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"PRAGMATISM AND REALISM DO NOT MEAN ABDICATION"[1]: A CRITICAL AND EMPIRICAL INQUIRY INTO SINGAPORE'S ENGAGEMENT WITH INTERNATIONAL HUMAN RIGHTS LAW

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Singapore acceded to three United Nations (UN) human rights treaties in 1995 on women's rights, children's rights and the genocide convention. It recently commenced engaging with the treaty-monitoring bodies through state reports. Drawing upon state practice, this article examines Singapore's human rights practice and its "pragmatic realist" approach, this being an instructive case study in demonstrating how "rights" play out within a "communitarian" society which valorises collective interests and favours consensus and a "responsibilities" discourse over adversarial rights language. It addresses themes central to understanding Singapore human rights practice in terms of substantive content, dominant rights theory, interpretative and enforcement approaches, including interactions with UN human rights institutions and non-government bodies. It contends that human rights policy is ultimately informed by state objectives prioritising economic growth, development and social order, often justified by reference to culturally relativistic "Asian values".

I. INTRODUCTION

The international law on human rights is not a value-neutral ideology; historically, it is rooted in revolt against the barbarism human governments are universally capable of.[2] Human rights law is committed to the vulnerable individual's welfare, recognising, as prudential necessity dictates, that the state can both protect and abuse its people. It seeks, through international standards and external modes of accountability, to promote and protect human dignity, through the legal technique of "rights" or justiciable entitlements asserted against the modern state. It effectively removes a state's treatment of individuals from the insulated province of "domestic jurisdiction" to that of international concern, conditioning state sovereignty not merely on effective control but legitimacy standards associated with a "civilised standard of governance."[3]

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1 Foreign Affairs Minister Wong Kan Seng, "The Real World of Human Rights", 16 Vienna 1993, Singapore Government Press Release No: (20/JUN, 09-1/93/06/16) *reproduced in* [1993] Sing.J.L.S. 605 at 607. [hereafter, "Vienna Statement"]

2 On human rights as a bulwark against the modern state's incursion on civil liberties, see Adamantia Pollis, "Cultural Relativism Revisited: Through a State Prism" (1996) 18 Hum.Rts.Q. 316.

3 David Fidler, "The Return of the Standard of Civilisation" (2001) 2 Chicago J.Int'l L. 137.

If human rights are entitlements one possesses by dint of being human, these are universal in scope. In abstract terms, the universal acceptance of human rights as a method for realising the human dignity ideal is largely undisputed. Beyond rhetoric, the universalist pretensions of human rights are challenged: as a secular ideology, the grounding tenets of moral individualism or western liberalism militate against "communitarian" ideals or other theistic "universalisms" such as Islamic values.[4] The principle of egalitarianism, anchoring human rights doctrine, opposes sexist or racist cultural tenets. Indeed, the legal technique of rights as determinative or compelling interest claims is alien to social environments where dignity is preserved by ascribed community roles and the language of responsibilities and harmony is more familiar than individual rights claims asserted in adversarial fashion against political authority. There remains clear disagreement as to *which* human rights are universal, as opposed to political claims, *how* rights are to be interpreted in terms of scope and content against other liberties and communal goods, *who* may legitimately participate in human rights discourse and critique and the appropriate enforcement methods.

Until recently, Singapore has been reticent in engaging with the international human rights regime although its human rights practices have been criticised by both domestic and international actors, including individual states,[5] N.G.Os like Amnesty International (AI) and the Asian Legal Resource Centre (ALRC), UN Charter-based bodies like the Commission on Human Rights (CHR) and various Special Rapporteurs. In 1995 Singapore acceded to three human rights treaties: the *Convention on the Prevention and Punishment of the Crime of Genocide*,[6] the *Convention for the Elimination of All Forms of Discrimination against Women* (CEDAW)[7] and the *Convention on the Rights of the Child* (CRC).[8] Singapore is not party to the major human rights treaties, *i.e.*, the 1966 International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR) and has not accepted the jurisdiction of any human rights body to receive individual or group communications. Singapore is party to over 20 International Labour Organisation (ILO) treaties, including Convention 100 on Equal Remuneration, ratified in 2002.[9] These treaties, together with any customary human rights norms and constitutional fundamental liberties declared in Part IV of Singapore's Constitution, constitute the corpus of applicable human rights norms. In terms of implementing these human rights or civil liberties, one looks to case law jurisprudence, the rights protective role of non-judicial bodies and Singapore's interaction with UN treaty-based human rights bodies in fulfilling its minimalist reporting obligations before the CEDAW and CRC Committees and in dialoguing with these Committee which seek to promote (but cannot compel) domestic compliance with treaty standards.

This article critically examines Singapore's human rights practice, which is instructive in examining how the idea of "rights" plays out within a "communitarian" society where a "soft authoritarian" government valorises collective interests[10] in security and harmony over

4 *Cairo Declaration on Human Rights in Islam*, 5 August 1990 (Islamic Conference of Foreign Ministers).

5 *E.g.*, on labour and children's rights in Singapore, see US Bureau of International Labor Affairs report on Exploitation Child Labour. Online: United States Department of Labour <http://www.dol.gov/ilab/media/reports/usfta/HR2739SingaporeChildLabor.pdf>.

6 *Convention on the Prevention and Punishment of the Crime of Genocide*, 12 January 1951, 78 U.N.T.S. 277.

7 GA Res. 34/180, UN GAOR, 34th Sess., Supp. No. 46, UN Doc. A/34/46 at 193.

8 GA Res. 44/25, annex, UN GAOR, 44th Sess., Supp. No. 49, UN Doc. A/44/49 (1989) at 167, *entered into force* September 2, 1990.

9 Singapore is party to 22 ILO Conventions, several anti-slavery and trafficking conventions and has signed the *Optional Protocol to the CRC on the involvement of children in armed conflict*. Online: Singapore Treaties Database <http://www.lawnet.com.sg>.

10 "Nation before community and society above self" is one of five national values proclaimed in the government-authored *Shared Values White Paper* (Cmd. 1 of 1991). [hereafter "SVWP"]

individual rights, where what some characterise as "rampant patriarchicalism"[11] sustains sexist policies[12] and where adversarial rights language is downplayed in favour of consensus-seeking and a "responsibilities" discourse.[13]

The central contention is that Singapore's human rights policy is ultimately informed by overriding state objectives and national development goals prioritising economic growth and social order.[14] The scope and application of human rights is qualified by the imperatives of economic development and pseudo-cultural invocations of government-constructed "Asian values" or Neo-Confucian communitarianism.[15] This strain of cultural relativism has sought both to shield off criticism with counter-claims of cultural imperialism and to present an alternative development model for ordering society-individual relations. While accession to human rights treaties indicates a willingness to engage in international human rights discourse, the concrete beneficial improvements in human rights practice remains to be assessed in a context where state values and pragmatic realism dominate. This article is structured around the identification and illustration of certain themes central to understanding Singapore human rights practice in terms of substantive content, interpretative and enforcement approaches. It examines the dominant rights theory and case-law, how rights are balanced against competing interests, informal and institutional modes of protection and the current state of a human rights culture measured against civil rights litigation, public rights consciousness, non-government body activism and interactions with UN human rights bodies.

Part I sets the context with a brief overview of the legal regime, the actors involved in the human rights process and a "snapshot" of Singapore human rights issues, in terms of common criticisms. Part II examines the international and domestic executive and judicial approach towards the scope, content and priority of human rights through an examination of international statements, legislation, policy and case law. This sheds light on human rights culture and attitudes. Part III deals with implementation issues, how rights are interpreted and enforced before domestic and international bodies, formal and informal, judicial and quasi-judicial. It examines modes of constitutional interpretation and judicial rights ideology, judicial receptivity to human rights law and the influence of international bodies upon the domestic legal order, throwing light on the relationship between state sovereignty and human rights law. Part IV examines various Singapore human rights case studies to ascertain whether in cases of impugned divergence from international standards, the difference is one of kind or degree. It draws upon materials pertaining to civil-political rights, socio-economic rights, physical security and cultural rights. Part V offers concluding observations on the effect of Singapore's approach of "pragmatic realism" towards the robustness of human rights promotion and protection.

[11] Anthony Woodiwiss, "Singapore and the Possibility of Enforceable Benevolence" in *Globalisation, Human Rights and Labour Law in Pacific Asia* (UK: Cambridge University Press, 1998) 216.

[12] Sing. *Parliament Debates*, vol. 75, col. 1130-1131 (1 October 2002) (Ms. Irene Ng) noting that "a national identity ... based on patriarchy excludes women".

[13] Notably, Lee Kuan Yew is one of the signatories to the Interaction Council's 1997 *Universal Declaration on Human Responsibilities*. The Declaration can be found at the Interaction Council website <http://www.interactioncouncil.org>.

[14] Economic development, competition and the principle of meritocracy and multi-racialism are key cornerstones of national policy.

[15] See the government-authored SVWP, *supra* note 10, which some argue have attained quasi-constitutional status: Benedict Sheehy, "Singapore 'Shared Values' and Law: Non East versus West Constitutional Hermeneutic" (2004) 34(1) Hong Kong L.J. 67.

II. Contextualising Human Rights Practice in Singapore: Legal Framework and Culture

A. *Legal Framework and Social Context—A Brief Overview*

Singapore's constitutional framework is based on a modified Westminster model of parliamentary government. The People's Action Party (PAP) has been in continuous hegemonic governance since Independence in 1965, when Singapore seceded from the Federation of Malaya, holding 82 of 84 elective parliamentary seats. The Constitution contains a spartan list of fundamental liberties, relating primarily to personal liberty and civil and political rights,[16] generally subject to judicial review.[17] It contains no justiciable socio-economic rights or third generation rights.[18] "Solidarity" rights to a healthy environment, clean air and water[19] are viewed more as goods than "rights". Notably, Part IV of Singapore's Constitution omits rights recommended for inclusion by the 1966 Constitutional Commission,[20] including the right to vote, to property, a judicial remedy and prohibiting torture. Given scarce land resources, property rights were considered unsuited to developing countries and would impede government land development schemes,[21] with a just compensation clause likely to engender "endless litigation".[22] It would also undermine national development by precluding compulsory acquisition on legislated nominal terms.[23]

Unlike individualist Anglo-American documents which phrase freedoms in absolute terms, Part IV rights are expressly qualified by reference to community goods like public order and morality, being more akin to "dignitarian" rights drafted after the European or Latin American fashion[24] where the individual is not autonomous but situated with responsibilities to families and communities, framing the exercise of rights. However, the Singapore formulation is cast in utilitarian, statist terms, as rights are qualified not by reference to normative standards like what is "necessary in a democratic society";[25] the free speech clause permits "expedient" limits.

Typical of constitutions drafted in the 1960s, there are no collective or minority group rights as the prevalent ideology considered that safeguarding individual rights would secure

[16] Part IV.

[17] Art. 93 of the Constitution vests judicial power in the Supreme Court, which is empowered to review administrative actions and declare statutes unconstitutional where inconsistent with the supreme law of the land: Art. 4.

[18] In contrast to more recent constitutions of neighbouring countries: see, *e.g.*, Art. 52 (right to public health service), Art. 55 (disabled right to state aid) and Art. 56 (right of person to give to state and communities participation in preserving biological diversity and exploiting natural resources) of the 1997 Thai Constitution.

[19] The government assumes responsibility as provider, *e.g.*, through water recycling and providing "newater" pursuant to making Singapore self-sufficient: "New water is reborn" *Straits Times* (24 February 2003).

[20] See Chapter II, 1966 Constitutional Commission Report, *reproduced in* Appendix D, Kevin Y.L. Tan and Li-ann Thio, *Constitutional Law in Malaysia and Singapore* (Asia: Butterworths, 1997) 1022.

[21] Lee Kuan Yew suggested that if swayed by notions of private property, "I venture to suggest that representative government in Singapore today would not have been possible." Sing. *Parliament Debates*, col. 1295 (15 March 1967). Indeed Singapore had asked the Federal Government to introduce laws to amend the property clause in its application to Singapore: Ahmad bin Mohd Ibrahim, State Advocate General, "The New Constitution for Singapore" *Straits Times*, Letters (22 December 1965).

[22] Sing. *Parliament Debates*, col. 1279 (15 March 1967) (Prime Minister Lee Kuan Yew).

[23] Nominal payments for compulsorily acquired land were criticised as "outright confiscations" tantamount to violating human rights: Sing. *Parliament Debates*, vol. 76 col. 2458 (15 August 2003) (Chiam See Tong). The government defended the valuation principles, arguing no human rights were violated, as review and appeal availed: cols. 2462-2463

[24] Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002) at 227.

[25] *E.g.*, Art. 10(2) of the *European Convention on Human Rights,* 213 U.N.T.S. 222.

minority interests. Thus the rejection of special rights or privileges for the Malays.[26] Affirmative action is not mandated,[27] departing from Malaysia's *bumiputra* rights scheme.[28] Part IV liberties have an assimilationist bent,[29] phrased primarily in individualist terms,[30] though the communal aspects of liberties like religious association is recognised.[31]

Article 152 enjoins the government to care for the interests of racial and religious minorities—a non-justiciable minority *protection* rather than *rights*-based system. Under Article 152(2), the special position of the Malays as the indigenous peoples of Singapore is recognised, with the government bound to guard their "political, educational, religious, economic, social and cultural interests and the Malay language." Malays constitute 14% of the population and most ethnic Malays are Muslim.[32] This sits at odds with the government's declared meritocracy policy, reflecting the pragmatic need to ameliorate the marginal socio-economic conditions of the Malay community, given the geo-political realities of being a "small dot in a sea of green",[33] a Chinese-majority city-state surrounded by Muslim nations.[34]

After accession in 1995, Singapore has begun to discharge its conventional state reporting obligations under the CRC and CEDAW.[35]

A city-state of some 4.1 million people,[36] its multi-ethnic population "shapes every aspect of civil life in Singapore".[37] In a multi-religious setting where 86% of the population

[26] The UMNO Chairman (Singapore) called for preferential treatment for Malays as indigenous peoples to enable them to co-exist at the same level of economic prosperity with other citizens, *e.g.*, state sponsorship of Malay education, special consideration in the employment sphere and commerce: "How other races can also be Malays: UMNO" *Straits Times* (4 March 1966).

[27] K. Shanmugam suggested there ought to be ways to place more Malays in positions of power, as "successful role models offer hope", diluting the appeal of those who advocate a militant brand of Islam: "M.P. makes bold proposal to help local Muslims" *Agence France Presse* (20 January 2003) archived online: Singapore Window <http://www.singapore-window.org/sw03/030121af.htm>.

[28] Special rights are accorded *bumiputras* (sons of the soil), through quotas for educational institutions, public sector employment and business licences: Art. 153(2) of the Federation of Malaysia Constitution.

[29] Lee Kuan Yew thought individual rights a more pressing problem than the rights of minorities; the latter would be protected by safeguarding the former: Sing. *Parliament Debates*, col. 1299 (15 March 1967).

[30] The idea of equal individual rights (and thus, the equal treatment of all communities, a rejection of the Malaysia "special indigenous rights" approach) is embodied in Arts. 12 and 16 of the Constitution, pursuant to the Singaporean Singapore ideal. This may be surprising, given that Singapore espouses a "communitarian" vision of state-society relations but not unexpected because in parallel with 1960s human rights standard-setting, minority rights were disfavoured, featuring only in a singular paragraph couched as an individual right in Art 27. of the *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171 (ICCPR). Further, "community" in Singapore tends to be conflated with the state.

[31] Arts. 15(2) and 16(2) of the Singapore Constitution.

[32] See Lily Zubaidah Rahim, "Minorities and the State in Malaysia and Singapore: Provisions, Predicaments and Prospects" E/CN.4/Sub.2/AC.5/2003/WP.12.

[33] Former Indonesian President B.J. Habibie made this derogatory reference: "President unhappy with Singapore, says AWSJ" *Straits Times* (5 August 1998) 16.

[34] Thio Li-ann, "Recent Constitutional Developments: of Shadows and Whips, Race, Rifts and Rights, Terror and Tudungs, Women and Wrongs" (2002) Sing.J.L.S. 328 at 352-355. Malaysian newspapers have invoked anti-Muslim images in criticising Singapore policy: a December 2002 editorial entitled "Singapore Behaving like the Jews in Claiming Batu Putih Island", cited by Sing. *Parliamentary Debates*, vol. 75, col. 2121 (21 January 2003) (Ms. Irene Ng).

[35] Singapore has submitted the CEDAW Initial Report (CEDAW/C/SGP/1), CEDAW Second Report (CEDAW/C/SGP/2) and CRC Initial Report (CRC/C/133).

[36] As of June 2000, the population breakdown is Chinese (77%), Malay (14%), Indians (8%) and Other ethnic groups (1%). Para. 2.1, CRC Initial Report CRC/C/51/Add.8 (17 March 2003).

[37] Para. 2.1, CRC Initial Report, *supra* note 35.

professes a religious faith,[38] Singapore practices a form of quasi-secularism. Security imperatives, including maintaining public order, racial and religious harmony and social cohesion, cabin civil liberties.[39] The state wields broad, intrusive executive powers to enforce social discipline, restrain privacy rights[40] and has introduced constitutional institutions which have effectively crippled the development of political opposition.[41]

B. *Local and Global Actors in the Human Rights Process*

The "advocacy revolution" spawned by human rights activism dates back to domestic and extraterritorial moral activists campaigning to eradicate the slave trade and slavery. The emergent network of domestic and international N.G.Os seek to pressure states through "name and shame" tactics, relying on publicity's moral force. Moral force remains important in a field where global and regional inter-governmental organisations generally have weak enforcement mechanisms, *viz*, state reporting procedures before international committees who issue recommendations. Judicial processes are exceptional. Human rights defenders monitor and spotlight rights violations; by identifying the theory/practice gap, states are held to account.

1. *Domestic actors: N.G.Os and opposition politicians*

The activism of domestic N.G.Os[42] remains undeveloped. Aside from political parties, the government distinguishes two groups of N.G.Os, those engaged in political issues (civil society) and those providing social services or Voluntary Welfare Organisations (V.W.Os).[43] This is apparent in the new dual regime of automatic and non-automatic registration under the 2004 amendments to the *Societies Act*,[44] to make the registration of societies not specified in the Schedule easier.[45] Listed groups include any society lobbying to promote or discuss issues relating to "religion, ethnic group, clan, nationality, or a class of persons defined by reference to their gender or sexual orientation", the use and status of any language, governance of Singapore society and societies seeking to promote "any civil or political

[38] Singapore Population Census (2000) Advance Data Release No. 2: Religion—The breakdown of religious affiliation was Christianity (14.6%), Buddhism (42.5%), Taoism (8.5%), Islam (14.9%), Hinduism (4%), Other Religions (0.6%), No Religion (14.8%), out of 2.5 million residents aged 15 and above: "Singapore Census of Population (2000) Advance Data Release 2—Religion", online: Statistics Singapore <http://www.singstat.gov.sg/papers/c2000/adr-religion.pdf>.

[39] See, *e.g.*, the 2003 Declaration on Religious Harmony, a set of guidelines for the exercise of religious liberty rights, at International Council of Christian Churches <http://www.iccc.org.sg/rhwcommittee.html>.

[40] There is no constitutional right to privacy. See "Privacy and Human Rights 2003: Singapore", online: Privacy International <http://www.privacyinternational.org/survey/phr2003/countries/singapore.htm>. *E.g.*, it is generally believed that state bodies like the Internal Security Department possess sophisticated phone monitoring techniques: "US State Department Human Rights Country Report (US Country Reports) (2003), Section 'F'" online: US Department of State <http://www.state.gov/g/drl/rls/hrrpt/2003/index.htm>.

[41] This relates to the creation of the Group Representation Constituency scheme and non-elective Members of Parliament (M.Ps). For a detailed analysis, see Thio Li-ann, "The Right to Political Participation in Singapore: Tailor-Making a Westminster-Modelled Constitution to fit the Imperatives of 'Asian' Democracy" (2002) 6 Sing.J.I.C.L. 181.

[42] See Kevin Y.L. Tan, "Non-Governmental Organisational Laws and Regulations: Country Report for Singapore" (prepared for International Center for Not-for-Profit Law, Washington DC, 1996) [unpublished, on file with author].

[43] On the government's perspective of "Social Tripartism" which distinguishes between political and social space, see Kenneth Paul Tan, "'Civic Society' and the 'New Economy' in Patriarchical Singapore: Emasculating the Political, Feminizing the Public" (2001) 15(2) Crossroads 95.

[44] *Societies Act* (Cap. 311, 1985 Rev. Ed. Sing.), *Societies Amendment Bill*, No. 14 of 2004.

[45] Reportedly, groups like Roundtable had to wait 5-6 months to a year for registration approval: "20 new groups on fast track to registration" *Straits Times* (11 October 2002).

right (including human rights, environmental rights, animal rights)" and "martial arts". This red-flags topics deemed politically contentious or destabilising.[46]

The government positively views the "people sector" composed of V.W.Os and enters into collaborative social partnerships, channeling subsidies to them and developing operational frameworks for child protection service providers.[47] N.G.O. members have been included in dialogue sessions with UN human rights bodies, such as during the initial CEDAW report presentation and Committee recommendations have been discussed with the Singapore Council of Women's Organisations (SCWO).[48] To encourage V.W.O. provision of public welfare services, pursuant to the government's anti-welfarism stance,[49] these groups are entitled to automatic registration, facilitating "greater social entrepreneurship".[50]

Conversely, civil society, composing human rights activists and environmental groups etc, is viewed as "an associational space that is antagonistic towards the state" and concerned with individual rights.[51] Such groups, implicitly viewed as threats to state power, continue to need prior approval for registration. This suspicion is evident in the hostile reaction towards a proposed Malay rights group.[52]

In an opening-up of sorts, it was declared that space existed for more "independent bottom-up initiatives" in the form of "non-political" associations such as the Roundtable, Association of Women for Action and Research (AWARE)[53], the Nature Society and Tangent.[54] AWARE lobbies for women's rights, utilising CEDAW standards and producing non-official, more critical "shadow" reports.[55] Like other groups adopting a low-key conciliatory approach, AWARE achieves more success in terms of policy impact.[56] In contrast, the government perceives as "opponents" groups adopting an adversarial, "one-sided" approach to public justice issues and being "overly critical of the government",[57] like the Think Centre and Open Singapore Centre (OPC), both registered as businesses.[58] The

46 *E.g.*, homosexual activist groups are considered "unlawful, prejudicial to the public peace" and "contrary to the national interest": "Singapore denies association rights to gay support group, orders to cease activities" *Associated Press Worldstream* (6 April 2004). This is widely supported given the majority's conservative social morality, as Singapore Ministers noted: "Singapore bans Gay Activists" 365Gay.com (16 April 2004).

47 National Standards for Protection of Children, online: Ministry of Community Development and Sports (MCDS) <http://www.mcds.gov.sg/MCDSFiles/Resource/Materials/Standards_Protection_Children.pdf>.

48 The MCDS website <http://www.mcds.gov.sg> reports that a Closed-Door Session on Singapore's implementation on CEDAW was held on 24 May 2003, jointly organised with the SCWO, for women's groups, where the CEDAW Committee's concluding comments were shared.

49 On privatising welfare, see, *e.g.*, the *Maintenance of Parents Act* (Cap 167A, 1996 Rev. Ed. Sing.).

50 Minister Ho Peng Kee, Second Reading, *Societies (Amendment) Bill*, Press Release (19 May 2004), online: Ministry of Home Affairs (MHA) <http://www.mha.gov.sg>.

51 *Supra* note 43 at 115.

52 Rather than "rights talk", PAP M.P. Yatiman Yusoff said that programmes dealing with drug abuse and rising divorce would better benefit the community: "Malay Rights Group 'could damage racial harmony'" *Straits Times* (27 June 1997) 50.

53 AWARE was registered in 1985 and its website is at <www.aware.org.sg>. Singapore has no religion-based women's groups akin to Malaysia's Sisters of Islam which seeks the progressive application of women's rights within an Islamic framework.

54 Deputy PM (D.P.M.) Lee Hsien Loong, "Building a Civic Society" (Speech at the Harvard Club of Singapore's 35th Anniversary Dinner, 6 January 2004), online: United Nations Online Network in Public Administration and Finance<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN015426.pdf>.

55 AWARE, "Remaking Singapore: Views of Half the Nation", online: OnlineWomen <http://www.online womeninpolitics.org/sing/aware.pdf>.

56 *E.g.*, environmental interest groups successfully lobbied the government to preserve Chek Jawa: "Interest groups can flourish here, says D.P.M." *Straits Times* (7 January 2004) H3.

57 P.M. Goh Chok Tong, of the Think Centre compared to the more dispassionate Roundtable: National Day Rally speech, 19 August 2001, *archived at* Ministry of Foreign Affairs <http://app.mfa.gov.sg/ pr/read_content.asp?View,968>.

58 When named political associations in 2001, both groups became ineligible for foreign funding: *Political Donations Act* (Cap 236, 2001 Rev. Ed. Sing.): "Singapore bars two groups from foreign funding", *Reuters* (30 March 2001).

Think Centre aggressively promotes human rights through promoting the CEDAW Committee's comments on Singapore practice on its website,[59] conferring human rights defenders awards on Lee Kuan Yew's *bete noire*, J.B. Jeyaretnam,[60] and staging rights awareness public exhibits. It faces difficulty where the authorities refuse to grant licences for public displays and recommend staging these in less conspicuous areas, like indoor forums.[61] The OPC's application to hold a forum entitled "Free Myanmar-How can Asians help" was declined for being "contrary to the public interest",[62] curbing political speech in the name of public order.

Notably, a potential source of dissent and mobilisation in the form of trade unions has been emasculated through the PAP's policy of Tripartism. To prevent disruptive strikes characteristic of pre-Independence labour relations,[63] the PAP since 1965 has sought to regulate trade unions by building a "partnership of trust" with the government facilitating labour-management co-operation.[64] This has helped create a reputation for "peaceful and co-operative industrial relations", facilitating cost-curbing, crucial to economic competitiveness.[65] Critics charge that trade unions are "voiceless groups of individuals" which do not serve the workers' interests since workers are always called upon to make the first financial sacrifices.[66]

Indeed, the umbrella National Trade Union Congress (NTUC) has close ties with the PAP government, endorsed in a 1980 resolution which has since been affirmed annually by 65 affiliated unions representing some 400,000 workers. In December 2002, a Singapore Democratic Alliance opposition politician was removed from United Workers of Electronic and Electrical Industries for acting against union interests.[67] Opposition politicians have argued that M.Ps in trade unions should "resign immediately".[68] Further, the government intervenes to maintain harmonious industrial relations, as in the 2004 Singapore International Airlines pilots strike, with Lee Kuan Yew vowing that "heads will be broken"[69] if

[59] Online: Think Centre <http://www.thinkcentre.org/article.cfm?ArticleID=1935>.

[60] See M.D. Barr, "J.B. Jeyaretnam: Three decades as Lee Kuan Yew's bete noir" (2003) 33(3) J. of Contemporary Asia 299; "JBJ given Human Rights Defenders award" *Sunday Times* (7 December 2003).

[61] "Police say no to Children's Day display in business district" *Straits Times* (26 September 2003). The Think Centre sought to promote CRC standards through an open thematic doll display but a licence was refused on "law and order considerations", the police fearing that members of the public might dispute the contents displayed and become rowdy. Surely, this evinces an overabundance of caution.

[62] *Supra* note 60.

[63] Singapore has not experienced strikes since 1986: Ng Eng Hen, Second Reading, *Trade Unions (Amendment) Bill* (20 April 2004). Non-essential services workers (outside the water, gas and electricity sector) may legally strike but disputes are usually resolved through informal consultation and conciliation or heard before the Industrial Arbitration Court, manned by representatives from Labour, Management and the Government. Generally, labour peace has been maintained by high growth and employment and regular wage increases: US Country Report (1999) online: US State Department <http://www.state.gov/www/global/human_rights/99hrp_index.html>. On Labour's incorporation into the state-corporatist political economy, see Woodiwiss, *supra* note 11 at 237.

[64] This involved establishing rational collective bargaining procedures, conciliation and arbitration schemes for handling disputes. See Explanatory Note, Code of Industrial Relations Practice, online: Ministry of Manpower (MOM) <http://www.mom.gov.sg>.

[65] "Tripartite trust pays off: P.M." *Sunday Times* (2 May 2004) 1.

[66] "PM raps WP's views on labour ties" *Straits Times* (2 May 2004). A Prime Minister's Office statement said confrontational industrial relations could not be allowed to compound travel industry woes: "Union Members to lose final say" *Straits Times* (20 March 2004) H8.

[67] "Worker's Party member resigns from union post" *Straits Times* (14 February 2003) H3. See EC Surin, "Government Influence on Labor Unions in a Newly Industrialized Economy: A Look at the Singapore Labor System" (1996) 18 Comp.Lab.L.J. 102.

[68] "DPP flays restoration of ministers' pay cuts" *Straits Times* (23 June 2004) H2.

[69] Union leaders had been kicked out for caving too easily to pay cuts and retrenchment. S. Ramesh "SM Lee says Government determined to resolve SIA pilots-management tension" *Channel NewsAsia* (1 December 2003), online: Channel NewsAsia <http://www.channelnewsasia.com/stories/singaporelocalnews/view/59900/1/.html>.

this strike endangered national survival. The government subsequently amended the *Trade Unions Act* in a manner which some considered as clipping the wings of a confrontational union.[70] Management, though, was vested with the responsibility of restoring trust with the union, with a Code of Industrial Relations Practice being adopted.[71]

2. *International actors*

At the international level, apart from UN human rights bodies' monitoring processes, Singapore does engage with criticisms levied by international N.G.Os. Recently, Singapore allowed foreign N.G.O. representatives from AI and Lawyer Rights Watch (Canada) to observe politically sensitive cases involving opposition politicians,[72] *e.g.*, J.B. Jeyaretnam's 2001 bankruptcy proceedings.[73] In 1997, the government allowed AI and the International Commission of Jurists to observe defamation proceedings against Jeyaretnam. The local press published their resulting critical reports which the government responded to.[74]

C. *A Snapshot of Singapore Human Rights Critiques and Rebuttals*

Criticisms against Singapore's human rights record range from "dismal"[75] to opinions that it "generally respects" citizens' human rights.[76] A certain template of issues tends to be canvassed, primarily related to civil and political rights. Before UN Charter based bodies like the CHR, Singapore has been accused of restricting free speech and assembly,[77] using preventive detention laws to curb political dissent,[78] discriminating against foreign nationals tried for murder,[79] infringing Jehovah's Witnesses (JW) religious freedom rights by penalising refusals to perform national military service.[80] Other N.G.Os have alleged executive interference with the judiciary, limits on press freedom,[81] maltreatment of jailed opposition

[70] The amendments empower trade union officers to represent members in collective bargaining without need for member ratification, apparently to facilitate "a more efficient process of collective bargaining" without diminishing worker collective bargaining rights: Ng Eng Hen, *supra* note 63; "Opposition MPs reject revision" *Straits Times* (21 April 2004) H4.

[71] Online: MOM<http://www.mom.gov.sg/MOM/CCD/Others/Code_of_Industrial_Relations_Practice.doc>. Guidelines stress mutual trust, dialogue and collaboration, not confrontation.

[72] This is significant as Singapore had previously denied that international organisations had any interest in Singapore's domestic human rights issues, barring AI representatives from country visits.

[73] US Country Report (2002), online: US State Department <http://www.state.gov/g/drl/rls/hrrpt/2002/18263.htm>.

[74] US Country Report (1999), *supra* note 63.

[75] Chee Soon Juan, "Pressing for Openness in Singapore" (2001) 12(2) J. of Democracy 157 *archived at* Singaporeans for Democracy <http://www.sfdonline.org/chee/jdem.html>.

[76] *Supra* note 74.

[77] The Singapore Permanent Representative responded by letter E/CN.4/2003/G/69 (4 April 2003) to the CHR chairperson to an ALRC written statement (E/CN.4/2003/NGO/91).

[78] ALRC Written Statement, E/CN.4/2002/NGO/75 and para. 8, E/CN.4/2002/NGO/78, both of 31 January 2002, detailing the use of national security laws "primarily to stifle political opposition and critics".

[79] Specifically, *Flor Contemplacion v. P.P.* [1994] 3 Sing.L.R. 834. A letter written to the Assistant Secretary-General for Human Rights pointed out inaccuracies in the Special Rapporteur's report (Violence on Women): E/CN.4/1996/53.

[80] Singapore rejects the universal applicability of conscientious objection to military service, asserting "the right of a state to preserve national security must prevail", otherwise "collective responsibility for national defence" would be compromised by exemptions, contrary to the application of equal laws: Letter to CHR Chairman, E/CN.4.2000/160.

[81] Asia Watch, *Silencing All Critics: Human Rights Violations in Singapore* (Washington DC and New York, 1989); Frank *et al.*, "The Decline of the Rule of Law in Malaysia and Singapore Part II—Singapore" (1991) 46 The Record of the New York Bar 7.

politicians,[82] while local critics have berated "blatant gerrymandering" to buttress political dominance.[83] A 2004 AI report alleged that Singapore had one of "the world's highest per capita execution rate, relative to its population".[84]

In response, the Singapore government has adopted a robust legalistic view in rebutting critics' allegations point by point, as with AI's 2004 report.[85] It has also argued that institutional critics have exceeded their mandate.[86] Clearly, Singapore does join issue with, rather than merely rebuff, some critics of its human rights policy

III. Substance, Scope and Priority: Human Rights in Singapore's Non-Liberal Rights—Reticient Culture

A. *Singapore's Human Rights Policy Articulated: Vienna Views*

Singapore articulated its human rights policy at the 1993 Vienna Human Rights Conference, consistent with the preceding *Bangkok Declaration*[87] adopted by Asian countries. Certain points regarding its understanding of human rights ideology are noteworthy.

First, Singapore adheres to the cultural relativist school, resistant to ethno-centricism and neo-colonialism, which qualifies the accepted principle of universal human rights by reference to "national and regional particularities and various historical, cultural and religious backgrounds".[88] This ambivalence is reflected in accepting the *Universal Declaration of Human Rights*[89] as a primary referent.[90] While not discounting that dictators can invoke culture to shield gross human rights violations like murder or torture, Foreign Minister Wong argued that the "hard core" of "truly universal" rights, including non-derogable ICCPR rights,[91] was limited. Beyond this, rights were qualified by cultural values and contingent on economic development levels, resulting in divergent applications of the "extent and exercise of rights".[92] This "Asian values"[93] alternative development model[94] posits

[82] The Asian Human Rights Commission has issued a report containing alleged incidences of abuse towards, *e.g.*, opposition leader Chee Soon Juan during his 5 week sentence "Mistreatment of imprisoned Singaporeans opposition leader", 1 November 2002, available at <http://www.singapore-window.org/sw02/021101hr.htm>. A Singapore Democratic Party colleague drafted a complaint to the International Red Cross about Singapore's prison conditions and the alleged infliction of physical and psychological pressure on Chee to deter his political activities.

[83] Chee Soon Juan, "Human Rights in Singapore", (Presented at the Think Centre forum, Every Singaporean Matters, 10 March 2000), online: Singaporeans for Democracy <http://www.sfdonline.org/chee/tcentre.html>. Chee also identified the need to abolish preventive detention laws and the lack of free speech as the most pressing human rights issues.

[84] *Singapore: The Death Penalty: A Hidden Toll of executions* ASA 36/001/2004, 15 January 2004.

[85] "Govt. points out 12 'grave errors' in Amnesty report" *Straits Times* (31 January 2004).

[86] Regarding the Special Rapporteur's extrajudicial, summary or arbitrary executions (E/CN.4/2002/74/Add.2) comments on Singapore's sentencing policy, in a non-extra-judicial case: E/CN.4/2003/G/57.

[87] Report of the Regional Meeting for Asia of the World Conference on Human Rights, A/CONF.157/ASRM/8; A/CONF.157/PC/59 (7 April 1993). [Hereafter, Bangkok Declaration]

[88] Para. 5, Vienna Declaration and Programme of Action, A/CONF.157/23 (12 July 1993). See Susan Sim, "Human Rights: The East Asian Challenge" *Straits Times* (18 Febraury 1996).

[89] *Universal Declaration of Human Rights* (UDHR), GA Res. 217A (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948).

[90] See Kevin Y.L. Tan, "Fifty Years of the UDHR: A Singapore Reflection" (1999) 20 Sing.L.Rev. 265.

[91] Art. 4(2) ICCPR lists the non-derogable rights.

[92] This may be a difference of degree rather than one of kind: *Supra* note 10 at para. 24.

[93] This is hardly a cohesive ideology, borne of a pragmatic coalition of states in Asia. Singapore and Malaysia, *e.g.*, differ radically in the scope of religious freedom and views on Religion's role in public law. See Anthony J. Langlois, *The Politics of Justice and Human Rights: Southeast Asia and Universalist Theory* (Cambridge: Cambridge University Press, 2001) at 13-16.

[94] Michael C. Davis, "East Asia after the Crisis: Human Rights, Constitutionalism and State Reform" (2004) 26 Hum.Rts.Q. 126.

that excessive individualism over community rights at the early stage of economic development would "retard progress", asserting the priority of meeting basic needs as "poverty makes a mockery of all civil liberties". Nevertheless, balancing individual and community interests did not lend itself to "neat general formulas"[95] portending "continuing and no less important conflicts of interpretation".[96]

The "right to development", vague in terms of content, beneficiary and duty-bearer, was characterised as "inalienable".[97] Although the 1986 UN Declaration on this right[98] does not equate development with economic growth, importing participatory and equitable distribution values, "development" in practice may become a state rather than a human right, used to justify authoritarian political order as integral to economic growth,[99] and yet preserving maximal state discretion owing to the difficulties of monitoring such a right.[100] Nevertheless, the justification for the "economics first" thesis was neither foreign approbation nor abstract theory but "the more rigorous test of practical success". Notably, concern for basic needs did not translate into espousing justiciable socio-economic rights.

Second, Singapore is impatient towards foundational questions[101] and thorny metaphysics; it seeks to avoid the ideological impasse through pragmatic realism and forging consensus towards a "more civilised world". "Ambiguity, compromise and contradiction" were necessary adjuncts of an "imperfect world". Given the evolving quality of norms, Wong advocated a humble, clinical approach over dogmatic pretensions of diplomats acting as "prophets of a secular god", in the mutual groping "towards a practical application of the ideals we all share"[102] rather than imposing "any particular political pattern or social arrangement".[103]

B. *Culture Exceptionalism and the Construction of Culture*

The contours of Singapore's legal framework and policy towards human rights are shaped and informed by the paramountcy of state objectives and national development goals.[104] Human rights are qualified by reference to pseudo-cultural invocations of "Asian values" or Neo-Confucianianism, embodied in the government-authored Shared Values White Paper (SVWP) and consonant with the preferred ideology of "paternalism, communitarianism, pragmatism and secularism".[105]

95 *Supra* note 1 at 609.
96 *Ibid.* at 607.
97 *Ibid.*
98 *1986 Declaration on the Right to Development*, G.A. Res 41/128, 4 December 1986.
99 *Supra* note 1 at 608. See Kevin Y.L. Tan, "Economic Development, Legal Reform and Rights in Singapore and Taiwan" in Bauer & Bell, eds., *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999) 266.
100 Georges Abi-Saab, "The Legal Formulation of a Right to Development" in R.J. Dupuy, ed., *The Right to Development at the International Level* (Hague Academy of International Law, 1980) 163; Jack Donnelly, "In Search of the Unicorn: The Jurisprudence and Politics of the Right to development" (1985) 15 Cal.W.Int'l L.J. 473.
101 *E.g.*, Michael J. Perry argues human rights are "ineliminably religious" in *The Idea of Human Rights: Four Inquiries* (Oxford: Oxford University Press, 1998). Religion is overtly invoked in the 1990 Cairo Declaration, *supra* note 2, pitting 2 "universalisms": Islam and the secular ideology of human rights. Michael Ignatieff argues that human rights, based on moral individualism, are minimalist and should serve his conception of "human agency": *Human Rights as Politics and Idolatry* (New Jersey: Princeton University Press, 1999). See generally, Jerome Shestack, "The Philosophic Foundations of Human Rights" (1998) 20 Hum.Rts.Q. 201.
102 *Supra* note 1 at 606.
103 *Ibid.* at 607.
104 Economic development, competition, meritocracy and multi-racialism ground national policy.
105 Eddie Kuo, "Confucianism as Political Discourse in Singapore: the Case of an Incomplete Revitalization Movement" in W.M. Tu, ed., *Confucian Traditions in East Asian Modernity: Moral Education and Economic Culture in Japan and the Four Mini-Dragons* (New Haven: Harvard University Press, 1996) 304 at 307.

"Asian values" have been described as an "attachment to the family as an institution, deference to societal interests, thrift, conservatism in social mores, respect for authority" with an emphasis on education and on consensus-seeking. This is presented as an alternative to wholesale westernisation,[106] despite contemporary concern that social discipline has bred rigidity inimical to the creativity needed in enterprise.

1. *Collectivism: "society above self"*[107]

Community interests are prioritised over individual rights, translated into development-oriented goals, with assertions that Singapore "has always weighted group interests more heavily than individual ones".[108] Secondarily, it is acknowledged that the individual has rights which "should be respected and not lightly encroached upon".[109] In action, this translated into canceling the rights of individual sea-front owners to compensation for sea frontage when sea-front land was acquired for reclamation.[110] Property rights are subordinated to the "communitarian" interest in economic development.

Thus, the cultural argument, invoked to justify differences in degree in the application of human rights, has justified laws based on pre-existing collectivist state values pertaining to security and racial-religious harmony. The former is addressed through preventive detention law like the *Internal Security Act* (ISA)[111], the targets ranging from communist, criminal triads to fundamentalist terror groups. However, the terms of the law are broad enough to include social activists and can quell legitimate political dissent, chilling political opposition.[112] The latter may be handled through "gag" orders against religionists deemed to intrude into the political sphere under the *Maintenance of Religious Harmony Act* (MRHA).[113]

2. *Social harmony: "consensus instead of contention"*

The White Paper rejects adversarial relationships in state-society relations, downplaying rights language and litigiousness. The preferred rhetoric is "responsibility" and "trust" in demonstrated virtue over faith in systemic checks and balances like a human rights institution or ombudsman.[114] This self-serving invocation which emphasises obedience to authority mutes the Confucian duty to criticise unjust governments.[115] The "smorgasbord" approach towards picking and choosing values facilitative of nation-building while jettisoning others belies the constructed nature of "culture".

An example of "trusting" government is the approach towards handling allegations of police abuse.[116] Only "internal" safeguards exist, in the form of the Internal Investigation

[106] "Asian values revisited: What would Confucius say now?" *The Economist* (25 July 1998) quoting Kishore Mahbubani.
[107] *Supra* note 10 at para. 14.
[108] *Ibid.* at para. 26.
[109] *Ibid.* at para 30.
[110] Lee Kuan Yew, "Prime Minister's Address" (Singapore Law Academy Opening, 31 August 1990) *published at* (1990) 2 Sing.Ac.L.J. 155 at 156.
[111] Cap. 143, 1985 Rev. Ed. Sing.
[112] *Supra* note 43 at 107.
[113] MRHA (Cap 167A, 2001 Rev. Ed. Sing.). See Valentine S. Winslow, "The Separation of Religion and Politics: The Maintenance of Religious Harmony Act"(1990) 32 Mal.L.R. 327.
[114] On government by trustworthy, "honourable men", see *SVWP, supra* note 10 at para. 41.
[115] Stephanie Lawson, "Confucius in Singapore: Culture, Politics and the PAP State" in P. Dauvergne, ed., *Weak and Strong states in Asia-Pacific societies* (Australia: Allen & Unwin, 1998) 123.
[116] On ill-treatment in prison, see *P.P. v. Somporn Chinphakdee*, High Court, CC90/1993, which involves detention in a fully lit cell, clad only in underwear without toilet paper: paras. 21-22, 29-32, 34. Officers have been charged under the *Police Force Act* (Cap. 235, 1985 Rev. Ed. Sing.) for allegedly assaulting 3 arrested Filipino women: *Ng Hock Guan v. Attorney-General* [2004] 1 Sing.L.R. 415.

Section (IIS), an independent unit in the police headquarters.[117] In 1993, the IIS investigated 94 complaints, which constitutes 0.5% of the pool of 19,000 suspects a year,[118] of which only 14 were substantiated and disciplined. In response to the call for an independent component in the inquiry process, Minister-of-State Ho was content to reside trust in "the integrity and professionalism of the Commissioner of Police", as distrust would mean "he is not the right man for the job".[119] The preference for weaker "in house" checks is evident.

3. *Community and moral values: rejecting social libertarianism*

The appeal to communal values is not entirely a state apology for power, as the majority of Singaporeans value public goods and support laws designed to serve communal interests in public morality, decency, order and health which might, to a foreign observer, unduly restrict civil liberties such as testing the urine of persons behaving suspiciously for drugs.[120]

An example of how public decency sentiments shape laws is the 1996 law making it an offence to appear nude in public or a private place exposed to public view under Section 27(A) of the *Miscellaneous Offences (Public Order and Nuisance) Act*.[121] This was spurred by public outrage expressed through the media over an incident where a couple was seen nude in their public housing flat. The statute authorises a police officer to enter a private place using necessary force, without the owner's consent, to arrest offenders. Although the Attorney-General noted this is "not an easy law to enforce", the Minister moving the Bill explained that while a person had a right to privacy in his own home, "it should not be exercised at the expense of public decency and morality, especially in high-rise housing estates where persons from all communities live next to each other".[122] This is a strong statement of communal values, legislatively embodied.

A final example which reflects, correctly, the rejection of social libertarianism and other excesses of western liberal individualism is censorship policy through the content-based "public morality" restriction to free speech rights. Censorship policy strives to balance "maintaining a morally wholesome society" with becoming "an economically dynamic, socially cohesive and culturally vibrant nation".[123] This focuses on the public harm expression might exert, rather than the individualistic notion of private choice. Censorship through film classification or Internet restrictions[124] has a protective function, safeguarding the young from undesirable values and protecting central values like the sanctity of marriage, filial piety, moral integrity, racial and religious tolerance.[125] Pursuant to this, pornography, which degrades women particularly, is banned, in attempting to protect women from subordinate sexual stereotyping, consistent with CEDAW requirements.[126] In an exercise of idealism mitigated by realism, one hundred Internet pornography sites were symbolically blocked out "as a statement of our values".[127]

[117] Sing. *Parliamentary Debates*, vol. 63, cols. 377-378 (25 August 1994) (Assoc. Prof. Ho Peng Kee).
[118] *Ibid.* at col. 380.
[119] *Ibid.* at col. 381.
[120] Under the *Misuse of Drugs Act* (MDA) (Cap. 185, 1998 Rev. Ed. Sing.): Vienna Statement, *supra* note 1 at 609.
[121] Cap. 184, 1990 Rev. Ed. Sing.
[122] Chan Sek Keong, "Cultural Issues and Crime" (2000) 12 Sing.Ac.L.J. 1.
[123] Para. 6.4, CEDAW Initial Report.
[124] Materials eroding public morality include pornography and contents promoting promiscuity, exploitative depictions of violence, nudity, horror and sexual perversions like homosexuality, lesbianism and pedophilia. For an appeal to an unbounded free market approach which disregards community values, and considers 'more speech' as the antidote to harmful speech, consonant with radical western liberalism, see Sydney Jones, "Free Expression on the Internet", Letter to Singapore Government, 13 August 1996, online: Human Rights Watch <http://www.hrw.org/advocacy/internet/sing-ltr.htm>.
[125] Para. 6.4, CEDAW Initial Report.
[126] Para. 58, A/56/38.
[127] Sing. *Parliamentary Debates*, vol. 73, col. 557 (9 March 2001) (Mr. Lee Yock Suan).

C. *Excavating Cultural Bias: The Patriarchical Spectre*

Culture is not monolithic, static or univocal; it is constantly being negotiated, though those in inferior power relationships are handicapped in this. Nevertheless, appeals to "dominant" Asian values to justify sexist policies contravening human rights obligations demonstrate insensitivity towards gender-concerns stemming from an andro-centric or patriarchical bias. This is ironical, given the PAP's socialist history as a women's rights champion.[128]

The family is considered the "basic unit" of society as a "shared value"; while family values are themselves not objectionable, the concern is that this guises detrimental sexist policies.[129] This is evident in past unapologetic invocations of "Asian values" to justify gender inegalitarian citizenship laws, unequal civil servants medical benefits[130] and even the medical quota on female medical students, with bald assertions that Singapore is "customarily still very much a patrilineal society".[131] The patriarchical bias underscores policies that cast men as household heads and primary providers, with women secondarily cast as "submissive, passive women whose paramount mission is to fulfill the roles of a wife and mother".[132] There is some ambivalence insofar as the SVWP discards the Confucian *wulun* (hierarchical fivefold relationship) where "males take precedence over females, brothers over sisters and the first born over younger sons"[133] as "sons and daughters are increasingly treated equally".[134] Nevertheless, gender-biased policies have been objected to, though the male-dominated political leadership seems committed to a very gradualist approach,[135] their gender-insensitivity captured in comments that gender-biased policies might be altered "as time changes ... perhaps one day when you have women in the Cabinet, we will discuss this again".[136] The problem is that women's issues are "ghettoised" and not treated as structural issues affecting general society.[137] Nevertheless, a positive and promising recent development is the inclusion of two women in the new cabinet headed by Singapore's third Prime Minister, Lee Hsien Loong, in August 2004.[138] Furthermore, there have been some significant policy reversals in relation to gender discriminatory law and policy.[139]

128 The PAP's 1959 election manifesto criticised patriarchy and promised to enhance women's status within socialist society, ensuring equal pay for equal work. PAP female M.Ps criticised "feudalistic" and "colonialistic" ideas for oppressing women: Sing. *Legislative Assembly Debates*, Official Report, vol. 12, cols. 443 at 1200 (January-June 1960) (Chan Choy Siong).

129 The CEDAW Committee was concerned that "Asian values" might perpetuate stereotyped gender roles in families, through husbands having legal household head status: A/56/38 (2001), para. 79.

130 In justifying allocating unequal medical benefits to male and female civil servants, Minister Lee Boon Yang stated "that in an Asian society like Singapore, it is the husband's responsibility to look after the family's need". Sing. *Parliamentary Debates*, vol. 75, cols. 1461-1462 (31 October 2002) (Minister Lee Boon Yang). When M.P. Halimah Yacob pointed out current policy contravened ILO standards, the response was that the matter would be studied by the Working Committee on Population: "Lost cause? It pays to persevere" *Straits Times* (12 March 2004) H6.

131 Wong Kan Seng, "New Citizenship rules recognizes marriage trends" *Straits Times* (13 March 2004).

132 Sing. *Parliamentary Debates*, vol. 75, col. 1130 (1 October 2002) (Ms. Irene Ng).

133 *Supra* note 10 at para. 44.

134 *Ibid*.

135 Irene Ng cautioned against using cultural arguments to justify unequal citizenship laws. D.P.M. Lee stated Singapore was still a patrilineal society, as many women sought their M.Ps' help after their husbands deserted them and stopped supporting the family; few men did the same: "More foreign-born kids to get citizenship" *Straits Times* (20 April 2004) H2.

136 "Ask when there are women in Cabinet" *Straits Times* (14 March 2003) H4.

137 *Supra* note 132 at col. 1131.

138 These are Mrs. Lim Hwee Hwa, who is Minister of State for Finance & Transport and Mrs. Yu-Foo Yee Shoon, Minister of State for Community Development, Youth and Sports. "Mr. Lee names his Cabinet" *Straits Times* (11 August 2004) 1. A third woman appointed to political office is Dr. Amy Khor as mayor of Southwest Community Development Council.

139 These relate to the female medical student quota, gender-biased citizenship laws and the civil servant medical benefits scheme: "Major Changes ahead with P.M's bold vision" *Strait Times* (23 August 2004) 1.

D. *The Human Rights Policy of the Government in Singapore—Critical Points*

Human rights law is a transformative ideology, seeking to advance human dignity.[140] This is reflected in the challenge treaties like CEDAW pose to domestic culture and the status quo. Its preamble voices awareness that pursuant to *de facto* gender equality, changes in traditional gender roles in society and family are needed. Article 5(a) requires states to "modify the social and cultural patterns of conduct of men and women" by eliminating prejudices and customs that perpetuate gender superiority/inferiority.

The cultural argument may be criticised for being an apology for power and inauthentic where "constructed" in a self-serving manner. Appeals to "culture" are unrepresentative and alienating, where this imports bias such as patriarchy, marginalising women's equality concerns. Further, in purporting to speak for the entire population, the government effectively conflates "state" with "community", treating state and community values synonymously. The "state" is distinct, a legal imposition on the more organic "community" and "government", the politically elected representatives of the day. The conflation is evident where, for example, the government promises economic benefits through prioritised public upgrading programmes for constituency wards supporting the PAP.[141]

The "communitarian" characterisation of local culture justifies the trumping of individual rights by community interests in upholding national values like political stability and national integration. Singapore lacks a developed human rights culture, denoting both knowledge of one's human rights and the practice of bringing alleged violations before judicial or quasi-judicial bodies. Minor positive developments include teaching about citizens' rights in the Civics and Moral Education programme in schools, albeit with an equal stress on civic responsibilities.[142] Although there are no statutory rights to consultation, the government has taken efforts to consult the views of the non-government sectors, *e.g.*, with respect to drafting the first CRC report[143] and discussing how to implement CRC obligations.[144] Consultation is an important aspect of the right to development which encourages all sectors of society to participate in public affairs.

Space for developing a human rights culture is cabined by the overriding PAP objective of preserving the political status quo of a strong government within a dominant party state, necessary for attracting foreign investment and dealing effectively with criminal and terrorist threats after 9-11. Economic success grounds the performance legitimacy of a corporatist government which valorises discipline and social order over individual rights and democracy, with stability apprehended as precursor to the full enjoyment of human rights. Thus, extensive government intervention in the public and private sector is justified.

[140] Of course, "human dignity" itself is a contested term. See generally Thio Li-ann, "The Impact of Internationalisation on Domestic Governance: Gender Egalitarianism & the Transformative Potential of CEDAW" (1997) 1 Sing.J.I.C.L. 278.

[141] In 2001, the Prime Minister told residents of an opposition stronghold that precincts evidencing at least 50% PAP support would enjoy priority upgrades: "SDA Distances Itself from Chee's Behaviour" *Straits Times* (1 November 2001) H4. This may inhibit free voting as the lack of PAP support implied loss of publicly-funded benefits: US Country Report (2002), *supra* note 73.

[142] Para. 430, CRC Initial Report. See Civics and Moral Education (Ministry of Education, 2000) at 7-8 (fundamental liberties) and 9 (responsibilities). The UN and its aims, including safeguarding human rights, are also taught: 63.

[143] Albert Tan, NGO Representative, "Singapore Delegates, Describing Compliance with Women's Convention, say account must be taken of cultural tradition, need for stability", Press Release WOM/1293 (13 July 2001), CEDAW Committee 25th Sess; Address by the Singapore Delegation to CRC Committee, 34th Sess., led by Minister Chan Soo Sen [Singapore CRC Delegation Address].

[144] Para. 1.5, CRC Initial Report.

E. *The Theory and Approach Towards Human Rights in the Courts*

A study of case law reveals both liberal and non-liberal conceptions of "rights". Lord Diplock for the Privy Council[145] in *Ong Ah Chuan v. P.P.*,[146] approvingly quoted Lord Wilberforce's stricture in *Minister of Home Affairs v. Fisher*[147] that where reading constitutional bills of rights, "a generous interpretation" to countermand the "austerity of tabulated legalism" was required to give individuals the "full measure" of their fundamental liberties. Inherent in the Constitution were "fundamental principles of natural justice", conditioning rights interpretation.[148] This dignitarian idea of rights was affirmed in *Taw Cheng Kong v. P.P.*,[149] where Karthigesu J.A. stated that constitutional rights were "inalienable",[150] part of the supreme law, rather than "carrot and stick privileges" the state and citizen could reciprocally barter.[151]

The current dominant approach towards constitutional interpretation, determined by its chief architect, Yong C.J., is utilitarian and selectively literalist. Rights are not "trumps" bearing determinative weight against competing interests. A review of civil liberties cases reveal that government-defined collective purposes or group interests are prioritised,[152] evident in cases like *Colin Chan v. P.P.*,[153] where "religious beliefs ought to have proper protection", but actions flowing therefrom "must conform with the general law relating to public order and social protection".[154] Further, National Service (N.S.) was declared a "fundamental tenet in Singapore" such that "anything which detracts from this should not and cannot be upheld,"[155] effectively allowing a legislative policy to trump a constitutional right. Extra-textual values were judicially invoked as reasons to curtail individual rights in the name of public order, with Yong C.J. inferring the "sovereignty, integrity and unity of Singapore" as an unwritten constitutional "paramount mandate"; thus religious beliefs and practices "which tend to run counter to these objectives must be restrained".[156] Hence, he declared a statist "basic feature".[157]

[145] Singapore cut off ties with the Privy Council in 1994. The July 1994 Practice Statement (1994) Sing.L.R. 689 noted the profound changes in post-Independent Singapore's "political, social and economic circumstances"; as such legal development "should reflect these changes and the fundamental values of Singapore society".

[146] *Ong Ah Chuan v. P.P.* [1981] 1 Mal.L.J. 64

[147] [1980] A.C. 319 at 329; [1980-1981] Sing.L.R. 48.

[148] See Andrew Harding, "Natural Justice and the Constitution" (1981) 23 Mal.L.R. 226; T.K.K. Iyer, "Article 9(1) and 'Fundamental Principles of Natural Justice' in the Constitution of Singapore" (1981) 23 Mal.L.R. 213. Notably, these principles have not been substantially developed since 1981. See Thio Li-ann, "Trends in Constitutional Interpretation: Oppugning *Ong*, Awakening *Arumugam* ?" [1997] Sing.J.L.S. 240.

[149] [1998] 1 Sing.L.R. 943, 965A-D. *Cf.* The Court of Appeal's decision in [1998] 2 Sing.L.R. 410.

[150] The 1966 Commission considered "inalienable" the right to government by popular choice, expressed in periodic, secret elections by universal, equal suffrage: *supra* note 20 at para. 43.

[151] In contrast, Yong C.J. was sympathetic to a Defence Ministry official's views in *Colin Chan v. P.P.*, *infra* note 153 at 684G-I that JW pacifism and willful disobedience would impair the Singapore Armed Forces (SAF)'s motivation, allowing JWs to "enjoy the social and economic benefits of Singapore citizenship" without "the responsibility of defending the very social and political institutions and structure which enable them to do so". Further, Constitutional Articles 128 and 131 provide a citizen may not renounce citizenship without discharging his national service liability, implying the contingency of rights on discharging citizen obligations.

[152] *Supra* note 10 at para. 24.

[153] [1994] 3 Sing.L.R. 662.

[154] *Ibid.*, 684F.

[155] *Ibid.*, 678B.

[156] *Colin Chan v. P.P., supra* note 153 at 684F-G.

[157] The Indian basic features doctrine from *Kesavananda Bharati & Ors v. The State of Kerala* A.I.R. 1973 S.C. 1461 was apparently rejected in *Teo Soh Lung v. Minister of Home Affairs* [1989] 2 Mal.L.J. 449.

IV. Implementing and Enforcing Human Rights: Attitudes and Modalities

A. *State Sovereignty, Internal Affairs and Human Rights*

While Singapore recognises that human rights issues are matters of legitimate international concern, not falling within a state's "exclusive determination", it opposed imposing conditionalities for development aid,[158] preferring non-confrontational constructive engagement over deploying economic sanctions against recalcitrant pariah regimes such as Myanmar.[159] ASEAN,[160] the primary sub-regional organisation Singapore belongs to, has no explicit human rights stance although it sponsors social welfare programmes designed to benefit vulnerable groups like women[161] and children.[162] A cardinal ASEAN principle is non-intervention in other states' internal affairs.[163]

Singapore considers that national governments are primarily responsible for protecting human rights, their "first duty" being to govern "effectively" and "fairly".[164] It took issue when politicians in ASEAN states like Malaysia criticised Singapore's "no tudung" policy, characterising this as intervention in domestic affairs—"Every sovereign country should have its right to manage its own affairs".[165] It rejected Malaysian pretensions at being a spiritual protectorate of sorts, a typical posture of "kin" states when their kin ethnic groups in a neighbouring state are maltreated, despite views that "historically, geographically, Singapore and Malaysia are still one".[166]

B. *Domestic Mode of Promoting and Protecting Human Rights*

Unlike other ASEAN countries, Singapore has no dedicated national human rights institution[167] which plays an important role through human rights education and public awareness, reviewing domestic law against international standards, investigating and mediating complaints, for example.[168] There is no specific ministerial-level human rights portfolio.[169]

[158] *Supra* note 87 at para. 4.

[159] British American Tobacco (BAT) pulled out of Myanmar after a British government request on 2 July 2003 asserting the inappropriateness of British companies trading with regimes suppressing basic human rights. BAT sold its 60% stake in a cigarette factory co-owned with the military government to Singapore-based Distinction Investment Holdings. See "BAT to extinguish business in Myanmar" *AFP*, Business Report (6 November 2003), online: Business & Human Rights Resource Centre <http://www.business-humanrights.org>.

[160] Association for Southeast Asian Nations (ASEAN). See generally Li-ann Thio, "Implementing Human Rights in ASEAN Countries: Promises to Keep and Miles to Go before I Sleep" (1999) 2 Yale Human Rts. & Dev.L.J. 1.

[161] The 1988 *Declaration of the Advancement of Women in the ASEAN Region* contains no justiciable rights.

[162] ASEAN Plan of Action for Children. In 1999, Singapore organised an Experts Group Meeting to share its expertise on early childhood development with other ASEAN members: Para. 2.14, CRC Initial Report.

[163] 1976 *Treaty of Amity and Cooperation in Southeast Asia* online: ASEAN Secretariat <http://www.aseansec.org/summit/amity76.htm>. See Li-ann Thio, *supra* note 157 at 19-23.

[164] *Supra* note 1 at 608.

[165] Interview of, *inter alia*, Hawazi Daipi (from the Ministry of Education) by David O'Shea (27 March 2002) on *Dateline*, SBS Television, Australia "Singapore—The Tudung Affair" *archived at* Singapore Window <www.singapore-window.org/sw02/020327sb.htm>.

[166] Karpal Singh, *ibid.*

[167] Specifically, Thailand, Malaysia, Indonesia and the Philippines. After the Michael Fay caning incident, opposition politicians called for a human rights commission: "Singapore Opposition Seeks Human Rights Commission" *Reuters Info. Services* (27 July 1994).

[168] *Supra* note 160 at 61-71; Amanda Whiting, "Situating Suhakam: Human Rights Debates and Malaysia's National Human Rights Commission" (2003) 39 Stan.J.Int'l L. 59.

[169] MCDS is charged with handling international human rights reporting obligations (CEDAW and the Child Convention): para. 5.8, CRC Initial Report. There appears a reluctance to use the terms "human rights", as

1. *Formal judicial checks: the courts as human rights watchdog?*

The judiciary's indispensable role in implementing UDHR and ICCPR rights was acknowledged by the 1995 *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*. This asserted that the judiciary should have jurisdiction over all justiciable issues and competence to determine its own jurisdiction, a principle the Court of Appeal endorsed in *Chng Suan Tze v. MHA*.[170]

Singapore has a formal adjudicatory and alternative dispute resolution system. The High Court may strike down unconstitutional laws[171] and afford remedies for civil liberties violations. However, this plays a limited human rights protection role for various reasons.

First, the limited range of constitutionally safeguarded civil-political rights. Second, judicial review is truncated by statutory ouster clauses, immunising execution action which restricts constitutional liberties[172] from judicial scrutiny and replacing this with non-judicial checks of uncertain efficacy.[173] Third, the lack of resort to constitutional litigation to resolve disputes as compared to commercial cases. This reflects the lack of a developed human rights culture in Singapore in terms of rights consciousness, litigation and activism, unsurprising where national ideology views rights as disrupting social harmony. For example, when the female medical quota was criticised before Parliament as violating the Article 12 equal protection clause, the stock government reply was to "put this to a test in a court of law".[174] This was never litigated, but one instance where potentially justiciable issues are not judicially resolved.

The reticence towards seeking redress for rights violations is perhaps because overwhelmingly,[175] cases brought against the government or its officials are lost, pursuant to the pro-communitarian bias and corporatist ethos case law evidences.[176] For example, critics allege that defamation suits are used as a tool to suppress political opposition, as reflected in the consistent sizeable awards favouring government plaintiffs, which creates a "general perception that it [the judiciary] reflects the views of the ruling party in politically sensitive cases".[177] Furthermore, judicial receptivity towards human rights norms is not forthcoming, where the Courts consider arguments referencing such norms as well as foreign constitutional decisions. In principle, it appears the Courts recognise the legal quality of accepted customary norms. In *P.P. v. Nguyen Tuong Van,*[178] while the High Court on reviewing the evidence found a conventional consular rule to be customarily binding, it did

MCDS presents itself as the national focal point on advancing women's status: para. 2.5, CRC Initial Report; para. 5.1, CEDAW Initial Report.

170 [1988] Sing.L.R. 132 at 156B-C: "All power has legal limits and the Rule of Law demands that the courts should be able to examine the exercise of discretionary power".

171 *Taw Cheng Kong v. P.P.* [1998] 1 Sing.L.R. 943.

172 *E.g.*, s.18, MRHA (Cap. 167A, 2001 Rev. Ed. Sing.); s.8, ISA (Cap 143, 1985 Rev. Ed. Sing.).

173 Notably, the elected presidency and various councils' roles regarding MRHA restraining orders and ISA detention orders: see Thio Li-ann, "The Elected President and Legal Control: *Quis Custodiet Ipsos Custodes*" in Tan & Lam, eds., *Managing Political Change: The Elected Presidency of Singapore* (London: Routledge, 1997) 100 at 115, 125-132.

174 Sing. *Parliamentary Debates*, vol. 63, col. 486 (25 August 1994) (Lee Yock Suan).

175 The government has exceptionally lost public law suits: *Bridges Christopher v. P.P.* [1997] 1 Sing.L.R. 406 (*Official Secrets Act*); *Stansfield Business v. Minister for Manpower*, [1999] 3 Sing.L.R. 742. (employment dismissal breached natural justice).

176 Yong C.J. in *Colin Chan v. P.P. supra* note 153 at 683C noted that any administration perceiving possible trouble over religious beliefs and not acting until trouble was about to break out "must be not only pathetically naive but also grossly incompetent". (rejecting the US "clear and present danger" test necessary to limit rights). See, *e.g.*, Thio Li-ann, "An i for an I: Singapore's Communitarian Model of Constitutional Adjudication" (1997) 27 (2) Hong Kong L.J. 152; Li-ann Thio, "*Lex Rex* or *Rex Lex?* Competing Conceptions of the Rule of Law in Singapore" (2002) 20 UCLA Pac. Basin L.J. 1 at 67-76.

177 *Supra* note 40 at Section E.

178 [2004] 2 Sing.L.R. 359.

not consider that "death by hanging" violated a customary rule against cruel and inhumane punishment, embodied in Article 5 of the UDHR. In other cases, references to customary norms in the UDHR have been ignored in the adjudicative process.[179] Further, the formal legal positivism which construes constitutional rights literally does not focus on whether an appropriate balance between rights and civic order has been struck; it does not seek to develop a conception of "law" that comports with substantive standards of fairness, justness and reasonableness.[180] Judicial review is confined to ascertaining whether law is duly enacted,[181] following all procedural law-making requirements, affirming *de facto* parliamentary supremacy. This stultifies the development of rights jurisprudence which may be usefully informed by the developing transnational "common law of human rights".[182]

Yong C.J.'s "four walls" approach[183] shows impatience for pro-human rights foreign cases; disdain for international law is also apparent.[184] However, foreign cases with a collectivist bent are readily cited to buttress decisions, dating from wartime eras[185] or at least a half-century ago when rights were regarded as only residual liberties at common law[186] rather than constitutionalised. Singapore courts are unlikely in the foreseeable future to become national venues for human rights enforcement.[187]

2. *Informal approaches and anti-institutionalism*

There have been calls to ensure that social structures and institutions can adequately ensure the observance of constitutional principles of non-discrimination and equality and to protect central aspects of national identity like Gender equality and Multiracialism: "Leaders may come and go, but institutions stay".[188] Institutions can target specific problems for concerted attention, *e.g.*, a Women's Affairs Ministry would address female under-representation in public life.[189]

However, the government prefers the muted resolution of complaints through informal channels. The usual route is a "piecemeal, ad hoc affair", *e.g.*, a pregnant woman facing workplace discrimination may try and seek redress through Members of Parliament (M.Ps),

[179] *Colin Chan v. P.P., supra* note 153 at 682A, in relation to Art. 18 of the UDHR.

[180] *Jabar v. P.P.* [1995] 1 Sing.L.R. 617 at 631B.

[181] Kan J. considered there was "room for debate" in ascertaining what "in accordance with law" meant, holding that it related both to ensuring that statutes "do not contravene the Constitution", *i.e.* substantive principles or values therein, and compliance with the procedural requirements for enacting statutes: *P.P. v. Nguyen Thuong Van* [2004] 2 Sing.L.R. 328, 353 at para. 77.

[182] J.C. McCrudden, "A Common Law of Human Rights? Transnational Judicial Conversations on Constitutional Rights" (2000) 20(4) Oxford J.Legal Stud. 499.

[183] Citing *State of Kelantan v. Government of the Federation of Malaya* [1963] Mal.L.J. 355 at 681A in *Colin Chan v. P.P.,* where analogical references to foreign constitutions were discounted. For a critical discussion of Yong C.J's judicial approach, see Thio Li-ann, "The Secular Trumps the Sacred: Constitutional Issues Arising out of Colin Chan v PP" (1995) 16 Sing.L.Rev. 26 at 26-103 and Victor V. Ramraj,"Comparative Constitutional Law in Singapore" (2002) 6 Sing.J.I.C.L. 302.

[184] Yong C.J. reportedly commented with regard to an article challenging the death penalty's constitutionality and international legality, "I am not concerned with international law. I am a poor humble servant of the law in Singapore. Little Island." "C.J. Yong on 'death penalty' article" *Straits Times* (1 October 2003).

[185] *Adelaide Jehovah's Witnesses Inc. v. C'wealth* [1943] 67 C.L.R. 116 in *Colin Chan v. P.P.*, *supra* note 153.

[186] In the political defamation case of *J.B. Jeyaretnam v. Lee Kuan Yew* [1992] 2 Sing.L.R. 310, the Court of Appeal cited and followed two Canadian cases, *Campbell v. Spottiswoode* [1863] Q.B. 185 and *Tucker v. Douglas* [1950] 2 D.L.R. 827; see Michael Hor, "The Freedom of Speech and Defamation" [1992] Sing.J.L.S. 543.

[187] In *Mabo v. Queensland* (1992) 175 C.L.R. 1, the Australian High Court acknowledged that international law, particularly universal human rights, was a "legitimate and important influence" in developing common law. The US Alien Torts Claim Statute allows foreign nationals to sue each other for torts violating the law of nations, *e.g.*, torture: *Filartiga v. Pena Irala*, 630 F. 2d. 876 (2nd Cir, 30 June 1980).

[188] Sing. *Parliamentary Debates*, vol. 75, col. 181 (1 October 2002) (Irene Ng).

[189] *Ibid.*

unions and the Ministry of Manpower but these are not dedicated institutions and further, lack time and resources to thoroughly investigate each case.[190] This enforcement method lacks institutional heft in providing a permanent remedial route, which itself promotes rights awareness and expectations. The weak informal processes available under the *Employment Act*[191] for sacked workers were likened to "a band-aid plastered over a crack on the wall when gaps are opening up from beneath our feet."[192] Violation of statutory rights in relation to paid maternity leave is an offence and aggrieved persons have been urged to "seek the help" of the Ministry of Manpower.[193]

The preference for "soft" educative and persuasive measures to a formalised legal sanctions-based approach in addressing problems like discrimination is evident in the handling of racist media advertising. Preferring promotion to legislation, a set of recommendatory tripartite guidelines were adopted in March 1999 by the Government, NTUC and Singapore Employers Federation to dissuade employers from specifying discriminatory job criteria in advertisements.[194] This was reportedly effective: as of October 2000, less than 1% of advertisements stipulated discriminatory criteria such as race, age and gender, a drop from 32% in January 1999, before the Guidelines were adopted.[195]

Further, calls for institutional safeguards like an Equal Opportunities Commission have been rejected on the basis that workplace culture would become more litigious.[196] This anti-institutionalism manifested again when the suggestion of creating an independent elections commission was raised, eliciting the reply that Election Department officials, which department comes under the Prime Minister's Office, had drawn up a code of conduct affirming values like neutrality, transparency and accuracy.[197] Dedicated rights bodies have the virtue of being a focal point for specific human rights concerns, and perhaps this institutional deficit reflects a desire to discourage a rights-oriented culture.

In terms of enforcing human rights obligations, the government prefers to operate through a partnership/consultative model rather than subjecting itself to domestic or international individual or inter-state complaints mechanisms,[198] such as the CEDAW Optional Protocol,[199] a more robust form of external accountability. For example, it set up the Inter-Ministry Committee on the CRC, composing various government body representatives, to monitor its implementation and to solicit non-government views.[200] Thus, Singapore prefers to maximise state discretion by promoting human rights "through appropriate infrastructure and mechanisms,"[201] *i.e.*, national bodies. However, this does not involve creating

[190] *Ibid.*, col. 179-181.
[191] Cap. 91, 1996 Rev. Ed. Sing.
[192] *Ibid.*
[193] Halimah Yacob, "It's an offence to deny workers maternity leave" *Straits Times* (24 June 2004) 21.
[194] "Guidelines on Non-discriminatory Job Ads", online: MOM <http://www.mom.gov.sg/MOM/LRD/Procedures/688_jobdisc.pdf>. This mentioned the constitutional equal protection clause, affirming that employment should be merit-based and that employers should not discriminate on the basis of race, religion descent or age where irrelevant to a job. Where a job was gender-specific, this needed an "acceptable rationale".
[195] Para. 7.6, CEDAW Second Report.
[196] "'No' to legal body to fight for equal opportunities" *Straits Times* (4 April 2002).
[197] "Election Dept officials have code of conduct" *Straits Times* (12 March 2004).
[198] Although one might always issue an informal complaint to the relevant Ministry. Para. 12, CRC Committee A/56/38 expressed concern about "the absence of an independent mechanism" empowered to regularly monitor CRC implementation and to receive complaints from individuals, including children: CRC/C/15/Add.220. Singapore was urged to establish a suitably financed, effective national human rights institution, accessible to children, to oversee CRC principles: para. 13.
[199] Para. 94, A/56/38 (2001).
[200] Part Two, para. 1.3, CRC Initial Report. In a similar vein, the Committee on the Family, under MCDS auspices, monitors issues affecting women and their families: para. 5.3, CEDAW Initial Report.
[201] S*upra* note 87, para 9.

institutions to implement treaty norms, *e.g.*, there remain no specific enforcement measures to redress discrimination against women.[202]

C. *International Modes of Enforcement*

In other jurisdictions, domestic practices criticised before human rights bodies have induced changes to conform domestic law with international standards,[203] allowing human rights standards to inform decision-making processes.

1. *Presumption of concordance*

This corrective or transformative force is minimalised in Singapore. In acceding to international human rights treaties, the operating assumption apparently considers that domestic laws largely comply with international norms,[204] insofar as no specific legal reform is undertaken, although the possibility of future improvements is admitted, with assurances of periodic law reviews.[205] No specific legislation[206] is enacted to effectuate these non-self-executing treaties.[207] Before the CEDAW Committee, the Singapore representative opined that despite the lack of specific anti-discrimination laws, the constitutional prohibition against unequal treatment sufficed.[208] Ratifying the ILO "equal remuneration" convention did not bring about changes in employment law but merely a tripartite resolution affirming these principles and encouraging their incorporation into employer-unions collective agreements.[209] In contrast, Malaysia amended its constitution to prohibit sex discrimination after ratifying CEDAW.[210]

2. *Acceding attitudes: reservations as insulation*

Accession to human rights treaties is intended to reflect the Government's commitment to the welfare of women and children, signaling "its openness to international scrutiny of its domestic policies, legislation and practices".[211] The supremacy of domestic law is

[202] Para. 3.1, CEDAW Initial Report. Para. 12.10 states that female employees, like males may appeal against wrongful discrimination and dismissal under the *Employment Act, supra* note 191.

[203] *E.g.*, Canada amended the *Indian Act* which was found inconsistent with ICCPR provisions in *Sandra Lovelace v. Canada*: No.24/1977, *Human Rights Committee Selected Decisions* 10; A/38/40, 249-53; 254.

[204] Para. 3.6, CEDAW Initial Report stated that prior to accession, the Singapore constitution and laws already contained principles to promote gender equality. Notably, Art. 12(2) does not prohibit sex discrimination but presumably the Art. 12(1) general equality clause would ground such claim: paras. 4.3, 4.11.

[205] Para. 3.1, Initial CEDAW Report.

[206] The Initial CEDAW State Report notes the lack of specific provisions by which the courts may penalise gender discrimination; any redress depended on the applicable law in that particular sphere: para. 2.2.

[207] *E.g.*, the legal regime for protecting children is based on various statutes listed in paras. 5.4-5.7, 5.9, CRC Initial Report. Part II para. 2 noted that CRC principles were "implemented in Singapore even prior to Singapore's accession". CRC provisions themselves cannot be judicially invoked. The CRC Concluding Observations expressed concern that domestic law did not fully reflect CRC principles: CRC/C/15/Add.220, para. 8. Regarding the lack of specific laws covering female workers outside the *Employment Act*, the state report declared no need to "specifically enact employment laws" as equality was constitutional enshrined and "widely practiced in the field of employment": para. 2.5. CEDAW Initial Report. Para. 12.3 notes the Ministry of Manpower provides a free conciliation service to help managerial / executive employees not covered by the Act resolve their salary claims, resulting in many successful solutions.

[208] Para. 58, A/56/38.

[209] Sing. *Parliamentary Debates*, vol. 75, col. 1463 (31 October 2002) (Minister Lee Boon Yang) adopted by the Ministry of Manpower, NTUC, Singapore Business Federation and National Employers Federation.

[210] "Equality for women move in Malaysia hailed" *Straits Times* (24 July 2001).

[211] Para. 1.3, CRC Initial Report.

protected by appending reservations[212] purporting to limit treaty obligations by reference to constitutional provisions,[213] the social context[214] and customary and religious values[215] regarding a child's place within and without a family. Various European countries, including Germany, Belgium, Finland, the Netherlands and Norway, objected to these reservations for being too general and undefined, for contravening the law of treaties by invoking internal law to avoid international obligation and for being contrary to CRC purposes.

D. *Socialisation into the UN Reporting System and its Influence on Domestic Practice*

Singapore's socialisation into the UN human rights reporting system is in its infancy, having prepared a total of three reports for the CRC and CEDAW Committees and dialoguing with Committee members on Singapore practice. In attempting to cultivate a participatory ethos, dialogue sessions with women's groups were held to aid preparation of CEDAW reports. The CEDAW Committee urged the wide dissemination of CEDAW—related information.[216]

Committee recommendations extend beyond the "public" or government sector into the "private" sphere. For example, on wage disparity, the CEDAW Committee urged direct government rectification in the public sector and influencing private employers through sensitivisation campaigns.[217]

While generally conciliatory, the Committees have criticised substantive aspects of Singapore policy. The CEDAW Committee noted the gross under-representation of women in the public field, only at 6.5%,[218] falling short of the critical mass of 30-35% needed for genuine gender-sensitive political change.[219] Pursuant to "meritocracy", women were considered part of the mainstream and not treated as a special interest group;[220] thus legislative quotas for women were rejected.[221] The Committee was concerned that the Singapore government lacked a clear apprehension regarding laws and gender mainstreaming, urging a review of all policies to achieve *de facto* equality by eliminating direct and indirect forms of discrimination.[222] The focus should not merely be on equality of opportunity but of result, given that the former disregards the inequities of an uneven playing field. A "gender sensitive" application of the meritocracy principle might include quotas to ensure women's participation in the political arena.[223]

[212] Para. 1.4, CRC Initial Report: declarations (Arts. 12-17, 19 and 39) and reservations (Arts. 7 (right to nationality), 9 (separation of child from parents), 10 (family reunification), 22 (refugee status), 28 (right to education) and 32 (protection from economic exploitation). A CRC member Yanghee Lee (CRC/C/SR.909 at para. 69) suggested Singapore withdraw its reservations and declaration. The Singapore delegation stated this was under review but reservations did not indicate "a lack of commitment but ... an honest appraisal of [Singapore's] current capabilities": paras. 70-7. The issues of caning and spanking were under review, Lee having argued this was cruel and degrading. The CRC committee recommended withdrawing reservations: para. 7, CRC/C/15/Add.220.

[213] Regarding Arts. 19-73, CRC.

[214] It argued that making primary education compulsory was "unnecessary in our social context where in practice virtually all children attend primary school": Art. 28(1)(a) of CRC.

[215] Singapore placed a declaration to Arts. 12 and 17 of CRC, conditioning their exercise "with respect to parental and school authorities" consonant with the "customs, values and religions of Singapore's multi-racial and multi-religious society" regarding a child's place in family and society: para. 3.1, CRC Initial Report.

[216] Para. 96, CEDAW A/56/38.

[217] *Ibid.*

[218] The CEDAW Committee described as "very low" the level of female representation in policy-making: paras. 62, 87, A/56/38.

[219] General Recommendation 23 of 1997, A/52/38, para. 16.

[220] Paras. 57, 62, 87, A/56/38 (2001).

[221] *Ibid.* at para. 57.

[222] *Ibid.* at paras. 83-84.

[223] *Ibid.* at para. 88.

Other concerns raised during the reporting process related to the withdrawal of broad reservations.[224] Reservations to Articles 2 and 16 of CEDAW, allowing Muslims to practice their religious and personal laws in recognition of the country's "multi-racial and multi-cultural society",[225] were considered the "very essence" of CEDAW obligations.[226] These hindered the "overall advancement' of women".[227] Singapore was urged to continue its process of law reform, referencing other countries with similar legal traditions in relation to Muslim law and especially, to consult women.[228] Change could only be nudged.

The CRC Committee raised specific concerns relating to the disharmony between domestic law and treaty norms,[229] urging a comprehensive review with respect to defining "child",[230] readjusting the level of resources allocated for children's social services,[231] fully integrating disabled children into national schools,[232] and raising the minimum age for criminal responsibility,[233] for example. Progress in these concrete matters may be evaluated at the next round of periodic state reports.

The committees expressed concern over the modalities of implementation. The CRC Committee was dissatisfied with the lack of a permanent co-ordination mechanism, as only an Inter-Ministry Committee responsible for overseeing CRC implementation was established. Furthermore, no national plan of action for children had been adopted.[234] The Committee was also discomfited by the lack of an independent monitoring mechanism and a direct individual complaints mechanism able to provide remedies for rights violations.[235] This was echoed in relation to CEDAW[236] but is contrary to the preferred self-regulatory approach to redressing government abuses. It recommended legislating mandatory duties to report instances of suspected child abuse[237] and further, for more accountability, that Singapore become party to the optional protocols for the sale of children, child prostitution and child pornography and that relating to children in armed conflict.

E. *Change in Domestic Practices as Instrumentalism, not Rights Vindication*

Certain changes advocated by UN treaty bodies were given effect, not because of the weight of these views but to serve coincident instrumental state purposes. A good example is the amendment of discriminatory citizenship laws, which both the CRC and CEDAW Committees were concerned with.[238] Previously, only overseas-born children with Singaporean fathers enjoyed Singapore citizenship automatically by descent, "in line with our Asian tradition where husbands are the heads of households".[239] Both Committees had criticised the proffered policy rationale as unconvincing and inconsonant with human rights standards

[224] Paras. 389-390, CRC /C/133 (2003); para. 64, A/56/38 (2001).
[225] Para. 64, A/56/38 (2001).
[226] *Ibid.* at para. 73.
[227] *Ibid.* at para. 65.
[228] *Ibid.* at para. 74.
[229] Paras. 391-392, CRC /C/133 (2003).
[230] *Ibid.* at para. 405.
[231] *Ibid.* at paras. 397-398.
[232] *Ibid.* at paras. 423-424.
[233] *Ibid.* at para. 427.
[234] Paras. 393-394 CRC /C/133 (2003).
[235] *Ibid.* at para. 395-396.
[236] The CEDAW Committee urged Singapore to "improve its complaints procedure" regarding equal rights violation: Para. 89, A/56/38.
[237] Para. 420, CRC /C/133 (2003).
[238] *Ibid.* at paras. 413-414.
[239] Para. 2.4, CRC Initial Report; Paras. 2.3 and 10.2, CEDAW Initial Report. The CEDAW Committee was concerned that the Asian values concept of the family would perpetuate stereotyped gender roles: para. 79, A/56/38.

in Singapore's country reports.[240] The Committees found lacunaes in Singapore's reasoning that women marrying foreigners cannot transfer their nationality as Singapore does not recognise dual nationality, as this reasoning equally applies to men marrying foreigners.[241]

The laws were made gender-neutral by an April 2004 constitutional amendment, extending automatic registration to overseas-born children of Singaporean mothers, the motive being to boost declining birth rates which hit a low of 36,000 in 2003.[242] Similarly, when the female medical students' quota was lifted in 2001, this was for entirely instrumental reasons rather than a full-blooded affirmation of women's rights or distinct response to aggressive lobbying.[243] Before a domestic audience, change is phrased not in terms of human rights gains but in service of state goals; it remains to be seen whether these changes will be reported before UN bodies as human rights improvements.

While the relatively costless route of treaty ratification does not necessarily produce better human rights performance,[244] the practical effect of signing treaties is not to be sniffed at. In the long run, it strengthens both domestic and international advocates, providing a common frame of reference in discussing human welfare concerns. Tisa Ng of AWARE noted the utility of CEDAW jurisprudence in defining discrimination, as "... definition is very important when the level of awareness of discrimination and issues of equality are not so well established".[245] It socialises government and non-government officials with international standards, as where domestic practices are evaluated against treaty norms.[246] Human rights add to the language of human welfare, an undeniable end of good governance.

V. Human Rights In Singapore—Selected Case Studies and Differences in Type and Degree

Given the broad drafting and divergent interpretations of existing human rights norms and the contested status of putative norms, it is difficult within a decentralised legal order with no final authoritative judge to ascertain whether advocating a universal norm is legitimate, a form of moral-cultural imperialism or one from which divergence is a matter of legitimate cultural difference, rather than a repressive self-serving concoction. In seeking to contextualise the universality versus relativism debate, this section examines certain Singapore case studies not only to shed light on local human rights practices but also to address the issue of relativity by distinguishing between a difference in *type* or content of a right and a difference in the *degree* of application of an accepted right. It draws examples from the fields of physical integrity, civil-political, socio-economic and minority rights.

A. *Matters of Life and Death: Right to Life, Liberty and Personal Security/Integrity*

Aspects of human rights in relation to physical integrity and life indicate that the debate is one over both substantive content of a right and divergences in applying accepted rights.

240 Singapore was asked to review its citizenship laws to ensure a child's right of nationality sans discrimination: para. 75, A/56/38; paras. 30-31; CRC/C/15/Add. 220.

241 Paras. 64, 75, A/56/38.

242 "More foreign-born kids to get citizenship" *Straits Times* (20 April 2004) H2.

243 The CEDAW Committee wanted this quota removed: paras. 92-93, A/56/38. "Lifted: Quota on women in medicine" *Straits Times* (6 December 2002). The Health Minister stated that with greater resources and a narrowed gender gap between trained doctors exiting the profession, the quota could be lifted; also, Singapore's aging population needed more doctors who would also support its push into the life sciences: Sing. *Parliamentary Debates*, vol. 75, col. 1969 (5 December 2002).

244 Oona Hathaway, "Do Human Rights Treaties make a difference" (2002) 111 Yale L.J. 1935.

245 "Conventional Wisdom: Why has Singapore not signed UN's anti-racial discrimination treaty, Cerd?" *Today* (20 April 2004), online: TODAYonline <www.todayonline.com>.

246 The Government insisted the medical quota did not contravene Art. 10 of CEDAW: Sing. *Parliamentary Debates*, vol. 75, cols. 1518-1522 (25 November 2002).

These pertain to the right of life and personal liberty[247] with respect to preventive detention laws and the criminal administration of corporal and capital punishment.

1. *The right to life and the deprivation of life*

Before one can define what a human right is, one must define what a human being is, an essentially theological question that politicians have appropriated. With a human right as fundamental as the constitutional right to life, Singapore is pragmatic and permits abortion[248] while penalising crimes of physical harm against expectant mothers.[249] The right to the life of the unborn child, set against that of reproductive autonomy, remains morally contentious at international law.[250]

2. *The death penalty and the death row phenomenon*

The death penalty has been under scrutiny, receiving attention by a former judicial commissioner in a critical Law Gazette article[251] and government-proffered assurances to Australia not to impose the death penalty on a person they wish extradited who is charged with murder, if found guilty.[252] The Think Centre tried to raise public awareness of the issue through its website.[253] AI reports alleged that the use of the death penalty in Singapore is "shrouded in secrecy", running "counter to the worldwide trend towards abolition of the death penalty", with Singapore hanging more than four hundred prisoners in the last thirteen years.[254]

The Singapore government retorted that its "tough but fair system of criminal justice", including the selective imposition of the death penalty, has made Singapore amongst the safest places to live. Further, the death penalty only applies to persons above 18[255] committing serious crimes such as murder,[256] drug trafficking[257] and firearms offences,[258] balancing the rights of victims and the community to live peacefully against rights of the criminally accused.[259] Further, it insisted that the appropriate way to alter the law was not through

[247] "No person shall be deprived of his life ... save in accordance with the law": Art. 9 of Singapore's Constitution.

[248] See *Termination of Pregnancy Act* (Cap. 324, 1984 Rev. Ed. Sing.). While the Child Convention does not expressly recognise foetal right to life, other instruments do, *e.g.*, Art. II, s. 12, 1987 Philippines Constitution (right of unborn to life from conception); Art. 4(1), *American Convention on Human Rights* 1144 U.N.T.S. 123.

[249] Section 214 of the *Penal Code* (Cap. 224, 1985 Rev. Ed. Sing.) forbids applying the death penalty to pregnant women.

[250] The European Court on Human Rights considered this issue in a judgment of 8 July 2004, in relation to an accidental abortion challenged as a homicidal act in *Vo v. France:* Application No. 53924/00. See "Abortion Error 'Shows Foetus Has Right to Life' " *The Times (London)* (11 December 2003) 11.

[251] K.S. Rajah "Death Penalty: The Unconstitutional Punishment" *Straits Times* (28 August 2003). He cites the Privy Council case of *Reyes v. The Queen* [2002] UKPC 11 where the mandatory death sentence was found to infringe Belize constitutional prohibition against inhuman and degrading treatment, by preventing judges from hearing any mitigation plea before sentencing. Rajah argued that *Ong Ah Chuan* [1981] was not relevant because international human rights jurisprudence then was "rudimentary".

[252] See "Double-murder suspect now wants to be tried in Britain" *Straits Times* (13 February 2004).

[253] A June 2001 online poll run by the Think Centre indicated that 83% of Singaporeans support the death penalty. Online: Media Awareness Project <http://www.mapinc.org/drugnews/v01/n1024/a.06.html>.

[254] *Supra* note 84.

[255] Section 213, *Criminal Procedure Code* (CPC) (Cap. 68, 1985 Rev. Ed. Sing.). Singapore's laws comply with Art. 37 of CRC which prohibits capital punishment for those under 18: para. 488, CRC Report.

[256] Section 32, *Penal Code* (Cap. 224, 1985 Rev. Ed. Sing.).

[257] Singapore argued that those facing capital punishment had sufficient protection under the MDA: Letter (27 June 1997) to Special Rapporteur (Extrajudicial, Summary or Arbitrary Executions), E/CN.4/1998/13.

[258] *Arms Offences Act* (Cap. 14, 1998 Rev. Ed. Sing.).

[259] Press Release, Ministry of Home Affairs, "Singapore Government's Response to Amnesty International's Report" (30 January 2004), online: Ministry of Home Affairs <http://www.mha.gov.sg>.

international bodies like AI "trying to drum up a campaign" but for a local human rights advocate to campaign and get elected on this platform.[260]

The constitutionality of the death penalty has been challenged as breaching equal protection guarantees and violating the right to life. The Courts have deferred to the legislative provision for capital punishment as a matter of social policy, following *Ong Ah Chuan v. P.P.*[261] The Court in *P.P. v. Nguyen Tuong Van*[262] rejected constitutional and human rights arguments that death by hanging[263] constitutes cruel and inhumane treatment contrary to constitutional law and that a cruel, inhuman and degrading method of execution would not represent the deprivation of life "according to law" as required by Article 9.1 of the UDHR.

First, it contested whether the UDHR was customary international law and pointed out the specific lack of reference to hanging. Citing a US authority, the dissensus over hanging as cruel punishment was evident.[264] The Court took a formalist approach in construing Article 9 which requires that deprivation of life be "in accordance with law". Consistent with its earlier approach in *Jabar v. P.P.*,[265] the Court refused to develop the idea of "fundamental principles of natural justice" which the word "law" in the constitutional text was declared to embody in *Ong Ah Chuan v. P.P.*

In *Jabar* as in *Nguyen,* concerning the "death row phenomenon",[266] the Court rejected appeals to Commonwealth decisions, common principles of humanity[267] and "evolving standards of decency that mark the progress of a maturing society."[268] As there was no express constitutional prohibition against cruel, inhumane treatment, the court while accepting that prisoners on moral and humanitarian grounds should not suffer the "death row phenomena", refused to import this transnational standard of humanity in reading Article 9 and thereby to consider the substantive merits of laws permitting mandatory death sentences. The Singapore and indeed, the US approach[269] to the death penalty and the "death row phenomenon" contrasts with that of the European Court of Human Rights which views the death penalty as cruel punishment causing severe pain and suffering.[270]

Before UN forums, Singapore has asserted the right to determine appropriate legal penalties to effectively combat serious crimes, noting that Article 6(2) of ICCPR permits the death

[260] "Singapore defends death penalty law from Amnesty criticism" *Agence France Presse* (16 January 2004).

[261] [1981] 1 Mal.L.J. 64; [1980-1981] Sing.L.R. 48.

[262] [2004] 2 Sing.L.R. 328. See Li-ann Thio, "The Death Penalty as Cruel and Inhuman Punishment before the Singapore High Court? Customary Human Rights Norms, Constitutional Formalism and the Supremacy of Domestic Law in *P.P. v. Nguyen Tuong Van*" (2004) 4(2) Oxford Univ.Comm.L.J. [forthcoming]. Nguyen's appeal was unsuccessful: *Nguyen Tuong Van v. P.P.* [2004] SGCA 47; See Allison Caldwell "Melbourne man loses death penalty appeal" *The World Today* (20 October 2004). Online: ABC Online <http://www.abc.net.au/worldtoday/content/2004/s1224237.htm>.

[263] As required by s. 216, CPC.

[264] The US Court of Appeals majority in *Campbell v. Wood* 18 F. 3d 662 (1994) considered that hanging does not violate constitutional protection against cruel and unusual punishments. But see Lord Bingham, *Reyes v. The Queen* [2002] 2 A.C. 235, para. 88.

[265] [1995] 1 Sing.L.R. 617.

[266] Thio, *supra* note 148 at 276-285.

[267] Lord Griffiths in *R v. Pratt*, [1993] 3 All E.R. 769 said the "instinctive revulsion" against hanging a man held under death sentence for many years was rooted in "our humanity": 783G-H.

[268] In *R v. Pratt* [1993] 3 All E.R. 769 at 734H-735A, Lord Griffiths endorsed Lord Brightman's dissent in *Riley v. A.G. of Jamaica* [1983] A.C. 719 that "the jurisprudence of the civilised world", drawing from common law principles, acknowledged such prolonged delay can make the death penalty inhumane.

[269] In *Jabar, Richmond v. Lewis* 948 F. 2d. 137 was cited to buttress the view that the death penalty inevitably caused mental suffering, and did not violate any constitutional rights. The US Court of Appeals noted if prolonged delay was "cruel and degrading treatment" and thus justified the quashing of death sentences, it would privilege death row inmates successful in delaying proceedings, contrary to the equal protection clause.

[270] *Soering* case (1989) 161 Eur.Ct.H.R. (Ser. A) at 3945.

penalty for "the most serious crimes",[271] and the lack of international consensus supporting the abolition of the death penalty.[272] Such differences were "rooted deeply in religions, legal systems of societies and their different approaches to punishment".[273] Thus, Singapore and forty other countries disassociated themselves from a draft resolution[274] penned by European states on the death penalty issue as violating the human right to life, noting that European Union states were not entitled to impose their regional standards via a "diktat based on false claims of universality".[275]

3. *Corporal punishment as "torture"?*

The Singapore Constitution does not expressly prohibit torture or cruel and inhuman punishment. Singapore has stated that "No one claims torture as part of their cultural heritage,"[276] consistent with the predominant view that the prohibition against torture is a customary, if not *ius cogens* norm.[277] There have been reported instances of maltreatment,[278] *e.g.*, during preventive detention,[279] that would fall within the conventional meaning of "torture" as the infliction by a public official of severe physical or mental suffering not incidental to lawful sanctions.[280] Owing to the andro-centric nature of this definition, domestic violence committed by private actors is not "torture". On whether female genital circumcision could be considered a *Penal Code* offence for violating the right to physical integrity, the government considers that this could possibly be an act of criminal force under section 350.[281]

Article 37 of the CRC prohibits torture or cruel treatment towards children (persons under 18), although Singapore entered a declaration that no existing domestic legal measures for maintaining law and order or which involved the judicious use of corporal punishment was prohibited.[282] The *Penal Code* allows caning as a form of corporal punishment for a restricted class of people.[283] This created an international ruckus in 1994 when applied

[271] In relation to the MDA, which imposes capital punishment for serious offences, consonant with Art. 6(2) of the ICCPR: Letter (27 June 1997), Singapore Permanent Mission to the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, CHR (54th Sess.,) E/CN.4/1998/13.

[272] Letter (10 April 2001) to CHR Chairman, E/CN.4/2001/153.

[273] CHR, 54th Sess., E/CN.4/1998/156.

[274] E/CN.4/1998/L.12.

[275] V.G. Menon (Singapore) comments in "Commission approved six measures on economic, social and cultural rights", Press Document (16 April 2004), online: United Nations <http://www.unog.ch/news2/documents/newsen/cn04052e.htm>.

[276] *Supra* note 1 at 607.

[277] See *ex. p. Pinochet* (1999) 2 All E.R. 97 (Lord Millet); *Filartiga v. Pena Irala*, 630 F. 2d. 876 (2d Cir, June 30 1980).

[278] Francis Seow, *To Catch a Tartar* (Yale Univ. Southeast Asia Studies, October 1994); Tang Fong Har, "Life with the ISD" *Censorship* (August 1989), *archived at* Singaporeans for Democracy <http://www.sfdonline.org/sfd/Link% 20Pages/Link% 20Folders/Human% 20Rights/fhar1.html>.

[279] Certain acts in detention have been alleged by opposition politician Chee Soon Juan, which if true, would fall within the international legal understanding of torture. See Chee Soon Juan, *To Be Free* (Monash Asia Institute, 1998) at 269.

[280] Art. 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res 39/46. Art. 5 of the UDHR provides: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The US Court in *Filartiga v. Pena Irala* 630 F. 2d. 876 (1980) considered this norm was universally binding customary international law.

[281] Mr. Filali, CRC Committee, CRC/C/SR.909, para. 35; response at para. 44.

[282] Para. 9.1, CRC Initial Report. *E.g.*, juveniles may be caned with a light rattan for committing serious offences: para. 9.2. School authorities may mete corporal punishment only to errant male students pursuant to Ministry of Education guidelines: para. 278.

[283] The CPC bars its application to women, men over 50 or under 16, or the medically unfit. See "The whipping boy" 143 *Time Magazine* (2 May 1994) 80.

against an 18-year old US foreign national, Michael Fay, for vandalism offences.[284] Detractors argued that caning, which is done in the presence of a medical officer, constituted torture as the pain inflicted from wet rattan flaying can cause unconsciousness and was considered barbaric. The CRC committee has called for the prohibition of punishments like caning and solitary confinement with respect to juvenile justice[285] and for prohibiting corporal punishment in homes and schools, favouring non-violent alternative forms of punishment.[286]

Singapore is not the only country in the world to practice corporal punishment and the debate as to whether this violates human rights illustrates the indeterminate nature of the definition of torture and the clash of cultural values such debates engender.[287]

4. *Broad security laws and preventive detention*

Post 9-11, few states can boast of not having preventive detention laws in their arsenal of anti-terrorist measures. Notorious for laws[288] like the colonial-era *Internal Security Act* (ISA), constitutionally authorised[289] on grounds of necessity, concerns loom large over the weaknesses of protection afforded the detained individual and its politicised usage.

The minister may issue preventive detention orders for renewable two-year terms against persons suspected of acting in a manner prejudicial to Singapore's security. The longest serving prisoner of conscience was Chia Thye Poh, detained for 23 years for allegedly being a communist insurgent.[290] After the Court of Appeal quashed a detention order on a technicality in the seminal case of *Chng Suan Tze v. Minister of Home Affairs,*[291] Parliament swiftly amended the Constitution and the ISA within a month. This severely limited judicial review to procedural grounds.[292] The detainee is not entirely deprived of due process rights, and must be heard *in camera* before an Advisory Board staffed by at least one person qualified to be a High Court judge, although this Board does not have to disclose any information deemed contrary to national interest.[293] The ISA also provides for a Board of Inspection, composed of justices of the peace and civic group volunteers who inspect detention centres and speak to detainees.[294] These onerous laws are legitimated by a "notwithstanding clause", even though they may be beyond legislative and judicial power and contrary to Articles 9, 11, 12, 13 and 14 (fundamental liberties) of the Constitution.[295]

The most trenchant criticism directed against the draconian ISA laws which derogate from civil-political rights is its usage to suppress political opponents and dissent, given the nebulous nature of "public security" which may be construed so broadly as to negate any

[284] Section 3 of the *Vandalism Act* (Cap. 341, 1985 Rev. Ed. Sing.) allows for 3-8 caning strokes. On a clemency appeal, the 6 stroke sentence was reduced to 4: A. Reyes, "Rough Justice: A Caning in Singapore Stirs up a Fierce Debate about Crime and Punishment" Asiaweek (25 May 1994).

[285] Para. 428(d), CRC/C/15/Add.220.

[286] Para. 416, CRC/C/15/Add.220.

[287] See, *e.g.*, "Singapore and the Culture of Caning" *Reuters Info. Services* (7 May 1994), stating that Australia used the punishment of caning until the 1950s; F. Bahrampour, "The Caning of Michael Fay: Can Singapore's Punishment Withstand the Scrutiny of International Law?" (1995) 10 Am.U.J.Int'l L. & Pol'y 1075.

[288] Other laws authorising preventive detention include the *Criminal Law (Temporary Provisions) Act* (Cap. 67, 2000 Rev. Ed. Sing.) applied against anyone "on suspicion" of criminal activity.

[289] Part XII, Singapore's Constitution.

[290] "Singapore: Restrictions on Singapore's Longest-Serving Political Prisoner Lifted" AI Index (ASA 36/06/98), 27 November 1998.

[291] [1988] Sing.L.R. 132. See Thio, *supra* note 176 at 54-63.

[292] Section 8(1)B of the ISA provides that judicial review is only available for questions "relating to compliance with any procedural requirement".

[293] Art. 151 of Singapore's Constitution.

[294] Letter, Singapore Permanent Representative to CHR Chairperson 58th Sess., E/CN.4/2002/157.

[295] Art. 149 of Singapore's Constitution.

meaningful content to liberty rights, and the lack of effective accountability mechanisms.[296] Domestic[297] and international calls[298] for abolishing the ISA have been rebuffed, with the government celebrating the ISA as part of Singapore's nation-building heritage.[299]

The government insists that important safeguards have been built into this powerful law which has "evolved in response to our own ... socio-political realities" and that "no opposition member of Parliament in Singapore today has been detained under the ISA" as it is invoked against individuals "who rejected the democratic process", resorted to force to overthrow the government or incited religious and racial hatred.[300] In December 2001, the government arrested fifteen suspected terrorists affiliated with Jemaah Islamiah, publishing a White Paper to explain these arrests and the threat posed, specifically, the establishment of *Daulah Islamiyah* (Islamic state) by violence, extending over Indonesia, Malaysia, south Philippines, Brunei and Singapore.[301] In contrast to the skepticism directed towards the arrest and harsh governmental attitude[302] towards the so-called "Marxist conspirators" in the late 1980s,[303] these arrests were broadly accepted by the public. The Minstry of Home Affairs took pains to keep Singaporeans informed of on-going investigations, conducting consultations with Malay community leaders, while the newspapers reported that detainees were allowed familial visits and that Internal Security Department officers had formed support groups for affected family members.[304] These placatory measures were designed to ease inter-ethnic tensions.

Where public order is imperiled, the debate is not over the necessity of intrusive prevention detention laws but rather, whether the safeguards are sufficient.

B. *Internal Self-Determination, Human Rights and the Political Space: Political Participation, Democracy and Free Speech*

Singapore "acquired sovereignty without bloodshed" when it seceded from the Federation of Malaya in 1965,[305] a facet of its external right to self-determination. Nevertheless, the right to self-determination has a continuing "internal" component relating to inclusive political processes, the protection of minority rights and schemes of spatial and non-spatial autonomy.

Aside from economic legitimacy, the Singapore government invokes political legitimacy in being elected to justify government action. The predicate of bipartisanism and political turnover, the chief political checks afforded by the Westminster model, require supporting civil-political liberties, including voting rights, a free press and protecting political speech,

[296] The elected President's role is muted in this regard. Where the Advisory Board disagrees with the Cabinet and recommends a detainee's release, the person cannot be further detained within Presidential concurrence: Art. 151(4) of Singapore's Constitution.

[297] Minister Jayakumar argued the ISA was needed not only to handle possible communist subversion but other security threats like communalism, religious extremism, international terrorism, espionage and other chauvinists. Sing. *Parliamentary Debates*, vol. 54, cols. 686-688 (19 November 1989) (Prof. S. Jayakumar).

[298] "Singapore 21 – The Best Argument for Immediate Abolition of the Internal Security Act", online: Asian Human Rights Commission <http://www.ahrchk.net>; "National Security Laws", ALRC Written Statement to CHR: E/CN.4/2002/NGO/78. Para. 8 lists some of the most well-known ISA detention cases, including former Solicitor-General Francis Seow, who had political aspirations, and was detained as part of the May 1987 Marxist conspiracy arrests in 1987 while taking a statement from a client. See Seow, *supra* note 278.

[299] "Declassified: ISD lifts veil of secrecy, offers a peek at the wars it waged" *Straits Times* (29 June 2004) H4.

[300] Letter, Singapore Permanent Representative to CHR Chairperson, E/CN.4/2004/G/34.

[301] The Jemaah Islamiyah Arrests and the Threat of Terrorism White Paper (Cmd. 2 of 2003).

[302] See Sing. *Parliamentary Debates*, vol. 49, cols. 1431-1514 (29 July 1987); Sing. *Parliamentary Debates*, vol. 51, cols. 328-249 (31 May 1998).

[303] See "'Marxist plot' revisited" (21 May 2001) at Singapore Window <http://www.singapore-window.org/sw01/010521ma.htm>.

[304] "Don't View Muslims with Suspicion: Carry on Life as before" *Straits Times* (1 February 2002) H10.

[305] "Lee hopes for 'new quid pro quo' relationship" *Straits Times* (15 December 1965).

to effectively function. In terms of human rights analysis, the relativity applies at the level of degree.

1. *Democracy and the right to political participation*

The view that Singapore has to be run by Singaporeans, excluding foreigners from political leadership, is reflected in its citizenship laws. Singapore does not grant dual citizenship and forfeiting foreign nationality, thus demonstrating readiness to have one's long-term future tied with Singapore, is the price of citizenship.[306]

Singapore practices a system of parliamentary democracy whereby "the will of the people" is broadly "the basis of the authority of government",[307] with the Singapore government asserting that it is "accountable through periodic secret free elections".[308] However, the electoral system is not based on parity of voting power and may be criticised on certain fronts.[309] First, there is no constitutional right to vote; it is a statutory right though a ministerial statement suggests that it might be an implied constitutional right, though this has not been judicially tested.[310] Second, voting rights are not equal as voting power depends on residence within a Single Member Constituency (S.M.C.) or Group Representation Constituency[311] (G.R.C.); the latter is represented by a team of four to six M.Ps, one from a stipulated minority group. G.R.C. residents cast one vote for up to six M.Ps while S.M.C. voters cast one vote for one M.P.—there is a disparity in voting power, although this instance of inequality is constitutionally sanctioned by a notwithstanding clause, immunised from Article 12 equality challenges.

The PAP government has enjoyed political hegemony since Independence, creating a depoliticised administrative state "resembling the mandarinate of China".[312] In response to calls for greater accountability, it has created informal feedback channels[313] and legislative institutions supportive of its favoured brand of non-threatening consultative democracy. While Non-Constituency M.Ps (N.C.M.Ps)[314] and Nominated M.Ps (N.M.Ps)[315] may articulate alternative views in Parliament, they cannot form an alternative government and being unelected, lack democratic legitimacy. Indeed, N.M.Ps are meant to be "apolitical", to provide "responsible criticism", in contrast to the "destructive" adversarial criticism an elected opposition would give. While these schemes would appear to enhance accountability and participation, they offer "popular consultation without political contestation",[316] thereby diffusing opposition politics through co-optation.

This promotes the dominant party state ideal which emphasises consensus and consultation, in line with "Asian culture", as opposed to adversarial politics.[317] Furthermore, the

[306] Sing. *Parliamentary Debates*, vol. 71, col. 1283 (6 March 2000) (Minister Wong Kan Seng).

[307] Art. 21(3) of the UDHR.

[308] *Supra* note 1 at 608.

[309] Since 1991, the presidency has been an elective office; the equal right to candidature is severely limited by the onerous pre-qualification criteria: Arts. 18-19 of Singapore's Constitution. See Thio, *supra* note 172 at 110-112.

[310] This provides a possible avenue for the (unlikely) development of an unenumerated rights jurisprudence: Sing. *Parliamentary Debates*, vol. 75 col. 1726ff (16 May 2001). See Thio, *supra* note 34 at 340-348.

[311] Art. 39A of Singapore's Constitution was introduced in 1988.

[312] Tan, *supra* note 43.

[313] *E.g.*, the Feedback Unit receives suggestions and holds dialogues on national issues. No rights of consultation are provided: para. 5.10, CRC Initial Report.

[314] N.C.M.Ps are selected from the top 3 losers minimally securing 15% of the vote in the contested constituency, their purpose being to ensure "the representation in Parliament of a minimum number of Members" not from the government's political party: Art. 39(1)(b) of Singapore's Constitution.

[315] The N.M.P. scheme's original rationale was to inject non-partisan views into Parliament, with current provision for nine N.M.Ps, up from the original two appointments: See Thio, *supra* note 41 at 231-241.

[316] Tan, *supra* note 43 at 112-113.

[317] *Ibid.* at 107-108. On restrictions on elections speech, see Thio, *supra* note 34 at 338-339.

G.R.C. scheme while consolidating political stability has dampened political pluralism insofar as most G.R.C. wards go uncontested as opposition parties cannot muster teams with the requisite racial components and thus tend to contest only the ever decreasing numbers of S.M.C. seats.[318] Pre-election gerrymandering,[319] resulting in the absorption of troublesome pro-opposition wards into PAP strongholds[320] also further erodes genuine political pluralism[321] and there is no independent elections agency to guard against this.[322] Thus, it has been observed that the PAP's political success is attributable partly to genuine voter support for "honest efficient administration" and its strong economic track record and partly to manipulation of the electoral framework, intimidation of organised political opposition and restriction of the boundaries of legitimate political discourse.[323]

2. *Restricting political speech: informal limits to legitimate political discourse—locating OB markers*

Although Article 14 guarantees free speech, this is curtailed by an illiberal formulation as "necessary or expedient" restrictions based on eight stipulated grounds are permissible.[324] While striving to be a communications hub, Singapore unabashedly rejects a laissez-faire model to free speech, actively adopting legislative and administrative content-based speech restrictions in relation to race, religion and political issues.[325]

As a matter of political-legal culture, the PAP has been sensitive towards criticism and established informal "OB markers" to delimit the boundaries of what it considers to be legitimate political criticism,[326] though this appears to be shifting insofar as the government is encouraging citizens to take ownership of public issues. Former Deputy Prime Minister

[318] In 1991, the Constitution was amended to raise the number of G.R.C. M.Ps from 25% to 75% of the total number of M.Ps returned: Sing. *Parliamentary Debates*, vol. 56, cols. 779ff (14 January 1991). For a detailed analysis, see Thio, *supra* note 41 at 216-219.

[319] Constituencies with strong opposition support like Anson, Cheng San and Eunos no longer exist. *E.g.*, in 1991, the PAP won Eunos (45833 votes) defeating the Worker's Party (41673 votes): Singapore elections history information available at <http://www.ecitizen.gov.sg>.

[320] Historically, "marginal" electoral wards have disappeared or been merged into a larger ward very shortly before polling day. Sin Kek Tong (Singapore People's Party), who intended to contest the Braddell Heights seat in 1997 and had credibly done so in 1988 (41%) and 1991 (47.7%), was left scrambling when told 2 months before election day that "his" ward, which shared no common boundaries with the Prime Minister's Marine Parade GRC ward, was to be merged thereto: See "Boundaries report perplexing" *Straits Times* Forum (28 November 1996) 54; "Change to electoral boundaries 'expected'" *Straits Times* (22 November 1996) 55.

[321] See Kevin Y.L. Tan, "Constitutional Implications of the 1991 General Elections" (1992) 13 Sing.L.Rev. 26; Kevin Y.L. Tan, "Is Singapore's Electoral System in Need of Reform?" (1997) 14 Commentary 109; Thio, *supra* note 41 at 229-230.

[322] See "Drawing the battle lines for General Election" *Straits Times* (4 May 2001) H7; "Should S'pore have an independent elections agency" *Straits Times* (22 December 2001) H10.

[323] US Country Report (2000), online: US Department of State <http://www.state.gov/g/drl/rls/hrrpt/2000/eap/770.htm>.

[324] *E.g.* the *Sedition Act* (Cap. 290, 1985 Rev. Ed. Sing.) makes seditious words an offence; this includes exciting disaffection against the government or promoting feelings of ill-will among citizens; *Official Secrets Act* (Cap. 213, 1985 Rev. Ed. Sing.).

[325] *E.g.*, although a licence is not needed to speak at Speaker's Corner, which many regard as a tokenistic sop, certain topics such as racial harmony are prohibited. Speaking on such topics, as Chee Soon Juan did regarding the "tudung controversy" was a PEMA offence incurring a $3,000 fine: "Chee flouts Speakers Corner rule" *Straits Times* (16 February 2002). District Judge Kow noted the particular importance of public order in a non-homogenous society like Singapore as "any disturbance to the delicate equilibrium in our multi-racial and multi-religious country can have potentially catastrophic consequences": "SDP Chief fined and barred from next GE" *Straits Times* (31 July 2002). See generally Li-ann Thio, "Speakers Cornered? Managing Political Speech in Singapore and the Commitment 'To Build a Democratic Society' " (2003) 3 ICON 516.

[326] These related to the speaker (only politicians should engage in political discourse), the attitude of speakers (to address government leaders respectfully) and the restricted subject-matter of public discourse: "Only those elected can set OB markers" *Straits Times* (3 February 1995) 22.

(D.P.M.) Lee has promised that within the "extreme limits" of race, language, religion or sedition, disagreement over policies is legitimate as "disagreement does not necessarily imply rebellion" where the motive is to improve policies, not "score political points".[327] This more consultative approach draws the line at issues relating to security, foreign policy and tax, cordoned off as matters best not conducted in the public arena.

3. *Free speech and the reputations of public officials: litigation and the chilling effect*

A chief criticism is the historical use of libel laws by government politicians against opposition politicians and newspapers to silence dissent. The former's high success rate undoubtedly "chills" political speech; indeed no foreign publisher ever successfully defended a libel suit brought by a Singapore politician. This is compounded by high damages awarded,[328] the widely publicised bankruptcy of certain opposition politicians[329] and the general sense of intimidation this engenders. Stuart Littlemore calculated that PAP politicians receive damages awards ($450,000) which are, on average, twelve times above the norm, on the basis that politicians had greater reputations to defend.[330]

In the leading case of *J.B. Jeyaretnam v. Lee Kuan Yew*,[331] the US public figure doctrine which requires that politicians be more tolerant towards criticism to serve free speech interests in a democratic society was rejected; further, determinative weight seems to be accorded to the public interest of maintaining the public reputation of public men, lest they be deterred, as sensitive honourable men (Confucian *junzi*![332]), from entering politics. Recent cases arising out of the 1997 and 2001 General Elections include: *Tang Liang Hong v. Lee Kuan Yew*;[333] *Goh Chok Tong v. Jeyaretnam Joshua Benjamin*[334] and *Goh Chok Tong v. Chee Soon Juan*.[335] The primacy of protecting institutional reputational interests over free speech is also evident in contempt of court cases involving imputations against the judiciary.[336]

[327] "Field for debate wide open" *Straits Times* (5 October 2000) 44.

[328] Tang Liang Hoong was subject to a damages award of US$ 5.5 million in a suit brought against him by various people (reduced on appeal to US$2.3million); Goh Chok Tong was awarded S$700,000 against Tang; J.B. Jeyaretnam was subject to a S$20,000 award, increased on appeal to S$100,000 and costs. These both related to the defamation proceeding from Jeyaretnam's election rally statement that Tang had placed two police reports in his hands, "against, you know, Mr. Goh Chok Tong and his people". Amnesty International considered these comments innocuous, not apt to excite comment in societies respecting free speech: "Singapore lambasts Amnesty over Report" *Hong Kong Standard* (18 October 1997); 17 October 1997 AI Report.

[329] P.M. Goh initiated bankruptcy proceedings against Jeyaretnam after winning a libel suit, resulting in the latter's January 2001 bankruptcy and loss of his N.C.M.P. seat.

[330] "Singapore authorities use libel laws to silence critics" *The Australian* (26 September 2002). Stuart Littlemore Q.C., a former International Commission of Jurists rapporteur, had his application for admission under the *Legal Profession Act* (Cap. 161, 2001 Rev. Ed. Sing.) to appear for Chee Soon Juan in two defamation suits denied because his prior disparagement of the Singapore judiciary indicated a lack of "decency, measure and maturity": Lai Kew Chai J., *Re Littlemore Stuart Q.C.* [2002] 1 Sing.L.R. 296, para. 14.

[331] [1992] 2 Sing.L.R. 310.

[332] *Supra* note 10 at para. 41.

[333] [1998] 1 Sing.L.R. 97

[334] [1998] 1 Sing.L.R. 547

[335] [2003] SGHC 79: P.M. Goh considered libelous Chee's street electioneering tactics in 2001 of loudly asking him about the fate of the US$10 billion loan to Indonesia. The Court considered the three defences of justification, qualified privilege and fair comment to be bare allegations and refused leave to defend these: paras. 56 to 57.

[336] See, *e.g. A.G. v. Wain* [1991] 2 Mal.L.J. 525; *A.G. v Lingle* [1995] 1 Sing.L.R. 696.

In response to criticisms from quarters like Amnesty International and the US State Department that the commencement of libel actions were politically motivated intimidation tactics, "unnecessary and disproportionate",[337] curtailing peaceful political activity,[338] the Singapore government has rubbished such claims as "co-ordinated partisan propaganda campaign to pressure the Singapore government".[339] Furthermore, Minister Jayakumar asserted that libel suits were an "established part of Singapore's political culture that seeks to maintain a high standard of truth and honesty in politics",[340] constituting a vindication before the electorate; he also noted the successful pursuit of defamation suits by opposition politicians.[341] This downplays the public interest in robust political speech.

4. *Regulating free speech through licensing*

Under the *Public Entertainments and Meetings Act* (PEMA),[342] no public entertainment defined broadly in the Schedule to include anything ranging from arts entertainment, puppet shows to public discussions on a serious topic, as in *J.B. Jeyaretnam v. P.P.*,[343] is to be provided except in an approved place with a licence. These regulations relate to content-based and content-neutral restrictions. Licensing decisions may be appealed to the Minister whose decision is final.[344] The Licensing Officer may refuse to grant or renew licences "in his discretion" though this is conditioned on stipulated criteria.[345]

PEMA regulates the law on public speaking. Opposition politicians have clashed with the Public Entertainments Licensing Unit (PELU), part of the police, over refusals to grant licences for public talks.[346] The authorities may investigate a situation to decide whether to grant a licence or whether law and order concerns dictate otherwise, particularly where the topic is sensitive and the proposed venue is outdoors. Minister Ho Peng Keng argued that "the PEMA is administered with a light touch"; that between 2001-2002, the police approved 99.6% (1341) of all applications and only rejected five.[347]

Whether PEMA licensing regulations violated free speech rights was raised in *Chee Soon Juan v. Public Prosecutor*.[348] Chee unsuccessfully applied for a licence to hold a May Day 2002 rally at the Istana, as the police considered that advertising this through press releases itself posed a "potential disruption to public order". Chee publicised his intention to proceed and spoke on labour issues. Ignoring police warnings, he was arrested and later convicted of willful trespass on government property,[349] and the PEMA offence of attempting to provide public entertainment without a licence. The police testified that the arrest was necessary to prevent a "law and order situation", given the presence of 5,300 people on Istana grounds.

[337] "Singapore: Defamation Suits threaten Chee Soon Juan and erodes Freedom of Expression" ASA 36/010/2001.

[338] "Singapore: J.B. Jeyaretnam—the use of defamation suits for political purposes" ASA 30/004/1997.

[339] "Singapore lambasts Amnesty over Report" *supra* note 325.

[340] Sing. *Parliamentary Debates*, vol. 68, cols. 1973 (20 April 1998) (Minister S. Jayakumar). An Aide Memoire responding to the 1997 US country report on Singapore was sent to the US Embassy on 30 March 1998.

[341] Opposition politicians have sued each other and in one instance, compensatory damages of $120,000 have been awarded: *Chiam See Tong v. Ling How Doong* [1997] 1 Sing.L.R. 97.

[342] Cap. 257, 2001 Rev. Ed. Sing.

[343] [1990] 1 Mal.L.J. 129.

[344] Section 10 of the PEMA.

[345] Section 13 of the PEMA. Section 14 provides that licences may be denied where the meeting is likely to cause, *e.g.*, a breach of the peace or be "indecent, immoral, offensive, subversive or improper".

[346] See "Chronicle of the Public Entertainments Act" *Straits Times* (18 November 2000) 14, listing these run-ins with the police. *E.g.*, in December 1998, Chee Soon Juan was charged for speaking without licence before a Raffles Place lunchtime crowd. Kevin Tan argues that permits should be granted as a matter of course since Art. 14 constitutionally safeguards free expression, unless reasons for refusal are shown: "No right is absolute, says varsity don" *Straits Times* (24 January 1999) 31.

[347] Sing. *Parliamentary Debates*, vol. 75, cols. 1689-1691 (26 November 2002) at 1690.

[348] (2003) 2 Sing.L.R. 445.

[349] Section 21(1) of the *Miscellaneous Offences (Public Order & Nuisance) Act* (Cap. 184, 2001 Rev. Ed. Sing.)

Chee was fined $4,000 for the latter offence, disqualifying him from membership in Parliament for a five-year period.[350] On appeal, Chee argued that PEMA was unconstitutional as it infringed the Article 14 constitutional right to free speech and association. To Yong C.J., the chief issue was whether Chee's action constituted "public entertainment" under PEMA, finding it was an "address" under Section 2(m). He noted that free speech in any democratic society was not absolute and had to be balanced against "broader societal concerns such as public peace and order". In assessing PEMA's constitutionality, Yong C.J. did not consider whether PEMA terms were necessary in a democratic society but merely stated it was enacted pursuant to Article 14(2)(a). Thus, nothing in PEMA was "in any way contrary to our Constitution". This formalistic approach disregards whether these administrative restrictions on a constitutional right are "reasonable" or "fair", considering interests in personal liberty and public good. In treating legislative judgment as determinative and adopting a literalist approach, the Court declined to develop a robust guardianship role over Part IV liberties.

5. *Freedom of the domestic press: between being a watchdog and a "Running Dog"*

The Singapore Constitution contains no "free press" clause and press control is effected through annually renewable licences under the *Newspaper and Printing Presses Act* (NPPA),[351] originally the 1920 *Printing Presses Ordinance*. Historically, the licences of newspapers like the *Singapore Herald* and *Eastern Sun* have been revoked and editors from the *Nanyang Siang Pau* detained for encouraging Chinese chauvinism, creating a climate of self-censorship.[352] Today, Singapore Press Holdings, which has close ties with the PAP,[353] dominates the print media.[354] It had a monopoly until 2000 when the state-owned broadcasting Media Corporation of Singapore was given a licence to publish a free newspaper, *Today*, apparently to create "competition". In 1974, the NPPA was amended to stave off foreign manipulation by creating two classes of ownership shares for newspaper companies publishing in Singapore: ordinary shares and management shares, which only citizens or approved corporations may hold, carrying 200 times the voting power and whose transfer is controlled by the Minister.

The assumption of Western societies that a free press should be a watchdog or "fourth estate" over government malfeasance stands in stark contrast with the PAP's propounded "responsible journalism" model, in which journalists are co-opted as constructive nation-building partners whose role is to forge harmony and consensus.[355] Ministers have encouraged the media to be critical but to ensure that work is "carefully researched". Journalists are warned to separate reporting from editorialising. While educating Singaporeans with "national perspective on issues", they must "avoid crusading journalism, slanting news coverage to campaign for personal agendas".[356] In contrast, the American media uses its power to "set the national agenda, champion policies and pass judgment on the country's

[350] Under Art. 45(1)(e) of the Constitution, conviction by a Singapore court or being fined minimally $2,000 are grounds for disqualification.

[351] Cap. 206, 2002 Rev. Ed. Sing.

[352] See Francis Seow, *The Media Enthralled: Singapore Revisited* (UK: Westview Press, 1998).

[353] Former Chairman Lim Kim San was a PAP Cabinet minister. Its current non-executive chairman, Lim Chin Beng, was formerly Ambassador to Japan.

[354] SPH owns all general circulation newspapers in the four official languages. The Heritage Foundation's 2004 Index of Economic Freedom: Singapore at 355 notes that Government-linked companies own all Singapore media, a mode of exercising political control over the economy: online: The Heritage Foundation <http://cf.heritage.org/index2004test/country2.cfm?id=Singapore>.

[355] Thio Li-ann, "Human Rights and the Media in Singapore" in Robert Haas, ed., *Human Rights and The Media* (Malaysia: AIDOM, 1996) 69.

[356] *Supra* note 54.

leaders".[357] The danger of course is that the press may become a government propaganda outlet, or in the words of Singapore's first Chief Minister, "running dogs of the PAP and poor prostitutes".[358]

6. *Controlling foreign media*

While seeking to be a regional communications hub,[359] the foreign media is subject to various controls. Aside from the deterrent of defamation suits, the foreign press and broadcasters are checked in terms of the content they provide, by laws seeking to penalise them where they are found "engaging" with "domestic politics". The common understanding is that they operate in Singapore as a privilege and should afford the government a "right of reply".[360] Under the NPPA and the 1994 *Broadcasting Act*,[361] the government can gazette publications[362] or channels[363] to restrict their circulation, without impeding the free flow of information, and impose financial penalties.

In *Dow Jones Publishing v. A.G.*,[364] the High Court held that "domestic politics" related to "the multitude of issues concerning how Singapore should be governed in the interest and for the welfare of its people", including political and social-economic government policies. "Engaging in" could entail going beyond factual reporting to "espouse political ideas or causes or seek to influence public opinion." It is unclear when the "interference" threshold is reached, as the example of a journalist actively agitating for political change or merely airing a viewpoint on a country are both instances with political implications. For example, an article in *Today* by a London-based journalist[365] who considers that Singapore maintains "the old-fashioned, outmoded trappings of a Third World dictatorship", urging the abolition of the NPPA, was cited as an example of a foreign journalist crossing over into domestic politics.[366]

C. *Civil & Political Rights: Freedom of Thought, Conscience and Religion*

1. *State and religion*

Singapore's quasi-secular constitutional system, where the Constitution and not divine sanction is the ultimate source of political authority,[367] differs from Malaysia's confessional

357 *Ibid.*

358 David Marshall labelled the Straits Times "either PAP wallahs or bootlickers" for refusing to publish his letter challenging the effectiveness and need for the mandatory death penalty, asking the Straits Times to start a petition to urge the President to commute all death sentences to 20 year jail terms: "David Marshall: Praise as well as criticise Govt" *Straits Times* (18 January 1994) H17.

359 Currently, 32 foreign newspapers and periodicals are printed in Singapore; international news agencies like Reuters and Bloomberg and broadcasters like Discovery Asia, CNBC and BBC have regional operations in Singapore: Para. 4.3, CRC Report.

360 "Rules for broadcasters on politics here" *Straits Times* (20 April 2001) H8. A refusal to allow the government to directly put its case to the public creates a skewed impression.

361 Cap. 28, 2003 Rev. Ed. Sing.

362 Previously applied to Time, Asia Wall Street Journal, Far Eastern Economic Review and Asiaweek.

363 Amended in 2001, the minister under the Broadcasting Act can gazette a foreign broadcaster deemed to be engaging in domestic politics, requiring this broadcaster to obtain express ministerial permission to continue broadcasting. The number of households receiving this programming can be restricted and fines amounting to $100,000 imposed. Minister Lee Boon Yang noted that "incendiary" reporting could destabilise Singapore through precipitating race riots, eroding investor confidence and harming jobs: "Singapore Extends Law on Foreign Media in Politics" Reuters (19 April 2001).

364 [1989] 2 Mal.L.J. 385

365 Michael Backman, "Is Singapore Paranoid" *Today* (8 October 2003).

366 "2003 World Press Freedom Review : Singapore", online: International Press Institute <http://www.freemedia.at/wpfr/Asia/singapor.htm>.

367 Paras. 5 and 21, *Maintenance of Religious Harmony White Paper* (Cmd. 21 of 1989). [MRHA white paper]

constitution which enshrines Islam as the Federation's religion,[368] and privileges it by prohibiting the propagation of other religions to Muslims.[369] Article 15 guarantees the right to profess, practice and propagate religion and while there is no textual endorsement of the principle of secularity, its adoption is evident from various sources,[370] being a deliberate move in forging a distinct post-Independence national identity. Singapore recognises that the principle underlying religious affiliation or non-affiliation is personal choice[371] while in Malaysia, a Muslim convert remains subject to Islamic law because Article 11 is read to exclude a right to renounce religion.[372] Religion is not constitutionally defined but was confined to faith in a personal God, omitting secular ideologies, in *Nappali v. ITE*.[373]

The government regards religion as a "constructive social force", seeking to remain "strictly neutral" on matters of religion.[374] While religion is not robustly asserted in Singapore in relation to public policy or affairs as in Malaysia,[375] religious views are consulted on controversial issues like living wills and religious perspectives are welcomed where made "clearly and responsibly".[376] Singapore's approach towards religion is pragmatic rather than dogmatic, as when it introduced a short-lived religious knowledge programme in national schools.[377] Nevertheless, religious freedom is not absolute and Article 15(4) provides it may be subject to "any general law relating to public order, public health or morality". For example, mosque calls to prayer must not exceed 65 decibels, though in accommodation, these calls are broadcast over state radio.[378] Aggressive evangelism where a group "seeks to increase the number of its converts drastically at the expense of the other faiths"[379] is also considered a security threat. Despite not having anti-propagation laws, the government has circumscribed proselytisation activities through informal warnings.[380]

[368] Art. 3 of the Malaysian Constitution. The government has reportedly sponsored and directed missionary activities, *e.g.*, encouraging indigenous communities like the Orang Asli and Kadazandusun in Sabah to embrace Islam: See Rahim, *supra* note 32.

[369] Art. 11 of the Constitution of Malaysia.

[370] Para. 38, 1966 Constitutional Commission Report, affirms that Singapore is a "democratic, secular state". *Reproduced in* Appendix D, Tan & Thio, *supra* note 20 at 1025. See para. 45, SVWP, *supra* note 10 and para. 21, MRHA white paper, *supra* note 367.

[371] Para. 5, MRHA white paper, *ibid.* recognised individuals rights to accept or reject any religious faith, which is underscored in school textbooks (Civics and Moral Education): Para. 430, CRC Report. Further, the government "should not be antagonistic to the religious beliefs of the population".

[372] In *Daud bin Mamat v. Majlis Agama Islam* [2001] 2 Mal.L.J. 390, the Court held Malaysian Muslims had no constitutional right to renounce religion as Art. 11 referred only to the right to profess and practice religion, contrary to Art. 1 of the 'Religious Intolerance' Declaration, A/36/684 (1981) and Art. 18 of ICCPR.

[373] [1999] 2 Sing.L.R. 569.

[374] *Supra* note 10 at para. 45.

[375] In Malaysia, political rallies commonly start with prayers and invocations of God, with speechs punctuated with religious injunctions to gain voter support: "One man, one vote, many ways" *Straits Times* (12 April 2004) A1. See Langlois, *supra* note 93 at 67-71.

[376] Prime Minister Goh, "From the Valley to the Highlands" (National Day Rally, 17 August 2003) *archived at* SingGov Government Information <http://www.gov.sg/nd/ND03.htm>. Social conservatives and members of religious groups expressed concern about the implications of a militant homosexual agenda, implicating public morality and health issues, after the government in June 2003 announced its relaxed policy of hiring homosexuals in key civil service positions, subject to sexual orientation disclosure. The Prime Minister clarified he did not "encourage or endorse a gay lifestyle", commending the responsible communication of views.

[377] This caused concerns that it was inconsistent with the secular basis of government and state: Sing. *Parliamentary Debates*, col. 585 (6 October 1989) (Tan Cheng Bock). See Joseph Tamney, *The Struggle over Singapore's Soul: Western Modernisation and Asian Culture* (Berlin & New York: Walter de Gruyter, 1996) at 25.

[378] "Under one sky" *Straits Times* (10 March 2002).

[379] *Supra* note 365 at para. 17.

[380] *E.g.*, in 1986 the Internal Security Department called up the leaders of eleven Christian organizations who were evangelising among Muslims, warning them to avoid activities apt to cause misunderstanding or conflict: "Religious Trends—A Security Perspective"Annex, MRHA white Paper, *supra* note 367 at para. 7.

The government has deregistered under the *Societies Act* certain religious groups which are considered harmful to the public interest, *e.g.*, jeopardising security through opposition to military service (JWs), a sect that utilised brainwashing techniques (Unification Church) and a group that engaged in aggressive politicking and social activism (Christian Conference of Asia).[381] The 2,000-strong JWs have unsuccessfully challenged the constitutionality of action taken against them.

In the face of increased religiosity and increased tensions *vis a vis* the Muslim community, particularly after the discovery of the Jemaah Islamiyah's bomb plot,[382] the need to manage faith, secularism and religious harmony has heightened. The Declaration of Religious Harmony, framing the basic ground rules for pacific co-existence of religious groups,[383] was adopted in 2003. Existing legislation include the 1989 *Maintenance of Religious Harmony Act* which seeks to pre-empt the excessive politicisation of religion.[384] This empowers the minister to impose non-justiciable restraining orders on religionists deemed to be intruding into politics.[385] The government retains discretion to draw the boundary between religion and politics, two non-self evident terms, with the chief motive being to confine religious groups to "educational, social and charitable work," avoiding "radical social action"[386] associated with the so-called "Marxist Conspiracy", apparently involving the Catholic Church, in the late 1980s.[387]

2. *The case of the Jehovah's witnesses in Singapore: subsuming religious freedom under national interests*

The case of the JWs is particularly instructive since they have brought a series of constitutional challenges against restrictions on their religious freedom. Their belief that satan is the God of this world requires them to maintain a complete separation from world systems, not to salute flags, participate in national elections or perform military service.[388] Deregistered by Order 179 of 14 January 1972 under the *Societies Act*, the production, sale and distribution of *all* publications[389] from their Watchtower publishing arm was simultaneously prohibited under the *Undesirable Publications Act*.[390]

Consequently, JWs were arrested during police raids for attending prayer and bible meetings of an unlawful society,[391] being members of an unlawful society,[392] fined and jailed

[381] Sing. *Parliamentary Debates*, vol. 65 (18 January 1996).

[382] The government actively sought to disassociate Islam from terrorism: Remarks by S. Jayakumar on a Strategic Review of the World, Including the Situation in Iraq and Asia-Pacific Region (14 March 2003), para. 13, online: Ministry of Foreign Affairs <http://www.mfa.gov.sg>.

[383] "More than words, a S'pore way of life" *Straits Times* (10 June 2003).

[384] As when Catholic priests venture into social action as political pressure groups, criticising amendments to the citizenship laws, NPPA, treatment of foreign workers and who invoke the wrath of God on ISD officials: "Religious Trends—A Security Perspective" *supra* note 380 at paras. 13-15.

[385] Art. 22I of the Constitution empowers the President to refuse to confirm or cancel a restraining order where the Cabinet's advice runs contrary to the Presidential Council for Religious Harmony's recommendations.

[386] Para. 2, MRHA white paper, *supra* note 367.

[387] A group of 20 socially-minded Catholics allegedly sought to bring about a Marxist state, which they denied, and were detained under the ISA. See generally "The conspiracy theory" *Far Eastern Economic Review* (22 October 1987). The leading cases are: *Chng Suan Tze v. Minister of Home Affairs* [1988] Sing.L.R. 132, *Vincent Cheng v. Minister for Home Affairs* [1990] 1 Mal.L.J. 449, *Teo Soh Lung v. Minister for Home Affairs* [1989] Sing.L.R. 499 (High Court); [1990] Sing.L.R. 40 (Court of Appeal). See paras. 30-31 of the Annex to the MRHA white paper, *supra* note 367.

[388] *Chan Hiang Leng Colin v. P.P.* [1994] 3 Sing.L.R. 662 at 668E-G.

[389] The ban was based not on content but publisher identity as otherwise it "would be administratively inconvenient as it would be absurd to expect every published material to be vetted": *Liong Kok Keng v. P.P.* [1996] 3 Sing.L.R. 263 at 269C-D.

[390] Cap. 338, 1998 Rev. Ed. Sing.

[391] Section 13(3) of the *Societies Act; Dennis Kok v. P.P.* [1997] 1 Sing.L.R. 123. Fines of up to $4,000 apply.

[392] *Chan Cheow Khiang v. P.P.* [1996] 3 Sing.L.R. 271.

for possessing Watchtower religious literature,[393] lost their jobs in educational institutions for refusing to salute the flag and sing the national anthem,[394] considered an idolatrous act. JW students in public schools refusing to declare the national pledge or salute the flag have been indefinitely suspended.[395] Reportedly, some fifty-five children have been suspended, not expelled, for various durations since 1990.[396]

Pursuant to national security imperatives, the Singapore government does not recognise a conscientious objector exemption from compulsory military service as a facet of religious liberty,[397] despite suggestions that non-military alternatives under the *Civil Defense Act*[398] be adopted.[399] This is not a universally recognised aspect of religious human rights, as Singapore has argued before UN bodies. Currently, JWs refusing to perform National Service (N.S.) are charged under the *Singapore Armed Forces Act*[400] with "criminal conduct"[401] and sentenced to military detention.[402]

These de-registration and prohibition orders were unsuccessfully challenged as breaching the right to profess, practice and propagate religion.[403] The Courts adopted, in the Attorney-General's words, a "hard-line" approach towards JWs because their pacifist tenets were considered a threat to national security through discouraging others to perform N.S. or by eventually carving out a religious exemption. This was contrary to the "national ethos" of demonstrated loyalty, as "Singapore has to rely on every available resource to defend its sovereignty and territorial integrity".[404] Thus, refusing to perform N.S. is unquestionably a "public interest" matter relating to the public order.[405] Judicial literalism is evident in holdings stating that no right is absolute and that the inherent limitations are found in dissolution orders issued under the *Societies Act*. The executive assessment of what national

393 *David Quak v. P.P.* [1999] 1 Sing.L.R. 533; *Liong Kok Keng v. P.P.* [1996] 3 Sing.L.R. 263. See "Singapore: AI Condemns Imprisonment of 72 year old Woman for Possession of Banned Religious Literature" ASA 36/005/1996, 2 July 1996. Fines of up to $2,000 apply for possession offences.

394 *Nappalli v. ITE* [1999] 2 Sing.L.R. 569. The 2002 US Country Report, *supra* note 73, reported that a JW public school teacher in 2001 resigned after threats of disciplinary action and dismissal for refusing to sing the national anthem.

395 "National anthem: Expulsion of Jehovah's Witnesses children", General Counsel of Jehovah's Witnesses (2001 Report), 11 October 2001, online: Human Rights Without Frontiers <http://www.hrwf.net/html/singapore2001.html>.

396 *Ibid.*

397 Para. 13. *Pte. Chai Tshun Chieh v. Chief Military Prosecutor*, Military Court of Appeal No. 1 of 1989 notes the Chief Justice held JWs "were not mere conscientious objectors to national service".

398 Cap. 42, 2001 Rev. Ed. Sing.

399 *E.g.*, Human Rights without Frontiers (HRWF) has suggested the possibility of channeling JW citizens to civilian duties, under the terms of s.2, *Civil Defence Act*: "Conscientious objection to military service", HRWF 2001 Singapore Report, online: Human Rights Without Frontiers<http://www.hrwf.net/html/singapore2001.html>.

400 Cap. 295, 2000 Rev. Ed. Sing.

401 Para. 26(b), MRHA White Paper, *supra* note 367. The US State Department International Religious Freedom Report notes that as of 30 June 2002, 30 JWs were incarcerated in the Armed Forces Detention Barracks initially for 15 months, with 24 months added for a second refusal to perform national service. Singapore contested CHR Resolution 1998/77 asserting a right to conscientious objection to military service as an aspect of Art. 18 UDHR and Art. 18 ICCPR, stating these rights were subject to public order and general societal welfare limitations, The Singapore government noted that national defence as a fundamental sovereign right trumped individual beliefs, with compulsory military service being the only way small countries like Singapore could establish a credible, deterrent defence force. Paras. 1-3, Secretary-General Report, CHR (56th Sess.,) E/CN.4/2000/55.

402 The appellant, a JW, was charged with willful disobedience of a lawful order contrary to s. 17(1), *Singapore Armed Forces Act* for refusing to wear a military uniform, handle a rifle and join training and was sentenced to 24 months detention. His argument that he was obeying a higher law (biblical law) was rejected. *Pte. Chai Tshun Chieh, supra* note 396.

403 The Court of Appeal in *Colin Chan v. MITA* [1996] 1 Sing.L.R. 609 held that citizens had a sufficient interest to challenge the constitutionality of a prohibition order; also that they were not asserting a right to propagate the beliefs of an unlawful society: 613G-H, 615F-G.

404 *Supra* note 122 at 12.

405 *Colin Chan v. MITA, supra* note 402 at 619D-E.

security requires is determinative; it is not for the courts to consider what effect a few conscientious objectors will have on N.S.[406]

It is poor consolation that the Courts acknowledge a constitutional right to have a religious belief but its external expression may be legally regulated and those in breach have to bear the consequences of their own action.[407] The Court of Appeal in s*Colin Chan v. MITA* noted the *Societies Act* and *Undesirable Publications Act* contained nothing prohibiting the holding of a religious belief and thus it was not illegal to be a JW or to profess JW beliefs *per se*.[408] JWs live under the constant fear of being arrested, of losing their jobs, not getting business licenses or government flats, fearing their children will face trouble in school. They feel that this "clandestine status" and "constant harassment" unwarranted, and some have expressed willingness to perform non-military national service.[409] To them, religious liberty is heavily truncated, if not illusory.

D. *The Socio-Economic Dimension: Welfare v. Rights*

1. *Programmes not justiciable rights*

When the 1966 Constitutional Commission was in session, a call by an Indian group to include a list of constitutional social-economic rights akin to the European Social Charter was rejected.[410] Thus, the constitution contains no justiciable socio-economic rights or social welfare principles. In relation to socio-economic welfare, the preferred language is not "rights" but of government commitment to promoting the people's well-being and indicia of successful welfare gains.

2. *Performance, legitimacy and the right to development*

In terms of performance, Singapore as an "Asian tiger" has achieved great economic success, which has largely legitimated PAP rule. It ranks well on development indexes[411] like the United Nations Development Programme's (UNDP) Human Development Index (H.D.I.), based on such factors as life expectancy and health, education and knowledge and standard of living, with the richer countries having better or lower HDI scores. Singapore ranked 28 on these indicators out of 175 countries in 2003.[412] The 2003 UNDP Human Development Report states that Singapore spent 3.7% of its G.D.P. on education (1998-2000), 1.2% on health (2000) and 5% on the military (2001).[413] Singapore scores highly on good governance in terms of government effectiveness, the rule of law and corruption control.[414] The

[406] *Ibid. at* 619B-D.

[407] *Dennis Kok v. P.P.* [1997] 1 Sing.L.R. 123 at para. 26.

[408] [1996] 1 Sing.L.R. 609 at 614I.

[409] "Fighting faith of stoic witnesses to repression" *Sydney Morning Herald* (11 April 1998).

[410] These included the right to work, to organise, collective bargaining, social security, social and medical assistance, family rights to special protection and the rights of migrant workers.

[411] World Bank Development Indicators: Singapore, online: World Bank <http://devdata.worldbank.org/idg/IDGProfile.asp?CCODE=SGP& CNAME=Singapore&SelectedCountry=SGP>.

[412] UNDP Human Development Report (2003), online: United Nations Development Programme <http://www.undp.org/hdr2003/pdf/hdr03_HDI.pdf>.

[413] *Supra* note 402 at 282-285. See also "Singapore—Human Development Fact Sheet" at <hdrc.undp.org.in/hds/HDFct/Sngpr.htm>.

[414] World Bank good governance study, online: World Bank <http://info.worldbank.org/governance/kkz2002>.

World Bank notes that Singapore, a "high income" economy[415] with one of the highest standards of living in Asia,[416] experienced a thirty-fold growth in per capita income ($24,740) since Independence, surpassing that in France or the UK.[417] Virtually all Singaporeans enjoy modern sanitation, high public health standards,[418] a clean, green environment[419] and high life expectancies.[420] Globally, it has amongst the lowest under-5 infant mortality rate.[421] In 2000, its total adult literacy rate was 92%.[422] Through foreign investment and a compulsory national savings scheme, the government has amassed huge savings and physical capital, although there is concern over the alleged lack of accountability with respect to its expenditure.[423]

Today, Singapore has developed an international level of industrial technology, is a shipping, air and communications hub, a regional financial services centre. 90% of its people are homeowners, with 92% of the population[424] living in flats built by the chief houser, the Housing and Development Board (HDB), as part of the successful public housing programme the PAP introduced in 1959 as a facet of its long-term development strategy.[425] The post-Independence problems of poverty, unemployment and homelessness have been effectively dealt with although Singapore remains vulnerable to external and internal shocks; the post 9-11, post-SARS landscape, decline in the electronics marketplace, rise in unemployment which was 5.4% in 2003[426] and the war in Iraq underscores the continuing need to preserve global competitiveness in the pursuit of a knowledge-based economy restructured on high-technology areas like medical care and biotechnology.[427]

The official view is that this success rests on sustaining a conducive, orderly environment to attract foreign investment.[428] This translates into a communitarian ethos,[429]

[415] World Bank Group Data and Statistics <http://www.worldbank.org/data/countryclass/classgroups.htm#High_income>.

[416] In 1998, for every 10,000 people, there were 30 public buses, 1,140 private cars, 14 doctors, 2 dentists, 40 nurses and 3,470 residential telephone lines: para. 3.1, CRC Initial Report.

[417] Kevin Hamlin, "Remaking Singapore" *Institutional Investor* (May 2002) *reproduced at* Singapore Window <http://www.singapore-window.org/sw02/020607rs.htm>.

[418] On the health care system for children, see paras. 4.6-4.9, CRC Initial Report. In 1999, the national health care expenditure was 3% of the GDP (US$ 2.65 billion); government public healthcare services subsidies was US$ 672 million: para. 289. On health and health services: paras. 323-380.

[419] Para. 4.4, CRC Initial Report.

[420] In 1999, female life expectancy was 79.6 years; for males, this was 75.6 years: see paras. 2.3-2.6, *ibid.*

[421] Para. 2.7, *ibid.* Between 1995-1999, there was an average of 14,000 abortions a year: Press Release, *supra* note 142. On child mortality: paras. 290-294, CRC Initial Report.

[422] "At a Glance: Singapore" statistics, online: UNICEF <http://www.unicef.org/infobycountry/singapore.html>.

[423] "Singapore government squanders savings 2000 Index of Economic Freedom Report" *New Zealand Herald* (18 May 2002).

[424] Para. 2.3, CRC Initial Report. In 2003, 93% of people living in HDB estates were owner-occupiers, compared to only 29% in 1970: S.S. Chan, Singapore CRC Delegation Address, *supra* note 142 at para. 19.

[425] Para. 14.3, CEDAW Initial Report; Aya Gruber, "Recent Development: Public Housing in Singapore" (1997) 38 Harv.Int'l L.J. 236.

[426] Its lowest unemployment rate was 1.7% (1990 Census); its highest was 8.2% (1970 Census). During the 1980s recession, it climbed to 6.5% (1986). During its tenure as an "Asian tiger", its unemployment rate was steady about 2% until the 1997 Asian crisis when it has swung from recession to recession in 1998 and 2001 and unemployment climbed to a 6% high. Statistics from SingGov Government Information <http://www.singstat.gov.sg/keystats/hist/unemployment.html>.

[427] "The Lion in Winter" *Time* (7 July 2003).

[428] Singapore remains highly dependent on foreign investment; a 1990 survey indicates M.N.Cs constitute 72.6% of the manufacturing sector, employ 58.8% of workers and account for 85.7% of export earnings. Melanie Chew, "Human Rights in Singapore: Perceptions and Problems" (1994) 43 (11) *Asian Survey* 933 at 945.

[429] Kishore Mahbubani "Dangers of Decadence", *Foreign Affairs* 72:4.

"Confucian" traits like social discipline, high savings, education and active state management over both economic[430] and political development, contrasting with Western liberal democracy. The success presents a development alternative to developing nations emphasising strong, effective government unopposed by political lobbies, institutional checks[431] and unruly labour,[432] employing non-liberal laws[433] to control social threats such as triads, communists and even politicians. Thus, the "demands of international capital for safe, reliable havens for export manufacturing" are fundamental factors in determining Singapore's political and human rights regime.[434]

However, an important aspect of the right to development is not merely economic growth and "an efficient free market economy ... [which] generates wealth"[435] but also, equitable distribution and participation in the development process. The broadening poverty gap between the rich and poor and the "politics of envy"[436] is likely to become more acute as the Malay community tends to fall within the lower income sector.

3. *Anti-welfarism: social security subsidies, not rights and a limited anti-poverty programme*

While promoting a hybrid capitalist system qualified by government intervention, Singapore is not a strong welfare state with a comprehensive programme of social welfare benefits after the Scandinavian model.

Indeed, anti-welfarism is cardinal to government policy, manifested in a system of social security safety-nets structured to "avoid a dependent mentality and severe social problems" welfare states in many developed countries experience,[437] pursuant to maximising economic performance. Instead of developing a welfare system that creates disincentives to work, assistance is to be provided without compromising self-reliance and economic productivity by being calibrated according to need. Ultimately, jobs best guarantee "financial independence and personal dignity".[438]

[430] Statutory boards helm economic development, public housing and public utilities facilities.

[431] However, the rationale for introducing the Elected Presidency in 1991 with limited watchdog powers over financial reserves was precisely to limit the Cabinet's untrammeled power.

[432] Woodiwiss notes that Singapore exists solely because of "transnational economic forces" but argues it has achieved "very high levels of social and economic justice": *supra* note 11 at 216, 222. On Singapore labour law, see Southeast Asia Research Centre Database, City University of Hong Kong <http://www.cityu.edu.hk/searc/labourlaw/db.htm/>.

[433] "From Singapore, Textbook Case of Stifled Subversion" *Wall Street Journal* (23 Sept 1986) 1.

[434] Chew, *supra* note 427 at 940.

[435] *Supra* note 10 at para. 32.

[436] Woodiwiss, *supra* note 11 at 230. On the "digital divide" see Hussin Mutalib, "The socio-economic dimension in Singapore's quest for security and stability" (2002) 71(1) *Pacific Affairs* 39. He writes that in January 2001, it was revealed the "top 20% of households had an average income which was 21 times that of the lowest 20 percent last year, up from 11.4 times a decade ago." In 2001, low-skill worker wages dropped by 34% while top salaries increased. See "Widening Inequalities in Society" Sing. *Parliamentary Debates*, vol. 72, col. 724ff (25 August 2000) (Jeyaretnam calling for equal workers rights, democratisation of trade unions, reviewing the right to strike, revising CPF rates, old age pensions for those over 65, providing free education for children with parents earning less than $2,000 a month and introducing unemployment benefits).

[437] *Supra* note 10 at para. 38.

[438] "Measures to help jobless adequate: Eng Hen" *Straits Times* (1 July 2003) H4, noting 6799 jobless Singaporeans received interim financial assistance from V.W.Os and C.D.Cs in 2002.

The government does expend large amounts on improving certain aspects of social-welfare, particularly in education,[439] child[440] and geriatric[441] services, through financial subsidies. Pursuant to the collective right to development,[442] 35% of the government's operating expenditure in 1999 went to the social and community services sector.[443]

The inadequacy of present social security policies has been criticised for not sufficiently ministering to the needs of the poor, which increasingly include the aged, those with low education, especially women and Malays,[444] compared to other affluent societies. This is because the primary basis of the social security system is minimalist and supplementary,[445] resting upon individual effort[446] and having strict needs criteria.[447] In other words, it is purposefully designed not to provide adequate social protection for the needy.[448] An extremely limited public assistance scheme helps those considered in genuine need of financial aid, being unable to work and without other means of subsistence.[449]

Additionally, the government operates a self-financing Central Provident Fund (CPF), established in 1955 by the colonial government. This is the main retirement income programme, imposing mandatory contributions by employers andemployees of fixed wage percentages[450] into a government-managed savings scheme, which can be withdrawn at 55. The scheme has evolved into a resource for approved investments and housing purchases (ordinary account), old age disability (special account) and a health care[451] (Medisave)

[439] The Ministry of Education through its EDUSAVE programme provides direct student subsidies based on need and merit. Primary school pupils do not pay school fees and secondary and junior college students pay nominal fees of $5 and $6 per month respectively. The annual cost per pupil of primary school education is about $2,865: para. 422, CRC Initial Report. Programmes like the Kindergarten Financial Assistance Scheme prepare children of low-income families for school to safeguard educational equality of opportunity: T.W. Tang, "Whole Child Development", Singapore CRC Delegation Address , *supra* note 142.

[440] *E.g.*, the government allocates subsidies to working parents ($75/month per child) using student and child care centres: Para. 3.13, CRC Report. However such expenditure is not need-related nor does it promote social security, being designed to encourage childbearing (baby bonus), a procreative incentive that is primarily beneficial to high income groups: M. Ramesh, "Social Security in Singapore: Redrawing the Public-Private Boundary" 32(1) *Asian Survey* 1093 at 1108.

[441] V.W.Os run nursing homes, costing up to $1,200-1,900 per person per month. Depending on the family's per capita income, the state may subsidise 25-75% of the costs: "When aged mum gets dumped in nursing home" *Straits Times* (3 June 2004) H1.

[442] Singapore asserts a deep concern with international social issues and seeks to share its technical and developmental experience with other developing countries through training programmes. It runs medical and health training programmes and awards training scholarships to nurses from ASEAN countries: Part Two, paras. 2.12-2.15, CRC Initial Report. In 2001, Government allocated S$260 million to international development assistance: Para. 67, CRC/C/SR/909.

[443] Part II, para. 1.2, CRC Initial Report.

[444] William Lee, "The poor in Singapore: Issues and options" (2001) 31 J. of Contemporary Asia 57

[445] In 1995, the total government expenditure on welfare-related programs was 2%. In 1989, only 53% of applications succeeded. The 1998 average monthly allowance was $200 (singles) and $570 (4 person family): *ibid.*

[446] The more one earns, the more one is able to save in CPF and Medisave accounts; thus income protection depends on market forces.

[447] Eligibility is contingent on proof of being poor with factors like acute old age, severe disability and lack of family as relevant factors: Ramesh, *supra* note 439 at 1100-1101.

[448] Ramesh critiques the minimal state involvement and reliance on familial and community mechanisms as resting on "an exaggerated notion of the level of communitarianism in modern Singapore", in the face of the individualism that capitalism and industrialisation engenders: *ibid.* at 1106.

[449] Para. 381, Minister Chan Soo Sen, Singapore CRC Delegation Address, *supra* note 142.

[450] The 1995 rates: employers (18%) and employees (22%): see William Lee, *supra* note 443.

[451] Public sector medical costs are heavily subsidised (Para. 13.3, CEDAW Initial Report) and the needy have their costs defrayed by Medifund, which had an initial capital transfer of $200m (Para. 237, CRC Report). See Mohan Singh, "Health and Health Policy in Singapore" (1999) 16(3) *ASEAN Economic Bulletin: Singapore* 330. In a policy U-Turn, a compulsory universal health insurance scheme is currently under consideration: "Compulsory Health Insurance: Before Taking the Plunge" *Straits Times* (20 March 2004) 33.

account.[452] The CPF is Singapore's alternative to a state pension scheme, with CPF members being eligible for other social schemes to protect their dependents.[453]

While the scheme allows the government to transform the income on this compulsory social savings scheme into a development fund,[454] lessening the drain on public funds, this surrogate pension scheme leaves several sectors of society vulnerable. It does not cover the self-employed and may not sufficiently protect low or irregular wage-earners.

4. *Privatised compassion*

A second leg on which national welfare needs are met is through privatising compassion by encouraging volunteerism, aided by government subsidies, to engender a self-help ethos. Families are viewed as the main social security mechanism for the aged.[455] The government as part of its "Many Helping Hands"[456] social partnership approach administers a range of programmes in conjunction with V.W.Os, community groups and the Community Development Councils,[457] providing resources for infrastructure and service development and releasing land[458] to encourage N.G.O. involvement in meeting community needs and delivering services such as clinics, tuition, care for elders,[459] children,[460] the disabled,[461] job placements and legal aid.[462]

5. *Accountability*

There are no formal mechanisms of accountability for the government's socio-economic performance, though such issues have been raised before Parliament, *e.g.*, in relation to the growing homeless problem,[463] though official figures are unavailable. Responding to a question, the Acting Minister for Community Development reported that as of February

[452] By promoting individual responsibility for health expenditure (CPF members contribute 6% monthly wages to Medisave), health care is kept affordable, limiting public health expenditure.

[453] *E.g.*, Medishield scheme (low cost medical insurance), dependents protection scheme, home protection scheme: para. 12.22, CEDAW Initial Report.

[454] However, economist Mukul Asher's landmark survey reported that the CPF from 1983-2000 only achieved a 1.8% return, when the economy was growing at an average rate of 8%, there being "a lack of transparency and accountability, particularly in investment management,"; it was "incredible" that there remained "no official data on the portfolio or returns for a fund of more than $50 billion which is supposedly to provide for people's retirement.": "More Transparency Please" *Asian Wall Street Journal* (8 August 2000) *archived at* Singapore Window <http://www.singapore-window.org/sw03/030808a2.htm>.

[455] To reduce reliance on government, incentives are offered: Committee on the Problems of the Aged Report (Singapore: Ministry of Health, 1984) 16: Ramesh, *supra* note 439 at 1108.

[456] Yaacob Ibrahim, Speech (8th World Down Syndrome Congress, 17 April 2004), online: <http://app.sprinter.gov.sg/data/pr/2004041702.htm>.

[457] On Community Development Councils and the potential politicisation in disbursing community welfare benefits, see Thio, *supra* note 41 at 226-229; para. 384, CRC Report.

[458] Paras. 2.7 and 3.12, CRC Report.

[459] In April 2000, the government established the Elder Care fund to subsidise nursing costs for lower income families and operational subsidies to V.W.Os running such facilities: para. 8.7, Second CEDAW Report; Hsu Locknie, "The Law and the Elderly in Singapore – The Law on Income and Maintenance for the Elderly" [2003] Sing.J.L.S. 398.

[460] Para. 12.25, CEDAW Initial Report.

[461] The government provides taxi and bus subsidies for disabled persons to get to work and special schools: para. 316, CRC Report. V.W.O.-run special education schools for disabled children were given government subsidies up to 4 times the recurrent costs of primary education. Chan Soo Sen, para. 88, Singapore CRC Delegation Address, *supra* note 142. The CRC Committee was concerned that disabled children were insufficiently integrated into the education system: para 40-41, CRC/C/15/Add.220.

[462] Alfred Tan (NGO Representative), Singapore CRC Delegation Address, *supra* note 142 at para. 32.

[463] But see "Singapore's growing homeless problem" *New Straits Times (Malaysia)* (11 Oct 2003) *archived at* Singapore Window <http://www.singapore-window.org/sw03/031011ns.htm>.

1994, some 1341 destitute persons (including beggars or persons without visible means of subsistence or place of residence)[464] were living without charge in three government houses.[465] Under the *Destitute Persons Act*, the Social Welfare Director is empowered to require a destitute or indigent person to reside in a welfare home and may authorise taking their photographs and fingerprints.[466] A register of destitute persons is maintained. Such persons may be required to engage in suitable work, training for employment or to contribute to their maintenance.[467]

The ILO criticised this Act, including its penal sanctions, as breaching the ILO Forced Labour Convention. The Constitution under Article 10(2) prohibits forced labour, excepting laws on compulsory national service. The Act was defended as a piece of social legislation that provided shelter, care and rehabilitation of destitute persons with a view to societal reintegration.[468]

6. *Monitoring by treaty-based bodies*

There is some external monitoring of socio-economic matters as the CRC and CEDAW conventions are key instruments in promoting economic, social and cultural rights, which are largely not immediate but contingent on appropriate institutions and funds for their realisation. Consequently, such rights have been criticised as "charity" dependent on government benevolence. Such an idea of a right, *e.g.*, to housing, would stick "in the gullet of Hohfeldian fundamentalists",[469] being more in the nature of a "good". Nevertheless, socio-economic rights, such as the right to housing, are clearly justiciable.[470]

While these conventional rights may not found a legal course of action, the treaty-monitoring committees which review and critique state reports provide useful yardsticks for human rights activists to expose weakness in domestic policies falling short of international standards. The preparation of state reports also yields specific general data in relation to socio-economic indicators like health.[471]

These Committees both affirm good practices and pinpoint deficiencies, recommending change. For example, the CRC committee in its concluding observations noted as positive the "considerable efforts" to implement children's economic, social and cultural rights, particularly in relation to available high quality health, education services and housing.[472] It expressed concern about rising youth suicide rates[473] and echoing domestic voices, educational stress levels,[474] urging more counselling services to address these health issues.[475] While noting that a considerable proportion of the national budget was spent on health and

[464] Section 2 of the *Destitute Persons Act* (Cap. 78, 1990 Rev. Ed. Sing.).

[465] "1,341 Destitute persons in govt homes" *Straits Times* (8 March 1994) 25.

[466] Section 3(6) of the *Destitute Persons Act*.

[467] Section 13, *ibid*.

[468] 1999 US State Department Country Report, *supra* note 63.

[469] J.W. Harris, "Human Rights and Mythical Beasts" (2004) 120 Law Q.Rev. 428.

[470] *Grootboom v. Govt. of the Republic of South Africa*, CCT38/00, 21 September 2000. This deals with the Art. 26(1) constitutional right of everyone to have "the right of access to adequate housing" which the state through legislative and other measures must progressively realise: M.S. Kende, "The South African Constitutional Court's Embrace of Socio-economic Rights: a Comparative Perspective" (2003) 6 Chapman L.Rev. 137. See also Comm. No. 155/96, African Commission on Human and Peoples' Rights.

[471] Singapore's CRC report on health care asserted that its standards were comparable to that of "advanced industrialized countries", with aspirations to become a "regional centre of medical excellence": paras. 379, CRC Initial Report, CRC /C/133. There are currently 12 public sector hospitals providing 80% of hospital beds: paras. 345-346.

[472] Para. 386, CRC Initial Report.

[473] *Ibid.* at para. 421.

[474] CRC/C/15. Add.220; "Education: Offer more choice, less pressure" *Straits Times* (2 October 2002); "Success drive send Singapore children to psychiatrists" *AFP* (2 March 2001).

[475] Paras. 38-39, CRC/C/15/Add.220.

education, it was concerned that resources allocated for children fell below that provided by other countries with comparable levels of economic development.[476] These observations point out problem-areas that require attention, though the follow-up mechanism of the next periodic report is weak.

E. *Minority Rights to Culture*

1. *Minorities, multi-racialism and the right to culture*

Article 27 of the ICCPR, as elaborated upon by the 1992 UN Minorities Declaration,[477] recognises the right of members of minority groups to enjoy, individually or in community, rights to language, culture and religion.

Within a multi-racial society, the government seeks to establish a unifying national identity while encouraging each community to nurture its distinct culture, language, religion. The dominant political view is that "racial divides cannot be removed totally".[478] Thus, sensitive to a history of race riots and the dangers of Chinese chauvinism,[479] the government structures institutions[480] and policies[481] in an attempt to integrate the races and to promote tolerance for plural cultures as integral to nation-building.[482] Measures accommodating cultural diversity are not considered discriminatory "differentiating measures".[483] Rejecting the idea of a "melting pot" which submerges all races or a "salad bowl" which celebrates cultural differences separately, P.M. Goh used the metaphor of a "mosaic" to describe Singaporean multiculturalism. Under this, "different communities" as mosaics "form a harmonious whole" while each piece retained "its own colour and vibrancy".[484] Effectively, this recognises a "separate domain" and a "common domain" where different ethnic groups interact.

Under Article 153A, Malay is the national language; Malay, Mandarin, Tamil and English are the four official languages. The educational policy of bilingualism is designed to promote

[476] *Ibid.* at para. 14.

[477] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, GA Res. 47/135, 18 December 1992; Singapore did not sponsor this: A/C.3./47/L.66, (1 December 1992) [Minorities Declaration].

[478] *Supra* note 122 at 8. Minister Yeo noted that multi-racialism requires a "realistic and practical approach" as "We have different gods ... Our religions are not going to fuse into one." "B.G. Yeo: NS vital for racial peace" *Sunday Times* (23 August 1998).

[479] *E.g.*, the fears that elitist Special Assistance Plan Schools, teaching advanced Chinese, privileged the majority Chinese community: "Govt takes pains to integrate students" *Straits Times* (11 March 1999) 32.

[480] *E.g.*, the G.R.C.'s ostensible rationale is to guarantee minimal minority legislative representation, by stipulating that each G.R.C. team must have one member of a designated minority: Art. 39A of Singapore's Constitution. This appears to relate to Art. 2(3) of the 1992 Minorities Declaration, regarding minorities' right to effective participation in national decisions. The Presidential Council of Minority Rights (PCMR) serves as a legislative check against laws with "differentiating measures": Art. 68 of Singapore's Constitution. The PCMR is generally regarded as ineffectual and has never submitted an adverse report: see Thio Su Mien, "The Presidential Council" (1969) 1 Sing.L.Rev. 2. Its marginal role in minority affairs is reflected in its refusal to publicly address concerns relating to workplace discrimination, pro-Chinese immigration and the restrictive Singapore Armed Forces (SAF) policy against Malays: John Clammer, *Race and State in Independent Singapore 1965-1990* (London: Ashgate, 1998) at 55.

[481] *E.g.*, the HDB since 1989 maintains public housing race quotas to promote ethnic integration, in percentages paralleling society's ethnic mix: Chinese residents cannot own more than 84% of flats in a neighbourhood: "No lifting of race quotas for HDB flats" *Straits Times* (11 November 2003) H3.

[482] *Supra* note 122 at 8.

[483] See Chan, *ibid,* footnote 24 for a list of laws not constituting differentiating measures. *e.g.*, s. 6(3)(b) of the *Corrosive & Explosive Substances and Offensive Weapons Act* (Cap. 65, 1985 Rev. Ed. Sing.): weapons like krises (Malay) or kirpans (Sikhs) may be lawfully carried on certain festive occasions.

[484] "Media's role in sealing social unity" *Straits Times* (7 September 1998) 1.

this "mosaic" vision without forsaking linguistic identity.[485] Ethnic groups are exempted from general laws in some instances in deference to cultural values, as where turbanned Sikhs need not wear helmets when riding motorcycles.[486]

However, it is important not to "essentialise" ethnic communities and assume homogenous views within them. For example, the Singapore Muslim community is divided over the issue of female circumcision, whether it is religiously warranted or an optional cultural practice, whether it is barbaric or a minor procedure.[487] The state leaves this to the community to handle, without requiring a mandatory reporting of female circumcision to the Ministry of Health. Its report to the CRC committee states that this is not a widespread practice amongst the Muslim community nor is it "a major public health concern", as no related complications have ever been reported to a state clinic.[488] The issue of female circumcision constituting a human rights violation under CEDAW[489] has never been publicly raised in Singapore.

2. *Protecting minority participation, identity and cultural autonomy: administration of Muslim law act, treaty reservations and legal pluralism*

The common law based Singapore legal system practices a limited form of legal pluralism, insofar as the Muslim minority is able to preserve its cultural particularities regarding personal and customary law, in matters like education, diet,[490] prayer obligations and religious instruction, as regulated by the *Administration of Muslim Law Act* (AMLA).[491] This establishes the Syariah Court with jurisdiction over matrimonial and divorce matters, the power to impose penalties for Muslim-specific offences and to administer Muslim oaths and testamentary disposition pursuant to Muslim law. It also establishes Majlis Ugama Islam or MUIS (Islamic Religious Council of Singapore) as a body corporate which advises the President on Islamic matters,[492] oversees Islamic schools, administers the Mosque Building fund, organises Mecca pilgrimages etc. Critics have alleged that MUIS is "severely controlled".[493]

The state's recognition of cultural autonomy buttresses patriarchical and inegalitarian religious laws. Examples include laws precluding women from certain public posts,[494] permitting polygamous marriages (though statistics indicate this is not the norm among Muslim

[485] Academic Lily Rahim was criticised by a Malay youth group for her assertion that the state was practising a policy of coercion in the learning of Mandarin among the Malays. See "Academic slammed for maligning Malays" *Straits Times* (29 June 2004).

[486] *Supra* note 122 at 16.

[487] "Muslim rite is modernised" *Toronto Star* (16 November 2002) L12. Competing views see the procedure as "outdated and inhumane" or alternatively, comparable to piercing one's ears.

[488] Paras. 31, 33 CRC/C/SR.909; para. 355, CRC Report, notes that female circumcision in Singapore is a relatively minor procedure.

[489] CEDAW Committee, General Recommendation No. 14 of 1990.

[490] *E.g.*, SAF camps maintain 2 kitchens: pork-free Muslim and beef-free Chinese kitchens, an apparently rare arrangement: "BG Yeo: NS vital for racial peace" *Sunday Times* (23 August 1998).

[491] Cap. 3, 1999 Rev. Ed. Sing.

[492] Information about MUIS is available at its website <http://www.muis.gov.sg>.

[493] Zulfikar Mohamad Shariff, "Malay leadership: Interest, protection and their imposition"(Paper presented at a conference entitled "Political Change in Singapore: what next?" 10-12 January 2003, Melbourne), *archived at* Singaporeans for Democracy <http://www.sfdonline.org/Link% 20Pages/Link% 20Folders/03Pf/Malay_leadership.html>.

[494] *E.g.*, the post of Kadi and Muslim Marriages registrar: ss.90(1), 91(1) and 146, AMLA; paras. 8.8, CEDAW Initial Report.

men[495]) and apportioning larger inheritance shares to males over females.[496] These gender discriminatory cultural norms contravene Singapore's obligations under, *e.g.*, CEDAW. Consequently, Singapore maintains reservations to Articles 2 and 16 in deference to minority religious and customary rights,[497] which considerably blunt the reach of CEDAW, especially in modifying sexist cultural patterns.[498]

3. *Cultural rights and education: madrasahs (religious schools)*

A primary goal of minority rights is to protect distinct group identity and autonomy; states are obliged to "create favourable conditions" for the development of minorities' culture, language and religion save where specific practices violate national law and international standards.[499]

In 2000, the decision was taken to make primary education compulsory under the *Compulsory Education Act*,[500] consonant with Article 13(2)(a) of ICESCR and Article 28(1) of CRC, with a few exemptions.[501] The education system seeks to produce well-rounded "morally upright individuals", fully conversant with technology but in touch with their Asian heritage,[502] maintained through the bilingual / Mother Tongue policy.[503]

This stirred concern that the existence of the six community-funded madarasahs which produce religious teacher-scholars, an important facet of communal cultural identity,[504]

[495] Section 96(2), AMLA. Para. 17.14, CEDAW Initial Report. In 1997, less than 1% of Muslim marriages solemnised involved polygamy. A first wife may seek a divorce from the Shariah court if unhappy about her husband's second marriage. According to Chaudhry, "[t]he Holy Quran has restricted man's right of contracting plural marriages to a maximum of four at a time' and also protected the rights of wives in cases of multiple marriages of the husband, citing Quran 4:3 and 4:129-130 as the relevant injunctions: Muhammad Sharif Chaudhry, "Woman and Polygamy" in S. Sajid Ali, ed., *Women's Rights in Islam* (Adam Publishers & Distributors, 1991) 83. Pro-women interpreters of the Quran argue it is not enough to know the Quran allows men to marry up to four women but to also read the last past of the verse: "But if ye fear that ye shall not be able to deal justly with them then only one." (4:3). It is argued that a Muslim woman may write into her marriage contract a clause stipulating monogamy, which if breached, gives her the right to divorce. Miriam Cooke and Bruce B. Lawrence, "Muslim Women Between Human Rights and Islamic Norms" in Irene Blook, J. Paul Martin and Wayne L. Proudfoot, eds., *Religious Diversty and Human Rights* (New York: Columbia University Press, 1996) 311 at 326. While polygamy is accepted in some jurisdictions, it is also regulated as in the case of Pakistan's *Muslim Family Laws Ordinance* of 1961 which requires a Muslim man to obtain prior consent of the Arbitration Council before contracting a second marriage: Sara Hossain, "Equality in the Home: Women's Rights and Personal Laws in South Asia" in Rebecca J. Cook, ed., *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press, 1994) 466 at 476. There is a school of thought which asserts that the right of Muslim men to practice polygamy, which is detrimental to women's rights, is derived not exclusively from the Quran but interpretations drawn from the traditions (hadith and Sunna of the Prophet) and those of Islamic scholars: see Norani Othman, "Grounding Human Rights Arguments in Non-Western Culture: Sharia and the Citizenship Rights of Women in a Modern Islamic State" in Joanne R. Bauer & Daniel A. Bell, eds., *The East Asian Challenge for Human Rights* (Cambridge University Press, 1999) 169 at 178.

[496] Para. 17.33, CEDAW Initial Report notes that the male's inheritance share is double the female's as men are responsible in Islam for maintaining their families (including wife, unmarried sisters, daughters, widowed mothers etc), while a woman's inheritance is for her own use.

[497] Para. 2.2, CEDAW Initial Report.

[498] Art. 5 of CEDAW. See generally Thio, *supra* note 139 at 299-305. The CEDAW Committee while recognising Singapore's plural society and historical sensitivity towards its communities cultural and religious values, recommended it study reforms in Muslim personal law, consulting the various ethnic and religious groups, including women, pursuant to eventually withdrawing these reservations: para. 74, A/56/38.

[499] Art. 4(2) of the Minorities Declaration.

[500] Cap. 51, 2001 Rev. Ed. Sing.

[501] *E.g.*, home-schooling, Islamic religious schools.

[502] Paras. 415 and 432, CRC Initial Report.

[503] Para. 3.8, *ibid.*

[504] Para. 6.10, CEDAW Second Report; "Ways to enable Islamic schools to co-exist" *Straits Times* (19 April 2000) 56.

would be threatened. PERGAS (Islamic Scholars Association of Singapore), among others groups, fought to retain the madrasahs with some members of the Muslim community considering that the government sought to control madrasahs where National Education, "a propaganda platform for PAP" was not taught to curb religious extremism.[505] The eventual compromise was to retain the schools' religious character while ensuring these attained minimal standards of proficiency in English, Science, Mathematics and Information Technology (I.T.) to ensure the employability of madrasah graduates. Thus, the Act does not fully apply to the Malay community. Currently, madrasahs may take in 400 primary one students annually.[506]

4. *The national school system as "common space"*

The public school system is seen as a "common space" where the commonalities amongst the different ethnic and religious groups can be fostered. Inter-cultural learning[507] is promoted insofar as the Civics and Moral Education national programme teaches the strength of the traditions students hail from, focusing on what is common between different cultures and trying to promote respect for religious and cultural differences. While English is the common social goal, the bilingualism / mother tongue policy is believed to promote cultural identity.[508] The Committee on Strengthening Racial Harmony in schools also encourages inter-racial mixing through co-curricular activities interaction in sports and societies.[509]

5. *The Tudung controversy and minority rights to culture*

This problem of religious dress in public schools is bedeviling other jurisdictions.[510] In Singapore, four primary schoolgirls were asked to leave their schools in January 2002 for flouting educational policy by wearing the *tudung* (Muslim headscarf) to school.[511] The common uniforms policy was based on the fear that wearing religious dress in public schools would heighten religious differences, fragmenting common space and undermining efforts to build a common identity, besides inviting "competing demands from other communities to assert their own identities".[512] This was decried by their parents as infringing religious freedoms and criticised by several politicians and activists as being hostile to religious diversity.[513]

The counterpoint is that forfeiting the constitutional rights of minorities was no recipe for racial-religious integration, harkening back to the hegemonic colonial mentality of

[505] Shariff, *supra* note 493.

[506] Para. 421, CRC Initial Report.

[507] Art. 4(4) of the UN Minorities Declaration requires states to take appropriate measures in education "in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory" and to ensure minorities had "adequate opportunities to gain knowledge" of society at large.

[508] Inter-Racial Mixing in Schools, Sing. *Parliamentary Debates*, vol. 76, col (15 August 2003). 2465 at cols 2467, 2476.

[509] T. Shanmugaratnam, *ibid.*, cols. 2465.

[510] In *R (on the application of Begum) v. Headteacher and Governors of Denbigh High School* [2004] All E.R. (D) 108 (Jun); [2004] EWHC 1389 (Admin), the claimant unsuccessfully challenged a school decision requiring she wear the agreed school uniform for female Muslim students (shalwar kameeze), where she wanted to wear the jilbab.

[511] Thio, *supra* note 34 at 355-370.

[512] *Supra* note 162.

[513] *E.g.* Fateha.com, then run by Zulfikar Mohammad Shariff. Azhar Ali of the opposition Singapore Malay National Organisation indicated he would write to the school and Ministry of Education requesting the ban be lifted: "Singaporean withdraws daughter from school to protest headscarf ban" *Associated Press* (1 July 2003) *archived at* Human Rights Without Frontiers <http://www.hrwf.net/html/singapore_ 2003.html>.

homogenisation based on "obsolete historical and civilizational premises."[514] Arguably, there was no empirical evidence that allowing Muslim headscarfs to be worn in schools would impede national unity. Rahim criticised the ban as paternalistic, a form of secular fundamentalism and "an attempt to impose cultural and social conformity in schools", indicative of religious insensitivity.[515] The matter raised important issues as to whether this policy violated religious freedom and cultural autonomy or liberated female Muslims from a repressive patriarchical practice, a feminist perspective not publicly canvassed.[516] From the perspective of the right to education, it was asserted that the policy threatened Muslim rights of "equal access to education",[517] damaging community relations and preventing the parents from effectively fulfilling their Islamic duty to educate their daughters, contrary to Articles 14, 27, 29 and 30 of CRC and Article 10 of CEDAW. Notably, nothing in Islam requires pre-pubescent girls to cover themselves and the point was made that it was unfair for the parents to make the decision without discussing it with the children.[518]

The Mufti, Singapore's highest religious authority, considered that priority should be accorded education over tudung-wearing, which the childrens' fathers rejected,[519] as did PERGAS,[520] which demonstrates dissent within the Muslim community.[521] The government's rationale was not to promote gender egalitarianism but to serve the instrumental purpose of preserving a common space to foster national solidarity. Thus, national goals limit the exercise of civil liberties, including religious liberties and minority rights.[522] The US-based Muslim Women Lawyers for Human Rights stated this policy reflected one of "internal political hegemony that does not shy from infringing upon fundamental minority rights", violating democratic values and human rights norms in relation to religious freedom, education, as embodied in the CRC, CEDAW and 1966 Covenants.[523] Despite reports that the parents would go to court to demand "our constitutional rights be restored" in relation to religious freedom and discrimination, the issue remains unlitigated.

VI. Conclusion

Human rights law is rooted in realism, the post-Holocaust "memory of horror"[524] and acute awareness that governments staffed by fallible human beings are capable of gross atrocities. International schemes of protection were meant to supplement, not supplant, the domestic system where this falters, in deference, to the unfortunate universal feature of human experience, the gap between "what we believe is right, and what we actually do", between rhetoric and reality, between aspiration, action and actualisation.[525]

[514] Karamah (Muslim Women Lawyers for Human Rights), Letter to Singapore Ambassador, Heng Chee Chan, (20 April 2002), online: Karamah <http://www.karamah.org/press_ letterto_singapore.htm>.

[515] *Supra* note 32.

[516] See Lama Abu-Odeh, "Post Colonial Feminism and the Veil: Considering the Differences" (1992) 26 New Eng.L.R. 1527.

[517] *Supra* note 513.

[518] Interview of, *inter alia*, Farid Alatas (a sociologist from the National University of Singapore) by David O'Shea *supra* note 165.

[519] "Mufti puts school first" *Straits Times* (6 February 2002).

[520] PERGAS is the Singapore Islamic Scholars and Religious Teachers Association. It considered Muslims could not be complacent in the face of "such hindrance towards fulfilling the religious obligation of the modest covering of aurat": "Tudung controversy a test in art of negotiation" *Straits Times* (20 February 2002). Pergas' stand on the Hijab issue (English version) at <http://www.pergas.org.sg/hijab-press2eng.html>.

[521] Muslims wrote letters to the press strongly supporting the government's stance, urging the fathers to send their daughters to madrasahs if they insisted their daughters wear tudung. Norita Abdullah, "Send daughter to madarasah" *Straits Times, Forum* (8 January 2003).

[522] Thio, *supra* note 34 at 355-366.

[523] Art. 18 of ICCPR; Art. 14 of CRC; Art. 29 of CRC; Art. 18 of UDHR, Art. 10 of CEDAW; *supra* note 504.

[524] Ignatieff *supra* note 100 at 80.

[525] Glendon, *supra* note 24 at 229.

In seeking to impose restraints on public and private power-holders, human rights law seems almost utopian in the face of history, a "compelling ideal in an imperfect world".[526] Based on the ideological commitment to the intrinsic worth and dignity of each human being, human rights as a humanist universal ethic, as "supra-national articles of faith"[527] now occupy the public space formerly inhabited by official proclamations of religious allegiance.

The "pragmatic realism" of Singapore eschews any "theological moralizing" over assertions of universal moral truth, in an age where "law is politics", as "we want to be effective rather than just feel virtuous".[528] Combined with the political imperative of maintaining a stable political order and a dominant one-party state, Singapore's approach towards human rights can be described as cautious; change is to be paced *andante* and brought about *sotto voce*. Stressing that Singapore takes its international obligations seriously, in replying to the question of whether Singapore would sign other treaties like CERD, the relevant Ministry stated "we are more concerned about substance than form", the priority being to focus on community bonding to sustain good relations.[529] The determinative factors were whether signing more treaties was "in our interest" and whether Singapore was "fully satisfied" it could "give effect to its provisions".[530] Presumably, this cannot entail too far a departure from the dominant state values of utilitarianism, instrumentalism and patriarchy. Furthermore, participation in the human rights regime is seen as a secondary objective, as some consider it unnecessary that Singapore become party to the ICCPR or other human rights conventions "in order to subject itself to a moral order that guarantees its peoples fundamental freedoms and rights" similar to ICCPR rights.[531]

Singapore emphasises the preservation of maximal state discretion (and minimal external accountability) in implementing international norms to ensure flexibility in addressing problems like racism through law, educational and enforcement programmes, bearing in mind "the unique confluence of social, historical, political and economic conditions faced by different societies."[532] Human rights criticisms are met with robust rejoinders and authoritarian practices justified by reference to the rhetoric of development, pragmatism and economic success attained in the forty years of nation-building where Singapore has become a first-world city-state with standards of living amongst the highest in Asia.

Against the leitmotif of Singapore's economic and non-economic vulnerability to forces within and without is the appeal to "communitarian values" of consensus-seeking, group discipline and social harmony to maintain social cohesion and protect Singapore's global competitiveness. This has justified the limitation of civil-political rights, the emasculation of political opposition and the maintenance of harmonious industrial relations through government control. Further, the importance of cultivating strong families[533] and social morality as a bulwark against the social decline, radical individualism and violence of crime plaguing Western liberal democracies is stressed. Despite micromanaging "one of the most successful (and controversial) socioeconomic experiments of the latter half of the 20th Century"[534] and without wanting to cede any political control, the government is concerned that authoritarianism in structuring state-society relations has stunted entrepreneurialism and creativity

[526] *Supra* note 1 at 605.
[527] *Supra* note 468.
[528] *Supra* note 1 at 606.
[529] *Supra* note 245.
[530] Sing. *Parliamentary Debates*, vol. 69, col. 539 (30 June 1998) (Prof. S. Jayakumar).
[531] Chan, *supra* note 122 at 9.
[532] Zainul Abidin Rasheed, Statement (World Conference against Racism, South Africa, 1 September 2001), online: United Nations <www.un.org/WCAR/statements/singE.htm>.
[533] Executive Summary, para. 1.2, CRC Initial Report. Attempts to promote family-friendly policies include allowing its officers to work just 11 hours a week: "Civil Service flexi-hours get more flexible" *Straits Times* (7 May 2004) 3.
[534] *Supra* note 416.

necessary to generate a knowledge-based economy. In embracing globalisation, cosmopolitan aspirations, trade liberalisation and having a more assertive, well-educated population, Singapore will continue to be exposed to ideas of democracy, political pluralism and human rights associated with westernisation. However, this will jostle with the dominant political rhetoric of community interests, individual duties and limiting rights through a "structure of preventive and penal laws"[535] ensuring the viability of a multi-ethnic, multi-religious nation-state. The limits of multiculturalism are informed by the recognition that "plural societies must have core values to bond the various ethnic groups" upon which to base an overarching national identity[536] without which "a multi-racial society will not be or become a nation."[537]

Singapore is gradually exposing its non rights-based,[538] programme-oriented approach to human rights to external examination through state reporting procedures and to external scrutiny and debate. While agreeing that a core of universal human rights exists, Singapore is wary of cultural imperialism. Where it disagrees with a particular human right norm's substance or scope, it either does not ratify the relevant treaty or attaches reservations and clarifying declarations.

Despite observations that nationhood is "perceived primarily as a problem of human resource management" in an administrative state run along corporate lines,[539] the fact that Singapore has chosen to engage this field by its limited participation in the UN human rights treaty-based regime is promising. Parliamentarians and activists are able to utilise the language of human rights and refer to Singapore's international obligations in seeking legal reform,[540] an important step in developing the nascent human rights culture. Nevertheless, in engaging in human rights dialogue and the project of improving human rights practices, we have only just begun.

[535] Chan, *supra* note 122 at 23.

[536] *Ibid.* at 23. He adds that criminal law has a central core of universally accepted values, religious, moral or humanitarian, which must prevail over the "fissiparous tendencies of individual cultures." Multiculturalism is a "worthy goal" where it buttresses these core values, enriching public life.

[537] *Ibid.* at 25.

[538] The CRC committee was concerned the public were insufficiently aware of the rights-based approach of the CRC: paras. 18-19, CRC//C/15/Add.220.

[539] Rahim, *supra* note 32.

[540] *E.g.* Charles Chong asked whether Singapore's education policy complied with Art. 10 of CEDAW: Sing. *Parliamentary Debates*, vol. 75, col. 1519ff (25 November 2002).