

"Hong Kong Today" Module

Rule of Law

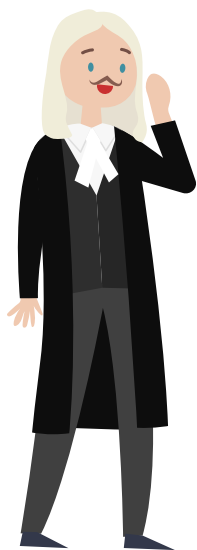
Justice, the rule of law, freedom, democracy and equality may be the most common elements in the pursuit of human rights today, and there is a sequential order for these ideals. The ancient Greek philosopher Plato raised the question of "What is Justice?" in his work Republic that marked the beginning of Western political philosophy. Later, his student Aristotle developed the concept that the rule of law is preferable to that of men. While justice creates the foundation and standard for the rule of law, it is the achievement of the rule of law that delivers the social order through which we can develop the ideals of freedom, democracy and equality.

The concept of the rule of law has evolved with time. In the 19th century, A.V. Dicey, an acclaimed British legal expert, proposed his view on the development of the British constitutional system, believing the rule of law should include three important principles:

- **Supremacy of Law.** Everyone should be and only be ruled by law.
- **Equality before the law.** This is an extension of the first principle. It may be claimed that law has the highest priority and that everyone is ruled by it, but what can be done if the law does not treat everyone fairly? If it is accepted that the highest priority be given to law, it should treat every person the same. Everyone is entitled to their rights as protected by law, nobody's rights should be allowed to override those of others, and everyone shall obey the same set of laws and be governed by the same court.
- **Constitutional principle** (rights of the citizens). Another extended concept is the constitutional principle in general, including the rights of the citizens originated from the judgment by the court. Based on the above, in addition to the priority of law, emphasis has also been laid on the importance of the court's power and jurisdiction.



More than a century after Professor Dicey proposed his theory on the rule of law, Lord Tom Bingham, the former President of the Supreme Court of the United Kingdom, came up with his own concept on the rule of law at the beginning of this century.



In addition to defending foundational principles proposed by his predecessors (e.g. everyone should obey the law), he also added insights based on historical background.

First, **the rule of law means examining and verifying government acts as well as the legitimacy and constitutionality of law.** While the former establishes the existence or absence of legal basis, the latter takes a step forward and stresses that even for legal acts, it must be considered whether the act itself or the law it is based on complies with the constitution. Any government acts or law shall be revoked or cancelled should it constitute a breach of the constitution. In Hong Kong, this is called judicial review.

Secondly, **citizens have the right to understand the law.** This requires the law to be perceptible, understandable, clear, assertive and predictable. Only then can citizens distinguish between the things that they can and cannot do.

Thirdly, **the law should provide sufficient protection to citizens' fundamental human rights.** Fundamental rights are certain basic values that reflect global consensus. In practice, the meaning is twofold: First, the law applies to everyone and no one is entitled to privilege, special preference or unequal treatment (with the exception of a few special situations, such as taking care of people with disabilities). These opinions are similar to those of Professor Dicey, in that no one should be entitled to more rights than others. Second, the law should ensure citizens' fundamental human rights. As well as relying on the court's effective operation and citizens' respect of the law and the court, it is also the government's power to enforce and support the implementation of different laws.

Hong Kong is a civilised metropolis and its citizens are aware of the importance of the rule of law in ensuring the equity of social operation as well as protecting individual rights, and they work together to maintain the rule of law. **The Basic Law guarantees the principle of the rule of law for Hong Kong** while vesting the power of final adjudication with the Court of Final Appeal. **Resting this power of final adjudication is a symbolic act marking Hong Kong's judicial independence,** and the institutional foundation to ensure that the principle of the rule of law is carried forward in Hong Kong.

