Original Paper

Rule of/by Law

Jan Erik Lane[1*]

[1] Professor emeritus Geneva University, Geneva, Switzerland

Abstract

One can go the World Justice Project (WJP) to find a valuable set of data on roughly 130 states, constructed from experts' ranking. A large number of country and international experts have given scores between 0 and 1 of state performance on a set of aspects or manifest variables much discussed. The WJP measures 8 or 9 state properties, which will be reduced to two latent variables here.

Keywords

justice, rule of law index, 2 different dimensions of the state

1. Introduction

The World Justice group is an NGO with world covering membership. Their main efforts—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 justice.

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

These principles did not prevent *Corpus Juris Civilis* from endorsing slavery, with 50 percent of the Empire population being just that. The Jews constituted a large 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 of rule of law.

2. Common Law-Locke

The Second Treatise of Government outlines the first ever principal-agent approach to government, restraining it by means of the sanctity of private property, individual rights, representation and the balance of powers. Locke brought the Calvinist effort at constitutionalism to completion from a Socinian basis, to be carried on by Madison's Machivellism.

3. Kant and Franco-German law

Kant looked for an answer to the question of law and freedom-Rousseau's problem. Having no principal-agent framework, he suggested his metaphysical moral theory as the foundation of law. His conception of constitutional monarchy was limited indeed.

New line

4. WJP

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 mmanifest 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 from 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, WJT 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 indicates 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 little of rule of law but the legal system is not broken.

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 Components analysis. Considering the 128 countries surveyed, these dimensions were revealed:

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

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

Table 1. Factor Analysis

	MR1	MR2	h2	u2	com
V1	0.69	0.460.95	0.052	1.7	
V2	0.99	-0.08	0.93	0.075	1
V3	0.65	0.45	0.86	0.144	1.8
V4	0.72	0.37	0.87	0.129	1.5
V5	0.87	-0.27	0.64	0.364	1.2
V6	0.93	0.09	0.94	0.063	1
V7	0.97	-0.03	0.91	0.086	1
V8	1	-0.07	0.95	0.054	

The finding is that we have two latent variables.

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?

5. Law and Order

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

Judicial enforcement

Here again we find Singapore and the UAE besides South Korea, Czeckien. 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

DIMENSION 2

The items loading on this variable 2 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 WJ 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.

6. Top Rule of Law

One may be interested in looking into which countries score high on the second dimension, i.e., government constraints, fundamental rights and open government. The Scandinavian countries and Finland stand out particularly. Noteworthy is that Germany ranks higher than France. The US is even lower than France. As a matter of fact, the US is scored beneath Uruguay, which sounds awkward. Likewise the score of the UK is astonishingly low compared with other democracies—beneath Estonia.

7. Legal Effiency and Rule 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.

8. Why the Nordic Countries Come on Top?

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 Magna Carta like rules 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.

9. Conclusion

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.

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