

# British concepts of the 'rule of law'



Brief 211716 The Rule of Law: Write an essay critiquing the concept of the “rule of law”. To what extent does today’s British state reflect the ideals at its core? Outlined below is a short critique of the concept of the rule of law, as well as an evaluation of the different opinions or perspectives of this concept. The rule of law as a distinct and separate concept is well over a thousand years old. It has legal and constitutional origins in Ancient Greece and Anglo-Saxon England. <sup>[1]</sup> It was the common law of Anglo-Saxon England that had the strongest influence upon the concept of the rule of law, when even the Norman conquest could not stop its ongoing development. <sup>[2]</sup> The fundamental basis of the rule of law is the notion that all members of any society are not above the law of the land, whether they are monarchs, politicians, the nobility, or indeed ordinary people. The rule of law itself is a concept that contends that everybody lives under the same jurisdiction, of the law of their particular land from its rulers and its lawmakers downwards. <sup>[3]</sup> At first appearance the concept of the rule of law seems to be a straightforward one, yet there are disagreements about the exact nature of the ideals at the core of the concept itself. The critique below will thus discuss the extent to which today’s British state reflects the core ideals of the rule of law. <sup>[4]</sup>

England was the country, as already mentioned, in which the concept of the rule of law was developed. The concept being influenced by the common law, Magna Carta, and the Bill of Rights of 1688 establishing the notion that the state should uphold the rule of law to protect its citizens, instead of ignoring the law and subjecting the people to their autocratic will. <sup>[5]</sup> Magna Carta was supposed to firmly establish the concept of the rule of law and

<https://assignbuster.com/british-concepts-of-the-rule-of-law/>

curtail the power of the state. In reality the monarchy, despite often-repeated claims of accepting the concept of the rule of law, still held considerable power until the 18<sup>th</sup> century, when the Prime Minister started to make widespread use of the royal prerogative instead. [6] The British state regarded the concept of the rule of law as being a reflection of the strength of liberalism as espoused by John Locke and others, the increasing influence of capitalism, as well as a result of the legal and political supremacy of Parliament. The House of Commons passed legislation, whilst the House of Lords contained the highest court in the land, all in the name of the monarch whilst representing the people. [7]

The unwritten constitution meant and continues to mean that whether or not the state keeping to the rule of law in Britain was less clear than in other countries. The lack of a written constitution was considered to be a legal not to mention a constitutional virtue instead of a problem as some legal experts have argued. It was assumed that because the British state has claimed to have adopted the concept of the rule of law for its constitutional, as well as its legal systems that the British government and all its departments in reality accepted and adhered to the notion in full. There are times though when governments have acted in ways that suggested they believed that they were above the rule of law. Generally if government ministers or senior civil servants act in ways that appear to be contrary to the rule of law they will lose their jobs, protecting the government from the legal or political consequences of their actions. [8]

Providing the political party forming the British government holds a Parliamentary majority in the House of Commons, it theoretically can pass constitutional and legal not to mention politically motivated legislation that might run counter to the rule of law. British governments have on various occasions been accused of only paying lip service to the concept of the rule of law. <sup>[9]</sup> Detractors of the lack or limited rule of law within the British state as large parliamentary majorities and the powers accorded via the royal prerogative has allowed governments to adopt policies without fully consulting Parliament, the courts, and ignoring the wishes of the general public. Governments with parliamentary majorities have argued that they are carrying out the policies contained within their manifestos, democracy does not always fit in exactly with the concept of the rule of law. The late Lord Hailsham a former Law Lord once described the constitution of the British state as being an elected dictatorship. <sup>[10]</sup>

Arguments, as well as debates concerning how the concept of the rule of law affects the legal and the constitutional situation within the British state partially reflect the vagueness and also the ambiguity of the very of the rule of law itself. People with more liberal or more democratic attitudes were not particularly convinced that the British state was not totally committed to the core values within the concept of the rule of law. <sup>[11]</sup> The critics of the contemporary British state argue that the rival political parties have considered the concept of the rule of law less important than the gaining and maintaining of political power via the winning elections. Such critics have pointed out that the combination of an unwritten constitution and the use of the royal prerogative has allowed the British state to bypass the democratic <https://assignbuster.com/british-concepts-of-the-rule-of-law/>

process through the use of dubious though not illegal means whenever it suited British governments to do so. <sup>[12]</sup>

However, in many respects Britain's membership of the European Union has had profound constitutional and legal consequences for the British state when taken as a whole. The British Parliament no longer has the complete legal and political sovereignty with European Union legislation taking priority over domestic laws. <sup>[13]</sup> The European Convention for Human Rights also has the power to make judgements about British laws and the government can change the legislation it considers to be contravening human rights. <sup>[14]</sup>

The ways in which the British state reflects the core values of the concept of the rule of law has undoubtedly changed 1997. <sup>[15]</sup> The New Labour government was committed to wholesale constitutional and legal changes which have reshaped the British State, thus affecting how the core values of the concept of the rule of law are reflected inside today's Britain itself. <sup>[16]</sup> In 1997 the outgoing Conservative government had been deeply unpopular in Scotland and Wales due to its economic policies whilst it had governed both countries without any Scottish or Welsh MPs. New Labour was the dominant political party in Scotland and Wales so it was committed to the introduction of devolved government to both countries in order to reduce support for nationalist parties as much as making the British state more responsive to the core values of the rule of law. <sup>[17]</sup>

Devolved government has given the voters of Scotland and Wales a greater degree of input into the legal and political decisions that concern their lives.

The introduction of devolution also means that the Scottish Parliament and the Welsh Assembly can pursue policies and pass legislation that is different from those implemented in England. <sup>[18]</sup> There is also the possibility that devolution could lead to the independence of Scotland at some point in the future, which would literally shrink the British state whilst demonstrating that the democratic will of the Scottish people was not been ignored.

Devolved government has also been restored in Northern Ireland as part of the peace process. Power sharing is hopeful sign that there is a return to the normal rule of law after the Troubles had closed down the Stormont Parliament and led to thousands of deaths. Devolution is intended to make the British state more responsive and more representative for all the people of Britain. <sup>[19]</sup>

A fundamental shift in the way that the core values of the rule of law are thus reflected in the British state has been witnessed in the area of human rights. New Labour passed the Human Rights Act 1998 in order to protect the human rights of all British people by enshrining the European Convention of Human Rights into the constitution, as well as the legal system. <sup>[20]</sup> The purpose of the Human Rights Act 1998 was to make sure that the British state could not abuse or reduce the human rights of its own people, in other words to comply with the rule of law. <sup>[21]</sup> The Human Rights Act 1998 increased the power of the courts to make legal decisions instead of the Home Secretary using the royal prerogative, for instance for judges to set the maximum term for jail sentences. The Human Rights Act 1998 also made it easier for people to question the decisions of government departments that have adversely affected their lives. Being able to hold the government

<https://assignbuster.com/british-concepts-of-the-rule-of-law/>

and its various departments into account is certainly a reflection of core values that mean the British state is abiding by the rule of law. Other legislation such as the Data Protection and the Freedom of Information Act are intended to improve the rights of citizens whilst making the government, officials, and departments more accountable for their actions. [22]

To conclude today's British state does to some extent reflect the concept of the rule of law as the government is democratically elected, yet can have its actions scrutinised by Parliament, the media, and the European Convention of Human Rights. The introduction of devolution in Scotland and Wales has made the British state more responsive to the wishes of its component countries and their populations, whilst increasing the risks of the United Kingdom dissolving in the future. The Human Rights Act 1998 is also a reflection of the core values being reflected as the rule of law. However, despite membership of the European Union and the change linked with the Human Rights Act 1998 the British government and its ministers can still wield considerable influence and power. Bibliography

Alder J, (2007) Constitutional and Administrative Law, 6<sup>th</sup> edition, Palgrave, London

Breyer S, (2008) Active Liberty, Oxford University Press, Oxford

Coxall B, Robins L & Leach R (2003) Contemporary British Politics 4th edition, Palgrave, London

Eatwell R & Wright A, (2003) Contemporary Political Ideologies 2<sup>nd</sup> Edition, Continuum, London

<https://assignbuster.com/british-concepts-of-the-rule-of-law/>

Gardiner & Wenborn (1995) *the History Today Companion to British History*, Collins and Brown Ltd, London

MacDonald A, (2007) *Reinventing Britain, Constitutional change under New Labour*, Politico's, London

Martin E A, (2003) *A Dictionary of Law*, Oxford University Press, Oxford

McCormick, (2002) – *Understanding the European Union*, Palgrave, London

Nugent N, (2003) *The Government and Politics of the European Union* 5<sup>th</sup> edition, Palgrave, London

Parpworth N, (2004) *Constitutional and Administrative Law*, Butterworths, London

Young H, (2003) *supping with the Devils – Political writing from Thatcher to Blair*, Guardian Books, London

---

## Footnotes

[1] Alder, 2007 p. 149

[2] Gardiner & Wenborn, 1995 p. 360

[3] Breyer, 2008 p. 19

[4] Martin, 2005 p. 441

[5] Eatwell & Wright, 2003 p. 27

[6] Sharma, 2003 p. 15



[7] Alder, 2007 p. 149

[8] Parpworth, 2004 3. 15

[9] Parpworth, 2004 3. 15

[10] Young, 2003 p. 1

[11] MacDonald, 2007 p. 48

[12] Breyer, 2008 p. 19

[13] McCormick, 2002 p. 5

[14] Nugent, 2003 p. 10

[15] Young, 2003 p. 230

[16] Coxall, Robbins, & Leach, 2003 p. 370

[17] Parpworth, 2004 3. 15

[18] Alder, 2007 p. 149

[19] MacDonald, 2007 p. 48

[20] Alder, 2007 p. 153

[21] MacDonald, 2007 p. 48

[22] MacDonald, 2007 p. 48