

For Rule of Law in the US, 2019 Brings New Hope

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Published in [The Hill](#) on 28 December 2018

For those concerned about the rule of law in the United States, the last two years have been a steady drip - accelerating at times to a full-blown torrent - of terrible, horrible, no good, very bad days.

2017 was tough, but 2018 was tougher. The year included the manufacture and release (against adamant objections from the intel community) of the infamous "Nunes" memo. It included the Helsinki summit between presidents Trump and Putin. It included attacks on the media, judiciary, and Justice Department - pillars of the rule of law in our constitutional system - culminating in, respectively, the Acosta imbroglio, the face-off with Chief Justice John Roberts, and the forced resignation of Attorney General Jeff Sessions and interim appointment of Matthew Whitaker. It included the papering over of the Jamal Khashoggi murder, disregard of the court-ordered end to family separations, and on and on.

Indeed, 2018 has been a nightmare for the rule of law, one from which it has seemed we might never wake.

However, here at the tail end of 2018, our eyelids may be starting to flutter. Something different is in the air. There is a feeling that the rule of law gears within our democratic machinery, which have been sluggish for some time, are beginning to break free from their stuck state.

What has happened in recent weeks that unexpectedly gives rise to feelings of hope? At bottom it is the growing accumulation of developments, big and small and from various segments of society, which collectively amount to a broad-based willingness to impose a check on the free-wheeling exercise of power of the executive. In other words, an invigoration of the most basic precept of the rule of law since King John of England agreed to limits on his power in the year 1215.

In particular, these developments include this month's full-throated rebuke by the Senate of the Trump administration's position on the war in Yemen and on the Khashoggi affair. They include the responses of individual senators to the president's decision this week to withdraw from Syria, which featured promises by Republican senators to "hold the President accountable" if he follows through on the Syria withdrawal. They include the ongoing and multiplying investigations by the Justice Department, through the Special Counsel's office and U.S. Attorney's offices, as well as state prosecutors' offices, into matters involving the president and his family. They include the courts continuing to conduct their business with independence and integrity. They include the media continuing to investigate and report on matters of civic importance in the face of cries of fake news and "enemies of the people."

Most important, these developments include actions taken directly by the body politic, the ultimate backstop of the rule of law in our constitutional framework. This occurred most notably in November's midterm elections, the results of which are better understood as a rebuke to unfettered executive power than as a rejection of the president, his policies, or his party. The results of the midterms embody a recognition on the part of the electorate that our governing system performs best when institutional powers are balanced against one another, that competition among the branches of government produces better results for the

country.

There is good reason to hope that this invigoration of the rule of law will pick up speed in 2019. Of course, having an opposing party in control of one of the houses of Congress will be a part of this, and Rep. Adam Schiff (D-Calif.), the incoming chair of the House Intelligence Committee, is taking up his new position with a healthy list of matters for investigation. It is certain that threads being pursued as part of the Russia investigation will have major, possibly culminating, developments in 2019. And although not certain, the Senate's recent experiment with striking its own path on a matter where the administration was on thin ice shows it can take an independent position when it sees advantage in doing so, something which may be increasingly relevant in 2019.

We are not out of the woods when it comes to threats to the rule of law in the United States. Indeed, we may be on the precipice of a period of great challenge to the rule of law given possible developments in the new year.

However, before we set off into the new governing landscape of 2019, it is worthwhile to reflect on the achievements of 2018, and in particular on the resilience of our constitutional system. Many of us began the year deeply worried about the ability of our system to rise to the challenge it faced. That is not how we end it.

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