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The rule of law in the UK: essence and approaches to determination

Maxim I. Shevchenko

RUDN University, *Moscow, Russian Federation*
✉m.sh.1997@yandex.ru

Abstract. The research is focused on the essence of the rule of law as a constitutional and legal principle as the basis of the UK constitution and approaches to its determination. The rule of law, being a general legal principle, which has been developed in various legal concepts, including the British rule of law, the German rechtsstaat, the French etat de droit, at the present stage has become one of the fundamental constitutional and legal characteristics, both at the national and supranational level. National concepts of the rule of law, having certain differences and peculiarities, are essentially aimed at achieving similar goals. However, their substantive content is formed on the basis of existing features of specific national legal orders. One of the earliest and most developed in terms of constitutional and legal theory and practice is the UK approach to the rule of law. However, the question of its determining remains relevant at the present stage. The object is the concept of the rule of law developed in the UK, the subject is its specific features and manifestations, as well as approaches to its determination in British legal doctrine and practice. The purpose is to explore the issue of determination of the rule of law in the UK and to form a comprehensive approach to understanding its essence. The methodological basis of the research is constituted by 1) dialectical method, 2) general scientific methods including analysis, synthesis, comparison, analogy, deduction and induction, 3) special methods including logical, formal-legal, comparative-legal, and statistical methods. Based on the analysis the author makes an attempt to define the essence of the rule of law as an integral part of the UK constitution and its key features.

Key words: rule of law, the UK constitution, common law, public authority, principle of legality, principle of equality, human rights and freedoms, independence of the judiciary

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Верховенство права в Великобритании: сущность и подходы к детерминации

М.И. Шевченко

Российский университет дружбы народов (РУДН), *г. Москва, Российская Федерация*
✉m.sh.1997@yandex.ru

Аннотация. Исследуется сущность верховенства права как политико-правового принципа, положенного в основу конституции Великобритании, и подходов к его детерминации. Верховенство права, являясь общеправовым принципом, получившим развитие в различных правовых концепциях, в частности, британском rule of law, немецком rechtsstaat, французском etat de droit, на современном этапе приобрела значение одной из основополагающих конституционно-правовых характеристик, как на национальном, так и наднациональном уровне. Национальные концепции верховенства права, имея определенные различия и особенности генезиса, по своей сути направлены на достижение схожих целей обеспечения надлежащего правового режима законности, всеобщего равенства и ограничения произвольного осуществления публичной власти. При этом их содержательное наполнение формируется исходя из существующих особенностей конкретных национальных правопорядков – в их законодательном регулировании, судебной практике и правовой доктрине. Одним из наиболее ранних и разработанных с точки зрения конституционно-правовой теории и практики является подход к верховенству права в Великобритании. Однако вопрос определения его сущности сохраняет свою актуальность и на современном этапе. Объект исследования составляет концепция верховенства права, получившая развитие в Великобритании, предмет – ее характерные особенности и проявления, а также подходы к ее детерминации, сложившиеся в британской правовой доктрине и практике. Цель – исследование проблемы детерминации верховенства права в Великобритании и формирование комплексного подхода к пониманию его сущности. Методологическую основу исследования составляют: 1) диалектический метод, относящийся к общефилософским, 2) общенаучные методы – анализ, синтез, сравнение, аналогия, дедукция и индукция, 3) специальные методы – логический, формально-юридический, сравнительно-правовой, статистический методы. На основании проведенного анализа автор принимает попытку определить сущность верховенства права как неотъемлемой части конституции Великобритании, и его ключевые аспекты.

Ключевые слова: верховенство права, конституция Великобритании, общее право, публичная власть, принцип законности, принцип равенства, права и свободы человека, независимость судебной власти

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Introduction

Over the centuries of state and legal development, and especially at the present stage, one of the key issues of constitutional and legal science has been to find such a model of legal framework, which would not Over the centuries of state and legal development, and especially at the present stage, one of the key issues of constitutional and legal science has been to identify such a model of legal framework, which would not only provide the best

way to achieve the goals of legal regulation, but also imply the creation of a system of guarantees designed to limit the possibility to arbitrary exercise public power.

Attaching special importance to the issue of forming a regime of legal bindings of all subjects of social relations, including those with public authority, can be traced back to ancient Greece. In this regard there are remarkable views of the outstanding ancient Greek philosopher Aristotle, who rejected the concept of building an ideal model of government of his teacher Plato; he suggested to base it on kings-philosophers with absolute knowledge rather than the law. Aristotle, developing the concept of isonomy (isonomia – equality before the law) was convinced, and as historical development shows, not unreasonably, of the need to consider such subjects as servants of the law (Sajó & Uitz, 2017:302), consequentially, subordinate to the law. In this connection, he emphasized that "it is more proper that law should govern than any one of the citizens" (Aristotle, 2009:172).

Such a notion, which over time has acquired additional meaning and various forms of its institutional design, has been strongly established at the present stage as one of the fundamental constitutional and legal characteristics, both at the national and supranational levels.

In terms of consistent development of the rule of law at the supranational level, special attention should be paid to the World Justice Project, an international non-profit organization. It annually conducts and publishes research on the level of state compliance with the rule of law, The Rule of Law Index[1]. The annual compilation of this index and the increasing level of attention to its indicators both on the part of officials and the scientific community emphasizes the particular importance of rule of law as a state legal characteristic at the present stage and its consideration by the international community as one of the key conditions for the normal functioning of any modern developed legal order.

Turning to the texts of national constitutions, the rule of law is quite often considered as an inherent basis of the constitutional order of many modern countries, regardless of their level of legal and economic development. Their basic laws in one form or another, mostly in the preamble or main chapters, contain a direct reference to this principle, emphasizing its widely recognized importance in building the mechanism of constitutional and legal regulation.

According to the Constitution Project portal, 115 current national constitutions explicitly mention the rule of law, including Part I of the Constitutional Act of Canada 1982[2], Article 2 of the Constitution of Norway 1814[3], Article 2 of the Constitution of Portugal 1976[4], Article 3 of the Constitution of Thailand 2017[5], the preamble to the Constitution of Rwanda 2003[6].

[1] The Rule of Law Index. Available at: https://worldjusticeproject.org/rule-of-law-index/ [Accessed 30th March 2023].

[2] Constitution of Canada. Available at: https://www.constituteproject.org/constitution/Canada_2011.pdf?lang=en [Accessed 30th March 2023].

[3] Constitution of Norway. Available at: https://www.constituteproject.org/constitution/Norway_2014.pdf [Accessed 30th March 2023].

[4] Constitution of Portugal. Available at: https://www.constituteproject.org/constitution/Portugal_2005.pdf [Accessed 30th March 2023].

[5] Constitution of Thailand. Available at: https://www.constituteproject.org/constitution/Thailand_2017.pdf?lang=en [Accessed 30th March 2023].

[6] Constitution of Rwanda. Available at: https://www.constituteproject.org/constitution/Rwanda_2015. [Accessed 30th March 2023].

At the same time, along with the active use of the term *rule of law* in constitutional practice at the present stage, individual legal systems (groups of legal systems) have formed their own equivalent or sufficiently similar concepts. Thus, along with the rule of law, for example, Germany has developed the concept of "rechtsstaat", France – "etat de droit", Denmark – "retsstat", Spain – "estado de derecho", Italy – "stato di diritto", Russia – "legal state".

Such concepts, while having certain differences and peculiarities of their genesis, are essentially aimed at achieving similar goals of ensuring the proper legal regime, universal equality and limiting the arbitrary exercise of public authority. However, despite their seeming functional identity, the conditions of national constitutional development objectively dictate the specifics of the practical implementation of these concepts, which deserve an additional study of their own. Meanwhile, this topic both in terms of the separate consideration of these concepts and their correlation was developed in the works of P. Barenboim, R. Grote, D. Dedov, D. Pfordten, T. Allan (Zorkin & Barenboim (eds.), 2013:259; 234-253; 260-272; 396-418), M. Loughlin (Loughlin, 2010:312-341), J. Meierhenrich (Meierhenrich & Loughlin, 2021:3-22), A. Sajó and R. Uitz (Sajó & Uitz, 2017:306-308) and many other researchers.

In this regard, J. Silkenat quite accurately pointed out that "the Rule of Law, considering its international aspects, includes many different doctrines and concepts, depending on who is using it and why" (Zorkin & Barenboim (eds.), 2013:17). The reason for this is that it is very difficult to elaborate a general concept of the "rule of law" applicable to all legal systems. Thus, M. Laughlin reasonably emphasized that "the role performed by this expression significantly varies across different governing regimes, and although a coherent formulation of the general concept can be devised, this formulation is entirely unworkable in practice and, for this reason, the 'rule of law' cannot be conceived as a foundational concept in public law" (Laughlin, 2010:312).

It is also necessary to note the position of a prominent Russian legal scholar V.E. Chirkin, who also emphasizes the complex nature of the rule of law as a legal concept. According to his position, despite the fact that the wording "the rule of law" is used widely enough and is described as an idea, an ideal, a value, a principle, a concept, it may receive different expression depending on the way it is used. At the same time, its substantive characteristic remains unclear (Chirkin, 2015:7).

Meanwhile, one of the earliest and most developed in terms of constitutional and legal theory and practice is the approach to the rule of law in the UK. As an independent legal principle underlying the uncodified UK constitution, it was introduced into scholarly discourse by the eminent English scholar A.W. Dicey in the late nineteenth century. The direct use of the term (obviously in its simplest and most unambiguous meaning, compared to its modern understanding) can be traced back to the sixteenth century. Thus, the Scottish theologian and political theorist S. Rutherford, being an adherent of constitutionalism and limitation of arbitrary exercise of public authority, advocated the limitation of "divine right of kings", emphasizing the need to conform the actions of both the common man and the representative of the royal dynasty in accordance with the rule of law (Rutherford, 1644:237).

We assert that the basic idea of ensuring regulation of social relations based on law and inadmissibility of arbitrary exercise of public powers is developed in various legal orders. Its substantive content is formed on existing features of specific national legal systems, in their legal regulation, judicial practice and legal doctrine. To identify the

essence of the rule of law as one of the British constitution foundations, we should turn to the existing approaches to its determination in British legal doctrine and practice. However, first of all, it seems necessary to outline the problem of such determination existing in the British legal framework.

The problem of the rule of law determination in the UK

The Constitutional Reform Act of 2005, laying down the foundations of the British judiciary at the present stage, just in its first article touches upon the principle of the rule of law by providing for the proviso that it will not be affected in any way by the adoption of the Act. Its section 17(1) obliges the Lord Chancellor, in taking office, to swear an oath to respect the rule of law and to maintain the independence of the judiciary in exercising their powers.

The report of the Select Committee on the Constitution of the House of Lords on the Constitutional Reform Act of 2005 underlines that the adoption of the Act, from a constitutional and legal perspective, aims to ensure respect for the rule of law as historically practiced in British society[7].

This kind of "sacral" attitude toward the rule of law underlying the UK constitution clearly demonstrates its fundamental importance both for the functioning of the entire national legal system and further constitutional and legal development of the state. However, despite the special importance of this principle for the British legal order, there is no legal definition of it or a uniform understanding of its legal content. This situation contributes to the continuing uncertainty and different approaches as to what the rule of law is, what its key manifestations are and what the extent of its impact on the constitutional legal order is. The Select Committee on the Constitution of the House of Lords unequivocally drew attention to this in the above report. It rightly points out that the use of negative language in section 1 of the Constitutional Reform Act of 2005, "does not adversely affect", and the use of the word existing in relation to the rule of law, leaves room for further debate about understanding of this principle's essence[8].

The history of constitutionalism in England and the UK is replete with examples of adopting various legal acts of a constitutional nature, enshrining and developing certain manifestations of the rule of law, but not forming a single legal institution with a formally defined content. The latter is interpreted quite freely by English judges and lawyers, which is quite characteristic of the legal order of the Anglo-Saxon legal tradition.

This situation was highlighted at the end of the nineteenth century. In this regard, stressing the special importance for the English society of the rule of law as a characteristic feature of the constitution, the famous English jurist A.W. Dicey, pointed out that the use of this phrase for most people is full of ambiguity and obscurity (Dicey, 1907:209).

Over time determination of the essence of the rule of law is largely the same. For example, the first President of the Supreme Court of the UK, Lord Phillips, unequivocally drew attention to the fact that today the content of this concept "is not readily defined or

[7] Select Committee on the Constitution of House of Lords. Report with Evidence. Constitutional Reform Act 2005. Available at: https://publications.parliament.uk/pa/ld200506/ldselect/ldconst/83/83.pdf [Accessed 30th March 2023].

[8] Select Committee on the Constitution of House of Lords. Report with Evidence. Constitutional Reform Act 2005. Available at: https://publications.parliament.uk/pa/ld200506/ldselect/ldconst/83/83.pdf [Accessed 30th March 2023].

readily understood"[9]. In turn, Select Committee on the Constitution of House of Lords, underlining that there is no consolidated position in the legal environment regarding the understanding of the rule of law, notes that this constitutional and legal principle "remains complex and rather vague"[10].

At the same time, similar assessments of the level of the rule of law understanding have been made also in American legal community by the Associate Professor of Political Science at Washington University in St. Louis F. Lovett. He legitimately notes that: "The rule of law is a valuable human achievement. It is valuable not only instrumentally, but also for its own sake as a significant aspect of social justice... Nevertheless, the rule of law is poorly understood" (Lovett, 2016: iii).

The essence of the rule of law in the UK

Considering the peculiarities of the British legal system, common law and uncodified nature of the national constitution, in particular, the content of the rule of law, its main features and influence on social relations were largely developed by judicial practice and legal doctrine, which in the countries of the Anglo-Saxon legal tradition has been given special importance.

The formation of the rule of law as one of the fundamental characteristics of the British constitutional order, along with the principle of parliamentary sovereignty, was associated with the consistent development of national legal regulation in the organization and functioning of public authority and its interactions with other subjects of social relations, primarily British nationals. While establishing and developing various constitutional and legal institutions, practices and values, the UK attempted to create a public order and system of legal regulation based not on lawlessness and arbitrariness, but on the regime based on equality which is observed by all participants of social relations, including the public authorities, within the existing legal norms in the society.

Basically, the rule of law is a principle of a constitutional and legal nature. Its operation affects not only the national legal regulation, expressed in a set of legal norms governing social relations, but also established public order, covering the basic principles of organization and functioning of social and political institutions.

Both historically and at the present time, the operation of the rule of law is inextricably linked to direct and indirect influence on the operation of public authorities, including the legislative, executive, and judicial branches of government. Thus, the operation of the British Parliament, which has the supremacy and is the central element of the entire British constitutional system, although without clearly defined formal requirements, suggests considering the rule of law. In this context Lord Steyn in the case Regina v. Secretary of State for the Home Department formed the significant legal position according to which Parliament should not enact legislation contrary to the rule of law, which provides a minimum standard of fairness, both substantive and procedural[11].

[9] Select Committee on the Constitution of House of Lords. Sixth Report, December 3, 2014, para 17. Available at: https://publications.parliament.uk/pa/ld201415/ldselect/ldconst/75/7505.htm#note18 [Accessed 30th March 2023].

[10] Select Committee on the Constitution of House of Lords. Sixth Report, December 3, 2014, para 17. Available at: https://publications.parliament.uk/pa/ld201415/ldselect/ldconst/75/7505.htm#note18 [Accessed 30th March 2023].

[11] Regina v. Secretary of State for the Home Department, ex p. Pierson [1998] AC 539, 591.

This principle also has a direct impact on the executive branch, which in the exercise of their public powers must comply with the existing legal regulation, especially in human rights and freedoms, acting strictly within their competence. The key part in this context plays the Human Rights Act of 1998 and the established practice of law enforcement. Considering this issue in the context of an analysis of the rule of law in UK, Lord Bingham noted that formation of public duty of Ministers of the Crown and other public authorities to exercise their powers based on justice, reasonableness, and good faith, and only for the law established purposes and limits (Bingham, 2011:56).

One of the main instruments for practical realization of the rule of law is the judiciary, which serves not only to enforce it, but also to develop its legal content. Given the paramount importance of such judicial function, the British legal order has devoted particular attention to the adoption of measures to ensure the independence of the judiciary, including those contained in the Succession to the Crown Act 1707 and the Constitutional Reform Act 2005.

Thus, the rule of law forms the basic parameters of the functioning of the constitutional system, the limits and conditions for exercising public powers, primarily conditioned by the need to ensure the comprehensive protection of human rights and freedoms.

At the same time, the rule of law has a direct legal dimension. Its manifestations, as follows from the English legal doctrine, are usually differentiated on their formal or substantive nature (Craig, 2017:467-487; McGarry, 2014:133). Such an approach is due to the different focus of the legal effect generated by the application of the UK law that reflect one or another aspect of the rule of law.

The formal nature of the rule of law is manifested in the key features of law as a social institution for regulating public relations, including its form, temporal effect, and way of presenting the content of legal norms. In this context, we are talking primarily about establishing legal regulation, both in terms of adopting primary and secondary legislation, and in terms of forming judicial precedents in common law, the degree of clarity, comprehensibility and accessibility for the law enforcer and all interested subjects of the legal norms, and establishment of a prospective and retrospective effect of legal norms.

On the other hand, the principle of the rule of law has a substantive nature, determining the content of the mechanism of legal regulation. One of its key manifestations in this regard is ensuring, establishing, observing and protecting fundamental rights and freedoms. In this context, at the current stage of the UK constitutional and legal development, the Human Rights Act 1998 is of prime importance. However, it should be noted that political processes to reform this act have recently intensified due to the governmental Bill of Rights introduced to the UK Parliament[12], which proposes a radical change in the current system of human rights and freedoms protection (Shevchenko, 2023:257-258). Such processes would clearly have a direct impact on the practical implementation of the rule of law in the UK.

At the same time, along with the mentioned aspects of the rule of law, it is necessary to point out that it becomes one of the key constitutional and legal values during the long genesis of the British legal order. Having various manifestations and exerting both direct and indirect influence on a wide range of social relations, this principle has acquired the form of comprehensive ideological basis for functioning of the entire mechanism of legal

[12] UK Parliament. Available at: https://bills.parliament.uk/bills/3227 [Accessed 30th March 2023].

regulation, not only forming the content and conditions of law implementation, but also acting as a kind of indisputable foundation for the existence of a modern democratic civilized society; actually, it has become a vector of legal development of British society.

Approaches to the rule of law determination in the UK

Given the particular importance of the rule of law to the British legal order, it has reasonably received wide academic attention in Anglo-Saxon legal doctrine, along with the principles of parliamentary sovereignty and separation of powers.

It is necessary to give tribute to the prominent English jurist A.W. Dicey for the significant input in revealing the essence of the rule of law, its specific manifestations and place in the British constitution. He examined this principle along with parliamentary sovereignty, as one of the key characteristics of the British constitution (Dicey, 1907:204-205). Taking into account the peculiarities of the constitutional and legal development of England and later the UK, he defined three key manifestations of the rule of law.

First, an inherent element of the rule of law is the formation of such public order organization, which creates conditions preventing the arbitrary exercise of public powers, including discretionary. In his opinion, this implies inadmissibility of bringing a person to legal responsibility or applying other coercive measures by public authorities in the absence of court-established fact of offense in strict compliance with the existing legal procedure (Dicey, 1907:209-210).

Such an aspect of the rule of law largely correlates with the widely developed doctrine of *ultra vires*, known both in the UK and other foreign legal systems. It involves establishing a special legal regime of public authorities' activities, providing for inadmissibility of exceeding their powers. This creates conditions for legal protection of subjects of social relations in cases of public powers abuse, which is often associated with violation of rights and freedoms.

In this regard A.V. Dicey differentiates between legal orders that implement this aspect of the rule of law and legal orders that provide public authorities with a broad and discretionary set of powers. Illustrating the former, he refers to the British legal order based on the constitutional principle of inadmissibility of arbitrary exercise of public power by the monarch, the executive and the judiciary (Dicey, 1907:211).

Secondly, the rule of law is inextricably linked to the formation of a legal regime of general equality before the law, regardless of any individual characteristics or social status. A.V. Dicey forms its two key manifestations, implying application of legal norms equally to all persons without any exceptions to this rule (Dicey, 1907:216-218). Here, it is worth mentioning the position of F. Hayek, who rightly argues that formation of such general legal regulation is based on the idea of "submission to law, as a set of general abstract rules, regardless of their application to specific individuals; this makes them independent of the will of other subjects and therefore free" (Hayek, 1960:15).

As follows from the A.V. Dicey's position, the operation of the rule of law principle is associated with the undoubted need for a unified system of courts, which extends its jurisdiction to both private persons and public authority. A different approach may lead to different ways in resolving similar cases with different parties. Reflecting on the state structure of England, Charles L. Montesquieu noted that "political liberty in a citizen is that tranquility of spirit which comes from the opinion each one has of his security, and in order

for him to have this liberty the government must be such that one citizen cannot fear another citizen" (Montesquieu, 1900:219).

Third, the rule of law is expressed in the approach of the legal order to the development of the current constitutional regulation, a significant part of which, along with parliamentary acts, consists of constitutional and legal norms, arising from common law (Dicey, 1907:219). In this regard, A.V. Dicey points to the formation of court-based constitution (common law constitution) in the UK, explaining that the key constitutional principles affecting implementation and protection of individual rights and freedoms are established by specific judicial decisions.

Thus, we can assert that the content of the rule of law principle, as defined by A.V. Dicey, is largely determined by peculiarities of the construction of the British constitutional legal order. In fact, along with the general legal regime of legality, the English jurist focuses on the characteristic features of the British legal system, pointing to the need for strict compliance with the ultra vires doctrine, rejection of specialized judicial jurisdiction on public law subjects and recognition of essential role of common law in the development of current constitutional regulation.

It should be noted that Dicey's concept, while maintaining its historical significance at the present stage, is not devoid of weaknesses and ambiguities highlighted by some scholars. Mark D. Walters, in his detailed study of Dicey's work, notes that "Dicey's conception of constitution has been as controversial as it has been influential" (Walters, 2020:2). The main criticisms of Dicey's approach include the narrow formal understanding of the rule of law, the uncertainty of arbitrary power concept, the belief in common law as the key means of protecting human rights and freedoms from unlawful acts of the public authorities in the lack of their legal formalization (Mikhailov, 2022:12–14). Moreover, as Mark D. Walters states, the concept is often described as overly analytical, formalist, descriptive, authoritarian, and positivist in its approach to defining and writing about law (Walters, 2020:2).

Focusing on identifying specific features of the rule of law as the basis of the UK constitution at the present stage, it seems necessary to focus on the approaches to understand this constitutional and legal principle developed in British legal doctrine, both considering individual provisions of A.V. Dicey's concept, and revealing new aspects of the object of study in view of the modern legal realities.

For example, the British judge Lord J. Steyn considered the rule of law as a complex legal institution with two key expressions in British public law. He distinguished between the rule of law as a political and legal principle and a constitutional principle. He distinguished between the rule of law as a political and legal principle and a constitutional one. Drawing attention to the paramount importance of the first characteristic, Lord J. Steyn viewed the rule of law as manifestation of "political philosophy or institutional morality" (Steyn, 1999:4).

The rule of law constitutes the ideological basis for functioning of the entire public order and conveys a number of key principles for functioning of state mechanism, thus forming a "moral dimension of public power". Among such ideas, he identifies "exercising public administration by laws rather than by people", rejection of the instrumentalist use of law to achieve certain dishonorable ends (for example, as was the case in apartheid South Africa), and operation of legal regulation based on equality and fairness. In this context, the rule of law is a cornerstone of British public law (Steyn, 1999:4).

On the other hand, the rule of law, according to Lord J. Steyn, acts as one of the central legal institutions of British constitutional law, defining the key parameters of the national legal order. As such, he distinguishes limiting the abuse of power by public authorities, ensuring legal certainty of the current legal regulation, including mechanisms for protection of individual rights and freedoms, legal guarantees of access to justice, as well as compliance with established legal procedures by public authorities in their law enforcement practice (Steyn, 1999:4).

A quite detailed study of the rule of law essence was carried out by Oxford University professor J. Raz. He, along with Lord J. Steyn, gave this principle a complex political and legal character, seeing its key idea in ensuring legal certainty to the mechanism of social regulation within a particular legal order, primarily in the context of permissible discretion in exercising public powers.

Developing this idea, J. Raz notes the widespread understanding of the rule of law as a mechanism to counter the arbitrary exercise of public powers. The rule of law, assuming the existence of a certain discretion in exercising public powers (primarily executive power), acts as a protective mechanism against arbitrary exercising of public power, excluding any form of interference in functioning of the judiciary (Raz, 1979:219).

At the same time, according to J. Raz, the rule of law acts as a means of ensuring stability and predictability of the entire public order functioning. In this regard, he points to the performance by the rule of law of such a significant function as creation of stable conditions for interaction between the social subjects, allowing them to properly organize their behavior on the basis of the existing legal regulation. The achievement of such a positive effect, in his opinion, can be achieved both through stabilizing social relations, which, with the exception of those regulated at the legislative level, can be unstable and unpredictable in many respects, and as a result of implementing self-restraint mechanism aimed at organizing and forming legal regulation as a stable and reliable basis for building a model of behavior for subjects of legal relations (Raz, 1979:220).

In addition, J. Raz legitimately draws attention to the general focus of the principle on ensuring effective mechanism of legal protection of individual rights and freedoms. In this case, such function of the rule of law is expressed not only in establishing prohibitions on certain undesirable and destructive for society forms of behavior associated with violation of individual rights and freedoms and restrictions on exercising public powers in order to minimize the possibility of undue interference in the sphere of personal interests, but also in the formation of a system of legal regulation, which will be based on respect for human dignity. The latter in this context should be understood, according to J. Raz, as the inherent right (restricted only to the extent necessary for a particular legal order) of any person to choose and follow a particular model of behavior and get the desired legal effect from it (Raz, 1979:220-221).

After analyzing the general essence of the rule of law as a political and legal institution, J. Raz turned to its characteristic features as a directly legal principle, focusing mainly on the formal aspect, while not excluding its material meaning. In this context, he saw two key manifestations of the principle, directly related to each other. Firstly, the mechanism of social regulation should be based on legal norms that all participants in social relations are obliged to observe. Secondly, such a mechanism should provide participants of social relations with a real opportunity to be guided by the relevant legal norms in shaping their own behavior model (Raz, 1979:213).

Moreover, a prominent British judge and jurist, Lord T. Bingham, played a significant role in the academic development of the rule of law and its characteristics, as well as the British constitutional legal doctrine as a whole. He developed a quite detailed approach to understanding of this principle.

In general terms, he saw the essence of the rule of law in subordination of all subjects of social relations (both private and public) to the existing legal regulation, publicly adopted, prospective and publicly applied in courts. Referring to such understanding of the rule of law, he further draws attention to the fact that his position cannot be regarded as comprehensive and solely correct, without any exceptions (Bingham, 2011:6).

Admitting the complex nature of the rule of law and the possibility of different approaches to its definition, he does not see it as essentially ambiguous or unclear, thus refuting the proponents of the opposing idea. This is particularly relevant for B. Tamanaha, who characterizes the rule of law as "an exceedingly elusive notion giving rise to a rampant divergence of understandings" (Tamanaha, 2004:3), as well as for T. Carothers, who points out the ambiguity in understanding the nature of this principle (Carothers, 2003:3).

Lord Bingham's approach to the essence of the rule of law is based on a set of legal principles that form certain conditions for funtioning of the system of legal regulation and public authorities. Among such principles, he identifies accessibility, comprehensibility, clarity of legal norms and predictability of their action, limitation of discretionary powers of executive authorities, fair and *bona fide* exercise of public powers, equality of all before the law, protection of fundamental human rights and freedoms, ensuring the right to a fair trial, and mechanisms for legal protection of arising civil law disputes (Bingham, 2011:30, 41, 48, 53, 59, 78, 83, 103).

At the same time, the position of A. Bradley, Professor of Law at the University of Edinburgh, and K. Ewing, Professor of Public Law at King's College, London, deserves special attention. They saw the essence of the rule of law in three key elements. The approach they adopted, in contrast to the concepts of J. Raz and Lord T. Bingham, is of higher level of abstraction and generalization and focuses on the basic characteristics of the political and legal principle as one of the foundations of British Constitution.

First of all, as A. Bradley and C. Ewing note, an inherent manifestation of the rule of law is the construction of social regulation system based on law, which implies the operation of generally binding law and order in society. It is intended to prevent the occurrence of arbitrariness and anarchy that threaten the security of subjects of social relations, their property and well-being (Bradley, Ewing, 2007:99).

In addition, they consider the rule of law as a way of ensuring that the public authorities exercise their powers in accordance with statutory regulation and, in its absence, in accordance with common law formed by courts (Bradley & Ewing, 2007:100).

At the same time, according to scholars, this principle forms the basis of legal regime of public authority, determining the type and scope of powers to be vested in the executive branch (e.g., determining the admissibility of vesting the executive with the power to detain a person in the absence of judicial authorization), as well as procedures to be followed by public authorities in their law enforcement practice (e.g., compliance with fair trial procedures) (Bradley & Ewing, 2007:101–102).

The above reputable views on the definition of the essence of the rule of law and its features provide a general idea of this issue, although they indicate the absence of a single comprehensive approach to understanding of such a complex constitutional and legal

principle. This also gives grounds to assert both similarities and differences in the positions of individual researchers on this issue.

At the same time, it should be noted that there is a certain consensus on the basic manifestations of the rule of law, such as, compliance with the principle of legality and compliance of public authorities with the law. On the other hand, some researchers, for example, A.V. Dicey, A. Bradley, and C. Ewing, are largely focused on the fundamental features of this constitutional principle, while others including Lord T. Bingham and J. Raz, pay considerable attention to the rule of law manifestation, which can also be characterized as general characteristics of the national legal order.

On the other hand, determining the formal and substantive nature of the rule of law has a significant importance in the context of understanding its essence and role at present. As already noted, legal doctrine in this context traces different approaches. Thus, in contrast to Lord T. Bingham, who explores the substantive content of the rule of law, A.V. Dicey and J. Raz confine themselves to a formalistic approach to its understanding.

At the present stage of social and legal development, in our opinion, the need to recognize the substantive nature of the rule of law becomes clear. Without it, such a concept can easily acquire an instrumentalist character and be used for the most disreputable purposes in forming so called ideal law and order in terms of constitutional design, construction and functional features of the rule of law. In this regard, J. Raz, although adhering to a formalistic approach, rightly emphasized: "A non-democratic legal system based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities and religious persecution may, in principle, conform to the requirements of the rule of law better than any of the legal systems of the more enlightened Western democracies... It will be an immeasurably worse legal system, but it will excel in one restect: in its conformity to the rule of law. …The law may institute slavery without violating the rule of law" (Raz, 1979:211, 221).

This problem was rightly highlighted by the Venice Commission in its Report on the rule of law. In fact, it pointed out that, while there are different approaches to understanding the rule of law, it is necessary to avoid a purely formalistic approach, whereby any public authority actions that are permitted by law are declared to be consistent with the requirements of this principle[13]. The opposite approach can lead to its distortion and unjustified reduction the rule of law to the term "rule by law".

Conclusion

Taking into account the approaches to the definition of the rule of law reflected in the legal doctrine and constitutional practice of the UK[14], it is possible to conclude that the rule

[13] Venice Commission. Report on the rule of law. CDL-AD(2011)003rev-e. Available at: https://www.venice.coe.int/webforms/documents/CDL-AD(2011)003rev-e.aspx [Accessed 20th May 2023].

[14] It should be noted that manifestations of the rule of law presented in this article are, for the most part, reflected in the judicial practice of the UK. There are a number of important court decisions from the perspective of the rule of law study, whose list is not exhaustive. For example, Regina v. Secretary of State for the Home Department, ex p. Pierson [1998] AC 539, 591 covers the British Parliament's consideration of the rule of law in its operations, Baggs Case [1615] 11 Co Rep 93b at 98a, Entick v. Carrington [1765] EWHC KB J98, Associated Provincial Picture Houses Ltd v. Wednesbury Corpn [1948] 1 KB 223, CA – compliance with the rule of law in the context of public authorities, Phillips v. Eyre (1870) LR 6 QB 1, R v. R [1991] UKHL 12 – inadmissibility of retrospective effect of legal regulation, R (UNISON) v. Lord Chancellor [2017] UKSC 51 –

of law, as one of the fundamental elements of the British Constitution, is expressed in three main fundamental features.

Thus, the rule of law is one of the most important constitutional and legal values developed and applied in the Anglo-Saxon legal tradition in general and the UK in particular. It underpins the whole spectrum of social relations developing in the UK and is an inherent basis for functioning of the entire state mechanism, which was clearly demonstrated in Section 1 of the Constitutional Reform Act 2005.

Furthermore, the rule of law is a political principle that affects functioning and development of the entire political system and separation of powers such as the UK Parliament, which in most cases is bound by the ideas of the rule of law in its law-making process, the executive, which must act within its powers and not unreasonably create ultra vires situations, the judiciary, whose operations are related to the direct implementation of the rule of law affecting the content of the law enforcement decision in each particular case.

At the same time, the rule of law is expressed as a legal principle and has a direct impact on the existing legal order by imposing specific requirements on it in terms of adopting legal regulations, determining the content of specific legal rules formed both in common law and statutory law, and the specifics of their application in a particular situation. At the same time, as the genesis of British constitutionalism shows, the rule of law is one of the most important factors determining the vector of development of the entire legal system.

It seems possible to identify the following principles, ideas and legal mechanisms that in one way or another form the basis of the modern legal content of the rule of law and its impact on public relations. Firstly, it is a special legal regime that binds public authorities and their powers by law in order to prevent arbitrariness in exercising public powers. Secondly, it ensures and protects fundamental individual rights and freedoms. Thirdly, it establishes special requirements to the legal order, both in terms of formal expression of legal norms and their content, which should ensure that the legal norms fulfil their regulatory function. Fourthly, the special role of court and justice both in the historical paradigm of the rule of law formation and its implementation in modern constitutional practice. Together, such rule of law manifestations create a peculiar effect of forming an appropriate model for organization and functioning of the legal system that effectively regulates social relations on the basis of equality, justice and strict compliance with legal norms.

Considering this, we may assert the complex essence of the rule of law as a political and legal principle that affects a wide range of social relations. Determining the manifestation of the rule of law and its impact on social processes and institutions in the historical paradigm and at the present stage is one of the key elements necessary to identify the characteristic features of the UK constitution.

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ensuring accessibility of justice. However, a full analysis of the implementation of the rule of law in judicial and constitutional practice still requires a separate detailed study.

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About the author:

Maxim I. Shevchenko – postgraduate student of the Department of Constitutional Law and Constitutional Procedure, Law Institute, RUDN University; 6 Miklukho-Maklaya str., Moscow, 117198, Russia Federation

ORCID ID: 0000-0002-5682-5525

e-mail: m.sh.1997@yandex.ru

Сведения об авторе:

Шевченко Максим Игоревич – аспирант кафедры конституционного права и конституционного судопроизводства, юридический институт, Российский университет дружбы народов (РУДН); 117198, г. Москва, ул. Миклухо-Маклая, д. 6

ORCID ID: 0000-0002-5682-5525

e-mail: m.sh.1997@yandex.ru