

Citizenship: Democracy and the Rule of Law

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Have you ever thought about the differences between what it means to be a “citizen” and what it means to foster “citizenship?” Yes, the two phrases can have similar meanings, but being a citizen and cultivating citizenship are miles apart in terms of responsibility and attitude. Google it. The bare minimum of what is required to be a “citizen” in many of the definitions that you might find online or in your textbooks are merely states of being. In other words, being a citizen means that you belong to some city, state, or nation. However, engaging in “citizenship” requires an effort. In this brief chapter, the effort involved in exemplifying citizenship is modeled through two very important theoretical lenses, democracy and the rule of law.

Why these two lenses? First, democracy is a form of government that allows its most basic functions to be operated, voted on, lobbied for, and carried out by the people of the country it serves—inherently, this means you! In a democracy, the construction and maintenance of roles in which citizens actively participate in the government is absolutely vital to the survival of the government itself. In the United States, politically active and engaged citizens perform roles as significant as the presidency or as essential as being an informed voter. And one of the ways society prepares for to be informed is through education. Secondly, to maintain governance by the people, the rule of law is necessary in order to preserve an environment in which the citizens feel free to enthusiastically participate. When the rule of law is maintained with respect to democratic freedoms, citizenship prevails.

As someone that is studying in America, citizen or not, it is imperative that you understand the rights and liberties that are bestowed on you simply by setting foot on United States soil or by having been born here. Remember that many of the freedoms that

you may take for granted today were fought for by generations of protesting students before you! In fact, you may be surprised to learn that this nation was built by the hard work and determination of people who were not that much older than the average college student; for instance, it is believed that Alexander Hamilton was just 21 years old on July 4th, 1776. Citizenship is more than where you were born, it is a sense of duty to the nation that educates, protects, and provides for you. Over the next few sections, these concepts will be discussed through the context of roles, obligations, and responsibilities associated with citizenship in the United States.

The Least Lousy Form of Government

"Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time."

Winston Churchill, 1947

Democracy is a word derived from *democratia* (Greek); deconstructed, *demos* means "people" or "the masses" and *kratos* means "rule, strength"—in other words, the power of the people. In democracy's most simple form, it boils down to one person, one vote. It is predicated on the very principle of equality—that no one person gets any more power than anyone else. This notion has certainly been divisive since the framers of this nation declared independence from British rule¹ (especially if you were a poor white male, an African American male, a native American, or a woman of any wealth or race). Nevertheless, America is grounded on the equal and inalienable rights of the individual granted by the Constitution. Let us further explore how the American Constitution creates the government that serves you and conversely how we all serve the American society.

It is important to note that there does not exist any *perfect* form of government (as alluded to by Winston Churchill). Yet, since the inception of this country, the ideals and beliefs of the American people have coalesced around the rights granted by a democratic

¹ African Americans were not eligible to vote until 1870 & women gained suffrage in 1920

society. These rights, as outlined by the first ten amendments to the Constitution, known as the Bill of Rights, include guarantees such as freedom of expression, freedom of religion, and freedom from cruel and unusual punishment among others. The codification and protection of these essential rights and liberties in the United States has helped propel the “American Dream” into the hearts and minds of people all over the World. However, the American viewpoint and attitude has often concluded that what is good for America is often “right” for the rest of the World—an approach that has contributed to America’s involvement in international conflict nearly every decade since the first World War.

On the other hand, you, as a citizen of this democracy have roles and responsibilities that maintain the freedoms many of us may take for granted. These responsibilities go far beyond simply voting, which, while important, is not necessarily your most significant duty. The American experience is preserved by its citizens’ vigilant maintenance of the Social Contract between the people and the government. In other words, the democratic government that serves at the behest of the electorate must retain the consent of the governed; however, if this contract is broken, the people have the right to reform their government as they see fit—revolution! Your responsibility as a citizen is not a passive one, in fact, it is imperative that as citizens, we remain vigilant in order to maintain the rights granted to us by the Constitution. Democracy is a form of government that is of the people, by the people, and for the people;² however, in the next section we learn how a republic is, in reality and practice, and about the rule of the law.

The Rule of Law and You!

“[Rulers] should be appointed to be only guardians, and the servants of the laws.”
Aristotle³

² Abraham Lincoln, “The Gettysburg Address,” 19 November 1863 (Transcript of Cornell University’s Copy)

³ Aristotle, *Politics*, trans. Ernest Barker, ed. R. F. Stalley (Oxford: Oxford University Press, 2009), 3.16.

The rule of law claims that every individual must answer to the law. Regardless of one's station in society, if that person breaks the law, then legal consequences must follow. The rule of law's origin in the common-law system can be found in the Magna Carta where the English monarch King John gave up a substantial amount of his authority to English law at Runnymede in 1215 CE. The American Constitution would utilize the precedent set in the Magna Carta as inspiration over half a millennium later.

Hundreds of years after the monumental restriction of King John's powers, enlightenment thinkers such as John Locke and Montesquieu in the late 17th and early 18th centuries breathed new life into the rule of law. Locke stated humans should be ruled by the law, "not to be subject to the inconstant, uncertain, unknown arbitrary will of another man."⁴ American revolutionary thinkers like Thomas Jefferson, Thomas Paine, and John Adams all espoused the rule of law in their writings. Paine stated, "in free countries the law ought to be king; and there ought to be no other."⁵ Adams emphasized this point when he wrote into the Massachusetts Constitution that the religiously founded colony should become "a government of laws and not of men."⁶ Clearly, America aimed to separate itself as a nation that relied upon the rule of law for governance, not the whims of would be tyrants.

For a nation to be governed by the rule of law, it must meet five criteria: 1) Generality, 2) Prospectivity, 3) Publicity, 4) Consent, and 5) Due Process. First, the requirement of generality dictates that laws must be applied to large groups of people. Individuals or small groups cannot be singled out. Lawmakers should not have a group in mind when they are creating a law. Some categories receive less protections, such as convicted felons, while other categories, like racial or ethnic minorities, receive more

⁴ John Locke, *Two Treatises of Government and a Letter Concerning Toleration*, ed. Ian Shapiro (New Haven, CT: Yale University Press, 2003), Ch. IV § 22.

⁵ Thomas Paine, *Rights of Man, Common Sense and Other Political Writings*, ed. Mark Philp (New York, NY: Oxford University Press, 1995).

⁶ Massachusetts, *The Constitution of the Commonwealth of Massachusetts* (Boston, MA: Secretary of the Commonwealth, 1780), Part I, art. XXX.

protection. Second, Prospectivity requires that all laws only apply to future actions. When a law is passed to retroactively punish a person or a group for past actions, this is known as an *ex post facto* law and is a clear violation of the rule of law. Tyrants and demagogues are keen to infringe upon the prospectivity principle.

Publicity is the notion that all laws must be available for public knowledge. So much law is passed that it is impossible to air public notices for every new law. However, all law should be available to be accessed online, at law libraries, and even in public libraries. Significant new laws are often publicized much more openly. For example, when many states began to ban texting and driving, they would advertise the new law and its effective date over major freeways so people would be aware. An old English legal maxim states, "ignorance of the law excuses not." Consent is equally important to a fair rule of law. While there are always outliers, the majority of citizens must agree to the laws that they are governed by. Consent is usually measured through what Locke called tacit consent or through actual consent. Tacit consent considers that if you choose to live in American society, you implicitly agree to be governed by it. For example, if you drive on the roads, we do not require you to sign a document stating you agree to obey the driving laws. Instead, it is determined that you agree because you are using the roads that the government provides. Actual consent can be found in the voting process. When the people democratically elect representatives, consent claims that citizens are giving their actual consent to be governed by these lawmakers.

Finally, and perhaps most importantly, due process requires that the laws must be administered impartially. Many observers of the American Revolution believe that it began over taxes. Surely taxes played a significant role, but the true catalyst for America's freedom was when the due process notion of a right to trial by jury was taken away from the colonies by the British government. Colonists knew that if they could not receive a fair trial, then they would no longer be governed by the rule of law. Due process is so important that it was placed in the Constitution twice, once to protect American citizens from the

federal government and nearly one hundred years later to protect its citizens from state governments.⁷

The Rule of Law intersects with Democracy most saliently during jury trials.⁸ A jury is a small panel of citizens that decides the fate of an accused citizen—usually a person living in the jurors’ own city or even neighborhood—rather than leaving this extraordinary power to government officials and judges. At some point, many of you will serve on a jury to determine the guilt or innocence of an accused individual.⁹ Thomas Jefferson noted that the jury is “the only anchor, ever yet imagined by man, by which a government can be held to the principles of its constitution.”¹⁰ In this nation, the citizen is entrusted with one of the ultimate powers of government: to determine guilt or innocence.

While the rule of law can be boiled down to a few principles, at times, it can be confusing and even stray from its intended principles. However, perhaps it can be best summed up by the notion of “giving the Devil the benefit of the law.” This idea comes from a brief dialogue in *A Man for All Seasons*. In this particular scene, Lord Chancellor Sir Thomas More is urged to arrest a man who has not yet broken the law, but intends future evil designs against More and his family. He responded that he will neither arrest nor imprison the man and would not even imprison “the devil himself [unless] he broke the law.”¹¹

⁷ See the Fifth and Fourteenth Amendments to the Constitution of the United States.

⁸ A jury is a group of American citizens—initially randomly selected, followed by thorough vetting by judges and attorneys in the case—that is tasked with determining whether or not the accused is guilty of a crime. In addition to criminal cases, juries determine the outcome of civil trials—cases of a non-criminal nature—often involving money, property, employment, contracts, or relationships.

⁹ Your right to a trial by jury in criminal cases is guaranteed by the Sixth Amendment to the United States Constitution.

¹⁰ Thomas Jefferson, “Letter to Thomas Paine,” 11 July 1789.

¹¹ Sir Thomas More notes that if we violate the law to punish even the worst of society, the law will have no power to protect anyone, whether they be good or evil.