

# THE RULE OF LAW

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## What is the Rule of Law?

**Andrew Le Sueur (Public Law; Text, Cases etc)**

The 'rule of law' is widely acknowledged to be an essential component of a good constitution: it is a principle that is concerned with constraining governmental action. First articulated in the nineteenth century, it has become increasingly frequently used by academics, politicians and judges during the twentieth century.

## How to understand the Rule of Law?

**It is necessary to ask two basic questions.**

First: how is the rule of law defined?

Second: how is the rule of law protected?

## Defining the Rule of Law?

### **Aristotle on the rule of law**

*“It is more proper that law should govern than any one of the citizens: upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians, and the servants of the laws”*

## Defining the Rule of Law....

### **A.V. Dicey on the rule of law**

1. No man is punishable except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of the land.
2. No man is above the law...every man is subject to the ordinary law of the realm.
3. The general principles of the constitution are...the result of judicial decisions determining the rights of private persons.

## Defining the Rule of Law....

### **Criticisms by Sir Ivor Jennings**

Dicey has ignored the special immunities certain categories of individuals have, for example children and foreign diplomats with diplomatic immunity.

Dicey has ignored the particular responsibilities public officials held by virtue of their roles.

Dicey's third point completely ignored the role of statute in the constitution.

## Defining the Rule of Law....

### **Lord Bingham on the Rule of Law (Eight sub-rules)**

1. The law must be accessible and, so far as possible, intelligible, clear and predictable.
2. Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.
3. The laws of the land should apply equally to all, save to the extent that objective differences require differentiation.
4. Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.

## Defining the Rule of Law....

### **Lord Bingham on the Rule of Law (contd.)**

5. The law must afford adequate protection of fundamental rights.
6. Means must be provided for resolving, without prohibitive cost or undue delay, bona fide civil disputes which the parties themselves are unable to resolve.
7. Adjudicative procedures provided by the state should be fair.
8. The rule of law requires compliance by the state with its obligations in international law as in national law.

## Defining the Rule of Law....

### **Joseph Raz on the Rule of Law (Eight principles)**

1. All law should be prospective, open and clear.
2. Laws should be relatively stable.
3. The making of laws should be guided by clear rules.
4. The judiciary should be independent.

## Defining the Rule of Law....

### **Joseph Raz on the Rule of Law (contd.)**

5. The principles of natural justice should be observed.
6. The courts should be able to review the implementation of other principles.
7. The courts should be easily accessible.
8. The discretion of the police and crime fighting agencies should not pervert the law.

# Protection of the Rule of Law

## Protection by Courts

- **Entick v Carrington [1765]**
- **Burmah Oil Company Ltd v Lord Advocate [1965]**
- **M v Home Office [1994]**
- **Belmarsh 9 case**
- **GCHQ case [1985]**

# Protection of the Rule of Law....

## Protection by the Parliament

### Constitutional Reform Act 2005

Section 01:

This Act does not adversely affect –

- (a) the existing constitutional principle of the rule of law, or
- (b) the Lord Chancellor's existing constitutional role in relation to that principle.

*Thank you...*