

# Research on law and policy

Rohan Samarajiva

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# Objective

- Ability to undertake legal and policy analysis
- Develop awareness of quality of information and sources
- Discriminate between good studies and bad

# Deceptively easy

- “Anyone can analyze written text”
  - But if so, why are there lawyers?
  - And why are many of them rich and powerful?
- Words are inherently ambiguous
  - Lawyers make them have even more meanings
- Words in laws, by themselves, have no authority; it’s the authoritative interpretations of specific kinds of words that do

# Words and their meanings

- “A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.”

2<sup>nd</sup> Amendment to US Constitution

- “The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.”

DISTRICT OF COLUMBIA v. HELLER (No. 07-290)

478 F. 3d 370, affirmed, pp. 2–53.

# Words and their meanings

- The US Constitution is the supreme law
  - But the words on paper do not give its meaning
  - What matters is the interpretation given to those words by the nine men and women in Supreme Court
    - Even that is not final; it's the interpretation of their judgment that matters
    - And that can change over time

# Dred Scott v. Sandford, 60 U.S. 393 (1857)

- Was the plaintiff, a slave of African ancestry, a citizen of the United States and thus able to invoke the protection of law?

# Dred Scott v. Sandford, 60 U.S. 393 (1857)

- The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who ... form the sovereignty, and who hold the power and conduct the Government through their representatives.... The question before us is, whether the class of persons described in the plea in abatement [people of African ancestry] compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

# HIERARCHY OF AUTHORITY



# The framework

- Is the supreme law, the Constitution

# Myanmar Constitution 2008

- The three branches of sovereign power namely, legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves. Art. 11(a)
  - Does not follow Westminster Model where separation of legislative and executive functions is somewhat fuzzy
  - Except that President is not directly elected, but is elected by an electoral college made up of legislators
  - Legislators can become Ministers, but they cease to be legislators when they do. Art. 232(i)



# Law is . . .

- **Made and amended by Parliament**
- Subordinate to the Constitution, the Telecommunications Law (2013 Union Parliament Law No. 31) sets out the broad principles and powers
  - Not expected to be changed frequently, though ICT sector laws become obsolete quickly
  - Rules made under a Law spell out details and allow greater flexibility

# Policies, plans and strategies are . . .

- **Adopted by the Executive;** subordinate to Law
- Policy sets out *what* must be done and justifies *why* it must be done
- Plans, which are more concrete and short-term, provide the strategy by which the policy is to be implemented
  - Plans define *how* the necessary actions will be taken by *whom* and *when* so that the policy objectives may be realized

# Exceptions

- Occasionally, a policy can include elements of a “White Paper” that sets out the government’s legislative intentions (e.g., National Telecom Policy (NTP) of Bangladesh, 1998)
  - Here, the policy is inconsistent with the existing legislation and therefore cannot be fully implemented until the consistent law is enacted
- Efforts have been made to adopt policies (e.g., Sri Lanka NTP in 2002) that are inconsistent with Constitution; was not allowed to go through

# Regulation is . . .

- “Sustained and focused control by a public agency over activities in a sector”
  - Restraining
  - Enabling
- Regulatory agencies are created to exercise discretion in lawful and predictable ways: “regulation is administration done well”
  - Tend to have additional consultative and procedural obligations
  - Also subject to appeal



# What to remember

- Actual words matter; not paraphrases
- Words must be placed in context
  - Words as interpreted by the right people, rather than words per se
  - Interpretations vary, so highest/most recent is what matters

# WORDS ARE NOT ENOUGH



# Why am I telling you this story?

- Late at night, a police officer finds a drunk man crawling around on his hands and knees under a streetlight. The drunk man tells the officer he's looking for his wallet. When the officer asks if he's sure this is where he dropped the wallet, the man replies that he thinks he more likely dropped it across the street. Then why are you looking over here? the befuddled officer asks. Because the light's better here, explains the drunk man.

# Laws, as actually practiced . . .

- Not all Constitutions are sacrosanct
- Not all laws are implemented
- Not all rules are followed
- In countries with weak government, laws and policies tend to be implemented selectively
- Always important to go beyond what you can find on Internet