CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM

Professionalism and the Rule of Law Convocation

The Meaning of the Rule of Law: A Very Brief Historical Overview

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A. Introduction

Almost every group of people who have ongoing relationships with each other has some type of rules. A complete absence of rules within a group of people who interact consistently would ultimately lead to chaos.

This historical overview very briefly summarizes codification of several examples of how the Rule of Law evolved during the last 3,800 years.

However, it is obvious that this very brief summary of the meaning of the Rule of Law is several thousand pages too short to be comprehensive. It is only intended to very briefly touch on a few of the multitude of steps taken during the last 3.800 years.

There are too many quotations about history to even count. Among them, there are many references to "not being a prisoner of one's history". Sometimes, quotations about history are misinterpreted. An example is "Don't look back. Something might be gaining on you."

That quotation has been frequently attributed to one of the most famous baseball pitchers in history, Satchel Paige. In my opinion, he was not advising everyone to ignore history but rather not to allow history to prevent the future from being enjoyed. That meant something special, because Satchel Paige was the greatest African American pitcher from about 1926 to 1947, but segregation prevented him from pitching in the major leagues until 1948, when he was somewhere between 40 and 42 years old.

However, we can and we should examine the history of the Rule of Law in order to keep improving it.

I appreciate the editorial assistance provided by Karlise Grier, the Executive Director of the Commission. However, I remain responsible for any omissions in this very brief overview of the complex history of the Rule of Law.

B. Prior to the Magna Carta

Among the numerous, historical examples of rules that were applied to a relatively large number of people is the Hammurabi Code. It was created by King Hammurabi of Babylon in approximately 1753 - 1754 BCE and inscribed in a basalt stele. It was later stolen.

In 1902, Father Jean-Vincent Scheil was apparently the first person to translate the Hammurabi Code after the original basalt stele was discovered in 1901 at the site of Susa in Iran. *See* Fourth Volume of the Reports of the Delegation to Persia (Souvay, 1910). That basalt stele is approximately 7.5 feet high, contains about 4,103 lines of text and is currently located in the Louvre Museum in France.

The Hammurabi Code is definitely regarded as a significant part of the Rule of Law's evolution. Some people regard it as the real starting point. The United States Capitol Building, where Congress sits, has a relief portrait of King Hammurabi in an area where other relief portraits of law givers also exist.

Another example is the series of laws that evolved within the Roman Empire. That includes a major codification in approximately 438 CE, referred to as the Theologian Code. It was followed relatively soon thereafter by the Justinian Code, which was also known as the Corpus Juris Civilis. It was issued by Emperor Justinian during a period of approximately 527 – 565 CE. *See* Justinian, Empire and Society in the Sixth Century (Edenborough Press, 2022).

C. The Magna Carta

Those sets of rules may not be categorized by everyone as "rules of law", because they were created by either a king, an emperor or at most a few people. It is possible that what we now consider the Rule of Law initially arose in 1215, when King John was forced to sign the Magna Carta. However, the somewhat larger group of people that initiated the process leading to the signing of the Magna Carta were primarily barons, who cared mostly about the amount of tax that a King could impose upon them, without much concern about the vast majority of people who owned little or no land.

Significantly, the Magna Carta was reissued, in a manner we would call an amendment, in 1216, 1217 and 1225. *See* W.L. Warren, King John (University of California Press, 1961). The evolution of the Magana Carta is a microcosm of the how the Rule of Law has historically evolved.

D. Code Napoleon

The 1804 Code Napoleon (also Napoleonic Code) was a major step forward regarding the Rule of Law. It was significantly based on the Justinian Code. *See*

Peter Stein, Roman Law in European History (Cambridge University Press, 1999). For example, in Article 8, it stated that "Every Frenchman shall enjoy civil rights".

However, Code Napoleon left much to be desired. For example, Article 213 stated: "The husband owes protection to his wife, [and] the wife obedience to her husband". *See* Jean-Louis Halperin, The French Civil Code (2006).

E. Declaration of Independence

If anyone attending this seminar reviewed the Hammurabi Code, the Theologian Code, the Justinian Code, the Magana Carta, the Napoleon Code, or for that matter numerous other compilations of rules prior to the Declaration of Independence in 1776, it would be easy to identify what we would now consider numerous, arbitrary and capricious rules or omissions.

The Declaration of Independence was a major step forward regarding creating rules by which large groups of people could function in a reasonably predictable and fair manner. In addition, the Declaration of Independence was debated, drafted and voted on by a relatively large number of people compared to prior efforts regarding the Rule of Law.

However, it was far from perfect. Looking back, we can hopefully all agree that the concept in the Declaration of Independence that "all men are created equal" was defective in several ways.

For example, slavery existed in several states in America for more than half a century after the Declaration of Independence was passed. In addition, the 19th Amendment to the United States Constitution guaranteeing women the right to vote was not ratified until 1920. *See* Ian McDougall, The Rule of Law: Meaning and Effect (2024), Chapter 1.

F. Recent (Historically Speaking) Views of the Rule of Law

Perhaps the following two quotes from former Presidents of the United States help put this in perspective. The first quotation is attributed to Founding Father and second President of the United States, John Adams. At least one other panel will discuss President Adams' contribution to the Rule of Law in more detail.

Before John Adams was President, he stated that the Rule of Law means a "government of laws and not of men". Interestingly, that language was first published by John Adams in the Boston Gazette in 1774 and later inserted by John Adams, before he became President, while he was drafting the Massachusetts Constitution in 1780. *See* Oxford Essential Quotations, Susan Ratcliffe, Editor (5th ed. 2017).

The evolution of the Rule of Law is also reflected by the fact that it took about eleven more years before the United States Constitution was signed in 1787. It was another year before it was ratified in 1788.

President Teddy Roosevelt, during an address to the United States Congress, stated that: "No man is above the law and no man is below it; nor do we ask any man's permission when we ask him to obey it". *See* Third Address to Congress, (December 7, 1903) (Written messages were sent to Congress by Presidents until 1914, when the State of the Union Address emerged as an oral presentation). This statement by President Teddy Roosevelt was connected to the aggressive action he took against several corporations and corporate trusts under the Sherman Antitrust Act. *See* Theodore Roosevelt Center, TR Encyclopedia, The Sherman Act, https://www.theordoreroosevelteenter.org.

President Teddy Roosevelt is also famous for proposals that would have allowed voters to override judicial decisions that blocked the enforcement of statutes passed by Congress. Despite the populist views of President Teddy Roosevelt, it would still be 17 years before the 19th Amendment guaranteed women the right to vote. That amendment was ratified in 1920, a short time after President Teddy Roosevelt died. It is noteworthy that his Senior Thesis at Harvard University in 1880 was titled "Practicability of Giving Men and Women Equal Rights." *See* Natalie A. Naylor, Theodore Roosevelt (2020).

It would also be 62 years before the Voting Rights Act of 1965 was passed. It significantly expanded the ability, as opposed to rights that might be granted by the U.S. Constitution, of African Americans in several states to effectively vote.

G. Evolution of the United States Supreme Court

Even this very brief overview needs to include a few comments on the evolution of the United States Supreme Court regarding the Rule of Law. The current power possessed by the United States Supreme Court has evolved just like other aspects of the Rule of Law.

Significant progress was made during the tenure of Chief Justice John Marshall. He served as the fourth Chief Justice starting in 1801.

One of the most famous opinions in the history of the United States regarding separation of powers was written by Justice John Marshall in 1803 in Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803). That case will be discussed by at least one other panel today.

The Supreme Court has been comprised of nine Justices since 1869. However, the number ranged from five to ten on six different occasions prior to 1869. *See* https://www.supremecourt.gov/about/institution.aspx.

Periodically, political leaders who are not pleased with specific decisions or the direction of decisions issued by the United States Supreme Court have tried to expand the number of Justices. One of the more famous efforts to expand the number of Justices was the proposed Judicial Procedure Reform Bill of 1937.

President Franklin Roosevelt vigorously advocated for Congress to pass that proposed statute, because the United States Supreme Court frequently ruled against legislation generally referred to as "New Deal Legislation". *See* Ian McDougal, The Rule of Law: Meaning and Effect (2024), Chapter 4. However, many members of Congress, including members of the Democratic Party of which President Franklin Roosevelt was the leader, opposed that legislation because it threatened the separation of powers and judicial independence. *Id*.

Interestingly, almost immediately after that legislation was defeated, the United States Supreme Court upheld several New Deal statutes. *Id*.

The population of America in 1869 was approximately 39 million. We now have approximately 350 million, or approximately nine times that many people in America. *See* https://www.Census.gov/popclock/. If we needed nine Supreme Court Justices for 39 million people, perhaps we do need more than nine Supreme Court Justices for approximately 350 million people.

If that ever occurs, we probably need a neutral method of expanding the United States Supreme Court as opposed to one Congress or one President effectively changing the composition of the United States Supreme Court on a purely political level.

H. Georgia's Participation in the Evolution of the Rule of Law

Georgia has been involved in many significant steps in the evolution of the Rule of Law. This includes abolishing the poll tax that prevented large numbers of people from voting, litigation over whether law firms were subject to sex discrimination laws, and litigation over funding of judicial elections.

An example is the decision by the Georgia Supreme Court, in Judicial Qualifications Commission v. Lowenstein, 252 Ga. 432, 314 S.E.2d 107 (1984). Full disclosure requires that I note my client was Mr. Lowenstein, who was head of the fundraising for Judge Keegan Federal. That unanimous decision invalidated certain judicial, post-election campaign fund raising restrictions.

Previously, Canon 7B(2) of Georgia Code of Judicial Conduct (1974) prohibited the losing party in a judicial election from raising money to pay campaign debts. Despite that, the winner was permitted to raise money to pay off campaign debts, even though it was obvious that only the winner could be unfairly influenced by additional campaign contributions.

The 250th Anniversary of the signing of the Declaration of Independence has generated additional interest in the Rule of Law in Georgia. Four examples are included.

First, during his investiture speech on April 1, 2025, Georgia Supreme Court Chief Justice Peterson highlighted the importance of the Rule of Law and of lawyers defending the Rule of Law. *See* https://www.gasupreme.us/04-01-2025-new-chief-justice-sworn-in/ at approximately 0:34:20. *See also* https://fedsoc.org/commentary/fedsoc-blog/the-rule-of-law-means-that-no-person-is-above-the-laws-requirements-or-below-its-protections-new-georgia-chief-justice-defines-and-defends-the-rule-of-law.

Second, Chief Justice Peterson reiterated the importance of the Rule of Law during his 2026 State of the Judiciary speech to the Georgia legislature. *See* https://www.youtube.com/watch?v=pyOPQhj4iRc at approximately 0:18:30. *See also* https://www.gasupreme.us/wp-content/uploads/2026/02/State-of-the-Judiciary-2026-for-web.pdf.

Third, during his presentation to the Board of Governors on June 13, 2026, Georgia Bar Association President Bill Gentry stated that one of his top priorities was safeguarding the Rule of Law in Georgia. That is the subject of an article in the Georgia Bar Journal (Summer 2026), pp. 36-39.

Fourth, in 2025, several lawyers in Georgia formed the Georgia Lawyers for the Rule of Law, Inc. as a not-for-profit corporation. There is also an article in the Georgia Bar Journal (Summer 2026), pp. 48-49, regarding this entity.

I. Conclusion

There are numerous components of the Rule of Law, not only in America but around the world. A few examples might be useful.

One example is whether everyone at this convocation believes they have committed a criminal act by driving a vehicle faster than the posted speed limit. If we assume the speed was 5 miles per hour faster than the posted limit on an Interstate Freeway, we would all probably like to conclude that we would not have violated any criminal law. However, it would be a misdemeanor.

Despite that, it is probable that no one has received a ticket on Interstate Highway 285 if they were exceeding the posted speed limit by 5 miles per hour but otherwise obeying the law. A vastly different context involves school zones. My hope is that we would all consider ourselves to be committing a misdemeanor if we drove a vehicle 5 miles per hour over the posted speed limit in a school zone on a school day. I am personally confident we would receive a ticket for doing so if a police officer observed this with sonar or radar.

That example might be summarized by the phrase “the context matters”. Government prosecutors, criminal defense lawyers and judges frequently deal with the “context”. Depending on the “context”, the discretion of prosecutors regarding what criminal charges could be brought against a person or entity usually has a significant impact on the final result of the case.

Plea agreements created by government prosecutors and criminal defense lawyers likewise involve significant discretion based on the “context”. Judges sometimes approve plea bargaining agreements involving crimes that clearly were not committed as part of a plea bargain.

Another example is the disciplinary process in Georgia regarding lawyers that is ultimately controlled by the Georgia Supreme Court. That is yet another example of how the Rule of Law works in a flexible manner depending on the “context”. Sanctions for violating the Georgia Rules of Professional Conduct range from a private letter of admonition to disbarment. There are numerous sanctions between those minimum and maximum sanctions.

Finally, by way of example, the Rule of Law involves representing parties involved in controversial litigation and non-litigation matters. Increasingly, what may have been controversial in the past has become divisive, particularly involving politically-related matters.

Clearly, not every lawyer is qualified to undertake every controversial litigation or non-litigation matter. However, in several areas of law, the legal profession should examine why relatively few lawyers are available to represent plaintiffs against governmental entities and even against law firms.