

The Rule of Law and The Right to Freedom of Thought Conscience and Religion

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Life-changing Learning
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FTCR and The Rule of Law

Questions for consideration

- Is FTCR co-dependent on adherence to the rule of law?
- Is the rule of law co-dependent on adherence to religious freedom?
- Can FTCR be considered as a universal good such that it ought to be included in constitutional frameworks regardless of the level of adherence to the rule of law in any given state



The right to freedom of thought conscience and religion

Overview

International, regional and national human right

Content

- The right
- The content
- Types of constitutional structures incorporating forms of FTCCR

International, regional and national human right

Content

- The right: Art 18 ICCPR
- Art. 18 (1): "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."
- Art. 18(2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice
- Art. 18 (3): "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

FTCR in constitutional context: the paradox



- - Religious and conscience-based groups formulate ethical frameworks around which adherents orientate their communal and individual lives
 - These can require allegiance over and above obedience to state mandated norms
 - E.g. Individuals accept martyrdom rather than act contrary to their religious or conscience-based beliefs
 - Failure by the state to facilitate freedom leads to:
 - Cognitive dissonance; disengagement with public life; ghettoization/isolation; (violent) opposition

The complexities of FTCD



- A faith or belief group will adhere to its own 'rule of law' as a civil society organisation
- The internal rules of the group may or may not mandate
 - engagement with the state and with public life: forms of Islam, forms of Christianity, Judaism in Israel
 - non-engagement: e.g Amish community/anabaptist
 - peaceful engagement/ non-peaceful engagement extremist/terrorist groups
- Government norms and faith or belief group norms need to co-exist in historical and political context of given nation state
- Worthwhile sophisticated and complex task

Achieving peaceful plural living together



Considered in my published works:

- **2018** Giles, Jessica 'Religious Freedom in Global Context'. Implicit Religion 21.3
- **Giles, Jessica (2018)** 'Tradition as a Peacebuilding Tool' in Giles, Jessica; Pin, Andrea; Ravitch, Frank. Law, Religion and Tradition, Springer, Switzerland
- **Giles, Jessica (2020):** 'A theological justification for freedom of religion and belief as a universal right' in Bunikowski, Dawid & Puppo, Alberto (eds) 'Why Religion? Towards a Critical Philosophy of Law, Peace and God' (Eds). Springer, Switzerland.



The questions for consideration in this presentation

- Empirical evidence of co-dependence FTCR and R of L: neither guarantees the other they can be and often are, present together
- So why is FTCR important: consider what the public and individual good is that comes from FTCR and why a state should take the trouble and face the challenge of facilitating FTCR in public life



The rule of law

Overview

The rule of law and FTCR



An analysis

- **Formal conceptualization** of the rule of law (Dicey, Raz): whether the process by which law is created and applied is appropriate
- **Substantive conceptualization** of the rule of law incorporating internationally recognized fundamental rights: whether the content of the law is appropriate
 - Provides ability to measure national state practice against international norms when measuring rule of law adherence

The rule of law



Issues arising from a substantive concept of r of l

- It is possible to measure rights adherence to some extent but
- It is unclear to what extent FTCCR is incorporated in assessment – danger that other rights will be prioritized so that rule of law scores are high without adherence to FTCCR
- Raz's analysis informative: see Craig 1997. A substantive approach involves political theory – the incorporation of (Western) rights into national law. Is this human rights by the back door?
- Loveland's (2018) analysis: moral conceptualization
- Fuller and Dworkin: synthesis between formal and substantive: see Craig 1997

The rule of law



Issues arising from a substantive concept of r of l

- If we take a substantive approach to RoL we should:
 - Articulate the political and moral implications of doing so, in particular, in relation to non-Western liberal democratic contexts
 - Prioritise FTCLR as a societal and individual 'good'
 - Establish FTCLR as a societal and individual 'good' absent high adherence to the RoL as a 'good' in and of itself



The empirical evidence: RoL and FTCCR

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Global measures: RoL, FTCR, Happiness



- World Justice Project rule of law index 2020
 - 128 countries surveyed for adherence to RoL
 - General population poll and Qualified Respondents Questionnaires
 - RoL defined in accordance with outcomes in society:
 - (1) accountability of government and private actors under law
 - (2) just laws: clear, publicized and stable, evenly applied
 - (3) open government: enactment and administration of law
 - (4) accessible, impartial and just dispute resolution
 - 8 supporting factors constraints on government powers, absence of corruption, open government, fundamental rights (including the right to freedom of thought, conscience and religion), order and security, regulatory enforcement, civil and criminal justice
- Denmark measures highest with .9, Venezuela lowest with .27

Global surveys: RoL, FTCCR, Happiness



- RoL comparison

- High income countries tend to score more highly on RoL index. Potentially application of RoL leads to economic stability and economic wellbeing

- Pew Research Centre FR survey: global surveys of 1. social hostilities and 2. government hostilities towards religion

- Not always a correlation between RoL and FTCCR indexes

e.g. India and Indonesia: high level on Pew

India 69/128 and Indonesia 59/128 on RoL

France: moderate to high on Pew

France: 20/128 on RoL (score .73)

- Therefore, above average ranking on RoL index no guarantee of FTCCR. Need more than the application of the RoL to guarantee FTCCR – need conscious articulation of FTCCR as a public and private good

World Happiness Index



- Rule of law + happiness = some correlation
- FTCCR + happiness more complex
- Countries where one predominant religion = tends to correlate with happiness
- World Happiness Report 2021:
 - Costa Rica (25 rule of law ranking), UAE (30 rule of law ranking), Guatemala (101 on rule of law ranking), Uruguay (22 rule of law ranking), Bahrain, Taiwan, Saudi Arabia (did not take part in the rule of law ranking), all rank 31 or above out of 149 countries surveyed on the happiness index.

World Happiness Index



- Stats on Peru indicate a country can have positive FTCR results without positive RoL and happiness results
 - Research Centres' 2018 report it scored in the top grouping with low social hostility towards religious freedom and low government restrictions on religious freedom. In the Rule of Law Index, however it ranked 80th out of 128 with an index score of .5 and in the 2021 World Happiness Report it scored 63/149.
<https://www.pewforum.org/essay/religious-restrictions-around-the-world/>
- FTCR no guarantee of RoL nor of happiness but
- Careful with stats + snapshot in time
- Also careful with considering outliers: several countries score highly on all three

World happiness index



- How is happiness measured?
 - Life evaluations + positive/negative emotions
 - 1000 responses per country, 3 years (covering pandemic)
 - Globally positive emotions 3xs as frequent as negative
 - Finland, Iceland, Switzerland and Netherlands cf Rwanda, Zimbabwe and Afghanistan
- How does happiness relate to FTCR
 - Avoiding cognitive dissonance – freedom to live in accordance with one's beliefs
 - Telos of religion: realized and future eschatological hope
 - Peace, joy, fulfilment, sacrifice, selflessness
 - Self-control (of one's emotions)

In summary

- RoL and FTCCR are not necessarily co-dependent but they can be
- The presence of either or both does not guarantee a high score on the happiness index but some countries manage relatively high scores on each
- BUT the public and private good of religion not necessarily measured by 'happiness'
- What is the 'good' that can be said to arise from FTCCR



FTCR

Individual and public good

The good arising from FTCSR



- Individual and public good
 - Religion or conscience orientated lives – adherence to a group and group (deity) mandated norms
 - Human agency: the ability to determine one's own path by choosing to belong or not belong to civil society group which might or might not involve commitment of one's life to a deity

The good arising from FTCR



- Individual and public good
 - Individual good
 - Public good

Any questions?

Over to you





Thank you for listening