



THE MISRULE OF LAW:

**FREETHINKING AND
THE RULE OF LAW**

THOMAS GRANT QC

What is the "Rule of Law"?

- "We mean, in the first place, that no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land."

A.V. Dicey, 1885

- Her Majesty "could inflict no punishment upon any, even the meanest of her subjects, unless warranted by the law of the land: and she therefore trusted that His Imperial Majesty would not insist upon impossibilities."

Secretary to Queen Anne, 1708

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(For Address and Telephone Number see inside cover)

DPP v Shaw (1961)

Lord Reid: "Where Parliament fears to tread it is not for the courts to rush in."

What is the Rule of Law? (Part 2)

"When we speak of the 'rule of law' as a characteristic of our country, [we mean] not only that with us no man is above the law, but (which is a different thing) that here, every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals."

A.V. Dicey

"My Lords, the argument that there is no power to enforce the law by injunction or contempt proceedings against a minister in his official capacity would, if upheld, establish the proposition that the executive obey the law as a matter of grace and not as a matter of necessity, a proposition which would reverse the result of the Civil War."

Lord Templeman, M v Home Office

"The core is the existing principle is, I suggest, that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts."

Lord Bingham

- The law must be accessible, and so far as possible intelligible, clear and predictable.
- Means must be provided for resolving without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.
- Adjudicative procedure provided by the state should be fair.
- The law must provide adequate protection of fundamental human rights.

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration."

Preamble to the European Convention on Human Rights

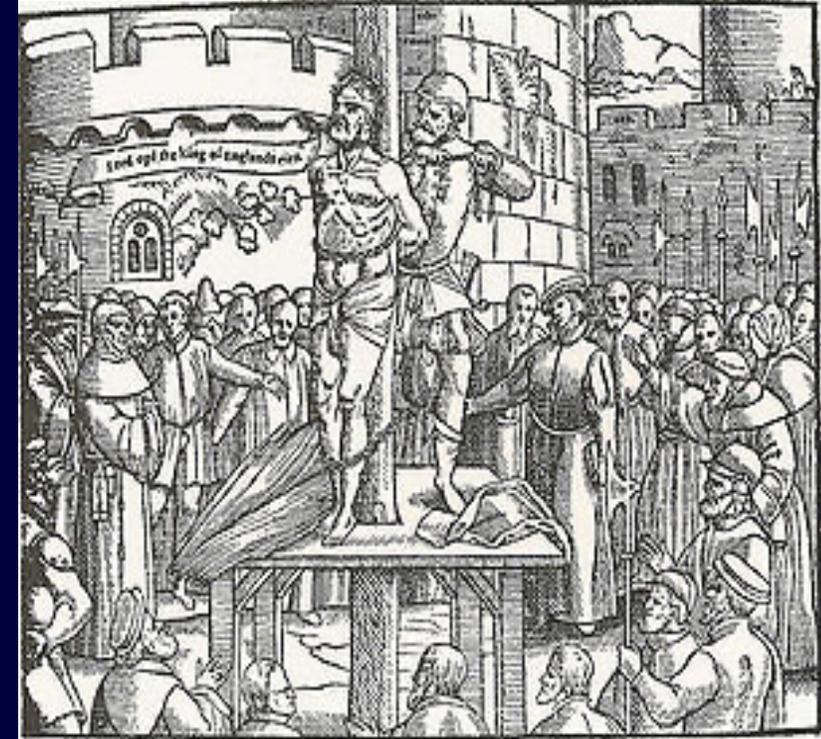
"Do not interrupt, Athenians, but keep that promise which I asked of you - not to interrupt, no matter what I say, but to listen; for I think that you will gain by listening....You may be very sure that if you put to death such an one as I, you will not injure me more than your own selves....For if you kill me you will not readily find another such as I, who am...fastened upon the state by God like some gadfly upon a powerful, high-bred horse that has become sluggish by reason of his very size and needs to be aroused. As such as gadfly does God seem to have fastened me upon the state; wherefore, besetting you everywhere the whole day long, I arouse and stir up and reproach each one of you."

The Apology of Socrates



"divers false and perverse people of a certain new sect ... make and write books, they do wickedly instruct and inform people ... and commit subversion of the said catholic faith.."

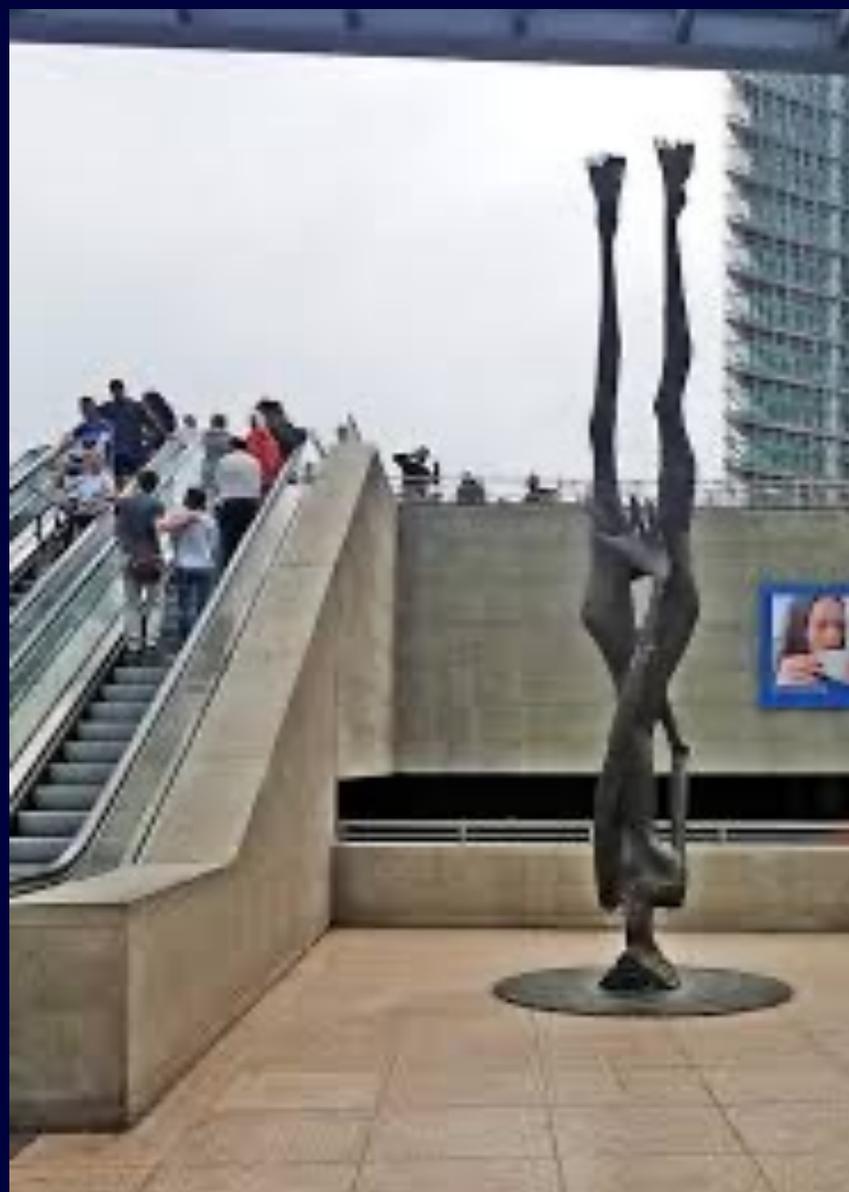
De Heretico Comburendo



"Perhaps you
pronounce this
sentence against me
with greater fear than I
receive it."

Giordano Bruno





"I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."

R v Hicklin (1868)



"As might be supposed I have not had the time, nor may I add the inclination to read through this book. I have however read pages 690-732. I am entirely unable to appreciate how those pages are relevant to the rest of the book or indeed what the book itself is about. I can discover no story. There is no introduction which give a key to its purpose and the pages above mentioned, written as they are as if composed by a more or less illiterate vulgar woman, form an entirely detached part of the production. In my opinion there is more, and a great deal more than mere vulgarity or coarseness, there is a great deal of unmitigated filth and obscenity.It is conceivable that there will be criticism of this attitude towards publication of a well-known writer; the answer will be that it is filthy and filthy books are not allowed to be imported into this country."

Sir Archibald Bodkin, Director of Public Prosecutions, on Ulysses

Article 9 of the European Convention on Human Rights:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

Article 10:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers..."

""Freedom to report the truth is a basic right to which the law gives a very high level of protection. It is difficult to envisage any circumstances in which speech which is not deceptive, threatening or possibly abusive, could give rise to liability in tort for wilful infringement of another's right to personal safety. The right to report the truth is justification in itself... But there is no general law prohibiting the publication of facts which will cause distress to another, even if that is the person's intention."

OPO v Rhodes, per Lady Hale and Lord Toulson

"There was not a shred of evidence that the Claimant was at risk of committing a criminal offence. The effect of the police turning up at his place of work because of his political opinions must not be underestimated. To do so would be to undervalue a cardinal democratic freedom. In this country we have never had a Cheka, a Gestapo or a Stasi. We have never lived in an Orwellian society...Overall, given the importance of not restricting legitimate political debate, I conclude that Mrs B's upset did not justify the police's actions towards the Claimant including turning up at his workplace and then warning him about criminal prosecution, thereby interfering with his Article 10(1) rights.."

Julian Knowles J, in R (Miller) v College of Policing (2020)

“Monsieur l’abbé, je déteste ce que vous écrivez, mais je donnerai ma vie pour que vous puissiez continuer à écrire.”

[Monsieur l’abbé, I detest what you write, but I would give my life to make it possible for you to continue to write.]

Voltaire