

Promoting and Defending the Rule of Law – the role of Bar Associations

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When asked to speak on the role of Bar Associations in promoting and defending the Rule of Law I immediately thought – as many of my colleagues would – of the very high profile advocacy that we, as Bar Associations, are often involved in. These include;

- repeated calls for the closure of the illegal United States detention facility at Guantanamo Bay;
- the recent demand issued to the African union by over 200 African Bar Associations, human rights groups and independent organisations to become involved in the electoral crisis in Zimbabwe;
- advocacy for the restoration of deposed Judges in Pakistan;

Many of you will also be aware that in February a delegation from the IBA's Human Rights Institute was refused entry into Fiji. This resulted in widespread calls to allow international scrutiny of the Rule of Law in Fiji.

I will talk about the South Pacific in more detail shortly.

These were, as I said, my *immediate* thoughts.

When I reflected on the topic in more detail, it seemed to me that to talk about the role of Bar Associations by focusing only on the “headline issues” would be to ignore the vast majority of work we, as Bar Associations, actually do to maintain and defend the Rule of Law.

Defining the Rule of Law

When I talk about the ‘Rule of Law’ I mean it in its broadest sense. Without confining the scope of our discussions today, the functional definition most commonly used for ‘Rule of Law’ may be found in the principles first attributed to Plato and articulated by the English jurist Albert Dicey in his seminal work ‘*an introduction to the study of the law of the constitution*.’ He articulated the elements to be:

- The Supremacy of law over arbitrary power;
- Equality of all before the law;

- The Law of the Constitution as a consequence of individual rights enforced by the courts.

The Work of Bar Associations in Promoting and Defending the Rule of Law

What can Bar Associations do to most effectively promote and defend the Rule of Law?

I see this work as reforming Legal Profession Acts, reviewing Admission Rules and performance measures for legal education to maintain high standards of competency and ethics for lawyers to give them skills to cope with Rule of Law challenges;

I also see it as monitoring enacted laws to ensure continued compliance with the Rule of Law and to ensure that high standards are maintained in public consultations and the drafting of legislation.

The work also involves providing assistance to neighbouring countries by way of training and teaching lawyers.

Wherever they are in the world, whatever the conditions under which they operate, a lawyer is a weapon to defend the Rule of Law.

Lawyers are weapons to defend the Rule of Law.

By this expression, I mean the lawyer's role to safeguard equality before the law by advocating for measures that maintain and improve access to justice and legal representation.

This is done, for example, by ensuring that legal aid schemes are adequately funded and that even the most disadvantaged person can access legal representation.

Importance of 'Routine' Work over 'Headline' Advocacy

Lawyers and Bar Associations cannot protect their clients' rights through their advocacy alone. Unless their clients' – or society's – rights are clearly sanctified and safeguarded by the law, then lawyers have few tools with which to assist them.

There can be no greater role for a Bar Association than to strive to equip lawyers, to in turn equip society, with the laws, tools and institutions to promote and defend the principles of the Rule of Law. Principles upon which a just and equitable society is based.

And note I deliberately use the term 'principles' of law.

Even in countries where the system of laws is weak, the principles embodied by 'the Rule of Law' are beyond reproach.

Promoting the Rule of Law

A key role of Bar Associations in defending the Rule of Law is to publicly advocate for measures that maintain and improve access to justice and legal representation.

Perhaps the most obvious way that Bar Associations undertake this work is by generating educative materials which outline legal rights and the mechanisms for giving effect to those rights.

The provision of educative material about court systems, police powers and resources available to individuals are activities which are directed towards raising local awareness about key Rule of Law issues.

It is unfortunate that so often, even in societies where the Rule of Law is not under threat, the community understands little of the critical importance of the Rule of Law.

All Bar Associations have an obligation to actively promote the Rule of Law to the community.

The Rule of Law requires that the branches of government, the legislature, the executive and the judiciary exercise only their own power such that a government which adheres to the Rule of Law may be a government of laws and not of men.

Laws may be unjust in a legal system which upholds the Rule of Law. A nation without respect for human rights can exist even where the Rule of Law is strong. However, the existence of a strong system of laws which apply equally to all citizens, be they President, Monarch or otherwise is the prerequisite for a just fair and stable society.

Monitoring Enacted Laws

Another primary function of Bar Associations in defending the Rule of Law is to review and monitor the operation of legislation and legal systems to ensure that those laws are working fairly, consistently and in the manner intended.

Given the nature of their work and the frequency and proximity with which they observe the law in action, the legal profession is often in a unique position to document:

- laws which fail to protect and promote people's rights or which operate to directly breach those rights.
- Laws which are adequate but are abused or ignored by those who should enforce the law, but choose to ignore them.

Often the legal profession is the group that 'raises the alarm' and alerts the wider community that certain laws, which would not otherwise be subject to scrutiny, are operating inefficiently or unfairly.

Development of Laws

Bar Associations also participate in the legislative process by contributing to the development of legislation. Many Bar Associations consult with government on law reform proposals and makes submissions to parliament on the contents of draft laws.

Bar Associations do not make these submissions because they believe lawyers should be afforded a privileged position in public debate.

Bar Associations makes these submissions because it is a natural extension of lawyers' duties to their client that they would also concern themselves with questions about the formulation of the law and its broader application to all citizens.

Safeguarding Independence While Maintaining Professional Standards

My own Bar, The Law Council of Australia, has always believed that an independent legal profession is crucial to building and maintaining a state in which the Rule of Law is respected.

Without access to competent and independent legal practitioners, individuals are often unaware of or unable to exercise their rights effectively. When this occurs, the protections afforded them under domestic and international law are rendered meaningless.

In Australia, lawyers are licensed and heavily regulated to bind them to act in their clients', rather than their own, best interests.

Stringent regulation does not impinge on the independence of the profession. However, Bar Associations must endeavour to ensure that the legal profession remains independent so that lawyers are able to provide robust legal representation to all those who require it, without fear of infamy.

At the same time, Bar Associations must ensure that the legal profession abides by the highest professional and ethical standards and remains accountable for any breach of those standards.

South Pacific

As an Asia Pacific Bar Association, the Law Council of Australia has a particular interest in promoting the Rule of Law in its own region – and as an Asia Pacific Bar Association, developing regional partnerships to strengthen the Rule of Law.

In recent times, the Rule of Law has been seriously undermined in Fiji, the Solomon Islands and Papua New Guinea.

Fiji has suffered four military coups in less than 20 years and remains under the administration of an interim military government. Significant troubles have arisen over the last 12 months concerning the independence of the judiciary and legal system in Fiji and a number of key judicial officers have either stood down or fled Fiji citing that their position had become untenable.

The Australian legal profession has been committed to promoting the Rule of Law in the South Pacific for a considerable period of time. Throughout the years the Law Council of Australia has supported capacity building initiatives directed towards improving access to justice, judicial standards, and the training of legal professionals.

In 2005, the Law Council of Australia lent considerable support to the Fiji Law Society in preventing the passing of legislation in Fiji which would have had the effect of exonerating George Speight and those who supported the attempted coup in 2000.

Since 1987, the Victorian Bar Council has trained 105 South Pacific lawyers through its intensive 3 month Bar Readers Course at no fee and operates workshops for national lawyers from Fiji, Vanuatu, the Solomon Islands and Papua New Guinea.

Many Australian State and Territory Law Societies and Bar Associations are linked to Law Societies in the South Pacific through 'twinning' arrangements and many Australian Judges sit on Appellate Courts in the South Pacific.

South Pacific Bar Secretariat

Recently the Law Council of Australia has expanded its commitment to the South Pacific through the South Pacific Bar Secretariat which is housed within the Law Council of Australia.

The South Pacific Bar Secretariat was established in 2007 by the IBA in partnership with the Law Council of Australia and the New Zealand Law Society.

It is based on a proposal developed by the Law Council following consultations with the Fiji Law Society and the New Zealand Law Society.

The South Pacific Bar Secretariat is committed to developing collegiality amongst the legal professions of South Pacific countries to enable better cross-promotion of training programs and sharing of precedents and resources, as well as promoting the Rule of Law throughout the region.

Through the inaugural South Pacific Forum in September last year (2007), twenty-one (21) representatives from fourteen (14) South Pacific Countries participated in identifying key challenges to the Rule of Law in the South Pacific and discussed mutual needs to meet those challenges.

At two teleconferences since that Forum, representatives have come together to refine those initiatives and discuss emerging issues.

A notable feature of the Secretariat is that its initiatives have all been conceived and developed by lawyers from South Pacific Countries – not by ‘well intentioned’ third parties.

With the support of the IBA, the Law Council and others, South Pacific Law Societies are taking ownership of the task of spreading the Rule of Law within their own countries and to their neighbours.

Law Council and the South Pacific Bar Secretariat

The role of the Law Council in the Secretariat is as a facilitator to enable these initiatives to take place. However, we also have a significant logistical role to play.

Relying on the training provided to lawyers in the South Pacific by Australian institutions, the Law Council will be working directly with the profession in Papua New Guinea, Fiji and other South Pacific countries to create locally sustained Continuing Legal Education programs.

Also, over the coming 12 months, the Law Council will be seeking to provide assistance to the Papua New Guinea and Fiji Law Societies to process outstanding disciplinary matters and investigate complaints against practitioners.

Bar Associations, through advocacy training programs and Continuing Legal Education initiatives, improve the skills of lawyers and consequently the capacity of lawyers to protect the rights of their clients.

Concluding Remarks

I will conclude with an earlier point.

Lawyers and Bar Associations cannot protect the Rule of Law through ‘headline advocacy’ alone.

Unless the Rule of Law is clearly enshrined in, and safeguarded by the law, society has no means under the law to seek to enforce the principles of equality and justice protected by the Rule of Law.

The role of Bar Associations is to promote and defend the law in order that lawyers – in order that society – is equipped with the laws – the tools – to maintain the Rule of Law as a foundation for a just and equitable society.

More succinctly and in the words of Marcus Tullius Cicero; whose words have been studied by advocates for over 2 000 years:

“We are slaves of the law so that we may be able to be free.”

There can be no greater purpose.

Thank you.