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THE SINGAPORE LEGAL SYSTEM — HISTORY, THEORY AND PRACTICE

*Andrew Phang**

I. INTRODUCTION

Law is central to order and stability and, without order and stability, societal as well as economic viability (let alone progress) are impossible.[1] The alternative is 'rule of man', and all the dangers of fallibility and (consequently) despotism that that entails. One central difficulty has, of course, been the maintenance of the argument that law is consonant with objective truth for if the law does not in fact possess this quality, then the 'rule of law' turns out to be the 'rule of man' after all. However, it is difficult, on rational grounds at least, to reject the concept of objectivity without undermining the very basis of that rejection itself— unless one is

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I am extremely grateful to the following persons who so generously assisted and/or furnished me with the relevant data necessary for the writing of this paper: Mr Ng Peng Hong, Deputy Registrar, Supreme Court of Singapore (and presently District Judge, Subordinate Courts, Singapore); Mr Foo Chee Hock, Senior Deputy Registrar, Subordinate Courts, Singapore (and presently Deputy Registrar, Supreme Court of Singapore); Mr Eric Tin, Deputy Registrar, Subordinate Courts, Singapore; Mr George Lim, the (then) President of the Law Society of Singapore; Mr William Phua, Finance/IT Director, Law Society of Singapore; Mr Loong Seng Onn, Assistant Director, Singapore Academy of Law and Deputy Director, Singapore Mediation Centre; Ms Yeo Su Inn, Deputy Registrar, National University of Singapore; Mrs Shih Chiau Lin, Application Manager, Registrar's Office, National University of Singapore; and Ms Sarah Syed Yahya, Administrative Assistant, Faculty of Law, National University of Singapore. I am, of course, solely responsible for all views, errors, as well as infelicities in language to be found in the final product.

1 Indeed, Professor Lon Fuller would argue that without certain basic principles legality (of which, he argues, there are eight in number), there would be no legal system to begin within the first instance: see generally L L Fuller, *The Morality of Law* (New Haven, Connecticut: Yale University Press, 1969 Rev Ed.). Fuller's conception of the internal morality of law was, however, *nowhere justified* as such by reference to a specific source and that it was more a *procedural* (as opposed to a substantive) conception: see also the main text accompanying n 4, below.

prepared to premise one's argument (for such rejection) on blind faith as well as to affirm one's argument whilst rejecting any claim to the truth of that argument itself. It is of course true that even if the law otherwise possesses objectivity, it must still be applied by persons and that could also result in the 'rule of man'. However, one central tenet underlying the 'rule of law' is the idea that the law itself constrains those applying and administering the law itself: although this idea is itself also not without controversy.[2] Further, the very concept of the 'rule of law' itself has been traditionally perceived as ensuring procedural (as opposed to substantive) fairness; in other words, and to put it very crudely, a fair procedure does not necessarily entail a fair result[3] — although the present writer would submit that the distinction between procedure and substance is oftimes an artificial one and that, as Professor Patrick Atiyah has pertinently pointed out in the context of contract law, procedural and substantive fairness often impact on, as well as interact with, each other.[4] The very brief discussion thus far reveals complex conceptual as well as practical problems that cannot really be dealt with within the more modest ambit of the present paper. It is submitted that whatever view one adopts of the objectivity (or otherwise) of the law in general and the precise nature of the 'rule of law' in particular, very few people — particularly in Singapore — would seriously controvert the need for 'rules'. Indeed, the popular perception (both within the country and without) has been precisely that Singapore is a very rule-oriented society indeed.

The central thesis of the present paper may be briefly and simply stated: Singapore is a rule-oriented society and that its legal system as a whole works well, although it should also be noted that there have, in any event and particularly in recent years, been attempts to ensure a liberalization of the services sector (especially with respect to finance and legal services).[5]

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2 Contrast eg E P Thompson, *Whigs and Hunters — The Origin of the Black Act* (New York: Pantheon Books, 1975) at 258-269 with M J Horwitz, 'The Rule of Law: An Unqualified Human Good?' (1977) 86 Yale Law Journal 561.

3 This was the nub of Horwitz's critique of Thompson, above, n 2.

4 See P S Atiyah, 'Contract and Fair Exchange' (1985) 35 University of Toronto Law Journal 1 (reprinted as Essay 11 in P S Atiyah, *Essays on Contract,* Clarendon Press, Oxford, 1986).

5 On liberalization, see eg 'Singapore — Liberalizing the service sector' *Asian Intelligence,* 14 July 1999 pages 9-10.

On a more general level, background literature on Singapore in general and its legal system in particular is now quite voluminous. The present writer would suggest the following works, bearing in mind that the list is extremely skeletal indeed:

General:

1. Lee Kuan Yew, *The Singapore Story: Memoirs of Lee Kuan Yew* (Times Editions, Singapore, 1998). (The second volume of Mr Lee's Memoirs has since been released: see Lee Kuan Yew, *From Third World to First — The Singapore Story: 1965-2000* (Singapore: Times Editions, 2000)).

However, it is further submitted that the success of the legal system cannot be attributed to the promulgation of rules alone but must be viewed, in addition, from the perspective of the legal culture of Singaporean society as a whole.

I will commence this paper by sketching out the historical foundations of the Singapore legal system. I will then proceed to describe the basic structure of the Singapore legal system, in particular, the courts structure. A more specific discussion then follows that focuses on the remarkable efficiency of the courts system in Singapore which is itself one of the particular factors accounting for the legitimacy of the legal system in the public perception. I will then briefly enunciate the various extralegal factors

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2. C M Turnbull, *A History of Singapore, 1819—1988* (Singapore: Oxford University Press, 1989 2nd ed).
3. E C T Chew and E Lee (eds), *A History of Singapore* (Singapore: Oxford University Press, 1991).
4. K S Sandhu and P Wheatley (eds), *Management of Success: The Moulding of Modern Singapore* (Singapore: Institute of Southeast Asian Studies, 1989).

Legal:

1. K Y L Tan (ed), *The Singapore Legal System* 2nd ed (Singapore: Singapore University Press, 1999).
2. H H M Chan, *The Legal System of Singapore* (Singapore: Butterworths Asia, 1995).
3. A Phang, *A Bibliographical Survey of Singaporean Legal Materials* (East Asian Legal Studies Program, Harvard Law School, 1999).
4. A B L Phang, *The Development of Singapore Law — Historical and Socio-Legal Perspectives* (Singapore: Butterworths, 1990).
5. G W Bartholomew, The Singapore Legal System' in Ch V of R Hassan (ed), *Singapore: Society in Transition* (Singapore: Oxford University Press, 1976).
6. K Y L Tan and L A Thio, *Tan, Yeo & Lee's Constitutional Law in Malaysia & Singapore* 2nd ed (Singapore: Butterworths Asia, 1997).
7. W Woon, *Basic Business Law in Singapore* 2nd ed (Singapore: Prentice Hall, 2000 2nd updated by Terence Tan).
8. B S Tabalujan, *Singapore Business Law: An Introductory Text* 2nd ed (Singapore: Business Law Asia, 2000).
9. M Soe, *Principles of Singapore Law (including Business Law)* 3rd *ed* (Singapore: The Institute of Banking and Finance, 1996).
10. A Harding (ed), *The Common Law in Singapore and Malaysia* (Singapore: Butterworths, 1985).
11. *Review of Judicial and Legal Reforms in Singapore Between 1990 and 1995* (Singapore,: Butterworths Asia, 1996).
12. *Supreme Court Singapore — Excellence into the Next Millennium* (Singapore: Supreme Court, 1999).
13. *Singapore Subordinate Courts — Excellence and Beyond* (Singapore: Subordinate Courts, 1997).
14. W C Chan and A Phang, *The Development of Criminal Law and Criminal Juslice in Singapore* (Singapore Journal of Legal Studies, Faculty of Law, National University of Singapore, 2001).

As for general background information on Singapore itself, see Appendix 1.

that (in my view) have contributed to the overall success of the legal system from the vantage points of both the common law as well as statute law. I then touch, in the briefest of fashions, on the impact of internationalization as well as globalization, as well as the potential tension with regard to the development of a distinctively autochthonous or indigenous Singapore legal system. I will then briefly conclude this paper by attempting to draw together the various themes discussed in the preceding Sections.

Above all, however, I hope to provide an adequate basis for comparative studies. This is not only desirable but totally necessary in a world that is (as alluded to in the preceding paragraph) becoming increasingly interconnected. I have, in fact, attempted some comparative work (albeit in a very preliminary fashion),[6] and realize that much more needs (in fact) to be done.

II. THE HISTORICAL FOUNDATIONS OF THE SINGAPORE LEGAL SYSTEM

As has often been acknowledged, an historical perspective is imperative in order to enable a legal system to chart its future: without a conscious knowledge of one's (here, legal) roots, one is left directionless and helpless. This is not to state that such roots will invariably constitute the ideal (or even merely appropriate) point of departure for future development but even where they are not, it is still necessary to know where one came from, as it were — if only to enable one to realize the need to adopt a radically different direction altogether.

Insofar as the Singapore legal system is concerned, historical heritage as well as consciousness are (as we shall see) helpful in two apparently conflicting (yet, in the final analysis, closely related) ways: first, the legal system inherited from the British has, and continues to, stand the country in good stead indeed; secondly, there is nevertheless a need to develop the existing legal system in ways more conducive to the felt needs of the society as a whole. This lastmentioned point relates to the need to develop a truly Singaporean legal system. However, it should also be mentioned that there is, simultaneously, a need to develop a legal system that is also attuned to the needs of the international legal community. As I very briefly discuss in a later Section, the need to develop a distinctly Singaporean legal system need not necessarily be at variance with the need to develop a system consistent with the international context. However, given the signal importance of the legal system initially inherited, a few brief words on this may not be amiss.

The foundation of the Singapore legal system is undoubtedly English in origin. Prior to the modern founding by Sir Thomas Stamford Raffles in

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6 See A Phang, 'Convergence and Divergence — A Preliminary Comparative Analysis of the Singapore and Hong Kong Legal Systems' (1993) 23 Hong Kong Law Journal 1.

1819, there was no known system of law; this is not in the least surprising because of the relatively small size of the then population itself.[7] Indeed, Raffles himself initially relied upon a system of indirect rule, with the headmen of each ethnic group taking charge of disputes and other allied matters. Raffles himself promulgated some regulations that were (unfortunately) *ultra vires*[8] Insofar as the current perception of the Singapore legal system is concerned, the country was, in the first instance, in a state of 'legal chaos' inasmuch as there was no known uniform law that was universally applicable to all the inhabitants of the island itself. All this was to change in 1826,[9] when the Second Charter of Justice was promulgated for it was precisely this Charter that has been traditionally perceived to have effected the reception of English law in Singapore; this perception is due, in the main, to Maxwell R's celebrated construction of the Charter itself in the leading decision of *R v Willans.*[10] Despite academic arguments to the contrary,[11] this perception has remained firmly etched in the Singapore legal landscape and, indeed, has been re-affirmed in the local case law from time to time.[12] The result may be succinctly stated: the principles and rules of English common law and equity *as well as pre-1826*[13] English

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7 The popular population figure attributed prior to Raffles' founding of Singapore is 200. Cf W Bartley, 'Population of Singapore in 1819' (1933) 11 Journal of the Malayan Branch of the Royal Asiatic Society at 177. See also generally Appendix 1.

8 See 'Raffles' Singapore Regulations — 1823', published in accessible form in (1968) 10 Malaya Law Review 248.

9 This was also the year when Singapore, together with Penang and Malacca, were banded together to form the Straits Settlements.

10 (1858) 3 Kyshe's Reports 16.

11 See M Gopal, 'English Law in Singapore: The Reception That Never Was' [1983] 1 Mai LR xxv; *contra* A Phang, 'English Law in Singapore: Precedent, Construction and Reality or "The Reception That Had To Be"' [1986] 2 Mai LR civ.

12 See eg *Supreme Holdings Ltd v The Sheriff, Supreme Court of Singapore* [1987]1 Mal LR 10 at 13-14; *Ng Sui Nam* v *Butterworth & Co (Publishers) Ltd* [1987] 2 MLR 5 at 13; *Reidel-de Haen AG v Liew Keng Pang* [1989] 2 MLR 400 at 402; and *Rai Bahadur Singh v Bank of India* [1993] 1 SLR 634 at 646, affirmed [1994] 1 SLR 328. Reference may also be made to *Then Kang Chu v Tan Kim Hoe* [1926] 1 Straits Settlements Law Reports 1 at 3.

13 On the issue of the 'cut-off date of 1826, see generally A Phang, 'Reception of English Law in Singapore: Problems and Proposed Solutions' (1990) 2 SAcLJ 20 at 25 and, by the same author, 'Of 'Cut-Off' Dates and Domination: Some Problematic Aspects of the General Reception of English Law in Singapore' (1986) 28 MLR 242 at 243-245.
The main text also assumes that there is no 'cut-off date as such for the received principles of English common law and equity. I have, however, ventured to suggest elsewhere that the Blackstonian declaratory theory of the common law (that supports the notion that common law (and equity) are timeless) is not incontrovertible: see eg the second article cited in the present note at 246-247. I hasten to add, however, that Blackstone's approach is nevertheless supportable on a *natural law* basis (a basis that was clearly part of Blackstone's own structure of thought and which, incidentally, I also support: see eg A Phang, 'The Natural Law Foundations of Lord Denning's Thought and Work' [1999] Denning Law Journal 159 and, by the same author, 'Security of Contract and the Pursuit of Fairness' (2000) 16 Journal of Contract Law 158). But shorn of its natural law basis, critics

statutes of general application were received into Singapore by virtue of this construction of the Second Charter of Justice itself, subject to the concepts of suitability and modification.[14]

We have hitherto only been considering the *general* reception of English law in Singapore. It should also be mentioned that there is also the *specific* reception of English law which occurs whenever a local statute (or, more accurately, a provision thereof) provides that English law is to be applied. Whilst many of these provisions perform gap-filling functions, there was one particular provision that engendered grave complexity as well as uncertainty for almost two centuries, *viz,* section 5 of the Civil Law Act.[15] Yet, this lastmentioned provision was of the utmost importance, dealing as it did with the introduction of English commercial law, commercial law being (of course) the lifeblood of Singapore then, as it is now. Given the relative absence of an inimical impact on the Singapore legal system in particular and the country's system of commerce in general, one may hypothesize that the very great potential for uncertainty may have actually resulted in local lawyers either agreeing amongst themselves as to the English law applicable to the case at hand and/or completely ignoring the issue of reception altogether. However, all these difficulties are now past: after almost one hundred and seventy-five years from the founding of modern Singapore (in 1819, as mentioned above), the Singapore Legislature passed the *Application of English Law Act* in 1993[16] which clarified the application of English law in the island republic not only with respect to specific but also general reception as well. Constraints of space preclude a description of the various substantive provisions of (as well as possible difficulties surrounding) this Act, and the reader is referred to an article attempting to realize these objectives in much greater detail written by the present writer not long after the Act itself was passed.[17] Suffice it to state that the Act is a landmark statute that eradicates, once and for all, the uncertainty surrounding the applicability of English statutes in Singapore, commercial or otherwise. It might be usefully mentioned at this juncture that the 'notorious' section 5 of the Civil Law Act was repealed by this Act and, *inter alia,* thirteen English commercial statutes have been listed in Part II of the First Schedule of the Act itself.[18] The Act also deals (in section 3) with the application of

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are, it is submitted, entirely correct in being skeptical of the declaratory theory. However, the attempted explication as well as resolution of this dilemma is outside the more modest objectives of the instant paper.

14 There is the related problem of how and when to apply these concepts: see generally the articles cited at n 13, above.

15 Cap 43, 1988 Rev Ed.

16 No 35 of 1993; now Cap 7A, 1994 Rev Ed.

17 See generally A Phang, 'Cementing the Foundations: The Singapore Application of English Law Act 1993' (1994) 28 University of British Columbia Law Review 205.

18 Each of these statutes has in fact been published (in accordance with s 9) and been given a local chapter number. However, they remain as English Acts.

common law and equity, subject to the concepts of modification and suitability. As already alluded to, there are some difficulties with some of the provisions of this Act but these are a small price to pay for the benefits that have accrued as a result of its enactment — principally, setting the stage for the development of the Singapore legal system through the next century and beyond.

It should also be mentioned, however, that although the main foundations of the Singapore legal system are English in origin, there are also other areas of Singapore law that have their roots in other sources. For example, the main piece of criminal law legislation, the Penal Code,[19] is Indian in origin, as is the Evidence Act[20] which applies to both civil as well as criminal cases alike.[21] In addition, there are very stringent local laws pertaining to drug-trafficking, corruption and vandalism that (for the most part) have no counterpart in the English context.[22] To take another common instance, the Singapore Companies Act,[23] whilst heavily English in origin, also borrows extensively from Australian legislation. Singapore land law has also diverged to a not inconsiderable extent from the English law.[24] And although the Singapore Constitution obviously has colonial origins, the development of Singapore constitutional law has (not surprisingly, perhaps, given the inherent nature of the subject-matter itself as well as the fact that Britain does not itself have a written constitution as such) developed in a distinctly local fashion.[25]

Not least, perhaps, because of the perception (at least) that uniform laws (here, the common law) encourages certainty, the received English law in general and its common law in particular have hitherto served Singapore very well indeed. I have nevertheless argued that the development of an autochthonous or indigenous Singapore legal system more attuned to the mores, needs and aspirations of its society is imperative for a number of

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19 Cap 224 1985 Rev Ed.

20 Cap 97, 1997 Rev Ed

21 And see generally A Phang, 'Of Codes and Ideology: Some Notes on the Origins of the Major Criminal Enactments of Singapore' (1989) 31 Mal LR 46.

22 See eg (as amended) the Misuse of Drugs Act (Cap 185, 2001 Rev Ed); the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed); the Vandalism Act (Cap 341,1985 Rev Ed); and the Prevention of Corruption Act (Cap 241, 1993 Rev Ed). See also generally A Phang, *The Development of Singapore Law — Historical and Socio-Legal Perspectives* (Singapore: Butterworths, 1990; also referred to at n 5, above) at Ch 3 (which also surveys the development of the criminal law generally in Singapore). Reference may also be made to W C Chan, 'Retrospective Confiscation Laws: Corruption (Confiscation of Benefits) Act, Drug Trafficking (Confiscation of Benefits) Act' (1997) SJLS 329.

23 Cap 50, 1994 Rev Ed.

24 See generally S Y Tan, *Principles of Singapore Land Law* 2nd ed (Singapore: Butterworths Asia, 2001).

25 And see generally K Y L Tan and L A Thio, *Tan, Yeo & Lee's Constitutional Law in Malaysia & Singapore* 2nd ed (Singapore: Butterworths Asia, 1997).

reasons, quite apart from reasons of national pride; these other reasons would include the building as well as reinforcement of a spirit of professionalism and service *vis-á-vis* the legal profession as well as the consequent development of legitimacy of the legal system as a whole in the eyes of the public itself.[26] However, where the received English law is not only viable but also eminently suitable to the needs of the country (particularly, in the commercial sphere), there is no reason to throw out, as it were, the baby together with the bathwater. One should, in other words, constantly be prepared to adapt and innovate, without detracting from ensuring the proper day-to-day functioning of the legal system itself. However, there are clear limitations that cannot be ignored. The present Chief Justice of the Republic of Singapore, Yong Pung How CJ, has, for instance, pertinently pointed to '[t]he fact that the European Community Law is now binding on English courts will progressively change the outlook of English courts and judges' and that hence, the then reliance on the Judicial Committee of the Privy Council as the highest appellate court could not be continued 'indefinitely'.[27] Indeed, it came as no surprise when appeals to the Privy Council were abolished the next year (in 1994).[28] It should also be observed, at this juncture, that such divergence would also possibly impact on the substantive local law, thus buttressing the case (made above) for the indigenous development of the local law whenever possible. The basic theme of legal autochthony has not in fact escaped Yong CJ's notice by any means; he has observed, for instance that:[29]

> There has been a realisation over these years that Singapore has to develop its own responses to its own legal problems; Singapore has to develop a legal system that is autochthonous, that grows out of its own soil.
>
> But autochthony does mean that we have to be willing to part ways with England, whenever necessary. To some extent we have already done so, particularly in several aspects of procedure, in

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26 See generally Phang, above, n 22 at 91-96.

27 See *Speeches and Judgments of Chief Justice Yong Pung How* (FT Law & Tax Asia Pacific, Singapore, 1996) (hereafter referred to as '*Speeches*'), 'Speech Delivered at the Opening of the Legal Year 1993 – 9 January 1993', pages 71-82, at 78.

28 As a result, a Practice Statement was issued allowing the Court of Appeal, as the final appellate court in Singapore, to depart from its own prior decisions in exceptional circumstances: see 'Practice Statement (Judicial Precedent)' [1994] 2 SLR 689. Such an approach is, of course entirely consistent with the theme of autochthony considered above.

29 See 'Speech Delivered at the Singapore Academy of Law Second Annual Lecture - 12 September 1995' in *Speeches*, above, n 27, pages 193-194, at 193-194. See also 'Speech Delivered at the Asia-Pacific Intermediate Courts Conference 1995 - 20 July 1995', pages 165-176, at 166-167. The concerns of legal autochthony, however, also extends to the consideration of investors who do not reside physically in Singapore as such: see 'Speech Delivered at the Singapore Academy of Law Conference 1995 – 4 November 1995' in *Speeches*, above, n 27, pages 205-209, at 205-206.

> legislation and case law. We must continue to evolve our own rules of procedure, suited to our own urban, multiracial, multilinguistic, Asian society. Our approaches to the law must reflect our own Asian values, such as consensus and respect for authority and the group. We must be willing to adopt new technologies which will assist in the effectiveness of our legal system; we cannot be Luddites, forever fearful of the new.

However, and consistent with the argument proffered above that one must not simply jettison what is already functioning (and well at that), Yong CJ also had occasion to observe thus:[30]

> Business interests, particularly those which are public corporate entities, invariably find themselves having to comply with reporting requirements under the law and also with shareholders to whom any substantial expenditure of money has to be justified. All of them find it difficult to do business in countries without proper legal systems which recognise contractual and property rights and obligations and which provide machinery for their efficacious enforcement. It has increasingly become a fact of modern life that countries that wish to attract sustained business investment must strive to develop clear laws and efficient legal systems which allow for easy access and give prompt, unbiased and consistent judgments and awards.
>
> Singapore is fortunate in having a legal system with all these attributes. We inherited from the British a system of law which is familiar to most, if not all, international businessmen and corporations. What the law in Singapore is, is readily ascertainable. Contractual and property rights are recognised and given binding legal effect. Access to the courts is open to all.

III. THE BASIC STRUCTURE OF THE SINGAPORE LEGAL SYSTEM

Institutionally, Singapore has inherited the British Westminster model, with the emphasis on the separation of powers. As is the case with the British model, however, true separation of powers occurs insofar as the judiciary is concerned. There are clear safeguards in the Singapore Constitution that ensure the independence of the (Supreme Court) judiciary.[31]

The judiciary itself may be looked at at two broad (albeit related) levels. The top tier, as it were, comprises the Supreme Court which comprises (in turn) the Court of Appeal and the High Court, respectively (for the total

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30 See 'Speech Delivered at the Fourth Inter Pacific Bar Association Annual Conference Dinner' in *Speeches*, above, n 27, pages 119-121, at 119-120.

31 See generally Arts 98—99. And see the discussion in the following paragraph.

number of Supreme Court judges, please see Appendix 2). Prior to 1994, the Judicial Committee of the Privy Council was the highest appellate court. However, since that date, appeals to the Privy Council were abolished[32] and the Court of Appeal is presently the highest appellate court in Singapore. The High Court has both original as well as appellate jurisdiction; in this latter respect, it hears appeals from the Subordinate Courts.[33]

The Subordinate Courts comprise, in the main, the Magistrate as well as District Courts. There are, however, presently many other courts as well, many of which are specialist courts: these include the Small Claims Tribunals; the Family Court; and the Juvenile Court, amongst others (for the total number of Subordinate Court judges, please see Appendix 2).[34]

It should be further mentioned that (particularly in recent years) there have been great advances in the use of the multifarious methods of Alternative Dispute Resolution which has (as we shall briefly see below) assisted greatly in reducing the caseload in the formal court system itself.[35]

It should also be mentioned, at this juncture, that the Singapore legal profession is a fused one, with each lawyer who is called to the Bar being termed an 'Advocate and Solicitor'.[36] The main institution for the academic training of lawyers is the Faculty of Law at the National University of Singapore, which is the only law faculty in Singapore.[37] Although graduates from certain United Kingdom universities can also be admitted to the Singapore Bar provided that they have graduated with at least a Second Class (Upper Division) Honours degree and have successfully completed the

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32 See also above, n 28.

33 See generally the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed.).

34 See generally the Subordinate Courts Act (Cap 321, 1999 Rev Ed.); the Small Claims Tribunals Act (Cap 308, 1998 Rev Ed.); and the Children and Young Persons Act (Cap 38, 2001 Rev Ed). See also generally T M Yeo, 'Jurisdiction of the Singapore Courts' in Ch 7 of K Y L Tan (ed), *The Singapore Legal System* 2nd ed (Singapore: Singapore University Press, 1999).

The total number of courts (less the Small Claims Tribunals) as at 8 December 1999 is 54, as follows:

Number of civil trial courts: 6

Number of criminal trial courts: 40

Number of family courts: 7

Number of juvenile courts: 1

The number of Small Claims Tribunals is 3.

I am very grateful to the Deputy Registrar of the Subordinate Courts, Mr Eric Tin, for furnishing me with the abovementioned information.

35 And see generally J Lee, 'The ADR Movement in Singapore' in Ch 12 of Tan (ed), above, n 34, and the literature cited therein. See also the main text accompanying nn48—50 and 54, below.

36 For recent statistics with regard to the Singapore legal profession, see Appendix 4. Reference should also be made to the Legal Profession Act (Cap 161, 2001 Rev Ed). See also generally Y L Tan, *The Law of Advocates and Solicitors in Singapore and West Malaysia* 2nd ed (Singapore: Butterworths Asia, 1998), which is the leading work in this field.

37 And see Appendices 5—7 for salient statistics.

Graduate Diploma in Singapore Law course (run by the local Law Faculty),[38] the local Law Faculty produces the greater majority of law practitioners. It should also be noted that in order to be admitted as an Advocate and Solicitor, qualified graduates would generally have to undergo a Practice Law Course (run by the Board of Legal Education) as well as pupillage (actual engagement in practice, it should be noted, requires the possession of a practising certificate).

It has been alluded to above that although Singapore is a very 'rule-oriented' society, the legal system itself has engendered a significant amount of legitimacy in the eyes of the public. Given recent history (particularly in Asia), this is quite remarkable. Indeed, as we shall see below, the Singapore legal system has even garnered praise internationally.[39] What accounts for this success? This is a theme to which our attention must briefly turn. However, before proceeding to do so, one key factor that, it is submitted, accounts for such success may be considered first and follows from the brief discussion of the basic courts structure in the present Section, *viz*, the efficiency of the Singapore Courts System itself.

IV. THE EFFICIENCY OF THE SINGAPORE COURTS SYSTEM

When the present Chief Justice of the Republic of Singapore, Yong Pung How CJ, assumed office in 1990, he candidly remarked thus:[40] 'Presently, however, we have the problem of a large and embarrassing backlog, which will need to be resolved with rather more realism and energy'. There were good reasons for clearing the backlog of cases expeditiously; again, in the words of Yong CJ:[41] 'As Singapore becomes an international business and financial centre, the slowness of the court system should not be a drag on the country's future development.' Approximately five years later, the Chief Justice was able to observe (of the backlog problem) thus:[42]

> Today, the backlog problem is behind us, both at the Supreme Court and the Subordinate Courts level. For over two years already we have maintained a short waiting time of two to three months for the trial or hearing of our cases. In fact, the average total time taken for a

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38 There is also very limited admission of Queen's Counsel and a special category of 'Malayan Practitioners': see generally Tan, above n 36 at Ch 2.

39 See below, Section V, entitled 'The Efficiency of the Singapore Courts System'.

40 See 'Speech Delivered at the Chief Justice's Welcome Reference – 8 October 1990' in *Speeches*, above, n 27, pages 25-30, at 27.

41 See 'Speech Delivered at the Opening of the Legal Year – 4 January 1992' in *Speeches*, above, n 27, pages 45-55, at 45.

42 See 'Speech Delivered at the Sixth Conference of Chief Justices of Asia and the Pacific in Beijing, People's Republic of China – 17 August 1995' in *Speeches*, above, n 27, pages 177-182, at 181. See also 'Speech Delivered at the Opening of the Legal Year 1996 – 6 January 1996' *ibid*, pages 211-221, at 211.

> civil suit to be disposed of has dropped from five years in January 1991 to between one and two years now.

The enormity of the task and the correspondingly remarkable results are attested to by the Chief Justice himself in his speech at the Opening of the Legal Year 1999, as follows:[43]

> From 1988 to 1995, there were over 7,000 writs filed, which had been inactive. By the end of 1998, we had disposed of all but 6 of them. As for the 4,802 writs filed in 1996 and 1997, we had cleared all but 133 of them by the end of 1998. Most of the outstanding 139 cases have been fixed for hearing and will be disposed of in the next few months. We re now managing cases filed in 1998 and, to date, more than 50% of them have been cleared.

Indeed, a multifaceted approach has been adopted in order to achieve this rather remarkable result[44] (remarkable because the number of cases filed before the Supreme Court insignificant)[45]: more specifically, the appointment of more judges as well as Judicial Commissioners; strict case-management; the appointment of Justices' Law Clerks; the reform as well as merger[46] of the Rules of Court; the introduction of information technology (notably in the form of a 'technology court',[47] electronic filing of documents, and the immensely useful LawNet database); and encouraging the settlement of disputes via *(inter alia)* various methods of Alternative Dispute Resolution.

Insofar as Alternative Dispute Resolution (ADR) is concerned, it should be noted that the Singapore Mediation Centre was set up in 1997[48] and, as at

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43 Delivered on 9 January 1999, at para 4 (a copy of this speech is on file with the present writer). See also *ibid* at para 5, as follows:

> In my Opening of the Legal Year speech last year, I mentioned that actions should be disposed of within 12 to 18 months from the date of the filing of the writ. This target has not only been met in the majority of cases but surpassed. The Supreme Court has been able to reduce the disposal time to an average of 9 to 12 months in a substantial number of cases. This has been due to the constant review by the Registry to ensure that cases proceed within the time frames set, and to its ability to accommodate parties who want an early trial of their matter.

Reference should also be made to the very comprehensive essay by the Registrar of the Supreme Court, Mr Chiam Boon Keng, entitled 'The Impact of Case Management' in *Supreme Court Singapore — Excellence into the Next Millennium*, above, n 5 at 56-61.

44 See generally *Speeches*, above, n 27 at 25-235, as well as the relevant literature cited below.

45 See generally Appendix 8.

46 In order that the same Rules apply to both the Supreme and Subordinate Courts alike.

47 That includes video-conferencing facilities, amongst other things.

48 It was in fact incorporated on 8 August 1997 and was officially launched by Chief Justice Yong Pung How on 16 August 1997 (and see also below, n 50). It is non-profit-making and non-partisan and is funded by the Government through the Ministry of Law and guaranteed by the Singapore Academy of Law. There is also the Singapore International

30 November 1999, 421 matters had been mediated at the Singapore Mediation Centre, with 74% of these matters having been settled amicably.[49] As Yong CJ has pertinently pointed out, ADR has a very real and practical underlying rationale:[50]

> The court's primary charter has been and will always be to do justice in accordance with the law. It is open to disputants with *irreconcilable* differences. On the other hand, it is important to acknowledge that no system can afford a sufficient number of Judges or courts or enough public money to allow every citizen to litigate in its courts for every real or imagined wrong. *Any attempt to allow that will inevitably result in delayed access to justice. Further, the social and economic costs of dispute resolution will be intolerable.*
>
> The ideal system should be one that assists parties to resolve their conflicts fairly, at affordable cost, and with due despatch. ADR mechanisms like mediation have to be integrated into the dispute resolution mechanism. Mediation must complement litigation. Disputants should have the alternative of attempting private, non-court based mediation, with the assistance of their lawyers where necessary. ... *Mediation as a form of dispute resolution is not new. In fact, it is deeply embedded in the Asian culture.* [Emphasis added.]

An equally remarkable reduction in the backlog of cases has also been achieved in the Subordinate Courts (again, remarkable as in the case of the Supreme Court because the number of cases filed in the Subordinate Courts is very significant[51]); as Yong CJ observed very recently:[52]

> [F]rom 1992 to 1997, the Subordinate Courts dealt with, within strict timelines, 1.7 million cases and other matters. Only 0.2% of the 1.7 million cases had proceeded on appeal to the High Court. 93% of these appeals had been dismissed and the decisions affirmed; only 7% had been allowed. In 1998 alone, the Subordinate Courts dealt

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Arbitration Centre, which is also a non-profit organisation and which was incorporated as a public company limited by guarantee in March 1990, commencing operations on 1 July 1991. With effect from 3 August 1999, the Centre (like the Singapore Mediation Centre) came under the aegis of the Singapore Academy of Law, having been formerly been under the Trade Development Board and the Economic Development Board. It should also be noted that the name of the institution is a bit of a misnomer as it handles domestic arbitrations as well.

49 Personal communication from the Deputy Director of the Singapore Mediation Centre, Mr Loong Seng Onn, dated 3 December 1999.

50 See 'Chief Justice's Address at the Official Opening of the Singapore Mediation Centre — Saturday, 16 August 1997' (a copy of the speech is on file with the present writer).

51 See generally Appendix 9.

52 See above, n 43 at para 37.

> with, in round numbers, a total of 364,000 cases and other matters. Compared to the 1997 caseload, there is an increase by 28.1%. In 1998, a lower percentage of appeals, 0.072%, proceeded to the High Court. These appeals will be completely disposed of in the High Court this year. Strict case disposition and judgment timelines continued to be maintained for all cases. The Subordinate Courts have no backlog.

Again, such a reduction was achieved via a multifaceted approach very similar to that employed in the Supreme Court — including strict case management; the increase of civil jurisdiction; the building of more courts; the introduction of information technology; the allowance of more efficient and automated settlements of minor offences (such as traffic offences); and the introduction of the Primary Dispute Resolution Centre (for the effective implementation of ADR[53]).[54] It should also be noted that more judicial officers have been appointed over the years,[55] and this is entirely consistent with the increased jurisdiction as well as increase in courts. There have also been instituted specialized courts to deal with particular types of disputes: to this end, we have seen the setting up of Small Claims Tribunals,[56] the Family Court as well as Night Court. A relevant question that arises is this: has the increase in judicial personnel in the Subordinate Courts been accompanied by a corresponding increase in the quality of justice administered? This is, naturally, a difficult question to which there can, in the nature of things, be no definitive answer. However, it is a question that needs to be at least raised. The present writer would suggest that the quality of justice has at least been maintained and there have been no public complaints as such. On the contrary the *public perception appears to be more than positive.* In a 1998 survey, the Subordinate Courts commissioned Forbes Research Pte Ltd to conduct a survey to ascertain the public attitudes towards, as well as perceptions of, the judiciary: a survey that covered a not insignificant number of 1,519 respondents aged fifteen years and above. The results were overwhelmingly positive. For example, 97% of the respondents felt that the courts administered justice fairly to all, regardless of language, religion, race or class, whilst 94.6% of the respondents felt that the judicial system was

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53 See also the main text accompanying nn 48—50, above. The results appear to be very encouraging indeed. For instance from January to December 1995, there were 1,133 cases mediated with 1,004 being settled (a settlement rate of 89%), whilst from January to September 1996, 1,294 cases were mediated with 1,204 being settled (a settlement rate of 93%): see *Singapore Subordinate Courts — Excellence and Beyond,* above, n 5 at 43.

54 Reference may also be made generally to E K S Tin, 'The Four Justice Models: Organised Creativity in Judicial Administration' (1999) 11 SAcLJ 377.

55 See Appendix 3.

56 And see per Yong CJ, above, n 43 at para 44, where he observed that '[f]rom 1997 to 1998, [the] settlement and disposal rate for small claims cases is 93.1%. Only 4.6% of these cases proceeded to be heard by the Referees.'

efficient in upholding law and order.[57] In an earlier survey (by AC Nielsen-SRS Pte Ltd, also commissioned by the Subordinate Courts, but this time in relation to the perceptions of the *business community),* the response was also extremely positive. This particular survey comprised 500 interviews and, again, 97% of the respondents were of the view that the courts administered justice, regardless of language, religion, race or social class, with 95% being of the view that the courts inspire trust and confidence. Further, 92% of the respondents thought that the introduction of mediation services had made it more affordable to access justice.[58]

It should also be noted that the Subordinate Courts themselves have also expressly adopted a set of core values in order to provide the normative standard against which performance can aim towards as well as be evaluated.[59] Further, the Chief Justice himself, Yong CJ, has consistently commented on the various ways in which the various judicial officers have upgraded their skills as well as knowledge; for instance, he has observed thus:[60]

> In our continuing effort to increase our efficiency and productivity, it must always be remembered however that the primary function of the Subordinate Courts is the administration of justice. In addition to ensuring that cases are dealt with expeditiously, it is at least equally important for us to ensure that we constantly strive to further improve and enhance the quality of our trial and adjudication processes. In this respect, the professionalism and competence of the judicial officers will be upgraded. Workshops and seminars will be held to equip them with the knowledge required to handle the increasingly complex cases which will be dealt with by the Subordinate Courts.

Indeed, less than six years later, the learned Chief Justice made, in a similar vein, the following very significant observation:[61]

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57 For more details, see the *Subordinate Courts Research Bulletin* (August 1998, Issue No 12).

58 For more details, see the *Survey on Attitudes and Perceptions of the Judiciary in Singapore* (Issue No 6, July 1997).

59 *Viz,* Accessibility; Expedition and Timeliness; Equality, Fairness and Integrity; Independence and Accountability; and Public Trust and Confidence: see *Singapore Subordinate Courts — Excellence and Beyond,* above, n 5 at 30. See also *Speeches,* above, n 27 at 137-138.

60 See 'Speech Delivered at the Introduction of the Subordinate Courts' Second Workplan 1993/94 – 17 April 1993' in *Speeches,* above, n 27, pages 95-98, at 97. See also 'Speech Delivered at the Opening of the Legal Year 1995 – 7 January 1995' in *Speeches,* above, n 27, pages 123-135, at 134.

61 See above, n 43 at para 52 (emphasis added).

> *In addition to* the institutionalised initiatives and a sound court governance framework, the Subordinate Courts must continue to administer justice with the *best and brightest* officers. *I have gradually posted in the best judicial officers to the Subordinate Courts. Individualised training road maps* for *every* judicial officer have been charted to actualise their potential and professional development. Officers who show promise are offered scholarships to pursue further studies or programmes. Presently two in every five judicial officers there possess *a postgraduate law degree.*

And on another occasion, Yong CJ remarked thus:[62]

> I am often told by foreign lawyers that the standards of the Singapore judiciary at all levels and the quality of their judgments are high, and are still rising. Although we have given much time and attention to case management, we have also ensured at all times that the highest quality of justice is dispensed in our courts.

That the various Subordinate Courts need to ensure that both the quantity as well as quality of justice are maintained is underscored by the fact that the majority of the cases take place in these courts. As Yong CJ has himself pertinently observed:[63]

> The Subordinate Courts have an important and wide ranging role in the life of Singapore. Much more than in the rare atmosphere of the Supreme Court, it is in these subordinate courts that for most citizens the Rule of Law has some meaning. For it is here that they have their first direct contact with the law.

More importantly, on another occasion, the learned Chief Justice also observed thus:[64]

> The Subordinate Courts will however be serving *an increasingly inquiring and better-educated public with high expectations of transparent and quality justice.* They may tend to be more litigious in enforcing their perception of their rights and seek judicial reviews of administrative actions affecting them. The Subordinate Courts

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62 See 'Speech Delivered at the Opening of the Legal Year 1994 – 8 January 1994' in *Speeches*, above, n 27, pages 99-108, at 104.

63 See 'Speech Delivered at the Opening of 24 New Subordinate Courts at Havelock Square and Paterson Road – 16 January 1993' in *Speeches*, above, n 27, paragraphs 87-89, at 88.

64 See 'Chief Justice's Keynote Address — Introduction of the Seventh Workplan 1998/1999, Subordinate Courts, Saturday 4 April 1998' at para 32 (emphasis added) (a copy of the speech is on file with the present writer).

> will be challenged to maintain the rule of law in an era of multiple value sets. ... The Subordinate Courts must continue to set the pace in managing these new demands. *Their legitimacy and authority must remain* Deference and respect for the Courts must stay, but such public regard must be continually earned. Judicial independence must be unmoved. But along with judicial independence must be recognition of *public accountability.*

The maintenance of legitimacy extended to criminal cases as well:[65]

> The risks of the innocent being convicted, and of the guilty being acquitted, must be as low as human fallibility allows. Any member of the public who becomes involved in the system of criminal justice in the Courts ... should be treated fairly, reasonably and without discrimination. Our sentences and sentencing philosophy must be clear, predictable and coherent, and correctly balance the tension between the need to ensure the security and well-being of the community and the need to give expression to the interests of the individual.

In sum, the efficiency of the Singapore courts system in all its various aspects could not be better. Acknowledging the possible perception, at least, by the reader of bias on the part of the present writer, it should be noted (in addition to the various survey findings briefly referred to above) that high praise has been accorded to the Singapore legal system in general and the courts system in particular by reputable international organisations. For example, the Political and Economic Risk Consultancy (PERC), which is an international consulting firm servicing companies doing business in Asia, ranked Singapore as having the best national institution in Asia.[66] Perhaps, more significantly, was the following comment by PERC itself:[67]

> Surprisingly for a country where the government is often accused by foreign human rights activists of using the judiciary to pursue politically motivated libel suits, our American respondents living in Singapore even rated the island's judicial system as being superior to that of the US.

In addition, the International Institute for Management Development (IMD), which is an independent foundation that (*inter alia*) publishes the

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65 *Ibid* at para 41.

66 This included the quality of the Judiciary and the police as key components: see *The Singapore Judiciary Annual Report 1998* at 82.

67 As quoted *ibid.*

well-known *World Competitiveness Yearbook,* ranked (in the 1998 volume of the aforementioned *Yearbook)* Singapore as first (amongst forty six countries surveyed) for its legal framework.[68] We are also told that '[t]he business community also affirmed a high level of confidence in the fair administration of justice in Singapore's justice system' and that 'Singapore was ranked fourth in the world, after Denmark, Norway and Canada'.[69]

V. POSSIBLE REASONS FOR THE RELATIVE SUCCESS OF THE SINGAPORE LEGAL SYSTEM

As already mentioned above, the relative success of the Singapore legal system as viewed principally through the lenses of the public itself has been more than encouraging.[70] This is not to state that there are no actual or potential difficulties. In the sphere of the common law, for example, I have already ventured to suggest that there is a real need to develop a truly autochthonous system and, although this will not of course be easy, it is by no means an impossible task. I have also dwelt briefly on the reasons why such development is necessary.[71] It is submitted that one major factor conducing towards legitimacy has been (as briefly considered in the preceding Section) the remarkable efficiency of the courts system itself: an efficiency that is not, as I have sought to argue, achieved at the expense of the quality of justice as such.[72]

However, there is a more skeptical line of thought that is expressed primarily through critique of the *legislative* aspects of the Singapore legal system. In particular, it has been argued that governmental initiatives as well as control have resulted in the imposition of a 'top-down' system, where people are instrumentally manipulated for the public good. It would be well, at this juncture, to observe that if the tendency has had a utilitarian flavour, the adoption of such an approach is not itself an untenable (let alone a minority) perspective in other (in particular, Western) countries. Indeed, in every country, there has been the perennial problem of balancing individual rights with communitarian goals in situations of actual or potential conflict.[73] Some scholars, such as the Critical Legal Scholars, have simply given up on any satisfactory objective theory that could mediate this tension which Duncan Kennedy has famously termed 'the fundamental

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68 *Ibid* at 84; the 'legal framework' here includes the entire corpus of laws as well as the manner in which such laws have been administered as well as adjudicated upon by the judiciary.

69 *Ibid.*

70 See, in particular, the main text accompanying n 57 ff, above.

71 See the main text accompanying n 26, above.

72 See the main text accompanying n 57 ff, above.

73 No problem would, of course, arise where there is no such conflict.

contradiction'.[74] I would suggest, with respect, that the oftimes sharp distinction drawn between individualism and communitarianism is, on most occasions at least, too reductionistic. Equally reductionistic, in my view, is the correlative proposition to the effect that Western values are coincident with individualism whereas Eastern values are coincident with community goals. This is not to state, however, that as a question of *emphasis*, this proposition is wholly off the mark. My principal point here is that one has to avoid, wherever possible, simplistic labelling and (consequently) simplistic thought as well as analyses. For example, insofar as Confucianism (a classic East Asian value system) is concerned, it is clear that it is not unambiguously communitarian: not, at least, to the entire or even near-entire exclusion of individual rights. On the contrary, as I have sought to argue elsewhere, classical Confucianism in fact recognized the indefatigable uniqueness of the individual.[75] Indeed, in an earlier work, I attempted to eschew a reductionistic stance and attempted to understand the success of local legislation in the context of the broader historical as well as socio-legal factors surrounding the very pieces of legislation themselves.[76]

Turning first to the sphere of the criminal law, I have in fact argued that despite the very stringent criminal laws in the Singapore context, there was nevertheless an enormous contrast between the colonial and modern governments' respective responses in every major area.[77] In the context of Chinese secret societies, for example, legislative indecision as well as faulty implementation were rife during the colonial period.[78] Although modernisation and industrialisation did aid in the gradual disintegration of these secret societies as they originally existed, it is also clear that the decision to finally effect detention without trial was an extremely weighty factor contributing to their ultimate downfall — a course of action that was embraced by the present government which decided (in the face of the balance between individual liberty and social order) to implement a measure utterly alien to British concepts of justice. It is true that not everyone would approve of such an approach but it is clear that without this unusual measure, the back of the secret society problem could not have been broken.

In the sphere of drugs, the local laws have been equally harsh (if not, in fact, harsher). The obsession with opium revenue on the part of the colonial government may be contrasted with the sensitivity of, as well as stringent

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74 See D Kennedy, The Structure of Blackstone's Commentaries' (1979) 28 Buffalo Law Review 205 at 211-213.

75 See A Phang, 'Roberto Linger and the politics of transformation in an Asian context' published in 3 parts in [1997] Tydskrif VirDie Suid-Afrikaanse Reg at 45, 287 and 472, respectively, and 483.

76 See generally Phang, above, n 22.

77 See generally Phang, *ibid at* Ch 4.

78 See generally *ibid* at 183-225. See also the Criminal Law (Temporary Provisions) Act (Cap 67,2000 Rev Ed) (as amended).

action taken by, the present government.[79] The present measures are harsh, the death penalty being in fact introduced as far back as 1975 for trafficking in certain stipulated drugs beyond a certain specified amount. However, having one of the most draconian drug laws in the world has engendered a not insignificant amount of success in battling the misuse of drugs generally.

The law relating to the prevention of corruption is another significant area. Again, contrasted to the corruption that was rampant during the colonial period, corruption has in fact been stringently controlled by the present government.[80] It should be observed that one of the most (if not the most) important factors contributing towards the success in curbing corruption in the Singapore context has been the commitment of political leadership itself: who realise that without a corruption-free environment, the entire social structure as well as economy would be put in grave danger.

That such stringent criminal laws have the general support of the Singapore people is not, it is submitted, a not implausible proposition. The maintenance of law and order contributes immeasurably to social stability and, as an important consequence, economic stability as well as prosperity (and this is exceptionally evident with respect to both the anti-secret society as well as the anti-corruption laws very briefly referred to in the preceding paragraphs). Indeed, it might be further observed, insofar as economic stability and prosperity are concerned, that the relatively stable status of the country has been a not insignificant factor in furnishing confidence to foreign investors as well as the local populace. However, it is also true that the small size of Singapore itself makes it very much easier to not only detect crime but also to enforce the various criminal laws as well: and this is an advantage that is shared by extremely few other countries in the world.

Turning very briefly to the civil legislative sphere, I have ventured to suggest elsewhere that, in the context of legislative developments from 1959 onwards,[81] the popular perception of 'top-down' control by the government was misconceived inasmuch as success generated by the local legislation was due not merely to the promulgation of the laws themselves but also to various factors operating specifically in different situations that (in turn) had their source in the wider societal context.[82] In particular, I proffered three extremely broad (and related) propositions, the first centring on the concept of *legitimacy* as viewed through the lenses of the general public[83] — in

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79 See generally Phang, above, n 22 at 225-237. See also the relevant statutes mentioned in n 22, above.

80 See generally Phang, above, n 22 at 238-243. Cf also M Hor, 'The Problem of Non-Official Corruption' (1999) 11 SAcLJ 393. See also the relevant statutes mentioned in n 22, above.

81 When Singapore first achieved internal self-government. After a brief, but rather acrimonious 'sojourn' in Malaysia between 1963 and 1965, Singapore attained (reluctantly, then) complete independence (on 9 August 1965).

82 See generally Phang, above, n 22 at Ch 5.

83 See also the main text accompanying n 57 ff, above.

particular, of the perceived moral authority of the government to promulgate laws and of the substance of the individual laws themselves. Secondly, I emphasised the importance of locating a coincidence of interests between the general populace and the government. Finally, I attempted to demonstrate that the success of law and legislation (as well as allied measure) could not, in point of fact, be separated from the wider socio-economic as well as political context.[84] Whilst these propositions may appear, and indeed *are*, self-evident, I effected my exposition in the context of historical as well as other particular multidisciplinary research.[85]

It is suggested that the relative success of the Singapore legal system is due to a complex set of societal factors. I have only been able to give but the briefest flavour of these factors and the interested reader is encouraged to pursue the more detailed discussions elsewhere.[86]

VI. THE INTERNATIONAL CONTEXT

As far back as 1994, Yong CJ observed thus:[87]

> The opportunities in the vast region [of Asia] appear to be limitless. All this means that Singapore can develop in a way into a centre for international legal services, and that this is now a new and attractive prospect that every new cohort of lawyers might well consider. To take proper advantage of these opportunities however will mean a

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84 On a general level, it should be mentioned that notwithstanding what appears like a fairly rigid political structure, there are in fact many countervailing factors that result in flexibility: see generally Phang, above, n 22 at 261-271. See also J S T Quah & S R Quah, 'The Limits of Government Intervention' in Sandhu and Wheatley (eds), above, n 5 at Ch 5. There is also the issue of internationalization and globalization (which I deal with briefly below in the next Section); as Senior Minister Lee Kuan Yew has recently pointed out, an attempted tight rein on the media is not possible because of the internet, although he was of the view that 'you can counter the Internet, by having a website which people believe in': see 'SM Lee's Interview with CNBC', *The Straits Times*, 13 December 1999, at 47. In that same interview, he also acknowledged the need generally to open up and encourage creative thinking: see ibid. In an earlier interview that same month (with David Lamb, Southeast Asia bureau chief of the *Los Angeles Times*), Senior Minister Lee (in response to a question that 'Singapore is a fairly rigid society with a lot of controls' and whether that would 'stifle creativity'), observed thus (see *The Straits Times*, 11 December 1999, at 77):

> That's a stereotyped view. I have a different one. A creative mind is a creative mind, whatever you do with it. I mean, if a chap has got it and wants to write a novel, a great novel, he will write it. But I'm not saying we shouldn't loosen up and try to get lateral thinking and a spontaneous fashion of ideas that may spark something profitable.

85 See above, n 82. I focused, in particular, on the spheres of family law, family planning and population control, labour law, and public housing.

86 See, in particular, Phang, above, n 22.

87 See 'Speech Delivered at the Admission of Advocates and Solicitors – 26 March 1994' in *Speeches*, above, n 27, pages 115-117, at 117.

> continuing period of further self-education to acquire an adequate familiarity with some basic differences in the legal systems and laws of other countries in the region. But the potential rewards should make the effort more than worthwhile.

Indeed, the inexorable effect of internationalization and globalization cannot be avoided, particularly in the context of a country like Singapore where its only substantive resources comprise people and its focus is on commerce as well as the provision of financial services. Even the emphasis on information technology brings with it the inherent need for the recognition as well as embrace of the wider world community. To this end, law in general and legal scholarship in particular must reflect the ever-increasing interconnectedness of nations and their respective legal systems. This is perhaps of particular importance in the context of commercial law, where there are cross-border transactions and where, therefore, the desideratum of uniformity is especially strong. Such uniformity can be achieved in the form of international conventions.[88] One possible alternative — which is, however, somewhat less satisfactory — is to rely upon general conflict of laws principles,[89] which, however, can only lead one to the applicable law, thus achieving a system of law which may or may not be fair.

Indeed, — and, at this point, the highly related sphere of comparative law becomes relevant — contracting parties often have to have an at least working knowledge of particular foreign legal systems in general and their commercial laws in particular. We find, for example, more and more corporations (particularly multinational corporations) setting up their business operations in other countries. A knowledge of the laws of the country concerned then becomes not only desirable but, indeed, imperative. These concerns have in fact resulted in a modification to the law curricula of many law schools (including the local law faculty) which not only conduct the more general comparative law courses but also many specialised courses as well (particularly with regard to foreign business laws).

There is yet another (extremely significant) development that is (and will be) gaining more and more attention in the years to come: *electronic commerce.* Indeed, an increasing number of countries are in the process of either enacting or have in fact enacted relevant legislation. In Singapore, for

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88 For a recent illustration in the Singapore context, see the Sale of Goods (United Nations Convention) Act (Cap 283A, 1996 Rev Ed.), which gives legal effect to the United Nations Convention on Contracts for the International Sale of Goods (more popularly known as 'The Vienna Convention').

89 See generally *Chitty on Contracts* 28th ed (London: Sweet & Maxwell, 1999), Vol 1 at Ch 31.

example, the Electronic Transactions Act was enacted in 1998.[90] Undoubtedly, the field of electronic commerce is, and will continue to be, of the utmost importance, and lawyers ignore it at their peril.[91]

It may be briefly observed, however, that there is in fact a potential tension between the need to develop an indigenous or autochthonous legal system[92] on the one hand and the need to meet the challenges of globalization as well as internationalization on the other. It is suggested, however, that there need be no real tension and one excellent (if rather simple) argument is to acknowledge the fact that whatever the needs of contract law in the international arena, the established common law of contract will need to be retained and developed to meet, if nothing else, disputes that arise between and amongst the local residents. Indeed, disputes that contain foreign elements will (as already briefly discussed above) need to be met by conflict of laws principles[93] as well as by international conventions (the latter in effect achieving a result via uniformity[94]). The ideal, in other words, is to strike a balance amongst the various competing needs and factors.

VII. CONCLUSION

I have attempted, within the relatively brief compass of the present essay, to set out the basic structure of the Singapore legal system as well as its role and function within the broader societal context which it serves. It is clear that the English common law foundations of the country have worked well

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90 No 25 of 1998; see now Cap 88, 1999 Rev Ed. This Act is based, in the main, on both the UNCITRAL Model Law on Electronic Commerce as well as the Illinois Electronic Commerce Security and Utah Digital Signature Acts. And see generally A Phang and D Seng, 'The Singapore Electronic Transactions Act 1998 and the Proposed Article 2B of the Uniform Commercial Code' (1999) 7 International Journal of Law and Information Technology 103.

91 The principal problem here, it may be observed, may well lie in understanding the ever-changing technology.

92 See generally above, Section II.

93 See above, n 89.

94 See above, n 88.

but there is a need to be constantly alert to ways in which those foundations may be modified in order that the legal system as a whole may develop along distinctly Singaporean lines. There is also a need to be simultaneously alert to the needs of globalization as well as internationalization. I also sought to demonstrate that the relative success of the Singapore legal system is due not only to the remarkable efficiency of the courts system itself but also to the complex mesh of extra-legal factors that have their distinctive roots in Singaporean culture in general and its legal culture in particular.

APPENDIX 1

GENERAL INFORMATION ABOUT SINGAPORE

I THE POPULATION OF SINGAPORE

YEAR	TOTAL POPULATION (thousand)	SINGAPORE RESIDENTS (thousand)
CENSUS		
1901	227.6	NA
1911	303.3	NA
1921	418.3	NA
1931	557.7	NA
1947	938.2	NA
1957	1,445.9	NA
1970	2,074.5	2,013.6
1980	2,413.9	2,282.1
1990	3,016.4	2,705.1
MID-YEAR ESTIMATES		
1991	3,089.9	2,762.7
1992	3,178.0	2,818.2
1993	3,259.4	2,873.8
1994	3,363.5	2,930.2
1995	3,467.5	2,986.5
1996	3.612.0	3,044.3
1997	3,736.7	3,103.5
1998	3,865.6	3,163.5
1999	3,893.6	3,217.5

Note:

1. Singapore residents refer to citizens and those who have been granted permanent residence in Singapore.

2. Total population comprises Singapore residents and foreigners staying in Singapore for at least one year.

Source: ***Monthly Digest of Statistics — Singapore, October 1999*** **(Singapore Department of Statistics, 1999), p 3.**

II TOTAL GROSS DOMESTIC PRODUCT (AT CURRENT MARKET PRICES)

In Million (Singapore) Dollars

YEAR	TOTAL
1988	50,714.2
1993	92,905.4
1994	106,489.7
1995	118,490.5
1996	128,973.5
1997	141,261.9
1998	141,216.2

Source: ***Yearbook of Statistics Singapore, 1998*** **(Singapore Department of Statistics, 1999), p 61.**

III PER CAPITA GROSS NATIONAL PRODUCT (AT CURRENT MARKET PRICES)

YEAR	PER CAPITA GNP (S$)
1988	18,093. 1
1993	28,600.4
1994	32,369.1
1995	35,107.2
1996	36,918.1
1997	39,395.8
1998	38,169.5

Source: ***Yearbook of Statistics Singapore, 1998*** **(Singapore Department of Statistics, 1999), p 2.**

IV EXCHANGE RATE (SINGAPORE DOLLAR PER US DOLLAR)

1997	1.4848
1998	1.6736
April 1999	1.7134
May 1999	1.7123
June 1999	1.7121
July 1999	1.6965
August 1999	1.6797
September 1999	1.6959

Source; ***Monthly Digest of Statistics — Singapore, October 1999*** **(Singapore Department of Statistics, 1999), p59.**

APPENDIX 2

TOTAL NUMBER OF JUDGES IN THE SUPREME COURT*

Chief Justice of the Republic of Singapore: 1
Total Number of Justices of Appeal: 2
Total Number of High Court Judges: 9
Total Number of Judicial Commissioners: 6
Total Number of Supreme Court Judges: 18

Number of Male Supreme Court Judges: 16
Number of Female Supreme Court Judges:** 2

* Source: *Supreme Court Singapore — Excellence into the Next Millennium* (Supreme Court, Singapore, 1999), pp 18—38 (and as updated by the present writer as at December 1999).

** Both judges are High Court Judges.

TOTAL NUMBER OF JUDGES IN THE SUBORDINATE COURTS*

Total Number of Judicial Officers: 69
Judicial Officers who are District Judges: 54
Judicial Officers who are Magistrates: 15

Number of Male Judicial Officers: 39
(31 District Judges and 8 Magistrates).
Number of Female Judicial Officers: 30
(23 District Judges and 7 Magistrates).

* As at 8 December 1999; I am grateful to the Deputy Registrar of the Subordinate Courts, Mr Eric Tin, for kindly furnishing me with the abovementioned information.

APPENDIX 3

NUMBER OF JUDICIAL POSTS AVAILABLE AND FILLED IN THE SINGAPORE LEGAL SERVICE: 1990—1998

YEAR	NUMBER OF POSTS	NUMBER OF OFFICERS
1990	53	53
1991	67	67
1992	94	81
1993	94	85
1994	94	72
1995	94	73
1996	107	89
1997	107	98
1998	107	100

Source: ***Legal Service Commission Annual Reports, 1990—1998.***

APPENDIX 4

NUMBER OF ADVOCATES & SOLICITORS* CALLED TO THE SINGAPORE BAR: 1994—1998

YEAR	NUMBER OF ADVOCATES & SOLICITORS CALLED TO THE BAR
1994	705
1995	505
1996	375
1997	397
1998	321

* The legal profession in Singapore is a fused profession and practitioners are known as 'Advocates & Solicitors'. However, in order to actively practise, an Advocate & Solicitor must hold a Practising Certificate (see the Table below).

NUMBER OF ADVOCATES & SOLICITORS HOLDING PRACTISING CERTIFICATES*: 1994—1999

YEAR	NUMBER OF ADVOCATES & SOLICITORS HOLDING PRACTISING CERTIFICATES
1995	2,730
1996	2,985
1997	3,170
1998	3,243
1999**	3,401

* The operative period for Practising Certificates is from 1 April to 31 March of the following calendar year.

** As at 31 March 1999.

Source for the statistics in both the above Tables; The Law Society of Singapore.

APPENDIX 5

FACULTY OF LAW — FIRST YEAR ENROLMENT, 1977 TO 1999

YEAR	MALE	FEMALE	TOTAL
1977/1978	50	48	98
1978/1979	42	38	80
1979/1980	36	61	97
1981/1982	62	72	134
1982/1983	69	94	163
1983/1984	94	103	197
1984/1985	107	105	212
1985/1986	113	87	200
1986/1987	105	130	235
1987/1988	109	87	196
1988/1989	116	84	200
1989/1990	97	99	196
1990/1991	91	108	199
1991/1992	100	103	203
1992/1993	83	107	190
1993/1994	90	100	190
1994/1995	70	109	179
1995/1996	95	76	171
1996/1997	79	81	160
1997/1998	56	94	150
1998/1999	73	81	154
1999/2000	63	81	144

Source: Register's Office, National University of Singapore.

APPENDIX 6

FACULTY OF LAW — TOTAL UNDERGRADUATE ENROLMENT PER YEAR, 1977 TO 1999 (FOUR YEAR UNDERGRADUATE PROGRAMME)

	MALE	FEMALE	TOTAL (FOR ALL FOUR YEARS)
1977/1978	187	260	447
1978/1979	189	215	404
1979/1980	156	197	353
1980/1981	171	194	365
1981/1982	185	219	404
1982/1983	214	268	482
1983/1984	276	320	596
1984/1985*	329	367	696
1985/1986*	377	381	758
1986/1987*	403	413	816
1987/1988*	424	406	830
1988/1989*	431	380	811
1989/1990*	411	391	802
1990/1991*	410	369	779
1991/1992*	398	382	780
1992/1993*	361	408	769
1993/1994	353	410	763
1994/1995	334	415	749
1995/1996	333	387	720
1996/1997	335	360	695
1997/1998	297	355	652
1998/1999#	300	329	629
1999/2000#	269	334	603

Note:

* Figures include students from the Special Law Programme

Figures include students from the Approved Graduate Law Programme

Source: Registrar's Office, National University of Singapore.

APPENDIX 7

FACULTY OF LAW — NUMBER OF LLB GRADUATES, 1961 TO 1999

YEAR	MALE	FEMALE	TOTAL
1961			22
1962			22
1963			47
1964			28
1965			57
1966			75
1967			66
1968			46
1969			45
1970			60
1971			79
1972			75
1973			87
1974			82
1975			81
1976			108
1977			113
1978	30	79	109
1979	56	73	129
1980	41	56	97
1981	43	42	85
1982	36	37	73
1983	31	49	80
1984	52	54	106
1985	60	67	127
1986	71	89	160
1987	82	90	172
1988	100	108	208
1989	113	84	197
1990	88	122	210
1991	107	88	195
1992	115	79	194
1993	92	93	185
1994	87	99	186

1995	94	100	194
1996	75	106	181
1997	90	97	187
1998	70	103	173
1999	92	77	169
TOTAL			4,510

Note: No breakdown of male and female graduates available prior to 1978.

Sources:

S Jayakumar, 'Twenty One Years of the Faculty of Law, University of Singapore: Reflections of the Dean' (1977) 19 *Malaya Law Review* 1 at 30.
Statistics Provided by the Registrar's Office, National University of Singapore.

APPENDIX 8

TOTAL NUMBER OF ACTIONS AND APPLICATIONS COMMENCED/FILED IN THE SUPREME COURT: 1990—1998

PART I: *ORIGINAL* JURISDICTION

(1) ORIGINAL CIVIL JURISDICTION

YEAR	TOTAL NUMBER OF ORIGINATING PROCESSES	TOTAL NUMBER OF INTERLOCUTARY APPLICATIONS	TOTAL NUMBER OF CIVIL ACTIONS AND APPLICATIONS
1990	11,122	8,267	**19,389**
1991	11,628	8,583	**20,211**
1992	11,447	8,751	**20,198**
1993	11,152	8,477	**19,629**
1994	11,048	8,533	**19,581**
1995	11,045	8,653	**19,698**
1996	8,918	9,783	**18,701**
1997	8,235	10,288	**18,523**
1998	10,543	10,418	**20,961**

Sources:
Supreme Court Singapore — The Re-organisation of the 1990s **(Supreme Court, Singapore, 1994), p 72.**
Supreme Court Singapore — Excellence into the Next Millennium **(Supreme Court, Singapore, 1999), p 158.**

(2) ORIGINAL CRIMINAL JURISDICTION

YEAR	1990	1991	1992	1993	1994	1995	1996	1997	1998
NUMBER OF CRIMINAL CASES	63	55	74	115	85	80	60	63	63
***NUMBER* OF CRIMINAL MOTIONS**	46	59	34	36	35	41	28	32	23
***TOTAL* NUMBER OF CRIMINAL ACTIONS**	**109**	**114**	**108**	**151**	**120**	**121**	**88**	**95**	**86**

Sources;
Supreme Court Singapore — The Re-organisation of the 1990s **(Supreme Court, Singapore, 1994), p 72.**
Supreme Court Singapore — Excellence into the Next Millennium **(Supreme Court, Singapore, 1999), p 158.**

PART II: APPELLATE **JURISDICTION**

(1) APPELLATE CIVIL JURISDICTION

YEAR	1990	1991	1992	1993	1994
CIVIL APPEALS	131	195	222	203	198
APPLICATIONS BEFORE THE COURT OF APPEAL	27	42	52	54	81
APPEALS AGAINST REGISTRAR'S DECISION*	348	377	334	418	384
DISTRICT COURT APPEALS	47	45	38	70	45
SMALL CLAIMS TRIBUNALS APPEALS	3	1	0	2	3
TOTAL NUMBER OF APPELLATE CIVIL ACTIONS	**556**	**660**	**646**	**747**	**711**

YEAR	1995	1996	1997	1998
CIVIL APPEALS	202	209	272	324
APPLICATIONS BEFORE THE COURT OF APPEAL	58	80	83	121
APPEALS AGAINST REGISTRAR'S DECISION*	433	656	620	890
DISTRICT COURT APPEALS	62	60	64	97
SMALL CLAIMS TRIBUNALS APPEALS	2	11	16	26
TOTAL NUMBER OF APPELLATE CIVIL ACTIONS	**757**	**1,016**	**1,055**	**1,458**

As from 1993, these included Registrar's Appeals from the Subordinate Courts.

Sources;
Supreme Court Singapore — The Re-organisation of the 1990s **(Supreme Court, Singapore, 1994), p 73.**
Supreme Court Singapore — Excellence into the Next Millennium **(Supreme Court, Singapore, 1999), p 159.**

(2) APPELLATE CRIMINAL JURISDICTION

YEAR	CRIMINAL APPEALS*	MAGISTRATE'S APPEALS	CRIMINAL REVISIONS	TOTAL NUMBER OF APPELLATE CRIMINAL ACTIONS
1990	30	378	18	**426**
1991	25	363	14	**402**
1992	55	417	26	**498**
1993	82	364	38	**484**
1994	56	253	19	**328**
1995	65	260	24	**349**
1996	37	247	29	**313**
1997	28	166	23	**217**
1998	24	206	27	**257**

* INCLUDING CRIMINAL REFERENCES AND CRIMINAL MOTIONS BEFORE THE COURT OF APPEAL

Sources:
Supreme Court Singapore — The Re-organisation of the 1990s **(Supreme Court, Singapore, 1994), p 73.**
Supreme Court Singapore — Excellence into the Next Millennium **(Supreme Court, Singapore, 1999), p 159.**

***PART III:GRAND TOTAL NUMBER* OF *ALL* ACTIONS AND APPLICATIONS**
(*ie*, PART I AND PART II)

YEAR	GRAND TOTAL
1990	**20,480**
1991	**21,387**
1992	**21,450**
1993	**21,011**
1994	**20,740**
1995	**20,925**
1996	**20,118**
1997	**19,890**
1998	**22,762**

Note: With effect from 1 April 1996. the High Court's jurisdiction in divorce and matrimonial proceedings was transferred to the Subordinate Courts.

Sources:
***Supreme Court Singapore — The Re-organisation of the 1990s* (Supreme Court, Singapore, 1994), p 73.**
***Supreme Court Singapore — Excellence into the Next Millennium* (Supreme Court, Singapore, 1999), p 159.**

APPENDIX 9

NUMBER OF CASES IN THE SUBORDINATE COURTS

I NUMBER OF CRIMINAL LAW SUITS PER YEAR*

YEAR	NUMBER
1995	183,541
1996	246,422
1997	189,602
1998	231,640

* Includes all Magistrate and District Arrest cases, Juvenile cases, Coroners cases, Traffic cases, Departmental Summonses, Magistrates' Complaints and Police Summonses.

II NUMBER OF CIVIL LAW SUITS PER YEAR*

YEAR	NUMBER
1995	28,380
1996	30,001
1997	32,941
1998	44,630

* Writs and Originating Summonses only.

III NUMBER OF FAMILY CASES PER YEAR*

YEAR	NUMBER
1995	5,748**
1996	10,246
1997	12,623
1998	14,690

* Divorce matters and other related applications (such as maintenance orders).

** Before the transfer of matrimonial causes under the Order of Transfer of 1 April 1996.

IV NUMBER OF SMALL CLAIMS PER YEAR* (UNDER THE SMALL CLAIMS TRIBUNALS ACT)

YEAR	NUMBER
1995	28,117
1996	29,992
1997	25,969
1998	39,350

* Significantly, the number of small claims filed between 1985 to 1990 was 3,788 (in 1985), 7,684 (in 1986), 6,408 (in 1987), 8,529 (in 1989) and 12,909 (in 1990). In 1990, for the first time more than 20,000 claims were filed (see *Judicare, Special Edition*, April 1998).

Source for the Tables in this Appendix: *Judiciary Annual Reports, 1996—1998 (figures for 1998 are preliminary);* I am grateful to the Deputy Registrar of the Subordinate Courts, Mr Eric Tin, for compiling these figures for me from the aforementioned sources.