

To What Extent Should a Legal System Favour the General Population Over the Ruling Class? (Word Count: 1178)

Ask most people who the law is supposed to serve and the answer comes instantly: the people, of course. The alternative, a legal order built for the powerful, sounds like the typical definition of tyranny. But that instinct hides a misconception. If we make “serving the people” the law's supreme goal, we hand the majority a blank cheque and allow them to establish laws with unlimited power, and some of history's ugliest injustices have been democratic on the surface, such as the Jim Crow Laws.¹ If instead we let the law serve those who govern, we arrive where Thrasymachus cynically landed in Plato's Republic, that justice is “nothing other than the advantage of the stronger.”² Neither answer survives scrutiny. This essay argues that a legal system should favour neither group as an end in itself. A legal system's real purpose is to secure justice, social stability, and long-term welfare, and the interests of the public and the powerful are not objectives to be maximised but variables to be balanced through constitutional institutions whenever doing so best advances the higher aims.

Locke argued that the government holds its power in trust for the governed and forfeits its authority the moment it betrays that trust; legitimacy flows upward, from consent, not downward, from force.³ Bentham went further and reduced good law to the arithmetic rule that the greatest happiness is of the greatest number.⁴ In this view, tilting the law toward the general population is justice by definition, because it benefits the majority.

¹ "Jim Crow Law," Encyclopædia Britannica, accessed July 7, 2026, <https://www.britannica.com/event/Jim-Crow-law>.

² Plato, *The Republic*, trans. Benjamin Jowett (Project Gutenberg), accessed July 7, 2026, <https://www.gutenberg.org/ebooks/1497>.

³ John Locke, *Second Treatise of Government* (1690; Project Gutenberg), accessed July 7, 2026, <https://www.gutenberg.org/ebooks/7370>.

⁴ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789; Library of Economics and Liberty), accessed July 7, 2026, <https://www.econlib.org/library/Bentham/bnthPML.html>.

Yet raw majoritarianism carries the tyranny of the majority, a flaw that Tocqueville and Mill both named.⁵ Germany between 1930 and 1933 shows how this works. Hitler led no coup. His party won more seats than any other in July 1932, President Hindenburg appointed him Chancellor by ordinary constitutional procedure in January 1933, and that March the Reichstag passed the Enabling Act by 441 votes to 84, letting his cabinet make law without parliament.⁶ Every step seemed like democracy, and the product was a dictatorship assembled out of lawful majorities. In Athens, a jury of five hundred citizens, following correct procedure, condemned Socrates to death for the opinions he taught. A vote only counts numbers, it cannot test whether the opinions are right, and it gives a losing minority nothing once the count turns against them. Majority preference by itself therefore cannot be what a legal system exists to serve.

Rulers Who Control the Law Rewrite It to Suit Themselves

The opposite arrangement fails more visibly. A governing class that holds lawmaking power tends to use it to entrench its own position, and apartheid South Africa is the plainest modern example. The Population Registration Act of 1950 sorted every inhabitant into a racial category,⁷ and the Group Areas Act dictated where they lived and traded.⁸ When an entrenched clause of the constitution protected Cape Coloured voters and the courts enforced it, the National Party government refused to give way. Over several years it enlarged the Senate and packed the Appellate Division with its own appointees until it manufactured the two-thirds majority demanded by the constitution, then struck those voters from the common roll. Every stage observed the forms of law. The substance was the theft of political rights by the men who happened to control the

⁵ Alexis de Tocqueville, *Democracy in America*, vol. 1, trans. Henry Reeve (1835; Project Gutenberg), accessed July 7, 2026, <https://www.gutenberg.org/ebooks/815>; John Stuart Mill, *On Liberty* (1859; Project Gutenberg), accessed July 7, 2026, <https://www.gutenberg.org/ebooks/34901>.

⁶ "The Enabling Act," Holocaust Encyclopedia, United States Holocaust Memorial Museum, accessed July 7, 2026, <https://encyclopedia.ushmm.org/content/en/article/the-enabling-act>.

⁷ "Population Registration Act," Encyclopædia Britannica, accessed July 7, 2026, <https://www.britannica.com/topic/Population-Registration-Act>.

⁸ "The Group Areas Act of 1950," South African History Online, accessed July 7, 2026, <https://sahistory.org.za/article/group-areas-act-1950>.

process. Gustav Radbruch, writing in 1946 after watching German judges apply Nazi statutes, concluded that a law whose injustice becomes intolerable forfeits its standing as law.⁹ A system that only mirrors the will of its rulers produces the Nuremberg Laws, and calling those “law” empties the meaning.¹⁰

Justice Is the Goal, and the Two Options Are Only Inputs

Since neither the population nor its rulers can be trusted with unchecked power, the object a legal system serves must be something other than the wishes of either. Aristotle placed it in the rule of law itself, reasoning that laws are ideally based on rational principles, whereas individual rulers are still human beings with emotions, desires, ambitions, and biases.¹¹ John Adams compressed the same thought into his definition of a republic as a government of laws and not of men.¹² Asked to design a society's basic rules without knowing whether you would be born powerful or powerless, Rawls argued, you would guarantee equal basic liberties for all and allow inequalities only where they lift the position of the worst-off.¹³ That test explains why sound law sometimes sides with the poor against the rich and sometimes shields a hated individual from the majority. It measures both by one standard of fairness instead of counting how many people stand on each side.

Institutions, Not Good Intentions, Hold the Balance

Worthy aims change nothing unless something compels officials to respect them, which is the real function of a constitution. Fuller showed that any genuine legal system must

⁹ Gustav Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)," trans. Bonnie Litschewski Paulson and Stanley L. Paulson, *Oxford Journal of Legal Studies* 26, no. 1 (2006): 1–11, <https://doi.org/10.1093/ojls/gqi041>.

¹⁰ "Nuremberg Laws," Holocaust Encyclopedia, United States Holocaust Memorial Museum, accessed July 7, 2026, <https://encyclopedia.ushmm.org/content/en/article/nuremberg-laws>.

¹¹ Aristotle, *Politics*, trans. Benjamin Jowett (The Internet Classics Archive), accessed July 7, 2026, <https://classics.mit.edu/Aristotle/politics.html>.

¹² *Constitution of the Commonwealth of Massachusetts* (1780), pt. 1, art. XXX, The Founders' Constitution (Chicago: University of Chicago Press), accessed July 7, 2026, <https://press-pubs.uchicago.edu/founders/documents/v1ch1s6.html>.

¹³ John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1971).

make its rules public, general, prospective and stable, and each condition already restricts what a majority or a ruler can inflict on a chosen target.¹⁴ Montesquieu's separation of powers and Madison's checks were engineered to set the branches against one another.¹⁵ Madison put the premise bluntly in Federalist No. 51, observing that because men are not angels a government must first be enabled to control the governed and then obliged to control itself.¹⁶ In the *United States v. Carolene Products* (1938) the Supreme Court announced that it would scrutinise most severely those laws aimed at “discrete and insular minorities” who cannot defend themselves through ordinary politics,¹⁷ and John Hart Ely later built a theory of judicial review, arguing that courts should keep the political process open and protect those it reliably shuts out rather than impose their own preferences.¹⁸ Judicial review, running from *Marbury v. Madison* (1803) onward, exists so that a passing majority cannot spend permanent rights.¹⁹ Germany, having watched the Weimar constitution vote itself out of existence, wrote an eternity clause into its Basic Law that places human dignity and the democratic order beyond the reach of any amendment, however large its majority.²⁰

The state that once perfected racial law now shows the other possibility. In *S v Makwanyane* (1995) the new South African Constitutional Court abolished the death penalty although surveys showed that most citizens wanted to keep it, holding that a question of constitutional rights cannot be decided by opinion polls.²¹ The court served

¹⁴ Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven, CT: Yale University Press, 1969).

¹⁵ Charles de Secondat, Baron de Montesquieu, *The Spirit of Laws*, trans. Thomas Nugent (1748; Online Library of Liberty), accessed July 7, 2026,

<https://oll.libertyfund.org/titles/montesquieu-complete-works-vol-1-the-spirit-of-laws>.

¹⁶ James Madison [Publius], “The Federalist No. 51” (1788), The Avalon Project, Yale Law School, accessed July 7, 2026, https://avalon.law.yale.edu/18th_century/fed51.asp.

¹⁷ *United States v. Carolene Products Co.*, 304 U.S. 144 (1938), Justia, accessed July 7, 2026, <https://supreme.justia.com/cases/federal/us/304/144/>.

¹⁸ John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, MA: Harvard University Press, 1980).

¹⁹ *Marbury v. Madison*, 5 U.S. 137 (1803), Justia, accessed July 7, 2026, <https://supreme.justia.com/cases/federal/us/5/137/>.

²⁰ Basic Law for the Federal Republic of Germany, art. 79(3), Federal Ministry of Justice (Bundesministerium der Justiz), accessed July 7, 2026, https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.

²¹ *S v Makwanyane and Another* 1995 (3) SA 391 (CC), Southern African Legal Information Institute (SAFLII), accessed July 7, 2026, <https://www.saflii.org/za/cases/ZACC/1995/3.html>.

neither the majority that wanted executions nor the governing elite. It served a standard of justice set above both, which is what this essay argues.

Conclusion

A legal system should favour the general population over the ruling class only so far as doing so advances justice, stability, and long-term welfare, and no further. In most conditions that means restraining the powerful, because concentrated power is the more frequent source of abuse. In some it means restraining the majority. The population and the ruling class are the forces a constitution has to keep in balance. Systems that grasp this, from the barons and clerks at Runnymede to the drafters of the German Basic Law, protect ordinary people and responsible government alike far better than any order that simply focused on one side.²²

²² "Magna Carta 1215," trans. British Library, The National Archives, accessed July 7, 2026, <https://www.nationalarchives.gov.uk/education/resources/magna-carta/british-library-magna-carta-1215-runnymede/>.

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