



## Restoring the Rule of Law

BY RICHARD W. RAHN

GOVERNMENT OFFICIALS SHOULD LIVE WITHIN THE RULES  
THEY IMPOSE ON THE PUBLIC

Last week, the Obama Justice Department declined to press charges against former Internal Revenue Service official Lois Lerner — even though there was overwhelming evidence that she had targeted conservative groups and may have been complicit in destroying her emails. She also waived her Fifth Amendment privilege by proclaiming her innocence before a congressional committee and then refused to answer questions. It is possible that for some unknown reason Ms. Lerner's case should have been dropped, but to many it appeared that once again President Obama and Attorney General Eric Holder were applying the rule of law selectively.

Concealing information from Congress is considered a major offense, punishable by fines and significant jail time. The evidence seems to be overwhelming that some in the IRS and the Department of Justice have concealed information from Congress. In fact, Mr. Holder was cited for contempt of Congress for withholding information. The rule of law breaks down when those charged with enforcing the law are, in fact, violators of it.

We now know that former Secretary of State Hillary Rodham Clinton withheld at least some of her emails from Congress despite pledging full cooperation back in 2012 regarding the Benghazi disaster, and she failed to use U.S. government email

servers as she was required to do. Again, these are serious crimes that someone less influential than Mrs. Clinton might well go to jail for — yet she most likely will be given a pass. Mr. Obama has taken many actions contrary to the rule of law. One can go on the Internet to obtain long lists of these alleged violations, many of which are now being litigated. One of the cases that the courts have already settled was Mr. Obama's outrageous claim that he, not Congress, would decide when it was in session. By making the false claim that Congress was not in session, he improperly made "recess" appointments to the National Labor Relations Board and others, which the courts then reversed, along with decisions made by the board when it was composed of illegal members.

Sustained economic progress is near impossible without the rule of law. Historically, people have been governed by arbitrary decisions of rulers or by laws that are readily understood, equally applicable to all (including the lawmakers), and only changed by a formal and open process. The concept of the rule of law goes back at least to ancient Greece. In England, the Magna Carta (1215 A.D.), established that the rule of law was superior to that of "divine right of kings." It is no coincidence that the industrial revolution and modern commerce developed first in the Netherlands and England, both of which were governed by the rule of law rather than the arbitrary decisions of a king or religious ruler. In order to protect the rule of law, the American Founders explicitly designed a system to limit the power of the executive and even that of the legislature and the courts.

It is no surprise that those countries in the world whose citizens enjoy the highest per capita incomes (with the exception of some petro-states) largely operate under the rule of law, particularly when it comes to economic issues, rather than the arbitrary decisions of a dictator.

The economic importance of the rule of law can be understood by looking at the highly publicized Argentine government bond default in 2001. Argentina sold more than \$100 billion of government bonds in the years immediately preceding 2001 under New York law and

using New York financial institutions. The reason it used New York rather than Argentine law is that purchasers of the bonds had much more faith in the rule of law in New York than the rule of law in Argentina. Thus, using New York law, Argentina could get a much better price for its bonds, saving its taxpayers many billions of dollars. The Argentine government has been trying to renege on its promise to use New York law but, fortunately, the U.S. courts have not let them do so.

The rule of law has been undermined in the United States by the fact that not all are treated equally. Politicians have increasingly exempted and declined to prosecute themselves and other government employees for violations of the law that apply to the rest of us. One of the solutions would be to greatly expand the right of private action against individual government employees and elected officials when their actions cause harm to individuals or groups. Tea Party and other groups should be allowed to sue Ms. Lerner and other miscreants at the IRS, without the government protecting them under the doctrine of sovereign immunity.

Finally, the rule of law has been undermined by the enormous increase in the number of laws allowing people in government to target almost anyone. There are more than 4,600 federal felonies now on the books, which many, if not most, citizens have unknowingly violated because many of these laws defy common sense. If the Ten Commandments were good enough for the Lord, than a limit of a hundred felonies ought to be good enough for the federal government.

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