

Ethical Judicial Restraint and the Rule of Law: Strengthening Constitutional Integrity in the UK

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This article establishes the theoretical framework for evaluating the concepts of 'elective dictatorship' and 'partisan politics' within the broader context of UK rule of law and ethics. It critically examines these notions to diverge from the conventional practice of parliamentary sovereignty in instances of power abuse. The term 'elective dictatorship' describes a scenario where an elected political party wields substantial power without effective checks and balances, leading to a concentration of power within the ruling party. This situation raises concerns about the erosion of democratic principles and potential power abuse. Closely linked to this is the concept of partisan politics, where alignment with a particular political party leads to abuses of power, challenging the principle of parliamentary sovereignty. Various factors contribute to this dynamic, including ideological, social, and economic considerations. In a healthy democracy, political parties play a crucial role in representing diverse interests and offering voters choices. However, when partisan politics becomes overly polarised and prioritises gaining and maintaining power at any cost, it can foster an elective dictatorship. This article reviews existing literature in this domain and addresses these concepts within the context of the rule of law and ethics. It aims to fill a gap in the literature by establishing the conceptual parameters for 'elective dictatorship' and 'partisan Politics', and argues that when both are used to undermine the judiciary, the court has a duty to depart from traditional norms. It further recommends that courts assess any legislation enacted by the government and Parliament against the rule of law, morality, and ethics.

Keywords: *Elective Dictatorship; Partisan Politics; Ethics; Rule of Law; Parliamentary Sovereignty.*

Introduction

In recent decades, the United Kingdom (UK) has been widely recognised as a leading advocate for liberty and the rule of law.¹ Successive British administrations have taken great pride in cultivating and maintaining this reputation, often referencing the enduring 'golden thread' that weaves through key historical milestones, such as the Magna Carta of 1215,² the Bill of Rights in 1689,³ the European Convention on Human Rights (ECHR) in 1950, and the Human Rights

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¹Moravcsik (2000).

²Holt, Garnett & Hudson (2015).

³Maer & Gay (2009).

Act of 1998 (hereinafter HRA 1998).⁴ On 18 December, 2008, during the 10th anniversary of the HRA, Jack Straw, then Secretary of State for Foreign, Commonwealth, and Development Affairs, characterised the Act as a ‘defining piece of legislation,’ a landmark that enshrined the liberties long enjoyed in the UK into a constitutional framework.⁵ He expressed the conviction that the HRA would be remembered as one of the most significant legal, constitutional, and social reforms of the government.⁶ This discourse highlights the UK’s prominent role in championing human rights and its substantial contributions to global efforts in upholding these legal principles. In light of this, the UK’s global leadership in the domain of human rights and the rule of law merits commendation for its steadfast commitment to these principles and its notable achievements.⁷

Initially designed to safeguard fundamental rights, the HRA 1998 has seen a decline in support from successive governments, most notably illustrated by the diminishing endorsement from the Labour Government. Concerns have been raised about the Act’s impact on human dignity, particularly in relation to its perceived limitations in crime prevention, the treatment of asylum seekers, and the so-called ‘war on terror.’⁸ This brings up an important question: Should the government be allowed to challenge the court’s interpretation and application of the rule of law and the fundamental principle of human dignity? This is more a matter of legal debate than political manoeuvring. It is fundamentally inappropriate for the government to question the court’s integrity or the foundational principle of human dignity. Furthermore, notable figures within the Labour Government, including successive Home Secretaries and Lord Chancellors, have expressed their disapproval of the fundamental rights protected by the HRA 1998.⁹ Ministers such as David Blunkett, John Reid, and Charles Clarke actively campaigned against the HRA and judicial interpretations, seeking to limit its impact.¹⁰ In response to this opposition, former Prime Minister Tony Blair ordered a review of the Act, and former Lord Chancellor Lord Falconer attempted to restrict judicial interpretations through directives. Such actions by the Labour Government not only contradicted the HRA’s original intent and the rule of law but also undermined the core principles of human dignity.

It is crucial to acknowledge that human rights are intrinsic to human existence—they reflect the fundamental nature of being human. As cultural beings, humans create and share complex systems of knowledge, beliefs, values, languages, and customs.¹¹ Therefore, human rights play a vital role in shaping human identity, influencing behaviour, and establishing a framework for social interaction.¹² In this context, human rights are not privileges granted or withdrawn by the state; rather, they are inherent to human existence. Consequently, it is the responsibility of the

⁴Schabas (2015).

⁵Hickman (2010).

⁶Hoffman & Rowe (2010).

⁷Lord Dyson (2023).

⁸Ibid.

⁹Kavanagh (2009).

¹⁰Shami Chakrabarti et al., (2010).

¹¹Brown (2007).

¹²Wilson (2014).

courts, not the state, to define and interpret the scope of human rights. Human rights, therefore, should not be subject to political decisions or governmental constraints.¹³

Having said that, the incorporation of the European Convention on Human Rights (ECHR) into UK law through the HRA 1998 has established a framework in which certain human rights are recognised as qualified rights.¹⁴ These rights include the right to respect for private and family life (Article 8), the right to freedom of thought, conscience, and religion (Article 9), the right to freedom of expression (Article 10), and the right to freedom of assembly and association (Article 11).¹⁵ Although these rights are fundamental, they are not absolute and may be subject to limitations under specific circumstances. Such circumstances include considerations of national security, public safety, the prevention of disorder or crime, the protection of health or morals, and the protection of the rights and freedoms of others.¹⁶ The governance of these limitations, however, must be firmly rooted in the rule of law as articulated in the HRA rather than being left to political discretion. The Act mandates that any restrictions on these rights must meet the criteria of proportionality, necessity, and rigorous legal scrutiny.¹⁷ The judiciary, serving as an impartial arbiter, is particularly well-suited to ensure that these restrictions are applied in accordance with legal principles and that they do not compromise fundamental human dignity.¹⁸ Consequently, the interpretation and application of human rights under the HRA 1998 should be the exclusive domain of the courts. This judicial oversight is essential in maintaining the rule of law and safeguarding human rights from the influence of shifting political agendas. From this perspective, it can be asserted that political interference in the application of the rule of law and human rights is incompatible with the principles of human dignity and the inherent essence of human existence.

The central question at hand is: How can the integration of the rule of law and ethics mitigate the prevalence of selfishness and self-interest in the conduct of the British Government? The answer does not lie in rigid doctrines or preconceived notions. Rather, it requires a recognition of the inherent self-serving tendencies within political conduct and a concerted effort to establish a clear boundary within politics. This delineation is crucial in shaping British Government policies and aspirations, necessitating careful scrutiny to ensure the continued well-being of democracy, the judiciary, and the broader identity and culture of the nation. Notably, certain high-profile cases have sparked public and governmental discontent, such as the tragic murder of Naomi Bryant by Anthony Rice, who had been released from prison on licence, and the High Court's ruling that prevented nine Afghani hijackers from being returned to Afghanistan,¹⁹ where they faced a genuine risk of torture or death.²⁰ In response to these outcomes, politicians like John Reid and Tony Blair

¹³Freeman (1994).

¹⁴Choudhry (2011).

¹⁵Ekins (2011).

¹⁶McGoldrick (2001).

¹⁷Elliott (2001).

¹⁸Lee & George (2008).

¹⁹*S & Ors, R (on the application of) v Secretary of State for the Home Department* [2006] EWHC 1111.

²⁰Kemshall (2012).

publicly criticised the courts, with Reid describing the decisions as ‘inexplicable or bizarre’ and Blair condemning them as ‘an abuse of common sense.’ These instances highlight the critical need to clearly define the boundaries within which political decisions are made, particularly when they intersect with fundamental principles of human dignity and the rule of law. This approach is essential for fostering a more accountable and just political environment in the UK.

The question of whether the Government has the legal authority to deport the nine hijackers to Afghanistan is a matter that fundamentally intersects with the principle of human dignity, a concept that extends beyond the immediate interests of the individuals involved to encompass the broader values of humanity. The Government’s recourse to public sentiment in criticising the judiciary, however, reflects a problematic and perhaps uninformed engagement with contemporary debates on the rule of law and human dignity. This discussion requires a better approach, particularly within the context of modern UK politics, where these principles must be assessed for their consistency within the broader framework of British governance. While it is tempting to dismiss the principles of judicial independence and parliamentary sovereignty as outdated or irrelevant, such a stance would overlook the complexities inherent in these concepts. Instead, I argue that a comprehensive understanding of the rule of law and ethics necessitates a re-examination of their foundational principles and underlying causes. This critical reflection allows for a more informed discourse, mitigating the superficial or uninformed limitations that often plague discussions on human rights and the rule of law.

To move the discourse forward, it is essential to transcend these limitations and engage in a more holistic exploration of the form and substance of these principles. Such an approach is crucial for elevating the discussion to a level that is both legally and factually sound. Understanding the rule of law and human dignity requires us to identify and address the evolving deficiencies in governmental interpretations and their application of emerging legal principles. By integrating appropriate moral, ethical, and legal frameworks, we can better conceptualise these principles, moving beyond mere definitions to grasp their true nature and strength as anchored in legal doctrine. This refined understanding should enable us to draw meaningful correlations between moral principles, such as virtue, and the concept of the common good within parliamentary sovereignty—distinct from the shifting political will of the government.

This article establishes a theoretical framework for evaluating the concepts of ‘elective dictatorship’ and ‘partisan politics’ within the broader context of the rule of law and ethics. It offers a critical analysis of these notions to challenge the conventional understanding of parliamentary sovereignty, particularly in cases where power is misused. Through a comprehensive review of existing literature, the article situates these concepts within the framework of the rule of law and ethics, addressing a notable gap in the literature by defining the conceptual boundaries of ‘elective dictatorship’ and ‘partisan politics.’ The central argument posits that when these concepts are employed to undermine the judiciary, courts are obliged to deviate from traditional norms to uphold justice. The article advocates for the

judiciary to scrutinise government and parliamentary legislation in light of the rule of law, human dignity, morality, and ethics.

The article is structured into four main sections. The first section details the research methodology employed in the study. The second section presents a literature review, examining the impact of 'elective dictatorship' and 'partisan politics' on parliamentary sovereignty and their effects on the rule of law and human dignity. The third section is a discussion that explores deficiencies in the contemporary approach to parliamentary sovereignty within the UK's democratic constitutional framework, followed by recommendations on how courts might ensure the practical application of the rule of law and the protection of human dignity in a democratic society. The final section provides a summary of the study's findings and offers future propositions and practices.

Research Methodology

This research adopts a qualitative, exploratory design to understand and critically evaluate the concepts of 'elective dictatorship' and 'partisan politics' within the broader contexts of the rule of law and ethics. This methodological approach is particularly suited to exploring complex, abstract concepts and their implications within legal and political frameworks. The study uses doctrinal legal analysis and case study methodology to construct a comprehensive theoretical framework.

Doctrinal Legal Analysis

A doctrinal approach is employed to critically examine the legal doctrines and principles underpinning parliamentary sovereignty, the rule of law, and judicial independence. This method involves an in-depth analysis of primary legal sources, including statutes, judicial decisions, and constitutional provisions, to establish the existing legal framework governing the separation of powers and the checks and balances within the UK's political system.

Key sources for this analysis include foundational constitutional documents such as the Magna Carta, the Bill of Rights 1689, the ECHR, and the HRA 1998. Judicial decisions that have shaped the understanding of parliamentary sovereignty and judicial independence will also be scrutinised, alongside statutory provisions outlining the powers and limitations of the executive, legislative, and judicial branches of government.

Case Study Analysis

In-depth case studies are conducted on specific instances where the UK government's actions have been perceived as examples of elective dictatorship or extreme partisan politics. These case studies illustrate the practical implications of these concepts and provide empirical evidence to support the theoretical arguments presented in the article.

Notable case studies include the prorogation of Parliament in 2019 and the legal challenges that followed, legislative actions taken by the government during periods of heightened political polarisation, and judicial decisions where courts have had to balance parliamentary sovereignty against the rule of law.

Data Collection and Analysis

Data for this research is gathered from a variety of sources, including primary sources such as legislative texts, court rulings, parliamentary debates, and government publications. Secondary sources include academic journals, books, legal commentaries, and policy analysis reports. However, expert interviews with constitutional scholars, legal practitioners, and political scientists were not conducted, which limits practical and primary insight into the contemporary challenges posed by elective dictatorship and partisan politics.

The data collected is analysed using thematic analysis to identify key themes and patterns related to the exercise of political power and its impact on the rule of law, ethics, and human rights. The analysis focuses on drawing connections between the theoretical framework established in the literature review and the empirical evidence gathered through case studies.

Literature Review

In the field of political theory, governance, and constitutional law, the scrutiny of ‘elective dictatorship’ and ‘partisan politics’ has gained significant importance,²¹ compelling scholars and analysts to carefully examine the delicate balance between electoral mandates, the rule of law, and human rights.²² Notably, previous discourse has often neglected the crucial role of ethics in maintaining this balance, particularly in ensuring that power is exercised in a manner consistent with the rule of law and the fundamental principle of human dignity.²³ This literature review seeks to address this gap by exploring the complexities of elective dictatorship and partisan politics within the UK’s parliamentary system, focusing on how the authority conferred upon elected leaders can incline towards dictatorial tendencies. The core of this analysis is the juxtaposition of the democratic mandate with the ethical obligation to uphold the rule of law and human dignity. The section aims to uncover the challenges and implications associated with the potential erosion of democratic values when confronted with unchecked power in the UK. By engaging in this analysis, the section’s primary objective is to elucidate the relationship between democratic legislative processes, ethical considerations, and the imperative to safeguard the rule of law and fundamental human dignity.

The UK’s constitution is characterised by the absence of a single, written document or law that explicitly defines the rights and responsibilities of citizens and

²¹Hailsham Lord (1976)

²²Grant (2009).

²³Aldons (2002).

the government.²⁴ While this unwritten nature allows for flexibility and organic development, it also poses the risk of parliamentary sovereignty being abused. The lack of a codified constitution permits partisan politics to exert undue influence over the legislature, leading to manipulation and unethical practices that can undermine democratic processes.²⁵ The notion that Parliament can amend any law, including constitutional law, remains a subject of significant debate, especially within a modern democratic society where political allegiance may sometimes overshadow the broader national interest.²⁶ Although theoretical constraints on constitutional powers exist through political checks and balances, recent events have challenged the efficacy of these safeguards. Notable examples include the Internal Market Bill, which threatens the rule of law, and the Overseas Operations (Service Personnel and Veterans) Act 2021, which violates international prohibitions on torture and further undermines legal principles. These instances reflect a broader political and institutional crisis within the UK, contributing to post-Brexit instability and damaging the nation's democratic standing on the global stage, with adverse economic consequences. As the UK continues to grapple with reputational damage, the pressing issue lies in addressing these challenges and preserving the integrity of governance and parliamentary sovereignty. Immediate action is required to reassess the UK's constitutional principles and establish clear guidelines that ensure effective governance while upholding the rule of law and the fundamental principle of human dignity.

In the context of the UK constitution, which is centred on the principle of parliamentary sovereignty, Parliament holds the authority to delegate powers to Ministers with relatively few constraints or conditions imposed by Parliament itself.²⁷ Ministers are then empowered to exercise these delegated powers at their discretion, though subject to judicial review. In practice, a government with a strong majority can secure the passage of almost any legislation it desires, thereby enabling it to achieve its legislative objectives with relative ease. This concentration of power has been characterised as an 'elective dictatorship,' a term coined by Lord Hailsham in 1976 to critique the potential for excessive executive dominance:

*'This concern was later articulated by the House of Lords Constitution Committee, particularly in relation to the European Union (Withdrawal) Act. The Committee observed that the Act's extensive and overlapping delegated powers effectively granted the Government an unprecedented and extraordinary range of powers. This, they argued, would fundamentally disrupt the constitutional balance of power between Parliament and the Government, constituting a significant and unacceptable transfer of legal authority from Parliament to the executive.'*²⁸

While some may argue that certain government actions are unconstitutional, a more precise characterisation would be the 'abuse' of parliamentary sovereignty. This raises a crucial question: Why is it necessary to establish rules governing

²⁴Horsley (2022).

²⁵Flinders (2009).

²⁶Sargeant, Coulter, Pannell, Mckee & Hynes (2023).

²⁷Elliott (2002).

²⁸European Union (Withdrawal) Bill: interim report (parliament.uk), para 44.

parliamentary sovereignty, particularly concerning the behaviour of legislatures and the conduct of the ruling political party? Moreover, how can the UK's somewhat flawed democratic process be enhanced to better safeguard democratic principles? An examination of the evidence reveals that parliamentary sovereignty in the UK has, at times, been utilised as a mechanism for 'elective dictators' to validate their democratic legitimacy, rather than as a genuine commitment to upholding the rule of law and the fundamental principle of human dignity.²⁹ This interpretation suggests that, within the context of contemporary UK governance, Parliament may be perceived as a relic of traditional practices rather than as a fully realised embodiment of modern democratic values that prioritise the rule of law and human dignity.³⁰ Given these concerns, a comprehensive reassessment of the concept of parliamentary sovereignty within the UK constitution is warranted, particularly in light of the evolving dynamics of society.³¹

The concept of 'elective dictatorship,' as explored by various scholars, highlights the erosion of governmental accountability within democratic systems, particularly in the context of British politics. Harmer associates this term with the weakening of Parliament's ability to effectively oversee and control the government, primarily due to the dominance of disciplined political parties that blur the lines between the legislative and executive branches.³² In an ideal democracy, Parliament should possess the power to dismiss the executive if it fails to meet its obligations. However, in an elective dictatorship, the executive, which already dominates Parliament, becomes accountable primarily to its party rather than to Parliament itself. This phenomenon is particularly evident in modern British politics, where a government with a strong parliamentary majority can undermine Parliament's capacity to scrutinise and regulate the executive. As Lord Hailsham noted, this creates a situation where the executive is rarely held accountable by party discipline, especially in the lower house—a problem more pronounced in the UK than in other democracies facing similar issues.

Aldons challenges this perspective, arguing that labelling the UK's representative parliamentary democracy as an elective dictatorship is both 'inappropriate and unproductive.'³³ He contends that the current system lacks the accountability mechanisms that were present during the so-called golden age of responsible government.³⁴ However, this argument is contentious and may lack depth, as it overlooks the complexities and challenges of modern democracy, where the separation of powers between the executive and the legislature is not as clear-cut as it once was. The inability of Parliament to effectively delineate its boundaries and assert its authority raises critical questions about the extent of executive power and the potential risks of constitutional collapse. The literature suggests that while achieving a complete separation of powers between the executive and Parliament may be constitutionally challenging, reinforcing the role of the judiciary could

²⁹Gordon (2015).

³⁰Ekins (2019).

³¹Ewing (2017).

³²Hamer (1994).

³³Evans (1993).

³⁴Evans (1992).

mitigate some of the negative consequences of parliamentary sovereignty.³⁵ This approach emphasises the importance of integrating the rule of law and ethics into the exercise of parliamentary sovereignty. Without these guiding principles, parliamentary sovereignty risks becoming an ungrounded concept, disconnected from the broader framework of law and governance. Historically, societies have been governed by rules and virtue, with parliamentary sovereignty emerging as a later development. To dismiss the rule of law and ethics in discussions of parliamentary sovereignty undermines the foundational social and constitutional norms that have historically guided governance.³⁶

Dearlove and Saunders contribute to this discourse by examining the British Constitution in the 1970s, particularly in light of Lord Hailsham's concept of elective dictatorship and Lord Denning's concerns about the misuse of power.³⁷ They argue that parliamentary sovereignty, as currently understood, lacks sufficient checks on the powers of Parliament, particularly given the rise of partisan politics and government intervention. This perspective aligns with the notion that the British Constitution, once seen as conducive to responsible party behaviour, now facilitates an elective dictatorship where party ambitions overshadow the legislature's traditional role in checking executive power.³⁸ Bogdanor further expands on this discussion by referencing Dicey's interpretation of parliamentary sovereignty,³⁹ noting that Dicey would have likely rejected the modern misinterpretation that equates parliamentary sovereignty with unchecked governmental power.⁴⁰ Bogdanor critiques Thatcher's centralisation of power, which he views as a departure from constitutional norms and an example of elective dictatorship.⁴¹ He suggests that parliamentary sovereignty should be understood in terms of adherence to the rule of law and the fundamental principle of human dignity, echoing the Greek philosophical concept of virtue or the good life. Within this framework, parliamentary sovereignty is not the ultimate source of legislation but rather a mechanism that should operate within a system of checks and balances.

The rapid evolution of the British Constitution since 1997 has raised significant concerns among scholars, particularly regarding the unchecked power of the executive branch.⁴² This evolution, facilitated by the absence of a formal process for constitutional changes, has allowed successive governments to reshape state structures to align with their political agendas, often without consulting other governmental institutions or seeking public approval.⁴³ Such actions have notably intensified since 1997, when governments began using simple parliamentary majorities to enact substantial changes to the judicial system and the structure of governance in the UK.⁴⁴ These changes include diminishing the traditional powers

³⁵Carolan (2009).

³⁶Salter (2022).

³⁷Saunders & Dearlove (1984).

³⁸Zecca (1992).

³⁹Cosgrove(2004).

⁴⁰Bogdanor (1996).

⁴¹Goodwin & Duncan (1989).

⁴²King (2007).

⁴³Jowell (2007).

⁴⁴Turpin & Tomkins (2007).

of the Lord Chancellor, implementing fixed-term parliaments, and devolving legislative powers to specific regions.⁴⁵ The ethical and moral implications of these constitutional shifts are contentious, as they often lack the necessary consultation and oversight, raising questions about the methods and motivations behind such changes.

Intellectuals and legal experts have expressed concern that these alterations were introduced without thorough consultation processes or referendums, undermining the separation of powers and the concept of parliamentary sovereignty.⁴⁶ Instead, the executive has leveraged its parliamentary majority to assert political dominance, setting a potentially dangerous precedent for the future of the UK Constitution and political landscape.⁴⁷ This trend is not necessarily a pessimistic view, but it highlights the need for careful consideration and scrutiny to prevent instability in the UK's democratic system.

The UK government's increasing willingness to modify long-standing traditions and constitutional principles for short-term political gains indicates a lack of ethical commitment to upholding the rule of law and the fundamental principle of human dignity.⁴⁸ Recent conflicts between the government and senior judges over judicial power, as well as challenges to the civil service's constitutional standing, represent a significant departure from the norms of the past several decades.⁴⁹ This shift suggests that the supremacy traditionally granted to Parliament as an absolute body may no longer be a reliable safeguard if the executive is willing to compromise the independence of the judiciary and the civil service. The government's consistent assertion of a democratic mandate to override opposition and bypass established rules and structures is a troubling defence against the rule of law and fundamental principles of human dignity. Together, these developments raise serious concerns about the future of democracy in the UK, suggesting that the country may be on a path towards a democratic crisis unless corrective measures are taken.

Under the current Conservative government, these issues have become even more pronounced. For instance, Prime Minister Boris Johnson's belief that he had a mandate to challenge the established boundaries of the UK constitution has been criticised as ill-considered and inappropriate for a democratic nation.⁵⁰ This approach has created tensions between ministers and the civil service, with the government's actions being seen as morally and ethically questionable. The civil service plays a crucial role in monitoring and regulating the boundaries that the government attempts to push, and when the government disregards their counsel, it undermines the stability and predictability of the political system.⁵¹

The absence of moral integrity and ethics in the government's actions, particularly in relation to parliamentary sovereignty, underlines a critical distinction

⁴⁵Smith (2005).

⁴⁶Blick (2016).

⁴⁷Foster (2021).

⁴⁸Norton (2018).

⁴⁹Rutter (2022).

⁵⁰Lindsay (2020).

⁵¹Garnett (2021).

between engaging in morally and ethically questionable behaviour and actions that are entirely devoid of moral integrity. Actions lacking in moral integrity are more likely to face censure and condemnation, as seen in the government's handling of Brexit and its willingness to violate both domestic and international law.⁵² The Johnson government's approach to Brexit, particularly its attempts to bypass Parliament and the law, reflects a troubling disregard for the rule of law and ethical governance.⁵³ This conduct, coupled with the government's open declaration to breach international law in 'limited and specific' ways, exemplifies a broader ethical and moral deficit in contemporary British politics.

Numerous analysts argue that the growing disconnect between UK citizens and their elected representatives is a significant factor contributing to the rising dissatisfaction, dysfunction, and declining respect for regulations among British politicians.⁵⁴ However, this viewpoint captures only a partial aspect of the broader discourse in British politics. While it is true that transparency in British politics has ostensibly increased over recent decades—exemplified by initiatives such as the televised Prime Minister's Question Time and the broadcasting of Parliamentary proceedings—this increased visibility has not necessarily translated into a more informed or engaged citizenry.⁵⁵ These initiatives were intended to enhance public access to government activities and subject the political elite to greater media scrutiny.

Despite these efforts, the claim that ordinary citizens now possess meaningful insight into government operations remains tenuous when measured against the prevailing attitudes and practices of British politicians. There is a persistent tendency among some political figures to manipulate rules to achieve their objectives, often invoking parliamentary sovereignty as a means to circumvent the rule of law and fundamental principles of human dignity.⁵⁶ This behaviour challenges the very notion of transparency and undermines the idea that simply making information available equates to genuine accountability. The underlying issue lies in the constitutional balance of power and the ethical considerations that should guide political conduct. To fully understand the dangerous precedent set by certain British politicians and the resulting power imbalance among government institutions, Lord Hailsham's concept of 'elective dictatorship,' introduced in 1976, is particularly pertinent. This term encapsulates the idea that a government with a strong parliamentary majority can effectively operate with minimal checks on its power, leading to a form of democratic governance that is more authoritarian in practice.

The relationship between elective dictatorship and partisan politics is deeply intertwined within democratic systems in the UK. Partisan politics, characterised by competition and rivalry between political parties, often paves the way for elective dictatorship, particularly when one party secures a substantial legislative majority.⁵⁷ In such scenarios, the dominant party wields significant influence, controlling the

⁵²Wille & Martill (2023).

⁵³Parker, Payne, Foster & Pickard (2020).

⁵⁴Le Roux (2014).

⁵⁵Riddell (2014).

⁵⁶Weinberg (2023).

⁵⁷Portis, Gundersen & Shively (Eds.) (2012).

legislative agenda, shaping key appointments, and rapidly implementing policies. The diminished influence of the opposition, which is frequently a consequence of partisan dynamics, further exacerbates an environment where unchecked executive power can thrive.⁵⁸ Party cohesion and ideological alignment within the ruling party bolster its authority, enabling the swift enactment of policies with minimal debate. This concentration of power can undermine traditional checks and balances within the democratic system, raising serious concerns about accountability and the potential for a democratic deficit.⁵⁹ Addressing the challenges posed by this relationship may require reforms focused on strengthening democratic principles, enhancing transparency, and reinforcing the role of opposition forces within the political landscape. The dynamics of majority rule, party dominance, and ideological alignment are central to the political environment, and mitigating the risks associated with this relationship is crucial for preserving a healthy and functional parliamentary sovereignty.

To establish a more effective system of checks and balances in contemporary British politics, it is crucial to strengthen judicial independence. This can be achieved by implementing measures designed to insulate the judiciary from external influences and safeguard its autonomy. Several key measures include:

- **Establishing Clear Protocols and Guidelines:** Develop and enforce clear protocols and guidelines that delineate the appropriate channels and procedures for communication between the executive and the judiciary. Defining the boundaries of authority for each branch will help prevent undue interference.
- **Facilitating Regular Consultations:** Encourage regular, structured consultations between the executive and the judiciary to address matters of shared interest, such as legal reforms and policy implications. Open and transparent dialogue can foster mutual understanding and respect.
- **Providing Training and Education:** Implement training and educational programmes for members of both the executive and the judiciary to enhance their comprehension of each other's roles, responsibilities, and constitutional limitations. This initiative would support a better-informed and more collaborative relationship.
- **Ensuring Transparent Appointment Processes:** Guarantee that the processes for judicial appointments are transparent, merit-based, and free from political interference. This is essential for maintaining the judiciary's independence and public confidence in its impartiality.
- **Upholding Respect for Judicial Independence:** Emphasise the critical importance of respecting judicial independence and the decisions of the courts, even in politically sensitive cases. Public statements or actions that could undermine the judiciary's integrity should be discouraged.
- **Collaborating on Legal Reforms:** Promote collaboration between the executive and the judiciary in the development of legal and judicial reforms.

⁵⁸Schonfeld & Winter-Levy (2021).

⁵⁹Schmidt (1996).

Involving both branches in the legislative process will help ensure that laws are constitutionally sound and practically effective.

- **Conducting Public Awareness Campaigns:** Launch public awareness campaigns to educate citizens about the significance of an independent judiciary and the principle of separation of powers. Building public support for these concepts is essential for their preservation.

By adopting these measures, the relationship between the executive and the judiciary can be cultivated to be more collaborative and respectful, thereby enhancing the effective functioning of democratic institutions.

Disch's analysis of Pitkin's concept of representation reveals a more radical interpretation than is commonly acknowledged.⁶⁰ Pitkin's theory, as interpreted by Disch, overlooks the crucial role that political parties and partisanship play in the dynamic process of representation. This omission is significant, particularly in light of Disch's broader critique of the two-party system in the United States. In *The Tyranny of the Two-Party System*, Disch argues that the dominance of two major political parties has created a form of political 'tyranny,' which restricts the diversity of political representation and marginalises alternative voices. According to Disch, the two-party system limits the political choices available to voters, reducing complex issues to oversimplified binary options, and thereby failing to adequately reflect the broad spectrum of opinions within society.

However, Disch's critique of the two-party system might be seen as overly simplistic, as it attributes voter discontent primarily to the limitations of the two-party structure. This perspective does not sufficiently consider other contributing factors, such as the influence of campaign finance, media dynamics, and systemic issues that also play significant roles in political disillusionment. Moreover, Disch may underestimate the ideological diversity within the two major political parties, which, despite some homogenisation, still encompass a range of perspectives. Voters often align themselves with the party that most closely aligns with their overall preferences, and the challenge lies in translating this alignment into policies and legislation that serve the collective welfare.

Disch's analysis point out the potential drawbacks of the two-party system, calling for a re-evaluation of the political landscape to enhance inclusivity, representation, and responsiveness to the electorate's diverse needs.⁶¹ The lack of emphasis on party representation is not unique to Disch; it reflects a broader trend in recent political theories on representation, where parties and partisanship are often absent from the discourse. This omission represents a missed opportunity to deepen our understanding of how party dynamics can enrich democratic processes. A renewed focus on the role of parties in representation could lead to improvements in modern politics. To address the limitations of the two-party system and excessive partisanship, several strategies can be considered:

⁶⁰Disch (2002).

⁶¹Pitkin (2023).

- **Electoral Reforms:** Implementing proportional representation or ranked-choice voting systems could ensure that a wider array of political perspectives is represented in legislative bodies, potentially breaking the binary nature of the two-party system and encouraging the emergence of multiple parties.
- **Campaign Finance Reform:** Stricter campaign finance regulations could reduce the dominance of wealthy interest groups and corporations, allowing for a more diverse range of candidates to participate meaningfully in the political process.
- **Encouraging Multiparty Systems:** Promoting the development of multiparty systems, where smaller parties have a realistic chance of gaining seats, could foster a more inclusive political landscape and prevent the concentration of power within a few major parties.
- **Enhancing Civic Education:** Investing in civic education programmes to inform citizens about the importance of political pluralism and the value of supporting a variety of parties could lead to a more informed electorate that is open to alternative candidates and parties.
- **Addressing Gerrymandering:** Implementing measures such as independent redistricting commissions could prevent gerrymandering, ensuring that electoral boundaries are drawn fairly and that parties and candidates are fairly advantaged or disadvantaged.
- **Promoting Coalition Governments:** Encouraging the formation of coalition governments, especially in parliamentary systems, could foster collaboration among multiple parties, reducing the adversarial nature of politics.
- **Expanding Access to Debates and Media Coverage:** Ensuring that all candidates, regardless of party affiliation, have equal access to debates and media coverage could help present a more diverse range of ideas to the electorate.
- **Supporting Grassroots Movements:** Encouraging grassroots movements and community-based political initiatives could empower individuals and groups to engage in politics outside traditional party structures, promoting a more bottom-up approach to representation.
- **Encouraging Cross-Party Collaboration:** Creating mechanisms that incentivise cross-party collaboration on key issues could reduce polarisation and encourage politicians to work together in the broader public interest.
- **Institutional Reforms:** Exploring broader institutional reforms, including changes to electoral systems and party funding mechanisms, could address the structural issues contributing to the dominance of two-party systems.

By implementing these strategies, the political environment could become more inclusive, responsive, and reflective of society's diverse needs and opinions. The evolving discourse on representation, increasingly aligned with normative democratic theory, emphasises the need for a better understanding of how parties and partisanship function within representative democracy.⁶² This perspective suggests that political representation should be viewed as a relationship between

⁶²Sabl (2015).

individual citizens and their elected representatives, with parties and partisanship serving as facilitators rather than dominant forces.

Discussion

The analysis in the literature of elective dictatorship and partisan politics within the framework of the rule of law and ethics presents a complex interplay of governance, legal principles, and moral considerations. It explores how these dynamics influence the foundations of democracy, the rule of law, and the ethical obligations inherent in a just and equitable society. For example, Tony Blair's decision to review the HRA 1998 highlighted a crucial moment in the balance between parliamentary sovereignty, the rule of law, and individual rights in the UK. The review was driven by the need to reconcile government policy with court rulings that appeared to diverge from the government's stance, particularly in relation to interpretations of the ECHR in other European Union (EU) countries.⁶³ Blair's initiative also aimed to amend the HRA 1998 to balance individual rights with the community's right to basic security. However, this approach raises significant concerns regarding the thoughtful consideration and timing of his actions. Blair's strategy appeared to be an attempt to use parliamentary sovereignty to override court judgments, a move that is problematic as it undermines the independence of the judiciary and the fundamental principles of the rule of law and human dignity. This approach risks distorting the legal system and weakening the checks and balances essential to democratic governance. While the government possesses the freedom to pursue its political objectives, it is critical that these efforts do not compromise the integrity of the courts or the rule of law. Any deviation from these principles suggests that Parliament can enact laws based solely on its preferences, a view that lacks contemporary validity in both theory and practice.⁶⁴

This situation underlines the need for legal principles to evolve as societies face increasingly complex issues. It also highlights the importance of morality and ethics in governance, which play a pivotal role in shaping perceptions of parliamentary sovereignty and the judiciary. The Joint Committee on Human Rights' November 2006 report criticised senior ministers, including the Prime Minister, for unfounded claims that the HRA 1998 or its interpreters were responsible for unpopular events. The committee's findings emphasised the government's failure to correct these errors publicly, despite the Lord Chancellor's assurance of a commitment to human rights across the government. This reflects the committee's substantial view of the rule of law and human rights, likely encompassing concepts of liberty and respect for private life.⁶⁵ The Labour Government's 2009 green paper, 'Rights and Responsibilities,' reiterated the significance of the HRA 1998 and proposed a new 'Bill of Rights and Responsibilities.' This document suggested that while human rights are not necessarily contingent on responsibility, future legislation might consider the applicant's behaviour and public safety. The paper's emphasis on

⁶³Temko & Doward (2006).

⁶⁴Young (2012).

⁶⁵Travis (2006).

responsibilities alongside rights adds a layer of complexity to the ongoing discourse on human rights and the rule of law.⁶⁶ In summary, the debate over the HRA 1998 and parliamentary sovereignty reveals the limitations of relying solely on legal rules and political systems to guide governance. The rule of law and the principle of human dignity must be rooted in the ethical and moral conduct of government, ensuring that these values are not just formalities but intrinsic to the behaviour of the executive. As such, the intersection of morality, ethics, and virtue with legal principles is essential for maintaining a just and equitable society, where the rule of law and human dignity are upheld and respected.

The Conservative Party's opposition to the HRA 1998 and its fundamental principle of human dignity has intensified over time. However, a notable shift occurred under David Cameron's leadership. In a 2006 speech at the Centre for Policy Studies, Cameron announced the party's intention to replace the HRA 1998 with a British Bill of Rights while retaining membership in the ECHR.⁶⁷ This proposal raised concerns, suggesting a possible misunderstanding within the Conservative Party regarding the rule of law and human dignity. Whether or not the HRA 1998 is replaced, the UK remains bound by its obligations under the ECHR unless it legislates to withdraw from the convention, a step that this analysis does not recommend for current or future governments. Should withdrawal be unfeasible, the courts must be ethically and morally committed to safeguarding the rule of law and human dignity against any political distortion.⁶⁸

Since the Brexit referendum, five Conservative Prime Ministers have consistently pursued policies that have undermined the rule of law and the fundamental principle of human dignity in the UK. This trend not only tarnishes the UK's reputation as a global champion of these principles but also raises serious concerns about the Conservative Government's dedication to upholding them domestically.⁶⁹ The actions of these five Prime Ministers have systematically eroded the foundations of the rule of law and human dignity. Post-Brexit, and amid the challenges of the COVID-19 pandemic, successive Conservative Governments have introduced legislation that expands state power while reducing the accountability of government officials.⁷⁰ These measures are often at odds with the UK's commitments under the ECHR. Notable examples include:

- **The Covert Human Intelligence Sources (Criminal Conduct) Act 2021**, which grants immunity to undercover operatives for criminal acts, contravening the principle of equal treatment under the law and restricting justice for victims.
- **The Overseas Operations (Service Personnel and Veterans) Act 2021**, providing immunity to military personnel from prosecution for specific offenses, further diluting accountability.

⁶⁶Bingham (2011).

⁶⁷Cameron (2006).

⁶⁸Dzehtsiarou, Lock, Johnson, De Londras, Greene & Bates (2015).

⁶⁹Siddique (2021).

⁷⁰Mitsilegas & Jofre (2023).

- **The Judicial Review and Courts Act 2022**, which limits the ability of the High Court to review decisions by certain public bodies, thereby restricting access to justice for those affected by unlawful government actions.
- **The Nationality and Borders Act 2022**, which raises the standard of proof for refugee status and reduces support for vulnerable asylum seekers, conflicting with the UK's international obligations.
- **The Police, Crime, Sentencing, and Courts Act 2022**, and **The Public Order Act 2023**, which introduce new protest-related offenses and enhance police powers, disproportionately targeting minority communities and curbing fundamental protest rights.

These legislative actions signal a concerning shift away from the UK's longstanding commitment to the rule of law and human dignity, demanding urgent reassessment of its global leadership role and domestic governance practices. Therefore, it may be assumed that the erosion of the rule of law and fundamental human dignity in the UK can be attributed to the phenomena of elective dictatorship and partisan politics. Partisan politics further exacerbates this issue, as political loyalty have overshadowed legal and ethical considerations. Decisions influenced by party allegiance often prioritise political gain over the broader principles of justice and human rights. The legislative measures introduced under recent Conservative Governments, such as the Covert Human Intelligence Sources (Criminal Conduct) Act and the Nationality and Borders Act, illustrate how partisan interests can compromise fundamental values. This alignment of political expediency with legislative action reveals the detrimental impact of both elective dictatorship and partisan politics on the integrity of governance and the safeguarding of human rights.

Conclusion

In this intersection, challenges emerge as the ethical duty to uphold justice sometimes conflicts with the practical realities of political manoeuvring. Striking a delicate balance requires a nuanced understanding of the interdependencies between political governance, legal structures, and the ethical obligations embedded within the rule of law and fundamental principle of human dignity. In conclusion, the inclusive analysis of elective dictatorship and partisan politics under the rule of law and ethics unveils a complex web of challenges faced by democratic societies. Recognising the interconnectedness of governance, legal frameworks, and ethical responsibilities is paramount for the preservation of a just and equitable society. The ongoing examination of these dynamics should inform our collective efforts to fortify democratic institutions, ensuring they remain steadfast in upholding both the rule of law and human rights standards.

In the context of the above discussion, let us consider a hypothetical example to illustrate the argument that, when fundamental principles are compromised through legislative processes and executive actions, the court has a moral and ethical obligation to intervene. Imagine a scenario where a parliament, driven by political

expediency, passes a law that infringes upon basic human rights protected by the Constitution. This law, although technically within the legislative authority, violates fundamental principles of justice, fairness, and the rule of law. It may grant excessive powers to the executive, curtail individual freedoms without due process, or discriminate against certain groups. In such a case, the court, as the guardian of the rule of law and the protector of fundamental principles, faces a moral and ethical dilemma. The court may argue that the intention of the parliament is not to undermine the very principles that form the bedrock of a just society. Instead, it may assert that parliament, in its legislative function, does not intend to pass an act that contradicted the rule of law and ethical standards. The court, cognisant of its role in upholding the constitution and safeguarding fundamental principles, might intervene to interpret the legislative intent in alignment with these principles. The argument here is that the parliament, in its pursuit of policy goals, may inadvertently stray from the ethical and moral foundations embedded in the rule of law. In this light, the court may see itself as the ethical guardian, ensuring that the legislative process does not compromise the core values that underpin a just and democratic society.

By circumventing the apparent intentions of the parliament, the court would be acting as a check against the potential abuse of power, upholding the moral and ethical imperatives that transcend the purely legalistic interpretation of statutes. This intervention becomes a safeguard against the erosion of individual rights and the subversion of democratic principles, emphasising the court's duty to preserve the ethical fabric of the legal system. In summary, this example illustrates the argument that, when faced with legislation or executive actions that contravene fundamental principles, the court may assert its moral and ethical duty to interpret legislative intent in line with the rule of law and ethical standards. In doing so, the court becomes a bulwark against the inadvertent transgressions of the parliament, ensuring that the legislative process aligns with the moral and ethical imperatives of a just and democratic society. Considering the above discourse, the enhancement of judicial restraint in the UK constitution through the integration of the rule of law and ethical considerations requires the cultivation of a legal atmosphere that promotes principled decision-making while preserving the integrity of the judiciary. A key recommendation in this regard could be:

- **Formulation of Ethical Principles:** Develop and prescribe a set of ethical guidelines specifically tailored to judicial restraint. These guidelines should outline the ethical considerations judges must take into account when deciding whether to exercise restraint or intervene in legislative and executive actions. This would contribute to a more principled and consistent approach.
- **Balancing Competing Ethical Values:** Acknowledge and address the inherent tension between the values of judicial restraint and the imperative to protect constitutional rights. Clearly delineate circumstances where ethical considerations may warrant a more restrained approach and situations where intervention is ethically justified to prevent constitutional violations or protect fundamental rights.
- **Continuous Ethics Training for Judges:** Implement ongoing ethics training programmes for judges that specifically focus on the ethical dimensions of

exercising judicial restraint. This training should include case studies, hypothetical scenarios, and discussions to help judges navigate complex ethical dilemmas related to constitutional interpretation and restraint.

- **Independent Ethics Oversight Body:** Consider the establishment of an independent ethics oversight body composed of legal scholars, ethicists, and retired judges. This body could provide guidance on ethical questions related to judicial restraint, offer opinions on specific cases, and contribute to the development of best practices in maintaining a balance between restraint and intervention.
- **Public Awareness and Accountability:** Foster public awareness of the ethical considerations involved in judicial restraint. Transparency about the ethical framework guiding judicial decisions enhances public trust and accountability. Judges should be mindful of the need to communicate their ethical reasoning in decisions, especially in cases where restraint may impact constitutional rights.
- **Integration of Ethical Review in Judicial Appointments:** Integrate a rigorous ethical review process into the judicial appointment process. This ensures that individuals appointed to the judiciary have a demonstrated commitment to ethical considerations, including a nuanced understanding of when restraint is ethically appropriate and when it may compromise constitutional principles.
- **Ethics Committees within the Judiciary:** Establish internal ethics committees within the judiciary tasked with periodically reviewing and updating ethical guidelines. These committees could also provide a forum for judges to seek guidance on ethical concerns related to judicial restraint, fostering a culture of ongoing ethical reflection.
- **Regular Assessment of Ethical Decision-Making:** Institute mechanisms for the regular assessment of judges' ethical decision-making, with a specific focus on cases involving judicial restraint. This could involve peer reviews, self-assessments, or external evaluations to ensure that ethical considerations remain at the forefront of judicial decision-making.
- **Public Consultation on Ethical Guidelines:** Involve the public in the development and review of ethical guidelines for judicial restraint. Public input can offer diverse perspectives and contribute to the legitimacy of the ethical framework guiding the judiciary. It also helps to align ethical considerations with societal values.

By focusing on the ethical dimensions of judicial restraint and integrating the rule of law principles, these recommendations aim to enhance the credibility and effectiveness of the judiciary in navigating the delicate balance between restraint and intervention in the UK constitutional context.

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