

4 Non-Legal Perspectives on Alcohol Restrictions

Indigenous Communities with alcohol restrictions throughout Australia are split in their opinion about this issue.

Some Communities were concerned that if Palm Island's restrictions were declared invalid by the High Court that restrictions in other places in Queensland, the Northern Territory and Western Australia could have also been made invalid. Many Communities are supportive of the restrictions.

However, many, such as Ms Maloney see the restrictions as an unfair limit to their freedoms and decide how to live their life.

While the decision of the High Court is final, careful consideration of the perspectives of those for and against alcohol restrictions, as outlined in the table below, are important for Federal, State and Territory Governments in considering whether they will reform their laws to ensure the right balance between restrictions, rights and freedoms of Indigenous Communities.

An article in the Townsville Bulletin on 14 January 2016 stated that the Queensland Government is conducting a major review into alcohol restrictions in Queensland.*



FOR ALCOHOL RESTRICTIONS	AGAINST ALCOHOL RESTRICTIONS
<p>Jenny Macklin Federal Indigenous Affairs Minister¹</p> <p>"...Aboriginal people have made it clear to me that alcohol abuse and the violence that comes with it is destroying their families"</p>	<p>Glen Elmes Queensland Minister for Aboriginal and Torres Strait Islander Affairs⁵</p> <p>Wants to include community consultation. Restrictions should not be imposed on communities, they should be able to choose it or not. Does not want to continue the 'paternalism of the past'.</p>
<p>Professor Marcia Langton University of Melbourne²</p> <p>Reduces hospitalisation for alcohol related assaults. Does not believe that alcohol restrictions are a violation of human rights.</p>	<p>Alf Lacey Mayor of Palm Island⁶</p> <p>Paternalistic policy that can be compared to the excuses used to remove indigenous children from their families. That alcohol management 'kills' self-determination and economic prosperity. Indigenous people needed to determine their own future.</p>
<p>Warren Mundine Generation One³</p> <p>Freely available grog is a nightmare for remote indigenous communities.</p>	<p>Campbell Newman Premier of Queensland⁷</p> <p>"I simply say the policy of discrimination against Aboriginal people is not appropriate,"</p>
<p>Derek Waipo Mayor Aurukan (remote Indigenous community)⁴</p> <p>Alcohol ban is essential and links the need for alcohol management plans (AMPs) to the need for employment. If more people work then the community will no longer have a need for AMPs</p>	<p>Ethel Robertson Coordinator of the Palm Island Women's Shelter⁸</p> <p>Alcohol restrictions discriminate against the rights of the people of Palm Island</p>

Please note: All quotes are from 2012 and 2013 and centre around discussions contemporary to the Maloney Case.

1. Richard Margetson, 'Alcohol management plans; Stronger Futures', ABC Radio Darwin, 26 February 2013.

2 - 5 Jamie Walker and Patricia Karvelas, 'Relaxed grog bans 'to revive violence', Aboriginal leaders warn', The Australian, 4 October 2012.

6. Michael McKenna, 'High Court upholds alcohol restrictions in indigenous communities', The Australian, 20 June 2013.

7. AAP, 'War brewing over indigenous alcohol ban', The Australian, 6 February 2013.

8. Peter McAllister, 'Fight for the right to drink on Palm Island', The Australian, 4 March 2013.

*Christie Anderson, 'Palm Island alcohol restrictions under review', Townsville Bulletin, 14/01/2016.

1 Racial Discrimination & Access to Justice

Discrimination against people on the basis of their race, colour, ethnicity, or nationality has been and remains a significant issue in protecting fundamental human rights.

The rule of law is essential for human rights to be protected - this resource traces the development of international law to Australian domestic law which deals with racial discrimination.

The **Racial Discrimination Act 1975 (Cth)** is the main legal response to racial discrimination under the law of the Commonwealth.

It was passed by the Whitlam Government in 1975 soon after the **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)** was ratified by Australia.

How do international agreements become law in Australia?

When an international agreement is ratified by Australia it does not immediately become law.

Australia has a **dualist system** which means the Parliament of Australia must pass a law concerning the international agreement, before it has effect in Australian law.

The CERD was the basis of the **Racial Discrimination Act 1975 (Cth) (RDA)**.

The Racial Discrimination Act 1975 (Cth)

Section 10(1) of the RDA states that all people are entitled to equality before the law regardless of their race, colour or national or ethnic origin.

Section 10 allows a law of the Commonwealth or a State/Territory to be challenged as being racially discriminatory.

This means that a person can appeal to a court in their state and territory to have a law declared 'invalid'. This kind of challenge may reach the High Court of Australia. If the High Court finds that a law is racially discriminatory it will be struck down as being inconsistent with the RDA.

Section 8 of the RDA references CERD and provides exceptions to section 10. These exceptions are called "special measures" and are actions taken to assist a specific racial or ethnic group for a particular purpose and are not considered racial discrimination.



Emblem for International Anti-Apartheid Year (1977), United Nations Photo, www.unmultimedia.org/photo/ under CC BY-NC-ND 2.0 Licence.

Definition of Racial Discrimination in the International Convention on the Elimination of Racial Discrimination (1969) Article 1(1)

'any, distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, social, cultural or any other field of public life'

Find CERD on the UN Treaties website:

<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidgno=IV-2&chapter=4&lang=en>

Find the Racial Discrimination Act 1975 (Cth) on AustLii:

http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/index.html

This resource is part of a series on the Rule of Law and Anti-Discrimination laws.

Find more at:

www.ruleoflaw.org.au/education/human-rights/



RULE OF LAW
INSTITUTE OF AUSTRALIA

There are a number of different perspectives on the issue of alcohol restrictions on the following page to assist you in thinking beyond the legal aspects of this case.

Ms Maloney did not succeed in having the law struck down. However, this case shows that an individual can challenge a law to the highest court in the land - which is an important check on the power of the Parliament.

It also shows that equal treatment before the law with regard to the possession of alcohol can come second to the right to safety and security.

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Conclusion

The High Court found that the alcohol restrictions were a special measure designed to protect the safety and security of people on Palm Island.

Discrimination Act states that a law should not be seen as racial discrimination - Section 8 of the Racial Discrimination Act states that a law should not be seen as racial discrimination if it is found to be inconsistent with a Commonwealth law.

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Special Measures

In 2008 Ms Maloney's car was searched by police who found two bottles of spirits in the boot. She was charged with possessing more than the allowed quantity of alcohol in a restricted area and was fined \$150.

The possession of alcohol is restricted on 10 of the 13 islands that are part of the Palm Island Aboriginal Shire - the population of which is approximately 97% Indigenous Australian.

Ms Maloney claimed that the laws restricting alcohol were invalid because they did not provide for equality before the law according to Section 10 of the Racial Discrimination Act 1975 (Cth). She argued they discriminated against her because of her Indigenous background, and that the laws themselves did not have the consent of the local community.

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The High Court's Decision

The High Court agreed with Ms Maloney and found that restrictions on the possession of alcohol on Palm Island were racially discriminatory under Section 10 of the Racial Discrimination Act 1975 (Cth). She argued they discriminated against her because of her Indigenous background, and that the laws themselves did not have the consent of the local community.

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This is not an example of racial discrimination. It is not unlawful under the RDA to express opinions in private.

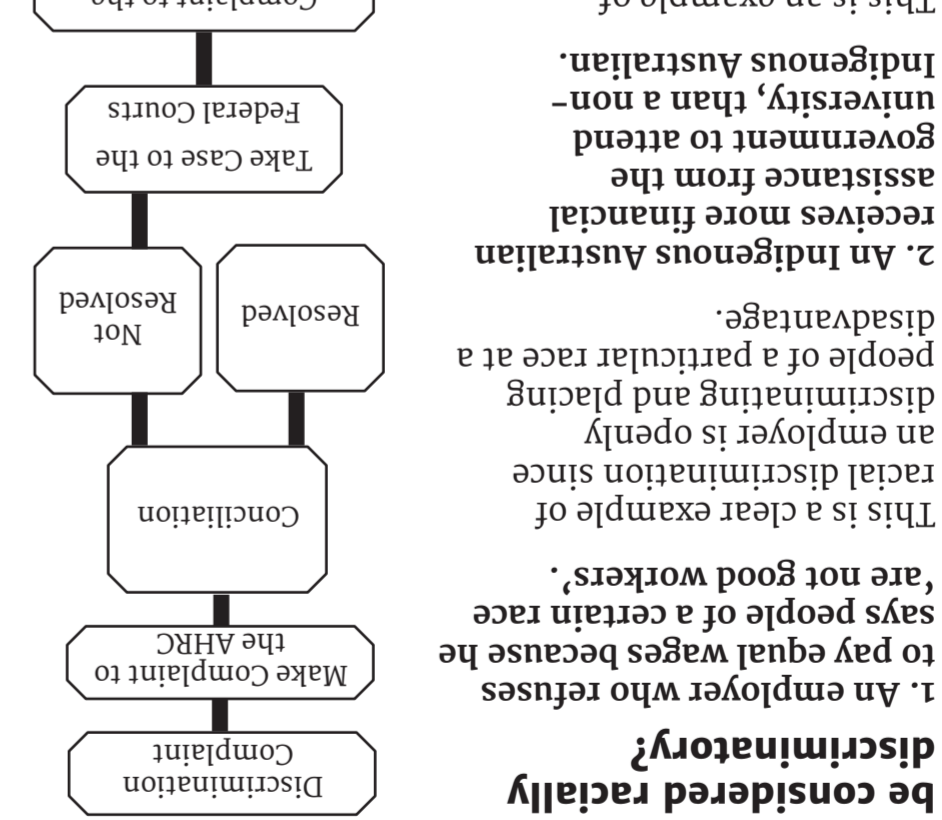
and often talks privately to their friends about their hatred.

3. A person who hates a particular racial/cultural group because of historical discrimination against them.

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What behaviour can be considered racially discriminatory?

1. An employer who refuses to pay people of a certain race 'are not good workers'.

This is a clear example of racial discrimination since an employer is openly discriminating and placing people of a particular race at a disadvantage.

2. An Indigenous Australian receives more financial assistance from the government to attend university, than a non-Indigenous Australian.

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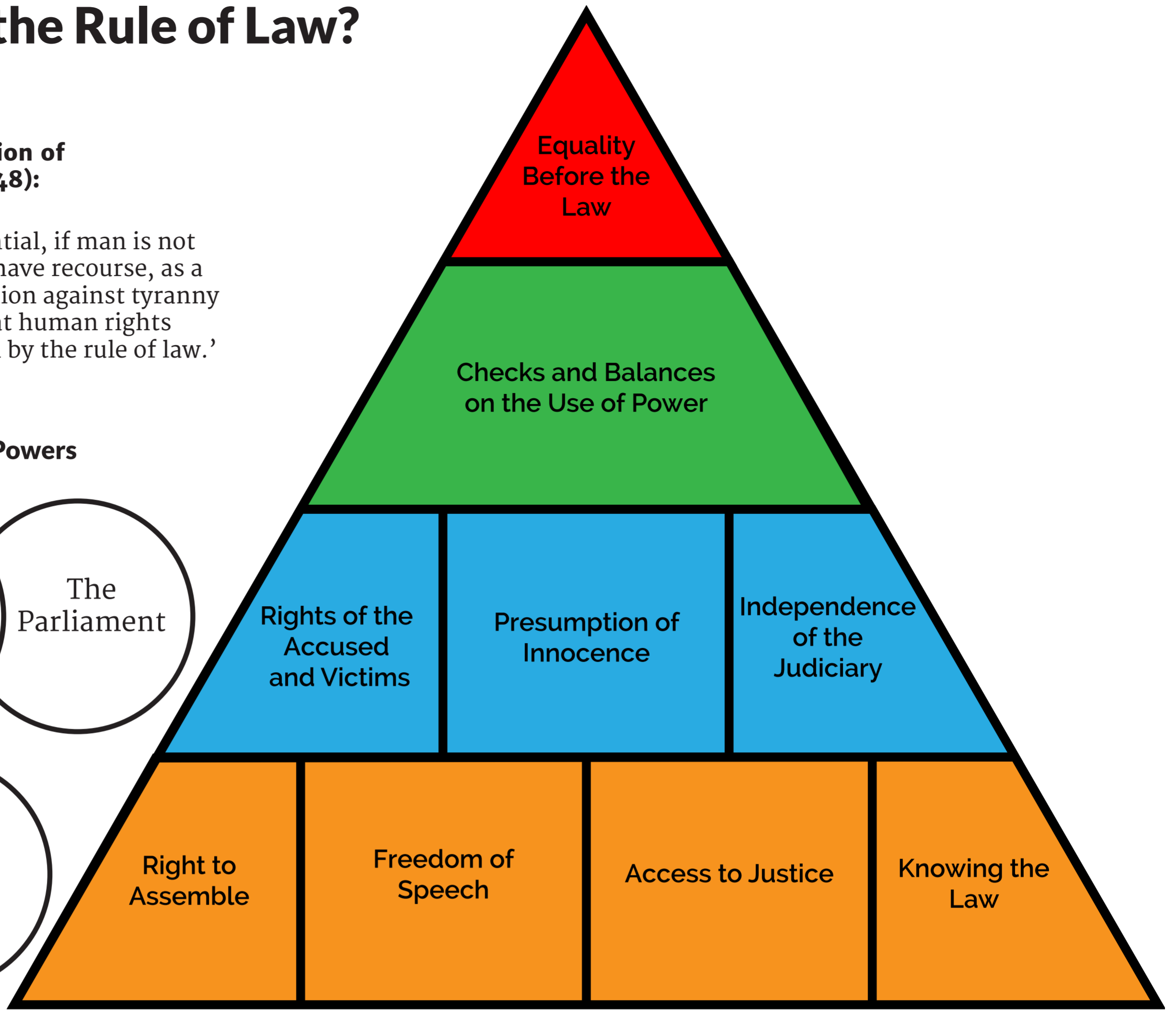
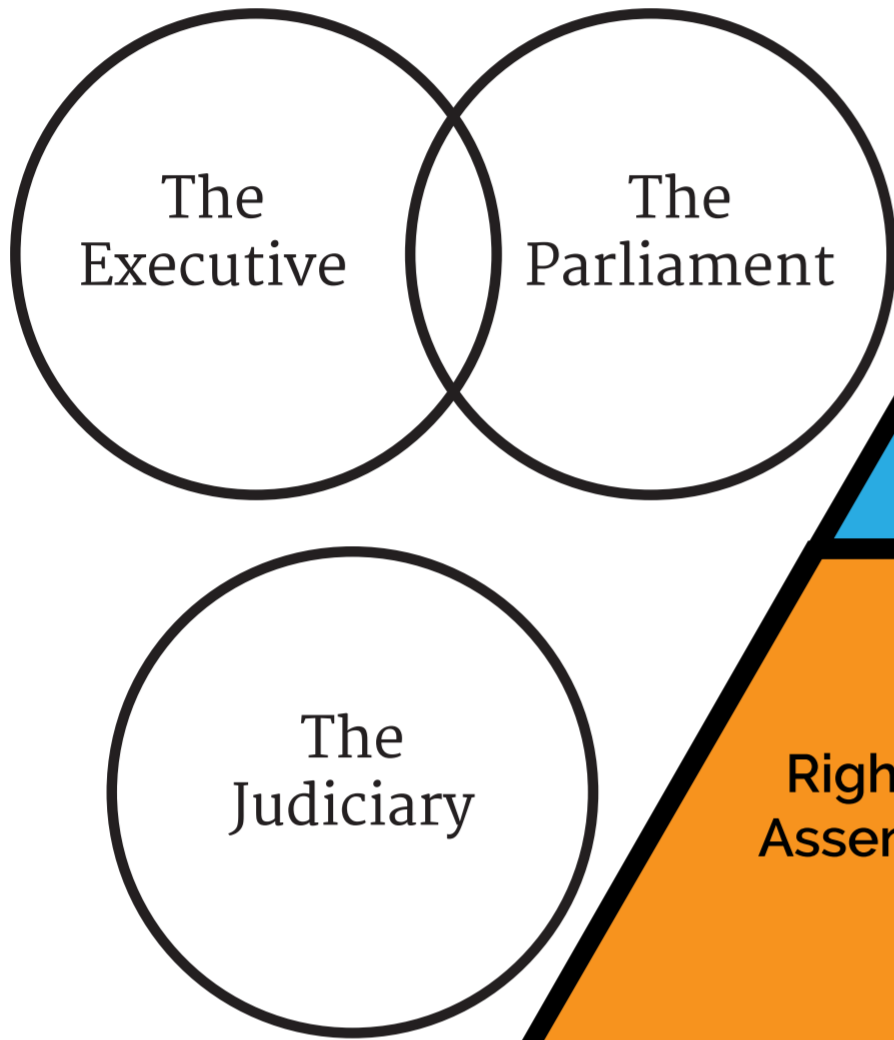
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What is the Rule of Law?

Preamble of the Universal Declaration of Human Rights (1948):

‘Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.’

The Separation of Powers



Racial Discrimination 1900 - 2016

1915	1
1945	2
1948	3
1969	4
1993	5
1994	6
2004	7
2004 onward	

1 Ian Black, 'The Armenian Genocide - the Guardian Briefing', The Guardian, 17/04/2015, <http://www.theguardian.com/news/2015/apr/16/the-armenian-genocide-the-guardian-briefing>

2 'Documenting Numbers of Victims of the Holocaust and Nazi Persecution', United States Holocaust Memorial Museum, last updated: 29/01/2016, <http://www.ushmm.org/wlc/en/article.php?ModuleId=10008193>, accessed 02/02/2016.

Adapted from above: Deaths during WWII due to Nazi policies - Jews: up to 6 million, Soviet Civilians: around 3 million (including 1.3 Soviet Jewish civilians, who are included in the 6 million figure for Jews), Non-Jewish Polish civilians: around 1.8 million, Serb civilians: 312,000, People with disabilities living in institutions: up to 250,000, Roma (Gypsies): 196,000 to 220,000, Jehovah's Witnesses: Around 1900, Repeat criminal offenders and "asocials": at least 70,000, Homosexuals: hundreds, possibly thousands (possibly also counted in part under the 70,000 repeat offenders and asocials).

3 United Nations Treaty Collection, Convention on the Prevention and Punishment of the Crime of Genocide, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&lang=en

4 United Nations Treaty Collection, International Convention on the Elimination of All Forms of Racial Discrimination, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en. Also called by its acronym: CERD. Decisions by the UN Committee on the Elimination of Racial Discrimination, you can filter by treaty and country: <http://juris.ohchr.org/>

5 International Criminal Tribunal for the Former Yugoslavia, 'Key Figures of the Cases', <http://www.icty.org/en/cases/key-figures-cases>

6 International Criminal Tribunal for Rwanda, 'The Genocide', <http://unictr.unmict.org/en/genocide>; List of people indicted by ICTR: https://en.wikipedia.org/wiki/List_of_people_indicted_in_the_International_Criminal_Tribunal_for_Rwanda

7 International Criminal Court, 'All Cases', https://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/cases/Pages/cases%20index.aspx; The Rome Statute of the International Criminal Court (came into force in 2002) - <http://legal.un.org/icc/statute/rome fra.htm>

What is the process for a nation state to agree to be legally bound by an international treaty?

A _____ will _____ a treaty (and become a signatory), which means they _____ the treaty, but are not yet legally bound by it.

A nation state that signs a treaty may then _____ the treaty which means they agree to be _____ by it.

_____ is the same as ratification, except the nation state does not become a signatory before agreeing to be legally bound by the treaty.

A state that has ratified or acceded to a treaty is known as a _____.

Rome Statute of the International Criminal Court, <http://legal.un.org/icc/statute/rome fra.htm>

Article 6 - Genocide
For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group."