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Rule of Law Definition and Foundational Principles, Supplemental Descriptions, Learning Outcome and Milestone

Produced by the Rule of Law Working Group

Holloran Center for Ethical
Leadership in the Professions

UNIVERSITY OF
St. Thomas.

A wooden gavel with a dark handle and a light-colored head rests on a folded American flag. The flag is spread out on a dark wooden surface, likely a table or desk. In the background, a courtroom setting is visible with dark wood paneling, a large American flag on a pole, and a circular seal on the wall.

Affirming the importance of the rule of law is neither partisan nor divisive; it is about reaffirming our collective commitment to justice, accountability, and the common good.

The Rule of Law Working Group is a joint enterprise of the Holloran Center for Ethical Leadership in the Professions at the University of St. Thomas School of Law and the “‘Pluralizing’ Legal Professional Identity: Democracy, Equity, Justice, and the Law School Curriculum” project led by Eduardo Capulong and funded by a grant from the Mellon Foundation.

The members of the working group include: Kendall Kerew (Georgia State), Andrew King-Ries (Montana), Tania Luma (Loyola Chicago), Jerry Organ (University of St. Thomas), Aric Short (Texas A&M), and Kelly Terry (University of Arkansas Little-Rock)

Introduction

The Rule of Law Working Group is a joint enterprise of the Holloran Center for Ethical Leadership in the Professions and the “‘Pluralizing’ Legal Professional Identity: Democracy, Equity, Justice, and the Law School Curriculum” project led by Eduardo Capulong and funded by a grant from the Mellon Foundation. The members of the working group include: Kendall Kerew (Georgia State), Andrew King-Ries (Montana), Tania Luma (Loyola Chicago), Jerry Organ (University of St. Thomas), Aric Short (Texas A&M), and Kelly Terry (University of Arkansas Little-Rock).¹

In dialogue with a number of members of the professional identity formation community, including members of the Mellon Grant team, the leadership team at the Holloran Center came to the realization that professional identity formation is incomplete if it does not engage law students in appreciating the significant responsibility of lawyers as public citizens to understand the rule of law and to support the foundational principles associated with the rule of law.

With that in mind, the Holloran Center and the Mellon Grant team formed this Rule of Law Working Group to develop a Learning Outcome and a Holloran Competency Milestone focused on supporting the rule of law in law schools around the country.

Our conversations helped us appreciate that the socialization process of legal education has been inadequate with respect to professional identity formation and with respect to how the rule of law relates to what it means to be a lawyer.

As evidence of this underemphasis on the rule of law in legal education, it is worth noting that only nine of the nearly 200 ABA-accredited law schools mention the rule of law in their learning outcomes.² As of this writing, only 28 law schools offer courses with “Rule of Law” in their title, all of which are upper-level electives.³

1. The Rule of Law Working Group is very thankful to several people for their helpful comments during the process of drafting these materials, including (in alphabetical order): Louis Bilionis, Eduardo Capulong, Barbara Glesner Fines, Paul Gowder, Neil Hamilton, William Hubbard, Monte Mills, Ben Rigney, Juliet Sorenson, Brian Tamanaha, and Kenneth Townsend. We are also grateful for the research assistance provided by Stephen Middlebrook, Nazeefa Nezami, and Alena Stankaitis.

2. This is despite the ABA’s Goal IV, which is to advance the rule of law. See https://www.americanbar.org/about_the_aba/aba-mission-goals/.

3. Memorandum of Research Conducted Across Law School Webpages by Nazeefa Nezami (July 2025) (on file with authors).

In the context of America's distinctive constitutional democracy, upholding the rule of law is more critical now than ever. Affirming the importance of the rule of law is neither partisan nor divisive; it is about reaffirming our collective commitment to justice, accountability, and the common good.

Our specific purpose in this set of documents is to offer the following:

1. A definition of the rule of law within the context of America's constitutional democracy that accounts for its history and identifies the foundational principles necessary to assess the extent to which America's constitutional democracy is grounded in the commitment to the rule of law. We have also provided a short supplement containing more extended descriptions of each of the foundational principles to provide a more nuanced understanding of the rule of law and its foundational principles.
2. A rule of law learning outcome for adoption by law schools to support a richer, critical understanding among law students and law graduates of the foundational principles associated with the rule of law and the particular responsibility of lawyers to foster and support these foundational principles.

Law schools bear a unique responsibility to teach the knowledge, skills, and values necessary to becoming a lawyer, which should include the foundational principles associated with the rule of law in the United States. "Lawyers are unique among professionals in that they are officially sanctioned participants in making the legal system work – officers of the court, as well as advocates for their clients."⁴

Our goal is to encourage those connected with legal education to generate a new set of teaching materials that will provide students with an understanding of the rule of law, its foundational principles, and the special obligations they will have as lawyers to sustain the rule of law. We hope these teaching materials also will challenge law students to deepen their understanding of law and lawyering, reflect on their own aspirations, and envision how they can play a role in assuring that the rule of law continues to be the hallmark of our distinctive constitutional democracy.

4. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 126 (2007).

Rule of Law Definition and Foundational Principles

We recognize that the rule of law is not easily defined. Many books and more articles have been written about the rule of law covering its history dating back to Aristotle. Depending on the context in which the authors of these books and articles have written them, the nature and scope of the rule of law vary, ranging from narrow, more procedural interpretations to broader, more substantive interpretations.

While we acknowledge the many varied perspectives on the rule of law,⁵ we have crafted the definition set forth below within the specific context of the distinctive constitutional democracy that has been America's heritage, tradition, and mission for over two centuries. We have distilled the foundational principles by identifying those that are repeatedly referenced across multiple scholarly discussions of the rule of law and are particularly relevant to sustaining our distinctive constitutional democracy.

5. Among the resources that members of the Rule of Law Working Group reviewed and considered in developing this definition and list of foundational principles were several books and articles. The books included, among others: BRIAN Z. TAMANAHA, *ON THE RULE OF LAW: HISTORY, POLITICS, THEORY* 91 (Cambridge Univ. Press 2004); PAUL GOWDER, *THE RULE OF LAW IN THE UNITED STATES: AN UNFINISHED PROJECT OF BLACK LIBERATION* (Hart Pub. 2021); ALBERT V. DICEY, *INTRODUCTION TO THE STUDY OF LAW OF THE CONSTITUTION* 181 (St. Martin's Press 1959) (1885); TOM BINGHAM, *THE RULE OF LAW* (2010); Julian Sempill, What is the Rule of Law? Political, Traditional, Rhetorical, in *ROUTLEDGE HANDBOOK OF THE RULE OF LAW* 61–65 (Routledge 2025). The articles included, among others: Robert Stein, Rule of Law: What Does It Mean?, 18 *MINN. J. INT'L L.* 293, 302 (2009); Robert A. Stein, What Exactly Is the Rule of Law?, 57 *HOUS. L. REV.* 185, 197–98 (2019); Mark Ellis, A Common Ground Definition of the Rule of Law Incorporating Substantive Principles of Justice, 72 *U. PITTSBURGH L. REV.* 191 (2010); Kendall Kerew, The Rule of Law, The Lawyer's Role as a Public Citizen, and Professional Identity: How Fostering the Development of Professional Identity Can Help Law Schools Address the Crisis Facing American Democracy, 75 *MERCER L. REV.* 1448 (2024); Russell Fowler, The Rule of Law: Origins, Meaning and Endangerment, 59 *TENN. B.J. NO. 3* (May/June 2023) <https://www.tba.org/?pg=Articles&blAction=showEntry&blogEntry=90749>; Eli Wald, The Role of Lawyers in Mature Democracies When the Rule of Law is Under Attack, in *RESEARCH HANDBOOK ON THE SOCIOLOGY OF LEGAL ETHICS* (forthcoming 2025). We also looked at the World Justice Project webpage which has an extensive list of resources. See <https://worldjusticeproject.org/>.

As a constitutional democracy, the United States of America was founded with two broad framing principles:

First, we are a government of laws, not individuals, a concept drawn from Aristotle, reinforced in the Magna Carta, and embraced by the founders of the United States.

Second, to assure that we remain a government of laws, not individuals, the three branches of government within our constitutional democracy – the legislative, judicial, and executive – are separate and are entrusted with distinct powers and limitations that function as checks and balances on each other.

Our nation's history manifests many ways in which we as a profession and society have failed to live up to some of the rule of law's aspirational principles listed below. These failures, however, highlight why this effort to educate the next generation of lawyers about the rule of law is so important for the future of our constitutional democracy.

For those entering the legal profession, it is particularly important that they understand their special responsibility as lawyers, officers of the court, and public citizens to strive to protect the rule of law by fostering and upholding the following foundational principles:

INDEPENDENCE—*The judicial branch and the legal profession are independent;*

EQUALITY—*All are equal under the law and no person, organization, or government entity is above the law;*

TRANSPARENCY—*The law is clear, public, and predictable;*

FAIRNESS and **CONSISTENCY**—*The law is applied impartially and not arbitrarily;*

PARTICIPATION—*Members of society have the right to participate in the creation and refinement of laws that regulate their behaviors;*

HUMAN DIGNITY—*The law is just and protects the fundamental human rights and dignity of all members of society; and*

DUE PROCESS—*Every person has access to legal counsel and to sufficiently robust legal processes to ensure protection of these foundational principles.*

Supplemental Descriptions of Foundational Principles of Rule of Law

1. Independence

An independent judiciary is fundamental to the rule of law.⁶ “The judiciary plays an essential role in giving life to other values, such as predictability and transparency.”⁷ It does not mean that judges can do whatever they want but, rather, that they must be fair and impartial.⁸ In his 2024 Year End Report of the Federal Judiciary, Chief Justice Roberts wrote:

The independent federal judiciary established in Article III and preserved for the past 235 years remains, in the words of my predecessor, one of the “crown jewels of our system of government.” Indeed, it is no exaggeration to conclude, as Chief Justice Rehnquist did, that “the creation of an independent constitutional court, with the authority to declare unconstitutional laws passed by state or federal legislatures, is probably the most significant contribution the United States has made to the art of government.” Before the American founding, no other country had found a way to ensure that the people and their government respect the law. One reason judicial review has endured and served us well lies in yet another insight from Chief Justice Rehnquist, articulated in his 2004 Year End Report: “The Constitution protects judicial independence not to benefit judges, but to promote the rule of law.” Or, as Justice Kennedy put it, “Judicial independence is not conferred so judges can do as they please. Judicial independence is conferred so judges can do as they must.”⁹

In an essay reflecting on the independence of the judiciary, Justice Ginsburg began with the idea that, “Essential to the rule of law in any land is an independent judiciary, judges not under the thumb of other branches of Government, and therefore equipped to administer the law impartially.”¹⁰ In concluding her essay, she quoted two scholars on opposite sides of the political spectrum who agreed on the following point, “Judicial

6. See Robert Stein, Rule of Law: What Does It Mean?, 18 MINN. J. INT’L L. 293, 302 (2009).

7. Id. at 301–302.

8. See id. at 302.

9. U.S. SUP. CT., 2024 YEAR END REPORT ON THE FEDERAL JUDICIARY (2024) (internal citations omitted), <https://www.supremecourt.gov/publicinfo/year-end/2024year-endreport.pdf>.

10. Ruth Bader Ginsburg, Judicial Independence: The Situation of the U.S. Federal Judiciary, 85 NEB. L. REV. 1, 1 (2011).

independence in the United States strengthens ordered liberty, domestic tranquility, the rule of law, and democratic ideals. At least in our political culture, it has proved superior to any alternative form of discharging the judicial function that has ever been tried or conceived. It would be folly to squander this priceless constitutional gift to placate the clamors of benighted political partisans.”¹¹

Just as an independent judiciary is fundamental to the rule of law, so too is an independent legal profession.¹² As stated in the Preamble to the Model Rules of Professional Conduct, “Self-regulation [] helps maintain the legal profession’s independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.”¹³ In a recent opinion of the United States District Court for the District of Columbia, Judge Beryl A. Howell observed:

The importance of independent lawyers to ensuring the American judicial system’s fair and impartial administration of justice has been recognized in this country since its founding era

The Supreme Court, too, has recognized the importance of lawyers to the functioning of the American judicial system, since “[a]n informed, independent judiciary presumes an informed, independent bar.” *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 545 (2001). This is so because Congress may legislate, the President may implement, and courts may adjudicate, “but only the lawyers can prepare and submit the great issues of human justice under law in such manner and form that courts, in the ultimate, may be effective.” *Williams v. Beto*, 354 F.2d 698, 706 (5th Cir. 1965). Absent their crucial independence, lawyers would “become nothing more than parrots of the views of whatever group wields governmental power at the moment.” *Cohen v. Hurley*, 366 U.S. 117, 138 (1961) (Black, J., dissenting).¹⁴

11. *Id.* at 13–14 (quoting Bruce Fein & Burt Neuborne, *Why Should We Care About Independent and Accountable Judges?*, 84 *JUDICATURE* 58, 63 (2000)).

12. See Stein, *supra* note 1, at 302.

13. MODEL RULES OF PRO. CONDUCT PREAMBLE ¶ 11 (A.B.A. 1983).

14. *Perkins Coie LLP v. U.S. Dep’t of Justice*, No. 25-cv-716 (BAH), 2025 WL1276857, at *1–2 (D. D.C. May 2, 2025) (footnotes omitted).

Law is carried out through the actions of government lawyers and private lawyers. Given their pivotal roles, all lawyers must uphold the law, support the independence of the judiciary and the legal profession, and ensure that the government follows the law.

2. Equality

Often considered to be a cornerstone of our society, the equality principle—the understanding that the law must be applied to everyone according to its terms no matter who they might be, whether rich or poor, White or Black, government official or citizen—encompasses two distinct but related concepts: one, no one is above the law; and two, the law should be applied impartially and not arbitrarily.¹⁵ The first aspect (sometimes referred to as vertical equality) is discussed here. For more information on the second aspect (horizontal equality), please see supplemental materials for the rule of law principle “Fairness and Consistency.”

The equality principle is reflected in the drafting of the United States Constitution and its revolutionary “enthronement of the law” as expressed in the Supremacy Clause in Article VI.¹⁶ As Thomas Paine expressed in 1776, “in America, the law is king. For as in absolute government the king is law, so in free countries the law ought to be king, and there ought to be no other.”¹⁷ In his articulation of the rule of law principles, Robert Stein, former ABA President and Dean of the Minnesota Law School, states “The law is superior to all members of society, including government officials vested with either executive, legislative, or judicial power.”¹⁸ Thus, the rule of law compels the government to comply with the law.

15. See TOM BINGHAM, *THE RULE OF LAW* 55 (2010); E-mail Exchange Between Jerry Organ and Brian Tamanaha (July 7, 2025) (on file with authors).

16. *Id.* at 12, 26; Stein, *supra* note 1, at 298; ALBERT V. DICEY, *INTRODUCTION TO THE STUDY OF LAW OF THE CONSTITUTION* 181, 188–196 (St. Martin’s Press 1959) (1885).

17. Stein, *supra* note 1, at 298 (quoting Thomas Paine, *Common Sense* 34 (Oxford U. Press 1995) (1776)); see also Sandra Day O’Connor, *Vindicating the Rule of Law: The Role of the Judiciary*, 2 *CHINESE J. INT’L L.* 1, 6–7 (2003) (“law is superior to any group or person no matter how powerful and should always constrain the ‘rule of man’ ”).

18. Stein, *supra* note 1, at 302.

While equality is a cornerstone of the rule of law, American history is rife with examples of many who were not considered “equal under the law.”¹⁹ At points, the rule of law has been interpreted and applied to deprive Indigenous people, African-Americans, people of color, women, members of the LGBTQ+ community, immigrants, and others of equal treatment and rights under the law. This inequality fosters conflict and crisis over the rule of law in the United States.²⁰ The efforts of many groups marginalized by the rule of law have brought changes in the law and helped move the rule of law in American society toward greater recognition of the principle of equality before the law.

3. Transparency

Robert Stein attempted to “clearly identify the principles and values that are inherent” in the rule of law.²¹ One of the principles Stein identified is that the “law is known, stable, and predictable.”²² Stein traces this principle that the law should be predictable back to the writings of Aristotle.²³ He also cites to more recent articulations of this concept of predictability of the law by United States Supreme Court Justices Kennedy and O’Connor.²⁴ Stein also references the work of British Chief Justice Tom Bingham.²⁵

Bingham asserts that “[t]he law must be accessible and so far as possible intelligent, clear and predictable.”²⁶ He makes three arguments supporting this proposition. First, specifically as to the criminal law, people need to be able to know what the law is to be able to conform their behavior to it.²⁷ Second, more

19. PAUL GOWDER, *THE RULE OF LAW IN THE UNITED STATES: AN UNFINISHED PROJECT OF BLACK LIBERATION 2* (Hart Pub. 2021). See Gowder generally for an excellent discussion of the tensions between the founding aspiration and the imposed reality of the rule of the law in the United States, particularly as to the history and contribution of African Americans to the development of the rule of law.

20. See id. 2–17; Julian Sempill, What is the Rule of Law? Political, Traditional, Rhetorical, in *ROUTLEDGE HANDBOOK OF THE RULE OF LAW* 61–65 (Routledge 2025).

21. Stein, *supra* note 1, at 296.

22. Id. at 302.

23. Id. at 297 (citing Aristotle, *Rhetoric* 32 (George A. Kennedy trans., 2d ed. 2007)).

24. Id. at 299–301.

25. Id. at 301.

26. TOM BINGHAM, *THE RULE OF LAW* 37 (2010).

27. Id. at 37–38.

generally, people need to understand what their rights and obligations are so that they can “claim the rights or perform the obligations.”²⁸ Third, according to Bingham, the economy depends on laws and rules that are accessible, precise, and predictable.²⁹

4. Fairness and Consistency

In the context of the rule of law, fairness hinges on judgments free from bias, pressure, or external influence.³⁰ The rule of law demands fairness at every stage—in drafting, interpreting, enforcing, and applying laws.³¹ Fairness requires unbiased hearings and the protection of fundamental legal rights.³² For more on these concepts, see Equality and Due Process.

Fairness is shaped by several key considerations: judicial respect for individual rights, the need for effective and efficient public administration, deference to the decisions of elected representatives, and the preservation of clear roles among different branches of government.³³ Together, these elements help define the overall structure of the duty of fairness.³⁴

Consistency, in turn, refers to the uniform and predictable application of laws and standards across similar cases or individuals. It ensures that like cases are treated alike, and that justice is not subject to arbitrary or discriminatory discretion.³⁵

28. *Id.* at 38.

29. *Id.* at 38–39.

30. See David F. Levi, Protecting Fair and Impartial Courts: Reflections on Judicial Independence, 104 JUDICATURE 2 (2020).

31. See Ao Ieong Man Chon, Research on Maintaining Judicial Fairness: Institutional Innovation and Practical Exploration, 2025 International Conference on Management, Economic and Sustainable Social Development, SHS Web of Conf. 213, Art. 02001 (Mar. 25, 2025).

32. See Kevin Burke & Steve Leben, Procedural Fairness: A Key Ingredient in Public Satisfaction, 44 CT. REV. 4 (2007).

33. See PAUL DALY, UNDERSTANDING ADMINISTRATIVE LAW IN THE COMMON LAW WORLD Chapter 3 (Oxford University Press 2021).

34. See *id.*

35. See NEIL MACCORMICK, LEGAL REASONING AND LEGAL THEORY Chapter 8 (Oxford Univ. Press 1978).

5. Participation

Participation, as a principle of the rule of law, means that “[m]embers of society have the right to participate in the creation and refinement of laws that regulate their behaviors.”³⁶

Introducing a democratic dimension³⁷ to the rule of law provides what some have called a “thicker account[]” of the concept.³⁸ Yet this democratic layer is formalistic rather than substantive; it “says nothing about what the content of the law must be.”³⁹ What it does require is a particular process for determining that content—namely, active participation by those who will be subject to the law.⁴⁰

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36. Robert A. Stein, What Exactly Is the Rule of Law?, 57 HOUS. L. REV. 185, 197–98 (2019). Justice Anthony Kennedy emphasized this same point during a lecture in Malaysia: “To these ends, the Law must establish and safeguard the constitutional structures necessary to build a free society in which all citizens have a meaningful voice in shaping and enacting the rules that govern them. . . . Our experience supports the conclusion that a government in which the citizens participate in developing the rules by which they are bound is an essential element of the rule of law.” Stein, *supra* note 1, at 299–300 (citation omitted). See also U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS., GUIDELINES FOR STATES ON THE EFFECTIVE IMPLEMENTATION OF THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS, U.N. Doc. A/HRC/39/8, ¶ 19(c) (2018) (“Laws . . . should ensure the equal participation of individuals and groups in the design, implementation, and evaluation of any law, regulation, policy, programme[,] or strategy affecting them.”).
37. Because our focus is on the rule of law in the United States, we are not taking a position on whether a democratic system of government is a prerequisite to the rule of law. Compare Stein, *supra* note 1, at 198 (“While theoretically possible, it is difficult, if not impossible, to find an example of . . . a nondemocratic benevolent dictatorship under the rule of law”) with JEDEDIAH BRITTON-PURDY, A DEMOCRATIC RULE OF LAW 1 (2024) (“The rule of law is entirely possible without democracy, but democracy is impossible, indeed, unintelligible without a certain kind of rule of law”), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5052568.
38. BRIAN Z. TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY 91 (Cambridge Univ. Press 2004).
39. *Id.* at 99. Indeed, “systems that use democratic procedures to determine the content of the law can [nevertheless] produce evil laws.” *Id.* at 100.
40. See Jane Mansbridge, Everyday Talk in the Deliberative System, in DELIBERATIVE SYSTEMS 23 (2012) (“In a democracy, legitimacy derives not from mere consent but from the opportunity for all affected to participate in the decision-making process.”).

Philosopher Jürgen Habermas identifies this participatory principle as foundational to democratic authority: “[T]he modern legal order can draw its legitimacy only from the idea of self-determination: citizens should always be able to understand themselves . . . as the authors of the law to which they are subject”⁴¹ Law, in this account, derives its normative authority from the consent of the governed.⁴²

But introducing the concept of consent raises a further question: How broad must that consent be to qualify as adequate participation in support of the rule of law? Unanimous agreement is rarely feasible. Instead, the standard emphasizes procedure: “What is required of each citizen is individual consent to be governed according to democratic mechanisms—agreement about the procedure utilized to make decisions about the content of law, not consent as to the content of each law produced.”⁴³

Beyond participation in democratic governance more broadly, the principle of participation within the rule of law also includes public engagement in the legal system itself. This encompasses, among other things, the opportunity and responsibility to serve as a juror⁴⁴ and to offer testimony in legal proceedings. It also protects the right to publicly critique governmental officials and hold them accountable for their decisions. In this respect, participation extends beyond formal roles to include public acts that challenge or resist official authority—reflected in this country’s robust traditions of protest, dissent, and conscientious objection.⁴⁵

41. JÜRGEN HABERMAS, BEYOND FACTS AND NORMS 499 (William Rehg trans., MIT Press 1996), cited in TAMANAHA, *supra* note 33, at 99; JOHN LOCKE, SECOND TREATISE OF GOVERNMENT §§ 95–99 (C.B. Macpherson ed., Hackett Publ’g Co. 1980) (1690) (emphasizing that a government’s legitimacy flows from consent of the governed).

42. See TAMANAHA, *supra* note 33, at 99.

43. *Id.* at 100.

44. See Vikram David Amar, Jury Service as Political Participation Akin to Voting, 80 CORNELL L. REV. 203, 206 (1995).

45. See Rachel López, Critical Curriculum Design: Teaching Law in an Age of Rising Authoritarianism, 109 MINN. L. REV. HEADNOTES 81, 88–89 (2025).

6. Human Dignity

A characteristic of an ideal society governed by the rule of law is one in which, “The law is just and protects the human rights and dignity of all members of society.”⁴⁶ The protection of human dignity should exist at the same time as the need to protect “the autonomy of an individual and their right to freely make decisions on actions that concern them.”⁴⁷

In the international law context, Thomas Weatherall observed that, “[H]uman dignity is a purpose of law, given that the dignity of the individual as a free and autonomous being can be realized only in the context of a community where it is protected by the institution of law. Consequently, the rule of law is necessary for the respect of the dignity of the human person and, as a corollary, to disregard the rule of law is to violate human dignity.”⁴⁸ The United Nations states that “dignity and respect are afforded to people through the enjoyment of all human rights and are protected through the rule of law.”⁴⁹

7. Due Process

Both the Fifth Amendment and the Fourteenth Amendment contain a Due Process Clause, which means the Due Process Clause applies to both the federal government and the state governments.

Two aspects of due process have been emphasized in case law. First, there is procedural due process – that the government has to provide notice and an opportunity to be heard and an impartial decision-maker before taking action harmful to the life, liberty or property of a person.⁵⁰ This reinforces the foundational principles of transparency and fairness and consistency. Second, there is substantive due process—an elusive and contested concept which can function as a limit on government power to regulate conduct in a manner that unduly constrains individual liberty.

46. Stein, *supra* note 1, at 302.

47. Radomir G. Zekavica, The Rule of Law in the Function of Human Dignity, 24 J. OF CRIMINALISTICS & LAW 17, 22 (2019).

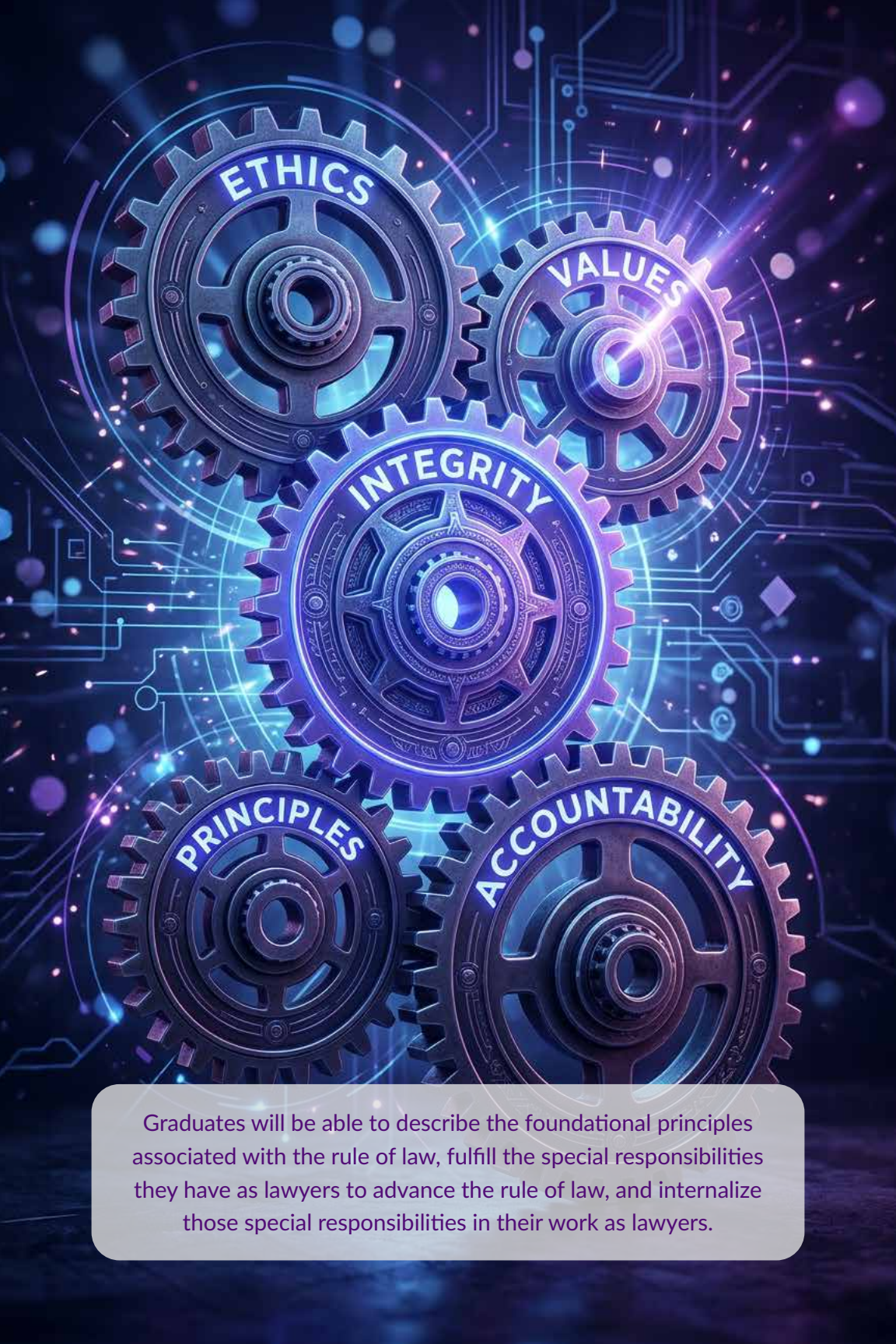
48. THOMAS WEATHERALL, JUS COGENS: INTERNATIONAL LAW AND SOCIAL CONTRACT 41 (2015).

49. Rule of Law and Human Rights, U.N., <https://www.un.org/ruleoflaw/rule-of-law-and-human-rights/>.

50. See Henry J. Friendly, Some Kind of Hearing, 123 U. PENN. L. REV. 1267 (1975) (discussing the development of case law relating to procedural due process with respect to injuries that require due process and with respect to the nature of the process required).

Due process also speaks to the right of individuals to have access to the legal system to have their concerns heard and adjudicated, including having access to lawyers who can help them navigate the legal system and advocate on their behalf. We continue to have an “access to justice” problem in the United States, with many individuals having to advocate for themselves.⁵¹

51. SANDEFUR, REBECCA L., ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY (August 8, 2014), <https://ssrn.com/abstract=2478040>.



Graduates will be able to describe the foundational principles associated with the rule of law, fulfill the special responsibilities they have as lawyers to advance the rule of law, and internalize those special responsibilities in their work as lawyers.

Rule of Law

Learning Outcome

J.D. Program Learning Outcome:

Graduates will be able to describe the foundational principles associated with the rule of law, fulfill the special responsibilities they have as lawyers to advance the rule of law, and internalize those special responsibilities in their work as lawyers.

Knowledge Sub-Outcome: Graduates will be able to identify and explain the foundational principles of the rule of law.

Criterion 1: Define and explain the role of an independent and impartial judiciary and the role of an independent legal profession in the context of the rule of law.

Criterion 2: Define and explain the concepts of equality and human dignity in the context of the rule of law.

Criterion 3: Define and explain the concepts of transparency and participation in the context of the rule of law.

Criterion 4: Define and explain the concepts of fairness and consistency in the context of the rule of law.

Criterion 5: Define and explain the concept of due process in the context of the rule of law.

Criterion 6: Articulate historical and critical perspectives on each foundational principle.

Skills Sub-Outcome: Graduates will be able to take appropriate actions to implement and foster the foundational principles of the rule of law.

Criterion 1: Educate others on the foundational principles of the rule of law.

Criterion 2: Identify ways in which the foundational principles of the rule of law have not been achieved in American society.

Criterion 3: Identify actions of lawyers, judges, and others that violate a foundational principle of the rule of law.

Criterion 4: Take appropriate action, individually or collectively, to address shortcomings or violations of a foundational principle of the rule of law.

Values Sub-Outcome: Graduates will be able to internalize the special responsibilities they have as lawyers to support and advance the rule of law.

Criterion 1: Integrate personal values and professional values in ways that support and advance the rule of law.

Criterion 2: Act consistently with integrated personal and professional values in ways that support and advance the rule of law.

Rule of Law Milestone

KNOWLEDGE

Novice Learner	Intermediate Learner	Competent Learner	Exceptional Learner
<i>Independent Judiciary and Legal Profession</i>			
Demonstrates limited understanding of the function and significance of one or both an independent and impartial judiciary and an independent and self-regulated legal profession to the rule of law.	Demonstrates basic understanding of the function and significance of one or both an independent and impartial judiciary or an independent and self-regulated legal profession to the rule of law.	Demonstrates complete understanding and ability to explain the function and significance of both an independent and impartial judiciary and an independent and self-regulated legal profession to the rule of law.	Demonstrates sophisticated and nuanced understanding and ability to explain the function and significance of both an independent and impartial judiciary and an independent and self-regulated legal profession to the rule of law.

Equality

Demonstrates limited understanding of the principle that no one is above the law and that laws should be applied equally to all members of society, including government officials serving executive, legislative, or judicial functions.	Demonstrates basic understanding of the principle that no one is above the law and that laws should be applied equally to all members of society, including government officials serving executive, legislative, or judicial functions.	Demonstrates complete understanding and ability to explain the principle that no one is above the law and that laws should be applied equally to all members of society, including government officials serving executive, legislative, or judicial functions.	Demonstrates sophisticated and nuanced understanding and ability to explain the principle that no one is above the law and that laws should be applied equally to all members of society, including government officials serving executive, legislative, or judicial functions.
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KNOWLEDGE (continued)

Novice Learner	Intermediate Learner	Competent Learner	Exceptional Learner
<i>Human Dignity</i>			
Demonstrates limited understanding that the function of law is to protect the human rights and dignity of all members of society, including the autonomy of individuals to freely make decisions on actions that concern them.	Demonstrates basic understanding that the function of law is to protect the human rights and dignity of all members of society, including the autonomy of individuals to freely make decisions on actions that concern them.	Demonstrates complete understanding and ability to explain how the law protects the human rights and dignity of all members of society, including the autonomy of individuals to freely make decisions on actions that concern them.	Demonstrates sophisticated and nuanced understanding and ability to explain how the law protects the human rights and dignity of all members of society, including the autonomy of individuals to freely make decisions on actions that concern them.
<i>Transparency and Participation</i>			
Demonstrates limited understanding of the function and significance of one or both transparency, defined by the accessibility, clarity, and predictability of legal rules, and public participation, including both formal processes and informal practices, to the rule of law.	Demonstrates basic understanding of the function and significance of one or both transparency, defined by the accessibility, clarity, and predictability of legal rules, and public participation, including both formal processes and informal practices, to the rule of law.	Demonstrates complete understanding and ability to explain the function and significance of both transparency, defined by the accessibility, clarity, and predictability of legal rules, and public participation, including both formal processes and informal practices, to the rule of law.	Demonstrates sophisticated and nuanced understanding and ability to explain the function and significance of both transparency, defined by the accessibility, clarity, and predictability of legal rules, and public participation, including both formal processes and informal practices, to the rule of law.

KNOWLEDGE (continued)

Novice Learner	Intermediate Learner	Competent Learner	Exceptional Learner
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Fairness and Consistency

Demonstrates limited understanding of fairness and consistency concepts and the importance of legal proceedings free from bias.	Demonstrates basic understanding of fairness and consistency concepts and the importance of legal proceedings free from bias.	Demonstrates complete understanding and ability to explain the function of fairness and consistency concepts and the importance of legal proceedings free from bias.	Demonstrates sophisticated and nuanced understanding and ability to explain the function of fairness and consistency concepts and the importance of legal proceedings free from bias.
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Due Process

Demonstrates limited understanding of procedural due process and the important role of lawyers in assuring access to justice.	Demonstrates basic understanding of either procedural due process or the important role of lawyers in assuring access to justice.	Demonstrates complete understanding and ability to explain both the purpose of procedural due process and the important role of lawyers in assuring access to justice.	Demonstrates sophisticated and nuanced understanding of and the ability to explain cogently and clearly the purpose of procedural due process and the important role of lawyers in assuring access to justice.
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Historical and Critical Perspectives

Demonstrates limited understanding of primary historical and critical perspectives on the rule of law.	Demonstrates basic understanding of some of the primary historical and critical perspectives on the rule of law.	Demonstrates complete understanding of most of the primary historical and critical perspectives on the rule of law, including the ability to explain those perspectives.	Demonstrates sophisticated and nuanced understanding of most of the primary historical and critical perspectives on the rule of law, including the ability to explain those perspectives.
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SKILLS

Novice Learner	Intermediate Learner	Competent Learner	Exceptional Learner
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Educate Others on Foundational Principles

Demonstrates limited ability to explain foundational principles and communicate with others about them.	Demonstrates basic ability to explain foundational principles and communicate with others about them.	Demonstrates thorough ability to explain foundational principles and communicate with others about them, including actively listening to the ideas of others.	Demonstrates sophisticated ability to explain foundational principles and communicate with others about them, including actively engaging with the ideas of others.
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Identify Situations When Foundational Principles Have Not Been Achieved

Demonstrates limited ability to identify situations when foundational principles have not been achieved.	Demonstrates basic ability to identify situations when foundational principles have not been achieved.	Demonstrates thorough ability to identify situations when foundational principles have not been achieved.	Demonstrates sophisticated ability to identify situations when foundational principles have not been achieved.
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Identify Actions That Violate Foundational Principles

Demonstrates limited ability to identify actions that violate foundational principles.	Demonstrates basic ability to identify actions that violate foundational principles.	Demonstrates thorough ability to identify actions that violate foundational principles.	Demonstrates sophisticated ability to identify actions that violate foundational principles.
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Take Appropriate Actions to Address Shortcomings/ Violations of Foundational Principles

Demonstrates limited ability to identify or take appropriate actions to address shortcomings/violations of foundational principles.	Demonstrates basic ability to identify and take appropriate actions to address shortcomings/violations of foundational principles.	Demonstrates thorough ability to identify and take appropriate actions to address shortcomings/violations of foundational principles.	Demonstrates sophisticated ability to identify and take appropriate actions to address shortcomings/violations of foundational principles.
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VALUES

Novice Learner	Intermediate Learner	Competent Learner	Exceptional Learner
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Integrate Personal and Professional Values to Support and Advance Rule of Law

Demonstrates limited ability to recognize and integrate personal values and the professional values relevant to practicing law in ways that support and advance the rule of law.	Demonstrates basic ability to recognize and integrate personal values and the professional values relevant to practicing law in ways that support and advance the rule of law.	Demonstrates complete ability to recognize and integrate personal values and the professional values relevant to practicing law in ways that support and advance the rule of law.	Demonstrates sophisticated ability to recognize and integrate personal values and the professional values relevant to practicing law in ways that support and advance the rule of law.
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Act Consistently with Integrated Personal and Professional Values to Support Rule of Law

Demonstrates limited ability to act consistently with integrated personal and professional values to support the rule of law.	Demonstrates basic ability to act consistently with integrated personal and professional values to support the rule of law.	Demonstrates complete ability to act consistently with integrated personal and professional values to support the rule of law.	Demonstrates sophisticated and steadfast ability to act consistently with integrated personal and professional values to support the rule of law, even when self-interest is at risk.
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Holloran Center for Ethical
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