Introduction

It is well-known that there is an absence of a written codified constitution in the United Kingdom which legally restraining the actions of the government and controlling the exercise of public power. As such, the [rule of law](https://www.lawteacher.net/free-law-essays/constitutional-law/the-rule-of-law-as-political-theory-law-essay.php), along with Parliamentary Sovereignty and the ruling of the courts are basically defining the principle of unwritten constitution. There is none official definition of the rule of law as it connotes different meanings to the parties with different legal minds. Essentially, the rule of law indicates that no one is above the law. In other words, everyone must be obedient to the law. This fundamental legal doctrine is said to be a safeguard against [government arbitration](https://www.lawteacher.net/free-law-essays/administrative-law/the-government-and-the-principle-of-legality-administrative-law-essay.php) as a nation should be governed by law, but not by arbitrary power. However, albeit the doctrine of the rule of law has triumphed in rhetoric globally, but there is insufficient evidence to show that it has been effectively practiced in the world.

Dicey and The Rule of Law

In the United Kingdom, the rule of law, at least historically, has been closely related to A.V. Dicey. Dicey’s perception of the rule of law was introduced in his book *Introduction to the Study of the Law of the Constitution*. According to Dicey, in line with the concept of Parliamentary Sovereignty, the rule of law is one of the twin pillars of the British Constitution. There are 3 conceptions of the rule of law which had been highlighted by Dicey. The first aspect indicates that no man is punishable or can be lawfully made to suffer in body or deprived of their goods unless they had violated the law which has been established in an ordinary way and applied by an ordinary court. There is also an absolute supremacy or predominance of regular law over arbitrary power and the state could not act in an arbitrary manner which was unlawful.

The second aspect of Dicey’s conception of the rule of law indicates that in terms of the equality before the law, no man is above the law. Regardless of what an individual’s rank or condition is, he is subjected to the ordinary law of the realm and be bounded to the jurisdiction of the ordinary tribunals. As a result, no matter an ordinary private citizen or a state official breached the same law, they would be treated in the same way.  It denoted that the state officials were not given any special privileges or protections from the law of the land. Thomas Fuller had also quoted that “Be you ever so high, the law is above you.”

The third aspect denotes that the principles of the constitution are the result of the ordinary law of the land. Dicey stated that Britain had a court-based constitution (in effect, a common law constitution), in the sense that decisions made by the judges directly resulted the principles of the constitution which concerning the rights of private persons. This reveals Dicey’s belief that the common law affords greater protection to the citizens than a written constitution.

The Modernized Rule of Law – The 8 Principles by Lord Bingham

The lecture entitled ‘The Rule of Law’ was given by Lord Bingham in the House of Lords on 16 November2006. Lord Bingham outlined 8 sub-rules which he believed comprised the rule of law and these 8 principles enunciated by Lord Bingham had been regarded as the modern version of the rule of law. Lord Bingham declared that “the core of the existing doctrine of the rule of law was that all public and private persons should be bound by and entitled to the benefit of laws publicly and prospectively issued and publicly administered by the courts.” The view of Lord Bingham could be said as filling in the gaps of Dicey’s conception as it is more modern and concerning the latest issue. The 8 principles are as below:

Sub-rule 1: The law must be accessible so far as possible, intelligible, clear and predictable.

Sub-rule 2: Questions of legal right and liability should generally be decided by   application of the law and not the exercise of the discretion.

Sub-rule 3:  The law must apply equally to everyone, unless differences can be justified.

Sub-rule 4: The law must provide appropriate protection of essential and basic human rights.

Sub-rule 5: The parties in civil disputes must be able to resolve disputes without facing a huge legal cost or excessive delays.

Sub-rule 6: The executive must use the powers given to them reasonably, in good faith, for the proper purpose and must not exceed the limit s of these powers.

Sub-rule 7: There must be adjudicative procedural fairness.

Sub-rule 8: The state must comply with the obligations of international law which whether deriving from treaty or international custom and practice governs the conduct of nations.

The Practice and Threats of the Rule of Law in the United Kingdom

It is clear that there is no written codified constitution in the United Kingdom. The United Kingdom is a constitutional monarchy in which the reigning monarch, either the King or Queen who is the head of the state and the sovereign, does not make any open political decisions. The responsibility of making political decisions is left to the government and the Parliament. The Parliament plays a vital role in upholding the rule of law in the United Kingdom’s constitutional system. Both House of Lords and House of Commons are important to ensure that the government is abiding by the rule of law and the proposed legislation is not in the breach of the rule of law. However, to what extent the United Kingdom upholds the rule of law should be discussed.

Entick v Carrington (1765) is a leading case in declaring that the government must act within the law. The defendants who were the King’s messengers were given the order to “search for the John Entick and send him together with his private papers” by Lord Halifax as he was suspected of seditious libel in criticizing the government. The defendants broke into his house and seized his papers under the warrant authorized by the Home Secretary. Entick successfully sued the defendants for trespass. The court held that the Home Secretary was not a magistrate and did not have authority to issue a warrant. Thus, the defendants’ actions were illegal. The executive could not act outside the law and would be treated in the same way as ordinary citizens if they breached the law. Dicey’s concept was affirmed in this case.

Meanwhile, the question that does the United Kingdom still upholds the doctrine of rule of law is never ended being debated. The rule of law regulated that laws must not be retrospective. In other words, if a person’s conduct was not an offence when he committed it, he could not be tried for that particular offence. However, this requirement of restricting retrospective effect in the rule of law is being played down as legislation such as War Crimes Act 1991 has retrospective effect.

Besides, the recent case of Serdar Mohammed v Ministry of Defence (2017) had set off an intense debate on the rule of law.  The issue on whether the human rights of Serdar as stated in European Convention of Human Rights had been breached was being debated. The Court of Appeal stated that Serdar who was an Afghan suspect was detained illegally by British Forces before handing him over to Afghan authorities in 2010. However, in the appeal, The Supreme Court ruled that Serdar’s detention was not in breach of the Article 5 of European Convention of Human Rights which is the right to liberty and security. The issue on whether the practice of the rule of law is still effective in the United Kingdom had been raised once again.

Anyway, The World Justice Project Rule of Law Index 2016 published that the practical of rule of law in the United Kingdom had been recorded as 10th out of 113 countries in global ranking. It is undeniable that the United Kingdom’s performance in upholding the rule of law is considered outstanding among the 113 countries.

The Practice and Threats of the Rule of Law in Malaysia

Unlike the United Kingdom, Malaysia is a country where there is a written constitution named Federal Constitution of Malaysia, which is the supreme law of the land. Malaysia is considered as a country that operates within the federal representative democratic constitutional monarchy having a paramount ruler whose roles are largely ceremonial. The government which attaches to the Constitution is headed by the Prime Minister who has been chosen from the present-day ruling party, as well as the United Kingdom. It should not be forgotten that Malaysia’s Constitution has been built based on the Reid Commission’s proposal on the doctrine of the rule of law as the foundation of the Constitution. Therefore, both the legislature and the executive must act within the bounds of the power conferred by the Constitution.

Based on Dicey’s first postulate in the rule of law, Malaysia may assure the rule of law in the case of Loh Kooi Choon v Government of Malaysia (1977). This case concerned the rights and freedoms assured by the constitution and also raised the question that to what extent the Parliament can amend the Constitution. The Royal Malaysia Police had detained Loh with a warrant issued under the provisions of the Restricted Residence Enactment 1933. Article 5(4) of the constitution stated that “the right to production before a magistrate for person detained and further detainment in custody shall not be executed without the magistrate’s authority”. Loh sued The Royal Malaysian Police for refusing to give him this right. The Parliament amended Article 5(4) to deny the previous right to production and the amendment was given retrospective effect until Malaysia’s Independence Day. Loh’s appeal had been rejected with the reason that albeit Article 4(1) stated that “any unconstitutional law passed after Malaysia independence would be void” but this did not apply to the Constitution itself. The Federal Court rejected the argument that the Federal Constitution could not be inconsistent with itself. However, the Internal Security Act of Malaysia 1960 is obviously violating the rule of law as a detainment of a person without trial is allowed and the detainee has no rights to bring this matter to the court.

Nonetheless, even if Malaysia as a democratic country should uphold the doctrine of the rule of law, the current ruling party ‘Barisan Nasional (BN)’ continues to show that the already fragile rule of law in Malaysia is being threatened as the ruling party is very awful in standing by the rule of law. There were too many scandals about the ruling party and the Prime Minister in the recent years. One of the high profile cases was that the current Prime Minister, Najib Razak had violated the constitutional provision by his action of immediate and instant sacking of the Attorney-General, Abdul Gani who had been investigating him and planned to bring charges against him as there were leaked confidential documents which claimed that money from the 1MBD (Malaysia’s state investment fund) went into his personal bank accounts. According to Article 145(6) of the Malaysian Constitution, it is very obvious that the Attorney-General “shall not be removed from the office, except on the like grounds and in the like manner as a judge of the Federal Court”. There were still a number of high profile cases which concerning the ineffectiveness of the rule of law in Malaysia. The World Justice Project Rule of Law Index 2016 published that the practical of rule of law in Malaysia had been recorded significant decline with the 56th global ranking. As a contrast, it is undoubted that the United Kingdom has been doing better in upholding the rule of law than Malaysia even though none of the countries around the world is perfect in upholding the doctrine.

The Practice and Threats of the Rule of Law in Thailand

After Thailand’s absolute monarchy had been replaced by the constitutional monarchy on 1932, the military and technocrats had made up Thai bureaucracy leaving hardly any space for discussing stability of law and civil liberties. The May 2014 military coup in Thailand had been criticized by the Lord Chief Justice and urged Thailand to restore democracy and the rule of law. Lord Chief Justice of Thailand has also stated that the repressive laws passed since the coup should be revoked and any revised Constitution should be assured to meet the international human rights and the requirement of the rule of law.

Besides, Navi Pillay, the United Nations High Commissioner for Human Rights had urged Thailand to “assure the position of the human rights and an immediate restoration of the rule of law in the country”. “The mandatory substitution of an elected government, the imposition of martial law, the suspension of the constitution and the emergency steps that are limiting the enjoyment of human rights are the issues that I am profoundly worrying about”, she added.

Over the past 84 years, numerous military interventions had been spotted in Thailand. It could be said that Thailand is moving towards the deep-rooted military rule in the recent years and is in the danger of becoming an assured military dictatorship after the broad police-like powers to arrest and detain had been granted to the military personnel. Thus, Thailand as constitutional monarchy is facing a serious issue on the ignorance of the doctrine of rule of law. To further certify this issue, the global ranking of Thailand in The World Justice Project Rule of Law Index 2016 was 64th.

The Recommendations to Improve the Effectiveness of the Rule of Law

It is inevitable that the rule of law around the world is being threatened in the recent days. To further prove the existence of this issue, the threats that the United Kingdom, Malaysia and Thailand are facing had been discussed above are stopping the rule of law from developing into a better one. Even if there is a written constitution in a country which operates on the belief that the doctrine of rule of law is supreme, it does not guarantee that respect and recognition will be given to the doctrine. In order to improve the effectiveness of the rule of law around the world, here are a few recommendations that can be adopted.

Firstly, the courts must play the vital and active role to uphold the doctrine of rule of law. When the control of the Parliament on the administration is reducing, the judicial power and control should be adequately raised. Thus, in the countries which having a written and supreme constitution, the judiciary or the courts are given the responsibility and right to review executive and legislative actions if any unconstitutionality is spotted. Besides, the judges should do their best in correcting the loopholes in the law.

Secondly, Lord Bingham’s sub-rule 5 of the rule of law declared that people must be able to resolve legal disputes without having to pay a huge and unaffordable cost. This is due to the access to justice in order to protect the citizens’ rights is one of the issue that the doctrine of rule of law concerns. The last coalition government gave a big strike to public funding for legal cases in the form of the Legal Aid Sentencing and Punishment of Offenders Act 2012. Since then, legal aid is simply not available to most types of cases. In other words, there is a dual-system of justice: one for the wealthy and another for everyone else. There is also an increment in the court and tribunal fees which makes the justice excessively costly. In spite of the extensive opposition, the Ministry of Justice has announced that there will be an increment in asylum and immigration tribunal fees by a excessive rate of 500%. Thus, it is undeniable that there will be a lot of people who could not afford the fees in order to seek for justice. The Ministry of Justice should reconsider about this the decisions above as to uphold sub-rule 5 of the rule of law.

Last but not least, judicial independence is said to be the key in upholding the rule of law. The independence of the judiciary must be guaranteed and it is the responsibility of the government officials to respect the judicial independence. However, the Prime Minister of Malaysia had announced that the tenures of Chief Justice and the President of Court of Appeal had been extended by three and two years. The Prime Minister had been criticized as undermining the judicial independence and the rule of law with such an unconstitutional move. The independence of the judiciary should be free from any pressure or interference of the government in order to uphold the justice. This is due to there would be a possibility that the judges might work in the favor of the government which would result in injustice. If there is no relation between the government and the judges, there will also be none benefit given to the judges which drives them to act in the favor of the government. Thus, any move that interfere the judicial independence should not be allowed.

Conclusion

By taking all the above discussions into account, it is undeniable that the rule of law is an essential element of constitutionalism and upholding the democratic system of government. The rule of law is also inevitably linked with the independence of the judiciary as upholding the various principles supporting the rule of law is one of the constitutional responsibilities given to the judiciary. Thus, the rule of law must be supported by a judicial system which is free and independent from any extraneous interference which emphasizing the importance of the doctrine of separation of powers. It had been proven that many of the countries’ practical of the rule of law are on the wane as they are departing away from the pathway of upholding the rule of law bit by bit. Proper measures should be taken in order to uphold the supreme of the rule of law.

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