Rule of Law: Concept Definition

There is no single and commonly accepted definition of the “rule of law”. However, it is possible to draw on general and more precise or minimalist definitions of this term. Trebilcock and Daniels (2008) refer to such definitions as “thick” and “thin”, respectively. They see the rule of law as “both a set of ideals and an institutional framework... it is concerned first and foremost with both the conceptual soundness and institutional protection of rules... interpretative and application methodologies, and... processes of judicial and other enforcement with the axiological purpose of providing such functions as social and economic coordination”.

The historically original meaning of the term, which could also be referred to as a minimalist definition, is that whatever law exists is written down and publicly promulgated by an appropriate authority before the events meant to be regulated by it, and is fairly applied by relevant state institutions including the judiciary (O'Donnell 2004). Both the civil-law and the common-law traditions view the hierarchical legal system under the rule of law, usually with a constitution on its top, that aims at yet never fully achieves completeness (O'Donnell 2004). Similarly, the rule of law “consists of the enforcement of laws that have been publicly promulgated and passed in a pre-established manner; are prospective, general, stable, clear and hierarchically ordered; and are applied to particular cases by courts independent from the political rulers and are open to all, whose decisions respond to procedural requirements, and that establish guilt through the ordinary trial process” (Maravall 2003). It is obvious that most minimalist definitions of the rule of law make no reference to democracy, justice or equality, whereby general (thick) definitions of the “rule of law” refer to such notions more explicitly.

There are generally accepted principles by which the rule of law can be achieved. Raz (1977) characterized such principles as follows: all laws should be prospective, open and clear; laws should be relatively stable; the independence of the judiciary must be guaranteed; the making of particular laws ... must be guided by open, stable, clear, and general rules; the principles of natural justice must be observed (i.e., open and fair hearing and absence of bias); the courts should have reviewed powers... to ensure conformity to the rule of law; the courts should be easily accessible, and the discretion of crime preventing agencies should not be allowed to pervert the law. Kleinfeld (2005) divided the definitions of the rule of law into two groups: 1) those that emphasize the ends that the rule of law is intended to serve within society, e.g. upholding law and order and, providing efficient judgments; 2) those that highlight the institutional attributes believed necessary to actuate the rule of law, e.g. well-functioning courts, comprehensive courts and well-trained enforcement agencies. The author herself also specified five basic principles which the rule of law is based upon: 1) a government bound by and ruled by law; 2) equality before the law; 3) the establishment of law and order; 4) the efficient and predictable application of justice; 5) the protection of human rights.

It is important to bear in mind, when defining the concept, that for most developed countries, the “rule of law” is linked to democracy not only at the stage of the law-making, but also concerning all institutions involved in law-making or/and implementing legal norms. Thus, to cite O'Donnell (2004) in this respect, the rule of law “has to be conceived not only as a generic characteristic of
the legal system and the performance of the court, but also as a legally based rule of a democratic state”. He also asserts that “the legal system is not just a set of rules but a system properly so called, which interlaces legal rules with legally regulated state institutions”. Only under a democratic rule of law will the various agencies of electoral, societal, and horizontal accountability function effectively, without abstraction and intimidation from powerful state actors (O’Donnell 2004ix).

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i In 1885, the British lawyer Albert Venn Dicey, who is considered the first to use this term in his introduction to the Study of Law of the Constitution, describes the rule of law as a feature of political institutions in England apprehensible in two different ways: “that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law… and that every man, whatever his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals”.


