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THE RULE OF LAW IN SINGAPORE

K. SHANMUGAM*

I. INTRODUCTION

Over the years, there have been many debates on what the Rule of Law actually means, and what it should include. Whether the Rule of Law should be “thick” or “thin”. The differences between “Rule of Law” and “Rule by Law”.

I do not propose to go into detail on these ideas. I think it is much more useful for me to set out how the Rule of Law operates in Singapore and how we approach the Rule of Law.

I will cover three points. First, Singapore accepts the Rule of Law as a universal value. It is the foundation on which our nation was built, and provides the framework for its proper functioning. Secondly, the Rule of Law must be approached and applied in a way which recognises practical realities, to achieve good governance and to promote the general welfare. Third, I will touch on some situations where exceptions have been made to the due process of law.

II. THE RULE OF LAW AS THE FOUNDATION OF OUR NATION

Singapore has a short history as a sovereign State. Unlike others, Singaporeans do not share a long history, a common ancestry, or a sense of unity born out of bloody revolution. In fact, we were a highly improbable nation.

What defined Singapore, what made us a nation, were shared ideals and shared aspirations. Equal opportunity for all, regardless of economic background or social status, race, language, or religion. Meritocracy. Equality before the law. Intolerance of corruption. A commitment to free trade and the market system. Above all, a determination to develop Singapore, give a better life to Singaporeans to survive and succeed against the odds.

We realised that our ideals and aspirations could only be realised through the law and the legal framework. Foreign investment would only come if we could provide the necessary legal certainty. In that sense, the Rule of Law was for us not only an aspiration and an ideal (important in itself), but also a necessity borne out of exigency.

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And, critically, for the legal framework to operate as it should, the Government itself had to abide by the law.

Against the odds, Singapore has done well. Our success is reflected in many indicators, on the quality of life, on social progress, and so on. Looking only at the economic indicators, our stock of foreign direct investment exceeded S\$600 billion at the end of 2010.¹ That amount of money would not have come into Singapore unless people believed that their investments were safe. In 2011, our gross GDP per capita was over US\$50,000. In 1965, it was around US\$500. I don't think any city or country in the world has made this kind of progress from 1965 to 2011.

Today, Singapore remains committed to the Rule of Law as a foundational principle. The Constitution is the supreme law of the land. Enshrined within it are a Bill of Rights and the Separation of Powers. Our laws are interpreted and applied by an independent and respected Judiciary. The President and Parliament are elected through universal franchise. There is a culture of respect for the law, and an expectation that the law will be impartially enforced, both in Government and in society at large. There is no tolerance for corruption, wherever it occurs.

III. THE RULE OF LAW AND ITS PRACTICAL APPLICATION

At the same time, the precepts of the law, and of the Rule of Law, must be applied with hard-nosed practicality. There is no use having beautiful laws, embodying the noblest ideals, only to do something else in practice. Elegant constitutions can be easily had, and are not hard to find. What matters is how the laws apply in practice. The truest test of the success of the law, of the Rule of Law, lies in the benefits it produces for society and individuals.

Mr Lee Kuan Yew makes the point lucidly in one of his early speeches. This is a favourite passage of mine. It gives a sharp perspective by the leader of a then-developing country, to the ideals on the Rule of Law espoused by those steeped in the traditions of the French and American Revolutions. Let me quote:²

There is a gulf between the principles of the rule of law, distilled to its quintessence in the background of peaceful 19th century England, and its actual practice in contemporary Britain. The gulf is even wider between the principle and its practical application in the hard realities of the social and economic conditions of Malaya. You will have to bridge the gulf between the ideal principle and its practice in our given sociological and economic milieu. For if the forms are not adapted and principles not adjusted to meet our own circumstances but blindly applied, it may be to our undoing.

...

The rule of law talks of... the right of association and expression, of assembly, of peaceful demonstration, concepts which first stemmed from the French Revolution and were later refined in Victorian England. But nowhere in the world today

¹ "Foreign Equity Investment in Singapore 2010" at 1, online: Department of Statistics Singapore <<http://www.singstat.gov.sg/pubn/business/fei2010.pdf>> (last accessed 10 October 2012).

² Lee Kuan Yew, Speech at the University of Singapore Law Society Annual Dinner (18 January 1962), online: National Archives of Singapore <<http://stars.nhb.gov.sg/stars/public/viewDocx.jsp?stid=8616&lochref=viewPDF-body.jsp?pdfno=lky19620118.pdf&keyword=>>> (last accessed 10 October 2012).

are these rights allowed to practise without limitations, for blindly applied these ideals can work towards the undoing of organised society. For the acid test of any legal system is not the greatness or the grandeur of its ideal concepts, but whether in fact it is able to produce order and justice in the relationships between man and man and between man and the State. To maintain this order with the best degree of tolerance and humanity is a problem, which has faced us acutely in the last few years as our own Malaysians took over the key positions of the Legislature, the Executive and the Judiciary.

...

Justice and fair play according to pre-determined rules of law can be achieved within our situation if there is integrity of purpose and an intelligent search for forms which will work and which will meet the needs of our society. Reality is relatively more fixed than form. So if we allow form to become fixed because reality cannot be so easily varied, then calamity must... befall us.

Too often, developing countries did not take into account the actual state of their societies and attempted to import laws wholesale. The results have not always been good.

Let me also quote from a paper from Professor Larry Diamond from Stanford. It throws a sharp focus the problems faced by many developing states with poor governance:³

Consider the archetypical badly governed country. Corruption is endemic throughout the system of government at every level. Everywhere, development promise is sapped by corruption. Public infrastructure decays or is never built because the resources from the relevant ministries are diverted to private ends. Decisions on public expenditures are tilted toward unproductive investments—sophisticated weapons, white-elephant construction projects—that can deliver large kickbacks to the civilian officials and military officers who award them... [C]linics are not stocked and staffed, roads are not paved and repaired because the funds for these essential dimensions of development are squandered and stolen. Businesses cannot get licenses to operate and small producers cannot get titles to their land because it would take half a year and a small fortune to navigate through the shoals of a bloated, corrupt state bureaucracy. State bureaucracies remain littered with pointless and debilitating regulations, each one of them an opportunity for corrupt officials to collect rents.

...

In a context of rotten governance, individuals seek governmental positions in order to collect rents and accumulate personal wealth—to convert public resources into private goods. There is no commitment to the public good and no confidence in the future... Thus, there is no respect for law, and no rule of law... Lacking a sense of public purpose, discipline, and esprit de corps, the civil service, police, customs, and other public institutions function poorly and corruptly. Salaries are meager because the country is poor, taxes are not collected, corruption is expected, and

³ Larry Diamond, "Building a System of Comprehensive Accountability to Control Corruption" (Paper presented to Seminar on Democratic Consolidation: The International Context and the Mexican Experience, 18-20 February 2003), online: Stanford University <http://www.stanford.edu/~ldiamond/papers/Horiz_Acct.pdf> (last accessed 10 October 2012).

government payrolls are bloated with the ranks of political clients and fictitious workers. Corruption is rife at the bottom of the governance system because that is the climate that is set at the top, and because government workers cannot live on the salaries they are paid. In fact, institutions in such a society are a façade. The police do not enforce the law. Judges do not decide the law. Customs officials do not inspect the goods. Manufacturers do not produce, bankers do not invest, borrowers do not repay, and contracts do not get enforced. Any actor with discretionary power is a rent-seeker. Every transaction is twisted to immediate advantage.

Look around the world today. How many countries which profess to the highest ideals of democracy, of the Rule of Law, fit that description? I suspect a rather large number.

From the start we were determined to avoid such an outcome, where the forms of the Rule of Law were observed but the ultimate goal of advancing the general welfare was sacrificed. The Rule of Law must deliver good governance. It should provide a framework and architecture that actively improves the life of Singaporeans. To this end, we have not followed some of the conventional thinking on what the Rule of Law requires and how it should be applied. We have suffered considerable criticism for this, but I think our approach is ultimately a defensible one. Let me illustrate with three examples.

A. *Checks and Balances*

First, the concept of checks and balances. Everyone accepts that there should be checks and balances within a system, to prevent abuses of power.

One model is that of the United States. The U.S. Constitution is virtually impossible to amend. The President, the two Houses of Congress, the federal and state structures, are all set up to check and balance each other. The system is built on a deep-seated distrust of government. The result is that the U.S. is not always able to move quickly on important issues.

This model may have worked for the U.S. But can everyone afford such a system? The U.S. is like an aircraft carrier. It can stay afloat even if it is hit a few times. Singapore is a small skiff, and we often have to navigate stormy seas. Our system today, which is based on the Westminster model, is designed to enable strong and effective government. Laws can be passed and policies implemented quickly.

We have our checks and balances. Within the Government, there are several layers of checks including the Auditor-General's Office. The ultimate check is of course the people of Singapore. They are highly educated and able to assess the Government's policies, and whether Government is serving the people well. They can express their judgment in regular, free and fair Parliamentary elections, where the barriers to candidature are low. And this judgment by the people of Singapore, more than any academic commentary, more than any foreign opinion, is the ultimate test of the success or failure of the Singapore approach.

B. *Criminal Justice System*

Second, the criminal justice system. It is a given that there should be due process, the presumption of innocence—these are universal values.

At the same time, the aim of the criminal trials should be the discovery of truth, not the frustration of justice. To this end, we have adapted our system, and have discarded rules or principles which do not lead to a reliable forensic process.

Take jury trials. There are many paeans to trial by jury as a cornerstone of the common law system. But let us be frank. Juries are not selected for their experience in adjudication. The average member of the jury will not be able to handle many of the complex issues that emerge in litigation. More likely than not, he or she decides by intuition and emotion, rather than by logic and reason. When you have a heinous crime, or an unlikeable defendant, there is a risk of injustice. We consciously moved away from such a system. All our trials, criminal as well as civil, are presided over by professional judges. We think this makes for a more reliable fact finding process.

Substantively, we are tough on crime and we make no apologies for it. Our laws on firearms and drug trafficking are tough, and intentionally so, despite consistent criticisms from some quarters. The laws are backed up by effective enforcement.

At the same time, we have created socio-economic conditions which reduce the need to turn to crime. There is economic development at all levels of society. There are no isolated inner city slums with a culture of criminality. Unemployment rates are low, home ownership levels are high, and so are levels of education.

The result of all this is a city of largely law-abiding people; a country of law and order. Children can take public transport on their own; women can travel alone almost anywhere, anytime. Our crime rates are much lower than other major cities in the world—for example, we had 16 homicides in 2011,⁴ or 0.3 cases per 100,000 population. This is all the more remarkable given that we have a smaller number of police officers per unit population (about 250 per 100,000 population)⁵ than many other cities. Living in an almost crime-free environment is something Singaporeans take for granted, when it is something enjoyed by few cities in the world. All this is a result of our approach to law and order.

C. Land Acquisition

Third, property rights. Property rights are fundamental to a market economy. We respect that, and the ordinary law of the land recognises and gives effect to property rights. But, differently from other countries, we made a conscious decision, when we gained independence, not to enshrine the right of property in the *Constitution*.⁶ We also gave the Government wide powers to acquire land for development.

We had several reasons for doing this. Singapore is a small country. Land is scarce. We could not leave its use and allocation purely in private hands. To pursue economic growth, the Government had to actively optimise the use of land. The Government also had another goal—the social and political goal of universal homeownership. To do this, the Government had to acquire land for public housing. The Government's approach at that time was not consistent with market principles, or received wisdom

⁴ "Crime Situation for 2011", online: Singapore Police Force <www.spf.gov.sg/stats/stats2011_overall_crime.htm> (last accessed 10 October 2012).

⁵ "Frequently Asked Questions", online: Singapore Police Force <<http://www.spf.gov.sg/infocus/faq.pdf>> (last accessed 10 October 2012) at 11.

⁶ Sing., *Parliamentary Debates*, vol. 25, col. 1389 at 1423 (17 March 1967) (Mr. E. W. Barker).

on the sanctity of private landed property. But they were certainly aimed at the public good.

In many countries, the extensive powers of acquisition that we have had been abused for private gain. But in Singapore we have used those powers for good. As a result of the Government's policies, about 85% of Singaporeans today live in public housing.⁷ Homeownership is around 90%.⁸ We are a property-owning democracy. Citizens have a home to call their own, a real stake in their country. And as I have said our economy and individual incomes have grown exponentially since Independence.

We do not claim that this works for everyone. Hong Kong, the other major Asian city with land constraints similar to ours, has taken a different approach. Property development is largely left to the market. The result—high prices, limited public housing. So Hong Kong's approach can be contrasted with ours.

Because we have bucked the conventional wisdom, we have sometimes faced perception issues. For example, when the World Justice Project came up with its Rule of Law Index in 2010, they took a dim view of the Government's extensive powers of land acquisition. Their position was categorical: Government expropriation is by definition inconsistent with the rule of law. They gave us a poor mark on this count. But they were reasonable people, so we engaged them. We explained our social objectives to them. We brought them to look at public housing in Singapore, at how the Government's powers were exercised for the public good, and not for private gain. I think they understood—our scorecard improved in the 2011 Index, by a little.

D. Summary

To summarise, my point is simply this: we can recognise the universality of the principles underlying the Rule of Law. But in applying those principles, in assessing whether a country adheres to those principles, we must be sensitive to its circumstances and the challenges which it faces.

And I think this is a worthwhile point to make, because very often, commentators proceed on the basis that the U.S. Constitution, or the unwritten constitution of England, is the golden standard. Moving towards that golden standard is progress; moving away is regression. But I would think that was not the intention of those who developed those systems. Engraved on the walls of the Jefferson Memorial in Washington D.C. are the following words, which I think subsequent commentators have not fully appreciated:

... laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors.

⁷ "HDB Annual Report 2010/2011", online: Housing & Development Board <<http://www10.hdb.gov.sg/ebook/ar2011/keystats.html>> (last accessed 10 October 2012) at 4.

⁸ "Key Annual Indicators", online: Department of Statistics Singapore <<http://www.singstat.gov.sg/stats/keyind.html#hhld>> (last accessed 10 October 2012).

In that light let me say something about institutions, laws and human fallibility. The human nature is imperfect. People are always subject to temptations to stray from the straight and the narrow, and in some cases they will fall. Strict laws and robust institutions can reduce wrongdoing, but they cannot prevent it altogether, no more than we can change human nature. What we can do, what Singapore does, is to respond swiftly and decisively to wrongdoing, to corrupt behaviour, when it happens. Everyone in Singapore knows this. If you break the law, action will be taken against you. No matter that you are a Cabinet Minister or a senior civil servant. In the words of Thomas Fuller: “Be you ever so high, the law is above you”. In fact, where a wrongdoer is in the public service, enforcement is likely to be even harsher. And when you have a system operating like that, when offenders are caught and dealt with severely and there is a culture of intolerance towards corruption, then what you get is a relatively clean system—which is the ultimate goal.

IV. EXCEPTIONS TO DUE PROCESS

I will now touch on the situations in Singapore where exceptions are made to due process. Let me focus on the law which is most often commented upon: the *Internal Security Act*.

Our starting position is this. We accept that there are important reasons why due process should be observed. Consequently—and let me be clear—derogations from the ordinary process of law call for explanation and justification.

On this premise, let us examine the *ISA*. The *ISA* empowers the Minister to order the preventive detention of a person, without trial, on grounds of national security. It is an exception to due process. Is there a potential risk of abuse? Obviously. Is it necessary? Is it justified?

Let us weigh the pros and cons. Since 9/11, I think I no longer need to persuade anyone that there are grave threats to our common security, and the serious consequences should these threats come to pass. Against these threats, against these consequences, the criminal law generally is only effective in punishing after the fact; not prevention. The process of law is deliberate and does not lend itself to decisive, preventive action. And often, it is not possible to divulge or disclose the evidence. And there are issues of territorial jurisdiction, depending on where the nefarious plans or attempts were conceived. There are many reasons and I have just identified a few.

On the other hand, the *ISA* has safeguards built in to prevent abuse. A detainee has to be informed of the grounds of his detention as soon as possible. His detention will be reviewed by an Advisory Board within three months of detention, and regularly thereafter. The board is independent of the Government: the Chairman is appointed by the Chief Justice and is in practice a sitting Supreme Court Judge; the other two members are appointed by the President. If the advisory board recommends the release of the detainee, his detention cannot continue unless the President concurs.

What is the correct approach? There are no absolutes. Society can decide that there is an unacceptable risk of abuse, in having a law like the *ISA*, even with these safeguards, and even with the countervailing security threats. Society could say, so what if there is a terrorist bombing? We will still not have such a law. If society so

decides, it will vote in a Government that reflects this view, and we will not have preventive detention by the executive. That is one possible approach.

Another approach is what we have in Singapore. Recognise, quite soberly, the need for preventive detention to counteract threats to national security and the risk of abuse that such powers carry. And then work to minimise the risk of abuse, such that it is reduced to a level which is preferable to the consequences should the threats come to pass. And let me add that our philosophy towards preventive detention is not to lock the door and throw the keys away. We have an active, successful rehabilitation programme. For the would-be Islamic terrorists whom we have detained, we get the Muslim community to come up with a syllabus, a programme, on the correct approach to Islam. They talk to the detainees and try to educate them. When the community itself is satisfied that these people are reformed, and we are satisfied that they are reformed, we release the detainees. Our view is that successful rehabilitation is much preferable to indefinite detention.

Other jurisdictions have approached things differently. Take the U.S. The war on terror was approached as an armed conflict, and not a law and order issue. Terrorists and suspected terrorists were treated as enemy combatants. They were detained at Guantanamo Bay and other overseas facilities, with the intention of putting them out of the reach of the protections which U.S. law afforded. Essentially, declare your laws sacrosanct and supreme within your own country, and then have a detention facility overseas. There has been some push back against this approach, not altogether successful. President Obama took office in 2009 promising to close down Guantanamo. But it has been difficult to close it down. The U.S. Attorney-General, Eric Holder, brought a terrorist to trial in federal court, but said that the terrorist would be detained even if he was acquitted. Congress has voted against allocating funds for having civilian trials for terrorist suspects.

The balance between the competing interests is difficult and delicate. It is for each society to strike, based on its own circumstances. For many years, the *ISA* has been criticised by foreign commentators, without an understanding or appreciation or desire to go into the rationale for it and how it was applied. After 9/11, that criticism has been substantially muted because many countries have had to deal with the issues that we have faced, and have found that the answers were not as obvious as they thought they were. President George W. Bush's Attorney-General, Alberto Gonzales, has written on the difficulties of having civilian trials for terrorist suspects.⁹

We will continue to debate what the right approach is. But I say that one thing is clear: it is not possible to say that there is no trade-off involved if we were to adhere inflexibly to the ordinary process of the law, no matter the exigencies of the situation. To take a leaf from a famous dissenting judgment by Mr. Justice Jackson of the U.S. Supreme Court:¹⁰ “[t]he choice is not between order and liberty. It is between liberty with order and anarchy without either.” If we do not temper doctrinaire logic with practical wisdom, we will turn the law—and the Rule of Law—into a suicide pact.

⁹ Alberto R. Gonzales, “Waging War Within the Constitution”, (2010) 42 *Tex. Tech L. Rev.* 843.

¹⁰ *Terminiello v. Chicago*, 337 U.S. 1 at 37 (1949).

V. CONCLUSION

In conclusion, Singapore is committed to the Rule of Law. It is the foundation of our society and a key ingredient of our success. We recognise the universality of its principles, but also stress that their application must be adapted to each society. We accept that exceptions to the Rule of Law must be closely scrutinised and strictly justified. We do not claim that our system is perfect, or that it works for everyone. But we do say that it has worked well for us, in our circumstances.

We are committed to continually improving our system. To this end, we will continue to engage *bona fide* interlocutors, both at home and abroad. I hope that the conversations that we are already having will become more regular, and that from these conversations will emerge a conception of the rule of law that is based on universal principles, which are at the same time sensitively applied to national circumstances.