

An Essay on the Rule of Law: Judicial Independence and Integrity as Bedrock Principles

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Abstract

*This article discusses the concept of the “rule of law” as it has been interpreted in the American legal system. The paper describes the key components and elements of the rule of law in the context of the doctrine of “separation of powers.” The paper discusses threats to the rule of law stemming from judicial corruption and a lack of judicial accountability. The paper concludes with a discussion of the current challenges to the rule of law in the international arena as well as in light of recent decisions by the United States Supreme Court, most notably in *Trump v. United States*, and other important decision of the Supreme Court.*

Key Words: “rule of law,” independent judiciary, judicial corruption, judicial accountability, *Trump v. United States*, separation of powers

1. Introduction

The phrase the “rule of law” was frequently discussed during the 2024 Presidential election in the United States (Sellers, 2022; Painter & Warren, 2023; Liptak, 2024). Candidate Kamala Harris warned that the election of her opponent would directly threaten the “rule of law” (Ayer & Aftergut, 2024), and candidate Donald Trump argued that the “rule of law” in the United States had been undermined by the “weaponization” of the Department of Justice against him (Schmidt & Haberman, 2023). Who was correct? What exactly is the “rule of law”?

Article 39 of the Magna Carta of 1215 states: “No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land” (see Magna Carta Project, 2024; see also Van Caenegem, 2014; Champion, 2015; Hamburger, 2015). The Report of the Secretary General of the United Nations (2004), entitled *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, notes:

“The rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of 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.”

The International Bar Association (IBA) adopted “an authoritative statement on behalf of the world-wide legal profession [that] . . . sets out some of the essential characteristics of the Rule of Law . . .” (see Neate, 2009). These characteristics include:

“An independent, impartial judiciary; the presumption of innocence; the right to a fair and public trial without undue delay; a rational and proportionate approach to punishment; a strong and independent legal profession; strict protection of confidential communications between lawyer and client; equality of all before the law . . .” (International Bar Association, 2005).

“Broadly speaking,” Justice O’Connor (2003) wrote, “the [r]ule of [l]aw requires that legal rules be publicly known, consistently enforced, and even-handedly applied.” The concept is often expressed in the phrase: “government by laws and not by men” (see Hayek, 1960).

2. Key Components of the Rule of Law:

The “rule of law” ensures that all individuals, institutions, and entities are accountable to laws that are:

- Publicly promulgated;
- Equally enforced and applied to everyone without discrimination and “without bias or emotion” (Mack, Anleu, & Tutton, 2021; Mikuli, 2023);
- Independently adjudicated by independent courts; and
- Consistent with international human rights principles (World Justice Project, 2019).

In this important context, judicial officers must exhibit a strong sense of professional ethics which include impartiality (deciding cases and controversies based solely on the law and facts, without any personal or external influence) (Mikuli, 2023); integrity, where judges conduct themselves with honesty, upholding the highest standards of moral conduct, both in their professional and personal lives (Ratner, 2016); accountability to the public and the legal system (Brake, 2024); competence; and independence (Breyer, 2010), where judges are free from political, financial (Douglas & Hartley, 2003), or other pressures that could affect their judgment.

2.1. The Importance of an Independent Judiciary

Stein (2019) states that “If governance is to be by law and not by people, it requires an application of the laws in an unbiased, even-handed manner by an independent judiciary.” Brauer and Loh (2001, p. 963) note that the first sentence of the American Bar Association’s *Model Code of Judicial Conduct* provides: “Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us.” Alexander Hamilton, who wrote in *The Federalist* in 1776 in support of approval of the U.S. Constitution, described the importance of judicial independence in this manner: “no man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer today” (see Ball, 2003). The importance of an independent judiciary has been highlighted by the late Justice Sandra Day O’Connor as the “foundation” of the rule of law (O’Connor, 2003). Justice O’Connor (2003) describes the necessity of judicial independence as both “institutional” and “decisional.”

2.2. Separation of Powers Considerations

As a reflection of the concept of separation of powers (see Simpson and Thompson (2023), James Madison in *Federalist 47* stated: “The accumulation of all powers, legislative, executive and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny” (see Shapiro, 2009).

As a historical note, the British philosopher and theologian William Paley (1833) noted “that the laws be made by one set of men, and administered by another; in other words, that the legislative and judicial characters be kept separate. When these offices are united in the same person or assembly, particular laws are made for particular cases, springing oftentimes from partial motives, and directed to private ends . . .”

Reynolds (2024) adds:

“Separation of powers is the philosophy that seeks to assign different governmental responsibilities to different branches of government. It aims to dilute the influence of any one person or entity in a government, thereby reducing opportunities for tyranny or abuse of power. Also, delegating different federal responsibilities to multiple branches of government helps prevent a single branch of government from becoming overwhelmed with administration.”

Institutional independence demands the independence of the judicial branch from both the executive and legislative branches of government. Decisional independence is the requirement that a judge must decide a particular case “only on the basis of the law and the facts presented to the judge in the case” (see Hood, 2003).

Over the years, the United States Supreme Court has been called upon to flesh-out the parameters, details, and limitations on the doctrine of separation of powers in a series of important and sometimes controversial cases—most recently in *Trump v. United States* decided by the United States Supreme Court in 2024. [The Appendix contains a brief summary of some of the most important cases in this area.]

3. Threats to the Rule of Law

Several threats have been identified to the rule of law.

3.1 Judicial Corruption (see Pahis, 2009)

Postema (2022, p. 151) writes that the rule of law is threatened in a political community:

“(1) when its institutions are weak or unable to respond flexibly to changes in domestic or global circumstances; (2) when political actors seek to subvert the formal institutions that realize the rule of law or the norms and practices that animate them; (3) when responses to attempts at subversion lack vigor and conviction; and (4) when the moral culture in which the ethos of fidelity exists is corrupted and public spaces in which accountability can flourish shrink.”

Hrynicky (2020) writes generally about the effects of corruption in a civil society. He notes that:

“Corruption constitutes a threat to the rule of law in a democratic law-observing state, destroying it from within and ridiculing it outside. It destabilizes social relations in such a state, which adversely affects the political system as well as the development of legislation and economy. The paper also reminds that corruption erodes social relations, causing demoralization and slackening of morals in society. Corruption may also be a threat to the life, health and property of citizens.”

More specifically, a major threat to the rule of law can arise from the existence of systemic judicial corruption (Pahis, 2009). The International Commission of Jurists [ICJ] (2013, p. 12) argues that “A strong and independent judiciary provides one of the most effective checks against corruption in other institutions of [the] State, and is essential to effective enforcement of the criminal and administrative law against corruption. However, where corruption is endemic in the public and private life of a country, the solution needs to be preventative as well as judicial.”

The ICJ (2013, p. 5) defined judicial corruption as follows:

“The judicial system is corrupted when any act or omission results of is intended to result in the loss of impartiality of the judiciary. Specifically, corruption occurs whenever a judge or court officer seeks or receives a benefit of any kind or promise of a benefit of any kind in respect of an exercise of power or other action. Such acts usually constitute criminal offences under national law.”

Examples of corrupt judicial conduct include bribery, fraud, the use of public resources for private gain, deliberate loss of court records, and deliberate alteration of court records (ICJ, 2013; Asrun, 2023). Corruption also occurs when “instead of procedures being determined on the basis of evidence and the law, they are decided on the basis of improper influences, inducements, pressures, threats, or interferences, directly or indirectly, from any quarter or for any reason” (see United Nations Human Rights Office of the High Commissioner, 1985). Judicial corruption may arise from improper influence on the judiciary by private persons or public or private institutions, or where public officials act outside the law.

Threats to the rule of law may likewise arise from improper political interference, a weak legal framework, a lack of accountability, the existence of human rights violations (Barkhuysen & van Emmerik, 2011), and an inequitable access to justice (see Simshaw, 2022).

3.2. Lack of Judicial Accountability

Voigt and Gutmann (2015) write that “judicial independence and accountability function as complements in preventing corruption.” The lack of judicial accountability (see Ciparick & King, 2010) has also been identified as a major threat to the “rule of law.” The ICJ (2000) noted that:

“... the judicial disciplinary system, and the criminal justice system, need to respond consistently, effectively and fairly to any acts of corruption in the judiciary. Great care must be taken in this regard, however, as mechanisms of judicial accountability are often abused to remove judges who act independently, contrary to powerful interests in the executive or the judicial hierarchy. If appropriate safeguards and guarantees of independence are not in place, the disciplinary and criminal justice systems can themselves become instruments of corruption.”

The *Policy Framework* (ICJ, 2000) recognized the need for national legislation, as opposed to informal procedures, “to criminalize conventional acts of corruption; require the disclosure of assets and liabilities of judges and other officers in the judicial system which is then independently monitored; provide for disciplinary or other proceedings against judges, in respect of a breach of a code of ethics, carried out by the judicial system; and provide for disciplinary or other proceedings against court officers consistent with any laws relating to their service.”

4. How to Ensure and Safeguard Judicial Independence

In order to assure judicial independence, the United States Constitution provides for “lifetime tenure” for certain Article III judges—including the members of the United States Supreme Court (see generally Rush, 2014), although this principle has been the subject of considerable recent comment and criticism (Wood, 2024; Rakove, 2024). At the same time, the judiciary can enhance the tradition of judicial independence by reinforcing a commitment to impartiality through maintaining a rigorous regimen of professional ethics which fosters a culture of integrity and ethical behavior among judges. One way to underscore this commitment would be to subject judges to regular peer review and independent oversight by judicial councils or similarly structured ethics committees (see Rachlinski & Wistrich, 2017) such as the Judicial Conference in the United States (United States Courts, 2024). Another would be establishing clear and binding codes of conduct and ethical guidelines which would provide judges—including members of the United States Supreme Court—with a recognized and enforceable framework for acceptable behavior (see McGinniss, 2024).

5. Current Challenges

The rise of authoritarianism in Central and Eastern Europe in such countries as Hungary (Mueller, 2015; Fiertz, 2018; Kosar, Bares, & Dufek, 2019; Scheiring, 2024), and until recently, Poland (although the situation may have been reversed with the ouster of a far-right regime in the fall of 2023) (Fried, 2023; Pikulicka-Wilczewska, 2023), has seen a decline in judicial independence along with restrictions on media pluralism and media independence (Brogi & Parcu, 2014). Spike (2024) writes: “It might be very difficult to imagine from America or Western Europe what the propaganda and the state machinery is like here. This parallel reality is like the Truman Show. People believe that it’s reality.” However, this situation is not only a European problem. In the United States, attacks by Donald Trump and others on the media, on “fake news,” courts, prosecutors, court personnel, and judges have certainly called into question aspects of the rule of law (see Liptak, 2024).

These political developments have been coupled with the seeming intransigence of the United States Supreme Court to recognize that its actions have resulted in the perception of the politization of the Court itself. In addition, the Court’s refusal to be bound by an enforceable Code of Ethics (Gersh & Totenberg, 2023; Popli, 2024), have likewise undermined the basic faith of citizens that the United States is truly “a nation of laws and not of men.” No one case decided by the Supreme Court may have led more to this unfortunate conclusion.

Trump v. United States (2024) involved the former President, who had been indicted by a federal grand jury on four counts for conduct that occurred *during his presidency* following the November 2020 election. The indictment alleged that the former President had conspired to overturn the results of the election by spreading knowingly false claims of election fraud. Trump then moved to dismiss the indictment based on a broad claim of Presidential immunity. Trump maintained that a President has absolute immunity from criminal prosecution for actions performed within his official responsibilities. The District Court in Washington, D.C. denied Trump’s motion to dismiss, holding that former Presidents do not possess federal criminal immunity for any acts. The D.C. Circuit Court of Appeals affirmed this decision. Trump filed an appeal with the United States Supreme Court.

On July 1, 2024, the Supreme Court held by a vote of 6-3 that under the constitutional structure of separated powers, a former President is entitled to *absolute immunity* from criminal prosecution for actions “within his conclusive and preclusive constitutional authority.” He is also entitled to *at least presumptive immunity* from prosecution for “all his official acts.” However, there is no immunity for unofficial acts. The Court vacated the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with its opinion. The Court emphasized that the President is “not above the law,” but under the system of separated powers, the President may not be prosecuted for exercising his core constitutional powers (see Kruzel & Chung, 2024; Garvey, 2024).

Criticism of this decision was both swift and pointed (Whitehurst, 2024). In a sharply worded dissenting opinion, Associate Supreme Court Justice Sonia Sotomayor wrote:

“Today’s decision to grant former Presidents criminal immunity reshapes the institution of the Presidency. It makes a mockery of the principle, foundational to our Constitution and system of Government, that no man is above the law. Relying on little more than its own misguided wisdom about the need for “bold and unhesitating action” by the President, the Court gives former President Trump all the immunity he asked for and more. Because our Constitution does not shield a former President from answering for criminal and treasonous acts, I dissent.”

Professor Akhil Reed Amar (2024) wrote that “Jurists who preach fidelity to the Constitution are making decisions that flatly contradict our founding document’s text and ideals.” Roisman (2024) adds that “... the majority’s decision in *Trump v. United States* proves fundamentally arbitrary. It fails to provide any reasonable grounds to decide future cases, and its inability to realize its own limits ought to be the final nail in the coffin of separation of powers formalism.”

Issues relating to the role of courts in maintaining the “rule of law” will no doubt remain in the forefront in the next few years—and perhaps longer—as the position of the judiciary, more specifically the United States Supreme Court, continues to invite scrutiny and criticism relating to the politization of the judicial branch. Will these forces result in the creation of an enforceable Code of Conduct for Justices of the Supreme Court or perhaps in term limits for the Justices, or in a further erosion of the doctrine of separation of powers? Only time will tell!

APPENDIX: CASES THAT INVOLVE THE PRINCIPLE OF SEPARATION OF POWERS (see generally Stratton, 2024)

Marbury v. Madison: This case underscored the role of the judiciary as a co-equal branch of government in the system of checks and balances. The case established the principle that courts have the power to nullify (i.e., to declare unconstitutional) laws that contradict the Constitution. Chief Justice John Marshall stated: “that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument.” In perhaps the most often quoted passage from a decision of the United States Supreme Court., the Chief Justice also noted: “*It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule,*” establishing the principle of judicial review. 95 U.S. 137 (1803).

Humphrey's Executor v. United States: As the functions of a commissioner of the Federal Trade Commission are both legislative and judicial in nature, the President’s exclusive removal power does not extend to such government officers. The President’s exercise of his removal power would exert coercive influence over the FTC that threatens the agency’s independence. Such an outcome would conflict with the separation of powers doctrine. Accordingly, the President had no constitutional power to remove Humphrey outside of the reasons specified by Congress.

The Court distinguished between pure executive officers, who serve at the pleasure of the President, and officers of independent regulatory agencies, holding that commissioners of independent agency were not subject to unrestrained removal by the President, as the nature and purpose of these agencies necessitated a buffer from executive control to prevent undue political interference and to maintain their quasi-legislative and quasi-judicial functions.

This ruling established that the President's authority to remove federal appointees is not absolute relating to a select group of independent regulatory commissions. Such protections ensure that these agencies can perform their duties impartially and effectively, free from political pressures. The decision reinforced the structural independence of certain regulatory agencies, enhancing their ability to function as intended under their enabling statutes.

However, *Humphrey's Executor* has been distinguished and called into question by *Seila Law LLC v. Consumer Financial Protection Bureau*. In *Seila*, Chief Justice John Roberts noted that *Humphrey's Executor* held that Congress may occasionally create independent agencies with removal of a commissioner only for cause so long as they share the “characteristics” of the FTC in 1935 as it had been constituted. 295 U.S. 602 (1935).

Youngstown Sheet & Tube Co. v. Sawyer: The Court addressed this question: Can the President seize or take possession of private property without authorization from Congress or under the authority of the Constitution through the valid exercise of the power of eminent domain? The Supreme Court ruled that in the absence of either statutory or constitutional authority, such executive orders seizing private property were not the lawful exercise of Presidential authority. 343 U.S. 579 (1952).

United States v. Nixon: In the context of the Watergate scandal, the Court held that the need for evidence in a criminal trial outweighs the president's general interest in confidentiality, ensuring that an assert of executive privilege cannot be used as a shield against judicial scrutiny, although such an assertion of executive privilege may be valid in other situations. 418 U.S. 683 (1974).

INS v. Chadha: The Supreme Court scrutinized the exercise of a legislative veto by one House of Congress and its compatibility with the separation of powers doctrine. Any law in the context of an action for deportation must be enacted by a majority of both Houses, and like nearly all other legislative actions, must be submitted to the President to be signed or vetoed. None of the specific constitutional exceptions that allow one House of Congress to act alone apply. These requirements are intended to preserve the system of checks and balances in the constitutional design and to preserve the separation of powers. 462 U.S. 919 (1983).

Morrison v. Olson: The case involved the constitutionality of the Independent Counsel law established by the *Ethics in Government Act* of 1978. The Supreme Court found that Congress may grant authority to the judicial branch to appoint an independent counsel without violating the separation of powers, even though the independent counsel is a member of the executive branch. Congress also may place restrictions on the removal of agency officials unless this interferes with the President's exercise of executive power. The Court thus upheld the constitutionality of the Independent Counsel law. The Court determined that the law provided “enough” executive control to satisfy the requirements of the separation of powers doctrine, as the Independent Counsel operated under the authority of the Attorney General, who retained oversight of the Independent Counsel and the ability to remove the counsel for cause. 487 U.S. 654 (1988).

Clinton v. Jones: In a case involving a claim of presidential immunity from civil prosecution, the Supreme Court held that a litigant's Sixth Amendment right to a speedy trial permits a civil lawsuit against a sitting President to proceed if the basis of the suit is unrelated to behavior that occurred during time in office, since presidential immunity does not apply under these circumstances. This ruling underscored the foundational belief that no individual, including the President, is above the law. 520 U.S. 681 (1997).

Free Enterprise Fund v. Public Company Accounting Oversight Board: The 2010 Supreme Court decision once again examined the removal protections afforded to members of certain independent agencies. In an opinion by Chief Justice Roberts, the Court ruled that the Constitution that makes the President accountable to the people for executing the laws also gives him the power to do so. That power includes, as a general matter, the authority of a President to remove those who assist him in carrying out his duties. Without such power, the President could not be held fully accountable for discharging his own responsibilities. Such diffusion of authority “would greatly diminish the intended and necessary responsibility of the chief magistrate himself.” The case reinforced the principle that, even within independent regulatory agencies, the President's executive authority must be preserved to maintain effective governance.

“This ruling highlighted the essential balance envisioned by the Founders, ensuring executive officers remain accountable to the President and, by extension, to the people. The decision reflects the principle of “checks and balances” embedded within the Constitution to prevent any branch of government from amassing unchecked power” (Stratton, 2024). 561 U.S. 477 (2010).

How this case “squares” with other Supreme Court precedents—especially *Humphrey's Executor*—is another matter!

Seila Law v. CFPB: Did the Consumer Financial Protection Bureau’s leadership by a single Director removable only for inefficiency, neglect, or malfeasance violates the separation of powers. The Supreme Court ruled that the structure of the CFPB was unconstitutional. The majority opinion argued that the “for-cause” removal protection afforded to the CFPB director unlawfully restricted the president's ability to execute the laws, as it inhibited the president from having direct oversight and control over executive branch officials. This case reinforced the boundaries that define the separation of powers, stressing that while so-called “independent agencies” may function autonomously, they must remain within the constitutional framework designed to prevent any one branch from wielding unchecked power. 591 U.S. 197 (2020).

References

- Amar, A.R. (2024). Something has gone deeply wrong at the supreme court. The Atlantic. <https://www.theatlantic.com/politics/archive/2024/07/trump-v-united-states-opinion-chief-roberts/678877/>
- Asrun, A.M. (2023). Judicial corruption as a violation of professional ethics. *International Journal of Professional Business Review* 8(2): 1-16.
- Ayer, D. & Aftergut, D. (2024). A restoration of the rule of law: Kamala Harris’ “freedom” campaign is coming for Trumpism. Salon (September 3, 2024). <https://www.salon.com/2024/09/03/a-restoration-of-the-rule-of-law-kamala-harris-freedom-campaign-is-coming-for-trumpism/>
- Ball, T. (ed). (2003). *The Federalist No. 78*. Cambridge University Press: Cambridge, UK.
- Barkhuysen, T. & van Emmerik, M.L. (2011). Accountability of the judiciary on the national level for violations of the European Convention on Human Rights, *in* Canivet G., Andenas, M. & Fairgrieve, D. (eds). Independence, accountability, and the judiciary. *The British Institute of International Law and Comparative Law*: 419- 429. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1896145
- Brake, J. (eds). (2024). Effective removal of Article III judges: Case suspensions and the constitutional limits of judicial self-policing. *The University of Chicago Law Review*: 9(4): 1111-1154.
- Brauer, A., Loh, T. (2001). Judicial misconduct. *Georgetown Journal of Legal Ethics* 14(4): 963-982.
- Breyer, S. (2010). An independent judiciary. *Experience: The Magazine of the Senior Lawyer’s Division, American Bar Association*: 20(1): 20-24.
- Brogi, E. & Parcu, P.L. (2014). The evolving regulation of the media in Europe as an instrument for freedom and pluralism. Robert Schuman Centre for Advanced Studies Research Paper No. 2014/09. https://cadmus.eui.eu/bitstream/handle/1814/29923/RSCAS_2014_09.pdf?sequence=1
- Champion, J. (2015). Magna Carta after 800 years: From liber homo to modern freedom. Online Library of Liberty (OLL) (May 1, 2015). <https://oll.libertyfund.org/publications/liberty-matters/2015-05-01-justin-champion-magna-carta-after-800-years-from-liber-homo-to-modern-freedom-may-2015>
- Ciparick, C.B. & King, B.T. (2010). Judicial independence: Is it impaired or bolstered by judicial accountability? *St. John’s Law Review* 84(1): 1-21.
- Douglas, J.W. & Hartley, R.E. (2003). The politics of court budgeting in the states: Is judicial independence threatened by the budgetary process? *Public Administration Review* 63(4): 441-454.
- Fiertz, N. (2018). The authoritarian’s playbook: Central Europe’s slide toward illiberalism. *Fragile States Index* (April 23, 2018). <https://fragilestatesindex.org/2018/04/23/the-authoritarians-playbook-central-europes-slide-toward-illiberalism/>
- Fried, D. (2023). Did Polish voters just set a new course towards centrism? *New Atlanticist* (October 23, 2023). <https://www.atlanticcouncil.org/blogs/new-atlanticist/did-polish-voters-just-set-a-new-course-toward-centrism/>
- Garvey, T. (2024). Presidential immunity from criminal prosecution in *Trump v. United States*. Congressional Research Service (July 5, 2024). <https://crsreports.congress.gov/product/pdf/LSB/LSB11194>
- Gersh, A. & Totenberg, N. (2023). The Supreme Court adopts first-ever code of ethics. NPR (November 13, 2023). <https://www.npr.org/2023/11/13/1212708142/supreme-court-ethics-code>
- Hamburger, P. (2015). The Magna Carta, due process, and administrative power. 2015 Walter Berns Constitution Day Lecture. American Enterprise Institute. <https://aei.org/wp-content/uploads/2016/03/The-Magna-Carta-Due-Process-and-Administrative-Power.pdf?x91208>

- Hayek, F.A. (1960). *The Constitution of liberty*. University of Chicago Press: Chicago, Illinois.
- He, Z. (2009). Judicial review—A regulator of American society. *Journal of Politics and Law* 2(1): 100-104.
- Hood, J.M. (2003). Judicial independence. *Journal of National Association of Administrative Law Judges* (Pepperdine University) 23(1): 137-145.
- Hrynicky, W.M. (2020). Corruption as a threat to the rule of law in a democratic law-observing state. *Security Dimensions* 34. <https://securitydimensions.publisherspanel.com/article/145609/en>
- International Bar Association (2005). Rule of law resolution. <https://www.ibanet.org/Document/Default.aspx?DocumentUid=C5728780-90F7-4377-A70E-590B01B33509>
- International Commission of Jurists (ICJ) (2000). Policy framework for preventing and eliminating corruption and ensuring the impartiality of the judicial system, in *CIJL Yearbook* (2000), Strengthening judicial independence, eliminating judicial corruption. <https://www.icj.org/resource/cijl-yearbook-strengthening-judicial-independence-eliminating-judicial-corruption-vol-ix-2000/>
- International Commission of Jurists (2013). Corruption as a threat to the rule of law. <https://www.icj.org/wp-content/uploads/2013/03/Corruption-as-a-Threat-to-the-Rule-of-Law1.pdf>
- Jacobsen, V. (2020). Hungary’s road to authoritarianism—Through the demise of a liberal democracy and free judiciary. *Denver Journal of International Law and Policy* (May 19, 2020). <https://djiplp.org/hungarys-road-to-authoritarianism-through-the-demise-of-a-liberal-democracy-and-free-judiciary>
- Kosar, D., Baros, J., & Dufek, P. (2019). *The twin challenges to separation of powers in Central Europe: Technocratic governance and populism*. Cambridge University Press: Cambridge, UK.
- Kruzel, J. & Chung, A. (2024). US Supreme Court rules Trump has broad immunity from prosecution. *Reuters* (July 1, 2024). <https://www.reuters.com/legal/us-supreme-court-due-rule-trumps-immunity-bid-blockbuster-case-2024-07->
- Liptak, A. (2024). Trump’s vows to prosecute rivals put rule of law on the ballot. *New York Times* (June 5, 2024). <https://www.nytimes.com/2024/06/05/us/trump-retribution-justice.html>
- Mack, K., Anleu, S.R., & Tutton, J. (2022). Judicial impartiality, bias and emotion. *Australian Journal of Administrative Law* 28(2): 66-82.
- Magna Carta Project (2025). Article 39. https://magnacartaresearch.org/read/magna_carta_1215/Clause_39 (last accessed January 14, 2025).
- McGinnis, M.S. (2024). Declaring independence to secure integrity: The Supreme Court Justices’ code of conduct. *Federalist Society Review* 25: 272-302.
- Mikuli, P. (2023). Impartiality of the judiciary. In Grote, R., Lachenmann, R., & Wolfrum, R. (eds). *Max Planck Encyclopedia of Comparative Constitutional Law*. Oxford University Press: Oxford, UK.
- Miller, M. (2015). *Judicial politics in the United States*. Routledge: New York.
- Müller, J-W. (2015). Should the EU protect democracy and the rule of law inside member states? *European Law Journal* 21(2); 141-160.
- Neate, F. (2009). International Bar Association, commentary on the IBA Council ‘rule of law’ resolution of September 2005. <https://www.ibanet.org/Document/Default.aspx?DocumentUid=A89CFFB1-BD4A-445C-8CAB-553AF21BD7A7>
- O’Connor, S.D. (2003). Vindicating the rule of law: The role of the judiciary, *Chinese Journal of International Law* 2(1): 1-10.
- Pahis, S. (2009). Corruption in our courts: What it looks like and where it is hidden. *Yale Law Journal* 118(8): 1584-1984.
- Painter, R. & Warren, A. (2023). 2024 election already signals political disdain for rule of law. *US Law Week* (August 2, 2023). <https://news.bloomberglaw.com/us-law-week/2024-election-already-signals-political-disdain-for-rule-of-law>
- Paley W. (1883). *Of the administration of justice*. In the works of William Paley. J.J. Woodward: Philadelphia, Pa.

- Pikulicka-Wilczewski, A. (2023). 'Ideologically anti-populist': Poland votes for a new future. Ground News (October 17, 2023). <https://ground.news/article/ideologically-anti-populist-poland-votes-for-a-new-future>
- Popli, N. (2024). Breaking down the Supreme Court's ethics rules as justices come under fire. Time (May 30, 2024). <https://time.com/6983758/supreme-court-ethics-rules-enforced/>
- Postema, G.J. (2022). 8 threats to the rule of law. In Postema, G. (ed). Law's rule. Oxford University Press: Oxford, UK.
- Rachlinski, J.J. & Wistrich, A.J. (2017). Judging the judiciary by the numbers: Empirical research on judges. Annual Review of Law and Social Science (Cornell Law Faculty Publications). <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2668&context=facpub>
- Rakove, J. (2024). Lifetime tenure for Supreme Court justices has outlived its usefulness. The Brennan Center for Justice (October 15, 2024). <https://www.brennancenter.org/our-work/analysis-opinion/lifetime-tenure-supreme-court-justices-has-outlived-its-usefulness>
- Ratner, M. (2016). Judicial ethical integrity: Challenges and solutions. Hastings International and Comparative Law Review 39(1): 149-166.
- Reynolds, A. (2024). Separation of powers in the constitution. ConstitutionUS.com (January 14, 2024). <https://constitutionus.com/alicia-reynolds/>
- Roisman, S. (2024). *Trump v. United States* and the limits of separation of powers formalism. Lawfaremedium.com (December 4, 2024). <https://www.lawfaremedia.org/article/trump-v.-united-states-and-the-limits-of-separation-of-powers-formalism>
- Rush, S.E. (2014). Federalism, diversity, equality, and Article III judges: Geography. University of Florida Levin College of Law Research Paper No. 115-30: <https://scholarship.law.ufl.edu/facultypub/468/>; Missouri Law Review 79(1): 119-184.
- Scheiring, G. (2024). I watched Hungary's democracy dissolve into authoritarianism as a member of parliament—and I see troubling parallels in Trumpism and its appeal to workers. The Conversation (March 7, 2024). <https://theconversation.com/i-watched-hungarys-democracy-dissolve-into-authoritarianism-as-a-member-of-parliament-and-i-see-troubling-parallels-in-trumpism-and-its-appeal-to-workers-224930>
- Schmidt, M.S. & Haberman, M. (2023). Trump says the justice system has been weaponized. He would know. New York Times (March 29, 2023). <https://www.nytimes.com/2023/03/29/us/politics/trump-justice-system-weaponized.html>
- Sellers, M. (2022). The rule of law in the United States of America. The American Journal of Comparative Law 70(Supp. 1): 26-38).
- Shapiro, I. (ed) (2009). The federalist papers. Yale University Press: New Haven, Connecticut.
- Simpson, S. & Thompson, J. (2023). The messenger: The separation of powers is the foundation of liberty. Pacific Legal Foundation (June 25, 2023). <https://pacificlegal.org/the-messenger-the-separation-of-powers-is-the-foundation-of-american-liberty/>
- Simshaw, D. (2022). Access to AI justice: Avoiding an inequitable two-tiered system of legal services. Yale Journal of Law and Technology 24: 150-226.
- Spike, J. (2024). How Hungary's Orban uses control of the media to escape scrutiny and keep the public in the dark. Associated Press (July 31, 2024). <https://apnews.com/article/hungary-media-democracy-orban-magyar-european-parliament-f6315d7cc252f210c360863de403054e>
- Stein, R.A. (2019). What exactly is the rule of law? Houston Law Review 57: 185-201.
- Stratton, E. (2024). Top cases that tested the separation of powers. U.S.Constitution.net (May 31, 2024). <https://www.usconstitution.net/top-cases-that-tested-the-separation-of-powers/>
Trump v. United States (2024). 603 U.S. 593.
- U.N. Human Rights Office of the High Commissioner (1985). Basic principles on the independence of the judiciary. Ohchr.org. <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary> (last visited January 19, 2024).

- U.N. Secretary-General (2004). The rule of law and transitional justice in conflict and post-conflict societies. U.N. Doc. S/2004/616 (Aug. 23, 2004). <https://digitallibrary.un.org/record/527647?v=pdf>
- United States Courts (2025). About the judicial conference of the United States. <https://www.uscourts.gov/administration-policies/governance-judicial-conference/about-judicial-conference-united-states> (last accessed January 14, 2025).
- van Caenegam, R.C. (2014). A note on chapter 39 of the Magna Carta. *Fundamina* 20(2): 961-964.
- Voigt, S. & Gutman, J. (2015). On the wrong side of the law: Causes and consequences of a corrupt judiciary. *International Review of Law and Economics* 43: 156-166.
- Whitehurst, L. (2024). Sotomayor's dissent: A president should not be above the law. *The Hill* (July 1, 2024). <https://thehill.com/homenews/ap/ap-u-s-news/ap-sotomayors-dissent-a-president-should-not-be-a-king-above-the-law/>
- Wood, D.P. (2024). Why term limits for Supreme Court justices make sense. *The Brennan Center* (August 19, 2024). <https://www.brennancenter.org/our-work/analysis-opinion/why-term-limits-supreme-court-justices-make-sense>
- World Justice Project (2019). Rule of law. https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2019-Single Page View-Reduced_0.pdf [<https://perma.cc/Z3J8-VFQQ>]