

UTAH MINORITY BAR ASSOCIATION / J. SIMON CANTARERO, PRESIDENT

Our Tradition in the Rule of Law

"The American Bar Association's Rule of Law Initiative and the Utah State Bar's Law Day celebration focuses on the Rule of Law as the key principle holding our society together."

J. Simon Cantarero, President, Utah Minority Bar Assoc.

Speaking of the concept of the Rule of Law, a legal scholar was recently quoted as saying that "No other single political ideal has ever achieved global endorsement." The concept of the Rule of Law is so broad and encompasses so many things that it is presumptive on my part to address the universe of issues that this political idea has in our society today. There are hundreds, if not thousands, of law libraries filled with millions of law-related books. The topic of law dates back to the earliest times in written history. It may be that the legal profession is the world's second oldest profession. After farming, of course.

The American Bar Association's Rule of Law Initiative and the Utah State Bar's Law Day celebration focuses on the Rule of Law as the key principle holding our society together. I would like to address two familiar and important topics concerning the Rule of Law. First, as it pertains to the American legal tradition, and second, the products of this tradition and how they affect our everyday lives today.

American Traditions

In 1776, Thomas Paine wrote in his famous pamphlet, *Common Sense* that, "in America the law is king. For as in absolute government the King is law, so in free countries the law ought to be king, and there ought to be no other." In so writing, he expressed the feeling that independence from the British crown would translate into the institution of a government where the law would rule all men, including the rulers of the people. Three years later, John Adams single-handedly wrote the Massachusetts constitution, the oldest written constitution still in use today. In it, he explained that the separation of powers into the legislative, executive and judicial branches was intended to create "a government of laws and not of men." What Paine and Adams expressed in their writings is arguably the beginning of the American legal tradition that the law rules all men, including the government. But writing the ideal into a pamphlet or parchment and calling it a constitution is a lot different than implementing that ideal into society.

There have been many instances in American history when the principle of the Rule of Law withstood the test and strain of time. John Adams himself exemplified the principle of the Rule of Law when, following the Boston Massacre, he represented the British soldiers who fired on the crowd. As a lawyer defending unpopular, if not despised, defendants, John Adams trusted in the principle of the Rule of Law and trusted that justice would prevail. A few years later, this same John Adams was an adamant advocate in Philadelphia to declare independence from the British empire and trusting that the Rule of Law would govern the colonies in the beginning of the new nation. The Rule of Law was committed to writing thirteen long years after the Declaration of Independence in the United States Constitution. The Constitution and the principle of the Rule of Law behind it have ruled our country for over 200 years, through some of the most difficult times in the nation's history.

The Rule of Law, as depicted in the United



J. Simon
Cantarero

States Constitution, was tested incredibly during the Civil War when the Southern States seceded from the Union. Following the Civil War, the United States began a long healing process, but the one true constant was the Rule of Law and the people's trust in the Constitution, trusting that when men fail, the law rules. One hundred years after the Civil War, the Civil Rights movement proved the testing ground during tumultuous and violent times. During the 1960s, the Rule of Law governed even in the midst of riots and assassinations. What came from the Civil Rights movement was the affirmation that all men are equal before the law. The Civil War and the Civil Rights movement also proved that the law itself has the capacity to change, when aided by people's conscious to right the wrong. The Rule of Law has proven that we can improve our society through law by enacting fair laws that protect and promote our civil duties, rights and liberties.

Products Of The Rule Of Law

The principle of the Rule of Law produces four important practices:

1. It gives legitimacy to those who rule the citizens;
2. It separates the power of the rulers;
3. It is a great equalizer, where all men are subject to the laws;
4. It provides legal certainty in the civil and criminal justice system.

The Rule of Law, when commonly accepted in a society, gives legitimacy to the public officials who are elected to represent a population and are appointed to enact and enforce laws fairly so as to protect the people and promote the public good. Legitimacy in the public officials is an important asset of American society, for we trust that those whom we elect will act in our best interest. Legitimacy also allows the people to remove from office and power those who fail to do what the citizens ask of them. To appoint and remove public servants without the use of the sword is a product of a society built on the Rule of Law.

The Rule of Law also separates power so it is not monopolized by a person or small group of individuals. The Rule of Law creates a government that is an institution built upon laws and regulations that provide the boundary

markers for each of the executive, legislative, and judicial powers. A government in which these three powers are divided is based on the principle that the underlying laws and regulations will be respected by the individuals who are charged to their public duties. By checking and balancing each other, the three distinct branches continue to be subject to the citizens whose right and duty it is to live the principle of the Rule of Law in their civic duty by voting, serving in jury duty, and being involved in community affairs.

Perhaps the most important byproduct of the Rule of Law is equality. Every one is subject to the laws regardless of their wealth or poverty, religion, race, gender, or national origin. Under the Rule of Law the President is subject to the same laws as the panhandler, with neither receiving any preferential treatment. The Rule of Law treats everyone the same. This is personified by the statue of Lady Justice. Equality is symbolized by her blindfold.

Legal certainty is the fourth impact on our lives from the Rule of Law. The element of surprise is largely done away with under a system of the Rule of Law. In the criminal justice system, for example, someone who has been convicted of a crime has a reasonable expect-

ation of what his punishment will be. Likewise in the civil arena, someone who seeks redress from a wrongful doing or omission, can reasonably expect restitution or compensation that will satisfy his needs for justice.

The Law Is King

The Rule of Law as a governing principle continues to be the dominant political ideal and as the aspiration of every civil society that seeks stability and security among the citizens. Since World War II, and as recent as last February, when the world's newest country, Kosovo, declared independence, the Rule of Law has been the bedrock of nation-building. New nations begin, and old nations continue with the aspiration and expectation that the Rule of Law at the international level and domestically will govern its citizens and pave the path to a prosperous future. By and large, the Rule of Law appears to be second nature to Americans who have enjoyed its protection for over 200 years. This same principle will continue to improve our lives and our communities.

Mr. Cantarero is an attorney with the Salt Lake City office of Holland & Hart LLP and is the current President of the Utah Minority Bar Association.