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Rule of Law Updates and Perspectives

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Volume 3 • Issue 1 • July 2014

A publication from LexisNexis Capital Monitor to advance the **Rule of Law** in the Asia-Pacific

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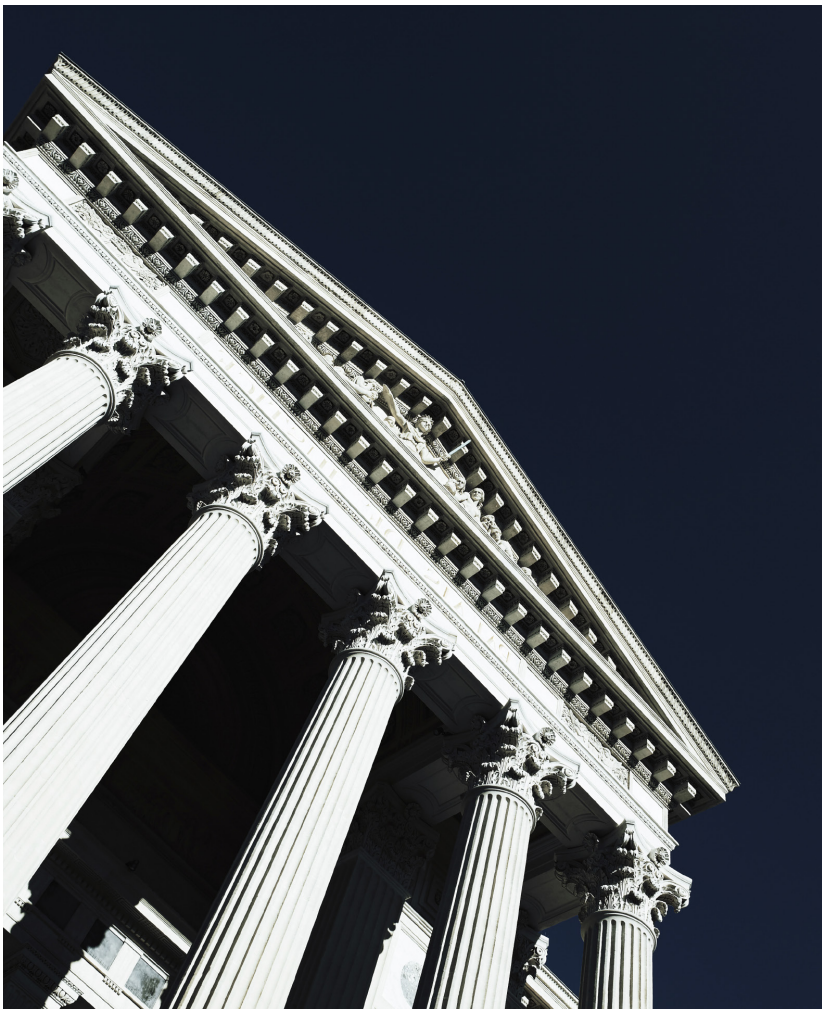

Contents

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Measures of justice: the law in the Pacific and beyond

A survey developed by the World Justice Project has found New Zealand's justice system to be the sixth best in the world, with Australia trailing close behind at number eight.

By Carolina Caliaba Crespo

The *WJP Rule of Law Index 2014* is a wide ranging survey of 99 countries and jurisdiction. The index aims to portray the rule of law as seen through the eyes of those who use the justice system around the world.

The index is rich in data, and ranks countries according to multiple indicators organised around constraints on government powers; absence of corruption; open government; fundamental rights; order and security; regulatory enforcement; civil justice; criminal justice; and informal justice.

The index affords interesting insight into overarching trends in judicial systems around the world. For instance, criminal justice was found to have declined worldwide in 2013-14, whereas order and security seem to be improving. In this and other respects, the aggregate data suggests weaker correlations between factors traditionally thought to be causally related.

Portrait of a region divided

The 2014 WJP survey found that the Rule of Law is a clear feature of societies in the East Asia and the Pacific region (excludes Pacific Island nations). The WJP survey described 'a high level of safety from crime and other forms of violence' as the most notable regional strength, but warned about significant internal variation in most other aspects. The wealthy

Australia and New Zealand compared

Australia	New Zealand
Australia ranks 8th overall, but within the top 15 places globally in all dimensions measured by the Index.	New Zealand ranks 6th globally; it stands out as the best performer in the region, featuring in the top ten globally in six of the eight dimensions measured by the index.
The civil courts are efficient and independent, although access to affordable legal counsel remains limited, particularly for disadvantaged groups.	Government agencies and courts are efficient, transparent and free of corruption.
Constraints on government powers and regulatory enforcement are effective (ranking 8th overall and 7th overall, respectively), despite a slight deterioration in performance since last year.	Constraints on government powers are effective, and fundamental rights are strongly protected.
Corruption is minimal (ranking 8th overall and 3rd in the region).	While the judicial system is independent and effective, there are relative weaknesses in the areas of accessibility of civil justice for marginalised populations.
The country ranks 10th in the world in protecting fundamental rights, but lags behind other high-income countries in guaranteeing equal treatment and non-discrimination, especially for immigrants and low-income people.	The country's ranking for criminal justice deteriorated slightly during the past year, with effectiveness of criminal investigations and equal treatment of criminal suspects standing out in particular as areas in need of attention.

Defining the Rule of Law

The World Justice Project uses a working definition of the Rule of Law based on four universal principles:

1. The Government and its officials and agents as well as individuals and private entities are accountable under the law.
2. The laws are clear, publicised stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property.
3. The process by which the laws are enacted, administered and enforced is accessible, fair, and efficient.
4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

jurisdictions in the region rank among the top 20 globally because of their low levels of corruption, open governments, effective regulatory enforcement and efficient judicial systems. Despite institutional strengths, rich countries in East Asia and Pacific saw a small but significant deterioration in people's perceptions of the effectiveness of constraints to government power.

East Asia and Pacific region in a nutshell

The best overall rule of law performers in the region are New Zealand and Australia, ranking 6th and 8th globally. The worst is Cambodia, ranking 91st among the 99 countries included in the index.

The region seems to be united in its challenges, with the WJP index singling out relatively weak protection of fundamental rights (particularly the freedoms of expression, religion, and association) as the main hurdle. The index emphasises the difficulty in accessing information and affordable civil justice as two areas in need of attention, for both wealthy and poorer countries.

Full report can be viewed here.

Civil disobedience and the power of no

By Saurabh Bhattacharya

In the years since 2011, western democratic societies have witnessed civil disobedience movements on a scale arguably not seen since the anti-Vietnam protests of the 1960s and 1970s.

This new breed of civil disobedience, exemplified by the Occupy movement, is different from historical civil disobedience movements such as Gandhi's non-cooperation against the British rule of India, Martin Luther King Jr.'s civil rights campaign, or Nelson Mandela's anti-apartheid protests in South Africa. Unlike these historical events, which targeted a specific law, set of laws or governance processes, contemporary civil disobedience movements are diffuse in their agenda, and deliberately seem to eschew the need for a centralised leadership structure.

Recent civil disobedience movements including Occupy are not civil disobedience as a means to re-shape specific legal structures; this is civil disobedience as a means to re-negotiate the fundamental notion of democratic rule of law. But to what purpose?

Former UK Lord Chief Justice Lord Bingham defines the rule of law as being reliant on 'an unspoken but fundamental bargain between the individual and the state, the governed and the governor, by which both sacrifice a measure of the freedom and power which they would otherwise enjoy'.[1] The definition is significantly contractarian, in that it is premised on a socio-legal contract not unlike the one that John Rawls presents in his seminal 1971 work *A Theory of Justice* as the foundation of justice: 'the principles of justice ... are principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association' (Harvard University Press, p. 11).

Lord Bingham's and Rawls's approach have strong philosophical foundations ranging back to the works of John Locke, Jean-Jacques Rousseau, and Immanuel Kant. The question, however, is this: what role, if any, can acts of civil disobedience exemplified in the Occupy movement have in democratic societies that, for all practical purposes, are functioning collectives with a clear commitment to rule of law? If the foundational principle of rule of law is a bargain voluntarily entered upon by both the individual and the state, then is it not the case that civil disobedience erodes the fundamental basis of rule of law by threatening to break this contract?

In his preface to *Occupy: Three Inquiries in Disobedience*, W.J.T. Mitchell interprets the Occupy form of civil disobedience as not so much an attempt to change legal structures as to change the very essence of law as we envision it in a democratic context. Mitchell views the fluidity of the Occupy movement as a 'reopening' of what Hannah Arendt called "the space of appearance (that) comes into being wherever men (and women) are together in the manner of speech and action, and therefore predates and precedes all formal constitution of the public realm" (p. xi).

"If the foundational principle of rule of law is a bargain voluntarily entered upon by both the individual and the state, then is it not the case that civil disobedience erodes the fundamental basis of rule of law by threatening to break this contract?"

On the face of it, historical acts of civil disobedience do not seem to be in a position to give any satisfactory answer to these questions. This is so simply because historical civil disobedience movements are specifically aimed to re-negotiate this contractarian basis of law. Gandhi's non-cooperation movement highlighted a fundamental flaw in British governance of India: that the people of India were never party to the rule of law developed by the colonial government, and so they were not in any way obliged to respecting such a rule of law. Similarly, both Martin Luther King Jr.'s civil rights agenda and Mandela's anti-apartheid protests questioned the existing rule of law on the grounds that a certain group of citizens of the relevant sociopolitical structure were never made part of the dialogue that led to the implementation of racially discriminatory laws.

In their own distinctive way, each of these leaders was questioning the basis of the contractual state of law. However, and this is critical, none of them was questioning the fact that a rule of law must necessarily have a contractarian foundation. This is particularly true of Nelson Mandela, a lawyer by profession who never lost his respect for the rule of law despite the discriminatory regime of the South African government.

In 1956, the pro-apartheid South African government arrested all the key leaders of the African National Congress, including Mandela, on grounds of high treason and conspiring to bring about a violent, communist revolution in the country. This mass arrest led to the famous Treason Trial of 1961. The result of this trial contradicted the government's political agenda. Despite the charges of the government, the three-judge bench led by Justice F.L. Rumpff acquitted all the arrested and threw out the charges of treason and conspiracy to violent revolution. Referring to this historic judgment in his autobiography *Long Walk To Freedom*, Mandela states: 'I did not regard the verdict as a vindication of the legal system or evidence that a black man could get a fair trial in a white man's court... The court system, however, was perhaps the only place in South Africa where an African could possibly receive a fair hearing and where the rule of law might still apply.'[2]

Mandela's respect for the rule of law became an intriguing catalyst to his approach towards civil disobedience. Mandela chose the path of civil disobedience not just to reject the discriminatory policies of the South African government, and to also reinstate the contractarian foundation of rule of law in a more inclusively democratic sociopolitical model. In a speech given in 1993 to the Soochow University in Taiwan during his investiture as Doctor of Laws, Mandela declared that 'a democratic order must be based on a majority principle, especially in a country where the vast majority have been systematically denied their rights ... Our new order must therefore be based on constitutional democracy ... It will be an order in which the government will be bound by a higher body of rules – an empire of laws ... We reject an empire of man; we require the rule of law, as opposed to what Aristotle called the 'passion of men.'[3]

In this view, civil disobedience is not antithetical to the rule of law, but the voice of the people who ought to be party to the rule of law. Mandela's civil disobedience movement is a hallmark of what such an overtly state-defying process can do to the foundation of the state: change it into a state where all matter, where the rule of law becomes a bargain between equals – individual and state– and thus reinstates the dignity of mankind in a true process of self-governance. Whenever there is any inequality of status between the individual and the state as they engage in crafting the contractual basis of rule of law, civil disobedience comes forth as the moral scalpel that cuts through this inequality. For civil disobedience to

"Gandhi, Martin Luther King Jr. and Mandela questioned the basis of the contractual state of law, but none of them questioned the fact that a rule of law must necessarily have a contractarian foundation."

gain a morally justifiable status within the framework of the rule of law, this, and this alone, ought to be its agenda.

This is the lesson we learn from Nelson Mandela's engagement with civil disobedience, and this is a lesson that proponents of modern civil disobedience movements must necessarily seek out and imbibe if they are to maintain their version of civil disobedience as an action morally justifiable within the confines of a rule of law. Ultimately, it is the civil disobedient's emphatic 'no' that helps sculpt and maintains a socio-political environment's emphatic 'yes' to rule of law. ■

Saurabh Bhattacharya is a Postgraduate Research Student at the University of Sydney.

Endnotes

[1] 'The Rule of Law' (Cambridge Law Journal 66(1), 2007, pp. 67-85)
[2] Abacus, 1994, p. 308
[3] www.anc.org.za/show.php?id=4094

Fiji Law Reports: an update from the Pacific Rule of Law Project

Early in 2014, LexisNexis was appointed partner and publisher for the authorised Fiji Law Reports.

As part of the ongoing commitment of LexisNexis to the Rule of Law, we are working in partnership with the Judicial Department of Fiji to create access to selected cases in both hard copy and digital formats. This will enable legal practitioners in Fiji to excel in the practice and business of law and assist the judiciary, governments and businesses to function more effectively, efficiently and transparently.

We are making great progress in identifying significant cases to the present day and will continue to build a comprehensive set of authorised reports. The first volume, comprising significant cases from 2012, will be launched in December this year. ■

Building on the rule of law in the global engineering sector

By James Polkinghorne

When the engineering sector does not adhere to the principles of the rule of law it causes untold harm to local communities. Faulty workmanship, inadequate design, corruption and labour violations each has the potential to create disasters and cause irreversible damage. Society as a whole suffers when the engineering sector does not adhere to the principles of the rule of law, as illustrated by the collapse of the Rana Plaza in Bangladesh in 2013. This disaster killed more than 1,200 people and also eliminated the jobs of several thousand workers who live below the poverty line. This tragedy is a direct result of conscious decisions made by engineers who ignored the legal framework by which the sector is bound.

In addition to the human cost, there are also broader economic effects to consider when the engineering sector does not uphold the rule of law. Failing to comply with legal obligations causes tremendous inefficiencies in the global economy, because the combined value of the sector's services are critical to developing and sustaining vibrant financial systems. Ultimately, bad engineering practices can hinder overall market effectiveness by deterring foreign investment and reducing productivity, stunting an economy's growth potential and therefore its overall competitiveness.

But it's not all bad news. There is evidence to suggest that the engineering sector is achieving closer alignment with the principles of the rule of law. Consider the political changes happening globally through the actions of citizens focused on improving the rule of law in their countries. The governments of China, India, Indonesia, Turkey, Malaysia, Thailand and Australia are all facing pressure to reduce local and national political corruption. Indeed, in some cases this negative public sentiment has been the base of entire election campaigns. A stronger government stance on corruption will inevitably see political pressure and compliance activities flow into the engineering sector, which is a major receiver and distributer of any nation's public spending.

In addition to social activism, the growing influence of the World Justice Project and Transparency International is leading to greater global focus on the importance of rule of law and anti-corruption initiatives. Significantly, these organisations understand why it is so important for the engineering community to respect the principles of the rule of law, and have initiated industry-focused programs to drive this message home. WJP's and IP's efforts to engage engineering bodies have paid off, with many professional institutions acknowledging their responsibility in achieving positive change.

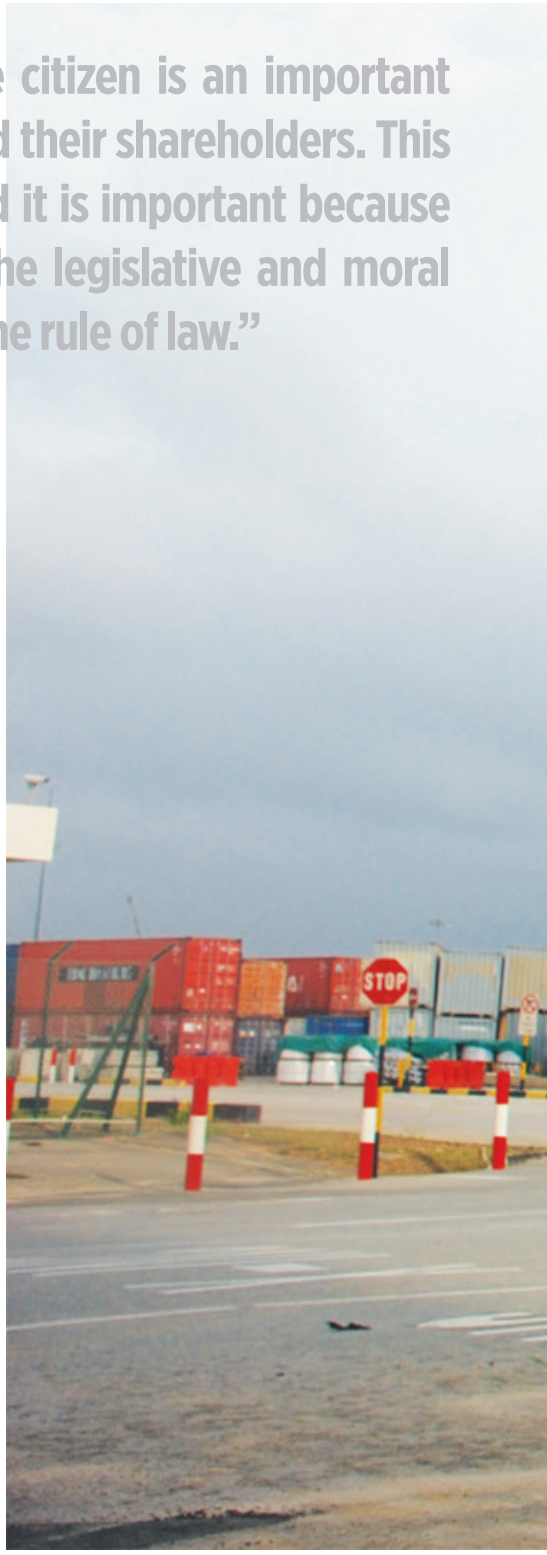
Increasingly accessible legislation and greater enforcement of laws is also having a positive impact on the engineering sector as a whole. Dispute resolution mechanisms are becoming fairer and more efficient for all stakeholders, assisted by the use of

> "Being viewed as a good corporate citizen is an important factor for engineering companies and their shareholders. This is a cultural shift for the industry and it is important because it links corporate procedures with the legislative and moral fundamentals needed to safeguard the rule of law."

standardised contracts that are being applied more broadly as the industry continues to globalise. In addition to improved legislation, client-led initiatives are also proving effective. The cross-debarment mechanisms of multilateral banks provide a robust and wide-reaching deterrent to organisations that fail to act lawfully. The fact that these debarments are globally enforced is highly significant, because they work as a deterrent for multinational companies.

A focus on corporate compliance is increasingly becoming a characteristic of organisations operating within the engineering sector. As with the increasing demand for health, safety, environmental and sustainability standards, the introduction of company ethics and compliance programs supported by strict internal procedures is now an essential requirement for engineering companies. Being viewed as a good corporate citizen is an evermore important factor for engineering companies and their shareholders, as (not and) corporate reporting. This is a significant cultural shift for the industry and is important because it assists in linking corporate procedures with the legislative and moral fundamentals needed to achieve adherence to the rule of law. Such approaches will be further enforced through mechanisms such as the proposed anti-bribery standard (BS-10500), which has been championed by the UK's Global Infrastructure Anti-Corruption Council (GIAC) and is now awaiting adoption by ISO.

Finally, the shame and reputational damage to those linked with public scandals are further assisting the engineering sector's shift toward the rule of law. In recent times major Australian construction and engineering groups have been subject to high-profile criminal investigations for both domestic and offshore activities, which has had a damaging effect on brands as well as share prices. And there is also significant public and media exposure of alleged criminal behaviour within Australia's national construction trade unions. This scrutiny is so significant that it has led to the establishment of a Royal Commission. At a state level, the proceedings of the New South Wales Independent Commission Against Corruption (ICAC) against high-profile government officials associated with property and resources developments is attracting widespread attention, and is a clear indication that such behaviour is not condoned by the state and will be punished accordingly.



The author, James Polkinghorne, is Director of Asia Civil, Singapore.

The benefit of a strong Rule of Law extends far beyond moral values – it has critical economic importance to all of society. In practice it serves to create and sustain a stable business environment, enabling industry to achieve high performance in terms of people and its respective organisations. The integrity of a system is dependent on the integrity of the people who operate within it, and also on the effectiveness of the laws that govern it. With that in mind, the engineering sector plays a critical function in our lives every day, yet its brand can only be as strong as the level of integrity that underpins it. Once serious questions arise regarding the sincerity of purpose of the industry or its players, the value of the industry's brand is compromised. And yet there are many reasons to be optimistic. Global shifts caused by a combination of citizen enforced cultural change within governments and the corporate sector, supported by improved legislative enforcement, are bringing the engineering sector into closer alignment with Rule of Law principles. Everyone stands to benefit from this trend. ■

"More and more, global shifts driven by citizen-enforced cultural change within governments and the corporate sector are supported by improved legislative enforcement. These changes are bringing the engineering sector into closer alignment with rule of law principles"

Proposed changes to freedom of speech, more questions than answers

By James Dalley

Australian Attorney-General George Brandis recently proposed changes to section 18C of the *Racial Discrimination Act* in a bid to defend freedom of speech, and prevent the curtailment of public discussion. Senator Brandis said that it is not the place of the State to police or censor opinions about contestable public issues, including opinions that are racially charged. But if the Attorney-General were really interested in protecting the Australian people's rights to freedom of speech and political communication, he would need to change much more than just the *Racial Discrimination Act*.

Though the right to freedom of political communication is preserved in the United Nations Universal Declaration of Human Rights1 and is part of the domestic laws of most nations, Australia does not expressly provide for the right to freedom of speech or political communication.

The Australian Constitution expressly prohibits laws that prevent members of the Australian community from communicating with each other about political and government matters relevant to the system of representative and responsible government.[2] This implied right to freedom of speech was recognised by the High Court of Australia in *Lange v The Australian Broadcasting Corporation*.[3] The High Court also confirmed in *Australian Capital Television Pty Ltd v Commonwealth* that having representative and responsible government protected under the Constitution implies that the Australian people have an implied right to freedom of political communication.[4]

The High Court of Australia has attempted to ensure freedom of speech and political communication in Australia through this implied right, but the courts' decisions can't provide the same protection for these freedoms as a definitive express right, as enjoyed by our US, EU, Canadian counterparts – or in our own region, our Japan and India.[5] The fact that the Australian Constitution does not expressly provide for freedom of speech or political communication has implications for the enjoyment of these rights by the Australian people.

Commonwealth, State and Territory governments have introduced legislation prohibiting certain manifestations of the rights to freedom of speech and political communication. These measures can only be brought in if considered reasonably appropriate and adapted to serve a legitimate end, and compatible with the maintenance of the constitutionally prescribed system of government.[6] This has proven to be a strikingly wide ambit.

Some examples include the insertion of sedition laws into the Criminal Code by the Howard Government in 2006, and the censorship of senior public servants at the CSIRO from both sides of the political divide. States and Territories have also made legislation curtailing implied rights to freedom of speech and political communication. The New South Wales Parliament recently amended the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) to limit political donations and electoral communication expenditure.[7] The amendments also banned donations to political parties from any person or body not on the Commonwealth or local government electoral rolls.[8] These amendments have raised questions about the compatibility of the amendments with the Australian Constitution and the implied freedom of political communication enshrined under sections 7 and 24.[9]

So it would seem that if Attorney-General George Brandis really wanted to defend Australian freedom of speech and prevent the curtailment of public discussion, he would need to change more than section 18C of the *Racial Discrimination Act*. In fact, he would need to change the Constitution, political attitudes towards these rights, and amend all of those statutes that impinge on citizens' right to freedom of speech and political communication.

James Dalley is News & Information Manager at LexisNexis Capital Monitor, Canberra.

Endnotes

[1] *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3 rd sess, 183 rd plen mtg, UN Doc A/810 (10 December 1948) Article 2.

[2] *Commonwealth Constitution; Levy v Victoria (DuckShooting case)* (1997) 189 CLR 622.

[3] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

[4] *Australian Capital Television v Commonwealth* (1992) 177 CLR 106.

[5] The US, EU, Canada, India and Japan all have an express right to freedom of speech embedded in their Constitutions. These rights are not overridden by prohibitions on rights to publicly discuss religion, politics or monarchs, unlike states including Thailand, South Korea, Indonesia and Malaysia, which also have an express right to freedom of speech embedded in their respective Constitutions.

[6] *Wotton v Queensland* (2012) 246 CLR 1, 25.

[7] *Election Funding and Disclosures Amendment Act 2010* (NSW).

[8] *Election Funding, Expenditure and Disclosures Amendment Act 2012* (NSW).

[9] *Commonwealth Constitution*.

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"There can be no Rule of Law unless there is access to the basic sources of Law"

— TJ Viljoen, CEO, LexisNexis Asia Pacific

LexisNexis promotes the Rule of Law by providing products and services that enable customers to excel in the practice and business of law, and that help justice systems, governments and businesses to function more effectively and efficiently.

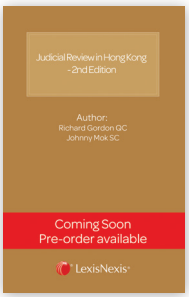
Criminal Law in Malaysia & Singapore, 2nd edition

Authors: Stanley Yeo, Neil Morgan, and Chan Wing Cheong

Country of Publication: Singapore

Year of Publication: 2012

ISBN (book): 9789812369277



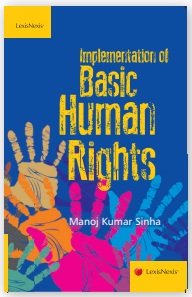
Judicial Review in Hong Kong, 2nd edition

Authors: Richard Gordon QC and Johnny Mok SC

Country of Publication: Hong Kong

Year of Publication: 2014

ISBN(book): 9789888147717



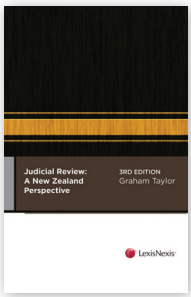
Implementation of Basic Human Rights

Author: Manoj Kumar Sinha

Country of Publication: India

Year of Publication: 2013

ISBN (book): 9788180389344



Judicial Review: A New Zealand Perspective, 3rd edition

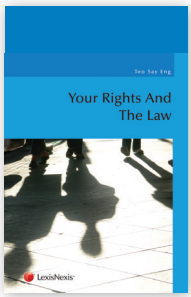
Author: Graham Taylor

Country of Publication: New Zealand

Year of Publication: 2014

ISBN (book): 9781927227800

ISBN (eBook): 9781927227817



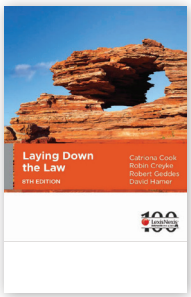
Your Rights and The Law

Author: Teo Say Eng

Country of Publication: Malaysia

Year of Publication: 2007

ISBN (book): 9789679628180



Laying Down the Law, 8th edition

Authors: Catriona Cook, Robin Creyke, Robert Geddes and David Hamer

Country of Publication: Australia

Year of Publication: 2011

ISBN (book): 9780409328530

ISBN (eBook): 9780409329643

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workshop

LexisNexis co-hosts Constitutional Awareness Workshop for Myanmar lawyers

At the request of Nobel Laureate and Chair of the Parliamentary Committee on Rule of Law, Aung San Suu Kyi, LexisNexis has been engaging with members of Myanmar's government, legislature, and legal profession, to lend support to the country's democratisation efforts.

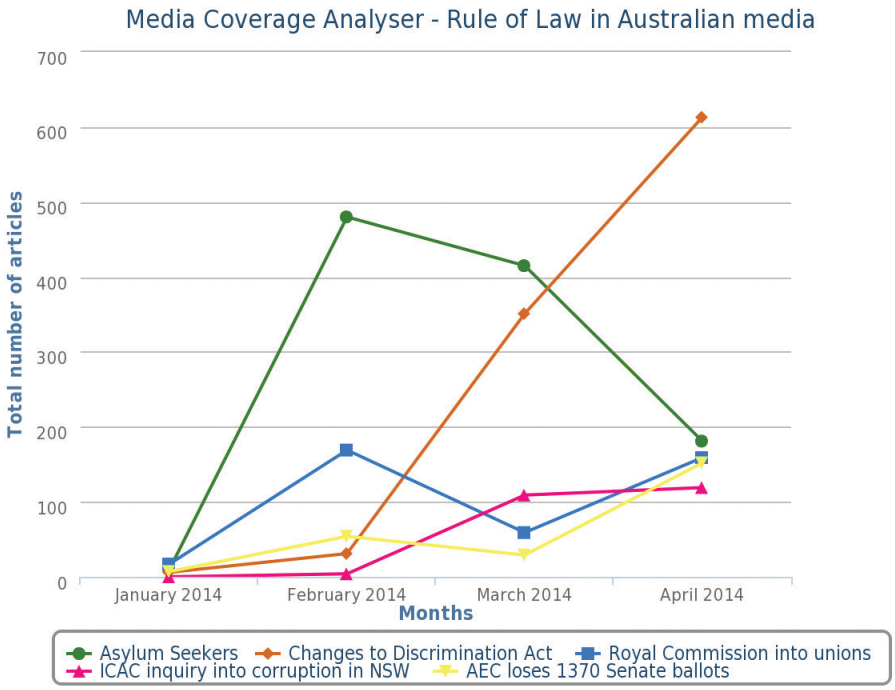
On 14 October 2013, LexisNexis organised a Constitutional Awareness Workshop for 100 lawyers working in Myanmar. The event was co-hosted by the Bingham Centre for Rule of Law, and featured especially created reading material in both English and Myanmar. This material compares the 2008 Myanmar Constitution with other constitutions around the world.

The Constitutional Awareness Workshop was a one-day interactive 'Train the Trainers' session, which aimed to equip Myanmar lawyers with the skills to conduct similar workshops on their own. The commitment of LexisNexis to the Rule of Law entails a commitment to meaningful legal education, which makes it possible to build capacity in a sustainable manner. The workshop facilitated lively debate on the constitution and the need for reform, including the academic and practical aspects of reform.

Empowered with the knowledge and skills acquired in the workshop, these lawyers then participated in a bus tour across six cities to conduct similar

workshops for thousands of their fellow citizens around the country.

The LexisNexis team was delighted to contribute to Myanmar's democratisation process, and looks forward to many more opportunities to help raise the bar.



Rule of law in the news

LexisNexis Media Coverage Analyser tracks how much attention Australia's major newspapers have been giving to the issues that affect the rule of law around the country. Attorney-General George Brandis' proposal to amend Section 18C of the Racial Discrimination Act has attracted considerable attention from the Australian media in the first half of 2014.

workshop

Human Security Cooperation in Asia

ANU Workshop facilitators: Professor Yasunobu Sato and Dr Hitoshi Nasu

Professor Yasunobu Sato (University of Tokyo) and Dr Hitoshi Nasu (College of Law and Co-Director of the Australian Network for Japanese Law and the Australian Centre for Military & Security Law, Australian National University) conducted a half-day workshop to showcase a new graduate program on cultural diversity and multiculturalism at the University of Tokyo.

The workshop focused on contemporary issues on human security such as post-conflict development issues, international criminal justice, refugees/internally displaced persons, asylum seekers, stateless people, minorities, transnational organised crime, and people smuggling. Graduate students from the University of Tokyo presented papers to discuss the promotion of human security cooperation in Asia. ANU experts provided feedback to assist the scholars in further developing their quality as future leaders.

Session 1: Peace and Conflict

Commentators: Mr. David Letts, Mr. Andrew Garwood-Gowers and Dr. Jacinta O'Hagan

Taliban's Legitimisation Strategy — An Analysis through the Taliban's Code of Conduct

Mr Yoshinobu Nagamine, Graduate School of Arts and Sciences, The University of Tokyo (UoT)

This presentation discussed the Taliban's 'Code of Conduct' and its role in legitimising the Taliban through partial compliance with International Humanitarian Law. Since 2006 the Taliban have followed a code of conduct that provides members with instructions on how to live and how to fight. In looking at the workings of renowned fighters considered by the West to be heavily linked to terrorism, Nagamine explored the reasons behind instigating the code of conduct, as well as its relationship with teachings of the Qur'an and international humanitarian law. Nagamine finds that the Taliban do in fact consider how internal and external parties view their activities, and that the code of conduct is a measure intended to legitimise the Taliban as an 'ethical actor' representing the common man in the region.

ICC vs R2P?: From the case of Sudan and Libya

Ms Ayako Hatano, Graduate School of Arts and Sciences, The University of Tokyo (UoT)

This presentation explored the relationship between the International Criminal Court (ICC) and the right to protection under international human rights law. Hatano uses examples from both Sudan and Libya to illustrate that the application of the right to protection can sometimes be uneven. She also considers whether it is within the jurisdiction of the ICC to authorise arrest warrants under the guise of the right to protection. The presentation threw up interesting questions about political bias and the role it plays in decisions made in international bodies, as well as the legitimacy of international bodies such as the ICC in the eyes of non-Western nations.

Session 2: Refugees, Asylum Seekers and Stateless People

Commentators: Mr Matthew Zagor, Ms Marianne Dickie

Resettlement Process of People from Burma Residing in Tokyo: A Study on the Emergence of New Minority-Majority Ties

Ms Miki Kajimura, Department of Area Studies, Graduate School of Arts and Sciences, UoT

This presentation discussed the resettlement of Burmese refugees in Japan. Kajimura primarily focused on the assistance provided to Burmese refugees by NGOs, formal and informal contacts, and social networking. Kajimura compared the community networking taking place among Burmese refugees in Tokyo with Japanese communities that immigrated to the United States. She observed that Japanese migrants formed social groups among other Japanese that originated from the same prefecture, and much the same could be said for Burmese refugees who are settling in Tokyo now. Kajimura also stressed that Burmese refugees currently living in Japan did not consider themselves a permanent part of the Japanese community, and identified themselves as Burmese living in Japan rather than new Japanese citizens.

The Real Refugee Issues in Host Countries: Kurdish Asylum Seekers' Survival Migration in Japan and Japanese Response

Ms. Chiaki Tsuchida, Graduate School of Arts and Sciences, UoT

This presentation focused on the response of Japan and the Japanese immigration system and its impact on resettlement of Kurdish asylum seekers. Tsuchida argued that political influences are at play in decisions to refuse applications from refugees of a certain origin, including Kurdish asylum seekers. Using immigration statistics, Tsuchida illustrated the disparity between applicant of Burmese and Kurdish origin granted refugee status in Japan. The data showed applicants of Burmese origin were much more likely to have their asylum claims granted, and that this has been the case since the Refugee Convention was incorporated into Japanese law in 1982. Tsuchida suggests that Japanese immigration authorities are more likely to reject applicants from countries with formal trade and political agreements with Japan. The immigration system also lacks review measures.

Stateless People and their Access to Education: A Case of Ethnic Minorities in Northern Thailand

Mr Ikuru Nogami, Graduate School of Arts and Sciences, UoT

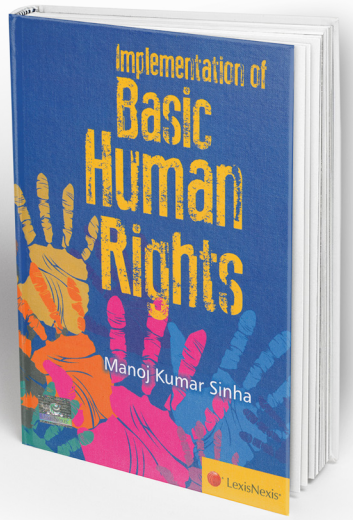
This presentation focused on stateless people, ethnic minorities and their access to education in Northern Thailand. Nogami argued that both physical and institutional barriers prevent access to education for stateless people and ethnic minorities. Nogami pointed out that under international human rights law, stateless people and ethnic minorities are entitled to an education in their own language and about their own heritage. But the presentation showed that the wishes of these ethnic groups may also play a part in the low number of the population receiving an education, because stateless people and ethnic minorities often wish to remain un-institutionalised, and avoiding state education is a way of ensuring this.

Special Session: CDR's Country of Origin Information – Project assisted by LexisNexis Japan

Prof. Satoshi Yamamoto, Secretary General of CDR

Yamamoto spoke about the contribution of large corporations in supporting assistance for refugees. Yamamoto commended LexisNexis's contributions to the cause.

Implementation of Basic Human Rights



Implementation of Basic Human Rights
by Manoj Kumar Sinha
LexisNexis 2013, 300 pages
ISBN 978-81-8038-934-4
Order now from https://store.lexisnexis.com.au/

Prof Manoj Kumar Sinha, Director of the Indian Law Institute (New Delhi), recently published a comprehensive textbook Implementation of Basic Human Rights covering the dynamic area of human rights. Marc K Peter, COO LexisNexis Pacific spoke with Prof Sinha about his new book.

What was your motivation for writing this book?
I wanted to build a comprehensive resource to benefit students and practitioners by providing a central source of definitions, concepts, legal frameworks, and globally important cases around the Rule of Law. The textbook is predominantly focused on international fundaments and concepts, with sections on the current state of the law in India.

What are your key observations about developments in India in support of the Rule of Law?
India has several key cornerstones that support the Rule of Law, including a democratic government, a court system and an independent judiciary. But we do have challenges, such as delays in the court system and ensuring access to justice for underprivileged members of Indian society.

How does your book contribute to the advancement of the Rule of Law and strengthen human rights principles?
This work provides government officials, lawyers, NGOs, academics and students with an overview of human rights developments, both prior to and since the advent of the United Nations. It provides definitions of the recognised non-derogable human rights, such as: the right to life; the right to protection against torture; the prohibition of slavery and servitude; freedom from retroactive criminal offences and punishment; the prohibition of imprisonment for non-fulfilment of contractual obligations; the right to legal recognition; the right to freedom of thought, conscience and religion; and the right to participate in government. Frameworks for the implementation of those rights are provided, at the international and national level, citing the Indian example, and an argument is made for further non-derogable rights to be secured at the international level. By creating a deeper understanding of this important subject, this book will help to entrench and promote the human rights principles that form the heart of Rule of Law initiatives.

Prof Dr Manoj Kumar Sinha is the Director of the Indian Law Institute (ILI), which collaborates with the Supreme Court of India to cultivate and promote the science of law. As a premier centre of national and international legal research and studies, lawyers from all branches of the profession, judges, government officials and academics have participated in the ILI's substantial ongoing contributions to reforming the administration of justice to meet the needs and socio-economic aspirations of the Indian people. ■

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journal review

Australian Journal of Human Rights

The *Australian Journal of Human Rights* (AJHR) is a peer-reviewed journal devoted exclusively to human rights development in Australia, the Asia Pacific region and internationally. By providing a forum for scholarship and discussion, the journal aims to raise awareness of human rights issues and to monitor human rights developments in Australia and throughout the region.

AJHR examines legal aspects of human rights – along with associated philosophical, historical, economic and political considerations – across a broad range of issues, including Aboriginal ownership of land, racial discrimination and vilification, human rights in the criminal justice system, children's rights, homelessness, immigration, asylum and detention, corporate accountability, disability standards, privacy rights and freedom of expression. The journal's patrons are the Hon Elizabeth Evatt AC, Commissioner of the International Commission of Jurists; Professor Philip Alston, Special Rapporteur of the United Nations Human Rights Council on extrajudicial, summary or arbitrary executions, and Director of the New York University Center for Human Rights and Global Justice; and Father Frank Brennan SJ AO, founding director of Uniya, the Australian Jesuit Social Justice Centre, Professor of Law at the Australian Catholic University, and Professor of Human Rights and Social Justice at the University of Notre Dame Australia.

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