

Does law create freedom or is freedom the absence of law?

Laws are rules, which both aim to constrain a community and indeed give them the necessary freedoms in the aim of helping society remain civilised. I believe that ‘good law’ is law that is made under the regulation of the Rule of Law, a phrase coined by A.V Dicey. Many Western Governments undertake the Rule of Law by treating all as equal under the law, all people and the State are accountable to the laws, there is fair participation in decision-making of the law and laws have to be made in consensus with human rights. Subsequently, The Rule of Law thrives in giving humans their necessary freedoms. Freedoms can be passive and active, in the sense that passive laws are where we are free from constraint and arbitrary power whereas active freedoms are the exercising of human rights such as freedom of speech, association and expression. The core issue this question is getting at, is assessing whether the law is more constraining on society than at its natural state or if law provides society with more freedoms than would be given in if man was left to his own resources .The prevalence of the Rule of Law in the 21st century highlights the need for freedoms to be recognised in society and therefore, in the Western, more liberal society law does create freedom.

It is necessary to differentiate between the law and variety of legal systems across the globe before answering this question. There is overwhelming global consensus for the importance of the Rule of Law seen by the 193 countries who are member states of the United Nations and as a result legally support the United Declaration of Human Rights. Unfortunately many countries do not instil its core values in their respective legal systems frequently due to the clash of religious laws (such as Sharia law). In line with my definition of the law, those laws which do not aim to benefit the greater good of society are merely rules, which nobody should be liable to keep. The relationship between countries that don’t consistently abide by the rule of law and countries with least citizenship freedom is positively correlated as seen in Figures 1 and 2 below.

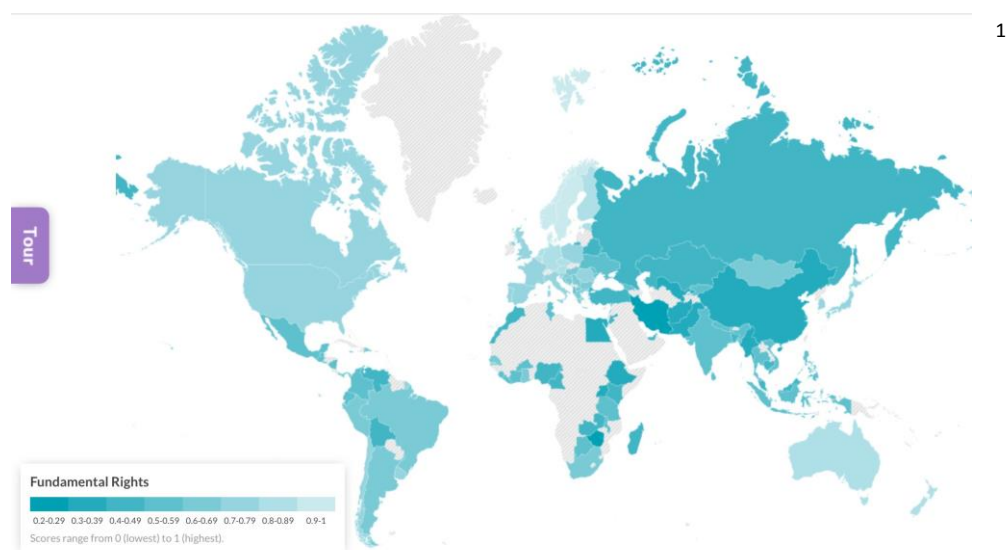


Figure 1: Rule of Law Index 2014 on Fundamental Rights (including freedom of expression and association)

¹ <http://data.worldjusticeproject.org/>

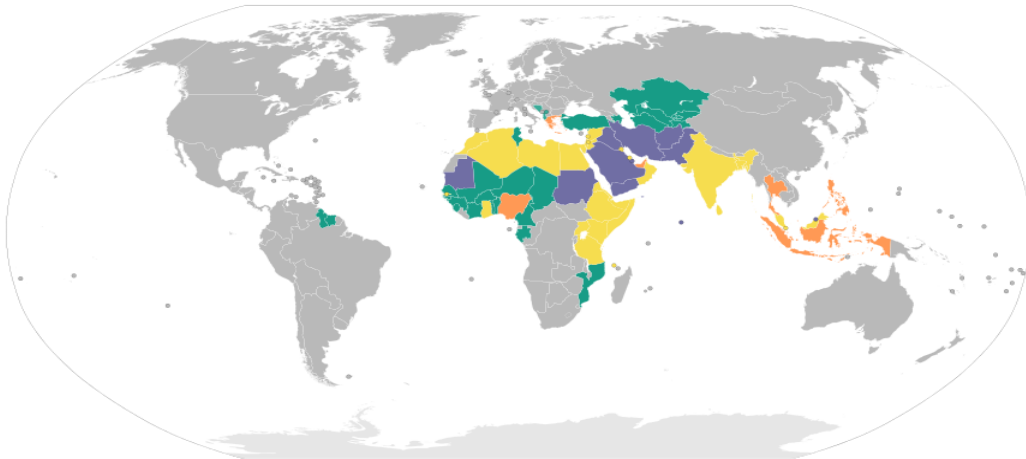


Figure 2: Use of Sharia by country
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Countries highlighted in purple show where Sharia law applies in full and is the sovereign law of the country. These cover issues of personal status and criminal proceedings³. Sharia law, in many areas, clashes with the Rule of Law on the rights and freedoms of women; under Sharia law women have lesser inheritance rights and witness status, compared to men and in Saudi Arabia women are not allowed to drive. On the standards set by the Rule of Law this is notoriously seen as discriminatory on the grounds of gender and these women therefore lack fundamental freedoms. The figures show that on average, countries that use Sharia law in criminal proceedings in Figure 2, are the countries in Figure 1 who have least fundamental rights and freedoms. Therefore, law can only create freedoms if it follows a justice system based on principles of equality. The laws which don't abide by the Rule of Law consequently are the 'chains' Rousseau mentions in *The Social Contract*: 'Man is born free, but he is everywhere in chains'⁴ as they obstruct man's natural rights to freedom.

The law allows for freedoms to flourish due to its evolutionary nature. 150 years ago, life for minorities and offenders was worse than in parts of the Eastern world today. Women and black people had no political power and slavery was rife among all four corners of the world. The law overturned all these injustices and ultimately has enabled society to become increasingly moral and fair, incentivising the recognition of freedom. If there was an absence of law these three groups would still be victims of discrimination across the globe. The legal system is a metaphorical platform where voices who advocate change in society can be heard rather than a lawless

² "Use of Sharia by country" by 2013_Freedom_House_world_map.svg
http://commons.wikimedia.org/wiki/File:Use_of_Sharia_by_country.svg#mediaviewer/File:Use_of_Sharia_by_country.svg

³ "Use of Sharia by country" by 2013_Freedom_House_world_map.svg
http://commons.wikimedia.org/wiki/File:Use_of_Sharia_by_country.svg#mediaviewer/File:Use_of_Sharia_by_country.svg

⁴ Rousseau, J. and Cole, G. *The Social Contract*. New York: E.P. Dutton and Company, Inc., 1950. Print.

world where people are killed for suggesting change. This can be seen in some parts of the Eastern world today, where dictatorships suppress any form of 'opposition' because the leaders fear liberalism and revolutionaries. The law in the West however, may be hostile to change but if the need in society is seen by such desperate measures (e.g. the Suffragette campaigners who committed crimes of arson, hunger striking and martyrdom) it has no choice but to be inclusive, making new laws for the greater good of society following the Utilitarian approach. A contributing factor to women's enfranchisement was the harsh attacks on society forcing the government to reconsider the legal system. The law's purpose is to act in favour of the people and if civilians are at risk, the law has a duty to protect them. The active nature of the law helps us overcome issues of discrimination as although some awful constraints on civil liberties are taking place now, society can reform itself and new freedoms can be identified with time.

The legislation throughout the 19th and 20th century granting women more freedoms demonstrates that law allows intellectual freedom to flourish. The beauty of the law is like a chain reaction of granting freedoms, as it is the human freedom of speech to change laws which consequently allows anything to be transformed in society to ensure more freedoms can be made. Parliament, the legislature in the UK is such a respected institute because of its sovereignty with no codified constitution allowing new legislation to be made easily. Campaigners, such as for women's rights in the early 20th century focused on lobbying the politicians (lawmakers) for the sheer fact that the mechanism of law is the only way of enforcing the public to truly respect and establish their actions in accordance with a change in public opinion. A lawless world lacks obedience because there is no concept of official punishment in a justice system. Because a new demand of society is never met with full consensus, law is put in place to deter man's natural instincts if they were to be against the principles of a suggested new way society should be ruled (i.e. women sitting in the legislature was a fairly radical idea in Victorian Britain). Allowing people to be a part of the decision-making process means compromises are made, so the majority of society agrees upon an issue. Thus the intellectual freedom of speech, expression exercised by women in the 20th century, had value because their demands were imposed into society who then respected the demands by granting them universal suffrage in 1928 and subsequently Margaret Thatcher became first female Prime Minister in 1979. Henceforth people should cooperate with society's wants if there is a punishment for not complying. The Criminal law is of paramount importance to society, as it is the resultant force of having freedoms.

Society cannot work without law because there would be no parameter for the infinite demands of each individual so each person would act in the needs of the self. Society works on the basis of some mutual understanding and compassion felt between the people. Freedom of speech and association are useless in an anarchical society due to the fact that simply the loudest voice wins, and people aren't given an equal chance to have their ideas heard. A community who feels genuine compassion for one another cannot be found without the law because there is nothing unifying a community if there's constant competition and great inequality. The law in the UK gives equality of opportunity to all for example by using Private Member's Bills

where our representatives can suggest any Bill. As almost every adult can stand for office, our legal system lets us introduce phenomenal freedoms. Such Bills have included the Murder Act of 1965 and the 1967 Abortion Act, both of which granted great freedoms to society, making capital punishment illegal and legalising abortion under certain terms. The UK law and legal system does its best to gratify the needs of society, by there being many processes in which laws can be made and the law being inclusive. With the Freedom of Information Act (2000) there is clear transparency between the lawmakers and rest of society, meaning a basic level of trust can be found in the UK today, unlike the high chances of corruption in lawless states.

Furthermore, supranational law like the European Convention on Human Rights (later incorporated in UK law under the Human Right Act of 1998) safeguards human rights. In the *Belmarsh* Case of 2004⁵ 9 men challenged Section 23 of the Anti-terrorism, Crime and Security Act 2001 claiming it was incompatible with the ECHR⁶. The House of Lords resulted in agreeing that the detention without trial of foreigners clashed with the superior ECHR. Consequently this part of ATCSA 2001 was repealed, giving greater freedoms to non-UK nationals under UK law. This supranational law, and specifically this case, is important in highlighting how the law is adaptable and with such a wide variety of law, human rights are safeguarded, even when parliamentary sovereignty is in place.

Society needs morality to become free because ultimately freedom isn't natural. Mankind will not give in to its morality if its between life and death. For this reason, mankind would commit all sorts of atrocities just in order to survive, over-exercising all types of freedoms we know of. Morality would be lost if there was no system of law because lawless states would mean people's lives are purely about survival, rather than other successes too that we enjoy in the world today. The law accommodates for an increase in society's morals. The relationship between the two is symbiotic as seen by the 'passionate campaign [to repeal the Contagious Diseases Act in 1864] engendered against this measure challenged not just the law but the whole basis of Victorian sexual morality'⁷. The upheaval of anarchy on the other hand would show the sheer similarity between humans and animals. Due to the scarcity of resources in our world, there would be the 'survival of the fittest', whereby the man who could do such wicked acts of murder; rape and even cannibalism would ultimately be the leader/survivor. It would be tragic for mankind to become subservient to its natural animalistic instincts rather than follow morality. This would be inevitable in a world with no law. Mankind like the rest of the animal kingdom if left to its own devices will form a society where slavery is commonplace. Decent people are weak and forced to become the proletariat and the brutal and callous form the elite strong bourgeoisie. Man's drive for power is natural and a lawless world would just be a test of what man could do to prove his dominion, such horrifying acts could include genocide like seen in the Holocaust. Under the Rule of

⁵ A v Secretary of State for the Home Department [2004] UKHL 56

⁶ <http://lawbore.net/articles/pil1.pdf>

⁷ Phillips, Melanie. *The Ascent Of Woman*- p.52

Law, society is susceptible to morality because power is earned by man's charisma. Everyone starts on a level playing field rather than the ruler of a lawless society would be dependent on physical strength and brutality. These are poor characteristics to base leadership upon, but this is the scary reality of a lawless society. The wicked thrive while the innocent endure.

In turn, the natural state of the world allows for cruel dictatorships to form due to man's lust for power. The cruel dictatorships of Soviet Russia and Nazi Germany saw mass-destruction of human rights due to Stalin and Hitler's fear of opposition allowing them to outlaw freedoms for the apparent 'greater good of society'. As seen before in totalitarian states like when Hitler passed the Enabling Act in Germany, 1933 that allowed him to legislate without decree, awful laws can be implemented such as the Nuremberg Laws which denied freedoms to 'non-Aryans'. As the natural state shows one man will rise to power and tyranny forms if we abolish all the laws in the world. The reason revolutions have taken place, such as in America and France is due to the demand for law, where human rights are to be respected. You only need to see how many times the Bill of Rights says the words 'freedom' to show how much people value freedom in the law.

On the surface, the argument that the absence of law would create freedom is a strong one because man would be free from constraint meaning man has freedom of choice. However, in practice anarchy would be 'solitary, poor, nasty, brutish and short'⁸ because society wouldn't exist as mankind is in a constant war to survive. Thomas More famously said the law is vital so "Nobody's under the frightful necessity of becoming first a thief and then a corpse"⁹. The anarchical world would be a scarily constraining small place, I estimate with human life ending in few centuries. Perhaps the reason mankind is still growing today, is due to the law which stresses the importance of freedom for worldwide survival. We've seen wars in the past attempt to destroy mankind, at the expense of manipulating freedoms (take the restricted freedoms and indoctrination in Soviet Russia and Nazi Germany which allowed so many lives to cease), and in effect we can draw similarity between these period of time and of an apocalyptic anarchy. The Latin phrase *bellum omnium contra omnes* meaning 'the war of all against all' implies that before state intervention/law the world is a place of constant power struggle. Mankind is in a war just to survive, never mind living a prosperous life. The people struggle because mankind is selfish in nature, but also each man has a very individual skillset. Combining these two factors, if each man was to fight lonesome for survival there would be no industry, no houses, no water supply and no technological improvements. Without the interaction and harmony of mankind and his resources, society cannot live because a home with no water supply is a useless building. We as a nation are dependent on each other's successes. Man's selfishness would mean people would be refused freedom of choice and economic freedom.

⁸ Hobbes, Thomas, Karl Schuhmann, and G. A. J Rogers. *Thomas Hobbes Leviathan*

⁹ More, Thomas: *Utopia* (1516)

Laws on the other hand control monopoly powers allowing greater equality of opportunity in the market and allow a mixed economy to form. A mixed economy is rather like Goldilocks' porridge; the perfect combination of constraint of freedoms but helping stimulate equality. The state provides freedom to those who actually aren't born with it, in the form of a protective welfare state. Similarly, the mixed economy allows the rich to also thrive in the public sector with greater choice than the state provides. A lawless society meagrely offers two choices: life or death whereas a fair society in today's lawful world, allows those without the natural ability to 'win' the survival of the fittest to be free and eligible to the same positions of authority as the naturally free man.

Arguably, economic freedom (personal choice, freedom of market competition and protection of person and property) is the freedom, which enables your other freedoms to be sustained, as they are dependent upon this one type of freedom. Having law is the only way that these freedoms can be protected and instilled in society, because as seen above, nobody can own anything in anarchy. Therefore, if anarchy cannot provide economic freedom then the other freedoms will not have value. The economist Friedrich Hayek argued the dependency of all other freedoms upon economic freedom meant that if you concentrate economic power into the state, society will then lose its political and intellectual freedoms too. This explains why the life expectancy in Russia was 30.9 years for males and 33.0 for female from 1996-1897¹⁰ as 80% of the Russian population were serfs who lived under the cruel autocracy of the Romanov dynasty. Their economic incapability's due to the restricted agricultural methods and lack of structured governmental support for choice in industry meant that the freedoms of speech and association became irrelevant to these Russians, as their livelihoods were in a such a detrimental state they simply died. The absence of clear and structured law here shows how vulnerable people are as economic freedoms are abused allowing cruel dictatorships to rule. The lack of freedom and huge inequality that anarchy would bring would rewind humanity back to brutal tribal times rather than catapult the world into liberation.

So why are politicians and lawyers such hated professions if the law is such an integral need to human life? Man's determination to believe he is strong and does not need to be governed is the most logical answer. However, through studies like Milgram experiment, which tested people's obedience to authority figures and showed that 65% of the experiment's participants administered the experiment's final massive 450-volt shock (gave most pain to the actors disguised as criminals)¹¹ so here we learn people naturally respect law. People therefore follow the rules rather than their own conscience. Similarly the theory of Social Contract tells us that mankind is in consensus to sacrifice some freedoms so that order is maintained by the state, however in return rights must be protected. People want law for protection and to obtain freedoms. The main issue is that certain freedoms are polarised, such that the freedom of speech inhibits the freedom of protection (recently the Charlie Hebdo case proved freedom of speech is such a powerful tool

¹⁰ <http://www.demogr.mpg.de/books/drm/009/part1.pdf>

¹¹ Milgram.S (1963) "Behavioral Study of Obedience"

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that people feel killing is justified due to the resentment that speech brings). The law is about balancing the necessity of each freedom because if one freedom causes a society to start killing, then all freedom is lost due to the basic concept that a fearful society is a society which cannot operate. I am in total agreement with John Locke that "when there is no law, there is no freedom". Society without law would be the epitome of barbarism, tyranny and chaos; a world in which freedom would never be seen.

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