The rule of law à la maltaise

Kevin Aquilina

The rule of law à la maltaise is the title of a book I have just published. I consider the rule of law to be paramount to a civilised democratic society. À la maltaise (the Maltese way of doing things) has had to be added to the book's title precisely to distinguish the theoretical concept of ‘the rule of law’ from the way it is practiced in Malta.

Defining the rule of law

To put it succinctly, the rule of law simply means that people should be regulated by the law. It is not a question of the law of the jungle where the survival of the fittest is parame­

r, but respect for the supremacy of the law. In its elaborate formulation it requires, inter alia, safeguarding of fundamental rights and freedoms; upholding the separa­

tion of powers and the independence of the judiciary; allowing easy access to the courts, providing for legal cer­

tainty; curtail­

ing administrative discretion; respecting minority rights; implementing an effect­

ive and counten­

ance in the workings of all state institutions; granting access to government-held in­

formation; empowering a free press and enforcing laws propor­

timately. But this is a far cry from what really happens in the field. Hence theoretical one thing, practice is an all-together distorted vision of theory. Flipping through the book, the reader will come across in­

stances where the rule of law is con­

tradicted. Let me exemplify.

By Parliament

By Parliament I mean by both government and the Opposition and by ‘opposition’ I refer to the majority party in opposition, the Nationalist Party. Take that the Constitutional Reforms (Justice Sector) Act, 2016 — clearly in breach of several pro­

nouncements of the European Court of Human Rights — is voted upon by both government and opposition notwithstanding the principles of the rule of law, the separation of powers and the independence of the judiciary. All these principles are thrown overboard by the legislator.

By Government

Recourse to positions of trust to employ people in breach of the Constitution, notwith­

standing the Maltese way of putting enormous pressure on the Prime Minister to ride rough shot over the rule of law?

Institutional failure

In my book’s preface I write that “À la maltaise is the rule of law in our country is at the crossroads and it tends to be at the crossroads to the extent that it ends up breached by those same institutions of the state which are called upon to promote, preserve, defend, nourish and safeguard it. I at­
tribute the inadequacies of the rule of law today to institutional failure — failure by the institutions of the state to carry out their duties and to fulfil their role in the full respect to the observance of the law.”

The Way Forward

We will get to know whether the two main political parties in the Bridge of Karmen are in good or bad faith depending on their actions next year. Will they come together to address this matter? The Constitutional Convention should provide an excellent forum for redressing all the past and current maladies of the rule of law. My fear is that the Constitutional Convention will fail or, worse, fall down and come go and all the bad practices we have been ac­

ting for, during the last fifty-three years of being an in­

dependent state will end up being constitutionalised. So we will continue to have the judiciary appointed, promoted, disciplined and removed by our political masters, provisions of trust will be enshrined in the Constitution, new financial prov­

usions in the Constitution will ensure that direct orders should invariably prevail over the ten­

ding decrees, that back bench MPs should continue to be allowed to act as Government ad­
visors and attend Cabinet meetings, that nepotism and clientelism are embedded within the Constitution as fundamental principles of state governance and that appointments and pro­

motions are dished out not on the basis of merit but on the basis of political party mem­

ship and of sympathy. This is why I fear that for republican Malta but I fear that this is what I will have to swal­