

Rule of Law



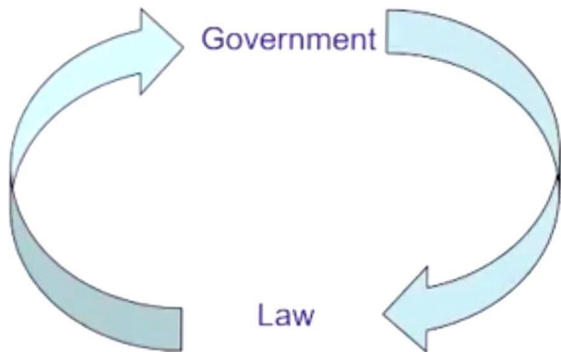
Principle: NO ONE is above the Law
and EVERYONE is subject to the Law



Associations

- Presumption of Innocence
- Double Jeopardy - cannot be tried for the same offence more than once
- Legal equality

Government subject to law



Government subject to law

- Governmental actions

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- Unlawful actions

- Law must be defined as “general, open, and relatively stable.”



Theories of Law

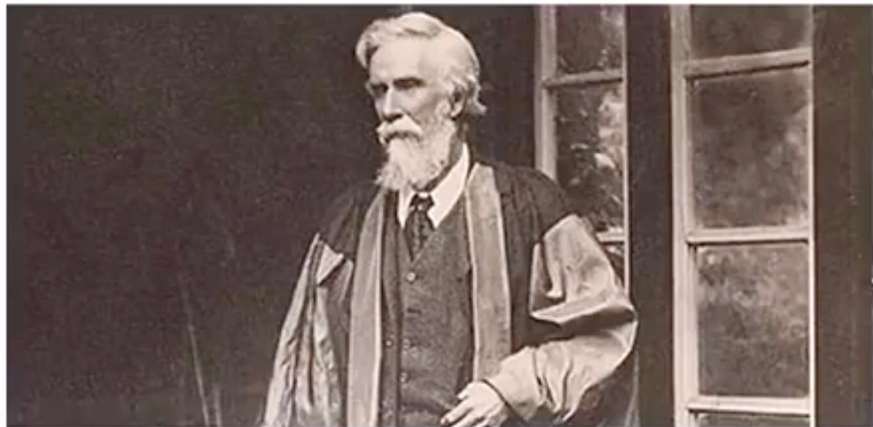
Natural Law

- Theological - all Law is based on God
- Secular - based on inherent good

Positivism

- Law is what is passed by Parliament

A. V. Dicey



A. V. Dicey

- “the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power”
- “a man may with us be punished for a breach of law, but he can be punished for nothing else”



A. V. Dicey

- “every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.”
- “every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen”



A. V. Dicey

- “the general principles of the constitution...are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts”
- “the right to individual liberty is part of the constitution, because it is secured by the decisions of the Courts”



Theories contd.

A. V. Dicey

The supremacy of regular Law as opposed to influence of arbitrary power

Equality of all classes to the ordinary Law, administered by the ordinary Courts

Law of the Constitution is the consequence of the rights of individuals as defined and enforced by the courts

John Rawl

Similar cases be treated alike

Laws must be known

Laws must abide by natural justice

Joseph Raz



1) All laws should be prospective, open and clear

- Using the law to guide our actions
- Law should not be retroactive
- Law should not be vague



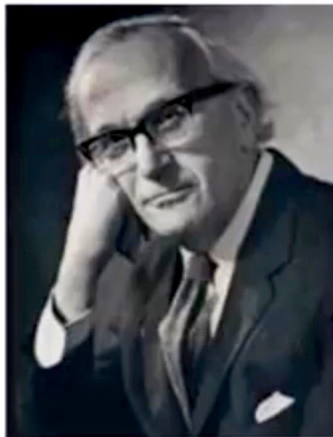
2) Laws should be relatively stable

- What would happen if the law changed everyday?



3) There should be clear rules and procedures for making laws

- H.L.A Hart's 'Rule of Recognition'
- How do we know a law is valid in the UK?



4) The independence of the judiciary must be guaranteed

- No political pressure on judges
- Judicial review



5) The principles of natural justice must be observed

- Right to a fair and open hearing
- No question of bias
 - “justice should not only be done, but should manifestly and undoubtedly be seen to be done.”
 - » R v Sussex Justices, ex p McCarthy [1924] 1 KB 256



6) The courts should have review powers over legislation

- Parliamentary sovereignty

V

- Judicial review

- What if the government passed a law that didn't respect the rule of law?



7) The courts should be easily accessible

- There shouldn't be excessive delays or costs for going to court
- Legal aid cuts



8) The discretion of the crime-preventing agencies should not be allowed to pervert the law

- The police and CPS cannot prioritise solving some crimes over others
- Madeleine McCann
- Smoking in cars



Theories contd.

Professor Joseph Raz

Rule of Law can exist without a legal system pursuing moral good



- MUST BE:
1. Clear
 2. Publicized
 3. Stable
 4. Not impossible to adhere to
 5. Non-contradictory
 6. Accessible and Independent Judiciary

Professor Lon Fuller

The legal system must serve the needs of the people; if it is to be obeyed

MALONE v UK
M v HO

Dicey

No punishment w/o breach

All equal before law

Rights best protected under Common Law

Criticism

Criticism

Judges

Criticism

Discretion of executive

Retrospectivity

Not all Parliaments equal

R v R

Burns Oil

Weddington v Miah

Ministry

'Acquy land during war time'

JENNINGS

Legislation

HRA 1998
RACE RELATIONS