

## SINGAPORE COUNTRY REPORT

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SUMMARY: I. *Introduction*. II. *Singapore's Economic Development in Historical Context*. III. *Law and Politics in a Developmental State*. IV. *Constitutional and Legal Regime of Property*. V. *Constitutional and Legal Regime of Public Enterprises*. VI. *Conclusion*.

### I. INTRODUCTION

Singapore has often been lauded an economic miracle.<sup>1</sup> It is a tiny island (683 sq km) you could dump into Lake Chapala with lots of room to spare. With over 4.5 million people, it has moved from being an economic backwater in the 1960s to one of the wealthiest and economically-successful countries in Asia.<sup>2</sup> Today, Singapore's GNP per-capita

<sup>1</sup> There are numerous volumes on Singapore's "miraculous" economic growth and development. The following are some of the key works: Ronald, Ma. and You, Poh Seng, *The Economy of Malaysia and Singapore*, Singapore, MPH Publications, 1968; Fong, H. D., *Strategy of Economic Development in Singapore*, Singapore, Nanyang University, Institute of Business Studies, 1970; You, Poh Seng, and Lim, Chong Yah (eds.), *The Singapore Economy*, Singapore, Eastern Universities Press, 1971; Goh, Keng Swee, *The Economics of Modernization and Other Essays*, Singapore, Asia Pacific Press, 1972; *The Practice of Economic Growth*, Singapore, Federal Publications, 1977; Lim Chong, Yah, *Economic Development in Singapore*, Singapore, Federal Publications, 1980; *A Proposed Industrialization Programme for the State of Singapore*, United Nations Industrial Survey Mission, 1963; the Winsemius Report; Lee Soo, Ann, *Industrialization in Singapore*, 1973; Theodore and Frances Geiger, *The Development Progress of Hong Kong and Singapore*, London, Macmillan, 1975; Rodan, Garry, *The Political Economy of Singapore's Industrialization: National State and International Capital*, London, Macmillan, 1989; and World Bank, *The East Asian Miracle: Economic Growth and Public Policy*, New York, Oxford University Press, 1993.

<sup>2</sup> In 1965, Singapore's Gross National Product per capita was \$1,600 dollars. By 1995, it had risen to \$35,000 dollars. See *Singapore: 1965-1995 Statistical Highlights: A Review of 30 Years' of Development*, Singapore, Department of Statistics, 1996, p. 3.

is \$27,800 dollars making it the second most prosperous country per capita in Asia, after Japan. Yet, few scholars studying Singapore back in the late 1950s and 1960s would imagine that Singapore would be so immensely successful, especially not as an independent country.

Even though Singapore had been a thriving centre of trade and commerce during British rule up till the outbreak of World War II, it had become a hotbed of communist activity, trade union radicalism and militant student activism. Economic woes and widespread poverty compounded the already dire situation Singapore found itself in during the twilight years of British rule and the opening years of self-government. To address the pressing economic issues, it was necessary for the government to act decisively and resolutely. The state had no alternative but to intervene. As Goh Keng Swee, Singapore's former deputy prime minister, finance minister and chief economic architect recalled:

Taking an overall view of Singapore's economic policy, we can see how radically it differed from the *laissez-faire* policies of the colonial era. These had led Singapore to a dead end, with little economic growth, massive unemployment, wretched housing, and inadequate education. We *had* to try a more activist and interventionist approach.<sup>3</sup>

Over the last 45 years, the state became the key engine driving Singapore's economic growth. The fact that Singapore has been, since 1963, a polity dominated by a single political party —the People's Action Party (PAP)— is significant in understanding the story of its economic success.

Law, the legal system and politics played a most crucial role in the story of Singapore's economic development. While most economists will agree that state intervention in the economy is necessary to offset market imperfections, proponents of *laissez-faire* economic theory will argue that such interventions should be restricted to the provision of such public goods as law and order, education, health and economic infrastructure. In this respect, the model of development adopted by Singapore mirrors more closely that of a planned socialist economy.

In this paper, I consider how law and the constitutional framework in Singapore have enabled the state to pursue its economic and develop-

<sup>3</sup> Goh, Keng Swee, "A Socialist Economist that Works", in Nair, C. V. Devan (ed.), *Socialism That Works: The Singapore Way*, Singapore, Federal Publications, 1976, pp. 77-85, esp. p. 84.

mental agenda in so efficient and single-minded a manner.<sup>4</sup> Part II of the paper situates Singapore's economic development within its proper historical setting. In part III, I consider how the politics of a single-party dominant state<sup>5</sup> has enabled the state to create a state-centered constitutional framework enabling it to have almost total control over the country's economic initiatives and resources. In part IV, the state's compulsory acquisition powers in relation to the right to property is discussed while the legal framework facilitating the emergence of public enterprises is discussed in part V.

## II. SINGAPORE'S ECONOMIC DEVELOPMENT IN HISTORICAL CONTEXT

Singapore has long been a centre of trade. During the 14th century, it was one of the key trading centers of the Srivijaya empire until Majapahit forces sacked the city. Thereafter, it remained a sleepy fishing village and pirates' lair. In 1819, the British signed a treaty with the Johor Sultanate to establish a trading post in Singapore. Over the next 140 years, Singapore became the centre of British power in Southeast Asia. From 1819 to the outbreak of the Japanese occupation during World War II in 1942, Singapore was Britain's most important military and economic outpost in the region. Singapore's strategic location made it a natural port of call for all sea-going traffic traversing between China and the west. Singapore was also the centre for the trade in key commodities such as tin, rubber and palm oil which were either found or grew abundantly in the Malay Peninsula.

<sup>4</sup> For the purposes of this paper, we are far more concerned with the State's role in the economic development, rather than in the economy *per se*. For the latter, see, Lee, Soo Ann, "The Role of the Government in the Economy", in You, Poh Seng and Lim Chong Yah (eds.), *op. cit.*, footnote 1, pp. 81-100; and Mukul, G. Asher, "Some Aspects of the Role of the State in Singapore", 1994, num. 14, vol. XXIX, *Economic and Political Weekly* pp. 795-804; and Tan, Kong Yam, "Economic Development and the State: Lessons from Singapore", in Fitzgerald, Robert (ed.), *The State and Economic Development: Lessons from the Far East*, London, Frank Cass, 1995, pp. 55-75.

<sup>5</sup> See Pempel, T. J. (ed.), *Uncommon Democracies: The One-Party Dominant Regimes*, Ithaca, Cornell University Press, 1990.

The basis for its economic development, noted one scholar was “and for most of its history has remained geography”.<sup>6</sup> Between 1819 and 1868, Singapore emerged as the main British trading post in Southeast Asia largely because of its geographical location. Even so, it was a modest trading settlement until the opening of the Suez Canal in 1869 and the rapid increase in world demand for primary produce like tin and rubber catapulted Singapore into a major international trading centre.<sup>7</sup> From then on, Singapore’s trade exploded:

Between 1871-1973 and 1900-2002 Singapore’s trade (imports + exports) increased more than sixfold from an annual average of \$67 million to \$431 million. A second phase of growth began after 1910, and by 1925-1927 trade had expanded a further fourfold to reach a pre-World War II apex of \$1,832 million. These are current-dollar figures, but they indicate rapid real growth for Singapore’s trade sector and thus for its highly trade-dependent economy as a whole... real trade growth averaged 3.3% between 1870 and 1937, representing a doubling in volume every 22 years.<sup>8</sup>

The Japanese Occupation (1942-1945) put paid to this spectacular growth. When the British returned to the island in 1945, they found an economy shattered by war, and the British Military Administration (1945-1946), a martial-law administration, did little to stem the black marketeering and corruption that had become endemic. What greeted the British on their return was an impoverished population totally disenchanting and disillusioned by Britain’s inability to defend Singapore the “Malta of the East”.

The years between 1946 and 1953 saw quick economic growth. By the early 1950s, Singapore had recovered economically from the devastation of the Japanese occupation even though its industrial sector had not developed substantially. While the British could certainly have done more to promote industrialization, there was no neglect in infrastructure terms. The island’s infrastructure continued to be developed with a new power station at Pasir Panjang, a new airport at Paya Lebar (1955) and a new dry dock at Queen’s Dock (1956).<sup>9</sup> Even with these initiatives, Singapore’s economic future remained uncertain. While unemployment in

<sup>6</sup> See Huff, W. G., *The Economic Growth of Singapore: Trade and Development in the Twentieth Century*, Cambridge, Cambridge University Press, 1994, p. 7.

<sup>7</sup> *Ibidem*, p. 8.

<sup>8</sup> *Ibidem*, pp. 11-12.

<sup>9</sup> *Ibidem*, p. 289.

1957 was running at about 5% —about the same as during its pre-War period— there was widespread poverty.<sup>10</sup> It was estimated that 19% of households and 25% of individuals lived below the poverty line.<sup>11</sup> At the same time, the birth rate grew an average of 4.4% annually between 1947 and 1957 the highest known in the world.<sup>12</sup>

In 1954, the Rendel Commission recommended that a new Constitution be introduced to bring the Singapore people closer towards self-government and eventual independence. It was during this era that the Singapore polity became increasingly engrossed and engaged in local politics. Nationalism was on the rise, and the experiences of the newly-independent British colonies like India and Burma inspired the Singapore people to fight for the right to chart their own destinies. Anti-British sentiments which festered since the end of the war became increasingly pronounced especially with the success of the Chinese Communist Party in 1949. With the impending elections of 1955 under the Rendel Constitution, political activism and civil protest reached a fever pitch. It was an era of great political change and transformation with the establishment of several new political parties including the Labour Front and the People's Action Party (PAP) in 1954.

From 1954 to 1965, labour stoppages, strikes and riots were commonplace. After all, strikes and riots were stock in trade weapons of nationalist movements. For example, between 1954 and 1963, a total of 2,866,355 man-days were lost as a result of 697 strikes involving 183,022 workers.<sup>13</sup> Compared with other countries in Southeast Asia, Singapore's chances of escaping political strife and an economic quagmire looked bleak. Recounting those heady days, Goh Keng Swee remarked:

...when we took office in June 1959 ... the setting could hardly have been less auspicious... There were extensive acts of violence, largely communist-inspired, in the course of this anit-imperialist struggle. Apart from acts of terror on individuals, such as the execution of recalcitrant trade

<sup>10</sup> See Goh, Keng Swee, *A Social Survey of Singapore: A Preliminary Study of Some Aspects of Social Conditions in the Municipal Area of Singapore*, Singapore, Department of Social Welfare, 1947.

<sup>11</sup> Huff, W. G., *op. cit.* footnote 6, p. 291.

<sup>12</sup> *Ibidem*, p. 292.

<sup>13</sup> These figures were gleaned from Huff, *ibidem*, p. 295.

union and student leaders by underground terror gangs, three large-scale riots occurred between May 1954 and October 1956. Seventeen people lost their lives and seventy-eight were seriously injured. In addition, acts of arson caused serious loss of property.<sup>14</sup>

The PAP's economic strategy obviously worked. Between 1960 and 1990, the economy grew rapidly, with trade as its main engine of growth. There were, however, three developments that set this phase of development apart from the earlier periods. First, the economy was much more diversified with the manufacturing and financial and business services sectors leading the charge. Second, much growth came from public enterprises and multi-national corporations, and third, the Government's activist hand in planning and spearheading economic growth was far more pronounced than in any other period in its history.<sup>15</sup> In this period, the Gross Domestic Product (GDP) grew by an average of 8.7% annually.<sup>16</sup>

The state is the ideal apparatus for economic intervention for two reasons. First, two key characteristics of modern states make them powerful engines for effecting economic changes: universal *membership* of states (unlike in private economic organizations), and the State's powers of compulsion which are generally unavailable to private economic organizations.<sup>17</sup> These two unique characteristics enable the state to play a pivotal role in planning, regulating and charting the course of economic development within its own boundaries. Second, the widespread application of Keynesian economics literally made it mandatory for modern states to intervene in economic matters. The positive reaction to the ideas of John Maynard Keynes following the Great Depression of the 1930s<sup>18</sup> in the industrialized West triggered off a wave of interventionist policies by governments throughout the world. The success of supply-side economics provided the impetus needed for governments to abandon their hitherto *laissez-faire* attitudes towards the marketplace and its actors.

<sup>14</sup> Goh, Keng Swee, *op. cit.* footnote 3, pp. 77-85, esp. p 77.

<sup>15</sup> See Huff, W. G., *op. cit.* footnote 6, p. 299.

<sup>16</sup> *Ibidem*, p. 14.

<sup>17</sup> Stiglitz, Joseph E. *et al.*, "The Economic Role of the State", in Heertje, Arnold (ed.), London, Basil Blackwell, 1989, pp. 11-21.

<sup>18</sup> See Weir, Margaret and Skocpol, Theda, "State Structures and the Possibilities for 'Keynesian' Responses to the Great Depression in Sweden, Britain and the United States", in Evans, Peter B., *et al.*, *Bringing the State Back*, Cambridge, Cambridge University Press, 1985, p. 107.

### III. LAW AND POLITICS IN A DEVELOPMENTAL STATE<sup>19</sup>

In this part, we focus on constitutional and legal developments that the People's Action Party (PAP) government found necessary to put in place in the immediate aftermath of its election victory in 1959 to facilitate its economic development programme. Even though the People's Action Party (PAP) won the 1959 elections handsomely, its hold on power was tenuous. Internal divisions within the Party between the moderate group led by Lee Kuan Yew and the radical left-wing group headed by Lim Chin Siong were soon to tear the Party apart. Indeed, it was the issue of merger with the Federation of Malaya that brought the rift out into the open and led to a massive defection of PAP members to form the Barisan Sosialis (Socialist Front) in 1961. The two erstwhile bedfellows battled for the political left outside the Malayan Communist Party.

#### 1. *Consolidating Power Within the Party: 1959-1963*<sup>20</sup>

The battle for supremacy within the PAP has been well documented elsewhere.<sup>21</sup> For our purposes, it is important to understand that the consolidation of power by Lee's moderate wing was made possible by the existence and implementation of two draconian and powerful security laws: the Preservation of Public Security Ordinance (PPSO) and the Internal Security Act 1960. Both these laws provided for preventive detention of suspected subversives and communists. Individuals can be detained—without trial—for up to two years at a time by the Government for suspected left-wing or communist activity.

Preventive detention legislation in Singapore and Malaysia share a common ancestor. Such legislation originated as part of the war powers of the British colonial executive, and eventually became a common weapon of the colonial administration. It was first introduced into Ma-

<sup>19</sup> See generally, Kevin Y. L. Tan, "Economic Development and the Prospects for Constitutionalism" Chin, Anthony, Choi, Alfred, (eds.) *Law, Social Sciences And Public Policy: Towards A Unified Framework*, Singapore, Singapore University Press, 1998.

<sup>20</sup> See generally Rodan, Garry, *The Political Economy of Singapore's Industrialization: National State and International Capital*, London, MacMillan Press, 1989, pp. 50-84.

<sup>21</sup> See in particular, Bloodworth, Dennis, *The Tiger & the Trojan Horse*, Singapore, Times Books International, 1986; and Drysdale, John, *Singapore: Struggle for Success*, Singapore, Times Books, 1984.

laysia (then the Federated States of Malaya) by the Emergency Enactment 1930.<sup>22</sup> The early legislation was used mainly to deal with the subversive activities of the South Seas (*Nanyang*) Communist Party in Singapore and the Malayan Communist Party (MCP) in Malaya<sup>23</sup> who were committed to the overthrow of the British government by force. The British battle against communism and the MCP in particular resumed in 1948 when a state of emergency was proclaimed and the MCP outlawed.<sup>24</sup> Under this Proclamation of Emergency, emergency regulations were passed to deal with the communists, but these regulations had to be reviewed and re-issued every few months. Since, the Emergency was meant to be a temporary state of affairs, the rationale for this continuous review and re-enactment of regulations was evident.

The first attempt to put these preventive detention laws on a more permanent footing occurred in Singapore when the Legislative Council passed the Preservation of Public Security Ordinance (PPSO) on October 21, 1955.<sup>25</sup> The PPSO was based on Indian, Pakistani and Burmese precedents. Section 3 gave the chief secretary the power to direct that a person be detained for a period not exceeding 2 years if the Governor-in-Council was satisfied that the detention was necessary to prevent that person from acting in a manner which was prejudicial to the security of Malaya, the maintenance of public order, or the maintenance of essential services.<sup>26</sup> Significantly, the PPSO gave the final decision on whether a person should be detained to a panel of 3 judges.<sup>27</sup> The 1955 Rendel Constitution did not include a Bill of Rights. As such, no fundamental liberties were guaranteed under this essentially colonial constitution and no constitutional issues were raised with the PPSO was passed.

When the Malayan Internal Security Act applied to Singapore in 1963, the discretion to detain a person under the ISA moved completely to the president or the minister of Home Affairs. In the meantime, the

<sup>22</sup> See section 3,2.b, F. M. S., Gazette 1930, vol. XXII.

<sup>23</sup> See Yatim, Rais, "Detention Without Trial Under the Internal Security Act 1960: The Necessity for its Abolition", 1996, vol. XXV, num. 2 *INSAF* 21, p. 28. The author states that the South Seas Communist Party was formed in 1928 while the Malayan Communist Party (MCP) was formed in 1930.

<sup>24</sup> On the Malayan Emergency generally, see Clutterbuck, Richard, *Conflict and Violence in Malaysia and Singapore*, Singapore, Graham Brash, 1984.

<sup>25</sup> The PPSO was passed on September 21, 1955 as Ordinance 25 of 1955.

<sup>26</sup> See section 3, PPSO.

<sup>27</sup> See sections 5, 4, 6 and 7, PPSO.

Emergency in Malaya was only lifted in 1960, and the Internal Security Act,<sup>28</sup> which remains the centre-piece of all preventive legislation, was enacted by the then-Federation of Malaya government on 22 June 1960 to make possible the cessation of the 1948 Emergency on 31 July 1960. The Malayan ISA of 1960 was subsequently imported into Singapore when Singapore became part of the Federation of Malaysia on 16 September 1963. Under the Malaysia Act 1963,<sup>29</sup> all provisions of the Malayan ISA (with the exception of sections 8,1 and 8,2) applied to Singapore. At the same time, sections 4 to 15 of the PPSO were repealed.<sup>30</sup> Later, a number of amendments were made to the ISA as it applied to Singapore; the net result being that the legislation in both states were practically word-for-word the same.<sup>31</sup> When Singapore left the Federation in August 1965, the ISA continued to apply to Singapore by virtue of section 13,1 of the Republic of Singapore Independence Act, 1965.<sup>32</sup> It was subsequently reprinted as chapter 115 of the 1970 Revised Edition of the Singapore Statutes.<sup>33</sup> In addition to the ISA, several other pieces of legislation provide for administrative detention. Notable among these are the Criminal Law (Temporary Provisions) Act (CLTPA),<sup>34</sup> the Infectious Diseases Act,<sup>35</sup> the Misuse of Drugs Act,<sup>36</sup> and the Mental Disorders and Treatment Act.<sup>37</sup>

In 1956, the Lim Yew Hock government detained some of the PAP's most important left-wing trade union leaders, including Lim Chin Siong, C. V. Devan Nair, Fong Swee Suan, James Puthuchear, and Sandy Woodhull. Their detention was made possible under the PPSO, and this enabled Lee's moderate faction to secure control of the Party's leadership and to keep the left-wing leaders out of the PAP's Central Executive Committee. However, after the PAP won the 1959 general elections, Lee Kuan Yew made it a condition of his taking office that the PAP's detained members be released. The released leaders were given a heroes'

<sup>28</sup> Federation of Malaya Act num. 18 of 1960.

<sup>29</sup> Federation of Malaya Act 23 of 1963.

<sup>30</sup> See LN 231/63.

<sup>31</sup> See LN 271/63, LN 334/64; and LN 335/64.

<sup>32</sup> Act 9 of 1965.

<sup>33</sup> Currently chapter 142, Singapore Statutes, 1985, revised edition.

<sup>34</sup> Chapter 67, Singapore Statutes.

<sup>35</sup> *Ibidem*, chapter 137.

<sup>36</sup> *Ibidem*, chapter 185.

<sup>37</sup> *Ibidem*, chapter 178.

welcome and then promptly appointed to positions within Government where they could do little harm and where they had no real power. Lim Chin Siong, for example, was appointed Political Secretary to Finance Minister Goh Keng Swee while Fong Swee Suan was Political Secretary to the Minister for Labour and Law.

While the left-wing leaders were unable to do much damage to the ministries to which they were attached, they continued to foment disaffection within the labour movement. The rift within the PAP became increasingly apparent and the Party teetered on the brink of collapse. It took the issue of merger with the Federation of Malaya, and the British Borneo territories of Sabah and Sarawak to form the Federation of Malaysia that forced the dissensions into the open. In July 1961, 13 PAP Assemblymen were expelled from the Party for abstaining on a vote of confidence in the government. They then established a new political party, the Barisan Sosialis (Socialist Front) with Lee Siew Choh as Chairman and Lim Chin Siong as secretary-general.

In the battle leading up to merger with Malaysia in 1963, the Barisan pulled out all the stops. Tunku Abdul Rahman, prime minister of Malaya and soon-to-be prime minister of Malaysia, was greatly alarmed by the pro-communist and radical stance adopted by the Barisan. As the PAP's majority in the Legislative Assembly was whittled down to just one vote, the Tunku decided to act. In February 1963, the Internal Security Council<sup>38</sup> approved Operation Coldstore, a joint Malayan-Singapore police operation that resulted in the arrest of 107 left-wing political leaders, trade unionists and supporters. These included practically the whole of the Barisan's Central Executive Committee. The arrests came as a relief to the PAP who went on to win 37 of the 51 seats in the general election that followed in September that year. That same month, Singapore became part of the new Federation of Malaysia and with the staunchly anti-Communist Tunku in charge of the central government; the PAP was able to rebuild its mass support base without the needing to fight a rear-guard action against the pro-communists and radical left.

<sup>38</sup> The Council was a panel proposed by the British to consider all matters relating to Singapore's internal security. It comprised the British High Commissioner, and two members nominated by the British, three Singapore representatives, including the prime minister and one member nominated by the Federation of Malaya Government.

By 1968, when elections were required to be called under the Constitution, the Barisan was a decimated force. Its decision to abandon Parliament to take their struggle into the streets was perhaps its biggest political mistake for it left the PAP with hegemonic control over the entire political arena. With no opposition to challenge them, the PAP government was able to put in place all the economic programmes and strategies it desired.

From a legal perspective, the PAP government allowed the ISA to remain in the statute books after independence in 1965. Indeed, they continued to use it against suspected subversives and communists in the years to come. This was made possible by the inclusion of article 9,6 of the Constitution which provides that “any law ‘in force before the commencement of this Constitution which authorizes the arrest and detention of any person in the interests of public safety, peace and good order’ shall not be invalid by anything in article 9 which provides that ‘No person shall be deprived of his life or liberty save in accordance with law’”. The presence of this draconian law and the PAP Government’s willingness to use it has acted as a major deterrent against anyone wishing to challenge the government’s power other than in a general election.

## 2. *Striving for Economic Legitimacy*

Even though the PAP government benefited immensely from the arrests of Operation Cold Store, it could not hope to rule by force alone. In any case, military power remained in the hands of the British and Singapore did not even have its own standing army till 1968. What the PAP government needed to do was to gain what Friedrich calls “performance legitimacy” through the delivery of economic promises and goods.<sup>39</sup> It understood quite early on that rights, freedom and limited government mean very little to people living on the verge of starvation. Neither does it mean much to those who see their standards of living falling day by day. Abraham Maslow, in his classic book *Motivation and Personality*<sup>40</sup> postulates that man has several levels of needs, the most crucial and basic of which is physiological in nature. Therefore, unless a government—whether legally or constitutionally legitimate or not—confronts and

<sup>39</sup> Friedrich, Carl Joachim, *Limited Government*, A Comparison, Englewood, Patience Hall contemporary comparative politics series, 1974.

<sup>40</sup> Maslow, Abraham, *Motivation and Personality*, 2nd ed., Harper and Row, 1970.

deals with basic issues such as food, housing, job opportunities and education, its legitimacy will quickly evaporate.

In this regard, the PAP government saw its principal source of legitimacy in economic terms. Writing in 1960, one of Singapore's pioneering economists, professor Lim Tay Boh worried that "the pressure of unbalanced nationalism, political extremism and ignorance may lead to the adoption of measures which will wreck the structure of Singapore's economy".<sup>41</sup> He opined that the government's success in implementing its economic programme depended on three factors: a) the extent it was able to mobilize the country's financial resources for investment in capital formation; b) the availability of skilled administrative and technical personnel; and c) the leadership of the politicians, civil servants and business and community leaders.<sup>42</sup> Economist Lawrence Kraus remarked:

Two tasks were recognized in 1959; the need to restructure the economy away from dependence on traditional entrepot trade, and the alleviation of unemployment. The promotion of industrialization, which was seen as a way to diversify the economy, was assigned to the newly created Economic Development Board (EDB). The EDB was envisioned as a one-stop agency to facilitate investment. During the transition period, the EDB confined itself to providing incentives to attract foreign investors, and infrastructure which included industrial sites. The highly innovative Jurong industrial estate was started at this time, and this was a step beyond the usual activity of a *laissez faire* government.<sup>43</sup>

Self-government and independence was realized through merger with Malaysia in 1963. However, within two tumultuous years, Singapore was out of the Federation and swimming alone. No one thought that Singapore could have survived economically on its own. Having independence thrust upon its shoulders, the Singapore Government was now faced with the daunting task of securing an economic future for the island. Political scientist Raj Vasil observed:

<sup>41</sup> Lim, Tay Boh, *The Development of Singapore's Economy*, Singapore, Eastern Press, 1960, p. 22.

<sup>42</sup> *Ibidem*, p. 30.

<sup>43</sup> Krause, Lawrence B., "The Government as an Entrepreneur", *The Singapore Economy Reconsidered*, Singapore, Institute of Southeast Asian Studies, 1987, pp. 107-127, esp. p. 112.

From the beginning, the foremost problem faced by the non-communist leaders of the government was how successfully to compete against the pro-communists, whose popular support was based largely on communism and Chinese chauvanism. The westernized non-communist leaders, Lee Kuan Yew and his associates, enjoyed little popular appeal and backing among the masses, especially the Chinese. None of them then had a special or charismatic appeal. In other Asian countries, the charismatic appeal of a prominent national leader, a father of the nation, had for years provided a mass base for a ruling political organization. But the PAP in Singapore possessed no such asset. It was clear to the non-communists that they could only rely on their achievements in the economic sphere to compete against their chief adversary, the pro-communists. Rapid and visible economic expansion and progress were not only necessary for the well-being of the nation but also for their own political survival.<sup>44</sup>

The main strategy for economic development was massive industrialization and a diversification of the country's economic portfolio. In the words of doctor Goh Keng Swee, former deputy prime minister and Singapore's economic architect:

... The stock remedy was to industrialize: but how to do this? Apart from the political climate, which hardly inspired investors' confidence, there were other constraints on industrial growth. Besides sand and granite, Singapore had no natural resources. The domestic market was too small to support import-substitution manufactures. Further, if the industrial effort failed, there was no fall-back position. The land area, 225 square miles at low tides, was too small to provide an agricultural refuge for the unemployed. Moreover, the main source of Singapore's economic activity, which centered round her port, was made more difficult by action taken in neighbouring countries, whose newly independent governments saw no reason to continue their countries' dependence on Singapore as a transit centre for their exports.<sup>45</sup>

To do this, it was essential to centralize a great deal of the state's resources and power in the hands of the government through legislation. As Goh pointed out, the growth strategy adopted by the PAP social dem-

<sup>44</sup> Raj, Vasil, "Trade Unions" in Kernial, Singh Sandhu and Wheatley Paul (eds.), *Management of Success: The Moulding of Modern Singapore*, Singapore, Institute of Southeast Asian Studies, 1989, pp. 144-170, esp. pp. 150-151.

<sup>45</sup> See Goh Keng, Swee, *op. cit.* footnote 3, pp. 77-85, esp. p. 78.

ocrats was based on three objectives: first, to achieve a society where all citizens could earn a decent living, and this meant the provision of public housing; second, to provide jobs for all; and third, to give workers rising incomes and improved standards of living over the years. These three aims could only be achieved “through continuous and rapid economic growth”.<sup>46</sup> Growth was to be achieved through the development of human resources and economic infrastructure.<sup>47</sup> In practical terms, this meant the provision of accessible schooling and adequate technical training for the citizens and workforce, and providing “an environment favourable to investment in employment-creating and output-raising industries”.<sup>48</sup> Mere infrastructural development was, however, insufficient. Goh further adds that:

Apart from supplying the infrastructure, the government had to involve itself in direct ownership and control of many industrial, financial and commercial enterprises. Some of these constituted risk-taking ventures in partnership with the private sector, in the early years when investors needed encouragement. Some were established to fulfil new needs, *e. g.* setting up a national shipping line, or a maintenance workshop for military equipment. Others were items of ‘colonial heritage’ such as Keppel Shipyard.<sup>49</sup>

For a start, the constitutional right to hold property, and to receive fair compensation if such property were acquired that was embodied in article 13,1 of the Federal Constitution as it applied to Singapore, was deliberately left out of the new Constitution.

The Government also used legislation to create statutory bodies such as the Economic Development Board<sup>50</sup> and the Jurong Town Corporation,<sup>51</sup> which would be highly financed and relatively autonomous in their operations but at the same time governed by rules and guidelines established by the government. These bodies were the main instruments through which the

<sup>46</sup> *Ibidem*, pp. 80 and 81.

<sup>47</sup> *Ibidem*, pp. 81 and 82.

<sup>48</sup> *Ibidem*, p. 82.

<sup>49</sup> *Ibidem*, p. 83.

<sup>50</sup> Established under the Economic Development Board Act, cap. 85, *Statutes of the Republic of Singapore, 1985 revised edition*.

<sup>51</sup> Established under the Jurong Town Corporation Act, cap. 150, *Statutes of the Republic of Singapore, 1985 revised edition*.

economic transformation of Singapore would be effected. The approach of the administration was to accomplish the process of economic development through statutory boards,<sup>52</sup> government departments, public corporations, and government companies. Indeed, in the early years, the government played a “catalytic role in Singapore in pioneering industrial ventures” moving into areas “where both foreign investors and local entrepreneurs lacked either the resources or the inclination to venture”.<sup>53</sup> As economist Lawrence Krause noted, the government no longer confined itself to “traditional economic pursuits and the building of infrastructure, but instead began to enter into activities that were or could have been the domain of private enterprise” there being “no ideological barrier preventing the government from entering any economic activity”.<sup>54</sup>

The key feature of enabling legislation was to give these corporations wide charters and to use privative clauses to minimize the delays which might be caused by legal challenges in Court. The reported cases indicate a relatively small volume of legal challenge and dispute resolution through the courts in comparison with the size and scale of activity undertaken by these agencies. Public efficiency and goal-driven public administration were apparently valued more highly than delays and individual rights. In this respect, social justice has a paramount pride of place over individual rights, this being justified on grounds of group survival and the Confucian value system. These developments will be discussed in greater detail in the latter part of this paper.

<sup>52</sup> On the roles and functions of statutory boards in Singapore, see Quah, Jon S. T., “Statutory Boards”, in Quah, Jon S. T. *et al.*, (eds.), *The Government and Politics of Singapore*, Singapore, Oxford University Press, 1985, pp. 120-145.

<sup>53</sup> See Chia, Siow Yue, “The Character and Progress of Industrialization”, in Kernal Singh Sandhu and Wheatley, Paul (eds.), *Management of Success: The Moulding of Modern Singapore*, Singapore, Institute of Southeast Asian Studies, 1989, p. 250 and p. 275.

<sup>54</sup> See Krause, Lawrence B., “The Government as Entrepreneur”, in Kernal, Singh Sandhu and Paul Wheatley (eds.), *Management of Success: The Moulding of Modern Singapore*, Singapore, Institute of Southeast Asian Studies, 1989, pp. 438 and 439, esp. p. 436.

### 3. *Disciplining Labour*<sup>55</sup>

In a celebratory pamphlet published in 1991, the Economic Development Board stated that the three main pre-requisites for sustained economic growth were: a) gaining the people's support and acceptance; b) establishing a comprehensive legal system; and c) developing the infrastructure.<sup>56</sup> In this context, the gaining of the people's support meant disciplining the trade unions, while the comprehensive legal system was one that set out "the principles governing the conduct of business activities ... and helps immeasurably to gain investor's confidence".<sup>57</sup> Reflecting on that early period of Singapore's political economy, Goh Keng Swee remarked:

The greatest difficulty we faced was in industrial relations. How to break the vicious cycle of trade union militancy and poor economic performance? We were fortunate that part of the solution was contributed by the Malaysian Government during the two years of merger, when we were a constituent state.

Most of the militant trade unions were under the control of the underground Communist Party of Malaya and operated under the leadership of open United Front leaders. As trade union activities were legal, it was not

<sup>55</sup> On trade unions and Singapore labour law generally, see, Gamba, Charles, *The Origins of Trade Unionism in Malaya: A Study in Colonial Labour Unrest*, Singapore, Eastern Universities Press, 1962; Tan, Pheng Theng, "A Conspectus of Labour Laws in Singapore", 1968, 10 (2), *Malaya Law Review*, pp. 202-229; Josey, Alex, *Labour, Laws in a Changing Singapore*, Singapore, Donald Moore, 1968; Josey, Alex, *Industrial Relations: Labour Laws in a Developing Singapore*, Singapore: Federal Publications, 1976; Lim-Ng, Bee Eng, *Chronology of Labour Legislation in Singapore 1946-1984*, Singapore, Singapore National Trades Union Congress, 1986; Chew, Soon Beng, *Trade Unionism in Singapore*, Singapore, McGraw-Hill, 1991; Tan, Chwee Huat, *Employment Relations in Singapore*, 4th ed., Singapore, Prentice Hall, 2004; Ravi, Chandran, *Employment Law in Singapore*, Singapore, Prentice Hall, 2005; Tan, N. C., *Collective Labour Relations and the Law in Singapore*, PhD dissertation, Oxford, Oxford University, 1972; and Raj, Vasil, "Trade Unions" in Kernal Singh Sandhu and Wheatley, Paul (eds.), *Management of Success: The Moulding of Modern Singapore*, Singapore, Institute of Southeast Asian Studies, 1989, pp. 144-170.

<sup>56</sup> See *Economic Development of Singapore, 1960-1991*, Singapore, Economic Development Board, 1992, pp. 4-6.

<sup>57</sup> *Ibidem*, p. 6.

possible for the Singapore Government to arrest them. Nor was it of any use to plead with them to moderate their activities in the national interest.<sup>58</sup>

To counter the radical left-wing's dominance of the labour movement, the PAP government turned to the law. One of the first things it did after coming to power in 1959 was to introduce the Trade Unions (Amendment) Bill. Under the Bill, the Registrar of Trade Unions was empowered to refuse registration of any trade union. Appeals against the Registrar's decision lay to the minister for Labour whose decision was final. With these powers firmly in hand, the PAP government then disbanded and deregistered numerous small splinter unions.

By way of background, the first major conglomerate of trade unions, the Singapore Trades Union Congress (STUC) was founded by V. K. Nair and Lim Yew Hock in May 1951. Lim was its first president. The STUC was closely affiliated with the Labour Front political party and one of its largest affiliates was the 40,000 strong Federation of Services Unions (FSU). In 1955, the left-wing Singapore General Employees Union (SGEU) held secret talks with the STUC to determine how to build a united trade union front which would lead to a further affiliation of 29 other radical unions associated with the left-wing Big Six and the Middle Road unions. With the fusion of these unions, it became the largest conglomerate of unions in Singapore and it was dominated by left-wing politicians and unionists. In 1959, after the People's Action Party (PAP) swept to power, they amended the Trade Union Ordinance, giving the Registrar powers to deregister unions deemed to be acting against workers' interests. To bring the unions under its control, the government deregistered many anti-government unions and affiliated them with the STUC.

In 1960, the government introduced the Trade Unions Bill to further tighten its hold on the labour movement and to create a unified trade union body. Under the Bill, all unions seeking registration had to have a minimum of 250 members, belong to one of the thirteen categories enumerated in the law, and affiliated to an "association of unions" (in this case the Trades Union Congress). However, the bill was ultimately allowed to lapse when relations between the left-wing union leaders and the PAP

<sup>58</sup> Goh, Keng Swee, "Transformation of Singapore's Economy, 1960-1985", in Low, Linda (ed.), *Wealth of East Asian Nations*, Singapore, Marshall Cavendish Academic, 2004, pp. 23-33, esp. p. 26.

crumbled. By this time, it was clearly not in the PAP's interests to have a strong unified labour movement moving against its economic imperatives.

In 1961, the STUC itself was proscribed by the government and de-registered. The conflict between the PAP between the moderates and the left-wing faction over merger with Malaya and the abolition of the Internal Security Council led to the establishment of the opposition Barisan Sosialis. This also split the STUC into the pro-PAP National Trades Union Congress (NTUC), led by C. V. Devan Nair and the Singapore Association of Trade Unions (SATU) which had the support of the Singapore General Employees' Union (SGEU led by Lim Chin Siong), the Singapore Bus Workers' Union (SBWU led by Fong Swee Suan) and the Singapore Business Houses Employees' Union (SBHEU led by ST Bani). The NTUC quickly became the leading trade union organization, largely because of its effectiveness and government support.

The government accused SATU of instigating 77 strikes between August and December 1961 and maintained a close watch on the Association. On 25 August 1963, the SATU unions and the Singapore Chinese Chamber of Commerce organized a mass rally to press the Japanese for compensation for wartime atrocities. When prime minister Lee Kuan Yew attempted to speak at the rally, he was booed off the stage. Three days later, the Registrar of Trade Unions asked 7 SATU unions, including the SGEU, SBWU and SBHEU why their registration should not be cancelled for displaying anti-Malaysian banners and placards at the rally, activities that were deemed communist united front activities. In October 1963, these unions were deregistered and fifty branches of deregistered SATU unions left to join the NTUC.

Following Operation Coldstore which resulted in the massive detention of all the top pro-Barisan union leaders, the power of the unions was broken. By the time of Singapore's independence in 1965, the PAP government "did not have to deal with a union movement that was substantially divided ideologically and which included a radical union with its own parent political party".<sup>59</sup>

Three other major changes to labour legislation completed the PAP government's efforts to tame the trade unions. The first was the Trade Unions (Amendment) Bill introduced on 24 June 1967. It amended the Trade Unions Ordinance and provided that employees of any statutory

<sup>59</sup> Raj, Vasil, *op. cit.*, footnote 55, pp. 144-170, esp. p. 154.

board —or body specified by the minister for labour— could not be a member or any union unless that union's membership was restricted only to the employees of that board or body. This change was targeted reducing the influence of the Amalgamated Union of Public Employees (AUPE) which was the largest common union organization of public employees. Shortly after the Bill's enactment, the minister for labour directed employees of three statutory boards —the Singapore Telephone Board, the Housing and Development Board and the Public Utilities Board— to leave the AUPE and form their own separate unions. As far as the PAP government was concerned, the rights of workers and unions was subjugated to the imperatives of economic development: To them, compulsions of economic advancement and racial harmony made it imperative that the government control all instruments and centers of power, and as a corollary that no foci of power, such as unions and business and industry, be allowed to become too strong.<sup>60</sup>

The next two important pieces of legislation to be passed by the PAP Government were the Employment Act and the Industrial Relations (Amendment) Act of 1968. This omnibus Employment Act clearly defined and established the rights and obligations of employers and employees. The blurred line between management and labour was now very clearly drawn. Certain matters, most notably promotions, internal transfers, recruitment of staff, retrenchment, dismissal or reinstatement of staff, and allocation of duties or assignments were now clearly within the management's purview and could no longer constitute the basis of a trade dispute or part of a collective-bargaining process or agreement. With these changes, the unions' role was restricted to issues such as wages, work benefits and some aspects of employment conditions. They had no further role in determining issues such as promotions, transfers, recruitment, retrenchment, dismissal or allocation of duties. Following the amendments in 1968, the Industrial Relations Act now required that all disputes go to arbitration before the Industrial Arbitration Court. The Industrial Arbitration Court (IAC) was established in October 1960 to deal with industrial matters concerning employer-employee relations and the settlement of trade disputes. A second IAC was constituted in 1962 but this ceased functioning in 1970 with the decline in the number of cases brought before the tribunal.

<sup>60</sup> *Ibidem*, p. 157.

With these legal measures, the PAP government successfully brought labour under control. In the coming years, they would move towards a tripartite association between the party, employers and labour. In 1968, the PAP even nominated six NTUC Central Committee members as candidates in the general elections.<sup>61</sup> On November 19, 1969, the NTUC held a major seminar on them of “Modernization of the Labour Movement” which involved all the major political leaders in Singapore. The seminar laid the foundation “for a close relationship between the union movement and the PAP government, which eventually developed into what came to be called the ‘PAP-NTUC symbiotic relationship’”.<sup>62</sup> This relationship was cultivated and forged over the next decade with the help of CV Devan Nair’s leadership of the NTUC. In June 1980, the Central Committee of the NTUC approved an institutional arrangement devised by Devan Nair to include the NTUC secretary-general in Cabinet meetings. On 15 September 1980, NTUC’s secretary general Lim Chee Onn was appointed minister without Portfolio in the Government.

#### IV. CONSTITUTIONAL AND LEGAL REGIME OF PROPERTY

Land use and control is one of the pillars of Singapore’s developmental agenda. Unlike many larger countries, the scarcity of land has made its management and ownership a major pillar of government economic policy. The first thing the Singapore government had to do was to ensure that all legal impediments to its acquisition of land for public purposes was not unduly hampered by legal niceties and challenges. There were two major reasons why land was so badly needed. First, one of the cornerstones of the PAP’s economic development programme was industrialization and the creation of the Jurong Industrial Estate. This required large tracts of swampland to be filled in for the building of factories and industrial buildings. Second, the massive public housing shortage compelled the government to similarly fill in swamps and reclaim land from the sea. Large stretches of Singapore’s shoreline were reclaimed seawards. As such, the prevailing legal framework had to be recast and adapted to such a political economy.

<sup>61</sup> They were Seah Muk Kok, Eric Cheong, N. Govindasamy, Abdul Aziz Karim, Ho See Beng and Lawrence Sia.

<sup>62</sup> Raj Vasil, *op. cit.*, footnote 55, 144-170, p. 160.

In this connection, the Singapore government faced with two main obstacles. The first was the Constitution which in 1963 guaranteed a right to property; and the second, the lack of sufficient legislative might. Prior to 1963, Singapore's Constitution contained no provision protecting fundamental liberties of its inhabitants.

1. *Compulsory Acquisition of Property:  
Some Early Attempts*

The compulsory acquisition of land for development was an issue the Singapore government had studied for some time. The first land acquisition law was passed in 1920<sup>63</sup> and subsequently amended in 1946 and 1955. However the powers of compulsory acquisition were limited and the government was compelled to pay market prices for property to be acquired. The Government's main concern was with the adequacy and fairness of compensation rather than on coercive action. In 1955, internationally-renowned Australian land valuer, doctor J. F. N. Murray was commissioned to "ascertain the most practicable means of controlling land prices, and to draft legislation which would ensure that, in future community created values would be retained by all the people of the Colony".<sup>64</sup> In this Report, Murray opined that legislative intervention was necessary to avert "disastrous increases in land values"<sup>65</sup> The resulting Land Acquisition (Temporary Provisions) Ordinance pegged the market value of land at April 22, 1955. Murray also argued that compulsory acquisition of land "should be resorted to only when all possibility of obtaining land by agreement with an owner had ended, either because he was unwilling to sell or consistently asked too high a price".<sup>66</sup>

When the PAP Government came to power, it was determined to amend the Land Acquisition Ordinance. In July 1963, the Land Acquisition (Temporary Provisions) Bill was introduced in the Singapore Legislative Assembly to peg the value of land to be acquired for public purposes to that prevailing on January 1, 1961. It was blocked and lapsed.

<sup>63</sup> Straits Settlements Acquisition of Land for Public Purposes Ordinance, 1920, Act number XXIII of 1920.

<sup>64</sup> See Colony of Singapore, A Report on Control of Land Prices, Valuation and Compulsory Acquisition of Land (Government Printing Office, 1954).

<sup>65</sup> *Ibidem*, paragraph 15, p. 10.

<sup>66</sup> *Ibidem*, p. 4.

On June 10, 1964, the Land Acquisition (amendment number 2) Bill was introduced in the Singapore Legislative Assembly. Speaking at the Second Reading of the Bill, prime minister Lee Kuan Yew outlined two broad principles guiding the Government in amending the land acquisition law: a) that no private landowner should benefit from development which had taken place at public expense; and b) that the price paid on the acquisition for public purposes should not be higher than what the land would have been worth had the government not contemplated development generally in the area. Public development should not, he said, benefit the landowners but “benefit the community at large”.<sup>67</sup>

At the same time, the government introduced the Foreshores (Amendment) Bill which was aimed at “eliminating the elaborate the elaborate and lengthy procedure in connection with foreshore reclamation and in the assessment of claims for compensation in respect of such foreshore reclamation”.<sup>68</sup> The main provision in this Bill sought to repeal section 7 of the Foreshores Ordinance such that there “shall be no compensation as of right in respect of any land or any interest therein alleged to have been injuriously affected whether on account of loss of sea frontage or for any other reason by the execution of such reclamation works”.<sup>69</sup> The object of these two Bills was to “ensure, albeit imperfectly, that the increase in value of land, because of the increase in population and in development, should not lead to unjust or windfall gains by private landowners and speculators”.<sup>70</sup>

## 2. *Constitutional Difficulties*

The Land Acquisition (Amendment) Bill was sent to Select Committee in 1964 but had to be withdrawn on the advice of the State Advocate-General’s Chambers. In his statement before the Legislative Assembly on June 16, 1965, law minister E. W. Barker said:

The State Advocate-General’s Chambers have looked into these matters and have advised that, in order to remove any doubts on the validity of

<sup>67</sup> Singapore Legislative Assembly Debates Official Reports 10 June 1964, at col. 25.

<sup>68</sup> See speech of prime minister Lee Kuan Yew, *Ibidem*, at col. 31.

<sup>69</sup> *Ibidem*, The Foreshores (Amendment) Ordinance number 2 of 1964.

<sup>70</sup> *Ibidem*, at col. 33.

this new legislation, it will be necessary for the Malaysian Parliament to exempt such a Bill from the operation of article 13 of the Constitution...

Representation will be made to the Central government for such an exemption provision to be passed in Parliament in order that these projects can be carried out in Singapore without any uncertainty about the constitutional validity of the formula for compensation.<sup>71</sup> Article 13 was introduced into the Constitution of the Federation of Malaya when it became independent in 1957.<sup>72</sup> The article, which reads: 13,1. No person shall be deprived of property save in accordance with law. 2. No law shall provide for the compulsory acquisition or use of property without adequate compensation. Was derived from a similar provision in the Indian Constitution. It was recommended for inclusion in the Federation of Malaya Constitution by the Reid Commission.<sup>73</sup> When Singapore became part of the Federation of Malaysia in 1963, article 13 of the Constitution automatically applied to Singapore.

### 3. *Constitutional Changes*

When Singapore left the Federation of Singapore on August 9, 1965, it was left with the task of crafting its own Constitution.<sup>74</sup> Despite many promises that the new Constitution was ready and would be put before Parliament and the people, no such document was publicly available.<sup>75</sup> Instead, the temporary Constitution which was adopted by Parliament on December 22, 1965 remained the only operational constitution Singapore has had since independence. This document, was actually a conglomeration of three separate documents: The Constitution of the State

<sup>71</sup> Singapore Legislative Assembly Debates Official Reports, June 16, 1965, at col. 812.

<sup>72</sup> A comprehensive comparative discussion of the Malaysian provisions is found in Sheridan, L. A., "Constitutional Protection of Property", 1962, 28 MLJ lxxv, lxxiii, lxxxix, cv, cxxv, cxli. See also Harding, A. J., "Property Rights under the Malaysian Constitution", in Trindade and Lee (eds.), *The Constitution of Malaysia: Further Perspectives and Developments: Essays in honour of Tun Mohamed Suffian*, Singapore, Oxford University Press, 1986.

<sup>73</sup> See Federation of Malaya Constitutional Commission 1956-1957, paragraph 162.

<sup>74</sup> See generally, Tan, Kevin Y. L., "A Short Legal and Constitutional History of Singapore", *The Singapore Legal System*, 2nd ed., Singapore, Singapore University Press, 1999.

<sup>75</sup> See "A Team of Experts to Draft Singapore Charter", *The Straits Times*, September, 1965; "Singapore's Constitution for Parliament soon", *The Straits Times*, October, 1965; "Singapore Constitution", *The Straits Times*, December 16, 1967; "Draft Constitution to be out soon", *The Straits Times* May 16, 1968.

of Singapore 1963, the Republic of Singapore Independence Act 1965,<sup>76</sup> and portions of the Malaysian Federal Constitution imported through the Republic of Singapore Independence Act.<sup>77</sup>

For our purposes, two constitutional changes are significant. The first was the Constitution of Singapore Amendment Act<sup>78</sup> which was passed by the Singapore Parliament on the December 22, 1965, retrospective to August 9, 1965. This Act amended the Singapore State Constitution and changed the procedure required for constitutional amendment. The two-thirds majority was abolished and only a simple majority was required for an amendment to the Constitution. In addition, this Act also changed the relevant nomenclatures to bring the Constitution in line with Singapore's independence status. The rationale was to ensure that constitutional niceties would not stand in the way of economic progress only by virtue of the special majority required for a constitutional amendment. The easing of the amendment process made for a very flexible constitution, which was necessary for the passing of wide-ranging legislation to effect the economy and political development of the country. The economic and social imperatives were the main concerns of the post-independence government and they are manifested in the manner in which the Constitution was from time to time amended in the years to come.

The second is the Republic of Singapore Independence Act (RSIA) of 1965<sup>79</sup> which was passed immediately after the Constitution Amendment Act. This Act was also passed retrospectively and provided, *inter alia*, that certain provisions of the Malaysian Federal Constitution were to be made applicable to Singapore. Of particular note is section 6 of the RSIA that provided that the provisions of the Constitution of Malaysia, other than those set out in section 6,3 "shall continue in force in Singapore subject to such modifications, adaptations and qualifications and exceptions as may be necessary to bring them into conformity with the independent status of Singapore upon separation from Malaysia". Section 6,3 specifically excluded article 13 of the Constitution of Malaysia clearly because of the impending passage of the Land Acquisition Bill. Law minister E. W. Barker explained the rationale as follows:

<sup>76</sup> Act 9 of 1965.

<sup>77</sup> Most of the imported provisions pertain to the fundamental liberties provisions which are federal matters and were missing in the State Constitution.

<sup>78</sup> Act number 8 of 1965.

<sup>79</sup> Act number 9 of 1965.

Clause 13 We have specifically set out to exclude. The reason is quite simple. This Constitution was drawn up by five eminent jurists from five of the major Commonwealth countries for the old Federation of Malaya. It is, in form, modeled upon a similar provision in the Constitution of the Republic of India. Since the passage of that section in the Indian Constitution, amendments have had to be introduced because land reforms were not possible, if the strict tenor of the words were to be complied with. In other words, in clause 2, once we spell out that no law shall provide for the compulsory acquisition or use of property without adequate compensation, we open the door for litigation and ultimately for adjudication by the Court on what is or is not adequate compensation.

Last year, if you will remember, Mr. Speaker, Sir, we moved a Bill to change the law regarding the acquisition of land in which we laid down that where land was compulsorily acquired for public purpose, no compensation shall be payable to the owner for any appreciation in value of the land which has been brought about by development expenditure of the government. It very often happens, as it did in the case of the development of the Jurong industrial site, that when public funds have been expended in considerable amounts for the development of roads, services, harbours, the adjacent land appreciates in value. And when it became necessary to acquire parts of the adjacent land for future expansion of the estate itself or for ancillary services such as schools, hospitals, and so on, we had to pay the owner under our present acquisition laws the enhanced value of the land, a value to which he himself had contributed nothing and which was, in fact, created wholly by the expenditure of State funds. This article will, therefore, be excluded. With this exclusion, our Land Acquisition bill, which went to Select Committee and was allowed to lapse because of the doubt as to whether or not it could be said to be in compliance with article 13, which is the supreme law, shall be proceeded with. Whilst we were still in Malaysia, we had sought to get Article 13 excluded in its application to us, but, in the nature of things, these matters either took a very long time for any decision to be made or for some reason or other no decision was made. Now the jurisdiction again reverts to this House and it is our intention that the Land Acquisition Bill shall be proceeded with and article 13 excluded.<sup>80</sup>

After this piece-meal Constitution was being cobbled together, Parliament appointed a Constitutional Commission to headed by the chief justice,

<sup>80</sup> Singapore Parliamentary Debates Official Report, December 22, 1965, at cols. 435-436.

Wee Chong Jin to study how minority interests could be safeguarded.<sup>81</sup> Even though the terms of reference of the Commission<sup>82</sup> were limited to considering representations on the rights of racial, linguistic and religious minorities and how provisions for their protection through entrenchment in the Constitution can be effected, the Commission's report went far beyond that. The Commission issued their Report in 1966 and made a number of important recommendations.<sup>83</sup> Among other things, the Commission recommended that the constitutional provisions relating to 11 fundamental liberties, the judiciary, the legislature, general elections, minority rights and the special position of Malays, and the amendment procedures themselves be entrenched. This was to be done by making these provisions amendable only if the amendment secures a vote of two-thirds majority in Parliament and two-thirds majority at a national referendum.<sup>84</sup>

The Commission further recommended the reintroduction of a modified clause to guarantee the right to property. In its Report, the Commission stated that in view of the fact that all written constitutions guaranteed the right to property and "one of the human rights proclaimed under the Universal Declaration of Human Rights by the General Assembly of the United Nations on 10 December 1948, is the right of an individual not to be arbitrarily deprived of his property"<sup>85</sup> a similar provision should be included in Singapore's Constitution. It was, the Commission continued, "necessary, sound and wise and in the best interests of the people of Singapore... that its Constitution should recognise and proclaim this fundamental right".<sup>86</sup>

While the Commission did not recommend re-introducing article 13 of the Constitution of Malaysia, it considered it imperative that "a just and fair balance must be struck between the public interest on the one

<sup>81</sup> Members of the Commission were: Wee Chong Jin CJ (Chairman), A. P. Rajah vice-chairman, C. F. J. Ess, M. J. Namazie, C. C. Tan, S. H. D. Elias, Syed Esa bin Syed Hassan Almemoar, G. Abisheganaden, Graham Starforth Hill, Abdul Manaf Ghows, Kirpal Singh and S. Narayanaswamy secretary.

<sup>82</sup> See Singapore Parliamentary Debates Official Reports, December 22, 1965, at cols. 429-430.

<sup>83</sup> See Report of the Constitutional Commission 1966, reproduced as Appendix D in Kevin Y. L. Tan and Thio Li-ann, Tan, Yeo and Lee's, *Constitutional Law in Malaysia and Singapore*, 2nd ed., Singapore, Butterworths, 1997.

<sup>84</sup> *Ibidem*, at paragraphs 78 and 81.

<sup>85</sup> *Ibidem*, at paragraph 41.

<sup>86</sup> *Ibidem*, at paragraph 42.

hand and private ownership on the other” and that this was best achieved through a new article in the Constitution providing as follows: 14,1 No person shall be deprived of property save in accordance with law. 2. No law shall provide for the compulsory acquisition or use of property except for a public purpose or a purpose useful or beneficial to the public and except upon just terms. The Commission’s recommendations were received by Parliament in December 1966 and the Government squarely rejected this particular recommendation. Speaking before the House, Law Minister EW Barker said:

The Government would accept this article but for the words at the end, namely, “and except upon just terms”.

Members may be aware that we have, at various times while within Malaysia, sought to amend article 13 of the Malaysian Constitution in its application to Singapore. The intention was to follow the provisions in the Indian Constitution so that any law providing for the compulsory acquisition of property shall be valid so long as that law provides for compensation and that such a law shall not be questioned in Court as to the adequacy of the compensation. The new Land Acquisition Act, which has been passed by this House and will be brought into force shortly, provides for the setting up of a Lands Appeals Board and it is not considered desirable that the intentions of that legislation should be stifled by landowners being able to raise constitutional issues when disputes over the quantum of compensation arise.<sup>87</sup>

#### 4. *The Land Acquisition Act 1966*<sup>88</sup>

On April 21, 1966, the Land Acquisition Bill was introduced in the newly-constituted Singapore Parliament. At the Second Reading, on June 22, 1966, law minister E. W. Barker once again explained that the pas-

<sup>87</sup> Singapore Parliamentary Debates Official Reports, 21 December 1966, at cols. 1053-1054.

<sup>88</sup> See generally, Koh, T. T. B., “The Law of Compulsory Land Acquisition in Singapore”, 1967, 2 M. L. J. ix; Ricquier, William J. M., “Compulsory Purchase in Singapore”, in Tsuyoshi, Kotaka and L. Callies, David (eds.), *Taking Land: Compulsory Purchase and Regulation in Asian-Pacific Countries*, Honolulu, University of Hawaii Press, 2002, at pp. 263-285; Khublall N., *Compulsory Land Acquisition Singapore and Malaysia*, 2nd ed., Singapore, Butterworths Asia, 1994; and Tan, Sook Yee, *Principles of Singapore Land Law*, 2nd ed., Singapore, Butterworths Asia, 2001, pp. 638-649.

sage of the Bill had been “delayed because of constitutional difficulties”.<sup>89</sup> The Bill was sent to Select Committee, passed on October 26, 1966 and became operational from June 17, 1967.<sup>90</sup> The most potent portion of the Act is section 5 which stipulates three grounds upon which land can be acquired by the state:

- 5 (1) Whenever any particular land is needed
- (a) for any public purpose;
  - (b) by any person, corporation or statutory board, for any work or an undertaking which, in the opinion of the Minister, is of public benefit or of public utility or in the public interest; or
  - (c) for any residential, commercial or industrial purposes, the President may, by notification published in the *Gazette*, declare the land to be required for the purpose specified in the notification.

Beyond the Land Acquisition Act, several other statutory bodies in Singapore have been conferred compulsory acquisition powers. Among them are the three bodies responsible for a substantial part of Singapore’s infrastructural development the Housing and Development Board, the Jurong Town Corporation, and the Urban Redevelopment Authority.<sup>91</sup> The overall national interest, which required vast tracts of land to be reclaimed and developed for industrial use, was crystallized in the passing of the Land Acquisition Act and providing various other statutory bodies powers of compulsory acquisition.<sup>92</sup> The dramatic transformation of the Jurong Industrial Estate and the Housing and Development

<sup>89</sup> Singapore Legislative Assembly Debates Official Reports, June 22, 1966, at col. 133.

<sup>90</sup> For a commentary on this Act, see. Koh, T. T. B , “The Law of Compulsory Land Acquisition in Singapore”, 1967, 2 MLJ lx.

<sup>91</sup> These statutory authorities were established under the Housing and Development Act (Cap. 129, Singapore Statutes) in 1959, the Jurong Town Corporation Act in 1968 (Cap. 150, Singapore Statutes) and the Urban Redevelopment Authority Act in 1973 (Cap. 340) respectively. Other legislation in which powers of compulsory acquisition have been provided for included the: Planning Act, Economic Development Board Act, Public Utilities Act, Telecommunication Authority of Singapore Act, Controlled Premises (Special Provisions) Act, Railways Act, Preservation of Monuments Act, and Local Government Integration Act. Most of the powers of acquisition originally given to these statutory authorities were removed in 1989. Indeed several of these statutes have been repealed since.

<sup>92</sup> See chapter 152, Statutes of the Republic of Singapore, 1985, revised edition.

Board's world-famous public housing programme are often used to rebut criticism over the constitutional exclusion of individual property rights.

Even in instances when litigants were minded challenge whether compulsory acquisition has been for a "public purpose", the courts have been reluctant to encroach on the Government's role in defining state economic imperatives. For example, the High Court ruled, in *Galstaun vs, Attorney-General* that:

The government is the proper authority for deciding what a public purpose is. When the government declares that a certain purpose is a public purpose, it must be presumed that the government is in possession of facts which include the Government to declare that the purpose is a public purpose.<sup>93</sup>

In *Basco Enterprises Pte Ltd vs. Soh Siang Wai*,<sup>94</sup> the appellants challenged an acquisition by the government on the grounds that the URA had acquired the premises acted improperly and that the acquisition was for an improper purpose since it acquired the charming colonial building (Stamford Court) at 1973 prices and resold it on the open market, thereby making a substantial profit. The Court of Appeal held that there was no evidence that the purpose of acquisition was for the making of profit.

## V. CONSTITUTIONAL AND LEGAL REGIME OF PUBLIC ENTERPRISES<sup>95</sup>

One of the most significant characteristics of Singapore's post-independence development has been the substantial role played by statutory boards and government-linked companies. Statutory board such as the Housing and Development Board, the Public Utilities Board, and the Singapore Tourist Promotion Board (now the Singapore Tourism Board) were

<sup>93</sup> See *Galstaun vs. Attorney-General*, 1981, 1 MLJ 9, at p. 10, per F. A. Chua J.

<sup>94</sup> 1990, 1 MLJ 193.

<sup>95</sup> See Low, Linda, "Public Enterprise in Singapore", in You, Poh Seng and Lim, Chong Yah, *Singapore: Twenty-five Years of Development*, Singapore, Nan Yang Xing Zhou Lianhe Zaobao, 1984, pp. 253-287; and Low, Linda, *The Political Economy of Privatization in Singapore: Analysis, Interpretation and Evaluation*, Singapore, McGraw-Hill, 1991, pp. 43-71.

instrumental in developing Singapore's economic and social infrastructure<sup>96</sup> in a way that few states can. Instead of resorting to centralized state planning, the Singapore government chose to utilize the legal vehicle of the statutory board and the ordinary corporation — a creation of the British colonial government — as the main instrument of social and economic transformation.

The statutory board is an autonomous government agency established by an act of Parliament with specific purposes, rights, and powers. It is separate from the Government and is not staffed by civil servants. Neither does it enjoy the legal privileges and immunities of government departments. The main difference is its greater autonomy and flexibility. A cabinet minister, representing Parliament, oversees the statutory board's activities. Constitutionally, this is provided for under article 30 which empowers the prime minister to "charge any Minister with responsibility for any department or subject".<sup>97</sup> A Board of Directors manages each statutory board and its members are typically senior civil servants, businessmen, professionals, or trade union officials.

The starting point for the state's extensive participation in the Singapore economy is the premise that in a free-market economy — even one with socialist pretensions — the government should not and cannot become involved in every aspect of the economy. This would lead to inefficiencies and create a bloated leviathan of a government sector. At the same time, the Singapore government knew that the state could not sit back and hope for the forces of demand and supply to bring about an alignment of forces that would create the necessary infrastructure for development. As Pillai noted, there are several reasons for the creation of state enterprises, "reflecting a series of events and perceived needs in which the state has taken a pioneering and dominant role".<sup>98</sup> The first group of public enterprises and statutory boards simply carried on functions historically undertaken by the British colonial government such as public housing (Housing and Development Board), public utilities (Pub-

<sup>96</sup> Krause, Lawrence B., "The Government as an Entrepreneur", *The Singapore Economy Reconsidered*, Singapore, Institute of Southeast Asian Studies, 1987, 107-127, p. 112.

<sup>97</sup> Article 30,1.a, Constitution of the Republic of Singapore, Singapore Statutes 1999, revised edition.

<sup>98</sup> See Pillai, Philip N., *State Enterprise in Singapore: Legal Importation and Development*, Singapore, Singapore University Press, 1983, p. 75.

lic Utilities Board) and port operations (Port of Singapore Authority). The second group of public corporations were created after independence and were typically single-purpose in nature, created to perform very specific functions. These included central banking (Monetary Authority of Singapore), tourism promotion (Singapore Tourist Promotion Board and Sentosa Development Corporation) or regulating public lotteries (Singapore Totalisator Board). The third group of state enterprise has been evident in strategic sectors such as in shipping (Neptune Orient Lines), petroleum (Singapore Petroleum Company) and defense (Sheng-Li Holdings). The fourth group of public enterprises were created to demonstrate the Government's confidence in the viability of a pioneer industry such as shipbuilding and insurance. State enterprise in the company form helps rationalize their activity within the whole administrative system and to lower cost overheads by entry into the commercial market as well.<sup>99</sup>

## VI. CONCLUSION

The Singapore government's intervention in its economy is well-known and accepted. It was made possible by placing the state at the centre of power. Its constitutional and legal framework was structured and augmented to serve the overriding imperative of economic development and in this regard, the government's success has been spectacular. Not only has it gained the economic legitimacy it sought in the 1960s, it has created a non-ideological political system that has engendered little political opposition. Singapore is a textbook example of a "soft authoritarian" state, a kind of benevolent dictatorship. The PAP government makes no apologies for this, nor baulked at the need to pay the necessary price. S. Rajaratnam, Singapore's long-time foreign minister noted:

These countries which are now judged as affluent, as advanced, were lucky in that they embarked on modernization and industrialization when there were no trade unions and no parliament. Modernisation in most of these countries was pushed through by dictators, autocratic monarchs or elites who were no dependent on the popular vote. So they could ex-

<sup>99</sup> *Ibidem*, pp. 70-75.

tract the price for modernization, sometimes an inhuman price for modernization, knowing full well that there were no trade unions or parliament to call them to account.<sup>100</sup>

The soft authoritarian state is highly centralized and powerful. It makes all key political, social and economic decisions and the general population live relatively happily under this all-knowing leadership. They are politically and socially stable and have performed remarkably well in terms of economic development. Politicians and economists, desperate for solutions to Third World problems have become fascinated by the phenomenon of the Four Little Dragons of Asia-Korean, Taiwan, Hong Kong and Singapore. Linking economic progress to their respective governmental systems and political culture, some scholars have argued that having a form of government with massive powers and a culture which subjugates individual freedom to the wider interest might be the best way to secure economic growth and a better life.

The idea of a soft authoritarian state runs counter to everything a constitutional lawyer holds dear to him. The ideas of the separation of powers, limited government and fundamental rights appear to be cast to the wind. But in the light of what we have discussed above, does the lessons of Singapore point the way to future constitutional development or regression? Governments must first accumulate enough power to govern. Only then can they begin to put into motion their economic plans and reforms. The form of government suitable to this kind of transformation is, unfortunately the very antithesis of the western liberal democratic constitutional model advocated by the Americans and much of the western world.

Governments who ignore the connections between economic development and constitutionalism do so at their own perils. Will soft authoritarianism rule the day? But whether their peoples will continue to happily live under their respective forms of government is a big question which remains unanswered. In the long run, when economic success comes to be taken for granted, and where the bulk of the people have satisfied their most important needs, then greater demands will be made for a more liberal constitution and form of government. The highest levels of

<sup>100</sup> Speech of Foreign Affairs Minister and Minister for Culture, S. Rajaratnam, *Singapore Parliament Report of Official Debates*, May-August 1965, col. 337.

needs, according to Maslow are the “self-actualizing” needs or “the desire to become more and more what one idiosyncratically is, to become everything that one is capable of becoming”.<sup>101</sup> When people of Singapore reach this level of needs, there will be a corresponding cry for less government, and more freedom.

<sup>101</sup> Maslow, Abraham, *Motivation and Personality*, *op. cit.*, footnote 38, p. 46.