【Special Features: Multiple Aspects on Constitutionalism –Asian "Contexts" and its Logic】

Theoretical Foundations for Asian Constitutionalism: The Case of Singapore

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Abstract

A contextual approach is key to understanding the nature and purpose of constitutions beyond the generic function of regulating public power. The Singapore constitution, which establishes a parliamentary system of government, is a hybrid of US-British influences, which has been developed along an autochthonous track in terms of both experimental institutional design (like the elected presidency with limited executive powers, unelected parliamentarians and multi-member constituencies with guaranteed ethnic representation) and rights jurisprudence, with an overt normative commitment to communitarianism. This operates within a neo-Confucianist political culture where ideas of the honourable gentleman ("君子") influences the law of political defamation and the rationale for laws regulating online falsehoods, given the emphasis on honesty and integrity in public discourse. Relational constitutionalism is an aspect of the Singapore approach towards manages inter-religious disputes, where the goal is to use a mix of formal and informal regulation to keep civil peace, relational welfare and social resilience, rather than to insist only on rights and legal sanction. In understanding the Singapore constitutional experience, one must appreciate that Law is not just a tool to constrain power but to serve efficient governance. Given the premium placed on political stability as essential to economic development, the rule of law is qualified by considerations of necessity through strict anti-subversion legislation. In terms of constitutional identity, aversive constitutionalism is displayed in the divergent approach towards race and religion Singapore adopts, compared to Malaysia, which it seceded from in 1965.

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I. Introduction

Constitutionalism is a site of confluence where "national history, custom, religion, social values and assumptions about government meet positive law."[1] As such, context is key to apprehending a constitution in terms of the political philosophy which affects the development of a constitution as a living institution[2] and in terms of its jurisprudence.[3] The primary objective of generic constitutionalism is to regulate the exercise of public power, whether in terms of constraint or in facilitating government action to secure fundamental principles and values.

Power, justice and culture may be identified as the three general elements of constitutionalism. All constitutions grapple with the Madisonian conundrum of empowering and restraining *power*,[4] reflected in the structuring of institutions for decision-making. They espouse principles of *justice* operating from the premise of universal applicability, such as the concept of democracy, the rule of

[1] 'Introduction', *Constitutional Systems in Late Twentieth Century Asia*, LW Beer ed., (University of Washington Press), 2. For general works on Singapore, see Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012); Kevin YL Tan, *The Constitution of Singapore: A Contextual Analysis* (Hart Publishing 2015); Li-ann Thio and Kevin Tan, *Evolution of a Revolution: 40 years of the Singapore Constitution* (Routledge-Cavendish, 2009).

[2] The Constitution is a living institution in the sense that in the first instance it is "a set of ways of living and doing. It is not, in first instance, a matter of words or rules. It rests on people behaving in certain patterns." Karl Llewellyn, 'The Constitution as an Institution' (1934) 34 Columbia Law Review 1 at 17-18

[3] See generally, Thio Li-ann, Principled Pragmatism and the 'Third Wave' of Communitarian Judicial Review in Singapore in *Constitutional Interpretation in Singapore: Theory and Practice*, J Neo ed., (Routledge, 2016). 75-116

[4] "But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself." *Federalist* No. 51.

law and human rights, although there are varied conceptions in terms of how to implement them.[5] The *cultural* element is "specific and particularistic" and may be pre-political or politically constructed by governing elites.[6]

In a nutshell, the Singapore model of constitutionalism is a hybrid of US-British influences, with a distinctive autochthonous stamp in terms of an overt normative commitment to communitarianism.[7] This has informed constitutional experiments in institution-building and jurisprudence, grounded in the adaptation from Euro-American civilisations of values and legal transplants like "parliamentary democracy and the rule of law."[8] In this context, 'law' is viewed not only as a tool for constraining power and ensuring a 'government of laws' and not men, but also as an instrument to facilitate effective and efficient government and to implement the goals of a developmentalist strong state.

As an aspect of its British colonial legacy, the Singapore constitution is a "modified" version of "the doctrine of the separation of powers", accommodating "the Westminster model of parliamentary government."[9] The "efficient secret" of the English Constitution is reproduced with "the nearly complete fusion of the executive and legislative power", through the "connecting link" of the Cabinet, which is "a committee of the legislative body selected to be the executive body."[10] This system of government is centred on political constitutionalism, a reliance on political checks and balances like ministerial responsibility to Parliament and robust democratic checks.

The American influence is represented in the American style model of *Marbury v Madison* type judicial review which aims to weaken the efficiency of the political branches, where the courts can strike down unconstitutional legislation.[11] Part IV of the Singapore constitution also contains a justiciable bill of rights, reflective of legal constitutionalism**.** This is limited by ouster clauses or

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[5] On the rule of law in Singapore see Thio Li-ann, Between Apology and Apogee, Autochthony: The Rule of Law beyond the rules of law in Singapore, (July 2012) SJLS 269

[6] Donald Lutz, 'Thinking about Constitutionalism at the Start of the Twenty-First Century (2000) 30(4) Publius 115-135.

[7] Paragraph 30, shared values white paper (Singapore Parliament, Cmd 1 of 1999) ("While stressing communitarianism, we must remember that in Singapore society the individual also has rights which should be respected, and not lightly encroached upon. The Shared Values should make it clear that we are seeking a balance between the community and the individual, not promoting one to the exclusion of the other.") The Chief Justice noted that "a prominent feature of our cultural substratum, which is an emphasis on communitarian over individualist values." Sundaresh Menon, 'Executive Power: Rethinking the Modalities of Control (2019) 29 Duke Journal of Comparative and International Law 277-305.

[8] Para 29, Shared values white paper.

[9] Chan Sek Keong J, *Cheong Seok Leng v PP* [1988] 2 Malayan Law Journal (MLJ) 481, 487.

[10] Walter Bagehot, The English Constitution (1867), available at http://derecho.itam.mx/facultad/materiales/proftc/herzog/

The%20english%20constitution%20walter%20bahegot%20adobe.pdf

[11] This is not explicitly provided for in the constitution, although article 93 vests judicial power in the judiciary and the case law supports this type of judicial review. Public Prosecutor v *Taw Cheng* Kong [1998] 2 SLR (R) 489 at [89] "The courts, in upholding the rule of law in Singapore, will no doubt readily invalidate laws that derogate from the Constitution which is the supreme law of our land."

'notwithstanding' clauses, which preclude judicial review, such as in relation to the Internal Security Act, an anti-subversion law which authorizes detention without trial, violating fundamental liberties relating to personal liberty and criminal due process. In this instance, faith is placed in non-judicial or political checks like Parliament or the President who may in his personal discretion 'veto' a detention order is an advisory board recommends release of a detainee, contrary to the decision of the executive.[12] Originally directed primarily at communists and criminal triads, it has mainly been exercised against terrorists, though there is a lingering fear it may be used to suppress political dissenters.[13] Necessity thus qualifies the rule of law.

Nonetheless, Singapore distinguishes itself from the dominant western liberal model of constitutionalism, whose chief features (at the risk of gross simplification) is the prioritization of individual autonomy and the idea of a 'neutral state' which does not interfere with the pursuit of individualised conceptions of the good, is agnostic and does not judge between competing worldviews and disavows interest in the character of its citizenry. This finds expression in a rights-oriented court-centric ('ROCC') model of constitutionalism. In contrast, illiberal or non-liberal societies reject liberal values in according primacy to the interest of the community and a shared conception of the good which entails promoting a certain ethos among citizens. In terms of typology, Singapore would be described as practising a non-liberal, illiberal or even authoritarian form of constitutionalism,[14] though more accurately, all constitutions have a mix of liberal and non-liberal elements.[15]

Singapore had no 'constitutional moment' in the form of a constituent assembly as she was weighed down with the more immediate socio-economic concerns of nation-building, including problems of unemployment, housing and maintaining social cohesion in the face of threats posed by communism and ethnic-religious communalism. The existing state Constitution of Singapore was retained with consequential amendments to reflect state independence; early plans to draw up a new constitution to entrench democratic practices and minority rights were abandoned.[16] It is not surprising that constitutional pragmatism was a driving force behind the adoption of the Republic's first constitution, which was concerned with what was serviceable rather than high idealism. Indeed, Singapore has been described as an 'accidental nation', as the intention of the departing British

[12] Article 151, Singapore Constitution.

[13] Such as in the case of the detention of about 20 people in the so-called 'Marxist conspiracy' of the late 1980s. See Michael Hor, 'Law and Terror: Singapore stories and Malaysian dilemmas' in Global Anti-Terrorism Law and Policy (CUP, 2005)

[14] Mark Tushnet, 'Authoritarian Constitutionalism' (2015) 100(2) Cornell Law Review 391

[15] Li-ann Thio, Chapter 5 'Constitutionalism in Illiberal Polities' in *Oxford Handbook on Comparative Constitutionalism*, Andras Sajo & Michel Rosenfeld eds., (Oxford University Press, 2012) 133-152; Graham Walker, 'The Idea of Nonliberal Constitutionalism' in Ian Shapiro and Will Kymlicka (eds), *Ethnicity and Group Rights* (NYU Press 1997) 154-184.

[16] 'A team of experts to draft S'pore Charter', *Straits Times* (Singapore), 11 September 1965.

colonial powers, with the negotiated agreement of local leaders, was that the city-state should find a place as part of the Federation of Malaysia, which Singapore seceded from on 9 August 1965.[17] This does not mean that Singapore does not have ideals, though this is somewhat muted rather than trumpeted in a constitutional preamble or directive principles.

Two key features should be observed in understanding constitutional development and the direction of constitutionalism in Singapore.

First, Singapore has enjoyed a long uninterrupted period of political stability and has not experienced political turnover since Independence. It has a dominant party state[18] which today commands an overwhelming majority of 82 of 89 elective parliamentary seats. This means that the ruling People's Action Party (PAP) party may and has regularly amended the constitution which generally requires the support of a two-thirds parliamentary majority.[19] This has facilitated a spate of constitutional experiments.

Second, Singapore has presented an alternative law and development model centered around a strong state model which is able to undertake long-term planning and to implement unpopular policies, such as compulsory acquisition. The view, which has been dubbed the 'Asian values' school in certain quarters, is that in the early phase of a nation's development, "too much stress on individual rights over the rights of the community will retard progress." Political stability as to be achieved through social discipline, by curtailing an over-robust exercise of civil and political rights; combined with a legal environment that protected contract and property rights, this was key to achieving economic take-off, which fueled Singapore's economic success from third to first world nation within a generation. [20]

Over time, with the emergence of new interests which need to be accommodated, which may result in "a looser, more complex and more differentiated political system."[21] This in fact is what has happened over time in Singapore, in terms of both political culture and institution-making which is meant to reflect some degree of (managed) political liberalisation, albeit not after the model of western

[17] This stemmed from deep political and economic disagreement between the ruling parties of Singapore and Malaysia, exacerbated by racial tensions between the Malay Majority in the Peninsula, and the Chinese majority in the city state. Singapore gained independence from Britain by joining the Federation on 16 September 1963.

[18] The PAP held all parliamentary seats between 1968-1981 when Singapore effectively had a one party state, primarily because of the weakness of the parliamentary opposition and their failure to contest and win electoral sins, until JB Jeyaretnam broke the PAP stranglehold by winning the Anson by-election in 1981.

[19] There have been about 50 Constitutional Amendment acts since independence. The governing provision is article 5 of the Constitution of the Republic of Singapore. More complex regimes in articles 5A, 5B and 5C

[20] For example, the gross GDP per capita from USD$500 in 1965 to USD$50,000 in 2011. K Shanmugam, 'The Rule of Law in Singapore' [2012] SJLS 357-365 at 358.

[21] Statement by Foreign Minister Wong Kan Seng, Vienna World Conference on Human Rights, 16 June 1993, Government Press Release 20/JUN09-1/93/06/16

liberal democracy. This may be described as a form of paternal (a relational term) democracy, as distinct from paternalism (a father knows best ideological mindset). This reflects the changing relationship between the Singapore government and the governed, reflected both in institutional developments and the rules of engagement. For example, while First Prime Minister Lee Kuan Yew was viewed as an authoritarian paterfamilias who ruled with an iron fist, Second Prime Minister Goh Cho Tong presented himself as an 'elder brother'[22] who sought to persuade rather than to impose *diktat.* Third Prime Minister Lee Hsien Loong, after suffering the electoral loss of a multi-member constituency in the 2011 General Elections, adopted the posture of public servant leadership, stressing that politicians were to serve their constituents, that there was no job security in politics, and emphasising popular consultation, catering to a more literate, wealthy and demanding citizenry.

The Singapore experience has demonstrated that economic reform and human development does not have to take place in tandem with political liberalisation after the Western 'ROCC' model. This successful economic track record earns the government a great deal of performance legitimacy, in tandem with democratic legitimacy from the ballot box.

II. Aversive Constitutionalism

1. Managing Race and Religion

Although the Singapore government is pragmatic in orientation, it is principled in various respects. This is evident in the strain of aversive constitutionalism evident in the rupture from the Malaysian approach that the Singapore constitutional order adopted, in addressing questions of race and religion in a different manner. It was recognised from the outset that "a nation based on one race, one language and one religion, (*Satu Bangsa, Satu Bahasa, Satu Ugama*) when its peoples are multi-racial, is one doomed for destruction." Having a "multi-racial secular society" was a "dire necessity" to ensure state survivability. [23]

The existing state Constitution of Singapore was retained with consequential amendments to reflect state independence; early plans to draw up a new constitution to entrench democratic practices and minority rights were abandoned.[24] Nonetheless, a 1966 constitutional commission was convened to propose adequate constitutional safeguards to secure the rights of racial, linguistic and religious

[22] Bertha Hanson, "PM Goh on his role as 'elder brother'" *The Straits Times* (20 October 1994) 4.

[23] Ministerial Statement, EW Barker, Minister for Law and National Development, 'Appointment of Constitution Commission' 24 Singapore Parliament Reports, 22 Dec 1965 at col 429.

[24] 'A team of experts to draft S'pore Charter', *Straits Times* (Singapore), 11 September 1965.

minorities.[25] Three points are noteworthy in appreciating religion-state relations and how the constitution deals with ethno-cultural diversity.[26]

First, Singapore practices a form of secular democracy. In opposition to the Malaysian confessional constitution,[27] the Singapore constitution makes no reference to any religion, there is no *invocation dei.* The Proclamation of Singapore of 9 August 1965 rests on the "inalienable right of a people to be free and independent", an expression of popular sovereignty and people-centric democracy. Article 152 of the Constitution enjoins the government to care for the interests of "racial and religious" minorities in Singapore, but does not recognize any minority rights or special privileges, distinct from Malaysia's preferential treatment of *bumiputeras* (sons of the soil) in terms of economic privileges. In particular, the government is to exercise its function in a manner which recognizes the "special position of the Malays" as indigenous people of Singapore. Pursuant to article 153, a degree of legal pluralism is recognised through the Administration of Muslim Law Act (Cap 3), which establishes an Islamic religious council, syariah courts and provides for religious law over a limited range of personal and customary law matters such as marriage, wills and halal certification. AMLA "reassures the Muslim community that its religion, Islam, and their Muslim way of life, have their rightful place in plural Singapore."[28] Religious courts are subject to the jurisdiction of civil courts, over the correct construction of statutes and in relation to procedural fairness.[29] AMLA is an exception to the generality of laws, a rule of law virtue, and underscores the importance of protecting pluralism in relation to the rights of ethnic and religious minorities.

Second, unlike the Malaysian Constitution which defines as 'Malay' someone who practices the Muslim religion under article 160, the Singapore Constitution does not ascribe a religion to any person based on their ethnicity,[30] even if 99.4% of Malays are Muslim.

Third, the Singapore Constitution adopts more liberal religious freedom guarantees. Article 15 protects the rights of every person to 'profess, practice and propagate' their religion; the Malaysian ban against religious propagation to Muslims was explicitly rejected by the 1966 constitutional

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[25] Li-ann Thio, 'The Passage of a Generation: Revisiting the 1966 Constitutional Commission' in *The Evolution of a Revolution: 40 Years of the Singapore Constitution* (Routledge-Cavendish, 2009), Li-ann Thio & Kevin YL Tan eds., 7-49.

[26] Li-ann Thio, Constitutional Accommodation of the Rights of Ethnic and Religious Minorities in Plural Democracies: Lessons and Cautionary Tales from South-East Asia (2010) 22 Pace International Law Review 43-101

[27] Article 3 of the Federal Constitution of Malaysia recognizes Islam as the religion of the federation. While historic intent indicates that Malaysia was meant to be a secular state, there have been political and judicial contests with respect to whether 'Islam' is a public law value: see generally Joseph M Fernando, *The Making of the Malayan Constitution* (MBRAS Monograph No. 31, 2002).

[28] Zainul Abidin Rasheed, Senior Minister of State (Foreign Affairs) 85 Singapore Parliament Report, Administration of Muslim Law (Amendment) Bill, 17 Nov 2008 at col 741

[29] *Mohd Ismail bin Ibrahim v Mohd Taha bin Ibrahim* [2004] 4 SLR 756

[30] Article 160 of the Federal Malaysian Constitution provides

commission as being incompatible with a secular democracy.[31] Neither does Singapore have any apostasy or blasphemy laws, as religious offences related not to the truth of a religious belief, but the use of religion to stir feelings of enmity, hatred, ill-will and hostility between different religious groups which harms the public order and the quasi-constitutional value of 'racial and religious harmony', which transcends public order to relating to the qualitative relationship between groups and how this affects the broader national solidarity.

There are diverse varieties of 'secularisms', and the form of the secular state in Singapore is anti-theocratic, not anti-theistic: individuals with religious convictions have the equal right with those of irreligious convictions to engage in public debate over law and policy matters. [32] The Court of Appeal has described the Singapore model as one of 'accommodative secularism'[33] while a leading minister has termed it "secularism with a soul", a system under which religion is not denigrated or marginalized but "allowed to play its role in forging a harmonious and cohesive society in our Singapore"[34] which is the world's most religiously diverse country.[35]

A strict separationist model is not practiced, as is clear from the interaction between religion and state in certain respects, such as the co-operative partnership between the government and religious groups engaged in promoting social welfare, which exemplifies the role of religion as a 'constructive social force'. [36] Nonetheless, there is a certain wariness in relation to the mixing of 'religion' and 'politics', such as where religion is invoked in electoral rallies to influence voting or to inspire disaffection against the government under guise of propagating a religious belief. The Maintenance of Religious Harmony Act (MRHA) empowers the issuing of non-justiciable restraining orders to 'gag' religious leaders to prohibit them from orally addressing a congregation or publishing in religious publications without ministerial permission.

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[31] Para 38, Report of the Constitutional Commission (Singapore Government Printer, 1966); see 'The right to choose one's religion - by a padre' *Straits Times*, 9 March 1966 at p.6. (A Malay Christian priest stating it was possible to practice Malay customs without being a Muslim)

[32] Religion in the Public Sphere of Singapore: Wall of Division or Public Square' in *Religious Pluralism and Civil Society: A Comparative Analysis*, Bryan S Turner ed., (Oxford: Bardwell Press, 2008) 73-104

[33] *Nappalli Peter Williams v Institute of Technical Education* [1999] 2 SLR 569 at [28].

[34] Zainul Abidin Rasheed, Administration of Muslim Law (Amendment) Bill, 74 Singapore Parliament Debates 23 May 2002.

[35] The Pew Research Centre ranked Singapore first on the Religious Diversity Index in 2014). It stated that "About a third of Singapore's population is Buddhist (34%), while 18% are Christian, 16% are religiously unaffiliated, 14% are Muslim, 5% are Hindu and <1% are Jewish. The remainder of the population of 5 million people belongs to folk or traditional religions (2%) or to other religions considered as a group (10%)." Pew Research Center, "Global Religious Diversity", 4 April 2014 at http://www.pewforum.org/2014/04/04/global-religious-diversity/.

[36] Para 45, shared values white paper (Cmd 1 of 1991). See Thio Li-ann, 'The Cooperation of Religion and State in Singapore: A Compassionate Partnership in Service of Welfare (Fall 2009) 7(3) Review of Faith & International Affairs 33-45; Kuah-Pearce Khun Eng, 'The Politics of Religious Philanthropy - Buddhist Welfarism in Singapore' in *Religious Diversity and Civil Society: A Comparative Analysis*, Bryan S Turner ed., (Bardwell Press, 2008).

The fear or trauma caused by race riots in the 1950s and 1960s in Singapore and Malaya fuels the primary principle of maintaining religious and racial harmony, which is one of five shared values.[37]

III. Positive Project: 'regardless of race, language or religion, so as to achieve a democratic society'[38]

Singapore's founding fathers determined to have a multi-racial state based on meritocracy, eschewing preferential treatment and special rights. This is reflected in the 4 official languages in Singapore stipulated in Article 153A (Malay, Mandarin, Tamil and English). The dominant belief was that members of minorities would be protected by a general individual rights regime, as clamoring for "rights different from those or additional to those enjoyed by the majority" was thought to repudiate the "democratic principle of equal rights",[39] and might provoke ethnic chauvinism on the part of the Chinese majority

Nonetheless, to pacify minorities, particularly the Malay minorities who had *bumiputera* status in the Malaysian Federation, the 1966 Constitutional Commission proposed having a 'Council of State' with powers of legislative review, designed to ensure that aggrieved parties would have adequate opportunities to make representation before the enactment of legislation that was discriminatory against members of any racial, linguistic or religious. Eventually, this took the form of the Presidential Council of Minority Rights (PCMR), which was a diluted form of the original proposal insofar as it did not compose independent experts but included high ranking cabinet ministers; meetings were to be held in camera, not in public. The PCMR was to draw attention to any "differentiating measure"[40] in a bill, but rather than allowing a PCMR report to be made to Parliament before the second reading of a bill, which is the main forum for debate, a report is made just before the third reading. The president cannot assent to a bill if the PCMR is of the opinion it would containing a differentiating measures, unless the Bill is a money bill, relates to security or which the Prime Minister certifies as 'urgent.' Nonetheless, even if the PCMR submits an adverse report, this can be overridden by a motion for presenting the Bill to the President supported by a two-thirds parliamentary majority, which the

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[37] These shared values may be read like a quasi-constitutional preamble and include: Nation before community and society above self; Family as the basic unit of society; Regard and community support for the individual; Consensus instead of contention; Racial and religious harmony: (Shared Values white paper, CMD 1 of 1991, Singapore Parliament) at [52].

[38] Singapore Pledge (1965), authored by S Rajaratnam.

[39] S Rajaratnam, (Foreign Affairs Minister), Report of the Constitutional Commission, Singapore Parliamentary Debates Official Reports (16 March 19677) vol 25, cols 1353-1372.

[40] Article 68 provides that "differentiating measure" means any measure which is, or is likely in its practical application to be, disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities, either directly by prejudicing persons of that community or indirectly by giving advantage to persons of another community;

PAP today easily commands. Unsurprisingly, the PCMR has been criticized for being toothless, its main role being symbolic, to provide some psychological assurance to minorities.

The importance of symbols and the ideal of multi-racialism was also evident in the recommendations made in 2016 by a constitutional commission to the institution of the elected presidency (EP).[41] The EP was introduced in 1991, transforming the ceremonial office of the president as head of state to an elective one, vested with a range of 'veto' powers, primarily in relation to fiscal matters. The qualifications for EP candidate was so stringent there was a real fear that members of the Malay community in particular would not qualify, as candidates from the public sector had to hold high public office (CJ, AG, Minister, Speaker), or be CEOs of statutory boards or government companies, while candidates from the private sector had to be CEO of a company worth $500m shareholder equity. The 2016 constitutional commission noted that pre 1991, there was a constitutional convention where the presidency was rotated amongst the various ethnic communities at a time when the legislature selected the president, to underscore the unifying symbol of multi-racialism and proposed what became known as the 'reserved elections mechanism' (REM) under new article 19B, which was criticized as being at odds with meritocracy and was admittedly an "unpopular decision." [42] To ensure that minorities could become president, a presidential election would be reserved for a particular racial group if Singapore has not had a President from that group for five continuous terms (30 years). This operates as a 'failsafe' if minorities fail to be elected in open elections, a form of restrained interventionism designed not to regulate power but to shape mindsets and attitudes. The Prime Minister declared that having multi-racial presidents "is an important symbol of what Singapore stands for, and a declaration of what we aspire to be."[43]

The primacy of multi-racialism is also reflected in an earlier constitutional experiment to institutionalise multi-racial politics through the Group Representation Constituency, first introduced in 1988. It requires political parties to field multi-member teams with a stipulated minority member,[44] placing the focus on the team rather than the ethnic candidate, which a regime based on separate race-based rolls or reserved quotas would do (proposals which were rejected), signaling difference rather than community. Criticisms that the GRC scheme was used to stultify the election of opposition politicians were made, because opposition political parties were so weak they could not muster enough candidates to field a team for a GRC ward, or could not find a candidate of the requisite ethnic group. They thus focused on single member constituencies (SMC). PAP ministers were candid in stating that

[41] See generally Thio Li-ann, *The Presidency of Singapore* (Singapore Chronicles Project, Institute of Policy Studies, 2015)

[42] 'Will reserved election promote multiracialism', *Straits Times*, 3 Sept 2017.

[43] 'PM Lee spells out why he pushed for reserved election', *Straits Times* 30 Sept 2017

[44] However, if a GRC team loses its minority members, by-elections are not automatically required: s24(2A) Parliamentary Elections Act (Cap 218).

the GRC scheme served as 'political stabilisers' since the PAP won every GRC ward since its introduction in 1988, until 2011. Examined in context, the law only requires that there be 9 SMCs, which means that more than 80 parliamentary seats would be contested through GRCs. Unsurprisingly, the GRC scheme has been criticized as unfairly benefitting the incumbent as it tended towards dominant party rule.

However, this criticism has largely dissipated with the 2011 General Elections where the PAP government lost Aljunied GRC and with it, two cabinet ministers and a junior minister. The GRCs were thus a double edged sword since at one fell swoop, political parties could gain or lose 4-6 parliamentary seats. Nonetheless, the GRC scheme was designed to ensure that Parliament was always multi-racial in character, without stipulating specific quotas. Notably too, the government has always rejected proposals such as that of proportional representation,[45] which tends to benefit smaller parties and ethnic minorities, and generally may open the door to weak, coalition government. This is anathema to the Singapore government's vision of the strong developmentalist state which cannot afford to have its programmes and policies thwarted by a strong opposition party which might form the next government, which is the norm in the Westminster parliamentary system in the UK and other jurisdictions, but not Singapore.

IV. Strong State: Legitimacy and Control

At one stage, government ministers argued that a one party state was just as able as a two party state to secure democracy, given that a parliamentary opposition composed of "bums, opportunists and morons" [46] could endanger democracy. The rhetoric of the 1970s gave way to the candid observation in the 1990s that "the system we want is actually one-party and many small parties to keep us on our toes."[47] This reflects a realization on the part of the ruling party that there was a growing desire on the part of the citizenry for more active political participation and to see political rulers held to account.

In response, the government began to evolve a more consultative approach towards politics, engaging in dialogues with the public. Institutionally, to reflect the importance of political pluralism,

[45] "We didn't do the proportional representation way because we felt that would be bad for Singapore. It would result in political parties that are based on race or religion. It would encourage political leaders to champion the demands of their particular segment against the broader interests of Singapore. It would divide us rather than bringing us together, because to win in a proportional representation system, you've got to have your base." PM Lee Hsien Loong, 'Updating the Political System' *Straits Times* 28 Jan 2016

[46] S Rajaratnam, quoted in Chan Heng Chee, *The Politics of One Party Dominance: PAP at Grassroots* (Singapore University Press, 1976) at 228.

[47] 'PAP loss would be 'hard to contemplate given the grave consequences' *Straits Times*, 10 Dec 1992, 22.

the constitution was amended in 1984 and in 1990 to introduce two schemes of unelected parliamentarians with limited voting powers[48] which have been refined over time, with the ostensible purpose of ensuring that Parliament is never again solely populated by one political party.

In 1984, the Non-Constituency MP scheme was introduced to ensure "the representation in Parliament of a minimum number of Members from a political party or parties not forming the Government." Originally, the scheme was introduced by Prime Minister Lee Kuan Yew in the early 1980s as having three main goals: to sharpen the little used debating skills of younger MPs and require Ministers to justify their actions against contrasting ideas, which had grown dormant in a Parliament dominated by one party; to provide an outlet for allegations of government misfeasance and corruption to allay any sense this could be easily concealed and lastly, to educate voters on the limitations of what a parliamentary opposition could do in the local context. Originally, up to 6 NCMPs could be selected from the top 6 losing opposition politicians earning the largest voting shares (provided the threshold of a minimum 15% of votes from the contested wards was cleared). If 6 opposition politicians are elected, no NCMPs are offered, if 5, then 1 NCMP seat is offered, and so on. Although opposition politicians decried this scheme as tokenism and a sop to satisfy the voter's desire for parliamentary opposition (since the scheme guaranteed the presence of parliamentary opposition in perpetuity), they took up these 'second class' seats and the heightened public profile and parliamentary experience they offered.[49] Government ministers derisively referred to NCMPs as 'losers.'[50] However, the tone has changed in the post-deference era after the 2011 General Elections which saw the record post-independence high of 6 opposition politicians being directly voted into Parliament. In 2016, a constitutional amendment increased the number of NCMPs (from an original 6 to 9 to12), and they were to be vested with full voting powers, to take away charges of being second class parliamentarians. The reasoning was that NCMPs as the 'best losers' not only ensured opposition voices in Parliament in perpetuity, but they had "at least as much right to be in Parliament" as MPs elected by a party list under a proportional representation system, having earned the support of some in their electoral ward. The NCMP scheme was supposedly meant to "moderate the extreme outcomes" of a first-past-the-post system." The government now presents the scheme as one where the right 12 people "will be able to hold the Government to account... and then in the next election, they will win more".[51]

[48] They cannot vote on supply or constitutional amendment bills, for example.

[49] For example, Sylvia Lim was first a Non-Constituency MP after standing for election in the 2006 general elections and became a MP after her political party, the Workers Party, won the Aljunied GRC in the 2011 general elections.

[50] Minister Wong Kan Seng in responding to a proposal by NCMP Jeyaretnam on having an independent elections commission stated: ""It is absurd. I think we cannot be more democratic than we are now. We even allow a loser to be in Parliament and make speeches attacking the government. Where could you find such a democracy in other countries?" Tim Healy & Santha Oorjitham, Conflict in a City of Consent, *Asiaweek*, 30 Nov 2000

[51] 'Not wise to purposely let the opposition grow bigger, says PM' *Straits Times*, 6 April 2018

In 1990, the Nominated Member of Parliament (NMP) was introduced to create more opportunities for Singaporeans "to participate in actively shaping their future"[52] thus presenting the government as adopting a more consensual approach to governance, one receptive to alternative views and able to accommodate constructive dissent. NMPs were distinct from NCMPs, who are opposition politicians were out to advance their party agenda. NMPs were not allowed to belong to any political party; instead, a special select committee was to appoint 9 nominees who "shall be people who have rendered distinguished public service, or who have brought honor to the Republic, or who have distinguished themselves in the field of arts and letters, culture, the sciences, business, industry, the professions, social or community service or the labour movement."[53] In making their selection, the committee should have regard for the need for NMPs "to reflect as wide a range of independent and non-partisan views as possible." NMPs would bring their special expertise or distinct perspective to enrich parliamentary discussions, and would be drawn from people who had "good reasons" for not wanting to enter politics or look after a constituency, such as the under-represented group of women.[54]

Thus, some 21 non-elected parliamentarians have been built into the Singapore version of the Westminster parliamentary system, a response to the dominant party system and the desire to have some element of political pluralism in the House, with a contest of ideas in open argument being seen as a boon and something that legitimates the present scheme of government.

While this may provide alternative views in the legislative branch, it appears to assume an alternative government is not likely, in assuming a small parliamentary minority that does not exceed 12 opposition parliamentarians, after which the NCMP scheme will become redundant. Have unelected MPs appears to open the door to more political participation, favouring a consensualist style of governance, without serious political contestation. Even if the PAP is not returned to power, the NCMP scheme "ensures a stronger opposition presence in Parliament, so that if the government wins overwhelming, nationwide support, it will still have to argue for and defend its policies robustly."[55]

The prospect that the PAP government will not be returned to power is now contemplated by PAP ministers. This is reflected in the discourse about 'freak elections' which may bring into power a corrupt government with untrammeled power, able to access and spend Singapore's considerable economic reserves through imprudent, populist policies. This is possible in dominant party states where the Cabinet controls the parliamentary majority and effectively enjoys untrammeled power to advance its agenda, facing few or weak political impediments. To guard against the plundering of

[52] Presidential Opening Speech, "On Building Consensus" *Singapore Parliamentary Debates, Official Record*, 9 January 1989, col 15

[53] Fourth Schedule, Singapore Constitution.

[54] Goh Chok Tong, *Singapore Parliamentary Debates, Official Record*, 29 November 1991, col 695 on discussing the reasons for the introduction of the Constitution of the Republic of Singapore (Amendment No 2) Bill

[55] PM Lee Hsien Loong, 'Updating the political system', *Straits Times*, 28 Jan 2016.

national reserves, the decision was taken to create the institution of the elected presidency as a fiscal check through an intra-branch scheme of checks and balances in 1990. To enable the President to have the moral legitimacy to oppose the decision of the head of government, the Prime Minister, the elected President (EP) was to be directly elected by the people with his own popular mandate, creating a duallist democracy. Essentially, the EP would be able, in consultation with an unelected Council of Presidential Advisors (CPA), to withhold assent to supply bills and transactions which drew down on 'past reserves'[56]. However, this decision was subject to a counter-checking mechanism such that where, for example, the president refused assent to a supply bill contrary to CPA recommendations, a two-thirds parliamentary majority vote could 'neutralise' the presidential 'veto' as presidential assent is deemed to be given from the date that parliamentary resolution is passed.

In inception, the EP scheme was thus a prudential measure instituted at a time "while honest men are still in charge"[57] to correct a "flaw in the political system" which future unscrupulous governments could exploit, it being a "fatal naivety" to bank on there being a "good and honest" government in perpetuity.[58] The parliamentary opposition maintained that a robust parliamentary opposition could better curb the arbitrary powers of Minister, and, in tandem with the courts as the final arbiter in disputes, furnish "a better safeguard than a one-man Elected President."[59] This indigenization of the Westminster model and its implementation of the separation of powers principle within the executive branch was a departure from the view expressed in the shared values white paper that governors were honourable and trustworthy, like Confucian junzi ("君子"). This government authored paper asserted that this idea "fits us better than the Western idea that a government should be given as limited powers as possible, and should always be treated with suspicion unless proven otherwise." This is distinct from the "liberalism of fear" [60] in western liberal constitutions which fuels the imperative of constructing schemes to restrain governments and legislatures. The EP scheme thus seems motivated by the Humean view that all men are self-interested knaves rather than Madison angels,[61] given that it was designed to be a check against cabinet government in certain stipulated matters.

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[56] Past reserves means reserves (the excess of assets over liabilities) not accumulated by the Government during its current term of office: Arts 2, 142.

[57] *Singapore Parliament Debates, Official Report* (4 October 1990) "Constitution of the Republic of Singapore (Amendment No 3) Bill" vol 56 at col 462 (Goh Chok Tong, First Deputy Prime Minister).

[58] *Singapore Parliament Debates, Official Report* (4 October 1990) "Constitution of the Republic of Singapore (Amendment No 3) Bill" vol 56 at col 462 (Goh Chok Tong, First Deputy Prime Minister).

[59] Lee Siew Choh, 56 SPR 4 Oct 1990, col 459, at 491.

[60] Judith Shklar, *Political Thought and Political Thinkers*, Stanley Hoffman ed (1998), p.3.

[61] If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. Federalist No. 51

This caused a problem as the president as ceremonial head of state was meant to be a unifying symbol, but making the office elective, with reactive executive powers, introduced the divisiveness of politics. The qualifications to run as EP were particularly stringent, not only requiring financial and/or managerial experience either from holding high public office or the being the CEO of a company with a minimum shareholders' equity of $500million. In addition, each candidate needs to be certified by the Presidential Elections Committee as "a person of integrity, good character and reputation."[62] To alleviate this tension between the historic unifying role and the new constitutional role of the EP, the government endorsed the constitutional commission's vision of presidential elections as being qualitatively different from General Elections and set about to manage this through rules governing election campaigns[63] to preserve "the dignity" associated with the presidency, allowing the EP to function as symbol of national unity, above tribal politics, personifying the People. Since the EP played no role in policy formulation, there was no need for a "vigorous contest of ideas" akin to what takes place during parliamentary elections.[64] The commission doubted the need for presidential rallies which could inflame emotions and precipitate divisiveness; televised addresses were considered more suitable. A new form was made available during the 2017 elections whereby candidates could voluntarily undertake to conduct their campaigns in such a "dignified" manner. In this way, the depoliticizing intent of rules governing elections was meant to mitigate tensions between the President's historical and custodial functions, a product of mixing in disparate functions in one institution.

V. Constitutional Development and Jurisprudence and the Influence of Political Culture

Distinctive features in relation to Singapore's political culture such as that of the governor as honourable man or *junzi* shape constitutional jurisprudence, as well as the view that the role of the media which is not supposed to be adversarial but constructive, as there was "no room in our political context for the media to engage in investigative journalism which carries with it a political agenda." Responsible, fair reporting was advocated as "our local political culture places a heavy emphasis on honesty and integrity in public discourse on matters of public interest."[65] Indeed, one of the reasons for enacting the Prevention of Online Falsehood and Manipulation Act (POFMA)[66] in 2019 was an

[62] Article 19(2)(e), Singapore Constitution.

[63] 2016 White Paper, paras 144-148.

[64] CCR, 7.11.

[65] *Review Publishing Co Ltd v Lee Hsien Loong* [2010] 1 SLR 52 at [272]

[66] POFMA operates through tools like correction orders requiring a person communicating falsehood to put up a notice stating what was communicated was false or to correct the falsehood, for example.

appreciation that misinformation undermined democracy, and a desire to maintain honest debate "on what should be the way forward" on "a foundation of truth, foundation of honour and foundation where we keep the lies out."[67] Nonetheless, "the first…line of defence…is a well-informed and discerning citizenry,"[68] which signals to citizenship that what is normative in public debate is not only civility but discernment, underscoring the importance of both character and rationality in seeking the common good.

The idea of 'honour' and a 'deference society' is evident in the Singapore law on political defamation. Singapore rejects the 'public figure' doctrine articulated in *New York Times v Sullivan*[69] and *Lingens v Austria*[70] which requires a public figure to be thick-skinned, given the importance attributed to robust political debate and the discounting of reputational rights. Singapore courts have held it would be contrary to the equal protection of the law to treat public and private persons differently; however, it would seem that men who seek public office must, as "sensitive and honourable men", be adequately protected lest they refrain from engaging in politics, noting that defamation law "protects the public reputation of public men as well."[71]

The presumption of trusting government leaders may account for the heavy weightage accorded to their reputational rights. A *junzi* is a noble and moral person who leads by example. As such reputation is highly prized and theorized as a form of honour, characteristic of a "deference society".[72] Belinda Ang J in *Lee Hsien Loong v. Singapore Democratic Party*[73] noted that defamation law "presumes the good reputation of the plaintiff", quoting the Greek rhetorician, Isocrates, who noted that "the stronger a man's desire to persuade his hearers, the more zealously will he strive to be honourable and to have the esteem of his fellow-citizens."[74] Thus, "the good reputation of an individual (meaning, his character), is of utmost importance to one's personal and professional life for human proclivity is such that people are apt to listen to those whom they trust."[75] This is reflected in

67 K Shanmugam, Debate on POFMA Bill, 8 May 2019 (Parliament: fake news law passed after 2 days of debate, *Straits Times*, 8 May 2019)

68 Parliament: fake news law passed after 2 days of debate, *Straits Times*, 8 May 2019 (Communication and Information Ministers S Iswaran)

69 376 US 254 (1964) (US Supreme Court)

70 (1986) 8 EHRR 407 at [42].

71 *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 1 SLR(R) 791 at [62].

72 Robert C. Post, "The Social Foundations of Defamation Law: Reputation and the Constitution" (1986) 74 Cal. L. Rev. 691 at 702.

73 [2009] 1 S.L.R.(R.) 642 at para. 102 (H.C.).

74 *Ibid*.

75 *Ibid*. No reference was made to the government's view that governors were honourable men, or Confucian *junzi*, to develop a theory of reputation as honour, which frames a deferential society.

the greater quantum of damages awarded to politicians and public leaders, at the apex of the fourfold tier set forth by the Court of Appeal in *Lim Eng Hock Peter v. Lin Jian Wei:*[76]

Top Tier	Political leaders, where defamation causes injury to both personal reputation as well as the institutional reputation of government
Second Tier	Non-political public leaders who are public figures in business, industry and the professions where the relevant outputs serve to augment public welfare; higher damages accrue because of their higher social standing and devotion to public service
Third Tier	Prominent figures such as businessmen who are not national leaders or involved in public affairs, where the business does not serve the public welfare; nonetheless, professionals should get a higher award because of the damage done to their professional reputations
Fourth Tier	Private individuals

While public leaders could be strongly criticised for "incompetence, insensitivity, ignorance and any number of other human frailties" as opposed to attacks besmirching "their integrity, honesty, honour, and such other qualities that make up the reputation of a person".[77] Effectively, reputational concerns were treated as having constitutional status as a co-equal right, balanced against free speech interests. Higher damages are awarded presumably to vindicate public reputation and to sustain the moral authority of governors, such that a private person enjoys weaker protection in this instance than a public person.

A hierarchical view of society is also manifest in the discount given in deciding the quantum for damages in *Lee Hsien Loong v Roy Ngerng Yi Ling*[78] where the defendant ran a private blog[79] commenting on Singapore politics, in the course of which he published an article defaming the Prime Minister, for which he was found guilty. The defendant invoked what might be identified as the spectre of the Confucian *Xiaoren* (little or petty person who cannot transcend his personal concerns and prejudices), stating that he should be subject to smaller damages as he was a "defamer of low credence" who would be less likely to be believed, which would lessen the gravity of the accusation, given his lower standing.[80] Given the defendant's "comparatively low standing", he was awarded a "substantial

76 [2010] 4 S.L.R. 357 (C.A.) 1. This drew a distinction between public leaders, both in the public and private sector as distinct from people famous in the public eye, who promoted the public welfare, the reputation of professional men and finally that of ordinary individuals.

77 *Lim Eng Hock Peter v Lin Jian Wei* [2010] 4 SLR 357 at [13].

78 [2015] SGHC 320

79 The court indicated that an institutional blog like that belonging to a news outlet or a traditional newspaper will be more credible than a run of a mill blog: *Lee Hsien Loong v Roy Ngerng* [2015] SGHC 320 at [55]

80 Reference was made to *Goh Chok Tong v Chee Soon Ju*an (2005) where the prominent standing of the defendant was a relevant factor. This was also the approach taken by the Hong Kong Court of Final Appeal in *Oriental Daily Publisher Ltd v Ming Pao Holdings Ltd* [2012] HKCFA 59, cited at [2015] SGHC 320 at [33]-[34]

reduction" in the quantification of damages, about half the sum awarded to those who defamed the Prime Minister during the last 20 years.[81] This cultural worldview thus shapes the contours of political speech and competing interests.

VI. Judicial Review (neither American or European, Singaporean) - Coequal

While judicial review on grounds of constitutionality is a power that Singapore courts have asserted, the courts have never struck down a piece of legislation as being unconstitutional. When it comes to morally controversial issues, for example, the courts have refused to construe 'personal liberty' or the 'equality' clause expansively to encompass new rights, such as claims to 'sexual autonomy'; this flows from the co-equality of branches of government and the separation of powers. Courts refrain from acting as second legislative chamber and refuse to arrogate legislative power to themselves or to consider extra-legal factors; where the courts "make" law, this is "only permissible in the context of the interpretation of statutes and the development of the principles of common law and equity,"[82] which the legislature can reject. The court is both to display judicial modesty and judicial courage, as warranted.[83]

While Singapore retains the British model of law where it comes to regulating commercial transactions, there has been a distinct move towards autochthony in the public law field. In 1994, Singapore cut off ties with the Privy Council as the highest court of appeal for the ostensible reason that the Singapore legal system had attained a sufficient degree of investor confidence and did not need the 'safety net' of the Privy Council as a body immune from undue influence to review the judicial process. In addition, the government considered that continuing reliance on the Privy Council would stultify local legal developments as it was no longer cognizant of Singapore's distinct circumstances. The way was paved for the future development of an autochthonous public law as evident in a 1994 Practice Statement on Judicial Precedents[84] which provided that Singapore courts would depart sparingly from cases dealing with "contractual, propriety and other legal rights", given the need for legal certainty. However, in the field of public law, it was stated that legal developments should reflect the enormous political, social and economic changes in Singapore, as well as "the fundamental values of Singapore society." Since then, the courts have generally rejected English precedents which have been 'Europeanised', insofar as the influence of the jurisprudence of the

81 [2015] SGHC 320 at [116]

82 *Lim Meng Suang v AG* [2015] 1 SLR 26 at [77]

83 *Tan Seet Eng v AG* [2015] SGCA 59

84 Practice Statement (Judicial Precedent) [1994] 2 SLR 689, issued 11 July 1994

European Court of Human Rights has altered English law 'in a liberal direction'[85] by according greater weightage to rights.[86] In particularly, it has rejected proportionality review, deeming it a European import into English public law by way of the 2000 Human Rights Act, which England enacted to give effect to its obligations under the European Convention on Human Rights. This is an intrusive standard of review, which may require the court to substitute its own judgement for that of the proper authority. The purposeful subsuming by Singapore courts of proportionality review under irrationality review reflects a local sensitivity against juristocracy.

When it comes to interpreting fundamental liberties, judicial review should consider 'local conditions' which have at various times supported statist and more recently, communitarian readings of fundamental liberties. Indeed, mixed constitutionalism is evident in the case law. In *Nappalli v Institute of Technical Education*, the Court of Appeal gave a liberal reading of the article 15 religious liberty guarantee in stating that "the protection of freedom of religion under our Constitution is premised on removing restrictions to one's choice of religious belief."[87] Religious identity was voluntarist, rather than ascriptive.[88] In times past, statism was evident in the displacement of religious freedom considerations in favour of public order grounds in *Colin Chan v Public Prosecutor*.[89] Here, a ministerial order issuing a blanket ban on Jehovah Witnesses' publications under the Undesirable Publications Act was unconstitutional. The Jehovah's Witnesses had been deregistered under the Societies Act in 1972 as its pacifist tenets and refusal of its eligible members to perform compulsory military service was considered a security threat. Yong CJ fashioned a statist trump which had no textual basis in declaring that the "sovereignty, integrity and unity of Singapore" were the "paramount mandate" of the Constitution and "anything, including religious beliefs and practices, which tend to run counter to these objectives, must be restrained."[90]

Most recently, there is evidence of a calibrated, authentic balancing approach in *Vijaya Kumar v AG* [91] which sought to optimalise or accommodate competing interests. This concerned the constitutionality of conditions attached to the grant of a permit for a religious procession, to celebrate the Hindu festival of Thaipusam.[92] These conditions were challenged as violating religious liberty

[85] *AG v Wain (No 1)* [1991] SLR 373 at 393F-G.

[86] E.g. see *Yong Vui Kong v PP* [2010] 3 SLR 489 at [61] (pointing out that unlike various Caribbean state, the Singapore Bill of Rights was not modelled after the European Convention of Human Rights, and therefore case law influenced by Europe was not applicable in Singapore).

[87] *Nappalli v Institute of Technical Education* [1999] 2 SLR (R) 529 at [228]

[88] Unlike article 162 of the Malaysian Constitution which ascribed Islam to Malays, the basis for apostasy laws.

[89] [1994] 3 SLR 662

[90] [1994] 3 SLR 662 at 684F

[91] [2015] SGHC 244

[92] All public processions in Singapore need a police permit, which may come with conditions.

(article 15), being unreasonable in the *Wednesbury* sense for prohibiting musical accompaniment. The High Court considered the licence and conditions no unreasonable as it fell within public order considerations as playing music in public required police authorization under the Public Order Regulation (2009) which applied to all religious processes, given the due to communal sensitivities and the potential for communal disturbance and strife." The court referred to the history of communal riots in Singapore, global trends of rising religiosity and sensitivities. It noted that the police, who had expertise at the 'ground level' had placed close attention to relevant facts such as traffic congestion, crowd build up, the scale and duration of the procession and its religious nature, "about 9000 to 10,000 devotees carrying kavadis or milk pots along a route of about 3km." This procession lasted for more than 24 hours, and had thousands of supporters and spectators. Thus, the conditional permit was "clearly linked to legitimate public order considerations," based on police assessments of ground conditions in consultation with temple organisers, security providers, the traffic police, Land Transport Authority and the Hindu Endowments Board. The Court accepted the complex, polycentric nature of social policy and noted it was not the correct authority to adjudicate on these matters. It approved the "calibrated approach" to the use of music (which was permitted at certain stationary points) which indicated the police had paid "due regard" to article 15 rights. For an outright ban in 1973, the police had over the years made incremental adjustments and a less strict approach to the music policy to permit the singing of religious hymns and playing music at music points at certain hours, at a maximum of 65 decibels. In so doing, the court upheld a communitarian ethos which gave weight both to a religious minority and to the community at large.

VII. Relational Constitutionalism: Soft Law, Public Ritual and the CRI

A final distinctive feature of Singapore Constitutionalism is that the constitution is not only to set out institutions, powers and rights, a form of what might be termed relational constitutionalism is practiced,[93] to manage inter-religious disputes which causes social alienation. The goals of relational constitutionalism is to build and keep civil peace and social harmony within multicultural societies, to secure "the relational well-being of individuals and groups and to preserve sustainable relationships in a polity where disparate religious groups and their members are able to co-exist, maintain their distinct identities, while being unified by a national identity and a shared commitment to the common good."[94] This could be done by institutions and processes that promote dialogue and interaction, such

[93] Thio Li-ann, Singapore Relational Constitutionalism: The 'Living Institution' and the Project of Religious Harmony (2019) SJLS 72-102

[94] Li-ann Thio, "Relational Constitutionalism and the Management of Religious Disputes: The Singapore 'Secularism with a Soul' Model" (2012) 1:2 Oxford J L & Religion 446

as the Presidential Council for Religious Harmony which is , which is composed of both religious leaders and lay persons. [95] Exercises like religious leaders working together under the guidance of a government minister to draft a Declaration on Religious Harmony (2004) or the private initiative by the Inter-religious organization in issuing a Commitment to Safeguard Religious Harmony[96] facilitate the building of trust and friendly relations, which enhances relational welfare. These soft law documents have to be consistent with the Constitution and notably, the Commitment starts with affirming the constitutional guarantee of religious freedom.

While there are legal sanctions to deal with offences against religion in the Penal Code or the statutory crime of sedition[97] which in Singapore includes the unusual ground of "promoting feelings of ill-will and hostility between difference races or classes of the population of Singapore"[98], the government sometimes prefers an informal approach to handling inter-religious dispute. This periodically erupts in Singapore, where sermons or speeches are delivered, often transmitted online, which causes ill-will or hurt feelings. The government may give warnings to religious leaders who transgress 'soft constitutional law' norms[99] which are found in executive authored instruments and widely known. In Singapore, given the power and prestige of the executive, these instruments, though hortatory rather than mandatory in nature, have considerable influence as the framework for desirable conduct. They are continually referenced by public and private actors[100] and gain the weight of a form of 'precedent' which nurtures expectations. For example, the Maintenance of Religious Harmony white paper,[101] which may be seen as an authoritative guideline on how to exercise the religious

[95] Article 22I, Constitution of Singapore

[96] 'More than 250 religious organisations commit to safeguard religious harmony', *Straits Times*, 19 June 2019

[97] On sedition law in Singapore, see generally Tan Yock Lin, "Sedition and its New Clothes in Singapore" [2011] Sing JLS 212; Jaclyn L Neo, "Seditious in Singapore! Free Speech and the Offence of Promoting Ill-Will and Hostility between Different Racial Groups" [2011] Sing JLS 351–372; Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012) at pp 774–792.

[98] Religion is implicated because of the loose treatment of 'race' to involve 'religion', particularly where Malays are concerned as 99% of them profess Islam.

[99] Li-ann Thio, 'Soft Constitutional Law in non-liberal Asian Constitutional Democracies' (2010) 8(4) International Journal of Constitutional Law (ICON) 766-799.

[100] The Commitment to Safeguard Religious Harmony, a private initiative provides: "We will share and propagate our beliefs respectfully, paying attention to inter-faith and intra-faith sensitivities. We will ensure that our practices are also done in a respectful and sensitive manner. We will not denigrate or insult other faiths, or promote ill-will. We reject unequivocally and will never tolerate any form of violence against anyone, including because of his faith." Text available at https://www.ircc.sg/commitment

[101] "So long as all Singaporeans understand that they have to live and let live, and show respect and tolerance for other faiths, harmony should prevail. Religious groups should not exceed these limits, for example by denigrating other faiths, or by insensitively trying to convert those belonging to other religions. If they do, these other groups will feel attacked and threatened, and must respond by mobilising themselves to protect their interests, if necessary militantly. Similarly, if any religious group uses its religious authority to pursue secular political objectives, other religions too must follow suit": Maintenance of Religious Harmony white paper, (Cmd 21 of 1989), para 13.

freedom of practise and propagation, cautions against insensitive proselytizing. While religious propagation is a constitutional right under article 15, it must be exercised sensitively and in a non-denigrating fashion. Indeed, the imperative of maintaining 'racial and religious harmony', which speaks to a sense of solidarity and respect for ethnic and religious differences, may be considered a 'constitutional civil religion',[102] informing a capacious understanding of public order which transcends the absence of disorder to implicate the quality of relationships.

A 'public ritual' in the sense of expectations has developed out of certain incidences where Christians, Muslims and Taoists/Buddhists had a falling out over sermons that they found upsetting or which the government feared would cause disharmony. This entailed, with due media attention, the transgressing religious leader delivering an apology in person to the leaders of the religious communities, forgiveness, reconciliation, a declared commitment to work together to achieve religious harmony, sometimes followed by a fellowship meal and visits to each other's church, temple or mosque. After the dust has settled, the relevant government minister will affirm these private initiatives and reiterate the soft constitutional law of mutual respect, tolerance and non-denigration of other faiths. This is an aspect of the Constitution as 'living institution' and not merely the text or case law. Relational constitutionalism is appropriate when the goal is not sanction but reconciliation, an educative moment to reiterate what is considered anti-social behavior and exhortation to heal relational breaches rather than breed animus and vengeance which perpetuates divisive conflict. It broadens the vocabulary of constitutional discourse beyond rights in drawing in duty, trust, solidarity, a conciliatory rehabilitative ethos in service of sustainable relationships, as a strategy to manage divided societies. Furthermore, this brand of constitutionalism discharges an integrative function in facilitating the process by which citizens develop a distinct, collective identity in promoting a vision of citizenship and the common good which is oriented towards promoting multiculturalism, moral solidarity, a shared way of life and living.

VIII. Conclusion

The Singapore Constitution is a flexible constitution which has been driven down an autochthonous route, while maintaining certain universal principles like the separation of powers, rule of law, democracy and protecting the rights and interests of individuals and racial and religious minority groups. These are common aspirations across countries, although the method of realising these goals differ.

[102] Li-ann Thio, 'Irreducible plurality, indivisible unity: Singapore Relational Constitutionalism and cultivating harmony through constructing a constitutional civil religion' [2019] 16(3) German Law Journal 171-213

Key particular traits that define the Singapore experience include a strong commitment to the rule of law, in terms of facilitating a business environment and placing a premium on socio-political stability and order. A variant of communitarianism is the governing political philosophy, where the concerns of the individual, situated in society, are balanced against those of the various minority groups and the national community. Securing racial and religious harmony through building durable relationships is a priority. While institutional checks like the EP have been developed to curtail some aspects of cabinet government, and while there has been a liberalization in terms of facilitating political participation through schemes like the NCMP and NMP and a policy of consultation, Singapore remains a dominant party state where faith in political constitutionalism remains high, where there is increasing resort to judicial review and rights litigation, with the courts more willing to exercise a form of calibrated review in relation to the exercise of executive powers, which is an expression of legal constitutionalism. A 'principled pragmatism' is evident insofar as ideological dogma is eschewed and the constitution is seen as a flexible tool which future generations can adapt to meet their needs, anchored upon the fundamental principles of multi-racialism, religious freedom, secularism, social harmony, the sovereign right of the people to elect their government and laws which comport with society's norms of justice and fairness.