

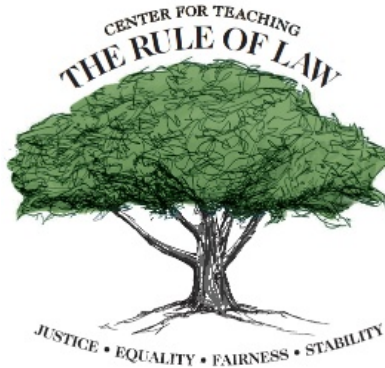


Definition of the Rule of Law

The rule of law may be respected only if it is defined so citizens can clearly understand it. In the first sentence of *On the Rule of Law: History, Politics, Theory*, Brian Tamanaha writes, "The rule of law is the most important political ideal today, yet there is much confusion about what it means and how it works." Tamanaha's comment reflects the general consensus that a definition of the rule of law is not only confusing but evasive as well.

The Center for Teaching the Rule of Law defines the rule of law as the universal ideal by which the rights of individuals and the collective rights of community are equally recognized by consent under the following core principles, which, through government, are guaranteed and protected:

- Government and its officials are subordinate to the law;
- Citizens are actively engaged in making the laws that govern them by consent or direct involvement;
- These laws are fairly and equally applied to everyone to protect individual freedom;
- Citizens agree among themselves to obey the laws for the protection of all; and
- An independent judiciary provides for equitable and impartial access to justice.



RULE OF LAW PRINCIPLES

- Law provides communal order, stability, and restraint
- Law reflects the will of the people and guarantees their civil rights
- Citizens consent to the laws and agree to obey them
- Government and its officials are bound by the law and are answerable to the people for their actions
- The laws are interpreted and applied fairly and equally to all people
- The rule of law is the bedrock for democratic civil societies: Democracy cannot exist without the rule of law
- The principles of the rule of law trace their origins through the philosophies and writings of Plato, Aristotle, Cicero, Thomas Aquinas, Thomas Hobbes, John Locke, Baron de Montesquieu, Jean Jacques Rousseau, John Stuart Mill, and others
- Embedded in any definition of the rule of law is the concept of a compact, contract, or agreement between the people and the government that the government will act fairly and equitably to preserve and protect the rights, freedoms, property and liberty of the individual and the community
- There should be an independent judiciary and legal system accessible to all people
- For the rule of law to function effectively, it must be codified in a constitution that sets the limits of government action and provides for a separation of powers to avoid any one branch of the government from exerting too much power over the government and the citizens
- Good government requires citizens to be actively engaged in the democratic process
- The rule of law principles of stability, certainty, and equality are the foundation for economic and commercial freedom
- The concept of self-determination is a basic principle of the rule of law
- The ancient philosophers Plato, Aristotle, and Cicero saw the Law as an enduring ideal that provides order, stability, and a restraining effect on human passion
- For the ancient philosophers and Thomas Aquinas, the Law must be good, virtuous, and just in order to guarantee the individual's pursuit of happiness
- Laws should not be retroactive an individual may not be punished for a law that did not exist in the past
- The rule of law acknowledges that individuals are born with certain fundamental rights natural rights that government may not take away from them: Life, liberty, property, and the pursuit of happiness
- *Liberty* is defined as individual independence and autonomy; *freedom* is defined as the individual rights people enjoy as members of the community, state, and nation
- From ancient Greece and Rome through the Middle Ages, the Enlightenment, to the present, a tension exists within the rule of law and democracy between individual rights and the good of the community