

Rule of Law

DEFINITION:

- Subject to debate
- • Agree: protecting individuals from unpredictable and arbitrary interference with their vital interests
- Ideal of ROL [Ratnapala]: Prohibit arbitrary power and guarantee that ppl enjoy life, liberty and property.
 - o limits the powers of rulers by subordinating them to enduring rules that they themselves cannot abrogate
- ★ • Hayke's Definition:
 - o He calls it a meta-legal doctrine or a political ideal concerning what the law ought to be
 - □ It cannot be realised unless it forms a part of moral tradition of the community.
 - o In ROL system equality before the law is important and legal discrimination is minimised
 - Legal discrimination can only be accepted if majority (part of or outside the discriminatory group) support it
 - o The rule of law creates a limitation on the powers of all government, including the powers of the legislature. It is a doctrine concerning what the law ought to be, concerning the general attributes that particular laws should possess.
 - o It is safeguard and legal embodiment of freedom.
 - Man is free if it has to follow only the law not the person.
 - o the rule of law is related to essential conditions of liberty
 - o ROL are ideal which we can hope to achieve closely but never fully realize.

GOV

- Denies gov right to destroy, enslave, or designedly to impoverish the subjects
- • implies that government can act only through law and law checks the power of government
 - o ROL exists only if gov is under the law and ppl can plan their life through the law
 - o Limitation of gov + protection of legal rights of PPL

CONCEPTIONS OF ROL

- Formal: Procedural - ROL have to accept with the elements.
 - o focusing on addressing the manner in which legislation is promulgated, as well as other formal aspects (clarity, generality, etc.)
 - o Not about [Paul Craig]:
 - Passing judgement upon the actual content of the law itself.
 - □ not concerned with whether the law is in that sense good law or a bad law, provided that formal precepts of the rule of law are themselves met.
 - o Joseph Raz: ROL is
 - political ideal which a legal system may or may not possess to a greater or a lesser degree
 - just one of the virtues which a legal system may possess and which it is to be judged
 - Even a non-democratic legal system which is inherently immoral and unethical can still conform to the rule of law
- Substantive: It's the mean by which ROL is achieved not the elements.
 - o a rule-of-law system laws must be structured around moral rights and duties that individuals ought to possess
 - Good law - comply with the moral rights and the bad law that doesn't.
 - o John Lockes: Aim of law is not to abolish or restrain but to preserve and enlarge freedom
 - No freedom = no law.
 - o Allan:
 - the term 'rule of law' seems to mean primarily a corpus of basic principles and values, which together lend some stability and coherence to the legal order
 - The rule of law is an amalgam of standards, expectations, and aspirations
 - it is necessarily allegiance to a political philosophy
 - The Law is being instrument to liberty and restricting arbitrary power.
- • Both Agree that: ROL acts as an important mechanism to minimise arbitrariness and so promote justice and personal freedom
 - o Follow the rules that are clear, published, predictive.

ELEMENTS OF THE ROL

- the law should be clear, certain, adequately published and normally prospective;
 - o Without this not know what the law really requires.
 - Certain: cannot apply or obey the law if can't understand it.
 - Certain: can't plan their future ≠ law
 - Published: law should be known
 - Prospective: did something in the past can be criminalised = supreme oppression.
- the law applies to general class of people;
 - o Law shouldn't be discriminatory - apply to all equally.
- the law should be stable;
 - o is important for citizens to know which laws they have to comply so as to plan their personal lives according to law
- the judges should not base their decision on their personal interest;
 - o Judges are appointed to interpret and apply the values inherent in the law
 - o no right to base their decisions about the validity of legislation upon their personal approval or disapproval of the policy of the legislation.
- the court must be independent, impartial and assessable to all;
 - o Access to the courts must be provided without long delays, corruption, or excessive legal costs in filing any lawsuit
 - Aus have excessive legal cost - have to be rich to have access to legal justice.
- the law limiting, controlling and guiding the exercise of official discretion;

- Need to be regulated by legal behaviour.
- Gov should be under and follow the law
 - Ppl follow the law couz it comply by the ROL.
- the law should protect against private coercion.

ROL + CULTURE OF LEGALITY

- ” • encompasses a socio-politico-cultural context in which both ordinary citizens and public officials manifest a serious commitment to principles and institutions of the rule of law
- The practical realisation of the rule of law requires a culture of legality
 - Realisation of the ROL depend on society as of the law.
 - ▶ ○ Law is not always the primary source of political power - other ways that society can recognise political law.
 - In society where charisma is more important than law in that society ROL will not see as most acceptable element of power.
- Diff gov have diff ways of achieving culture legality