

The Rule of Law

In this article **Xiao Hui Eng** introduces 'the rule of law' and outlines its relevance for Citizenship teaching. It is followed by a sample classroom activity from a resource pack recently published by the Bingham Centre. Until we met colleagues from the Bingham Centre, we thought we understood what the phrase 'the rule of law' meant when it appeared in the government's statement of Fundamental British Values. In fact, as this article shows, the concept is more nuanced and more useful than we had thought.

The Bingham Centre's rule of law in schools project

Since 2014, the Bingham Centre for the Rule of Law has run 'The Rule of Law for Citizenship Education', an innovative project that provides resources and support to schools to teach the rule of law. It responds to a need for high quality, user-friendly resources on law and justice in the context of the Citizenship Curriculum, as well as the need for a constructive way to address new government education requirements on teaching 'Fundamental British Values' and counter-extremism strategies.

The Rule of Law for Citizenship Education programme is not simply a fact-based method of teaching law and justice. Rather, it equips students with the skills to analyse and evaluate the justice system and to understand the fundamental principles underpinning a good justice system. It engages students with democracy, justice, and rights through real-life scenarios on topical issues such as immigration, fair trial rights, equality before the law, abuse of power, and human rights. Using case studies and examples, students critically examine legal, political and social issues and consider values important to modern society.

The programme also helps develop key skills, challenging students to think beyond their own experiences, promoting debate and analysis, building confidence to form and articulate independent opinions, and to draw reasoned conclusions, with the ability to be sensitive to other points of view.

What exactly is the rule of law?

Over the course of our work on developing resources for schools on the rule of law and providing support on rule of law teaching, we have, of course, been asked numerous times what the rule of law actually

is. We often hear it mentioned as a vital partner to democracy and good governance, but its content is not often well understood, even among lawyers.

A justice system that respects the rule of law is one that upholds equality and fairness and has regard for individual liberties. It serves all in society regardless of personal attributes and does not exclude those who have fewer resources or are disadvantaged in any other way. This means having laws that provide for equal enjoyment of rights, as well as a justice system that enforces those rights fairly and equitably.

It is often easier to explain the rule of law by identifying its hallmarks. If there is one message that we try to reinforce, it is that the rule of law is not a nebulous concept with no specific content. Its content is, in fact, quite well defined and measurable.

- Everyone is subject to the law. This includes people, companies, organisations and the government.
- The law should be applied equally to everyone.
- The law should be as clear as possible so that everyone can know his or her rights and duties.
- Those in power may only make their decisions based on the law, and must do so fairly and reasonably.
- Everyone should be able to challenge decisions taken against him or her.
- Trials must be fair, with decisions made by judges who are impartial and independent.
- The law should show respect for individual rights.

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How is rule of law teaching relevant to Citizenship Education?

The hallmarks of the rule of law above show that learning about the rule of law goes far beyond learning what the law is, and how the justice system functions. Nor does the rule of law call

Xiao Hui Eng, Research Fellow at the Bingham Centre for the Rule of Law, a research institution that carries out applied research on national and international rule of law issues.



citizens to simply obey the law in the belief that the law is always right. Learning about the rule of law necessarily involves a close examination and evaluation of the law and justice system, and provides a thoughtful and stimulating way to explore the law and justice content of the Citizenship curriculum at Key Stages 3 and 4, as well as the Citizenship Studies GCSE content specification.

Beyond Citizenship curriculum requirements, rule of law teaching also has an obvious relevance for Department for Education (DfE) strategies that teachers find themselves suddenly having to meet.

The most likely place that teachers might have met a reference to teaching the rule of law is in the context of Fundamental British Values (FBVs) as part of spiritual, moral, social and cultural development (SMSC). The 2014 DfE guidance identifies the rule of law as one of the 'British values' to be promoted.

Secondly, there is the Prevent strategy, the aim and implementation of which is a cause for concern for many teachers who wonder how to meet the requirements in a way that does not undermine cohesion in the classroom and beyond. Rule of law teaching plays an important role in education to prevent extremism. It does not avoid controversial issues, instead tackling them in an accessible, balanced and engaging way that emphasises inclusiveness and encourages discussion in a reasonable and respectful way. Examples of topics examined in the resources include racial bias constituting an abuse of power in the context of police 'stop and search' powers, trials being conducted in secret for national security reasons, and equality law in the context of employment.

We have recently also started to hear more about the DfE's 'character and resilience' education, the stated aim of which is to cultivate a positive attitude

and values in young people through education. By teaching that rights and justice are for all, rule of law education promotes a positive outlook, showing that everyone can achieve change in society through accessing information and pursuing the right channels.

How does teaching the rule of law help to meet all these new requirements?

Rather than providing a simple 'right or wrong' answer, rule of law teaching introduces explicitly values of equality, fairness, liberty and justice as ideals to strive towards in a good and fair justice system that, by definition, serves all sectors of society. It is through this lens that rule of law teaching explores the place of individuals in society and in Britain as a whole, cultivating understanding of rights, as well as responsibilities.

Rule of law teaching is a useful tool in evaluating and examining controversial issues, and promoting the formation of different points of view through lively debate based on evidence and reason rather than on pre-conceived ideas. For example, the rule of law principles of fairness and equality embrace different needs and identities in society, and introducing them in the classroom can promote a culture of inclusiveness and understanding of diversity in the school and within the wider community. Rule of law teaching introduces fundamental moral and human rights principles, emphasising their universality.

Skills development

In encouraging students to examine the world and issues around their lives, rule of law teaching also plays a part in key skills development. From a Citizenship teaching point of view, it helps to provide pupils with the knowledge, skills and

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understanding to prepare them to play a constructive part in society.

Learning about the rule of law necessarily requires students to explore political and social issues critically, think independently, balance evidence, communicate points of view, make reasoned arguments and draw reasoned conclusions. This develops critical thinking skills and encourages development of analytical and communication skills. In the process, students learn how to develop their own opinions and express them in ways that are sensitive to the needs and points of view of others.

An independent evaluation of the rule of law teaching project pilot in September 2015 found that it succeeded in engaging children who are not usually high-achieving or the most confident in their peer groups, as it challenges pre-conceived ideas and the notion of a simple 'right answer'.

In the long-term, teaching the rule of law aims to instil in students the idea that they can and should play a full and active part in society. It does this by equipping them to analyse critically the authorities and system that make and administer important decisions affecting their lives.

What schools will get from the project

In its guidance for teachers on how to manage controversial issues in the classroom (in the context of Prevent), ACT has outlined some of the challenges that arise, and emphasises the importance of lesson planning. We have aimed in our resources to provide teachers with planning guidance by establishing clear learning objectives, and explaining the knowledge, skills and understanding that should be achieved by the lesson. The resources also provide the opportunity for debrief so that teachers can assess student learning and how far objectives have been met.

ACT guidance also highlights the challenge of managing controversial discussions and bridging knowledge gaps. Teaching law and justice content and discussing controversies related to them is sometimes viewed as technical and challenging for those who do not have a legal background. The resources provide detailed guidance for rule of law teaching, including definitions of key terms and concepts, background information on teaching points and full instructions on how to run activities, aimed at those who are new to this. (A sample from our resources follows this article.)

How to join

The Bingham Centre welcomes schools and teachers interested in rule of law teaching to view the sample resources available on the Centre's web site, and to sign up for a pack of free resources on the Rule of Law for Citizenship Education project web page: <http://binghamcentre.biicl.org/schools/>

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4.3.7 ACTIVITY 5: The Maverick Judge – Printouts for students

Imagine that you are the legal assistants to a maverick judge, who is independent-minded and does not have all the characteristics you discussed in Activity 3. A trial is about to take place where someone has been charged with terrorist violence. The person charged maintains his innocence saying that he has been wrongly arrested and charged. There has been a lot of negative public opinion about him and most people want him to be found guilty and locked away.

You have some doubts about how the maverick judge is planning to conduct the trial. Below are some of the things the judge has said to you about the trial. Based on what he has said,

What advice would you give the judge in order to make sure the trial is fair?

This is what the judge has told you in his own words:

a. I just want to get this trial over and done with, the quicker the better. The sooner the terrorist is found guilty, the sooner I can rest easy in the knowledge that he is behind bars and that people will feel safe in their homes.

b. Why don't we hold the trial next week? We don't need to tell him that he is going to be on trial until the day before. That way he won't have too much time to invent stories to tell the judge and jury.



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c. I don't want him to know the facts that we plan to use against him in the case because it'll be much easier to deal with him if he isn't prepared for what we say about him in court. It's quite convenient that he doesn't speak English very well because then he won't be able to question the story we put forward in court too much.

d. We'll let him know that if he doesn't want to be found guilty, he's going to have to prove that he didn't do it. We'll give him a couple of days to come up with something, and if he doesn't manage to, that'll show that he's guilty.

e. I think it's best to be quite discreet with the case and I won't let the public know what's going on. I won't need to give too much reasoning for the guilty verdict when we get to it. It's obvious that he's guilty and when you start giving too many reasons that just invites people to start talking about the trial and to ask difficult questions. We really don't need the public involved. That just creates more trouble than is necessary.

f. To be honest, I'm not that worried. If the worst comes to the worst, I'm sure we can get a confession out of him by the end of the trial. He has a wife and two young children and I'm sure he wouldn't want anything to happen to them. We can let him know that if he wants them to be safe he should do as he's told.

Write down your advice for the judge here:



4.3.9 ACTIVITY 5: The Maverick Judge - Background for teachers

Note for teachers: The law (particularly from the International Covenant on Civil and Political Rights (ICCPR), The European Convention on Human Rights (ECHR) and the UK Criminal Procedure Rules (CPR)) behind the principles for this activity has been cited in footnotes for your information but is not necessary for students' understanding of the principles.

Sample answers

- a. The defendant must be told the details of what crime(s) he is being accused of and be given enough time to prepare a defence. Without information and enough time, the defendant is not given the opportunity to tell his side of the story. The short timeframe that the judge is proposing is not going to be sufficient time for the preparation of a defence, particularly in such a serious case where the charge is one of murder.
- b. In order to be able to defend himself fully, the defendant must also be informed of the argument that the prosecution plans to use against him. Otherwise, he may not, for example, mention facts that would be crucial to disproving that argument because he doesn't know that they are relevant.
- c. The defendant must be provided with an interpreter so that he can fully understand the court proceedings and so that he is not disadvantaged as compared to the prosecution. Again, if he doesn't know exactly what the argument is that is being mounted against him, or what questions the judge is asking, he won't be able to defend himself fully.
- d. The judge is wrong that the defendant should have to prove his innocence. The principle that everyone is innocent until proven guilty means that the burden is on the prosecution to show that the defendant is guilty.
- e. Although closed trials are carried out in certain situations where, for example, the trial could be prejudiced because of strong public opinion, in general, a trial should be open to the public so that they can scrutinise its fairness. Closed trials mean that unfair proceedings could be going on (as with this case) and nobody would ever know. The judge must give reasoning in coming to a decision so that everyone can see that the judge has based his decision on the facts of the case and the law, and not on arbitrary or irrelevant reasons. If the decision is illogical, the defendant can then appeal against it.
- f. The defendant cannot be forced into a confession. Threatening that something untoward will happen to his family means that the defendant may confess in order to protect his family rather than because he is guilty.

You may if there is time now wish to explore the case study below with students, explaining that many of the unfair elements of the trial explored above were at risk of being put into action through the government's proposal to use secret trials in certain cases.