

## Lecture

### THE RULE OF LAW: THE PATH TO EXCEPTIONALISM\*

Sundaresh MENON\*\*  
*Chief Justice of Singapore.*

#### I. Introduction

1 When I was invited to address the members of the American Law Institute (“ALI”) at this Annual Meeting, I hesitated. To be sure, it is a great honour. But, I wondered what I, the Chief Justice of a small island nation as far away from the US as it is possible to be, could offer that might be of interest to you. It is difficult for Americans to relate to the tiny scale of my country. When I studied in the US in the early 1990s, there were many who had never heard of Singapore; and those who had mostly had no idea where, much less how small, it is. To convey an idea of scale, I would say that Singapore is about a fifth of the size of Rhode Island; or half the size of the Hawaiian island of Oahu.

2 The US is not only a vast country blessed with rich and diverse natural resources; she exerts economic, cultural, intellectual and diplomatic influence on the rest of the world through her global businesses, the ground-breaking innovations and research of her scientists and inventors, the worldwide reach of her news and entertainment media, the long arm of her diplomacy and the persuasive force of her thinkers on law, liberty and democracy. It is not difficult to see why many insist that America is an exceptional nation.

3 Singapore, on the other hand, has been described rather more modestly as an improbable nation. She is often caricatured as a study in contrasts: tiny yet prosperous; safe but over-regulated; western in outlook, yet steeped in notions of Confucianism; democratic, yet dominated throughout her existence by a single political party; free but communitarian; and above all, pragmatic, not ideological.

4 Yet despite our many differences, I believe our nations meet on a foundational plane in our shared commitment to the rule of law.

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Singapore was among the last places that the late Justice Scalia visited before his untimely death. I had the pleasure of hearing him speak and the privilege of hosting him when he visited my court. We spoke at length about the rule of law and its critical role in enabling Singapore's success as a nation. It was in that shared space that we connected.

5 But the rule of law is a seemingly elastic concept that risks being sidelined as a convenient sound bite if one looks at the diversity of those who claim to embrace it. I therefore propose to begin my substantive remarks today by adopting the working definition of the rule of law put forward by the late Tom Bingham, one of the foremost thinkers on the subject, that:<sup>1</sup>

... [a]ll persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.

This encapsulates the most important facets of the rule of law and it rightly emphasises the instrumental role the courts play in upholding it, which is what I shall mainly focus on today. Beyond this, I will suggest that there can well be differences in our understanding of how the rule of law works as a practical matter in each society.

6 I will then outline the Singapore story to validate my hypothesis that our journey as a nation has been founded on a commitment to the rule of law, and also to illustrate how we have sometimes pursued a path that might take a somewhat different direction than you have done, without thereby derogating from what I consider is a shared commitment to the rule of law. I will close with some thoughts on how and why we as a legal community should devote ourselves to exporting this commitment, but taking due regard of the peculiarities of the soil in which the seed is to be planted.

## II. Rule of law: Theory and practice

7 The rule of law is not an immutable concept. There are competing accounts as to what it entails. Simpler theories focus on the dichotomy between “thick” and “thin” conceptions.<sup>2</sup> More sophisticated

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1 Tom Bingham, *The Rule of Law* (Penguin Books, 2010) at p 8.

2 See, for example, Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press, 2004) at pp 91–94 and Simon Chesterman, “An International Rule of Law?” (2008) 56 AJCL 331 at 340.

analyses characterise it as the coalescence of a series of related but distinct values.<sup>3</sup>

8 Yet a theoretical analysis of the rule of law might obscure two elementary points. The first is that debates over the rule of law are often mired because of a failure to separate a conception of the rule of law from the philosophical and normative premises embedded within it.<sup>4</sup> A sharp disagreement seemingly over a particular rule-of-law theory may, in substance, be a deeper, more antagonistic narrative of an ideological difference.

9 The second point is that the practical outworking of core rule-of-law values in any country will depend on and take shape from the social context and national soil out of which it grows.<sup>5</sup> Thus, the practical manifestation of the rule of law in a society steeped in a long tradition of democracy and liberal values may be very different from that in a nation journeying out of a history of military or autocratic rule whether by reason of war, as in Iraq, or of “people power”, as in the Philippines when President Marcos was deposed, or by the peaceful reconfiguration of the system, as recently in Myanmar.

10 There are two aspects of the point I wish to draw out. The first is the obvious one that it would be naïve, even unwise, to assume that fidelity to the rule of law must look and feel the same in the US as, for instance, in Myanmar today, if only because the societies in which it operates are differently situated. My second point is that there is no reason to assume that fidelity to the rule of law must mean, staying with the same example, that Myanmar as a polity *must* one day look and feel American. This, too, would be naïve because of differences in the ethos of each society and in their value systems, aspirations, cultural and religious beliefs and what I might conveniently term, their own historical baggage.

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3 See, for example, Tom Bingham, *The Rule of Law* (Penguin Books, 2010); Joseph Raz, “The Rule of Law and its Virtue” (1977) 93 LQR 195; Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford University Press, 1983) at pp 210–229; Cass R Sunstein, “Problems with Rules” (1995) 83 Cal L Rev 953 at 968–969 and Robert S Summers, “The Principles of the Rule of Law” (1998–1999) 74 Notre Dame L Rev 1691 at 1693–1697.

4 Brian Z Tamanaha, “The Rule of Law for Everyone?” St John’s Legal Studies Research Paper at pp 22–24, available at <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=312622](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=312622)> (accessed June 2016); Thio Li-ann, “Between Apology and Apogee, Autochthony: The ‘Rule of Law’ Beyond the Rules of Law in Singapore” [2012] Sing JLS 269 at 273.

5 Jeffrey Jowell, “The Rule of Law: A Practical and Universal Concept” in *Rule of Law Symposium 2014: The Importance of the Rule of Law in Promoting Development* (Jeffrey Jowell QC et al eds) (Academy Publishing, 2015) at pp 8–9.

11 We need not look far to appreciate both these elementary points; they are borne out by the long arc of America's rich and textured legal history.

### III. The rule of law in American legal history

12 The American Revolution drew from the well of natural law theory and the Lockean social contract in its commitment to equality and a distrust of power.<sup>6</sup> The Constitution, therefore, divided the Government into three coordinate arms. The Judiciary was the institution entrusted with upholding the rule of law. Any doubt as to the strength of the Judiciary's bite<sup>7</sup> was dispelled in *Marbury v Madison*,<sup>8</sup> which entrenched judicial review as a stalwart of constitutional rights and a safeguard against governmental excesses.

13 In the aftermath of the Civil War,<sup>9</sup> the courts were, on the orthodox view, propelled by the ideology of *laissez-faire* individualism into a period of activism.<sup>10</sup> But this was followed by a period of retreat and restraint under the New Deal court, as the US strived to overcome the woes of the Great Depression.<sup>11</sup> By the mid-20th century, the court emerged as the strong protector of civil rights and liberties with the far-reaching decisions of the Warren Court.<sup>12</sup>

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6 Wallace Mendelson, "Separation, Politics and Judicial Activism" (1977) 52 Ind LJ 313 at 313.

7 See James Bradley Thayer, "The Origin and Scope of the American Doctrine of Constitutional Law" (1893–1894) 7 Harv L Rev 129.

8 *William Marbury v James Madison, Secretary of State of the United States* 5 US 137 (Cranch) (1803).

9 *Lochner v New York* 198 US 45 (1905). See also *Allgeyer v Louisiana* 165 US 578 (1897); *Adair v United States* 208 US 161 (1908); *Coppage v Kansas* 236 US 1 (1915) and *Adkins v Children's Hospital* 261 US 525 (1923).

10 Edward S Corwin, "The Constitution As Instrument and Symbol" (1936) 30 Am Polit Sci Rev 1071 at 1078; David N Mayer, "The Jurisprudence of C G Tiedeman: A Study in the Failure of *Laissez-Faire* Constitutionalism" (1990) 55 Mo L Rev 93; Herbert L A Hart, "American Jurisprudence Through English Eyes: The Nightmare and the Noble Dream" (1976–1977) 11 Ga L Rev 969 at 971. However, there are revisionist accounts that suggest this is a misleading characterisation of the actual jurisprudence of that era: see, for example, Michael Les Benedict, "*Laissez-Faire* and Liberty: A Re-evaluation of the Meaning and Origins of *Laissez-Faire* Constitutionalism" (1985) 3 Law & Hist Rev 293 (1985) and Matthew J Lindsay, "In Search of '*Laissez-Faire* Constitutionalism'" (2010–2011) 123 *Harvard Law Review Forum* 55.

11 See Cass R Sunstein, "Constitutionalism after the New Deal" (1987) 101 Harv L Rev 421.

12 Chief among them *Brown v Board of Education* 347 US 483 (1954).

14 I tread carefully in making these broad strokes, which might well not be universally accepted.<sup>13</sup> I am conscious of the perils of addressing an audience of American judges and lawyers on their constitutional history. But I hope to make a narrower point that may go down rather easier.

15 That the conceptions of an independent Judiciary upholding the rule of law have evolved over time is unsurprising because the rule of law is inevitably enmeshed within a complex web of historical fact, philosophical outlooks and, to some extent, the “felt necessity of the time”.<sup>14</sup> Yet, behind these various conceptions, we see the same deep and unyielding commitment to the ideals of equality and liberty that characterised the founding of the republic;<sup>15</sup> the same firm recognition of the centrality of the Judiciary in ensuring legality and defending rights; and the same respect for and adherence to the decisions of the courts, no matter how unpopular they might be. Without question, this has been instrumental in America’s pathway to its exceptional position.

#### IV. The Singapore story

16 Against that backdrop, let me turn to the Singapore story. If the American republic was born out of a pursuit of high ideals, Singapore was the progeny of an austere and existentialist necessity.

17 For nearly a century and a half prior to her independence in 1963, Singapore had been a colony subject to British rule. As she moved towards independence in the early 1960s, the strong sentiment was that a federation with Malaysia, our neighbours in the north, would be the only way to secure our survival.<sup>16</sup> Malaysia was a large, resource-rich nation. By contrast, Singapore, though already a busy trading port, had little else. We had a land area of just 580km<sup>2</sup> (about 150,000 acres) and no natural resources; we even depended on Malaysia for drinking water. We had a population of 2 million people, many of whom were migrants of a diverse heritage, having only recently set foot in Singapore. I, for example, was born just a decade after my parents first came to Singapore from India.

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13 The backbone of the narrative I have sketched above is drawn largely from Kermit L Hall & Peter Karsten, *The Magic Mirror: Law in American History* (Oxford University Press, 2nd Ed, 2009), an excellent account of the subject.

14 Oliver Wendell Holmes Jr, *The Common Law* (John Wilson & Son, 1881) at p 1.

15 See Kermit L Hall & Peter Karsten, “Epilogue: More Like a River than a Rock” in *The Magic Mirror: Law in American History* (Oxford University Press, 2nd Ed, 2009) at p 382.

16 Constance M Turnbull, *A History of Modern Singapore 1819–2005* (National University of Singapore Press, 2009) at p 273; Edwin Lee, *Singapore: The Unexpected Nation* (ISEAS Publishing, 2008) at pp 203–212.

18 And so on 16 September 1963 we came out of our colonial past as a constituent state of the Federation of Malaysia (“the Federation”). The union was short-lived. There were deep disagreements between the local government in Singapore and the federal government over the establishment of a common market and the special position of the Malays.<sup>17</sup> Singapore left the Federation in 1965 after political, economic and racial skirmishes<sup>18</sup> caused our relationship with the Malaysian government to fracture and eventually break down. On 9 August 1965, Singapore became an independent nation.

19 I don’t think many gave us much chance perhaps even to see in the new year! The idea of an independent Singapore – which had been described (by her founding Prime Minister, the late Mr Lee Kuan Yew) as a “political, economic and geographical absurdity” – had materialised.<sup>19</sup> Our existence was precarious and the path forward fraught. Racial tensions were high following our communally charged exit from the Federation; we had also witnessed the worst racial riots in our history just the year before. The *Konfrontasi*, a brief period of sharp armed conflict stemming from Indonesia’s opposition to the Federation, loomed large in the consciousness of the young republic. And the communist threat persisted into our independence with traction especially among the working class and Chinese-speaking tertiary students of the day.<sup>20</sup> These were not the best of conditions for a young, poor nation with a racially and religiously diverse population.

20 The need to survive sharpened the ideals of Singapore’s founding fathers into an intensely pragmatic vision. Mr Lee Kuan Yew put it this way in a speech he delivered in those early years:<sup>21</sup>

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.

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17 Lau Teik Soon, “Malaysia–Singapore Relations: Crisis of Adjustment, 1965–68” (1969) 10(1) *Journal of Southeast Asian History* 155 at 159–160; R S Milne, “Singapore’s Exit from Malaysia; the Consequences of Ambiguity” (1966) 6(3) *Asian Survey* 175; Robert E Gamer, “Urgent Singapore, Patient Malaysia” (1965–1966) 21(1) *International Journal* 42; K S Nathan, “Malaysia–Singapore Relations: Retrospect and Prospect” (2002) 24(2) *Contemporary Southeast Asia* 385.

18 Constance M Turnbull, *A History of Modern Singapore 1819–2005* (National University of Singapore Press, 2009) at pp 289–290; Edwin Lee, *Singapore: The Unexpected Nation* (ISEAS Publishing, 2008) at pp 250–256.

19 Alex Josey, *Lee Kuan Yew: The Crucial Years* (Marshall Cavendish, 2012) at p 159.

20 Lee Ting Hui, *The Open United Front: The Communist Struggle in Singapore 1954–1966* (South Seas Society, 1996) at pp 28–29 and 281–319.

21 Lee Kuan Yew, Singapore Prime Minister’s Speech to the University of Singapore Law Society Annual Dinner at Rosee D’Or (18 January 1962).

21 One consequence of that hard-nosed pragmatism was an emphasis on a strong rule-of-law culture in order to attract foreign investment and multinational business interests. Without natural resources, investment and technology from abroad would be the engine to drive our economic growth, and its fuel a legal and business environment that protected contracts and property rights.

22 We understood from our foundational moment that an indispensable feature of that environment was a clean, efficient and independent Judiciary. Our judges were drawn from our finest private lawyers, academicians and government counsel. Their tenure and remuneration were constitutionally protected.<sup>22</sup> We ceaselessly updated our court systems and processes to cope with the increased volume and complexity of cases that came with development.<sup>23</sup> Underlying this was our zero-tolerance approach to corruption, which just last week Ms Christine Lagarde of the International Monetary Fund praised in a speech on the economic harm of corruption. She cited Singapore as an example to be emulated for its eradication of corruption and its establishment of honest and competent public institutions.<sup>24</sup>

23 Our commitment to the rule of law resting on a strong Judiciary has been pivotal in Singapore's development narrative and its emergence as a modern economic miracle. Our Law Minister has observed<sup>25</sup> that the confidence in our legal system helped us attract and sustain the high level of foreign direct investment relative to our size that we continue to receive today: about US\$740bn at last count.<sup>26</sup> From our improbable beginnings, we stand today as one of the most prosperous nations in the world. Our gross domestic product *per capita* has risen from approximately US\$400 at the time of our independence in 1965 to about

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22 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 98.

23 Singapore was ranked first out of 140 countries in terms of the “[e]fficiency of [its] legal framework in settling disputes” by the World Economic Forum (World Economic Forum, *The Global Competitiveness Report 2015–2016* (Klaus Schwab ed) at p 321. Singapore was also ranked amongst the top countries worldwide in respect of its fidelity to the rule of law by the World Bank (The World Bank, *Worldwide Governance Indicators: Country Data Report for Singapore, 1996–2014*) and the World Justice Project (World Justice Project, *Rule of Law Index 2015* at p 23, available at <<http://worldjusticeproject.org/rule-of-law-index>> (accessed June 2016)).

24 “IMF Chief Cites Lee Kuan Yew’s ‘Zero-tolerance’ Stance towards Corruption As Example for Rest of World” *TODAY* (12 May 2016), available at <<http://www.todayonline.com/world/imf-chief-cites-lee-kuan-yews-zero-tolerance-policy-towards-corruption-example-rest-world>> (accessed June 2016).

25 K Shanmugam, “The Rule of Law in Singapore” [2012] Sing JLS 357 at 358.

26 Department of Statistics Singapore, “Latest Data”, available at <<http://www.singstat.gov.sg/statistics/latest-data#15>> (accessed June 2016).

US\$55,000 today.<sup>27</sup> Home ownership rates have risen from 29% in 1970<sup>28</sup> to 90.3% today.<sup>29</sup> Life expectancy and literacy rates are also very high.<sup>30</sup>

## V. Communitarian perspectives

24 But our fidelity to the rule of law has co-existed comfortably with a prominent feature of our cultural substratum, which is an emphasis on communitarian over individualist values.<sup>31</sup> These include notions such as dialogue, tolerance, compromise and placing the community above self. These values have modulated the court's approach in ensuring that the rule of law rules.

25 Chief Justice Chan Sek Keong, who held the office before me, spoke extra-judicially of the contrast between a society where the court is in an adversarial relationship with the Executive and one in which the court plays a supporting role to good governance by articulating clear rules and principles by which the Government should abide,<sup>32</sup> and serving as the last line of defence if and when those principles are breached. On the latter view, good government can be encouraged through a variety of means, only one of which is the adversarial process of pitting the Government across the bar table before a judge.

26 Aspects of the latter approach can be seen in *SGB Starkstrom Pte Ltd v Commissioner for Labour*,<sup>33</sup> a recent decision of the Court of Appeal, our apex court. It concerned judicial review of administrative action on the ground of *substantive* legitimate expectation, which is engaged when the Government or an administrative agency acts contrary to a promise or an expectation that it has created or encouraged. This is a developing body of law with divergent approaches

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27 Department of Statistics Singapore, "Latest Data", available at <<http://www.singstat.gov.sg/statistics/latest-data#1>> (accessed June 2016).

28 Phang Sock Yong, "The Singapore Model of Housing and the Welfare State" in *Housing and the New Welfare State: Perspectives from East Asia and Europe* (Richard Grove *et al* eds) (Ashgate, 2007) at p 21.

29 Department of Statistics Singapore, "Latest Data", available at <<http://www.singstat.gov.sg/statistics/latest-data#22>> (accessed June 2016).

30 They stand at 82.8 years (Department of Statistics Singapore, "Latest Data", available at <<http://www.singstat.gov.sg/statistics/latest-data#22>> (accessed June 2016)) and 96.8% (Department of Statistics Singapore, "Latest Data", available at <<http://www.singstat.gov.sg/statistics/latest-data#22>> (accessed June 2016)) respectively.

31 See, for example, *The Shared Values White Paper* (Cmd 1 of 1991).

32 Chan Sek Keong, "Judicial Review – From Angst to Empathy: A Lecture to Singapore Management University Second Year Law Students" (2010) 22 SAclJ 469 at 480.

33 [2016] 3 SLR 598.



in the British Commonwealth: both the courts of England<sup>34</sup> and Hong Kong<sup>35</sup> recognise it as a ground for review while the courts of Australia<sup>36</sup> and Canada<sup>37</sup> do not. The controversy centres on the fact that this type of judicial review goes beyond the process and legality of executive actions. Judicial enforcement of an individual's legitimate expectation could amount to overruling on the merits the choice of the Executive to reverse its earlier policy stance which had given rise to the expectation.

27 We did not in the end have to decide whether to recognise this type of review under Singapore law because it was a complete non-starter in the circumstances of the case.

28 But I do want to mention one aspect of our judgment. We observed that there exists a multitude of gradations between, on one hand, judicially enforcing a substantive legitimate expectation and, on the other, permitting an administrative authority to ignore it altogether. Intermediate points include (a) requiring the authority to confirm that it has considered the relevant expectation; and (b) requiring the decision-maker to disclose its reasons for overriding that expectation and subjecting those reasons to the traditional grounds of judicial review.

29 The judgment is instructive for the guidance it gives to the Government and the public as to the sorts of issues that will need to be considered, and the variety of possible solutions, which can be evaluated when a proper case arises. What underlies this approach is the belief that a court which is respected by the other branches of government can effectively shape the debate and ensure the legality of government actions by setting out its concerns openly and potentially obviating a binary clash between the Judiciary and the Executive.

## VI. The sharp edge

30 Having said that, confrontation may be inevitable and then, the Judiciary must stand firm as the last line of defence. Judicial review is the sharp edge that keeps government action within the form and substance of the law. Although there is no express power of judicial review in our Constitution,<sup>38</sup> our courts, like yours, have held that judicial review flows naturally from the premise that “[i]t is emphatically the province and duty of the judicial department to say

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34 *R v North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213.

35 *Tung v Director of Immigration* [2002] HKLRD 561.

36 *Attorney-General (NSW) v Quin* (1990) 170 CLR 1.

37 *Mount Sinai Hospital Center v Quebec (Minister of Health and Social Services)* [2001] 2 SCR 281.

38 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint).

what the law is”.<sup>39</sup> Our first Chief Justice post-independence, Wee Chong Jin, wrote in *Chng Suan Tze v Minister for Home Affairs*<sup>40</sup> that:<sup>41</sup>

... the notion of a subjective or unfettered discretion is contrary to the rule of law. All power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power.

31 The Court of Appeal was recently required to apply this in *Tan Seet Eng v Attorney-General*.<sup>42</sup> Dan Tan had been detained by the executive order of the Minister for Home Affairs under legislation which exceptionally permits such detention, if the Minister is satisfied that the detainee had been associated with activities of a criminal nature, and that the detention was “in the interests of public safety, peace and good order”.

32 Mr Tan’s detention was ordered on the grounds that he had been the leader and financier of a global soccer match-fixing syndicate, labelled “the world’s most notorious” by Interpol,<sup>43</sup> and which allegedly operated in Europe and Africa from Singapore.<sup>44</sup> He moved for *habeas corpus*, claiming that his detention was illegal.

33 We found for Mr Tan and set aside the Minister’s order. We undertook a detailed review of the history and purpose of the relevant legislation and concluded that it only permitted detention where the detainee’s acts were harmful *in Singapore*.<sup>45</sup> The grounds for Mr Tan’s detention given by the Minister did not establish whether or how the match-fixing activities, which were executed abroad, had a bearing on public safety, peace and good order *within* Singapore.<sup>46</sup>

34 Mr Tan was accordingly released, but he was re-arrested and detained a week or so later. The Ministry said in a statement that while it accepted the court’s decision, it considered that there were sufficient grounds for Mr Tan’s detention, and so a fresh order was issued, this time setting out in detail the grounds relied on to establish the existence

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39 *William Marbury v James Madison, Secretary of State of the United States* 5 US 137 at 177 (Cranch) (1803). See the excerpt in Kevin Y L Tan & Thio Li-ann, *Constitutional Law in Malaysia and Singapore* (LexisNexis, 3rd Ed, 2010) at p 543.

40 [1988] 2 SLR(R) 525.

41 *Chng Suan Tze v Minister for Home Affairs* [1988] 2 SLR(R) 525 at [86].

42 [2016] 1 SLR 779.

43 Selina Lum, “Alleged Global Match-fixing Kingpin Dan Tan Freed by Court of Appeal” *The Straits Times* (25 November 2015).

44 *Tan Seet Eng v Attorney-General* [2016] 1 SLR 779 at [8] and [131].

45 *Tan Seet Eng v Attorney-General* [2016] 1 SLR 779 at [117]–[120].

46 *Tan Seet Eng v Attorney-General* [2016] 1 SLR 779 at [146].

of the relevant threat *in Singapore*.<sup>47</sup> A few weeks later, the Ministry released three *other* detainees. It said on that occasion that in the light of the Court of Appeal's decision, the Minister had reviewed the detention orders of these persons and concluded that the orders ought to be revoked.<sup>48</sup>

35 The point I wish to draw from this example is that the commitment of the Executive to comply with and abide by the law as pronounced by the Judiciary is critical to the rule of law and good governance. The release of the three other detainees apparently did not rest on any application they had made but on the Minister's review of the position in the light of our decision. In the final analysis, the robustness of a nation's rule of law framework depends greatly on how the other branches view the Judiciary and whether it in turn is able and willing to act honestly, competently and independently.

## VII. Looking ahead

36 Allow me to tie these threads together with some thoughts on looking ahead. If by my brief remarks, I have persuaded you that we share a commitment to the rule of law, even if we might differ somewhat in its practical application, then I think we need to ask ourselves how this common ground amidst our diversity might inform our vision for the future. In the aftermath of World War II, there was a sense that the peoples of the world had to unite in order to assure peace, justice, development and the alleviation of poverty. But as we survey the world around us, we seem to be drawing further away from this. I believe that the biggest contribution we can make towards those ideals is to enhance the appreciation for the transformational power of a genuine commitment to the rule of law. Indeed, there has not been a better time for this than the present age of globalisation when we are connected and susceptible to external influences to an unprecedented extent, and when we also have the opportunity to reach others by the power of our ideas and the force of our dreams as never before.

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47 Ministry of Home Affairs, "MHA Statement on Detention of Dan Tan Seet Eng" (5 December 2015), available at <<https://www.mha.gov.sg/Newsroom/press-releases/Pages/MHA-Statement-on-Detention-of-Dan-Tan-Seet-Eng.aspx>> (accessed June 2016).

48 Ministry of Home Affairs, "MHA Statement on Three Members of Match-fixing Syndicate Released from Detention and Placed on Police Supervision Orders" (18 January 2016), available at <<https://www.mha.gov.sg/Newsroom/press-releases/Pages/MHA-Statement-on-Three-Members-of-Match-fixing-Syndicate-Released-from-Detention-and-Placed-on-Police-Supervision-Orders.aspx>> (accessed June 2016).

37 But we must be sensitive to the fact that just as the understanding and actualisation of rule-of-law values in our societies have been shaped by the strong pull of our own culture and history, so too in other nations will landmarks in their progression affect how they seize upon the rule of law and employ it in the ordering of their societies.

38 South Africa offers a poignant example. The transition from the horrors of apartheid occurred not through the prosecution of the transgressors for their violations of human rights. Instead, growing out of that nation's unique situation, a Truth and Reconciliation Commission ("the Commission") was constituted on the foundations of truth-seeking, forgiveness and reconciliation. Victims had to relinquish their interest in retribution and their claims under the civil law because of amnesties granted to the perpetrators who came forth in proceedings before the Commission.

39 The constitutionality of this regime was challenged in *Azanian Peoples Organization (AZAPO) v President of the Republic of South Africa*,<sup>49</sup> where the petitioners argued that it violated their right to have disputes settled in a fair trial. A unanimous Constitutional Court rejected the challenge. A striking passage from Deputy President Mahomed's opinion (in which the rest of the court, save one, joined), referenced the unique struggle South Africa was confronted with, and he observed that how a broken nation achieves reconciliation and reconstruction so that the people can live and work together is:<sup>50</sup>

*... a difficult exercise which ... such a state has to perform by having regard to its own peculiar history, its complexities, even its contradictions and its institutional traditions.* [emphasis added]

40 The descent of any society into lawlessness and dysfunction follows a universal pathway sign-posted by the common evils of greed, fear, selfishness and the pursuit of power. But the ascent from chaos into a well-ordered and functioning society through the instrumentality of the law takes shape in myriad forms. If we are to encourage the embrace of the rule of law amidst these many contexts, it will not be by cloning and exporting our own ideas of what we regard to be the acceptable ordering of our societies. Instead, it will be by identifying the particular impetus for it in any given society and then zeroing in on the real core of

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49 CCT 17/96.

50 *Azanian Peoples Organization (AZAPO) v President of the Republic of South Africa* CCT 17/96 at [31].

the rule of law, unadulterated by the baggage of our own interpretations and ideologies.<sup>51</sup>

41 I suggest three practical areas where we might do this, and where we in Singapore have started our forays: first, the pressing need to combat corruption. Corruption violates the constitutive principles of any legal system and is inimical to investment and economic development.<sup>52</sup> We, who have the good fortune of living and working within legal systems where the thought of judicial corruption is inconceivable, must do all we can to advance the fight against corruption in nations that continue to labour under its yoke. The Judicial Integrity Initiative, which was launched last year by the International Bar Association (“IBA”) and spearheaded by its president, David Rivkin, is a wonderful example of such an effort. It was born of the recognition that we as lawyers, judges and the academy are specially placed to combat corruption from the ground up. Singapore is an active participant in the initiative; we hosted its Asia launch and a number of us, including me personally, are contributing our expertise and perspectives to the IBA’s work.

42 The second is to aid development of independent and clean judiciaries that apply the law honestly and transparently. Judges must be plugged in to standards of independence and neutrality present in well-ordered courts and judiciaries. They must also possess the right technical skills. To this end, it is important to provide training and aid to the judiciaries of emerging countries to facilitate the transmission of these ideas and skills. The Singapore Judicial College (“SJC”) was set up in November 2014 with an international wing to focus on just that. Last year, the SJC conducted judicial-training programmes that covered case management, judicial ethics, bench skills, and courts and technology for more than 250 international participants from over 40 countries. Not only did we bring judges and judicial administrators into Singapore; our staff also went to the Solomon Islands, Cambodia, Myanmar, Laos and Vietnam to conduct training and workshops on the art and business of judging.

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51 See Randall Peerenboom, “Varieties of Rule of Law: An Introduction and Provisional Conclusion” in *Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the US* (Randall Peerenboom ed) (Routledge, 2004) at pp 34–38 and Brian Z Tamanaha, *On The Rule of Law: History, Politics, Theory* (Cambridge University Press, 2004) at pp 137–141.

52 See Pak Hung Mo, “Corruption and Economic Growth” (2001) 29 J Comp Econ 66 at 76; Organisation for Economic Co-operation and Development, G20 Anti-Corruption Working Group, “Issues Paper on Corruption and Economic Growth” (2013); Christine Lagarde, “Addressing Corruption – Openly” in *Against Corruption: A Collection of Essays* (UK Prime Minister’s Office, Policy paper, 2016).

43 The third area is to encourage a rule-of-law environment where rights are duly enforced and upheld. This will promote investment, which in turn will spur development and alleviate poverty if the system as a whole is honest and incorrupt. An essential part of that environment is found in two connected faces of the certainty of laws; certainty in their enforcement and in their articulation.

44 Certainty in enforcement gives confidence to investors that their commercial rights will be fairly and effectively adjudicated upon and enforced. The preferred means for this, thus far, has been international arbitration, largely because national court systems were thought to be ill-equipped for the cross-border intricacies that arise out of international investment and trade. In January last year, we launched the Singapore International Commercial Court (“SICC”), which is designed to provide international businesses operating in Asia with high quality adjudication for transnational disputes. The SICC, which is an integral part of our domestic judiciary, is uniquely staffed by eminent commercial jurists from Singapore, the UK, Australia, France, Japan, Hong Kong, Austria and the US, cutting across both East and West and across the common and civil law. This and other features place the SICC well to address transnational disputes regardless of the governing law, the nationality of the parties, or the locus of the dispute.

45 Certainty in the articulation of laws will also contribute to the advancement of the rule of law and enable investment. Fragmented and inaccessible laws increase transaction costs, carry unnecessary risk and dissuade investors. And so earlier this year, we established the Asian Business Law Institute with the aim of carrying out focused yet practice-oriented research to promote the convergence and cross-pollination of business laws across the region. Its genesis was inspired by the tremendous work of the ALI. Prof Ricky Revesz and his colleagues warmly welcomed my staff on a study visit, for which I am deeply grateful. I hope, in the years to come, we can strengthen the bond between our institutes.

### VIII. Conclusion

46 Tom Bingham observed that the rule of law is “one of the greatest unifying factors, perhaps the greatest” of mankind.<sup>53</sup> This speech has been for me an actualisation of that: despite the vast differences in our legal systems and the variations in the length, colour and character of our history and culture, it is that same commitment to the rule of law that brings us here today; and this should be a heartening

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53 Tom Bingham, *The Rule of Law* (Penguin Books, 2010) at p 170.

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thought for all of us who have made the rule of law nothing less than our life's work.

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