

FIFTY YEARS AND MORE OF THE WOMEN'S CHARTER OF SINGAPORE

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This article traces the enactment of the *Women's Charter* in 1961 to the goal of national construction pursued by the People's Action Party upon winning the 1959 General Elections. The statute introduced a unitary monogamous law for non-Muslim Singaporeans and, by legislating the equality of the wife with the husband, played a crucial role in Singapore's economic progress by encouraging fuller economic participation of women. The article then discusses the contributions of section 46—modelled after a Swiss provision—which exhorts husband and wife to co-operate for their mutual benefit as well as to care for their children within the spouses' equal partnership of different efforts that marriage is. This exhortation places marriage firmly on a moral foundation. The moral message helps explain the remarkable developments within several areas of the family law in Singapore including the nature of the spousal relationship, parental responsibility to their children and the equitable division of matrimonial assets.

I. ENACTMENT OF THE *WOMEN'S CHARTER*

It is fairly common knowledge that the *Women's Charter*¹ was enacted by the legislature of Singapore, then the Legislative Assembly of the State of Singapore, in 1961. The historical context leading to its enactment may be less well known. The first part of this article traces the events leading to its enactment.

A. *From the Straits Settlements to the State of Singapore*

The administration of the territory that is currently the Republic of Singapore from its 'founding' by officials of the British East India Company in 1819 is fairly well documented.² For more than a century the administration of Singapore was intertwined with that of what are now the states of Penang and Malacca in the neighbouring

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¹ The current version is Cap. 353, 1997 Rev. Ed. Sing. [*Women's Charter*], as amended by *Statutes (Miscellaneous Amendments) Act (No. 2) 2005*, No. 42 of 2005.

² See e.g., C. Mary Turnbull, *A History of Singapore*, 2d ed. (Singapore: Oxford University Press, 1989); C. Mary Turnbull, *A Short History of Malaysia, Singapore and Brunei* (Singapore: G. Brash, 1981); Ernest C.T. Chew & Edwin Lee, eds., *A History of Singapore* (Singapore: Oxford University Press,

Federation of Malaysia,³ the three being parts of the territory of 'The Straits Settlements'. The immediate events leading to 1961 were the dismantling of the Straits Settlements when Penang and Malacca were joined with the other states in peninsular Malaya into the ill-fated Malayan Union that was cobbled together after the Second World War, leaving Singapore as a separate Crown Colony; the new union of the Federation of Malaya replacing the Malayan Union in 1948; and this Federation of Malaya achieving its independence from Britain in 1957.

The political awakening and agitation for independence in the neighbouring peninsular Malaya from the 1940s onwards stirred similar sentiments in Singapore. Several political parties and their leaders played pivotal roles on the road to independence in Singapore. It was, however, mainly with the political agenda of the leaders of the People's Action Party that the fate of the *Women's Charter* lay.

B. *The PAP and The Tasks Ahead*

The People's Action Party ("PAP") was formed in 1954 by a group of fourteen "intellectuals, trade unionists and journalists ... a small elite group who were for the most part English-educated",⁴ including Mr. Lee Kuan Yew, Dr. Toh Chin Chye, Mr. S. Rajaratnam and Mr. Devan Nair.⁵ Through the party's tumultuous early years the constant goal was to rid the country of British colonialism. The party joined other political parties existing then in talks with the colonial administration in London towards internal self-government for Singapore during March and April of 1957. General Elections towards a fully elected government in Singapore (with charge of all matters except foreign affairs and defence that would still be controlled by Britain) were agreed to be held in May 1959.

The PAP formulated and disseminated its manifesto as a Five-year Plan for 1959-1964 that it appropriately entitled 'The Tasks Ahead'. Party Chairman Toh Chin Chye kicked off a series of road shows with a mass rally at Hong Lim Green on 15th February 1959 where he declared:

Today is the first of a series of pre-election rallies Once a week at different parts of Singapore we shall explain the programme and policy of the PAP.... We say to all that we stand for equality ... equality of opportunity for education and employment to all Singapore citizens.⁶

1991); and for a very brief summary of the milestones, see Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore: Butterworths Asia, 1997) at 2-4 [*Principles*].

³ The Federation of Malaysia was formed from the former Federation of Malaya and the states of Sabah and Sarawak in Borneo on 31st August 1963. Although Singapore was initially a fourth constituent state of the Federation of Malaysia it exited barely two years later, on 9th August 1965, to become the Republic of Singapore and has remained so since.

⁴ See Shee Poon Kim, *The People's Action Party of Singapore 1954-1970: A Study in Survivalism of a Single-Dominant Party* (Ann Arbor, Michigan: University Microfilms International) at 28 (Ph.D. Thesis, Indiana University, 1971).

⁵ See also *PAP 1st Anniversary Souvenir* (Singapore: Petir, 1955).

⁶ See *The Tasks Ahead Part 1* (Singapore: Petir, 1959) at 1 and 4.

Elaborating, Dr. Toh announced at a meeting of the PAP:

The Central Executive Committee of the party has already issued the following policy statements [relating, among others, to] the problems of women... [T]hese are the following specific tasks of our five-year plan [among seven others] ...

8. Emancipation of women

Women who form nearly half of our population have an important part to play in our national construction. In the first instance in order to emancipate them from the binds of feudalism and conservatism a monogamous marriage law will be passed... Furthermore to free working-class women from domestic drudgery ... we shall carry out an extensive education campaign on family limitation and the rights of women... We shall foster the principle, if necessary by legislation, that there shall be equality of women with men in all spheres and we shall encourage them to come forward to play a leading role in politics, administration, business and industry, education and in other spheres.⁷

At another rally, Mr. Yong Nyuk Lin elaborated on their commitment to universal education for all children, whatever race or gender, thus:

Both problems of quantity and quality [of education in Singapore] must be given equal attention for only by doing so can we adjust ourselves to the new political and economic changes ... from a colonial to a self-governing state and ... from a non-productive trading economy to a productive economy... [W]e recognise that children are the spring source of the nation. Take good care of it and the spring will develop into a stream that will nourish an oasis⁸

Espousing the PAP's vision of 'Women in the new Singapore' at yet another rally, party leader Ms. Chan Choy Siong said:

One of the aims of the PAP Government will be to introduce the necessary legislation to make monogamous marriages compulsory for all except Muslims whose religious beliefs permit polygamy.⁹

Ms. Chan also envisaged the establishment of 'Marriage Counselling Courts' that would "deal specifically with family disputes and marriage problems ... conducted by sympathetic people anxious to help solve domestic affairs with kindness and tact". It may reasonably be suggested that this part of the PAP vision was not achieved until the establishment of the Family Court in 1995.¹⁰

The PAP, as is well known, won an overwhelming victory of forty-three out of fifty-one seats in the General Elections of 1959¹¹ leaving the other political parties struggling for survival. The former colony had evolved into the State of Singapore. The party repeated its commitment to the tasks identified in its election manifesto, and

⁷ Announced by PAP Chairman at special Party Congress on 25th April 1959, *ibid.* at 7-8 and 11.

⁸ Speech at a mass rally at Thomson Road on 12th April 1959, see *The Tasks Ahead Part 2* (Singapore: Petir, 1959) at 1-2.

⁹ Speech at a mass rally at Bukit Panjang on 8th March 1959, *ibid.* at 18-19.

¹⁰ On the establishment and characteristics of the Family Court in Singapore, see *Principles*, *supra* note 2 at 769-782.

¹¹ See Sing., *Government Gazette Extraordinary*, vol. 14, no. 51 (Singapore: Government Printing Office, 2 June 1959).

declared as its seven goals: developing industry, agriculture and fisheries; strengthening the state administration; training personnel for skilled labour; raising the standard of education; improving the health of the people; improving the welfare of workers; and emancipating women.

C. Passage through Legislative Assembly

Faithful to the publicly declared goals of the PAP, the Minister of Labour and Law Mr. K.M. Byrne presented the *Women's Charter Bill* to the First Session of the First Legislative Assembly of the State of Singapore on 2nd March 1960, for its first reading.¹² At the second reading of the *Bill* on 6th April 1960 the Minister observed:

[T]he Government is carrying out its promise as contained in the Yang di-Pertuan Negara's speech [Hansard, Vol 11 No. 1, Col 9, that it] 'will enact legislation which ... will make it an offence to contract other than monogamous marriages in future.' The opportunity has been taken to consolidate the existing laws relating to marriage, divorce, the rights and duties of married persons, the maintenance of wives and children, and the punishment of offences against women and girls.¹³

The *Bill* was resoundingly supported.¹⁴ Even the members of the Opposition then, Dr. Lee Siew Choh,¹⁵ Mrs. Seow Peck Leng¹⁶ and Mr. A.P. Rajah,¹⁷ raised misgivings only with relatively minor matters, while endorsing the imposition of monogamy on the non-Muslim population. Dr. Lee Siew Choh articulated their sentiments when he said:

[A]s our country is just on the threshold of a new era and will need all the energy and help from all quarters—male as well as female—in the gigantic task of nation building, it might be advisable for those who are blessed with more zest and vitamins in their system ... to re-channel their exuberant energy into other socially useful ... productive occupations.... [I]n all progressive countries, the one man one wife system of marriages is the recognised social order.... I will even go so far as to say that this *Women's Charter* ... will find, as various other charters in other parts of the world have found ... a permanent monument and milestone—in the history of social struggle for the betterment of the world.¹⁸

It cannot be often that a member of the Opposition voices such ringing endorsement of an initiative of the ruling party.

Summing up the debate, Mr. K.M. Byrne revealed the reason for what might otherwise be thought of as a rather grandiose title for the statute proposed to regulate

¹² See Sing., *Legislative Assembly Debates*, vol. 12, no. 1 at col. 406 (2 March 1960). See also *Principles*, *supra* note 2 at 38-44.

¹³ See Sing., *Legislative Assembly Debates*, vol. 12, no. 1 at col. 438 (6 April 1960).

¹⁴ See *Principles*, *supra* note 2 at 38-41, and Andrew Phang Boon Leong, *The Development of Singapore Law: Historical and Socio-Legal Perspectives* (Singapore: Butterworths, 1990) at 273-274 [*Development of Singapore Law*].

¹⁵ See Sing., *Legislative Assembly Debates*, vol. 12, no. 1 at col. 454 (6 April 1960).

¹⁶ *Ibid.* at cols. 444, 450-451.

¹⁷ *Ibid.* at col. 459.

¹⁸ *Ibid.* at col. 454.

the formation of marriage and family life. He said:

[T]his Bill is making a very great change in the personal lives of the greater majority of our citizens. It marks a complete break from the past and it is a big step forward. And it is just for that reason that we have thought it important that we consider this piece of legislation as something outside the ordinary stream of legislation that we consider it to be, in the real sense of the word, a Charter for the women of our State.¹⁹

The *Women's Charter Bill* was committed to a Select Committee of the Legislative Assembly.²⁰ The Select Committee reported on 20th May 1960. While there were fifteen written representations from individuals and groups to the Select Committee, these raised other points and there were hardly any misgivings regarding the principle of monogamy for all non-Muslims. The *Report of the Select Committee on the Women's Charter Bill*, however, concluded:

Your Committee are of the opinion that, at this late period of the Session, it is not possible to bring their consideration of the Bill to a satisfactory conclusion. They have therefore agreed to present this report of the representations received and the Minutes of Evidence taken before them and to recommend that should a similar Bill be introduced in the next Session and should the Bill be committed to a Select Committee, this report be referred to that Select Committee for consideration.²¹

The enactment of the *Women's Charter* thus became delayed because the Legislative Assembly was prorogued and the *Bill* lapsed.

D. *Passage (for the Second Time) through Legislative Assembly*

A slightly modified *Women's Charter Bill* was re-presented for its first reading to the Second Session of the First Legislative Assembly of the State of Singapore on 22nd February 1961.²² At its second reading on 22nd March 1961, Mr. K.M. Byrne told the House:

The opportunity has been taken to reconsider the details of the Bill in the light of the representations made before the Select Committee on the former *Women's Charter Bill*. The result is that a number of detailed amendments have been made to the Bill.²³

The amendments were not of great significance, except for the change to clause 45 on 'rights and duties of husband and wife' to be discussed in greater detail below.²⁴

The principle of monogamy was widely embraced by this time. Dr. Goh Keng Swee, who was then the Minister of Finance, said:

We agree that this *Women's Charter*, like any other piece of legislation, gives only the protective framework. In itself, it cannot establish any new social codes of

¹⁹ *Ibid.* at col. 480.

²⁰ *Ibid.* at col. 490.

²¹ L.A. 16 of 1960 at 2.

²² See Sing., *Legislative Assembly Debates*, vol. 14, no. 2 at col. 1006 (22 February 1961).

²³ See Sing., *Legislative Assembly Debates*, vol. 14, no. 2 at col. 1198 (22 March 1961).

²⁴ See *infra* Part III, Section A at para. 3.

behaviour... This piece of legislation is only the beginning. But the more basic work ... is to arouse the consciousness of women in our society, so that they can more effectively stand up for their rights, and it is only the women who can do so.²⁵

The belief that the title of the legislation was not more grand than appropriate was re-conveyed by Mr. K.M. Bryne in summing up the debate:

[T]his Bill is worthy of the description of being a *Women's Charter*. For the first time ... there will be monogamy in our community.... There is no point in our talking about the rights of women and so on unless the woman is first regarded as the mistress in her own home.²⁶

This *Bill* was committed to a Select Committee of the Legislative Assembly that was directed to study not only the *Bill* but also the earlier *Report of the [First] Select Committee on the Women's Charter Bill*. The *Women's Charter* is thus unique in having been the subject of scrutiny by two Select Committees of the Legislative Assembly before its enactment.

The *Report of the [Second] Select Committee on the Women's Charter Bill*²⁷ was completed on 28th April 1961 having, by this time, the comfort of making only minor adjustments to several provisions. The most interesting discussion was with a member of the public who submitted a written representation suggesting the introduction of "a joint application by a husband and wife ... for dissolution of marriage".²⁸ After fairly substantial discussion,²⁹ Chairman Sir George Oehlers, Speaker of the Legislative Assembly, conveyed the Select Committee's rejection of the suggestion thus:

I think you are looking at this problem from a point of view of a different strata of society, rather than from the society which this Charter is really trying its best to protect. [S]ociety in the present context of Singapore is not ready to accept this principle of dissolution of marriage by consent.³⁰

At the third reading of the *Bill* on 24th May 1961, Mr. K.M. Bryne endorsed the decision:

The *Women's Charter Bill* ... has been under the close scrutiny of two Select Committees and I hope the *Bill*, as amended, will be generally accepted as a

²⁵ *Op. cit.* at col. 1213.

²⁶ *Ibid.* at col. 1214.

²⁷ L.A. 10 of 1961.

²⁸ *Ibid.*, Appendix II: Written Representations at B1, from Mr. E.S. Moorthy.

²⁹ *Ibid.*, Appendix III: Minutes of Evidence at C4-7.

³⁰ *Ibid.* at C7. It may interest readers that allowing the spouses to make a joint application to court for a judgment of divorce by their mutual consent was proposed, officially, in the *Women's Charter (Amendment) Bill*, No. 23 of 1979, to the Parliament of the Republic of Singapore. That *Bill* was committed to a Select Committee. The Committee deleted the clause that contained that proposal from the *Bill*. See Sing., *Report of the Select Committee on the Women's Charter (Amendment) Bill [Bill No. 23/79] [1979 Select Committee Report]*. The 1979 *Select Committee Report* only shows that the members were unanimous and agreed to the deletion without discussion, beyond the statement of Dr. Ahmad Mattar, then Acting Minister of Social Affairs, that it would have "run counter to the principle laid down in ... the *Bill* ... that irretrievable breakdown shall be the sole ground for divorce", and "[o]ur Act should not make it easy for the parties to a marriage to terminate their marriage". For the writer's comments of the Select Committee's decision, see *Principles*, *supra* note 2 at 699-702.

significant advance in social legislation for the protection of the rights of women. The *Bill* seeks ... to make it as easy as possible to enter into the contract of marriage and ... as difficult as possible to contract out of it... It may be that when the women of Singapore are more advanced and more aware of and more in a position to exercise their rights, it would be possible to go further in liberalising the law of divorce—but for the present it is felt it would be better to work on the existing law, which has been in force in Singapore since 1912, and which has been found on balance not to have operated unsatisfactorily.³¹

With that the *Women's Charter Bill* was passed at the Second Session of the First Legislative Assembly on 24th May 1961.³² The *Women's Charter* commenced as Ordinance 18 of 1961 with effect from 15th September 1961.

II. IMPACT OF THE *WOMEN'S CHARTER*

The enactment of the *Women's Charter* was a momentous event in the relatively short history of Singapore, which only gained internal self-government in 1959, independence as a constituent state within the Federation of Malaysia in 1963, and full independence as the Republic of Singapore in 1965. Its impact may be appreciated, first, on marriage and family law in Singapore and, second (more widely), on economic progress in Singapore within this relatively short space of time.

A. *On Marriage and Family Law: Providing Unitary Monogamous Law for Non-Muslims*

Of the change to the landscape of family law that the enactment of the *Women's Charter* brought, the writer had observed in 1990:

[T]he family laws in Singapore in 1959 were a motley mixture as varied as the racial and religious mix of the society... This profusion no doubt caused a certain amount of conflict and confusion and, eventually, unhappiness with the entire situation. Inasmuch as the vast majority of the population was Chinese, it was mainly the unhappiness over the Chinese customary marriage law as it has been developed by the expatriate English judges sitting in the Straits Settlements courts that determined the course taken by the Legislative Assembly.

The expatriate English judges decided *inter alia* that the Chinese were polygamous so that each of the man's marriages was of equal status in law; a Chinese customary

³¹ See Sing., *Legislative Assembly Debates*, vol. 14, no. 2 at col. 1546 (24 May 1961). The law of divorce was indeed liberalised, most dramatically, in following the lead set by the (*English*) *Divorce Reform Act 1969* when the *Women's Charter (Amendment) Act*, No. 26 of 1980, substituted the law of divorce as of 1961 with that based on the modern principle of proof of the irretrievable breakdown of marriage. This law remains as s. 93 of the current *Women's Charter*, see *supra* note 1. An alternative of divorce by the mutual consent of the spouses does not appear to be likely to become law in the near future. Perhaps, in the spirit of the comments of the then Minister of Labour and Law, women remain unable to protect their own interests and we need to await that condition before the law should allow her the autonomy together with her husband whether to end their marital relationship.

³² See Sing., *Legislative Assembly Debates*, vol. 14, no. 2 at cols. 1545-1547 (24 May 1961).

marriage could be proven [very] simply ... and that all the Chinese man's widows shared equally ... under the *Statute of Distributions*.

The combination of these rules irked the Chinese community ... [and] social reformers [who] did not or could not distinguish the customs in their traditional form from the customary law as propounded by the expatriate English judges after they had attempted to understand the customs and after they had manipulated them to fit into the common law which was, after all, the basic law of the colony.³³ As it happened the 'customs' were increasingly denigrated as anti-social and oppressive. In its stead Christian norms which were adopted into English family law ... were regarded as enlightened and as prerequisites to progress and the enhancement of family life in Singapore.... It is mere speculation now whether the Chinese customs of marriage and family life would have stood a better chance of survival if the judges' interpretations of the Chinese customs were more faithful to their essential nature and if more of these customs had been raised to law so that a complete and rational customary marriage system developed....

Thus the first Legislative Assembly rejected local customs and religious laws on marriage and the family and chose a law which had drawn heavily from the norms of the Catholic Church....

There is no doubt, however, that in enacting a common non-Muslim marriage law the Legislative Assembly had made obsolete those conflicts and confusion due to the plurality of marriage laws.³⁴

A learned commentator considered that "of all the legislation promulgated locally by the PAP during the 'modern period', the *Women's Charter* is probably one of the most distinctive".³⁵

The momentous change of imposing monogamy on all non-Muslims was achieved remarkably smoothly. There was hardly any opposition despite this seemingly removing a privilege that Chinese and Hindu men had grown accustomed to. Little opposition was voiced to its proposal, whether within the Legislative Assembly or without, or was raised at its implementation after enactment. The learned commentator of this "most distinctive" legislation suggested that the reason for this was that the principle was right at the time it was proposed, thus:

[T]he success of the *Women's Charter* ... was due, in no small measure, to the impact of the wider socioeconomic as well as political context.... [A] whole series of factors existed so as to generate an environment or atmosphere that was extremely favourable to, and did indeed result in, success.... [T]aken in its strict legal sense and context, the Charter could not, it is submitted, have engendered success of its own accord.... [T]he Charter introduced a monogamous regime of marriage when the laws of most of the main ethnic groups actually recognised

³³ This process is discussed in greater detail in Leong Wai Kum, "Common Law and Chinese Marriage Custom in Singapore", in Andrew Harding, ed., *The Common Law in Singapore and Malaysia* (Singapore: Butterworths, 1985) 177.

³⁴ See Leong Wai Kum, *Family Law in Singapore: Cases and Commentary on the Women's Charter and Family Law* (Singapore: Malayan Law Journal, 1990) at 9-10, 15-16 [Cases and Commentary].

³⁵ See *Development of Singapore Law*, *supra* note 14 at 276.

polygamy instead. The law relating to divorce ... was itself based ... upon English principles and was thus equally foreign to the general population.³⁶

He attributed the success of the *Women's Charter* and, in particular, the principle of monogamy, to the happy confluence of the economic pragmatism that was the driving motivation of the ruling party, the influence of Westernisation and modernisation on the local population as well as the fact that this modernisation had also taken hold in China and India. Be that as it may, on achieving internal self-government the political leaders set about aligning Singaporean Chinese and Hindu men's marital commitment with the principle of monogamy that their ancestral homelands had also adopted by this time.

B. *As an Aid Towards Economic Progress*

The success of the *Women's Charter* in Singapore may be appreciated to exceed merely modernising marital commitment. It was envisaged by the political leaders to, and did, aid the economic progress of the state. The leaders developed their vision towards such economic progress in their Party's manifesto for the General Elections of 1959. They publicised the vision to the people through public rallies and, once in government, they pursued it on the fronts they had earlier identified, including the enactment of this legislation.

The leaders rightly reasoned that, if Singapore was to be lifted from its fairly low economic status in the late 1950s when the most profitable sector of the economy was as the port of entry of goods bound for the Malayan hinterland, it needed its entire population to be as highly educated and economically productive as possible. Each individual man and woman had to play his or her part. Several initiatives needed to be pursued. Quality education had to be freely accessible. Child care and health services had to be improved and made accessible to all. Children, the spring source of the nation, had to be valued and no difference drawn between girls and boys. Both had to be nurtured and educated to the highest level possible. Workers had to be protected and female employment encouraged.

In all this it became crucial that women be accorded full equal rights and protection as men. The circumstance where equality should be expressly sanctioned is within marriage. Where the husband is the equal of the wife the seeds for the future well-being of the children, including the daughters, are sown.

As the political leaders rightly envisioned, each step in this endeavour brought benefits that were magnified in the successive economic leaps by modern Singapore. To a family lawyer, it is particularly heartening that the political leaders began with improving the status of women within marriage. They put in motion the enactment of the *Women's Charter* at the first session of the first Legislative Assembly, within their first year in office as the government of Singapore.

Any study of the economic participation of women in Singapore from 1961 bears out the unmitigated success of this vision. The writer need only quote from one

³⁶ *Ibid.*

such study:

In census year 1957, only 21.6% of the total female population aged 15 years and above were economically active. This figure rose rapidly to 29.5% in 1970 and 44.3% in 1980.... The economic status of women in Singapore has been relatively favourable. [A]lthough the migrant population came from traditional sources like China and India, where the cultural traditions are heavily biased against women, the PAP had no such sex preference in its development programmes and strategies. In the wake of a new post-colonial era, economic and political survival was at stake. There was no room for luxury, such as a prolonged debate on sex distinctions. Instead, the gender issue was settled early on, as seen in the provision of equal educational and employment opportunities and the enactment of the *Women's Charter* in 1961, which ensured equal rights for married women *vis-à-vis* their husbands.³⁷

Of the 1990s, the current period of that study, and of married women in particular, the study found:

[T]he economically active females as a proportion of total population ... was particularly pronounced among married women, from 29.8% in 1980 to 43.1% in 1990.... Women constitute 38.4% of the total economically active population in 1990.³⁸

The general conclusion of the study was:

The economic status of women in Singapore has progressed in tandem with our economic development over the past three decades. It is interesting to note that this has occurred without undue sensitivity to or preoccupation with gender issues. The problem at hand today is more the acute shortage of labour and every effort has to be made to enhance human resource growth and development. There is no possibility of a retrogression in the status of women. Political suffrage, education and economic advancements will guarantee their continued well-being and status.³⁹

At the macro level the enactment of the *Women's Charter* may have played a pivotal part in raising the status of women and supporting their economic participation.

As political achievement this legislation lives up to its title, the *Women's Charter*, as its promulgators had intended. While the unusual title does invite the occasional call for change so that the title becomes one that is less dramatic, for instance the 'Family Law Act', the consequent loss of connection of this piece of legislation with the political and economic development envisaged by the leaders of modern Singapore should give one a reason to pause.⁴⁰

³⁷ Linda Low, Toh Mun Heng, Euston Quah & David Lee (then all academics at the National University of Singapore), "Economic Participation", in Aline K. Wong & Leong Wai Kum, eds., *Singapore Women: Three Decades of Change* (Singapore: Times Academic Press, 1993) at 87 and 90.

³⁸ *Ibid.* at 97 and 101.

³⁹ *Ibid.* at 117.

⁴⁰ See the writer's personal representation to the Select Committee of Parliament on the *Women's Charter (Amendment) Bill*, No. 5 of 1996, arguing against such a name change in Sing., *Report of the Select Committee of Parliament on the Women's Charter (Amendment) Bill [Bill No. 5/96]*, Appendix III: Written Representations at B34 [1996 *Select Committee Report*].

III. MARRIAGE AS EQUAL CO-OPERATIVE PARTNERSHIP OF DIFFERENT EFFORTS

The next part of this article focuses on one exceptional provision within the *Women's Charter* that was there from its enactment in 1961 and continues today. This brings the discussion of the contribution of the *Women's Charter* to improving, at the micro level, legal regulation of the individual family in Singapore.

Section 46 of the *Women's Charter* regulates the relationship between husband and wife. While the provision is directed at the narrower concern of regulating the relationship between a husband and his wife, good legal regulation of this relationship ultimately benefits larger society in promoting harmonious family life and encouraging stable marriages. This provision within the family law in Singapore thus also has a national role.

A. Section 46 of the Women's Charter

The current *Women's Charter* in its section 46 provides:

- (1) Upon the solemnization of marriage, the husband and the wife shall be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children.
- (2) The husband and the wife shall have the right separately to engage in any trade or profession or in social activities.
- (3) The wife shall have the right to use her own surname and name separately.
- (4) The husband and the wife shall have equal rights in the running of the matrimonial household.

The writer has observed of this exceptional provision:

[T]he provision exhorts husband and wife to co-operate for mutual benefit as well as to care and provide for their children...

The provision is powerful beyond its substantive content and despite it being powerless of direct enforcement. None of its pronouncements gives rise directly to an enforceable right. A court cannot give judgment directly from it on a complaint of failure of a spouse to meet its expectations, even where this can be proven. The classicist who believes that a legal rule should be an enforceable command might frown upon a statutory provision of unenforceable expectations. To denigrate the provision, however, would be to regard law more narrowly than necessary. While it is a fundamental purpose of law to design and enforce rights, the law serves an equally important role to teach us how to behave as moral people. The pedagogical function of law is not exhausted in moulding enforceable rights. Enforceable rights do teach morality but the law can do the same beyond rights. There are areas over which there may not yet be enforceable rights but proper conduct in these areas is essential to harmonious living. Indeed, these areas come within the purview of family law more than other laws. In the regulation of the intimate continuing relationship between spouses, the judicious expression

of expectations may well be an ideal expression of the law. Family law is the stronger for embracing and performing this role.⁴¹

It is of note that the *Women's Charter*, as originally enacted in 1961, already contained the current section 46. It is fascinating to inquire how the draftsman to the Legislative Assembly in Singapore almost half a century ago came upon this brilliant idea of conveying marriage to the spouses in a moral way as their 'equal co-operative partnership of different efforts', and to do this through a provision so unlike any other within the common law style of legislative drafting, that is, a provision that exhorts expectations without threat of sanction for breach.

1. Clause 45 of the Women's Charter Bill

In moving the second reading of the *Women's Charter Bill*, for the second time, on 6th April 1960, Mr. K.M. Byrne revealed the source of inspiration of clause 45 that has become the current section 46:

[C]ause 45 is taken from the Swiss Civil Code and it has been considered by eminent jurists before.⁴²

Although no further details were provided, the revelation that the source of the current section 46 of the *Women's Charter* was the law of a country within the civil law family of legal systems explains much about its character. The more expansive style of legislative drafting allows the legislatures of civil law countries to include within their statutes statements of principle that fall short of enforceable rights where such statements are judged to be appropriate. The writer took the opportunity to track this Swiss connection within our family law that is somewhat unusual in itself since the more common models of our legislation are countries within the common law family of legal systems, principally England.

2. The Swiss Connection

The Fifth Title of the *Swiss Civil Code* provides for "The consequences of marriage in general". Article 159 expresses the general principle of the "Rights and duties of both parties" (which the next eighteen Articles flesh out) thus:

By the marriage both parties are bound in marital community (*Eheliche Lebensgemeinschaft*).

They bind themselves, on either side, to preserve the weal of the common relationship, in harmonious working together, and to care for their children in common. They owe to each other fidelity and assistance.⁴³

⁴¹ See Leong Wai Kum, *Elements of Family Law in Singapore* (Singapore: LexisNexis, 2007) at 84-85 [Elements].

⁴² See Sing., *Legislative Assembly Debates*, vol. 12, no. 1 at col. 485 (6 April 1960).

⁴³ Official versions of Swiss law appear in their three official languages, viz. German, French and Italian, but, unfortunately for the writer, not in English. The writer thus had to rely on unofficial English translations. Until very recently the only reliable English translation was *The Swiss Civil Code of December 10, 1907*, as translated by Robert P. Shick, annotated by Charles Wetherill (both of the Philadelphia Bar), and corrected and revised by Eugen Huber (Professor at the University of Berne

It is most revealing that Professor Eugen Huber, the drafter of the *Swiss Civil Code*, had intended Article 159 to convey the moral perspective of marriage. When commissioned to compile the cantonal private laws towards a unified code for his country in 1884, Professor Eugen Huber completed the preparation in his four volumes entitled *System and History of the Swiss Private Law* (1886-1893). In 1892 he began on the draft that would lead to the *Swiss Civil Code*. In this extract from it,⁴⁴ Professor Huber provided his intention in his commentary that was written in German and which may, unofficially, be translated thus:

The matrimonial union has moral and legal content. It appears to us desirable to state the moral effects in the law, at least inasmuch as the violations affect the marriage and may possibly provide grounds for divorce.⁴⁵

It would appear that, while the related Articles were a combination of the existing laws of the Swiss cantons, especially those of Bern, Solothurn and Argau, as well as provisions of the *German Civil Code* (that had put emphasis on the legal aspects of marriage), Professor Eugen Huber went further to add his personal conception of the moral basis of marriage.

That the drafter of Article 159 of the *Swiss Civil Code*, on which section 46 of the *Women's Charter* was based, added his personal moral perspective to buttress what were the more technical provisions from the Swiss cantonal and the German family laws explains so much of the remarkable developments within the family law in Singapore that are discussed below.⁴⁶ Generations of Singaporeans remain indebted to the wise draftsman of the original *Women's Charter* in 1961 who chose to model this aspect of our law after the Swiss thus incorporating a moral message in the legal regulation of spouses.

The writer has described section 46(1) of the *Women's Charter*, laying out the moral basis of marriage, far from being a worthless provision of imperfect obligation, as “the ideal formulation of law to express the hopes of general society while

who was the drafter of the *Swiss Civil Code*), Alfred Siegart and Gordon E. Sherman (reprint by Connecticut: Hyperion Press, 1980 of the original book by Boston Book Co. in 1914). The most current English translation is by a team of lawyers under the sponsorship of the Swiss-American Chamber of Commerce entitled *Swiss Civil Code I and II* (English Translation of the Official Texts), 2008 ed. (Zurich: Schulthess Juristische Medien AG, 2007) [*Swiss Civil Code I and II*].

⁴⁴ The writer gratefully acknowledges the very generous assistance provided by Professor Alexandra Rumo-Jungo of the University of Fribourg in locating and understanding the thrust of these invaluable insights into Article 159 of the *Swiss Civil Code*. She was most kindly put in touch with Professor Rumo-Jungo by Professor Susan Emmenegger of the University of Zurich, who is a former classmate of the writer's colleague and family law co-teacher at the NUS Faculty of Law, Associate Professor Chan Wing Cheong. She is also grateful to Visiting Professor Lim Yee Fen who readily offered her assistance in reading the laws in German. Such is the collegiality among academics that the most generous help was so readily given to the writer including from across the seas for no reward other than our common academic curiosity of the origin of s. 46 of the *Women's Charter*.

⁴⁵ Eugen Huber, *Schweizerisches Zivilgesetzbuch, Erläuterungen zum Vorentwurf des Eidgenössischen Justiz- und Polizeidepartements* (Bern, 1902) at 143: “Die eheliche Gemeinschaft hat sowohl einen sittlichen als auch einen rechtlichen Inhalt Es erscheint uns ... wünschenswert, im Gesetze die sittlichen Wirkungen wenigstens insofern anzuführen, als deren Verletzung das eheliche Verhältnis beeinflusst und eventuell eine Scheidungsklage begründen kann.” See *supra* note 44.

⁴⁶ See *infra* B.

supporting the subsisting relationship between spouses.”⁴⁷ She continued:

The relationship is hopefully of long duration. It is a deep emotional and sexual union.... If this intimate relationship is to endure, the parties require the utmost privacy to sort out all manner of rights, obligations, responsibilities and privileges between themselves. Injudicious interference by the law can only cause harm. In this context, the best society can do may be to spell out what the ideal is and leave the parties to achieve this to the best of their abilities.⁴⁸

Professor Eugen Huber’s incorporation of a moral message has been affirmed by other commentators. The most renowned commentators of the *Swiss Civil Code* are apparently Heinz Hausheer, Ruth Reusser and Thomas Geiser. They referred to Professor Huber’s commentary and affirmed the effect of Article 159 in 1988, again unofficially translated from German, thus:

Art 159 expresses perfectly the idea of a monogamist marriage. It expresses the moral and ethical aspects of the matrimonial union.⁴⁹

The latest unofficial English translation of Article 159 of the *Swiss Civil Code* affirms the moral perspective that it conveys thus:

1. The wedding ceremony joins the spouses into a matrimonial union.
2. They mutually undertake to assure the well-being of the union through harmonious co-operation and to jointly care for the children.
3. They shall owe each other fidelity and support.⁵⁰

3. *Clause 45 of Women’s Charter Bill Shed of the Idea of “Community of Property”*

The original clause 45 contained one last part that was deleted before the *Women’s Charter Bill* became enacted in 1961. This part of the proposed clause was criticised. The original proposed clause 45(4) had contained, apart from what is today section 46(4) of the current *Women’s Charter*, that is, “The husband and the wife shall have equal rights in the running of the matrimonial household”, the following:

and in the ownership and management of the family properties.

This part of the proposed sub-clause was perfectly in tandem with the civil law-based Swiss idea of the effect of marriage on the spouses’ interests in each other’s property. This idea is conveyed by the convenient phrase,⁵¹ ‘the community of property’,

⁴⁷ See Leong Wai Kum, “Supporting Marriage through Description as an Equal Partnership of Efforts”, in Andrew Bainham, ed., *The International Survey of Family Law*, 2002 ed. (Great Britain: Jordans, 2002) 379 at 381 [*Supporting Marriage*].

⁴⁸ *Ibid.* at 381.

⁴⁹ Heinz Hausheer, Reusser Ruth & Geiser Thomas, *Kommentar zum Eherecht, Band I, Kommentar zu Art. 159-180 ZGB und zu Art. 8a und 8b SchlT* (Berne, 1998) at 28: “Art 159 bringt das Wesen der monogamen Ehe in mustergültiger Weise zum Ausdruck (Botschaft Ziffer 211). Er verleiht dem sittlichen und ethischen Gehalt der ehelichen Gemeinschaft Ausdruck. (vgl. HUBER, Erläuterungen zum Vorentwurf eines ZGB, Bern 1914, s 158).” See *supra* note 44.

⁵⁰ See *Swiss Civil Code I and II*, *supra* note 43, and see *supra* note 44.

⁵¹ See the writer’s brief comparison of the contrasting ideas of ‘the community of property’ and ‘the separation of property’ in *Elements*, *supra* note 41 at 489-492 and 529-539.

which contrasts with the common law idea conveyed by the phrase 'the separation of property'. Under 'the community of property', marriage has a sweeping effect on a spouse's interest in property owned by the other. All property acquired during the course of the marriage whether by one spouse or both becomes pooled into a community over which both spouses have equal interest and right of control.⁵² Under 'the separation of property', in contrast, marriage has minimal effect. While the marriage subsists the general rules of property law continue to determine whether a spouse gains any interest in property acquired by the other so that the status of being married to the owner, by itself, is of little significance.

The part of the proposed sub-clause 45(4) quoted above would have introduced the civil law idea of community of property into Singapore in providing that, upon marriage, both spouses have equal rights in the ownership and management of family properties. It was immediately criticised. In the debate following the second reading of the *Women's Charter Bill* when it was first presented to the Legislative Assembly on 6th April 1960, Mr. A.P. Rajah, an Opposition member, said:

This is more serious. Quite frankly ... I do not quite follow the meaning of this. The implications of this sub-clause could be very drastic. Some of the phrases used are such that they cut across the whole conception of property and operation of property in Singapore.⁵³

The Select Committee that was convened to study the *Bill* faced similar criticism of the effect of this sub-clause on everyday life. Several private individuals commented:

[E]qual rights in the ownership and management of the family properties will cause innumerable disagreements, and the consequences of such troubles will be disastrous to the whole family especially to those who have more than one wife.⁵⁴

The second Select Committee, of which Mr. A.P. Rajah was a member, scrutinised the *Women's Charter Bill*, including the much criticised sub-clause 45(4). In its report that was accepted by the Legislative Assembly without further discussion, the Select Committee included a revised *Bill*. In this revised *Bill* the provision that remains as section 46(4) of the current *Women's Charter* read, "The husband and the wife shall have equal rights in the running of the matrimonial household." Thus it was that the part of the sub-clause that would have introduced the civil law idea of community of property became deleted from the *Women's Charter* before it was enacted.

With this deletion, the law regarding the effect of marriage on each spouse's interest in the other's property, at least while the marriage subsists, continued as the common law idea received in Singapore from 1826, notwithstanding the enactment of the *Women's Charter*. The spouses' interests are regulated by the general law of property and the family law introduces minimal modification of these rules and principles.

⁵² The *Swiss Civil Code* of 1907 conveys this idea in its Article 194, unofficially translated thus: "The union of property unites all property ... coming to them during the marriage, into marital property"; see *Swiss Civil Code I and II*, *supra* note 43.

⁵³ See Sing., *Legislative Assembly Debates*, vol. 12, no. 1 at col. 458 (6 April 1960).

⁵⁴ See *Report of the Select Committee on the Women's Charter Bill*, L.A. 16 of 1960, *supra* note 21, Appendix I: Written Representations Received on the Bill at A4 (Paper from Tan Eng Eam, Tay Tong Seng, Yeo Tian Sung, Ho Cheong Chin and Lim Way Seo).

The deletion of this last part of clause 45(4) of the *Women's Charter Bill* does not in any way detract from the significance of the rest of clause 45 that became enacted into law.

B. *Significance of the Moral Perspective of the Marital Relationship*

The writer has observed of the significance of providing the moral perspective of the marital relationship⁵⁵ in acknowledging the “true creative genius”⁵⁶ of the legislative draftsman in 1961. The exhortation to spouses that they are engaging in an ‘equal co-operative partnership of different efforts’ places marriage firmly on a moral foundation. Its significance may be shown in three areas.

1. *Adulterous Wife Behaved Unreasonably but Husband Cannot Sue Her Lover for Damages*

The moral principle within section 46(1) of the *Women's Charter* leads to three characteristics of legal regulation of the marital relationship, as follows:

1. spouses are expected to behave reasonably with each other;
2. spouses owe duties mutually; and
3. spouses retain autonomy of decision-making.⁵⁷

The family law in Singapore does regulate a spouse's conduct towards the other but it judiciously stops short of formally intervening in their relationship where intervention threatens at least as much harm as good. It does expect spouses to behave reasonably, and will condemn unreasonable behaviour, but this condemnation must rightly be restrained while the spouses remain married. Sanction by law should be deferred until one spouse chooses to initiate legal proceedings against the other including, in the most dire circumstances, proceedings for a judgment of divorce. The family law can do no better. An appropriate illustration of such restrained condemnation of unreasonable behaviour between spouses was *TPY v. DZI*.⁵⁸

The wife in *TPY v. DZI* had no doubt behaved unreasonably. She had taken a lover. The courts could clearly, on the basis of section 46(1) of the *Women's Charter*, have condemned her behaviour as having fallen short of the expectation of the law that she co-operate with her husband to safeguard their union. That, however, was not what the husband asked for. He sued his wife's lover for damages, claiming that the lover had caused him harm in enticing his wife's affections from him. This claim the court did not allow. While the common law received in Singapore in 1826 had recognised such an intentional tort allowing an aggrieved husband to claim damages as compensation, the High Court decided that, by 1997 when the husband made his claim, the legal view of the marital relationship made an order of damages

⁵⁵ See above text corresponding to note 41, and Leong Wai Kum, *Supporting Marriage*, *supra* note 47.

⁵⁶ See *Principles*, *supra* note 2 at 356.

⁵⁷ See *Elements*, *supra* note 41 at 86, and more generally of this provision, at 85-95.

⁵⁸ [1997] 3 Sing. L.R. 475; see discussion in *Elements*, *supra* note 41 at 115-116.

inappropriate. Rubin J. reasoned:

[T]o give currency to a cause of action which had no known presence in Singapore and one which had been given a final farewell in its place of birth would be to lend a hand to encouraging fruitless litigation for vindictive purposes.... In my opinion, though the tort of enticement might well have been received in Singapore under the Second Charter of Justice, it cannot continue to serve any useful purpose particularly when society no longer subscribes to the view that women are mere chattels and whose existence is only to be in the service of their husbands. Sections [46, among others] of the *Women's Charter* clearly underscore the aspect that a wife is a person in her own right and not someone who is subordinate to, or a chattel of her husband.⁵⁹

The principle that emerges from this decision may be suggested thus:

By the current view of the marital relationship as an equal co-operative partnership of efforts, a disappointed husband cannot hope to receive damages for the 'injury' to his marital condition caused by his wife having a sexual relationship with another man. The equal marital partners must resolve their problem by taking gentler, more practicable steps that may help to mend their relationship.⁶⁰

The law of torts in Singapore will not compensate a spouse aggrieved by the other's adultery simply because the family law in Singapore teaches the spouses that their marriage requires a more 'give and take' co-operative spirit from each of them. The best the law can do for parties who remain engaged in a marital relationship is to exhort the wife to try to do better. The family law in Singapore recognises the practical limits of law in regulating an intimate continuing relationship. Any more concrete comfort for the aggrieved husband or education of the misbehaving wife will have to come from general social services. Such is the contribution of the *Women's Charter* from 1961 to modernising the legal view of the nature of the relationship between husband and wife.

2. Parental Rights Transformed into Parental Responsibility

The moral foundation is equally felt in legal regulation of the spouses as parents. The common law would have viewed the relationship between the parents and their child from the litany of rights the parent (indeed, in practice only the father) held over the child.⁶¹ Section 46(1) of the *Women's Charter*, however, improved the legal perspective immeasurably. The natural authority that parents have over their child remains acknowledged by the law but this is now presented within the modern idea of the parents' responsibility to care and provide for the child.

The shift from parental rights to parental responsibility is no mere semantics. This change of perspective means that each exercise of parental authority must be

⁵⁹ *Ibid.* at paras. 14-15.

⁶⁰ See *Elements*, *supra* note 41 at 116.

⁶¹ See *Cases and Commentary*, *supra* note 34 at 253-257.

motivated by the parents' pursuit of the well-being of the child, as the provision suggests. Section 3 of the *Guardianship of Infants Act*⁶² affirms this change of perspective in requiring that every issue relating to the upbringing of a child whatever the nature of the court proceedings where it arises should be resolved by the "first and paramount consideration" of the welfare of the child.

The writer has observed:

The moral view of parenthood ... underlines several points:

1. that parents should view their relationship with the child from the perspective of responsibility;
2. that a parent should exercise authority over the child co-operatively with the other parent;
3. that the parents are equal in their responsibilities towards their child; and
4. that when a parent exercises his or her authority over a child, this should be in order to discharge his or her responsibility to care and provide for the child.⁶³

The Court of Appeal in *CX v. CY (minor: custody and access)*⁶⁴ has embraced the idea of parental responsibility within, among others, the law of guardianship and custody. The optimal exercise of the courts' power over a custody of a child aims to preserve the responsibility of both parents.⁶⁵ That parental responsibility is the pivotal principle in legal regulation of the parent-child relationship is another remarkable result of enacting the moral foundation within section 46(1) of the *Women's Charter* in 1961.

It is of note that outside Singapore the common law community took much longer to achieve this result. Parental responsibility became entrenched in legal terminology only through the sponsorship of the *United Nations Convention of the Rights of the Child 1989*, Article 18 of which commits State Parties to recognise that both parents have common responsibilities for the upbringing and development of their child. In England the term became officially used only from the enactment of the (*English*) *Children Act 1989*. By this exceptional provision in the *Women's Charter*, however, parents in Singapore were from as early as 1961 exhorted to discharge their role from the moral stance conveyed by 'parental responsibility'. They are exhorted to care and provide co-operatively for their child. Such is the contribution of the *Women's Charter* from 1961 to improving the law in Singapore of the relationship between parent and child.

⁶² Cap. 122, 1985 Rev. Ed. Sing. Section 3 was first inserted *vide* the *Guardianship of Infants (Amendment) Act*, No. 17 of 1965, although the idea was developed earlier by the Courts of Chancery in England. The courts in the Straits Settlements had embraced the equitable idea and were resolving disputes regarding the upbringing of children by reference to the standard of 'welfare of infants', see *e.g.*, the Straits Settlements High Court in Penang in *In re Sinyak Rayoon* (1888) 4 Kyshe 329.

⁶³ See *Elements*, *supra* note 41 at 249.

⁶⁴ [2005] 3 Sing. L.R. 690, noted in Chan Wing Cheong, "Custody Orders, Parental Responsibility and Academic Contributions" [2005] Sing. J.L.S. 407.

⁶⁵ See the writer urge the preservation of parental responsibility in Leong Wai Kum, "Trends and Developments in Family Law" in Singapore Academy of Law, *Review of the Judicial and Legal Reforms in Singapore between 1990 and 1995* (Singapore: Butterworths Asia, 1996) at 632, and in *Principles*, *supra* note 2 at 538-542, that was elaborated in Debbie Ong Siew Ling, "Making No Custody Order" [2003] Sing. J.L.S. 583.

3. *Division of Matrimonial Assets: Non-Financial Contribution Given Due Credit*

The most visible effect of section 46(1) of the *Women's Charter* placing marriage on a moral foundation as the spouses' 'equal co-operative partnership of different efforts' has perhaps been on the remarkable development of the law of division of matrimonial assets upon divorce.⁶⁶

The law was introduced only in the major review of the *Women's Charter* that resulted in the *Women's Charter (Amendment) Act* of 1980.⁶⁷ This forerunner provision was improved when it was substituted with the current section 112 by the *Women's Charter (Amendment) Act* of 1996.⁶⁸ This empowerment of the courts to order the "just and equitable" division of property that are 'matrimonial assets'⁶⁹ introduced a dramatic change to the law concerning the effect of marriage on spouses' interests in each other's property. The writer has long suggested that the enactment of this power changed the law based on the common law idea of 'the separation of property', with a limited power to make some adjustment to 'settlements' upon divorce, to the idea of 'deferred community of property'⁷⁰ that was innovated in the Scandinavian countries.⁷¹ The Court of Appeal may have recently endorsed this depiction of the law.⁷²

⁶⁶ The law of division of matrimonial assets equally arises upon the award of a judgment of nullity as well as a judgment of judicial separation but it is of note that many more judgments of divorce are awarded than the other two. This is not to suggest that divorce occurs any more than occasionally in Singapore. Most marriages in Singapore still end in the death of one spouse. For a short summary of the statistics, see *Elements*, *supra* note 41 at 145. Whether the law of division of matrimonial assets should be enforced slightly differently in contexts other than divorce is discussed in *Elements*, *supra* note 41 at 537.

⁶⁷ It is believed there had been a Review Committee established in 1973 to review, *inter alia*, whether to introduce the changes to divorce law in England by their *Divorce Reform Act 1969*, which the Royal Commission on Non-Muslim Marriage and Divorce Laws of Malaysia 1971 had recommended adoption by Malaysia. The report of the Review Committee was never made public. The *Women's Charter (Amendment) Bill*, No. 23 of 1979, was read for the first time on 15th May 1979: see *Sing., Parliamentary Debates*, vol. 39 at col. 366 (15 May 1979). At its second reading it was committed to a Select Committee; see the *1979 Select Committee Report*, *supra* note 30, presented to Parliament on 25th February 1980. At its third reading the forerunner of the provision that empowers the court on awarding a judgment of divorce to order the division of selected property was enacted as the then s. 106 of the *Women's Charter*. Section 106 was substituted by the current s. 112 by the *Women's Charter (Amendment) Act*, No. 30 of 1996, that had also been scrutinised by a Select Committee of Parliament; see the *1996 Select Committee Report*, *supra* note 40, presented to Parliament on 15th August 1996. The current s. 112 came into force on 1st May 1997.

⁶⁸ See the discussion of the intention behind the 1996 substitution with the current s. 112 in *Elements*, *supra* note 41 at 534-536.

⁶⁹ See *Women's Charter*, s. 112(10).

⁷⁰ See, Leong Wai Kum, "Division of Matrimonial Assets: Recent Cases and Thoughts for Reform" [1993] *Sing. J.L.S.* 351 at 353.

⁷¹ See *e.g.*, the *Swedish Civil Code* that from the 1920s provided that during marriage the spouses own and manage their individual properties while retaining some right in the other spouse's property, and that the primary effect of community of property kicks in only at the termination of marriage by court. The laws are now the *Swedish Marriage Code 1987*; S.F.S. 1987: 230, Chapters 7-13.

⁷² See Andrew Phang Boon Leong J.A.'s remark in *Lock Yeng Fun v. Chua Hock Chye* [2007] 3 *Sing. L.R.* 520 at para. 40:

[T]he legislative mandate to the courts is to treat all matrimonial assets as community property (or, as one writer put it, 'deferred community of property' inasmuch as the concept of community of property does not take place until the marriage is terminated legally) to be divided in accordance with section 112 of the Act.

'Deferred community of property' means that the law has two foci. While the marriage subsists, the common law idea of 'the separation of property' reigns in that a spouse gains an interest in the other's property only by the same general rules of property law so that family law has minimal input. Upon the termination of marriage, however, it is the civil law idea of 'the community of property' that takes over. Precisely because both spouses are regarded within their equal co-operative partnership of marriage to have contributed to the acquisition of property whatever the exact role each discharged during their marriage, in particular whether this was a financial or a non-financial role, the courts are empowered to divide such property equitably between them upon their divorce. The law of division of matrimonial assets rests on the premise that both spouses contributed to the acquisition of property that are matrimonial assets whether by their financial or non-financial contribution. As this new view of the acquisition of property is allowed only upon the award of a judgment of divorce, the community of property is deferred until this time. The brilliance of this Scandinavian innovation has been observed thus:

[T]he idea is the most practical response that meets the needs of:

1. convenience, which is of primary significance during the period of time the marriage subsists; and
2. fairness, which comes into primacy at the point in time when a court judgment terminates a marriage.

As the termination of marriage by a court judgment occurs at one point in time only, there is no fear of the law of division of matrimonial assets impeding transactions with property that involve one or more married persons. Additionally, the law only allows a spouse to make one application for an order of division of matrimonial assets. As such, the law is contained within manageable limits.⁷³

The writer has repeatedly related the power in the courts to divide property between the spouses with section 46(1) providing the view that marriage is the 'equal co-operative partnership of different efforts'.⁷⁴ The legal view of marriage, in particular

Phang J.A. was citing Leong Wai Kum, *Halsbury's Laws of Singapore: Family Law*, vol. 11 (Singapore: LexisNexis, 2006 Reissue) at para. 130.751. Cf. earlier judicial disapproval of any suggestion that a part of our law subscribes to the civil law idea of community of property, e.g., Coomaraswamy J. in *Neo Heok Kay v. Seah Suan Chock* [1993] 1 Sing. L.R. 230 at 233, remarking of the former *Women's Charter*, s. 106, that, as it did not use either of the terms 'matrimonial assets' or 'family assets', the use of these terms by practitioners did not introduce the concept of matrimonial assets or family assets into Singapore.

⁷³ See *Elements*, *supra* note 41 at 531.

⁷⁴ See the writer's first discussion of the former *Women's Charter*, s. 106, in Lewong Wai Kum, "Division of Matrimonial Property upon Termination of Marriage" [1989] 1 M.L.J. xiii:

Today, it is impossible to deny that both spouses contribute towards whatever is acquired by the family however the spouses choose to distribute the various roles that require to be performed if the family is to function as a unit.

See also Leong Wai Kum, "Trends and Developments in Family Law" in Singapore Academy of Law, *Review of the Judicial and Legal Reforms in Singapore between 1990 and 1995*, *supra* note 65 at 632, 700:

When two people marry, they create a partnership. How they choose to divide the tasks between them, in particular, who should bear the brunt of the breadmaking role and who should bear the brunt of the homemaking and child-rearing role is a matter, only, of their private concern. As far as the court goes, any material gain made during the course of the marriage has been acquired by the two partners where both discharged the breadwinning and the homemaking roles concurrently.

of it being the spouses' 'equal co-operative partnership of different efforts' for mutual benefit, provides the proper context to appreciate the court's power to divide their matrimonial assets. No provision other than section 46(1) can more perfectly justify the "just and equitable" division of matrimonial assets (that is, property that one or other or both spouses acquired by their personal effort during the course of their marriage) upon the termination of the marriage.⁷⁵ The Court of Appeal has adopted this linkage thus:

The division of matrimonial assets under the Act is founded on the prevailing ideology of marriage as an equal co-operative partnership of efforts. The contributions of both spouses are equally recognised whether he or she concentrates on the economics or homemaking role, as both must be performed equally well if the marriage is to flourish. When the marriage breaks up, these contributions are translated into economic assets in the distribution....⁷⁶

The development of the law of division of matrimonial assets in Singapore has been nothing short of remarkable from its introduction a mere twenty-eight years ago. From the first decision where the courts used this power as it was intended to be used, *Koo Shirley v. Mok Kong Chua Kenneth* only in 1989,⁷⁷ the body of case law has grown dramatically both numerically and substantively. In her latest review of the cases, the writer suggests:

[N]o homemaker wife has been given less than 35% of the matrimonial assets, except in two cases involving 'huge money'. Indeed, homemaker wives who served their roles for 20 years or more have received 50% or even more. The majority of decisions resulted in a simple equal division ordered or an insignificant difference from 50%.... The next most common proportions were where one spouse received 10% more than the other. With these two categories forming the vast majority of decisions given in recent years, it may be suggested that an order of division of matrimonial assets in Singapore is likely to be of equal division or within a narrow range from equal division.⁷⁸

The Malaysian Court of Appeal observed in 2003 that, while it may be dangerous to rely uncritically on decided cases from other jurisdictions in understanding the

See further Leong Wai Kum, "The Just and Equitable Division of Gains Between Equal Former Partners in Marriage" [2000] Sing. J.L.S. 208 at 210:

Family law regards the spouses to have co-operated in the acquisition [of property]. This is irrespective of whether they both paid for it or only one paid while the other attended to homemaking and child caring.... All contributions whether financial or non-financial are part of acquisition of property.

⁷⁵ See Leong Wai Kum, "The Laws in Singapore and England Affecting Spouses' Property on Divorce" [2001] Sing. J.L.S. 19, comparing the s. 112 of the *Women's Charter*, set in the context provided by s. 46(1), favourably with the equivalent law in England that suffers not only in being worded less boldly than s. 112 but also in lacking the setting of s. 46(1). This is not to suggest that a bold judiciary cannot make up for these statutory weaknesses. Indeed a bold House of Lords in their seminal decision in *White v. White* [2001] 1 A.C. 596 re-interpreted their equivalent provision such as to allow the comment, by noted English academic Stephen Cretney in "Community of Property Imposed by Judicial Decision" (2003) 119 L.Q.R. 349, that the decision introduced the idea of 'deferred community of property' into English law from 2001.

⁷⁶ Per Andrew Phang Boon Leong J.A. in *NK v. NL* [2007] 3 Sing. L.R. 743 at para. 20.

⁷⁷ [1989] Sing. L.R. 342.

⁷⁸ See *Elements*, *supra* note 41 at 696-698.

Malaysian law of division of matrimonial assets upon divorce, this may not necessarily be so with decisions in Singapore as the two laws share a common origin.⁷⁹ The court gave a decision that was consistent with the principles laid down by the High Court in *Koo Shirley v. Mok Kong Chua Kenneth*.⁸⁰ The principled basis within section 46(1) of the *Women's Charter* has driven the remarkable development of our law of division of matrimonial assets such that other countries may now draw worthwhile lessons from the judicial record of this area of Singapore law.⁸¹ Such is the contribution of the *Women's Charter* from 1961 towards an equitable view of the value of the different roles a husband and wife may discharge during their marriage.

Section 46(1) of the *Women's Charter* may on first sight appear somewhat toothless but it has been the harbinger of remarkable developments in family law in Singapore. It is speculation whether the members of the Legislative Assembly of the State of Singapore in 1961 could have foreseen its impact. Undoubtedly, it is to this exceptional provision that one may attribute the laudable developments in the law regulating the relationship between husband and wife, the law regulating the relationship between parents and their child, and the law of division of matrimonial assets upon divorce. The members of the Legislative Assembly will no doubt approve of these developments. Professor Eugen Huber, too, may take some credit for the effect of his creative imagination on the current state of the family law in Singapore.

IV. CHALLENGES TO FAMILY LAW IN THE NEAR FUTURE

It is somewhat dangerous to try to predict what the future holds. For the near future, it may perhaps be suggested that the family law in Singapore is likely to face challenges in the law of maintenance between spouses and the law of division of matrimonial assets.

A. *The Unilateral Character of Maintenance between Spouses*

The obligation of maintenance between spouses remains, unfortunately, unilateral. The *Women's Charter* in section 69(1) allows the court only to order an able husband to provide reasonable maintenance to his wife who proves her need for maintenance. In an admittedly unusual scenario an able wife cannot be ordered to do the same for her husband who can similarly prove his need for maintenance.

This feature of the law was inherited from the common law, which developed the unilateral obligation as *quid pro quo* for its rule that, upon marriage, a married woman

⁷⁹ See Abdul Hamid Mohamed J.C.A. in *Sivanes a/l Rajaratnam v. Usha Rani a/p Subramaniam* [2003] 3 M.L.J. 273.

⁸⁰ Following the spirit of Abdul Hamid Mohamed J.C.A.'s observation, Leong Wai Kum, "Division of Matrimonial Assets upon Divorce—Lessons from Singapore for Malaysian Practice", in Alan Tan Khee Jin & Azmi Sharom, eds., *Developments in Singapore and Malaysian Law* (Singapore: Marshall Cavendish Academic, 2006) at 246-268.

⁸¹ See Leong Wai Kum, "The Laws in Singapore and England Affecting Spouses' Property on Divorce", *supra* note 75 at 51-52; "Division of Matrimonial Assets upon Divorce—Lessons from Singapore for Malaysian Practice", *ibid.*; and *Elements*, *supra* note 41 at 686 where she "regards this as one of the finest aspects of family law in Singapore".

lost her capacity to own property. All her property was automatically transferred to her husband during the subsistence of their marriage. In what was regarded as fair compensation, the common law held him responsible for her subsistence. While the rule that robbed a married woman of legal capacity to own property is no longer part of our law,⁸² the legislature has not seen fit to transform the maintenance obligation between spouses into one that is mutual in character.⁸³ When the next challenge to this unilateral character comes, as it will, it will be the moral foundation of the marital relationship provided by section 46(1) of the *Women's Charter* that will guide the resolution. Where marriage is an 'equal co-operative partnership of different efforts', an able spouse should be liable to provide reasonable maintenance to the other who proves his or her need for such assistance.

B. Further Clarification of Division of Matrimonial Assets

As remarkable as the developments in the law of division of matrimonial assets are, there are details within it that remain to be settled. These would include issues regarding the proper definition of what property constitutes 'matrimonial assets' and is thus subject to the power to divide. Despite section 112(10) of the *Women's Charter* providing a definition, there remain areas of disagreement.⁸⁴ There is further potential for resolving the disagreement over whether the somewhat broad and loose direction to the court in section 112(1) to aim for proportions of division that are "just and equitable" could be improved with a clearer directive.⁸⁵ For most areas of disagreement, it is submitted that reasoning from the moral foundation of the marital relationship provided by section 46(1) of the *Women's Charter* will be helpful. This principle may not provide the complete answer but it should inform and guide the resolution. The closer the details of the law of division of matrimonial assets conform with the moral foundation of the marital relationship, the better reasoned the law will be.

It is perhaps too speculative to suggest what shape the family law in Singapore will take further down the road. Such crystal ball gazing will require a separate article.

V. CONCLUDING OBSERVATIONS

The family law in Singapore was set on a thoughtful moral course with the enactment of the *Women's Charter* in 1961. As its promulgators envisaged, raising the legal status of married women opened all manner of economic possibility to the women of Singapore. Together with egalitarian policies offering full educational and

⁸² See the detailed provisions on the equality of the spouses and, in particular, the *Women's Charter*, ss. 51, 52 and 56, on a married woman's capacity to hold and transact with her own property.

⁸³ Despite calls for this change to the law; see e.g., Leong Wai Kum, "The Duty to Maintain Spouse and Children During Marriage" (1987) 29 Mal. L.R. 56 at 78, and her private representation to the Select Committee of Parliament in 1996 reported in the *1996 Select Committee Report*, *supra* note 40, Appendix III: Written Representations at B37.

⁸⁴ For discussion of the areas where some rationalisation of parts of the statutory definition is called for, see *Elements*, *supra* note 41 at 648-665.

⁸⁵ For discussion of the choices available, see *Elements*, *supra* note 41 at 676-688.

employment opportunities to all Singaporean boys and girls and men and women, the *Women's Charter* has played its part in transforming Singapore from a sleepy trading port to the vital financial centre it is today. The process might not have been as swift if not for the greatly increased economic participation by married women.

The current state of the family law in Singapore is good. It stands up to scrutiny in comparison with equivalent laws in other countries. The *Women's Charter* was in 1961 a beacon in promulgating the idea of marriage as an 'equal co-operative partnership of different efforts'. Today it is still a shining piece of legislation that supports marriage and exhorts spouses towards moral conduct and co-operation for mutual benefit and for the well-being of their children. There may not be much more that one can hope for in the law that regulates members of a family in their relations with one another. The *Women's Charter* has served us well these past fifty years. It promises to continue to do so for the foreseeable future. When the issue arises, we may do no better than extend its thoughtful regulation beyond the heterosexual conjugal relationship that the *Women's Charter* is currently restricted to — but that is another story, beyond this article.