LIBERTY AND LAW IN SINGAPORE

I

For the student of civil liberties, Singapore excites strong feelings. There are those, even in Singapore itself, who question the; existence of civil liberties within the Republic, and take, the view that the evolution of some sort of dictatorship has, in the course of the past twenty years, cut down on the areas of human freedom to such an extent that political apathy and cultural inactivity are the consequence.

By such critics, the absence of any opposition in Parliament is offered as a decisive factor. The reasons for an absence of any opposition member of Parliament are complex; but to what extent the present state of Singapore is due to the existence of such measures as a law on preventive detention (cited by such critics as the basic reason for a lack of any political opposition) is a matter of concern to any lawyer, who knows well enough that the very existence of such a law on the statute book can inhibit political criticism, without anyone being in fact detained. Yet Lord Diplock could observe in the House of Lords, in a case[1] involving extradition in 1971, that

> all that had been proved was that since 1948 emergency legislation in Singapore authorized the detention without trial of persons regarded as security risks and that sixty to a hundred persons were currently so detained. But there was no evidence of anyone being detained for expressing political opposition to the Government such as the appellant claimed to have expressed [*the appellant had, it seems, spent a year or so in the Irish Republic, writing a book attacking the Singapore Government on political grounds*]; such evidence as there was was to the contrary.

It is, of course, difficult to go behind a detention order: in other words, to attack the good faith of the authority making the order. In this area of government one is compelled to accept that *prima facie* authority acts in good faith. Nevertheless, the recent case of *Teh Cheng Poh* v. *P.P.*,[2] a final legacy from the Privy Council to Malaysia in the realm of criminal and constitutional law, and one of strong persuasive authority in Singapore, suggests that some remedies are available to an aggrieved detainee, even in such a closed preserve of government. Government is not above the law, and indeed, Singapore may be said to have pioneered the development of the law relating to suits against the Government, with the Crown Suits Ordinance of 1876,[3] which gave "the subject a right which he does not yet possess in England, namely to sue the Crown in tort."[4] That Ordinance gave way, with Singapore's admission to Malaysia, to the [Malaysian]

[1] *Fernandez* v. *Government of Singapore and Others* [1971] 1 W.L.R. 987 at 993.

[2] *Teh Cheng Poh* v. *Public Prosecutor, Malaysia* (Privy Council Appeal No. 15 of 1978).

[3] XV of 1876.

[4] Braddell, *The Law of the Straits Settlements* (2nd ed., 1931), Vol. I, p. 102.

Government Proceedings Act;[5] and this Act, now suitably modified, survives as the Government Proceedings Act;[6] a measure which assimilates the position of Government to that of a private individual — more or less — on the lines of the United Kingdom Crown Proceedings Act of 1947. However, the Evidence Act[7] restricts the disclosure of information prejudicial to the public interest.

At an international level, Singapore's reputation in the matter of human rights appears to compare favourably with that of other countries. Such, at least, seems to be the tenor of a recent U.S. State Department report on human rights practices throughout the world.[8] Commenting on allegations of "intensive questioning" of detainees (presumably a euphemism for torture), the report noted that torture "is not condoned by the Singapore Government": the Department observing that while "vigorous interrogation may occur" it had "no evidence of physical mistreatment."[9] In that report, authorities in Singapore and Malaysia are said to have cited the "threat of insurgency and the possibility of renewed communal conflict" as justifying emergency security laws. Indeed, "the need to avoid any inflammatory topics that could lead to racial tension" is the reason for some curtailment of freedom of the press.

In the course of this brief essay I propose to touch upon a few of the more significant aspects of the subject of civil liberties, in as temperate a fashion as possible. The subject merits a full and critical study, in the course of which the researcher might be surprised by the extent of the liberties in law available to the individual. On making that discovery he could well murmur, with Larochefoucauld, that slavery degrades men to such a degree that they enjoy it: but at that point, he enters into a sociological study, into an examination of the temperament of the various races constituting Singapore's society, and will then discover other and deeper reasons for any apparent apathy. Civil liberties do in fact exist. Let us endeavour, shortly, to see what they are. It may be that, because they are unknown, they are not exercised as vigorously as they could be, as they should be. For liberty of the, spirit, like health of the body, requires constant exercise.

II

The first point to make is that there exists in Singapore a charter of fundamental liberties, existing as part of the law of the Island: a charter drawn up, admittedly by non-Singaporeans, but deliberately adopted in 1965.

This charter consists of all but one of the provisions of Part II of the Malaysian Constitution, as set out in articles 5 to 12 of that document] The final article of Part II, article 13, states as a fundamental principle that "no person shall be deprived of property save

[5] Ordinance 58 of 1956.

[6] Cap. 21, Singapore Statutes, Rev. Ed. 1970.

[7] Cap. 5, Singapore Statutes, Rev. Ed. 1970, ss. 123, 124.

[8] *Straits Times*, 11 February 1979.

[9] But a report in the *Straits Times* of 12 October 1978 referred to allegations of ill-treatment and even torture of two detainees, apparently on hunger strike as a protest against a change of their place of detention.

in accordance with law," and requires that compensation shall be "adequate". The adjective suggests that the courts might well intervene (as indeed they have in Malaysia)[10] to assess the adequacy of compensation: and, possibly for that very reason, the article was not adopted by Singapore, although it was of course in force in the State while Singapore was a member State of Malaysia.

With admission to Malaysia in 1963, then, the fundamental liberties of the Malaysian Constitution fell like the gentle rain from heaven upon the new member-State of Singapore. Modelled upon provisions of the Constitution of India, the Malaysian provisions differ from those originally in force in India, in that any restrictions upon liberty imposed by Act of Parliament are not in general open to judicial challenge. Parliament, and not the courts, dictates the extent of the freedoms guaranteed by the Constitution: a policy tending, inevitably, towards a certain legalism, a belief that salvation depends upon adherence to the strict letter of the law.

When Singapore was in 1965 "cast out onto the troubled waters of South-East Asia"[11] various constitutional adjustments were precipitated. The Constitution of Singapore was then, and for that matter still is, embodied in an Order in Council of the United Kingdom, made under the Malaysia Act of 1963,[12] and was designed to interlock (like the Constitutions of Sarawak and Sabah, also embodied in the same Order in Council) with the Malaysian Constitution. On separation, the Singapore legislature enacted the Republic of Singapore Independence Act 1965[13] and, in that Act, adopted a number of provisions of the Malaysian Constitution, including the fundamental liberties set out in articles 5 to 12, as in force at that time.

These provisions cover the right to life and personal liberty, *habeas corpus,* the right to be told the grounds of arrest, the right to legal representation and to judicial scrutiny of the grounds of arrest (article 5); freedom from slavery and forced labour (article 6); protection against retrospective criminal laws and double jeopardy (article 7); equality before the law (articles 8 and 12); the right of a citizen to live in Singapore (article 9); freedom of speech and expression, of peaceful assembly and the right to form associations (article 10), and freedom to profess and practise one's religion (articles 11 and 12). These rights are not (except, perhaps, for the prohibition on slavery) absolute, and an encroachment upon them is, within the limits of what Parliament regards as reasonable, permitted. To a large extent, in their inception they embodied principles of existing legislation — indeed, that is how those who framed the original Malaysian Constitution saw them. In Singapore they were reviewed in 1966 by a Constitutional Commission headed by the Chief Justice, and in August 1966 the Commission suggested that they should be reinforced by

[10] See *Selangor Pilot Association (1946)* v. *Government of Malaysia and Anor.* [1975] 2 M.L.J. 66: subsequently overruled by the Privy Council. See also, Professor L.A. Sheridan, "The Mysterious Case of the Disappearing Business" [1977] JMCL 1.

[11] Mohamed Noordin Sopiee, *From Malayan Union to Singapore Separation,* (1974) p. 229.

[12] 1963 S.I. No. 1493. For an up-to-date text, see Jayakumar, *Constitutional Law* (Singapore Law Series No. 1, 1976).

[13] No. 9 of 1965.

adding a provision providing that "no person shall be subjected to torture or inhuman or degrading punishment or other treatment," but then excepting from the ambit of the proposed provision anything done under existing law (*Report,* para. 40).

Three strokes of the birch on the bare buttocks, carried out after a medical examination and in the presence of a doctor, inflicted upon a fifteen-year old schoolboy in the Isle of Man for assaulting a school prefect, was in 1978 held by the European Court of Human Rights to be "degrading treatment" within the terms of article 3 of the European Convention on Human Rights.[14] As a writer[15] comments, "the Court points out that the very nature of judicial punishment is that it involves one human being inflicting physical violence on another human being. This suggests that the infliction of physical violence on a person as a punishment is intrinsically degrading...," and the writer seeks to find the *ratio* of the Court's decision (which indeed is difficult to discover) in "the simple fact that judicial corporal punishment has been abandoned throughout Europe, including the United Kingdom, and is almost universally disliked in governmental circles."

Such dislike does not extend to Singapore, where male offenders under 50 can still be caned[16] and where, for that matter, capital punishment is still a part of the law[17] and has, of late, been extended to drug offences. It is unlikely, then, that anything like article 3 of the European Convention will be adopted in Singapore within the foreseeable future for, as elsewhere in Southeast Asia, severe punishments are in favour. Nevertheless, the Report of the Constitutional Commission contained several other progressive proposals, such as the establishment of a Council of State to protect minority rights; the creation of the office of Ombudsman or Parliamentary Commissioner; the entrenchment within the law of provisions of the Constitution; the creation of a right on the part of citizens to elect a government of their choice in general elections held at periodic intervals by secret ballot (a matter we can return to); and the provision of a right to apply to the courts, to enforce fundamental rights and liberties.

The recommendation relating to minority rights was implemented by the introduction into the Constitution, in 1973, of a new Part, setting up a Presidential Council for Minority Rights, charged with the responsibility of reviewing all legislation to ensure that it does not work to the prejudice of minority groups. Other recommendations of the Commission were regarded as "acceptable in principle" by the Minister of Law, in 1966, and are to be "incorporated in some form in the new Constitution to be drawn up." So far, no new Constitution has appeared, and according to an observation of the Prime Minister of 13 December 1978 it is unlikely to appear in the foreseeable future: the more so, as the Attorney General is now empowered (with the approval of the President) to issue a revised version of the Constitution, incorporating all relevant amendments.[17a]

[14] Judgment, 25 April 1978 (Council of Europe).
[15] Graham Zellick in 27 I.C.L.Q. (1978) 666-7.
[16] Criminal Procedure Code (Cap. 113, Singapore Statutes, Rev. Ed. 1970), ss. 217, 221, 222.
[17] In February 1975, eight criminals were hanged in one day.
[17a] Constitution (Amendment) Act 1979 (10 of 1979).

The need to limit the growth of the population has inevitably stimulated a Government campaign to discourage early and irresponsible marriages, and to encourage married couples not to have more than two children — whatever the sex of the child. The pressures of this campaign are evident in the realm of hospital care, education and housing, and merit a study all their own: a study in which the nature of law as a direction from a politician might become manifest. As part of such a campaign, presumably, a law permitting voluntary sterilization was introduced in 1969,[17b] for a maximum period of five years. The Act, deriving its concepts from legislation in Japan, Sweden and the State of Virginia, was designed to permit voluntary sterilization "on medical, social or eugenic grounds;" and it was replaced in 1974 by the current Voluntary Sterilization Act of that yean[17c], The present Act abolished the Eugenics Board (which under the earlier Act had to authorize voluntary sterilization) and put the subject firmly onto the statute book.

As far as non-Singaporeans marrying Singaporeans are concerned, the theme has developed somewhat ominous undertones: for it seems that where the non-Singaporean is the holder of a work permit who has not completed five years of employment in Singapore, or who is not regarded as skilled by the Vocational and Industrial Training Board, official approval has since June 1973 been required before the marriage can be registered; and approval is only given When the parties sign their consent to their sterilization after the birth of their second child. The sanction here lies in the cancellation of an entry permit or pass. The policy is due, it seems, to an influx in (he early 1970's of young men and women seeking jobs, and has occasioned some controversy.[17d] It is not seen as an infringement of the principle of equality before the law, common to all persons in Singapore, but rather as an application of the principle of the two-child family, regarded as the norm for the citizen.

Even so, the several articles of the Malaysian Constitution adopted in 1965 constitute a basic guarantee of civil liberties in Singapore, and their existence is not, perhaps, well known. It may be objected that as they leave it to Parliament, and not the courts, to determine what are reasonable restrictions upon liberty, they are to that extent defective. From the point of view of a Western, or,for that matter Indian lawyer, this may be a valid objection: but (on reviewing the Indian experience of fundamental rights) there is much to be said, in an Asian context, for the Malaysian and Singapore approach. The education of an electorate is a long, delicate and painful process: but until the judiciary has become truly sympathetic to the aspirations of the people, the hazards of a collision between executive and judiciary (a familiar pattern in English colonial history) are all too obvious.

III

There is no doubt that in some quarters the shock of separation from Malaysia created a trauma within Singapore, creating a sense of rejection and isolation, a feeling of being unloved and alone in a

[17b] Act 26 of 1969 (Cap. 170).
[17c] 25 of 1974.
[17d] See, e.g., *Straits Times* of 16 May, 29 May and 30 May, 1979.

hostile world, and a determination to survive in the face of opposition and rivalry. The People's Action Party, in office since 1959, had fought the battle for merger, a merger "as inevitable as the rising and setting of the sun," as the Prime Minister had affirmed in 1961. The suddenness of the break was almost catastrophic; its effects continue to this day.

Economic survival was the paramount objective, and remains so today. Out of this fact flows the attitude of the Singapore politician to most of the issues of human rights, civil liberties. Singapore is, after all, a trading community of some two million people, living on an island of two hundred or so square miles, with little or nothing in the way of natural resources. Denied access to the space, natural wealth and labour market of Malaysia, its inhabitants have of necessity been compelled to discipline themselves with care, to husband their meagre resources and to develop their skills and expertise in order to attract that capital without which the city-state would die.

In consequence, that nest impression of tidiness imparted to the visitor is significant. Even in the bustling streets, order prevails; a land of clinical cleanliness possesses the city; the whole place is as neat as a beehive. The socialism of Singapore is based on order, reminding the observer of Orwell's comment, in *The Road to Wigan Pier,* that

> [t]he underlying motive of many Socialists... is simply a hypertrophied sense of order. The present state of affairs offends them not because it causes misery, still less because it makes freedom impossible, but because it is untidy....

The external Order reflects a significant aspect of a policy supported, it Would seem, by the overwhelming majority of the inhabitants — with the possible exception of those universal individualists, taxi drivers. Conformity is important to most communities, habit being (as William James noted) the great fly-wheel of life. In Singapore, where, as elsewhere in Asia, the matter of face is important, it may well be the basis of the philosophy of law and politics. Let us take the matter of appearance, the basic conformity. St. Paul said that long hair "was a shame unto a man"; Alexander the Great, the man who cut the Gordian knot and conquered a vast tract of Asia, favoured no beards; the clean-shaven Normans beat the long-haired English at Hastings; and the long-haired Cavaliers were routed by the disciplined, short-haired Puritans.

All these lessons of history have not been lost upon the present government of Singapore, which early in its life adopted the view, shared by an older generation in Britain, that long hair is a symptom of decadence, inefficiency, uncleanliness, untidiness and, in consequence, rebellion, civic indifference or whatever else derogates from the advance of society. Civic virtue resides in short hair. In December 1976 twenty secondary school students were expelled from a GCE "O" level examination "because they sported long hair and donned trendy jeans and dungarees": a decision supported by the Minister of Education, as being in conformity with rules "that the boys had to have proper haircuts," and as being "necessary to maintain discipline in the

[18] *Straits Times,* 8 December 1976.

schools."[19] A reminder on the matter was issued by the Ministry of Education in October 1977,[20] that "any student sporting long hair and not wearing his full school uniform" would be barred from that year's GCE "O" and "A" level examinations. At the same time, private entrants for the examinations were put on notice that male candidates should wear "shirts, pants and shoes," and women were warned "against wearing T-shirts or anything immodest or outlandish." In January 1978[21] male clinical students of the University of Singapore were reminded of the need to wear ties, long trousers and overalls on most occasions: the Dean of the Faculty of Medicine noting that "the staff of our medical school and the hospitals are authorised to deny attendance at classes or admission to wards to students who are improperly attired." In March 1978[22] the Minister for Home Affairs and Education told Parliament that in 1977, "591 students with long hair were warned and their parents informed, and 59 musicians were told to cut their hair short.... 620 people were refused entry into Singapore for having long hair and 801 were allowed to come in only after they had shorn their locks." Three government employees were dismissed, twenty fined and another three hundred and twenty-five warned for sporting long hair, the Minister said. It is a world of conformity, where outward appearance is important: in July 1978[23] "more than fifty Singapore Polytechnic graduands were barred from receiving certificates and diplomas when they turned up at their graduation ceremony in long and unkempt hair...." A Polytechnic official said: "we take a serious view of long-haired students, be they in the campus or at any of our official functions." However, the delinquents (two of whom, according to the report "had their shaggy waves snipped on the spot by their mothers, who had come armed with scissors in anticipation of the likely displeasure their sons might incur") later received their certificates.[24]

The drive to conformity inevitably affected the local Bar, especially with more women lawyers seeking admission to the profession, and on 18 January 1978[25] a High Court judge, in admitting forty-three women lawyers to the Bar, commented of the want of uniformity in their apparel, and enquired of counsel representing the Law Society whether there was any regulation on the mode of dress. On that occasion, it seems, some of the new women lawyers wore saris, with robes over them, while others had white blouses and dark skirts. It all sounds a very discreet affair. However, the Law Society promptly issued a circular,[26] stating that, after consultation with the Chief Justice, advocates should robe in all sittings in open court: robes to consist of gown, bands and wig (if worn); dress should be unobstrusive; shirts and blouses should be white, long-sleeved and high to the neck; jackets should be black, and shoes either black or "of a plain colour"; men should wear white wing collars; and conspicuous jewellery should not be worn. The pass has not, therefore, yet been sold.

[19] *Straits Times, 6* January 1977.
[20] *Straits Times,* 22 October 1977.
[21] *Straits Times,* 28 January 1978.
[22] *Straits Times,* 18 March 1978.
[23] *Straits Times,* 16 July 1978.
[24] *Straits Times,* 18 July 1978.
[25] *Straits Times,* 20 January 1978.
[26] *Straits Times,* 24 February 1978.

On the general level (treating lawyers as exceptions) it seems likely that time and the insidious influence of tourism is beginning to erode the current rules relating to appearance; nevertheless, any man contemplating a charter flight to Singapore should get a haircut first, and abandon any copy of *Playboy* magazine he may possess, before his arrival at Paya Lebar.[27] He should, too, remember that smoking is frowned upon, as in all societies dominated by a puritan ethic. A statute of 1970 regulates the practice,[28] and the activity is banned in cinemas, theatres and taxis.

IV

In so far as freedom of expression in clothes, in the magazines you may carry, are concerned then, there are certain social or legal sanctions. Long-hair may send a man to the end of a queue in the Post Office, the possession of some manifestation of "yellow culture", such as *Playboy* magazine, tolerated in other societies, may not be accepted openly in Singapore: a country where the liberties of the common law have, as elsewhere, been eroded and regulated by written law.

The second Charter of Justice of 1826 brought the common law to Singapore. A few years later, an Indian Act[29] extending to Singapore, provided that no printed periodical containing public news or comments should be published within the territories of the East India Company except in accordance with certain rules, such as that the printer and publisher of every periodical work must make a declaration before a magistrate; that all printed papers and books should bear the names of the printer and publisher and the place of printing; and that copies be deposited in the Supreme Court,

There is nothing at which to cavil in such a provision, of course: even the law makers have an interest in the truth. The Indian Act continued in force in Singapore, with the relevant copies now deposited in the National Library. However, in 1920 the law was "amplified" by the Printing Presses Ordinance.[30] This law gave the Colonial Secretary power to license printing presses, and provided that he could "at any time withdraw such licence either permanently or for such period as he thinks fit."

Such a power, that of licensing the printed word, is indeed dangerous: it is of the very stuff of the suppression of liberty.[31] In Singapore, however, there was under the colonial regime a hierarchy

[27] Or, it seems the Singapore docks. On 26 October 1977 the *Straits Times* reported that a young Bangladeshi had been charged "with having a copy of *Playboy* magazine at Gate 2 of the PSA."

[28] Prohibition of Smoking in Certain Places Act 1970 (No. 57 of 1970). In August 1977 a delegate from Singapore to the Miss Young International contest in Tokyo was photographed with what seemed to be a cigarette in her hand. This "brought forth a burst of criticism" (*Straits Times,* 8 August 1977). The offending object was, it appears, an anti-cold inhaler.

[29] No. XI of 1835. But (see the *Singapore Chronicle* of 1 March and 26 April 1827) press censorship existed in Singapore from early days.

[30] No. 5 of 1920.

[31] It is significant that a similar law was proposed in England in 1977, by an officer of the Transport and General Workers' Union: some members of trade unions there, it seems, being anxious to muzzle the press.

of authority ending with Parliament: the Colonial Secretary being responsible to the Governor, the Governor to the Crown (in the person of the Secretary of State) and the Secretary of State to Parliament. Such a structure of authority imposed a high degree of responsibility at all levels.

The history of the press in Singapore is, however, one of a curtailment of freedom: for as long ago as 1827 the Resident Councillor had ordered the editors of Singapore newspapers not to publish criticism of the East India Company and its officials, matter tending to create alarm on controversial religious issues, and "private scandal, and personal remarks on individuals, having a tendency to excite dissention in Society." The law of 1920 introduced the concept of licensing of printing presses; in 1939 came that of issuing permits for newspapers. In the *Objects and Reasons* for the amending Bills,[32] the Attorney-General observed that the "circumstances of the times and of Singapore in particular necessitate a stricter scrutiny of and control over the activities of newspapers." So, immediately before the second World War, a tight, annual control over newspapers came into force in Singapore; this has remained in force ever since: although it is true that licences and permits are "ordinarily" issued for one year: a term implying a certain flexibility dependent, no doubt, on good behaviour.

The power of cancelling a permit was invoked in 1971,[33] to put an end to the existence of a daily newspaper, the *Singapore Herald:* a lively journal, backed by Hong Kong capital, that lasted for some ten months. In the same year, too, the managing editor of a Singapore Chinese language newspaper, the *Nanyang Siang Pau,* was detained under the Internal Security Act on the grounds of having "knowingly and wilfully veered the editorial policy of the paper to (a) one of glamourising communism and (b) stirring up communal and chauvinistic sentiments over Chinese language, education and culture[34] and having highlighted "the more unsavoury aspects of Singapore life." These grounds are significant, as constituting, together with the principles adopted in relation to film censorship, a virtual yardstick for editorial policy within the Republic.

The events of 1971 appear to have prompted a review of the law relating to newspapers, and in 1974 the Newspaper and Printing Presses Act[35] was enacted: coming into force on 1 January 1975. This Act repealed the Ordinance of 1920, preserved the licensing provisions (with an appeal from the Minister to the President, *i.e.*, the Cabinet) and enlarged the concepts of the law by importing new provisions relating to "newspaper companies": provisions applying to all newspapers published at intervals of not over one week, unless exempted by the Minister. Every such newspaper must be published by a company whose directors are citizens of Singapore, and the shares of every such company must consist of two classes of share, ordinary shares and management shares, the latter of which can only be held by citizens or corporations approved by the Minister. Further, the

[32] *S.S. Government Gazette,* 17 August 1939.

[33] *Government Gazette*, Notification No. 1601 of 28 May 1971.

[34] See *Lee Mau Seng* v. *Minister for Home Affairs and Anor.* (1971) 2 M.L.J. 137.

[35] Act No. 12 of 1974.

Act makes it an offence to receive on behalf of a newspaper in Singapore "any funds from a foreign source," without ministerial approval.

To the concept of licensing, therefore, has been added a new policy, that of splitting the financial control of a newspaper from its editorial control, with the latter in the hands of the owners of a majority of the management shares. In some cases, it seems, a proportion of management shares is held by a government-controlled company. However, if those exercising a financial control over newspapers in Singapore considered the consolidating and amending Act of 1974 the last word on the subject, they were in for a further surprise on 22 February 1977. On that day the Minister for Culture, Science and Technology announced in Parliament[36] that "in order to break the monopolistic control of major newspapers by a small group of people, the Government is considering an amendment to the Newspaper and Printing Presses Act 1974, to prohibit any person from holding, either directly or indirectly through a nominee or holding company or in other manner, more than three per cent of the stock of a newspaper, without the special permission of the licensing authority of the newspaper. Persons holding shares in excess of the permitted limit will have to dispose of them through the Stock Exchange."

The Minister explained that the Act of 1974 was not intended to interfere with newspapers "as an economic activity": but "in a small country like Singapore, it is undesirable to allow any person or family to have a monopolistic control of any major newspaper. In view of the great influence the news media has on every individual's life as well as national issues, it would be safer for their ownership to be spread as widely as possible." The proposed amendment was, it seems, contemplated as part of the evolution of a "national cultural identity," a process likely to take generations, "but," added the Minister, "change Singapore must." The process was aimed, amongst other things (or so it seemed) at insulating Singapore against "the more pernicious elements," "the undesirable part" of Western culture and "the life-styles and norms of permissive Western societies."

There is much in the Western world that is no doubt undesirable. It is in the nature of a free society, and indeed it is an essential part of that freedom (and one now under attack from the left) that the writer, artist and composer remains free to express himself, and that the critical faculties of the individual are kept alive, so that the process of discrimination necessary to the evolution of the best in a society can operate effectively. Infusions of Western culture into Eastern society carry their own hazards, as do infusions of Eastern culture into Western society: but to deny the citizen the opportunity to discriminate tends to keep him in a condition of eternal infancy.

The amendment the Minister referred to duly took its place on the statute book.[37] What effect these amendments have had on the press is as yet difficult to assess. In 1976 one observer noted[38] that "(t)he quality of the newspapers, particularly the Chinese newspapers, has improved lately, since whatever is now published is because of

[36] *Straits Times,* 23 February 1977.

[37] No. 6 of 1977.

[38] *Socialism That Works — The Singapore Way,* compiled and edited by C. Devan Nair (1976), p. 200.

its newsworthiness and not because of other considerations, political or otherwise." To the writer, there is now something of a livelier air about the English language press, whose coverage of the by-elections of 10 February 1979 was comprehensive and fair. Whether this is a consequence of legislation is another matter. One can only hope that the restricting phase of press legislation, that began in the 1820's, is now at an end. In a television debate on 23 October 1978[39] between teams from Nanyang University and the University of Singapore, with the latter proposing the motion "That Singapore has a dull and docile press, due less to a lack of journalistic skills than to a fear of offending the authorities," the opposition were held victorious: but whether the victory was due to restraint or lack of debating skill on the part of those in favour of the motion, or a quick and lively attack on the part of those opposing it, was obscure. That such a motion could be publicly debated suggested, however, that there is a greater degree of freedom of speech than some suppose: although the Minister for Foreign Affairs has emphasised the degree of responsibility required of journalists, by announcing that "what Singapore requires are *[sic]* not journalists who want to score a high rating in popularity polls but men and women committed to helping people make and support the right decisions for them and their country."[39a]

The policy of the book selection committees of the National Library may afford an index to the climate of censorship within Singapore. There are 1,154,000 books in the Library, 51.8 per cent of these being in English, 29.3 per cent in Chinese, 12.6 per cent in Malay and 6.3 per cent in Tamil. The book selection committees consist, it appears, of the entire professional staff of the Library. These committees select books "on the basis of content, accuracy, author's professional reputation, style, readability, formal and price." In the realm of content, "works which merely exploit sexual subject matter and have no literary or scientific value" are rejected, as are books "which deliberately misrepresent religious beliefs, customs or practices; political novels which are purely propagandistic in nature; and thrillers, romances and westerns which do not contain outstanding literary or informative value." However, "books by local writers and novels with a local background are given priority, and copies of such novels are usually bought."[39b]

Such a policy is followed in the retail book trade, it seems, for there is a marked absence on the racks of the bookshops of much of the erotic material available elsewhere. Distributors no doubt have to exercise caution in the nature of the material they import, given the lax interpretations of obscenity (though not of blasphemy) adopted by such countries as the United Kingdom. Responsibility is all, not only in the realm of publication, but in that of circulation.

V

In Singapore, the cinema is probably the most popular form of entertainment: the cinemas being crowded and active with, at the

[39] *Straits Times,* 24 October 1978.

[39a] In an address to the Malay Journalists' Association on 24 February 1979.

[39b] According to an article, "How the National Library selects books for you", based upon an interview with the Head of the National Library's Acquisitions Division, in the Singapore *Mirror* of 30 April 1979. The *Mirror* is a publication of the Ministry of Culture.

weekends, morning and midnight performances. In consequence, the nature of films put on public exhibition becomes a matter of importance, especially to the Minister of Culture, within whose portfolio reside issues of censorship.

The relevant law is contained in the Cinematograph Films Act:[40] legislation which grew out of that relating to theatres. The Theatres Ordinance of 1908[41] referred to "cinematographic" exhibitions; but it was not until 1919 that the office of a censor of films was established.[42] At present, films are censored by a Board of Film Censors, "full-time employees in the civil service who are specially trained to do the job. They are bi-lingual or tri-lingual graduates."[43] An appeal lies from the Board (which may delegate its functions to individual members) to an Appeals Committee; this consists at present (1979) of five men and four women — "two lawyers, two university dons, two bankers, a doctor, a journalist and a public relations officer." The Committee approved the screening of *One Flew Over the Cuckoo's Nest* in 1976: a film attacking the authoritarian in life, and one originally banned by the Board.

In 1978, 788 films were viewed by the Board. Of these, 271 came from Hong Kong, 209 from the United States, 91 from India, 11 from China, 3 from Japan and 2 from Malaysia. Seventy-five films were banned, most of them, it seems, on the grounds that they were likely "to promote gangsterism, violence and crime." In 1978 the film *Africa Addio* was banned "for political reasons"; *Looking for Mr. Goodbar* was prohibited as "morally objectionable"; *Skateboard* was banned, as the Government considered skateboarding "a dangerous game and has banned it from public places"; and the film of the play *Equus* was also banned, although the play itself had been staged in Singapore. In March 1979 a gala of seven French films, organised by the L'Alliance Française, was cut down to two "light fairy tale comedies" largely, it seems, because the films objected to (earlier shown in Bangkok) contained "nude scenes".[43a] Around the same time the Parliamentary Secretary (Culture) told Parliament that "the Government has decided against film classification as it feels this would bring an influx of films that exploit violence, sex and other pornographic material."[43b] That the Government's views reflect a portion of critical opinion was manifest a few weeks later, when a critic observed, of a Chinese film, *The Deadly Breaking Sword,* that it had "too many bloody killings and violence."[43c] Even the censors could, it seems, be too lenient.

The advent of the video tape-recorder prompted an amendment to the Cinematograph Films Act[43d] which came into force on 4 May 1979: the definition of "film" being amended to include video tapes,

[40] Cap. 239, Singapore Statutes, Rev. Ed. 1970. Every "public entertainment" requires in general a licence: Public Entertainments Act (Cap. 259).

[41] XVII of 1908.

[42] Ordinance 1 of 1919.

[43] Much of the information on this subject is derived from three articles by Saw Puay Lim in the *Straits Times* of 11 and 15 January and 12 February 1979, and quotations in this part are from these articles.

[43a] *Straits Times,* 14 March 1979.

[43b] *Straits Times,* 24 March 1979.

[43c] *Sunday Times,* 13 May 1979.

[43d] Cinematograph Films (Amendment) Act 1979 (15 of 1979).

and the amended Act requiring that all films for exhibition or distribution in Singapore be presented to the Board of Film Censors, for censorship, without any alteration or cuts. A government statement on the amending Act observed that some foreign television programmes which could be video-taped "had undesirable themes like sex perversion and gangsterism."[43e]

Clearly, then, it is considered that "a lax policy can lead to an increase in the crime rate": and "policies kid down specify that censors have to look out for crime and violence and corruptive themes like permissiveness, free love, incest, homosexuality and drug addiction." Further, "films that run down any country, people or religion are also banned. Censors see to it that those released for public screening will not cause any offence or tread on the sentiments and sensitivities of any sector of multi-racial Singapore." Passages that are "clearly exploitations of the sex theme meant to cash in on the prurient tastes of sexually repressed Singaporeans" are censored: the test being, it appears, the provocative nature of the film. One member of the Appeals Committee said that they were "supposed to make decisions using the 'lowest common denominator' — which is generally taken to mean the young child": a comment supported by the reporter's observation that "(s)ince film classification has not been introduced in Singapore, we generally see only what is considered all right for a child to see." Given the problem of controlling admission to cinemas, and the habit of some families to take even the youngest child to the cinema, existing policy may be said to be grounded in reality.

An equal sensitivity attaches to the medium of television, first introduced into Singapore in 1963: a sensitivity made the more acute by reason of the added problems of advertising matter. In a survey made by the *Far Eastern Economic Review* in January 1979,[44] it was noted that "Governments persist in shielding viewers from what they see as 'corrupting' influences.... The difficulty is deciding what is genuinely unwholesome and corrupt. Singapore's Ministry of Culture is liable to shelve anything from trendy fashions to rich men in yachting races; and news of riots, particularly those with racial overtones, is taboo, though reports from China are now admitted." It is indeed a difficult matter. The technique of imposing a time restriction on advertisements has been adopted, so that advertisements for liquor (and, it seems, "women's undergarments and sanitary napkins") can be transmitted only from around 10 p.m.[45] It is indeed difficult enough to control the use of descriptions such as "nutritious", "fresh", "pure" and "for good health" in food advertisements: pictures on television or in cinema advertising present further problems of informal control, dealt with in some developed countries by complex legislation.

VI

If the written word has become subject to an increasingly protective control, the spoken word has fared little better. The courts have, of course, the usual powers of punishment for contempt,[46] and

43e *straits Times,* 10 May 1979.

44 "Asia in View", *Far Eastern Economic Review, 5* January 1979, p. 24.

45 *Straits Times,* 20 September 1978.

46 See, Supreme Court of Judicature Act (Cap. 15, Singapore Statutes, Rev. Ed. 1970), s.8.

Parliament, too, can also exercise a degree of control similar to that exercised by the mother of Parliaments.[47] However, the Indian Penal Code came to the Island in the last century, some ten years after its enactment in India, in 1860. Drafted almost single-handedly by Macaulay, under the influence of Bentham and Mill, it is "a code of law drawn not from existing practice or from foreign law systems, but created *ex nihilo* by the disinterested philosophic intelligence."[48]

The product of such utilitarian doctrine, couched in simple, elegant language, could not fail to please the contemporary, honest and pragmatic Singaporean, who has no doubt been interested to discover that defamation can be a crime. Section 499 of the Code provides that anyone who, by words or signs etc., makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of another person, is said to defame that person; a series of "exceptions" follows, affording defences of publication for the public good, and so on; and a succeeding section imposes appropriate penalties.

Such a criminal provision may have in, say, England or America, an antique, archaic flavour. Not so in Singapore, where it was invoked in the aftermath of the general election of December 1976, in the prosecution of several speakers at opposition rallies, who in consequence collected sentences of from two to eighteen months in respect of defamatory allegations against the Prime Minister. Indeed, the catalogue of actions following the election prompted an article in the *Guardian*,[49] where the writer, Martin Woollacott, observed that "[m]any of those who know Lee and Singapore well believe that the reason for this overkill is not petty vindictiveness, although there has always been an element of that. It lies instead in the bleak views of Lee and his Government about cohesiveness of Singapore society and the great threats that await it in the future."

It is perhaps little cause for wonder that, on 7 February 1977, the Leader of the House and Minister for Law and Environment found it necessary to exhort backbenchers in Parliament to speak "without inhibition or constraint": a call prefaced by the observation that "the House would have to manage once again with members from only one party."[50] The call was re-echoed on 15 February 1978,[51] when the Parliamentary Secretary (Ministry of Culture) said that people would be encouraged to express opinions on topics normally considered "sensitive". However, it may be difficult to persuade sixty-nine flowers to bloom.

VII

This sensitivity to the written and spoken word reaches its most acute and notorious form in the law on preventive detention. Such detention has been a part of the law of Singapore since 1948, when emergency regulations created a power of detention without trial for

[47] See, Parliament (Privileges, Immunities and Powers) Act (Cap. 49, Singapore Statutes, Rev. Ed. 1970), ss. 3, 6, 7, 20 and Part V.
[48] Stokes, *The English Utilitarians and India* (1959), p, 225.
[49] 31 January 1977.
[50] *Straits Times,* 8 February 1977.
[51] *Straits Times,* 16 February 1978.

periods up to two years. In 1955 there was enacted the Preservation of Public Security Ordinance,[52] designed to remain in force for, initially at least, three years. The Ordinance conferred on the Governor in Council a power to order the detention, up to two years, of any person, "with a view to preventing that person from acting in a manner prejudicial to the security of Malaya or the maintenance of public order therein or the maintenance therein of essential services," such as water, gas, electricity, etc. An appeal tribunal consisting of not less than three persons (two of them judges, one a magistrate) was required to review each case every six months, and could itself revoke a detention order. The Ordinance thus contained a number of useful safeguards, in that it was subject to legislative review; every detainee's case was reviewed twice a year; and the appeal tribunal could overrule the order of the detaining authority. It was a measure designed "to give us time to understand better the realities of the Communist threat to us and to Malaya," the then Chief Minister explained.[53]

In an imperfect world such safeguards are, it seems, impossible to sustain. The Internal Security Act 1960 of Malaysia (a measure that came into force on the termination of the twelve-year long emergency there) limits itself essentially to the safeguards, such as they are, built into article 151 of the Constitution: these require, *inter alia,* that a detainee be informed of the ground of his detention and (subject to non-disclosure of facts affecting the national interest) the allegations of fact on which that detention is based: the case being reviewed by an advisory board within three months of detention, with the recommendations of the board going to the head of State.

Internal security being a federal subject, the provisions of the Malaysian Act applied to Singapore on its entry into the Federation and, as "existing law" marched onwards after its exit: the power of detention being now vested in the President and, as in Malaysia, addressed to preventing persons from acting in any manner prejudicial to the security of the State, or to the maintenance of public order or essential services therein.[54]

It is difficult to assess the number of persons detained in Singapore, but a report by David Watts in February 1977[55] states that "[t]he Singapore Government says that it is holding some 60 men and women without trial, four of them... since 1963. The Government claims that these detainees are members of, or sympathize with, front organizations of the illegal Communist Party of Malaya." Indeed, on 15 December 1976 the Home Affairs and Education Minister stated[56] that "the communist underground was still the main threat facing Singapore on the security front." He added that "in the security operations, the powers of detention under the Internal Security Act were used discriminately. Only the hardcore and those who refused to recant their communist involvements were issued with Orders of Detention. Of those arrested during the year, about 90 per cent were released after they had made a clean breast of their involvements."

[52] No. 25 of 1955.

[53] David Marshall, *Singapore's Struggle for Nationhood 1945-1959,* p. 10.

[54] Cap. 115, s. 8.

[55] *The Times,* 14 February 1977.

[56] *Straits Times,* 16 December 1976.

Recent events appear to confirm the Minister's comments, and indeed, in November 1978 two political detainees held for over fifteen years were put on suspension orders, confined to two islands off Singapore.[57] "Not since Napoleon was exiled to Elba has there been so dramatic a story about political prisoners sent off to some safe place," exclaimed an editorial in the *Straits Times*.[58] However, in an interview reported a few weeks later,[59] the Prime Minister was quoted as saying that "the communists under detention in Singapore had invested 28 to 29 years of their lives to the cause and were not going to write off that investment lightly." The threat, it seemed, remained.

The basic defect of any law on preventive detention is that, so long as it remains on the statute book, it acts as an inhibiting factor in damping down and, ultimately, repressing the expression of public opinion. Even if not one person be detained, the existence of the law itself distorts the natural development of society: so that it can only be justified under exceptional conditions. These exist: or so it seems. David Marshall made the point[60] that in 1955 "abolition of Emergency Regulations would create an R. and R. [*i.e.* 'rest and recreation'] centre for communists in Singapore and would make Singapore a springboard for their activities in Malaya." The government of Singapore cannot be indifferent to the policies of its immediate neighbour, and as long as Malaysia faces a communist threat, it seems likely that so long must the power of preventive detention remain. The best that the lawyer concerned with civil liberties can hope for is a restoration of the safeguards of the legislation of 1955 so that, in the field of personal liberty as in that of freedom of expression, the gap between the aspirations on which the Constitution of Singapore is based, and the restrictions imposed by the necessities of the time, can be diminished. This is an unceasing task, not made the easier by the absence of any opposition in the legislature: an absence creating at times a dangerous self-righteousness on the part of uncriticized ministers.

While the Internal Security Act is used in the realm of the subversive to seek to check the activities of those acting in a manner prejudicial to the security of the State, there is another law on the statute book aimed at curbing the activities of the secret societies of Singapore.[61] This is the Criminal Law (Temporary Provisions) Act:[62] a measure originally enacted in 1955, for a period of three years, "to make temporary provisions for the maintenance of public order, control of supplies by sea to the Federation of Malaya, and the prevention of strikes and lock-outs in essential services." The Act has been kept alive, and is at present due to expire in October, 1979.

The history of the Act is not without interest. The power of the Minister to order the detention "in the interests of public safety, peace

57 *Straits Times,* 18 November 1978. See, more recently. *Straits Times,* 17 June 1979: a report which refers to the release of eight of nine persons arrested in April 1979 for "pro-communist activities and for attempting to overthrow the government through armed struggle."

58 *Ibid.*

59 *Straits Times,* 25 December 1978.

60 *Op. cit.*, p. 10.

61 Societies, that is, associations of ten or more persons, must in general be registered with the Registrar of Societies: see Societies Act (Cap. 262, Singapore Statutes, Rev. Ed. 1970).

62 Cap. 112.

and good order" of any person suspected of being "associated with activities of a criminal nature" was inserted in the Act in 1958.[63] At first, detention was intended to be for a period of six months, with a possible extension of up to two years, but the period was in 1959 extended to one year and, in 1960, the limit of two years was dropped. Detention orders are referred to an advisory committee within four weeks of their making, and are subject to confirmation by the President.

The Act and its subsequent amendments were designed, in the words of the Minister for Home Affairs,[64] "to break the back of the secret society menace which has plagued this land of ours for some time now ...." It seems that the provisions of the Act have, over the past two decades, served to keep the activities of secret societies — a kind of hidden government within the city — within bounds. According to a report in June 1977,[65] between 1958 and 1975, 19,803 were arrested under this legislation, of whom 4,301 were the subject of detention orders, 4,823 were placed under police supervision, 1,687 were charged in court, and 285 placed on record as members of secret societies, with the Registrar of Societies: the remaining 8,707 being released unconditionally.

According to the same report, between January and June, 1976, police arrested 293 people under the Act, with 109 detention orders being issued, 53 people put under police supervision, 41 charged in court, 32 registered as secret society members and 38 released unconditionally: the remaining 20 cases being then still pending. The report outlined new police procedures for arrest and interrogation including, so it appeared, a prohibition on hearsay evidence.

Little or no protest is heard at the international level in relation to this legislation, although it probably has more profound consequences on the way of life of the ordinary citizen then does the operation of the Internal Security Act: and yet the principle common to both, of detention without trial, is abhorrent to lawyers. But then, members of secret societies operate at lower and less picturesque levels than those favoured by supporters of "human rights", and command no sympathy,

A Banishment Act (based on a law dating from 1870) remains on the statute book.[66] Under this law, the Minister can, on information from the Commissioner of Police, banish from Singapore anyone who is not a citizen, either for life or for a prescribed term, if such action is "conducive to the good of Singapore." Alternatively, the Minister may issue an expulsion order.

VIII

The Chief Justice and the other judges of the Supreme Court are appointed by the President, acting on the advice of the Prime Minister: the Prime Minister consulting the Chief Justice in relation to the appointment of judges.[67] The retiring age of judges is sixty-five. If the Prime Minister, or the Chief Justice after consulting the Prime Minister, considers that a judge ought to be removed on the ground

63 Ordinance 25 of 1958.

64 *Singapore Parliamentary Debates, 2* September 1959, Col. 574.

65 *Straits Times,* 3 June 1977.

66 Cap. 109, Singapore Statutes, Rev. Ed. 1970.

67 Constitution of Singapore, s. 52 (C).

of misbehaviour, inability, infirmity of body or mind or any other Cause, to discharge his functions properly, the President must appoint a tribunal consisting of not less than five Singapore or Commonwealth judges and, if the tribunal so recommends, remove the judge from office.[68]

There is nothing unusual in these provisions, their principles being derived from English practice and parallel provisions in the Malaysian Constitution.[69] The judges so appointed have so far been lawyers who qualified in England, and are therefore familiar with the spirit of the common law. However, judicial policy, as reflected in the law reports, suggests a legalistic rather than a creative approach to the law.

At the opening of the legal year in 1977, the Chief Justice was quoted as reiterating "the total commitment of the Judiciary in Singapore to dispensing justice according to law, and to upholding the independence of the Judiciary." He said that "[i]t is our responsibility to let there be no shadow of doubt whatsoever that we are committed to these two principles and to dispel as forcefully as lies within our power any attempt from any quarter to cast doubt that these two principles are being adhered to here."[70] That it should have been necessary for the Chief Justice to speak in such emphatic terms suggests a certain ground-swell of criticism, possibly from within as well as outside Singapore. An *Amnesty International* report of February 1976[71] had observed, somewhat cryptically, that "[w]hilst we would hesitate to claim that the whole judicial system is subject to general government interference, it is certainly true that individual lawyers are not immune from political pressure."

Such a comment could probably be made of most societies, most lawyers. The reported cases indicate no evidence of government interference. As indicated, the policy of the judiciary is one of "justice according to law," For example, the extension of a detention order bearing the signature of a Permanent Secretary, and not that of the President, a Minister or a Secretary to the Cabinet, was held void:[72] and the case could perhaps be regarded as characteristic. Efforts made by detainees in 1972 to secure release on the grounds that prolonged detention for over seven years was "improper and ... abuse of law," or as based on a "lack of good faith" were rejected, as was an argument by others that being required to take part in vocational training was "labour" within the meaning of the relevant rules.[73] In one case[74] the Chief Justice affirmed the constitutional right of a person detained under the Internal Security Act to be allowed to consult a legal practitioner of his choice, when that right had been denied by the executive: although it must be admitted that the affirmation proved something of a Pyrrhic victory for the plaintiff.

[68] *ibid.*, s. 52F.

[69] Malaysian Constitution, arts. 122B, 125.

[70] *Sunday Times, 9* January 1977.

[71] *Briefing: Singapore,* p. 2.

[72] *Lim Hock Siew and Others* v. *Minister of the Interior and Defence* [1968] 2 M.L.J. 219.

[73] See *Lau Lek Eng and Seven Others* v. *Minister for Home Affairs* [1972] 2 M.L.J. 4.

[74] *Lee Mau Seng* v. *Minister for Home Affairs, Singapore and Anor.* [1971] 2 M.L.J. 137.

The approach of a Lord Denning is not for Singapore: and there are those, even in England, who on occasion feel uneasy at the ideas of that great lawyer. The judge must, after all, reflect the attitudes and mores of his society. In Singapore the parameters of behaviour are (as this essay may illustrate) defined with unusual clarity, and one consequence is that the word of a police officer or other official carries more weight than it would in, say, England. As in Malaysia, the will of the lawmakers, as reflected in the statute book and administrative directions, dictates policy: and here, there has been a tendency, in recent years, to prescribe mandatory sanctions in penal laws: so cutting down on the discretion and, some might affirm, usurping the functions of the judiciary. For example, in 1975 the Misuse of Drugs Act 1973 was amended[75] to create a mandatory death sentence and minimum penalties (usually involving corporal punishment), in relation to certain offences of trafficking in drugs. This imposition of a mandatory sentence (which may well infringe the constitutional principle of equality, by failing to permit extenuating circumstances to be taken into account) indicates something of the legal and political climate in which the judges operate: and this may become clearer from recent developments in the law relating to criminal procedure — notably, those in relation to the history in Singapore of trial by jury, and of the practice relating to the admissibility of statements to the police.

Originally, the criminal law of the Straits Settlements followed English law, pursuant to the second Charter of Justice of 1826. Then, in 1870, a code of criminal procedure modelled upon that in force in India was introduced: a code representing a unique blend of English ideas and Indian experience. Out of this grew the concept of trial by jury, that palladium of liberty once so cherished, dating back to days before the Norman conquest of England, to the old Prankish empires and beyond. In Singapore the concept fell under attack in 1960, with the enactment of a measure designed to abolish trial by jury except in capital cases:[76] the Prime Minister commenting, on the second reading of the Bill amending the Criminal Procedure Code, that "the business of the administration of law" is "to do justice and to see that right is upheld and wrong is punished." Nine years later, the jury itself was abolished, to be replaced by two judges: although given the nature of Singapore society, two assessors, sitting with a judge, might better have served to maintain a lay element in the administration of criminal justice, and saved the energies of one judge.

At the same time as the institution of the jury fell under attack, the principle that "no statement made by any person to a police officer in the course of a police investigation" should be admissible in evidence (an absolute prohibition as regards an accused, but subject, at the discretion of the court, to exception in order to impeach the testimony of a witness who has told conflicting stories)[77] also fell for review. The principle, familiar to an older generation of prosecutors, seems to be under attack everywhere. At all events, the English practice of admitting in evidence a statement made by an accused, after due caution in conformity with the (English) Judges' Rules, was adopted:

[75] No. 49 of 1975, am. 5 of 1973.
[76] No. 18 of 1960.
[77] See s. 121 of the Criminal Procedure Code (prior to 1960).

provided the statement was made to a police officer of or above the rank of inspector.[78]

This adoption of the practice in England, Hongkong and Sarawak continued until 1976, when a further amendment[79] reduced the status of the police officer concerned to that of sergeant (an amendment probably due to an improvement in the calibre of sergeants) and also (following the lines of proposals made by the United Kingdom Criminal Law Revision Committee) abolished the caution itself. In its place, the police are now required to serve upon an actual or potential accused a written notice, *viz.*,

> Do you wish to say anything in answer to the charge? If there is any fact on which you intend to rely in your defence in court, you are required to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general. If you wish to mention any fact now, and you would like it written down, this will be done.

Parallel amendments to the Evidence Act have therefore created a situation in which the so-called "right to silence" has, in effect, vanished. It was a "right" of questionable virtue, and the present caution appears more realistic than the artificial constraints of old. Even so, a greater degree of responsibility has fallen upon all those concerned in the administration of justice — judges, lawyers and police — to ensure that it is in harmony with the ethics of society.

These changes are indeed significant. They mark a willingness to depart from principles that once had a vigorous life, but have perhaps served their purpose. The challenge of the times requires new ideas, and those who hold them and apply them should not be abused. The past has its own lessons, it is true; but as the hero of a Victorian novel, one dealing with issues still very much alive, observed:

> to men groping in new circumstances, it would be finer if the words of experience could direct us how to act in what concerns us most intimately and immediately; which is full of difficulties that must be encountered; and upon the mode in which they are met and conquered — not merely pushed aside for the time — depends our future.[80]

IX

Contemporary Singapore presents a problem to the student of civil liberties. For an observer afar off, ignorant of the problems of its government, it is easy to be critical, and such issues as the bonding of medical students and the creation of a power to withhold degrees from medical and dental undergraduates failing to undertake to serve in government hospitals after graduation[81] tend to create an alarming impression abroad. There seem to be no intellectual voices in opposition. The bar — in most countries foremost in its concern for civil liberties—has such a bad image (due to a recent series of successful prosecutions of lawyers for criminal breach of trust of clients' moneys) that the Government now proposes to amend the Legal Profession Act

[78] No. 18 of 1960.
[79] Embodied in Act 10 of 1976.
[80] Mrs. Gaskell, *North and South* (1855), (repr. Penguin English Library), p. 414.
[81] See *e.g., Straits Times,* 30 August 1978, an editorial of 20 September 1978, and reports during that period.

in order to tighten up discipline in the profession, and to disqualify from practice any lawyer who is "financially embarrassed."[82] Politics in the University of Singapore is taboo, according to a 1978 article in the *Singapore Undergraduate*:[83] an article blaming students' apathy for the diminished effectiveness of the students' union. Something of this may be due to comments made by the Prime Minister late in 1977.

When Singapore became a member State of Malaysia, those provisions of the federal Internal Security Act relating to "suitability certificates" for undergraduates became law in the State and remained so after independence. Section 42 of the Act, enforced on 1 August 1964, provides that no person shall be admitted as a student to "any institution of higher education" (a term including the University of Singapore, Nanyang University, the Singapore Polytechnic and Ngee Ann College) without a "certificate of suitability for admission thereto"; the certificate is issued by the Director of Education, unless he has reasonable grounds for believing the applicant would, if admitted, "be likely to provide, or otherwise participate in, action prejudicial to the interest or security of Singapore"; and an appeal lies against a refusal to the Minister. The section was designed to prevent communist influence in institutions of higher education.

In December 1977 the Prime Minister observed[84] that the certificate had "served its purpose. The age of turbulence in our schools caused by communist agitation and recruitment for revolution seems to have passed." However, he advised undergraduates to "leave agitation, picketing and strikes, and demonstrations outside the campus [85] to the adult world of real politics ...." On 10 February 1978, therefore, the requirement was suspended,[86] the Ministry of Home Affairs excepting only those who had previously been refused such certificates — some 100 applicants in 1965, and 132 in 1966. It was then reported that "in the last three years 22 applications from 18 applicants... were rejected. Some were seeking entry to more than one institution"; fifteen applications related to the Singapore Polytechnic and Ngee Ann College, and seven to the University of Singapore or Nanyang University. The section remains, however, dormant on the statute book.

So, there are signs of life in the community. In a short survey of the press[87] G.H. Tan and A. Ismail noted a tendency on the part of the English language press, in 1978, to "a more critical stance": an opinion based upon a survey of reactions to certain issues. The writers noted that "the press is not, as in totalitarian regimes, directly under the control of the state. Being a public institution, it is not solely the mouthpiece of the government, and opposition views can be heard. At the same time, those working for the press are subject to various legal and official restraints which qualify rather than nullify

[82] *Straits Times,* 3 March 1979.
[83] *Straits Times,* 21 January 1978.
[84] *Straits Times,* 31 December 1977.
[85] What seems currently (according to a notice board on the Bukit Timah campus) to be called "Wah Piowism", after Tan Wah Piow, a student leader ca. 1975, now overseas.
[86] *Straits Times,* 11 February 1978.
[87] "Criticism in the Press — How Far?" *Singapore Undergraduate* (Vol. 12, No. 1).

their freedom of expression." However, the writers took the view that "the press functions basically to confirm, to preserve and to promote the status quo. Freedom of expression is thus 'free' only so far as real social and economic factors permit." The general conclusion seemed to be that a society gets the press it deserves.

It is true that there is a large element of the authoritarian within Singapore society. The reasons for this are complex. Dr. Chan Heng Chee has suggested [88] that "the bulk of the Singapore Chinese population reared in the Chinese cultural tradition, the perception of government and the individual's response to it may be shaped in fact by this cultural legacy," that is, by the legacy of Confucian doctrine and philosophy; and it seems that the Confucian rather than the Taoist school of philosophy is favoured by the (predominantly Hokkien) Chinese of Singapore: industrious, aggressive and self-reliant, endowed with a belief in a natural and moral order. The attitudes of Singapore youth come out very clearly in a recent book in which a graphic insight is given into the mind of the Singapore conscript.[89] People do not lose their cultural values overnight.

So, we may deduce that the present limits of liberty satisfy the majority of citizens. There are, it is said, places where, say, the appetites of sex can be discreetly satisfied, blue films can be seen: in short, there exists that hedonistic shadowland so necessary to society, so essential to the police in their task of law enforcement generally. Yet the letter of the law remains important and, as in, say, Japan (a country also facing the problems of constitutional government) freedom of speech is not unrestricted, freedom of expression is not untrammelled, intervention by the police into individual affairs is regarded as acceptable when such affairs consist of political activities affecting, or likely to prejudice, the welfare of society generally. There are no absolutes, and the initiative in the development of technical legal thought is vested in the legislature and, essentially, in the decision-makers within government. The doctrine of utilitarianism is very much alive, and is well-served by the instrument of an honest civil service. Such a service can effectively control a population anxious to ascertain the limits of its freedom as painlessly as possible (and preferably without the benefit of legal process), and to make money within that area of liberty.

Nevertheless, if creativity within the civil service and other key sectors of society is to be secured, the need to tolerate, and indeed to encourage dissent remains. In 1977 the *Straits Times* observed that "[o]ne of the consequences of PAP policies on Singapore's campuses is the virtually complete depoliticisation of students. This must be reversed, and quickly...."

The need is indeed urgent, but there are many fears to be overcome, some of them unreasonable, all pervasive, created by the kind of incipient paranoia that is bred within a closed society. For example, there does seem to be strong evidence that the existence of a serial number on a ballot paper excites alarm on the part of, and may well intimidate some voters. The report of the Constitutional

[88] *The Dynamics of One Party Dominance* (1976) p. 231.
[89] Leong Choon Cheong (ed.), *Youth in the Army* (1978).

Commission (1966) recommended[90] the inclusion in the Constitution of a right for the people of Singapore "to be governed by a government of their own choice, expressed in periodic and general elections by universal and equal suffrage and held by secret vote": and in that context the Commission thought:

> it is right that we should draw attention to the provisions of section 29(3) of the Singapore Parliament Elections Ordinance (Cap. 53). This subsection requires that 'each ballot paper shall have a number printed on the back and shall have attached a counterfoil with the same number printed on the face.' It appears to us that this provision is inconsistent with the right to secrecy of the vote.

In the face of such a strong recommendation, and in the light of complaints by at least one opposition leader,[91] it is perhaps surprising that the subsection remains part of the law.

It is perhaps impertinent for a visitor to comment on these issues, for a proper assessment of the extent and quality of liberty under the law of Singapore is best made by a citizen. The foregoing observations touch upon matters which are of interest to an outsider who detects a new spirit abroad within Singapore society. One reads of official encouragement for students to go overseas and study such subjects as philosophy and politics: so that a more liberal atmosphere, and one in which the limits of criticism may be enlarged to embrace a greater degree of creativity, may be in the making.

The trouble with Singapore society may, perhaps, be explained by observing that the law is not seen always to reside in what the lawmakers declare, but in what people suppose the Prime Minister says it is; this is not, as some Western observers may think, a criticism of authority, still less of the Prime Minister: it is a simple fact of life within a society coloured by Confucian ideas, historically influenced by the practices of British colonial authority, and taking a practical view of the realities of commerce in a competitive world. The inhabitants of, say, Toa Payoh, are not regular readers of the Government *Gazettes,* and they have preoccupations more important, in their eyes, than a concern for human rights. They settle for the best they can contrive.

No society remains static; as the author of the *Romance of the Three Kingdoms* observes, Empires wax and wane. None need fear any of these issues, for liberty is a subject that requires continual study, a study linked with the history of men, ideas, societies. Like life itself, it is a series of compromises between what we want and what we can get, and our experience of life dictates the negotiation of these compromises. The natures and directions of the pressures within society are constantly changing. Any study of liberty in Singapore is likely to work towards an island that is as free as it is beautiful, as happy as it is industrious.

R.H. HICKLING*

[90] Para. 43.

[91] See *Straits Times,* 15 February 1979, and 17 February, when the Secretary-General of the Workers Party (an unsuccessful candidate at a by-election) stated that "it was reported to me by polling agent at one of the centres that the ballot papers, when handed to the voters, were folded in such a manner as to show the number on the reserve of the ballot paper openly to the voter."

* C.M.G., LL.B., Ph.D., Visiting Professor of Laws, University of Singapore