

THE RULE OF LAW

BY PATRICIA D. CAFFERATA, ESQ.



BASIS OF THE AMERICAN RULE OF LAW

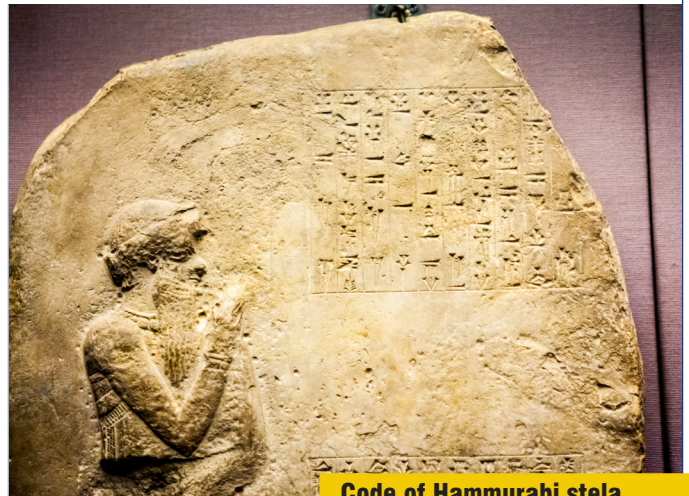
How long has the rule of law existed? Where did the rule originate? I looked to members of our own legal community and beyond to get some answers.

According to the State Bar of Nevada's President Gene Leverty, rules have been around for centuries. He pointed out that the earliest known code of laws was compiled by the king of the Babylonian Empire and is known as "The Code of Hammurabi" (1754 B.C.). This comprehensive code contains 282 rules regarding conduct. The rules address topics such as crime and punishment, contracts, and the rights of women, children and slaves, and many other matters.

Justice Mark Gibbons, on the other hand, addressed the roots of the rule of law in America. He stated that, "as the foundation for English common law, the Magna Carta is one of the earliest identifiable sources of the rule of law." The Magna Carta was signed in England in 1215. Centuries later, in 1787, when drafting the U.S. Constitution, the founding fathers of America "looked to Magna Carta when demanding liberty from English rule. In particular, the Fifth Amendment of the United States Constitution, which states that no person shall be deprived of life, liberty or property without due process of law, mirrors Clause 39 of the Magna Carta. This indicates that the rule of law largely originated with the Magna Carta."

Leverty agreed with Gibbons that the Magna Carta was the true beginning of the American rule of law. It contains a charter of liberties, and the U.S. Constitution contains the fundamental guarantee of people's rights and privileges. He concludes that the best example of the rule of law is the U.S. Constitution.

Other lawyers also agree. The late Archibald Cox, first Watergate Special Prosecutor and law professor, believed that the Constitution and rule of law go hand in hand. He stated that the U.S. Constitution documents the basic individual rights guaranteed against government oppression.



**Code of Hammurabi stela.
Babylonian laws (circa 1760 BC)**

In conclusion, while the concept of a rule of law is centuries old, the Constitution, the basis of the rule of law in the United States of America, is 229 years old.

Do you have some theories, ideas or opinions regarding the rule of law? Submit your thoughts on the rule of law and its meaning in 400 words or fewer. The best submissions will be published in *Nevada Lawyer* throughout the year. Please send your comments to me, the column editor, at pdcafferata1@sbcglobal.net. **NL**

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