

# THE RULE OF LAW IN PARLIAMENT

A Review of Sessions 2013-14 and 2014-15



A Research Report by the Bingham Centre for the Rule of Law for the  
All-Party Parliamentary Group on the Rule of Law

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## Executive Summary

In the UK's constitutional system, Parliament plays a central role in upholding the rule of law; scrutiny by both Houses is a key element in holding the government to account over rule of law issues and ensuring that proposed legislation does not offend rule of law principles. Surprisingly, however, in spite of the centrality of the rule of law for Parliament, there has been no systematic review or analysis of the ways that the rule of law is used as a point of reference in parliamentary proceedings. This study addresses this gap by adding to the evidence base on current use of the rule of law, identifying when the rule of law has been used in Parliament's decision-making, and informing the ways that the rule of law might be used in Parliament in the future.

This study examines references to the rule of law in the UK Parliament in debates, parliamentary questions and written statements for the 2013-14 and 2014-15 parliamentary sessions, with a view to understanding how and in relation to which topics members of the House of Commons (MPs) and members of the House of Lords (peers) refer to the rule of law.

Some general trends were identified as between the Houses.

- Bills and issues that concerned the justice system, security and human rights in the UK were subject to more rule of law discussion in the House of Lords than in the House of Commons.
- Debate that considered the rule of law in some depth tended to take place in the House of Lords and not in the House of Commons.

With regard to individual parliamentarians who most frequently referred to the rule of law, some general trends were identifiable regarding whether they held executive roles, and the issues that raised rule of law consideration.

- Among the MPs who referred to the rule of law the most:
  - All held positions in the Executive or in the shadow cabinet
  - Most focussed on the rule of law in the context of foreign affairs, not rule of law within the UK
- Among the peers who referred to the rule of law the most, there were some peers who did not at the time hold positions in the Executive or in the shadow cabinet.
- MPs and peers who held a UK justice portfolio in the Executive or shadow cabinet largely focussed their rule of law comments on domestic issues rather than foreign affairs.

There were also trends identifiable in the issues that raised rule of law consideration as between the Houses, in parliamentary scrutiny of the executive, and the quality of rule of law discussion on those issues.

- There were more references to the rule of law in the Commons than in the Lords for some foreign affairs issues, Northern Ireland, the John Downey case and On-the-Runs Scheme, and British Values in Schools.
- Parliamentary scrutiny of the Executive concerning the rule of law appears to have been concentrated in the area of foreign affairs, and lacking in relation to government activities within the UK.

- The rule of law was mentioned numerous times in debates on foreign affairs and international development, but without detailed consideration of the particular relevance of the rule of law for those issues, or what the rule of law required in the context of those issues.

Topics concerning the justice system (such as judicial review, but not including crime), security and human rights, tended to give rise to rule of law debates that included in-depth consideration of rule of law principles and their application to the issue at hand. Individuals with a legal background (such as former judges or lawyers) tended to dominate debate on the rule of law in relation to justice issues within the UK. By contrast, debates concerning British values and crime also attracted references to the rule of law, but these references tended to be made in passing without further consideration of the nature, content or application of rule of law principles.

Legislative work and scrutiny of the executive are both enhanced when engagement with the rule of law is clear and thorough. The high water mark of Parliament's engagement with the rule of law found in this research was the Criminal Justice and Courts Bill, for which there was the most rule of law discussion of any issue in the two sessions. Moreover, the successful amendment of the Bill was argued for with extensive reference to the rule of law, suggesting that the arguments were persuasive in Parliament.

The rule of law was referred to in relation to a number of issues debated and discussed in Parliament. Thus, the findings from this research indicate that the rule of law is accepted by MPs and peers as a principle or value that Parliament should uphold.

Yet, the data also reveals that rule of law discussion was largely confined to certain kinds of issues, and only a relatively small number of parliamentarians used rule of law principles to scrutinise legislation and government activities within the UK. By contrast, many parliamentarians referred to the rule of law as a value by which to critique other countries such as Russia, Iraq and Burma/Myanmar. As such, it seems that the rule of law is not seen by parliamentarians generally to be a mainstream concern relevant to all areas of law making and government activities. In particular, there is not a general or widespread application of rule of law principles to the scrutiny of legislation.

Moreover, the research found areas that would benefit from deeper and more thorough rule of law consideration by parliamentarians. Although there was a relatively high focus on rule of law in foreign policy and foreign affairs contexts, this discussion tended to lack detailed consideration of specific content of the rule of law such as transparency and equality before the law. As noted above, debates concerning British values and crime suffered from a similar lack of depth in terms of rule of law analysis.

Just as the UK's Foreign and Commonwealth Office and Department for International Development promote and support the development of the rule of law in their activities overseas, the research in this paper suggests that there is scope for work to increase the focus on the rule of law within the UK Parliament, particularly with regard to a broader range of issues within the UK. The All-Party Parliamentary Group (APPG) on the Rule of Law therefore has a role to play in promoting further consideration and discussion of the rule of law in Parliament, along with other APPGs, select committees, individual parliamentarians' contributions and non-parliamentary bodies.

**Download the full report: <http://binghamcentre.biicl.org/appg-rule-of-law>.**

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