How to Do a Dialogue on the Rule of Law

If you are a lawyer or judge interested in leading a Dialogue on the Rule of Law at a school in your community, follow these steps to help ensure a meaningful experience for you and the students.

**Step 1. Identify a school.**
Contact a school where you or your friends’ children are students, a school in your neighborhood, or a school where you know members of the teaching staff. Friends and co-workers might also recommend a school that would like to participate in the Dialogue program.

**Step 2. Set up an appointment for your visit.**
Contact the school principal or head of the relevant department (social studies, history, government, or civics). Explain the program to them and offer them a copy of the Dialogue materials. Ask if they or another teacher in their school would be willing to devote a class session to the Dialogue and schedule a day and time. You will want somewhere between 45 and 90 minutes to make the Dialogue a meaningful experience.

**Step 3. Discuss your visit with the teacher.**
Discuss the ages and experiences of the students. Determine what part of the Dialogue you would like to focus on and provide the teacher with a copy of the materials you wish to discuss. Also consult with the teacher about additional background materials that might help the students. Request that the teacher have name tags or tent cards printed with the students’ first names, and ask for any other equipment you might need (a blackboard or flip chart, for example).

**Step 4. Prepare the class for your visit.**
Ask the teacher to distribute any materials or assign any background readings you want the class to discuss at least one day before your visit.

**Step 5. Prepare yourself for your day in class.**
Know your subject. Review the Dialogue materials before you go to class and think of additional questions you think will help the students explore the issues raised by the Dialogue. Have a planned outline of where you would like the discussion to go, but be prepared to be flexible. Personalize the topic by thinking of experiences from your own practice that you can relate to the students.

**Step 6. Follow up after the Dialogue.**
Write a thank-you note to the teacher and the class. Make yourself available to answer questions the class may raise following the Dialogue.
The ABA Dialogue Program
The Dialogue on the Rule of Law is the sixth installment in the ABA Dialogue Program. The Dialogue Program provides lawyers and judges with the resources they need to engage high school students and community groups in discussion of fundamental American legal principles and civic traditions. Supreme Court Justice Anthony Kennedy introduced the first Dialogue program, the Dialogue on Freedom, at the 2002 ABA Midyear Meeting in Philadelphia. In 2003, the ABA introduced the Dialogue on Brown v. Board of Education to commemorate the 50th anniversary of the Supreme Court’s landmark ruling. In 2005, the Dialogue on the American Jury complemented the ABA’s American Jury Initiative. In 2006, the Dialogue on the Separation of Powers was introduced, followed by the Dialogue on Youth and Justice in 2007. For more information on these Dialogues, visit http://www.abanet.org/publiced/features/dialogues.html.

GETTING STARTED | PROGRAM OVERVIEW
The Dialogue on the Rule of Law is designed for use by lawyers, judges, and teachers in school classrooms and with community groups. The Dialogue offers numerous perspectives on the rule of law, giving you different options for different audiences or classrooms. Part I offers an opportunity for participants to consider what the rule of law means, looking at different components and definitions of the rule of law. Part II looks at the rule of law in history, focusing on the rule of law and revolutions, the rule of law and slavery, and the movement toward an international rule of law. Part III considers the rule of law in literature and movies, and provides different options for discussions with elementary, middle, and high school students, as well as adult audiences.

In consultation with the teacher or community group leader, decide which part of the Dialogue would be most interesting and appropriate for your group. You will find suggested questions throughout the Dialogue to help you begin your discussion of the topics the Dialogue introduces. We encourage you to be open to new directions your Dialogue may take as you and your group explore the many issues related to the rule of law.
The rule of law is a term that is often used but difficult to define. A frequently heard saying is that the rule of law means the government of law, not men. But what is meant by “a government of law, not men”? Aren’t laws made by men and women in their roles as legislators? Don’t men and women enforce the law as police officers or interpret the law as judges? And don’t all of us choose to follow, or not to follow, the law as we go about our daily lives? How does the rule of law exist independently from the people who make it, interpret it, and live it?

The easiest answer to these questions is that the rule of law cannot ever be entirely separate from the people who make up our government and our society. The rule of law is more of an ideal that we strive to achieve, but sometimes fail to live up to.

The idea of the rule of law has been around for a long time. Many societies, including our own, have developed institutions and procedures to try to make the rule of law a reality. These institutions and procedures have contributed to the definition of what makes up the rule of law and what is necessary to achieve it.

This section of the Dialogue offers quotations that define components of the rule of law as it has been understood at different times and in different contexts. It asks Dialogue participants to use these quotations in giving meaning to the concept of the rule of law. It then considers a working definition of the rule of law that has been proposed by the American Bar Association’s World Justice Project.
To make laws that man can not and will not obey, serves to bring all law into contempt. It is very important in a republic, that the people should respect the laws, for if we throw them to the winds, what becomes of civil government?

—Elizabeth Cady Stanton (1860)

It is very difficult for a nation to maintain the rule of law if its citizens do not respect the law. Assume that people in your community decided that they didn’t want to be bothered by traffic laws and began to ignore stop signs and traffic signals. The ability of police officers to enforce the laws would be overwhelmed and the streets of your community would quickly become a chaotic and dangerous place. The rule of law functions because most of us agree that it is important to observe the law, even if a police officer is not present to enforce it. Our agreement as citizens to obey the law to maintain our social order is sometimes described as an essential part of the social contract. This means that, in return for the benefits of social order, we agree to live according to certain laws and rules.

Elizabeth Cady Stanton’s quote also highlights another important aspect of the rule of law. People must be asked to obey laws that they can and will obey. If laws become impossible—or even difficult—to follow, the respect of citizens for the law will begin to erode.

There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny.

—U.S. Supreme Court Justice Felix Frankfurter, United States v. United Mine Workers (1947)

Judicial independence means that judges are independent from political pressures and influences when they make their decisions. An independent judiciary is essential to maintaining the rule of law. Judges should not be pressured by a political party, a private interest, or popular opinion when they are called upon to determine what the law requires. Keeping the judiciary independent of these influences ensures that everyone has a fair chance to make their case in court and that judges will be impartial in making their decisions. Judges also must explain their decisions in public written opinions, and their decisions can be appealed to a higher court for review. These elements of judicial decision-making ensure that judges remain accountable to the rule of law.

From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.


The Supreme Court’s opinion in Gideon v. Wainwright secured the right to counsel for indigent criminal defendants unable to afford legal assistance on their own. The decision in Gideon was grounded in the Sixth Amendment to the Constitution, which guarantees criminal defendants “the assistance of counsel.” At issue in Gideon was whether this guarantee of assistance required the state to provide legal counsel if a defendant could not afford to exercise his or her constitutional right.

In a criminal trial, the state has many resources at its disposal, including lawyers who prosecute the state’s case. As Justice Black notes, it is difficult to claim that a defendant has been treated with fairness and impartiality and has been given equal standing before the law if the defendant must face the state without a lawyer of his or her own.

I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.

—Martin Luther King, Jr., “Letter from Birmingham Jail” (1963)

The words of Martin Luther King from Birmingham Jail remind us that there is a distinction between law and justice. The law, even if it is uniformly applied, does not in itself guarantee a just result. The rule of law is intended to promote stability, but a society that operates under the rule of law must also remain vigilant to ensure the rule of law also serves the interests of justice. As this quote points out, the continued strength of the rule of law sometimes depends on individuals who are willing to risk punishment in pursuit of justice.

Neither laws nor the procedures used to create or implement them should be secret; and . . . the laws must not be arbitrary.


Judge Wood’s comments highlight the need for, first, an open and transparent system of making laws and, second, laws that are applied predictably and uniformly. Openness and transparency are essential. If people are unable to know and understand what the law is, they cannot be expected to follow it. At the same time, people deserve to know why a particular law has been passed and why they are being asked to obey it.

The rule of law also requires that people can expect predictable results from the legal system; this is what Judge Wood implies when she says that “the laws must not be arbitrary.” Predictable results mean that people who act in the same way can expect the law to treat them in the same way. If similar actions do not produce similar legal outcomes, people cannot use the law to guide their actions, and a “rule of law” does not exist.

When we [Americans] talk about the rule of law, we assume that we’re talking about a law that promotes freedom, that promotes justice, that promotes equality.

—U.S. Supreme Court Justice Anthony Kennedy, Interview with ABA President William Neukom (2007)

Justice Kennedy suggests that the rule of law has taken on special meaning for the people of the United States, based on our history of looking to the law to fulfill the promises of freedom, justice, and equality set forth in our nation’s founding documents. As will be further discussed in Part II of the Dialogue, our understanding of the rule of law in the United States did indeed develop around the belief that a primary purpose of the rule of law is the protection of certain basic rights. The United States Constitution represented the first effort by a nation to establish a written constitution of laws that would bind the government and guarantee particular rights to its people. Today, the rule of law is often linked to efforts to promote protection of human rights worldwide.
What does the rule of law mean?
After reading through the preceding quotes and comments on the rule of law, ask Dialogue participants to begin working out the meaning of the “rule of law.” In doing so, ask participants to think about these questions:

- Identify what components of the quotes and comments you think are essential to a definition of the rule of law, and which you think are optional or aspirational. Be prepared to explain your reasoning.
- Consider any important aspects of the rule of law that you do not see reflected in the quotes and comments. What are they?
- Form groups of four to five participants. Members of each group should use their individual understanding of the rule of law to create a shared group definition of the rule of law that all members of the group can agree upon.
- Share the group’s definitions with other participants in the Dialogue.
- Compare and discuss similarities and differences among the group definitions. Identify components of the rule of law that were shared by all the groups.

The rule of law and the ABA World Justice Project
In 2007, ABA President William Neukom established the World Justice Project. The World Justice Project recognizes the problem that “the ‘rule of law’ is a frequently used term that is rarely defined.” One goal of the World Justice Project is to develop a broadly accepted definition of the rule of law that could be used to measure adherence to the rule of law both in the United States and abroad. Based on the belief that the rule of law is a prerequisite for building societies that offer opportunity and equity to all their citizens, the World Justice Project proposes to use its definition of the rule of law to create an index that will measure how nations around the world are—or are not—following the rule of law.

The World Justice Project has proposed a working definition of the rule of law that comprises four principles:

1. A system of self-government in which all persons, including the government, are accountable under the law
2. A system based on fair, publicized, broadly understood and stable laws
3. A fair, robust, and accessible legal process in which rights and responsibilities based in law are evenly enforced
4. Diverse, competent, and independent lawyers and judges

Questions for Discussion

- The World Justice Project asserts that “the rule of law is the platform for communities of opportunity and equity and is essential to addressing the world’s most persistent and harmful ills.” Do you agree with this statement? Why or why not?
- Compare the World Justice Project’s definition of the rule of law to your own definitions of the rule of law that you created individually or in your small group. What similarities and differences do you see between the definitions? Are there elements of the World Justice Project definition that you would add to your own definition of the rule of law? Why or why not?
- Think about your own experiences or familiarity with the law in the United States. To what extent do you think the rule of law in the United States adheres to the World Justice Project’s definition of the rule of law? To what extent do you think that the United States fails to live up to this definition?
- The World Justice Project suggests that the four principles it has used to define the rule of law are universal principles. Do you think that these principles would be universally accepted by nations around the world? Why or why not? Do you think these principles should be universally accepted? If not, how would you modify this definition to reflect what you think are universal principles of the rule of law?
Our understanding of the rule of law today is the product of centuries of historical development. This section of the Dialogue looks at important historical movements, institutions, and events that have defined, and at times threatened, the rule of law. These include the role of the English and American revolutions in defining the rule of law, the challenges that slavery posed to the rule of law in the United States, and the movement toward an international rule of law in the years surrounding the Second World War.

Before studying and discussing these historical events, Dialogue participants should have an understanding of what the rule of law means. We recommend that you first work through Part I of the Dialogue or at least share with the participants a definition of the rule of law.

One of the questions that historical study of the rule of law raises is the extent to which the meaning of the rule of law has changed over time. Participants should thus be encouraged to consider how their understanding of the rule of law might have differed if they had lived at another time. Participants might also discuss how their understandings of the rule of law today compare to earlier understandings of the rule of law.

The Rule of Law and Revolution

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. . . . [W]henever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government.

—Declaration of Independence (1776)

It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

—Preamble to the Universal Declaration of Human Rights (1948)

Our understanding of the rule of law today was forged in a series of political revolutions in the seventeenth and eighteenth centuries. These revolutions transformed relationships between governments and the governed in England, the United States, and France. From these revolutions emerged the principle that the rule of law exists to protect certain fundamental human rights. If a government fails to uphold basic rights through the rule of law, it is the ultimate right of the people to rebel against the government.
England’s Glorious Revolution
Over the course of the seventeenth century, the people of England struggled—sometimes violently—to define the proper relationship between the monarch (the king or queen), Parliament (the English legislature), and the people. The English monarchy claimed that it ruled by divine right and was answerable only to God. Members of the English Parliament, including lawyer Edward Coke, disagreed. Coke argued that Magna Carta, the “Great Charter” signed by King John in 1215, had established the common law as the supreme authority in England, to which even the king was subject. In 1628, members of Parliament presented King Charles I with the Petition of Right, which accused the king—among other things—of imprisoning, trying, and executing English subjects without due process of law. The conflict between Parliament and the king ultimately resulted in the English Civil War and the beheading of King Charles in 1649.

King Charles’s son was restored to the throne as king in 1660. With the restoration of the monarchy, the struggle between the king and Parliament resumed. In 1688, a group of powerful English leaders invited Prince William of Orange, who was married to Princess Mary, the daughter of the English king, to take over the English throne from Mary’s father, King James II. James had suspended Parliament and had repealed several important laws without Parliament’s consent. Prince William landed in England with a force of 15,000 troops and was greeted with enthusiastic support. King James fled into exile. England’s “Glorious Revolution” had secured a new monarch.

In 1689, Parliament presented the new King William and Queen Mary with a Bill of Rights, described as “An Act Declaring the Rights and Liberties of the Subject.” The Bill of Rights detailed King James’s abuses of the law and established that Parliament, not the king, had ultimate authority to make or repeal laws. The Bill of Rights also asserted “certain ancient rights and liberties” of English subjects, including

• The right to petition the king and his government
• Freedom of speech and debate in Parliament
• Rights of English subjects to keep arms for their defense
• Rights to trial by jury
• Prohibitions on excessive bail, excessive fines, and cruel and unusual punishments

The American Revolution
Less than one hundred years after the Glorious Revolution, England faced another revolution in its American colonies. Once again, charges against the British king, this time George III, were at the heart of the colonists’ complaints. But the charges against the king in the Declaration of Independence were really against the British government, including Parliament, which the king represented. In the decades preceding the American Revolution, Parliament had enacted a series of laws that imposed various taxes on the colonies. It had also sent troops to the colonies to enforce those laws.

The American colonists viewed themselves as British subjects, with the same rights as persons living in England. During the many years of colonial experience that preceded the Revolution, the colonies had formed legislative assemblies that represented local colonial interests and governed much of life within the colonies. The colonies did not have representatives in the British Parliament. When Parliament began imposing taxes on the colonies to fund British wars and the defense of Britain’s colonial frontiers, the colonists objected to what they saw as taxation without representation in Parliament. Several colonial assemblies passed resolutions against Parliament’s actions.

A good example of these resolutions is the “Resolves of the Pennsylvania Assembly on the Stamp Act,” passed in 1765. The Stamp Act was a highly unpopular tax on every piece of paper printed in the colonies. In passing the Stamp Act, Parliament had also provided that violations of the law were to be tried in courts of admiralty, which did not use the system of trial by jury typically used in English and colonial courts. The Resolves of the Pennsylvania Assembly asserted that

• The inhabitants of Pennsylvania were “entitled to all the Liberties, Rights and Privileges of his Majesty’s Subjects in Great-Britain.”
• Every British subject had “the inherent Birth-right, and indubitable Privilege . . . to be taxed only by his own Consent, or that of his legal Representatives.”
• The removal of trial by jury for violations of the Stamp Act was “highly dangerous to the Liberties of his Majesty’s American Subjects, contrary to Magna Charta, the great Charter and Fountain of English Liberty, and destructive of one of their most darling and acknowledged Rights, that of Trials by Juries.”

The Pennsylvania Resolves were based on key aspects of the understanding of the rule of law that had developed in England from Magna Carta through the Glorious Revolution. First, British subjects were protected by specific liberties, rights, and privileges. Second, laws were valid only with the consent of the people who were governed by them, either by direct consent or by the consent
of the people's representatives. Third, trial by jury—judgment by one's peers, not by officers of the state—stood as an important defense of the individual subject's liberty.

The British Parliament repealed the Stamp Act in 1766. The same year, however, it issued the Declaratory Act of 1766. This act stated "that the said colonies and plantations in America have been, are, and of right ought to be, subordinate unto, and dependent upon the imperial crown and Parliament of Great Britain." It further declared "that all resolutions, votes, orders, and proceedings, in any of the said colonies or plantations, whereby the power and authority of the parliament of Great Britain, to make laws and statutes as aforesaid, is denied, or drawn into question, are, and are hereby declared to be, utterly null and void."

The impasse between the British government, which claimed as its right the power to rule the American colonies, and colonists who chafed at laws passed without their consent ultimately resulted in outright rebellion against British rule. The document that ultimately defined the new United States government—the Constitution—created a new rule of law that emphasized limits on government power. With ratification of the Bill of Rights (the first ten amendments to the Constitution) in 1791, Congress and the states clarified the role of this new legal order in protecting a core set of fundamental individual rights.

The rule of law defined by the Constitution in many ways grew from the British rule of law that the Glorious Revolution had established. The Glorious Revolution had removed power from a single individual, the monarch, and vested it in a representative legislative body, the Parliament. The American colonial experience had demonstrated, however, that an all powerful legislative body could be as oppressive as an absolute monarch.

The Constitution attempts to control the government's power in two important ways. First, it gives only limited powers to the national government. As made clear in the Tenth Amendment, all powers not delegated to the national government are reserved to state governments and to the people, the ultimate source of power in the U.S. constitutional system. Second, it separates power among the three branches of government: the legislature (Congress), the executive (President), and the judiciary (Courts). The legislative supremacy of the British Parliament is thus tempered in the U.S. system by giving the executive and judicial branches checks and balances on the legislature's power. Congress, in turn, is given checks and balances on executive and judicial power.

When the Constitution went to the states for ratification, the lack of a Bill of Rights raised immediate concerns. Here too, the influence of the colonists' experience as British subjects is apparent. We saw in the Pennsylvania Resolves how central the notion of key "liberties, rights, and privileges" had been to the colonists' understanding of their status. Throughout British history, major conflicts between the king and his subjects had produced assertions of the subjects' rights: from the rights asserted by the barons in Magna Carta to the English Bill of Rights presented to William and Mary when they assumed the British throne. Securing an American Bill of Rights, which defined key liberties on which the government could not encroach, became a condition of ratification for many of the states. And here too, recent colonial experiences led to an expansion of the rights American colonists had held as British subjects. The First Amendment's expansive rights to free speech and the freedom of religion and the Fourth Amendment's rights against unreasonable government searches and seizures all respond to abuses Americans had experienced as British colonial subjects.

The rights-centered revolution in the rule of law that began in England and took firmer shape in its American colonies was not confined to the Anglo-American world. In 1789, the year that the Bill of Rights was drafted in America, a revolution began in France. From that revolution came a "Declaration of the Rights of Man and of the Citizen" that became the foundation for a new system of government in France. By the twentieth century, the Universal Declaration of Human Rights implicitly recognized a right to revolution if a nation failed to protect human rights with the rule of law.

**Questions for Discussion**

1. A key feature of the U.S. Constitution's separation of powers is the creation of an independent judiciary. This means that, once federal judges have been appointed to office, they are free from the influence of Congress or the President when they make judicial decisions. Why do you think an independent judiciary would be important in protecting individual rights from government intrusion?

2. Trial by a jury of one's peers was a prominent concern of both Britons and Americans in their respective bills of rights. Many modern democracies, however, do not include trial by jury as a feature of their legal systems. Why would trial by jury be an important feature under a rule of law that emphasizes limited government power and fundamental individual rights? How would our legal system be different if we did not have trial by jury?

3. The experiences of England, the United States, and France, and the language of the Universal Declaration of Human Rights, suggests that there is a right of the people to rebel against a government that fails to protect their basic rights. Revolution is, of course, a drastic remedy—the Universal Declaration describes it as "a last resort." What conditions do you think would be necessary to trigger a right to revolution?
Slavery and the Rule of Law

The slave, to remain a slave, must be made sensible, that there is no appeal from his master; that his power is in no instance, usurped; but is conferred by the laws of man at least, if not by the law of God.

—Judge Thomas Ruffin, State v. Mann, Supreme Court of North Carolina, 1830

Part I of the Dialogue noted that “the rule of law is more of an ideal that we strive to achieve, but sometimes fail to live up to.” This is certainly true of the American experience. Nowhere has the disparity between ideal and reality been more explicit than in the history of slavery in the United States, especially as it pertains to the gap between law and justice.

The same Constitution that proclaimed the consent of “we the people” to a government of limited powers that protected fundamental rights of the people also provided for the legal existence of slavery in the new United States. The slave-holding states quickly developed legal codes that placed slaves largely outside the protections of the law. The federal government also passed laws that protected the interests of slave-owners against their slaves.

This section of the Dialogue considers the history of slavery in the United States. This history raises fundamental questions about the rule of law in the United States. Before the end of slavery, what claim did the United States have to be a nation defined by the rule of law? When the institution of slavery was abolished following the Civil War, to what extent were the protections of the rule of law extended to all American citizens? When can we fairly say that the United States truly became a nation defined by the rule of law?

The Constitution

Article I, Section 9, of the Constitution provides that Congress could not prohibit “the migration or importation of such persons as any of the states . . . shall think proper to admit” until 1808. This meant that the slave trade would be guaranteed legal protection until 1808. Article I, Section 2 provides that representatives to Congress shall be apportioned by “adding to the whole number of free persons, including those bound to serve for a term of years, and excluding Indians not taxed, three fifths of all other persons.” The “all other persons” who were counted as three-fifths of a person were slaves. The fugitive slave clause in Article IV, Section 2, provides that “no person held to service or labour in one state . . . escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.” In other words, a slave could not gain freedom by escaping into a free state. Even if a state did not recognize slavery within its boundaries, it was obligated to return a fugitive slave escaping from a state where slavery was legal.

These provisions of the Constitution reflect a compromise between slave-holding and free states at the time of our nation’s founding that set the stage for decades of struggle. This struggle ultimately culminated in the outbreak of civil war in 1861. By permitting the continued existence of slavery in the newly formed United States, these provisions also encouraged the formation of two separate systems of law. One, available to free persons, carried with it the liberties and legal protections guaranteed by the Bill of Rights. The second, designed to manage and control the fates of those who were enslaved, created a tyrannical system that far surpassed anything experienced by the nation’s colonial forebears under British rule.
**State v. Mann**

State v. Mann, a decision of the North Carolina Supreme Court, is one of the clearest statements of the legal condition of slaves in the years preceding the Civil War. In 1828, a slave named Lydia, living in North Carolina, was hired out by her master for one year to John Mann. During her time with Mann, Lydia did something to offend him and he began to punish her. Lydia tried to run off, but Mann shot and wounded her. Mann was tried for assault and battery. The jury was told it should convict him if it found that his punishment was cruel and out of proportion to her offense. The jury convicted Mann and he appealed to the North Carolina Supreme Court.

The decision that resulted from Mann’s appeal starkly defined the position of the slave under the law. “The power of the master must be absolute,” the court ruled, “to render the submission of the slave perfect.” The law and the courts had no place interfering in the relations between master and slave; there was no crime, in other words, when a master beat or wounded his slave. Mann had been wrongly convicted by the jury at trial.

The decision in State v. Mann has drawn the attention of many historians, in part because of the opinion of Judge Thomas Ruffin. Judge Ruffin prefaced his decision by describing “the struggle ... in the Judge's own breast between the feelings of the man, and the duty of the magistrate.” In this statement, some have seen a conflict between an individual, troubled morality, and a professional duty to apply the law. Yet Judge Ruffin was not an opponent of slavery. His opinion is also prefaced by a statement that cases involving slavery were impossible to understand “but where institutions similar to our own, exist and are thoroughly understood.” The institution of slavery required absolute dominion of the master as “essential to the value of slaves as property, to the security of the master, and the public tranquility, greatly dependent upon [the slaves'] subordination.” By establishing the master’s absolute power over the slave, the decision in State v. Mann effectively removed those in slavery from the protection of the law.

**The Fugitive Slave Acts**

The fugitive slave clause in Article IV of the Constitution was given support by two federal laws. The first, passed by Congress in 1793, was “An Act respecting Fugitives from Justice, and Persons Escaping from the Service of Their Masters” (1 Stat. 302). This Act provided that the master of an escaped slave could seize or arrest the slave and take the slave before a federal judge or local magistrate. Upon receiving either an affidavit (a written statement) or oral testimony stating that the slave owed service under the laws of the state from which the slave fled, the judge or magistrate was obliged to issue a certificate to the master. This certificate was sufficient for the master to claim and remove the slave.

As abolitionist sentiment against slavery began to grow in the northern United States, lawyers devised a strategy that asserted the power of the states to provide fugitive slaves with enhanced legal protections. Based on the presumption that any person in a free state is in fact free, abolitionists argued that hearings regarding the status of fugitive slaves in free states should provide what a free person would regard as standard procedural protections.

The issue came to a head in the case of *Prigg v. Pennsylvania*, decided by the Supreme Court in 1842. Pennsylvania had enacted procedural safeguards that created obstacles to the recovery of fugitive slaves under the 1793 Act. It required a warrant before a fugitive could be seized or arrested. It made the oath of the claimed owner or any interested party inadmissible as evidence on the fugitive’s status. It allowed the fugitive to delay a hearing, at the claimed owner’s expense, if the fugitive was not yet prepared for trial. Pennsylvania law also defined a kidnapping offense against anyone who forcibly removed a black resident from the state with the intention of selling him or her into slavery.

Edward Prigg, an agent for a Maryland slave owner, broke Pennsylvania law by seizing one Margaret Morgan (who was acknowledged to be an escaped slave) without following the procedures in the Pennsylvania law and forcibly removing her back to Maryland. He appealed to the U.S. Supreme Court, claiming that the Pennsylvania law was a violation of the fugitive slave clause in Article IV of the Constitution.

The Supreme Court held that the Pennsylvania law was an unconstitutional violation of the right to retrieve a fugitive slave protected in Article IV of the Constitution and further defined by the 1793 Fugitive Slave Act. Justice Joseph Story, in the opinion for the Court, declared that the object of Article IV was “to secure to the citizens of the slave-holding states the complete right and title of ownership in their slaves, as property, in every state in the Union into which they might escape from the state where they were held in servitude.” Justice Story also argued that “the full recognition of this right and title was indispensable to the security of this species of property in all the slave-holding states; and, indeed, was so vital to the preservation of their domestic interests and institutions, that it cannot be doubted, that it constituted a fundamental article, without the adoption of which the Union could not have been formed.” The recognition of slavery, in other words, and the unquestioned right of slave owners to their property, was fundamental to the formation of the United States. This right could not be interfered with by a state, even if that state did not recognize slavery within its territory.

Eight years after the *Prigg* decision, Congress further strengthened the right to retrieve fugitive slaves as part of the Compromise of 1850. The Compromise was intended to appease southern states concerned, among other things, about the admission of California to the union as a free state. The 1850 Fugitive Slave Act was designed to override any resistance in the free states of the North to returning fugitive slaves. Its provisions included summary procedures for establishing the status of a fugitive slave (including a denial of testimony by the accused slave) and a financial “bonus” for commissioners who returned a fugitive slave to the owner. The act also provided for steep penalties against anyone who aided or gave shelter to a fugitive slave.

The Fugitive Slave Act imperiled not only fugitive slaves. Free blacks in the North, if accused of being fugitive slaves, would be denied the opportunity to testify if they were seized. Thousands of free black residents migrated to Canada in response to the Act. Canada also became the primary destination of fugitive slaves escaping through the Underground Railroad.
1. Until the Civil War, the courts generally refused to provide basic procedural and legal protections to slaves. Do you think this hastened or delayed the end of slavery? Do you think these rulings were true to the language of the Constitution? Why or why not?

2. Consider the strategy of abolitionists in the North to weaken the Constitution's fugitive slave law. How do you think their understanding of the rule of law informed their efforts to combat slavery?

3. In *Prigg v. Pennsylvania*, Justice Story claimed that the Constitution's protection of slavery was necessary to the formation of the United States. Do you think that the founders made an acceptable compromise by protecting slavery? Can we say that, notwithstanding its protection of slavery, the Constitution still established a valid rule of law for the United States? Why or why not?

4. Consider the history of slavery in the United States. Applying your definition of the rule of law to this history, when do you think the United States became a nation under the rule of law?
An International Rule of Law?

The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched.

—Justice Robert Jackson, Chief Counsel for the United States, Opening Statement before the International Military Tribunal, Nuremberg, Germany, November 21, 1945

From 1939, when German Nazi forces invaded Poland, to 1945, when the Allied forces (led by the United States, the United Kingdom, and the Soviet Union) defeated the Axis forces of Germany, Italy, and Japan, the world witnessed the most destructive war it has ever seen. The toll from the Second World War, including both military and civilian casualties, is estimated at between 50 and 70 million dead. More than six million of these casualties were European Jews murdered in death camps run by the Nazis in an effort to annihilate Europe's Jewish population. Other victims of Nazi atrocities included the Roma (Gypsies), civilians in occupied Poland (an estimated 1.9 million civilian Poles were killed), Soviet prisoners of war, political opponents of Nazism, persons with mental and physical disabilities, and homosexual men.

Well before the outbreak of the Second World War, many nations had participated in efforts to define an international law of war. Examples of these efforts include:

- The Hague Convention of 1907 on the Laws and Customs of War on Land. This convention defined, among other things, basic conditions for treating prisoners of war and regulations on what constitute acceptable uses of force in hostilities (e.g., forbidding the use of poison, forbidding weapons designed to cause unnecessary suffering, prohibiting the pillage of captured territory).
- The Kellogg-Briand Pact of 1928. This agreement was intended to end the use of war “as an instrument of national policy” (sometimes described as a “war of aggression”). It stated that nations who signed the agreement would seek changes in their relations with each other “only by pacific means.”
- The 1929 Geneva Convention Relative to the Treatment of Prisoners of War. This convention defined essential measures to ensure the humane treatment of prisoners of war.

These agreements demonstrate that the international community was working toward an international law of war in the first decades of the twentieth century. Some of the essentials of this effort included a prohibition on the use of war to promote national policy, a requirement for the humane treatment of prisoners of war, and a prohibition against the use of unnecessary force against civilians in enemy or captured territories. A major problem with these agreements, however, was the question of enforcement. Before the end of the Second World War, no nation or national leaders had been tried by the international community for violating the law of war. If there was no expectation of legal consequences for violating these agreements, could the terms of these agreements rise to the status of law?

What Is International Law?

International law has two primary sources: customary law and international agreements.

Customary law is a law that is generally and consistently accepted among nations, and which nations feel obliged to uphold. In 1900, for example, the U.S. Supreme Court recognized that as a rule of international customary law, coastal fishing vessels were exempt from capture as a prize of war (The Paquete Habana, 175 U.S. 677). Certain norms rise to the level of jus cogens (“compelling law”) and cannot be violated or ignored by any country. Examples of jus cogens today include prohibitions on genocide and slavery.

International agreements include formal treaties or conventions among two or more nations. If the terms of an international agreement become generally accepted by nations, they can become customary law.

The international law of war is made up of both customary law and international agreements. Its main concerns include protection and treatment of civilian populations during times of war, protection of important cultural and historic sites, and humane treatment of prisoners of war.

The question of enforcement is a constant issue in international law. Nations have the power, acting individually or in concert with other nations, to punish a nation that violates international law by imposing economic or military sanctions.

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Once the Second World War had begun, the leaders of Allied nations began to discuss what they would do if they were victorious. In October 1943, the Allied leaders issued the Moscow Declaration. In that declaration, U.S. President Franklin D. Roosevelt, United Kingdom Prime Minister Winston Churchill, and Soviet Premier Joseph Stalin vowed that German officers and members of the Nazi party who had participated in atrocities, massacres, and mass executions would be “pursued[.] . . . to the uttermost ends of the earth” and brought to justice. The Moscow Declaration also warned that “German criminals whose offenses have no particular geographical localization”—leaders of the Nazi party, that is, whose actions had widespread effects—would be punished by joint decision of the Allied governments.

After the unconditional surrender of Nazi Germany in 1945, the Allied leaders met to determine the fate of Nazi leaders. Some, including Prime Minister Churchill of the United Kingdom and U.S. Treasury Secretary Henry Morgenthau, advocated summary execution (execution without trial) of captured leaders. Others in the United States government urged public trials. The Allies ultimately agreed upon trial. In August 1945, the governments of the United States, United Kingdom, Soviet Union, and France issued a charter establishing an International Military Tribunal for the trial and punishment of major Nazi German war criminals.

The charter for the International Military Tribunal established three categories of crimes:

1. **Crimes Against Peace** These crimes included waging or conspiring to wage a war of aggression or a war in violation of international treaties.

2. **War Crimes** These crimes included violations of “the laws or customs of war.” Examples included murdering civilian populations or forcing them into slave labor, murder, or ill-treatment of prisoners of war, and acts of destruction not justified by military necessity.

3. **Crimes Against Humanity** These crimes included murder, extermination, deportation, and enslavement of civilian populations, and persecutions on political, religious, or racial grounds. The charter expressly stated that these crimes would be tried and punished regardless of whether they had violated the domestic law of the country where they were perpetrated.

In his opening statement before the International Military Tribunal in Nuremberg, Germany, Justice Robert Jackson of the United States (serving as the U.S. Chief Counsel for the tribunal) acknowledged that he was opening “the first trial in history for crimes against the peace of the world.” He also addressed “some general considerations which may affect the credit of this trial in the eyes of the world.” First, both prosecution and judgment would be “by victor nations over vanquished foes.” But the worldwide scope of the war that Germany had initiated left few neutral nations. The accused were “the first war leaders of a defeated nation to be prosecuted in the name of the law.” But they were also, Justice Jackson noted, the first to be given a chance “to plead for their lives in the name of the law.”

Twenty-two accused German war criminals were tried before the International Military Tribunal in Nuremberg. Nineteen were convicted and three were acquitted. Of the nineteen convicted criminals, twelve were sentenced to death, three to life imprisonment, and four to prison terms of ten to twenty years.

The precedent established by the Nuremberg trials has been unevenly applied in the decades since the Second World War. Massacres of civilians in places such as Cambodia (an estimated 1.5 million casualties under the Khmer Rouge regime in the 1970s) and Uganda (an estimated 300,000 victims of dictator Idi Amin) have gone unpunished by the international community. In recent years, however, the international community has demonstrated a greater willingness to intervene in humanitarian catastrophes. The Security Council of the United Nations has established international criminal tribunals to try perpetrators of human rights violations in the former Yugoslavia and Rwanda. The United Nations has also established an International Criminal Court to serve as a court of last resort (when, for example, a national court is unwilling or unable to prosecute a crime) for crimes of major concern to the international community. These crimes include aggression, serious war crimes, genocide, and other crimes against humanity. The treaty establishing the International Criminal Court has been signed by 105 countries. Several key nations in the international community—including China, India, Russia, and the United States—have not yet agreed to ratify (formally accept) the treaty.

**Questions for Discussion**

1. Consider the three categories of crimes for which Nazi leaders were tried at Nuremberg. Do you think the Allies had an adequate legal basis for putting Nazi leaders on trial for these crimes, or did the trials simply represent “victor’s justice”?

2. What message about the rule of law do you think the Allies sent by putting Nazi leaders on trial instead of summarily executing them?

3. One purpose of the International Criminal Court is to provide a regular forum for the trial of major violations of international law. As noted above, several major world powers—including the United States, China, India, and Russia—have not agreed to accept the treaty establishing the International Criminal Court. Why do you think a nation, especially one with significant power in the world, might be reluctant to accept the jurisdiction of the International Criminal Court? What objections might a nation have to the idea of an international rule of law?
Concepts of law, justice, and the rules of fair play influence more than our legal system. They are central to our understanding of who we are and how we make sense of the world. Not surprisingly, these concepts often appear in the movies we watch and the books we read.

Books and movies can take the abstract concept of the rule of law and make it concrete, examining how the rule of law succeeds, is threatened, or fails in different circumstances. There are many works of literature and movies that explore themes of law and justice. We have chosen a few examples here that offer opportunities to discuss aspects of the rule of law at different age levels.

Both Alice's Adventures in Wonderland and Holes are appropriate for late elementary-school audiences (Grades 4–6) and up. Holes and Harry Potter: Order of the Phoenix can be used with middle-school audiences (Grades 6–8) and up, while Harry Potter and High Noon are appropriate for either high school or adult audiences (although the Harry Potter series was written for juvenile audiences, it also has a wide adult readership). The descriptions of Holes and Harry Potter below correspond to the novels. Both have been adapted into movies, and you may also wish to screen selected scenes for your Dialogue participants.

Participants should have a basic understanding of what the rule of law means, especially older students and adults who are discussing Holes, Harry Potter, or High Noon. Either work through Part I of the Dialogue or share and briefly discuss the World Justice Project’s working definition of the rule of law (also in Part I). The questions for younger audiences on Alice’s Adventures in Wonderland are designed to help introduce them to basic concepts of fair play and the rule of law.

The Rule of Law in Wonderland

References to the law are a recurring motif in Lewis Carroll’s Alice’s Adventures in Wonderland (New York: The Modern Library, 2002). In Chapter III, the Mouse shares his “long tale” of a lawsuit with Fury; the Queen of Hearts arbitrarily—and ineffectively—orders the summary execution of all who offend her; and the book closes in Chapters XI and XII with the trial of the Knave for stealing tarts.

As with everything in Wonderland, nothing is quite right about the law. Much of the fun in Alice’s Adventures is the book’s creation of a nonsensical world, loosely tethered to our sense of the way things should be. By figuring out what is wrong with the law in Wonderland, Dialogue participants can gain a sense of how the law should function in the “real world.”
**Mouse’s “Long Tale” of the Law**

In Chapter III of Alice’s Adventures, Mouse offers the “long and sad tale” of his history. This tale takes the form of a poem, printed in most editions of the book as a long and curving mouse’s tail. It tells of Mouse’s encounter with Fury, who suggests that they both “go to law” for a trial for something to do: “Fury said to a mouse, That he met in the house, ‘Let us both go to law: I will prosecute you.’” When Mouse notes that a trial would be a waste of time without judge or jury, Fury responds: “I’ll be judge, I’ll be jury . . . I’ll try the whole cause, and condemn you to death.” Mouse’s tale ends when he notices that Alice has become distracted by a knot in his tail.

**The Queen’s Croquet Game**

In Chapters VIII and IX, Alice, having successfully made her way into the Queen of Hearts’ croquet ground, plays a game of croquet with the Queen and her courtiers. It is a novel game of croquet, with hedgehogs serving as balls, live flamingos as mallets, and the Queen’s soldiers, made to “double themselves up and stand on their hands and feet,” as arches.

The Queen of Hearts is easily angered, and just as easily condemns those who offend her with a scream of “Off with their heads!” The game quickly disintegrates into chaos:

The players all played at once without waiting for turns, quarrelling all the while, and fighting for the hedgehogs; and in a very short time the Queen was in a furious passion, and went stamping about, and shouting “Off with his head!” or “Off with her head!” about once in a minute.

Despite the Queen’s orders, no one ever seems to be executed.

**Who Stole the Tarts?**

Alice’s adventures in Wonderland end in Chapters XI and XII with the trial of the Knave of Hearts, who is accused of stealing tarts. The accusation flows from the familiar nursery rhyme, recited in court by the White Rabbit:

The Queen of Hearts, she made some tarts,  
All on a summer day:  
The Knave of Hearts, he stole those tarts,  
And took them quite away!

The King of Hearts serves as judge (Alice recognizes him as judge “because of his great wig”), with the Queen at his side. Twelve creatures from Wonderland serve as the jurors.

The Knave’s trial is highly irregular. The King calls upon the jurors to consider their verdict before they have heard any evidence; the Mad Hatter is called as a witness and commanded to testify, lest he be executed on the spot; the King tells the jury what he thinks is important evidence; and an unsigned letter, not in the Knave’s handwriting, is taken as proof of the Knave’s guilt (the King tells the jury that the Knave “must have imitated someone else’s hand,” and that the lack of a signature proves that the Knave “must have meant some mischief, or else [he]’d have signed [his] name like an honest man”). The trial ends with the Queen of Hearts ordering the jury to give their sentence first, then the verdict. Neither sentence nor verdict is delivered, however, as Alice’s adventures abruptly end when she wakes with her head on her sister’s lap.

**Stage a Trial**

The trial of the Knave in Alice’s Adventures in Wonderland, the trial of Stanley Yelnats in Holes, and the trial of Harry Potter in Harry Potter and the Order of the Phoenix all could easily be staged as mock trials in a classroom. For ideas on staging a mock trial, see Putting on Mock Trials, available at www.ababooks.org (Product Code No. 2350206).

**Questions for Discussion:** Alice’s Adventures

Review the scenes described in Chapters Three, Eight, Nine, Eleven, and Twelve (you might also choose to focus on just one or two of these scenes, especially for young participants). Use the following to guide discussion:

1. Read the Mouse’s tale of his lawsuit with Fury with the students. The Mouse makes reference to a prosecutor, judge, and jury in his tale.
   - Discuss with students the role that these figures play in a typical trial (a prosecutor decides whether to try someone for a crime, a judge determines what law should apply and makes sure that the parties play by the rules, and a jury decides whether the facts presented at trial violate the law as defined by the judge).
   - Why would it be unfair for one person to play all three of these roles? Why would it be especially unfair for a party to a lawsuit to play any of these roles?

2. How would you describe the Queen’s behavior during the game of croquet? Does her behavior make the other players pay better attention to the rules of the game? Why does no one seem to listen to the Queen? What might make the players pay better attention to her and to the rules of their croquet game?

3. Look closely at Chapter Twelve (“Alice’s Evidence”). Focus especially on Alice’s testimony and the discussion of the unsigned letter that is introduced as evidence against the Knave. Is the Knave given a fair trial in this scene? If not, what is wrong with the trial? What would have to change to give the Knave a fair trial?
Holes and the Rule of Law

In Holes (New York: Yearling, 1998), the rule of law does little to protect Stanley Yelnats when he is accused of stealing the shoes of famous baseball player Clyde “Sweet Feet” Livingston. Found guilty of a crime he swears he did not commit, Stanley is sent to Camp Green Lake, a juvenile detention facility where boys spend their days digging holes five feet wide by five feet deep to improve their character. Green Lake, once the largest lake in Texas, is now nothing more than a dried out lakebed. The camp is run by the Warden, who uses a combination of terror and rewards to keep the boys digging their holes.

Two Injustices

Stanley’s Trial

Walking home from school one day, Stanley Yelnats is hit on the head by a pair of sneakers as he walks out from under a freeway overpass (Chapter 6). Stanley’s father, an inventor, is working on a way to recycle old sneakers and Stanley takes the free sneakers that have fallen from the sky as “some kind of a sign.” He breaks into a run to get home more quickly and is picked up by a patrol car. The policeman makes a call on his radio and learns that the sneakers had been stolen from a display at a homeless shelter, where they were going to be auctioned off at a charity event to help the homeless. Stanley is arrested. Stanley has a hearing before a judge, but his parents can’t afford a lawyer. “You don’t need a lawyer,” Stanley’s mother advises. “Just tell the truth.”

At Stanley’s hearing, baseball star Clyde “Sweet Feet” Livingston testifies that the sneakers were his, and that he had donated them to the homeless shelter. He testifies that “he couldn’t imagine what kind of horrible person would steal from homeless children.” Stanley takes his mother’s advice and tells the truth, but no one believes that they fell from the sky. The judge, calling Stanley’s crime “despicable,” offers a choice of time served at Camp Green Lake or in jail.

The Murder of Sam

Holes also tells the story of how Green Lake came to be a dried out lakebed (Chapters 23, 25, and 26). More than one hundred years ago, the lake was full of water, with peach trees lining its shore. Miss Katherine Barlow was the town’s school teacher. Katherine strikes up a friendship with Sam, the onion man, a black farmer who lives across the lake and comes into town with his donkey, Mary Lou, to sell his onions. Katherine hires Sam to do some repair projects around the school, and their friendship deepens. Katherine and Sam eventually kiss, and are seen by a townsman who tells the townspeople what she saw.

A mob descends on the school and begins tearing it down. Katherine runs to the sheriff for help. He refuses, stating that the kiss between Katherine and Sam violated a law against interracial relationships, and that he is getting ready for a hanging. Sam and Katherine try to flee across the lake in a boat, but are pursued by townspeople who shoot and kill Sam. Katherine is taken back to town, where she sees the donkey, Mary Lou, also shot dead on the shore. Three days after Sam’s shooting, Katherine shoots the sheriff in his office. She applies a fresh coat of lipstick and gives the dead sheriff a kiss. For the next twenty years, she terrorizes the West as the outlaw Kissin’ Kate Barlow. From the date of Sam’s murder, not a drop of rain falls in Green Lake, and the lake eventually disappears.

Questions for Discussion: Holes

1. Stanley’s trial is described in Chapter 6 and the story of Sam and Katherine Barlow is told in Chapters 23, 25, and 26. Participants should, however, have read and be familiar with the whole novel. Use the following to guide your discussion.

   a. Stanley has his day in court and is given the opportunity to tell his story to the judge, but he is still wrongfully convicted of a crime. Do you think that Stanley was given a fair trial? Why or why not? What does a fair trial include? What do you think of Stanley’s mother’s advice that Stanley does not need a lawyer if he just tells the truth?

   b. When Katherine Barlow seeks help from the sheriff, he responds with indifference and inaction, stating that Katherine and Sam have themselves violated the law. Should a law enforcement officer have the right to decide whether the law is enforced? What is required from a law enforcement officer to uphold the rule of law? If the sheriff had acted differently, how might the outcome of Sam and Katherine’s story have changed?

   c. Review Chapter 47. How does the arrival of the lawyer, Ms. Morengo, and the Texas Attorney General at Camp Green Lake change the fate of Stanley and his friend, Zero? Do you think access to lawyers is a necessary part of maintaining the rule of law? If so, what should be done when someone accused of a crime is unable to afford a lawyer?

   d. Stanley is given a hearing and is able to tell his story, but an unjust result still occurs. Does this mean that there has been a breakdown in the rule of law? Is there a difference between law and justice? Is there anything that can be done to lessen the harm that results when the rule of law fails to secure justice?
The Rule of Law in the Wizarding World: Harry Potter and the Order of the Phoenix

In her Harry Potter series, author J. K. Rowling creates an alternate “wizarding” world that roughly parallels the world of Muggles (humans without magical powers). Wizard adults have professional lives, wizard children attend school, wizard needs are supplied by wizard shops, and wizard finances are handled at the Gringotts Wizarding Bank. The wizarding world also has its own government, centered in the Ministry of Magic, which promulgates laws and regulations and tries and punishes wizards who violate the law.

The rule of law emerges as an important theme of the fifth installation in the series, Harry Potter and the Order of the Phoenix (New York: Scholastic Press, 2003). Early in the novel, Harry makes unauthorized use of magic by performing the Patronus Charm to chase away dementors who have descended on the suburban Muggle community of Little Whinging, where Harry spends summers with his Aunt Petunia, Uncle Vernon, and cousin Dudley. Harry uses the charm in defense of himself and Dudley, whose lives are threatened by the dementors. Within minutes of summoning his Patronus, Harry is served with notices from the Improper Use of Magic Office ordering him to appear at a disciplinary hearing at the Ministry of Magic.

The rule of law theme continues through the novel, as the students and faculty at the Hogwarts School of Witchcraft and Wizardry struggle under the tyrannical rule of Dolores Umbridge. Initially appointed as teacher of Defense Against the Dark Arts, Professor Umbridge is soon given the title of High Inquisitor and serves as the Ministry of Magic's representative at the school. As the High Inquisitor, she single-handedly issues educational decrees that gradually limit student and faculty privileges at Hogwarts. She also audits the courses of other faculty to review their teaching and determine their continued employment at the school. Professor Umbridge assumes full powers when she is named Head of Hogwarts to replace Professor Dumbledore, who confesses to plotting against the Minister of Magic, Cornelius Fudge, and leaves the school.

The Trial of Harry Potter

Threatened by the rumored return of the Dark Lord, Voldemort, the Ministry of Magic begins to take desperate measures to suppress any discussion of Voldemort. A key target of the Ministry’s efforts is Harry Potter. At the end of his fourth year at Hogwarts (Harry Potter and the Goblet of Fire), Harry witnessed Lord Voldemort ordering the murder of Harry’s schoolmate, Cedric Diggory. Harry’s unauthorized use of the Patronus Charm to save himself and his cousin gives the Ministry an opportunity to remove him from Hogwarts and isolate him from the wizarding community.

Harry’s unauthorized use of magic occurs in Chapter One (“Dudley Demented”) of Harry Potter and the Order of the Phoenix. The details of Harry’s disciplinary hearing at the Ministry of Magic are laid out in Chapter Two (“A Peck of Owls”) and Chapters Seven and Eight (“The Ministry of Magic” and “The Hearing”). Two of the “peck of owls” who appear in Chapter Two bear messages from the Improper Use of Magic Office. The first message announces that Harry has been summarily expelled from Hogwarts and will have his wand destroyed by Ministry of Magic officials. The second message announces a revised decision, allowing Harry to retain his wand until a disciplinary hearing at the Ministry, at which his continued enrollment at Hogwarts will also be decided.

On the day of his hearing, Harry arrives with Mr. Weasley at the Ministry of Magic only to learn that the Ministry has at the last moment changed the time and venue of his hearing (Chapter Seven). He is whisked down to Courtroom Ten, which he recognizes as the courtroom where he had seen serious criminals tried while visiting a memory in Dumbledore’s Pensieve. He is made to enter the hearing alone, but Dumbledore appears behind him as a witness on his behalf (Chapter Eight). Dumbledore also serves as Harry’s advocate, reminding the tribunal that the Wizengamot Charter of Rights gives the accused the right to present witnesses on his behalf. He also calls the tribunal’s attention to clause seven of the Decree for the Reasonable Restriction of Underage Sorcery, which provides that “magic may be used before Muggles in exceptional circumstances, . . . includ[ing] situations that threaten the life of the wizard or witch himself, or witches, wizards, or Muggles present at the time.” Harry secures a majority of votes in his favor from the tribunal, and is cleared of the charges against him.

Questions for Discussion: Harry Potter

Review Chapters One, Two, Seven, and Eight. Use the following to guide discussion.

1. Why does Harry summon his Patronus in Chapter One? Could he have done anything else to drive away the dementors?

2. What takes place in Chapter Two between the first message from the Improper Use of Magic Office and the second message? What does Dumbledore disclose at the trial about the changes in the Ministry’s messages?

3. Why do you think the Ministry suddenly changes the time and venue of Harry’s hearing?

4. What is the significance of the procedures and rules that Dumbledore brings to the tribunal’s attention? What sort of rights seem available to wizards in a regular Ministry hearing? Why are these rights important to secure a fair trial?

5. Based on the evidence of Harry’s hearing, how stable is the rule of law in the wizarding world? What threatens or undermines the rule of law?

6. Identify and discuss other passages in the book that reflect on the strength or weakness of the rule of law in the wizarding world (e.g., the Ministry's relationship with the media, the powers given to Professor Umbridge at Hogwarts, the application of the law to other magical creatures, etc.).
High Noon: *The American Western and the Rule of Law*

With their “lawmen” and “outlaws,” American movie Westerns can be a powerful dramatic device to explore the rule of law and related themes—the frontier and civilization, law and order, peace or violence, vigilante justice or due process of law, self-preservation and civic responsibility. These basic rule-of-law themes work well in classic Westerns because these films provide a mythical time and place, set on the frontier in an American past, where law’s rule is often weak, precarious, or unsettled. The risks are high and so are the stakes, both for the individual and the community.

Perhaps the best movie Western for considering the theme of the rule of law is *High Noon* (1952), starring Gary Cooper as Will Kane and Grace Kelly as his wife, Amy. *High Noon* is set in the small Western town of Hadleyville, circa 1880s. All of the action of the 85-minute movie takes place virtually in real time—just about two hours pass from beginning to end. Clocks show the approach to “high noon” and the movie’s climactic scene. The mood is suspenseful, enhanced by the playing of the theme song, the ballad “Do Not Forsake Me.” Kane’s wife, a pacifist Quaker, has persuaded him to resign as marshal and begin a new life with her, as shopkeepers in a new town. They are married in the opening scene. Then, shocking news breaks. Frank Miller, a convicted killer whose gang terrorized Hadleyville five years before, has just been inexplicably pardoned by the territorial authorities “up north.” Three members of his gang wait for him to arrive in town on the noon train. They are intent on seeking vengeance. Rather than leave town, Marshal Kane decides he must face Miller, knowing it is life or death. He seeks his wife’s understanding and the community’s support. He hopes they will not forsake him.

**At the Church: The Community and the Rule of Law**

Roughly halfway through the movie (Artisan DVD chapter 14), a pivotal scene (7-1/2 minutes) occurs when Kane interrupts Sunday morning service at the town church to inform parishioners of Miller’s imminent return. This prompts a vigorous discussion of their predicament. Town leader Jonas Henderson facilitates: “If there’s a difference of opinion, then let everyone have a say—but let’s do it like grown-up people.” Many voices are heard. One man asks if it’s true that “there’s personal trouble” between the marshal and Miller. Another avers: “It ain’t [Kane’s] trouble. It’s ours.” Another man confronts Kane, wondering why he hasn’t done anything about the “three killers walking the streets bold as brass….Why didn’t you put them in jail where they ought to be?” The marshal responds, “They haven’t done anything. There’s no law against them sitting on a bench at the depot.” Henderson gets the last word. He acknowledges the great debt the town owes Kane, enabling it to become “decent” rather than “just another wide open town.” Henderson concurs that Miller is “our problem, not his.” He concludes, however, that “shooting and killing in the streets,” no matter what the reason, will do the town no good. It would be best for all, even Kane himself, Henderson argues, if he leaves. His reasoning prevails. The parishioners guiltily hang their heads. Kane mutters “thanks” and departs, forsaken again.

**Questions for Discussion: High Noon**

1. Screen the church scene. Use the following to guide discussion:
   1. What do we learn about the people in the church from their discussion?
   2. Do you think Miller is simply Marshal Kane’s personal problem or that of the town’s? Why does this matter?
   3. What is the difference between a “decent” town and one that is “wide open”? Does the town being “decent” depend upon maintaining the rule of law? Why?
   4. Why didn’t the marshal arrest Miller’s gang members? How might he have done so? What would the consequences have been? Would it have been consistent with the rule of law?
   5. Why does Henderson argue that “shooting and killing” would be detrimental to the town, especially for its economic viability in the eyes of investors “up north”? Do you agree with his assessment?
   6. Do you think Henderson really believes his “hunch” that “there won’t be any trouble” if only Kane leaves town before Miller arrives?
   7. How important is the support of the community to sustaining the rule of law? Why? What does this say about the rule of law, its strengths, its limits, and its precariousness? Its dependence on human action and force of will?
One of the hallmarks of a democracy is its citizens’ willingness to express, defend, and perhaps reexamine their own opinions, while being respectful of the views of others. If you plan on leading a Dialogue in a high school classroom, here are some ground rules for ensuring a civil conversation:

• Show respect for the views expressed by others, even if you strongly disagree.
• Be brief in your comments so that all who wish to speak have a chance to express their views.
• Direct your comments to the group as a whole, rather than to any one individual.
• Don’t let disagreements or conflicting views become personal. Name-calling and shouting are not acceptable ways of conversing with others.
• Let others express their views without interruption. Your Dialogue leader will try to give everyone a chance to speak or respond to someone else’s comments.
• Remember that a frank exchange of views can be fruitful, so long as you observe the rules of civil conversation.

Note to Dialogue Leaders
Before beginning your Dialogue, distribute these ground rules and review them with the students.

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