambia as well as Central America. Rule by law is more frequent though, as in China after Mao and Russia after Stalin. Where do we have rule of law?

3. World Justice Project (WJP)

The World Justice group is an NGO with universal membership. Their main effort the World Justice Project (WJP) stems from the concern for justice and the role government plays for it. More specifically,

the World Justice Association targets one form of justice, much debated in political philosophy, namely the rule of law, i.e., public law (Waldron, 2020). WJP does not deal with distributive justice or social equity.

The great Roman lawyers defined justice as correct behavior (speak the truth, honor contracts), not harming anyone and give to each and everyone what is due to them (the cardinal problem of justice persisting to this day).

These principles did not prevent *Corpus Juris Civilis* from endorsing slavery, with 50 percent of the Empire's population being subjugated, while the Jews constituted another large oppressed group but more seldom as slaves. Roman law did not know rule of law, although the republic was much institutionalized. The Roman Empire under the *PRINCIPATE* degraded into "occidental despotism".

Constitutional law surged in the feudal society with representative bodies and councils, as Hintze pointed out against Weber, but only in Western Europe where political representation outlived feudalism. Slavery was undone successively, replaced by serfdom in Eastern Europe. The Vikings had "traelar".

Administrative law followed the modern state as its core was bureaucracy. Towards the 18th century we arrive at two chief interpretations.

Although one may be sceptic to the claims WJP makes for the social benefits of rule of law, one can still employ their measures to draw a global map. Starting from the opaque nature of the meaning of "rule of law", the WJP considers the following manifest variables relevant:

1) Restraints on government

This criterion is vague. It sounds like separation of powers or judicial review. The opposite is dictatorship in some form.

2) Absence of corruption

Here we have a variable that relies much upon expert opinion. Corruption comes in several forms, which are difficult to measure. On the one hand, there is *petty* corruption in ill-ordered societies that may result in Pareto improvements. On the other hand, we have big scale corruption that is zero sum, benefiting different players or companies. Could the American system with PACs involve some form of corruption?

3) Open society

This is easier to establish, as open against closed society is a dichotomy.

4) Fundamental rights

A list of *immunities* often accompanies a written *constitution*. The crux of the matter is whether these rights or privileges are enforced fully or partially. This depends on the justice system in a country. Only common law or civil law legal traditions admits this possibility, not Koranic law or socialist law traditions.

5) Order and security

WJP here turns to variables that are conditions for or consequences of criteria 1)–4). Under 5) we have

how the state protects private property, against theft or expropriation.

6) Regulatory enforcement

This variable 6) is close to 2) corruption, although there may be other causes of regulatory failure like anarchy.

7) Civil justice

The criterion here is the capacity of ordinary citizen to make their voices heard legally.

8) Criminal justice

Again this is more of the background of rule of law, namely the efficiency of the legal machinery as a whole.

Moreover, WJP has a ninth variable-informal justice. It taps how customary law operates.

Scores on each manifest variable between 0 and 1 are obtained by means of a questionnaire to laymen and experts.

It seems that the first 4 variables indicate what we mean by “rule of law”. The others refer more to the functioning of the legal system in general. In dictatorships like the Gulf states, there is not much rule of law but the legal system is not broken.

4. Factor Analysis

Factor Analysis is, one may mention, a data analysis technique aimed at finding underlying dimensions in an observed data set. One identifies combinations of variables which are shared by a set of properties, i.e., common traits. It is similar to what is called Principal Component analysis. Considering the 128 countries surveyed, these dimensions were revealed:

Dimension 1: Absence of Corruption, Regulatory Enforcement, Criminal Justice, Civil Justice, Order and Security;

Dimensions 2: Constraints on Government, Fundamental Rights, Open Government

Table 1. Factor Analysis

	Loading dimension	Loading dimension
V1	0.69	0.46
V2	0.99	-0.08
V3	0.65	0.45
V4	0.72	0.37
V5	0.87	-0.27
V6	0.93	0.09
V7	0.97	-0.03
V8	1	-0.07

Table 2. Model Diagnostics

	Dimension 1	Dimension 2
Sum of squared loadings	3.54	3.50
Proportion Variance	0.44	0.44
Cumulative Variance	0.44	0.88

The finding is that we have two latent variables of equal strength, and together they account for almost 90 % of the variation.

Dimension 1

The first dimension comprises corruption, law enforcement and civil and criminal justice. Is that rule of law? Could a country score high on these properties but not so high on dimension 2?

4.1 Law and Order

The following countries score high on this measure: Singapore, UAE and Hungary. But these countries have hardly rule of law states.

4.2 Judicial Enforcement

Here again we find Singapore and the UAE besides South Korea, Czech Republic. However, these states are not well-known for high rule of law. It appears that dimension 1 is more measuring political stability than rule of law. It seems that the WJP contains 2 distinct dimensions of the state: efficiency of the legal machinery on the one hand and government constraints on the other. One sees this in the different scores for India and China. Rule by law is typical of China, whereas India has more of rule of law. Rule by law is a necessary condition for rule of law, but the opposite does not hold.

Dimension 2

The items loading on this variable2 comprise government constraints and fundamental rights. The countries that score high do not include Singapore or Eastern Europe. Instead it is Western Europe, North America and Oceania.

The WJP index adds the scores on the 8 elements of rule of law into one total score. I believe factor 2 should be given more weight than factor 1 in such a summary index. The prominent place given to Singapore and Hong Kong as well as the UAE seem more to reflect dimension 1, although Hong Kong autonomy is only history.

5. Mapping

Table 3 presents the results of the most recent survey of the RL Index for 128 countries around the world, presenting the mean value by region.

Table 3. Average RL Index by World Region in 2020

Region	Min	Average	Max	Number of countries
East Asia & Pacific	0.33	0.60	0.83	15
Eastern Europe & Central Asia	0.43	0.51	0.60	14
EU + EFTA + North America	0.53	0.74	0.90	24
Latin America & Caribbean	0.27	0.53	0.71	30
Middle East & North Africa	0.36	0.50	0.65	8
South Asia	0.36	0.45	0.53	6
Sub-Saharan Africa	0.34	0.47	0.63	31

Only so-called Western countries score above 0.6 on this scale with a few exceptions. Exceptions include: Japan, South Korea, Singapore, Chile, Costa Rica, Uruguay, United Arab Emirates, Mauritius and Namibia as well as Rwanda. Hong Kong is also given a high grade by the WJP, but that must be in the past now. As a matter of fact, it was never a democracy, much like the UAE by 2020.

Here we have a fascinating problem of explanation. Is it a matter of culture or institutions? Perhaps rule of law is path dependent meaning we have to examine historical developments?

The Scandinavian countries came out of the Great War as constitutional monarchies with parliamentary. By allowing for unlimited right to vote for men and women, the path to constitutional democracy was easily secured. Finland followed a different path, presidential democracy after a civil war between “reds” and victorious “whites”.

It may be added that from an historical point of view absolute monarchy did not last for any longer periods of time (Denmark longer than Sweden and Norway). Since the medieval times there were representative institutions for the estates of the realm (Riksdag) as well as general support and respect for the so-called Law, early codified. We find rules similar to the Magna Charta in *Kings' Oaths*. A possible strong institution against infractions law infractions is the *Ombudsman Office*, either as the Swedish model or the Danish model, to which ordinary people can complain over abuse by the authorities of the law.

6. Rule of Law Countries

Many people around the globe want rights and security under the law. More than 50 percent of the countries of the world have states that do not respect the precepts of rule of law. The concept of rule of law is somewhat ambitious in WJP. It stands for legal integrity (Kant) or rights and representation (Locke).

Globally, what stands out in these comparative scores is the following:

- 1) “Norden” scores exceptionally high;
- 2) The UK and the US have lower than expected rankings in the top.

Many countries have been left out, not only poorer countries. Thus, Switzerland is missing as well as Iceland. There is no evidence showing that countries with constitutional review or federalism score top.

7. Development

Developing countries should move from autocracy or rule by law to rule of law. This is the best development strategy. When rights are secured, then wealth will come.

Development theory has vacillated between capitalism and socialism. However, socio-economic development will come when a country moves from autocracy to rule of law and then further to rule of law. Example: Mauritius compared with unfortunate Myanmar.

Development economics has suggested various key areas of strategic investment: agriculture, heavy industry and social programs as well as education and individual capability. Micro financial projects and women empowerment are also emphasized. Development politics has suggested development administration or policy like infrastructure.

Yet, as Botswana and Chile show development is fostered by rule of law. Military coups to force development do not work. Military regimes engage in looting to pay themselves and the little soldier – see Burma, Pakistan and Iraq.

Screening planet Earth ahead of 2021, one is forced to admit that we have dictatorship on all continents. Do people really want to live under such a political dispensation?

Dictatorships include old monarchies, authoritarian rule as well as totalitarian regimes. The opposite is rule of law. How to theorize this notion?

A majority of people live under dictatorship. The dictatorial regime comes in a bewildering variety that has not been compared systematically. Dictatorships are to be found in religious regimes as well as military ones. But here we find also semi democracy where government tends towards specific authoritarian measures (Russia). One party states often combine with plebiscites. However, the common core is the absence of rule of law.

8. Towards a Theory

There is no neat and tidy definition of the expression “rule of law”. The Oxford English Dictionary offers the following entry:

“[t]he authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.” Now, this sounds rather complicated as well as somewhat legalistic: how to measure it in order to compare states?

One may deconstruct this concept with other concepts or criteria like:

- 1) Strong legal formalism promoting equality under the laws;
- 2) Individual rights covering contract, free labour and property;

3) Checks and balances, i.e., institutionalized mixed government with countervailing competences between executive, legislature and judiciary.

As a matter of fact, a dictatorship may satisfy the criteria 1) and 2)—at least partly. Thus, criterion 3) is pivotal.

It is worth pointing out that democracy is not mentioned in the project. Rule of law was conceptualized before the advent of democracy after the Great War. Rule of law as legality, rights and countervailing powers may be combined with democracy as popular rule, but it has not always been so. The following principles constitute the principal-agent approach to political leadership:

a) Epicurean nature of human beings: men and women are basically selfish except in a small group. Thus, Hobbes is correct: *omnium bellum contra omnes*.

b) Public goods: each society needs a supply of public goods responding to the demands for law and order.

The assumption (b) introduces the principal-agent nature of the state. The population can not do without a set of custodians allocating public goods.

c) Asymmetry: the principal is less well informed about the actions and conditions for them of the set of political and bureaucratic leaders than these themselves. The information advantage invites opportunism with guile.

d) Manipulation, corruption and looting: Political and bureaucratic leaders whatever title they may have cherish autocracy or the rule by law as it provides them with opportunities for an extra income or set of benefits.

Examples: Trump and Putin will not disclose correctly income or wealth; Mobutu and Gadhafi were masters of looting; China repeats that climate change is a major priority and the ANC says it cares for the poor. Bolsonaro misled a whole nation on COVID = “a flu”. Embarrassing embezzlement occurred in Argentina, Tunisia and Egypt plus the Khanates.

e) Principal’s counter strategy: rule of law institutions. The set of institutions that has a positive impact upon restraining the political and bureaucratic elites to work for the interests of the population at large comprise all the rules that promote counter-weighting competences, oversight, evaluation, check and balances, inertia, inquiries, decentralization, referenda and qualified majority.

Rule of law institutions are neither bound to a western culture nor the same as decentralized capitalism.

9. Christian Heritage?

Christianity before the Reformation was based upon extreme hierarchy. It recognized Old and New Testaments as valid sources of law. Calvinism started to speak of a *constitution* (Beze) in the modern sense including individual rights such as religious belief. The master theoretical expose was done by John Locke in Second Treatise of Government from 1689.

Yet, rule of law does not figure prominently in any of the world religions. Locke went to natural law theory (Suarez, Grotius) for his inspiration about foundations. Revealed law does not comprise rule of law, neither with Jesus or Mohammed nor Buddha—whether they were historical persons or not.

The negative impact of religion appears in the numbers in Table 1 for Latin America, the Koranic civilisation as well as the Buddhist countries. For the post Soviet states it is not so much Christian Orthodoxy driving down numbers as the Communist legacy in combination with corruption. It has happened that a country can overcome the negative consequences of religion for rule of law, like in Japan and South Korea. Shintoism supported authoritarian rule, which also applies to the religions of South Asia and South East Asia.

Revealed law could only bolster limited and countervailing rule when united with the theory of natural law. Grotius declared in 1623 that natural law trumps revealed law, if different at all. If natural law implies rule of law, then we arrive at a secular approach to limited and countervailing powers. Yet, Grotius still supported monarchy. However, Locke managed the transition: God must respect the rule of law because he is Reason.

10. Conclusions

Take a quote from WJP: “Effective rule of law reduces corruption, combats poverty and disease, and protects people from injustices large and small. It is the foundation for communities of justice, opportunity, and peace—underpinning development, accountable government, and respect for fundamental rights. Traditionally, the rule of law has been viewed as the domain of lawyers and judges. But everyday issues of safety, rights, justice, and governance affect us all; everyone is a stakeholder in the rule of law.” (WJP, 2020, p. 9)

All this amounts to an exaggeration, if only Myanmar could enjoy some these benefit. Development is macro and capacity/capability is micro.

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