

THE MORAL DIMENSION OF RULE OF LAW IN THE U. S. CONSTITUTION

A Brief Overview

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Lady Justice is a centuries-old personification of the concept of justice—depicted with a blindfold, scales, and a sword--representing impartiality, weighing of evidence, and authority. A similar image appears at the entrance of the U. S. Supreme Court. The U. S. Supreme Court bears the motto, “Equal Justice Under Law.”

Introduction

Rule of Law is the governing principle of a state in which just, fixed laws act as supreme authority versus rulers’ arbitrary exercise of power. By this principle, everyone, including those in power, are subject to and equal before the law. No one is above the law, and the law protects the rights of every citizen. To be supreme, the law must be just and thus moral.

This principle differs from “Ruler’s Law” or the “Law of the Ruler” in which a governing body may arbitrarily govern its citizens as subjects, slaves, or serfs--without meaningful accountability.

Ruler’s Law has been the historical norm for most of man’s 6,000 years of recorded governmental history in the form of monarchy, autocracy, plutocracy, aristocracy, oligarchy, empire, and military dictatorship. The characteristics of Ruler’s Law are the following:

1. Government power is exercised by compulsion, force, conquest, or legislative usurpation,
2. Power is concentrated in the Ruler,
3. The people are treated as subjects of the Ruler,
4. Land is generally treated as the realm of the Ruler,
5. The people have no unalienable or natural rights,
6. The people are often structured into social or economic groups,
7. The thrust of government is from the Ruler down, not from the People upward,
8. Problems are solved by issuing new edicts, creating more governmental bureaus, and charging the People more taxes to pay for the Ruler’s Law,
9. Freedom of the People is not considered a solution to anything, and
10. The transfer of power under Ruler’s Law is often by violence from a new Ruler, with blood and terror as commonplace and with the People living in poverty and excessive taxation.

Though not the norm in history, Rule of Law can be traced back to Mesopotamian, Hebraic, Greco-Roman and Judeo-Christian civilizations.

The American founding is a successful, modern example of a large nation practicing Rule of Law. American citizens, both religious and non-religious, live peacefully and with equal protection of their rights under a tradition of Natural Law, Natural Rights, and biblical principles that are the foundations of Rule of Law in this nation.

The Natural Law Tradition

The Natural Law tradition originates from the worldview that humanity must be governed by timeless moral principles versus temporary, man-made, fabricated decrees that can be changed by the next ruler in power. This tradition has been recognized in both secular and religious sources, and it is a major influence on the moral dimension of Rule of Law in America because it treats everyone as equal.

Important modern Western thinkers who defended Rule of Law recognized the Law of Nature. In his 1600-1615 *Law Reports*, British justice Edward Coke explains the nature and purpose of the Law of Nature in biblical terms:

The Law of Nature is that which God at the Time of Creation of the Nature of Man infused into his heart for his Preservation and Direction; and this is *Lex aeterna* [eternal law], the Moral Law...By this Law, written with the Finger of God in the Heart of Man, were the People of God a long Time governed, before the Law was written by *Moses*...This Law of Nature.... was two thousand Years before any Laws written, and before any Judicial or Municipal Laws.

English judge William Blackstone in his 1765-1769 *Commentaries on the Laws of England* notably described the content of the Law of Nature with the three precepts from the Romans--that “we should live honestly, hurt nobody, and render to everyone his due.” He described the application of this law as supremely authoritative and universal--“superior in obligation to any other” and “binding over all the globe in all countries, at all times.”

Supported by both secular and religious sources over centuries, the Natural Law tradition became a key part of Western thought and jurisprudence. It is, as observed by Dr. John Tyler, “the oldest tradition in Western jurisprudence”.

The Natural Law tradition is an important influence on the moral justification for Rule of Law in America, in setting the moral standard required for just law and governance.

In contrast to the oppressive control of citizens and the inconsistent application of law by rulers under Ruler’s Law, Rule of Law, beginning with the Natural Law tradition, provides equal, fair, and respectful treatment of every citizen regardless of status, race, or creed.

The Biblical Law Tradition

The Bible acknowledges and reinforces the Law of Nature. The Bible demonstrates Rule of Law in three contexts of law: in the Law of Nature, the Law of Moses, and the Judeo-Christian Golden Rule. Each

context supports Rule of Law by illustrating and confirming the standard of just civil law and government.

First, the Law of Nature informs and supports Rule of Law by its moral content and universal application to all mankind, being written on the heart of man.

Second, the Mosaic Law supports Rule of Law by its impartial application to all the ancient Israelites, both rulers and people. The Mosaic Law instructed the Israelites to follow the “sentence of the law” and to “not show partiality to the poor or favoritism to the great, but judge your neighbor fairly” and to “hear the small as well as the great.”

Third, the Judeo-Christian Golden Rule supports Rule of Law by providing the content of God’s Moral Law to “love your neighbor as yourself,” “do unto others what you would have them do to you,” and “do no harm to a neighbor.” It also supports Rule of Law by its equal, fair, respectful, and just application of this law to all of God’s people.

The Biblical Law tradition was consistent with the Natural Law tradition because it upheld the *same* Moral Law. Indeed, *one* Moral Law is conveyed in both traditions.

These Moral Law traditions provide a consistent moral standard for just civil law and government that supports Rule of Law.

The Rule of Law in Roman Law

Roman Law played a notable role in the moral development of Rule of Law in the Western world--including in England and, ultimately, in America.

The ancient Romans applied Rule of Law when they created their first body of written laws known as the Twelve Tables in 451 BC. Because the ruling-class of judges often decided peoples’ legal cases arbitrarily and based on their own interests, commoners demanded fixed, definitive laws that were the same for everyone. Ten men or Decemviri thus engraved a set of laws on twelve stone tablets and publicly displayed them so that everyone could know and apply them. The Twelve Tables ensured that commoners received fair, equal treatment and protection of rights.

The Twelve tables upheld equality in law, stating, “Laws of personal exception shall not be proposed.” It also upheld due process--in which no one can be denied one’s rights without proper legal procedure and just judgment according to the law. It states, “Anyone whomsoever to be put to death without a trial and unconvicted...is forbidden.”

American Founder James Wilson observed in his 1790-1791 *Lectures on Law*, “The Decimvirs declared...that the laws should be equal and impartial to the high and to the low.”

Emperor Justinian I's 529-565 AD *Corpus Juris Civilis* became the codified law of the christianized medieval Roman Empire. The Romans asserted that their empire was governed under God’s Moral Law and that this law was the source of just civil law. The Romans recognized the Law of Nature in the *Corpus*.

The Romans described the Law of Nature with three precepts, “to live honestly, to hurt no one, and to give to every man his due.” The precept to “injure no one” was originally expressed by Greek philosopher, Socrates, in Plato’s 380 BC *Crito*.

The *Corpus* upheld, at least in theory, the equal application of law. It asserted that “laws shall be obeyed equally by all” and that “all, though belonging to the imperial house must live according to the laws.” Rulers were subject to the laws since their authority “depends upon the authority of law.”

The principles of Roman law profoundly shaped English jurisprudence which, in turn, shaped American jurisprudence. In asserting the authority, impartiality, and due process of law, and in recognizing the Law of Nature, Roman law contributed greatly to the development of Rule of Law in England and America.

The Rule of Law in English Common Law Tradition

Because English jurisprudence had a significant impact on American jurisprudence, it is important to consider the moral development of Rule of Law in English law. Anglo-Saxon and Roman jurisprudence were instrumental in the development of common law and Rule of Law in England.

The Anglo-Saxons enacted Rule of Law in accordance with the Biblical Law tradition as seen in the Mosaic Law by making their laws impartial and equally applied to all subjects, to “not show partiality to the poor or favoritism to the great.” Their law code provided the foundation for English common law and became solidified in the 1000s - 1100s.

The Magna Carta or "Great Charter" of 1215 was an agreement between King John and his noblemen that applied the common law not only to the people but to the king and his magistrates. It acknowledged the supreme authority of "the law of the land" over rulers and that citizens had certain rights that could not be arbitrarily abused by those in power. Magna Carta also upheld due process of law.

In his c1470 *In Praise of the Laws of England*, English Chief Justice John Fortescue recognized the authority and universality of the Law of Nature: “The Law of Nature in all countries is the same.” Roman Law principles including the Natural Law tradition were incorporated into English jurisprudence.

The phrase, ‘Rule of Law’ emerged in England around 1500.

Further, English common law operated by *stare decisis*, Latin for “to stand by what has been decided,” in which judges are bound to decide cases according to previous legal decisions or precedent. The purpose of this practice is to keep the law constant, impartial, and just. It prevents judges from deciding cases arbitrarily.

The Rule of Law in Modern British Thought

Despite the advancement of Rule of Law in the Middle Ages in England, the doctrine of "Divine Right of Kings" became prominent in the 1600s under the Stuart kings who imposed absolute monarchy--Law of the Ruler or Ruler’s Law. This doctrine asserted that the monarch received absolute authority directly from God and was therefore not accountable to any earthly authority such as English Parliament. The monarch’s will, acts, and decrees were the law. In response, British thinkers including Samuel Rutherford, Edward Coke, and John Locke refuted Divine Right of Kings and reaffirmed Rule of Law.

In his 1644 *Lex, Rex*, Scottish theologian Samuel Rutherford supported Rule of Law based on the Biblical Law tradition, the Bible's three contexts of law. He asserted that all people are subject to just civil law just as they are subject to the Law of Nature, for “God’s law excepteth none at all.” He also cited the impartiality of the Law of Moses to “not show partiality in judgment; you shall hear the small as well as the great.” He further asserted from the Judeo-Christian Golden Rule that kings, as human and not God, should be equally subject to the same laws as the people and should not violate the rights of subjects. Rutherford strongly discredited Divine Right and validated Rule of Law in British and American thought. His ideas were familiar to the American Puritans and to revolutionary writer Thomas Paine.

British Chief Justice Edward Coke defended Rule of Law over Ruler's Law and affirmed due process of law. In his 1628-1644 *Institutes of the Laws of England*, Coke explained that the English common law was called the "law of the land" in Magna Carta so that "the law might extend to all, both king and people." He described the common law as the "golden metwand" or measuring rod by which "all men's causes are justly and evenly measured and appointed to measure the cases of all and singular persons, high and low, to have and receive justice."

American Founder Thomas Jefferson described Coke's *Institutes* as the "universal elementary book of law students." Coke helped to preserve Rule of Law in English and American law.

British Enlightenment philosopher John Locke supported Rule of Law as the best way to protect citizens' rights and maintain a just and orderly society. Locke favored Rule of Law based on the Moral Law traditions, though his presentation was largely secularized. Locke drew on the Bible's three contexts of law, including the universal application of Natural Law as described in Romans 2:14-15. In his 1695 *Reasonableness of Christianity* and his 1689 *Second Treatise of Civil Government*, Locke recognized the universal application of the Law of Nature to all mankind. Locke supported Rule of Law based on man's equality and natural rights, and on the Moral Law as conveyed in the Moral Law traditions.

English justice William Blackstone also strongly supported Rule of Law. His 1765-1769 *Commentaries on the Laws of England* taught early Americans about the Law of Nature, English common law, and Rule of Law. Blackstone adopted the three precepts of Roman law to describe the Law of Nature--that "we should live honestly, hurt nobody, and render to everyone his due."

Rutherford, Coke, and Locke played a vital role in affirming Rule of Law and refuting Ruler's Law in the Divine Right of Kings. Blackstone further reaffirmed Rule of Law with his modern, moral presentation of English common law. Divine Right fell out of use in England after the Glorious Revolution of 1688.

The Rule of Law in the American Puritan Colonies

The American Pilgrims and Puritans, as reformed Protestant Christians, favored Rule of Law over Divine Right of Kings based on their Bible-inspired belief that only God has rightful absolute authority over His church. God was their king.

In accordance with Biblical Law and English common law traditions, the Pilgrims' and Puritans' also favored Rule of Law based on their Bible-based view that all men are equal in standing before God and subject to God's Moral Law.

The Pilgrims' Mayflower Compact of 1620 initiated Rule of Law in America because it placed all signers and their families, regardless of status, on equal standing in the new colony and in subjection to the colony's future laws--with God as Supreme Judge and King (versus an earthly king). The Mayflower Compact was the "first expression" of such political equality in America and created a framework for Rule of Law in America. "The Pilgrims, more than any others," says Dr. Daniel Dreisbach, "laid the foundation for an American political tradition committed to the Rule of Law."

To implement Rule of Law, the Puritans created constitutions of law for their new colonies in America. Their constitutions upheld the "sentence of the law" in line with Rule of Law and the Biblical Law tradition. Their constitutions---in their form, purpose and application---resembled in some ways biblical and common law documents such as Moses' Ten Commandments and Magna Carta which adhered to Rule of Law.

The Moral Law in American Thought and Jurisprudence

In accordance with their philosophical beliefs, founding-era Americans upheld and aligned with the Moral Law traditions when shaping America's jurisprudence, civil laws, and government. In doing so, they also aligned with and adopted important principles of Roman, British, and American colonial jurisprudence. Early Americans agreed with Blackstone's Moral Law precepts to "live honestly, hurt no one, and render to everyone his due" and the universal impartial, equal application of this law to all people based on man's equality. Further, they believed that the Moral Law--in both content and application--is the foundation of just civil law.

Founder Samuel Adams, in his 1794 *Address to the Legislature of Massachusetts*, affirmed the Moral Law from both the Natural and Biblical Law traditions. He expresses: ... [sociallocker id="3920"]

All men are equally bound by the laws of nature, or to speak more properly, the laws of the Creator; they are imprinted by the finger of God on the heart of man [Romans 2:14-15]. Thou shalt do no injury to thy neighbor [Romans 13:10], is the voice of nature and reason, and it is confirmed by written revelation [or the Bible]. [/sociallocker]

American Founder and U. S. Supreme Court Justice James Wilson in his 1790-1791 *Lectures on Law* similarly recognized the Moral Law from these traditions. The Moral Law's content, he says, alluding to Blackstone, "prohibits injury and commands the reparation of damage done" and "fidelity to our engagements." On the Moral Law's application, Wilson cited Romans 2:14-15 in stating that this law is "engraven by God on the hearts of men." Echoing the Mosaic law to "hear the small as well as the great," he says that natural rights are given "in the same manner, to all; to the weak and artless, their small acquisitions, as well as to the strong and artful, their large ones."

Founder John Adams saw the relevance and benefit of the Moral Law, as expressed in the Golden Rule, for all Americans. He writes in his 1796 Senate notes, "One great advantage of the Christian Religion is, that it brings the great principle of the Law of Nature and nations--Love your neighbor as yourself, and do unto other as you would have others do to you,--to the knowledge, belief and veneration of the whole principle."

Founder James McHenry described the Moral Law in the Bible as a worthy guide for American Law. In his 1813 address for the Baltimore Bible Society, he states, "The Old and New Testaments taken together, are the only books in the world which clearly reveal the nature of God, contain a perfect law for our government, propose the most powerful persuasions to obey this law."

Early Americans' alignment with the Moral Law traditions led them to create and/or aspire to just civil laws and government that reflect this Moral Law in both its content and application. John Quincy Adams, quoting John Locke, reiterated this view in his 1772 *Report on the Rights of Colonists*: ... [sociallocker id="3920"]

"Just and true liberty, equal and impartial liberty" in matters spiritual and temporal, is a thing that all Men are clearly entitled to, by the eternal and immutable laws of God and Nature, as well as by the law of Nations and all well-grounded municipal laws, which must have their foundation in the former. [/sociallocker]

Encompassing both secular and religious moral worldviews and traditions, the American Declaration of Independence of 1776 upholds the Moral Law traditions in acknowledging a "Creator" and the "Laws of Nature and Nature's God" on which Americans base their rights, civil laws, and constitution. Both religious and non-religious early Americans viewed the Moral Law as the firm basis for just government and civil law.

The Rule of Law in American Thought and Jurisprudence

Early Americans drew in part from the Moral Law tradition to inform the governing principle and practice of Rule of Law in the United States. The content and application of God's universal Moral Law led them to implement Rule of Law as the most just and fair means of governance for the new nation.

Founding-era Americans saw in the Moral Law traditions consistency with Rule of Law. In contrast to the arbitrary, inconsistent application of Ruler's Law, God's Moral Law demonstrates an equal application of law that supports Rule of Law. In his 1772 *Rights of Colonists*, Samuel Adams defends Rule of Law. Quoting Locke and resounding the Mosaic Law to "show no partiality to the poor or favoritism to the great," he states, ... [sociallocker id="3920"]

"The Legislative cannot justly assume to itself a power to rule by extempore arbitrary decrees; but it is bound to see that Justice is dispensed, and that the rights of the subjects be decided, by promulgated, standing, and known laws.... 'There shall be one rule of Justice for rich and poor, for the favorite in Court, and the Countryman at the Plough.'" [/sociallocker]

Early Americans specifically affirmed that American common law is rooted in the Moral Law traditions. Founder James Wilson expressed the influence of the Natural Law tradition on American law, stating, "Man's rights are to be free from injury, and to receive the fulfillment of the engagements, which are made to him. His duties are, to do no injury, and to fulfill the engagements, which he has made. One these two pillars...rest the criminal and the civil codes of the municipal law."

U. S. Supreme Court Judge Joseph Story, a Blackstonian advocate of common law in America and one of America's early commentators on American jurisprudence, pointed out how American law is rooted in the Biblical Law tradition. He states in a 1829 speech: ... [sociallocker id="3920"]

One of the beautiful boasts of our municipal jurisprudence is, that Christianity is a part of the common law, from which it seeks the sanction of its rights, and by which it endeavors to regulate its doctrines....there never has been a period in which the common law did not recognize Christianity as lying at its foundations. [/sociallocker]

During the American Revolution from 1775-1783, English political writer Thomas Paine further validated the Rule of Law from the Moral Law traditions with his influential 1776 political pamphlet, *Common Sense*. Paine reiterated the biblical arguments found in Samuel Rutherford's *Lex, Rex*: ... [sociallocker id="3920"]

But where say some is the king of America? I'll tell you, friend, he reigns above, and doth not make havoc of mankind like the royal brute of Britain. Yet that we may not appear to be defective even in earthly honours, let a day be solemnly set apart for proclaiming the charter; let it be brought forth and placed on the divine law, the word of God; let a crown be placed thereon, by which the world may know, that so far as we approve of monarchy, that in America

THE LAW IS KING. For as in absolute governments, the king is law, so in free countries, the law ought to be king: and there ought to be no other. [/sociallocker]

The American Founders defended and instituted Rule of Law as the best means of governance for the new nation and states of the United States. As Founder John Adams affirmed, the American Founders sought to create a good and just "government of laws, and not of men."

The Rule of Law in the United States Constitution and American Common Law

The U. S. Constitution of 1787 as the "law of the land" secures Rule of Law in serving as the supreme governing authority in the nation, requiring civil servants to enforce the law, upholding due process and equal protection of the law, and creating an independent judicial branch. The American judicial system upholds Rule of Law in abiding by American common law including *stare decisis*.

The Constitution secures Rule of Law in being considered the supreme authority in the United States. Article 6 of the U. S. Constitution states, "This Constitution and the Laws of the United States which shall be made pursuant thereof...shall be the Supreme Law of the land." No civil law is considered legal or legitimate if inconsistent with this fundamental law.

The Constitution also secures Rule of Law by providing all citizens with due process and equal protection of the law. Amendment 14 states, "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to any person within its jurisdiction the equal protection of the laws."

Russell Kirk affirms that "the basis of American law....is the common law which began to develop in England nine hundred years ago" and that "in America, common-law principles would upon work public affairs more powerfully than any other influences except Protestant Christianity and the colonial social experience itself."

The U. S. Constitution upholds Rule of Law in serving as the supreme authority by which all people, their representatives, and other civil laws must abide and by which all citizens are protected of their rights and freedoms.

Conclusion

The American Founders created a new nation, the United States of America, governed by Rule of Law that was designed to treat all people equally and fairly under the law. For they had learned from history and their own experience that the arbitrary, subjective, and inconsistent application of law under Ruler's Law often resulted in the unjust oppression of people and their rights. As supported by the Natural Law and Biblical Law traditions and by Roman, British, and American jurisprudence, founding-era Americans embraced the philosophical principle of Rule of Law as the best means of governance for the protection of citizens' rights. Rule of Law provides for the fair, equal, and respectful treatment of every citizen regardless of status, race, or creed.

*The full essay including endnotes of **The Moral Dimension of Rule of Law in the U. S. Constitution** by Angela E. Kamrath is available to view on The Founding Blog, www.thefounding.net, and to download from the resources page of AHEF's main website, www.americanheritage.org.*

Sources:

Kamrath, Angela E. *The Moral Dimension of Rule of Law in the U. S. Constitution (Unabridged)* (July 1, 2021). *The Founding Blog* (thefounding.net). Houston, TX: American Heritage Education Foundation, 2017-present.

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Source for more information:

Kamrath, Angela E. *The Miracle of America: The Influence of the Bible on the Founding History and Principles of the United States of America for a People of Every Belief*. Second Edition. Houston, TX: American Heritage Education Foundation (americanheritage.org); Longwood, FL: Xulon Press, 2013, 2015, 2020.

<https://americanheritage.org/programs/miracle-of-america/>

Activity:

Lesson: The Miracle of America High School Teacher Course Guide, Unit 8, Part 1, Activity 3: “Principles of the United States Constitution” p. 270, MS-HS.

Other Suggested Readings:

-*Miracle of America* text, 1.1-3, 2.4, 2.6, 3.2, 3.4, 3.6-10, 6.5, 7.2-3, 7.10-11, 7.14, 7.18, 8.3, 8.5-7, 8.11, 8.19.

-*Principles of the United States Constitution* handout by Angela E. Kamrath. See “Supporting Resources,” pp. 392-396, in *Miracle of America HS Teacher Course Guide*, or “Miracle of America Snapshots” handout in member resources at americanheritage.org.

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