

The Supreme Court (Rt. Hon. Lord Reed, President of the Supreme Court of the United Kingdom) – Written Evidence (ROL0100)

Introduction

1. I welcome the opportunity to respond to this invitation. I discuss below the issues raised in the Committee's questions which are most pertinent to the work of the Supreme Court.

Summary

2. The main points made below can be summarised as follows:
 - i. The rule of law is a long-established principle of our constitution, which can be traced back to Magna Carta. It is of vital importance to the lives of everyone in our society.
 - ii. The rule of law and parliamentary sovereignty should be understood as twin pillars of our constitution rather than principles in conflict with one another
 - iii. Parliament, the government and the courts all play a vital role in maintaining the rule of law. Upholding and defending the rule of law is one of the crucial responsibilities of all three branches of the state. A threat to the rule of law can arise if there is a lack of mutual trust between Parliament, the government and the courts.
 - iv. The judiciary play an essential role in upholding the rule of law. The courts apply and enforce laws which protect everyone and ensure that all parties are equally subject to the law, that the proceedings are conducted fairly, and that decisions are reached impartially, without external influence or bias.
 - v. The rule of law depends on public confidence in our institutions. If individuals cease to believe that their society is effectively regulated by law, then the rule of law is liable to break down.
 - vi. The UK's reputation as a beacon of the rule of law is a powerful source of international influence and has a profound impact on our economy.

Defining the rule of law

3. As the Committee is aware, the definition of the rule of law has been much debated. The broadest definitions that have been put forward have risked eliciting the response that the rule of law is equivalent to the rule of lawyers, and even a threat to parliamentary sovereignty. I adopt a more modest approach.
4. Put simply, the rule of law means the protection of everyone in our society against interferences with their rights without lawful authority. It means that no-one can interfere with a person's home, their family, their property or their liberty without lawful authority. The rule of law exists to protect everyone in our society – especially the most vulnerable, who are at greatest risk where the exercise of power is not controlled by law.

The rule of law as a tenet of our constitution

5. This conception of the rule of law, as meaning the absence of arbitrary power, can be traced back a long way in our constitutional history. It was given statutory force in section 29 of Magna Carta 1297, which re-enacted a provision set out in the better-known Magna Carta of 1215:

“No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed; nor will we not pass upon him, nor condemn him but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right.”

6. That provision encapsulates the central idea of freedom from arrest, imprisonment, deprivation of property or other interference with an individual's rights, otherwise than in accordance with the law. It also guarantees access to justice. It remains in force, and was applied by the Supreme Court as recently as 2016.¹
7. Parliament used the expression “the rule of law” in the same sense in 1610, when the House of Commons addressed a petition to James I. In it,

¹ *R(Unison) v Lord Chancellor* [2017] UKSC 51.

they expressed concerns about the government's use of prerogative powers to change the law without parliamentary consent. They wrote:

"Amongst many other points of happiness and freedom which your Majesty's subjects of this kingdom have enjoyed under your royal progenitors, kings and queens of this realm, there is none which they have accounted more dear and precious than this, to be guided and governed by the certain rule of the law which giveth both to the head and members that which of right belongeth to them, and not by any uncertain or arbitrary form of government."²

8. So understood, the rule of law and parliamentary sovereignty are twin pillars of our constitution³ rather than principles in conflict with one another. Parliamentary sovereignty ensures that the lives of everyone in our society are governed by the law of the land, and not by what the House of Commons called an "uncertain or arbitrary form of government". But there "is little advantage in the promulgation of laws ... unless there are judges who are able and willing to enforce them. Otherwise, the powers that be can disregard the laws with impunity."⁴ In other words, if the rule of law were not enforced through the courts, legislation could be arbitrarily applied or ignored, rendering Parliament's role as the supreme law-making body meaningless. By interpreting and applying the legislation that Parliament passes, the judiciary support and enforce the sovereignty of Parliament.

The basic requirements of the rule of law

9. In order for everyone in our society to be protected effectively by law against arbitrary power, certain basic requirements must be fulfilled. The rule of law requires:
- i. that powers to interfere with individuals' rights must be conferred and defined by law;

² *House of Commons*, vol. 2 of the *Proceedings in Parliament*, 1610, ed. Elizabeth Read Foster (1966), pp. 258-259.

³ As A V Dicey recognised in his *Introduction to the Law of the Constitution* (1885). In section 1 of the Constitutional Reform Act 2005, Parliament referred to "the existing constitutional principle of the rule of law".

⁴ T. Bingham, *The Rule of Law* (Penguin, 2011), p. 24.

- ii. that the law is reasonably clear and accessible, so that everyone can find out what their rights are;
- iii. that the law is applied and enforced even-handedly and with reasonable efficiency, so that everyone's rights are protected in practice and not only on paper;
- iv. that courts of law, as the final guardians of everyone's rights under the law, are impartial and independent of political influence; and
- v. that everyone whose rights have been threatened or infringed has reasonable access to the courts, so that unlawful behaviour can be challenged and redress can be obtained.

10. These requirements are largely formal rather than substantive in character, but are none the less important for that. Fulfilling them is a challenge for any society. Few countries have succeeded in meeting that challenge as well, or for as long, as the United Kingdom. As explained below, that continues to be a factor in the UK's economic prosperity and international influence.

The role of Parliament, the government and the courts in the operation of the rule of law

11. Parliament, the government and the courts all play a vital role in maintaining the rule of law. Upholding and defending the rule of law is one of the crucial responsibilities of all three branches of the state: legislative, executive and judicial.

12. Historically, Parliament has been responsible for some crucial underpinnings of the rule of law. Some examples were given above. Another example concerns judicial independence. Until the 17th century judges had no security of tenure, and could be (and sometimes were) removed from office if they took decisions which displeased the executive. In response to a petition by Parliament, Charles I agreed in 1640 that judges should hold office during good behaviour. That reform was made permanent by Parliament by the Act of Settlement 1701, and similar legislation continues in force.⁵

⁵ Senior Courts Act 1981, section 11(3). The Constitutional Reform Act 2005 also recognises and

13. Today, Parliament remains at the heart of the protection of the rule of law. In the first place, it makes much of our law, either by enacting statutes or by approving delegated legislation, and is therefore responsible for ensuring that the law which it makes is compatible with the rule of law. That means, in particular:

1. that laws should normally be prospective rather than retrospective;
2. that laws should be publicly available to everyone who may be affected by them (this may seem obvious, but the requirement has not always been met in relation to delegated legislation);
3. that laws should be reasonably clear and intelligible;
4. that laws should be relatively stable over time; and
5. that it should generally be possible for individuals to have recourse to the courts when they believe that powers conferred by legislation have been abused in a way that affects them. That means that ouster clauses should not be enacted where they would have the effect of preventing the abuse of power from being challenged.

14. Parliament is also responsible for making the laws which govern the courts, judicial appointments and the judiciary's terms of service. Those are the foundation of judicial independence, without which the rule of law would not exist.

15. Parliament is also the forum where issues of importance in our national life are debated. The maintenance of the rule of law is entirely compatible with such debate – indeed, public debate is a vital means of ensuring that the rule of law is maintained – provided that it is conducted in a manner which does not undermine the work of the courts or the independence of the judiciary. The necessary balance is struck by Parliament's procedures, as set out in *Erskine May*.⁶

preserves the guarantee of judicial independence in section 3(1), which provides: "The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary."

⁶ Para 21.23.

16. The government also have a number of functions which are of critical importance to the rule of law. They put forward most of the legislative proposals considered by Parliament. They make delegated legislation, to which the principles set out in para 13 above apply. They exercise extensive powers over individuals and organisations, as conferred by the law. They are responsible for the financial resources of the courts, and, through an executive agency, for the administration of the courts of England and Wales. They also have responsibilities in relation to other organisations whose work affects the rule of law, such as the police, the Judicial Appointments Commission and the Criminal Cases Review Commission.

17. The judiciary also play an essential role in upholding the rule of law. The courts apply and enforce laws which protect everyone, such as the criminal law and the civil law of tort. When presiding over disputes, the judiciary ensure that all parties are equally subject to the law, that the proceedings are conducted fairly, and that decisions are reached impartially, without external influence or bias. The judiciary maintain the stability and predictability of the law through the guidance given by appellate courts, and ultimately by the Supreme Court, when issuing judgments which bind the lower courts, where the vast majority of cases are decided.

The role of other institutions

18. Other institutions are also important to the maintenance of the rule of law. In particular, the Scottish Parliament, the Senedd and the Northern Ireland Assembly have a broadly similar role to Parliament within the scope of their responsibilities, and the observations made above in relation to Parliament are applicable by analogy, *mutatis mutandis*. Similarly, the Scottish Government, the Welsh Government and the Northern Ireland Executive have analogous responsibilities to those of the UK Government, within the scope of their functions.

19. Throughout the UK, confidence in the independence, integrity and efficiency of the police is of great importance to the effectiveness of the

criminal law. The crucial role of the legal profession should also not be overlooked. The effective protection of legal rights depends on access to competent and independent lawyers, as well as on independent and impartial courts.

The role of the public

20. Finally, the rule of law also depends on public confidence in our institutions. If individuals cease to believe that their society is effectively regulated by law, then the rule of law is liable to break down. Some people will then believe that they can ignore their obligations under the civil or criminal law with impunity, and act accordingly. Others will believe that they have to take the law into their own hands to protect themselves and their families. Others will become vulnerable to the appeal of demagogues.

21. Such a loss of confidence in the rule of law can come about in different ways: for example, if people lose confidence in policing; or if they cease to believe that the courts are independent and impartial, or that they have the capacity to deal effectively with violations of the civil or criminal law; or if they see people in positions of authority behaving unlawfully without apparent consequences.

Threats to the rule of law

22. There are many threats to the rule of law. Some have already been mentioned. Some are evident in other democracies at the present time:

- i. the development of support for a viewpoint which is hostile to the very idea of a society governed by rules, or to restraints on executive power;
- ii. the parallel development of the view that institutions which impose restraints on executive power, such as the legislature and the courts, are elites thwarting the wishes of the people for their own political reasons;
- iii. a consequent disdain for judicial independence, and a belief that judges should be politically accountable;

- iv. a view of lawyers as politically motivated, and a consequent disapproval of lawyers who represent unpopular individuals or organisations; and
- v. the growth of misinformation about the law, lawyers and courts on social media platforms, at a time of growing reliance on social media as a source of news and opinions.

23. This country is not immune to the tendencies which are affecting other democracies. It is particularly important that misinformation on social media should be countered, given its potential influence; but that task is beyond the capacity of the courts.

24. Other potential threats to the rule of law can include:

- i. a level of resourcing of the justice system which prevents the police or the courts from providing effective protection of rights, whether through the civil or the criminal law;
- ii. barriers to access to justice, including the cost of legal services;
- iii. threatened or perceived interferences with the independence of the courts; and
- iv. other behaviour which diminishes public confidence in the courts, such as unwarranted attacks on the competence, impartiality or integrity of judges.

25. In relation to the first of those matters, it is well known that constraints on the capacity of the prison system are affecting the processing of the more serious cases in the criminal courts. Reviews are under way with a view to addressing that problem, but it will inevitably take time to resolve. In relation to the second matter, there is reason for cautious optimism, as developments in the use of artificial intelligence raise the possibility of relatively low cost methods of resolving straightforward civil disputes.⁷ In relation to the third and fourth matters, there is an unfortunate tendency in public debate for people to react to the outcome of legal cases by

⁷ Low-cost dispute resolution systems have been established by some online retailers.

praising or, more commonly, criticising the judges rather than the state of the law.⁸

26. A more subtle threat to the rule of law can arise if there is a lack of mutual trust between Parliament, the government and the courts. In such a situation, the government may wish to protect themselves from what they perceive as intrusion by the courts, by asking Parliament to confer powers upon ministers whose exercise is effectively immune from challenge in the courts, either because they are so vaguely worded that it is difficult to place any limit on their scope, or because they are fenced with ouster clauses designed to prevent individuals from bringing cases before the courts. Such legislation is incompatible with the rule of law if it places individuals at risk of the arbitrary exercise of power. The avoidance of that threat requires Parliament, the government and the courts to understand and respect the constitutional boundaries between their respective roles.

The rule of law, economic prosperity and international influence

27. The importance of good governance through a commitment to the rule of law is widely recognised as underpinning economic prosperity. In particular, the quality of a country's legal system, and the independence and competency of its judiciary, are crucial factors for investment, innovation and GDP growth.⁹

28. The UK's reputation as a beacon of the rule of law is a powerful source of international influence and has a profound impact on our economy. A study by the British Institute for International and Comparative Law emphasised how important it is for businesses that the courts are seen to be impartial and the procedure adopted is fair and effective.¹⁰ The UK's

⁸ Recent examples include the *Miller* cases during the Brexit debate – *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 and *Miller v Prime Minister* [2019] UKSC 41 – and *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16.

⁹ Social Market Foundation, *Law and the Open Economy* (November 2021) (<Law-and-the-open-economy-Nov-2021.pdf (smf.co.uk)>), pp 12-13 (accessed on 7 April 2025). See also D. Acemoglu and J.A. Robinson, *Why Nations Fail* (Profile, 2013); UN General Assembly Resolution 70/1 of 25 September 2015.

¹⁰ British Institute for International and Comparative Law, *Risk and Return: Foreign Direct Investment and the Rule of Law* (<49_risk_and_return_fdi_and_the_rol_compressed.pdf (biicl.org)>) (accessed on 8 April 2025), p 6.

ability to attract foreign companies and investments reflects the fact that we continue to have a reputation as a robust legal system with an independent judiciary.

29. The UK's reputation as a country that respects judicial independence and applies clear and coherent rules also means that it is a popular choice of jurisdiction to resolve international disputes,¹¹ and that English law is commonly selected as the governing law for commercial transactions internationally. An analysis by LegalUK found that in 2018-2019, English law governed around £80 billion of gross written insurance premiums in the London market; £250 billion of global merger & acquisition deals; US\$11.6 trillion of global metals trading; and €661.5 trillion of global derivatives transactions.¹² English law is the governing law of choice for maritime contracts, a sector that contributes over £17 billion annually to the UK economy. Further, the London Business and Property Courts attract high numbers of users from outside the UK. In 2023, there was at least one non-UK party in 75% of cases in the Patents Court, 64% in the Commercial Court, and 54% in the Competition Court. All the parties were non-UK in 40% of cases in the Commercial Court, 40% in the Admiralty Court and 25% in the Business Court.¹³

30. This is also a feature of many of the cases in the Supreme Court. For example, in 2023, we decided a contractual dispute between Ukraine and Russia, as their contract specified that it was governed by the law of England and Wales and that the courts of England and Wales had exclusive jurisdiction to hear disputes arising out of it.¹⁴

¹¹ E. Lein et al, *Factors Influencing International Litigants' Decisions to Bring Commercial Claims to the London Based Courts* (London, 2015), Ministry of Justice Analytical series, at p 15. The UK has the second largest legal services market in the world, after the USA: TheCityUK, *Legal Excellence: internationally renowned* (2024), p 4. The 2021 Queen Mary University of London/White & Case International Arbitration Survey confirmed that London remained the most popular seat of arbitration (equal, for the first time, with Singapore): http://www.arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf

¹² Oxera (prepared for LegalUK), 'The Economic Value of English Law' (October 2021) < [The-value-of-English-law-to-the-UK-economy.pdf](#) > (accessed on 7 April 2025), p.1, 16-17.

¹³ TheCityUK, 'UK Legal Services 2024' (December 2024) < [uk-legal-services-2024-legal-excellence-internationally-renowned.pdf](#) > (accessed on 7 April 2025), p8.

¹⁴ *Ukraine (represented by the Minister of Finance of Ukraine acting upon the instructions of the Cabinet of Ministers of Ukraine) v The Law Debenture Trust Corporation plc* [2023] UKSC 11.

31. The justices of the Supreme Court also sit on the Judicial Committee of the Privy Council (the "JCPC"), which is the court of final appeal for 13 UK overseas territories, three Crown dependencies, and 12 independent countries whose constitutions provide a right to appeal to the JCPC. Those jurisdictions continue to use the JCPC as their final court of appeal because they trust the impartiality of our judiciary and our commitment to principles of the rule of law, such as predictability, transparency and fair process. The reputation of the judiciary in the UK and our commitment to the rule of law has also played a part in encouraging economic prosperity in the JCPC jurisdictions which depend on attracting foreign investment and international business, such as Jersey, Guernsey, the Isle of Man, Gibraltar, the Cayman Islands, the British Virgin Islands, the Bahamas and Bermuda. International companies investing or establishing themselves in these jurisdictions are reassured by the fact that any dispute that may arise can ultimately be resolved by an independent court with a commitment to transparency and integrity.

32. The UK's reputation as a bastion of the rule of law is also reflected in the fact that the Supreme Court receives visits almost every week from judges and justice ministers from around the world, who want to learn from the UK about judicial transparency, communication with the public, managing relationships between the court and other governmental institutions, and other ways in which the court seeks to maintain respect for the rule of law. The justices and court staff are also regularly invited to visit other supreme courts to give lectures and seminars on these topics. A common theme that arises in our discussions with the judiciary of other countries is the difficulty of securing judicial independence from political interference. The UK is perceived internationally as a good example of a country with an independent judiciary within a system which maintains an appropriate separation of the courts from political influence. It is important to the UK's economic prosperity, as well as to the maintenance of our values and our freedoms, that we should maintain that reputation.

24 April 2025

