INTRODUCTION

In the Western civilizations for the last two thousand years, the rule of law has not only been considered to transcend the authority of the individual, but is also inextricably linked to the good of a society as whole. An ancient ideal, the rule of law has been regarded as a system of rules inherent in the natural order and the concept continues to be an important normative ideal, a condition sine-qua-non for any democracy. Interdependent with democracy, respect for the rule of law and the rule of law are quintessentially linked with a society where the rule of law is equally applied to everyone, and is perceived to benefit the society as whole.

While some have argued that the concept of the rule of law has become so vague and all encompassing as to lose much of its meaning, political thinkers, legal scholars, and politicians alike agree on its significance, and to the fundamental importance of the concept. Development of the rule of law remains one of the main priorities in nascent democracies and developing nations. Historically, the move from oligarchy to democracy has been associated with the development of the rule of law. Open governance and fair application of the rule of law are closely linked together. Societies that are more open, with a vibrant commons, freedom of the press, and a system of checks and balances, have strong rule of law. A culture for respect for the rule of law must invariably be joined to an open and fair government, where the law is perceived to be fair, and those governed not only have access to an impartial system of justice but also to a check on government. Furthermore, a culture and respect for the rule of law, coupled with an impartial judiciary, encourages an environment that is appropriate for the development of Non-Profit Organizations, enriched public discourse, and the unimpeded exchange of ideas, while at the same time providing the stability required for economic development.

Although the philosophical and scholarly discourse about the rule of law and what the concept encompasses dates back to Ancient Greece, the meaning of the rule of law has changed, and grown to encompass not only procedure, but also (and to an increasing degree) substance. Although such meaning must invariably be dependent on inherently cultural values, a general measure of the respect for the rule of law must encompass the law's success and enforceability. If values of the people are not reflected in the rule of law, then respect and enforceability must also suffer. As a result, in order to create a
culture of respect for the rule of law, disconnect between popular beliefs and the rule of law must be minimized to assure that the law is perceived to benefit the society as whole.

**HISTORICAL VIEWS OF THE RULE OF LAW: END GOALS AND INSTITUTIONS**

Despite the extensive history of the concept of *the rule of law*, there is little consensus among legal and political scholars with respect to a working definition. While there is considerable scholarly discourse on the rule of law within the U.S., a substantial part of the discourse regards mainly promoting the rule of law in nascent democracies, or developing nations. Legal and political scholars regard the concept from an ideological perspective, focusing on and defining the concept according to the principles and goals of the rule of law. Alternatively, practitioners in the field regard the concept of rule of law with regard to the institutions necessary for developing and implementing the rule of law in developing countries. As a result of the aforementioned dual approach, two main categories of definitions emerge: ‘end purposes’ definitions and ‘institutional attributes’ definitions.¹

In discussing the different definitions of the concept of rule of law, Rachel Kleinfeld specifies five separate and generally accepted end-goals, each important to supporting the rule of law when implemented²:

1. A government bound by the law.
2. Equality for all before the law.
3. Stable law and order.
4. Predictable and efficient judicial rulings.
5. Respect for human rights.

Kleinfeld also outlines three primary institutions that are commonly considered necessary for a state to uphold the rule of law:

1. A comprehensive body of laws.
2. Well-functioning courts.
3. Effective law enforcement agencies.

In discussing these different definitional approaches to the rule of law, Kleinfeld touches on the fundamental difference in the development of these two complementary categories of concepts. Despite their development, Kleinfeld regards achievement of both end and institutional goals necessary for the rule of law. The aforementioned categories provide a good framework for defining the rule of law in the context of a proactive policy to strengthen it. In focusing on an ends-based approach to the rule of law, it is important to remember that each of these characteristics is somewhat independent of the others, and

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that a developing nation may find pursuit of these ends to conflict in the short term. However, attention to all five is necessary to ensure a healthy respect for the rule of law.

Equality before the law (equal application of the law) and a fair and impartial judiciary are two main related concepts that stand out as apparent in several definitions, both ‘end purposes’ definitions and ‘institutional attributes’ definitions. These concepts, while slightly different, are fundamentally dependent on each other, as equality before the law can only be applied through the use of a fair and impartial judiciary and the judiciary cannot be fair and impartial if it does not apply the law equally. With the exception of the definition based on Respect for Human Rights, all ‘end goal’ definitions are related to equality before the law, and an impartial judiciary, making these concepts the cornerstone of the rule of law.

A Government Bound by Law

Not only has the concept of a government bound by law been discussed since ancient times, but early accounts of the theory that good governance requires law to transcend the will of the powerful few also date back to Ancient Greece. Aristotle determined that in a state governed by law “God and reason alone rule,” whereas “passion perverts the minds of rulers, even if they are the best of men.” In order to prevent arbitrariness, the state must be subordinate to the rule of law. Though, in the course of history, this model fell out of favor for an extended period, during the rise of the monarchical rule, it was reintroduced by the Magna Carta, where the concept of government subordinate to law became a matter of right of English subjects codified in The English Bill of Rights. A sine-qua-non condition in and of itself, a government bound by rule of law is incontestably necessary to the creation of the rule of law, as well as to the administration of the rule of law in a fair and non-arbitrary manner. A government bound by the law must abide by the same pre-written rules as the members of society, insuring non-arbitrariness, and creating a stable environment, where capricious behavior such as the taking of private property, without compensation by absolute governments is avoided. Binding a government to rule by law is also an issue of judicial independence and a check on governmental power.

Equality For All Before The Law

The concept of equality before the law also stems from Ancient Greek principles. Solon created “equal laws for the noble and the base” in Athens. Following the same pattern as the concept of government bound by law, the idea of equality before the law fell out of favor during centuries of hierarchical monarchy, and was then revived during the Enlightenment and the French Revolution. An essential element of democracy, equality before the law ensures that all citizens, irrespective of class or social status, are judged according to the same laws and standards. Equality before the law is not only necessary

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4 See Rachel Kleinfeld. Competing Definitions of the Rule of Law, quoting The English Bill of Rights, 1689.
for fairness in a society, but is needed in order to avoid and combat corruption. If laws and standards are applied equally to all people, bribery and corruption are less possible.

Through equality under the rule of law, a society can ensure that the rights of marginalized groups, such as women and racial and religious minorities, will be upheld. Furthermore, equality under the law is what ensures democracy by holding government officials, and the more powerful, to the same standard and keeping them from monopolizing the legal system and creating an oligarchy. Equality under the law empowers the populace, thus helping create a society where the rule of law is perceived to benefit the society as a whole and creates a stable socio-economic environment, by limiting the arbitrariness of the legal system. However, in spite of the fundamental connection between equality before the law and democracy, in actual practice, equality can only be enforced through a judicial system that is impartial, fair, strong and independent, for richer members of society can otherwise bribe officials and justices to escape punishment or restrictions enforced by the law.

**Stable Law and Order**

Although the stability of law and order have not been part of the original philosophical basis of the rule of law, the importance of a society free of wanton crime or random violence has been reiterated countless times throughout history and in the philosophy of civic leadership. However, although originally a reaction to the brutality of the English civil war, the reasons for pursuing this goal have undergone a substantial shift. Many endorsements of stable societies stem from the pragmatic view that lawfulness is simply in a state's best interest, to be achieved by whatever means necessary (including oppressive law enforcement). The Enlightenment saw a shift away from this interpretation, identifying law and order as a social pact citizens engage in for mutual security. Hobbes concluded that people sought the protection offered by the state to escape lives otherwise “nasty, brutish, and short.” Similarly, Locke concluded that people would only give up absolute liberty and subject themselves to the rules of a government for the “mutual preservation of their lives, liberties, and estates, which I call by the general name, property.”

Law and order are essential for the protection of society and its laws and for the enforcement of laws. Stable law and order is also a crucial element for a state in protecting the rights of minorities as well as its ability to right wrongs and punish crimes. If laws are to be considered anything more than a philosophical discourse, or even remotely relevant, stable and effective law and order must be achieved by the state, or else enforcement would be left to the citizens, creating a society closely resembling anarchy. Rachel Kleinfeld points out that at present, most citizens within weak states regard law and order as the foremost good of the rule of law. Consequently, the onus for lawful behavior has shifted from rulers using brute force to citizens using a common respect for the rule of law. Rule of law and law order reinforce each-other and their

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benefits, the less crime and corruption there is in a society, the more likely the rule of law will be applied equally and impartially.

**Predictable and Efficient Judicial Rulings**

Predictability and efficiency has been an implicit part of the rule of law since the Magna Carta outlined that justice would neither be denied nor delayed. In many ways, predictability is merely an extension of equality under the law, but its intersection with efficiency is vital. The importance of swiftly executed justice is reiterated by William Penn: “Our law says well, 'To delay justice, is injustice.'” Given that delaying tactics can often be used to benefit one party in dispute, or to forestall justice being done, in some cases, this position has gone beyond mere rhetoric, and into law, such as the case of Gohman v. City of St. Bernard (1924), America’s first legal case to hold that the rule of law required some form of efficiency in decision making.

Originally considered by the ancient Greeks as a stand alone element of the rule of law, predictability serves to create deterrence for crime, one of the most important practical roles and achievements of the rule of law. In an efficient and predictable system, the populace knows what the right side of the law is. Furthermore, predictability is quintessential in providing a stable socio-economic environment and a system within the bounds of which economic development and planning can be achieved. Moreover, predictability and efficiency are central to fighting arbitrariness and to the belief that the rule of law benefits the society as a whole, which in turn decreases the likelihood that people will use extrajudicial means to achieve equity. Predictability and efficiency are also highly interrelated with equality before the law, as well as a fair and impartial judiciary. If the judiciary is not fair and impartial, all are not treated equally under the law, and if people are not treated equally under the law, determining what the rule of law is may become a guessing game, with results dependant on affluence, and power. Respect for the rule of can only be achieved when the law is not only known to those governed by it, but also predictable, and applied equally, efficiently and impartially.

**Respect for Human Rights**

Although there is a long history of discussion on natural individual rights, the inclusion of respect for human rights is a controversial addition to the list, and is not universally agreed upon. This definitional approach has led to a centuries long debate between substantivists, who believe the rule of law must contain some content and some limits on governmental action, and formalists, who claim that the rule of law is merely procedural. The substantivists trace their modern lineage to the Enlightenment. Locke (and others in his time) spoke of the rule of law in terms of fundamental human rights, such as the

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7 See Magna Carta, 1215, c1. 40. "To no one will We sell, to no one will We deny or delay, right or justice."

preservation of life, liberty, and estates. This approach introduced substantive content to the procedural ideals of the rule of law, as well as personal rights and limits on what the government can and should be allowed to do. The other camp is that of the formalists, who hold that the rule of law is merely procedural and need not reflect specific cultural values. Substantivists commonly regard formalism as making no distinction for a rule of law and being rules by law. Formalists, by contrast, maintain that respect for the rule of law is a characteristic that exists independently from respect for human rights. Ronald Cass, for example, defines the rule of law as “fidelity to rules, of principled predictability, embodied in valid authority, that is external to government decision makers,”

reiterating Kleinfeld's first four goals but remaining silent on the fifth. With respect to a proactive policy to strengthen the rule of law, there is a case to be made for favoring the substantivist view. Locke stated that the rule of law ought to be “directed to no other end but the peace, safety, and public good of the people.”

In seeking to aid developing countries, fostering respect for a rule of law that itself is conducive to the country's development seems more productive than fostering the rule of law while allowing its application to be unjust. However, requiring not only institutional reform, but also the establishment of substantial cultural values, this element of the rule of law may be hardest to implement and achieve, particularly in societies that have fundamentally different traditional values.

**Institutional Approach**

Achieving or promoting the rule of law through accomplishing the end-goals requires equality before the law, an impartial and fair judiciary to enforce the laws as well as a comprehensive reform of multiple rule of law institutions. As such, even when defining the rule of law by its ends, the institutional reform is inherently a part of the definition. Pragmatically, most organizations involved in building and promoting the rule of law define the concept through institutional attributes, which are usually more easily observable and can be more rapidly achieved as a quantifiable and intermediate measure. The institutions considered essential for the rule of law, a comprehensive body of laws, well-functioning courts, and effective law enforcement agencies can also trace their heritage back to the ancient Greeks. The three primary institutions were first enumerated in this form by John Locke who declared that all legitimate governments must “be bound to govern by established standing laws, promulgated and known to the people, and not by extemporary decrees, by indifferent and upright judges, who are to decide controversies by those laws; and to employ the force of the community at home only in the execution of such laws.”

At present, practitioners still define the rule of law as a state containing all of these three primary institutions: laws that are publicly known and relatively settled, an efficient and impartial judiciary that is trained in legal reasoning, knowledgeable about the law, and

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11 Locke, Treatise II, 131, 353.
12 Locke, Treatise II, 131.
free of political manipulation and corruption, and a law enforcement that is able to execute judgments, and maintain public peace and safety. Although the aforementioned three institutions are essential to the development and preservation of the rule of law, their proper functioning relies on a large array of essential supporting institutions, and is highly interconnected with the end-goals of the rule of law. Furthermore, political, social and cultural structures and values are important in determining the limits of acceptable areas of government interference and control.\textsuperscript{13}

Ever since ancient Greek philosophers discussed the rule of law, these significant institutions were considered means to overarching societal ends, such as order, rights, and justice, not ends in and of themselves. Many scholars argue that in order to define the rule of law through its institutions, the end goals must be an underlying assumption. The importance of a fair and impartial judiciary in a democratic society and for the promotion and preservation of the rule of law is undisputed. However, the value of an impartial judiciary rests in its ability to efficiently resolve and settle disputes, without recourse to violence, its ability to promote the rule of law by creating predictability, not merely in the institution itself. Defining the rule of law by its institutions alone, while practically feasible, runs the risk of skewing societies toward overly technocratic models of reform. In order to be not only successful but also sustainable, and in order to impact the development and preservation of the rule of law, institutional reform must occur as a means to the ends it is intended to serve. A measuring of the institutional reform alone is sufficient in judging the success of the rule of law alone, but only when taken in context with the ends such reform is designed to achieve.

Reforming and promoting the rule of law is certainly a complex task. However, distilling the complex nature of the concept to an institutional approach may not only frustrate the overarching goal, but also slow development. Kleinfeld concludes that the rule of law system is better seen not as a set of institutions but as a set of distinct but interrelated mutually sportive end goals. Although, it is more difficult for practitioners in the field to work with a definition of the rule of law based on ends, it is the ends that must be the driving force behind institutional reform.

At present, the rule of law is not only considered as a condition sine-qua-non for the developed world, but also a requirement for many, if not most, modern frameworks of international law and international organizations. The North Atlantic Treaty Organization (NATO) demands that all new members demonstrate a commitment to the rule of law, while the European Union (EU) requires respect for the rule of law from a country before even beginning negotiating its accession to the community. The “Copenhagen criteria,” lied out in 1993, require the rule of law as a prerequisite for the admission of new member states to the European Union. According to the Bulletin for the European Community of June 1993, candidate countries are required to have achieved “stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.” Correspondingly, the Treaty on European

Union (Article 6) outlines the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law as the common principles which all Member States must uphold as fundamental rights. In this regard, the EU defines the rule of law as more than just a practical method for strengthening society, as a fundamental characteristic of free societies and as one of its fundamental values.

**Transition to Open Society**

In a global economy, countries with significant levels of rent-seeking and compromised rule of law cannot compete for capital. Development professionals involved in governance are increasingly committed to civic engagement: society’s role in improving “social accountability”, or “an approach towards building accountability that relies on ordinary citizens and/or civil society organizations who participate directly or indirectly in exacting accountability.” Recent theorists emphasize the interdependence of economic and political systems. North, Wallis, and Weingast argue in “A Conceptual Framework for Interpreting Recorded Human History” ([http://www.nber.org/papers/w12795](http://www.nber.org/papers/w12795)) that the transition to open access social orders does not happen in incremental policy changes, but takes place through a quantum leap. Before the transition, rule of law exists for the elites, who restrict entry into economic, political, religious, educational, and military organizations.

Limited economic, political, and social access generates economic rents, which are used to perpetuate elite privileges. In the late eighteenth and early 19th century, Britain, France, the Dutch, and the United States made transitions that took roughly fifty years. In the twentieth century Taiwan, South Korea, Ireland, and Spain have made very rapid transitions. “Crony capitalism” limits access to organizational forms to members of the dominant elite. The transition takes place when a society becomes rich in large numbers of competitive organizations. An active civil society serves the political interests of its membership, and enables citizens, groups and firms to enforce their rights which are enshrined in constitutional laws. Econometric studies have found correlations between the degree of openness in a country and that country’s economic performance.  

Another study on the quality of government shows that low infant mortality, significant school attainment, low illiteracy, and high quality infrastructure typically come together, and that more open governments are more efficient, intervene less and provide better public goods. Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, Robert Vishny, "The Quality of Government", Working Paper 6727, National Bureau of Economic Research, September 1998, page24.

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Respect for the rule of law must necessarily imply a proper functioning of the institutions that uphold the rule of law and respect for the institutions themselves. As such, the perception of legislative, legal and law enforcement institutions, while not in and of itself a measure for the success of the rule of law, can be a good indicator of respect and trust in the rule of law. In order for there to be respect for the rule of law, society must have a certain degree of faith in the institutions that are responsible for the implementation of justice and governance. Looking at the European Union countries, despite a foundation of common European values, cultural differences between member states exist. As such, although respect for the rule of law in the European Union would likely reflect the spectrum of individual cultures, a measure of the respect for the rule of law must encompass the law’s success and enforceability. If values of the people are not reflected in the rule of law, then respect and enforceability must also suffer. Considering the example of the European Union, one of the most developed and democratic areas of the world, data from fall 2006 shows a general trend of support and trust within the institutions of the European Union, the European Commission and the European Parliament. With respect to personal values, when asked which were the three most important personal values for them, and which were the three most important European Union values for them a quarter of the populace believes the rule of law to be one of the top three European Union values, human rights and democracy being considered the two most important values\textsuperscript{15}.

Establishing the rule of law necessarily involves reducing corruption, as corruption leads to inconsistent, unpredictable and unequal enforcement of the law and creates an incentive to remain outside the law. While the rule of law concept as well as the respect for it in different cultures may not be easy to ascertain, one can try to analyze the respect for the rule of law in contrast to corruption, and in accordance with political and civil freedom, trust in legal, legislative and law enforcement institutions. Although respect for the rule of law in the European Union would likely reflect the spectrum of individual cultures, and thus different tolerance and limits for governmental action, a measure of the respect for the rule of law must encompass the law’s success and enforceability. A review of the European Union provides a wide spectrum of countries with differing levels of corruption, allowing for different degrees of tolerance for the effects of corruption in different areas of society.

Transparency International’s “Corruption Perceptions Index” (or CPI) provides a metric for measuring perceived freedom from corruption, last measured for 2006.\textsuperscript{16} With high scores being better, Finland & Denmark top the list at 9.6 and 9.5 (out of a possible 10

\textsuperscript{15} Eurobarometer - http://ec.europa.eu/public_opinion/standard_en.htm
maximum), respectively, while Poland and Romania bottom out the list at 3.7 and 3.1, respectively. The remaining distribution is roughly linear, providing an excellent scale along which to compare other variables. Interdependent with democracy, respect for the rule of law is highest when it is perceived to benefit the society as whole. Thus, perceptions of corruption levels within a society are representative of respect for the rule of law. When asked whether corruption is a major problem in their country 72% of Europeans agreed, with only 22% of the respondents believing that corruption is not a major problem in their country, with percentages inversed for Finland, and Denmark.\(^{17}\)

Clear evidence with respect to the erosion of the rule of law by corruption can be found in the area of law enforcement. A corrupt police force is a police force that society doesn’t believe to be beneficial to everyone and the populace isn’t willing to trust. This can be seen quite clearly in the robust relationship between the Corruption Perception Index and crimes reported per capita.\(^{18}\) Crimes reported rises as transparency improves because more crimes are reported to the police, and the police are less likely to conceal criminal activity. While countries with a naturally low crime rate may be outliers in this analysis, the data suggests that corruption is an influential variable in determining crimes per capita. Society will not report crimes to a corrupt law enforcement agency, because they do not believe it will benefit them. As such, at the most basic level, a police force that isn’t aware of crimes is unable to pursue justice, and the rule of law cannot be enforced.

In light of the strong negative impact corruption has on the rule of law, when trying to answer the question how to best promote and preserve the rule of law, the most evident requirement is a transparent government. As the daily dealings of institutions become public knowledge, corruption is more difficult to sustain, and society is likely to trust institutions more. Given that education and information are the best ways of having an informed society that trusts and is able to control its government, it should come as no surprise, then, that Internet penetration\(^ {19}\) is also tightly correlated with freedom from corruption. While there are a number of possible reasons for this, it is not unreasonable to suspect that the Internet gives a population a common medium in which to interact on a national scale. Information regarding the institutions of government is more easily available to those with Internet access, as is objective journalism. Additionally, the Internet provides citizens with a medium with the potential for secure financial transactions that can insulate honest businesses from theft and fraud. Thus, those who seek to reinforce the rule of law must be keenly aware of the interaction between technology and society, as the so-called information age provides not only new pitfalls, but also new opportunities. Respect for the rule of law can best be accomplished when the rule of law is designed in agreement with the desires and believes of the people, to benefit everybody, and is coupled with transparency in government, and governmental institutions. This can best be accomplished through education and through an independent and impartial judiciary that promotes equality before the law.


\(^{19}\) International Telecommunication Union, [http://www.itu.int/](http://www.itu.int/)
For additional data with respect to these topics, see the figures in the attached Appendix.

**A RIFT BETWEEN POPULAR BELIEF AND THE RULE OF LAW: COPYRIGHT**

The issue of copyright law is an excellent example of the consequences of a sizable disconnect between the rule of law and the popular consensus in society. On the one hand, there exists a clear legal consensus regarding the rule of law on topics of intellectual property. Under the auspice of the World Intellectual Property Organization, a United Nations agency with 184 member states, this consensus has been implemented around the world, in laws defining the criteria and scope of intellectual property rights. In the age of digital content, this consensus includes the understanding that purposeful duplication of copyrighted digital material can be a crime. Despite nominally strong Intellectual Property laws that expand the rights of copyright owners, extend the longevity of those rights, and multiply the remedies available for enforcement, the attitude of the population does not conform to those laws, and copyright infringement remains a problem for copyright owners. The rebellion against overly broad ownership rights has not only lead to an increase in peer-to-peer file sharing, but more notably to the creation of new licensing agreements, based on a different approach to copyright law more compatible with perceptions of the rule of law.

Despite new legislation, a series of judicial precedents, and the increasing sophistication of law enforcement techniques, piracy is a problem whose scope appears to vastly exceed the reach of the institutions aiming to solve it. The ubiquity of this problem stems from the widespread belief that piracy either isn’t a crime, or at least not a crime worth punishing, or that it isn’t immoral. Consequently, the problem will remain ubiquitous until this rift can be bridged, both through increasing public consciousness of the effects of piracy and through the alteration of legal definitions of intellectual property to better align with popular consensus.

By and large, the principle divide in society over copyright is a generational one. Legislation is being drafted and judicial precedents are being interpreted by people over a generation older than the consumers who are most ambivalent towards copyright law. There is substantial evidence that legislators do not, on the whole, understand the complexities of the technology that they are undertaking to regulate, while the ubiquitous availability of this technology allows even the very young to become proficient copyright pirates. By contrast, young people have integrated digital technology into their lives in

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21 The vastness of this divide between ages was cast in sharp contrast by Senator Ted Stevens, in his now-infamous "series of tubes" speech. Despite his high-ranking position in the Senate Committee on Commerce, Science, and Transportation, he famously asserted that “The Internet is not something you can just dump something on. It's not a truck. It's a series of tubes.” (Transcript from Wired, [http://blog.wired.com/27bstroke6/2006/06/your_own_person.html](http://blog.wired.com/27bstroke6/2006/06/your_own_person.html) ) His description of the technology was
a profound way. In 2003, 91% of students through grade 12 used computers and 59% used the Internet. When focused on grades 9-12 alone, those numbers rise to 96% and 79% respectively.\(^2\footnote{National Center for Education Statistics Computer & Internet Use By Students in 2003. http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2006065}^2\) Though a slim majority of youth (54%)\(^3\footnote{Business Software Alliance/Harris Interactive Youth & Downloading Study, 2006. http://www.bsa.org/usa/research/}^3\) oppose all forms of piracy as morally wrong, the remaining bloc of potential pirates numbers in the tens of millions in the US alone. Despite widespread public awareness campaigns, a sudden increase of lawsuits by intellectual property owners, and strict laws, a large proportion of young people do not feel strongly about copyright violations.

Interestingly, this divide is best captured, not by the differences in beliefs, but by a gap in each group’s perceptions of the other’s beliefs. Although 54% of youths oppose piracy, adults surveyed estimate that not more that 21% of youths would give such a response.\(^4\footnote{Business Software Alliance/Harris Interactive Youth & Downloading Study, 2006. http://www.bsa.org/usa/research/}^4\) This suggests a considerable lack of cross-talk between generations about topics of piracy and copyright. As a result, the generational divide is not just a divide in technological proficiency, but also a profound a divide in communication. Unless legislators begin to more actively engage in a dialog with their younger constituents, this cultural rift is likely to continue.

Although the controversy over copyright continues, some alternatives are being created. One such alternative is the “copyleft” movement, a legally robust approach to the distribution of intellectual property that emphasizes public access to data. Centered on “reciprocal licensing,” copyleft movements make use of existing copyright laws to secure, for all who receive a work, the same rights to study, modify, and even redistribute the work and its derive versions. Two widely used varieties of reciprocal licenses are the GNU General Public Licenses (or GPL) and the Creative Commons licenses.

Some form of the GPL is applied to approximately two-thirds of all open-source software, including many variations of the Linux operating system. A parallel system of licensing, the Creative Commons licenses can be applied to any creative work, with over 140 million web pages making use of Creative Commons licenses. In both cases, an increasing number of individuals and institutions are taking advantage of a copyleft approach rather than continuing to engage in the traditional copyright approach (including its illegal violation). Because software piracy is so difficult to enforce on a large scale, it represents a low risk crime in all countries. Therefore, the main factor limiting how widespread it becomes is the ethical conviction that respecting the rule of law is important. Although there is a strong correlation between corruption and software piracy, as estimated by the Business Software Alliance\(^5\footnote{Business Software Alliance Global Piracy Study, 2006. http://www.bsa.org/usa/research/}^5\), differences in the rate of software piracy stem heavily from self-regulation by citizens, rather than by law enforcement. Moreover, data suggests that there is a strong correlation between the

\[^{22}\text{National Center for Education Statistics Computer & Internet Use By Students in 2003.}\]
\[^{23}\text{Business Software Alliance/Harris Interactive Youth & Downloading Study, 2006.}\]
\[^{24}\text{Business Software Alliance/Harris Interactive Youth & Downloading Study, 2006.}\]
\[^{25}\text{Business Software Alliance Global Piracy Study, 2006.}\]
active development of open-source software\textsuperscript{26} (distributed under copyleft models) and a country’s Corruption Perception Index – countries that are the most active in development of open-source software, are also less corrupt. This can be interpreted to show a willingness to abide by the law, where there are alternatives that are reasonably priced and that conform to the popularly held beliefs and values of a society.

\textit{CONCLUDING REMARKS}

The cornerstone of democracy, the rule of law is inextricably linked with an open society, where there is transparency in governmental workings and governmental institutions, and free exchange of opinions. A society that encourages discourse and commentary of the workings of government is less likely to come to a substantial divide between the views of the legislators, and popular beliefs. Furthermore, in order for society to able to maintain a control on government, an independent, effective and impartial judiciary is quintessential for the rule of law to be equally applied to everyone, and thus be perceived to benefit the society as whole. Although a very complex task, development and preservation of the rule of law can be accomplished, if institutional reform is in accordance with public beliefs and is designed to lead to a government bound by law, equality before the law, stable law and order, predictable, impartial and efficient judicial rulings, and respect for human rights.

\textsuperscript{26} Open Source Software Activity, Metaparadigm Ltd., 2005 \url{http://oss.metaparadigm.com/oss-activity/}
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