



Video Outline: The Rule of Law

The rule of law is an important legal concept that has a significant influence on our lives.

Some even consider the rule of law “**is the basis for the whole system of constitutional democracy and perhaps of all civilised society.**”

Definition

At its most basic level, the rule of law is the concept that both the government and citizens **know the law and obey it. No one is above the law**; all individuals, including government, are accountable to and constrained by the law **regardless of their authority or station in life.**

The rule of law establishes the law is **applied to everyone equally and fairly.**

The rule of law ensures:

- A. The government does not exercise power arbitrarily, and
- B. citizens are afforded human rights protections.

The Rule of Law Education

Centre has recently developed the Rule of Law Wheel to explain the key principles of the rule of law (pictured right):



Key concepts that underpin the Rule of Law

There are four key characteristics that the rule of law must maintain in order to ensure that the law upholds justice and equality for all members of society.

Fairness: It is fair that in our legal system, the law is applied to **everyone**; government and citizens.

Rationality: Laws need to be **rational**. It is against the rule of law to create a law that cannot be followed.

Predictability: Laws must be predictable to ensure that the laws an individual must abide by are known. It is also important that the consequences and punishments for breaking these laws are equally **accessible and known** by individuals. The rule of law is against the enactment of **retrospective laws**. Rather, laws must be prospective in their operation.

Consistency: This means that the law must apply to everyone **in the same way**. As a result, cases with similar facts are likely to have similar outcomes. This also requires judges to clearly identify how cases, that may appear to be similar, are different if they want to treat them differently.

Impartiality: In our system of government, we have an impartial **judiciary** that is separated from the other arms of government: the **executive** and the **legislature**. This is known as the '**separation of powers**'. This doctrine enables judges to make decisions based on the merits of the case without facing pressure, interference, or negative repercussions from the government. The entirety of the legal profession is also impartial; solicitors and barristers must represent a client to the best of their abilities without the fear of persecution.

History

Professor A.V. Dicey, a professor of English Law at Oxford, coined the term “the rule of law.” Dicey first used the term in his book ‘An Introduction to the Study of the Law of the Constitution’ which was published in 1885. Although the term ‘the rule of law’ was not frequently used before this publication, the concept has been in existence for a much longer period of time. The rule of law can be traced back to the ancient Greek philosopher, Aristotle, and his notion that governments should govern for the good of the people and not the good of those in power. The development of the Magna Carta in 1215 was the foundation of what became a tradition of constraining the monarchy’s power by law. In Australia today, we owe this tradition of the rule of law to the Magna Carta and the many legal documents it has since inspired.

Additional Resources

The Rule of Law and its Foundations in the Magna Carta

<https://youtu.be/XuPRCV1RtZM>

Having its foundations so long ago in the past does not mean that the rule of law has lost its relevance in today’s society. Today, the rule of law continues to have a significant influence on our individual lives and government actions. The doctrine governs citizen and government behaviours alike through concepts such as the separation of powers and the right to a fair and prompt trial.

The rule of law is fundamental in maintaining the free, democratic, and fair society that Australia enjoys.

Rights

The rule of law provides a valid basis for many **fundamental human rights**. Some examples include the:

- A. right to life,
- B. right to liberty, and
- C. security.

Many international human rights documents refer to the importance of the rule of law, including the **European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950**. Similarly, the **Universal Declaration of Human Rights of 1948** declares the rule of law 'essential if man is not compelled to have recourse as a last resort, to rebellion against tyranny and oppress, that human rights should be protected by the rule of law.'

Additional Resources

45 Years of the ICCPR

 <https://www.ruleoflaw.org.au/40-years-iccpr/>

Life without the Rule of Law

Succinctly, the rule of law allows us to function in our day to day lives without fear of arbitrary trespass upon person and property, the terrors of violence and persecution or unjust treatment under the law. A world without the rule of law opens the door to anarchy, a state of lawlessness; and tyranny, a ruler or government vested with absolute power.

Additional Resources

Democracy vs Totalitarianism

 <https://www.ruleoflaw.org.au/wp-content/uploads/Study-Task-Democracy-vs-Totalitarianism.pdf>

Review/Research Questions

1. **Define** the concept of the rule of law.
2. **Describe** the key principles of the rule of law.
3. **Outline** the role of the parliament, courts and executive under the rule of law.
4. **Discuss** the historical development of the rule of law.
5. **Investigate** the Magna Carta (1215) and summarise its key principles.
6. **Explain** how the rule of law is important for society today.
7. **Explain** why the rule of law must be supported by informed and active citizens.