

# *Public Law and Statutory Interpretation*

## *Notes (Law 1112)*

**Topics Covered:** (w/ detailed case examples)

1. Foundational Concepts
2. Relationships & Structures
3. Origins & Evolution of Public Law
4. Parliament & Legislative Power
5. The Executive & Executive Power
6. Courts & Judicial Power
7. Public Law in Practice: Human Rights
8. Statutory Interpretations
9. Presumptions & Protecting Rights
10. Statutory Interpretation Guide
11. Personal HD-scoring explanation of SI and its principles
12. Essay Structure
13. Bonus Exam Tips

**KEY:**

Yellow Highlight: Core Concepts

Green Highlight: Essay Support

Pink Highlight: Case Law

Blue Highlight: Understanding SI

# Topic 1: Foundational Concepts

## What is public law?

The body of legal principles, which has the primary purpose of constraining the exercise of public power. PL limits the scope of public power which is fundamental to the way our legal system operates.

PL covers laws, institutions, structures, systems, principles and processes that govern the relationship between the state and its citizens, and between the various constituent elements that make up the state.

PL determines the scope of public power

- The *nature* of public power
- *Limitations* placed on the exercise of public power
- The *procedures* by which public power can be exercised
- *Who* can exercise public power (e.g. parl, executive, judiciary)

PL is the foundation of all law, as the govt can't legislate where it does not have the power to do so, and determining whether such power exists is a matter of public law. (e.g. does vic parl have the power to pass xyz act?).

## The Rule of Law

The principle that distinguishes a healthy, well functioning legal system from a despotic or tyrannical regime. A system where govt power is both bestowed and limited by law.

**RoL limits arbitrary power:** in a RoL system, people cannot act arbitrarily, they can only act within their legal bounds and this applies equally to everybody, meaning no one is above the law. (e.g. decision makers must act in accordance with the law, not on personal whims or unchecked discretion).

**RoL has a universal application:** everyone, irrespective of their position, is subject to the law - ensuring fairness and equality before the law. (e.g. a PM can't break the law and expect to be treated differently).

*∴ specific principles & practices ensure that everyone conforms to and is bound by the law*

## Key RoL Theorists & Their Contributions:

RoL theories focus on the procedures by which the law is made, carried out and enforced and emphasise the importance of legal processes and procedural correctness. Substantive theories focus on the quality of the law and the legal system as well as the justness or fairness of the laws making up the system.

### **A.V Dicey**

- Supremacy of the Law: no individual is above the law.
- Equality before the Law: all individuals are subject to the same law and are entitled to equal protection.
- Predominance of the Legal Spirit: the RoL is not merely a set of rules, but a cultural and societal norm.

### **Raz**

- The legal system should be clear, accessible, stable and predictable.
- Rules should be publicly known and applied consistently.
- Individuals should be subject to legal constraints, rather than arbitrary or discretionary decisions (e.g. people cannot act on whims, they must follow legal procedures & principles).
- Laws should only take effect after being made.
- Human Rights (HR), irrelevant to the RoL (in Raz's opinion).

### **Lord Bingham**

- The RoL is essential for maintaining a just and democratic society.
- The legal system must be fair, transparent and accessible to all.
- The SoP is crucial for upholding the RoL.

### **Allan**

- The RoL requires that international law be based on the principles of legality, predictability and accountability. Allan argues that the RoL requires int law to be enforced in a way that is consistent with democratic principles and HR protection.

### *Australian Communist Party v The Commonwealth (1951)*

Communism was viewed as a serious threat by Western democracy during the Cold War, and so, the Cth banned the Comm Party.

- HC decided that this said law was invalid, b/c the const did not give the Cth power to enact such a law.
- Thin procedural justification, and others believed it should have been struck down for being immoral.
- The ruling was accepted by all, indicating a commitment to the RoL despite the fact the initial law was actually popular.
- The case affirms that even popular or politically motivated laws must be constitutionally authorised, reflecting a foundational commitment to the RoL over executive or legislative overreach.

**Dixon J:** The const is an instrument framed in accordance w/ many traditional conceptions...**among these I think that it may fairly be said that the rule of law forms an assumption.** In other words, the Const is framed upon the assumption of the RoL.

## Constitutionalism

A political doctrine that holds that the law of the **const is supreme law**, in a legal and political sense. Hence, the legitimacy of the state is based on its exercise of legal and political power that is constrained by a const.

>Refers to the principle that public/govt power is limited and its exercise is controlled.

Some legal systems have written const and others do not (e.g. the UK does not, and no written instrument to set out the const rules that apply). The SoP is strong in the USA, the AU Const **does not** contain a bill of rights.

**Legal constitutionalism:** substantial limits on govt powers that are written and enforceable in a court of law; the courts play a greater role and are an important site of govt power.

### Why should one obey the law? - Should people obey bad laws?

People should obey the law b/c the benefits outweigh the costs, they need to belong, morality, fairness, social norms, being convinced of the wisdom of compliance + 'its what good citizens do'.

## Topic 2: Relationships & Structures

### Democracy

A system of gov't where the population/eligible members of state make decisions **through elected representatives**. Opposite of autocracy.

**Direct Democracy** - people vote to make their own laws.

**Indirect Democracy** - people vote for a smaller group of representatives who make laws on behalf of others.

Benefits of democracy > people are more willing to follow laws, have a say in said laws and it creates better citizens (more rational/empathetic people).

### Complexities of democracy:

- People w/ minority views may not have their views heard in parl.
- Tyranny of the majority