

LECTURES IN
ADMINISTRATIVE LAW
III

Robert Musumeci

Biography



Dr Robert Musumeci obtained a PhD in Law from the University of Malta with his dissertation entitled '*Judicial Interpretation of Maltese development planning law. Eliciting the added value*' after having been previously selected by the same University for the prize of Best Doctor of Laws Thesis Award in 2016 for his work entitled '*The Development Planning Act 2016 – A critical Appraisal*'. Prior to being admitted to the Maltese Bar, Dr Musumeci had graduated as a *perit* in 1997 and then moved on to also obtain a Masters Degree in Conservation Technology in Masonry Buildings in 2004. He is a former chairperson of the Building Industry Consultative Council (BICC) and was later appointed as a government consultant in the reform which led to Malta Environment and Planning Authority's demerger, the establishment of the Lands Authority, the introduction of a regulatory framework for Estate Agents, the drafting of the constitutional amendments pertaining to the Gender Balance in Parliament Reform and the setting up of the Building Construction Authority. Dr Musumeci is a senior lecturer in planning law and administrative law at the University of Malta. He also authored the book '*Selected Principles of Maltese Planning Law*' (Kite Publications, 2021). Dr Musumeci is the first to hold warrants to practice both as a lawyer and a *perit* in Malta.

Rule of Law and the public administration

In recent years, there has been significant criticism directed towards the management of public administration in Malta. Various online portals have depicted Malta as a country with low democratic credentials and standards, and some commentators have even labelled it as a "mafia state" that disregards democratic principles and the rule of law.

Before delving into the specific issues, it is essential to clarify the meanings of "democracy" and the "rule of law". While the understanding of the rule of law may vary among individuals, it is evident that many people confuse the concepts of "rule of law" and "rule by law." Although these terms may sound similar, they have distinct meanings.

"Rule by law" refers to a situation in which the government or ruling authority uses the law arbitrarily to maintain control and exercise power. In such cases, laws are selectively applied or manipulated by the ruling elite to serve their own interests rather than those of all citizens. Rule by law can legitimize authoritarian or oppressive regimes by providing a façade of legality while disregarding principles of justice and fairness. It often lacks an independent and impartial system to protect individuals from government abuse or to sanction those in positions of power.

On the other hand, the "rule of law" stands in stark contrast to the aforementioned concept. In a society that upholds the rule of law, the government or ruling authority is bound by legal principles that prevent arbitrary use of the law to serve the interests of a privileged few. This entails emphasizing the supremacy of the law and the equality of all individuals before it. It also means that everyone, including government officials and the ruling elite, is subject to and accountable to the law.

Additionally, the laws must be compatible with fundamental rights and freedoms to ensure citizen protection. The rule of law requires clear, publicized, and consistent application of laws.

In summary, the rule of law promotes fairness, justice, and equal treatment under the law, while rule by law can be associated with an instrumental and potentially abusive use of legal mechanisms by those in power. The distinction lies in the guiding principles and values of the legal system and the extent to which the law is applied consistently and impartially.

Upholding the rule of law in Malta is crucial for protecting individual rights, ensuring fairness and justice, limiting government power, promoting economic development, and upholding democratic principles. It also provides a fair legal framework for cooperation and integration between Malta and other countries.

While there is no universal definition of the rule of law, several common criteria are widely accepted as precursors to its establishment. These include the accessibility and clarity of laws, equal application of the law, settlement of legal disputes through courts rather than discretion, the exercise of executive discretion in good faith and fairness, adequate protection of fundamental human rights, cost-effective dispute resolution, fair adjudicative procedures, and the state's adherence to its obligations under international and national law.

Now, let us address the earlier assertions regarding Malta's legal framework and its compatibility with the rule of law. Firstly, it is important to note that Malta is a member of the European Union (EU), which places a strong emphasis on the rule of law as a fundamental value and monitors its adherence among member states. The EU's influence and mechanisms for promoting the rule of law have contributed to its recognition and understanding in Malta. However, even prior to EU accession, Malta had a democratic system in place with a separation of powers, as outlined in its Independence Constitution since 1964. This separation

ensured that no part of the government could become authoritarian or totalitarian, thus safeguarding Malta's democracy.

Regarding the protection of human rights, at least in recent history, there is no record of Malta using laws related to terrorism and national security to target government critics, leading to restrictions on freedom of speech. To my knowledge, there have been no instances of independent media outlets being closed by the State, allegations of torture or arbitrary detentions, or violations of due process. Furthermore, there is no evidence of political interference in the judiciary from the executive with a view to undermine its independence.

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