

he purports to act within a broadly drafted power, on the ground that the actions do not promote the policy and objects of the statute conferring the power. Although the check thus represented by judicial review on a minister's actions may suggest that the rule of law is recognised by the constitution, it might be equally plausible to suggest that such a check springs from the doctrine of parliamentary sovereignty, in that it is designed to ensure that powers exercised by ministers and other bodies do not rise above those of Parliament itself. Certain constitutional writers, such as Wade, have criticised the notion that such a well settled feature of the constitution as the granting of wide powers to ministers can be said to infringe the rule of law.

What of the notion that the law applies equally to all citizens, which implies that no one is above the law? The notion could be attacked by citing numerous exceptions to it. Members of Parliament enjoy complete civil and criminal immunity in respect of words spoken during 'proceedings in Parliament' by virtue of the Bill of Rights 1688, while judges also enjoy various legal privileges. Diplomatic and consular immunities arise under [the Diplomatic Privileges Act 1964](#) and the Consular Relations Act 1968, and these have been left undisturbed by s 16 of [the State Immunity Act 1978](#). However, it might be suggested that these examples of exemptions granted and recognised by law support the argument that the rule of law exists in the UK Constitution, as they imply that there is a need to create exceptions to a general principle which would otherwise apply to all the groups mentioned. It is notable that in *A v Secretary of State (2004)*, one of the key grounds for finding the legislative scheme allowing for detention without trial in Belmarsh prison of terrorist suspects incompatible with the Convention, was that it unlawfully discriminated between nationals and non-nationals.

Can it equally be said that the doctrine of the separation of powers is of some relevance to the UK Constitution, even though it is possible to find instances where it is clear that the doctrine is not being applied? The doctrine, mainly developed by Montesquieu and his followers, encompasses the notion that the three main organs of government are the legislature, the Executive and the judiciary, and that only one class of function should be in the hands of each body. For example, the judiciary should apply, not create, law. Thus, a system of checks and balances between each branch of government will be provided. It is not hard to find examples of the violation of this doctrine. Judges can create law, in the sense that they can declare and develop the common law. Declaring the common law clearly means creating it, as the common law often has to meet fresh situations which have never previously been addressed. In *Shaw v DPP (1962)*, for example, the House of Lords declared that the common law included a doctrine known as conspiracy to corrupt public morals, although no precedents were cited demonstrating that it had ever existed except as a variant of the power exercised by Star Chamber judges to punish offences against conventional morality.