



Just Keep Stirring

What *Finding Dory* and Whole Foods Have in Common with the Rule of Law

By Agathon Fric

When Pixar's animated film *Finding Nemo* premiered in 2003, a forgetful blue reef fish voiced by Ellen DeGeneres stole the show.

"Just keep swimming, just keep swimming," Dory sung in her characteristically chipper tone. Her devil-may-care attitude endeared her to audiences and other fish in the sea. But Dory's short-term memory loss did not give her much choice. For her, repetition meant survival.

Recent political developments have caused some to question whether our own survival is at stake. Such doomsday predictions are probably overstated, but the Rule of Law's fate is much less certain. Protecting it starts by understanding what the Rule of Law means in 2017.

The World Justice Project tries to quantify the Rule of Law by measuring its outcomes. The result – the Rule of Law Index¹ – is an insightful, if imperfect, tool. But defining the Rule of Law by its outcomes is a bit like defining a thunderstorm by the rainbow it produces: it tells us why the Rule of Law is desirable, but it doesn't tell us what the Rule of Law *is*.

Then, there's the U.S. Army's preferred definition:

a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles

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of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.²

This is as good and comprehensive a description as one could hope to find for a concept that eludes easy characterization. However, it too lacks explanatory power. How is it that this magical principle prevails in some countries and not others? What is the Rule of Law's special sauce?

The answer, it turns out, tastes a lot like satay. Let me explain.

In Ancient Greece, Aristotle emphasized that the emergence of the city-state was an *organic* development, born out of man's *natural* inclination toward civic existence in partnership with his neighbors. The Rule of Law, like the city from which it arose, also developed organically throughout history, the product of hard-fought battles for individual rights against some distant, tyrannical king.

If the Rule of Law were a commodity, it would be sold at Whole Foods and come in a jar of all-natural peanut butter. The peanuts are people; the jar, our state. Unlike the stuff you used to eat as a kid, real peanut butter sepa-

rates over time: its natural oil floats to the top, causing the peanut butter to dry out and harden. This layer of oil – this *liquid gold* – is to peanuts what the Rule of Law is to society. Each binds the other and gives it its stickiness.

When it's all mixed together, it's easy to forget that the oil exists and to take it for granted. When it's working well, it's invisible to the naked eye. Without it, the stuff in the jar goes chunky; it ceases to spread smoothly.

But natural peanut butter can taste bland. So, companies change the flavor by adding sugar to the mix and inventing new, no-stir formulations. We call them “leaders.” The result might taste better. It might even look better. However, by changing its flavor and appearance, we artificially extend the jar's shelf life. We mask the telltale signs that our peanut butter has gone rancid. We deprive our bodies of the natural food – whole food – that they need to survive.

And so it is with our democracy. The process of separation is not the problem. Like the city and the Rule of Law, the separation is natural; it occurs only as quickly as we allow it to. The separation is a symptom of our failure to vigorously and regularly stir Rule of Law norms back into our society.

We all have a role to play. For example, you can:

- film a Rule of Law-themed video and share it with your friends on social media;
- visit classrooms to teach schoolchildren about the importance of civic participation;
- write letters to your state and federal representatives when they do something you don't agree with;
- start your own Rule of Law blog;

- volunteer as a wayfinder or legal information provider at your local courthouse;
- speak for those who don't have a voice;
- write a letter to the editor of your local newspaper; and/or
- file a request for government information under the Freedom of Information Act.³

The Rule of Law needs crusaders, stirrers, and taste testers – people who believe in its value and who seek to bring its all-natural benefits to more people around the world. We cannot afford to sit around and wait for others to do the heavy lifting. We must have the fortitude to stir our own peanut butter and to make sure that as many people can taste it as want to.

I don't use this nutty metaphor to be cute. I use it to illustrate the central point of the Rule of Law and the lessons of our modern times: the Rule of Law, like love, is in the *doing*. It is a verb, not a noun. It requires consistent, positive, and proactive steps to keep the people well-lubricated with Rule of Law norms, to remind them of what the Rule of Law has done for them lately – securing political accountability, fundamental rights, order, and security.

Our survival, like Dory's, depends on repetition: “Just keep stirring, just keep stirring.” It won't be easy.

But it helps if you use a chipper tone. ■

1. *WJP Rule of Law Index 2016*, World Justice Project, <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2016> (last visited Dec. 20, 2017).

2. Conor Friedersdorf, *America Fails the 'Rule of Law' Test*, *The Atlantic*, Jul. 11, 2014, <https://www.theatlantic.com/politics/archive/2014/07/how-america-fails-the-rule-of-law-test/374274>.

3. *Freedom of Information Act*, U.S. Department of Justice, <https://www.foia.gov> (last visited Dec. 20, 2017).



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