THE EVOLUTION OF SINGAPORE'S MODERN CONSTITUTION: DEVELOPMENTS FROM 1945 TO THE PRESENT DAY[1]

Introduction

Any lawyer studying the constitutional histories of former British colonies will quickly realise that the transition from colony to independence on the basis of an established constitutional framework in these former colonies have often proved disastrous. Indeed, the failure of constitutional government in these former colonies has been the norm rather than the excception. Singapore's story is in that sense unique. This brief history of Singapore's constitutional development from 1945 to the present documents the various changes that have taken place over the past 45 years.

The Constitutional Position Before 1942[2]

The structure of government in the early years of Singapore's history was haphazard and confusing. When Sir Stamford Raffles claimed Singapore for the British East India Company in 1819, he placed her under the government of Bencoolen, of which he was the Lieutenant-Governor. The Presidency at Bencoolen was in turn, subordinate to the Supreme Council in Fort William, Bengal. The Supreme Council, had extensive legislative powers granted under Pitt's Act of 1784 and the power to legislate for Singapore lay in Fort William. Raffles had staked the British claim on Singapore without express authority from his superiors in Bengal and it was not till 1824 that Singapore and Malacca were effectively transferred to the East India Company by the British Parliament.[3] At the same time, both territories became subordinate to Fort William and subject to the jurisdiction of the Supreme Court of Judicature in Fort William.[4]

In 1858, the East India Company was abolished and Singapore came under the direct administration of the new Indian Government.[5] Indian rule proved unsatisfactory as the local population felt that legislators in India were insensitive to local needs. After much agitation both in Singapore and in the British Parliament, Singapore was transferred to the Colonial Office in 1867.[6] At the time of transfer, Singapore was given a normal colonial constitution.[7]

1. For Singapore's earlier constitutional history, see the author's A Short Legal and Constitutional History of Singapore in *The Singapore Legal System* (W. Woon ed., Singapore: Longmans, 1989) at 3.
2. For a more detailed account, see *ibid.*
3. 5 Geo IV, c. 108.
4. See, 39 & 40 Geo III, c. 79.
5. 21 & 22 Vic, c. 106.
6. This was done via the Straits Settlements Act, 29 & 30 Vic, c. 115.
7. See Letters Patent dated 4 February 1867.

Under this Constitution, the structure of the judicial system, established by the Second Charter of Justice[8] and augmented by the Third Charter of Justice[9] remained largely unchanged. In 1826, the Second Charter had extended the jurisdiction of the Recorder's Court at Penang to Malacca and Singapore, and the Penang-based Recorder was to travel on circuit to the other two territories. Troops, the Lieutenant-Governor, the Colonial Engineer and four Unofficial which had jurisdiction over Singapore and Malacca, consisted of the Recorder of Singapore, the Governor and Resident Councillor. The other division comprised the Recorder of Penang and the Governor or Resident Councillor of Penang and it had jurisdiction over Penang and Provice Wellesley.

Legislative authority in the Colony was vested in the Legislative Council. There were two classes of members in the Council, the Official members and the Unofficial members, the former taking precedence over the latter.[10] The number of the Official members always exceeded that of the Unofficial members and gave the Governor (who possessed a casting vote[11]) effective control over the Council. At the time of the Transfer, the Legislative Council consisted of the Governor, the Chief Justice, the Officer Commanding the Troops, the Lieutenant-Governor, the Colonial Engineer and four Unofficial Europeans. By 1871, the Lieutenant-Governor of Malaccca, the Judge of Penang, the Treasurer, the Auditor-General and two more Unofficial members were added to the Council.

The Council got to work very quickly and by Straits Settlements Act I of 1867, all appointments made under the Indian Government were invalidated except for officers holding office under the 1855 Charter of Justice. By Act III of that same year, the Governor of the Straits Settlements ceased to be a Judge of the Court of Judicature but the Resident Councillors continued to sit under their new titles of Lieutenant-Governors. This Act also made changes in the nomenclature of other officer: The "Recorder of Singapore" became the "Chief Justice of the Straits Settlements" and the "Recorder of Penang" became the "Judge of Penang".

In 1868, the Court of Judicature of Prince of Wales' Island, Singapore and Malacca was abolished and in its place was established the

8. The Second Charter was dated 27 November 1826.
9. The Third Charter was dated 12 August 1855 and ratified by Act 18 & 19 Vic, c. 3 section 4.
10. Article VII.
11. Article IX.

Supreme Court of the Straits Settlements.[12] By this reorganisation, the Resident Councillors, by implication, ceased to be Judges of the Court.[13] A few years later, the Supreme Court was again reorganised. By Ordinance V of 1873, Ordinance V of 1868 was repealed and the Court now consisted of the Chief Justice, the Judge at Penang, and a Senior and Junior Puisne Judge. There were two divisions of the Court, one at Singapore and Malacca and the other at Penang.[14] Significantly, the Supreme Court was given jurisdiction to sit as a Court of Appeal. This jurisdiction was very significant since appeals had previously only lain to the King-in-Council.[15]

After the creation of the Court of Appeal by the Ordinance of 1873, several other major changes were made to the structure of the courts in Singapore.[16] In 1878, as a consequence of the changes in the court structure in England resulting from the passing of the U.K. Judicature Acts 1873-75, an Ordinance was passed to restructure the courts in Singapore. Under this Ordinancce, the jurisdiction of and residence of the Judges was made more flexible and by implication, the divisions which were created by the earlier Ordinance was abolished. The jurisdiction of the Supreme Court itself was now similar to that of the new English High Court whereas it was formerly geared to the old Common Law Courts and the Court of Chancery.[17]

In 1907, the 1878 Ordinance was re-enacted with amendments by Ordinance No.XXX of 1907 in which the jurisdiction of the Supreme Court was presented in a more organised manner. Under this Ordinance, the Court would exercise:

a. General Jurisdiction;
b. Original Civil and Criminal Jurisdiction; and
c. Civil and Criminal Appellate Jurisdiction.

Furthermore, with the establishment of the Federated Malay States (F.M.S.) and their own judicial system, the Ordinance provided that the Judicial

12. Ordinance V of 1868. It should noted that Straits Settlements Statutes were known as "Acts" till 1868. From then on, the title "Ordinances" was used.
13. See, *Sir Roland Braddell, The Law Of The Straits Settlements: A Commentary,* 2nd Edition, (Singapore: Kelly & Walsh, 1931) at p. 36.
14. *Ibid.* at 37. There were never four judges under this particular Ordinance and the number was subsequently reduced to three by Ordinance XVII of 1876.
15. *Ibid.* at 38.
16. Ordinance III of 1878.
17. See Myint Soe, *General Principles of Singapore Law,* (Singapore: The Institute of Banking & Finance, 1978), at 6-7 (henceforth Myint Soe).

Commissioners of the F.M.S. shall be supernumerary judges of the Supreme Court of the Straits Settlements and that the Governor could appoint them from time to time to perform the duties of a Supreme Court Judge.[18] The 1907 Ordinance also did away with the Quarter Sessions and Court of Requests and District Courts with both civil and criminal jurisdiction and Police Courts (replacing the Magistrates' Courts) were established.[19] Subsequent amendments to this Ordinance which did not alter the existing structure were incorporated into Ordinance No. 101 of the 1926 Revised Edition of the Ordinances of the Straits Settlements.

The last major change in the judiciary before the Second World War came in 1934. The Courts Ordinance[20] of that year took into account the various changes in the F.M.S. judiciary and created a Court of Criminal Appeal[21] which was basically an extension of the Supreme Court's jurisdiction.

In 1877, an Executive Council was introduced into the government of the Straits Settlements.[22] The purpose of the Executive Council was to advise the Governor and it was to comprise "such persons and constituted in such manner as may be directed" by the Royal Instructions.[23] The Letters Patent establishing the Executive Council also empowered the Governor to appoint "all such Judges, Commissioners, Justices of the Peace, and other necessary Officers and Ministers".[24] The Council was to be consulted by the governor on all affairs of importance unless they were too urgent to be laid before it or of such a nature that reference to it would prejudice the public service. In all of these urgent cases, the Governor had to communicate to the Executive Council the measures he had adopted.

After 1877, the structure of the government, in particular, the Executive and Legislative Councils and the powers of the Governor as well as competence to legislate for the Colony remained largely unchanged until the advent of World War II. In the interim 65 years, several Letters Patent which had the effect of revoking earlier Letters Patent or Royal Instructions were issued to streamline and reorganise the constitutional structure of the colony but they did not substantially change the arrangements made by the 1867 and 1877 Letters Patent.[25] The last constitution of the Straits Settlements was that of

18. Section 6(2). See Myint Soe, *ibid*
19. See sections 47-63.
20. Act No. 17 of 1934.
21. Section 19.
22. Letters Patent dated the 17th of November 1877, a copy of which is available at the Law Library of the National University of Singapore.
23. Art. II.
24. Art. V.
25. These included the Letters Patent dated 17th November 1885 and 30th December 1891.

1924 which based on Letters Patent dated 17th December 1911 as amended by Letters Patent dated 18th August 1924 and Royal Instructions dated 18th August 1924.

The only note-worthy changes were those made by Governor Guillemard in 1924. Two Unofficial members of the Legislative council were to be nominated by the Governor to sit on the Executive Council and the Legislative council was enlarged to comprise 26 members, with equal numbers of Unofficial and Officials. Under this scheme, the Governor had a casting vote. The Penang and Singapore European Chambers of Commerce were each allowed to nominate one Unofficial whilst the Governor nominated the rest on a racial basis: five European (including one each from Penang and Malacca); three Chinese British subjects, one Malay, one Indian and one Eurasian.[26]

The Japanese Occupation 1942-1945[27]

The structure of the constitution and courts as described above remained almost intact throughout the 1930s and into the 1940s. It might well have continued in existence even till the next decade were it not for the invasion of Singapore by the Japanese forces under Lieutenant-General Tomoyuki Yamashita on the 15th of February 1942. The British surrender meant that from that date, Singapore would be administered and justice dispensed according to the rules and regulations of the Japanese conquerors.

Much confusion abounds as to where the proper legislative authority lay. There were several government or military bodies who had the power to make laws. At the top of the pyramid was the Supreme Command of the Southern Army Headquarters, then came the 25th Army Headquarters, the Military Administration Department and then the Malai (Malayan) Military Administration Headquarters and the City Government of Tokubetu-si. Most of these bodies issued streams of regulations, laws and notices through the Tokubetu-si without adhering to the normal chain of command. Often these laws and regulations were contradictory but the problem usually resolved itself since the body higher up on the heirarchy always prevailed.[28]

All existing courts ceased to function when the Occupation began. A Military Court of Justice of the Nippon Army was established by a Decree dated the 7th April 1942 and the civil courts were re-opened by a Proclamation on 27th

26. See, C.M. Turnbull, *A History of Singapore 1819-1975,* (Singapore: Oxford University Press, 1977), at 158 (henceforth Turnbull).
27. For an historical account of the legal situation in Singapore during this period see Goh Kok Leong, "Legal History of the Japanese Occupation in Singapore," [1981] 1 M.L.J. xx.
28. *Ibid.* at p. xxi.

May 1942. These courts included the Criminal, District, Police and Coroner's Courts. The other effect of this Proclamation was to make applicable all former laws (British Laws) so long as they did not interfere with the Military Administration. At the apex of this judicial administration was the Syonan Supreme Court or the Syonan Koto-Hoin which was opened on 29th May 1942. Although a Court of Appeal was constituted, it never sat.[29]

Liberation and the Abolition of the Straits Settlements

The Japanese surrendered 12th September 1945. Due to the uncertainty as to the form of her new constitution, Singapore was temporarily administered by the British Military Administration (B.M.A.).[30] Immediately, the B.M.A. proclaimed that all Japanese Proclamations and Decrees ceased to have effect and that the "laws and customs existing immediately prior to the Japanese occupation will be respected."[31] Lord Mountbatten, the Supreme Allied Commander who was in charge of the overall administration of South-east Asia, left Singapore in the charge of the Deputy Chief Civil Affairs Officer, Patrick McKerron.

McKerron had originally proposed that the island's internal administrative structure not be altered as far as possible but he changed his mind upon reaching Singapore. The Colonial Office had already decided that the old Straits Settlements should be disbanded and Singapore be constituted as a separate colony, it requiring "special treatment" because it "has economic and social interests distinct from those of the mainland."[32] They were anxious to get Singapore's problems out of the way and to concentrate on the Malayan Union[33] and thus opted to retain the hierarchy of executive, legislative and municipal councils and rural board which had been operating before the War but to expand opportunities for representation. By the Straits Settlements (Repeal) Act 1946[34], the Straits Settlements was disbanded.

Under the new constitutional arrangements, Singapore would be a separate Crown Colony vested with a constitution of its own. The constitution that was set out in the Singapore Colony Order-in-Council 1946[35] was essentially

29. *Ibid.*
30. Turnbull, p. 223.
31. G.W. Bartholomew, *Introduction to the Table of Written Laws of Singapore, 1819-1971,* (Singapore: Malay Law Review, 1972) at li.
32. See Malayan Union and Singapore: Statement of Policy on Future Constitution, U.K. Cmnd. 6724, paragraph 5.
33. See, Debate on the Straits Settlements (Repeal) Bill, Hansard, 8th March 1946, cols. 637-727 and 18th March 1946, cols. 1540-1565.
34. 9 & 10 Geo. IV, c. 37.
35. Order in Council dated 27th March 1946, Statutory Rules and Orders, 1946, No. 462.

a colonial one. It preserved the Governor's veto and reserved powers over legislation and set up an advisory Executive Council of 6 officials and 4 nominated unofficials. The Legislative Council, consisting of 4 ex-officio members, 7 officials and at least 2, but not more than 4 nominated unofficials, and 9 elected members was therefore without an unofficial majority. This epitomised the Colonial Office's desire for a gradual transition to self-government and the new Constitution was heavily criticized as failing to permit local people to play an effective role in public affairs.[36]

In order to work out the number of nominated and elected unofficials and the manner in which the seats will be be filled, a Reconstitution Committee comprising official and local representatives was convened by Governor Sir Franklin Gimson in 1946. The Committee presented its report[37] that same year and all but two of their recommendations were accepted. The Government increased the number of nominated unofficials from 2 to 4 to safeguard minority interests. Of the 9 elected seats, 3 were alloted to the Singapore Chamber of Commerce, the Chinese Chamber of Commerce and the Indian Chamber of Commerce which represented European, Chinese and Indian economic interests respectively. The other 6 seats would be filled by democratic elections based on universal suffrage. Thus, the revamped Legislative Council would comprise 4 ex-officio members, 5 officials, 4 nominated unofficials, 3 chamber of commerce representatives and 6 popularly elected members. These reforms were significant in that first, there was an unofficial majority of 13 to 9 in the membership of the legislature and secondly, democratic elections were being introduced for the first time.[38] The new constitution came into effect on the 1st of March 1948 and elections were held for the first time on the 20th of March 1948.[39]

Originally, the Colonial Office had visualized a legislative Council in which representation would be based on race. However, this was vehemently opposed by the Malayan Democratic Union, the only organised political group at the time and this was unanimously supported by the advisory council which insisted that elections be based along territorial lines.[40] Most of the seats in the first election were won by the Progressive Party which dominated Singapore politics till the late 1950s.

36. See Yeo Kim Wah, *Political Development in Singapore 1946 -1955,* 1973 (Singapore: Singapore University Press) at 55 (henceforth Yeo Kim Wah).
37. See Report of the Committee for the Reconstitution of the Singapore Legislative Council, as reproduced in Appendix A *of Annual Report on Singapore* for 1st April - 31st December 1946, pp. 17-25.
38. Yeo Kim Waw, pp. 55-56.
39. See Order in Council dated 24th February 1948, Statutary Instruments, 1948, No. 341.
40. Turnbull, at 235.

The judicial structure and hierarchy of courts was not changed by the new Constitution. There was to be a Supreme Court which "shall be a Court of Record and may consist of a High Court and a Court of Appeal".[41] and the Chief Justice and the Judges of the Supreme Court of Singapore were "appointed by His Majesty by Letters Patent, or by the Governor by Letters Patent under the Public Seal in accordance with such instructions as he may receive from His Majesty through a Secretary of State."[42]

The Rendal Constitution

From 1948 to 1953, Singapore's constitutional development was slow and leisurely. The government's top priority was to deal with increasing communist front activities and this held up constitutional change both in Singapore and the Federation.[43] In 1950, the Progressive Party demanded for 3 additional elected seats in the Council. By an Order-in-Council dated the 21st of December 1950[44] this change was made and it was implemented in early April 1951 in time for the triennial elections. This amendment left the basic constitutional structure intact, the 13 ex-officio and nominated members retaining their majority.

In the second general election of March 1951, 22 candidates contested the 9 available seats with the Progressive Party winning 6 of them. Only 52% of the population voted. In 1953, the Progressive Party set a 10-year target date for achieving self-government, to be followed by full independence through merger with the Federation. In the meantime, it advocated introducing a predominantly elected Legislative Council, with a Member system comparable to that in the Federation. This proposal was greeted enthusiastically by the Colonial authorities since they regarded the Progressives as a reliable and responsible group who could be counted on ensure the smooth and peaceful transfer of power.

All through this period, the general public was apathetic towards the new political situation and this was regarded by the British as the major impediment to the development of democratic government in Singapore.[45] Changes in the constitutional system were necessary to increase widespread participation in central and local government and to this end, a Constitutional Commission

41. See Article 14(2) of the 1946 Order in Council.
42. See Article 14(2) of the 1946 Order in Council.
43. Yeo Kim Wah, at 56.
44. Statutory Instruments, 1950, No. 2099.
45. Turnbull, at 241; see also Speech given by Governor-General Malcolm MacDonald, broadcast on 19 October 1947 exhorting the people of Singapore to vote in the 1948 elections, the text of which is published by the Department of Public Relations, Malayan Union.

headed by Sir George Rendal was set up in 1953.[46] The Commission was charged with "a comprehensive review of the constitution of the Colony of Singapore, including the relationship between the Government and the City Council, and to make such recommendations for changes as are deemed desirable at the present time."[47]

The Rendal Commission issued its report in February 1954 and most of its recommendations were accepted by the Government. There was to be an automatic system of registration of voters since only about 25% of citizens had taken the initiative to register themselves as voters; the Legislative Council would be transformed into a mainly elected Assembly of 32 Members, of whom 25 would be Elected Unofficial Members, 3 ex-officio Official Members holding Ministerial posts, and 4 would be Nominated Unofficial Members.

The Commission also recommended the creation of a Council of Ministers which consisted ot 3 ex-officio Official Members and 6 Elected Members appointed by the Governor on the recommendation of the "Leader of the House", who would be the leader of the largest Party in the Assembly or of a coalition of Parties assured of majority support. English was to be retained as the sole official language of the Legislative Assembly and the Commission considered that the functions of local and central government should be carried out by separate bodies. Although outside the scope of their terms of the reference, the Commission saw fit to comment on the relations between Singapore and the Federation of Malaya feeling that "a closer association of the two territories will ... be necessary in order to justify the removal of ... reserved and veto powers"[48] The Commission also recommended the removal of the Chamber of Commerce representation.

The above recommendations were, as a whole implemented by the Singapore Colony Order-in-Council of 1955[49], otherwise known as the "Rendal Constitution". The run-up to the 1955 elections marked a significant departure from the past. There emerged numerous nationalist leaders and issues which affected the masses were finally being debated in public. A total of 79 candidates contested the 25 seats and the Labour Front, led by David Marshall won 10 seats; the Progressives, 4 seats; the People's Action Party won 3 seats

46. The members of the Commission were: The Attorney-General, the President of the City Council, Mssrs. Tan Chin Tuan, Lim Yew Hock, N.A. Mallal, C.C. Tan, Ahmad bin Mohamed Ibrahim and C.F. Smith. Professor Owen Hood Phillips was appointed Adviser to the Commission on constitutional matters.

47. See Letter from Governor Sir John Nicoll to Sir George Rendal, as reproduced in the Annex to Report of the Constitutional Commission, Singapore, 1954.

48. Paragraph 141 of the Report.

49. Statutory Instruments, 1955, No. 187.

and the Democratic Party won 2. Marshall thus became the first Chief Minister of Singapore.

The main problem with the Rendal Constitution was that though the cabinet was to be responsible to the Legislative Assembly (which succeeded the old Legislative Council), the powers of the ministers, especially those of the Chief Minister were not well defined. Furthermore, the retention of the portfolios of Finance, Administration and Internal Security and Law in the hands of the official ministers proved to be major impediment to the development of self-government in Singapore.

Marshall saw himself as a Prime Minister and was determined to wield real power. He saw his task as one of co-ordinating policy in particular and governing the country in general. Governor Nicoll was of a diametrically opposite view, expecting Marshall to concentrate on the Ministry of Commerce and Industry and to initiate legislation in the assembly. The crucial decisions and policies should, thought Nicoll, reside in the Governor and the Official ministers.[50]

In July 1955, Marshall sought more power by demanding the appointment of 4 assistant ministers. This demand was refused by Sir Robert Black, the new Governor who succeeded Sir John Nicoll and Marshall immediately threatended to resign unless Singapore was given immediate self-government. The issue, Marshall claimed, was "whether the governor governs or we govern". It is important to note that these trubulent times, with the communist-infiltrated Opposition urging extremist views and political back-stabbing and rivalry was white hot in its intensity. The Colonial Office was appalled by Marshall's demands but feared that his resignation would pave the way for more radical and irresponsible government. The Governor was therefore instructed to act on the Chief Minister's advice and agreed to hold constitutional talks after the assembly had been in existence for one year, instead of allowing it to run its full term.[51]

Constitutional Talks and Self-Government

Between the 23rd of April and the 15th of May 1956, the Constitutional Mission, comprising 13 Assemblymen representing all the parties in the Assembly held discussions in London with officials of the Colonial Office.[52]

50. Yeo Kim Wah, at 62.

51. Turnbull, at 262.

52. See The Constitutional Conference, London, 1956, Cmnd. 9777, (Sessional Paper No. Command 31 of 1956 for the Legislative Assembly of Singapore).

At the Conference, Marshall demanded independence by 1st April 1957, leaving foreign policy and external defence in British hands but allowing Singapore a veto on defence and rights of consultation on foreign affairs. This proposal was rejected although the British government was prepared to grant a great deal There would be a fully-elected assembly and the ex-officio members would be removed. Under the terms, Singapore would also have its own special citizenship and complete control over trade and commerce. The only major demand of the Colonial Office was that in the proposed Defence Council, on which Britain and Singapore should have equal representation, the casting vote should be in the hands of the British High Commissioner who would only use it in an emergency. Marshall refused to concede on this point, insisting that the casting vote be placed in the hands of a Malayan appointed by the Government of the Federation of Malaya.[53] At this point, the Conference broke down. Marshall had made a pre-commitment before leaving for London that he would obtain independence for the island and this left no room for bargaining. On his return from London, in June 1956, he resigned.[54] Lim Yew Hock succeeded Marshall as Chief Minister.

In March of the following year, Lim led a second all-party delegation to London to renew discussions on self-government. These negotiations were made easier by the fact that the Federation of Malaya was about to become independent. The terms offered by the British were almost identical to those offered to Marshall's delegation the year before that except that with regard to internal security, the British were now prepared to adopt Marshall's earlier suggestion. Under this scheme, a 7-member Internal Security Council would be established, with Britain and Singapore having 3 representatives each; whilst the 7th member would be a Malayan Minister appointed by the Federation.[55] This satisfied Singapore's pride and her aspirations towards merger and placed the casting vote in the hands of the Federation who shared Britain's concern over the problems of communist insurgency.[56] The delegation accepted these terms and the report[57] which was presented to the Legislative Assembly was accepted by the majority of its members, A third all-party mission was to go to London in 1958 to settle the final terms for the new constitution.

The terms of the new constitution were quickly agreed upon and on the 1st of August 1958, the British Parliament passed the State of Singapore Act[58]

53. See, *ibid.* at 7-8,
54. Turnbull, at 263.
55. See Repon of the Singapore Constitutional Conference held in London in March and April 1957, Sessional Paper, No. Misc. 2 of 1957, at paragraph 27,
56. Turnbuli, at 264.
57. See, *supra* note 56.
58. 6 & 7 Eliz. 2, Ch. 59.

which effectively converted the colony into a self-governing state. By the Singapore (Constitution) Order-in-Counell, 1958[59] the last vestiges of a colonial-style constitution – the post of Governor – was abolished and the office of the Yang di-Pertuan Negara as the constitutional head of state was established.[60] The Yang di-Pertuan Negara would appoint, as Prime Minister the person who was most likely to command the authority of the Assembly and the ministers were also appointed by the Yang di-Pertuan Negara on the advice of the Prime Minister,[61] Under Article 34, the new Legislative Assembly would comprise 51 elected members and the structure of the Judicial structure was left very much intact[62], with the Chief Justice being appointed by the Yang di-Pertuan Negara on the advice of the Prime Minister.[63]

The new constitution also constituted the office of the British High Commissioner[64] who would act on royal instructions; he also played a crucial role as Chairman of the new Internal Security Council.[65] The Commissioner remained very much in the background but had considerable powers, being entitled to see the agenda of cabinet meetings and all cabinet papers. Under Part VIII of the constitution, responsibility for the external affairs of the State of Singapore was placed in the British Government.

The power to amend the new Constitution was given to Legislative Assembly. Article 105 provided that the Assembly may by any enacted law, "amend, add to, replace or revoke any of the provisions" of the Order in Council, provided that "no Bill for that purpose shall be deemed to be passed unless at the final vote thereon it has received the affirmative vote of not less than two-thirds of all the Members of the Assembly." The Queen, acting on the advice of the Privy Council and in concurrence with the Government of Singapore, was also empowered "amend, add to, or revoke and replace" the Order in Council.[66] The Government of the United Kingdom also retained the power to suspend the Constitution if it was "satisfied that the situation in Singapore is such as to threaten the ability of that Government to discharge its responsibilities for defence and external affairs or that the Government of Singapore has acted in contravention of the Constitution of Singapore."[67]

59. Statutory Instruments, 1958, No. 156.
60. See Part II of the 1958 Order in Council.
61. See Article 21(1).
62. See Part X.
63. Article 89.
64. Articles 15 to 19.
65. Part III.
66. Article 104.
67. Article 106.

The People's Action Party (PAP) won 43 out of the 51 seats in the general elections of 1959 and this marked the transition from colony to state. The outgoing Governor, Sir William Goode brought into force by Proclamation the new Constitution on 3rd June 1959. Sir William then took his oath as the first Yang di-Pertuan Negara of the State of Singapore.[68] Mr. Lee Kuan Yew became Singapore's first Prime Minister and a total of 9 ministers were appointed.

Merger & Separation

The new PAP government sought merger with the Federation of Malaya as a matter of urgency for two main reasons: first, to achieve political independence and secondly, to guarantee Singapore's economic survival. This was denounced by the pro-communist elements in the PAP as a imperialist plot; these were defeated on a motion of confidence on this issue in the legislature. The dissident factions proceeded to form an opposition party, the Barisan Socialis with Lim Chin Siong as its secretary-general. They however continued to sit in the Legislative Assembly as representatives of their constituencies.[69]

At a meeting of the Commonwealth Parliamentary Association held in Singapore in July 1961, the principle of merger was approved by representatives from Malaya, Singapore, North Borneo, Brunei and Sarawak. This constitutional development was considered necessary because it was felt that Singapore and the Federation were "inextricably bound by common racial, historal, cultural, economic and political ties".[70] By November that year, it was agreed that Singapore should be a special state with greater autonomy than the other units in the proposed federation, although Singapore citizens did not automatically become citizens of Malaysia. Singapore would also have a smaller representation in the Federal Government but would be able to retain her own executive state government.[71] The proposals for the new Federation were accepted by the British Government provided she retained control over the military bases in Singapore and provided also that the people of the territories involved were in favour of the merger.[72] The Referendum for Merger

68. Under the transitional provisions in the 1958 Order in Council, Article 107, it was provided that the incumbent United Kingdom Commissioner would hold the office of Yang di-Pertuan Negera for the first six months.

69. See Turnbull, at 279.

70. See Memorandum Setting Out Head of Agreement for a Merger between the Federation of Malaya and Singapore, Singapore Parliament, Cmd. 33 of 1961, paragraph 1.

71. *Ibid.* at paragraphs 5, 14 & 15.

72. See Federation of Malaysia: Joint Statement by the Governments of the United Kingdom and of the Federation of Malaya, U.K. Cmnd. 1563; see also, The Merger Plan (Singapore: Ministry of Culture, 1963).

with Malaya was treated as an election issue and 71 % of the population voted for the government's proposals.

Under the Malaysia agreement, which was concluded on the 9th of July 1963[73], it was agreed that the Colonies of North Borneo and Sarawak and the State of Singapore would be federated with the existing states of the Federation of Malaya to form the Federation of Malaysia.[74] Singapore left control over foreign affairs, defence and internal security to the central government but maintained considerable powers over finance, labour and education. She would also be allocated 15 of the 127 seats in the new federal legislature and retain her own executive government and legislative assembly. The day-to–day administration of Singapore was the responsibility of the executive government and Singapore was to pay 40% of her income from taxes to the federal government.[75]

A new State Constitution was granted to Singapore to effect this change in status.[76] It should be noted that though most of the provisions relating to the legislative and executive bodies remained very much the same as those of the 1958 Order in Council, the judicial branch of the government was treated as a federal matter and did not exist as part of the state constitution. Furthermore, there were no articles under this State Constitution providing for the protection of fundamental liberties. An interesting provision was also added as a constitutional provision under the State Constitution. In the 1958 Order in Council, the following words were found in the Preamble:

> "...it shall be the responsibility of the Government of Singapore constantly to care for the interests of racial and religious minorities in Singapore, and in particular that it shall be the deliberate and conscious policy of the government of Singapore at all times to recognise the special position of the Malays, who are the indigenous people of the Island and are in most need of assistance, and accordingly, that it shall be the

73. See Agreement between the United Kingdom, the Federation of Malaya, North Borneo, Sarawak and Singapore Concerning the Establishment of the Federation of Malaysia, U.K. Cmnd. 2094 (henceforth Federation Agreement); see also, Malaysia Agreement Exchange of Letters, Singapore Legislative Assembly, Misc. 5 of 1963 dated 26th July 1963. The Federation Agreement was given statutory force by the enactment of the U.K. Malaysia Act (11 & 12 Eliz. 2, c. 35).
74. Federation Agreement, Article 1.
75. Turnbull, p. 280.
76. See The Sabah, Sarawak and Singapore (State Constitutions) Order in Council 1963, Statutory Instruments 1963, No. 1493, as published in the State of Singapore Government Gazette Sp. No. S 1 of 1963.

> responsibility of the Government of Singapore to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language."

The substance of the above wording was encapsulated and entrenched in Article 92 of the new State Constitution. Whereas it had hitherto been a pronounced direction to the present and future government of Singapore to promote the interests of the minority races and of the Malays, the new provision actually made it a legally binding obligation for all governments to do so.

Malaysia Day which fell on 31st August 1963 (to coincide with Merdeka Day) was designated the day in which the new Federation would come into being. The Malaysian Prime Minister, Tengku Abdul Rahman deferred this to mid – September due to objections by President Sukarno of Indonesia. The latter viewed the merger plan as "a threat to the area and the denial of ethnic and cultural unity."[76A] On the 31st of August, Prime Minister Lee Kuan Yew unilaterally declared that "Singapore shall forever be a part of the sovereign, democratic and independent State of Malaysia"[77] and the island enjoyed an anomalous 15 days of full independence before becoming a part of Malaysia.

The internal politics of the Federation and the abortive attempt by the PAP at federal politics was to prove fatal to the merger. Soon personal suspicions, fueled by the increasing communist and communalist threats brought relations between the central government and the Singapore government on a steadily downhill path. The general population in Singapore were also beginning to resent the strains and irritations which merger involved and this was worsened by incidents created by the Indonesian confrontation.[78] It was clear that worsening relations and tensions created by racial politics would prompt the Tengku to do something drastic. He had only two options: to depose the Singapore government or to eject Singapore from the Federation. In August 1965, Prime Minister Lee was summoned to Kuala Lumpur and informed of the Tengku's decision to expel Singapore from the Federation and on the 9th August 1965, Singapore's independence was proclaimed.[79]

76A. Turnbull, at 281.
77. See State of Singapore Annual Report 1963, at 22.
78. Turnbull, at 290.
79. See Independence of Singapore Agreement, 1965, O.N. No. 1824 of 9th August 1965.

Singapore's Independence Constitution and some Inherent Problems

Separation was effected by a series of documents. First, the Malaysian Parliament enacted the Constitution and Malaysia (Singapore Amendment) Act[80] which effectively transferred all legislative and executive powers previously possessed by the Federal government to the new Government of Singapore. Under section 4 of this Act, the Malaysian Parliament affirmed that the Singapore Government retained its executive authority and legislative powers to make laws. Under section 5, the "executive and legislative powers of the Parliament of Malaysia to make laws for any of its constituent States ... shall be transferred so as to vest in the Government of Singapore." The wording of these two sections have given rise to arguments as to whether the whole of the legislative and executive powers were transferred to the executive branch.

This confusion is understandable, bearing in mind the fact that the parliamentary draftsman used the words "Government of Singapore". If these powers were indeed to be conferred to the executive as well as the legislative bodies, the draftsman might have worded the section to read "Singapore Legislative Assembly" instead of "Government of Singapore." This problem is further compounded when one reads section 7 which provided that all laws in force in Singapore immediately before Singapore Day "shall continue to have effect according to their tenor ... subject however to amendment or repeal by the Legislature of Singapore."

Section 8 of the Constitution and Malaysia (Singapore Amendment) Act preserved the existing judicial structure and provided that appeals from the High Court "shall continue to lie to the Federal Court of Appeal of Malaysia and then to the Privy Council."

The second enactment was the Constitution of Singapore (Amendment) Act[81] which was passed by the Singapore Parliament on the 22nd of December 1965, retrospective to 9th August 1965. This Act amended the Singapore State Constitution and changed the procedure required for constitutional amendment. The two-thirds majority was abolished and only a simple majority was required for an amendment to the Constitution. In addition, this Act also changed the relevant nomenclatures to bring the Constitution in line with Singapore's independence status.

The final document of importance is the Republic of Singapore Independence Act (R.S.I.A.) of 1965[82] which was passed immediately after the Constitution

80. Act No. 53 of 1965.
81. Act No. 8 of 1965.
82. Act No. 9 of 1965.

(Amendment) Act. This Act was also passed retrospectively and provided, *inter alia,* that certain provisions of the Malaysian Federal Constitution were to be made applicable to Singapore. The R.S.I.A. also adopted for the Singapore executive and legislatures, the powers relinquished by the Constitution and Malaysia (Singapore Amendment) Act.

It should first be observed that instead of drafting a completely new constitution, the Government of the day resorted to adopting, adapting and augmenting the 1963 State Constitution. The passing of the Constitution (Amendment) Act of 1965 and the Republic of Singapore Independence Act mentioned above were necessary to "complete the formalities consequent upon the assumption of independence by Singapore".[83] These two Acts also provided the newly-independent country with a working constitution at very short notice. At this point in time, it would therefore appear that the composite Constitution of the Republic of Singapore is to be found in three separate documents: the R.S.I.A., the State Constitution of Singapore (and its amendments) and provisions of the Federal Constitution of Malaysia as made applicable by the R.S.I.A.

Several academic problems arise from these changes. They may conveniently be classified as follow:

a. The Grundnorm Problem
b. The Reprint Problem
c. The Amendment Problem

and I shall deal with each of them briefly.

The Grundnorm Problem

This problem was first highlighted in a rather controversial article by Andrew Harding entitled "Parliament and the Grundnorm in Singapore".[84] Harding challenges the idea that the Singapore Constitution is the supreme law[85] of the land by arguing that at the time of independence, the Singapore Parliament exercised legislative powers in a manner which makes the Legislature and not the Constitution supreme. To understand his arguments, it is necessary to briefly acquaint oneself with some basic theories of Hans Kelsen and H.L.A. Hart since Harding's arguments are based on their ideas.

83. See Parliamentary Debates, 22 December 1965, col. 430.
84. See A.J. Harding, "Parliament and the Grundnorm in Singapore", (1983) 25 Mal. L.R. 351 (henceforth Harding).
85. See Article 4 of the Constitution of the Republic of Singapore, 1985 Revised Edition (hereinafter Constitution 1985).

Both Kelsen and Hart were leading proponents of a school of jurisprudence known as Positivism. Kelsen's most important work concerned his Pure Theory of Law[86] in which he asserted that law was a system of norms or rules. In order for a legal norm to be valid, it must be a member of a system and the reason of validity of that norm is always another higher norm. This can ultimately be traced to the most basic norm known as the grundnorm. J.W.Harris puts it thus:

> "If it were said that a byelaw was valid, the reason for that would be a statute. The reason for the statute's validity might be a written constitution conferring legislative power on the legislature. The constitution might be valid because it had been promulgated in accordance with some historically prior constitution. Eventually one has to go back to a historical starting-point for norm-creation, beyond which the chain of validation cannot go. At that point it [is] necessary ... to presuppose a basic norm which authorised those who promulgated the historically first constitution."[87]

This grundnorm can, however be replaced by a revolutionary situation. In such an instance, the old order ceases to have a claim on validity and it is replaced by a new system having a new grundnorm of its own.[88]

The idea of the grundnorm has parallels with Hart's concept of the ultimate rule of recognition. The Hartian legal system is premised on the union of two types of rules: primary rules which are duty-imposing rules, such as the criminal law or the law of tort; and secondary rules which are power-conferring rules, such as laws facilitating "the making of contracts, wills, trusts, marriages, etc., or which lay down rules governing the composition and powers of courts, legislatures and other "official" bodies".[89]

Hart states that there are three kinds of secondary rules: First, there are rules of adjudication which not only identify "the individuals who are to adjudicate" but "also define the procedure to be followed". These rules "do not impose duties but confer judicial powers and a special status on judicial declarations about the breach of obligations".[91] Secondly, there are rules of change which

86. Hans Kelsen, *The Pure Theory Of Law,* 1967.
87. J.W. Harris, *Legal Philosophies* (London: Butterworths, 1980) at 67.
88. See, Harding at 360.
89. See Lord Lloyd of Hampstead & M.D.A. Freeman, *Lloyd's Introduction to Jurisprudence,* 5th Edition (London: Stevens & Sons, 1985) at 403.
90. See H.L.A. Hart, *The Concept of Law,* (Oxford: Oxford University Press, 1961), at 94 (henceforth Hart).
91. *Ibid.*

regulate the process of change by empowering "an individual or body of persons to introduce new primary rules for the conduct of the life of the group, or of some class within it, and to eliminate old rules".[92] Finally, there are rules of recognition which, in the words of Hart:

> "...will specify some feature or features possession of which by a suggested rule is taken as a conclusive affirmative indication that is is a rule of the group to be supported by the social pressure it exerts. The existence of such a rule of recognition may take any of huge variety of forms, simple or complex. It may, as in the early law of many societies, be no more than that an authoritative list or text of the rules is to be found in a written document or carved on some public monument." [93]

In its application to the British colonies before they became independent, Hart argues that "the legal system of the colony is plainly a subordinate part of a wider system characterized by the ultimate rule of recognition that what the Queen in Parliament enacts is low for (*inter alia*) the colony".[94] However, after it attains independence, "the ultimate rule of recognition has shifted, for the legal competence of the Westminster Parliament to legislate for the former colony is no longer recognized in its courts".[95] In keeping with its independent status, the:

> "legal system in the former colony has now a 'local root' in that the rule of recognition specifying the ultimate criteria for legal validity no longer refers to enactments of a legislature of another territory. The new rule rests simply on the fact that is is accepted and used as such a rule in the judicial and other official operations of a local system whose rules are generally obeyed."[96]

Harding states that constitutional instruments are in a special position in that they derive their validity solely from the grundnorm or the ultimate rule of recognition.[97] Applying these concepts to the events of 1965, he argues that there was no "smooth transition" of one Constitutional to another. Harding assumes that in 1963, when Singapore joined the Malaysian Federation, Singapore was subject to the Malaysian grundnorm. As such, upon Separation in 1965, the Malaysian legal system must have been considered the parent and the Singapore legal system the offspring.[98] Following this argument to its logical

92. *Ibid.* at 93.
93. *Ibid.* at 92.
94. Hart at 116.
95. *Ibid.*
96. *Ibid.*
97. Harding, at 357.
98, *Ibid.* at 362.

conclusion, the Singapore Legislature will only have such powers given to it by the Malaysian Legislature,

Because of the curious wording used in the Constitution and Malaysia (Singapore Amendment) Act, the only reasonable conclusion is that when the Singapore Parliament passed the R.S.I.A., it was acting beyond the limits of power conferred on it by the Singapore Amendment. The Singapore Parliament was certainly not conferred powers to grant Singapore a new Constitution. Thus, when the Singapore Parliament passed the R.S.I.A., it effectively took upon itself the right to determine the entire content of the new Constitution and established its own plenary competence at the same time.

Harding summarises his argument thus:

> "...a legislature cannot grant itself plenary powers – either it has them or it has not, but should we not see the R.S.I.A. and in particular section 5 as an assertion of fact, the fact of legislative supremacy? The R.S.I.A. resembles a Constitution ... in all respects save one – it is a gift of the legislature. No Constitution authorises this gift because the Constitution is itself a gift. The Constitution is not the grundnorrn, but merely a manifestation of the grundnorm. The grundnorrn is the supremacy of the legislature. Parliament in passing the R.S.I.A. assumed the mantle of supremacy in Singapore."[99]

In conclusion, Harding points out that if the Singapore Parliament can enact a constitution by the R.S.I.A., it can also easily enact another Constitution by another Act of Parliament. There would then be no need to hold a referendum or establish a special Constituent Assembly; a simple Act passed by Parliament would be sufficient.

At this point, it may be pertinent to consider the status of the R.S.I.A. itself. If it is no more than an ordinary parliamentary act (as Harding suggests), then it can be repealed in the same way as any other ordinary legislation, i.e. by a simple majority of votes in Parliament. And if the R.S.I.A. is thus repealed, does it also mean that the provisions of the Malaysian Federal Constitution which were made applicable to Singapore would contemporaneously be extinguished as well? This question brings in the related problem of the 1980 Reprint of the Constitution.

99. *Ibid.* at 366.

The Reprint Problem

In 1979, an act was passed to amend the Constitution.[100] Among other things, the Act amended the amendment procedure of the Constitution[101] and also authorised the Attorney-General to print and publish a reprint a single composite document called the "Reprint of the Constitution of the Republic of Singapore, 1979".[102] Both these provisions pose some problems, and we shall deal with the latter first.

Article 93 of the 1963 State Constitution as reprinted in RS(A) 14/1966 was amended to authorise the Attorney General to:

> "cause to be printed and published a consolidated reprint of the Constitution of Singapore as amended from time to time, amalgamated with such of the provisions of the Constitution of Malaysia as are applicable to Singapore, into a single, composite document to be known as the Reprint of the Constitution of the Republic of Singapore, 1979."

This amendment gives the Attorney-General considerable discretionary powers in the consolidation of the Constitution. Clause 5 of the Article 93 (the present Article 155) provides *inter alia* that he "shall have the power in his discretion" to make such "modifications as may be necessary or expedient in consequence of the independence of Singapore upon Separation from Malaysia",[103] to "re-arrange the Parts, Articles and provisions of the Constitution of Singapore and of the Constitution of Malaysia",[104] and "generally, to do all other things necessitated by, or consequential upon, ... or which may be necessary or expedient for the perfecting of the consolidated Reprint".[105]

Two issues arise for consideration here. First, if the 1980 Reprint is a consolidation of the existing Constitution of the Republic of Singapore, then Harding must be correct in asserting that the R.S.I.A. is nothing more than an ordinary act passed by the Legislature because the Reprint does not include some of the provisions included in the R.S.LA. itself. Notably, sections 7 (official languages of Singapore) and 8 (President's power of pardon), were absent from the Reprint.[106] This brings us back to the question of the status of the R.S.I.A.

100. The Constitution (Amendment) Act, No. 10 of 1979. See also S. Jayakumar, "Legislation Comment: The Constitution (Amendment) Act, 1979 (No. 10)," 21 Mal. L.R. 111 (1979).
101. See Article 90 of the Singapore State Constitution 1963 which is now Article 5 of the 1980 and 1985 Reprints.
102. See Article 93 of the Singapore State Constitution 1963 which is now Article 155 of the 1980 and 1985 Reprints.
103. Clause 5(a).
104. Clause 5(b).
105. Clause 5(d).
106. See, R.H. Hickling, "Legislation Commentr Reprint of the Constitution of the Republic of Singapore," (1980) 22 Mal. L.R. 142 at 144.

The R.S.I.A. cannot, in the view of the Attorney-General, form a part of the consolidated Constitution of the Republic of Singapore, otherwise, the whole part of the Act would be included in the Reprint. Further confusion is to be had if one considers the manner in which the R.S.I.A. has been treated in the 1985 Reprint of the Statutes of Singapore. It has no chapter number and is placed at the very front of the 12 volume set together with the Constitution and the Independence of Singapore Agreement as one of the "Constitutional Documents". It is difficult to resolve the anamolous status of the R.S.I.A. and every interpretation is fraught with incongruities. It might perhaps be suggested that the Act is merely *sui generis* and must be regarded as a "one-off" document and be interpreted accordingly.

The second issue concerns the inclusion of Article 4 in the Reprint. This article provides that the Constituion "is the supreme law of the Republic of Singapore and any law enacted by the Legislature ... which is inconsistent with this Constitution shall, to the extend of the inconsistency, be void". This provision existed as Article 52 of the 1963 State Constitution and remained in that Constitution when Singapore became independent. First of all, it would appear that the supremacy clause applies only to the provisions of the State Constitution and not to the Malaysian provisions as imported by the R.S.I.A. By including this clause as the present Article 4, the Attorney-General appears to make the supremacy clause applicable to the entire Reprint. Secondly, Its inclusion represents an inaccurate description of the state of affairs since "the Constitution can only be supreme law if there was something about the constitutional facts of separation which made it supreme."[107] Thus, unless a coherent argument can be advanced to explain why the Constitution and not the Legislature is supreme, Article 4 is nothing more than a declaration unsupportable by historical and legal fact.

The Amendment Problem

As mentioned above, Act 8 of 1965 introduced changes to the amendment process for the 1963 State Constitution, making the Constitution amendable by a simple majority. Act 10 of 1979 restored the amendment requirement to two-thirds majority since "[a]11 consequential amendments that have been necessitated by our constitutional advancement have now been enacted".[108]

107. See Harding, at 357.

108. See Republic of Singapore Parliamentary Debates Official Reports (henceforth Parliamentary Debates), 30 March 1979, col. 235.

The problem arises at this point. The 1979 amendment affected only the 1963 State Constitution and did not affect those provisions of the Malaysian Federal Constitution introduced by section 6 of the R.S.I.A. Yet, in the consolidated reprint, Article 5(2) provides that

> "A Bill seeking to amend *any provision* in this constitution shall not be passed by Parliament unless it has been supported on Second and Third Readings by the votes of not less than two-thirds of the total number of the Members thereof. *(emphasis added)*"

It would therefore appear that the Attorney-General, in consolidating the Constitution for reprint has "in effect amended the amendment procedure by making it applicable to the Malaysian provisions"[109] as well.

This problem is further compounded by the decision of *Heng Kai Kok v. Attorney-General of Singapore.*[110] In that case, Chan Sek Keong J.C. (as he then was) held (albeit *dicta*) that

> "By virtue of Article 155 thereof, the Reprint shall be deemed to be and shall be, without any question whatsoever in all courts of justice and for all purposes whatsoever, the authentic text of the Constitution of the Republic of Singapore in force as from March 31, 1980 until superseded by the next or subsequent authorised reprint."[111]

This holding would imply that technically speaking, even if the Attorney-General were to make a *bona fide* mistake in the consolidation process, the wording of the provision in question cannot be called into question in any court of law. The only remedy would be for Parliament to be summoned and the errant provision amended or repealed according to the procedure established under Article 5(2). The effect of this holding in *Heng Kai Kok* would also have similar implications for the Reprint Problem discussed above.

Post 1965 Developments[112]

The easing of the amendment process by Act 8 of 1965 transformed the Singapore Constitution into a very flexible one. This was necessary for the passing of wide-ranging legislation to effect the economic and political development of the country. The economic and social imperatives were the

109. See A.J. Harding, "The 1980 Reprint of the Constitution of the Republic of Singapore: Old Wine in a New Bottle?," (1983) 25 Mal. L.R. 134, at 136.

110. [1987] 1 M.L.J. 98.

111. *Ibid.* at 102.

112. For an account of the impact of social, economic and political imperatives on legal and constitutional development in Singapore, see Philip N. Pillai & Kevin Tan Yew Lee, Settling Into the Foundations: Development of Singapore's Constitutional System in *Singapore: The Management of Success* (K.S. Sandhu & Paul Wheatley eds.)

main concerns of the post-inpendence government and they are manifested in the manner in which the constitution was from time to time amended. One of the most important questions which the government faced was the protection of minority rights and interests which was crucial to the survival of Singapore society.

To this end, the Constitutional Commission headed by Chief Justice Wee Chong Jin was immediately charged with the responsibility of seeing how these interests could be safeguarded in the Constitution. In their report[113] the Commission made recommendations on fundamental liberties, the setting up of the office of the Ombudsman and the establishment of a Council of State, and reviewed the procedures for constitutional entrenchment. Following lengthy debate in Parliament, a Parliamentary Select Committee was set up to study the proposals for a Presidential Council which would act in an advisory capacity and vet legislation which might have an adverse effect on the racial and religious minorities in Singapore. This was eventually accepted and an amendment to the Constitution was made in 1969 to effect this change.[114]

Changes to the judicial system were few. In 1969, an amendment to the Constitution was made to constitute the Singapore judiciary.[115] This was necessary because the 1963 State Constitution did not provide for the judiciary; these matters were governed by the Federal Constitution. The amending act also constituted the Judicial Committee of Her Britannic Majesty's Privy Council as the final court of appeal for Singapore. The shortage of High Court Judges led the legislature to pass an amendment to Article 94 in 1971, which permitted a judge of the High Court to serve on the Bench on a contractual basis.[116] In 1979, the Constitution was amended once again to provide for the appointment of extra judges of the Supreme Court. These judges, who are known as Judicial Commissioners, are to be appointed for such classes of cases as the Chief Justice may specify.[117] A recent amendment to the Judicial Committee Act[118] has limited the number of appeals to the Privy Council.

In 1972, an amendment was moved to protect the sovereign status of Singapore.[119] This amendment precluded any surrender or transfer of sovereignty by way of merger, federation or otherwise, unless there is a national referendum with two-thirds of the electorate supporting such a change.[120]

113. See Report of the Constitutional Commission, 1966.
114. Act No. 19 of 1969. In 1973, the Presidential Council for Minority Rights replaced the old Presidential Council. See Act No. 3 of 1973.
115. Act No. 19 of 1969.
116. Act No. 16 of 1971.
117. See Article 94(2).
118. Act No. 21 of 1989.
119. For a legislation comment, see A.J. Harding, "The Entrenchment of Sovereignty: An Analysis of Part III of the Singapore Constitution," (1982-83) 2 *Lawasia* (N.S.) 261.
120. Part III, Constitution of the Republic of Singapore.

The next major constitutional change in the period under survey is the creation of seats for Non-Constituency Members of Parliament (MPs). This amendment was a major constitutional innovation in that it sought to "ensure the representation in Parliament of a minimum number of Member from a political party or parties not forming the government".[121] The Prime Minister stated the objectives of the scheme as first, to educate the younger Ministers and MPs; secondly, educate the public by bringing to the fore the limits of a constitutional opposition in Singapore; and finally, to dispel suspicions of cover-ups or alleged wrongdoings which might result from the PAP's overwhelming dominance of Parliament.[122] Although the Constitution provides for a maximum of six non-constituency MPs, the number has been restricted to only three.[123] These non-constituency MPs have all rights and privileges of constituency MPs except that they are not permitted to vote on bills to amend the Constitution, Supply or Money Bills or on a motion of no confidence in the Government.[124]

In 1985, an amendment was passed to consolidate the provisions relating to citizenship under the Constitution.[125] Under the new Article 135, the Government is empowered to deprive a citizen of Singapore of his citizenship if he "voluntarily claimed and exercised any rights ... available to him under the law of any country outside Singapore being rights accorded exclusively to the citizens or nationals of that country",[126] or if he has "applied to the authorities of a place outside Singapore for the issue or renewal of a passport or used a passport issued by such authorities as a travel document".[127] These two new provisions merely restated the law under the old Article 135.

The major change was the introduction of a new ground for the deprivation of citizenship. Under the new Article 135(1)(c), the Government may deprive a citizen of Singapore of his citizenship if "has been ordinarily resident outside Singapore for a continuous period of 10 years ... and has not at any time"

121. Article 39(1)(a).
122. See Parliamentary Debates, 24 July 1984, col, 1726. Under this scheme, no eligible candidate accepted the offer of a non-Constituency seat following the 1984 General Election. After the 1988 General Elections, two candidates, veteran politician Dr Lee Siew Choh and former Solicitor-General Francis Seow (both of the Workers' Party) were offered non-Constituency seats. Both candidates accepted but at the time of writing, only Dr Lee has taken his seat and has been actively participating in Parliamentary proceedings whereas Mr Seow has never taken his place in Parliament and is believed to be somewhere in the United States. See, V.S. Winslow, "Creating A Utopian Parliament: The Constitution of the Republic of Singapore (Amendment) Act 1984; The Parliamentary Elections (Amendment) Act 1984", (1986) 28 Mal. L.R. 268,
123. See Section 52 of the Parliamentary Elections Act.
124. Article 39(2).
125. Act 10 of 1985.
126. Article 135(1)(a).
127. Article 135(1)(b).

either "entered Singapore by virtue of a certificate of status or travel document issued by the competent authorities of Singapore"[128] or "been in the service of the government or of an international organisation of which Singapore is a member or of such other body or organisation of which Singapore is a member or of such other body or organisation as the President may, by notification in the Gazette, designate".[129] According to the Minister for Home Affairs and Second Minister for Law, the amendment was necessary because of "considerable problems with persons outside Singapore who were away for many years and later alleged that they were born in Singapore".[130]

The last major constitutional development discussed in this paper concerns changes made to the electoral system through the introduction of the Group Representation Constituencies (GRCs). The idea of clustering three sing-member constituencies to form a GRC resulted from the government's observation that there was a "voting trend which showed young voters preferring candidates who were best suited to their own needs without being sufficiently aware of the need to return a racially balanced party slate of candidates".[131] In 1988, Parliament passed the Constitution of Singapore (Amendment) Act[132] and the Parliamentary Elections (Amendment) Act 1988.[133]

The Constitution was amended to empower the Legislature to provide for "any constituency to be declared by the President ... as a group representation constituency to enable any election in that constituency to be held on a basis of a group of 3 candidates".[134] Furthermore, "at least one of the 3 candidates in every group shall be a person belonging to the Malay"[135] or "Indian or other minority communities".[136] The amendments were made to "secure the long-term political stability of Singapore ... by ensuring that Parliament will always be multi-racial and representative of our society, and ... by encouraging the practice of multi-racial politics by all political parties".[137]

128. Article 135(1)(c)(i).
129. Article 135(1)(c)(ii).
130. See Parliamentary Debates, 30 August 1985, col. 290,
131. See Parliamentary Debates, Vol. 50, 11 January 1988, col. 178.
132. Act No. 9 of 1988.
133. Act No. 10 of 1988.
134. Article 39A(a)(b).
135. Article 39A(2)(a)(i).
136. Article 39A(2)(a)(ii).
137. See Parliamentary Debates, Vol. 50, 11 January 1988, col. 179. For a more detailed discussion of this scheme and its relation to the Town Councils system, see Kevin Tan Yew Lee, Parliament and the Making of Law in Singapore in *The Singapore Legal System* (Walter Woon ed.) (Singapore: Longmans, 1989) 37, at 61-64.

By entrenching the multi-racial component of politics in the Constitution, the GRC concept attemps to avoid the situation in which no Malay, or Indian, or other minority MP will be elected into Parliament. The danger of such a scenario arising is real, especially since Malay, Indian or other minority candidates are at a disadvantage in view of a Chinese voter population in all constituencies.

Recently, the Government issued a White Paper entitled Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services.[138] The White Paper sets out the "proposal for a President to be elected directly by the people in elections separately from parliamentary elections".[139] This idea is not new. In 1984, Prime Minister Lee Kuan Yew hinted on this possibility in his National Day Rally Speech.[140]

The objective of the proposals are first, to ensure that there is a "second key" to the nation's financial reserves held by an elected President, thereby making it more difficult for the Prime Minister and his Cabinet to squander the assets. Secondly, it is to give the elected President power to withhold his consent on the appointment of key public service positions. Although the Parliamentary system of government will not be altered, the elected President will have the power to either grant or withhold his concurrence is these two areas.[141] Under this proposed system, there would also be an elected Vice-President. Both the President and the Vice-President will be elected as a team.[142] A Presidential Committee for the Protection of Reserves will also be established[143] under this new system and the Government intends to entrench these provisions under Part III of the Constitution.[144]

Conclusion

The evolution of Singapore's constitution from the end of the Second World War to the present day is unique in many ways. Unlike many former colonies, Singapore has progressed and prospered without abandoning the established constitutional order. The Westminster Model was maintained and eventually

138. Cmnd. 10 of 1988 (henceforth, White Paper).
139. See Statement by First Deputy Prime Minister Goh Chok Tong, *Straits Times,* 30 Jul 1988, at 16.
140. See *Straits Times,* 24 August 1984; see also, Tan Lian Choo, "A Conversation with David Marshall; Signs of Political Maturity", *The Sunday Times,* 9 September 1984.
141. See, White Paper, paragraphs 19-20.
142. *Ibid.* at paragraph 19.
143. *Ibid.* at paragraph 46.
144. *Ibid.* at paragraph 48.

altered to fit the prevailing needs. The tutelage system worked out by the British to effect a gradual and peaceful transition of power was far more successful in Singapore than in many of these countries. There was none of the convulsions and revolutions that plagued other post-independence administrations,

It is not within the scope of this paper to explain this development, for that would require a tome unto itself. It may be surmised that ultimately it is the politics behind the constitution that makes it work. Despite its many amendments and its departure from the original Westminster model, the Constitution has not lost its legitimacy. It may not be as revered a document as the American Constitution, but it nevertheless continues to form the basic framework for social, economic and political advancement. Its initial flexibility in the post-independence era allowed the Government to make sweeping reforms in all spheres. Success, apparently breeds success. Changes and amendments to the constitutional structure were in many respects self-legitimising since the Government's economic and political policies were on the whole remarkably successful. In a basically immigrant society where material well-being has traditionally been valued above legal rights, even the most fundamental changes to the Constitution are easily tolerated.

The key to legitimacy, constitutional law and politics is undoubtedly the ability of the Government in forging a consensus with its people. It is crucial that the electorate supports the Government's agenda for action based on the agreed constitutional framework. Ideals, aspirations and political values are not etched in stone and do not transcend the generations. They are dynamic in nature and with each generation, a new consensus must be reached. In Singapore, the constitution has thus far been seen as a basic framework of social and economic progress. The Constitution of Singapore, unlike the American Constitution is not based on the Lockean philosophy of limited government which stresses control and checks on government. Instead, it is a pragmatic document which provides a springboard for governmental action. It is an instrument which promotes change, but which at the same time assures the populace of a large measure of stability.

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