



Evolution of the Rule of Law

# The Rule of Law

**Rules sometimes get in the way of what we want to do. But it is the Rule of Law that makes us free—within limits.**

**E**arly humans didn't have to abide by the law. There weren't any. For over 25 million years our ancestors did pretty much what they wanted and tried to avoid others who were doing their own thing. When conflicts occurred it was the natural law that prevailed—survival of the fittest.

That might sound pretty good to some. There are so many laws and rules. People often feel constrained by them. Some say this is the price of civilization. Others respond that enough is enough. And still others say many laws are designed to protect the privilege of the few over the needs of the many. There is an ongoing debate over which laws are just and right, and this will probably always be the case. But where exactly did the idea of the Rule of Law come from and how does it apply to us today?

# The Rule of Law

**“In free countries the law ought to be king: and there ought to be no other.”** Thomas Paine, *Common Sense* (1776)

**Put simply, the Rule of Law means that everyone is subject to the law, with no exceptions.**

Not the Prime Minister or any minister; not the monarch or president; not the military; not the police; not the courts; not the church; not anyone.

Any powers these positions have is granted to them by law. Of course laws are not always fair and are not always enforced. Police and the courts sometimes look the other way and the rich and powerful seem to get away with things the poor do not.

Sometimes juries ignore the law in finding someone guilty or innocent. There’s actually a phrase for this: “jury nullification.” It’s clear that the Rule of Law doesn’t always guarantee freedom or justice. Nevertheless, it provides a critical framework for groups and nations to define how they want to be together. It is intended to protect the common person from the whims of the powerful.

The Rule of Law assumes that the people who are ruled by the law also have input into making the laws. In general, this is done by electing representatives to government. These officials then make the laws we must live with.

Sometimes laws are seen as being unfair or unjust. When it seems there is no way to change an unfair law, people may act against the law to change it.

The American Revolution is an example of extreme reaction to what was perceived as

unjust laws: taxes imposed on certain goods by the King of England. At the signing of the Declaration of Independence, Benjamin Franklin is quoted as saying: “*We must all hang together, or assuredly we shall all hang separately.*” Disobeying the law in order to change it can be risky business.

Whether it’s a school rule, court case or a revolution, the Rule of Law shapes our lives.

## The Rule of Law vs. The Rule of Men

Until quite recently, the history of civilization was characterized by the rule of strong leaders. These leaders—kings, emperors, gods—created laws for others but did not have to live up to them. In general, they ruled until they were defeated by stronger men or died. The Rule of Law was pretty much out of the question.



Plato and Aristotle debate the rule of law versus the rule of men.

There were a few exceptions. Around 350 BC, in ancient Greece, the concept of the Rule

of Law was debated by the great philosophers: Aristotle and his teacher, Plato. Plato originally described the concept of rule by law but did not trust ordinary men and favoured handing over the powers of the state to “philosopher kings.” Aristotle, on the other hand, advocated for “the rule of laws, not men.”

As a practical point, this argument mattered little. For the most part, Greece and nearly all other countries up until a few hundred years ago were run by strong men who saw themselves above the law. Take, for example, the Magna Carta.

### **The Magna Carta** (Latin for Great Charter)

In 1215, English barons forced King John of England to accept a document that restricted the powers of the King. In practice, the Magna Carta had little immediate impact on the behavior of kings. They continued to do pretty much what they wanted, but the idea of the rule of law stuck. Many of today’s laws were first described in the Magna Carta.

### **The Rule of Law in Canada**

When Canada was created in 1867, it drew upon three legal traditions to define its Rule of Law. (1) English-speakers brought with them the English Common Law. This is a body of decisions made in English courts since the Norman Conquest (1066). New laws were based on precedent in the Common Law. Laws in the United States are also based on English Common Law.

(2) In Quebec, the law became based on French civil law, which goes back to ancient Roman law and French traditions.

(3) Both English common law and French civil law traditions incorporate some legal rights based on indigenous peoples’ traditions. However, aboriginal peoples continue to seek greater recognition of their traditional laws.



### **Case Example: *Universal Declaration of the Rights of Indigenous Peoples***

On September 13, 2007 the General Assembly of the United Nations adopted a *Declaration on the Rights of Indigenous Peoples*. The only nations voting against the declaration were:

- Australia
- Canada
- New Zealand
- United States

It is not clear why these countries did not support the measure. But Articles 26 and 28 may provide a clue:

26.1 “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”

28.1 “Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”

The four countries that did not support the declaration have the largest numbers of indigenous peoples. Each country has laws that govern the property rights of indigenous peoples, which differ from those in the declaration. These laws are often challenged by indigenous people who do not think they are just.

The declaration is not legally binding. However, it is part of the Rule of Law by setting standards for national relations with indigenous people. The four nations that voted no do not want to be bound by these standards.

Indigenous people had no vote.

## The Rule of Law | Key Vocabulary

<b>English Common Law</b>	The legal system for England and Wales. The basis for legal systems used in Commonwealth countries and the U.S.
<b>indigenous people</b>	An ethnic group who inhabits or inhabited a geographic region before its occupation by another group.
<b>jury nullification</b>	An action by a jury that ignores the law and rules for a defendant even though the evidence supports conviction.
<b>Magna Carta</b>	An English legal charter originally issued in 1215 that required King John of England to ensure rights to his subjects.
<b>Norman Conquest</b>	The defeat of England in 1066 by the Duke of Normandy resulted in changes in culture, language, legal customs in England.
<b>philosopher king</b>	A concept proposed by Plato in which the brightest and most educated (philosopher kings) would rule, rather than democracy.
<b>Plato and Aristotle</b>	Plato was a classical Greek philosopher. He, his teacher (Socrates), and his student (Aristotle) laid the foundation for Western philosophy.
<b>prevail</b>	To achieve success after struggle.
<b>survival of the fittest</b>	A phrase used by Darwin and others to describe the evolutionary theory of natural selection in which animals best suited for survival did so.

## Discussion Points

1. Think of some rules that you don't like—rules that effect your life. They don't have to be laws. Even if you don't like them, do you think they make sense? If not, why and how would you change them?
2. What laws do you think make a lot of sense? Are there more laws that you think should be adopted?
3. Are there laws that benefit one group over another? Does this make sense to you? How would you like to change them?