



INDIVISIBLE

Social and Economic Foundations of American Liberty

Leading Conservatives
Exchange Policy Perspectives

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INTRODUCTION BY JAY W. RICHARDS

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RULE OF LAW

Economic Prosperity Requires the Rule of Law

BY J. KENNETH BLACKWELL

AMERICA IS THE MOST PROSPEROUS SOCIETY IN the history of mankind, and many factors have contributed to its success. Some credit our unparalleled university system. Others note our vast natural resources. Many reference the fact that our melting-pot culture tends to attract people willing to work from all over the globe, who then bring new perspectives and approaches to augment our own. All of these are reasons for American success.

But none is more important than America's respect for the rule of law. Not only American politics but also the American way of life could hinge on the fate of this concept.

Rule of law, as traditionally understood, is now being threatened. If Americans wish to see a return to prosperity, we must demand public policy that upholds the rule of law when it comes to property and business and hold elected officials accountable not only to deliver such policy but also to submit to the rule of law as well.

We are a nation of laws, not of men. We do not have one set of laws for the people and another for the elites. In the United States, every person, including the President, is required to obey the law. The U.S. Supreme Court building has the words "Equal Justice Under Law" carved into its massive façade. These words remind us of the truth that whether you are rich or poor, man or woman, young or old, in America we all live equally under the protection of our laws.

The Founders, however inconsistent they may have been in implementing it, rightly saw that justice requires our equality before the law, because each of us is created by God. More recently, however, we have become aware of the way rule of law has contributed to our unprecedented economic opportunity. In America, we all have the legal right to use all of our God-given talents to pursue our dreams.

We have the opportunity, protected by law, to work hard and enjoy the success that we earn as the fruits of our labors. We know that if we work at a job we will receive our salary or wages at the agreed-upon rate. We have the freedom to negotiate the value of our skills and our labor. Our laws provide a degree of confidence that the business we pursue is a legitimate enterprise, and employers have confidence that they know the true identity of those working for them. The rule of law makes it illegal to deny someone the opportunity to work on the basis of their gender or skin color and allows businesses to freely compete for customers and to pay competitive wages for good employees.



J. Kenneth Blackwell

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RULE OF LAW AND CAPITALISM

The rule of law is essential to a sustainable capitalism. Capitalism requires long-term agreements and contracts, which require predictability. The law can't change capriciously depending on who is in office. The right kind of law requires all parties to a contract to fulfill their obligations or provide adequate recompense for parties that have been wronged. These laws encourage trade by instilling confidence in buyers that they will get what they pay for and can be compensated if they do not receive it. The law provides redress for people or organizations that suffer economic harm from another party's actions, whether willful or negligent.

Property laws need the same, long-term reliability. Our property laws enforce the rights of ownership and proper use and enjoyment for all manner of property, whether it be real estate, personal property, or intangibles such as copyrights or intellectual property. It allows individuals and organizations to make long-term economic plans, which typically produce more wealth than short-term ventures. In recent years, economists such as Hernando de Soto have come to recognize the importance of these laws for economic prosperity.¹⁷

Another reason that the rule of law is necessary for capitalism is that it drives capital formation. People can invest their money with confidence that the government will not decide to take it away tomorrow. They are also confident that the law will be on their side if the securities or other investments in which they place their money turn out to be fraudulent. Investors derive comfort from the deterring effect that our criminal laws—applied in an even-handed manner by judges who are not corrupt and vigorously enforced by police officers and federal agents who are likewise not corrupt—have on would-be criminals.

For these reasons, a country under the rule of law is a good place to invest, and a promising environment in which to succeed. By maximizing opportunity through the proper balance of good laws and sparse regulations with personal liberty and individual choice, the rule of law facilitates the creation and accumulation of wealth and financial security.

RULE OF LAW: A CONCEPT IN JEOPARDY

However, these benefits provided by the rule of law are threatened by various policies currently being enacted. The term “rule of law” is broader than simply not violating specific statutes and regulations found on the books. It also concerns changes in law and the politicizing of business and economics.

The federal government is exploding, both in size and in scope. This

¹⁷ See, for example, de Soto's *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000).

expansion entails a staggering increase in federal spending. That spending is creating trillion-dollar-plus deficits for years to come that will bury not only our children, but even our grandchildren under a mountain range of debt. The government is indebting people who have not even been born by spending wealth that has not even been created.

Spending vast sums of money that others must repay is not only immoral, it's bad economic policy. This debt discourages investment and burdens economic activity by making it less likely that businesses will succeed over time. It also hampers commerce, as consumers have to divert more of their hard-earned money to pay installments and interest on this government debt. All this undermines the sense of confidence that the rule of law provides.

The government is also decimating the private sector. It is directly taking over the financial sector, not only with massive regulation but also by claiming ownership rights over institutions that took bailout funds. The federal government now owns some 60 percent of General Motors and is gaining ownership stakes in other businesses as well, discarding and rewriting contractual commitments that were originally made in good faith. It is promulgating an enormous "cap-and-trade" system for carbon emissions that could cripple companies, putting them at the mercy of the government. And President Obama seeks to commandeer the entire American health care system that alone accounts for around 16 percent of our economy.

This reduces prosperity in two ways. First, nullifying or modifying contractual terms that were legal and enforceable is antithetical to the rule of law. Parties enter into agreements with the sense that they understand the rules that will govern their activities. They look to government to uphold and enforce those rules, rather than change them mid-stream. Second, the government takeover of such private ventures violates the property rights of the owners and debtors, destroying the confidence they ought to be able to have under the rule of law.

By its very nature, government is inefficient, wasteful, and tends toward corruption. It tends to be driven by the headlines of the day and the passions of the moment. Because of this, when government gets involved in business, it tends to replace a focus on long-term results with a focus on short-term political gains. Profit incentives are supplanted by political considerations. Uncounted sums are routinely wasted by government in a manner that would never be tolerated in the private sector. And the lack of profit incentives, protections from legal liability, and the anonymity of endless bureaucracies often lead to individuals acting to enrich themselves or their friends, instead of investors. All too often, such behavior is also found in some corporate cultures when those corporations are shielded from failure by taxpayer bailouts or political entanglements.

THE ROLE OF INDIVIDUAL RESPONSIBILITY

But this is not a conflict only between governments and corporations. The rule of law cannot long be exercised nationally unless it is upheld individually and

culturally. The rule of law may be enforced most visibly by the government, but it is first enforced in the self-restraint of individuals and families. People tend to excuse behavior in others that they are willing to tolerate in their own lives. The rule of law exists in a democratic republic only to the degree that the voters demand it of their elected leaders and shareholders demand it of their corporate executives. A morally corrupt population will inevitably give rise to a corrupt polity.

When it comes to debt, for instance, it is not just the government's problem. It is our problem as well. For both moral and economic reasons, we must repudiate

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our culture of creeping debt. For decades America has been moving from a culture of saving to a culture of debt. In large part this culture is what led to our current economic woes, which are an indictment of

our desire for instant gratification. Irresponsibility is no longer stigmatized. Rights and responsibilities have been replaced with a pervasive entitlement mentality. People are routinely living beyond their means and relying on the next generation or the government to provide for them when they are older. Government policies certainly encourage these problems, but some of the blame falls on us.

The good news is that we can reverse these trends, starting in our homes. First, parents must teach children that irresponsible living is frowned upon, and we must start by living in a responsible and self-sufficient manner ourselves.

Second, we need to foster a culture of virtue and integrity. Hard work is a virtue. Planning for the long term and providing for the financial stability of our children is honorable. Beyond that, our word must once again be our bond. Regardless of what laws are written on the books, contracts ultimately are not much good without basic honesty. Our conscience and an awareness that we all live our lives under the watchful eye of God, who will hold us to account in this life or the next, must bear on our business dealings, our work ethic when no one is looking, and our life choices.

The political value of this relationship of the rule of law to economic prosperity is that it can unite all conservatives, as well as conservatives and libertarians. We all understand that, rather than bringing prosperity, government involvement in day-to-day business affairs is the route to economic stagnation and the loss of innovation and initiative. It is incompatible with the freedom and rugged individualism that has made America great. It also causes government to lose sight of its proper domestic role of promoting prosperity by upholding the rule of law.

The American people must reclaim these truths if we desire to return to prosperity. The well-being of our children and grandchildren depends on it.

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