

# Lawyers and the Rule of Law



Last month I wrote about the role of the Law Society in sustaining a competent and independent Bar which ensures access to justice. This month I focus on our role in upholding the rule of law.

While the notion of an impartial rule of law has ancient antecedents, not least in the Chinese political philosophy known as Legalism, its practical expression in political systems took root through

developments in England and its off-shoot, the USA, in the Second Charter of Justice of 1827. Singapore was an early beneficiary of this enlightenment, and we can proudly claim that a system compliant with the rule of law has existed in Singapore since 1819 (barring the short interregnum of the Japanese Occupation). This is a much longer period than, for example, the recent contestants for the title of Champions of Europe, Portugal and Greece, can boast, because both were ruled by Generals (often exercising power by fiat and decree) as recently as 35 years ago.

The essence of the rule of law is that government authority may only be exercised in accordance with written laws, adopted through an established procedure. The principle prevents arbitrary rulings in individual cases.

As with access to justice, the rule of law must be honoured and promoted in substance and not just in name, and vigilance against inroads is essential. Lawyers naturally have a key role to play in this. It is sometimes tempting for lawyers to see themselves more as intermediaries on behalf of supplicants seeking a licence or favourable exercise of discretion from someone in power, rather than as advocates, demanding that law, like death, spare no one. It is as advocates, however, that lawyers really make a difference to the society in which they live and ensure that the rule of law is perpetuated, deepened and strengthened in each new generation.

Lawyers in Singapore certainly could do more to develop their knowledge and skills in such aspects of the rule of law as judicial review of administrative action. One important development in recent years has been entry into free trade and other international agreements, which impose, particularly in favour of foreign investors, constraints on executive action and legislative decision. Read together with existing constitutional provisions, these agreements will reinforce existing trends toward greater transparency, accountability and consistency. Lawyers can and should do their part in promoting these goals, which after all are simply modern names for aspects

of the rule of law. Transparency requires that citizens know in advance how power will be exercised so that they can model their behaviour accordingly. Accountability requires that the exercise of power be justified with reasons and that there be proper procedures for review or appeal. Consistency requires that power be exercised impartially, without discrimination. These developments are taking place together with others, such as competition law, and it is vital that lawyers understand these developments and ensure that they are in a position to advise clients on all their rights and remedies.

Unfortunately, I must sound a warning note. There is a passive quality to much of our legal thinking, a waiting for developments elsewhere that goes beyond conservatism to inertia. We must not consign ourselves to the waiting room of history, as if it is only elsewhere that new law (and most particularly constitutional and civil liberties arguments) can be made. It used to be fashionable to assert that Asian values were inimical to the assertion of rights and the search for remedies within the legal system, and that this was a path to modernity that Asian nations should not follow. Instead, (the conventional wisdom went) we should seek consensus and avoid conflict. Thankfully, that archaism has been discarded with the recognition that debate generates new ideas and new ways of doing things. Unless, however, we lawyers feel the importance of advancing, of thinking about the law and its development as something that is everyone's responsibility, we will find that we are indeed left behind. This time not just by jurists in Europe or the USA but by those in Korea, Taiwan or Thailand. All of these countries are developing their own constitutional and administrative law remedies even though they lacked our headstart, given to us by the common law.

Instead of passivity, let me urge liveliness. Instead of following others, let me urge thinking for ourselves.

Grounded in long and venerable traditions of the rule of law, Singapore lawyers should have the confidence to move forward, to develop their skills and present arguments on behalf of clients, boldly, forcefully and yet, in the best traditions of our Bar, courteously and respectfully. It is exciting that this magazine has run many articles on new developments and old principles and that the legal community has engaged in greater discussion of issues and concerns: in debates, forums and in print. A lively, thinking Bar is a wonderful institution, and will ensure the competence and independence so essential to the rule of law.

**Philip Jeyaretnam, SC**  
President  
The Law Society of Singapore