

THE RULE OF LAW IN PARLIAMENT

A Review of the 2015-16 Session

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A Research Report by the Bingham Centre for the Rule of Law

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The Bingham Centre for the Rule of Law was launched in December 2010 to honour the work and career of Lord Bingham of Cornhill – a great judge and passionate advocate of the rule of law. The Centre is dedicated to the study, promotion and enhancement of the rule of law worldwide.

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THE RULE OF LAW IN PARLIAMENT

A REVIEW OF 2015-16

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EXECUTIVE SUMMARY

INTRODUCTION

The rule of law lies at the heart of the UK's system of government. It has been recognised in Parliament as a 'fundamental British value' - a value which must be protected just as carefully and resolutely as other values that form the basis of our society, such as democracy, individual liberty and respect for diversity. The UK is also recognised internationally for its commitment to the rule of law, and the benefits that it has brought.

This report provides detailed information and analysis of references made to the 'rule of law' by parliamentarians during the 2015-16 parliamentary session.¹ A shorter briefing paper with an overview of the key findings complements this report and is available at <https://www.biicl.org/bingham-centre/projects/ruleoflawreview2016>

WHY TALKING ABOUT THE RULE OF LAW IN PARLIAMENT IS IMPORTANT

The rule of law has practical implications for almost every aspect of government and parliamentary decision-making and so parliamentarians consider rule of law issues frequently. Every decision to grant a discretion to a Minister or bureaucrat in an Act of Parliament engages the rule of law, questions of access to the legal system such as fees, legal aid and legal process are rule of law issues, and holding the government to account is an example of applying the rule of law. Most often, parliamentary debates on these and other rule of law issues are focused on practical outcomes. Under the pressure of decision-making on complex and technical policy and legal issues with numerous interests to balance, including budgets, underlying fundamental constitutional values, like the rule of law, are not often directly raised.

There is a danger in separating individual issues from their rule of law underpinnings. It is important to keep them linked because protecting and maintaining the rule of law requires constant vigilance across a wide range of issues. It can be weakened or even destroyed by incremental actions, perhaps taken in good faith, often unnoticed. Express reference to the rule of law mitigates such risks. Direct references to the 'rule of law' when issues that concern the rule of law are discussed is a reminder that these are not purely political and policy matters with limited impact in their own particular sphere but are part of the network of policies and laws that together secure a just society in the UK - necessarily underpinned by the rule of law.

So, the study on which this Briefing is based considers only express references to the rule of law in Parliament: it is concerned with the use of the term 'rule of law' itself.

Thinking and talking about issues from a rule of law perspective is important in every part of government but Parliament has a special role in upholding the rule of law because ultimately it is Parliament that must protect the fundamental constitutional values of the United Kingdom.

¹ This study builds on the first ever systematic review of these issues, conducted by the Bingham Centre last year and published as: Swee Leng Harris and Lawrence McNamara, *The Rule of Law in Parliament: A Review of Sessions 2013-14 and 2014-15*, Bingham Centre for the Rule of Law (2016) http://www.biicl.org/documents/860_final_full_rule_of_law_in_parliament_research_report_2013-14_2014-15.pdf?showdocument=1

WHAT IS THE RULE OF LAW?

The rule of law is a core constitutional value in the UK. It both encompasses and illuminates vital aspects of good law-making, accountable government and individual liberty.

Magna Carta and the rule of law – 2015 Lord Lang: ‘In this of all years, when we celebrate the 800th anniversary of the sealing of the Great Charter, it seems timely to reassert the primacy of the rule of law in our democratic heritage, which is still central today to the workings of our constitution and our courts.’ [House of Lords, 7 July 2015, Col 105]

Although the rule of law is a single value, it includes many different principles, each of which contributes to the rule of law overall. These principles cover a range of matters that have practical implications for all of us, every day, like access to justice, independent and impartial courts, legal aid, transparency in executive decision-making, fair and rational decision-making, and government accountability. The rule of law is not an abstract value to be used for rhetorical effect only. As Lord Bingham wrote in his book, *The Rule of Law*, at the core of the rule of law is the notion ‘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’.²

The principles that make up the rule of law have been stated in many different ways. Most famous in the UK is the statement of eight specific principles by Lord Bingham, the preeminent UK judge of his generation and a passionate advocate of the rule of law. While Lord Bingham’s eight principles touch on a variety of different issues, each principle should not be viewed in isolation. They work together to secure the rule of law.

Lord Bingham’s **eight rule of law principles** (*The Rule of Law* (2011)):

1. The law should be accessible and predictable
2. Legal questions should be determined according to law, not by the exercise of discretion
3. The law should apply equally to all, except where objective differences justify differentiation
4. Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably
5. The law must afford adequate protection of fundamental human rights
6. Means must be provided for resolving without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve
7. Adjudicative procedures provided by the state should be fair
8. The state must comply with its obligations in international law as in national law

² Tom Bingham, *Rule of Law* (2011) 8.

KEY FINDINGS OF 2015-16 STUDY OF RULE OF LAW IN PARLIAMENT

Trends across the Houses in 2015-16

- **Very few parliamentarians regularly use the term 'rule of law' in parliamentary proceedings.** The 'top 10' lists of parliamentarians who referred to the rule of law most frequently in each House each had a parliamentarian in first place with over 40 hits and then a sharp decline to fewer than 10 hits for the parliamentarian in last place.
- **Among the MPs and peers who referred to the rule of law most frequently, most references to the rule of law concerned foreign affairs matters.** This unfortunately suggests that members continue to view the rule of law as an 'export' of greater relevance outside the UK than in it, and often of special relevance to the developing world.

'We have an important role to play as part of the international community. We cannot stand by and see atrocities happen; we cannot stand by and see the rule of law broken or human rights abused.' Valerie Vaz MP on the political situation in Burma³

- **The overwhelming majority of parliamentarians who most frequently referred to the rule of law held positions in the Executive**, and a significant proportion of references to the rule of law by members of the Executive were made when answering questions. This suggests that the rule of law tends to be used by Government to justify Government actions, rather than as a tool to scrutinise legislation and hold the Executive accountable. But, it also means that there is significant scope for members from other parties (as well as Conservative party members who do not hold Executive positions), to use the rule of law as a tool for parliamentary scrutiny.
- **Whether parliamentarians have a legal background is largely irrelevant to their engagement with the rule of law.** Almost all MPs and peers who referred to the rule of law most frequently did not have a legal background. This demonstrates that the rule of law is not a concept accessible only to lawyers and can be utilised by all parliamentarians.

³ Valerie Vaz MP, House of Commons, Hansard, 23 Mar 2016, Col. 571.

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Top issues attracting rule of law discussion

Of the **top issues** that attracted rule of law discussion in Parliament:

- Approximately half concerned the **rule of law overseas**: the rule of law in Turkey, Hong Kong, Eritrea and China, and rule of law in UK foreign policy

'Efforts to improve economic opportunities in Eritrea must go hand in hand with improvements in human rights and the rule of law.' David Lidington MP Minister of State for Europe [House of Commons, Hansard, 9 Nov 2015, Col 198]

- Two issues concerned the **rule of law in Northern Ireland**: the rule of law in Northern Ireland generally and the Northern Ireland (Stormont Agreement and Implementation Plan) Bill

'The [Northern Ireland (Stormont Agreement and Implementation) Bill] ... amends the pledge of office for Ministers in the Northern Ireland Executive. The enhanced pledge reflects the commitments in the fresh start agreement to give unequivocal support for the rule of law and to work collectively to achieve a society free of paramilitarism.' Lord Dunlop, Parliamentary Under-Secretary of State, Scotland Office [House of Lords Hansard, 12 Apr 2016, Col 225]

- Four issues concerned the **rule of law in the UK generally**: the rule of law in the UK as a whole and in the context of: the Immigration Bill; the Office of the Lord Chancellor; and radicalism/extremism

'Justice also recommends that the proposal to extend the "deport first, appeal later" powers to all human rights-based immigration appeals should be a source of alarm to anyone who cares about the law and the rule of law. How can people outside the country assert their rights and appeal in the way that we think is appropriate under the rule of law? It is unimaginable.' Baroness Kennedy on the Immigration Bill [House of Lords, Hansard, 22 Dec 2015, Col 2483]

Parliamentary Committees' engagement with the rule of law

Some parliamentary committees referred to the rule of law in their reports, during discussions and in committee correspondence. Certain committees provided strong examples of how the rule of law can be used as a tool for legislative scrutiny at the committee stage. For example, the House of Lords Select Committee on the Constitution employed rule of law concepts and the term 'rule of law' in a variety of different contexts, including to criticise lengthy and vaguely worded immigration legislation, expansive executive power and in discussions about the role of the Lord Chancellor.

However, overall the analysis of committee materials shows that committees could refer to the 'rule of law' more often, particularly committees with domestic mandates. For example, the Joint Committee on Human Rights referred to the rule of law only in relation to the use of drones for the purposes of targeting killings to emphasise the importance of the rule of law in UK foreign policy, despite the fact that the Committee considers domestic issues that touch on many rule of law principles.

CONCLUSIONS AND RECOMMENDATIONS

The Bingham Centre's study of direct references to the rule of law in parliamentary proceedings is grounded in the importance of linking issues that touch on rule of law principles with the overarching concept of the 'rule of law'. Direct reference to the rule of law in Parliament can strengthen the constitutional underpinnings of government in the UK. It can remind both politicians and citizens that decisions on what may seem to be rather small or isolated matters of bureaucratic detail – such as welfare benefits sanctions – may, in fact, touch on fundamental values. Expressly anchoring parliamentary deliberation in the rule of law can also protect the practical operation of the rule of law by clarifying its application and scope.

The report on the 2015-16 session of Parliament is therefore intended to encourage parliamentarians' increased recognition of and engagement with the rule of law in their parliamentary duties. Further, it is hoped that the study will contribute to the engagement of citizens and civil society with Parliament. Finally, the study adds to the evidence base on Parliament's role in upholding the rule of law.

In light of the study's findings, the Bingham Centre makes the following **recommendations**:

- 1. All parliamentarians should increasingly refer to the 'rule of law'** where appropriate in parliamentary proceedings. Such references would strengthen Parliament's important role in upholding the rule of law and enrich parliamentary debate by linking seemingly independent matters to the broader, more fundamental value of the rule of law in the UK.
- 2. Parliamentarians holding Executive and shadow portfolios** should increase engagement with the rule of law on matters within their portfolios **and** also engage with the rule of law in a broader range of contexts outside their portfolios (e.g. parliamentarians holding Executive positions should not only use the rule of law to advocate for or defend government action within their own portfolios). This would contribute to richer parliamentary debate and more rigorous scrutiny across a broader range of policy areas.
- 3. Parliamentary Committees** should engage more actively with the rule of law, especially those with domestic mandates.
- 4. Parliamentarians should especially increase their engagement with the rule of law on domestic issues.** Parliamentarians should not view the rule of law as a matter relevant to developing countries only and should also invoke rule of law principles and expressly refer to the 'rule of law' when considering UK matters, such as those relating to criminal justice, immigration and human rights.
- 5. The All-Party Parliamentary Group (APPG) on the Rule of Law has a role to play assisting parliamentarians to implement recommendations 1–4.** Parliamentarians are encouraged to attend the meetings of the APPG on the Rule of Law.
- 6. Parliament should ensure that Henry VIII clauses are used sparingly, and when used, are carefully drafted and only used in primary legislation that provides appropriate detail and substance for legal certainty.** Looking ahead to the major issue on Parliament's agenda, Brexit will raise a range of rule of law questions. The scale and complexity of the law reform process necessary to give effect to Brexit in UK law will likely give rise to a temptation to delegate large

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swathes of legislative power. Although such delegation may in some cases be appropriate, it is important that rule of law principles such as the proper exercise of legal power by the Executive are safeguarded by Parliament, as discussed in the Bingham Centre's Briefing Paper on *Parliament and the Rule of Law in the Context of Brexit*

(http://www.biicl.org/documents/1284_briefing_paper_parl_and_rol_in_brexit.pdf?showdocument=1).

- 7. When scrutinising legislation, Parliament and its committees can apply the standards from the Code of Constitutional Standards** — derived from the work of the House of Lords Constitution Committee and produced by the University College London Constitution Unit — to promote fidelity to rule of law principles. (The code is available at <https://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/164>) Many of the Code's standards translate broad rule of law principles into specific standards.

The Bingham Centre also acts as the secretariat for the All Party Parliamentary Group (APPG) on the Rule of Law. The purpose of the APPG on the Rule of Law is to promote parliamentary and public discussion of the rule of law as a practical concept. The APPG on the Rule of Law was established by a meeting of members of both Houses of Parliament on 3 June 2015 and is Chaired by The Rt Hon Dominic Grieve QC MP, the Co-Chair is The Lord Pannick QC.

The Centre is grateful to the Legal Education Foundation which provides financial support for the secretariat.

Further information on the APPG for the Rule of Law can be found at:

<http://binghamcentre.biicl.org/appg-rule-of-law>.

THE RESEARCH

I DATA SUMMARY

'Hits' returned by the searches roughly correlated to references to the rule of law, but did not exactly correlate on a one-to-one basis. The search engine treated a speech or statement that mentioned the rule of law multiple times as a single 'hit', although different speeches that mentioned the rule of law in the same proceedings were treated as different hits. Hence, a proceeding in which multiple speakers referred to the rule of law produced more hits than a proceeding in which one speaker spoke about the rule of law at length with multiple references to the rule of law in the one speech. However, where the rule of law was mentioned by a member in the course of parliamentary debate (i.e. where there was interactive discussion, rather than the delivery of a single speech), each rule of law reference was counted as a separate hit.

A. Overall Results for the 2015-16 Parliamentary Session

1. The search for 'rule of law' in the 2015-16 session returned several hundred hits for the Lords and the Commons as set out in Table 1.

Table 1

Hits in Commons	Hits in Lords	Total
374	279	653

2. Table 2 disaggregates the figures in Table 1 by the main types of parliamentary materials in which there were hits. However, two hits in the Commons are not included in the table below: one hit concerning a Business Question and another hit concerning an Oral Question Time Intervention.

Table 2

Type of Material	Hits in Commons	Hits in Lords
Proceeding contributions – statements or speeches in parliamentary debates	236	215
Written questions and answers	101	45
Oral questions and answers	33	17
Parliamentary proceedings ⁴	2	2

B. The Top Issues that Received Rule of Law Discussion

3. The issues that prompted the most rule of law discussion in Parliament are set out in Table 3 below. The aim of the analysis was to present the top 10 issues, however, 11 issues are listed because there were three issues tied on 12 hits for ninth place.

⁴ Parliamentary Proceedings materials encompass various materials such as formal proceedings, statements, ministerial corrections, petitions and points of order.

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4. Of these top issues:

- Five concern the rule of law overseas, two concern the rule of law in Northern Ireland, and four concern the rule of law in the UK generally.
- Only two of the issues involved legislative scrutiny, i.e. rule of law discussion in relation to specific proposed legislation.
- Most of the top issues received more rule of law discussion in the House of Commons than in the House of Lords, with the notable exceptions of the Immigration Bill and the Office of the Lord Chancellor. The latter received no discussion in the House of Commons, and the Immigration Bill received four times as much rule of law discussion in the House of Lords than in the House of Commons.

5. The top issues were:

- Rule of law in Turkey⁵ — Importance of the rule of law in Turkey, UK's promotion of rule of law through foreign policy, requirement for Turkey to improve rule of law to join EU. Note, however, that eight hits for this issue were generated by a reference to the rule of law in a written answer by Rt Hon David Lidington MP, then Minister of State for the Foreign and Commonwealth Office on European issues and NATO. These eight written answers were drafted in the same terms to different questions, and four hits are similarly generated by four identical written answers by Mr Lidington.
- Immigration Bill — The Bill's extension of enforcement powers of immigration officers; provisions for immigration detention and bail system; and extension of the 'deport first, appeal later' rules to all human rights appeals raised rule of law questions. There was also discussion of people coming to the UK because of the rule of law here, and the need for immigration in accordance with the rule of law.
'Justice also recommends that the proposal to extend the "deport first, appeal later" powers to all human rights-based immigration appeals should be a source of alarm to anyone who cares about the law and the rule of law. How can people outside the country assert their rights and appeal in the way that we think is appropriate under the rule of law? It is unimaginable.' Baroness Kennedy on the Immigration Bill⁶
- Office of the Lord Chancellor — House of Lords debate on the Report of the Constitution Committee on The Office of Lord Chancellor.⁷ The rule of law was mentioned 130 times in the debate, in which discussion focused on the Lord Chancellor's role in upholding the rule of law.

⁵ Includes debates and questions on: Turkey: EU Enlargement; EU-Turkey Agreement; Turkey: Press Freedom; Turkey: Freedom of Expression; Turkey: Arrests; Turkey: Military Intervention; European Council: March 2016; Egypt and Turkey: Freedom of Expression; Turkey: PKK; European Council.

⁶ House of Lords, Hansard, 22 Dec 2015, Col. 2483.

⁷ House of Lords, Select Committee on the Constitution, 6th Report of Session 2014-15, *The Office of Lord Chancellor* (December 2014).

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- iv. Rule of law in Northern Ireland⁸ — importance of the rule of law in Northern Ireland, commitment of political parties in Northern Ireland to rule of law in negotiations; UK Government commitment to upholding rule of law.
- v. Rule of law in the UK⁹ — rule of law as an important and shared value/part of life in the UK; discussion of what it requires and how the rule of law is upheld in the UK; discussion of the relationship between the Human Rights Act and the rule of law.
- vi. Rule of law in China¹⁰ — rule of law in China, and the rule of law in UK foreign policy on China.
- vii. Radicalism/Extremism¹¹ — Most of these hits are generated by quotation of the Government's definition of extremism, which includes the phrase 'rule of law'. Ten of these hits are references to the rule of law in written answer given by the Rt Hon Karen Bradley MP, then Parliamentary Under-Secretary for the Home Office.
- viii. Rule of law in foreign policy¹² — Discussions of UK foreign policy and the rule of law, including: threats to rule of law overseas, the need to uphold, promote and comply with the rule of law in foreign policy, UK's history of promoting rule of law, and importance of rule of law to international development.

'We have an important role to play as part of the international community. We cannot stand by and see atrocities happen; we cannot stand by and see the rule of law broken or human rights abused.' Valerie Vaz MP on the political situation in Burma¹³
- ix. Northern Ireland (Stormont Agreement and Implementation Plan) Bill — The Bill (now an Act) proposed to implement aspects of the Stormont agreement from December 2014 and Fresh Start Agreement of November 2015. The Act amended the undertaking given by Members of the Legislative Assembly and pledge of office by Ministers to include supporting the rule of law.

'The [Northern Ireland (Stormont Agreement and Implementation) Bill] ... amends the pledge of office for Ministers in the Northern Ireland Executive. The enhanced pledge reflects the commitments in the fresh start agreement to give unequivocal support for the rule of law and to work collectively to achieve a society free of paramilitarism.' Lord Dunlop, Parliamentary Under-Secretary of State, Scotland Office¹⁴
- x. Rule of law in Hong Kong¹⁵ — rule of law in Hong Kong and promoting rule of law through UK foreign policy on Hong Kong.
- xi. Rule of law in Eritrea¹⁶ — rule of law in Eritrea, and promoting rule of law through UK foreign policy on Eritrea.

⁸ Includes debates and questions on: Northern Ireland; Terrorism: Northern Ireland; Northern Ireland Political Agreement; Northern Ireland: Political Agreement; Paramilitary Groups (Northern Ireland); Northern Ireland: Paramilitary Groups; Northern Ireland: Political Situation; Northern Ireland: Political Developments; Stormont.

⁹ Includes debates and questions on: Public Life: Values; Rule of Law (Magna Carta); Home Affairs and Justice.

¹⁰ Includes debates and questions on: China: Diplomatic and Economic Relations; China (Human Rights); China: Human Rights; China: Capital Punishment; China: Human Rights; Tibet; Zhang Kai.

¹¹ Includes debates and questions on: Universities: Radicalism; Radicalism.

¹² Includes debates and questions on: Britain and International Security; Britain in the World; International Human Rights Day.

¹³ House of Commons, Hansard, 23 Mar 2016, Col. 571.

¹⁴ House of Lords Hansard, 12 Apr 2016, Col. 225.

¹⁵ Includes debates and questions on: Hong Kong: Sino-British Joint Declaration; Hong Kong: Kidnapping of British Subjects; Hong Kong: Human Rights.

¹⁶ Includes debates and questions on: Eritrea; Eritrea: Human Rights; Human Rights (Eritrea).

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'Efforts to improve economic opportunities in Eritrea must go hand in hand with improvements in human rights and the rule of law.' David Lidington MP¹⁷

Table 3: Issues that generated the greatest number of rule of law hits

Issue	House of Commons	House of Lords	Total Hits
Rule of law in Turkey	22	10	32
Immigration Bill	5	20	25
Office of the Lord Chancellor	0	22	22
Rule of law in Northern Ireland	11	7	18
Rule of law in the UK	12	5	17
Rule of law in China	12	3	15
Radicalism/Extremism	12	1	13
Rule of law in foreign policy	13	0	13
Northern Ireland (Stormont Agreement and Implementation Plan) Bill	10	2	12
Rule of law in Hong Kong	10	2	12
Rule of law in Eritrea	6	6	12

C. MPs and Peers

6. Tables 4 and 5 below show the MPs and peers who referred to the rule of law most frequently in the 2015-16 parliamentary session. It should be noted that as this report covers only one parliamentary session, the figures are significantly lower than those contained in the 2015 Report, which covered two parliamentary sessions.
7. The tables include whether the members have a legal background, or held a position in the Executive or a shadow portfolio, and the percentage of hits that concerned UK issues versus foreign affairs matters. These lists are referred to as the 'top 10' lists, although there are only seven peers listed. This is because eighth place in the House of Lords was jointly held by eight peers who each had four hits: Baroness Ludford, Lord Woolf, Lord Ramsbotham, Baroness Kennedy of the Shaws, Earl of Lytton, Lord Popat, Lord Ahmad and Lord Hylton.
8. It is important to note that the figures contained in the tables below do not necessarily represent the breadth or depth of rule of law analysis in which parliamentarians engaged. For example, some members referred to the rule of law in identical or nearly identical written answers given to multiple written questions. Where this was the case, each written

¹⁷ House of Commons, Hansard, 9 Nov 2015, Col. 198.

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answer containing the rule of law reference was counted as a hit. The figures for some members may therefore suggest more frequent and active engagement with the rule of law than was actually the case. For example, although the Rt Hon Karen Bradley MP, then Parliamentary Under-Secretary for the Home Office, had 11 rule of law hits, nine of these hits were for a written answer that was largely reproduced (with some additions) in response to a variety of different questions. The sentence in which the rule of law was referred to was almost identical in all nine of the written answers. This was also the case in relation to the two remaining hits – i.e. each hit related to a similar written answer and the sentences in which the rule of law was mentioned were almost identical. As such, although the Rt Hon Karen Bradley MP had 11 hits overall, closer analysis reveals that she only referred to the rule of law in two distinct contexts.

9. This reflects a limitation of our methodology. Because all hits apart from false positives are counted in the quantitative analysis, certain members may be ranked more highly than they should be due to repetitive references. Conversely, because only explicit references to the rule of law are counted as a hit, there is a risk that a member will receive a low ranking for rule of law hits even where that member frequently engaged with rule of law issues through the use of other 'rule of law' language – for example, through references to concepts such as transparency, accountability and access to justice.

MPs

10. Table 4 indicates the following trends among the MPs who most frequently referred to the rule of law in the 2015–16 session.
11. **The overwhelming majority of MPs held positions in the Executive** – Joanna Cherry QC MP is the only 'top 10' MP who was not a member of the Executive. This suggests that the rule of law is used more often by Government to justify Government actions, rather than as a tool for other parliamentarians to hold the Executive accountable. Parliamentary debate would be greatly enhanced if parliamentarians increasingly used the rule of law as a tool to scrutinise Government proposals and ensure compatibility of Executive decision-making with rule of law principles.
12. **The context in which MPs referred to the rule of law was closely linked to their Executive position.** This finding was also made in the 2015 report. All MPs who held an Executive position in the Foreign and Commonwealth Office referred to the rule of law only in relation to foreign affairs matters. Similarly, those MPs holding an Executive position in the Home Office or Northern Ireland Office referred to the rule of law only in the context of Northern Ireland. The Prime Minister and Lord Chancellor's references to the rule of law were almost equally divided between UK and international issues. All of the hits for Joanna Cherry QC MP, the Shadow SNP Westminster Group Leader on Justice and Home Affairs, were on UK issues. Parliamentary debate would be richer and legislative proposals would be more closely scrutinised if members engaged with rule of law principles in a broader range of contexts and not only to advocate for topics within their portfolios.
13. **Most references to the rule of law by the top 10 MPs were made in relation to foreign affairs matters.** There were fewer references to the rule of law in relation to domestic issues, as compared to foreign affairs matters amongst the hits for the top 10 MPs. The same finding was made in the 2015 report. This unfortunately suggests that MPs view the rule of law as of greater relevance to the developing world than to the UK. The top four members all referred to the rule of law exclusively in relation to foreign affairs matters. In fifth place, the Rt Hon Karen Bradley MP referred to the rule of law only in domestic

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contexts, however her results misrepresent the depth of her engagement with the rule of law, as discussed in paragraph [8] above. In sixth and seventh place, Theresa Villiers MP and Ben Wallace MP also referred to the rule of law in domestic matters only, but did so exclusively in relation to Northern Ireland (which reflects their portfolios).

14. Very limited references to the rule of law were made in relation to other domestic matters, including criminal law, immigration law and human rights matters. Some of these matters have been the topic of discussion in meetings of the APPG on the Rule of Law in 2015 and 2016. The discussion at these meetings indicates the potential for greater rule of law analysis of UK issues in Parliament generally. Parliamentarians should not view the rule of law as a matter relevant to developing countries only and should also invoke rule of law principles to analyse domestic issues.
15. **Whether MPs had a legal background is largely irrelevant.** Those MPs who referred to the rule of law most frequently did not have a legal background. This demonstrates that the rule of law is not a concept with which only lawyers are able to engage and is an accessible tool for all parliamentarians to use.

Peers

16. Table 5 indicates the following trends among the peers who most frequently referred to the rule of law in the 2015–16 session.
17. **There were some peers who did not hold positions in the Executive or a shadow portfolio.** This finding was also made in the 2015 report. This reinforces the argument made above that the rule of law is a tool that should be used by parliamentarians as parliamentarians, not only by the Executive setting out Government policy.
18. **Whether peers had a legal background was largely irrelevant.** As with the House of Commons results, almost all peers who referred to the rule of law most frequently did not have a legal background (the one exception being Lord Faulks). Again, this suggests that the rule of law is an accessible and readily understandable concept and is not a tool that is at the disposal of lawyers only.
19. **The context in which Peers refer to the rule of law was closely linked to their Executive position.** As with the House of Commons, peers with portfolios in the Executive which concerned foreign affairs focused their rule of law references on foreign affairs issues. Those peers with domestic portfolios – most notably, Lord Faulks as Minister of State for Justice – referred to the rule of law in relation to UK matters. This finding was also made in the 2015 report.

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General observations

20. The 2015 report found that the demands of the rule of law for UK justice issues were considered more extensively in the House of Lords than in the House of Commons. The same conclusion can be drawn from the 2015-16 session, however, this finding is not as stark as the previous two parliamentary sessions.
21. In both the House of Commons and the House of Lords, the overwhelming majority of rule of law references were made by Conservative party members (almost exclusively with Executive positions). This suggests that there is significant scope for members from other parties (as well as Conservative party members who do not hold Executive positions), to use the rule of law as a tool for parliamentary scrutiny.
22. Furthermore, the 'top 10' lists in both the House of Commons and the House of Lords start with a top ranking parliamentarian with over 40 hits and then reveal a sharp decline to less than 10 hits for the parliamentarian in tenth (or seventh) place. This demonstrates that very few parliamentarians frequently refer to the rule of law and actively engage with the concept in parliamentary proceedings. As such, all parliamentarians could improve their engagement with the rule of law.

The Rule of Law in Parliament

Table 4: Members of the House of Commons who most often mentioned the rule of law

Member	Party	No. of 'hits'	Background*	Executive or Shadow Portfolio	% hits UK issues	% hits foreign affairs
Rt Hon David Lidington MP	Con	43	Non-legal	Minister of State for Europe (Foreign and Commonwealth Office) (European issues and NATO)	0%	100%
Tobias Ellwood MP	Con	21	Non-legal	Parliamentary Under-Secretary of State (Minister for the Middle East and Africa) (Foreign and Commonwealth Office)	0%	100%
Hugo Swire MP	Con	17	Non-legal	Minister of State for Europe and the Americas (Foreign and Commonwealth Office)	0%	100%
James Duddridge MP	Con	11	Non-legal	Parliamentary Under-Secretary of State (Foreign and Commonwealth Office)	0%	100%
Rt Hon Karen Bradley MP	Con	11	Non-legal	Parliamentary Under-Secretary of State (Home Office)	100%	0%
Theresa Villiers MP	Con	10	Legal	Secretary of State for Northern Ireland	100%**	0%
Ben Wallace MP	Con	9	Non-legal	Parliamentary Under-Secretary of State (Northern Ireland Office)	100%**	0%
David Cameron MP	Con	9	Non-legal	Prime Minister	44%	56%
Michael Gove MP	Con	9	Non-legal	Lord Chancellor and Secretary of State for Justice	56%	44%
Joanna Cherry QC MP	SNP	8	Legal	Shadow SNP Westminster Group Leader (Justice and Home Affairs)	100%	0%

* For the purposes of the research, 'legal' background includes a legal education, legal academia, practicing as a lawyer, or sitting as a judge.

** All Ms Villiers' and Mr Wallace's rule of law hits concerned Northern Ireland.

The Rule of Law in Parliament

Table 5: Members of the House of Lords who most often mentioned the rule of law

Member	Party	No. of 'hits'	Background*	Executive or Shadow Portfolio	% hits UK issues	% hits foreign affairs
Baroness Anelay	Con	41	Non-legal**	Minister of State, Foreign and Commonwealth Office	2%	98%
Lord Faulks	Con	13	Legal	Minister of State for Justice	100%	0%
Lord Alton	CB	8	Non-legal		0%	100%
Earl Howe	Con	6	Non-legal	Minister of State for Defence	33%	67%
Lord Ashton	Con	5	Non-legal	Lord in Waiting (HM Household) (Whip)	75%	20%
Lord Dunlop	Con	5	Non-legal	Parliamentary Under-Secretary of State, Scotland Office	100%	0%
Lord Soley	Lab	5	Non-legal		40%	60%

* For the purposes of the research, 'legal' background includes a legal education, legal academia, practicing as a lawyer, or sitting as a judge.

** Although Baroness Anelay does not fall within the definition of having a legal background for the purposes of this research, she was a magistrate between 1985 and 1997.

23. Table 6 lists the MPs and peers who were in the 'top 10' lists and held roles in the Executive or a shadow portfolio, identifying the percentage of hits for those MPs and peers that were answer to questions (for the Executive) or questions (for a shadow portfolio). These figures include both oral and written questions. The figures indicate when MPs and peers refer to the rule of law in their capacity as a member of the Executive or shadow cabinet (rather than as parliamentarians *per se*). As was found in the 2015 report, the results indicate that a significant proportion of the rule of law references made by most of these MPs and peers were due to their Executive rather than as parliamentarians as such.

Table 6: Percentage of rule of law hits that were answers to questions to members of the Executive

Member	No. of 'hits'	Executive Role	% answers to questions
Rt Hon David Lidington MP	43	Minister of State for Europe (Foreign and Commonwealth Office) (European issues and NATO)	74%
Baroness Anelay	41	Minister of State (Foreign and Commonwealth Office)	83%
Tobias Ellwood MP	21	Parliamentary Under-Secretary of State (Minister for the Middle East and Africa) (Foreign and Commonwealth Office)	57%
Hugo Swire MP	17	Minister of State for Europe and the Americas (Foreign and Commonwealth Office)	47%
Lord Faulks	13	Minister of State for Justice	31%
James Duddridge MP	11	Parliamentary Under-Secretary of State (Foreign and Commonwealth Office)	73%
Rt Hon Karen Bradley MP	11	Parliamentary Under-Secretary of State (Home Office)	100%
Theresa Villiers MP	10	Secretary of State (Northern Ireland Office)	40%
Ben Wallace MP	9	Parliamentary Under-Secretary of State (Northern Ireland Office)	0%
David Cameron MP	9	Prime Minister	22%
Rt Hon Michael Gove MP	9	Lord Chancellor and Secretary of State for Justice	33%
Earl Howe	6	Minister of State for Defence	0%
Lord Ashton	5	Lord in Waiting (HM Household) (Whip)	20%
Lord Dunlop	5	Parliamentary Under-Secretary of State (Scotland Office)	0%

II. SELECT COMMITTEES

24. Of the four select committees studied, a number referred to the rule of law in their Committee reports and during discussions and in Committee correspondence. Certain Committees provided strong examples of how the rule of law can be used as a tool for legislative scrutiny at the Committee stage. For example, the House of Lords Select Committee on the Constitution employed rule of law concepts in a variety of different contexts, including to critique lengthy and vaguely worded immigration legislation, expansive executive power and in discussions about the role of the Lord Chancellor.

25. However, overall the analysis of Committee materials reveals Committees could engage more actively with rule of law concepts, particularly Committees with domestic mandates. The lack of engagement with rule of law concepts on domestic issues and the tendency to focus rule of law discussions on international affairs, as discussed above in relation to parliamentary debate, was unfortunately mirrored in Committees. For example, the Joint Committee on Human Rights only referred to the rule of law in relation to the use of drones for the purposes of targeting killings to emphasise the importance of the rule of law in British foreign policy. Similarly, although the Justice Committee discussed policy matters that potentially raise a number of rule of law issues, the Committee did not refer to the rule of law in any of its reports.

Justice Committee

26. The Justice Committee plays a key role in scrutinising the expenditure, administration and policy of the Ministry of Justice and other public bodies involved in the administration of justice. In the session under consideration, the key issues discussed by the Justice Committee ranged from prison safety, criminal courts charge, to sentencing guidelines.¹⁸ If seen through the lens of Lord Bingham's eight principles encapsulating the 'core' of the rule of law, these issues might be seen as ones that would particularly warrant discussion of the dispute resolution, human rights and fair trial aspects of the rule of law.

27. For this reason it is perhaps surprising that the phrase 'rule of law' was not used in any of the Committee's reports or Government responses to the reports from the session under study. However, as discussed in the Methodology section below, there are limitations to our adopted research methodology. For example, the issue of accountability and governance of Inspectorates was discussed in the Committee's report on criminal justice inspectorates, which is clearly a rule of law issue, even though the phrase 'rule of law' was not used in such discussion.¹⁹

Foreign Affairs Committee

28. The rule of law was referred to twice in correspondence to the Foreign Affairs Committee, in relation to civil unrest in Egypt and Syria.²⁰ However, reference to the rule of law was absent from the Committee's reports covering the UK's involvement in the war against Daesh and the extension of British military involvement in Syria.

29. The rule of law arose in the Committee's report on the implication of the EU referendum result for the UK's role in the world.²¹ The Committee considered the rule of law as an aspect of the European Security and Defence Policy (renamed the Common Security and Defence Policy), designed to enable EU Member States to prevent or intervene in conflicts where NATO as a whole is not involved.

30. However, in general, the Committee tended to focus discussion of the rule of law in the area of human rights. For example, the rule of law arose in the correspondence to the Committee after the Committee sought clarification of the Government's commitment to

¹⁸ See House of Commons, Justice Committee, 6th Report of Session 2015-16, *Prison Safety* (May 2016); House of Commons, Justice Committee, 2nd Report of Session 2015-16, *Criminal Courts Charge* (November 2015); Justice Committee, 5th Report of Session 2015-16, *Draft Sentencing Guideline on Community and Custodial Sentences* (March 2016).

¹⁹ House of Commons, Justice Committee, 4th Report of Session 2015-16, *Criminal Justice Inspectorates* (March 2016), 9 [21].

²⁰ Letter from the Foreign Secretary on Egypt to Crispin Blunt MP, 18 September 2015; Prime Minister's Response on Syria, 26 November 2015.

²¹ House of Commons, Foreign Affairs Committee, 5th Report of Session 2015-16, *Implications of the Referendum on EU Membership for the UK's Role in the World* (April 2016).

support universal human rights as set out in the Conservative Party manifesto.²² In that correspondence, the Foreign Secretary asserted that upholding the rule of law and democratic values was one of three ways by which the Government aimed to demonstrate this commitment, the other two being the promotion of the rules-based international system and human rights for a stable world.²³ The Committee itself referred to the rule of law in the context of human rights in its discussion of how the administration and funding of its human rights work overseas would promote democratic values and the rule of law as one of its three strategic priorities (in addition to strengthening of the rules-based international system and the advancement of human rights for a stable world).²⁴

Joint Committee on Human Rights

31. The 'rule of law' was not referred to directly in any Joint Committee on Human Rights correspondence, which covered topics including the Government's proposals for a new British Bill of Rights and the appointment of David Isaac as the Chair of the Equality and Human Rights Commission.
32. The Committee's reports covered the Government's policy on the use of drones for targeted killing, the appointment of the Chair of the Equality and Human Rights Commission, and the Trade Union Bill.²⁵ However, the rule of law was only discussed in the Committee's report on the Government's use of drones as a means of carrying out targeted killings in order to protect the lives of others.²⁶ In that report, the Committee discussed the rule of law extensively. The Committee noted that adherence to the rule of law is one of the Government's international obligations, and that compliance with the rule of law is of great importance in terms of the UK's ability to influence other countries in its foreign policy and to be a force for good in the world.²⁷ The Committee placed significant emphasis on Lord Bingham's inclusion of the international rule of law as one of his eight principles of the rule of law.²⁸

Constitution Committee

33. The House of Lords Select Committee on the Constitution plays a central role in acting as guardian of the rule of law — a lens through which it scrutinises legislation and government action.
34. The Committee expects legislation to be clear, certain and predictable — a central requirement of the rule of law.²⁹ In numerous reports, the Committee criticised Government Bills as failing to meet this standard, particularly in the context of immigration.³⁰ The Committee criticised the continued tendency towards the introduction of vaguely worded legislation that leaves much to the discretion of ministers and urged the

²² Letter from the Foreign Secretary following oral evidence on 21 July 2015 to Crispin Blunt MP, 22 July 2015.

²³ *Ibid.*

²⁴ House of Commons, Foreign Affairs Committee, 4th Report of Session 2015-16, *The FCO's Administration and Funding of its Human Rights Work Overseas* (April 2016).

²⁵ Joint Committee on Human Rights, 1st Report of Session 2015-16, *Legislative Scrutiny: Trade Union Bill* (February 2016); Joint Committee on Human Rights, 2nd Report of Session 2015-16, *The Government's Policy on the Use of Drones for Targeted Killing* (May 2016); Joint Committee on Human Rights, 3rd Report of Session 2015-16, *Appointment of the Chair of the Equality and Human Rights Commission* (May 2016).

²⁶ Joint Committee on Human Rights, 2nd Report of Session 2015-16, *The Government's Policy on the Use of Drones for Targeted Killing* (May 2016), 5–6, 20–4, 75.

²⁷ *Ibid.* 5–6.

²⁸ *Ibid.* 20.

²⁹ House of Lords, Select Committee on the Constitution, 7th Report of Session 2015-16, *Immigration Bill* (January 2016) [18].

³⁰ See generally, House of Lords, Select Committee on the Constitution, 7th Report of Session 2015-16, *Immigration Bill*, HL Paper 75 (January 2016). See paragraphs [56]–[59] below for further discussion of the Constitution Committee's consideration of the Immigration Bill.

House of Commons to ensure that Bills contain an appropriate level of detail and provide a suitable degree of legal certainty.³¹

35. The rule of law was used by the Committee as a check on Executive power. The Committee observed that the ability of a minister to override or alter independent judicial decisions was in tension with the principles of the rule of law and that the usual process, should a minister have concerns about a judicial decision, would be to appeal against it.³² The Committee also criticised Bills containing clauses having retrospective effect.³³ The Committee pointed out that the rule of law requires Government to act in accordance with the law and from that perspective, the retrospective provision of a legal basis for executive action is constitutionally suspect.³⁴ The Committee called for clear justification based on compelling public interest reasons and not administrative convenience.³⁵ Moreover, the rule of law was used by the Committee to promote Government accountability, noting the general requirement that the lawfulness of executive decisions should be capable of being tested either by way of an effective right of appeal or by way of judicial review.³⁶
36. As discussed below under the issue of the role of the Lord Chancellor, the Committee also discussed the rule of law from a constitutional perspective, questioning the then Lord Chancellor on his rule of law responsibilities and the difference between the rule of law and constitutional reform.³⁷

³¹ House of Lords, Select Committee on the Constitution, 7th Report of Session 2015-16, *Immigration Bill* (January 2016), [18]–[19]. See also House of Lords, Select Committee on the Constitution, 2nd Report of Session 2015-16, *Cities and Local Government Devolution Bill [HL]; Psychoactive Substances Bill [HL]; Charities (Protection and Social Investment) Bill [HL]* (June 2015). In that report, the Committee observed the continuation of a tendency towards the introduction of vaguely worded legislation that leaves much to the discretion of ministers and called for bills to contain an appropriate level of detail and provide a suitable degree of legal certainty: at [2]–[3].

³² House of Lords, Select Committee on the Constitution, 7th Report of Session 2015-16, *Immigration Bill* (January 2016), [28].

³³ *Ibid* [29]–[38].

³⁴ *Ibid* [34].

³⁵ *Ibid* [34]–[35].

³⁶ *Ibid* [44].

³⁷ See paragraphs [64]–[66] below.

III. QUALITATIVE DATA ANALYSIS

A. Summary Analysis for the Houses

House of Commons

37. In the House of Commons, MPs tended to emphasise the significance of the rule of law and to present it as a historic British value. This was particularly evident in discussions of the commemoration of the eight-hundredth anniversary of the sealing of the Magna Carta, with the Attorney-General Jeremy Wright MP noting that in the centuries following the event, *'the rule of law has played a fundamental part in our national identity'*.³⁸
38. However, despite the celebration of the British origins of the rule of law, the rule of law tended to be discussed in the context of foreign affairs and rather than domestic. This suggests that the current value of the rule of law is perceived as lying in the development of foreign policy rather than in addressing domestic issues.
39. MPs frequently alluded to the importance of promoting the rule of law as a foreign policy objective. This was especially apparent in discussions regarding the aftermath of the Arab Spring in the Middle East. In addition, promotion of the rule of law was often discussed as part of a three-fold foreign policy strategy, together with human rights and democracy, indicating that MPs view these as inter-connected, complementary aims. For example, Fiona Bruce MP queried the proportion of the Foreign and Commonwealth Office's budget that was allocated to promoting these three objectives.³⁹

House of Lords

40. The rule of law arose frequently in the House of Lords debates, and was discussed in relation to a broad spectrum of topics from legal aid, to ISIS, the European Referendum Bill and the refugee crisis. This suggests that the House of Lords is a gatekeeper of this fundamental value.
41. In the field of foreign policy and international development, the rule of law served as an international standard. The House of Lords called on governments to uphold, respect and enforce the rule of law. There appeared to be consensus that the fundamental values of rule of law, democracy and human rights are symbiotic. Good governance and transparent legal systems (arguably in themselves facets of the rule of law), and the rule of law itself were seen as vital underpinnings for a stable, prosperous and flourishing society. This belief was succinctly encapsulated by Baroness Flather: *'without rule of law, nothing can change in a country'*.⁴⁰
42. The rule of law also featured prominently in debates concerning domestic issues. It was viewed by peers such as Lord Ahmad as a fundamental British value.⁴¹ The House of Lords appeared to perceive the rule of law to be a value that is shared and part of the UK's national identity, and which should be continually promoted and upheld both at home and abroad.
43. The institutional aspect of the rule of law also received attention from the House of Lords, which emphasised the importance of the separation of powers, depoliticising state

³⁸ Attorney-General Jeremy Wright MP, House of Commons, Rule of Law (Magna Carta), Hansard, 2 Jul 2015, Col. 1612.

³⁹ Fiona Bruce MP, House of Commons, Human Rights, Hansard, 28 Oct 2015, Col. 12641.

⁴⁰ House of Lords, Commonwealth Heads of Government Meeting, Motion to Take Note, 17 Dec 2015, Col. 2220.

⁴¹ House of Lords, Response to written question, Radicalism: Written question – HL2187, 14 Sep 2015.

institutions, an independent judiciary, securing access to justice and ensuring due process. Whilst scrutinising Bills, the Lords were minded to use the rule of law as a curb on executive power.⁴² The Lords remained highly critical of retrospective legislation and repeatedly called for legal certainty.⁴³

B. Case Studies

Arbitration and Mediation (Equality) Services Bill

44. The Arbitration and Mediation (Equality) Services Bill was a private member's Bill, introduced into the House of Lords in June 2015 by Baroness Cox. The Bill sought to address human rights issues and strengthen the position of vulnerable women. It proposed to provide additional arbitration and mediation services, specify the application of equality legislation to arbitration and mediation services and restrict the use of Sharia law principles.⁴⁴ Lord Faulks stated that '*[t]he measures in the Bill would apply... to a range of arbitration and alternative dispute resolution services, including those provided by arbitration tribunals, religious councils and boards and independent family mediation services...*'⁴⁵ The Bill would have prevented Sharia courts in England and Wales from claiming legal jurisdiction over family or criminal law matters.⁴⁶ A new criminal offence of 'falsely claiming legal jurisdiction' would apply to any person who adjudicates upon matters which ought to be decided by criminal or family courts.⁴⁷ The Bill also sought to outlaw practices such as giving a woman's testimony only half the weight of a man's testimony.⁴⁸ The Bill would have required public authorities to inform women that they have fewer legal rights if their marriage is unrecognised by English law.⁴⁹ This would have expanded the public sector equality duty specified in the Equality Act 2010.⁵⁰
45. After passage in the House of Lords, the Bill was presented to the House of Commons on 11 February 2016. Parliament expired before the Bill received its second reading, however the Bill was reintroduced by Baroness Cox in the 2016-17 parliamentary session in May 2016. Baroness Cox has introduced similar bills in previous parliamentary sessions. For example, in the 2012-13 parliamentary session, a Bill of the same name had its second reading in the House of Lords on 19 October 2012.⁵¹
46. When the Peers debated the Bill in the 2015-16 session, the vast majority commended the Bill to the House of Lords, as they acknowledged increasing evidence to suggest that in some instances, Sharia law is being used as an alternative to the State's legal system. For

⁴² House of Lords, Select Committee on the Constitution, 7th Report of Session 2015-16, *Immigration Bill* (January 2016) [44]. In the context of the Secretary of State's power to certify human rights claims, the House of Lords stated that it is a general requirement of the rule of law that the lawfulness of executive decisions should be capable of being tested either by way of an effective right of appeal or by way of judicial review.

⁴³ See, e.g., House of Lords, Select Committee on the Constitution, 7th Report of Session 2015-16, *Immigration Bill* (January 2016), [34]. See also House of Lords, Select Committee on the Constitution, 4th Report of Session 2015-16, *Energy Bill* [HL], [7]–[9]. Whilst reviewing the Energy Bill and the retrospective provisions thereof, the House of Lords reiterated that as a category, retroactive legislation is inherently constitutionally suspect and fundamentally inconsistent with the rule of law. There needed to be compelling reason in the public interest for a departure from the general principle that retrospective legislation is undesirable.

⁴⁴ Arbitration and Mediation Services (Equality) Bill [HL] Part 1.

⁴⁵ Lord Faulks, House of Lords, Hansard, 23 Oct 2015, Col. 902.

⁴⁶ Arbitration and Mediation Services (Equality) Bill [HL] Part 6.

⁴⁷ *Ibid* Part 5.

⁴⁸ *Ibid* Part 1.

⁴⁹ *Ibid* Part 1.

⁵⁰ Equality Act 2010 s 149.

⁵¹ House of Lords, Hansard, 19 Oct 2012, Col. 1683–1716.

example, Baroness Eaton expressed concern that currently, many women and girls in the UK are suffering systematic religiously-sanctioned discrimination.⁵² The Bill was therefore seen as a measure which would strengthen the rule of law.

Syria and Daesh/ISIS

47. In the House of Lords, the rule of law was referred to in the context of military action in Syria.⁵³ The rule of law was identified as a key commitment by Minister of State at the Foreign and Commonwealth Office Baroness Anelay and Lord Alton. Lord Alton referred to the atrocities committed by Daesh.⁵⁴ He stated that if what distinguishes the UK from Daesh is that the UK believes in upholding the rule of law, it is important to emphasise that a day of reckoning will come for those responsible for the mass graves.⁵⁵
48. In the House of Commons, Chris Evans MP referred to adopting an approach where we understand that the rule of law applies in this country as it does in the Middle East and thus stop perpetuating violence in Syria and Iraq.⁵⁶ Further in the House of Commons, the then-Prime Minister David Cameron MP discussed how he believes that military action alone will not be enough in the fight against Daesh; the UK must also target terrorist finance and the terrorist narrative.⁵⁷ He further stated that Daesh would lose because of its lack of values such as democracy, tolerance and the rule of law which, in his opinion, were superior values.⁵⁸ The Rt Hon Philip Hammond MP, Secretary of State for Foreign and Commonwealth Affairs, referred to the rule of law when discussing talks convened to discuss Syria's territorial integrity.⁵⁹

Extremism/radicalism/terrorism

49. The rule of law was repeatedly referred to in parliamentary proceedings when defining extremism as the '*vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs*'.⁶⁰
50. Further, the rule of law was also referred to in the distinct context of terrorism. For example, in the House of Commons the then-Prime Minister David Cameron MP spoke of the need to '*work harder to bring about some rule of law*' in countries which operate as '*ungoverned spaces where terrorists are able to stay and train*'.⁶¹ Interestingly, however, in a debate on Britain and International Security, John Redwood MP questioned whether the destructive and aggressive means that are often employed by the UK to pursue terrorists in overseas territories help to '*creat[e] a rule of law or democratic pressures*' in that country.⁶²
51. The rule of law was also discussed in relation to the effects of counterterrorism locally. Baroness Hussein-Ece in the House of Lords referred to the rule of law in the context of the increased attacks on British Muslim citizens and how British values such as the rule of law,

⁵² Baroness Eaton, House of Lords, Hansard, 23 Oct 2015, Col. 884.

⁵³ House of Lords, 16 Dec 2015, Col. 2138.

⁵⁴ House of Lords, Hansard, 16 Dec 2015, Col. 2145.

⁵⁵ Ibid, Col. 2146.

⁵⁶ House of Commons, Hansard, 2 Jul 2015, Col. 1708.

⁵⁷ House of Commons, Hansard, 29 Jun 2015, Col. 1183.

⁵⁸ Ibid.

⁵⁹ Philip Hammond MP, House of Commons, Hansard, 16 Dec 2015, Col. 1568.

⁶⁰ As published in the Extremism Task Force report, *Tackling Extremism in the UK* (2013).

⁶¹ Prime Minister David Cameron (as he then was), House of Commons, Hansard, 17 Nov 2015, Col. 547.

⁶² John Redwood MP, House of Commons, Hansard, 2 Jul 2015, Col. 1652.

equality and respect for minorities were put *'at risk if we do not do more to ensure that everyone who is a citizen feels that they belong and do not feel ostracised'*.⁶³

52. The rule of law was also recognised as a fundamental British value in the context of religious tolerance and racist bullying in schools. Nick Gibb MP, in response to written questions on the issue in the House of Commons, stated that *'all schools are required to promote the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faith and beliefs'*.⁶⁴

Immigration, refugees and migration

53. There was lengthy discussion in both Houses of the rule of law in the context of humanitarian migration crises overseas. This included discussion in the House of Lords of the Sudanese conflict and the resulting displacement of more than two million people.⁶⁵ Lord Alton discussed the failure to arrest Sudan's President Omar al-Bashir – despite the many allegations against him of war crimes, including genocide – as *'a blow... to the rule of law'*.⁶⁶
54. The House of Lords debate on the Immigration Bill focused heavily on rule of law concerns and the collective responsibility for the migration crisis that flows from the UK's current membership of the European Union.⁶⁷ The debate addressed rule of law and access to justice concerns raised by human rights and immigration organisations in the context of immigration decisions and, more specifically, the out-of-country appeals process and its compatibility with the procedural requirements under Article 8 of the European Convention on Human Rights.⁶⁸
55. Perhaps the most substantive discussion of the rule of law in this context appeared in relation to the proposed *'permission-to-rent'* amendment to the Immigration Act 2014. This amendment, which was eventually withdrawn, sought to remedy (in part) the issue that asylum seekers who do not have the relevant documentary proof are unable to show landlords that they have a right to rent. Baroness Lister employed the rule of law in support of this amendment: *'I draw your Lordships' attention to a singular aspect of the permission-to-rent scheme that the amendment is designed to remedy. The UK has a strong tradition of upholding the rule of law. All of us can be sure in our interactions with the state that officials who make decisions that affect us are accountable to the law... [I]n every case the people affected are either directly notified of the decision or are able to access information about it that is available in the public domain. By informing people of the decisions that affect them, we ensure that government operates reasonably transparently. We ensure that power is exercised in a reasonably accountable way...'*⁶⁹
56. In addition, the House of Lords Select Committee on the Constitution gave detailed consideration to the rule of law implications of the Immigration Bill, as outlined in the Committee's report on the Bill.⁷⁰ Crucially, the Committee identified three key ways in which the Bill raised rule of law issues.

⁶³ Baroness Hussein-Ece, House of Lords, Hansard, 26 Nov 2015, Col. 873.

⁶⁴ Nick Gibb MP, House of Commons, Hansard, 11 Jan 2016, Col. 678.

⁶⁵ Lord Alton, House of Lords, Hansard, 9 July 2015, Col. 290.

⁶⁶ Ibid.

⁶⁷ See, e.g., Baroness Lister, House of Lords, Hansard, 3 Feb 2016, Col. 1798; Lord Ramsbotham, House of Lords, Hansard, 3 Feb 2016, Col. 1802.

⁶⁸ See, e.g., Lord Rosser, House of Lords, Hansard, 3 Feb 2016, Col. 1794.

⁶⁹ Baroness Lister, House of Lords, Hansard, 12 Apr 2016, Col. 127.

⁷⁰ House of Lords, Select Committee on the Constitution, 7th Report of Session 2015–16, *Immigration Bill* (January 2016).

57. First, the Committee discussed the complexity of existing immigration law and noted that the Bill would contribute further to this problem, being a '*lengthy and complicated*' piece of legislation.⁷¹ The Committee stated that '*[t]he disparate and complex nature of [immigration law] is of real concern from a rule of law perspective*' and expressed the view that '*further thought must be given to this matter so as to make immigration law accessible and fit for purpose*'.⁷²
58. Second, the Committee discussed the Bill's proposal to grant the Secretary of State power to override bail conditions set by the First-tier Tribunal.⁷³ The Committee stated that such executive intervention in independent judicial decisions was '*constitutionally dubious*' and '*in tension with the principles of the rule of law*'.⁷⁴ The Committee noted that a similar issue was recently considered by the Supreme Court in *Evans v Attorney-General*,⁷⁵ and recommended that the House '*ask the Government to clarify how their proposals comply with the rule of law*'.⁷⁶
59. Third, the Committee noted the retrospective effect of certain bail provisions contained in the Bill and expressed the view that the Government's explanation for such retrospectivity – namely, that the provisions '*clarify*' existing law – is '*questionable*'.⁷⁷ The Committee stated that although retrospectivity in this context is not particularly egregious, '*the rule of law requires government to act according to law, and from that perspective the retrospective provision of a legal basis for executive action is constitutionally suspect and calls for a clear justification*'.⁷⁸ The Committee stated that Government's justification to date '*appears to turn upon considerations of administrative convenience*'.⁷⁹
60. The Rt Hon Lord Bates responded to the Committee's report on behalf of the Government.⁸⁰ The response included a short paragraph in relation to the Committee's rule of law concerns, stating that the Government '*acknowledge[s] the Committee's concerns regarding the potential conflict of the original drafting of the bail powers with the rule of law*'.⁸¹ To address these concerns, the response stated that amendments to the Bill would be tabled to '*remodel the relevant clause and schedule*'.⁸² However, the letter did not outline exactly how such amendments would address the specific rule of law concerns raised by the Committee, including the Bill's possible retrospective application. Furthermore, the brevity of the response raises rule of law concerns regarding transparency in the legislative process. Even if the proposed amendments addressed the Committee's concerns, how they would do so remains unclear to the public who would be required to trace the passage of the tabled amendments and interpret them unaided. In addition, the response suggests that the rule of law issues raised by the Committee have been squarely dealt with by the Government's proposed amendments. However, one of the key issues raised by the Committee was the length and vagueness of immigration laws, which clearly cannot be addressed by simply remodelling certain sections of the Bill.

⁷¹ Ibid [18].

⁷² Ibid [19].

⁷³ Ibid [20]–[28].

⁷⁴ Ibid [27]–[28].

⁷⁵ Ibid [24]; *R (Evans) v Attorney-General* (2015) UKSC 21.

⁷⁶ House of Lords, Select Committee on the Constitution, 7th Report of Session 2015-16, *Immigration Bill* (January 2016), [28].

⁷⁷ Ibid [34].

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Government response to the Committee's report on the Immigration Bill, 3 March 2016.

⁸¹ Ibid 2.

⁸² Ibid.

61. References to the rule of law were also made in the House of Commons debate on the Immigration Bill. Sir Keir Starmer QC MP, for example, emphasised that an amendment which proposed to remove the power of the Secretary of State to detain without just cause an individual who had been granted bail by the tribunal essentially *'makes a point about rule of law and separation of powers'*.⁸³ The Solicitor-General also referred to the rule of law in recognising the human element involved in debates such as the debate on the Immigration Bill: *'It would take a heart of stone not to recognise that, in the myriad different cases, we are dealing with people and their lives. That is why the role of decision makers, and the discretion that they have, is so important in assessing the evidence and coming to a reasonable conclusion. We call that due process. It is something that we treasure as part of our rule of law, and it is something of which we are rightly proud'*.⁸⁴ It is of note, however, that the House of Commons debate does not discuss the rule of law implications of the Immigration Bill in the same depth as the House of Lords debate.

Turkey

62. The rule of law was raised in several different contexts in debates about Turkey in the House of Commons and, to a lesser extent, in the House of Lords. With regard to Turkey's potential accession to the European Union, the rule of law was identified as an area, along with human rights, in which it might be helpful to open a dialogue with Turkey. Baroness Anelay, Minister of State at the Foreign and Commonwealth Office, cited both of these as areas in which Turkey would need to undertake substantial reform in order to meet the standards required of a European Union candidate member.⁸⁵

63. The rule of law was also discussed in the context of human rights concerns in Turkey more broadly, featuring in discussions about freedom of expression and the treatment of the Kurdish minority in the south-east of the country.⁸⁶ Rt Hon David Lidington MP, then Minister of State for the Foreign and Commonwealth Office on European issues and NATO, stated in response that the Government was monitoring the situation in Turkey, focusing particularly on respect for the rule of law.⁸⁷ Baroness Anelay also expressed concerns that the rule of law was not being properly upheld in Turkey's systems of governance, citing a lack of independence and impartiality of the judiciary as an illustration of this, which was also highlighted by the 2014 Annual Progress Report on Turkey's European Union accession.⁸⁸

The Role of the Lord Chancellor

64. The Committee's Report on the Office of Lord Chancellor published in the previous session of Parliament was discussed in the House of Lords.⁸⁹ The Committee's view on the

⁸³ House of Commons, Public Bill Committee, Immigration Bill, Tenth Sitting, 3 November 2015.

⁸⁴ House of Commons, Public Bill Committee, Immigration Bill, Eleventh Sitting, 5 November 2015.

⁸⁵ House of Lords, Turkey: EU Enlargement: Written question – 3643 asked by Lord Hylton on 17 November 2015 and answered by Baroness Anelay on 24 November 2015.

⁸⁶ House of Lords, Turkey: Kurds: Written question – 7135 asked by Lord Hylton on 17 March 2016 and answered by Baroness Anelay on 1 April 2016.

⁸⁷ House of Commons, Turkey: Kurds: Written question - 23183 asked by Natalie McGarry MP on 19 January 2016 and answered by Mr David Lidington on 27 January 2016; and House of Lords, Turkey: Press Freedom: Written question – 7082 asked by the Marquess of Lothian on 16 March 2016 and answered by Baroness Anelay on 31 March 2016.

⁸⁸ House of Lords, Turkey: Press Freedom, Written question – 6746 asked by Lord Hylton on 7 March 2016 and answered by Baroness Anelay on 21 March 2016.

⁸⁹ House of Lords, Selection Committee on the Constitution, 6th Report of the 2014-15 Session, *The Office of Lord Chancellor* (December 2014).

centrality of the role of the Lord Chancellor in maintaining the rule of law is evidenced in the Report's proposal that the Lord Chancellor's oath be amended from '*respect the rule of law*' to '*respect and uphold the law*'.⁹⁰ Lord Lang, Lord Phillips, Lord Faulks, Lord Falconer, Lord Crickhowell, Lord Cullen, Lord Norton, Lord Lester, Lord Lexden, Lord Beecham and Lord Woolf all spoke of the importance of the rule of law and the role of the Lord Chancellor, and commended the Report's observations and recommendations.⁹¹ Lord Crickhowell and Lord Beecham criticised the Government's response to the Report, noting that it not only failed entirely to respond to numerous points contained therein but that the responses it did provide were inadequate and a cause for concern.⁹² In a speech delivered during parliamentary proceedings on 7 July 2015, Lord Lang spoke of the importance of the rule of law, engaged in in-depth consideration of what the rule of law requires and examined the Lord Chancellor's responsibilities in relation to different aspects of the rule of law.⁹³

65. The Constitution Committee held an evidence session with the Rt Hon Michael Gove MP, then Lord Chancellor and Secretary of State for Justice, on 2 December 2015.⁹⁴ During the session, the Committee questioned the Lord Chancellor on how far he shared the view that he had special rule of law responsibilities over and above other ministers.⁹⁵ The Committee questioned how far the Lord Chancellor believed his role extended when there were differences amongst ministers and whether the Lord Chancellor felt that there may be issues on which he would feel compelled to go public in upholding the law. The Committee also questioned whether the Lord Chancellor had extra clout when negotiating with the Treasury in relation to issues such as access to justice, austerity, legal aid and judicial review if there was a conflict between access to justice and the rule of law on the one hand and cuts in the Lord Chancellor's department on the other. The Committee recognised that there are different conceptions of what the rule of law encompasses and what it requires. The Committee questioned whether in the area of civil liberties such as detention without trial, the defence of civil liberties should be paramount and whether on such issues, there might be cases when the Lord Chancellor might find his double role as Secretary of State for Justice and Lord Chancellor in conflict with one another.⁹⁶
66. The Committee went on to explore during the evidence session whether in addition to the Lord Chancellor's special rule of law responsibilities, he also had an extra role above and beyond that of his Cabinet colleagues in protecting the constitution as a whole.⁹⁷

Northern Ireland

67. Northern Ireland was debated by the House of Commons in the context of terrorism, how the political strife has been dealt with previously, and how these issues can be addressed in a positive manner moving forward.

⁹⁰ Ibid 75 [51].

⁹¹ See, e.g., Lord Lang, House of Lords, Hansard, 7 Jul 2015, Col. 104; Lord Lester, House of Lords, Hansard, 7 Jul 2015, Col. 112; Lord Woolf, House of Lords, Hansard, 7 Jul 2015, Col. 113–14.

⁹² Lord Beecham, House of Lords, Hansard, 7 Jul 2015, Col. 108; Lord Crickhowell, House of Lords, Hansard, 7 Jul 2015, Col. 115.

⁹³ Lord Lang, House of Lords, Hansard, 7 Jul 2015, Col. 104–7.

⁹⁴ House of Lords, Select Committee on the Constitution, Oral Evidence Session with the Rt Hon Michael Gove MP, Lord Chancellor and Secretary of State for Justice, Evidence Session No 1, 2 December 2015.

⁹⁵ Ibid 5 (Question 5) (Lord Judge).

⁹⁶ Ibid 7 (Question 5) (Lord Lester).

⁹⁷ Ibid 10 (Question 7) (Baroness Taylor).

68. Former Secretary of State for Northern Ireland, Theresa Villiers MP confirmed that there was no immunity from prosecution for terrorists in Northern Ireland and that the Government believed in the rule of law and would not countenance amnesties or immunity from prosecution such as via granting letters of immunity to 'on the runs'.⁹⁸ The then-Prime Minister David Cameron MP stated that one of the defining features of the UK is that the Government does not decide who is prosecuted and who is not prosecuted: '*[w]e have the rule of law; we have independent prosecuting authorities*'.⁹⁹ The Parliamentary Under-Secretary of State for Northern Ireland, Ben Wallace MP, reiterated that the Government was committed to the rule of law.¹⁰⁰ Where there was evidence of wrongdoing, it is right that it should be investigated.¹⁰¹
69. The Northern Ireland (Stormont Agreement and Implementation Plan) Act provides for the Independent Reporting Commission, extends the period for the appointment of Northern Ireland Ministers and modifies the pledge made by Northern Ireland Ministers on taking office. It also provides for persons becoming Members of the Northern Ireland Assembly to give an undertaking. Finally, it also makes provision about the draft budget of the Northern Ireland Executive, in pursuance of the agreement made on 17 November 2015 called 'A Fresh Start: The Stormont Agreement and Implementation Plan'. During its second reading, the House of Commons welcomed the Bill's initiative to tackle paramilitarism and organised crime.¹⁰² The Bill's enhanced pledge was recognised as a reflection of the commitment in the Fresh Start Agreement to give 'unequivocal support for the rule of law and to work collectively to achieve a society free of paramilitarism'.¹⁰³
70. The rule of law debate concerning Northern Ireland was not confined to legacy issues. For example, Vernon Coaker MP observed that there had been recent shootings and murders linked to paramilitary activity and demanded to know from the Secretary of State what action would be taken against those who have no respect for human life or the rule of law.¹⁰⁴

⁹⁸ House of Commons, Terrorism: Northern Ireland: Written question – 26923, 10 February 2016.

⁹⁹ House of Commons, Oral Answers to Questions, 8 November 2015, Col. 673.

¹⁰⁰ House of Commons, Hansard, 18 November 2015, Col. 677.

¹⁰¹ *Ibid.*

¹⁰² House of Commons, Second Reading: Northern Ireland (Stormont Agreement and Implementation Plan), 22 February 2016.

See, e.g., Nigel Mills MP, House of Commons, Hansard, 10 Mar 2016, Col. 500.

¹⁰³ Theresa Villiers MP, House of Commons, Hansard, 10 Mar 2016, Col. 520.

¹⁰⁴ House of Lords, Oral Answers to Questions, Terrorism, 20 Apr 2016, Col. 905.

APPENDIX—METHODOLOGY

A. Searching Parliamentary Materials

71. UK parliamentary materials were searched for references to the phrase ‘rule of law’ in the 2015–16 session of Parliament.¹⁰⁵ The research only considered explicit references to the phrase ‘rule of law’ in parliamentary debates. Parliamentary discussions involving other rule of law topics and language – such as discussions about transparency, accountability and access to justice – were not considered, unless the specific phrase ‘rule of law’ was used in such discussions. Furthermore, issues that might have benefitted from rule of law discussion and did not receive such discussion were outside the scope of this research.

Categories of material available on the parliamentary search site

72. The searches for this research were undertaken using the publicly available search service on the parliamentary website.¹⁰⁶ This ‘search parliamentary material’ page remained in a ‘BETA’ phase during the search period. It became apparent that the search page produces false positives in its search results – this was not addressed for tables 1 and 2, but was for the top issues and top MPs and Peers.

73. False positives that resulted in hits being removed from the analysis for issues, and for MPs and Peers included where:

- there was no actual reference to the rule of law (for example, there were 24 hits for the title ‘Commonwealth Heads of Government Meeting’ that did not actually include a reference to the rule of law)
- ‘rule of law’ was used as part of a proper noun (for example, a reference to the Bingham Centre for the Rule of Law, or to the name of a foreign piece of legislation)
- a rule of law reference had mistakenly been attributed to a parliamentarian (e.g. the reference was actually made by another parliamentarian in the course of close debate)
- hits were returned for references to ‘rules of law’ or ‘any rule of law’ or ‘rules and laws’

74. The search page allowed a user to select from a range of categories of materials, including Legislation, Members’ Contributions, Parliamentary Questions, and Research Briefings. Each of those categories contained sub-categories of materials which could be selected or de-selected, for example, the category Parliamentary Questions included the sub-categories of Business Questions, Oral Questions (which itself has the sub-categories of Prime Minister’s Questions and Topical Questions), Private Notice Questions, Urgent Questions, and Written Questions.

75. The categories selected in searches for this research were:

- Members’ Contributions, which included:
 - Business Questions
 - Oral Answers to Questions
 - Oral Question Time Interventions
 - Oral Questions

¹⁰⁵ The coverage was the same in the Lords and the Commons, though with one key exception. The searches captured information from Committee stage in the House of Lords but did not capture Committee stage debates in the Commons Public Bill Committee debates

¹⁰⁶ <http://search-material.parliament.uk/> (September–October 2016).

- Proceeding Contributions (which are speeches, comments and statements by parliamentarians in parliamentary proceedings)
- Speaker's Rulings
- Parliamentary Proceedings, which included:
 - Debates
 - Formal Proceedings
 - Ministerial Corrections
 - Petitions
 - Points of Order
 - Private Notice Questions
 - Statements
 - Urgent Questions
- Parliamentary Questions, which included the sub-categories noted above.

76. Where multiple categories were selected and sub-categories overlapped between the selected categories – for example the sub-category of Oral Questions was included in both Members Contributions and Parliamentary Questions – the search service only returned results for that sub-category once and did not 'double count'. However, the overlap of sub-categories between categories indicates the potential for confusion in categorising parliamentary materials.

77. The categories of materials not selected in searching for this research were:

- Legislation
- Parliamentary Committees
- Parliamentary Papers
- Research Briefings

78. The online search of materials from Parliamentary Committees available as at October 2016 did not search the full text of all materials from select committees or Commons public bill committees. Accordingly, material from select committees and Commons Public Bill Committees was excluded from the research due to the lack of a reliable way to search that material. The Lords' Committee stage consideration of legislation was subject to full text search as part of proceedings contributions within members' contributions, and therefore the parliamentary proceedings of the Lords' Committee stage were included in this research because their full text could be searched reliably.

79. Legislation, parliamentary papers, and research briefings (e.g., by the House of Commons Library) were also excluded from the scope of this research because they do not indicate the rule of law contributions of individual parliamentarians, although they are part of the work of Parliament.

Material returned by searches

80. 'Hits' returned by the searches roughly correlated to references to the rule of law, but did not exactly correlate on a one-to-one basis. The search engine treated a speech or statement that mentioned the rule of law multiple times as a single 'hit', although different speeches that mentioned the rule of law in the same proceedings were treated as different hits. Hence, a proceeding in which multiple speakers referred to the rule of law produced more hits than a proceeding in which one speaker spoke about the rule of law at length

with multiple references to the rule of law in the one speech. However, where the rule of law was mentioned by a member in the course of parliamentary debate (i.e. where there was interactive discussion, rather than the delivery of a single speech), each rule of law reference was counted as a separate hit.

81. The search results showed the 'title' of the material in which the rule of law was referred to. The titles in parliamentary materials are assigned in accordance with the Parliamentary Orders of Business for the day. Titles indicated the matter that was being considered in that section of parliamentary materials, for example a debate about a Bill would have the title of that Bill, or a question about human rights in Eritrea might be given the title 'Eritrea'.
82. It should be noted that there were some discrepancies in the 'hits' returned when different searches were run. For example, a search for the total number of rule of law references in both Houses returned 662 hits. Yet when a search was run for each House individually, 382 hits were returned for the House of Commons and 281 hits for the House of Lords, which is a combined total of 663. As such, it appears that the search engine misses a hit when both Houses are searched together. However, any such discrepancies were too infrequent and small to impact the overall analysis.

B. Searches and Analysis

Hits per chamber and categories of material

83. The total number of hits for each chamber was noted to assess the number of rule of law references made by MPs and peers per chamber in the 2015-16 parliamentary session. These hits were disaggregated into different categories of parliamentary materials in the search to find the key contexts in which the rule of law was mentioned, for example, in parliamentary proceedings (such as debates) or written questions and answers. The categories in which there were the majority of hits were:

- proceeding contributions
- written questions and answers, and
- oral questions and oral answers to questions

A fourth category of parliamentary proceedings was the category in which the rest of the hits were found, and consisted of two motions to take note, a petition and a ministerial correction.

Titles in parliamentary materials versus issues

84. A list was compiled of the titles which attracted three or more references to the 'rule of law', to establish a general overview of the contexts in which the rule of law was discussed in Parliament.
85. Discussion of the same issue would often occur under multiple titles. This was especially so as between Houses, where different titles were often used. It was also the case that within Houses, different titles would be used at different times for some issues. For example, the issue of the rule of law in Northern Ireland was discussed under the titles 'Terrorism: Northern Ireland'; 'Northern Ireland Political Agreement'; 'Northern Ireland: Political Agreement'; 'Paramilitary Groups (Northern Ireland)'; 'Northern Ireland: Political Situation'; 'Northern Ireland: Political Developments'; and 'Stormont'. It was appropriate to identify issues rather than being solely guided by titles because, otherwise, an issue in relation to which the rule of law had been

discussed many times under different titles would not appear to rank as highly as an issue in relation to which the rule of law had been discussed fewer times under the same title.

86. Therefore, searches were undertaken of key words in each title that had attracted three or more hits to assess:

- The nature of the issue
- The different titles under which the same issue had been discussed
- The number of hits for the rule of law that the parliamentary search found for these titles

Categorisation and definition of issues and attribution of hits to issues

87. The categorisation of issues required some qualitative analysis and decisions using the searches of key words in the titles that had attracted three or more hits. The categorisation of issues was primarily guided by the titles in parliamentary materials. Bill-specific titles were straightforward to categorise as an issue, for example, the 'Immigration Bill' title was categorised as the 'Immigration Bill' issue. However, some issue categories were spread across a number of different titles as set out above in relation to the rule of law in Northern Ireland. For those issues, titles were grouped together where they concerned discussion of the same issue.

88. Some issues were hard to define precisely, for example, the Northern Ireland (Stormont Agreement and Implementation Plan) Bill was closely related to the issue of the rule of law in Northern Ireland.

89. Two titles were excluded as issues because they were titles under which a wide range of topics were discussed: the Queen's Speech, and Topical Questions. Under each of these titles, various issues were discussed giving rise to references to the rule of law, but because of the issues discussed being so different, it was not appropriate to treat any of these titles as a category of issue. For example, under the title the 'Queen's Speech' one peer spoke about the importance of access to civil justice for the rule of law,¹⁰⁷ while another spoke about the threat of 'political Islamists' to the rule of law.¹⁰⁸

90. Once the top issues had been identified, searches were conducted for each issue and the rule of law, using key words for the issue and drawing on the grouping of titles that discussed the same issue. Each result from these searches was considered to remove false positives and count the total number of hits per issue.

MPs and peers for whom there were the most hits

91. A search was undertaken for each MP and peer who referred to the rule of law in the 2015–16 session of Parliament to determine which MPs and peers had referred to the rule of law most frequently during the session. These lists are referred to as the 'top 10' lists, although there are only seven peers listed. This is because eighth place in the House of Lords was jointly held by eight peers who each had four hits.

92. When compiling the 'top 10 lists', the hits were analysed to ensure that no false positives were included in the final hits tally.

¹⁰⁷ Earl of Lytton, House of Lords, Hansard, 2 Jun 2015, col. 310.

¹⁰⁸ Lord Blencathra, House of Lords, Hansard, 2 Jun 2015, col. 312.

93. For each of the parliamentarians in these top 10 lists, research was also undertaken using the UK Parliament website and other publicly available resources to determine whether those parliamentarians had held a position in the Executive or shadow portfolio during the relevant sessions of Parliament. Similar research was undertaken to determine whether the parliamentarians had a legal background, meaning a legal education or experience in legal academia, practicing as a lawyer, or sitting as a judge.
94. As was also found in the 2015 report, much rule of law discussion and references in Parliament concern foreign affairs, that is, the state of the rule of law in foreign countries and/or the rule of law as it is used or considered in the UK's foreign policy for those countries. Therefore, the hits for the top 10 lists of MPs and peers were further analysed to determine whether they concerned matters within the UK or foreign affairs.
95. In addition, the hits for parliamentarians who had held roles in the Executive or shadow portfolios were analysed to determine the percentage of their hits that related to parliamentary questions or answers. This analysis was undertaken to determine the extent to which references to the rule of law were made in the context of a parliamentarian's Executive role/shadow portfolio, and the extent to which references were made in general parliamentary debate and discussion.

Case studies

96. Seven issues were selected for more in-depth consideration as case studies. The criteria on which the selection was made included the number of 'hits' raised by the issue, how topical the issue was at the time and the likelihood of it remaining so in the near future, and how likely it was to contain an in-depth discussion of the rule of law. A balance was sought between issues which contained detailed rule of law consideration, those which attracted substantial discussion that nevertheless sometimes could have benefited from additional guidance as to the nature of the rule of law, and those which were likely to contain passing remarks only. This approach was used to ensure a cross-section of issues was identified. This study focussed on rule of law issues within the UK, so the bulk of the issues selected were UK issues and the cross-section does not reflect the prevalence of rule of law references in relation to foreign affairs.
97. Research in relation to the case studies included analysing any relevant Committee reports on the Bill or issue and any Government responses to such reports. Where the case study concerned a Bill, whether the Bill ultimately passed in one or both Houses was considered as well as whether any relevant amendments were made or considered to address rule of law concerns discussed during debate. The breadth and depth of debate on the case study issues was also compared as between the two Houses.

C. Committees

98. Unlike the other searches for this study, the material on committees was drawn from committees' separate webpages, as the search engine used for the above research did not reliably search the full text of material from committees.
99. Four select committees were chosen for study in this review. In choosing these committees, we aimed to include a mix of:
 1. Domestic and international focuses;

2. House of Commons, House of Lords, and Joint committees; and
3. Committees with legal and non-legal focuses.

100. All the reports and some correspondence in 2015-16 for each committee were searched for references to the 'rule of law'. Where relevant, Government responses to committees' work involving the rule of law were also considered. The search results were analysed to examine how the rule of law was referred to and the contexts in which it arose. Furthermore, the work of committees that did not include references to the rule of law was considered for gaps where the committees perhaps missed an opportunity to engage in rule of law analysis.

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