



The Rule of Law

Why It Matters

The protection of the Rule of Law has been in the spotlight because of the recent increased threat of terrorism and because of the controversy surrounding the legitimacy of military action in Iraq. The extension of powers contained in counter-terrorism legislation, such as the right to detain suspects without trial, raised concerns about the balance between the need for security and the protection of the individual liberties of citizens. Increased levels of surveillance in daily life raise similar concerns. But striking the balance between interests is not an exact science.

The Essentials

1.

It is generally accepted that adherence to the Rule of Law is fundamental to and is one of the defining features of a civilised society.

2.

The “Rule of Law” is an ancient principle and has been subject to many interpretations over the centuries. It is a phrase universally used but not comprehensively defined, although it is commonly understood to mean that every member of a society is bound by and entitled to the benefit of laws which are publicly made and publicly administered and which do not have retrospective effect.

3.

So, all are subject to and equal under the law, even rulers and governments. In essence it can be said that the rationale of the Rule of Law is to provide a safeguard against arbitrary governance whether by totalitarian leaders, elected governments or mob rule.

4.

Some also extend the principle to include the notion that the government is created by and for the people and is answerable to the people.

5.

In times of crisis, governments may seek to justify departures from the Rule of Law on the grounds of national security. Several instances of such departures from the principles of the Rule of Law have occurred in recent years in the United Kingdom and have raised concerns as to the effectiveness of provisions designed to keep the executive in check.

6.

The judiciary are often regarded as the guardians of the Rule of Law, as it falls to an independent and fair judiciary to enforce the Rule of Law, especially when invoked by citizens to protect themselves from the excesses of the state or the executive.

The Important Debates

DEFINING THE ‘RULE OF LAW’

The “Rule of Law” is an ancient principle and an elusive notion which has been subject to many interpretations over the centuries. It is a phrase universally used but not comprehensively defined, although it is commonly understood to mean that every member of a society is bound by and entitled to the benefit of laws which are publicly made and publicly administered and which do not have retrospective effect. Despite this lack of clarity, reference to the phrase is made in national and international laws, declarations and conventions which have in turn provided different formulations of the principles.

The Universal Declaration of Human Rights and the [European Convention on Human Rights](#) both refer to the Rule of Law.

In 1959, over 185 judges, lawyers and law professors from 53 countries took part in the New Delhi Congress and published the Declaration of Delhi which set out the principles they considered were comprised in the Rule of Law. Broadly they took the view that individuals have certain rights and freedoms which must be protected; that an independent judiciary is fundamental for the protection of these rights and freedoms and that the establishment of certain basic economic and cultural conditions would assist in the protection of these rights. ([The International Commission of Jurists](#) is still in existence today)

In the United Kingdom Section 1(1) of the Constitutional Reform Act 2005 states: “Nothing in this Act shall detract from the existing constitutional principle of the Rule of Law.” However, it does not offer a definition of what that principle is.

The Secretary-General of the United Nations defines the rule of law as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.” [\[More+\]](#)

Lord Bingham summarizes this principle in a more colloquial manner:

“If anyone – you or I – is to be penalized it must not be for breaking some rule dreamt up by an ingenious minister or official in order to convict us. It must be for a proven breach of the established law of the land.” Tom Bingham, *The Rule of Law* Allen Lane, February 2010. [\[More+\]](#)

1215

The Magna Carta emphasizes the need for an independent judiciary and for unvarying judicial process

1610

Phrase found in a petition to James I from the House of Commons

1644

Samuel Rutherford writes ‘Lex, Rex’ (Latin for ‘the Law is King’, subverting the traditional formulation ‘the King is Law’)

1679

The Habeas Corpus Act is adopted (sometimes referred to as ‘the Great Writ’) creating protections against arbitrary imprisonment by guaranteeing that the accused is allowed to present their case before a court of law

1689

The Bill of Rights is introduced. The Bill of Rights reinforced the Habeas Corpus Act, the Petition of Right, and the Petition of Grievances, and established other rule of law standards as constitutional foundations, such as the right to trial by jury, the prohibition against cruel and unusual punishment, and limitations on the powers of the monarchy

1690

John Locke discusses it in the Second Treatise of Government

1748

Montesquieu writes about it in The Spirit of the Laws

1776

The notion is popular at the birth of the United States

1776

Thomas Paine writes, in *Common Sense*, that ‘In America, the Law is King’

1780

John Adams incorporates the principle into the Massachusetts Constitution, seeking to establish ‘a government of laws and not of men’

1885

A.V Dicey popularizes the term ‘the rule of law’

1945-6

The Nuremberg Trials refocus international attention on the rule of law, making it a foundational concern in the emerging project that would become the United Nations

1945

Charter of the United Nations created

1949

The Universal Declaration of Human Rights states: ‘It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law’

1959

International Commission of Jurists Makes the Declaration of Delhi

1979

Joseph Raz releases *The Authority of Law*, articulating an influential account of the rule of law from a legal positivist perspective

2009

The Council of International Bar Association endorses a ‘broad’ definition of the rule of law

2010

Former Lord Chief Justice, Lord Bingham of Cornhill publishes the landmark book ‘the rule of law’

2013

The introduction of Secret Courts in the Justice and Security Bill.

[Find out more](#)

Website created by Charlotte Craig

[Neon Web Design Bournemouth](#)

0207 227 4923 • info@consoc.org.uk • Top Floor, 61 Petty France, London, SW1H 9EU

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