

# Defining the rule of law in terms of liberty and equality

*The relationship between liberty, the individual freedom from social oppression and restrictions, and equality, which entails providing equal rights and opportunities to all segments of the population, is intricate and often disputed. Isabel Trujillo, professor in legal philosophy at the University of Palermo, Italy, explores this relationship in the context of the rule of law – the notion that all citizens and organisations are equally accountable for their actions and must abide by the same set of laws.*

The rule of law is generally conceived as the idea that all citizens living in a particular state or country must abide by the same set of rules and that no person – irrespective of their status, connections, or wealth – is above the law. This key notion serves as the foundation for all democratic societies, and today, it is considered a crucial value internationally. Laws that are applicable to everyone place some limits on arbitrary powers. The rule of law is a set of principles for ensuring a just and orderly society; in essence, it can be thought of as a ‘way of life’ within our society. The [World Justice Project Rule of Law Index](#) measures how the rule of law is adhered to, for example, whether there are adequate constraints on government powers, civil justice, and adherence to fundamental rights.

Two concepts that deeply influence the rule of law are liberty and equality. Liberty can be defined as the freedom to act freely in society, without being oppressed or restricted, whereas equality entails ensuring that all people are given equal rights, opportunities, and limitations, irrespective of their socio-economic backgrounds. Some might argue that liberty and equality are mutually exclusive as enforcing rules that are equal for everyone restricts the freedom of individuals to do as they wish. However, a specific balance between them is the core of the rule of law.

Isabel Trujillo, professor in legal philosophy at the University of Palermo, Italy, has been exploring the link between liberty and equality according to the law. In her recent paper, she offers an insightful

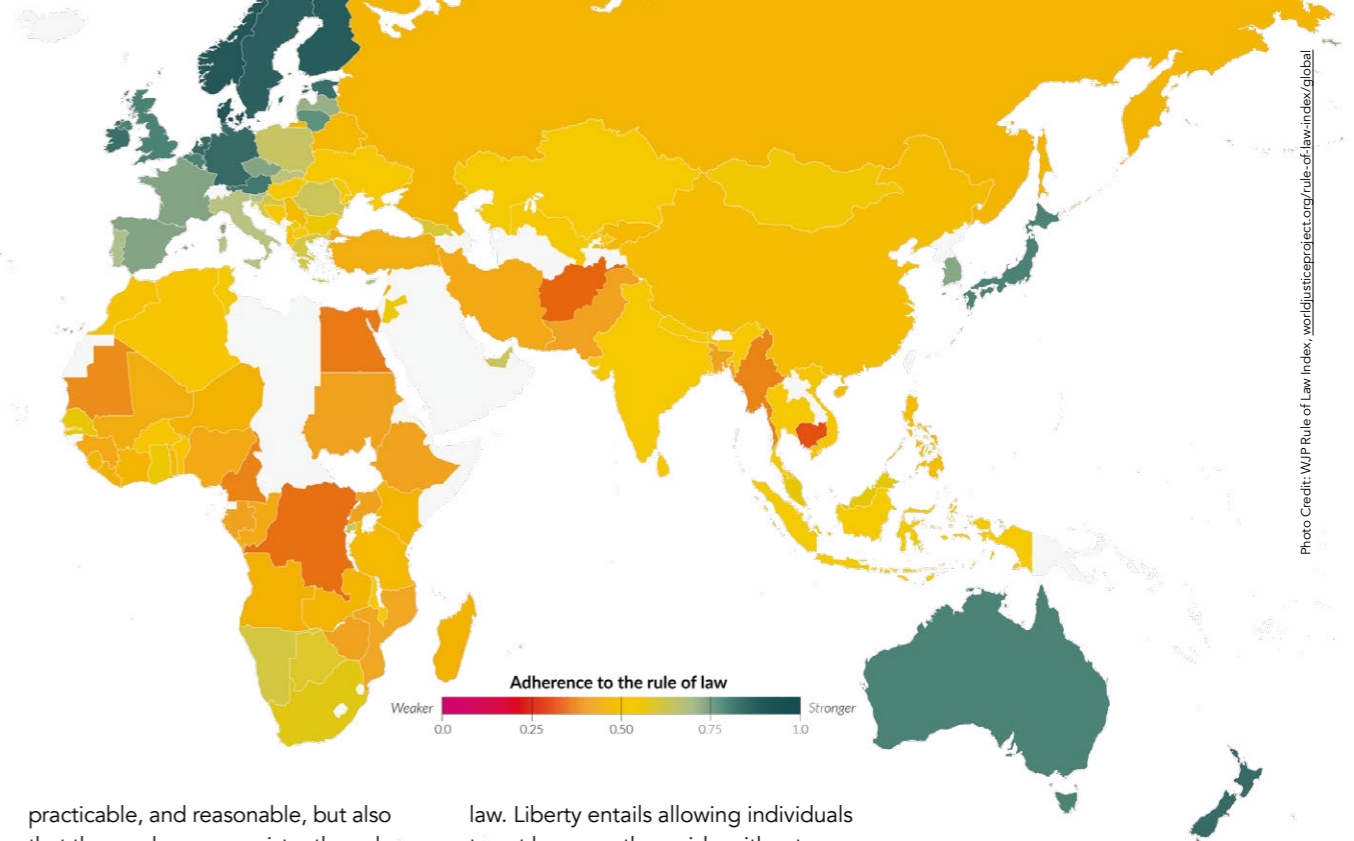
interpretation of the rule of law that entails striking a specific balance between liberty and equality to promote both accountability and participation in society.

## A VERTICAL VERSUS HORIZONTAL VIEW OF THE RULE OF LAW

Rather than being set in stone, the rule of law constantly evolves over time. A key account of the rule of law in continental Europe, for instance, is the so-called *Rechtsstaat*, an approach developed by legal scientists in Germany during the 19th century – designed to preserve people’s rights while simultaneously allowing judiciary powers to enforce laws. This account, like many others, tends to take a top-down and authoritative approach to law, suggesting that governments and judiciary powers can exercise power on citizens, who must abide by laws and behave in specific ways. This ‘vertical’ approach depicts citizens as subordinates, who can choose how to behave but must face the legal consequences of specific actions delineated by governments.

An alternative interpretation of the rule of law represents the relationship between authorities and citizens as reciprocal, rather than authoritative. This ‘horizontal’ approach emphasises the accountability and duties of authorities, suggesting that governments should also abide by specific requirements. Based on this perspective, individuals and authorities should cooperate, with the latter also complying to specific expectations and rules. For instance, governments should ensure that the rules they introduce are clear,

The World Justice Project Rule of Law Index measures how the rule of law is adhered to in different countries.



practicable, and reasonable, but also that these rules are consistently and impartially enforced.

This means that much like the other citizens, the authorities are also subordinate to the citizens and the laws, irrespective of who they are. The supremacy of law equalises governments and citizens and requires a reciprocal cooperation. Ultimately, the shared duty to obey the law creates

law. Liberty entails allowing individuals to act however they wish, without restricting their human rights and autonomy. Today’s Western legal and political contexts highlight liberty as a crucial right, with laws protecting freedom of expression, speech, conscience, and so on.

Equality, on the other hand, entails that human beings are all equal and should be equally accountable for their actions.

They specifically propose that liberty should be prioritised over equality, and that when people are free to make different choices, they will inevitably have unequal roles in society.

## LIBERTY, EQUALITY, OR BOTH?

When it comes to implementing laws, it is important to pinpoint to what extent and under what circumstances citizens should be considered equal. It is essential to consider the inequalities that are a reasonable consequence of individual liberties, and also that gross discriminations are forms of arbitrary dominations. Trujillo explores this intriguing dilemma, framing equality and liberty in the context of a horizontal view of the rule of law.

While a vertical view of the rule of law focuses on the equality in judicial treatment, suggesting that the law should treat citizens impartially and impersonally, a horizontal perspective places a greater emphasis on reciprocity. Reciprocity is essentially a form of equality, as it requires the mutual engagement of both authorities and citizens in the implementation of

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a sort of membership in which every individual owes loyalty to others.

## THE RELATIONSHIP BETWEEN LIBERTY AND EQUALITY

Trujillo’s recent paper specifically explores the relationship between liberty and equality within the context of this horizontal view of the rule of

The Universal Declaration of Human Rights, introduced in 1948, states that human beings are born free and have the same right to dignity and freedom. The relationship between equality and liberty has been the subject of much research. Certain theorists, known as libertarians, suggest that they are incompatible and mutually exclusive.



Reciprocity requires the mutual engagement of authorities and citizens in the implementation of laws.

laws and a solid awareness of what we owe each other.

Trujillo suggests that finding a desirable balance between equality and liberty is key to realising such a horizontal legal order, by encouraging cooperation and accountability among citizens, legal professionals, and authorities. This balance should ultimately ensure that the liberty and equality of citizens are protected, with laws regulating the interactions between free and equal individuals.

**EXTENDING THE RULE OF LAW INTERNATIONALLY**

Trujillo also explores the possibility of introducing a rule of law that applies internationally, or in other words, a rule of law that achieves legal control over international affairs. This could be achieved in several different ways. The first could be to introduce a requirement among the domestic laws of individual countries, stating that the state should also comply to international law.

Alternatively, extensions of the rule of law could be considered as international

rules that individual countries must abide to, such as international human rights laws. Finally, an international rule of law could be viewed as an adaptation of the principles of the rule of law to the international landscape.

Notably, Trujillo's horizontal version could also be applied to an international rule of law, promoting cooperation, accountability, and reciprocity among different states and other involved parties. Ultimately, she highlights the

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need to strike a good balance between liberty and equality, to foster positive, fair, and mutually accountable relationships between citizens and legal authorities.

**FOCUSING ON DIFFERENT LEGAL VIRTUES**

Instead of focusing on the prohibitions and orders prescribed by legal systems, Trujillo has been examining some of the legal virtues underpinning the rule of law. Judiciary authorities are expected to have

specific virtues, such as transparency, impartiality, independence, civility, procedural fairness, and offering clear explanations for judicial decisions.

In her work, Trujillo points out that these virtues are in many ways aligned with the vertical view of the rule of law, as they generally only apply to judges and reiterate a top-down approach. She suggests that these virtues combined with some other virtues that are more closely related to the law, such as reflexivity, fidelity to the law, and teamwork, are far more relevant to a horizontal view of the rule of law.

When talking about reflexivity, Trujillo points out that both legal professionals and common people can reinforce the rule of law. In addition, it is important for them to be faithful to the law, following legal rules fairly, rejecting privileges or legal forms of domination. Trujillo's final emphasis is on the importance of teamwork between judges, other lawyers, and legal institutions to ensure that laws are clearly conveyed and fairly enforced, while respecting the rights of all citizens.



# Behind the Research

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### Research Objectives

The research explores the interaction between liberty and equality in the context of the rule of law.

### Detail

**Bio**

Isabel Trujillo is Full Professor in legal philosophy at the University of Palermo, Italy. She has been director of the PhD programme in human rights and has initiated the PhD programme in gender studies. She has also worked as the director of the Doctoral School in Supranational and Domestic Law.

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### References

Trujillo, I, (2021) The legal balance between liberty and equality, *Annals*, 69(3), 675–689. [doi.org/10.51204/Anali\\_PFBU\\_21307A](https://doi.org/10.51204/Anali_PFBU_21307A)

### Personal Response

**Why is the relationship between liberty and equality so crucial to the rule of law?**

It is important because liberty and equality are usually conceived as opposing, whereas the rule of law – that represents the core idea and the main role of law – implies a specific balance of both, once considered that it aims at protecting liberty but in a context of coordination. This distinguishes the legal domain – under the governance of the rule of law – from politics, ideologies, and theoretical debates on justice.

