

## CONSTITUTIONAL ‘SOFT’ LAW AND THE MANAGEMENT OF RELIGIOUS LIBERTY AND ORDER: THE 2003 DECLARATION ON RELIGIOUS HARMONY

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In June 2003, the government adopted the Declaration on Religious Harmony as part of a multi-pronged strategy to address the problem of aggravated ethnic-religious relations, heightened after the discovery of the bomb plot masterminded by *Jemaah Islamiah*, a group affiliated with *Al Qaeda*. This instrument belongs to a corpus of ‘constitutional soft law’, a set of precepts embodied in a text lacking legal status which exerts some degree of legal impact and influences the shaping of state-society relations. Such informal standards shed light on the politico-legal culture, process values of participatory democracy and the practical workings of institutional restraints on public power and governance. This article examines the role of these informal standards within the context of a written constitution, with a particular focus on the Declaration—whose principles have implications for the scope and practice of religious liberty in Singapore, a secular state with a religious society.

### I. INTRODUCTION

On 9 June 2003, the government adopted the Declaration on Religious Harmony (‘DRH’)<sup>1</sup> as part of a multi-pronged strategy to combat the threat aggravated ethnic-religious relations posed towards internal stability and the social cohesion of Singapore’s multi-religious<sup>2</sup> population. This flowed from the discovery of the terrorist bomb plot masterminded by members of *Jemaah Islamiah* (‘JI’), a ‘self-proclaimed Islamic group’ in December 2001 with links to Osama bin Laden’s *Al Qaeda* group. JI members were preventively detained under the *Internal Security Act* (‘ISA’).<sup>3</sup> Heightened religious sensitivities and race relations were exacerbated

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<sup>1</sup> “Declaration on Religious Harmony”, Press Statement, 9 June 2003 [*DRH Press Statement*], online: <<http://www.mcys.gov.sg>>; “More than words, a S’pore way of life” *The Straits Times* (10 June 2003) (Lexis).

<sup>2</sup> The approximate breakdown of religious affiliation in Singapore is: Christianity (14.6%), Buddhism (42.5%), Taoism (8.5%), Islam (14.9%), Hinduism (4%), Other Religions (0.6%), and No Religion (14.8%)—out of 2.5 million residents aged 15 and above: Singapore Census of Population 2000, Advance Data Release No. 2: Religion, online: Statistics Singapore <<http://www.singstat.gov.sg/papers/c2000/adr-religion.pdf>>.

<sup>3</sup> Cap 143, 1985 Rev. Ed. Sing [ISA]. A white paper released in January 2003 by the Home Affairs Ministry justified the preventive detention of JI members under the ISA: Sing., “The Jemaah Islamiyah Arrests and the Threat of Terrorism”, Cmd. 2 of 2003 [*JI White Paper*].

by the 'tudung controversy'<sup>4</sup> of January-February 2002 where the government ban on wearing Muslim headscarf in public schools was criticized as impinging upon religious freedom and minority cultural identity. Singapore's geo-political vulnerability as a Chinese majority city-state surrounded by Muslim majority nations<sup>5</sup> was underscored when Brunei and Malaysia criticized the treatment of Singapore's Malay minority community.<sup>6</sup> These developments were associated with religious revivalism and the 'radicalization of parts of Muslim societies'<sup>7</sup> over the past 30 years especially in South-East Asia, where Muslims were increasingly 'more orthodox, behaving like the Arabs.'<sup>8</sup>

Against this heightened security imperative, the pressing need to consolidate racial ties and win the 'ideological battle',<sup>9</sup> then Prime Minister ('PM') Goh Chok Tong mooted the idea of having a Code on Religious Harmony in October 2002. The proposed draft sought to 'outline the principles' designed to buttress 'inter-religious confidence'<sup>10</sup> by guiding interaction amongst Singaporeans in practicing their faiths.<sup>11</sup> It reads:

We, the citizens of Singapore, acknowledging that we are a secular society; enjoying the freedom to practise our own religion; and recognising that religious harmony is a cornerstone of our peace, progress and prosperity; hereby resolve to practise our religion in a manner that: promotes the cohesion and integration of our society; expands the common space of Singaporeans; encourages mutual tolerance, understanding, respect, confidence and trust; fosters stronger bonds across religious communities; and prevents religion from ever being a source of conflict.<sup>12</sup>

The government sought public input on this draft and consulted with religious leaders who raised concerns and objections on religious freedom matters. The eventual formulation reads:

We, the people in Singapore, declare that religious harmony is vital for peace, progress and prosperity in our multi-racial and multi-religious Nation. We resolve to strengthen religious harmony through mutual tolerance, confidence, respect,

<sup>4</sup> See Thio Li-ann, "Recent Constitutional Developments: Of Shadows and Whips, Race, Rifts and Rights, Terror and Tudungs, Women and Wrongs" [2002] Sing JLS 328 at 355-366. [*Recent Constitutional Developments*]

<sup>5</sup> *Ibid.* at 352-355. Malaysian newspapers have invoked anti-Muslim images in criticizing Singapore policy: a December 2002 editorial entitled 'Singapore Behaving like the Jews in Claiming *Batu Putih* Island' asserted 'just like Israel... is surrounded by Arab countries, Singapore is like a Jewish state surrounded by Malay states.' Cited in Sing. *Parliament Reports*, vol. 75, col. 2035 at 2121 (20 Jan 2003) (Irene Ng).

<sup>6</sup> See *Recent Constitutional Developments*, *supra* note 4 at 366-370.

<sup>7</sup> Sing. *Parliamentary Reports*, vol. 75, col. 2066 (20 Jan 2003) (K. Shanmugam).

<sup>8</sup> Senior Minister Lee Kuan Yew, September 2002 Interview, *International Herald Tribune*, quoted in "When religion encroaches into public space in S'pore" *The Straits Times* (2 Oct 2002) (Lexis).

<sup>9</sup> Shanmugam, *supra* note 7 at col. 2067.

<sup>10</sup> Para 2-3, *DRH Press Statement*, *supra* note 1.

<sup>11</sup> "PM Goh proposes resolution to guide practice of religion" *Channel News Asia* (25 Sept 2002), online: Worldwide Religions News (WWRN) <<http://www.wwrn.org>>; *Jl White Paper*, *supra* note 3 at 23; Explanation on the Declaration by the Religious Harmony Working Committee, online: International Council of Christian Churches <<http://www.iccc.org/rhwcommittee.html>>, Seu Teck Charitable Association <<http://www.seuteck.org/religiousharmonyenglish.html>>.

<sup>12</sup> "PM condemns 'dastardly acts' at S'pore's doorsteps" *The Straits Times* (15 Oct 2002) (Lexis).

and understanding. We shall always Recognise the secular nature of our State, Promote cohesion within our society, Respect each other's freedom of religion, Grow our common space while respecting our diversity, Foster inter-religious communications, and thereby ensure that religion will not be abused to create conflict and disharmony in Singapore.

This article has two primary goals. First, it considers and analyses the subject-matter of the DRH, which is the maintenance of religious harmony in a multi-religious society where 80% of the population professes a religious faith.<sup>13</sup> This is of historical and contemporary importance to Singapore, influencing the reach of civil liberties and spurring government action dedicated towards preserving religious harmony as a crucial facet of security and national cohesion. Described as an 'important document' by then PM Goh,<sup>14</sup> the substance of the DRH contributes to the debate over Religion's proper role in shared life in an era where the need to openly and rationally debate previously taboo and politically sensitive issues such as race and religion is recognized, particularly where religious practice hinders economic productivity, active citizenry and impacts others in society.<sup>15</sup> This article examines issues of constitutional importance raised in the drafting process and final DRH text, elucidating 'what lies behind and beyond the constitution'<sup>16</sup> which is the central though not sole feature of the rules regulating government. It seeks to provide insight into the nature of religious pluralism and ambit of religious liberty in Singapore by examining the parameters of religious harmony as a public order good qualifying constitutional religious freedom guarantees, the duties of citizens and State-Religion relations within a 'quasi-secular' state.<sup>17</sup>

Second, from the perspective of legal theory, it examines the phenomena of 'soft' constitutional law instruments, a common feature of the Singapore public law landscape, as part of the constitutional law matrix. These may be described as a set of precepts embodied in a text lacking legal status, but which exerts some degree of legal impact and influence in shaping state-society relations. The focus is on the DRH, as its adoption provides the opportunity for a contextual exploration of the strategic motives for deploying such instruments, their utility and how these, as interpretational tools or behavioural guidelines, inter-relate with the constitutional order. The broader issue implicated is the role of informal rules or standards in the constitutional system as regulatory techniques. From the socio-legal perspective, an exclusive focus on positive hard law norms which neglects to consider the phenomena of non-binding standards presents a deficient, incomplete picture of Singapore

<sup>13</sup> As of June 2000, the population breakdown is Chinese (77%), Malay (14%), Indians (8%) and Other ethnic groups (1%)., *Singapore's Initial Report, Rights of the Child Convention CRC/C/51/Add.8* (17 March 2003) at para 2.1, online: Ministry of Comm. Dev., Youth and Sports <[http://www.mcys.gov.sg/MCDSFiles/download/CRC\\_Initial\\_Report\\_Full\\_Report\\_Website.pdf](http://www.mcys.gov.sg/MCDSFiles/download/CRC_Initial_Report_Full_Report_Website.pdf)>.

<sup>14</sup> "Religious Harmony Declaration calls for greater social cohesion among Singaporeans" *Channel News Asia* (10 June 2003), online: Human Rights Without Frontiers <<http://www.hrwf.net>>.

<sup>15</sup> Shanmugam, *supra* note 7 at col. 2070. Articulating 'mild heresy', meritocracy was questioned in arguing 'there must be opportunities ... some form of action which will see Malays in important positions in greater numbers than they are now.'

<sup>16</sup> S.A. de Smith, *Constitutional and Administrative Law*, 5th ed. by Harry Street & Rodney Brazier eds., (London: Penguin Books, 1986) at 15.

<sup>17</sup> On Singapore's model of 'accommodate secularism', see Thio Li-ann, "The Secular Trumps the Sacred: Constitutional Issues Arising out of *Colin Chan v. PP*" (1995) *Sing L.R.* 26 at 34-38.

constitutionalism and limited government. Such informal standards shed light on the politico-legal culture, process values related to participatory democracy, the practical workings of institutional restraints on public power and governance, partially delimited by qualified rights guarantees. This enquiry necessitates stepping beyond the bare constitutional text, the legislation it mandates, the institutional processes it creates and the case law that interprets it, but is necessary to fully apprehend Singapore constitutional law and legal-political culture.

Part I gives a brief overview of the general legal framework, scope of religious liberty and Religion-State relations. Part II examines the DRH's origins, its development and the process values inherent in its projection as a broad-based consultative exercise. Part III examines DRH principles and the substantive issues implicating religious freedom, examining concerns raised during the consultation and drafting process and the significance of revisions to the original draft. It considers how these principles inter-relate with the constitutional legal framework in delineating the ground rules for exercising religious liberty while maintaining social cohesion. Specifically, it examines the harms identified in the DRH posed by abuses of religious freedom and assesses the implications of DRH principles as social behaviour guidelines. Part IV defines 'soft law' and reflects upon its role within a legal order with a written constitution. It examines the nature and significance of the DRH as a 'soft' constitutional law instrument and the strategies motivating its adoption as a set of informal rules armed only with 'soft enforcement' measures. Part V offers concluding observations.

## II. RELIGIOUS LIBERTY IN A QUASI-SECULAR, MULTI-RELIGIOUS STATE

### A. *Religion, Law & the State*

Religious liberty, the pre-eminent civil liberty<sup>18</sup> and core human right,<sup>19</sup> protects personal autonomy by preserving a free conscience to make informed decisions on matters of divine, ultimate concern. Article 15(1) of the *Constitution of the Republic of Singapore* ('Singapore Constitution') applies to both citizen and non-citizens,<sup>20</sup> declaring the right of everyone 'to profess and practice his religion and to propagate it'. The constitutional prohibition against its curtailment during Emergencies where other freedoms are limited underscores its fundamental quality.<sup>21</sup> Within a 'democratic secular state',<sup>22</sup> political authority is derived from the constitution, not 'any

<sup>18</sup> See, e.g., the 1648 *Treaties of Westphalia: Treaty of Peace between France and the Empire*, signed at Munster, 14 (24) October 1648 (1 CTS 271); *Treaty of Peace between Sweden and the Empire*, signed at Osnabruck 14 (24) October 1648 (1 CTS 119), which contains religious minority rights. See generally Malcolm D. Evans, *Religious Liberty and International Law in Europe* (United Kingdom: Cambridge University Press, 1997) at 45-59.

<sup>19</sup> There is no international convention on religious freedom although global and regional human rights instruments contain religious liberties clauses: see B.G. Tahzib, *Freedom of Religion or Belief* (The Hague/Boston/London: Martinus Nijhoff Publishers, 1996).

<sup>20</sup> (1999 Rev. Ed.) [Singapore Constitution]. E.g., the art. 14 free speech guarantee of the Singapore Constitution applies only to citizens.

<sup>21</sup> Art. 150, Singapore Constitution.

<sup>22</sup> Sing., "Report of the Constitutional Commission" (Singapore: Government Printer, 1966) at para. 38, reproduced in Kevin Y.L. Tan & Thio Li-ann, *Constitutional Law in Malaysia and Singapore*

divine or ecclesiastical sanction.<sup>23</sup> Both freedom *of* and *from* religion (exercising religious rights and freedom from religious compulsion respectively) warrant protection. As constitutionally recognized indigenous peoples,<sup>24</sup> Malays, who are mostly Muslim,<sup>25</sup> enjoy a limited degree of pluralism in applying religious personal laws in matters of religious office, marriage and testamentary disposition, administered through *Shariah* courts established by the *Administration of Muslim Law Act*.<sup>26</sup>

Religion is correctly valued as a 'constructive social force'.<sup>27</sup> Its philanthropic qualities and cultivation of individual spirituality is appreciated; anti-theism is rejected<sup>28</sup> in recognising Religion's legitimate role in public life and debate.<sup>29</sup> While Religion can motivate compassion and charity, Ignatieff fairly notes that both Religion<sup>30</sup> and atheistic ideologies<sup>31</sup> can and have inspired hatred and violence. Addressing ultimate issues pertaining to life and death that evokes passion, Religion can precipitate conflict between religionists and non-religionists, between adherents to exclusive religious faiths and place State and Religion in direct competition for loyalty.<sup>32</sup> Consequently, article 15(4) authorizes the restriction of religious practices

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(Asia: Butterworths, 1997) at 1025 (Appendix D). On Singapore's commitment towards secularism, which is not an explicit constitutional principle, see, Sing., "Maintenance of Religious Harmony White Paper", Cmd. 21 of 1989 [*MRHA White Paper*] at para. 5 and Sing., "Shared Values White Paper", Cmd. 1 of 1991 [*SVWP*] at para. 46. Both documents were presented to Parliament by command of the President of the Republic of Singapore and ordered by Parliament to lie upon the table on 26 Dec 1989 and 2 Jan 1991 respectively.

<sup>23</sup> *MRHA White Paper*, *ibid.* at para. 5.

<sup>24</sup> Singapore Constitution, arts. 152 and 153.

<sup>25</sup> *Federal Constitution of Malaysia*, art. 160, defines 'Malay' as a person who, *inter alia*, professes Islam; online: Constitution Finder (University of Richmond) <[http://confinder.richmond.edu/local\\_malaysia.html](http://confinder.richmond.edu/local_malaysia.html)> [*Malaysian Constitution*]. This race-religion conflation is absent from the Singapore Constitution, where religious affiliation rests on personal choice: *MRHA White Paper*, *supra* note 22 at para 18(c).

<sup>26</sup> Cap 3, 1999 Rev. Ed. Sing.

<sup>27</sup> *MRHA White Paper*, *supra* note 22 at para. 45.

<sup>28</sup> 'Singapore's government is secular; but it is certainly not atheistic. It is neutral. This is an important principle because all the major religions of the world are represented here.' "Government is secular; not atheistic: BG Yeo" *The Straits Times* (8 Oct 1992) at 2. *E.g.*, the view that the government should not cooperate with religiously affiliated voluntary welfare organizations on school sex education programmes reflects an anti-religion bias: see H. Neo, "Does this group deserve funding?" *The Straits Times* (6 Dec 2003) (Lexis). Such secular absolutism, guised in false neutrality, arrogantly seeks to impose a particularistic moral orthodoxy, displaying intolerance for religious perspectives.

<sup>29</sup> See Thio Li-ann, "State, Religion and the Public Square" *The Straits Times* (11 Dec 2003) at 24. *E.g.*, PM Goh commended social conservatives and religious community members for 'clearly and responsibly' expressing their concerns that a further liberalisation of the militant homosexual agenda would erode other civil liberties and harm public morality and health. He did not 'encourage or endorse a gay lifestyle' despite relaxing policy to allow homosexuals to be hired for key civil service positions, subject to disclosure: PM Goh Chok Tong, "From the Valley to the Highlands", (National Day Rally Speech, 17 August 2003), online: Sing. Govt. Press Release <<http://www.gov.sg/nd/ND03.htm>>.

<sup>30</sup> Believing one possesses 'unassailable grounds of faith' and a divine mandate to spread this has 'provided powerful justifications for torture, forced conversion, the condemnation of heresy and the burning of heretics': Michael Ignatieff, *Human Rights as Politics and Idolatry*, Amy Guttmann ed., (Princeton & Oxford: Princeton University Press, 2001) at 86.

<sup>31</sup> The forceful religious counterargument is that 'the abominations of the twentieth century were an expression of secular hubris, of human power intoxicated by the technology at its disposal and unrestrained by any sense of ethical limit': Ignatieff, *ibid.* at 86.

<sup>32</sup> The three Abrahamic faiths (Judaism, Christianity and Islam) posit mutually exclusive absolute truth claims, based on divine text and revelation. Attempted syncretisation would undermine their integrity.

by general laws serving public order, health or morality.<sup>33</sup> Religious groups and practices are subject to government control through legislative and administrative sanctions, as when the Jehovah's Witnesses were deregistered and their publications simultaneously banned in 1972 under the *Societies Act* and *Undesirable Publications Act* respectively.<sup>34</sup>

### B. Racial and Religious Harmony

The imperative of preserving racial and religious harmony, a declared 'shared value'<sup>35</sup> and facet of public order is underscored by constant government allusion to past conflicts sparked by racial and/or religious differences.<sup>36</sup> There is a notable tendency to conflate race and religion in relation to the overwhelmingly Muslim minority Malay community. Ensuring the pacific co-existence of disparate religious groups within a multi-confessional society continues a fundamental problem of statecraft. Identified threats include aggressive proselytisation, excessively politicized religious groups mixing religion and politics by engaging in 'radical social action'<sup>37</sup> associated with the so-called 'Marxist Conspiracy' in the late 1980s,<sup>38</sup> and more recently, religiously motivated terrorism. Aside from preventive detention laws,<sup>39</sup> the *Maintenance of Religious Harmony Act* ('MRHA')<sup>40</sup> empowers the government to impose non-justiciable restraining orders on religionists deemed to be straying from the acceptable realm of educational, social and charitable work into the political realm, to prevent religion from being invoked to pursue political causes<sup>41</sup> or religious-ethnic entrepreneurs from fomenting strife. In a post 9-11 political landscape, the government was quick to characterize JI members as foreign pawns and to disassociate terrorism from Islam.<sup>42</sup> Nonetheless, concerns about the Malays' economic-political

<sup>33</sup> Singapore *Constitution*, art. 15(4).

<sup>34</sup> Cap. 311, 1985 Rev. Ed. Sing. and Cap. 358, 1998 Rev. Ed. Sing.. On the Jehovah Witnesses in Singapore, see Thio, *supra* note 17.

<sup>35</sup> *SVWP*, *supra* note 22 at para. 16.

<sup>36</sup> There were two racial riots in 1964 (Prophet Mohammad Birthday riot in July and another in September) and another Kuala Lumpur originated communal riot in May 1969: Mark Hong, "Singapore's Success in Creating Racial and Religious Harmony" (Moscow, June 2000) at para. 4 [unpublished], archived online: <[http://www1.moe.edu.sg/racialharmony/download/Racial\\_Religious\\_Harmony\\_final.pdf](http://www1.moe.edu.sg/racialharmony/download/Racial_Religious_Harmony_final.pdf)>. See C.M. Turnbull, *A History of Singapore 1819-1988*, 2nd ed. (Singapore: Oxford University Press, 1992) at 242 and 283 respectively.

<sup>37</sup> *MRHA White Paper*, *supra* note 22 at para. 2.

<sup>38</sup> A group of 20 socially-minded Catholics allegedly sought to bring about a Marxist state, which they denied, and were detained under the *ISA*. See generally "The conspiracy theory" *Far Eastern Economic Review* (22 Oct 1987) at 22. The leading cases are: *Chng Suan Tze v. MHA* [1988] S.L.R. 132, *Vincent Cheng v. MHA* [1990] 1 M.L.J. 449, *Teo Soh Lung v. MHA* [1989] S.L.R. 499 (Sing. H.C.); [1990] S.L.R. 40 (Sing. C.A.). See *MRHA White Paper*, *supra* note 22 at paras. 30-31, Annex.

<sup>39</sup> See Michael Hor, "Terrorism and the Criminal Law: Singapore's Solution" [2002] Sing. J.L.S. 30-55.

<sup>40</sup> Cap 167A, 2001 Rev. Ed. Sing. See Valentine Winslow, "Separation of Religion and Politics: The Maintenance of Religious Harmony Act" (1990) 32 Mal. L.R. 327.

<sup>41</sup> Line-drawing between 'religion' and 'politics' is notoriously difficult, as religions like Christianity and Islam are holistic in nature: *MRHA White Paper*, *supra* note 22 at para. 25. Para. 13 of the Annex ('Religious Trends—A Security Perspective') cites as an example the venturing of Catholic priests into 'social action' by publishing booklets critical of government policies in the mid-1980s.

<sup>42</sup> See Foreign Minister S. Jayakumar, "Strategic Review of the World, Including the Situation in Iraq and Asia-Pacific Region" (Remarks in Parliament, 14 March 2003) at para. 13, online: Ministry of Foreign

marginalization, 'relative insularity'<sup>43</sup> and discontent intensified.<sup>44</sup> To prevent a downward spiral in ethnic relations,<sup>45</sup> the government introduced reconciliatory or integrative initiatives to foster intangibles like inter-ethnic confidence building.<sup>46</sup> Despite the belief that 'in formal terms we have done most things correctly' in minority affairs through constitutional equality guarantees and the meritocracy policy, it was observed that 'societies are not built on such formal institutions alone. Feelings and attitudes are also important.'<sup>47</sup> The DRH through informal means was meant to minister to such feelings and pre-empt religious conflict.

### III. FROM GENESIS TO REVELATION: THE PROCESS CULMINATING IN THE DECLARATION ON RELIGIOUS HARMONY

#### A. *Genesis of the DRH: Reactions to the Proposed Code, Its Desirability and What It Should Contain*

The government needed to offer 'explicit and clear' explanations for having guidelines to assuage concerns that the Code represented a further government attempt to tell people 'how to practice their religion'.<sup>48</sup> The perceived need to respond to impaired ethnic relations and threatened religious harmony fuelled this initiative. Ministerial statements stressed the Code was designed to keep and maintain the peace through guidelines advocating the practice of religions 'in an enlightened manner' to avoid inevitable tensions should one race or religious group seek to aggressively dominate the others.<sup>49</sup>

Representatives of religious communities interviewed by the press expressed varying responses and reservations towards the proposed Code and what was needed to address threats to religious harmony. The views of particular religious groups reflected their sensitivities, some of which were incidental to the avowed primary purpose of responding to the fall-out from the JI terrorist threat.

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Affairs <<http://www.mfa.gov.sg>>. The Muslim Affairs Minister cautioned the Muslim community against warped religious teachings, urging it to be a 'progressive, integrative' community: "Blind Followers... Like JI detainees, they may be misled by warped religious teachings: Yaacob Ibrahim" *The Straits Times* (30 June 2003) at 3.

<sup>43</sup> Shanmugam, *supra* note 7 at col. 2067.

<sup>44</sup> Lily Z. Rahim, "Minorities and the State in Malaysia and Singapore: Provisions, Predicaments and Prospects", Working paper, UN Working Group on Minorities, E/CN.4/Sub.2/AC.5/2003/WP.12 (5 May 2003).

<sup>45</sup> On non-Muslims' mistrust of Muslims, see Sing. *Parliamentary Reports* vol. 75, col. 2035 at 2043-2044 (20 Jan 2003) (Wong Kan Seng). On the Muslim community's efforts at strengthening inter-ethnic ties, see: Sing. *Parliamentary Reports*, vol. 75, col. 2229ff (21 Jan 2003) (Yaacob Ibrahim). See also PM Goh Chok Tong, "Remaking Singapore—Changing Mindsets" (National Day Rally 2002 Speech, 18 August 2002) (In Malay), urging religious moderation. See David Chan, *Attitudes on Race and Religion: Survey on Social Attitudes of Singaporeans 2001* (Singapore: Ministry of Community Development & Sport, 2002).

<sup>46</sup> E.g., the Inter-Racial Confidence Circles and Harmony Circles to promote inter-communal understanding: *Recent Constitutional Developments*, *supra* note 4 at 369-370.

<sup>47</sup> Shanmugam, *supra* note 7 at col. 2068.

<sup>48</sup> "When religion encroaches into public space in S'pore", *supra* note 8.

<sup>49</sup> Wong Kan Seng, quoted in "Dogs used as border controls tighten" *The Straits Times* (19 Oct 2002) (Lexis).

### 1. *Countering Misgivings and Negative Perceptions*

It was feared, after the JI bomb plot was discovered, that Singapore Muslims would be distrusted or blamed, aggravating ethnic rifts. Then PM Goh was concerned that a long-term divide between Muslims and non-Muslims was developing, despite calls for Muslims to engage in mainstream public life. This would help dispel 'unhealthy thought' that other Muslims might harbour terrorist intentions, despite the insistence that only a few 'who happen to be Muslims ... use(d) Islam for their own evil goals'.<sup>50</sup> There was a sense within the Muslim community of its subjection to negative media portrayal, with calls for restraint.<sup>51</sup>

Unsurprisingly, interviewed Muslims hoped the Code would elucidate the substance of each religion's principles, without prescribing how it should be practiced. Indeed, this would be unwarranted interference with the autonomy of religious communities, as when the Ceaurescus used to dictate prayer items to Romanian Churches.<sup>52</sup> The Code should be 'educational' and specifically, teach Singaporeans that Islam promoted peace and wisdom.<sup>53</sup> This would enable Singaporeans to discern whether terrorist groups were acting consistently with Islamic tenets<sup>54</sup> and prevent an entire community from being stigmatized by the actions of a deviant sect—'the code comes at a very crucial time when Islam is being slammed worldwide'.<sup>55</sup> It was hoped the Code would help diffuse stereotypes.

### 2. *Non-Imposition of Views and Curbing Propagation?*

The public focus on Religion drew expressions of disquiet from certain religious groups that their members were being exposed to other religious beliefs through active propagation efforts. Interviewed Taoists, Buddhists and clan association leaders wanted the Code to draw a line against proselytisation, with the Secretary-General of the Singapore Buddhist Federation stating 'No more attempts to convert us, please'.<sup>56</sup> He considered that people 'lecturing people who don't want to be lectured' was disrespectful. A Hokkien clan leader asserted that 'we shouldn't be converting people who already subscribe to a certain religion', although free-thinkers were fair game.<sup>57</sup> Buddhists and Taoists were pleased with the reference to 'respect' in the draft Code, given their complaints about aggressive proselytisation.<sup>58</sup> Notably, Buddhists are the largest religious group in Singapore while the number of Taoists steadily declined in the 1990s, against rising numbers of Chinese converts to Christianity.<sup>59</sup>

<sup>50</sup> "PM Goh proposes resolution to guide practice of religion", *supra* note 11.

<sup>51</sup> Sing. *Parliamentary Reports*, vol. 75, col. 2099, (20 Jan 2003) (Low Thia Khiang).

<sup>52</sup> See generally Bultman, Hill & Fickett, *Revolution by Candlelight: the Real Story behind the Changes in Eastern Europe* (US: Multnomah Publishers Inc, 1991).

<sup>53</sup> "Don't end up preaching, says religious leaders" *The Straits Times* (26 Sept 2002) (Lexis).

<sup>54</sup> Ameer Ali Abdeali, Secretary General, Islamic Fellowship Association, *ibid*.

<sup>55</sup> Yahya Hashim, Al-Falah Mosque Manager, "Religious code goes beyond keeping peace" *The Straits Times* (16 Oct 2002) at H2.

<sup>56</sup> "Don't end up preaching, says religious leaders", *supra*, note 53.

<sup>57</sup> Kua Soon Khe, Hokkien Huay Kuan clan association, *ibid*.

<sup>58</sup> "Religious code goes beyond keeping peace", *supra* note 55.

<sup>59</sup> Reportedly, the Chinese Buddhist population in the 1990s increased from 40 to 54%, with Chinese Taoists declining from 28 to 11%. Jason Leow, "Christianity popular among Chinese here" *The Straits Times* (18 Nov 2000) at 7.



PM Goh said to prevent misunderstandings between communities, ‘one should not impose his religion and his own practice on other people’.<sup>60</sup> However, there was some concern that the constitutionally guaranteed right to propagation would be injuriously implicated by DRH principles.

### 3. Safeguarding Religious Liberty and the Private Space

The Christians interviewed wanted assurances the Code would ensure constitutional rights to religious freedom, noting that church and state should be separate to preserve the autonomy of religious institutions.<sup>61</sup> A Presbyterian reverend, noting that Islam and Christianity were missionary religions, hoped ‘that people from different communities can continue sharing their faith with others.’<sup>62</sup> Muslim leaders, evidently fearing restrictions on religious activities, approved the Code’s reference to ‘the freedom to practice our own religion.’<sup>63</sup>

While coerced religious belief is unacceptable whether by state or non-state actors, the right to propagate or engage in religious free speech is constitutionally protected and consonant with the principle that religious affiliation is a matter of personal choice. Pursuant to this ‘free market’ approach, individuals should be able to hear all views and make an informed choice about having, not having or changing religion. The Indian Supreme Court considered that ‘propagation’ did not constitute a ‘fundamental right to convert another person to one’s own religion’ but protected the right ‘to transmit or spread one’s religion by an exposition of its tenets’.<sup>64</sup> Nevertheless, evangelism can stir religious sensitivities and social disharmony where religious groups fear losing their members to other faiths. In certain jurisdictions, anti-propagation laws have been enacted,<sup>65</sup> but this would in Singapore contravene both constitutional and international human rights standards.<sup>66</sup>

The Singapore *Constitution* guarantee of religious freedom differs from its article 11 Malaysian counterpart in explicitly recognizing the right to religious proselytisation. Article 11 specifically allows state law to forbid the propagation of other faiths to Muslims, deferring to Islam as the Federation’s religion as stated in article 3.<sup>67</sup> This evokes a commitment to a particular belief system, distinct from Singapore’s embrace of secular neutrality.<sup>68</sup>

<sup>60</sup> “PM Goh proposes resolution to guide practice of religion”, *supra* note 11.

<sup>61</sup> Canon James Wong, General Secretary, National Council of Churches Singapore, “Don’t end up preaching, say religious leaders”, *supra* note 53.

<sup>62</sup> “Don’t end up preaching, say religious leaders”, *ibid.*

<sup>63</sup> “Religious code goes beyond keeping peace”, *supra* note 55.

<sup>64</sup> *Rev. Stanilaus v. State of Madhya Pradesh* A.I.R. 1977 S.C. 908, approvingly cited in *Satya Ranjan Majhi v. State of Orissa* 2003 S.O.L. Case No. 491 (Supreme Court, India).

<sup>65</sup> *E.g.*, see the discussion between religious freedom and Greece’s anti-propagation law found in Section 4, Law (*anagastikos nomos*) no. 1363/1938 (making proselytism a criminal offence), amended by section 2 of Law no. 1672/1939, in *Kokkinakis v. Greece* (1993), 260A Eur. Ct. H.R. (Ser. A) 20, 17 E.H.R.R. 397.

<sup>66</sup> Art. 1, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, GA Res. 36/55 (1981); Art. 18, *Universal Declaration of Human Rights*, GA Res. 217A (III), U.N. Doc A/810 at 71 (1948); Art. 18, *Covenant on Civil and Political Rights*, GA 999 U.N.T.S. 171 (23 March 1976).

<sup>67</sup> *Malaysian Constitution*, *supra* note 25.

<sup>68</sup> The suggested value of ‘Belief in God’ was rejected because of the state’s secular nature: *SVWP*, *supra* note 22 at para. 46. See 1966 Constitutional Commission Report, *supra* note 22 at para 33, 1022-6.

Both countries manifest divergent stances towards the freedom to change or leave a religion.<sup>69</sup> The Singapore model recognises the right of individual choice in religious profession,<sup>70</sup> while the Malaysian model attributes greater weight to protecting a particular religious community's identity and cohesion.<sup>71</sup> The Malaysian High Court in *Daud bin Mamat v. Majlis Agama Islam* considered that article 11 did not encompass a right to renounce (change) one's religion.<sup>72</sup>

The issue of proselytisation remains a bone of contention. The Code's drafters faced the conundrum of 'how to conduct this in a way without offending other religious groups?'<sup>73</sup> Limiting the constitutional right to propagation sets in tension an individual's right to believe in accordance with conscience against insecure religious group sensitivities. Should the Code address this, it would have to 'balance the interests of different religions.'<sup>74</sup> While noting that 'evangelism is very much a part of what we do', National Council of Churches President Bishop Solomon drew a sharp distinction between coercive 'forcing our faith on other people', which he rejected, and freely 'sharing our faith'. Further, the *MRHA* was available to handle extremist preaching.<sup>75</sup> Ultimately, the DRH did not explicitly address proselytisation issues.

#### B. *The Consultative Process as Consensus-Building Method*

The task of refining the draft code was entrusted to Minister of State Chan Soo Sen, reportedly an agnostic,<sup>76</sup> who established a seven member Working Committee comprising various parliamentarians with different religious affiliations.<sup>77</sup> The process by which the code evolved to a declaration reflects a conscious desire to mute perceptions that the DRH was a top-down imposition, despite its genesis as a prime ministerial idea. To promote participation, broad-based consultations were

<sup>69</sup> Anthony Langlois, *The Politics of Justice and Human Rights: Southeast Asia and Universalist Theory* (New York: Cambridge University Press, 2001) at 67-71.

<sup>70</sup> *MRHA White Paper*, *supra* note 22 at para. 5 noted the government's obligation to ensure that 'every citizen is free to choose his own religion'. It exhorted religious groups in exercising their religious freedoms to respect individual rights to 'hold his own beliefs and to accept or not to accept any religion': para 18.

<sup>71</sup> The Singapore approach of respecting individual choice in relation to religious profession is consonant with international standards: see Human Rights Committee, General Comment 22 on art. 18, I.C.C.P.R., UN Doc. HRI/GEN/1/Rev.1 (1994) at 35.

<sup>72</sup> [2001] 2 M.L.J. 390 at 402D-F (H.C., Kota Baru). In *Lina Joy v. Majlis Agama Islam Wilayah* [2004] 2 M.L.J. 119 (H.C., Kuala Lumpur), the Court held that article 11 had to be construed harmoniously with other provisions on Islam. Consequently, a Muslim's right to change religion was not absolute as the right to *murtad* had to first comply with the relevant *syariah* laws on apostasy.

<sup>73</sup> Chan Soo Sen, "Need to tackle proselytism when drafting religious code" *China News Asia* (24 Oct 2002), online: Human Rights without Frontiers International <[http://www.forf.org/news/2002/tackle\\_proselytism.html](http://www.forf.org/news/2002/tackle_proselytism.html)>.

<sup>74</sup> Bishop Robert Solomon, "Need to tackle proselytism when drafting religious code", *ibid.*

<sup>75</sup> Chan Soo Sen, *supra*, note 73.

<sup>76</sup> "Religious code goes beyond keeping peace", *supra* note 55.

<sup>77</sup> These were Ong Chit Chung (Christian), Inderjit Singh (Sikh), R. Ravindran (Hindu), Ang Mong Seng (Taoist), Ong Seh Hong (Buddhist), Ahmad Khalis bin Abdul Ghani (Muslim) and Gerard Ee (Catholic): *DRH Press Statement*, *supra* note 1 at para. 3; "Multi-religious team to draft harmony code" *The Straits Times* (2 Nov 2002) at H6.

held over four months from November 2002 to February 2003 with the national bodies of all major or mainstream religious groups in Singapore, including Buddhists, Muslims, Christians, Catholics, Hindus, Sikhs and Taoists.<sup>78</sup> Public views were more generally solicited and considered through channels like letters and emails to the media and Feedback Unit.<sup>79</sup> Religious representatives were invited to review a modified draft incorporating their views. This was submitted to the Inter-Racial Confidence Circle ('IRCC') National Steering Committee and thence to the government in February 2003.

During the public consultation process, a nomenclature change in re-titling the 'Code' as a 'Declaration' was agreed upon. Presumably, this downplayed the former's legalistic connotations. Through encouraging public participation, effort was expended in trying to confer on the Declaration some degree of popular endorsement, to project the perception that all Singaporeans owned the document, 'a product of a bottom-up consultation process involving all major stakeholders',<sup>80</sup> thereby engendering solidarity. This seems consonant with recent government attempts to depart from declaring *diktats* by broadening space for 'openness and channels of consultation', while paradoxically retaining 'harsh instruments of political repression' like preventive detention laws.<sup>81</sup> This consultative democracy model affords 'popular consultation without political contestation' as part of the government's 'sophisticated political management strategy'.<sup>82</sup> This welcomes value-adding, apolitical 'responsible criticism', as opposed to destructive criticism which erodes government standing.

Presenting itself as a 'people's document',<sup>83</sup> the DRH constituted a collective reflective pause in the nation-building process, en route towards achieving equilibrium within a secular state with a multi-religious society. At a time of heightened ethnic and religious tensions, the drafting process facilitated nation-wide dialogue on religious faith, creating space for engagement among citizens, foreclosing insularity and helping to diffuse inter-communal suspicions.<sup>84</sup> This progressive confidence-building process moved beyond tolerance, noted Minister Chan,<sup>85</sup> who hoped it would be an educational process for the religious representatives involved, encouraging them to regard the government-initiated code,<sup>86</sup> which they helped to formulate,

<sup>78</sup> Specifically, the Hindu Endowments Board, Inter-Religious Organisation, *Majlis Ugama Islam Singapura* ('MUIS'), National Council of Churches of Singapore, Roman Catholic Church, Sikh Advisory Board, Singapore Buddhist Federation, Singapore Council of Christian Churches, Taoist Federation, Thye Hua Kwan Moral Society and Red Swastika Society: *DRH Press Statement*, *supra* note 1 at para. 4.

<sup>79</sup> Consultation period from 13 June 2003 to 16 July 2003: "Issue 12/03: Declaration on Racial Harmony", online: Feedback Unit <<http://app.feedback.gov.sg/asp/pol/pol01d1.asp?id=402>>.

<sup>80</sup> *DRH Press Statement*, *supra* note 1 at para. 6.

<sup>81</sup> Kenneth Paul Tan, "'Civic Society' and the 'New Economy' in Patriarchal Singapore: Emasculating the Political, Feminizing the Public" (2001) 15(2) *Crossroads: An Interdisciplinary Journal of Southeast Asian Studies* 95 at 109, 112-113.

<sup>82</sup> *Ibid.*

<sup>83</sup> The Declaration opens with the phrase 'We the people in Singapore'.

<sup>84</sup> Chua Lee Hoong, "Code Red? Code Green? Code Orange!" *Straits Times* (16 Oct 2002) (Lexis).

<sup>85</sup> "Don't end up preaching, say religious leaders", *supra* note 53.

<sup>86</sup> Noting that the Prime Minister had proposed a draft Code and appointed a Working Group on the Code charged with consulting national faith groups: "Code on Religious Harmony", *Sing. Parliamentary Reports*, vol. 75, col. 1495 at 1496 (25 Nov. 2002) (Chan Soo Sen).

as 'their code ... not the Government's code'.<sup>87</sup> Cultivating dialogue with non-government actors was a healthy acknowledgement that members of parliament ('MPs') in a dominant one party Parliament did not represent or could not articulate all religious views. The dialogic process nurtured public 'goods' like tolerance which subsist beyond the province of law. Bishop John Chew affirmed the declaration was 'good' as a beneficial collaborative process, as 'it's really the process that would stand us in good stead'<sup>88</sup> by building a store of social capital. Participants were sensitised to other religious groups' concerns and made conscious of the reality that any group actively championing their rights would spark tension as religious organizations would not tolerate 'any overzealous act of religious leaders'.<sup>89</sup> Notably, the consultations were carried out with mainstream official religious groups, excluding marginal groups like the Jehovah's Witnesses.<sup>90</sup>

#### IV. THE PRINCIPLES IN THE DECLARATION ON RELIGIOUS HARMONY

The Declaration contains a 'set of guiding principles' for mutual interactions within 'our multi-racial, multi-religious society'.<sup>91</sup> These relate to the practice of religious pluralism which is to support the statist goals of 'peace, progress and prosperity', fostering religious harmony through communication and mutual confidence, state secularism, respect for religious liberty and maintaining a 'common space' co-existing with a separate domain wherein religious diversity can be preserved. These principles 'look rather familiar',<sup>92</sup> being reiterative rather than innovative in reflecting 'moral values and social norms'<sup>93</sup> which embodied 'common sense'.<sup>94</sup> These principles and their constitutional dimensions are considered below.

##### A. *The Security Imperative: Maintaining Religious Harmony without Sacrificing Religious Freedom*

###### 1. *The 'Public Order' Goal*

The DRH states that 'Religious Harmony is vital for peace, progress and prosperity in our multi-racial and multi-religious Nation.' This instrumental principle seeks to serve the Peace architecture of the political order, treating religious harmony as falling under the 'public order' ground in article 15(4) of the Singapore *Constitution* which authorizes derogations from religious liberty.

<sup>87</sup> "Multi-religious team to draft harmony code" *The Straits Times* (2 Nov. 2002) at H2.

<sup>88</sup> "Religious Harmony Declaration calls for greater social cohesion among Singaporeans", *supra* note 14.

<sup>89</sup> Ramil Puteh, Ain Society president, "Make it personal; don't just say the words" *Straits Times* (16 Oct. 2002) (Lexis).

<sup>90</sup> The consultation process was not as extensive as the Remaking Singapore process, both headed by Ministers of State. The latter dealt with a broader range of issues related to political, social and cultural aspects of national survival, producing a final report, online: Remaking Singapore <<http://www.remakingsingapore.gov.sg/>>.

<sup>91</sup> Chan *supra* note 86 at col. 1495.

<sup>92</sup> Chan, *ibid.*

<sup>93</sup> Chan, *ibid.*

<sup>94</sup> Chan Soo Sen, "Make it personal; don't just say the words", *supra* note 89.

In interpreting Part IV fundamental liberties, case law manifests consistent judicial deference to executive assessment of public order concerns. This reflects the primacy accorded communitarian or collectivist goals like social harmony. The High Court has declared that actions motivated by religious beliefs could not run counter to the declared 'paramount mandate' of the Constitution, which is to preserve 'the sovereignty, integrity and unity of Singapore'.<sup>95</sup> However, collectivist goals can be construed so expansively to effectively denude liberties,<sup>96</sup> whereby the exception becomes the norm.

## 2. *Vigilance over Liberty*

Rights are a legal technique which recognizes the importance of an interest and accords it protection. A constitutional right of individuals or groups recognizes the need to protect its beneficiaries against majority will and collective goals. This trade-off inheres in the 'constitutional bargain'<sup>97</sup> struck by a liberty (art. 15(1)) and its qualification (art. 15(4)).

Were the DRH merely a statement about the importance of public order values, this would be a lop-sided presentation of half the story as public order is not a free-standing or intrinsic good; rather, it serves the end of liberty. Within a democracy where government is derived from popular consent, government is to benefit and serve human beings. Government action curtailing individual rights in the name of necessity or the collective interest may be abused to promote statist over humane values.

Wisely, the DRH's final text recognizes and reflects the constitutional bargain inherent in managing these competing concerns. It states the need to 'Respect each other's freedom of religion' in the quest to prevent religion from creating disharmony. While the Code's first draft spoke mainly in the language of collective goods while noting the 'freedom to practice our own religion', the final version contains stronger 'rights' language. The re-wording of 'hereby resolve to practice our religion in a manner that promotes the cohesion and integration of our society' to the stand-alone phrase 'respect each other's freedom of religion' to some extent mitigates the concern that religious liberty could be restrictively interpreted or otherwise effectively emasculated. For example, propagation of faith is constitutionally protected but raises the religious sensitivities of groups feeling threatened by another's proselytisation efforts. Arising tensions could conceivably be seen to constitute religious practice contrary to societal integration, justifying a law banning evangelism. A stand-alone recognition of a right, conditioned separately by a reference to social cohesion, while recognizing that right is not absolute, affirms it has intrinsic worth and cannot be entirely subject to instrumental concerns nor reduced to a nullity. It demonstrates consciousness that an entrenched constitutional liberty, not any mere interest, is implicated.

Within Singapore, the articulated fear that rights exercised without a sense of responsibility sustains selfish individualism is paralleled at the international level, evident in the 'responsibilities' and communitarian discourse of the 1990s. This was a

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<sup>95</sup> Yong C.J. in *Chan Hiang Leng Colin v. PP* [1994] 3 S.L.R. 662 at 684F-G.

<sup>96</sup> See Thio Li-ann, *supra* note 17 at 77-82.

<sup>97</sup> Lai Kew Chai J., *Lee Kuan Yew v. Jeyaretnam* [1990] 3 M.L.J. 322 at 333C-D.

reaction to hyper-individualism and 'rights talk',<sup>98</sup> pursuant to which the InterAction Council (counting Lee Kuan Yew as a member) in 1997 drafted a proposed Universal Declaration of Human Responsibilities.<sup>99</sup> Helmut Schmidt noted that 'human obligations' which are associated with 'responsibility' was interdependent with 'rights' which relate 'more to freedom.' Furthermore, 'responsibility, as a moral quality, serves as a natural, voluntary check for freedom. In any society, freedom can never be exercised without limits.'<sup>100</sup> This is a truism as excess of liberty portends anarchy while excess of 'responsibility' portends repression. The attempt to inter-relate both right and responsibility in article 15 of the proposed Universal Declaration is reflected in the DRH:

While religious freedom must be guaranteed, the representatives of religions have a special responsibility to avoid expressions of prejudice and acts of discrimination toward those of different beliefs. They should not incite or legitimize hatred, fanaticism and religious wars, but should foster tolerance and mutual respect between all people.

Within a communitarian society, rights are not nonnegotiable claims or an absolute 'trump card',<sup>101</sup> implying 'that when rights are introduced into a political discussion, they serve to resolve the issue'.<sup>102</sup> Instead, the language of 'rights and freedoms' provide the basis for deliberative dialogue, where the right-holder's interests are not determinative, but are to be worked out within the community context, where subscription to human rights entails 'the fundamental moral commitment' to adjudicate conflicting rights through persuasion, *i.e.*, to respect others' reasoned commitments and forge a compromise which prevents conflicting claims from harming either side.<sup>103</sup>

While the DRH recognizes the need to balance liberty and harmony, its principles are vague, abstract and unhelpful in the adjudicative context. This is a reflection of the open-textured quality of 'soft law' norms, discussed below.

### B. *The Secular Imperative: A Religious Society and a Secular State*

A distinct change in the final draft demonstrates the sensitivities associated with understandings of the term 'secular.' The original phrase 'acknowledging that we are a secular society' elicited strong objections as 'secular society' falsely connoted

<sup>98</sup> Amitai Etzioni, *The Spirit of Community: Rights, Responsibilities, & the Communitarian Agenda* (New York: NY Crown Publishing Group, 1993); Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991).

<sup>99</sup> InterAction Council, "A Universal Declaration of Human Responsibilities" (1 September 1997), online: <<http://www.interactioncouncil.org/udhr/declaration/udhr.pdf>>.

<sup>100</sup> "It is time to talk about human responsibilities", Report, Conclusions and Recommendations by a High-level Expert Group Meeting (Vienna, 20-22 April 1997), online: InterAction Council <<http://www.interactioncouncil.org>>.

<sup>101</sup> Ronald Dworkin defines individual rights as 'political trumps' whereby 'a collective goal is not sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them': *Taking Rights Seriously* (Great Britain: Duckworth, 1977) at xi.

<sup>102</sup> Ignatieff, *supra* note 30 at 20.

<sup>103</sup> Ignatieff, *ibid.* at 84.

that 'we have no religion at all, like the communists.'<sup>104</sup> This is a correct observation, evincing clear opposition against affirming secularism as a worldview.

It was suggested 'we live in a secular society'<sup>105</sup> should replace the original formulation, as this phrase is not presumptuous in its wholesale characterization of a culturally and religiously heterogeneous society. The final draft was modified to read 'recognise the secular nature of our State,' referring to the *state* alone which is 'an imposition on society' and unless 'humanised and democratised', relies on coercive sanctions. This is distinct from, and should not be conflated with, the 'organic' nature of community or society which, mostly, 'depends on popular norms developed through forms of consensus and which are enforced through mediation and persuasion.'<sup>106</sup> The amendment clarified the term 'secular' should relate to a legal entity, the state, and not be confused as reflecting a popular ethos or government advocated mentality.

This disagreement over what a secular state entails in Singapore stems from the absence of an express constitutional principle of secularity and little judicial pronouncement where this issue is tangentially raised, although state-defined national interests are accorded precedence over religious practices. For example, claims to religious conscientious objection are subject to the legislative duty of military service, which was judicially declared a 'fundamental tenet'.<sup>107</sup> Notably the Court of Appeal narrowly defined 'religion' as a citizen's faith in a personal God, excluding secular ideologies.<sup>108</sup>

In terms of historical practice, Singapore at independence explicitly departed from Malaysia's confessional constitution with respect to Islam. However, 'secularism' in relation to the relationship between the state and a religion(s) is not a self-evident term<sup>109</sup> and bears a range of meanings from hostility to indifference, from anti-theism to agnosticism, with implications for how strictly 'church' and 'state' are separated. It is clear from the provisions of the Singapore *Constitution* that Singapore does not practice secular fundamentalism, a strict secularist approach bent towards obliterating any trace of religion in public. For example, article 152 imposes a constitutional duty on the government to safeguard the religious interests of indigenous Malays, *i.e.* Islam. For example, government policy requires there be minimally one mosque in each new town.<sup>110</sup> Singapore's approach towards religion is pragmatic, not dogmatic, as when it introduced (and later terminated) a religious knowledge programme in national schools to buttress national values.<sup>111</sup>

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<sup>104</sup> Canon James Wong, quoted in "Religious code goes beyond keeping peace", *supra* note 55.

<sup>105</sup> Canon Wong, *ibid.*

<sup>106</sup> Yash Ghai, "Asian perspectives on human rights" (1993) 23 H.K.L.J. 342 at 352.

<sup>107</sup> [1994] 3 S.L.R. 662 at 678B.

<sup>108</sup> The Court rejected the argument that state mandated recitation of National Pledges in public schools constituted a religious belief, as the State commanded no supernatural existence in a citizen's belief system: *Nappali v. Institute of Technical Education* [1999] 2 S.L.R. 569.

<sup>109</sup> See Rajeev Bhargava ed., *Secularism and its Critics* (New Delhi: Oxford University Press, 1998).

<sup>110</sup> See Sing. *Government Press Release*, No. 9 of October 1987, 02-0/87/10/03.

<sup>111</sup> There were concerns this contravened the secularity of government and state: Sing. *Parliamentary Reports*, vol. 54, col. 585 (6 Oct 1989) (Tan Cheng Bock). See Joseph Tamney, "The Religious Studies Experiment" in Tamney, *The Struggle over Singapore's Soul: Western Modernisation and Asian Culture* (Berlin & New York: Walter de Gruyter, 1996) at 25.

The meaning of 'secular' state may be gleaned from various white papers, including the MRHA (1989)<sup>112</sup> and Shared Values<sup>113</sup> (1990) white papers. In the latter, the government declared its 'strictly neutral position' on matters of religion.<sup>114</sup> That is, the reins of state and political power are not exclusively controlled by any one confession or ethnic group. Indeed, the Religious Harmony Working Committee explained that the DRH wording was designed to ensure in a multi-religious society that 'followers of all religions are equal in our society,' countering fears of dominance by any one religious group.<sup>115</sup> Equality of religions is meant to protect, not destroy, religions.

Religion and politics are separated insofar as political authority does not stem from a divine source and 'mutual abstention from competitive political influence'<sup>116</sup> among religious groups is considered crucial to religious harmony. However, secularism does not require individuals to separate religion from other parts of life (this is impossible in the case of holistic faiths), including public debates. What is required is that the Priest does not become Politician by misusing the pulpit to amass political support for subversive ends. While Religion in Singapore public life does not play as large or as overt a role as it does in Malaysia in informing public social values,<sup>117</sup> the need post 9–11 to address religious issues publicly and sensitively is increasingly advocated: 'We can no longer say religion is just a private domain: It's me, my God and my community'. The caveat is that in the public sphere, the emphasis should be on common issues and principles shared by the different faiths.<sup>118</sup>

### C. *The Imperative of Sustaining Religious Pluralism*

A background issue to the DRH is the implicit theory of religious pluralism extant in the constitutional setting. The DRH calls for the promotion of social cohesion, strengthening religious harmony 'through mutual tolerance, confidence, respect and understanding'. This is to be achieved through both formal legal and informal promotional means as cultivating a certain attitude is necessary to sustain the practice of religious pluralism.

#### 1. *What Religious Pluralism Entails: Tolerance as Basis for Co-Existence*

The DRH principles appear consistent with the precept that tolerance recognises all religions should receive equal legal protection, such that all holders of religious beliefs are safeguarded from fear of religious persecution—as in the Elizabethan era when conversion to Catholicism in England was a capital offence.<sup>119</sup> This approach

<sup>112</sup> MRHA White Paper, *supra* note 22.

<sup>113</sup> SVWP, *supra* note 22.

<sup>114</sup> SVWP, *supra* note 22 at para. 46.

<sup>115</sup> Explanation on the Declaration by the Religious Harmony Working Committee, *supra* note 11.

<sup>116</sup> MRHA White Paper, *supra* note 22 at para. 28.

<sup>117</sup> Langlois, *supra* note 69 at 13-16; Andrew Harding, "The Keris, Islam and the Blind Goddess: The State, Islam and the Constitution in Malaysia" [2002] 6 Sing. J.I.C.L. 154.

<sup>118</sup> "Have faith in dialogue" *The Straits Times* (16 Feb. 2003), quoting Theresa Seow, Head of the Inter-Religious Organisation ('IRO').

<sup>119</sup> Douglas Laycock, "Continuity and Change in the Threat to Religious Liberty: The Reformation Era and the Late Twentieth Century" (1996) 80 Minn. L. Rev. 1047 at 1059.



does not entail endorsing any religion's veracity. Instead, the focus is correctly placed on the equal legal right to hold, without interference, a religious belief and practice it.

Tolerance is integral to religious pluralism, grounded in the democratic right of every person to found religious commitment on personal conscience. This forms the strongest basis for the stability of religiously plural societies as there is security within a system which secures mutual respect for disparate beliefs, without sacrificing the integrity of any. An anti-theistic system or a system elevating one faith above all and seeking to curb competing faiths perpetuates religious intolerance and is oppressive. Differences in terms of religious affiliation are an accepted constant; eliminating dissent eventuates in eliminating dissenters, as '[c]ompulsory unification of opinion achieves only the unanimity of the graveyard.'<sup>120</sup> The task perpetual is to manage these differences.

The current approach toward State-Religion relations, insofar as it reflects a benevolent neutrality or accommodative secularism, has merit. From the government's perspective, neutrality is disassociated from anti-theistic hostility toward religion displayed by totalitarian systems one might associate with Stalinism or the extreme social libertarianism secular fundamentalists espouse.<sup>121</sup> Only a non-partisan government can urge understanding between religious groups, without itself being suspected of imposing religious preferences.

## 2. Dialogue as Confidence-Building

The Sikh Advisory Board chairman articulated the fear that intolerance and suspicion would be bred by 'communities being misunderstood and stereotyped post Sept. 11.'<sup>122</sup> The antidote resided in enhancing public awareness of 'each other's traditions and value systems.'<sup>123</sup> This would debunk the myth of homogenous perspectives within a minority community.<sup>124</sup> In particular, Members of Parliament have urged conducting progressive debates about Muslims' and Islam's role in modernity, including participants beyond the religious or intellectual elite. Positive developments in neighbouring countries like Malaysia have been noted, where women's groups such as the Sisters of Islam work to promote women's rights within the Islamic framework.<sup>125</sup>

In this era of enhanced religious sensitivities, coupled with greater assertiveness and popular clamour for 'more political space and more freedom of expression',

<sup>120</sup> Jackson J., *Western Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

<sup>121</sup> On the United States front, see "Secular Absolutism: The Irreligious left tries to impose its religious views on everyone else" *Opinion Journal*, from the *Wall Street Journal Editorial Page* (14 March 2004), online: <<http://www.opinionjournal.com/editorial/?id=110004819>>.

<sup>122</sup> "Don't end up preaching, says religious leaders", *supra* note 53.

<sup>123</sup> IRO Leaders have advocated that people attend religious ceremonies of different faiths: "Want to understand Hinduism? Step into a temple" *The Straits Times* (18 March 2002) (Lexis).

<sup>124</sup> E.g., Muslims in Singapore have expressed different views regarding female genital mutilation: "Female circumcision alive and well in S'pore" *The Straits Times* (11 Nov. 2002); "Enough said, let's move on" *The Straits Times* (23 Jan. 2003) (Lexis).

<sup>125</sup> Sing. *Parliamentary Reports*, vol. 75, col. 2124 (20 Jan. 2003) (Irene Ng). See Jaclyn Neo Ling Chien, "'Anti-God, anti-Islam and anti-Quran': Expanding the Range of Participants and Parameters in Discourse over Women's Rights and Islam in Malaysia." 21 *UCLA Pacific Basin Law Journal*, (forthcoming: Fall 2003).

manifesting in 'more aggressive' missionary work, social tensions are inevitable unless religious groups develop a degree of mutual confidence 'which allows them to air their different positions without undermining the common peace'.<sup>126</sup> This requires that a sense of civic responsibility accompany the exercise of religious free speech and other rights, to 'continuously promote social cohesion'.<sup>127</sup>

Tolerance is mutually beneficial, as 'there can be little meaningful community or religious life if there is no collective peace'.<sup>128</sup> Abuses of freedom invite legal regulation of freedom. Only if this enlightened mindset was adopted could the call to inter-religious harmony not curb but facilitate 'greater freedom of religious expression'.<sup>129</sup> Openness to dialogue and challenge after all is evidence of a secure faith. The DRH calls for the fostering of 'inter-religious communication' to promote the intangible of tolerance through education, not legal sanction.

Dialogue is the first step towards dispelling misunderstanding. It is a preventive strategy against simmering suspicion, resentment and ultimately inter-group conflict. It buttresses religious pluralism by sustaining a tolerant ethos which accommodates religious diversity and builds confidence between 'us' and the 'other'.

#### D. *Unity in Diversity: 'Grow Our Common Space while Respecting Our Diversity'*

Religious pluralism is served by ensuring, through legislative and informal means, that minority groups both share in national life while having space to enjoy and preserve their distinctive faiths, cultural identity and communal autonomy, quelling fears of assimilationist pressures.

The Singapore *Constitution* has opted to deal with this not through minority rights but by affirming non-justiciable duties of minority protection and prohibitions against racial discrimination, which benefits individual members of ethnic groups. For example, the government's obligation under article 152 to protect racial and religious minorities has been translated into minority legislative quotas and monitoring institutions. The dominant view in the 1960s when the Wee Constitutional Commission was convened was that the rights of minority groups would be protected if individual rights were safeguarded.<sup>130</sup> The principle of equal rights over the pursuit of special rights, 'the futile and illusory goal of minority rights',<sup>131</sup> was preferred. Nevertheless, statutes facilitated the limited operation of Muslim personal and customary law. This sphere of autonomy enjoyed by a minority religious and cultural group was preserved in appending protective reservations when Singapore acceded to the

<sup>126</sup> Sing. *Parliamentary Reports*, vol. 75, col. 2084 at 2092 (20 Jan. 2003) (Ahmad Khalis).

<sup>127</sup> *Ibid.* (Ahmad Khalis).

<sup>128</sup> *Ibid.* (Ahmad Khalis).

<sup>129</sup> *Ibid.* (Ahmad Khalis).

<sup>130</sup> "No amendment without consent, urges Tamil minority" *The Straits Times* (5 March 1966); J.B. Jeyaretnam, "The minorities and individuals," Letters, *The Straits Times* (23 Dec. 1965); Sing. *Parliamentary Debates*, vol. 25, col. 1355–1361 (16 March 1967) (Minister for Foreign Affairs S. Rajaretnam).

<sup>131</sup> Sing. *Parliamentary Debates*, vol. 25, col. 1355 at 1358 (16 March 1967) (Foreign Affairs Minister S. Rajaretnam).

*Elimination of All Forms of Discrimination against Women*<sup>132</sup> and the *Rights of the Child*<sup>133</sup> conventions in 1995.<sup>134</sup>

The nation-building task of cultivating a unifying national identity is difficult as social cohesion demands shared ideals, while respecting particular racial-religious particularities. The ‘common space’ relates to the idea of a common domain where commonalities amongst citizens are emphasized, in integrative fashion, and where there is participation in political and civic life. The corollary of this is a separate domain where a community’s distinct identity is able to flourish. Thus, to former PM Goh, Singapore was neither a ‘melting pot’ which submerged all races nor a ‘salad bowl’ which celebrates cultural differences and rejects assimilation; rather, ‘the different communities are mosaics which form a harmonious whole, with each piece retaining its own colour and vibrancy.’<sup>135</sup> The DRH addressed the need of individual members of communities to fulfill their duties as citizens and religious obligations in a compatible manner, with the overriding proviso that group interests not undermine political cohesion.<sup>136</sup> It recognizes that loyalty and group allegiances are multi-tiered rather than singular, that the accommodation of Caesar and Christ was something warranting continual negotiation.

The issue of ‘common space’ crystallized over the *tudung* dispute where the educational policy on uniforms was said to violate religious freedom rights. The government rationale was that schools were a ‘common space’ for socializing students, in a race and religion-blind setting, into the ideals of national citizenship, though this has been contested.<sup>137</sup> Singing national anthems and the flag-raising ceremony<sup>138</sup> was instituted to convey a common identity,<sup>139</sup> and inter-ethnic interaction would help students build ‘emotional ties, identification, and a sense of commitment to one another as fellow citizens’, facilitating the object of ‘carefully interwoven seams of race and religion.’<sup>140</sup> The fear was that allowing the wearing of the Muslim headscarf would emphasise difference, breed racial enclaves and thwart the project of creating

<sup>132</sup> GA Res. 34/180, 34 U.N. GAOR Supp. No. 46, U.N. Doc. A/34/46 (3 September 1981) at 193 [CEDAW].

<sup>133</sup> GA Res. 1386 (XIV), 14 U.N. GAOR Supp. No. 16, U.N. Doc. A/4354 (1959) at 19.

<sup>134</sup> On the reservations to CEDAW, see Thio Li-ann, “The Impact of Internationalisation on Domestic Governance: The Transformative Potential of CEDAW” [1997] 1 Sing. J.I.C.L. 248 at 299-305. The C.R.C. Committee expressed concerns over treaty reservations: Concluding Observations: Singapore, CRC/C/133 (2003).

<sup>135</sup> “Media’s role in sealing social unity” *The Straits Times* (7 Sep. 1998) at 1.

<sup>136</sup> “Balancing needs of faith and citizenship” *The Straits Times* (23 Jan. 2003) (Lexis).

<sup>137</sup> For an analysis of the legal issues, see *Recent Constitutional Developments*, *supra* note 4 at 355–366. See also Letter from Azizah Y. al-Hibri, Executive Director, Muslim Women Lawyers for Human Rights (KARAMAH) to Singapore Ambassador Chan Heng Chee (20 April 2002), online: KARAMAH <[http://www.karamah.org/press\\_letterto\\_singapore.htm](http://www.karamah.org/press_letterto_singapore.htm)>.

<sup>138</sup> Notably, Jehovah Witnesses’ teachers and students have been suspended for refusing to participate in these school rituals, on religious grounds: see *Nappalli v. I.T.E.*, *supra* note 108. Since 2000, 22 students were suspended from primary or secondary schools for refusing to salute the flag or sing the national anthem: U.S. Department of State, Country Report on Human Rights Practices: Singapore (31 March 2003), online: <<http://www.state.gov/drl/rls/hrrpt/2002/18263.htm>>.

<sup>139</sup> Education Minister Teo Chee Hean, Speech at A.C.J.C. Racial Harmony Music and Dance Day (19 July 2003), online: M.O.E. <<http://www.moe.gov.sg/speeches/2003/sp20030719a.htm>>.

<sup>140</sup> Hawazi Daipi, Parliamentary Secretary, Education, Speech at Launch of Racial Harmony Website (15 Feb. 2003), online: Ministry of Education <[www.moe.gov.sg/speeches/2003/sp20030215.htm](http://www.moe.gov.sg/speeches/2003/sp20030215.htm)>.

a common national identity. Thus, the implications of 'common space' (contrasted with 'private space'<sup>141</sup>) has prominently entered public discourse.<sup>142</sup>

The original Code proposed to 'expand the common space of Singaporeans'. This elicited fears that 'expand' connoted the retreat of religion in order to enlarge the common space. While some felt the proposed code should prevent private religious practices from spilling into the public domain and causing friction, religionists feared being required to switch off their ethnic or religious identity in the common domain.<sup>143</sup>

To placate these concerns, the final wording was rendered less aggressive, to 'grow our common space while respecting our diversity'.<sup>144</sup> 'Grow' captures both the idea of natural or organic change and the aspiration to expand public life in less threatening fashion.

The DRH Working Committee opined that expanding common space did not necessarily entail sacrificing individual identities, private values and ways of life—it was not a 'zero sum game' according to Minister Yaacob Ibrahim.<sup>145</sup> To him, the common space 'reflects what makes us uniquely Singaporean, while embracing the diverse cultures and faiths that we come from.'<sup>146</sup> The growing of the common space 'depends largely on how the different communities see the value in preserving a uniquely Singaporean identity'.<sup>147</sup> He advocated focus on shared aspirations and values,<sup>148</sup> not cultural differences, but these 'must also be operating in the private space.' That is, he rejected viewing the common/private space as hermetically-sealed compartmentalized aspects of life,<sup>149</sup> in contradistinction with former PM Goh's view that religious practice should be limited to personal space in secular Singapore.<sup>150</sup>

There is no rigid line between common and private space. For example, the government has an interest in preventing religious radicals harbouring terrorist notions from flourishing in the 'private space'. Yet, understanding that politicians incur

<sup>141</sup> The desire to preserve the 'private space' of a religious group is an issue reflected in the effect of legislating mandatory primary education under the *Compulsory Education Act* (Cap 51, 2001 Rev. Ed. Sing.) on *madrasahs* (religious schools), an important aspect of community identity in producing teacher-scholars. The fear was the Act would reduce the supply of primary school candidates to the six full time *madrasahs*, causing them to die a natural death. The accommodation struck was to maintain the schools' religious character while ensuring basic standards in English, Science, Mathematics and I.T., safeguarding the employability of *madrasah* graduates: "Ways to enable Islamic schools to co-exist" *The Straits Times* (19 April 2000) at 56. For a critique, see Zulfikar Mohamad Shariff, "Malay leadership: Interest, protection and their imposition" (Speech at a conference entitled 'Political Change in Singapore: what next?', 10-12 Jan 2003, Melbourne), online: Singaporeans for Democracy <<http://www.sfdonline.org>>.

<sup>142</sup> "Recast the debate over 'common space'" *The Straits Times* (30 Oct. 2002) (Lexis).

<sup>143</sup> "PM condemns 'dastardly acts' at S'pore's doorsteps", *supra* note 12.

<sup>144</sup> "More than words, a S'pore way of life", *supra* note 1.

<sup>145</sup> Sing. *Parliamentary Reports*, vol. 76, col. 1788 (20 March 2003) (Yaacob Ibrahim).

<sup>146</sup> *Ibid.* at col. 1786.

<sup>147</sup> *Ibid.* at col. 1786. Social cohesion is not limited to bridging racial/religious divides, but extends to other social divides like rich/poor, young/old, where inter-group collaboration through 'volunteerism, philanthropy and mutual self-help groups' creates 'social capital' that solidifies 'unity in diversity': at col. 1782.

<sup>148</sup> For *e.g.*, 'our belief in nurturing strong families, meritocracy, multi-racialism and a corrupt-free government', *ibid.* at col. 1787.

<sup>149</sup> "Recast the debate over 'common space'", *supra* note 133; "Let's redefine common space, says minister" *The Straits Times* (25 Oct. 2002) (Lexis).

<sup>150</sup> "Let's revive colour-blind times through Chinese New Year" *The Straits Times* (1 Feb. 2003).

resentment in confronting religion, it has urged the Muslim community to engage in self-policing to weed out extremist teachings.<sup>151</sup> The problem is the need to manage the state's desire to integrate its citizens in a shared national life within the common domain with the particular aspirations of ethnic or religious communities.

To 'foster inter-religious communication' requires mutuality as good relations between the non-Muslim majority and Muslim community could not be a 'one way street'. Accordingly, former PM Goh noted that a joint statement signed by 123 Muslim groups calling for the promotion of common space positively demonstrated these Singaporean Muslims' commitment towards the common goal of 'peace and nation-building'.<sup>152</sup> Rejecting insularity and engaging in constructive dialogue, as the DRH advocates, promotes inter-group respect.

## V. THE DRH AS CONSTITUTIONAL 'SOFT LAW'

### A. *The Phenomenon of Soft Singapore Constitutional Law*

The DRH is not juridically binding<sup>153</sup> and may be described as an instrument of 'soft' constitutional law not founding a justiciable course of action. This does not mean it is irrelevant to constitutional law, lacks legal weight or practical impact on the scope of public power and fundamental liberties within the constitutional order.

Soft law is better apprehended when contrasted with 'hard law' which refers to legal obligations created and changed by formal legal process, such as legislative enactment or other secondary 'rules of recognition'. This process identifies which facts are legally relevant and attract legal consequences. Breaches in hard law found legal action before judicial bodies empowered to order remedies. Soft law norms are created by informal processes, being in nature moral-political obligations. While promoting the values of social actors, these are subject to looser internal 'sanctions' inducing compliance, such as peer pressure or generated expectations.

Within public law, 'soft law'<sup>154</sup> may be understood as a descriptive umbrella for non-binding instruments containing recommendations or hortatory, programmatic statements, taking the form of informal rules like circulars, self-regulating codes of conduct or government white papers.<sup>155</sup> These soft law instruments co-exist with 'hard' law and may have legal impact. The High Court has pragmatically given effect

<sup>151</sup> "Keeping the radicals at bay" *The Straits Times* (12 Jan. 2003) (Lexis).

<sup>152</sup> "PM condemns 'dastardly acts' at S'pore's doorsteps", *supra* note 12.

<sup>153</sup> *DRH Press Statement*, *supra* note 1 at para 8, notes it is 'not a legal document' but provides a basis to induce reflection on the state of religious harmony.

<sup>154</sup> In international law which lacks a formal legislative process, 'soft law' is a term coined to refer to non-legally binding instruments having some legal effect: see Eibe Riedel, "Standards and Sources: Farewell to the Exclusivity of the Sources Triad in International Law?" (1991) 2 E.J.I.L. 58; Christine Chinkin, "The Challenge of Soft Law" (1989) 38 I.C.L.Q. 850. These standards impact international relations particularly where applied by international organizations like the Organisation for Security and Co-operation in Europe, whose annual Summits' Concluding Documents are recommendatory in nature. 'Soft law' has blurred the threshold of normativity, with law viewed not as a command backed by legal sanctions but a predictive factor in inter-state conduct: Ulrich Fastenrath, "Relative Normativity in International Law" (1993) 4 E.J.I.L. 305.

<sup>155</sup> Baldwin & Houghton, "Circular Arguments: The Status and Legitimacy of Administrative Rules" [1986] Public Law 239. The English Court of Appeals has considered reviewable a code issued by a non-statutory body: *R. v. Panel on Take-overs and Mergers, ex. P. Datafin* [1971] 1 Q.B. 815.

to informal rules issued by public bodies, recognizing these can create legitimate expectations, in *Lines International Holding v. Singapore Tourist Promotion Board and Port of Singapore Authority*.<sup>156</sup> Prakash J. found 'astonishing' the proposition that statutory bodies could not formulate policy guidelines unless a regulation was duly promulgated as 'this is not the way the executive arm of any common law country functions.'<sup>157</sup> Lacking formal legal status, soft norms nevertheless are legally relevant.

Various factors may explain the phenomenon of soft law norms within the public legal order. First, the rise of the Administrative State and the increasing 'delegation' of public functions to private bodies has necessitated the development of para-legislative acts in various non-binding forms within public law systems. These soft law rules control or condition the law-interpreting and applying behaviour of public realm actors. While not creating direct legal relations to which the citizen is party, soft norms do modify existing public powers and duties in relation to the citizen.

Second, the particular political context characterized by the hegemonic rule of the People's Action Party ('PAP') which has continuously governed Singapore since 1965 has facilitated the production of soft law norms. The opinions of leading government ministers, contained in policy statements or papers are accorded greater weight, as 'soft law' norms are easily translated into law and programmes. Recently, the sitting Court of Appeal judge and senior counsel referred to the 2004 National Day Rally speech delivered by Singapore's third Prime Minister, Lee Hsien Loong.<sup>158</sup> The stated possibility of reversing policy and building a casino in Singapore was cited as signaling government willingness to revise the past public policy commitment against gambling. According determinative or near legislative weight to a policy pronouncement *contemplating* a controversial change, the Court reversed a prior decision disallowing the recovery of debts by foreign casinos through Singapore courts.<sup>159</sup>

### B. 'Soft Law' and the Theory of Law

An examination of soft law norms which influence social behaviour but lack legal validity transcends the constitutional lawyer's traditional diet, taking one into the extra-legal realm and beyond the traditional binary framework of law which sharply

<sup>156</sup> [1997] 2 S.L.R. 584. The Court accorded binding quality to quasi-law in the form of non-statutory informal rules found in unofficial oral guidelines issued by the Port of Singapore Authority imposing cruise type quotas. See Thio Li-ann, "Law and the Administrative State" in Kevin Y.L. Tan ed., *The Singapore Legal System* (Singapore: Singapore University Press, 1998) 160 at 174-175.

<sup>157</sup> [1997] 2 S.L.R. 584 at 608A-B.

<sup>158</sup> Reportedly, K. Shanmugan, Senior Counsel and PAP MP, read out part of the PM's speech to indicate that Singapore welcomed the establishment of a casino as part of its tourism initiative, even though the public debate over this controversial proposal had only just begun: "Court rules in favour of foreign casino" *The Straits Times* (26 Aug 2004) (Lexis).

<sup>159</sup> *Liao Eng Kiat v. Burswood Nominees Ltd* [2004] SGCA 45, overruling *Star City Pty Ltd v. Tan Hong Woon* [2002] 2 S.L.R. 22.

distinguishes the pre-legal (non-law) from the legal ('hard' law). This is a function of legal positivism<sup>160</sup> which conceptually separates what John Austin termed 'laws properly so called' (hard positive law) and 'laws improperly so called' (norm programmes).<sup>161</sup> This threshold technique maintains law's autonomy, insulating it from conflation with other rules of political conduct or notions of justice extant in the social environment. Soft law norms embodied in a text issued by a government actor may be considered to form an intermediate category between hard law and non-law norms.

This entails a wider, more fluid conception of law in including informal rules as relevant 'standards', representing a shift from formalism to a more pragmatic, eclectic<sup>162</sup> socio-legal approach towards analyzing law and society. It broadens the focus from norm creation and status to considering the factors which render 'quasi-law' a significant social phenomenon, able to persuade compliance by relevant actors, generating expectations about how legal relations will be implemented, and even modifying the exercise of public power.

Soft law norms may be relevant standards in political discourse and constitute an alternative technique of regulating social relations. However, these lack categorical force, rendering imprecise the law/non-law boundary, opening the door for politicizing law and valorizing subjective values touted as soft law norms. While the study of soft law norms beyond rights guarantees and institutional case studies provides a more informed, realistic picture of Singapore public law and legal culture, it nonetheless muddies the juristic conception of law. Nevertheless, it is important particularly in the absence of a robust rights culture in Singapore where many potentially justiciable constitutional issues go unlitigated.<sup>163</sup>

### C. *The Role of Soft Law in a Legal Order with a Written Constitution*

Singapore has a written *Constitution* which structures public institutions and declares rights. As the fundamental and paramount law,<sup>164</sup> all hierarchically inferior legal norms or for that matter, non-legal or soft law norms, must not be inconsistent with it.

A written constitution's text is not exhaustive as there are unwritten constitutional norms and conventions which inform constitutional ordering. 'Soft law' does not refer to unwritten fundamental principles of natural justice, judicially declared in *Ong Ah Chuan v. Public Prosecutor*<sup>165</sup> to inform a normative understanding of the word 'law' in Westminster modeled constitutions. These are integral parts of English

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<sup>160</sup> Legal positivism views law as an objectively given fact, tested through a validating law-making process, being a product of the will of law-makers. The focus is on construing the wording of positive rules in texts, though the meaning of words may be indeterminate and change over time.

<sup>161</sup> John Austin, *The Province of Jurisprudence Determined*, Berlin, Hampshire & Wollheim eds., (London: John Murray, 1832) at 201.

<sup>162</sup> Martti Koskeniemmi, "The Politics of International Law" (1990) 1 E.J.I.L. 4.

<sup>163</sup> Thio Li-ann, "Lex Rex or Rex Lex: Competing Conceptions of the Rule of Law in Singapore" (2002) 20 U.C.L.A. Pacific Basin Law Journal 1 at 38-45. Political and legal reform seem best accomplished through petition rather than adversarial lobbying. Clear examples include the inegalitarian gender medical quota and the 'tudung controversy': *Recent Constitutional Developments*, *supra* note 4 at 348-352.

<sup>164</sup> Singapore *Constitution*, art. 4.

<sup>165</sup> [1981] 1 M.L.J. 64 (P.C.).

common law operating in Singapore at the *Constitution's* commencement.<sup>166</sup> Nor are non-legal rules such as constitutional conventions or commonly accepted rules of political morality primarily contemplated for current analytical purposes. Certain British conventions have been directly incorporated into Singapore's constitutional text,<sup>167</sup> and the Malaysian High Court considers that where necessary, conventions may aid in interpreting written constitutions.<sup>168</sup> Clearly, constitutional interpretation extends beyond textual literalism. Indeed the Singapore High Court, while rejecting the Indian basic features doctrine, has declared statist non-textual values.<sup>169</sup>

The Singapore *Constitution* lacks a preamble containing objectives or directive principles which while 'soft' and not judicially enforceable, exert some legal impact. First, these could affect the framing and presentation of government policy. Second, they could guide constitutional interpretation, particularly, on how to strike the non self-evident, ideologically-determined balance between constitutional rights and public interests, in maintaining order without sacrificing individual freedoms.

Soft law instruments may influence constitutional interpretation. Sheehy argues that a non-binding government white paper on shared values<sup>170</sup> articulating the government's preferred communitarian values and Neo Confucianist ideology<sup>171</sup> ('Nation before community and society above self'),<sup>172</sup> has quasi-constitutional status, subsisting in the twilight "legal-but-non-legal" zone.<sup>173</sup> Only by examining the constitutional text in conjunction with the white paper can 'some sense from the Singaporean constitutional interpretation' be made. He notes the white paper, containing 'principles suitable for organizing many aspects of society' assumes the role of a constitutional preamble setting out 'governing hermeneutical principles' of constitutional interpretation.<sup>174</sup> The white paper's statist values assume quasi-constitutional status in the adjudicatory context.<sup>175</sup>

Utilising soft law methods may be preferred as a way of influencing community conduct or even enforcing constitutional standards, without cultivating a rights consciousness or institutionalizing complaints mechanisms, in serving an ideological preference for 'consensus instead of contention'.<sup>176</sup> Soft law norms, cast in imprecise, abstract terms as programmatic 'shoulds', do not operate in an adjudicative framework which tries specifically formulated legal claims. Soft law norms

<sup>166</sup> *Ibid.* at 68.

<sup>167</sup> E.g. the Singapore *Constitution*, art. 25, conditions the presidential appointment of a parliamentarian as prime minister where the said person commands majority MP confidence.

<sup>168</sup> *Datu Haji Mustapha v. Datuk Haji Mohamed Adnan Robert, Yang di-Pertua Negeri Sabah & Datuk Joseph Pairin Kitigan (No. 2)* [1986] 2 M.L.J. 420.

<sup>169</sup> These relate to unwritten principles, such as individual dignity or democracy, which being 'basic', are not subject to constitutional amendments: *Kesavananda Bharati v. State of Kerala* A.I.R. 1973 S.C. 1461, rejected in *Teo Soh Lung v. M.H.A.* [1989] S.L.R. 499 at 514H-I.

<sup>170</sup> *Supra* note 22.

<sup>171</sup> See Eugene K.B. Tan, "Law and Values in Governance: The Singapore Way" (2000) 30 H.K.L.J. 91.

<sup>172</sup> Chua Beng Huat, *Communitarian Ideology and Democracy in Singapore* (London: Routledge, 1995).

<sup>173</sup> Benedict Sheehy, "Singapore 'Shared Values' and Law: Non East versus West Constitutional Hermeneutic" (2004) 34 H.K.L.J. 67 at 73.

<sup>174</sup> *Ibid.*

<sup>175</sup> The pro-communitarian approach towards balancing individual rights and community interests, which is protective of and accords paramountcy to state interests is evident in *Chan Hiang Leng Colin v. PP*, *supra* note 92. For a critical comment see Thio Li-ann, *supra* note 17. See also Thio Li-ann, "An i for an I: Singapore's Communitarian Model of Constitutional Adjudication" (1997) 27 H.K.L.J. 152.

<sup>176</sup> *SVWP*, *supra* note 22 at 10, para 52.



do not sustain an adversarial model of state-society relations, which those preferring social harmony through negotiating more flexible political-moral norms may laud. For example, this was the preferred approach in dealing with employment advertisements violating the constitutional prohibition against racial discrimination. Eschewing formal, sanctions-based legal processes, the problem was addressed through adopting guidelines co-authored by the government, National Trade Unions Congress and Singapore Employers Federation. These sought through educative methods to discourage employers from specifying discriminatory criteria in job advertisements.<sup>177</sup>

#### D. *The Utility of the DRH as an Instrument of Soft Constitutional Law*

##### 1. *Adopting the DRH as a Strategic Move to Avoid the Political Costs and Legal Risks of a Legal Regime*

There is a political cost in adopting legislation to regulate social behaviour, in the perception that the government is augmenting state powers as a further act of self-aggrandizement, thus buttressing an authoritarian state. For example, the enactment of the *Maintenance of Religious Harmony Act* in 1990 was criticized as enlarging state powers of control to the detriment of civil liberties.

The route of adopting an informal code cast in the non-threatening language of aspiration and moral norms rather than mandatory obligation was strategically less likely to meet resistance. Community leaders agreed that the code should not be 'a set of rules or a Government-mandated prescription for the pious'.<sup>178</sup> A top-down *diktat* would command little (genuine) support and sustain critiques of illiberal state action. Furthermore, a soft law instrument avoids the legal risk of being challenged and judicially struck down as unconstitutional law.

To secure the legitimacy of DRH principles and enhance their persuasive power, there was an attempt to cultivate a sense of popular ownership through the consultative process discussed above. Adopting the DRH publicly demonstrated government concern and engagement, rather than inaction, in relation to a pressing but socially sensitive social problem.

##### 2. *The Interpretive Role of the DRH*

The DRH as a soft law instrument may help delineate the scope of 'hard' constitutional provisions. Not being judicial determinations, soft law norms as orienting aids to interpretation inform the content of legal rights, duties and their exceptions, establishing the parameters for future legal argument about the applicable law. They

<sup>177</sup> This was reportedly effective: between January 1999 and October 2000, the number of racist advertisements dropped from 32% to 1%: Singapore's Second Report to the CEDAW Committee, CEDAW/C/SGP/2 (16 May 2001) at para. 7.6., online: Min. Comm. Dev., Youth and Sports <[http://www.mcys.gov.sg/MCDSFiles/download/CEDAW\\_second\\_report.pdf](http://www.mcys.gov.sg/MCDSFiles/download/CEDAW_second_report.pdf)>; Singapore National Employers' Federation, National Trades Union Congress and Ministry of Manpower, "Tripartite Guidelines on Non-discriminatory Job Advertisements" (March 1999), online: Ministry of Manpower Press Room <[http://www.mom.gov.sg/MOM/LRD/Procedures/688\\_jobdisc.pdf](http://www.mom.gov.sg/MOM/LRD/Procedures/688_jobdisc.pdf)>.

<sup>178</sup> "Don't end up preaching, says religious leaders", *supra* note 53.

can flesh out the content of a legal provision, as where the guidelines against racist advertising issued by the Manpower Ministry illustrate a contravention of the constitutional equal protection clause. As yardsticks for reasoning embodying some understanding of legal terms, soft law norms may influence the future development of legal norms by limiting interpretation choices.

### 3. *Promoting Desirable Standards and Influencing Conduct*

Soft law norms are standards of relevance utilised by non-judicial actors in political discourse, rather than courts, as inconsistency imports no legal liability. The utility of the DRH and its politico-moral norms, where widely accepted, is its potential to shape future dialogue along a common frame of reference based on accepted standards in the instrument's text. Soft law norms may reflect widespread views of what is legal, just or desirable and indirectly influence public policy discourse and formulation, generating moral norm-compliance pressures. DRH principles embody a desirable mental attitude meant to guide citizens' external conduct consistently with the declared imperatives of heeding racial and religious sensitivities. Essentially the DRH's success would be its obsolescence, when the norms and ethos it contained are internalized and practiced,<sup>179</sup> as a 'law' written on the hearts of man, rather than cold, externally enforced legislation.

#### E. *'Soft' Implementation*

The DRH is a 'soft law' instrument containing hortatory norms guiding the practice of religious liberties and 'not a piece of legislation.'<sup>180</sup> When first mooted, Parliament discussed possible modes of implementation, such as monthly readings of the Code before religious groups' members<sup>181</sup> or establishing a mediation council to handle minor religious misunderstandings, without resorting to deploying the MRHA.<sup>182</sup> Unsurprisingly, the same general reticence towards institutionalising complaints mechanisms,<sup>183</sup> which would buttress a rights-oriented culture, shapes the DRH follow-up mechanism. As its general principles, which encourage co-operation and open-textured standards of behaviour, are aspirational, promotional and educative approaches were considered most apt. Resorting to informal means to promote values is not unprecedented, as seen in the use of the 1991 shared values white paper to promote a set of national values to guide citizens.<sup>184</sup>

<sup>179</sup> "Make it personal; don't just say the words", *supra* note 89.

<sup>180</sup> Chan, *supra* note 86 at col. 1495.

<sup>181</sup> Chan, *ibid.* at col. 1496.

<sup>182</sup> Chan, *ibid.* at col. 1498.

<sup>183</sup> *E.g.*, in terms of employment rights, Singapore prefers to promote employment standards by persuasion rather than coercive institutionalised methods: Sing. *Parliamentary Reports*, vol. 75, col. 179 (2 April 2002) (Irene Ng). See also "'No' to legal body to fight for equal opportunities" *The Straits Times* (4 April 2002).

<sup>184</sup> *E.g.*, the five shared values are included at a Ministry of Education webpage on National Symbols: online: <[http://vs.moe.edu.sg/national\\_symbol.htm](http://vs.moe.edu.sg/national_symbol.htm)>. At the 2001 National Day Parade, the People's Association choreographed dances around the themes of the five shared values: Eugene Mok, "What a Colourful World" *Cyberpioneer* (web publication of Singapore Armed Forces) (5 June 2001), online: <<http://www.mindef.gov.sg/cyberpioneer/backissuesaugnews.htm>>.

As a focal point, a shepherding body was created, staffed by a permanent liaison committee of religious representatives<sup>185</sup> drawn from the relational networks developed between religious groups' national bodies during the drafting process. The Inter-Religious Harmony Circle ('IRHC') comprising religious representatives from at least 10 religious bodies overseen by Minister Chan Soo Sen, was formed and tasked with promoting DRH principles to the wider community. The IRHC could clarify matters where objections relating to the DRH were raised.<sup>186</sup> Promotional initiatives include proposals that Singaporeans reflect on the Declaration during the week of Racial Harmony Day (21 July), underscoring the nexus between race relations and religious harmony. IRHC members would encourage incorporating the reciting and teaching of the Declaration into the activities of their places of worship during that week, as a 'vow and validation of the multi-religious make-up of Singapore'<sup>187</sup> and etching it into popular consciousness. Furthermore, the intention is to broadly disseminate the Declaration to community bodies and schools.<sup>188</sup>

In addressing the DRH's lack of 'teeth' or enforceability in terms of legal sanctions for breach, Minister Chan drew an (unfortunate) analogy with spitting, a habit 'nearly everybody believes is ... bad'. Consequently, the focus was on encouraging positive behaviour and reminding people 'not to go into negative behaviour ... so there's no need to use the teeth.'<sup>189</sup> Nevertheless, soft law norms like DRH principles operate not in a vacuum but within the existing legal framework which provides 'teeth' through laws empowering government ministers to issue ISA detention orders or MRHA restraining orders to address disharmony.<sup>190</sup> The DRH is preventative: its observance turns on self-regulation and the will to comply. Where reason and good will fail, adjudicative and punitive law is the final resort.

## VI. CONCLUDING OBSERVATIONS: NAVIGATING BETWEEN HARM AND HARMONY

The need to address the religious harmony issue testifies to its potential deterioration. The introduction of the MRHA in 1990, seeking to separate religious from state authority, was something introduced 'more in sorrow than with joy', designed to 'prevent us from sliding backward' and 'not something we are very proud of.'<sup>191</sup> Since Independence, the PAP government has actively adopted measures designed to manage multi-racialism and its close affiliate, religious diversity. For example, free speech is limited by concerns to preserve racial and religious harmony. The Speakers' Corner regulations prohibit speech which causes 'feelings of enmity, hatred, ill will

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<sup>185</sup> *DRH Press Statement*, *supra* note 1 at para. 9; "Code on Religious Harmony likely to be submitted to Government by end March" *Channel News Asia* (10 Feb 2003), online: Human Rights Without Frontiers Int. <<http://www.hrwf.net>>.

<sup>186</sup> "More than words, a S'pore way of life", *supra* note 1; " 'Shepherds' to iron out inter-faith differences" *The Straits Times* (11 Feb 2003) (Lexis).

<sup>187</sup> "A Religious harmony pledge for everyone" *The Straits Times* (19 July 2003); *DRH Press Statement*, *supra* note 1 at para. 11.

<sup>188</sup> "Religious Harmony Declaration calls for greater social cohesion among Singaporeans", *supra* note 14.

<sup>189</sup> *Ibid.*

<sup>190</sup> Chan, *supra* note 86 at col. 1495.

<sup>191</sup> Sing. *Parliamentary Reports*, vol. 54, col. 1148 at 1159 (23 Feb. 1990) (Goh Chok Tong).

or hostility between different racial or religious groups'.<sup>192</sup> Plays like 'Talaq', about marital violence within the Indian Muslim community, have been refused a licence for offending religious sensibilities.<sup>193</sup> Religious leaders are urged to admonish followers against using the Internet to spread deviancy or mischievous information deleterious to religious harmony.<sup>194</sup>

The DRH represents one of the latest initiatives in this respect, assuming its place as part of the anti-terrorist countermeasures and efforts to prevent religious radicalisation after a season of unsettling events that placed the Muslim community under the public microscope: 9-11, the JI arrests and the *tudung* controversy. These events have focused attention on issues of identity and loyalty, whether national, communal or individual, highlighting the need to ensure the man on the street appreciated that mutual respect for religions served the public interest.<sup>195</sup> Debunking the stereotyping of communities which feeds the cancer of distrust was thus an anti-terrorism tactic, as terrorism thrives in 'ghettoised' or divided societies. The DRH and its drafting process provide insight into issues of religion and state within the constraints of Singapore's multicultural framework.

Religious sensitivities wax and wane; at the time of its adoption, the DRH had been overshadowed by the March-April 2003 Severe Acute Respiratory Syndrome (SARS) health crisis. Nevertheless, its drafters hoped it would serve as a 'living guide' to practising religious freedom within a multi-religious society and secular state.<sup>196</sup> Notably, monographs on Singapore race relations commissioned by the Ministry for Community Development before and after 9-11 indicated no appreciable change between the 2001 and 2002 survey finding that most Singaporeans were satisfied (90%) with race relations and optimistic (92%) of continuing improvement. While Malays surveyed in 2001 were reportedly less optimistic than other races about future race relations, a 'significant increase' in optimism was evident in the 2002 survey,<sup>197</sup> perhaps attributable to efforts to enhance racial relations between 2001 and 2002.<sup>198</sup>

Despite initial discomfit that the DRH was another instance of the government telling people what to do, it offers broad guidelines, not specific rules. As 'soft' law or a declaratory 'code of interaction', it seeks to persuade, not compel. It reflects consciousness that Religion is a societal fault-line with conflictive dimensions, and sets its face not against Religion but the abuses of religious extremism. It reiterates

<sup>192</sup> *Public Entertainments (Speakers' Corner) (Exemption) Order 2000*, S. 364/2000. See Li-ann Thio, "Speakers Cornered? Managing Political Speech in Singapore and the Commitment 'To Build a Democratic Society'" (2003) 3 Int'l. J. of Constitutional Law 516-524.

<sup>193</sup> "No go for touchy play" *The Straits Times* (28 Oct 2000) at L3.

<sup>194</sup> "Net mischief may harm religious harmony" *The Straits Times* (4 Jan 2001) at 1.

<sup>195</sup> Bhajan Singh, Sikh Advisory Board, "Religious code goes beyond keeping peace", *supra* note 55.

<sup>196</sup> *DRH Press Statement*, *supra* note 1 at para. 12.

<sup>197</sup> David Chan, *Attitudes on Race and Religion: Survey on Social Attitudes of Singaporeans (SAS) 2002* (Singapore: MCDS, 2003) at 11, para. 2.8, online: MCYS <<http://www.mcys.gov.sg/MCDSFiles/download/SAS02RR.pdf>>. Para. 2.5 reports that more Singaporeans indicated having close friends from different races in the 2002 Survey (76%) compared to the 2001 (70%) one. Detailed analyses showed this attributable to the 'substantial increase in proportion among Malays from 71% (SAS 2001) to 86% (SAS 2002). Chan opines that 'It is possible that the spotlight cast on the Malay community as a result of events between SAS 2001 and SAS 2002 led some Malays to reach out more or tell their personal problems to non-Malay Singaporeans'.

<sup>198</sup> Chan notes, *ibid.* at para. 2.8, that this 'speaks well of the efforts put into enhancing race and religious group relations in the one-year period from SAS 2001 to SAS 2002' and of the Malay community's concern about the future of race-religious group relations in Singapore.

and encourages reflection upon the basic principles of a national commitment towards religious harmony, advocating moderation and toleration in religious affairs.

Religious harmony is an aspect of the shared value of 'Nation above community and society above self'.<sup>199</sup> The drafting process and active consultation of the public and mainstream religious bodies, e.g., *Majlis Ugama Islam Singapura* ('MUIS'),<sup>200</sup> Sikh Advisory Board and Council of Christian Churches, reflects an attempt to encourage participation in governance. The DRH recognizes the link between religious co-operation and human security. The code formulation process helped diffuse inter-group tensions, generating consensus on the need 'to ensure that religious enthusiasm' does not generate and breed 'bigotry or extremism'<sup>201</sup> through rules of good conduct. It also signals acceptance of the need for open, rational discussion of previously 'taboo' issues.<sup>202</sup>

Law alone cannot assure prudent conduct, as it is a blunt instrument unable to heal relational rifts. Acts of reconciliation and fostering solidarity go beyond Law, although legislative values can have an educative function. The language of common sense and responsibilities is integral to such venture. Dialogue promotes intangibles like 'trust' and 'confidence' but other desirable traits are needed, such as not being oversensitive, resisting community stereotyping or demonisation and seeking inter-cultural understanding pursuant to accommodating diverse cultural-religious beliefs.<sup>203</sup> This task cannot be solely accomplished by the government alone,<sup>204</sup> requiring the collaborative efforts of all sectors of society.

U.S. President Roosevelt in his last address shortly after World War Two in April 1945 identified an imperative all human societies struggle with: 'if civilization is to survive, we must cultivate the science of human relationships—the ability of all peoples of all kinds to live together'.<sup>205</sup> Cultivating an ethos of tolerance, mutual respect and understanding requires technique or methods more suited to promotional measures or soft law instruments than legislation.<sup>206</sup> While rights are self-centred legal constructs asserted by right-holders against the state, duties are other-centred moral constructs. The latter is the 'spirit' which sustains the operation of formal legal structures and rights.

Essentially, the DRH echoes the prior urgings in the MRHA white paper<sup>207</sup> to exercise religious rights without infringing on other citizens' rights and sensitivities.

<sup>199</sup> *SVWP*, *supra* note 22 at para. 52.

<sup>200</sup> This is a statutory body established under Part II, *Administration of Muslim Law Act*, *supra* note 26. Its function is to advise the President on Islamic matters. The MUIS website is at: <<http://www.muis.gov.sg>>.

<sup>201</sup> *Supra* note 126 at col. 2086 (Ahmad Khalis).

<sup>202</sup> Deputy PM Lee Hsien Loong noted that after the events of 11 September 2001, 'we were able to discuss openly and maturely gut issues of race and religion, and how we could build trust between Muslims and non-Muslims. These sensitive matters were not off-limits to rational discussion...': Deputy Prime Minister Lee Hsien Loong, "Building a Civic Society", Speech delivered at Harvard Club of Singapore's 35<sup>th</sup> Anniversary Dinner (6 Jan 2004), online: Feedback Unit, Government Consultation Portal <<http://app.feedback.gov.sg/asp/new/new0001.asp?id=501>>.

<sup>203</sup> "Make it personal; don't just say the words", *supra* note 89.

<sup>204</sup> Sing. *Parliamentary Reports*, vol. 75, col. 2077 (20 Jan 2003) (Ong Chit Chun).

<sup>205</sup> Franklin D. Roosevelt, *Report to the US Congress*, 79<sup>th</sup> Congress, 1<sup>st</sup> Session, House Document No. 106 (1 March 1945); reprinted in *International Conciliation* Nos. 407-416, 319-334 (1945).

<sup>206</sup> See Sir John Laws, "Beyond Rights" (2003) 23 O.J.L.S. 265.

<sup>207</sup> *MRHA White Paper*, *supra* note 22 at para 5.

The DRH does not purport to curtail legal rights but, together with co-existing legal schemes, is regulatory in seeking to guide the exercise of this liberty by exhorting observance of its principles through an appeal to sense and self-restraint. In a sense, it seeks to achieve constitutionalism outside the constitution.

Formal rights guarantees alone cannot alter mindsets or attitudes. Rights should not be irresponsibly exercised as man lives in community, not as an atomistic, isolated entity. However, man is not to be treated as a mere automaton within a collective. Disorder may ensue from exercising liberties *sans* self-restraint, requiring repressive, intrusive laws limiting civil liberties to restore order.

There was skepticism that the Code, however well crafted, being contrived rather than a grassroots initiative, would be received 'with indifference by most, and derision by some.'<sup>208</sup> While some consider the DRH a futile exercise in niceties, it does register government concern and action over a social relations problem, obviating the perception of official neglect or indifference which breeds its own problems.

The price of liberty is eternal vigilance; the cost of public order, including religious harmony, is a continuous commitment to exercise civic rights responsibly, respecting both individual autonomy and the common good. Like Tantalus' thirst, this demand for vigilance is insatiable, because, 'if all men are brothers, the ruling model is Cain and Abel'.<sup>209</sup> Politics, and perhaps law, is the art of the possible in our lifetimes. A sober realism must have spurred deleting the utopian wish from the Code's first draft that hopes to 'prevent[s] religion from ever being a source of conflict'.<sup>210</sup>

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<sup>208</sup> "Code Red? Code Green? Code Orange!", *supra* note 84.

<sup>209</sup> Arthur Leff, "Unspeakable Ethics, Unnatural Law" (1979) *Duke L. J.* 1229 at 1249.

<sup>210</sup> "Religious Code goes beyond keeping peace", *supra* note 55.