

## TEACHING CONSTITUTIONAL AND ADMINISTRATIVE LAW AT NUS: MISSION, MATERIALS AND METHODS 1957-2017

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This essay engages pedagogy and teaching philosophy in reviewing how constitutional and administrative law (“CAAL”) has been taught at NUS over the past 60 years, engaging the themes of mission, method and materials. Gone is the time when foreign academics disinterested in local law thoughtlessly issued readings on Bickel and irrelevant foreign cases; today, most CAAL teachers are active researchers who appreciate the autochthonous, experimental nature of the constitutional order and the changing political context, while staying abreast of comparative and international developments. While the dominant party state remains, the governance style has shifted from authoritarianism to a more consultative, participatory approach, befitting of a post-deferential era. Government-driven constitutional amendments continue, constitutional litigation is proceeding apace and public interest in public law is in ascendancy.

Teaching methods have shifted away from a black letter focus to seeking to impart both legal doctrine and theory as an aid to constructing propositional arguments; the mission is to help students distinguish between strong constitutional argument and bare political claims, to ensure they engage with and evaluate a representative range of diverse viewpoints, arguments and counter-arguments. There is no dearth of scholarly literature, as evidenced by the various casebooks, books and treatises, and numerous law review articles, on the topic. More broadly, NUS academics have sought to promote general constitutional literacy through sharing their expertise by writing op-eds, running blogs, advising parties to litigation and making submissions before constitutional commissions in the hopes of contributing to informed, civil debate.

### I. PROLOGUE

*Tempora mutantur, nos et mutamur in illis*

*[Times change and we change with them]*

We have taught Public Law<sup>1</sup> for a long time; more than 50 years between us.<sup>2</sup> At least one of us has been learning and teaching the subject for over half the life of

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<sup>1</sup> We have used the term ‘Public Law’ as a convenient shorthand for the subject that has, since 2015, been called ‘Constitutional and Administrative Law’.

<sup>2</sup> Kevin began teaching Constitutional Law and Constitutional Theory in 1986 and, save for an interregnum between 2000 and 2002, has continued to teach the subject. He was subject coordinator between 1992 and 2000. Li-ann has taught the subject since 1991 and has, since 2004, been the course convenor.

the National University of Singapore (“NUS”) Faculty of Law’s 60 years.<sup>3</sup> As the Faculty celebrates its diamond jubilee, we share our reflections on the history of the course, and how it has been taught over the years. We have organised our thoughts around three main themes—Mission, Materials, and Methods.

Part II deals with Mission and Materials. The theme of Mission engages the ‘Why?’ questions. Why is the course important? Why is it taught as a compulsory subject and in the first phase of the legal curriculum? Why have we structured the course in a particular way? In short, this section covers what we consider to be the most important objectives of the course, as shaped by our personal visions of the kind of legal education which students need, and by the changing political, social and economic conditions in Singapore. The theme of Materials discusses *what* materials we cover and why. Part III on Methods deals with *how* we teach the course and its various components, which implicates pedagogy and philosophy.

## II. MISSION & MATERIALS

### A. *Establishment of the Law Faculty*

Calls for the establishment of a law faculty preceded the opening of the University of Malaya in October 1949. For over a century, since the introduction of the Second Charter of Justice in 1826, lawyers wishing to practise in Singapore had no choice but to first be called to the Bar in England, Wales or Scotland before gaining admission to practice here. Candidates seeking admission for practice did not need a university law degree; they only had to be first qualified as a barrister in one of the four Inns of Court. That said, many lawyers were doubly qualified. This mode of qualification was expensive and tedious, ensuring that only those wealthy or clever enough (to win a government scholarship like the Queen’s Scholarship) were able to qualify for practice. It was thus not surprising that calls to establish a law department in Singapore were made even before the official inauguration of the University of Malaya in October 1949.

After considerable dithering on the part of the colonial authorities, the first step towards the establishment of a law department was in the appointment of Sir Roland St John Braddell (1880-1966) and Professor Roy George Douglas Allen (1906-1983) to “submit a scheme of courses and organisation for consideration by the Senate and Council.”<sup>4</sup> The Braddell-Allen Report of March 1955 recommended that separate faculties of Social Studies and Law be established but that the teaching of these subjects be developed concurrently. With respect to the course in Law, it was proposed that legal courses first be developed “for students of social studies and then for Degrees in Law.”<sup>5</sup> Braddell and Allen recommended that the University establish a Faculty of Law to provide:

[L]ocal training of high standard for those intending to enter legal practice, either privately or in public office; another is to provide legal training for the many

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<sup>3</sup> Kevin studied Constitutional Theory, Constitutional Law and Administrative Law as a student at the NUS Law Faculty (1982-1986).

<sup>4</sup> Roland St John Braddell & RDG Allen, *Scheme of Organisation and Courses in Social Studies and Law* (Singapore: University of Malaya, 1955) at 1 [Braddell-Allen Report].

<sup>5</sup> *Ibid* at 2.

kinds of public officials and for those employed in a variety of other occupations in which legal knowledge is important.<sup>6</sup>

### B. *The Place of Constitutional Law in Local Legal Education*

Braddell proposed a four-year degree programme with three main subjects being covered in the first year: General Elements of Law; Elements of Constitutional Law; and Elements of Contract. The topics covered in Elements of Constitutional Law were divided into five parts: (a) Nature of Constitutional Law; (b) English and Malay Sovereignty; (c) Judiciary; (d) Subjects and Citizens; and (e) The British Commonwealth. At this time, Singapore was still very much a colony as was the Federation of Malaya, and legally speaking, the two entities were treated very much as one. In preparing their report, Braddell and Allen consulted various ‘stakeholders’, including the Bar Committee of Singapore who proposed that instead of teaching Elements of Constitutional Law, a proper course of studies should include English Constitutional Law, English Constitutional History, English Legal History and Jurisprudence, with students electing to read two of these four subjects as optionals.<sup>7</sup> Braddell and Allen demurred, stating: “We disagree with the Committee as to the inclusion of Jurisprudence and the exclusion of Constitutional Law.”<sup>8</sup>

### C. *Sheridan’s Vision*

Braddell proposed that a Professor of Law be appointed at the University of Malaya and given a year to work out a detailed syllabus and course of study and to establish a Department of Law. Lionel Astor Sheridan (born 1927) was appointed the first Professor of Law at the University of Malaya in 1956 at the age of 29. Sheridan, who had studied constitutional law under the great Sir Glanville Williams at Cambridge (to which University College London had temporarily relocated during the War), reorganised Braddell’s scheme and proposed six subjects in what he called the ‘intermediate course’, including ‘Constitutional Law and History’.

For Sheridan, the study of law was much more than a study of rules and principles, but also the social context in which these rules and principles operated. He eschewed the ‘magisterial lecture’, favouring instead the case class, Socratic method of teaching made famous by Charles Langdell at the Harvard Law School.<sup>9</sup> Socratic teaching required materials which students could digest before his lectures. One of the first things he did was to appoint three legal researchers to help collate material. One of them was Mavis Scharenguivel,<sup>10</sup> who was tasked with gathering local material on constitutional law which he could use as teaching material. He did not believe that the local course should simply mirror that taught in the English law

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<sup>6</sup> *Ibid* at 21.

<sup>7</sup> *Ibid* at 33.

<sup>8</sup> *Ibid* at 23.

<sup>9</sup> LA Sheridan, *Legal Education* (Singapore: Malayan Law Journal, 1961) at 15-17.

<sup>10</sup> Better known as Mavis Puthucheary, after her marriage to former politician and lawyer James Puthucheary, she had then freshly graduated with a Diploma in Public Administration. Later, she would become Associate Professor in the Faculty of Economics and Administration at the University of Malaya in Kuala Lumpur.

schools and to that end, worked tirelessly to create a cache of local legal literature.<sup>11</sup> His major accomplishment was *Malaya and Singapore, The Borneo Territories: The Development of their Laws and Constitutions*,<sup>12</sup> published in 1961 as Volume 9 of the acclaimed series *The British Commonwealth: The Development of Its Laws and Constitutions* under the general editorship of Professor George W Keeton (Sheridan's mentor). This hefty volume is divided into three parts: Constitutional Development; Public Law; and Private Law. Sheridan acted as editor and lead author while five other academics contributed.<sup>13</sup> Sheridan wrote the chapters on the constitutional development of the *Constitution of the Federation of Malaya*<sup>14</sup> and the *Singapore Constitution*,<sup>15</sup> as well as the chapter on the "Judicial Systems and Legal Professions". This is not a book on the constitution of any of the territories mentioned in the title, but rather a historical account of how the law had developed to 1961.<sup>16</sup>

#### D. Harry Groves: Asia Foundation Professor of Constitutional Law

Sheridan taught the subject exclusively from 1957 till July 1960 when he was joined by Professor Harry E Groves (1921-2013)<sup>17</sup> who came to Singapore as the first Asia Foundation Professor of Constitutional Law. From the outset, Sheridan had determined that it would be preferable to have an American professor (or at least an American-trained professor) teach constitutional law to Malayan undergraduates especially since the *Malayan Constitution* was a written one and was modelled on the Indian Constitution, which in turn had been modelled on the American Constitution. Groves had taken two years' leave as Dean of the Southern Texas University Law School. A graduate of the University of Colorado, Groves held a law degree from

<sup>11</sup> See his LA Sheridan, "Federation of Malaya's New Constitution" [1957] MLJ lxiii; and LA Sheridan, "Singapore's New Constitution" [1959] MLJ xxv. Sheridan wrote a four-part analysis and commentary simply entitled "The Federation of Malaya Constitution" for the University of Malaya Law Review, published in two different volumes—LA Sheridan, "Part One" (1959) 1 U Mal L Rev 137; LA Sheridan, "Parts Two and Three" (1959) 1 U Mal L Rev 177; LA Sheridan, "Parts Five to Thirteen" (1960) 2 U Mal L Rev 246; and LA Sheridan, "Parts Four and Fourteen" (1960) 2 U Mal L Rev 29. These articles were subsequently compiled and published as LA Sheridan, *Federation of Malaya Constitution: Text, Annotations and Commentary* (Singapore: University of Malaya Law Review, 1961). Sheridan was joined by Harry E Groves as co-author in the second to fourth editions of this book published in 1967, 1979 and 1987 respectively. In 1962, Sheridan also wrote a massive article on the "Constitutional Protection of Property" for the 1962 volume of the Malayan Law Journal which was eventually published as LA Sheridan, *Constitutional Protection: Expropriation and Restrictions on Property Rights* (Singapore & New York: Malayan Law Journal & Oceana Publications, 1963).

<sup>12</sup> LA Sheridan, *Malaya and Singapore, The Borneo Territories: The Development of their Laws and Constitutions*, 1st ed by George W Keeton (London: Stevens & Sons, 1961).

<sup>13</sup> They were: Harry G Calvert, Chua Boon Lan, Punch Coomaraswamy, Reginald Hugh Hickling, and Theodore B Lee. With the exception of Hickling, the rest were teaching staff at Sheridan's new law school at the University of Malaya.

<sup>14</sup> (1957) [*Malayan Constitution*].

<sup>15</sup> *Singapore (Constitution) Order in Council 1958* (SI 1958 No 1956) [*Singapore Constitution*].

<sup>16</sup> Professor SA de Smith thought Sheridan's volume "perhaps the best of all" the volumes in the series as "none has journeyed across unmapped lands so surely as the present volume": SA de Smith, "Review of Malaya and Singapore, The Borneo Territories: The Development of Their Laws and Constitutions" (1962) 38:2 *International Affairs* 283.

<sup>17</sup> For a brief account of Groves and his career, see John Charles Boger, "Harry Edward Groves, Late Emeritus Henry Brandis Professor of Law: In Memoriam" (2014) 92 *NCL Rev* 1041.

the University of Chicago and an LLM from Harvard Law School. At the time of his appointment, he was the only American professor to have published anything on the *Malayan Constitution*.<sup>18</sup> Under the terms of his employment, Groves was expected to “act as advisor to the University in law education, having major responsibility in the formulation of the University’s law curriculum” as well as to “assist in the training of an Asian successor” to himself.<sup>19</sup>

In preparation for his assignment, Groves spent five weeks at the Harvard Law Library to gather materials for his course. Explaining his preparatory strategy, Groves wrote:

This phase of the project, *ie* the preparation of teaching materials, is, of course, of utmost importance to the entire program. If I were simply preparing to teach a course in constitutional law in this country, I could select a textbook from at least a half dozen good ones available. Or if I were going abroad for a typical assignment, I would prepare a series of lectures. However, this assignment is of a more sustained nature, with the course designed in fact to become a permanent part of the curriculum of the University. There is simply no available collection of materials that could be put in the hands of the students. Regardless of the adequacy of the library there, this would not be a sufficient substitute of textual materials for the students. Casebooks for American courses in constitutional law would not be appropriate, since much of their material would be irrelevant and since, in any case, the purpose would not be to give them a course in American constitutional law but rather by the careful selection of relevant United States materials to show them a method for approaching their own constitution. My plan is to prepare a loose leaf type text book at Harvard. These materials could then be reproduced by mimeographing and/or photocopying in the quantities needed in Malaya.<sup>20</sup>

When Groves joined the Faculty of Law, he was its most senior and experienced academic. He was aghast to find so many junior lecturers among the Faculty’s staff and even more alarmed to find that many of them ignored local law and developments simply because materials were not readily available. Unfortunately, there was little he could do except to ensure that local materials were duly incorporated in his own teaching materials. Groves published a couple of articles offering a comparative perspective<sup>21</sup> on aspects of the *Constitution of Malaysia*<sup>22</sup> and in 1964, published *The Constitution of Malaysia*,<sup>23</sup> the first attempt at a treatise on the subject.

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<sup>18</sup> Harry E Groves, “Fundamental Liberties in the Constitution of the Federation of Malaya: A Comparative Study” (1959) 5 How LJ 190.

<sup>19</sup> Letter from Ryan to Harry E Groves (20 Apr 1960) in Harry E Groves Papers #04975, Southern History Collection, The Wilson Library, University of North Carolina at Chapel Hill.

<sup>20</sup> See Harry E Groves, “How Did You Get to Singapore?” (1999) [unpublished, archived in Harry E Groves Papers #04975, Southern History Collection, The Wilson Library, University of North Carolina at Chapel Hill] at 5, 6.

<sup>21</sup> See “Due Process of Law: A Comparative Study” (1961) 4:1 Mal L Rev 1; and “Scandalizing the Court: A Comparative Study” (1963) 5:1 Mal L Rev 58.

<sup>22</sup> (1963) [*Malaysian Constitution*].

<sup>23</sup> Harry E Groves, *The Constitution of Malaysia* (Singapore: Malaysia Publications, 1964). This was a much expanded version of his article “The Constitution of Malaysia” (1963) 5:2 Mal L Rev 245.

While Singapore was not singled out for special treatment, Groves covered areas where the *Malaysian Constitution* provided for Singapore's exceptionalism—such as requirements as to the qualification for Yang di-Pertuan Negara (Head of State);<sup>24</sup> Singapore's revenue provisions;<sup>25</sup> amendments;<sup>26</sup> and citizenship.<sup>27</sup>

In his preface, Groves says that the book “is directed towards two categories of readers: Malaysians and those otherwise knowledgeable about the country and those persons who may know but little of this new nation.” The book arranged constitutional provisions “around the concepts and institutions with which the document is concerned” so that the reader will know how the *Malaysian Constitution* had been interpreted by courts as well as by the Legislature.<sup>28</sup>

#### E. Thio Su Mien and S Jayakumar

As to the other of Groves' responsibilities, Sheridan had determined that Huang Su-Mien<sup>29</sup>—one of the top graduates of the inaugural University of Malaya's Class of 1961—whom he recruited as Assistant Lecturer in 1962 should be Groves' understudy. Sheridan's plan was that she would do an LLM under Groves before proceeding to the United States for a doctorate, and then return to take over Groves' classes. Huang completed her LLM in 1963<sup>30</sup> under Groves but did not proceed to Harvard to do her SJD as planned. Instead she headed to the London School of Economics to write her doctoral dissertation under Professor Stanley de Smith.<sup>31</sup>

With Thio away on study leave, Shanmugan Jayakumar, top student in the Law Faculty's Class of 1963, was hired to teach constitutional law. Jayakumar held the fort till Thio's return in 1965, leaving for his LLM studies at the Yale Law School in 1966. After her return, Thio returned to teaching, was elected Dean in July 1968 and resigned at the end of 1970 after which she published her classic *Locus Standi and Judicial Review*.<sup>32</sup> A popular lecturer, her tenure was too short for her to make a significant impact on the teaching of the subject although she was much involved in the Select Committee Hearings on the Presidential Council. In 1966, following the second curriculum review of the Law Faculty, Constitutional Law and History was renamed 'Public Law' and taught in the second, rather than the first year. It has remained a second-year subject since then. Advanced courses in public law—Advanced Constitutional Law and Administrative Law had, since 1957, been offered as optional subjects in the third and final years.

<sup>24</sup> *Ibid* at 53.

<sup>25</sup> *Ibid* at 146, 147.

<sup>26</sup> *Ibid* at 155.

<sup>27</sup> *Ibid* at 167-173, 177-179.

<sup>28</sup> *Ibid* at Preface.

<sup>29</sup> Better known as Thio Su-Mien, she was later to become the first local Dean of the Law Faculty. She is also the mother of one of the authors of this article.

<sup>30</sup> SM Huang, *Equality Before the Law: Article 8 Constitution of the Federation of Malaya* (LLM Thesis, University of Singapore Faculty of Law, 1963) [unpublished].

<sup>31</sup> The change in plan had been occasioned by her marriage—she was by now Mrs Thio Su-Mien—and her husband had obtained a posting to London.

<sup>32</sup> SM Thio, *Locus Standi and Judicial Review* (Singapore: Singapore University Press, 1971).

It was Jayakumar who, upon his return from Yale at the end of 1967, was to make the most significant impact in the next five years. Gathering a new set of materials to replace Sheridan's and Groves' outdated teaching materials, Jayakumar produced the first local casebook on Constitutional Law—*Constitutional Law Cases from Malaysia and Singapore*.<sup>33</sup> Jayakumar was to continue teaching the subject for another decade, till he left academia for politics in 1980, and save for the time when he was seconded to the Ministry of Foreign Affairs to be Singapore's Permanent Representative to the United Nations (1971-1974), he was the leading constitutional scholar in Singapore. After his return from the United Nations, Jayakumar resumed teaching and published a substantially enlarged and improved version of the casebook in 1976.<sup>34</sup> Jayakumar's casebook proved extremely useful and popular with students and even after he left the Law Faculty for government in 1980, Jayakumar continued to be inundated with requests from students to revise his casebook. With the first two editions of Jayakumar's casebook in circulation, the die had been cast. The casebook became, and was to remain, the primary means by which students of Singapore constitutional law would master their subject.

#### F. Kevin Tan and Thio Li-ann

With Jayakumar's departure from the Faculty in 1980, the field of Constitutional Law lost its curriculum tsar, the one person with sufficient experience and local sensibilities to lead and direct the course. This is not to deny the presence of many outstanding teachers of the subject during this period. Among the leading teachers and scholars were Andrew J Harding, Valentine Winslow, LR Penna and Hugh Rawlings. The massive increase in student numbers in the 1980s also meant the recruitment into the Faculty of many young and inexperienced faculty from abroad who were unfamiliar with the local legal literature and often taught Singapore Constitutional Law as an appendage to American or British Constitutional Law. Kevin distinctly remembers how one American tutor began the course with an exploration of *Marbury v Madison*<sup>35</sup> and Alexander Bickel's *The Least Dangerous Branch*.<sup>36</sup>

When he was recruited into the Faculty in 1986, Kevin was determined to change all this. Inspired by the work of Sheridan, Groves and Jayakumar as a student in Singapore, and subsequently by the work of Bruce Ackerman and Michael Reisman during his LLM studies at Yale, Kevin wanted to take the teaching of constitutional law to the next level, with a casebook to match that vision. Returning to Singapore in 1988, he began accumulating materials for a new casebook that would go beyond case law and legislation by helping explain the context in which constitutional ideas and institutions develop. Enlisting the help of two junior colleagues—Yeo Tiong Min

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<sup>33</sup> S Jayakumar, *Constitutional Law Cases from Malaysia and Singapore* (Singapore: Malayan Law Journal, 1971).

<sup>34</sup> S Jayakumar, *Constitutional Law Cases from Malaysia and Singapore*, 2d ed (Singapore: Malayan Law Journal, 1976).

<sup>35</sup> 5 US 137 (1803).

<sup>36</sup> Alexander M Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (New York: The Bobbs-Merrill Company, 1962).

and Lee Kiat Seng—he produced *Constitutional Law in Malaysia and Singapore* in 1991.<sup>37</sup> The *Preface* of this volume explains both the vision and the method:

In putting this book together, we have tried as far as possible to view the study of constitutional law as one which transcends the traditional (and one might add, artificial) boundaries of history, economics, sociology, politics and law. Constitutional law touches all of these subjects; but it is also larger than all of them. It concerns basic issues of self, state, and society for it deals with rights, obligations and above all, justice.<sup>38</sup>

Beyond the use of judicial decisions, the authors included extracts from books, articles, and reports to help the student understand the complexities of the subject. The casebook proved highly successful and quickly established itself as the standard work on the subject. It also established Kevin’s vision of teaching Constitutional Law holistically and contextually. In the same year the book was published, Thio Li-ann joined the Faculty and volunteered to teach Constitutional and Administrative Law, an unusual choice at the time. In 1997, she would join Kevin as co-author of the second edition of the casebook and in partnership, has worked with him to develop the course till today. *Constitutional Law in Malaysia and Singapore*—better known to students simply as ‘Tan & Thio’—went into its third edition in 2010<sup>39</sup> and is currently being revised. As a sign of how much constitutional developments in Malaysia and Singapore have diverged over the years, the next edition will focus purely on constitutional and administrative law in Singapore. Kevin will edit a different volume with Jaclyn Neo to cover constitutional law in Malaysia. The basic structure and coverage will remain unchanged although the material will be updated to take into account institutional and judicial developments.

### G. *The Mission Today*

Some things don’t change. A law school’s primary responsibility—at least in Singapore—remains that of producing competent, deployable law graduates. In the process, we hope that they also acquire the spirit of enquiry and the skill of critical thinking. In teaching constitutional law, big foundational questions are unavoidable: who is King? How shall we organise human society? What vision of human flourishing is desirable? Are our rulers righteous and trustworthy philosopher kings or Confucian *junzi*, or knaves to be distrusted?<sup>40</sup>

The public lawyer’s mission is to promote constitutionalist thinking, not anti-constitutionalism. This is done by drawing from a toolbox of universally-accepted principles such as the rule of law, separation of powers, democracy, fundamental

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<sup>37</sup> Kevin YL Tan, Yeo Tiong Min & Lee Kiat Seng, *Constitutional Law in Malaysia and Singapore* (Singapore: Malayan Law Journal, 1991).

<sup>38</sup> *Ibid* at v.

<sup>39</sup> Kevin YL Tan & Thio Li-ann, *Constitutional Law in Malaysia and Singapore*, 3d ed (Singapore: LexisNexis, 2010).

<sup>40</sup> Contrast the vision of the governor in the Singapore, Parliament, “White Paper on Shared Values”, Cmd 1 (1991) at para 41, with the Madisonian view that men are not angels and so checks and balances need to be instituted to prevent abuses of power in James Madison, “The Federalist No 51” in Jacob E Cooke, ed, *The Federalist*, 1st ed (Middletown: Wesleyan University Press, 1961).



human rights and considering how they may be qualified by other important public values, such as legal pluralism.<sup>41</sup> After all, the study of constitutional law is not a study of utopia nor an apology for government. It is a mix of idealism and realism, of principle and pragmatism,<sup>42</sup> of political theory actualised. As such, we must examine the normative, conceptual and empirical dimensions of constitutionalism.<sup>43</sup> In examining ideas of ‘secularism’ for example, we may ask: (a) Is secularism a good thing? (normative); (b) What does secularism entail in terms of religion and public life—strict separation, accommodation, amelioration, cooperation? (concept vs conception); or (c) What variant of secularism operates in Singapore: anti-theocratic? Anti-religious? (empirical). In considering the idea of democracy, we argue that it is more instructive not to focus on any particular form of government (*eg.* parliamentary or presidential systems) but to consider the values embodied in the concept, some of which could be contradictory.<sup>44</sup> Rather than simplistic binaries (democratic/non-democratic), it is more accurate and illuminating to think in terms of spectrums and degrees of democracy so we might better clarify what a non-democratic value might be.

Our teaching mission might be summed up in three key objectives. First, to impart legal orthodoxy, and the tools to advance constructive heresies. This requires students to move from rhetoric to reason. Emotive cries for ‘justice’ or ‘fairness’ mean little since any substantive theories of justice is necessarily contested. How then do we construct sound constitutional argument within the parameters of the law? What standards matter and count? This part of our mission is largely philosophical. If we are to understand the world in which constitutionalism manifests, how do we ensure that we avoid one-sided biases, remain willing to listen to criticism and ponder other views? We believe that this can only be done by promoting ideas and rejecting ideology. Ideology—of any form—imprisons the mind while the proliferation of ideas liberates it.<sup>45</sup> When free thought and diversity die, so does intellectual and academic rigour.

A second aspect of our mission is related to the first. We would like to train our students not only to sift reasoned argument from rhetorical populist arguments bearing a superficial if misleading attractiveness,<sup>46</sup> but also to promote general constitutional

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<sup>41</sup> For *eg.*, the *Administration of Muslim Law Act* (Cap 3, 2009 Rev Ed Sing).

<sup>42</sup> This is evident in Lee Kuan Yew’s quote which shows a commitment to core values while an openness in terms of implementation mode: “I am not following any prescription given me by any theoretician on democracy. I work from first principles, what will get me there—social peace and stability within the country, no fight between the races, between religions, fair shares for all, everybody is a homeowner. . .”: “The Pragmatic Singaporean”, *The Straits Times* (23 September 2009).

<sup>43</sup> Keith Whittington, “Constitutionalism” in Keith E Whittington, R Daniel Kelemen & Gregory A Caldeira, eds, *The Oxford Handbook of Law and Politics* (Oxford: Oxford University Press, 2008) at 281.

<sup>44</sup> For *eg.*, the Nominated Member of Parliament scheme may be criticised as undermining democracy by including unelected parliamentarians in the legislature, and as promoting the democratic value of participation and representation.

<sup>45</sup> For more on this distinction, see Manisha Kumar, “Difference between Philosophy and Ideology” (28 July 2011) DifferenceBetween (website), online: DifferenceBetween <<http://www.differencebetween.net/miscellaneous/difference-between-philosophy-and-ideology>>.

<sup>46</sup> See *Chee Siok Chin v AG* [2006] 3 SLR (R) 735 at para 116 (HC), where Phang JC stated that “labels without substance constitute not only empty rhetoric but are also exceedingly dangerous things indeed—and all the more so when they have a superficial attractiveness, and nothing more.” Open-textured terms like ‘personal liberty’, ‘secularism’ and ‘democracy’ can all too easily become triumphant but ultimately

literacy<sup>47</sup> as the Singapore of the 21st Century and Singaporeans become repoliticised and constitutional discourse, popularised. To that end, we wrote a short book targeted at the layman to commemorate Singapore's Golden Jubilee, and as a modest contribution to promoting knowledge about our *Constitution*<sup>48</sup> to our fellow citizens.<sup>49</sup>

Third, we want Singapore public law to be studied on its own terms. Text and context must be taken seriously. We need to develop our own approach to understanding our own constitutional realities and not rely blindly on methodologies developed or fashioned by the preoccupations of constitutional lawyers elsewhere. For example an American court-centric approach is inappropriate here as Singapore judges have exhibited a strong distaste for juristocracy (judges making laws) as it contravenes the separation of powers.<sup>50</sup> Furthermore, constitutional change is not difficult because we have an effective (too efficient?) Parliament with "the necessary flexibility to ensure that the Singapore Constitution reflects the prevailing social mores as well as aspirations of Singapore society."<sup>51</sup> Ours is a more holistic approach to the study of constitutional principles and history, institutions, processes, fundamental liberties and public goods. Such an approach is necessary given Singapore's experimental constitutional engineering over the past 50 years, which has produced institutions such as the elected presidency, non-constituency and nominated parliamentarians. In this respect, we also examine a range of constitutional models beyond liberal rights-based constitutions, such as communitarian and theocratic forms of constitutionalism,<sup>52</sup> as well as relational approaches towards constitutionalism.<sup>53</sup> Relationalism focuses on the quality of relationships within a polity, as shaped not just by rights, but by the influences of duties and public goods such as a sense of

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empty containers into which a preferred ideology is poured. One way to avoid this is to identify the minimum core elements of the idea that enjoy general consensus, before discussing 'thicker' and more contentious conceptions.

<sup>47</sup> The lack of literacy was apparent in the way certain candidates campaigned in the 2011 presidential elections, claiming powers and declaiming agendas beyond the remit of the institutional mandate. Notably, the *Presidential Elections Act* (Cap 240A, 2011 Rev Ed Sing) was amended to ensure that for the 2017 elections, the prospective candidates are obliged to issue a statutory declaration that they understand the constitutional role of the President. See Melissa Zhu & Jalelah Abu Baker, "Applications for Presidential Election to open Jun 1", *Channel News Asia* (31 May 2017), online: Channel News Asia <<http://www.channelnewsasia.com/news/singapore/applications-for-presidential-election-to-open-jun-1-8897484>>.

<sup>48</sup> *Constitution of the Republic of Singapore* (1999 Rev Ed) [Constitution].

<sup>49</sup> Kevin YL Tan & Thio Li-ann, *Singapore: 50 Constitutional Moments that defined a Nation* (Singapore: Marshall Cavendish, 2015). Earlier efforts include Kevin Tan, *Introduction to Singapore's Constitution*, 3d ed (Singapore: Talisman, 2013).

<sup>50</sup> See *Lim Meng Suang v AG* [2015] 1 SLR 26 at paras 6, 8, 9, 12, 53, 77, 81, 83-86, 111, 154-180 (CA) [*Lim Meng Suang* (CA)], for the court's recurring reference to the need to refrain from considering extralegal considerations and the insistence that the voice of the law "represents the voice of objectivity" (at para 5).

<sup>51</sup> *Ibid* at para 92.

<sup>52</sup> Li-ann Thio, "Constitutionalism in Illiberal Polities" in András Sajó & Michel Rosenfeld, eds, *The Oxford Handbook on Comparative Constitutionalism* (Oxford: Oxford University Press, 2012) 133. Indeed, all constitutions are mixed in the sense of having both liberal and non-liberal elements: see Graham Walker, "The Idea of Nonliberal Constitutionalism" in Ian Shapiro & Will Kymlicka, eds, *Ethnicity and Group Rights* (New York: New York University Press, 1997) 154.

<sup>53</sup> Li-ann Thio, "Relational Constitutionalism and the Management of Inter-Religious Disputes: The Singapore 'Secularism with a Soul' Model" (2012) 2 *Oxford J of L and Religion* 1.

national identity or moral solidarity, which moderates rightism. Arguments closely associated with Singapore, such as the ‘Asian values’ school that advocates political control and stability during the early stages of development, at the expense of democratic freedoms, to attract foreign investment and trade key to economic take-off, are also critically examined and assessed.<sup>54</sup>

### III. METHOD

#### A. *Beyond the Constitutional Text*

As noted by Sheridan when he established the Law Faculty, law cannot be taught without reference to the underlying political philosophy, legal culture<sup>55</sup> and political context within which law and legal institutions live and breathe. All the more so with constitutional law. We must look at “what lies behind and beyond the Constitution”,<sup>56</sup> all the while conscious of how law remains in the foreground. Theory (the big ideas) and Doctrine (the little rules) are both important and intertwined.

The constitutional order is broader than the constitutional text and may include key statutes with constitutional import. It includes unwritten sources of constitutional law like case law, conventions (particularly in relation to parliamentary privileges and immunities) and soft constitutional law.<sup>57</sup> In a globalised age, students must also have a rudimentary knowledge of public international law insofar as it impacts the constitutional order. Indeed, the courts have authoritatively pronounced on how treaty law, customary international law norms and peremptory norms relate to and rank within Singapore’s legal order.<sup>58</sup> Foreign cases, frequently cited before our courts, are useful as models and anti-models, sources of inspiration or cautionary tales.<sup>59</sup> A knowledge of foreign developments and context is of great utility in fashioning the approach Singapore should adopt towards new doctrines, such as that

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<sup>54</sup> Kevin YL Tan, “The Role of Public Law in a Developing Asia” [2004] Sing JLS 265.

<sup>55</sup> See Lawrence M Friedman, “Legal Culture and Social Development” [1977] Law & Socy Rev 29 at 34, where he stated that ‘legal culture’ may be defined as [emphasis added]:

[T]he values and attitudes which bind the system together, and which determine the place of the legal system in the culture of the society as a whole. . . the network of values and attitudes relating to law, which determines *when and why and where* people turn to law or government, or turn away.

<sup>56</sup> SA de Smith, *Constitutional and Administrative Law*, 5th ed by Harry Street & Rodney Brazier (London: Penguin Books, 1985) at 15.

<sup>57</sup> This refers to prospective written declarations of standards of conduct constitutional actors are expected to comply with, despite their non-binding nature. See Li-ann Thio, “Soft Constitutional Law in nonliberal Asian Constitutional Democracies” (2010) 8:4 ICON 766; Matthew SR Palmer, “Using Constitutional Realism to Identify the Complete Constitution: Lessons from an Unwritten Constitution” (2006) 54 Am J Comp L 587.

<sup>58</sup> See especially *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 (CA) [*Yong Vui Kong* [2015] (CA)]. See also Thio Li-ann, “International Law in the Courts of Singapore: Still a Little Island?” (2013) 19 Asian YB of Intl L 1.

<sup>59</sup> For *eg*, Phang JA in *Shadrake Alan v AG* [2011] 3 SLR 778 at paras 41-43 (CA) characterised the American political libel test as idiosyncratic or peculiar to American culture and not necessarily an approach to be emulated. See also *Lim Meng Suang v AG* [2013] 3 SLR 118 at para 133 (HC), where Quentin Loh J demonstrated that an exercise in comparative constitutional law can often find cases supportive of both sides of an argument.

of substantive legitimate expectations which the High Court has accepted as a ground of administrative legality, but which the Court of Appeal has questioned.<sup>60</sup>

### B. Power, Justice and Culture

Constitutions may be seen as pre-commitment strategies, codified ideals and sites of struggle. In imparting the basics, we adopt Donald Lutz's analytical framework that emphasises three primary features of all constitutions: Power, Justice and Culture.<sup>61</sup> All constitutional orders grapple with how to structure power and this in turn affects institutional design and bills of rights. An enduring question here is whether good government can be legislated into being. Thus, 'power' implicates principles of order and envisions Law as Command. 'Justice' speaks to the universal principles of Liberty and Equity, and envisions Law as embodying standards of fairness and humanity, as discerned by reason and conscience. 'Culture' speaks to memory and passion, and occurs in those idiosyncratic parts of the constitutional order, its history, pre-political norms, customs, conventions, where Law serves as a source of identity, espousing hortatory common values.

### C. Reading the Constitution

When interpreting open-textured terms like 'personal liberty' and 'equality', we need a theory of interpretation. After all, these are not endlessly capacious vessels into which every expression of human will and desire may be poured.<sup>62</sup> The meaning of the word 'law' immediately raises the perennial jurisprudential debate over natural law and legal positivism. What about a term like 'separation of powers'? Does it shed light on what is justiciable, such as whether courts should be final arbiters of technical constitutional terms like 'net investment income' or matters of moral controversy? The increase in the quality and quantity of cases in the first decade of the 21st century means that we need to focus greater attention on methods of constitutional interpretation and propositional argument.

With respect to the latter, courts have increasingly explored important legal issues in *obiter*, such as when discussing the test for bias in *Tang Kin Hwa v Traditional Chinese Medicine Practitioners Board*<sup>63</sup> or whether the English approach towards qualified privilege for defamation as encapsulated in the *Reynolds* test<sup>64</sup> of 'responsible journalism' should apply in Singapore.<sup>65</sup> Such decisions invite future argument

<sup>60</sup> See *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2014] 1 SLR 1047 (HC); *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 (CA) especially at paras 59-63.

<sup>61</sup> Donald S Lutz, "Thinking about Constitutionalism at the Start of the Twenty-First Century" (2000) 30:4 *Publius: The J of Federalism* 115.

<sup>62</sup> Indeed, the Attorney-General has emphasised the importance of fidelity to the text and deprecated 'non-textual approaches' where, in the face of what one might consider a deplorable law or policy, one might insist there is a constitutional remedy even where the text points to none: VK Rajah, "Interpreting the Constitution", *The Straits Times* (30 May 2015), online: The Straits Times <<http://www.straitstimes.com/opinion/interpreting-the-constitution>>.

<sup>63</sup> [2005] 4 SLR (R) 604 (HC).

<sup>64</sup> *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 (HL).

<sup>65</sup> *Review Publishing Co Ltd v Lee Hsien Loong* [2010] 1 SLR 52 (CA) [*Review Publishing*].

when the specific point is in actual contention, as statements made extra-judicially affirm.<sup>66</sup> To this end, we try to provide raw material and analytical frameworks for students to structure propositional arguments that develop the law, and have examined them on this basis. For example, a question from a recent examination paper asks whether, in light of the recognition of the implied right to vote, other implied constitutional rights could be found and if so, on what basis.<sup>67</sup> This requires an inquiry into interpretive method, drawing from a palette of text, historical intent, precedent, theory or moral values.<sup>68</sup> On issues like whether Singapore should adopt some variant of proportionality review, recourse to theory and comparative materials is also of great assistance.

#### D. Local Conditions?

In 1994, Singapore stopped all appeals to the Judicial Committee of the Privy Council and the Court of Appeal issued a Practice Statement noting that “the political, social and economic circumstances of Singapore have changed enormously since Singapore became an independent and sovereign republic. The development of our law should reflect these changes and the fundamental values of Singapore society.”<sup>69</sup> In the intervening years, the courts have invoked ‘local conditions’ as a ground for deviating from established practice. While there is nothing wrong or unique about invoking ‘local conditions’ as a basis for judicial reasoning, this is unacceptable if it takes the form of a bare invocation unaccompanied by reasons.<sup>70</sup> Such practices were prevalent right up till the mid-2000s. Today this deficit is no longer typical, given the culture of reason-giving evident in the present Bench.<sup>71</sup> Instead of merely invoking the rhetoric of balancing, there is evidence of an authentic balancing process, an awareness that the interests balanced at both ends cannot be “defined in such a way that renders the other otiose.”<sup>72</sup> The Court of Appeal has also articulated a

<sup>66</sup> See Chan Sek Keong, “Opening Address of Chief Justice Chan Sek Keong” (Opening address delivered at the Singapore Academy of Law Conference 2011, Developments in Singapore Law 2006-2010, 24 Feb 2011) at para 15 [*Opening Address of Chief Justice Chan Sek Keong*]:

The Court of Appeal in that judgment also suggested that if the *Reynolds* privilege was not accepted as a defence to liability, it can still be accepted as a mitigating factor in damages. I would have thought that any academic commentator would seize on that suggestion and make a meal of it.

<sup>67</sup> See *eg*, Thio Li-ann, “Westminster Constitutions and Implied Fundamental Rights: Excavating an Implicit Constitutional Right to Vote” [2009] Sing JLS 406; *Vellama d/o Marie Muthu v AG* [2013] 4 SLR 1 (CA).

<sup>68</sup> This is borrowed from Richard Fallon, “A Constructivist Coherence Theory of Constitutional Interpretation” (1987) 100 Harv L Rev 1189.

<sup>69</sup> *Practice Statement (Judicial Precedent)* [1994] 2 SLR 689 (CA).

<sup>70</sup> See *eg*, *AG v Wain (No 1)* [1991] SLR 383 at 394B, 394C (HC); *Chan Hiang Leng Colin v Public Prosecutor* [1994] 3 SLR 662 at 681F-H (HC) [*Colin Chan* (HC)].

<sup>71</sup> For *eg*, see the treatment of the responsible journalism test in *Review Publishing*, *supra* note 65 or the rationale underlying the award of damages for defamation in *Lim Eng Hock Peter v Lin Jian Wei* [2010] 4 SLR 357 (CA) and *Lee Hsien Loong v Roy Ngerng* [2016] 1 SLR 1321 (HC). See also Judith Prakash J’s treatment of free speech theory in relation to the contempt of court defence of fair criticism in *AG v Tan Liang Joo John* [2009] 2 SLR (R) 1132 (HC).

<sup>72</sup> *AG v Shadrake Alan* [2011] 2 SLR 445 at para 57 (HC), Quentin Loh J. See also the High Court’s assessment of the calibrated balancing adopted by the police in issuing conditional licences for religious processes in *Vijaya Kumar s/o Rajendran v AG* [2015] SGHC 244.

four-fold typology of how to weigh constitutional rights<sup>73</sup> which may add nuance to the balancing process.

Given the significant strides in terms of judicial elaboration of the nature and content of concepts like fundamental rules of natural justice<sup>74</sup> and the basic structure doctrine,<sup>75</sup> we focus students' attention on analysing these developments from the inception of the idea to how it evolved, and why. We 'deconstruct' the courts' interpretive methods to offer insights into how judges think and we delve into unsettled issues and the possible trajectories of legal development. We thus hope to equip students with the skill to identify the law, apply and evaluate a norm, make reasonable propositional arguments and formulate informed predictions on how the law might develop.

### E. *In the Classroom*

CAAL is a complex subject. It is currently taught in the second year of the LLB programme and many students find it difficult to adjust to the material especially since it is one of the least 'rule-based' subjects in the syllabus, engaging background political philosophy. For this reason, we maintain the approach of teaching the subject as a team. At the same time, we can ensure that as a core compulsory subject, the syllabus is common and consistent for all students and is not subject to the vagaries of individual tutors. Students also sit a common examination at the end of the course.

Because of the difficulty and complexity of the subject, we have also retained the lecture-seminar method of teaching. Sheridan railed against this when he arrived in Singapore:

The death knell of the magisterial lecture was sounded by the invention of the printing press, but the senile tradition still totters around the cloisters. There is no need for university law schools to pretend that each man must scratch his own parchment or mark his own slate. There are enough legal fictions already. Why ask a scholar to declaim to an audience of scribes what a would-be scholar can read in a book?<sup>76</sup>

Sheridan felt that unless there "is interchange of ideas between don and undergraduate, there was really no point for a teacher to be in a classroom." We disagree.

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<sup>73</sup> These are fundamental, preferential, co-equal and subsidiary rights: *Review Publishing*, *supra* note 65 at paras 286-289.

<sup>74</sup> The Court of Appeal in *Yong Vui Kong* [2015] (CA), *supra* note 58 at paras 64, 65 clarified that the fundamental rules of natural justice do not encompass substantive rights but procedural rights designed at securing a fair trial.

<sup>75</sup> The then-Chief Justice seemed to recognise the basic structure doctrine in *Mohammad Faizal bin Sabtu v Public Prosecutor* [2012] 4 SLR 947 at paras 11-15 (HC) despite the earlier rejection of the Indian basic features doctrine in *Teo Soh Lung v MHA* [1989] 1 SLR (R) 461 (HC). The situation remains unclear, particularly over whether the term 'basic' indicates an immutable feature, as opposed to denoting the importance of the feature, with this issue being made the subject of a recent mid-term assignment.

<sup>76</sup> LA Sheridan, "University Law" (Inaugural lecture on his becoming the first Professor of Law at the University of Malaya delivered at the Arts Lecture Theatre, 19 October 1956), (Singapore: University of Malaya, 1956) at 7, 8.

Lectures serve an important occasion for topics to be introduced through broad surveys and a contextualisation of issues. It is also extremely beneficial to students who are auditory learners. It is in the seminars that we drill deeper into theory and case law where more than adequate interaction takes place “between don and undergraduate”. In the case of administrative law, we focus more on understanding the rationale behind rules and applying the rules to factual problems.<sup>77</sup>

This approach provides students with a variety of perspectives and different methods of argument, which is important in a subject where diverse normative positions are taken. In the public arena, this can too often descend into bare assertions and *ad hominem* non-arguments which seek to suppress rather than foster authentic debate. In the context of the classroom, academic freedom and integrity require the cultivation of a civil if not serene and civilising environment where one is egalitarian towards the articulation of varied views, and elitist in terms of interrogating their premises and assessing their cogency.

Teachers are encouraged to adopt an ethos of political liberalism, which also constitutes a rejection of comprehensive liberalism or illiberal liberalism which is itself a substantive ideology (favoured by some, denigrated by others) and not ‘neutral’.<sup>78</sup> Indeed, one may question whether there is any ‘neutral’<sup>79</sup> vantage point (beyond that of genuine indifference) when it comes to supporting a particular public philosophy. A political liberal welcomes viewpoint diversity and a forum to robustly evaluate all views while an illiberal comprehensive liberal may purport to be tolerant of views, but is intolerant of views he finds disagreeable, which is itself a brand of intolerant tolerance. While public law teachers have disparate views, it bears reiteration that our job is to educate and not indoctrinate. What makes for a good or weak argument? What is a sound constitutional argument as opposed to a bare naked assertion, made for rhetorical effect or sleight of hand? This is a salutary teaching commitment, as it schools the student that when constructing an argument for examination purposes, the task is to construct a good, persuasive argument, regardless of who the marker is

<sup>77</sup> There have been discussions about whether administrative law should be hived off into a separate subject but the status quo is to teach its core principles with constitutional law. Faculty electives have included specialist or comparative administrative law modules.

<sup>78</sup> A state espousing liberal ideology cannot be said to be neutral as it produces a particular kind of citizen, that is, liberal individuals, who are autonomist and experimentalist in orientation: Stephen Macedo, *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism* (Oxford: Clarendon Press, 1990).

<sup>79</sup> Indeed, it may be questioned whether ‘neutrality’ (as opposed to impartiality) is desirable, or even possible, as it may belie a liberal power grab: Bruce Ackerman, “What is Neutral about Neutrality?” (1983) 93 *Ethics* 372, online: Yale Law School <[http://digitalcommons.law.yale.edu/fss\\_papers/152](http://digitalcommons.law.yale.edu/fss_papers/152)>; it was also argued in Ryszard Legutko, “What’s wrong with Liberalism?” (Winter 2008) *Modern Age* 7 at 9 that:

Liberals always place themselves in a higher position than their interlocutors and from that position they have an irresistible urge to dominate. . . they always usurp for themselves. . . the role of the architectonic organizer of society; thus they always want to dominate by performing the roles of the guardians of the whole of the social system and the judges of the procedural rules within the system. . . they declare “neutrality” towards concrete solutions and decisions within the system, but such “neutrality” is impossible to maintain; one cannot be an organizer of everything while at the same time refraining from imposing substantively in specific cases.

Removing the cloak of the myth of ‘neutrality’ in relation to liberal arguments allows all arguments to be assessed on an even playing field, as opposed to immunising liberal values from scrutiny based on a false claim of neutrality.

as scripts are allocated randomly and marked anonymously, rather than to write an argument that the student thinks will please a teacher's predilections.

The virtue of the collective endeavour of team teaching, aside from providing an environment to mentor and nurture junior faculty in developing their teaching skills, is that it also serves as a form of discipline over how we teach, to ensure a topic is fairly taught with a view to establishing duelling paradigms. This allows us to also identify dominant and subordinate views, enabling students to see competing views and hone their analytical skills to assess the cogency of a proposition. Academics are human too, prone to their whims and follies, and team teaching moderates that tendency; teaching in a team can also facilitate vibrant scholarly discussion among colleagues, where the collective wisdom of a number of minds are brought to bear on the syllabus and pedagogy, for the benefit of the student's learning experience.

#### IV. CONCLUSION

Behind every system of law is a background political philosophy, and nowhere is this more apparent than in the field of public law, which deals with the state or government and its relationship with its groups and individuals. The political environment impacts the academic environment and where there is chariness towards dissenting views, some circumspection on the part of academics is *de rigueur*. When governors admit to not possessing a monopoly of wisdom, where a diversity of viewpoints are solicited, encouraged and considered in good faith, the pre-requisites for academic freedom are established. This engenders a concomitant need for academic responsibility to teach students not *what* but *how* to think, and in our context, to develop Singapore law with a view to both principle and particularities.

The key shift, since we both started teaching public law, was the change from an era of authoritarian governance impatient of dissent to what might be called a 'post-deferential' era. The latter may be identified with the post-2011 General Elections when the ruling party lost a Group Representation Constituency ("GRC") for the first time since GRCs were introduced in 1988, with a resultant shift in tone of address to citizens, including apologies<sup>80</sup> and the inauguration of the "Singapore conversation" designed to engage citizens in discussing national policies.

While government leaders in times past admonished citizens to recognise the hierarchical superiority of governors and to be respectful when speaking to them as the senior party (*boh tua boh sway*),<sup>81</sup> these quasi-feudalistic overtones have evaporated in an era where participation and consultation—in order to forge consensus—is the new normal. Indeed, this trajectory was forged back in 2004 when then-Deputy Prime Minister Lee Hsien Loong urged Singaporeans not to be "passive bystanders in their own fate" but to engage in national debate with "reason, passion and conviction."<sup>82</sup>

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<sup>80</sup> See eg, Lydia Lim, "PM says sorry: Govt could have moved faster to address housing, transport woes", *The Straits Times* (4 May 2011) at 1.

<sup>81</sup> Comments made by Singapore Minister for Information and the Arts, George Yeo: "Debate yes, but do not take those in authority as 'equals'", *The Straits Times* (20 February 1995) at 11.

<sup>82</sup> Lee Hsien Loong, "Building a Civic Society" (Speech delivered at the Singapore's 35th Anniversary Dinner, Harvard Club of Singapore, 1 June 2004), online: United Nations <<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan015426.pdf>> [*Building a Civic Society*].



Debate can, however, descend into bare rhetoric in an age where constitutional law is popularised and citizens are more rights conscious.<sup>83</sup> It is thus necessary to ensure that debates are “issued-focused, based on facts and logic and not on assertions and emotions”, and aim at reaching “correct conclusions on the best way forward for the country.” Most importantly, it is now possible to disagree without being disagreeable. Disagreement “does not necessarily imply rebellion. . . nor should unity of purpose and vision mean sameness in views and ideas.”<sup>84</sup> Academics with non-establishment views are no longer tarred as opponents and proponents of potentially subversive views, but in the main treated as interlocutors to engage in dialogue with.

The mood and approach of the courts have changed in this more consultative, perhaps communitarian era.<sup>85</sup> We are now at a stage in our national history where public law is maturing, where one might discern ‘three waves’ of judicial review approaches. The cursory, often parochial judgments which valorised statist values<sup>86</sup> and were markedly reluctant to cite public law scholarship have now been replaced by decisions which regularly engage with the academic literature and transnational sources;<sup>87</sup> they evince a forgiving attitude towards technical errors and a determination to address issues squarely, even if only in an exploratory manner, with a clear autochthonous bent. This has been identified as exemplifying the ‘third wave’ of constitutional interpretation, where the courts are thinking constitutionally (rather than administratively or bureaucratically), engaging with constitutional norms though not mimicking the rights-based approaches of (Western) liberal jurisdictions.<sup>88</sup>

The subject of CAAL is well and alive. It has survived the whispered questioning of its ‘relevance’ or ‘purpose’ in a single-party dominant state where judicial review was seen as largely ineffective. Indeed, such rumblings prompted then-Chief Justice Chan Sek Keong to deliver a widely read lecture discussing red and green light theories of review in 2010.<sup>89</sup> In 2011, then-Attorney-General Sundaresh Menon spoke of a need to ensure “a build-up in critical areas of importance such as administrative law, constitutional law.”<sup>90</sup> The Bench has also sent strong signals to academics and practitioners to focus on facilitating the maturation of Singapore jurisprudence,

<sup>83</sup> That is, where citizens offer opinions with some reference to the constitutional framework or standards or invoke rights enthusiastically, but not always in an informed manner, by reference to Part IV of the *Constitution*. See eg, “Unfair to deprive smokers of fundamental personal liberty”, *The Straits Times* (23 December 2011) at A24.

<sup>84</sup> *Building a Civic Society*, *supra* note 82.

<sup>85</sup> See *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR (R) 684 at para 17 (CA).

<sup>86</sup> See *Colin Chan* (HC), *supra* note 70 at 684F, 684G, where the court stated that “[t]he sovereignty, integrity and unity of Singapore are undoubtedly the paramount mandate of the Constitution and anything. . . which tend[s] to run counter to these objectives must be restrained.”

<sup>87</sup> One of the earliest citations of local constitutional scholarship by the Court of Appeal was in *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 at para 64 (CA), in relation to our co-edited book, Li-ann Thio & Kevin YL Tan, eds, *Evolution of a Revolution: Forty Years of the Singapore Constitution* (London: Routledge-Cavendish, 2009).

<sup>88</sup> See eg, Thio Li-ann, “Principled Pragmatism and the ‘Third Wave’ of Communitarian Judicial Review in Singapore” in Jaelyn L Neo, ed, *Constitutional Interpretation in Singapore: Theory and Practice* (London: Routledge, 2016) at 75. See also Goh Yihan & Paul Tan, “An Empirical Study on the Development of Singapore Law” (2011) 23 *Sing Ac LJ* 176.

<sup>89</sup> Chan Sek Keong, “Judicial Review - From Angst to Empathy” (2010) 22 *Sing Ac LJ* 469.

<sup>90</sup> KC Vijayan, “Question and Answer with AG Sundaresh Menon”, *The Straits Times* (29 October 2011).

declaring the intent to build up “a body of local jurisprudence” which within “a small jurisdiction” would require a “sustained intellectual effort by the courts.”<sup>91</sup>

Gone are the days where senior academics quietly cautioned junior academics not to be too ‘political’ in teaching the subject, which dealt with sensitive issues such as the Internal Security Act and Marxist conspiracy of the late 1980s. Today, on the back of decisions from the apex courts, issues implicating moral and political controversy are the regular fodder of seminar discussions.<sup>92</sup> The key challenge now is for teachers not to engage in biased, one-sided advocacy, which never helps robust thinking, but to practice the principle of ‘*audi alteram partem*’, of hearing the other side. Professors will have their views of course, but intellectual robustness and honesty is imperilled by that brand of unconscious close-mindedness such that one cannot contemplate, weigh or fairly represent a possible counter-argument, however much one might disagree with it. Intellectual work is about the evaluation, rather than celebration, of beliefs after all. Classrooms are not platforms for ideological hobby-horses and in the words of Professor Stanley Fish, “the only advocacy that should go on in the classroom is the advocacy of the intellectual virtues”,<sup>93</sup> central to which is being “conscientious in the pursuit of truth.”<sup>94</sup>

It is heartening to note a perceptible change in the attitudes of many students towards the subject; where previously seen as somewhat ‘esoteric’ and beyond the ken of the average practitioner, the practical and normative import of the subject is today better appreciated. Former Attorney-General VK Rajah noted in 2015 that there had been an “increase in civil litigation between the public and the state in administrative and constitutional law” in recent years, partly due to “the rise of an educated class with more awareness of their civil and constitutional rights.” This was not perceived negatively insofar as “judicial review is the hallmark of the judicial enforcement of the rule of law, in relations between the state and its people.”<sup>95</sup> A holistic approach to the subject favours an appreciation of the varied perspectives of stakeholders, both law-maker and citizen alike, an apprehension that obligation, expectation and aspiration are all part of the public law landscape.

Beyond the classrooms, public law teachers have engaged in public law and policy-making through various forums besides scholarship: as *amicus curiae* or expert consultants in litigation,<sup>96</sup> offering views in dialogues with government

<sup>91</sup> *Opening Address of Chief Justice Chan Sek Keong*, *supra* note 66 at para 6; Melissa Sim, “Write On Local Law, CJ Tells Academics” *The Sunday Times* (2 September 2007). Local judgments directly relevant to the issue should be cited “in precedence to foreign judgments”; where foreign cases are cited, counsel should ensure these would be “of assistance in the development of local jurisprudence on the particular issue in question”, bearing in mind “differing legal, social or economic contexts.”: Practice Direction No 1 of 2008 at paras 4, 5, online: Supreme Court <<http://www.supremecourt.gov.sg/docs/default-source/default-document-library/legislation-and-directions/practice-direction-no-1.pdf>>.

<sup>92</sup> For *eg*, matters relating to political defamation laws and the upholding of the constitutionality of the law criminalising sodomy: see *Review Publishing*, *supra* note 65; *Lim Meng Suang (CA)*, *supra* note 50.

<sup>93</sup> Stanley Fish, “Professor, Do Your Job”, online: (2008) August & September Policy Rev <<http://www.hoover.org/research/professor-do-your-job>>.

<sup>94</sup> James Brady, “Good Students and Good Citizens”, *New York Times* (15 September 2002).

<sup>95</sup> VK Rajah, “Speech of the Attorney-General VK Rajah SC” (Speech delivered at the Opening of the Legal Year 2015, 5 January 2015) at para 16, online: Singapore Academy of Law <<https://www.sal.org.sg/Portals/0/PDF%20Files/Speeches/OLY%202015%20AG's%20Speech.pdf?>>.

<sup>96</sup> For *eg*, Professors Kevin Tan, Valentine S Winslow and Thio Li-ann assisted counsel for the presidency in *Constitutional Reference No 1 of 1995* [1995] 1 SLR (R) 803 (SGCT).

ministers with respect to legislative proposals, lending their expertise as public intellectuals in forums such as that organised by the Institute of Policy Studies, through newspaper interviews, writing op-eds, running public law blogs, making submissions before constitutional commissions, even serving as nominated parliamentarians (as one of the authors did from 2007-2009).

Gone are the days where foreign academics thoughtlessly cited Bickel or set as assignment questions the analysis of North American case law, evincing a lack of interest in local institutions and case laws. Most public law academics today are active researchers in the field which energises teaching.<sup>97</sup> Materials on constitutional law scholarship are no longer scant<sup>98</sup> and public lawyers are now turning their attention towards administrative law, the ‘poor cousin’ within public law.<sup>99</sup>

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<sup>97</sup> Exemplary of this is the recent collection of essays edited by Jaclyn Neo in Jaclyn Neo, ed. *Constitutional Interpretation in Singapore: Theory and Practice* (London: Routledge, 2016).

<sup>98</sup> See eg, Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Singapore: Academy Publishing, 2012); and Kevin YL Tan, *The Constitution of Singapore: A Contextual Analysis* (Oxford: Hart Publishing, 2015).

<sup>99</sup> For eg, Professor Thio is currently writing an administrative law textbook for Academy Publishing. A chief line of inquiry is whether theories of judicial review, developed within a context where the dominant view is that Parliament is supreme, is suitable in Singapore, with or without modification, where the *Constitution* is supreme. This book will build on ideas sketched out in Thio Li-ann, “The Theory and Practice of Judicial Review of Administrative Action in Singapore: Trends and Perspectives” (Paper delivered at the SAL Conference 2011: Developments in Singapore Law between 2006 and 2010—Trends and Perspectives, 24-25 February 2011) SAL Conference 2011—Singapore Law Developments (2006-2010) 714.