

## The Rule of Law

Lord Bingham summarises the principal of the Rule of Law:

"If anyone - you or I - is to be penalised it must not be for breaking some rule dreamt up by an ingenious minister or official in order to convict us. It must be for a proven breach of the established law of the land"

<https://web.archive.org/web/20141006092303/http://www.consoc.org.uk/other-content/about-us/discover-the-facts/the-rule-of-law/>

The "Rule of Law" And "Rule by law"

*"Some theorists draw a distinction between the Rule of Law and what they call rule by law (see e.g., Tamanaha 2004: 3). They celebrate the one and disparage the other. The Rule of Law is supposed to lift law above politics. The idea is that the law should stand above every powerful person and agency in the land. Rule by law, in contrast, connotes the instrumental use of law as a tool of political power. It means that the state uses law to control its citizens but tries never to allow law to be used to control the state. Rule by law is associated with the debasement of legality by authoritarian regimes, in modern China for example. "*

Civil and Criminal cases should be dealt with without influence of government or official bodies.

Parliamentary Oath

<https://www.parliament.uk/about/how/elections-and-voting/swearingin/>

*"Be Ye Never So High, The Law is Above You!"*

*"If ever the law of God and man are at variance, the former are to be obeyed in derogation of the latter."* - Maxim of Law

If any government act or legislation is different, divergent, or inconsistent, to gods laws, gods law is to be obeyed in exempt of governments "laws".

Lord Wilberforce, speaking in the house of Lords in 1997 said:

*"Perhaps I may remind noble Lords of what our essential civil rights, as guaranteed by common law, are: the presumption of innocence; the right to a fair hearing; no man to be obliged to testify against himself; the rule against double jeopardy; no retrospective legislation; no legislation to be given an effect contrary to international law - an old principle that has been there for years; freedom of expression; and freedom of association .. firmly secured already by the common law of this country, and not intended to be superseded or modified by new inter-state obligations..."*

In past times, words and their meaning had value and were fully respected. Sir Robert Howard, a member of the Convention Parliament, and of the drafting Committee for the Bill of Rights, wrote:

*"The people have always had the same title to their liberties and properties that England's kings have had unto their crowns. The several charters of the people's rights, most particularly the Magna Carta were not grants from the King, but recognitions by the King of rights that have been reserved or that appertained unto us by common law and immemorial custom."*

In other words, any attempt to reduce the rights, freedoms and liberties enshrined in the constitution would be ultra vires.

The case of *Chester v Bateson*, 1920, held that *"common law is not immune from development or improvement."* It does not talk about "limitations" or "destruction".

Applying the principle of *Pepper v. Hart* (1992), the interpretation of statutes by reference to the debates in parliament during the passage of the bill), the following statements during the passage of European enabling legislation are relevant:

*"The house as a whole may therefore be reassured that there is no question of this bill (The European Communities Bill 1972) making a thousand years of British law subservient to the Code Napoleon".* Mr. Geoffrey Rippon, Chancellor of the Duchy of Lancaster. *Hansard*, 15th Feb 1972.

*"Our sovereignty cannot be bartered away by the Solicitor General, or even by the Prime Minister, because it is not theirs to give. I speak not only of the sovereignty of this house, but also of the higher sovereignty of the British people".* Mr Alfred Morris M.P *Hansard*, 17 Feb 1972

Judgement in the *Witham* case of 1997 included the observation:

*"The common law does not generally speak in the language of constitutional rights, for the good reason that, in the absence of a sovereign text, a written constitution which is logically and legally prior to the power of the legislature, executive and judiciary alike, there is on the face of it no hierarchy of rights such as that any one of them is more entrenched by law than any other... at a time when common law continues to accord a legislative supremacy to parliament."*

Which brings us back finally to the meaning of words, respect for their meaning, and acceptance of the force, obligations and commitments they carry. The Alice in Wonderland language - "words mean what I want them to mean" - adopted increasingly by the executive in modern times is at the very heart of the UK's current political skepticism, as government blithely ignore almost anything that is inconvenient to them, prefer political correctness to substance, and spin-doctor their way around every obstacle.

If the words used in the *Witham* judgement have any meaning, legal or otherwise, the logic of the case we have argued in this document is overwhelming. Whether those in or close to the executive, the legislature or the judiciary will recognise the force of our case sufficiently to find the courage to lend support is altogether something else [This part and others were written by the Magna Carta Society on invoking Article 61 Magna Carta 1215 so this last sentence is referring to the question will they find support from the house of Lords to back it, as to invoke Clause 61 there needs to be a quorum (25) of barons. They did find the support they were looking for!!!!]