

THE RULE OF LAW IN PARLIAMENT

A Review of Sessions 2013-14 and 2014-15

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

The APPG on the Rule of Law is a cross-party group focussed 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. The Chair of the APPG is The Rt Hon Dominic Grieve QC MP, the Co-Chair is Lord Pannick QC.

The Bingham Centre acts as the secretariat for the APPG on the Rule of Law, and is grateful to the Legal Education Foundation for funding that supports the Centre's secretariat work.



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EXECUTIVE SUMMARY

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

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

Some general trends were identified as between the Houses.

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

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

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

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

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

The Rule of Law in Parliament

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

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

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

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

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

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

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

I. INTRODUCTION

1. In the UK's constitutional system, Parliament plays a central role in upholding the rule of law; scrutiny by both Houses is a key element in holding the government to account over rule of law issues and ensuring that proposed legislation does not offend rule of law principles. Surprisingly, however, in spite of the centrality of the rule of law for Parliament, there has been no systematic review or analysis of the ways that the rule of law is used as a point of reference in parliamentary proceedings. This study addresses this gap by adding to the evidence base on current use of the rule of law, identifying when the rule of law has been used in Parliament's decision-making, and informing the ways that the rule of law might be used in Parliament in the future.
2. This study aims to identify and analyse how the rule of law has been used in Parliament in light of Parliament's role in law making and scrutiny of the Executive within the UK constitutional system. It takes the last two parliamentary sessions as its focus (2013-14 and 2014-15). It is intended to inform the work of the APPG on the Rule of Law, and parliamentarians more broadly, as well as increasing the evidence base for rule of law and Parliament, and perhaps assist civil society's rule of law engagement with Parliament.
3. There are five parts to this report. Following this introduction (Part I), in Part II the report presents the contextual framework, research questions, and outline of the searches and analysis conducted for this study, then in Part III sets out the data gathered and some trends indicated by this data. It emerged during the research that many rule of law discussion and references in Parliament are in relation to foreign affairs, and Part III includes some quantitative analysis of this finding. Part IV discusses significant patterns in the data and our findings, and presents case studies of issues in relation to which there was discussion of the rule of law. These findings consider how the rule of law was discussed in relation to a selection of issues, and the depth of analysis in the discussions. The focus is on parliamentary rule of law discussion of domestic UK issues because of the focus of the research on Parliament's role in upholding the rule of law within the UK's constitutional system, rather than internationally. Part V draws some conclusions from the research, and the detailed methodology for the study is set out in the Appendix to this report.

II. ANALYSING THE RULE OF LAW IN PARLIAMENT

A. The Rule of Law

4. Lord Bingham's formulation of the rule of law, set out in his statement of a core definition and eight principles that follow, has been widely endorsed as a benchmark and is commonly followed in the UK and internationally. While the precise details of what the rule of law requires are a subject of debate, Bingham's principles provide a sound basis for assessing parliamentarians' engagement with the rule of law. Lord Bingham's position as a highly respected Lord Chief Justice and the adoption of his formulation by the Venice Commission give considerable influence to his Principles. Accordingly, this is the standard that was used to evaluate engagement with the rule of law in the debates examined. The core of these principles is the notion that:

all persons and authorities, 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.¹

5. That core, argues Lord Bingham, engages eight principles, which can be summarised as:
- **Accessibility:** The law must be accessible and so far as possible intelligible, clear and predictable
 - **Law not discretion:** Questions of legal right and liability should ordinarily be resolved by the application of law and not the exercise of discretion
 - **Equality before the law:** The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation
 - **The Exercise of Power:** Ministers and public officers at all levels must exercise the powers in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably
 - **Human Rights:** The law must afford adequate protection of fundamental human rights
 - **Dispute resolution:** Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve
 - **A fair trial:** Adjudicative procedures provided by the state should be fair
 - **The rule of law in the international legal order:** The rule of law requires compliance by the state with its obligations in international law as in national law

B. Research Questions

6. Within this conceptual framework, we did not expect to find detailed rule of law content in parliamentary debates, and therefore sought to answer the following questions in our research:
- i. **How many times** was the rule of law referred to in Parliament?
 - ii. **Which issues** attract the most references?
 - iii. **Who** makes the most references and do they have a legal background or a role in the Executive?

¹ Tom Bingham, *The Rule of Law* (2010, Penguin Books), 8.

- iv. In what **way and manner** do MPs and peers refer to the rule of law?
- v. Are there **patterns** in the references to the rule of law?

C. Methodology

7. UK parliamentary materials were searched in August and September 2015 for references to the phrase 'rule of law' in the 2013-14 and 2014-15 sessions of Parliament. The searches for this study were undertaken using the publicly available search service on the parliamentary website.² This "search parliamentary material" page was in a 'BETA' phase during the search period. The study did not include material from select committees or Commons public bill committees because the online search available as at September 2015 did not search the full text of materials from these committees, however Lords Committee Stage proceedings were searchable and therefore included in the study.
8. The search results were analysed to examine how the rule of law was referred to and by whom, where debate occurs, and the context in which it arises. The search results 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 issues that received the most rule of law discussion were identified and hits were attributed to each to rank the issues in terms of which received the most rule of law discussion. Furthermore, a search was undertaken for each MP and peer who referred to the rule of law in the 2013-14 and 2014-15 sessions of Parliament to determine which MPs and peers had referred to the rule of law most frequently, whether they had a legal background, and whether they held roles in the Executive or shadow cabinet at the time. The results for the top MPs and peers were further analysed to determine whether their rule of law references concerned matters within the UK or foreign affairs, and whether the references were in the context of a parliamentary question or answer. Finally, three or four issues in each session for each House were selected for more in-depth consideration as case studies.
9. A detailed methodology for this study is set out in the Appendix to this report.

² <http://search-material.parliament.uk/> (August-September 2015).

III. DATA SUMMARY

10. The ‘hits’ returned by the parliamentary online search 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.

A. Overall Results for the 2013-14 and 2014-15 Sessions of Parliament

11. The search for ‘rule of law’ in the 2013-14 and 2014-15 sessions 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
2013-14 Session	303	297	600
2014-15 Session	280	316	596
Total for both sessions	583	613	

12. Table 2 disaggregates the figures in Table 1 by the main types of parliamentary materials in which there were hits.

Table 2

Type of Material	Session	Hits in Commons	Hits in Lords
Proceeding contributions— statements or speeches in parliamentary debates	2013-14	190	224
	2014-15	186	249
Written questions and answers	2013-14	66	35
	2014-15	63	45
Oral questions and oral answers to questions	2013-14	26	14
	2014-15	26	16
Parliamentary proceedings (predominantly Written Statements) ³	2013-14	21 ⁴	24
	2014-15	5	6

³ Parliamentary Proceedings materials encompass various material such as ministerial corrections and points of order, but the vast majority of those with rule of law references were written statements.

⁴ The search result showed 22 but these included a proceeding contribution that did not have a rule of law reference (Health and Social Care from 13 May 2013, House of Commons vol. 563 pt. 4 col. 402). Accordingly, Table 2 uses the figure of 21.

B. The Top Issues that Received Rule of Law Discussion

13. Table 3 identifies the issues for which there were the highest number of rule of law hits.⁵ The table sets out the top 18 issues, because multiple issues attracted 11 total hits so it was not possible to present a 'top 20', nor find a significant drop in the total hits at which to stop the list after 'Burma' below which all of the gaps are only a difference of one or two hits.
14. Of the issues that received the most rule of law consideration:
- Bills and issues that concerned the justice system in the UK were subject to greater rule of law discussion in the House of Lords than in the House of Commons
 - There were more references to the rule of law in the Commons than in the Lords for some foreign affairs issues, Northern Ireland, the John Downey case and On-the-Runs Scheme, and British Values in Schools
15. The top issues were:
- i. Criminal Justice and Courts Bill — judicial review reforms proposed under the Bill
 - ii. Russia — problems with, and promotion of, rule of law in Russia
 - iii. British Values in Schools — the rule of law as a British value to be promoted or taught in schools
 - iv. Legal Aid — proposed increased restrictions on/reductions to access to legal aid would undermine the role of legal aid in enabling access to justice as part of the rule of law
 - v. Commonwealth — rule of law as a value shared in the Commonwealth, and problems with the rule of law in certain Commonwealth countries, particularly Sri Lanka
 - vi. Ukraine — problems with, and promotion of, rule of law in Ukraine particularly in light of Russia's actions, with Russia's military action itself viewed as a breach of international rule of law
 - vii. Counter-Terrorism and Security Bill — a number of proposals under the Bill were discussed including the definition of extremism, passport seizures, temporary exclusion orders, and the extension of terrorism prevention duties
 - viii. Immigration Bill — concerns about proposed provisions to strip citizenship from people suspected of terrorism, and a proposal to altered the bar to deportation so as to make the right to life and the right to be free from torture or inhuman and degrading treatment or punishment the only circumstances preventing deportation
 - ix. Iraq — problems with, and promotion of, rule of law in Iraq
 - x. John Downey and the On-the-Runs Scheme — the so called 'On-the-Runs Scheme' was devised to reassure former IRA members via letters that they were no longer wanted by the police; there was particular focus on the trial of John Downey which collapsed due to his possession of such a letter
 - xi. Legal Systems: Rule of Law — the contribution made by the UK legal systems to the international standing of the UK and the observance of the rule of law in the UK and abroad
 - xii. Burma — importance of, problems with, and promotion of rule of law in Burma/Myanmar

⁵ The methodology (Appendix) explains in detail how the issues were identified and defined.

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- xiii. Northern Ireland — challenges to the rule of law in Northern Ireland, such as violence associated with the annual 12 July parade, and praise for the police and security force’s upholding the rule of law in Northern Ireland
- xiv. Middle East — problems with, and promotion of, rule of law in the region and specific countries
- xv. Hong Kong — rule of law in Hong Kong (generally referred to as good), and UK promotion of the rule of law in Hong Kong
- xvi. Soft Power — rule of law promotion as part of the soft power used in UK foreign policy
- xvii. China — problems with, and promotion of, rule of law in China
- xviii. The Future of EU Enlargement — role of the EU in promoting the rule of law in countries in the region

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

	Issue Based on the Hansard Sub-heading	Session(s)	Hits in Commons	Hits in Lords	Total
1	Criminal Justice and Courts Bill	2013-14 2014-15	7 9	- 66	82
2	Russia ⁶	2013-14 2014-15	2 8	13 14	37
3	British Values in Schools ⁷	2014-15	19	14	33
4	Legal Aid ⁸	2013-14 2014-15	7 -	23 2	32
5	Commonwealth ⁹	2013-14 2014-15	15 1	13 -	29
6	Ukraine ¹⁰	2013-14 2014-15	10 3	13 2	28
7	Counter-Terrorism and Security Bill	2014-15	12	14	26
8	Immigration Bill	2013-14	7	15	22
9	Iraq	2013-14	2	-	22

⁶ Includes debates on: EU and Russia (EUC Report); Russian Membership of the Council of Europe; and European Court of Human Rights: Khodorkovsky Case for which there were 11 hits in the House of Lords.

⁷ Includes debates on: Faith Schools; Schools: Radicalism; Birmingham Schools; Education Regulations and Faith Schools; British Values: Teaching; Education: British Values; Schools: British Values; Church Schools; and Schools: Reforms.

⁸ Includes debates on: Civil Legal Aid (Remuneration) (Amendment) (No. 3) Regulations 2014, Criminal Legal Aid (General) (Amendment) Regulations 2013, Transforming Legal Aid, and Criminal Legal Aid Reforms.

⁹ Includes debates on: Commonwealth Heads of Government Meeting; Commonwealth Heads of Government Meeting and Philippines; Commonwealth Meeting and the Philippines; Commonwealth: Judicial Processes; Commonwealth: Membership; and Human Rights (Commonwealth).

¹⁰ Includes debates on: UK Relations with Ukraine; as relevant Ukraine, Syria and Iran; and as relevant Ukraine, Middle East, North Africa and Security.

		2014-15	5	15	
10	John Downey and the On-the-Runs Scheme ¹¹	2013-14 2014-15	20 1	1 -	22
11	Legal Systems: Rule of Law	2014-15	-	21	21
12	Burma ¹²	2013-14 2014-15	9 4	3 2	18
13	Northern Ireland ¹³	2013-14	13	4	17
14	Middle East ¹⁴	2013-14 2014-15	4 4	5 4	17
15	Hong Kong ¹⁵	2013-14 2014-15	1 9	- 6	16
16	Soft Power ¹⁶	2014-15	-	14	14
17	China ¹⁷	2013-14 2014-15	11 1	2 -	14
18	The Future of EU Enlargement	2013-14	-	12	12

C. MPs and Peers

16. Tables 4-7 show the MPs and peers who referred to the rule of law the most in the 2013-14 and 2014-15 sessions. However, the tables are not necessarily representative of the depth of rule of law analysis in which members engaged.
17. Tables 4 and 5 list 11 MPs and 10 peers who had the most hits in the search of parliamentary materials, and note whether these parliamentarians have a legal background, or held a position in the Executive or shadow cabinet, and the percentage of hits that concerned UK issues versus foreign affairs issues. These lists are referred to as the 'top 10' lists, although there are 11 MPs in the list of MPs as two were tied for 10th place.
18. Tables 4 and 5 indicate the following trends:
 - Among the MPs who most frequently referred to the rule of law in the 2013-14 and 2014-15 sessions
 - All held positions in the Executive or in the shadow cabinet

¹¹ Includes debates with the titles: High Court Judgment (John Downey); On-the-Runs Scheme; and Northern Ireland: On-the-Runs Scheme.

¹² Includes debates on: Burma; Burma (Human Rights); and Human Rights (Burma).

¹³ Includes debates on: Northern Ireland (Miscellaneous Provisions) Bill and Bill of Rights (Northern Ireland).

¹⁴ Includes debates on: Middle East and North Africa; Syria and the Middle East; Ukraine, Middle East, North Africa and Security; and Persecution of Christians (Middle East).

¹⁵ Includes debates on Foreign Affairs Committee (Hong Kong Visit).

¹⁶ The numbers include debates on: Soft Power and Conflict Prevention; and Soft Power and the UK's Influence (Select Committee Report).

¹⁷ Includes: United Kingdom and China; UK Relations with China.

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- Most focussed on the rule of law in the context of foreign affairs, and not on rule of law within the UK
 - MPs with portfolios in the Executive or the shadow cabinet at the time, which concerned foreign affairs, made their rule of law comments solely on foreign affairs issues
 - Among the peers who referred to the rule of law the most:
 - There were some peers who did not hold positions in the Executive or in the shadow cabinet
 - As was the case in the Commons, peers with portfolios in the Executive or the shadow cabinet at the time, which concerned foreign affairs, focused their rule of law comments on foreign affairs issues
19. MPs and peers who held a UK justice portfolio in the Executive or shadow cabinet largely focussed their rule of law comments on domestic issues rather than foreign affairs.
20. 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. Based on the parliamentarians who had the most hits, those who considered UK justice issues were:
- Lords Pannick, Faulks, Cormack, Beecham, and Judd in the Lords; and
 - Andy Slaughter MP in the Commons.

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 Cabinet	% Hits UK Issues	% Hits Foreign Affairs
David Lidington MP	Con	49	Non-legal	Minister of State for the Foreign and Commonwealth Office (European issues and NATO)	0%	100%
Hugo Swire MP	Con	38	Non-legal	Minister of State (Foreign and Commonwealth Office)	0%	100%
Tobias Ellwood MP	Con	23	Non-legal	Parliamentary Under-Secretary of State for Foreign & Commonwealth Affairs	0%	100%
David Cameron MP	Con	22	Non-legal	Prime Minister	22.7%	77.3%
Theresa Villiers MP	Con	18	Legal	Secretary of State for Northern Ireland	100%**	0%
Mark Simmonds MP	Con	11	Non-legal	Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs (until Aug 2014)	0%	100%
William Hague MP	Con	11	Non-legal	Minister for Foreign & Commonwealth Office	0%	100%
Andy Slaughter MP	Lab	10	Legal	Shadow Minister for Justice	100%	0%
Kerry McCarthy MP	Lab	10	Legal	Shadow Minister for Foreign & Commonwealth Office	0%	100%
Sir Hugh Robertson MP	Con	9	Non-legal	Minister of State, FCO	0%	100%
Alistair Burt MP	Con	9	Legal	Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs (until Oct 2013)	0%	100%

* 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' rule of law hits concerned Northern IrelandP

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 Cabinet	% Hits UK Issues	% Hits Foreign Affairs
Baroness Warsi	Con	68	Legal	Senior Minister of State for the Foreign and Commonwealth Office; Concurrently Senior Minister of State for Faith and Communities (until resignation in Aug 2014)	0%	100%
Baroness Anelay	Con	36	Non-legal**	Chief Whip (until Aug 2014); Minister of State for the Foreign and Commonwealth Office (from Aug 2014)	0%	100%
Lord Faulks	Con	21	Legal	Minister of State for Justice	95.2%	4.8%
Lord Pannick	CB	17	Legal		100%	0%
Lord Wallace of Saltaire	LD	15	Legal	Lords Spokesperson (Cabinet Office); Whip	0%	100%
Lord Cormack	Con	15	Non-legal		100%	0%
Lord Woolf	CB	13	Legal		100%	0%
Lord Beecham	Lab	12	Legal	Shadow Spokesperson on Justice	100%	0%
Lord Judd	Lab	10	Non-legal		20%	80%
Lord Soley	Lab	9	Non-legal		33.3%	66.6%

*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.

21. Tables 6 and 7 list the MPs and peers who were in the 'top 10' lists and held roles in the Executive or shadow cabinet, identifying the percentage of hits for those MPs and peers that were answers to questions (for the Executive) or questions (for the shadow cabinet). These percentages indicate when these MPs and peers were referring to the rule of law in their capacity as a member of the Executive or shadow cabinet rather than as a parliamentarian *per se*. Tables 6 and 7 indicate that a significant proportion of the rule of law references made by most of these MPs and peers were due to their Executive or shadow cabinet roles.

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

Member	No. of 'hits'	Executive Role	% Answers to questions
Baroness Warsi	68	Senior Minister of State for the Foreign and Commonwealth Office; Concurrently Senior Minister of State for Faith and Communities (until resignation in Aug 2014)	44.1%
David Lidington MP	49	Minister of State for the Foreign and Commonwealth Office (European issues and NATO)	63.3%
Hugo Swire MP	38	Minister of State (Foreign and Commonwealth Office)	63.2%
Baroness Anelay	36	Chief Whip (until Aug 2014); Minister of State for the Foreign and Commonwealth Office (from Aug 2014)	72.2%
Tobias Ellwood MP	23	Parliamentary Under Secretary for the FCO from July 2014	100%
David Cameron MP	22	Prime Minister	45.5%*
Lord Faulks	21	Minister of State for Justice	9.5%
Theresa Villiers MP	18	Secretary of State for Northern Ireland	33.3%
Lord Wallace of Saltaire	15	Lords Spokesperson (Cabinet Office); Whip	46.7%
Mark Simmonds MP	11	Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs (until Aug 2014)	45.5%
William Hague MP	11	Minister for Foreign & Commonwealth Office	0%
Sir Hugh Robertson MP	9	2012- July 2014 Minister of State at The Foreign and Commonwealth Office	77.8%
Alistair Burt MP	9	Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs (until Oct 2013)	44.4%

* Answers to Prime Minister's Questions

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Table 7: Percentage of rule of law hits that were questions by shadow cabinet members

Member	No. of 'hits'	Shadow Cabinet Role	% Questions
Lord Beecham	12	Shadow Spokesperson on Justice	0%
Kerry McCarthy MP	10	Shadow Minister for Foreign & Commonwealth Office	50%
Andy Slaughter MP	10	Shadow Minister for Justice	33.3%

D. Rule of Law Based Parliamentary Scrutiny of the Executive

22. The proportion of rule of law hits for members of the Executive that were answers to questions indicate rule of law based parliamentary scrutiny of the Executive's activities and policies. It appears from tables 4 to 6 that parliamentary scrutiny of the Executive in relation to the rule of law was concentrated in the area of foreign affairs, and was lacking in relation to government activities and policies within the UK. This trend emerges when the following are taken together:
- There was an extremely high representation of MPs and peers who held foreign affairs oriented portfolios in the Executive in the top 10 lists
 - These MPs and peers tended to speak about the rule of law exclusively in relation to foreign affairs
 - A significant proportion of hits for these MPs and peers related to answers to questions (apart from William Hague MP)
23. By contrast, there was not a similar level of parliamentary questioning of the Executive concerning the rule of law in areas such as those within the purview of the Home Office or the Department for Work and Pensions. Even Lord Faulks as the Minister of State for Justice appears only in the middle of the list of Executive portfolio holders and only 9.5% of his hits were answers to questions, suggesting that rule of law questions were a relatively small component of the Parliamentary scrutiny of his portfolio.

E. Northern Ireland

24. Northern Ireland issues are an interesting exception to the general trend that domestic UK issues received more rule of law discussion in the Lords than in the Commons. The rankings of the issues of Northern Ireland and the John Downey case involving the On-the-Runs Scheme in table 3 indicate the relatively high level of consciousness in the Commons of the rule of law in relation to Northern Ireland. The prominence of references to the rule of law in the Northern Ireland context is also indicated by Theresa Villiers MP's high ranking as an MP who referred to the rule of law, with 100% of her hits concerning Northern Ireland, 36.8% of which was answers to questions. This suggests that Ms Villiers faced some parliamentary scrutiny on the rule of law and Northern Ireland, but that most of the time it was she who raised discussion of the rule of law not parliamentarians in their questions to her.

IV. DATA ANALYSIS FOR BOTH HOUSES

25. **The most striking trend was the focus on the rule of law in relation to foreign affairs** that emerged from the top issues that received rule of law discussion and the analysis of contributions by the 'top 10' MPs and peers. It is clear from the numerous times that the rule of law was referred to in relation to topics such as Russia, Ukraine, and Iraq that the rule of law in foreign countries and in UK foreign policy was a topic of concern for many MPs and peers. Moreover, the discussion of the rule of law in those contexts indicates a broad acceptance of the importance of the rule of law amongst MPs and peers.
26. The high ranking of MPs and peers holding Executive portfolios that concerned foreign affairs in tables 4 and 5, and the clear trend of those MPs and peers referring to the rule of law only in relation to foreign affairs both suggest that the rule of law was a key element in UK foreign policy. There were occasions when members of the Executive were specifically asked about the rule of law in relation to a foreign affairs issue and therefore referred to the rule of law in their answer. However, there were also several instances where members of the Executive raised the rule of law as part of their answer to questions on foreign affairs and UK foreign policy.
27. However, although members of both Houses made many references to the importance of promoting the rule of law in foreign policy generally and as part of international development in particular, there was little further analysis that accompanied these comments. The debates could perhaps have been improved by greater detail on what the rule of law entails; for example, explicit consideration and application of judicial independence and access to justice would have enhanced debate and analysis. This is an area in which the APPG on the Rule of Law might fruitfully work to increase the depth of consideration and the range of rule of law principles considered relevant in foreign affairs issues.
28. In addition, the trend of rule of law discussion being focussed on foreign affairs issues suggests that there is scope for the APPG on the Rule of Law to aim to 'mainstream' rule of law considerations in domestic UK issues. The APPG on the Rule of Law may provide a forum for sensitising parliamentarians to the different demands of the rule of law in domestic UK issues.
29. The case studies that follow below are largely drawn from UK domestic policy issues because the focus of this research was on UK parliamentary engagement with the rule of law with regard to domestic UK issues. However, the foreign affairs trend was of such significance that it warranted reflection on what it might tell us about how MPs and peers currently engage with the rule of law.
30. **The most in-depth analysis of the rule of law** was found in areas centred on the justice system (especially legal aid and judicial review reforms, but not crime as discussed below), security and human rights. Generally, these were matters or issues that would fall within the 'justice' portfolio of the Executive. In the 2013-14 and 2014-15 sessions, this was most clearly demonstrated by the debates relating to the Criminal Justice and Courts Bill, Legal Aid, Immigration Bill, Counter-Terrorism and Security Bill, and the Lords proceedings entitled 'Legal Systems: Rule of Law'. Debate on rule of law issues is heavily dominated by those holding a portfolio in the Executive or shadow cabinet (see Tables 4 and 5).
31. Where the rule of law was discussed with regard to a UK justice topic (for example the Criminal Justice and Courts Bill), perhaps unsurprisingly the debate tended to be dominated by individuals with a legal background. Parliamentarians in the top 10 lists who focussed on the rule of law in

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the domestic context generally have a legal background. Lord Cormack is a notable exception to this general trend, with 15 hits all relating to UK justice issues, and not having come from a legal background. Lords Judd and Soley also spoke about the rule of law in the domestic context, but to a lesser extent, and not always in relation to justice issues.¹⁸

32. During the debate in the Lords on 'Legal Systems: Rule of Law', Baroness Butler-Sloss observed that she had a feeling that, 'this, with some notable exceptions, is very much a lawyers' meeting place, if not a picnic. I am afraid that, as yet another lawyer, I am contributing to that.'¹⁹ The sense that non-lawyers who contributed to such debates were, so to speak, encroaching on territory that belonged to others was conveyed well in a speech by Baroness Prashar in which she said: 'My Lords, as a non-lawyer I feel like a gate-crasher into this lawyers' and judges' picnic. However, I do not regret having gate-crashed because, as I expected, this has been an informative, interesting and thoughtful debate.'²⁰ This is perhaps all the more significant as, being a former chair of Judicial Appointments Commission she was on far more familiar ground than many others would be.
33. If this is indicative of a wider trend, then debates on justice issues raising rule of law concerns may be subject to a form of bias through self-selection. MPs and peers with non-legal backgrounds are likely to have valuable comments to make about what the rule of law requires with regard to issues in debate, but their views are less frequently expressed in rule of law discussions relative to the proportions of MPs and peers with legal and non-legal backgrounds.²¹ The provision of additional information on the rule of law by the APPG on the Rule of Law might encourage contributions from MPs and peers from non-legal backgrounds on justice issues.
34. **Proceedings without a deep engagement with the rule of law** were often centred on 'British values' and crime. It is interesting that although justice issues tended to receive in-depth rule of law analysis as discussed above, issues concerning crime tended not to receive similar in-depth rule of law consideration. The rule of law was referred to, but the statement and application of its principles to the relevant issues was not always consistent with an understanding of the kind set out in the Bingham principles. In particular, references to the rule of law in these debates sometimes did not distinguish between the rule of law and the obligation of people in the UK to obey the laws of the UK. For example, 'What we are talking about is people complying—at least, they ought to comply—with the law of this land. We ought to be encouraging, as a matter of integration and the rule of law, that Muslim marriages are carried out according to the law of this land' (Baroness Deech).²²
35. The rule of law was characterised by some MPs and peers as a fundamental British value alongside principles such as tolerance, freedom or democracy.²³ Some MPs and peers used conformity with the rule of law to advocate for 'law and order' policies and to argue for the integration of minority groups into UK society. When used in these ways, the phrase tended to be

¹⁸ Lord Soley's UK-related hits concerned Scotland, British values, and the economy.

¹⁹ HL Deb 10 July 2014 vol. 755 pt. 23 col. 348.

²⁰ HL Deb 10 July 2014 vol. 755 pt. 23 col. 350.

²¹ Only 13.5% of MPs from the major parties were barristers or solicitors in 2010: House of Commons Library, Research Paper 12/43: UK Election Statistics: 1918-2012 (7 August 2012), 20.

²² HL Deb 12 December 2014 vol. 757 pt. 75 col. 2084.

²³ HM Government, *Prevent Strategy* (June 2011), [6.60]; Department for Education, *Promoting fundamental British values as part of SMSC in schools: Departmental advice for maintained Schools* (November 2014), 5.

used in passing with little further analysis of what the rule of law means or its application to the specific issues under discussion. By providing opportunities for in-depth rule of law discussions, the APPG on the Rule of Law can hope to deepen rule of law discussion on these kinds of issues.

36. **Debates that would also benefit from an enriched discussion of the rule of law** included debates on the UK's relationship with international sources of law.²⁴ Human rights issues such as those raised in the Immigration Bill context (noted above and discussed below) tended to receive thoughtful rule of law discussion. Yet, when human rights were discussed in relation to international sources of law, the rule of law discussion indicated some confusion amongst parliamentarians. The rule of law was cited by those arguing that the concept necessitates strict parliamentary sovereignty as well as those advocating compliance with decisions of the Strasbourg court, with neither side delving deeper into why their arguments were supported by the rule of law. A more thorough consideration and explanation of the relationship between the UK legal system and international law might clarify the debate, and this may be an area in which the APPG on the Rule of Law could look to provide additional information to Parliament.

A. Data Analysis for the House of Commons

37. MPs seemed comfortable asserting the importance of the rule of law, as an apparently uncontroversial thing to be in favour of. This was especially pronounced in the context of international relations and foreign aid, where it was mentioned in passing alongside other concepts such as freedom or human rights. For example, in discussing foreign policy on Russia, Ian Austin MP stated that 'The truth is that the west needs to decide which is more important: our values and commitment to democracy, freedom and the rule of law, or the dubious benefits of the west's commercial relationships with Russia.'²⁵
38. The importance of a proper and detailed understanding of the rule of law, coupled with the application of its principles, was advocated by Jacob Rees-Mogg MP during debate on the Recall of MPs Bill where he said that 'if this House does not stand up pedantically for the rule of law, nobody will.'²⁶
39. There were instances that suggested confusion amongst some MPs about the nature of the rule of law, and its relevance and application to Parliament's law making. A statement by, for example, Bill Cash MP identified such confusion:
- I have heard lawyers—I am one myself, and a former shadow Attorney-General—talk over and over again about the rule of law without asking this question: what is the rule of law

²⁴ These questions continue to arise, e.g. Professor Mark Elliott, 'The Ministerial Code and International Law' (26 October 2015) <http://publiclawforeveryone.com/2015/10/26/the-ministerial-code-and-international-law/>; Professor John Finnis, 'Ministers, International Law, and the Rule of Law' Policy Exchange (2 November 2015) <http://www.policyexchange.org.uk/media-centre/blogs/category/item/ministers-international-law-and-the-rule-of-law> ; and APPG on the Rule of Law, 'Meeting Report: The Ministerial Code and International Rule of Law', 9 November 2015, available at: <http://www.biicl.org/bingham-centre/appg-rule-of-law/meetings>.

²⁵ HL Deb 18 March 2014 vol. 577 pt. 138 col. 681-2.

²⁶ HC Deb 24 November 2014 vol. 588 pt. 66 col. 688.

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based on? What circumstances does it apply in, and is it still relevant? We amend Acts of Parliament the entire time.²⁷

40. A number of debates provide interesting examples of rule of law discussions. Given the very high level of rule of law discussion accorded to the Criminal Justice and Courts Bill, that Bill is taken as a key case study in both this section and the following section on the Lords.

Criminal Justice and Courts Bill

41. The rule of law discussion in debate on this Bill focused on the government's reform of judicial review. The Bill (now an Act) sought to curb perceived abuse of judicial review, based on an underlying view that judicial review was being used as a promotional tool by 'countless Left-wing campaigners',²⁸ and a concern that time and money were being wasted in dealing with unmeritorious applications that were brought simply to generate publicity or to delay implementation of a decision that had been made properly.²⁹ The Bill proposed (and the Act now legislates) that third party interveners must in certain circumstances pay not only their costs but also those of all the other parties involved, and to prevent the judiciary from giving permission to hear judicial review cases where it was unlikely that government's acting lawfully would have substantially changed the outcome for the applicant.
42. The restrictions on judicial discretion when deciding whether or not to allow an application for judicial review were strongly opposed by some MPs on the grounds that they violated the rule of law. It was argued that the Bill would undermine the accountability of the Executive by legislating to 'insulate their bad decision making from legal challenge and place themselves outside the rule of law' (Andy Slaughter MP).³⁰ The duty of local authority and state civil servants to consider the effects of their actions, especially their legality, was stated by Mr Slaughter as being important for the functioning of a proper democratic system. Mr Slaughter also cited the senior judiciary's response to the Lord Chancellor's consultation, which stated that it had seen no 'evidence of inappropriate use of judicial review as a campaigning tool, and it is not the experience of the senior judiciary that this is a common problem.'³¹ Sadiq Khan MP (the then shadow justice secretary) cited a number of present and former members of the senior judiciary on the fundamental importance of access to judicial review to the rule of law, and argued that the rule of law meant that the government had to act lawfully, just as citizens must.³² Elfyn Llwyd MP and Yasmin Qureshi MP were also amongst the most vocal opponents of the restrictions on access to judicial review who cited the rule of law in their contributions to parliamentary proceedings.
43. On the occasion when the then Lord Chancellor Chris Grayling MP defended the Bill against the rule of law criticism, he did so in the following terms:

As Lord Chancellor I take my responsibility to uphold the rule of law very seriously, but I do not believe that the way in which it has evolved in relation to the current use of judicial

²⁷ HC Deb 6 January 2015 vol. 590 pt. 85 col. 192.

²⁸ Justice Secretary Chris Grayling, 'The judicial review system is not a promotional tool for countless Left-wing campaigners', *Daily Mail* (6 September 2013), available at <http://www.dailymail.co.uk/news/article-2413135/CHRIS-GRAYLING-Judicial-review-promotional-tool-Left-wing-campaigners.html#ixzz3ulbaXXMx>; HC Deb 24 Feb 2014 vol. 576 pt. 124 col. 65.

²⁹ HC Deb 24 Feb 2014 vol. 576 pt. 124 col. 56.

³⁰ HC Deb 24 Feb 2014 vol. 576 pt. 124 col. 119.

³¹ HC Deb 24 Feb 2014 vol. 576 pt. 124 col. 118.

³² HC Deb 24 Feb 2014 vol. 576 pt. 124 col. 65, 66, and 67.

review is consistent with or necessary to uphold the rule of law... Judicial review was never intended to be a tool for pressure groups to seek to disrupt perfectly lawful decision making in Government and Parliament, it was never designed to be used as a political campaigning tool, and it was never intended to put the courts above the elected government in taking decisions over the essential interests of this country. Yet, in far too many examples, that is precisely what it has become and is why reform is necessary.³³

44. One particular rule of law discussion that could have been taken further was whether a member of the Executive can adjudicate what amounts to 'lawful decision-making in Government', or which legal challenges are politically motivated, without being a judge in her or his own cause. Lord Bingham's third and fourth principles would have been of particular relevance to such discussion.
45. Despite the abovementioned rule of law concerns, the House of Commons voted against all of the amendments proposed within the House designed to preserve access to judicial review. The House of Commons only voted in favour of a government amendment allowing the judiciary to give permission to hear judicial reviews in cases where there was an 'exceptional public interest', (regardless of the likelihood of whether the government acting lawfully would have made a difference to the outcome), after the House of Lords had insisted on amendments preserving such access to judicial review during the 'ping pong' stage, making it clear that the Bill would fall in the last parliamentary session before the end of the Coalition Government if the government did not give way. We cover the Lords debate in greater detail below.

Immigration Bill, proposed clause 15

46. Clause 15, proposed by Dominic Raab MP, sought to change the exceptions to the automatic deportation provisions set out in the UK Borders Act 2007, but was voted down by the Commons.³⁴ It would have altered the bar to deportation under the proposed provision so as to make the right to life and the right to be free from torture or inhuman and degrading treatment or punishment the only circumstances preventing deportation, as opposed to human rights violations in general.
47. The lack of a shared understanding of the rule of law amongst MPs was demonstrated in debate on the amendment by Jacob Rees-Mogg MP and Chris Bryant MP, with both claiming that their arguments were supported by the rule of law. Mr Rees-Mogg argued that to preserve the rule of law was to preserve parliamentary sovereignty, whilst Mr Bryant argued that Parliament being bound by the rule of law meant that there were certain things it could not do.³⁵ Greater understanding of the rule of law in the context of the UK Parliament and the UK's relationship with international sources of law could clarify this area of contention.

Counter-Terrorism and Security Bill and Judicial Review Generally

48. Concerns were raised relating to the lack of judicial oversight for the making of temporary exclusion orders, a system to block the return of individuals suspected of fighting in the Middle East, proposed under the Bill (now an Act). That these kinds of Executive powers should be subject to a court order as a form of legal redress was stated to be 'part of living under the rule of law'

³³ HC Deb 1 Dec 2014 vol. 589 pt. 71 col. 70.

³⁴ HC Deb 30 Jan 2014 vol. 574 pt. 115 col. 1065; 1106-1107.

³⁵ HC Deb 30 Jan 2014 vol. 574 pt. 115 col. 1083-1 and 1091.

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(David Winnick MP).³⁶ The Bill was passed by Parliament following the insertion of a requirement that the Secretary of State obtain a court's permission to impose a temporary exclusion order, unless the urgency of the case requires that the order be imposed without obtaining such permission.³⁷

British Values: Teaching and Birmingham Schools

49. These proceedings referred to 'Operation Trojan Horse' and the resulting investigation into alleged Islamist infiltration of schools in Birmingham. Concerns were raised that children were being exposed to practises and information which were contrary to British values such as the rule of law.
50. Debate surrounding the rule of law as a British value highlighted one problem presented by lack of in-depth engagement with the concept. These proceedings, in both Houses, contained some of the least detailed yet most numerous references to the rule of law in the 2014-15 session. The rule of law was dealt with in a perfunctory manner, without detailed analysis of what it meant or required for the debate at hand. Charlie Elphicke MP linked the rule of law to other British values that he viewed as being undermined by multiculturalism which he said causes 'fear and mistrust'.³⁸
51. The proceedings on this issue reflected one view of the rule of law—as one of a number of British values that also include tolerance and freedom of religion. Members believed this was threatened by, for example, the curriculum in the schools in question being narrowed instead of a broad and balanced curriculum,³⁹ and gender discrimination through segregated classrooms.⁴⁰

Foreign Affairs Committee (Hong Kong Visit)

52. The Chinese government banned a British parliamentary delegation from visiting Hong Kong during the recent pro-democracy demonstrations. A debate took place in the Commons relating to this decision and the current state of affairs in Hong Kong.
53. While various Members took part in the proceedings, with some referring to the importance of the rule of law to the 'one country, two systems' framework, very few speeches addressed the underlying rule of law issues in any depth. A notable exception was presented by the contributions of Sir Malcolm Rifkind MP. Sir Malcolm analysed the concept of the rule of law 'with Chinese characteristics'.⁴¹ He emphasised the importance of recognising that an understanding of the rule of law must not be limited to the duty of citizens to obey the law of the land. It was also necessary that the government obey the law, act under the law, and ensure the existence of an independent legal and judicial system.

John Downey

54. There are 187 IRA members who remain at large in relation to alleged offences committed during the Troubles. The debate considered a scheme devised to reassure former IRA members that they

³⁶ HC Deb 15 Dec 2014 vol. 589 pt. 80 col. 1233; see also HC Deb 6 January 2016 vol. 590 pt. 85 col. 177-178, and 192.

³⁷ Sections 2-3 of the Counter-Terrorism and Security Act 2015.

³⁸ HC Deb 25 June 2014 vol. 583 pt. 13 col. 112WH.

³⁹ See e.g., HC Deb, 9 Jun 2014 vol. 582 pt. 3 col. 272; HC Deb, 22 Jul 2014 vol. 584 pt. 28 col. 1255.

⁴⁰ See e.g., HC Deb, 9 Jun 2014 vol. 582 pt. 3 col. 279; HC Deb, 22 Jul 2014 vol. 584 pt. 28 col. 1251.

⁴¹ HC Deb 2 Dec 2014 vol. 589. pt. 71 col. 169-170.

were no longer wanted by the police, the so called On-the-Runs Scheme. In particular, the debate related to the trial of John Downey—the Hyde Park bomber—which collapsed due to his possession of such a letter as the judge believed that to continue would constitute an abuse of process.

55. The majority of Northern Ireland MPs were appalled at the verdict, arguing that it violated equality before the law: Lady Hermon MP, independent MP for North Down, said: ‘We now know, post-Downey, that the rule of law did not apply to the comrades of Mr Adams.’⁴² However, it was argued by the then Attorney-General Dominic Grieve QC MP that by affirming Government’s past representations, the rule of law had been upheld in terms of consistency.⁴³

B. Data Analysis for the House of Lords

56. Debate in the Lords tended to include more in-depth discussion of the rule of law than debate in the Commons. There appeared to be different rule of law ‘groups’ in the House of Lords.
57. First, there were those who show great interest in what may be thought of as traditional, or strict, rule of law issues such as judicial review. These peers included Lords Pannick, Woolf, Marks of Henley-on-Thames, Lester of Herne Hill, Beecham, Plant, Thomas of Gresford, Baroness Butler-Sloss and Baroness Lister of Burtersett. Members of this group were overwhelmingly current or former judges, lawyers, and other individuals with a legal background. Much of the most in-depth discussion of rule of law issues by this group took place as part of the scrutiny of Bills as opposed to other proceedings.
58. Secondly, there was another group of peers who use the rule of law as an international benchmark in their discussion of international development and foreign affairs. References to the rule of law in these areas were almost exclusively confined to the proceedings of topical debates as opposed to the scrutiny of Bills. Its use in these subject areas tended to be somewhat brief or vague, where a more detailed elaboration could have yielded greater benefits for debates. In the foreign policy context, the rule of law was sometimes referred to as a British value, something that should influence foreign policy, and at other times the lack of the rule of law was referred to as a basis for criticism of other countries. For example, ‘We know perfectly well that countries such as Russia will be in severe difficulties so long as they persist in loving a strong leader with a weak and corrupt JROL [justice and rule of law]’ (Earl Atlee).⁴⁴
59. The following examples give a flavour of rule of law discussions in the House of Lords. As with the preceding section on the Commons, particular prominence is given to the Criminal Justice and Courts Bill.

Criminal Justice and Courts Bill

60. As discussed above, the Criminal Justice and Courts Bill proposed to restrict access to judicial review, regardless of the lawfulness of the Government’s decision-making process, in cases where there was a high likelihood that the outcome of the Government’s decision would have been

⁴² HC Deb 27 Mar 2014 vol. 578 pt. 144 col. 541.

⁴³ HC Deb 26 Feb 2014 vol. 576 pt. 126 col. 276-277.

⁴⁴ HL Deb 4 Nov 2014 vol. 756. pt. 51 col. 1565.

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substantially the same, as well as by requiring the court to impose all costs arising from an intervention onto the third party intervener under certain specified conditions.

61. The Lords debates gave lengthy and serious consideration of the rule of law and its demands. The rule of law was mentioned a total of 75 times (as distinct from the number of hits) in the Lords debates, by Lords Faulk, Pannick, Woolf, Marks on Henley-on-Thames, Deben, Mackay of Clashfern, Elystan-Morgan, Beecham, Cormack, Davies of Stamford, Ramsbotham, Horam, Irvine of Lairg and Lester of Herne Hill, as well as Baronesses Campbell of Surbiton, Kennedy of the Shaws and Williams of Crosby. The vast majority of peers did not simply use the rule of law as a rhetorical device, but as a source of obligations on the government to act lawfully, while allowing individuals to challenge bad decision-making where the government fails to so do.
62. Lords Pannick, Woolf, Beecham and Carlile of Berriew successfully moved an amendment to preserve judicial discretion over whether to grant permission for judicial review, regardless of the likelihood of the outcome remaining the same, thereby preserving access to judicial review and maintaining the rule of law over unlawful government decisions. The Lords also passed amendments preserving judicial discretion on the provision of financial information and over costs for third party interveners, at the Report Stage.
63. During ping pong, all of the House of Lords amendments were rejected by the House of Commons, after an hour long debate in which the rule of law was mentioned four times. The House of Lords insisted on the amendments preserving judicial discretion over access to judicial review and on the provision of financial information, in a three hour debate in which the rule of law was mentioned 24 times. Lord Faulks then sought and obtained government amendments in the House of Commons, preserving judicial discretion to grant judicial review in cases involving 'exceptional public interest', and not to request the identity of those contributing an amount below a threshold, thereby enabling the Bill to be passed into law.
64. The concluding contributions to debates suggest that fidelity to the rule of law had been an important concern. For instance, in his closing speech, Lord Faulks thanked Lord Pannick for his observations on the rule of law, its role and importance and judicial review as a part of that.⁴⁵ Lord Pannick for his part thanked Lord Faulks for achieving the compromise between the Lord Chancellor and the House of Lords, as well as the substantial rebellion in support of retaining judicial discretion from the Liberal Democrat benches, alongside substantial support from Conservative Peers, both publicly and behind-the-scenes, whom he praised for being 'wise and experienced, and respectful of the value of the rule of law'.⁴⁶

Counter-Terrorism and Security Bill

65. The Bill focused on the threat posed by the so-called 'Islamic State' or Daesh and from a general growth of extremism. Concerns were raised with regard to elements of the Bill that were believed to offend free speech, namely requirements relating to 'extremist speaker policies'. Some peers were also concerned about the possible arbitrariness of the term 'extremist', especially regarding its inclusion of non-violent extremism. Baroness Lister of Burtersett and Lord Thomas of Gresford raised their concerns about the adequacy of judicial oversight and procedural safeguards.⁴⁷ Areas

⁴⁵ HL Deb 21 Jan 2015 vol. 758 pt. 89 col. 1349.

⁴⁶ HL Deb 21 Jan 2015 vol. 758 pt. 89 col. 1345.

⁴⁷ HL Deb 13 Jan 2015 vol. 758 pt. 83 col. 708-11 and 718-21.

which garnered significant input regarding the effects of the Bill on the rule of law included passport seizures, temporary exclusion orders, and the extension of terrorism prevention duties.

Legal Systems: Rule of Law

66. A motion was tabled by Lord Woolf, former Lord Chief Justice of England and Wales, 'That this House takes note of the contribution made by the legal systems of this country to the international standing of the United Kingdom and the observance of the rule of law in this country and abroad.'⁴⁸ Lord Woolf highlighted the rule of law as an important British export and spoke of its importance to the economic wellbeing of the nation. However, concerns relating to changes to the legal system that may be seen as undermining elements of the rule of law were also raised.
67. This debate featured some of the most in-depth discussion of the rule of law in the 2014-15 session — including some contributions that set out the concept and the values it seeks to promote. Lord Marks of Henley-on-Thames stated that: 'the cardinal principle is that the law, not the state, is supreme'.⁴⁹ Several peers addressed the Chamber on the importance of an independent judiciary, access to justice, fair trial, and legal certainty. Perhaps surprisingly the Chamber was also addressed about formulations of the rule of law that extend beyond procedural conceptions to include human rights and informal legal sources by Lord Plant of Highfield and Baroness Prashar.⁵⁰ As with other debates in the area of justice, the proceedings were dominated by peers with a legal background.

International Development Goals

68. The rule of law has been identified by Prime Minister David Cameron as part of a 'golden thread' which is necessary for sustainable development. References to the 'rule of law' were not expanded on in depth in debate on the sustainable development goals for the post-2015 international development agenda. Instead, the term appeared to be used almost rhetorically. Much of the pertinent debate focused on the importance of fostering a rule of law culture in developing countries. The debate may have benefitted from explanation of what the rule of law requires in terms of issues such as of transparency, accountability, and judicial independence. For example, the engagement of the debate with rule of law principles would have been greater with concrete examples of how states may improve legal certainty, or in what manner the independence of the judiciary can be secured and why this is important, coupled with views on how governments should act in order to further these goals.

British Bill of Rights

69. The Commission on a Bill of Rights submitted its final report entitled *A UK Bill of Rights? - The Choice Before Us* to the UK Government on 18 December 2012. Debate on the Report attracted rule of law comments, mostly from Lords McNally, Judd, Woolf, Lester and Baroness Kennedy. The last staunchly defended the duty to give effect to Strasbourg judgments, saying that to disregard them 'flies in the face of the rule of law.'⁵¹ Both Lord Judd and Lord Woolf described the rule of law. The former took the view that 'it is not just about having a rule of law, it is about ensuring that the rule of law reflects the cause of justice' acknowledging the concepts are related yet separate.⁵²

⁴⁸ HL Deb 10 Jul 2014 vol. 755 pt. 23 col. 329.

⁴⁹ HL Deb 10 Jul 2014 vol. 755 pt. 23 col. 342.

⁵⁰ HL Deb 10 Jul 2014 vol. 755 pt. 23 col. 350-1 and 346-7.

⁵¹ HL Deb 20 Jun 2013 vol. 746 pt. 21 col. 449.

⁵² HL Deb 20 Jun 2013 vol. 746 pt. 21 col. 454.

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Given the ongoing topicality of the issue, opportunities for further engagement with rule of law aspects of the issue would be beneficial.

Complexity of Legislation

70. The Lords debated a question asked by Lord Bates 'To ask Her Majesty's Government what assessment they have made of the review by the Office of the Parliamentary Counsel, *When Laws Become Too Complex*'. In that context, Lord Phillips of Sudbury highlighted the case for emphasis on the rule of law in parliamentary drafting: 'That last point is crucial: it undermines the rule of law. If we contrive a system in which the average citizen feels put upon by the law, resents the law and feels outside the law in the sense of any engagement with its passing, then that is all bad and it is too true of today's society'.⁵³ There was cross-party consensus on this issue.

⁵³ HL Deb 19 Jun 2013 vol. 746 pt. 20 col. 315.

V. CONCLUSIONS

71. Rule of law concepts are central to the proper functioning of parliamentary scrutiny, including scrutiny of legislation and of the Executive, and it is apparent from this research that in both Houses there is frequent discussion of the rule of law. However, the data regarding how the rule of law is referred to, where debate occurs, and the context in which it arises is very significant. It suggests that there is room for — a need for — greater parliamentary engagement with the concept.
72. The aim of this research was to look at how Parliament engaged with the rule of law with respect to issues of UK domestic policy, yet the striking finding in the quantitative analysis was the focus of Parliament on the rule of law in relation to foreign affairs rather than domestic policy. This trend was indicated by the issues that received the most rule of law discussion, the Executive roles of the MPs and peers in the top 10 lists and the proportion of the hits for those MPs and peers that concerned foreign affairs issues. Furthermore, it appears from the proportion of hits that were answers to questions by members of the Executive that held foreign affairs oriented portfolios that rule of law based parliamentary scrutiny of the Executive was overwhelmingly focussed on foreign affairs and not rule of law issues in the UK.
73. Even where there was rule of law discussion of domestic UK issues, one of the key findings in this research is that there was an imbalance in the ways that rule of law concepts play a role in ‘legal’ as opposed to ‘non-legal areas’ of domestic UK policy and politics. By ‘legal’ issues, we mean issues concerning the UK justice system and other legal areas such as civil liberties in the context of national security, and human rights (which received relatively detailed rule of law analysis), as well as crime (which received much rule of law discussion, albeit without much detail).
74. By contrast, Parliament passes many laws concerning ‘non-legal areas’ of UK domestic policy, but the rule of law was not discussed in relation to many of these issues. One of the few non-legal topics that received some rule of law discussion was the Energy Bill in the 2013-14 session. Although the rule of law will probably be relevant to many non-legal areas of debate in Parliament, it is not often considered in detail in debates on non-legal topics. It was beyond the scope of this research to consider whether there were issues that would have benefited from rule of law based analysis which failed to receive such analysis in parliamentary debate. In light of the tendency to raise rule of law questions when the issue at hand concerned a legal topic, it is possible that a number of ‘non-legal’ issues were debated in Parliament without consideration of their relevant rule of law dimensions. Research on this question may provide a new dimension to the analysis undertaken in this paper.
75. Given the central importance of the rule of law to government and individuals’ rights and interests in the UK, the rule of law should be a core concern for all MPs and peers in all aspects of UK law and policy. The rule of law has relevance not only for issues involving the justice system, but also all realms of government decision-making from welfare to finance and taxation. Accordingly, MPs and peers should have rule of law considerations in mind when they debate all legislation, not only legislation that concerns legal issues. MPs and peers must have adequate support to ensure that measures proposed in Parliament further rule of law goals, and there is scope for the APPG on the Rule of Law to play a role in providing this support. Furthermore, the APPG on the Rule of Law has a role to play in creating a space for in-depth rule of law discussion, promoting in-depth rule of law analysis of a range of issues.

APPENDIX—METHODOLOGY

A. Searching Parliamentary Materials

76. UK parliamentary materials were searched in August and September 2015 for references to the phrase 'rule of law' in the 2013-14 and 2014-15 sessions of Parliament.⁵⁴ The research considered only topics that received explicit rule of law discussion in parliamentary debates; 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

77. The searches for this research were undertaken using the publicly available search service on the parliamentary website.⁵⁵ This "search parliamentary material" page was in a 'BETA' phase during the search period. 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.
78. 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
 - 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
79. 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

⁵⁴ 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.

⁵⁵ <http://search-material.parliament.uk/> (August-September 2015).

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.

80. The categories of materials not selected in searching for this research were:
 - Legislation
 - Parliamentary Committees
 - Parliamentary Papers
 - Research Briefings
81. The online search of materials from Parliamentary Committees available as at September 2015 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.
82. 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 parliamentarians, although they are part of the work of Parliament.

Material returned by searches

83. '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.
84. 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 the situation in Iraq might be given the title 'Iraq'.

B. Searches and Analysis

Hits per chamber and categories of material

85. 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 per session of Parliament. 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

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as debates) or written questions and answers. The categories in which there were the majority of hits were:

- proceeding contributions
- written questions and answers
- 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 predominantly of written statements, but did contain other subcategories of materials.

Titles in parliamentary materials versus issues

86. 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. A separate list of titles was made for each House for each session.
87. 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 Ukraine and as an aspect of UK foreign policy on Ukraine was discussed under the titles 'Ukraine'; 'UK Relations with Ukraine'; 'Ukraine, Syria and Iran'; and 'Ukraine, Middle East, North Africa and Security'. 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.
88. 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

89. 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 generally straightforward to categorise as an issue, for example, the 'Immigration Bill' title was categorised as the 'Immigration Bill' issue. Similarly, some titles were used consistently for the same issue and could serve as the issue category, such as 'Iraq'—all of the hits counted in this research for that issue were hits for that title. However, some issue categories were spread across a number of different titles. For example, the issue 'British Values in Schools' was a category that emerged from searches in relation to the titles 'British Values: Teaching' and 'Education: British Values'. These searches revealed nine different titles under which there had been discussion of British values in schools that referred to the rule of law as a British value, hence the issue was categorised as 'British Values in Schools'.
90. Some issues were hard to define precisely, particularly the 'Middle East', and the categories of 'China' and 'Hong Kong', and absolute objective precision would be impossible in light of the

qualitative decisions that needed to be made. Taking the example of the Middle East, on one view, all hits for the rule of law in relation to all countries in that region could have fallen within that category, hence hits for Iraq could have been included within the issue of the Middle East. However, the rule of law was mentioned a number of time in debates concerning only Iraq and, given that this was sufficient to generate 22 hits, 'Iraq' was treated as its own category. On the other hand there were 16 hits for the rule of law where it was referred to in relation to the Middle East region, without the same focus on one particular country. Hence, the Middle East was given its own category as an issue.

91. Three titles were excluded as issues because they were titles under which a wide range of topics were discussed: the Queen's Speech, Engagements, 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 need for the rule of law in Afghanistan,⁵⁶ and one peer spoke about UK justice matters including legal aid and judicial review.⁵⁷
92. Similarly, various titles relating to the Foreign Affairs Council and General Affairs Council of the EU were excluded as an issue primarily because they concerned different issues noted in reports to Parliament on the activities of the Councils, the Commission's Communication on the Rule of Law, and the rule of law in various countries.⁵⁸
93. Once the top issues had been identified, the titles for hits were used as the primary guide for whether a hit should be attributed to a particular issue. This allowed a largely quantitative analysis, whereby a hit was attributed to the issue that was indicated by the title for the hit in the parliamentary search. Where the title lacked precision, there was some consideration given to the substance of rule of law references under the title; for example, references to the rule of law within proceedings entitled Ukraine, Syria and Iran were given some qualitative analysis to determine whether the reference concerned Ukraine, Syria, or Iran, and only attributed to the issue of Ukraine when the reference concerned Ukraine.

MPs and peers for whom there were the most hits

94. A search was undertaken for each MP and peer who referred to the rule of law in the 2013-14 and 2014-15 sessions of Parliament to determine which 10 MPs and 10 peers had referred to the rule of law most during these sessions. There were two MPs who were tied in 10th place, so the 'top 10' list for MPs actually has 11 MPs.
95. For each of the parliamentarians in these top 10 lists, research was 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 cabinet 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.

⁵⁶ Lord Triesman, HL Deb 15 May 2013 vol. 745 pt. 5 col. 411-412.

⁵⁷ Lord McNally (The Minister of State, Ministry of Justice), HL Deb 9 May 2013 vol. 745 pt. 2 col. 27-30.

⁵⁸ A secondary reason for the exclusion of these titles as an issue was that the same reports tended to be presented to each House, resulting in a kind of double counting.

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96. It emerged during the research that 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.
97. In addition, the hits for parliamentarians who had held roles in the Executive or shadow cabinet were analysed in terms of whether each hit was a parliamentary question or answer on the basis that such hits would often relate to this Executive/shadow cabinet role.

Case studies

98. Three or four issues in each session for each House 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

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