

The Rule of Law Institute of Australia is an independent not-for-profit body formed to uphold the rule of law in Australia. Through the publishing of a series of YouTube videos the Institute aims to not only promote discussion on the importance of the principles which underpin the rule of law but to provide high school students and their teachers with an informative and practical resource.

Rule of Law introduction

The rule of law is an important basic legal concept that has a great deal of influence on our lives. As discussed in the video the rule of law is difficult to define. Some have even gone so far as to suggest that the rule of law doctrine “is the basis for the whole system of constitutional democracy and perhaps of all civilized society”¹. It is a legal and constitutional doctrine that should be followed.

Definition

A strict definition of the rule of law is hard to express as many slightly different definitions are accepted. Most definitions agree, ensuring government is under law is paramount. This means that government needs to be bound by substantive laws, not just the constitution and the law operates as a constraint on the power of government. As the rule of law is a constraint on the power of government the government cannot simply enact laws to defeat this purpose. While technically they would be acting under law this would not be under the rule of law.

Within the concept of the rule of law there is also an implication that our daily lives should be free from threats of violence and oppression from individuals or groups.

Key principles that underpin the rule of law

- **Fairness:** it is fair that in our legal system the law applies to everyone, government and citizen
- **Rationality:** Laws need to be rational. It is against the rule of law to create a law that cannot be followed
- **Predictability:** being predictable means that the laws that an individual must abide by are known along with what the likely outcome is if these laws are broken, thus the rule of law is against the enactment of retrospective laws
- **Consistency:** not only does the law apply to everyone, it applies to everyone in the same way, thus cases with similar facts are likely to have

¹ Geoffrey De Q. Walker “The Rule of Law: Foundation of Constitutional Democracy” 1988 Melbourne University Press.

similar outcomes. This also requires that judges identify how cases that may appear 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 means that judges can make decisions based on the merits of the case without facing pressure or negative repercussions from the government. Our legal profession as a whole is also impartial thus solicitors and barristers are bound to represent a client to the best of their abilities without facing repercussions.

History

The person who coined the term “the rule of law” is Professor A.V. Dicey, who was a professor of English law at Oxford. 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. Some point as far back as 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. It is important to know that the ideas and principles that make up the rule of law have been in discussion since the formation of modern society, even Magna Carta in 1215 is commonly viewed as upholding rule of law issues.

Having its foundations so long ago in history does not mean that the rule of law has lost its relevance in today’s society. In fact it can be suggested that it is now recognised as influencing more areas of our lives. Traditionally seen as a feature of legal life, since the GFC, the rule of law’s positive effect on the economy has been mentioned by the Economist publication in the UK and Alan Greenspan, the former chairman of the Federal Reserve Bank of The United States.

Rights

The rule of law gives many fundamental human rights validity, as the rule of law is a valid basis for many of these rights. Some examples include the right to life and the right to liberty and 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 and 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 oppression, that human rights should be protected by the Rule of Law’.

Life without the rule of law

Succinctly the rule of law allows us to function in our day to day lives without fear of 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).

Review Questions:

1. Define the concept of the rule of law.
2. Outline 5 key principles that characterise the rule of law.
3. Briefly discuss the historical development of the rule of law.
4. Analyse the importance of the rule of law for society today.