

Rule of law. Government, Cabinet and Parliament. Influences on Parliament Parliamentary supremacy.

Rule of law – it safeguards society against dictatorship, supports democratic principles and exists when the government's powers are limited by law and citizens have core rights that the government must uphold.

The rule of law has 3 main principles:

- No person shall be sanctioned except in accordance to the law;
- There must be equality before the law and no discrimination of any grounds;
- There must be fairness and clarity of the law.

The rule of law must be transparent and serve as a 'shield' against injustice

- **Government** – it consists only of democratically elected Members of Parliament.
- **Cabinet** – includes the c.22 most senior government ministers from the ruling party; it is responsible for its departments; disputes are held in their meetings; puts policies into action and takes a collective responsibility for the implemented policies; chosen by the Prime Minister to lead specific policy areas, e.g. Health, Transport, Foreign Affairs or Defence.
 - **Cabinet Committee** – acts when the Cabinet is overloaded with work/business/information; ensures that matters are properly investigated; considers particular questions and recommends policies.
- **Parliament** – it is composed of the two Houses of the legislature (Commons and Lords) and the monarch (King or Queen).

Name of person	Views on the rule of law
A.V. Dicey	<ul style="list-style-type: none"> ➤ Equality before the law ➤ Supremacy of ordinary law ➤ Absence of arbitrary power on the part of the state <p>! BUT Dicey's view of the rule of law conflicts with the fundamental principle of parliamentary supremacy (an Act of Parliament can overrule any other law + no other body has the right to override or set aside an Act of Parliament); under the rule of law there should be no arbitrary power on the part of the state ⇔ under parliamentary supremacy Parl. has the right to make any law it wishes and these can include granting arbitrary powers to the state; laws passed by Parl. can't be challenged through judicial review; Dicey talks about formal equality, but disregards equality based on wealth, power and connections (e.g. a poor person cannot afford to pay for a case) => different to execute in practice as there needs to be an appropriate mechanism to address these factors => abstract ideas</p>
F.A von Hayek	<ul style="list-style-type: none"> ➤ Absence of arbitrary power on the part of the state ➤ The rule of law had been weakened due to intervention of the state ➤ Modern state is directly involved in regulating economic activity in conflict with the rule of law
Joseph Raz	<ul style="list-style-type: none"> ➤ Judicial independence must be granted ➤ The principles of natural justice should be observed ➤ There ought to be a clear procedure for making laws ➤ Courts should have the power to review the way in which the other principles are implemented

Monarch – opens/closes Parliament; allowed only in the House of Lords; gives a Royal Assent to approve Bills => the become Acts of Parliament

House of Lords – c. 750 Lords (composed of 92 hereditary peers + life peers (who are appointed) and the 26 most senior Bishops of the Anglican Church; there is a gold throne in the middle of the Chamber on which sits the monarch; the seats are coloured red.

House of Commons – democratically elected; the Speaker is neutral and establishes order; Britain has 650 constituencies and each one of them elects a single MP; the Masters at Arms keeps order and escorts people out of the Chamber (also carries a sword, which he puts on a hook); the seats are coloured green and the distance between the two benches is two swords wide

Influences on Parliament:

1. **Political parties** – before a general elections political parties publish their manifesto and try to persuade people to vote for them; gradual start of the reforms and virtually every law will be passed (efficient law making); if another party is elected it can repeal laws; may have disputes in coalition governments (e.g. Conservative-Liberal coalition 2010-2015); a party has a term of 5 years to bring its manifesto in action; in the opening of each session once a year the PM writes a speech for the monarch to read.

✓	✗
Planned law proposals => every law would be virtually passed => efficient law making policies	If another party is elected, it may repeal the laws created by the previous party + disputes in a coalition government could be caused (e.g. the 2010-15 Conservative-Liberal coalition: NHS, EU currency, EU membership)

2. **Public opinion/media** – public opinion may be taken into consideration as in the case of the Dunblane massacre in 1996; the free press may criticise the government as in 2009 when it criticised MPs over their expenses claims; however the government may have a 'knee-jerk reaction' (a rapid response) as in the Dangerous Dogs Act 1991; media may also manipulate the news

✓	✗
<p>Parliament banned private gun ownership of most handguns as a result of the 1996 Dunblane massacre (16 kids were shot by a lone gunman with a legally owned gun)</p> <p>Free press criticises the government and bring any other policy to the government's attention by popularising them; e.g. in 2009 when the media showed criticism over MPs' expenses claims, which caused outrage + media popularity was given to father's rights and fatherhood, which resulted in a reform</p> <p>Sometimes public opinion will be affected by specific events and these may also play a role in formulating the law</p>	<p>A 'knee-jerk reaction' = a rapid government response; risk of no scrutinising and poor law drafting; e.g. the Dangerous Dogs Act 1991 = failed because of wording and there were thousands of dog attacks</p> <p>Media manipulates the news and creates false public opinion</p>

3. **Pressure groups** – there are four different types of groups:
 - sectional** – represent the interests of a particular group of people (Law Society, British Medical Association, NUS);
 - cause** – promote a particular cause (e.g. Greenpeace, Amnesty, ASH);
 - insider and outsider** – insider groups are the most influential and have a direct impact on the government; the outsiders are the least; an example of an insider pressure group is the British Medical Association and Amnesty International is an outsider pressure group.

Government was successfully influenced by pressure groups to;

- Reduce the age of consent to homosexual acts to 16;
- Pass the Hunting Act 2004 (influenced by the League against Cruel Sports), which prohibited the hunting of foxes with dogs;
- Prohibit smoking in public places in 2007 (influenced by public and medical opinion).
- ! The 'Justice and Liberty' pressure group campaigned against a proposed change in law: restriction of the right to trial by jury

4. Law commission – an independent body of legal experts that suggests areas of law that need reforming; they can choose to research an area themselves or they can be asked to do so by the government; established in 1965 and consists of a Chairman (a High Court judge) and four other law commissioners; its brief is a 'systematic development and reform, codification and repeal; it can consolidate (bring together), codify (review law on a topic and create a single code) and repeal (get rid of) laws.

- Before setting out their final proposals for reform, the Commission issues a consultation paper so that they can gather the views of the interested parties
- A report includes a draft Bill setting out the exact way a law should be reformed => after that it is transferred to Parliament
- 85% implementation rate, but dropped to 50% in a decade
- 1965-2016 = 66% of reform reports have become laws (143 reports, 31 rejected, 19 prolonged)
- Significant when influencing Parliament to reform law

Steps:

- 1) A topic is chosen by the Law Commission or referred by the government
- 2) The Law Commission researches the law
- 3) The Law Commission issues consultation papers
- 4) The Law Commission issues its final report

Work	Definition	Successful	Unsuccessful
Codification	A process that involves reviewing all the law on the particular topic and then creating a code to cover all aspects on the law of that topic	Criminal Justice Act 2003 =brought lots of laws into one	draft Criminal Code 1985 (still not implemented)
Consolidation	Combining the law from several Acts of Parliament into a single Act	Powers of Criminal Courts Act 2000	Criminal Justice Act 2003
Repeal	The Act ceases to be law; only Parliament can repeal an Act of Parliament	Statute Law (Repeals) Act 2013 = Act of 1696 about rebuilding of St. Paul's Cathedral	It's an offence to shoot a bowman on Chester Walls (very old law, which is valid today)

Successful Law Commission reforms:

- Coroners and Justice Act 2009 (abolished the defence of provocation);
- Criminal Justice and Courts Act 2015 (created offence of a jury misconduct in using the internet);
- Consumer Rights Act 2015 (gave consumers the legal right to reject faulty goods)

✓	✗
<p>Parliament enacts the reform of a whole area of law, then the law is in one Act, e.g. the Land Registrations Act 2002</p> <p>Areas of law are researched by legal experts</p> <p>Whole areas of law can be considered, not just small issues</p>	<p>Failure of Parliament to implement reforms, e.g. Offences Against the Person report and the Liability for Psychiatric Illness report</p> <p>Lack of Parliamentary time, e.g. Report on Participating in Crime 2007 and the Report on Conspiracy and Attempts 2009</p> <p>Government may not accept all recommendations made by the Law Commission</p>

Lobbying – pressure groups gather in ‘lobbies’ and try to persuade individuals MPs to support their cause or raise a particular issue.

✓	✗
<p>A wide range of issues is drawn to the government’s attention; there are different aims and issues, but the important issues can be raised, e.g. environmentalists have raised issues about the ecological damage by greenhouse gases and other pollutants.</p>	<p>Pressure groups seek to impose their ideas even when the majority of the public does not support their view.</p> <p>Two pressure groups may have conflicting interests (e.g. regarding the ban against fox hunting: League against Cruel Sports vs Countryside Alliance).</p>

Parliamentary supremacy (A. V. Dicey’s views):

- Parliament can legislate on any subject matter (make statutes on whatever they want);
- No other way has the right to override or set aside all acts of Parliament (laws made by Parliament are superior and cannot be changed by another group e.g. judges);
- No Parliament can be bound by a previous one (a new parliament is selected at each general election and it does not have to follow the laws of a previous Parliament).

Limitations on parliamentary supremacy:

- **EU laws:**
 - GB joined the EEC in 1973 and voted to leave the currently known EU in 2016
 - EU law took priority over British law when GB was in the EU
 - Example: Merchant Shipping Act 1998, which set down rules for who could own or manage fishing boats registered in Britain; Act said that 75% of the directors and shareholders had to be British, but the Court of Justice of the EU ruled that this was contrary to EU law and that the Act couldn't be enforced so far as EU citizens were concerned
- **Devolution:**
 - Devolution means spreading power from a central government to different sub-governments
 - Power was devolved to Scotland and Wales via the Scotland Act and Wales Act respectively, with both Acts being from 1998
 - This means that the two countries can make their separate laws on some matters without having to get Parliament's approval
 - Repealing these Acts would most likely be very unpopular
- **Human Rights Act 1998**
 - States that all Acts of Parliament have to be compatible with the European Convention on Human Rights; courts use s.4 of the ECHR to declare an Act as being incompatible
 - **H v Mental Health Review Tribunal (2001)**
 - When a patient was making an application to be released, the Mental Health Act 1983 placed the burden of proof on the patient to show that he should be released
 - Human rights meant that it should be up to the state to justify the continuing detention of such a patient
 - Court made a declaration that the law was not compatible with human rights => government changed the law
 - But a declaration of incompatibility doesn't mean that the government must change the law
 - If Parliament wishes, it can pass a new Act which contravenes the ECHR

END.