

The Constitution Liberates Us: The Rule of Law and How It Enables Equal Protection, Justice, and an Enduring Freedom for All

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[I]n 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.¹

Laws are the necessary relations arising from the nature of all things and subsisting between all intelligent beings.² We the people are governed by law, not individuals. And individuals are made free, as John Locke taught, when governed by just law; for “where law ends, tyranny begins.”³

These precepts are significant because (1) by our nature all people are sovereign, and (2) we choose to gather and organize together in social constructs—such as families, communities, and countries—to sustain and strengthen our sovereignty and the pursuit of happiness. We therefore seek to form more perfect unions by establishing agreed principles that govern human relations in our elusive endeavor to secure an orderly, peaceful, and just society. The establishment and administration of just laws enable us to live together in harmony and achieve the greatest level of individual and collective happiness. This is why people charter government. Law empowers citizens and nations to provide equal protection, establish justice, and enable greater freedom for all.

Of all the fundamental principles of the U.S. Constitution, one is necessary for the viability of all the others. It is the culminating keystone in the arch that upholds the superstructure of freedom for all people. It ensures that the other component principles necessary for constitutional freedom are secure in their proper place and functioning according to their proper purpose. Without this principle, all other fundamental constitutional principles begin to fracture, and the political superstructure of freedom falls.

The fifth constitutional principle in our review of the U.S. Constitution is the *Rule of Law*.⁴

At its most fundamental level, the Rule of Law is generally understood to be that all citizens of a nation

are governed by and held accountable to written constitutional laws that are just, publicly promulgated, equally enforced, and independently adjudicated. It means the law governs everyone equally. Neither government officials nor common citizens are allowed to break the law. Everyone is treated equally before the law and afforded due process and fairness under the law. Sovereign citizens advance the cause of freedom and this principle when they choose to obey, honor, and sustain the law that is justly enacted within a society, conducting themselves uprightly in conformity with that law and all other fundamental constitutional principles.

The principle of the Rule of Law may be the most difficult of all constitutional principles to truly understand, in both its nature and application, which is why for thousands of years the wisest among us have consistently tried to do so.⁵ Understanding basic principles of law generally and their proper application in a society are helpful in increasing one's knowledge concerning the Rule of Law. These fundamental principles provide clearer insight into the paramount constitutional principle that is the Rule of Law. I will highlight seven of these general principles of law.

Seven General Principles of Law and the Application of Law

First, it is *only* the law that governs within a just and free society, as opposed to individuals. This makes each citizen equal to any other under the law and leads to every citizen, regardless of position or stature within a society, being treated equally before the law. No one, not even the most elevated and honored official, is above the law. The proper application of the law checks power and slows its abuse by those entrusted with authority. This both enables and sustains greater freedom.

Second, law that is vague, incoherent, arbitrary, or unwritten is no law at all.⁶ Any law that is not clear,

plain, and precise is deficient. An equivocal mandate from the state is always unjust because it strikes without warning and, thus, abridges both personal sovereignty and collective liberty. The best and truest laws are just, precise, easy to execute, and appropriate to the people who receive them.⁷

Third, laws alone do not establish justice. It is the proper application of just laws by wise rules and choices based on true constitutional principles that guide, like a compass, the way to justice and happiness within a free society. This process requires diligence and strict observation of law among both citizens and those entrusted by the people to enforce the law. It further requires government to *equally* guarantee to all individuals the Rule of Law and security of liberty under the law.

Fourth, those entrusted to enforce laws within a society must defend assiduously the people's liberty and the equal application of the people's law.⁸ Men and women entrusted with the power to execute, legislate, and adjudicate laws (i.e., those empowered by the people to govern) serve by proxy on behalf of every citizen; they are *servants* of both the law and the people. Likewise, those trained in the law within a society have a heightened duty and obligation to teach the law, and to defend and honor it. This helps ensure collective freedom under law within a society in perpetuity.

Fifth, allowing just laws of a society to *not* be observed is worse than having no law at all. Ignoring just laws is the antithesis to the Rule of Law. It is to abase law and promote injustice without remedying the problem for which the law is intended. When citizens obey, honor, and sustain just laws established through government of the people, liberty is strengthened and magnified.

Sixth, laws that cause what is indifferent to be regarded as necessary are not sensible. Even worse, such laws may cause what is necessary to be considered indifferent. Laws should therefore only pronounce on essential things. Superior laws safeguard, protect, and guarantee the most essential things. Government should avoid legislating the inconsequential or other matters properly left to individuals, local communities, and societal mores.

Seventh, there are various sorts of law and thus different orders to laws.⁹ The binding force of an inferior law always flows from that of a superior one. The laws of nations, for example, flow from natural law; the laws of a community flow from national law, and so forth. Inferior laws should never contravene superior laws unless the superior law itself violates a higher law. To do so would render the inferior law unjust and no longer a true law at all. The best, highest, and truest laws concern the most essential things. People within a society should choose through their legislative power the highest laws they can bear in their particular situation in order to achieve greater collective peace, liberty, and happiness.

The Rule of Law in America

Against this backdrop of general principles regarding the application of law, we can better understand and implement our written law. We begin to see why the Founders believed that no liberty was more central than the people's liberty to govern themselves under rules of their own choice. They gave the last full measure of their devotion to establish *the* law that would secure the blessings of liberty to themselves and their posterity for all future generations.

They were successful. As a result, in America, *We the People* ordained and established the highest law by which all are to be governed within our nation. It is the standard raised to all the world in its

capacity to advance the cause of freedom, secure greater happiness, and protect the rights and life of all people. *Our law is the U.S. Constitution.* All conduct of both government and citizens, including all inferior laws they may implement, must conform to the superior and highest law of the land enacted by the people, which is the Constitution. Ultimately, this is the Rule of Law.

The loyalty of American citizens is, therefore, not to any individual, magistrate, or king; it is to the written Constitution and its principles and processes. As we understand and adhere to the true principles of higher law and its equal application, we discover that law has the power to liberate and ennoble. By the Rule of Law, we draw nearer to justice and engender greater freedom. We begin to fulfill the promissory note of freedom written by America's Founders to which we all are the beneficiary and fall heir.

The Rule of Law is the *sine qua non* for liberty. Yet, too often this constitutional principle remains elusive and paradoxical to most. It is only by and through the constraints of the Rule of Law that the collective freedom of any people within a nation is truly possible. Diligent adherence by citizens to the highest laws enables the greatest level of freedom for all. Quite simply, without the protection of law, there can be no liberty; for every citizen's right to enjoy life and property would be subject to the capricious and uncertain acts and will of others. As Montesquieu revealed, "Liberty is a right of doing whatever laws permit, and if a citizen could do what they forbid he would be no longer possessed of liberty, because all his fellow-citizens would have the same power."¹⁰ This is true. If there is no law, there can be no punishment; and if there is no punishment, there is neither security nor peace while people are free. And without security and peace, ultimately, there is no liberty. The Rule of Law, therefore, is the very means by which freedom, prosperity, and happiness are possible.

Five True Principles Regarding the Rule of Law

The thoughtful consideration of the true nature of law and its proper application within a just society reveals many higher and important truths regarding the Rule of Law. I will close by mentioning just five.

*Laws are to make people free.*¹¹ Laws enable greater good, wisdom, and happiness. They are a rampart against despotism and a safeguard of a just liberty. The truest laws are immutable and everlasting. Abiding by these laws endows one with knowledge of the universal consequences of law, and this knowledge may be used for the greater good and ennoblement of all things, including nations, societies, and people. Disregarding true laws, however, is perilous and leads to the degradation and ultimate demise of that which is just and good—whether within a nation, a society, or a people. Societies that fail to uphold just laws will have citizens who no longer possess liberty.

The more diligence given to the truest of laws, the greater the freedom. True and just laws engender liberty and, if strictly followed, greater prosperity to nations and their citizens. Such laws do not come from the whims of kings and tyrants, nor from the decrees of potentates or political parties. They are understood and proscribed by the enlightened minds of the people. These may be attained in time by trial and error or wisdom, and through perfected reason. Within just governments, true laws are ordained and established by the people or their elected representatives to whom they have entrusted their legislative authority.

The nature and reward of laws by their observance irrevocably applies to all. The consequences of law cannot be evaded. True laws,

just like motion, gravity, and light, are universal, and their effect is sure, whether upon individuals, communities, or nations. A people's understanding of and conformity to the highest laws makes them free. This leads to greater justice and, ultimately, to greater safety and happiness. This is the way to form a more perfect union and to secure the blessing of liberty for a nation, its people, and their posterity. True laws implemented and observed diligently by societies always lead to greater security, peace, and happiness within that society.

The Rule of Law is endangered by fear. Unfortunately, a nation's laws and the Rule of Law are often forgotten and even abandoned when they are needed most—when fear, strife, or a national crisis are present. These lead to anger and the danger that the Rule of Law will be set aside, disregarded, or even lost entirely. When this happens, alas, so goes freedom. Consequently, nations and their citizens must be vigilant to preserve the Rule of Law and abate fear when national crises arise.

Loyalty to law instituted under principles of popular sovereignty creates unity. Large republics and nations by their nature comprise vast and diverse people and cultures. Law engenders unity and advances the greatest good in diversity. By and through the people's written constitution, they, as sovereign citizens, become linked together for a greater good. They form a more perfect union and advance liberty. Out of many, they become one.

Conclusion

The great truths and principles associated with the Rule of Law should be carefully considered and studied often. Law enables freedom. Honoring true laws magnifies liberty. The Rule of Law, if maintained, ennoble a nation and its people. Indeed, the Rule of Law is the mother of Liberty herself. With these truths well understood, all other fundamental principles of the Constitution come into clearer focus. Together, the fundamental principles of the Constitution protect the rights, privileges, and life of all. They sustain and engender a freedom among nations that may endure forever.

Endnotes

¹THOMAS PAINE, COMMON SENSE (1776).

²See MONTESQUIEU, THE SPIRIT OF LAWS, Book I, Ch. 1. (1748).

³See JOHN LOCKE, TWO TREATISES OF GOVERNMENT, Book II, ch. 6, § 57 and ch. 18, § 202 (1690).

⁴The 2020-2021 FBA presidential messages focus on five foundational principles of the U.S. Constitution: Popular Sovereignty, Federalism, Separation of Powers, the Bill of Rights, and the Rule of Law.

⁵See the collective works and reflections on law by Socrates, Plato, Aristotle, Cicero, St. Augustine, Aquinas, Locke, Montesquieu, Blackstone, and others. These philosophers viewed law as “eternal divine wisdom” and a means to rightly constrain the exercise of political power, particularly by tyrants, whose failure to subordinate self-interests impairs the good and happiness of a society and its people. As Aristotle taught, “He who asks law to rule is asking God and intelligence and no others to rule, while he who asks for the rule of a human being is importing a wild beast...[for] Law is intelligence without appetite.”

⁶To be just within a society, laws must be fixed, unambiguous, and readily understood by the people. In the second of his *Two Treatises of Government*, John Locke expounded on the importance of governance through “established standing Laws, promulgated and known to the People” in order to not be subject to others’

incalculable opinions and rule by “extemporary Arbitrary Decrees.” (See generally, Locke, *supra* note 3, at ch.10, §§ 135-7.)

⁷THE FEDERALIST NO. 62 (James Madison) (“It will be of little avail to the people that the laws are made by men of their own choice if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; ... Law is defined to be a rule of action; but how can that be a rule, which is little known and less fixed?”).

⁸This principle regarding justice established through law and by the equal application of law is quite different than using government to enforce equity or uniformity in outcome. Law and government must not be used to preclude diversity and freedom in the way people think, act, or live.

⁹Montesquieu taught that among these are natural law, divine law, ecclesiastical law, law of nations (i.e., political and civil law), law of conquest, and domestic law; and consequently, there are different orders of laws. See generally, Montesquieu, *supra* note 2. The height of human reason consists in knowing which of these orders is most suitable to a people and the things they need to be decreed. Law should be simple and grave. *Id.* at Books XXVI and XXIX.

¹⁰MONTESQUIEU, THE SPIRIT OF LAWS, Book XI, Ch. 4.

¹¹LOCKE, *supra* note 3, at ch. 6, § 57 (“[T]he end of Law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings, capable of laws, where there is no law there is no freedom. For liberty is to be free from restraint and violence from others, which cannot be where there is no law.”)

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