

# The Rule of Law

Lesson from the Courts in the Community curriculum.

Find out more about [this program](#) and discover [additional lesson plans about how state courts operate](#).

**Objective:** Students will be able to identify the origins of the rule of law, its impact on their everyday lives and the role it plays in the judicial system.

## Inquiry Questions:

- How do the structures of the United States, state and local governments impact democratic decision making?
- What does it mean for a society to have and follow rules? Can rules be biased toward or against a particular group of people?
- What is the “rule of law” and what is its role in the policies and practices of the judiciary?

## Colorado Academic Standards

- **SS.HS.4.2.EOe.** Describe the role and development of the founding documents of Colorado and the United States from their inception to modern day.
- **SS.HS.4.2.EOf.** Evaluate the role of the judicial system in protecting life, liberty, and property for all persons in the United States

**Activities:** Video about the rule of law, reading, homework, optional: rule game

**Materials:** Large poster paper, markers, printed or online articles

**Grade Level:** High School

**Anticipated classroom time:** 45-60 minutes

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## Teacher Background Information

The content provided below is designed to help students understand the rule of law. The articles can be shared through a lecture, discussion or a read around.

**Article 1: Courts and the Rule of Law** by former Colorado Supreme Court Chief Justice Mary Mullarkey

The American commitment to the rule of law stands in sharp contrast to much of the rest of the world. We have agreed to govern ourselves with written state and federal constitutions and implementing laws made by our elected representatives. When we have disputes that we cannot settle among ourselves, we take them to court. We trust juries and judges to decide our most important concerns; they literally decide matters of life and death, fame and fortune.

In To Kill a Mockingbird, the author Harper Lee talks about the courts as the great “levelers” of society. Lee means that the courtroom is the one place where all people are treated as equals. Disputes are to be decided on the merits. Differences among the parties in wealth, intelligence, social status, and the like should not determine the outcome of a case. This concept of the courts as society’s great levelers comes directly from the statement in the Declaration of Independence that all of us are created equal. As the motto above the entrance to the United States Supreme Court puts it, a courthouse is a place of “Equal Justice under Law.”



Of course like any other human institution, the courts do not always live up to our ideals. But there are built-in ways to correct errors. Cases can be appealed to the appellate courts and erroneous decisions can be reversed or overruled. Laws, including our constitutions, can be amended.

Overall, the courts function very well. Every year the Colorado courts resolve nearly 600,000 cases, the equivalent of about one case for every 10 people living in the state. All of these cases are important to the persons involved but very few attract any public attention. That court decisions are an everyday part of the American routine shows our acceptance of, and reliance on, the rule of law. Not many countries can say the same.

## **Article 2: The Rule of Law in Western Thought**

*by Melissa Thomas, a consultant on rule of law and judicial and legal reform*

The rule of law is an ancient ideal. Plato wrote one of the earliest surviving discussions. While convinced that the best form of government is rule by a benevolent dictator, Plato concedes that, as a practical matter, persons with the necessary leadership qualities are rare. Accordingly, he imagines a utopia that is governed not by a benevolent dictator, but by Nomos, the god of Law. In “The Politics,” Aristotle also considers whether it is better for a king to rule by discretion or according to law, and comes down firmly on the side of law; individuals are too often swayed by private passions. Christian philosophers, seeing the power to rule as a delegation from God, the Lawgiver, saw any kingly act contrary to “natural” law as an express violation of this delegation for which a monarch would surely be punished after death.

Both the early Greeks and the Christian philosophers had a vision of law as a system of rules whose source lay outside of the ruler himself. For the Greeks, law was inherent in the natural order or arose from the timeless customs of the people; for the Christians, law came from God. Accordingly, if a king were to rule according to law, he would be constrained and his powers would be limited.

A king was seen primarily as a judge, who applied the law in specific circumstances. But in the 16th and 17th century, there was increasing recognition of the power of government to make laws. This newly recognized “legislative” function of government posed a serious problem for the rule of law ideal. If kings made the rules, how was the rule of law different from rule by discretion? And how could kings be bound by the law as private individuals? The English philosopher Thomas Hobbes concluded that they couldn’t. In opposition, liberals such as Mill insisted that restraints on legislative power were a necessary part of the rule of law ideal.

Jurists and philosophers now distinguish between two types of rule of law. The first is “substantive” rule of law, defined to be rule according to some particular set of laws that are valued for their content, such as guarantees of basic human rights. The second is “formal” or “procedural” rule of law, defined to be rule according to any laws generated by some legislative process, even if they are “bad” laws.

Several other ideas are sometimes swept under the name of “rule of law.” The idea that the persons in government should be subject to law like any private citizen is another idea that is sometimes discussed under the rule of law. Authoritarian states tend to identify rule of law with “law and order,” implying not restraints on the government but restraints on citizens. Increasingly, economists have come to realize that the free market depends on certain institutions and the enforcement of certain rules, such as the freedom to contract and the enforcement of contracts. Very recently, economists and development specialists have begun to discuss the “rule of law” as the enforcement of private contracts. And while the ideal of the rule of law describes the way a king should act--and by implication, the executive branch--many confuse the rule of law with the quality of the court system.



### Article 3: Rule of Law in a Democracy

The rule of law can be defined as a system in which the laws are public knowledge, are clear in meaning, and apply equally to everyone. They enshrine and uphold the political and civil liberties that have gained status as universal human rights over the last half-century. In particular, anyone accused of a crime has the right to a fair, prompt hearing and is presumed innocent until proved guilty. The central institutions of the legal system, including courts, prosecutors, and police, are reasonably fair, competent, and efficient. Judges are impartial and independent, not subject to political influence or manipulation. Perhaps most important, the government is embedded in a comprehensive legal framework, its officials accept that the law will be applied to their own conduct, and the government seeks to be law-abiding.

The relationship between the rule of law and liberal democracy is profound. The rule of law makes possible individual rights, which are at the core of democracy. A government's respect for the sovereign authority of the people and a constitution depends on its acceptance of law. Democracy includes institutions and processes that, although beyond the immediate domain of the legal system, are rooted in it. Basic elements of a modern market economy such as property rights and contracts are founded on the law and require competent third-party enforcement. Without the rule of law, major economic institutions such as corporations, banks, and labor unions would not function, and the government's many involvements in the economy--regulatory mechanisms, tax systems, customs structures, monetary policy, and the like--would be unfair, inefficient, and opaque.

### Article 4: [Rule of Law in American Life: A Long and Intentional Tradition](#) from American Bar Association (ABA)

### Article 5: [Rule of Law and the Courts](#) from the ABA

### Article 6: [What Confucius' Li Can Teach the West about Law](#)

### Article 7: [What is the Rule of Law?](#) From the United Nations

## Key terms

**Civil liberties.** Individual rights protected by law from unjust governmental or other interference. Though the scope of the term differs between countries, civil liberties may include the freedom of conscience, press, religion, speech and assembly.

**Judicial independence.** The ability of courts and judges to perform their duties free of influence or control by other actors, whether governmental or private. The term is also used in a normative sense to refer to the kind of independence that courts and judges ought to possess.

**Adjudicate.** To make an official decision about a dispute or matter, often in a legal context.

## Rule of Law Elements

- **Accountability:** The government as well as private actors are accountable under the law.
- **Just Law:** The law is clear, publicized and stable and is applied evenly. It ensures human rights as well as property, contract, and procedural rights.
- **Open Government:** The processes by which the law is adopted, administered, adjudicated, and enforced are accessible, fair, and efficient.



- **Accessible and Impartial Justice:** Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve.
- **Adherence to democratic principles:** Supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.

**Substantive rule of law.** Set of laws that govern how members of a society are to behave. It defines the rights and responsibilities in civil law and crimes and punishments in criminal law.

**Formal (or procedural) rule of law.** Law that establishes the rules of the court and the methods used to ensure the rights of individuals in the court system.

## Class Preparation

1. Review teacher background. Determine in what format to share content.
2. Determine which class activities to do with your students.
3. For main class activity: Before class, write one question on the top of each poster sheet and post on walls in the classroom. You may need to multiple posters with the same question, depending on the number of students in your class.
  - a. What are key elements of the rule of law?
  - b. Do you think that the rule of law is applied equitably to different groups of people in the United States? Why or why not?
  - c. How does the rule of law look different in a democracy or an autocracy?
  - d. What are the challenges we face today in upholding the rule of law?

## Class Activity

1. Watch the rule of law video: <https://www.youtube.com/watch?v=bmAKAHDsnGs>
2. Divide the students into groups of four and have each group consider the question posed on the poster. Have them write their responses on the sheets
3. Depending on time, you could have students visit other posters and discuss the question.
4. Have students share comments from the posters and discuss as a class.
5. **Optional Class Activities**
  - a. **Play a game.** [Rules, Rules, Rules](#) helps students understand the importance of rules by playing a game where the rules aren't defined.
  - b. **Take a deeper dive.** If you want to dig into the content, divide students into groups, share the articles provided above (or others you find) about the rule of law with different groups, have them answer the following questions about the rule of law based on the content they read and share their thoughts with the class.
    - 1) What are the main points this reading makes about the rule of law?
    - 2) Why do you think we should care about the rule of law?
    - 3) What are the challenges we face today in upholding the rule of law?
    - 4) What questions do you have about the rule of law?
  - c. **Review and discuss primary sources.** [Exploring the Rule of Law](#) uses primary sources to teach about the rule of law.



## Homework assignment

- Consider assigning one of the classroom activities above as homework.
- Or, have students answer the following questions, using your assessment rubric.
  - The definition of the rule of law is strongly impacted by a country's social and political structure. Compare the definitions discussed in class with the definition of the rule of law from another country.
  - The most commonly accepted purpose of the rule of law is to limit the arbitrary acts of government. Explain how this influences the judicial branch.
  - Outline your concept of the rule of law and why it is important to you.

