

The Magna Carta 1215 and the Bill of Rights 1688 were attempts made by people of the time to enforce the rule of law in Britain. The rule of law is a set of values or principles that are the cornerstone of our legal system. These principles are known or readily discoverable and therefore do not change without notice; are reasonably clear; apply prospectively, not retroactively; and enforced through public trials based upon rational procedural rules before arbiters independent of the state and all others. The purpose of the rule of law is to remove both the reality of injustice and the sense of injustice, thus preventing individuals from taking the law into their own hands as would occur under natural law or anarchy. The rule of law advocates that no one, not even Kings, politicians, government officials etc... are above the law.

During the medieval period a transition took place in Britain that moved the feudal belief that the King was subject to law to the King being above the law. According to Clarke, the idea of Kings being above the law was transmitted via Latin Christianity. Thus Catholic monarchs took advantage of this belief to do as they pleased. In the 13th Century Britain, King John believed strongly in the *divine right of Kings* and as such did much against custom eventually leading to his forced signing of the Magna Carta in 1215AD by his barons. The idea behind the Magna Carta being that the customary law was written and agreed to by the King and thus their rights protected from the King's arbitrariness. The following sections of the Magna Carta give some indication of an attempt to uphold the rule of law: S17 Common pleas shall not follow the court but be held in some fixed place; S39 No freeman shall be taken or imprisoned or diseased or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgement of his peers or by the law of the land; S40 To no one will we sell, to no one will we refuse or delay, right or justice; S45 We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well. However this attempt was not very effective, as future kings only observed the Magna Carta's provisions when it suited them. This problem became apparent in the 17th century under kings: James I, Charles I, James II, and Charles II and culminated with the Glorious Revolution and the signing of the Bill of Rights 1688.

The Glorious Revolution was the result of a series of kings doing as they pleased against the rule of law. Clarke states:

“In the sixteenth century in England the constitutional practice emerged that major changes in national policy were made by acts of parliament. In the early seventeenth century when King James I and his successors sought to rule by the prerogative and in particular to raise taxes by extra-parliamentary means, a conflict ensued with parliamentary forces and some sections of the judiciary.”

Following the revolution, the current monarch was replaced by Dutch protestant King William of Orange on the condition that he agree to the Bill of Rights 1688. The Bill of Rights imposed far greater restrictions upon the monarch than the Magna Carta had, and introduced many concepts considered part of the rule of law. Some examples of this are: Art1,2 which prevented the monarch from suspending or dispensing with the law and executing laws; Art10 disallowed excessive bail and fines, and cruel and unusual punishments. Also the Bill of Rights provided for a parliament in which it's approval was needed to enact laws, thus the monarch was kept in check. Wade and Bradley state:

“The Bill of Rights in 1689 finally affirmed that the monarchy was subject to the law. Not only was the Crown thereby forced to govern through Parliament, but also the right of the individual to be free of unlawful interference in his private affairs was established.”

The Bill of Rights certainly did a better job at enforcing the rule of law than the Magna Carta, however despite the monarch being barred from arbitrary use of power, in theory parliament was supreme and thus capable of similar faults. The concept of separation of the powers (executive, legislature and judiciary) however limits this possibility.

In the 18th century the case of *Entick v. Carrington* saw the rule of law upheld by the judiciary above the claims of the government. In this case, Entick's home was broken and entered by two King's messengers who took his papers upon a warrant issued by the Secretary of State, as Entick was thought to be writing seditious libel against the government. As no statute allowing such a thing to occur nor some common law precedent existing 'on the books', what happened to Entick was considered an unlawful interference and judgement was entered in his favour. In relation to this case, Wade and Bradley state:

“Such decisions stressed the value of personal liberty, and the necessity of protecting private property against official interference. At the same time, the remedy of habeas corpus was being developed. Formal adherence to the law was one of the public values of 18th century Britain, though not all the people gained equally from it.”

Thus the case of *Entick v. Carrington* set a precedent whereby the rule of law prevailed except where statute said otherwise.

In conclusion, the rule of law safeguards liberty for citizens against arbitrary use of power by the government. The Magna Carta was a barely enforceable document but put the rule of law out in the open for all to see, and the Bill of Rights giving further power towards enforcing the rule of law. Although the Magna Carta 1215 and the Bill of Rights 1688 may not have enforced the rule of law fully, they were indeed a step in the right direction.