RULE OF LAW AND DEMOCRACY: HOW RULE OF LAW CAN STRENGTHEN DEMOCRACY

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- WHAT IS THE RULE OF LAW?
- RULE OF LAW: THICK OR THIN?
- IS RULE OF LAW A DEMOCRATIC CONCEPT?
- ASIAN PERSPECTIVES ON RULE OF LAW AND DEMOCRACY
- CONCLUSION

Dicey's version of rule of law

- The supremacy of regular law enforced in the ordinary courts
- Citizens and officials equally accountable under the same laws
- No imposition of a penalty save for a clear breach of the law established before an independent tribunal.
- … and therefore
  - laws must themselves be clear not vague
  - must be published in advance
  - and must be prospective not retrospective in application
  - administrative discretion should be confined as far as possible; and that no 'special' courts can be established.
- Famously also, Dicey's original concept (he changed his mind later on) precludes development of a separate administrative law designed to control administrative action

The Rule of Law: Model-thin Classical Model acc. to AV Dicey, 1835-1922

Thick or thin rule of law in Asia? Gymnast or Sumo Wrestler?

- rules for determining which entities can make law and how
- publicity, predictability and accessibility of law
- clarity, consistency, stability and general acceptability of law
- narrowing of the gap between the law in books and the law in practice
- development of legal aid/ legal education

THICKENING THE RULE OF LAW?