"But Pompey himself often operated above the law, and so did Julius Caesar and Antony and other powerful men. And so, in due course, they overawed the Senate, which was the political custodian of the rule of law, and turned the Roman republic into an empire, in which the emperor was above the rule of law (and eventually deified). That began Rome's long degeneration, in which the rule of law was destroyed altogether, and in Western and Central Europe the period we know as the Dark Ages began. Further East, in Byzantium, Roman law, as updated in the great law code of Justinian, continued. But there too the emperor and his state were above the law, thus ensuring in the long run political, economic, moral and military decadence."

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Editor's note:
With this article the Journal editorial page inaugurates an occasional series, running throughout the year, that will examine some of the most significant trends of the past 1,000 years.

LAYING DOWN THE LAW


The most important political development of the second millennium was the firm establishment, first in one or two countries, then in many, of the rule of law. Its acceptance and enforcement in any society is far more vital to the happiness of the majority than is even democracy itself. For democracy, without the rule of law to uphold the wishes of the electorate, is worthless, as the history of the past half-century has shown again and again in Africa, Latin America and Asia. The Soviet Union had, in theory, a wonderfully democratic constitution, but it lacked the rule of law entirely, and as a result Stalin was able to murder 30 million of its citizens and die safely in his bed, unarraigned and unpunished.

What do we mean by the rule of law? We mean a judicial regime in which everyone is equal before the law, and everyone--and every institution--is subject to it. You may ask: Was not the rule of law established in the Roman Republic even before the first millennium opened? Not so. It is true that Rome, building on Greek foundations, devised a system of law that on the whole operated effectively throughout her vast possessions. That was why Mediterranean society flourished. Using Roman legal procedures and law enforcement methods, Pompey, for instance, was able to put down maritime piracy for the first time in history.

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I date the emergence of a true and permanent rule of law to the 11th and 12th centuries. Two streams converged. Under Hildebrand, Pope Gregory VII, the Roman church fought vigorously to uphold its rights against both crowned princes and feudal barons. Pope Gregory saw the church's own courts, where canon law, itself derived from Roman law, operated, as a refuge for the physically weak and oppressed—not just the clergy themselves but women, children, the poor and the sick—against the rule of force and fear in an age when the armored knight dispensed what law there was. Gregory won some battles, lost others, and was finally driven from Rome; he thought he had failed and his dying words were said to have been, "I have loved justice and hated iniquity—therefore I die in exile." But his successors carried on the struggle until churches and monasteries, nunneries and all consecrated ground, at least, were free from the arbitrary sword.

At the same time, the English crown, building on quite a different legal tradition—the Germanic law codes of the Anglo-Saxon state—was moving by secular means toward the same rule of law. In 1154, the Angevin dynasty, the richest and most powerful in the West, took over the English crown in the person of Henry II. He restored order after a period of feudal anarchy and rapine, "when men said openly"—I quote the Anglo-Saxon Chronicle—"that Christ and his saints slept." He was determined to enforce the rule of law against all the powerful barons with their private armies. He used the flexible instrument of the old English common law, interpreted by royal judges according to general principles of justice and equity, but reinforced by some comprehensive statutes that Henry drew up and enforced.

His judges rode all over the country administering the system, and often the king went with them, to add authority to the royal courts. He was seldom out of the saddle in the cause of law. This medieval sheriff-in-chief (his sheriffs or shire-reeves were his tax collectors and local administrative officers, one of whose functions was to ensure that judges were protected and comfortably housed) should be seen as the true founder of the modern system of common law. By one of those ironies of history, he fell foul of the Hildebranidine reformers, who were trying to achieve roughly the same end by ecclesiastical means. The result was his quarrel with Archbishop Thomas à Becket of Canterbury, leading to Becket's murder in his own cathedral, Henry's repentance and public self-abasement, and an eventual compromise of the kind the English love.

The upshot, a generation later, was the Magna Carta (1215) in which church and secular forces came together to force the crown itself, in the person of King John, for the first time to submit publicly to the rule of law. This great charter, stating and protecting the
legal rights of many groups in society, is rightly classified as the first of the English Statutes of the Realm. It has been confirmed many times and is still valid law in England (and, it could be argued, in the U.S. also). Thereafter statutes flowed in unbroken succession, but the common law, judge-made according to first principles, flowed alongside it. And the High Court of Parliament evolved alongside both, as the supreme court of the country.

Here we have the origins of the permanent rule of law in the Anglo-Saxon tradition. But over the centuries, the power of the crown waxed and waned, and eventually Parliament had to fight hard to insist that the monarch too was subject to the law of the land. King Charles I proclaimed that "a king and a subject are two plain different things." In the 1640s, Parliament proved him wrong--a king, like all his subjects, was answerable to the courts--but it took a bloody civil war, and Charles's execution, to ram the point home. When the crown was restored in 1660, the new king ruled under what was emerging as a clear, albeit unwritten, constitution, in which the monarch was sovereign only "in Parliament." Early in the 18th century, when the Hanoverian dynasty was installed in Britain, they ruled not by divine right, as the Stuarts had claimed, but by vote of Parliament, another huge step toward the permanent rule of law.

Later in the century, the 13 American colonies, which had inherited English common and statutory law, but which had their own elected bodies, used English constitutional precedents to establish their right not just to tax themselves, but to declare independence. The parliamentary battles that had led up to the English Civil War in the 1640s were recorded verbatim in seven huge and famous tomes known as Rushworth's Collections. It was to these that the Founding Fathers turned when they needed to beat the British politicians and constitutional lawyers at their own game. "What we did," said Thomas Jefferson, "was with the help of Rushworth, whom we rummaged over for revolutionary precedents of those days." The American revolutionaries argued that they were the traditionalists, upholding the rule of law and the constitution, and that George III and his ministers were the innovators and usurpers.

Hence when the infant American republic came to draw up its constitution, the framers were very conscious that they were upholding and reinforcing a system of government "of laws, not men," and that their task was to establish, for all time and in written form, a constitution that guaranteed the rule of law. That is why they separated the powers into legislative, executive and judiciary, so that each balanced the other two, why they accorded such remarkable authority to federal judges, especially the Supreme Court, and why they inserted the impeachment provision, albeit in a mild and law-abiding form compared with its English parliamentary precedent, as a legislative check on both executive and judiciary.

This remarkable group of wise and highly literate men understood that for a political system based on the rule of law to succeed where Rome had failed, three conditions were necessary. First, the basic documents should be written in plain language, which all could understand and the young even learn by heart. That is the merit of the Declaration of Independence and of the Constitution. (And the great weakness of the foundation documents of the European Union, an arrangement its supporters hope will
blossom into the United States of Europe, is that they are all written in incomprehensible legal-bureaucratic jargon.

Second, it should be lawful to change the constitution from time to time but by a procedure that discouraged rash innovations—as James Madison put it, amending the constitution "should be possible but not easy." Third, it was essential to interpret the constitution in a conservative but enlightened manner. This point was admirably met during the long tenure of Chief Justice John Marshall, who was appointed by President John Adams in 1801, and who effectively created the legal framework within which free markets in goods and services could establish themselves and flourish. Hence the rule of law accommodated the most successful economic system the world had ever seen, but one which, despite its immense wealth and power, remained subject to the courts.

Thus, first in Britain then in the U.S., the rule of law was firmly and permanently established by the 19th century, During the last century of the millennium, attempts have been made to transplant the rule of law to other territories, within Europe and outside it, with varying degrees of success. In a civil society, in which men and women can be free to go about their business in peace and safety, equality before the law and one-man-one-vote go together. Both are needed, but young states find in practice that legal equality, enforced by courts which fear no one, is the substance, formal democracy often the mere shadow. So that is why I rate the rule of law the greatest public achievement of the second millennium.

What we have seen in the last century, first with the League of Nations, then with the United Nations (and its associated bodies) is the attempt to create a global rule of law. Like its predecessor—the rule of law in individual states—getting it in place and working is going to be a long, difficult and occasionally bloody struggle. Reversing aggression in the Falklands and Kuwait, ensuring Iraq does not deploy weapons of mass destruction—these, in their own way, are typical steps towards the end, like the Magna Carta or the English Civil War or the American Revolution. We will surely get there eventually, and the rule of law throughout our planet is likely to be among the achievements of the third millennium, as its establishment nationally was of the second.