

# RULE OF LAW

**PBL2015 Administrative Law**

DR. ROBERT MUSUMECI

## ATTEMPTING A DEFINITION

**A CORPUS OF BASIC PRINCIPLES AND VALUES, WHICH TOGETHER LEND SOME STABILITY AND COHERENCE TO THE LEGAL ORDER**

**THE RULE OF LAW IS THE EXPLANATION FOR WHY THE LAW IS TREATED AS LEGITIMATE AND THUS WHY IT OVERRIDES PERSONAL AND OTHER INTERETS**

## WHAT DICEY AND FINNIS HAD TO SAY

**DICEY:** EVERY OFFICIAL FROM THE PM TO A CONSTABLE OR COLLECTOR OF TAXES IS UNDER THE SAME RESPONSIBILITY FROM EVERY ACT DONE WITHOUT LEGAL JUSTIFICATION AS ANY OTHER CITIZEN....

**FINNIS:** THE NAME COMMONLY GIVEN TO THE STATE OF AFFAIRS IN WHICH A LEGAL SYSTEM IS LEGALLY IN GOOD SHAPE

# THE FORMAL SCHOOL –VS THE SUBSTANTATIVE SCHOOL

**THE FORMAL SCHOOL: (i) PREDETERMINED PROCEDURE (ii) CLEAR, STABLE, CERTAIN (iii) NO ONE IS PUNISHED EXCEPT FOR A BREACH OF LAW (iv) LAW APPLIED EQUALLY TO ALL, REGARDLESS OF THE STATUS**

**THE SUBSTANTATIVE SCHOOL: THE FORMAL CONDITIONS PLUS THE LAW MUST UPHOLD CERTAIN CONDITIONS (HUMAN RIGHTS)**

THIS IS TO SAY....

ANOTHER WAY OF SAYING: 'GOVERNMENT UNDER THE LAW'

GOVERNMENT ORGANIZATIONS MAY NOT ACT WITH IMPUNITY

THE EXECUTIVE IS REMINDED THAT IT MAY ONLY ACT IF IT HAS THE LEGAL POWERS TO DO SO, HENCE ITS ACTIONS ARE SUBJECT TO JUDICIAL REVIEW

IF THE ACTIONS ARE ILLEGAL, THEN THE COURT HAS THE POWER TO ANNUL THOSE ACTIONS

# ACHIEVING THE ROL OBJECTIVES IN PRACTICE

NO ONE MAY BE PUNISHED BY STATE EXCEPT FOR BREACH OF LAW

GOVERNMENT UNDER THE LAW, BOUND BY RULES ANNOUNCED BEFOREHAND – STABLE, PRECISE

INDIVIDUALS' RIGHTS ARE PROTECTED THROUGH ORDINARY LAW/COURTS

LEGAL CERTAINTY AND NON-RETROSPECTIVITY

FAIR HEARING BY AN INDEPENDENT JUDICIARY