

Rule of Law and YOU

BY ROBIN OAKS

In September, the American Bar Association announced the release of the ABA Task Force for American Democracy Report (“the Report”). The Report represents two years of bipartisan effort developing recommendations for the legal community to strengthen American democracy. It outlines a variety of actions for building trust in elections, promoting education about how our legal system works, and supporting lawyers in upholding constitutional governance. The Report also announced the Task Force’s transition into an independent organization that will focus on developing safeguards to protect the Rule of Law and foster participation by legal professionals and bar associations as “Rule of Law advocates” and “community bridge builders.”¹

In keeping with this column’s focus on well-being in law, I wrote this article to explore how the Report’s proposed actions and the Rule of Law are inextricably linked to our professional responsibilities, professional identity, and life/work satisfaction. Based on research involving legal professionals and their jobs (and according to self-determination and various positive psychology theories), well-being is strongly correlated with how well our work satisfies basic needs (i.e., autonomy, relationships, competence, safety). These human needs are the bedrock of those “fundamental rights” expressed famously in the Declaration of Independence as “life, liberty, and the pursuit of happiness.”

Upholding the Rule of Law and the Constitution and promoting the fundamental principles of justice are part of the oath we take to be licensed attorneys. It’s our professional identity. The ABA defines professional identity as “the values, guiding principles and well-being practices considered foundational for legal practice.” What values and principles guide your practice of law? When was the last time you considered what the Rule of Law means to your life, your legal organization and business, or your clients?

Having pride in what we do as legal professionals and valuing our professional identity and responsibilities are the threads of a rope tethered to democratic ideals: 1) freedom to do our job as legal professionals in a system designed to resolve conflicts peacefully (autonomy), 2) choice about who we represent and fair and civil treatment of others

(relationships), and 3) opportunities to develop excellence and strive to thrive in all dimensions of life without violence, coercion, or threats to our livelihood (safety and competence).

Defining and Researching the Rule of Law

To understand how to keep something healthy and alive, you must first know what it needs to survive, function, and thrive. In 1885, Professor A.V. Dicey, an Oxford law professor coined the term “Rule of Law” in his classic book: *An introduction to the Study of the Law of the Constitution*. Over the years there have been varied definitions applied. Even Aristotle spoke about the concept of the Rule of Law, defining it as a safeguard against arbitrary power by individuals that provided stability by ensuring that laws are applied fairly and with accountability.

The ABA has a public education site that provides resources for understanding what the Rule of Law means, defining it generally “as a set of principles, or ideals, for ensuring an orderly and just society.”² But, beyond ideals, what concrete indicators and actions contribute to whether the metaphorical Rule of Law rope is strengthened or frayed?

The extensive research cited in the Report comes from the World Justice Project (“WJP”) that compiles data about the Rule of Law world-wide. The WJP was founded by William H. Neukom and William C. Hubbard in 2006 as a presidential initiative of the American Bar Association. The WJP Rule of Law *Index*[®] evaluates 142 countries and jurisdictions. It’s the world’s most comprehensive dataset of its kind. It relies on primary data, focusing on the perspectives and experiences of ordinary people, including those from marginalized sectors of societies.³ It was developed in consultation with legal professionals, academic scholars, and community leaders from around the world.

The WJP defines the Rule of Law as “a durable system of laws, institutions, norms, and community commitment that delivers four universal principles that are building blocks for any Rule of Law system and foundational for communities of justice, opportunity, and peace—underpinning development, accountable government, and respect for fundamental rights.” The four principles are:

Accountability: This principle states that both the



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government and private actors must be accountable under the law.

Just Laws: Laws must be clear, public, stable, and fair, and they must also protect fundamental human rights and ensure the security of persons and property.

Open Government: A government must share information, provide tools to hold the government accountable, and allow for citizen participation in public policy.

Accessible and Impartial Justice: The justice system must be accessible to everyone, delivered by competent, ethical, and independent representatives who reflect the communities they serve.

The Index uses forty-four indicators across eight categories, each of which is scored and ranked globally and regionally: Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice. Based on the WJP research, the following are several significant correlations that affect our lives and the life conditions of others:⁴

1. Where Rule of Law is stronger - so is the economy. Business growth, investments, reserve currency, and predictability for planning depend on the Rule of Law.
2. Where Rule of Law is stronger - so is peace. There are more wars and incidents of political violence when the Rule of Law is weak or declining.
3. Where Rule of Law is stronger - so is education that protects inclusion and academic success for all.

Educational opportunities impact the Rule of Law by promoting civic awareness, critical thinking, and recognition of human rights and protections, empowering citizens to participate in creating and obeying laws.

4. Where Rule of Law is stronger - so is health. Life span is correlated with economic factors and the Rule of Law. People are healthier in countries with higher Rule of Law scores.

Some Sobering WJP Index Facts

For the seventh year in a row, the Rule of Law has declined in most countries. The U.S. was ranked 26th out of 142 countries and jurisdictions overall. This ranking indicates a decline in the U.S. Rule of Law scores, related to such factors as government accountability, justice system accessibility, and specifically public trust.

Trust, community awareness, and commitment create stability that strengthens the Rule of Law. A 2023 U.S. Pew Research poll indicates that 63% of U.S. citizens surveyed have “not too much or no confidence at all” in the future of the U.S. political system; a little under a third of Millennials polled “considered it essential to live in a democracy.” In contrast, consider another Pew Research survey conducted in the 1950s that found 75 % of those polled had trust in government decisions.

Participation contributes to a healthy democratic system that relies upon a collective willingness to obey laws and beliefs that the ideals foundational to the Rule of Law are worth preserving. I attended a webinar by the ABA Business Law Section that had a panel comprised of members from the WJP, academics, businesses, and the legal profession presenting informative ideas about what strengthens the Rule of Law and promotes sustainability. Consider the following suggestions by the panel and see if you agree with what they labeled “headwinds” currently impacting the Rule of Law.⁵

- Erosion of the Rule of Law is a gradual process, so it is difficult to get people to realize and focus on the urgency of the situation.
- Civics education is being neglected. Lack of education and confusion about the Rule of Law, the Constitution, and the legal system create polarization, passivity, and pessimism.
- Short-sighted individualism has people searching for an outcome that is favorable to them personally, versus doing what is in the long-term interest or what serves the greater good.
- There is a prevalence of misinformation, and a lack of desire for civil discourse.

- There is a failure to recognize the benefits of effective conflict resolution options for resolving grievances peacefully and collaboratively, and increased demonizing of people who try to add nuance to real discourse.
- We have never been without the Rule of Law - so we take it for granted.

The panel suggested that business lawyers can address growing client concerns about uncertainty and economic instability by helping their clients “understand that the Rule of Law is essential for addressing sustainability issues...and law supports and impacts all elements of the sustainability paradigm.” “Business lawyers can grow their own understanding of the Rule of Law and share this understanding with their clients by promoting Rule of Law principles through professional organizations and community outreach programs that demystify the practice of law...and supporting public education initiatives about the Rule of Law.”

Legal Professionals’ Responsibilities

I’m not a Rule of Law scholar, but I have taught constitu-

tional law at the Colleges of Law and worked (in the 1980s) at the Department of Justice in Washington, D.C., specifically on cases involving the government and violations of constitutional rights (*Bivens* claims). In my current legal work mediating and investigating workplace misconduct and discrimination complaints, I’ve seen first-hand the mental, physical, emotional, and economic toll caused by hostile work environments, unfair and retaliatory treatment, and leaders who create chaos with intimidation.

This article is intended to spark curiosity and provide thought-provoking questions that are a call for action. We are the people who by our conduct are the face and functioning of a healthy legal system and thriving legal community. Our actions and professional responsibilities as legal practitioners matter. How we do our job and whether we promote awareness, integrity, fairness, equity, and civility will create ripple effects throughout society.

The word democracy is rooted in the Greek words *demo*s (people) and *kratos* (rule, power, strength), suggesting that *people* and their actions are at the heart of whether the Rule of Law remains alive and well, or weakens and dies from lack of care. Justice Learned Hand once said, “If we are to

keep our democracy, there must be one commandment, ‘Thou shalt not ration justice.’ What other *commandments* do you want to live and work by that will strengthen the Rule of Law and foster well-being for you and others? ■

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ENDNOTES

1. The Report stated that the “views expressed herein are those of the ABA Task Force for American Democracy. They have not been reviewed or approved by the ABA House of Delegates or the ABA Board of Governors. Accordingly, the views expressed herein should not be construed as representing the policy or position of the American Bar Association.”
2. https://www.americanbar.org/groups/public_education/resources/rule-of-law/
3. <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2024.pdf>
4. <https://worldjusticeproject.org/about-us/overview/what-rule-law>
5. Standing up for the Rule of Law. Critical Times for Business Lawyers, April 4, 2023 (ABA Business Law Section)
6. https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/
7. <https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/Attorneys-Oath>

Strengthening the Rule of Law for All

As officers of the court, we are uniquely positioned to build—or break down—people’s trust in and understanding about our legal system and the Rule of Law. Pause for a mindful moment to consider the following words about professional responsibilities and identity. Review the ABA Task Force for American Democracy Report in depth to decide what you can do to strengthen the Rule of Law, protect human rights, and act with care and competence for those we serve, for our well-being, and for the sustainability of our livelihood. What do we have to lose?

Excerpts from the ABA Preamble, Model Rules of Professional Conduct⁶:

1] “A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”

[5] “...A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others...”

[6] “As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public’s understanding of and confidence in the Rule of Law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority...”

From California Bar Association’s website⁷:

“Taking the attorney’s oath is not just a ritual, it is required for admission to practice law in California pursuant to California Business and Professions Code section 6067...”

I, (licensee name) solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability. As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity.”

SBCBA Mission Statement

To preserve the integrity of the legal profession and respect for the law, to advance the professional growth and education of its members, to encourage civility and collegiality among its members, to promote equal access to justice and to protect the independence of the legal profession and the judiciary.