

Holloran Center Rule of Law Working Group Rule of Law Learning Outcome Materials

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

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.

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 Bilonis, 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).

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).

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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. 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.

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/>.

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.