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THE POST-SEPTEMBER 11 FALLOUT IN SINGAPORE AND MALAYSIA: PROSPECTS FOR AN ACCOMMODATIVE LIBERALISM

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This paper argues that the new heightened consciousness of terrorism in Singapore and Malaysia requires a more accommodative, but still distinctly liberal, approach to social and political rights, one which harnesses the strengths of liberal democracy and pluralism in its efforts to suppress both the threat of terrorism and its potential socially divisive consequences. In particular, the paper defends the view that liberalism, properly conceived, has the conceptual tools to accommodate cultural and religious differences and provides an antidote to the divisive, essentialist thinking that the tragic events of September 11 have unleashed.

I. INTRODUCTION

The American legislative response to the September 11 terrorist attacks on New York and Washington, D.C., with its emphasis on security even at the expense of civil liberties, appears to be a vindication of what has been called the illiberal[1] approach to constitutional rights and governance in Singapore and Malaysia, with its longstanding emphasis on security and political

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1 Here and throughout this article, I use the term "illiberal" in the non-pejorative sense in which it is used by political theorists to describe democracies (mostly in the Asia-Pacific area) that do not share the same model of government found in some of the democracies of the West. It is used by many scholars, including those who have some sympathy for the illiberal approach they describe: see, for example, Daniel A. Bell, *et al., Towards Illiberal Democracy in Pacific Asia* (New York: St. Martin's Press, 1995). My primary reason for adopting this term is that I find the more commonly used term, *communitarian*, somewhat misleading for reasons that I set out *infra*: see text accompanying note 4.

stability. One might be therefore be inclined to think that this new era of heightened consciousness of terrorism will further entrench the prevailing legal and political structures in these countries. This might well be the case, at least as far as preventive detention and police powers are concerned. But this paper argues, perhaps less intuitively, that the new heightened consciousness of terrorism in the region requires a more accommodative, but still distinctly liberal, approach to social and political rights—one which harnesses the strengths of liberal democracy and pluralism in its efforts to suppress both the threat of terrorism and its potential socially divisive consequences.

To see why this is so, it important to understand how the aftermath of September 11 has exposed an important weakness in the prevailing approach to ethnic pluralism. By exposing important differences among some ethnic and religious groups in Singapore and Malaysia, it threatens to unravel the delicate ethnic tapestry that has been painstakingly woven together by the post-independence governments in the region. And as these ethnic and religious differences begin to resurface, policies meant to foster a peaceful "multiracialism" give rise to concerns about divisive communalism, while the project of forging a common identity through a set of shared *Asian* values becomes less viable. The fallout from September 11 has also led to concerns about the once-celebrated "soft" authoritarian approach to governance, in which political power is concentrated in the political elite, while civil society groups are carefully managed and controlled. In short, the aftermath of September 11 has forced a quiet, but urgent, reconsideration of the policies of a recent, but slowly receding, era.

As differences among ethnic and religious groups come to light, Singapore and Malaysia have had to face squarely the concerns of ethnic and religious minorities about their place in the wider society—which concerns have been exacerbated and exploited by those who might want to portray the legislative, political, and military response to the contemporary terrorist threat as a clash of civilizations. The question therefore arises as to whether these pluralistic societies can afford to hold on to their illiberal approach to governance as their semi-official state ideology, shaping public law and public institutions alike.

This paper examines the extent to which the paradigm of constitutionalism in Singapore and, to a lesser extent, Malaysia,[2] ought to be, and indeed already are shifting slowly away from essentialism, cultural relativism, and

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[2] While Singapore and Malaysia share a common social and political history, a common legal system, and in many ways a common interest in Asian particularlism at least at the official level, these countries are distinct in important ways and it is dangerous to generalize about the two. For instance, the prevalence of Islam as a religion in Malaysia and its impact both on law and politics as well as its controversial status relative to the constitution make it distinct from predominantly secular Singapore. Yet in many ways, the events of September 11 have challenged Singaporean and Malaysian society in similar ways, as this article attempts to

soft authoritarianism, so as to accommodate ethnic and religious minorities, prevent divisiveness and ethnic conflict, and respond to concerns about alienation. In particular, this paper argues that an accommodative form of liberalism, one which takes seriously the claims of ethnic and religious groups of the right to preserve their practices, language, traditions, and beliefs within an accommodative liberal framework, is now more suitable for Singapore and Malaysia than the prevailing ideology.

Before I proceed, however, let me pause for a moment to say a brief word about the idea of accommodative liberalism. It may well be objected that this term is effectively redundant since the very essence of liberalism is its accommodation of different ways of life. And so it should therefore be sufficient to speak of liberalism, period. While I acknowledge—and, indeed, argue in support of—those versions of liberalism that are accommodative in this broad sense, I think it is important to distinguish these forms of liberalism from more extreme versions of "liberalism" (perhaps better described as *libertarianism*), which emphasize liberty and pure, formal neutrality. It is liberalism as it is thus understood (or, rather, *mis*understood) that I believe gives liberalism a bad name. And at the risk of simplifying a rather complex controversy, I would suggest that the real dispute within contemporary liberal theory is not between those who hold a libertarian view and those who do not, but rather over the manner and extent to which the liberal state ought to intervene to correct for unequal conditions or cultural, religious, or other contextual particularities which distort and render unfair the application of formally neutral rules. This is a dispute within liberal theory, a dispute which shows that contemporary liberalism is very much attuned to the sorts of issues and concerns that it is often unfairly accused of neglecting.

II. Illiberalism in Singapore and Malaysia Pre-September 11

The ideological approach adopted in Singapore and Malaysia toward issues of pluralism and governance has often been described as *communitarian*, given its emphasis on the importance of the community above the individual.[3] There is much to be said for this approach and for the light that it sheds on the emphasis often placed on traditional values and culture and its sceptical stance toward individualism and individual rights. But individualism and individual rights might be rejected for a variety of reasons, not

show. But on the question of how these countries might ultimately react to these contemporary challenges, the answer for each may well diverge.

[3] See, for example, Beng-Huat Chua, *Communitarian Ideology and Democracy in Singapore* (London and New York: Routledge, 1995); Thio Li-ann, "An 'i' for an 'I'? Singapore's Communitarian Model of Constitutional Adjudication" (1997) 27 H.K.L.J. 152; Eugene K.B. Tan, " 'We' v. 'I': Communitarian Legalism in Singapore" (2002) 4 Australian Journal of Asian Law 1.

all of which are communitarian. For instance, the procedural rights of the accused might be diminished for the utilitarian reason of public safety rather than communitarian reason of supporting the social and cultural context in which individuals are embedded. Similarly, individual constitutional rights and liberties might be diluted not to prevent individual atomism, but rather to facilitate effective or efficient governance. And so, as we examine the prevailing approach to pluralism and governance before September 11, I prefer to adopt the term *illiberal*[4] on the assumption that the approach taken is best defined by the liberal position it rejects, and leaving open the question of whether a unifying "communitarian" ideology exists.

What then was the prevailing approach to pluralism and governance prior to September 11? As with any attempt to abstract from practice to theory, we must be cautious not to over-simplify. But when we examine key public policies, the political discourse, and constitutional law jurisprudence in Singapore and Malaysia as they bear on questions of pluralism and governance, three broad themes emerge: first, the idea of Asian cultural relativism, which defines the "East" in opposition to the "West," is deployed both as a nation-building tool and as a justification for illiberal laws and policies against Western critics; second, an ethno-racial essentialism emerges as a major governing principle in the development of policies on welfare, education, and language, as well as an implicit theme in nation-building efforts; and finally, a "soft" authoritarianism, secured through the concentration of policy-making power and political discourse in the political elite, discourages the direct participation of citizens in policy making and hampers the emergence of a vibrant civil society.

A. *Asian Cultural Relativism*

The concept and rhetoric of Asian cultural relativism (or "Asian values") was increasingly used in Singapore and Malaysia, particularly in the early 1990s but even after the Asian financial crisis of 1997[5] in two ways: it was used affirmatively, as part of the nation-building enterprise (more so in Singapore than in Malaysia), and it was used defensively, in justification of illiberal policies, typically in response to critics. One example of the national-building use of Asian cultural relativism can be seen in Singapore,

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4 *Supra*, note 1.

5 For but a few reported examples of the continued use of the rhetoric of an Asian-Western dichotomy after the 1997 Asian financial crisis, see: "Singapore's Lee says more rights, democracy would not avert crisis" *Deutsche Presse-Agentur* (20 February 1998); Asad Latif, "SM: Textbook western-style democracy not for Singapore" *The Straits Times* (Singapore) (12 November 2001); Johsi V., "Mahathir back in form with warning on West" *Courier Mail (Queensland, Australia)* (30 January 1998); "Mahathir warns Malaysian Moslems of perils in new millennium" *Deutsche Presse-Agentur* (7 January 2001).

where Asian cultural relativism was invoked by the government in a 1989 white paper in an attempt to publicly identify a broad set of values shared by Singaporeans of different ethnic and religious backgrounds so as to "evolve and anchor a Singaporean identity."[6]

The nation-building use of Asian cultural relativism has not been its sole use in the political discourse. It has also been used defensively, to deflect criticism by "the West," typically directed at an Asian country's human rights record. In this mode, the Asian values discourse asserts a fundamental difference between Asia and the West and then insists that the Asian way is distinct in a way that makes it immune from Western criticism in the guise of a "universalist" normative critique. Such an assertion of difference can be seen in the *Shared Values* white paper, which explains that a "major difference between Asian and Western values is the balance each strikes between the individual and the community" and further, that "Asian societies emphasise the interests of the community while Western societies stress the rights of the individual."[7]

The assertion of difference is then used in other contexts to defend laws or policies approaches that have come under attack. It has been invoked in defence of Singapore's unforgiving, deterrence-focussed criminal laws,[8] as well as its courts' reluctance to look to foreign constitutional law cases for interpretive guidance.[9] In Malaysia, the concept of Asian particularism has been used to defend the government's fiscal policies and human rights record against external political pressure and to attack Western hegemony[10] and hypocrisy.[11] One problem with this defensive and *negative* use of the Asian

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6 White Paper on *Shared Values* (Singapore: 2 January 1991), Cmd. 1 of 1991 at para. 1.

7 *Ibid*. at para. 24.

8 It is said, for instance, Asians are unique in being "willing to accept certain curbs on their civil liberties in exchange for a crime-free environment": see Venkat Iyer, "Asian Values and Human Rights" in V. Iyer, ed., *Democracy, Human Rights and the Rule of Law* (New Delhi: Butterworths, 2000), 155–172 at 170.

9 Victor V. Ramraj, "Comparative Constitutional Law in Singapore" (2002), 6 Sing. J.I.C.L. 302 at 324–29.

10 See Mahathir Mohamad, "Keynote Address" in Just World Trust, *Human Wrongs: Reflections on Western Dominance and its Impact Upon Human Rights* (Penang: Just World Trust, 1996), 6–12. Mahathir argues that in the post-colonial era, "[e]conomic forces, the Western media, and Non-Governmental Organizations (NGOs) carried on where colonial governments left off. The U.N. may talk of the 'equal rights … of nations, large and small' but it became clear that large nations, or rather powerful nations, were more equal than small nations. Neo-colonialism perpetuated the old hegemony" (at 7). Moreover, "[no] one, no country, no people and no civilization has a right to claim that it has a monopoly of wisdom as to what constitutes human rights" (at 11).

11 *Ibid*. "The record of the democratic governments of the West is not very inspiring. Unless their own interests are at stake, as in Kuwait, they would not risk anything in the cause of democracy. … If the record of the Western democrats in propagating their ideology is dismal, their own human rights records are worse …" (at 9).

particularist discourse is that it tends to undermine the affirmative nation-building enterprise. Citizens are told to define themselves negatively—by what they are not—rather than affirmatively by the values that they stand for. Another, perhaps more profound problem, is that it has become associated with an ethno-racial essentialism which is as divisive as it is restrictive.

B. *Ethno-racial Essentialism*

The assumption of ethno-racial essentialism—the idea that one's ethnicity or, as it is more commonly expressed, one's *race*, is a fundamental and "fixed" or inescapable aspect of one's identity—underlies a wide range of policies and legal principles in contemporary Singapore and Malaysia. But the public and official significance of race has a long history in the region, dating back to the colonial era. Indeed, the colonial government implemented in Singapore and Malaysia, as it did in its other colonies, a divide-and-rule approach, according to which each ethnic group was kept apart, in a separate enclave, and was left to tend to its own needs.[12] And while pre-independence politics in the 1960s witnessed a period of coalition-building that largely crossed the ethnic divide, culminating in calls for a non-racial nationalist movement,[13] the politics of race remained a significant phenomenon after independence.[14]

That one's race still has a public and official salience in Singapore is evident on applications forms (both in the public and private sectors), government documents, and citizenship identity cards; in language and

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[12] Chua Beng Huat and Kwok Kian-Woon, "Social Pluralism in Singapore" in Robert W. Hefner, ed., *The Politics of Multiculturalism: Pluralism and Citizenship in Malaysia, Singapore, and Indonesia* (Honolulu: University of Hawaii Press, 2001), 86–118 at 88.

[13] This approach is reflected in the 1966 *Report of the Constitutional Commission* (reproduced in Kevin Y.L. Tan and Thio Li-ann, *Constitutional Law in Malaysia & Singapore* (Singapore: Butterworths Asia, 1997), 1020–35) which observed: "We find … in the years succeeding the Second World War, the growth of a national spirit amongst the many peoples of the many races who now regard Singapore as their home if not the home of their forefathers and we believe that there is a growing awareness and acceptance amongst these peoples that in spite of their different origins, their destinies are intertwined, intermixed and interwoven and that their future and the future of their nation lies in a non-racial approach to all problems under a form of government which would enable the growth of a united, multi-racial, free and democratic nation in which all citizens have equal rights and opportunities" (at 1021).

[14] Two defining moments of communal violence in Singapore and Malaysia in the 1960s were, respectively, the riots on and following Prophet Mohamed's birthday in Singapore in 1964, in which 22 people were killed and hundreds injured in the aftermath of a political controversy over special rights for Singapore Malays, and the May 13 communal riots in Kuala Lumpur in 1969 which killed over 1000 people following general elections: see generally Richard Clutterbuck, *Conflict and Violence in Singapore and Malaysia 1945–1983* (Singapore: Graham Brash, 1985), 289–302, 319–322; C.M. Turnbull, *A History of Singapore 1819–1975* (Singapore: Oxford University Press, 1977), 290–293.

educational policy; in public housing policy; and in the dissemination of community support services through ethnic-based support groups. Much has already been written about these policies,[15] but we need to pause here for a moment, as some background is required for the uninitiated as to housing policy and ethnic-based support organizations in Singapore.

Singapore's emergence as a developed country paralleled its massive public housing programme, through which the government took over from the colonial government in systematically replacing city-area slums with new high-rise housing blocks through its Housing Development Board (HDB) policy, after which the ubiquitous modern housing estates are named. The government then sold to Singapore citizens at subsidized rates. Some 85 percent of Singaporeans live in these HDB estates today.[16] One of the cornerstones of the HDB housing programme is its "ethnic integration policy." The government, in an effort to break up ethnic enclaves, implemented this policy to ensure a racially balanced mix of residents in each housing estate.[17] But in order to do so, it relies on an official classification of citizens based on race.[18]

The same goes for the ethnic-based, government-sponsored support organizations in Singapore. The first of these organizations, the Malay community's *Mendaki*, was established in 1981, as a way of improving Malay educational achievement, which was found to be lagging behind that of the other ethnic communities in Singapore. Within a decade, other ethnic-based support organizations were established by the other major ethnic communities in Singapore. The government supported these organizations in various ways, as by allowing them to collect donations from individuals (with a provision for opting out) through government channels, matching donations in kind, and assisting with training of staff.[19]

In Malaysia, ethno-racial essentialism is closely linked to religion, particularly Islam. While the *bumiputra* peoples of Malaysia, including the Malays, the indigenous peoples of Sabah and Sarawak, and Portuguese

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[15] See Huat and Kwok, *supra* note 12; R. Quinn Moore, "Multiracialism and Meritocracy: Singapore's Approach to Race and Inequality" (2000) 58 Review of Social Economy 339; Lily Zubaidah Rahim Ishak, "The Paradox of Ethnic-Based Self-Help Groups" in Derek Da Cunha, *Debating Singapore: Reflective Essays* (Singapore: I.S.E.A.S., 1994), 46–50.

[16] See online: Facts on HDB <http://www.hdb.gov.sg/isoa034p.nsf/factsonhdbview?OpenView&Start=1&Count=1000&ExpandView>.

[17] *Ibid*.

[18] One option for allocating housing which achieves the same objective (ensuring ethnic diversity) without relying on essentialist assumptions would be a purely *random* scheme for allocating HDB housing or eligibility to purchase HDB housing. Whether such a policy could be defended against other sorts of objections (*e.g.* that it restricts freedom of choice) is, of course, another matter.

[19] Moore, *supra* note 15 at 346.

Eurasians, are all accorded a special status under the federal Constitution,[20] being Malay is associated with professing Islam, and Islam is entrenched in the federal Constitution as the official religion.[21] And while Malaysia remains an ethnically and religiously diverse society, there is a discernible contemporary trend in Malaysian society toward greater religious significance and consciousness,[22] a trend amplified by the high coincidence of Malay ethnicity and Islam. Ethno-racial essentialism in Malaysia, with its overlay of religion, is also reflected in its laws, which provide a separate system of *Syariah* Courts[23] and in different forms of state legislation prohibiting apostasy.[24]

While the constitutions of Singapore and Malaysia both expressly prohibit discrimination based on grounds that include religion, race, descent, and place of birth,[25] the constitutional equality jurisprudence nevertheless implicitly endorses ethno-racial policies and assumptions on the basis that there is no discrimination where legislative distinctions are made "between class and class,"[26] provided that the distinction bears a rational relationship to the objective of the legislation. What this formal approach to equality implies, in short, is that it is acceptable for the legislature to differentiate

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20 See, for example, Articles 89 (preserving the reserve land of Malays as forever remaining theirs unless altered by way of laws passed with a two-thirds majority of Parliament) and 153 (preserving the special position of Malays and the *bumiputra* in Sabah and Sarawak). Article 152 provides that Bahasa Melayu is the official language, though no restrictions may be placed on the use of other languages.

21 Article 3.

22 This trend is noted by several authors in an anthology of essays on pluralism in Southeast Asia: Hefner, *supra* note 12.

23 Singapore also has a *Syariah* Court, the jurisdiction of which is confined by s. 35(2) of the *Administration of Muslim Law Act* (Cap. 3, 1985 Rev. Ed. Sing.) to some aspects of personal law: "The [Syariah] Court shall have jurisdiction to hear and determine all actions and proceedings in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law and which involve disputes relating to—(a) marriage; (b) divorces known in the Muslim law as *fasakh, cerai taklik, khuluk* and *talak*; (c) betrothal, nullity of marriage or judicial separation; (d) the disposition or division of property on divorce or nullification of marriage; or (e) the payment of *emas kahwin*, maintenance and consolatory gifts or *mutaah*."

24 In Malaysia, the states have legislative competence over the administration of Islamic laws resulting in varying legislation on apostasy. For example, in Perak, s. 13 of the *Administration of Islamic Law Enactment* provides that apostasy committed by a Muslim is an offence punishable by a fine or RM 2,000 or imprisonment for a term of up to two years, or both. In 1993 in the state of Kelantan, the state legislative assembly passed the Hudud Enactment (not yet in force), which makes apostasy punishable by death. The question of whether a person is a Muslim has been held by the civil courts in Malaysian to be a matter for the *Syariah* (religious) courts to determine: see, for example, *Priyathaseny v. Pegawai Penguatkuasaagama Jataban Hal Ehwal Agama Islam Perak* [2003] 2 M.L.J. 302 (H.C.); *Daud Bin Mamat v. Majlis Agama Islam* [2001] 2 M.L.J. 390 (H.C.).

25 See Article 12(2) in Singapore and Article 8(2) in Malaysia.

26 *Ong Ah Chuan v. Public Prosecutor* [1981] 1 M.L.J. 64 (P.C.).

between classes of persons (*e.g.*, individuals at different income levels) for the purpose of attaining a particular policy objective (progressive taxation), but the particular goal sought to be attained is not itself scrutinized:

> [T]he law may classify persons into women and men, or into wives and husbands, and provide different rights and liabilities attaching to the status of each class; the law may classify offences into different categories … fiscal law may divide a town into different areas and provide that rate payers in one area pay a higher or lower rate than those in another area, and in the case of income tax provide that millionaires pay more tax than others; and yet in my judgment in none of these cases can the law be said to violate art. 8. All that art. 8 guarantees is that a person in one class should be treated the same as another person in the same class, so that a juvenile must be treated like another juvenile, a ratepayer in one area should pay the same rate as paid by another ratepayer in the same area, and the millionaire the same income tax as another millionaire.[27]

This formal approach to equality enables essentialist policies to escape constitutional scrutiny by the courts as distinctions are not considered problematic, provided that everyone within the category is treated alike, even in cases where the discrimination in question is based on a ground, such as religion, which is expressly prohibited by the constitution.[28]

Ethno-racial essentialism complements, though somewhat uncomfortably, the notion of Asian cultural relativism. On the one hand, ethno-racial essentialism shares with cultural relativism the assumption that there are fundamental differences between "Asians" and others, and in this way is essentialist. On the other hand, ethno-racial essentialism is typically expressed in Singapore and Malaysia at a more particular level of ethnicity—in terms of a person's identity as Chinese, Indian, Malay, or Eurasian, for example. The mixed message being sent is that whatever these ethnic groups have in common as Asians, there are nevertheless other differences that make them categorically distinct, in ways that are fixed or immutable.

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[27] *Public Prosecutor v. Khong Teng Khen* [1976] 2 M.L.J. 166 at 170, cited with approval in *Datuk Haji Harun bin Haji Idris v. Public Prosecutor* [1977] 2 M.L.J. 155 at 166 (F.C.C.A., Malaysia).

[28] See, for instance, *Kok Hoong Tan Dennis v. Public Prosecutor* [1997] 1 S.L.R. 123 (Sing. H.C.), where the constitutional validity of a law rendering the Congregation of Jehovah's Witnesses an unlawful society was upheld on the ground that the equality provisions in the Constitution "did not forbid discrimination in punitive treatment between one class of individuals and another, provided that the dissimilarity in circumstances, which justified the differentiation in the punishments imposed, was not purely arbitrary but bore a reasonable relationship to the social object of the law" (at 131). The formal approach to equality is applied even though the discrimination in question involved discrimination based on religion, which is expressly prohibited by Article 12(2) of the Singapore Constitution: *supra* note 25.

C. *Soft Authoritarianism*

The soft authoritarian approach to governance in Singapore and Malaysia is itself justified in terms of Asian—or, sometimes in the case of Singapore, Confucian—values. Emphasis has been placed in Singapore on the idea of *junzi*—government by honourable men "who have the trust and respect of the population"—on the basis that it "fits better than the Western idea that a government should be given as limited powers as possible, and should always be treated with suspicion unless proven otherwise."[29] This idea is thought to justify a paternalistic, government-knows-best approach whereby individual political liberties, including freedom of speech, freedom of religion, and freedom of association, all take second place to stability and security.

A deferential approach to the government is equally present in the constitutional jurisprudence of both Singapore and Malaysia. The fundamental liberties guaranteed in their respective constitutions are similar in structure and wording to the limitations on rights set out in the European Convention on Human Rights in that they set out express limitations on the fundamental liberties.[30] However, the limitation clauses in the Singapore and Malaysian constitution have been interpreted much more broadly than the corresponding European provisions, leaving maximum latitude to the legislature and executive. In both Singapore and Malaysia constitutional guarantees of freedom of expression and freedom of religion, for example, are subject to broad limitations based on national security and public order, typically interpreted in favour of the state.[31] It is not surprising then, that the constitutionality

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[29] *Supra* note 6 at para. 41.

[30] Consider, for example, the protections of free speech in the Singapore Constitution and the European Convention on Human Rights. Article 14(2) of the Singapore Constitution makes freedom of speech subject to "such restrictions as [Parliament] considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence." Similarly, Article 10(2) of the European Convention provides: "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

[31] In Singapore, a series of defamation and contempt of court cases have interpreted the Article 14(2) limitations on freedom of speech very broadly: see, respectively, *Jeyaretnam v. Lee Kwan Yee* [1992] 2 S.L.R. 310 (C.A.) and *A.G. v. Lingle* [1995] 1 S.L.R. 696 (H.C.). In *Chan Hiang Leng Colin v. Public Prosecutor*, the Singapore Court of Appeal held, in the context of limitations on freedom of religion, that issues of national security were not justiciable. In Malaysia, the right to freedom of religion does not include the right to renounce one's religion: *Duad bin Mamat, supra*, note 24.

of legislation placing significant limits on voluntary associations,[32] while *prima facie* inconsistent with the right to form associations, has not seriously been challenged.

This restrained approach to judicial review complements a paternalistic approach to matters of sexual morality and lifestyle choices. Protection of gay and lesbian rights, cohabitation, and in some respects, gender equality, have historically been discouraged: sodomy between consenting adults remains an offence;[33] unmarried couples are not allowed to buy flats in public housing estates;[34] and women are not entitled to some of the same benefits as men.[35] The government has historically taken an active role in promoting certain lifestyles and discouraging others.[36]

Admittedly, there was, prior to September 11, a slight relaxation of some of the soft authoritarian policies in Singapore and Malaysia. For instance, the 1997 economic crisis in Asia cast doubt on the attempt to link economic development and prosperity with soft authoritarian policies.[37] More recently, Singapore designated part of a central public park as a "Speaker's Corner," relaxing in a limited way the extent of regulation of political speech[38] while, in August 2001, Malaysia amended its constitution

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[32] See: *Societies Act* (Cap. 311, Rev. Ed. Sing.); *Societies Act 1966* (Malaysia Act 335, 1987 Rev. Ed.).

[33] See *Penal Code* (Cap. 224, 1985 Rev. Ed. Sing.), ss. 377 and 377A, which provide respectively: "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animals, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to 10 years, and shall also be liable to fine" and "[a]ny male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years." Similar provisions may be found in the Malaysian *Penal Code*, as both statutes are based on the Indian *Penal Code*. For a critique of these provisions, see Lynette J. Chua Kher Shing, "Saying No: Sections 377 and 377A of the Penal Code" [2003] Sing. J.L.S. 209.

[34] To be eligible for HDB (public) housing, applicants must produce their marriage certificate at the estimated completion date of the flat or three months after they have taken possession of the new flat, whichever is later: online: HDB Infoweb <www.hdb.gov.sg>.

[35] For example, male and female civil servants are subject to different schemes for medical benefits: While men may use up to 60 percent of their $350 annual outpatient subsidy for their dependents, women cannot. This policy is currently under review: Cheah Wui Ling, Neo Ling Chien, and Vanita Jegathesan, "South East Asia and International Law" (2002) 6 Sing. J.I.C.L. 1073 at 1097.

[36] This paternalistic approach to lifestyle choices in Singapore seems now to be changing: see *infra*, note 51.

[37] The link between Asian values and economic development is also challenged by Amartya Sen in "Human Rights and Asian Values" in Tibor R. Machan, ed., *Business Ethics in the Global Market* (Stanford: Hoover Institution Press, 1999) 37–62.

[38] *Public Entertainment and Meetings (Speaker's Corner) (Exemption) Order* (S29/2003). This order exempts prospective speakers (who are Singapore citizens) at "Speaker's Corner" in Singapore from legislation requiring that they obtain a licence, but other conditions apply. For instance, the speaker must register in advance, proving his or her citizenship (r. 4), and must

to prohibit discrimination based on gender.[39] And in recent years, in both Singapore and Malaysia, civil society groups, often critical of government policy, are beginning to emerge, despite the many restrictions on the formation of associations.[40] But by and large, on September 11, 2001, the legal and political climate and discourse in Singapore and Malaysia remained wedded to Asian cultural relativism, to ethno-cultural essentialism, to a soft authoritarian approach to government, and, ultimately, to an illiberal approach to governance and constitutional rights.

III. The Post-September 11 Fallout

In what respect, then, can the September 11 attacks in New York and Washington, half the globe away, be seen as a watershed moment in the legal and political evolution of Singapore and Malaysia? The aftermath of September 11 has challenged the status quo in at least three important ways: it has cast doubt on the claim that Asians are alone in willing to sacrifice their liberties in the name of security, weakening the force of the Asian values rhetoric; it has exposed the potential divisiveness to which essentialist assumptions can easily give rise; and it has demonstrated how the disaffected, without a public outlet for their grievances, can easily take their criticism and dissent underground, with potentially disastrous consequences.

A. *Security Concerns East and West*

First of all, the American response to the September 11 terrorist attacks on New York and Washington D.C. has had an important impact on the claim to a unique Asian approach to matters of security and liberty. Specifically, the U.S. response to the attacks, to the extent that it has curtailed civil liberties and constitutional rights in the name of security, has shed doubt on the claim that Asian societies have a distinct approach to security and rights compared to that typically taken in the West.[41] The Asian approach has been described as one which places the security of the community above the liberty of the individual and which self-consciously pursues collective goals, even at the expense of individual rights. However, the claim that Asians are *uniquely* willing to sacrifice their rights in the interests of security seems dubious after September 11. While the emergence of a security paradigm in much of the

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refrain from speaking on matters relating to religion or which "may cause feelings of enmity, hatred, ill-will or hostility between different racial or religious groups in Singapore" (r. 3).

39 Cheah Wui Ling *et al*., "Southeast Asian and International Law," *supra*, note 35 at 1097.

40 *Supra*, note 32.

41 See Victor V. Ramraj, "Terrorism, Security, and Rights: A New Dialogue?" [2002] Sing. J.L.S. 1.

West provides a new shroud of legitimacy for internal security legislation, it does at the same time expose the weakness, or at least the exaggerated nature, of Asian cultural relativism as a general position. This in turn opens the door to a more accommodative liberal approach, at least to social and political rights.

B. *The Divisiveness of Essentialist Thinking*

The aftermath of September 11 has also exposed the increase in ethnic tensions in Singapore and Malaysia. As a recent government report on social, political, and cultural policies in Singapore recognizes, "tribal fault lines" have recently been accentuated and while "race, language and religion have always posed challenges in Singapore's context, recent global trends point to an escalation in religious and ideological extremism."[42] The report warns that Singapore needs to "ensure that these globalised ideological battles do not threaten [its] social fabric."[43] It also suggests a latent danger in the essentialist approach, the danger of ethnic fragmentation and communalism. Consider Lily Zubaidah's criticism of ethnic self-help groups in Singapore, from which she draws the following, general concern:

> If a society is organized on the basis of race, it can then be easily divided on the basis of race, rendering it easier for the various ethnic communities to be manipulated against one another on the basis of ethnicity. Multi-racialism thus becomes reduced to rhetorical [sloganeering], whilst communalism cantankerously seeps into the social fabric of society as primordial clannishness is provided with a conducive environment.[44]

Policies which discourage individuals from revising their identities or deny them the opportunity to do so also encourage essentialist thinking and stereotyping more generally, which in turn becomes acutely problematic when one ethnic or religious group is stigmatized by the negative traits or beliefs of a small faction of its members. This is precisely what happened on a global scale in the aftermath of September 11, as Muslims faced a backlash or were stigmatized by their fellow citizens or the media. The danger of

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[42] *Changing Mindsets, Deepening Relationships: The Report of the Remaking Singapore Committee* (Singapore: Government of Singapore, 2003) at 10. The Report is available at: online: Singapore Government Online Portal <http://www.gov.sg/psd/pau/newpsd/rms/Full%20Version%20of%20Remake%20Sg.pdf>.

[43] *Ibid.*

[44] *Supra* note 15 at 47. See also Eugene Tan, *supra* note 3 at 13: "In emphasizing a civilizational discourse to ensure the cultural ballast … the result is that ethnic, cultural and religious values and identities have been distinguished and deliberately set apart from one another."

backlash and stigmatization is particularly serious, however, when essentialist thinking is encouraged. One antidote to these dangers in Singapore and Malaysia has largely been to marginalize extremist groups within the community[45] while emphasizing *intra*-group diversity and debate. But the aftermath of September 11 suggests that essentialist assumptions and policies also need to be reconsidered.

C. *The Danger of Suppressing Dissent*

The threat of terrorism both internationally and regionally is also beginning to show how the suppression of dissent can be extremely dangerous. First of all, without a public outlet for their grievances, disaffected members of society can easily take their criticism and dissent underground. Second, absent an open environment in which those in authority are questioned and challenged in public, and an education system that fosters independent thinking and dissent, citizens may lose (or never gain) the ability to reflect critically on the demands of those in positions of authority and, in turn, become vulnerable to the powerful ideological messages of extremist groups. Consider, for instance, the Singapore government's assessment of the two groups of suspected Jemaah Islamiyah terrorists who were detained under the *Internal Security Act* in December 2001 and August 2002:

> The psychologists concluded that many JI members turned to leaders like Ibrahim Maidin as they wanted a "no fuss" path to heaven. They wanted to be convinced that in JI they had found 'true Islam' and free themselves from endless searching as *they found it stressful to be critical, evaluative, and rational*. They believed they could not go wrong, as the JI leaders quoted from holy texts. *The psychological profile of the JI members (e.g. high compliance, low assertiveness, low in the questioning of religious values, and high level of guilt and loneliness) suggested that the group of JI members was psychologically pre-disposed to indoctrination and control by the JI leaders* and needed a sense of belonging without close attachments. Some were altruistic and wanted to help the *ummah*. Others wanted to accumulate "points" for a place in heaven.[46]

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[45] This appears to be the preferred strategy of Singapore's Senior Minister, Lee Kuan Yew: "Governments can beef up their intelligence services, ferret out and destroy terrorist networks and harden potential targets. But only Muslims themselves—those with a moderate, more modern approach to life—can fight the fundamentalists for control of the Muslim soul" ("A glimpse into the terrorist mind" *The Straits Times* (Singapore) (7 October 2003) at 18).

[46] *The Jemaah Islamiyah Arrests and the Threat of Terrorism (White Paper)*, Cmd. 2 of 2003 (Singapore: 7 January 2003), at 17 [emphasis added].

The implicit argument here seems to be that an inability to think critically, coupled with a propensity to defer to authority (in this case, religious authority), makes one vulnerable to extremist ideas. We need to tread cautiously here, as religious dictates are sometimes characterized precisely by their imperviousness to critical or rational thought, and must be accepted purely as a matter of faith. To the extent that freedom of religion is considered at all important, some acceptance of religious dictates as a matter of faith must therefore be accepted by the state. But there is still room for critical thinking about religion. Even those who are devoutly religious might want to know which dictates are genuinely religious (and therefore mandatory) and which are cultural or political, since most religions demonstrate at least some internal diversity.[47] The challenge that the Singapore government's assessment of the Jemaah Islamiyah members presents is that some of the very qualities (deference to authority, high level of compliance) that have made these individuals susceptible to the extremism of Jemaah Islamiyah are qualities that, at least until recently, were regarded as desirable in citizens in the political sphere.[48]

D. *The Challenge and Preliminary Response*

In the aftermath of September 11, the challenge presented to Singapore and Malaysia has been to revisit their illiberal policies and practices not as a response to external, hegemonic pressure or criticism, but rather to ensure their own social and political cohesion. What seems increasingly clear is that at least some of the illiberal policies pursued in the past may well be divisive or counterproductive, particularly in a climate of fear caused by the perceived threat of imminent, catastrophic terrorism. To their credit, the Singapore and Malaysia governments seem well aware of the challenge posed by this climate of fear and have acted swiftly to counter any ethnic tension and, in particular, to counter the stigma cast upon Islam both domestically[49] and

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[47] And even when some dictates are genuinely religious, some devotees might still want to know their exact nature. For instance, a Jew or Muslim who has concerns about animal welfare, knowing that meat eaten must be killed by ritual slaughter, might well ask whether it is in fact *compulsory* to eat meat at all: compare Brian Barry, "The Strategy of Privitization" in *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge: Harvard University Press, 2001), *passim.*

[48] See, for example: "Debate yes, but do not take those in authority as 'equals'," *The Straits Times* (Singapore) (20 February 1995) at 11, as reproduced in Kevin Y.L. Tan and Thio Li-ann, *Constitutional Law in Malaysia and Singapore*, 2nd ed., (Singapore: Butterworths Asia, 1997) at 25.

[49] In the months following September 11, the Singapore government spearheaded a series of "inter-racial confidence circles" to promote harmony between the various ethnic and religious groups in Singapore. For some background to these confidence circles, refer to a speech

internationally.[50] And there are small signs that, at least in Singapore, the government is beginning to encourage greater openness and diversity.[51] But the most intriguing question now is whether the time is ripe for Singapore and Malaysia to consider a new ideological direction toward an accommodative brand of liberalism, one that takes the concerns of traditionalists seriously within a pluralistic but broadly liberal framework.

IV. Prospects for Accommodative Liberalism in Singapore and Malaysia

Much of the resistance to greater liberalism in Singapore and Malaysia can be attributed to a failure to appreciate fully the significant debate within modern liberal thought and the extent to which many contemporary liberals have acknowledged the importance of community to the individual and of multicultural diversity. Liberalism is typically associated with the amorphous "West" (generally with the United States in mind) and is regarded as ultra-individualistic, essentially unconcerned with community, culture, or tradition. This individualistic liberalism is typically contrasted with a communitarian approach, which places the interests of community above

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by Dr Yaacob Ibrahim, Acting Minister for Community Development and Sports, at the Institute for Policy Studies' Forum on Ethnic Relations (24 October 2002), online: Singapore Government Online Portal <http://www.gov.sg/singov/announce/241002yi.htm>.

[50] The Government of Malaysia has been playing host to international Islamic conferences aimed at mapping out the future of Islam in response to the threat of extremism: for instance, the government recently hosted the World Conference of Islamic Scholars in Kuala Lumpur, 10–12 July 2003: online: <http://www.bernama.com/events/ulama/mediaadv.doc>.

[51] The Singapore government's recent liberalizing initiatives are summarized in a speech by Prime Minister Goh Chok Tong: see Goh Chok Tong, "Taking off the blinkers" in *The Straits Times* (Singapore) (15 July 2003) at 15. These initiatives include a new openness about employing gays in the civil service: see Simon Elegant, "A Lion in Winter" *Time* (7 July 2003) and "Singapore tries to alter its stiff image," *National Post* (Canada) (14 July 2003). Another possible sign of impending change is *The Report of the Remaking Singapore Committee (supra* note 42), which recommends a range of changes to social, political, and cultural policies, some of which represent a departure from past practices. But other recommendations (at 27), such as retaining the *status quo* with respect to the "identity and role" of ethnic-based self-help groups (even in the face of concerns that these groups "reinforce racial segregation and … might run counter to national efforts in integration"), suggest a commitment to the divisive essentialist approach of the past. Since this Report was released, the Ministry of Information, Communication and the Arts announced that it will gradually relax some of its laws: for a summary of these changes, see online: Ministry of Information, Communications and the Arts <http://www.mita.gov.sg/pressroom/press_030908.pdf>. The Singapore government has since relaxed its laws relating to bungee-jumping and bar-top dancing and will now permit pubs to open for 24 hours: "Bungee: Now you can take that leap in Singapore" *The Straits Times* (Singapore) (13 July 2003). Whether these initiatives translate into greater liberalization in the political realm is yet to be seen and some critics have already registered their skepticism: Li Xueying, "Employing gays in the civil service a 'tiny step forward'" *The Sunday Times* (Singapore) (6 July 2003).

the individual.[52] But this interpretation of liberalism is misleading on two counts, in that it fails to appreciate the extent to which some of the major theoretical differences between liberal and communitarian theorists have been reconciled in mainstream legal theory, and it underestimates the practical importance of community and tradition in Western law and governance. A basic understanding of modern liberal thought, however, reveals a growing effort to accommodate the claims of traditionalists seeking to preserve group identity and practices within a broadly liberal state which respects the rights of the individual. This modern, accommodative version of liberalism may well be attractive to governments coping with the threat of terrorism and its potentially divisive consequences, as it adopts a steady course between community and individual autonomy, tradition and modernity, and particularism and universalism.

A. *Modern Accommodative Liberalism*

Liberalism as a general theory has come under attack from a number of fronts. First, it is said to give inordinate weight to "atomistic" individuals and ignores the importance of social roles and relationships and of the community, all of which are essential to individual flourishing. Second, the liberal premise of state neutrality is debunked by showing how *formally* neutral rules tend to privilege those in the cultural mainstream, while imposing indirect burdens on minority communities. Third, liberalism is charged with failing to take seriously the interests of minority groups and, in particular, their desire to preserve their traditional, and often illiberal, way of life.

If these attacks on liberalism were successful, it would seem that the preferred approach to ethnic and religious pluralism would be a system of autonomous, self-governing communities, along the lines of the millet system of the Ottoman Empire.[53] Indeed, it would seem that if the critique of liberalism is correct, ethno-racial essentialism may well be the best approach. But contemporary liberalism offers a powerful response to these criticisms, one that acknowledges the importance of the community, rejects

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[52] See the Singapore government's *Shared Values* white paper, *supra* notes 6–7 and accompanying text, as well as Jon S.T. Quah, "Searching for Singapore's National Values" in Jon S.T. Quah, ed., *In Search of Singapore's National Values* (Singapore: Institute of Policy Studies, 1990) at 92–93.

[53] Under the millet system, Muslims, Christians, and Jews all lived in self-governing units or "millets" which were permitted to impose their own religious laws on their members: see Will Kymlicka, *Contemporary Political Philosophy*, 2nd ed., (Oxford: Oxford University Press, 2002) at 230–31.

formal neutrality, and permits a wide range of traditional practices, while preserving a core of individual autonomy.

Consider first the argument that liberalism has an impoverished, atomistic view of the individual.[54] While it may be true that some liberals hold the sort of view that is subject to this attack, mainstream liberalism tends to have a much more sophisticated view of the individual. Indeed, prominent contemporary liberal theorists "recognize that individual autonomy cannot exist outside a social environment that provided meaningful choices and that supports the development of the capacity to choose among them."[55] But while liberals acknowledge the importance of the community, they prefer to rely on civil society rather than the state as the repository of cultural values. This is not to say that state support for cultural institutions is necessarily rejected by all liberals; rather, such support must be provided to protect vulnerable cultural institutions in a non-evaluative way[56] and must permit individuals to opt out. Liberals therefore do not reject the importance of the community; what they question is the manner in which the state sustains or protects it.

Similarly, the attack on liberalism for its *formal* neutrality is entirely misplaced. Both modern liberal theory and jurisprudence acknowledge the need to adjust for an unequal distribution of basic goods which neutral rules merely serve to perpetuate. Indeed, as we observed earlier, the strict application of formal rules is more conducive to a society that wants to maintain social differences and power imbalances than one that seeks to mitigate or remove them. Indeed, largely in response to criticism by postmodernist theorists, modern liberalism has moved away from proceduralism and formalism, as can be seen in the innovative constitutional jurisprudence of Canada[57] and

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54 For a version of this argument, see Charles Taylor, "Atomism" (Chapter 7) in *Philosophy and the Human Sciences: Philosophical Papers 2* (Cambridge: Cambridge University Press, 1985) at 187–210.

55 *Ibid.* at 245.

56 *Ibid.* at 247. According to Kymlicka, accepting that state support is needed to ensure the availability of an adequate range of choices does not mean that we must reject state neutrality. He gives this example: "Consider two possible cultural policies: In the first case, the government ensures an adequate range of options by providing tax credits to individuals who make culture-supporting contributions in accordance with their personal perfectionist ideals. The state acts to ensure that there is an adequate range of options, but the evaluation of these options occurs in civil society, outside of the apparatus of the state. … In the second case, the evaluation of different conceptions of the good becomes a political question, and the government intervenes, not simply to ensure an adequate range of options, but to promote particular options" (at 247). The first possibility suggests that the state can support cultural institutions in a non-evaluative, neutral way.

57 For a survey of Canadian constitutional jurisprudence under the Charter, see Beverley McLachlin, "Imagining the Other: Legal Rights and Diversity in the Modern World" (2003) 7(1) Associations: Journal for Legal and Social Theory 11.

South Africa.[58] The jurisprudential trend in these jurisdictions is to formulate constitutional standards that permit the courts to examine the substantive fairness of legal rules and, in particular, their effect on vulnerable minorities.

This brings me to the third charge against liberalism, in that it fails to take seriously the interests of minority groups and, in particular, their desire to preserve their traditional way of life. As we have seen, this charge is at least partially incorrect in as much as a focus on substantive legal principles permits the courts to prevent discrimination where, for instance, facially neutral rules have an adverse impact on minority groups, or to uphold restrictions on rights to protect or compensate minorities from, say, more powerful (*e.g.* hate) speech. But what of the claim that liberalism undermines group efforts to preserve their traditional way of life?

This is perhaps the most controversial issue within liberal theory. How far should liberalism go to accommodate minority groups and allow them to retain and protect their *illiberal* practices and traditions? Consider Will Kymlicka's helpful distinction between the two sorts of rights that minority groups might claim:

> The first involves the right of a group against its own members, designed to protect the group from the destabilizing impact of *internal* dissent (*e.g.* the decision of individual members not to follow traditional practices or customs). The second kind involves the right of a group against the larger society, designed to protect the group from the impact of *external* pressures (*e.g.* the economic or political decisions of the larger society). I call the first "internal restrictions," and the second "external protections."[59]

Kymlicka explains that internal restrictions "involve *intra*-group relations" and a group "may seek to use state power to restrict the rights of its own members in the name of group solidarity,"[60] raising the danger of individual oppression. External protections, on the other hand, involve *intra*-group relations and a group "may seek to protect its distinct existence and identity by limiting the impact of the decisions of the larger society."[61] The potential danger here, he tells us, is one of unfairness between groups. Kymlicka explains that liberals generally accept that groups should be free to set the terms of membership, but do not, given their commitment to autonomy, accept that groups should be able to *legally* compel their members to follow certain practices or to question traditional beliefs, as these would

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[58] For a discussion of this substantive approach in the South African constitutional due process context, see Victor V. Ramraj, "Freedom of the Person and the Principles of Criminal Fault" (2002) 18 S.A.J.H.R. 225–58.

[59] *Supra* note 55 at 340–41. See also Will Kymlicka, "Individual Rights and Collective Rights" in *Multicultural Citizenship* (Oxford: Oxford University Press, 1995) at 34–48.

[60] *Supra* note 55 at 341.

[61] *Ibid.*

involve internal restrictions. As for external protections, Kymlicka argues that liberals might accept some protections, but only to "reduce the group's vulnerability to the economic or political power of the majority."[62]

Two points emerge from this discussion. First, it is clear that even accommodative or "cultural" liberals like Kymlicka are not prepared to abandon their commitment to autonomy, as this remains the cornerstone of liberal theory. There would be nothing left of liberalism if they did. Kymlicka himself remains committed to the idea of revisability, the idea that individual are (and ought legally to be) capable of "questioning and rejecting the value of the community's way of life."[63] But it is equally apparent that the liberal commitment to autonomy does not mean that liberals are entirely opposed to culture or tradition, not does it mean that they are unsympathetic to the concerns of minority groups that wish to preserve their way of life.

Clearly, not all liberals would endorse this accommodative liberal approach.[64] But it is equally clear that there is a growing acceptance within liberal theory—and practice—of a more accommodative approach. Even liberal critics of accommodative or cultural liberalism, such as Brian Barry, nevertheless argue that "just as the whole point of liberal institutions is to give different religions a chance to flourish on equal terms, so an enormous range of cultural differences can be accommodated within a common framework of liberal laws."[65] Barry therefore defends orthodox liberalism precisely on the ground of its ability to fairly accommodate the demands of particular groups. What this suggests, perhaps, is that liberalism, in at least some of its forms, might not be as alien or threatening to diverse Southeast Asian societies as it is sometimes thought to be, for it is not about unbridled liberty but rather the fair accommodation of difference.

B. *Implications for Singapore and Malaysia*

A closer look at challenges for Singapore and, perhaps to a lesser extent, Malaysia post-September 11 suggests that an accommodative approach to liberalism may well provide these societies with the ideological basis for responding to potential divisiveness by discouraging essentialist thinking and empowering citizens to think critically, while respecting and preserving

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62 *Ibid.* at 342.

63 *Ibid.* at 228.

64 For a contemporary liberal account that rejects accommodative or cultural liberalism, see Barry, *supra* note 47.

65 *Ibid.* at 23.

the traditional ways of life that are valued by many in these societies. First of all, accommodative liberalism accepts the importance of ethnic communities including their desire to protect themselves against external forces, while rejecting the essentialist approach which creates a necessary link between the individual and the group. By allowing for revisability, it makes suspect any absolute inference about an individual based on a presumed affiliation with a group. Also, by expressly protecting the ability of individuals to leave the group, it encourages diversity with the group (some groups would prefer to accommodate differences than to lose members) which, in turn, makes stereotyping suspect.

Second, by securing the legal right of individuals to leave the group, it allows some latitude for individuals to question traditional practices and to affirm or qualify their participation in group practices to the extent that questioning is permitted. If the group does not permit such questioning, the individual remains (legally) free to leave. This is, on the whole, a defensible approach, but politically, it remains open to attack from opposing directions. On the one hand, traditionalists might argue that it leaves individuals too much liberty and poses too much of a threat to the traditional beliefs and practices, as well as the integrity of the group. On the other hand, those who might be seen to suffer under the group's practices might argue on the contrary that their legal right to leave does not take into account the enormous peer and group pressure that compels them to stay despite their misgivings.

These are, of course, important concerns which need to be addressed by legal and political theorists. But for now it might be enough to answer that if there is indeed an independent reason for wanting to preserve individual liberties in a pluralistic society (as I have argued above), then an accommodative liberalism may be the best way of doing so, while preserving as much cultural group autonomy as is consistent with those liberties. What this implies, at least for Singapore, is that policies and legislation based on race should be abolished, and conditions created in which voluntary associations may flourish. This will require the loosening of legislation such as the *Societies Act*, which prevents associations from forming freely. The same may be said of Malaysia, but as we have seen, ethno-racial essentialism is overshadowed by issues of religion and religious authority. Curiously, it may be that the emphasis on religion might actually diminish ethno-racial essentialism since it is the religion (in particular, Islam, to which a non-Malay person may convert, but not vice versa) rather than ethnicity or race which is crucial. But the extremely sensitive question for Malaysia in this context is the extent to which the religious consequences of apostasy ought to be such that, while leaving the religion may be prohibited internally, it remains, from a legal perspective, a genuine option.

Finally, while accommodative liberalism may not give traditionalists all of the powers that they might want over their members and as against other groups, it nevertheless affords ethnic minority groups some tools for preserving their traditional ways of life by permitting the state to provide some forms of cultural support. For instance, accommodative liberalism would permit the state to support voluntary ethnic self-help associations provided individuals remained free to opt out (which is technically the case in Singapore) *and* that all traces of essentialism, such as the official status of race, were removed (which is not).

V. Conclusion

The basic argument in this article is that the best response to the divisive social consequences of the September 11 attacks and their reverberations in Southeast Asia is to shift away from the illiberal practices of the past toward an accommodative brand of liberalism and, indeed, that this shift is already slowly taking place. There are, of course, two claims here—a normative one (that this shift ought to take place) and a speculative empirical one (that it is taking place). Let me concede right upfront that the latter, empirical claim is on much weaker ground than the former, normative one. First of all, it is not clear to what extent a significant transformation is really taking place. In Singapore, notwithstanding some highly-publicized signs of more policy changes ahead, until these changes are thoroughly entrenched and institutional reforms fully carried out, government priorities remain susceptible to change or reversal. Malaysia, on the other hand, has a different starting point since there has long been a wide range of civil society groups[66] and a relatively strong political opposition; yet contemporary Malaysian politics is currently dominated by a contest between political parties on their Islamic credentials. This complicates matters since what might be best in terms of ensuring ethnic harmony (such as a more general shift toward accommodative liberal laws and policies), might be politically unacceptable in some Muslim constituencies that hold the balance of political power.

Second, even to the extent that there are signs of a shift, it is a difficult empirical matter to show that this shift can be traced to the events of September 11. But difficult as it may be to prove conclusively, the basic evidence (at least in Singapore) seems to suggest a strong *prima facie* case: (a) international terrorism was very quickly regarded as a potential threat to ethnic harmony; (b) the Singapore government itself identified an unquestioning deference to authority as a cause of extremism;[67] and (c) since September

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[66] See Abdul Rahman Embong, "The Culture and Practice of Pluralism in Postcolonial Malaysia," in Hefner, *supra* note 12 at 59–85.

[67] *Supra* note 46.

2001, government policies (and proposed policies) have been shifting in a more liberal direction. An inference can be drawn that liberalism is seen as a potential antidote to extremism and to divisiveness among ethnic groups.

This would not be the first time in the history of Southeast Asia that a shift to liberalism has been regarded as an appropriate response to ethnic disharmony. In the lead up to and in the immediate aftermath of independence from British colonial rule, ethnic tensions which led to communal riots were met with proposals at the highest levels for a non-racially or ethnically defined, liberal constitutional framework.[68] What differs dramatically today from previous efforts to liberalize the constitution is the growing awareness within liberal thought that a formalistic approach to state neutrality is not the only possible liberal answer and that the claims of traditional groups seeking to preserve their customs and practices need to be taken seriously.

There remains one other important qualification to the argument for accommodative liberalism. The argument that accommodative liberalism is an antidote to ethnic divisiveness may well be stronger when it comes to *political* rights (such as freedom of expression, religion, and association, and perhaps the right to equality) than to *due process* rights which limit the policing powers of the state and the ability of the state to detain terrorist suspects without trial. This is not to say that policing powers and preventive detention are unproblematic as far as ethnic harmony is concerned; in some cases, they may well exacerbate ethnic tensions, particularly when particular ethnic or religious groups are, or are perceived to be, unfairly singled out for investigation or detention. There may well be an even stronger argument along these lines. The argument in this article, however, focuses on the way in which illiberalism with respect to *political* rights tend to undermine ethnic harmony.

There has been, since September 11, a renewed and growing sense of urgency about the future of ethnic relations in Singapore and Malaysia. Singapore appears to be moving slowly, but deliberately toward a more liberal and pluralistic approach, while Malaysia is deeply involved in the debate about pluralism both internally and with the Muslim world. And

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[68] The Report of the Constitutional Commission in Singapore in 1966, *supra* note 13, recommended the entrenchment of fundamental individual rights the preferred way to deal with an increasing pluralistic society: "[We] are … unanimously agreed that the best and most appropriate way of safeguarding the rights of the racial, linguistic, and religious minorities in the Republic would be specially to entrench in the Constitution the fundamental rights of both the individual and the citizen (which would include prohibition against discriminatory treatment on the ground only of race, decent, place of origin or religion) as well as those provisions of the Constitution which we consider essential for the protection of those rights" (at 1021). A similarly non-racial approach was urged for the United Malays National Organization in post-colonial Malaysia during the communist insurgency in the 1950s by its then leader Onn Jaafar, but was not ultimately accepted.

while the rhetoric of Asian cultural particularism and ethno-racial essentialism continues to echo in the region, the case for liberalism in Singapore and Malaysia has became much more compelling. Liberalism, properly conceived, has the conceptual tools to accommodate cultural and religious differences and provides an antidote to the divisive, essentialist thinking that the tragic events of September 11 have unleashed.