LAW AND ECONOMIC DEVELOPMENT IN SINGAPORE 1959-1999

CONNIE CARTER

SOAS Law Department
School of Oriental & African Studies
University of London

Submitted to the University of London for the Degree of Doctor of Philosophy.

ProQuest Number: 11010582

All rights reserved

INFORMATION TO ALL USERS
The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript
and there are missing pages, these will be noted. Also, if material had to be removed,
a note will indicate the deletion.

ProQuest 11010582

Published by ProQuest LLC (2018). Copyright of the Dissertation is held by the Author.

All rights reserved.
This work is protected against unauthorized copying under Title 17, United States Code
Microform Edition © ProQuest LLC.

ProQuest LLC.
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106 – 1346

ABSTRACT

Singapore is a successful example of a growth-oriented, interventionist, capitalist state. For four decades the government resolutely promoted economic development by fostering key elements which it considered conducive to growth.

Economists, sociologists and political scientists have analysed the contribution that these and other elements have made to Singapore's economic development. However no one seems to have contemplated the role that law might have played.

This study seeks to fill that gap. It draws on theory from the 1960s' law and development movement, which purportedly died in the 1970s but was revived as the law and economics movement in the 1980s by agencies like the World Bank and the IMF. After the collapse of Soviet communism, revival of the movement accelerated as many sought to assert ascendancy of the market over the state using the rule of law as a catalyst.

My thesis is that Singapore's experience contradicts crucial predictions of law and development theory, whether in its old or its reincarnated guise.

Many Singapore laws have diverged from their English roots to form an autochthonous body of rules which is more situational, opportunistic, regulatory, holistic and communitarian than the rights-based, individualistic model of the West. Their nature is 'westernistic' and syncretistic, but Singapore laws are not converging with those of the West as a *result* of economic development, as the theory predicted. Finally, the study speculates on whether Singapore's experience has more relevance for late-industrialising countries than the experience of European and American democracies whose industrialisation spanned centuries rather than decades.

ACKNOWLEDGEMENTS

This study has benefited from the patience and generosity of a number of individuals. My primary debt is to my supervisor, Dr Andrew Harding, Professor of Law in the University of London, who gave unstintingly of his time and enormous regional knowledge. I am grateful to Professor Michael Palmer and Dr Lynn Welchman, who, as members of my supervisory committee, provided useful feedback on methodology especially during the early phases of my work.

I must also thank all the Singaporeans, both at home and abroad, who gave me their time to discuss legal, economic and other developments in their country, in China, Indonesia, Malaysia and India. They are far too numerous to list. But I must record my gratitude to Ms Shirley Chen, Director of Corporate Affairs at the Economic Development Board (EDB); Mr Hwang and Mr Chua, past senior EDB officers; Mr Peter Bidstrup, Regional Managing Director, and Ms Catherine Kwok, Finance Director, both at Grundfos Pumps (Singapore) Pte Ltd; Ms Regina Chia of Metro China Holdings; and Mr Ahuja of the Thakral Group.

I am particularly indebted to the staff at the National Library in Singapore, whose collection of the Official Reports of Singapore's Legislative Assembly and Parliamentary Debates was my most invaluable resource, and Ms Yang at the Library of the Singapore House of Parliament for providing recent debates. My gratitude goes also to library staff at the School of Oriental & African Studies; the Institute of Advanced Legal Studies, London; the University of London Library; Lincoln's Inn and the National University of Singapore. Finally, thank you to Dr Basil Byroo, Merrill Lynch, London without whose patient guidance my database of Singapore statutes and amendments over 40 years would have remained a pipe dream.

The law is stated on the basis of material available to me as at 1 May 1999.

Connie Carter
SOAS, University of London

This thesis is dedicated to my mother,
Mrs Carmen Carter-McLeary,
and to Christopher and Nicole Carter
in loving memory of their father.

ABBREVIATIONS

These abbreviations are used in this study. 'Government' denotes the executive policy-making body of a political unit. It is sometimes used synonymously with 'state'.

ABAJ	American Bar Association Journal
AC	Appeal Cases
ACU	Asian Currency Unit
AFTA	ASEAN Free Trade Area
AJCL	American Journal of Comparative Law
AJIL	American Journal of International Law
All ER	All England Reports
ANU	Australia National University
APEC	Asian Pacific Economic Cooperation
ART	Article (as in a Treaty)
ASEAN	Association of Southeast Asia Nations
AJ Pub Ad	Asian Journal of Public Administration
AWSJ	Asian Wall Street Journal
CAP	Chapter
CPF	Central Provident Fund
CUP	Cambridge University Press
DBS	Development Bank of Singapore
EC	European Community
EDB	Economic Development Board
ED	Edition or Editor
EIPR	European Intellectual Property Review
EOI	Export-oriented Industrialisation
EPC	Enterprise Promotion Centres [of Singapore]
EU	European Union
FEER	Far East Economic Review
GATT	General Agreement on Tariffs and Trade (see WTO)
GDP	Gross Domestic Product
GIC	Government Investment Corporation of Singapore
GLC	Government-linked Company
GSP	Generalised System of Preferences
HDB	Housing and Development Board
HUDC	Housing and Urban Development Corporation
HVA	Higher Value-added [as in production]
ICLQ	International and Comparative Law Quarterly
IIAS	International Institute for Asian Studies [at Leiden Unversity]
IIC	International Review of Industrial Property and Copyright
IIPA	International Intellectual Property Alliance
ILO	International Labour Organisation
IMF	International Monetary Foundation
INTRACO	International Trading Company [of Singapore]
ISI	Import-substituting Industrialisation
JTC	Jurong Town Corporation
Jnl Eco Pers	Journal of Economic Perspectives
Ky	Kyshe's Reports

LD	Legislative Assembly Debates [Official Reports]
LAD	Law and Development
Mal LR	Malaya Law Review
MAS	Monetary Authority of Singapore
MIT	Massachusetts Institute of Technology
MLJ	Malayan Law Journal
MLR	Modern Law Review
MNC	Multi-national Corporations
MOU	Memorandum of Understanding
MP	Member of Parliament
NAFTA	North American Free Trade Area
NIEO	New International Economic Order
NCB	National Computer Board
NIC	Newly Industrialised Country
NTI	Nanyang Technological Institute
NTUC	National Trades Union Congress
NUS	National University of Singapore
NWC	National Wages Council
OECD	Organisation of Economic Co-operation and Development
OUP	Oxford University Press
PAP	People's Action Party
PD	Parliamentary Debates [Official Reports]
PSDC	Public Sector Divestment Committee
QMW	Queen Mary & Westfield College [University of London]
REV ED	Revised Edition
RTGS	Real-time Gross Settlement System
SATU	Singapore Association of Trades Unions
S	Section (as in a statute or Act)
SD	Singapore Dollar
SDF	Skills Development Fund
SES	Stock Exchange of Singapore
SESDAQ	Stock Exchange of Singapore Dealing & Automated Quotation market
SFTU	Singapore Federation of Trades Unions
SIMEX	Singapore Money Exchange Limited
SISIR	Singapore Institute of Standards and Industrial Research
SLR	Singapore Law Reports
SLR	Straits Law Reports
SOAS	School of Oriental & African Studies [University of London]
SSAR	Straits Settlements Annual Reports
SSLR	Straits Settlements Law Reports
SSR	Straits Settlements Records
TRIPS	Trade Related aspects of Intellectual Property rights
U Chi L Rev	University of Chicago Law Review
UN	United Nations
UNCITRAL	UN Commission on International Trade Law [model law on arbitration]
VITB	Vocational and Industrial Training Board
WIPO	World Intellectual Property Organisation
Wis L Rev	Wisconsin Law Review
WTO	World Trade Organisation

An Access database of Singapore Statutes, with amendments from 1959 to 1999, is available. It is too long to be included as a hard copy.

TABLE OF CASES

Tulk v Moxhay (1848) 2 Ch 774

Whicker v Hume (1858) 7 HLC 125; (1858) 11 ER 50

Yeap Cheah Neo v Ong Cheng Neo (1875) LR 6 PC 381

TABLE OF STATUTES

Singapore[1]

Administration of Muslim Law, cap 3

Advocates and Solicitors (Amendment) Ordinance

Air Navigation, cap 6

Application of English Law, cap 7A, 1994 ed.

Asian Development Bank

Banking, cap 19, 1994 ed.

Bankruptcy, cap 20, 1996 ed.

Bretton Woods Agreements

Central Provident Fund, cap 36, 1997 ed.

Cinematograph Film Hire Duty, cap 40

Civil Law, cap 43, 1994 ed.

Civil Law Ordinance, No 4/1878

Clean Air, cap 45

Companies, cap 50, 1994 ed.

Computer Misuse, cap 50A, 1994 ed.

Constitution of the Republic of Singapore

Control of Manufacture, cap 57

Conveyancing and Law of Property, cap 61, 1994 ed.

Copyright 1911

Copyright (2/1987), cap 63, 1988 ed.

Copyright (14/1994), cap 63, 1988 ed.

Copyright (6/1998), cap 63, 1998 ed.

Copyright (Gramophone Records and Government Broadcasting), cap 64

Corruption (Confiscation of Benefits) 1989 (No 16 of 1989)

Criminal Law (Temporary Provisions), cap 67, 1998 ed.

Criminal Procedure Code, cap 68

Crown Lands Ordinance 1883

Currency, cap 69, 1998 ed.

Customs, cap 70, 1997 ed.

---

[1] Chapter numbers refer to the 1985 rev ed, unless otherwise stated. A database of Singapore statutes and amendments for 40 years from 1959-99 is available. It is too long to be included in the Appendix.

Development Fund, cap 80, 1995 ed.

Development Loan, cap 81

Development Loan (1987), cap 81A, 1988 ed.

Economic Development Board (21/1961), cap 85, 1992 ed.

Economic Expansion Incentives (Relief from Income Tax, 36/1967) cap 86, 1996 ed.

Employment, cap 91, 1996 ed.

Employment of Foreign Workers, cap 91A, 1997 ed.

Employment Agencies

Entertainments Duty, cap 94

Estate Duty, cap 96, 1997 ed.

Executive Condominium Housing Scheme, cap 99A, 1997 ed.

Factories, cap 104, 1998 ed.

Films, cap 108

Finance Companies, cap 108, 1995 ed.

First Charter of Justice 1807

Foreshores, cap 113

Free Trade Zones, cap 114

Frustrated Contracts, cap 115

Futures Trading, cap 116

Government Contracts, cap 118

Government Proceedings, cap 121

Government Securities, cap 121A, 1993 ed.

Holidays, cap 126, repealed by Act 8/98

Housing and Development (Ordinance 1959, 11/59)

Housing and Development, cap 129, 1997 ed.

Housing Developers (Control and Licensing), cap 130

HUDC Housing Estates, cap 131

Industrial Relations Ordinance 1960 (No 20 of 1960)

Industrial Relations, cap 136

Institute of Education, cap 140, repealed by Act 38/1996

Institute of Technical Education, cap 141A, 1993 ed.

Internal Security, cap 143

International Arbitration, cap 143A, 1995 ed.

International Finance Corporation, cap 144

Interpretation, cap 1

Judicial Committee, cap 148, repealed by Act 2/1994

Jurong Town Corporation, cap 150, 1998 ed.

Land Acquisition, cap 152

Land Improvement, cap 153

Land Titles, cap 157, 1994 ed.

Land Titles (Strata) cap 158, 1988 ed.

Land Transport Authority of Singapore, cap 158A, 1996 ed.

Loans (International Banks) cap 164

Maintenance of Parents, cap 167B, 1996 ed.

Maritime and Port Authority of Singapore, cap 170A, 1997 ed.

Medicines, cap 176, (amended by Act 7/1998)

Merchant Shipping, cap 179, 1996 ed.

Monetary Authority of Singapore, cap 186

Nanyang Polytechnic, cap 191A, 1993 ed.

Nanyang Technological University, cap 192, 1992 ed.

National Computer Board, cap 195

National Productivity Board, cap 200, repealed by Act 1/1996, see cap 303A

National Science and Technology Board, cap 201A, 1991 ed.

National University of Singapore, cap 204

Newspaper and Printing Presses, cap 206

Newspaper and Printing Presses (Amendment) 1997

Official Secrets, cap 213

Patents, (21/1994), cap 221, 1995 ed.

People's Association, cap 227, 1994 ed.

Planning, cap 232, repealed by Act 3/98

Port of Singapore Authority Ordinance 1963

Port of Singapore Authority, cap 236, repealed by Act 6/97

Post Office Savings Bank of Singapore, cap 237

Post Office Savings Bank of Singapore (Transfer of Undertakings and Dissolution) 1998

Premiums on Leases, cap 238

Prevention of Corruption, cap 241, 1993 ed.

Prevention of Corruption (Amendment) Act 1963 (No 41 of 1963)

Prevention of Corruption (Amendment) Act 1966 (No 10 of 1966)

Prevention of Corruption (Amendment) Act 1972 (No 27 of 1972)

Prevention of Crimes, cap 242

Prevention of Pollution of the Sea, cap 243

Property Tax, cap 254, 1997 ed.

Property Tax (Surcharge), cap 255

Printing Presses (Amendment) Ordinance

Public Utilities, cap 261, 1996 ed.

Registration of United Kingdom Patents, cap 271, repealed by cap 221, 1995 ed.

Registration of Deeds Ordinance 1886

Regulation of Employment, cap 272, repealed by Act 21/90. See cap 91A

Regulation of Imports and Exports, cap 272A, 1996 ed.

Republic of Singapore Independence 1965

Residential Property, cap 274

Retirement Age, cap 274A, 1994 ed.

Road Vehicles (Special Powers), cap 277

Rubber Association of Singapore (Incorporation), cap 278, repealed by Act 16/1992

Rubber Industry, cap 280, 1993 ed.

Sale of Commercial Properties, cap 281

Second Charter of Justice 1826

Securities Industry 1973

Service Lands, cap 292

Settled Estates, cap 293

Singapore Improvement Ordinance 1927

Singapore Institute of Standards and Industrial Research, cap 301, repealed: cap 303A

Singapore Labour Foundation, cap 303

Singapore Overseas Telecommunications Board Ordinance

Singapore Productivity and Standards Board, cap 303A, 1996 ed.

Singapore Tourism Board, cap 305B, 1997 ed.

Skills Development Levy, cap 306, 1998 ed.

State Lands, cap 314, 1996 ed.

State Lands Encroachment, cap 315

Statutory Bodies and Government Companies (Protection of Secrecy) cap 319

Statutory Corporations (Contributions to Consolidated Fund) cap 319A, 1990 ed.

Telecommunication Authority of Singapore, cap 323, 1993 ed.

Tokyo Convention, cap 327

Trade Development Board, cap 330

Trade Disputes, cap 331

Trade Marks 1938

Trade Marks, cap 332, 1992 ed., repealed by Act 46/1998

Trade Unions, cap 333

Transfer of the Nanyang University Alumni Register, cap 333A, 1997 ed.

United Kingdom Designs (Protection), cap 339

Urban Redevelopment Authority, cap 340, 1990 ed.

Vocational and Industrial Training Board, cap 345, repealed by Act 8/92, cap 141A

Women's Charter, cap 353, 1997 ed.

Workmen's Compensation, cap 354

Australia

Copyright Act 1968

Malaysia

Constitution (Amendment) Act 1962 (No 14)

Federal Constitution of Malaysia

Malaysia Act 1963 (No 26)

UK

Act of Settlement 1701

Customs and Excise 1952

Colonial Laws Validity 1865

European Communities 1972

Federation of Malaya Independence Act 1957

Imperial Copyright 1911

Indian Charter 1833

Malaysia Act 1963

Partnership 1890

Patents 1977

Straits Settlements (Repeal) 1946

Straits Settlements and Johore Territorial Waters (Agreement) 1928

Territorial Waters Jurisdiction 1878

USA

Omnibus Trade and Competitiveness Act 1988, 19 USC section 2242, 1990

US Semiconductor Chip Protection Act 1984

Foreign Assistance Act 1966

INTERNATIONAL CONVENTIONS AND TREATIES

Association of Southeast Asian Nations 1967 (ASEAN)

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Berne Copyright Convention 1886

Budapest Treaty 1977

Convention on Biological Diversity, Rio de Janerio 1992

European Patent Convention 1973

General Agreement on Trade and Tariffs 1994 (GATT)

Madrid Agreement concerning the International Registration of Marks 1891

Madrid Protocol 1989

Paris Convention for the Protection of Industrial Property 1883

Patents Co-operation Treaty 1970

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961

Universal Copyright Convention 1952

Washington Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC)

World Intellectual Property Organisation Copyright Treaty (WIPO)

World Trade Organisation Agreement 1994 (WTO)

CHAPTER 1 INTRODUCTION AND ANALYTICAL FRAMEWORK

These newly developing nations need our help - not only our money and machines and food, but also the great capital of knowledge accumulated by our professions. ... [T]he young nations need teachers from the West by the hundreds and thousands - law teachers, professors of government, research assistants. We must not miss out on this opportunity for service - for participation in the long creative period ahead of legal development in over half the world.

Supreme Court Judge Douglas,
Douglas W (1962) Lawyers of the Peace Corps (1962) 48 *ABAJ* 909-10.

[A] great deal of attention is being given to what members of [the US] Congress, ..., have termed 'strategic' research issues, including, in particular, the role of law in democratization and the development of free markets in developing countries.

Editorial [1994] 28 *Law & Society Review* 189

1.1 Purpose and Relevance of the Study

Few can doubt that Singapore is a successful example of a growth-oriented, interventionist, capitalist state. Even the World Bank (1993; 1996; 1997) acknowledges this fact. For four decades the Singapore government resolutely promoted economic development by:

> Providing selected free market access;
> Establishing and maintaining efficient infrastructure;
> Orchestrating and investing in key export-led sectors of the economy;
> Disciplining and educating the work force;
> Creating an ideology *and delivering* social justice and tangible benefits that secure the acquiescence of the people to the activities of the state and its elite bureaucrats.[1]

This study examines the role of law in the mix that enabled Singapore's rapid sustained economic growth from 1959 to 1999.

The purpose of this study is to discover whether key law and development (LAD) predictions about the relationship between law and economic development proved viable in the *practice* of economic development in Singapore from 1959 to 1999. Purists may argue that, as discussed at 1.3.2 below, there appears to be no rigorous *theory* of LAD. However there is an abundance of rhetoric, which is made compelling by the status of some LAD protagonists like the World Bank[2] and the International Monetary Fund (IMF). Some of this rhetoric inform this study's analytic platform (see 1.2, 1.3 *infra*).

---

[1] The content of the mix is synthesised from the work of economists, development theorists and other commentators. I am particularly indebted to Hafiz Mirza (1986), Tan Chwee Huat (1989), Tan Kong Yam (1995), Hanna *et al* (1996), Huff (1997) and the World Bank (1993, 1997).

[2] See, for instance, World Bank Helps Pioneer Judicial Reform in Peru, World Bank Group News Release No 98/1555/LAC on the World Bank website: www.worldbank.org:.

> In the 1990s Peru's economy responded vigorously to a well-grounded economic reform program, ... But it is *an accepted fact* that the weakness of the judicial system has been an obstacle to that growth, discouraging investors and innovative economic activities while contributing to a general sense of insecurity (my italics).

Furthermore, the new rhetoric claims that the rule of law is crucial for economic growth, see: World Bank (1996) *World Development Report 1996: From Plan to Market*, chapter 3: Property Rights and Enterprise Reform, and chapter 5: Legal Institutions and the Rule of Law.
The World Bank and the IMF are two of three institutions set up under the United Nations' Bretton Woods negotiations during World War 2. (The third institution, the GATT, became the WTO: World Trade Organisation in 1994). The Bank's Articles of Agreement were finalised in July 1944. For an insightful discussion of the World Bank, see Fatouros (1977). For a World Bank moderated introduction, see Shihata (1991). The World Bank Group includes the International Bank for Reconstruction and Development (IBRD, which is the oldest institution), the International Finance Corporation (IFC), the International Development Association (IDA), the International Centre for Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency. In this study, the term World Bank covers particularly IBRD, IFC and IDA.

Having become a newly industrialised country (NIC) by about 1973, one might imagine that Singapore's experience could have some significance for economic development theory, and that it provides an excellent opportunity to test some popular LAD claims. However, so far, this has not been the case. LAD scholars seem to have been concerned with their own fairly narrowly defined agenda. Until recently, their focus was on specific problems, which they tend to view in relation to only three types of developing countries: the devastatingly poor ones (mostly in Africa); those burdened by foreign debts (mostly in South America); and those in transition from communism (mostly in Eastern Europe). They seem to be preoccupied with investigating what went wrong, rather than what went right. Thus few if any LAD studies have considered the Singapore experience, where none of the three situations applied.[3]

Even if that hurdle is surmounted, others emerge. Some scholars claim that Singapore is too special or too small for its experience to be of general significance (Wade 1990). To my mind, that claim is ill-conceived and arrogant. By 'too special', scholars seem to mean that Singapore did not take off from an agrarian society; implying that the less important is agriculture, the easier it is for a nation to attain high growth rates of GDP (Little 1982, 450). This is not the place to pursue that debate. However, one important recent case should urge scholars to reconsider the idea: Compared with Russia, China must be recognised as the more agrarian society. Yet in recent history, China's rapid growth rates of GDP have outpaced Russia's mightily (Nolan 1995).

It has also been said that Singapore's position as a staple port gave it a unique advantage which other developing nations do not have. Viewed in this way, every country is unique. A more relevant shared experience of many new nations is their colonial past. Each geographic area was colonised for the particular benefit (usually economic) perceived by the coloniser. Singapore's was clearly based on its natural harbour and geographic location. Other countries had mineable ores, oil or other resources; many also had an abundance of unskilled labour. The crux for any law and economic development study thus becomes an inquiry into how each new nation took charge of its resources, and transformed them into national assets to create competitive advantage once the colonisers had withdrawn from their governing, largely exploitative roles.

For an introduction to the IMF, see Chatterjee in Fox, ed. (1992), Cutajar in Ghai *et al* (1987).

[3] An exception is the Asian Development Bank's study by Pistor & Wellons (1999). However, Singapore was not included.

Secondly, the idea that Singapore is too small is arrogance which denies the fact that viable city-states existed, e.g., in ancient Greece and Renaissance Italy. Currently 87 of the world's 193 nation-states have populations of under 5 million each; and 58 of these have fewer than 2.5 million each (*Economist* 3 January 1998, 63). It seems obvious that Singapore's experience would be more relevant for other small nations than the experience of the USA with its 267 million or the UK with 60 million[4]. Besides, the old preference for small states was only transformed by greed and political expediency during the 19th century rash of national take-overs and mergers (Italy was unified in 1861; Germany by 1871), and by colonial empire-building of Britain, France, Holland and so on. In 1914, at the outbreak of World War 1, there were only 62 independent countries in the world, against today's 193. The new post-World War 2 proliferation of small nation states is due to (a) the colonial powers divesting themselves of their colonies; (b) the collapse of the Soviet Union; and (c) the impact of technology and the spread of democracy or other participatory forms of government. Moreover, in the context of the British Commonwealth, the majority of its 54 nations are small; 22 of them have populations of fewer than 1 million (*id*).

Small states share at least one common burden: they lack the advantages of scale. Singapore's experience might be relevant for showing possible ways of coping with this disability, and for taking charge of post-colonial economic development in the context of an English common law heritage.[5]

But the fact remains, until now, most studies have focused on the political economy of Singapore's success (Huff 1997; Rodan 1989), sometimes analysing its social costs (Tremewan 1994) or the role played by information technology (Hanna *et al* 1996), by multinationals (Mirza 1986) or government (Low 1998), but nearly always ignoring the role of law. Philip Pillai (1983) and Andrew Phang (1990) are exceptions. Pillai's study considers legal importation of what he calls state enterprise law, while Phang's legal treatise also incorporates socio-economic development aspects. At p 5 he asserts: 'the *development* of the Singapore *legal system* has been *heavily dependent* upon its wider socio-economic as well as political context' (my italics). I agree with this, however, my own study critiques aspects of Pillai's and Phang's studies.

---

[4] For interesting insights into the idea of miniature nations as symbols of the future, see Alesina A & Spolare E (1997).

[5] For studies of small economies, see, e.g.Vital D (1971); Lewis V, ed (1976); UNCTAD (1974).

Others have focused on substantive areas of Singapore law and considered, almost incidentally, how law has impacted on narrow aspects of the republic's development. For instance, Christudason (1994 unpublished PhD thesis, London) examines the *rationale* behind the development of Singapore's land law. She concludes *inter alia* that the role of the Housing and Development Board, a statutory arm of the Ministry of National Development (which she calls 'the architect of modern Singapore') goes far beyond providing affordable public housing and serves also as a medium for social engineering (at 363). Similarly, Mohan's study of the control of corruption in Singapore (1988 unpublished PhD thesis, London) posits that Singapore's level of development made possible the availability of resources to combat corruption. He leaves untouched the impact that curbing corruption might have had on Singapore's economic development. Again, neither explicitly examines the role of law in Singapore's economic development. That is the purpose of this study.

This study investigates the *nature* of the relationship between law and economic development in Singapore. It seeks to uncover the role that law might have played in transforming Singapore from being a modestly successful colonial entrepot in 1959, when it won self-rule from the British, to modern Singapore, which in 1995 was among the 20 richest nations in the world. With a 1995 per capita GNP of US$24,800, it was ahead of its past colonial master whose was only US$18,700 (*World Bank Atlas* 1997). By 1990, with a population of about three million, Singapore was the world's 13th largest exporter of commercial services, and ranked 18th in exports of merchandise or three times the merchandise exports of the whole of India (GATT 1990/91 vol 2, 3-4).

The 1960s' law and development (LAD) paradigm forms the framework in which this study is conducted. Although presumed dead in the 1970s (Trubek & Galanter 1974), LAD regained poignancy as it was revitalised and globalised in the 1980s and '90s by the World Bank (Shihata 1991, 1995), the IMF and other supranational agencies.

My thesis is that Singapore's experience has *disproved* the two core LAD predictions: One, only the Western notion of the rule of law can secure sustainable economic growth. Two, the laws of developing countries will converge with, and become like, those of the West, as a result of economic development. The study shows that Singapore has experienced sustainable growth without adopting crucial aspects of the rule of law. Moreover, far from converging with laws of the West, many Singapore laws have di-

verged to form an autochthonous body of rules in response to the government's strategic intent and the nation's unique mix of socio-cultural, economic and political imperatives.

The study concludes that law in the developmental state of Singapore diverged from its roots and has become more situational, regulatory, communitarian and holistic in nature than the rights-based, individualistic model of the West. However, at the turn of the millennium a new species of supranational laws is set to change this conclusion. Global laws such as those designed to protect intellectual property rights (chapter 8) will be *imposed* on all nations that wish to participate in world trade. Thus, at least on paper, such laws will converge with those of the West, even though such convergence is not occurring as an inevitable *result* of economic development as LAD theory requires.

Although this study does not suggest direct emulation of Singapore, it speculates on whether Singapore's experience has more relevance for late-industrialising nations than the experiences of European and American democracies, whose industrialisation spanned centuries rather than decades.

There is now a dearth of LAD studies about Singapore but that situation might change. As pundits proclaim the demise of the Asian miracle because of the 1997-99 regional setback, scholars are likely to show more interest. Many are set to posit theories about cronyism and 'what went wrong' in Asia[6], while a few might want to discover why Singapore seems to have emerged relatively unscathed from the economic turmoil.

1.2 Methodology

The word development connotes a dynamic process of change over time. The objective of this study therefore dictates that my investigation employs historical methods of analysis. These are combined with basic quantitative and qualitative methods.

---

[6] See, e.g., Martin Lee, Economic Crisis is Proof the Asians Need Democracy, *International Herald Tribune*, Wed Jan 21, 1998, p 8, col 3:

> The first lesson from the Asian crisis is that a government that is not answerable to its people will not be likely to have open markets or the institutions required to impose discipline to overcome a financial crisis. The second lesson is that *guanxi*, or connections, are never a substitute for the rule of law.

See also Paul Krugman, Asia's economic pain for real, *USA Today*, Fri Jan 2, 1998, p6A:

> Rules are there for a reason. In the United States, we do business under a lot of annoying regulations that require company managements to report profits and losses accurately, that prevent banks and those they lend to from getting too friendly, and so on. And we also made it hard for government officials and businessmen to strike deals without a lot of lawyers present. In Asia, they scoffed. They did business on the basis of personal relationships, not narrow legalisms. And now we know the results.

Thus, using simple, descriptive, statistical analyses and qualitative assessments based on secondary sources, I trace the pattern of Singapore's economic development from 1959 to 1999. Where changes or paradigmatic shifts are found, they are identified as development phases. While I expect that major changes such as the shift from import-substituting industrialisation (ISI) to export-oriented industrialisation (EOI) will be well marked, for instance in government statistics, care will be taken to identify more subtle changes, including negative ones. I do not imagine that changes manifested themselves as Damascus road events, rather they probably took place over shorter or longer time periods. This will undoubtedly add to the complexity of making an exact correlation between specific laws and economic development. However I hope that broad trends manifested during periods of two-three years following the coming into force of specific laws will be indicative.

1.2.1 Strategy

Conceptually, the study divides into two parts. In Part 1, I try to capture the *nature* of Singapore's law as it appeared in 1959. The historical context in which Singapore received its English common law system is presented in outline, in sufficient detail to help identify the status or 'ideal type'[7] of Singapore's laws as at 1959, when Singapore won self-rule from the British. Next, using a relational database, I register the major substantive laws[8] that were in force in 1959 and attempt to plot, chronologically, the development of these and subsequent laws from 1960 to 1999. In registering changes in the laws during the period, care is taken to note how they coincide in time with each previously identified phase of economic development. Using my modified version of Trubek's model of ideal types of legal systems (see 1.5), I attempt to draw conclusions about the *nature* of Singapore's laws in 1959. I also examine whether the cursory correlation, which might have been found between law and economic development from 1959 to 1999 reveals any developmental tendencies or changes in the *nature* of Singapore's laws.

---

[7] Ideal type refers to Trubek's model of three ideal types of legal systems, see 1.5 *infra*.

[8] By substantive law I mean all legislation, as in a body of statutes, all Acts of Parliament, the Constitution, subsidiary legislation, directives, rules and regulations. The study focuses on primary legislation. A typology of Singapore statutes, which forms the structure of a customised database of Singapore laws 1959-1999, is shown in the Appendix. The database is available on diskette.

Part 1 and Part 2 of my study are closely linked. Part 1 forms the macro-level basis from which the more detailed methodology for Part 2 evolves. In Part 2, I conduct a micro-level test of key LAD-informed hypotheses[9]. Here I attempt to go beyond the mere mechanical correlation between law and development, which was established in Part 1. I analyse the development of three specific areas of economic law over the period 1959 to 1999 and examine the nature of their links with economic development during the period. For this micro-level analysis, I have chosen laws governing labour, land, and capital. This is because these laws govern what economists call 'factors of production', that is, resources, which they claim *cause* the production of wealth in capitalist societies. How such laws originated, developed and operate in Singapore should therefore be indicative of the link between law and economic growth in the country.

I move from a macro-level analysis in Part 1 to a micro-level analysis in Part 2 for two reasons. First, there are so many variables, which might effect economic change that it is not easy to differentiate the role that law might have played from the role of other change-agents employed by the state. It is here that LAD theory reveals its inadequacy, since as discussed at 1.3 *infra*, there are no *proven causal links* between law and development. Secondly, the operation of legal systems is so complex that it is impossible to isolate the impact of internal interaction between laws and legal institutions from the impact between the legal system and other socio-economic factors. By focusing on three areas of law I hope to simplify the task somewhat by reducing the number of variables.

Part 2 presents three *competing hypotheses,* which are informed by core LAD assumptions about the causal link between law and economic development. Assumptions relating to hypothesis (1), Convergence, are synthesised from LAD rhetoric discussed in 1.3 *infra* as represented by, for instance, the World Bank. Hypothesis (2), Divergence, accepts as a working hypothesis that there is a link between law and development but rejects convergence; while hypothesis (3), Irrelevance, rejects the existence of a link.

---

[9] These and an historical account of the LAD movement are discussed at 1.3 *infra*. There are two basic ideas. One, that economic development will result from the implementation of rational or modern western law, especially laws that safeguard individual property rights and contracts. In the 1990s this concept developed into a more elaborate diet of legal reform which forced transplantation of the rule of law to developing countries under the guise of structural adjustment programmes which the World Bank and the IMF claim will lead to economic development. The second idea is that laws and legal systems develop along a continuum from primitive or customary law to modern, rational, rights-based western law. This natural evolution ends with the convergence of laws, so that those in developing countries will inevitably become like those in the developed West.

The general claims for the three competing hypotheses are summarised thus:

(1) Convergence. Modern law is synonymous with the rule of law as practised in developed western countries. It is characterised by *inter alia* clearly defined, predictable rules which safeguard individual property rights and transactions between parties. Its characteristics are universal and essential for the operation of a free market economy[10]. Unless developing countries implement the rule of law they will not achieve economic development. The laws and legal systems of developing countries will converge with, and become like, those of the developed countries, because convergence is an inevitable outcome of economic development. The globalisation of markets and the use of information technology serve to accelerate the convergence of laws.

(2) Divergence. Modern law is an organic, culture-specific, political entity. Even if country A's legal system is initially the same as or similar to that of country B, the laws of country A and country B will diverge and develop in different ways as they respond to challenges in ways that are influenced by indigenous socio-cultural, political and economic imperatives. Thus laws and legal institutions of countries will vary in design and function. Some may be conducive to rapid economic development, others not. It really depends on the policies, strategic intent and decisions of governments.

(3) Irrelevance. Modern law is irrelevant for economic development. There is no discernible link between law and economic development. Economic growth is the result of strategic decisions taken by wise charismatic leaders.

To summarise, my purpose in Part 1 is threefold:

1. To examine the origins and nature of the laws that operated in Singapore in 1959.
2. To identify and analyse growth phases in Singapore's economic development from 1959 to 1999.
3. To correlate, where possible, changes in the laws with growth phases in the economy during the same period.

My purpose in Part 2 is twofold:

1. To identify the *nature* of the link between changes in the law and changes in the economy that were uncovered in Part 1.

---

[10] This part of the hypothesis is informed by LAD interpretation of Weber's work on the role of law in Europe's development. For an insightful discussion, see Trubek (1972) especially 11-16. The remainder of the hypothesis derives from World Bank rhetoric; see notes 2 and 9.

2. To determine the extent to which the nature of the link (in relation to three specific areas of law) corresponds with key LAD hypotheses.

1.2.2 Sources

A mix of primary and secondary sources is used. Economic data derive from secondary sources: government statistics and statistics presented in academic and other literature, including reports from the World Bank and the Asian Development Bank. There is an abundance of such data, for many studies have marvelled and continue to marvel at Singapore's rapid economic growth. However, the accuracy of some historical government data is disputed, for instance, regarding unemployment rates. But as the focus of my study is law and not statistics, I shall not enter into this debate. Instead I employ government statistics, and accept that these might paint a rosier picture than some pure statisticians might like. For the purposes of this study, it is important only to register the broad trend of moving from surplus labour to full employment; a percentage point or two will not alter the general picture. To clarify the overall picture and accuracy of the phases of Singapore's economic growth 1959-1999, interviews were conducted with various groups of non-scientifically selected employers and employees in the private and state sectors as well as retirees, especially ex-civil servants.

Legal data were gathered from primary sources. The focus of the analysis is primary legislation, though some subsidiary legislation and cases are considered. Official Reports from debates in Singapore's Legislative Assembly and Parliament, and ministerial speeches about the government's intention regarding specific bills form the core of the extra-judicial documents that were consulted. These data were collected in Singapore. Primary legislation and cases were consulted in Singapore and England.

Interviews were conducted with legal professionals and academics who had worked in Singapore in the 1960s, 1970s and so on, and with members of Singapore's bureaucracy and some of its retirees. According to Economic Development Board (EDB) statistics a significant number of EDB officers have served for well over 10 years. For instance, 65 officers in its Manpower Development Division joined the EDB in 1961 and some were still employed in 1990 when the Low *et al* (1993, 398) book was researched.

However, it proved a formidable task to achieve a reasonably open dialogue with Singaporeans. While obstacles to collecting [unbiased] information on commercial and legal activities exist in all societies, in Singapore they are compounded by a high degree

of reluctance on the part of officials and private citizens to be open with strangers. This is due partly to cultural norms that stress information exchange within *existing* relationships (Hwang 1987), and partly to repressive internal security - the siege mentality (Harding 1998), which means that many people do not seem to feel free to exercise basic civil liberties. Many also seem to feel that giving *any* commercial information to strangers may be detrimental to the nation's (or their firm's) competitive advantage. This is probably underlined by the Statutory Bodies and Government Companies (Protection of Secrecy) Act, cap 319. Thus, instead of a random sample of interviewees, I was forced to build relationships with few trusting locals and foreigners who have firsthand knowledge of the workings of the statutory bodies and government-linked companies. Interviews were conducted in June and September 1998 and April 1999. The database of Singapore's primary statutes 1959-99 was established in the same period and revised in May 1999.

1.2.3 Approach and Outline of Chapters

According to Burg (1977, 492):

> A theory of law and development is one which seeks to describe the relationship(s) between law (however defined) and development (however defined) in the particular context of the so-called developing countries of the world.

Consequently, a study, which seeks to discover the role of law in the economic development of Singapore from 1959 to 1999, should be well served by a theory of law and development (LAD). However, as indicated at 1.3.2, there seems to be a lack of LAD theory, but an abundance of rhetoric and, in the 1980s and 1990s, renewed pressure on developing countries to effect legal and economic liberalisation. The 1980s' debt crisis in developing countries induced the introduction of World Bank and IMF structural adjustment programmes and other interventions, in which legal reform was an explicit precondition to assistance from the two Bretton Woods institutions. The stick and the carrot are used. On the one hand, developing countries are warned that there will be no foreign investment or World Bank loans without modern [western] law. On the other, they are promised that modern law inevitably will lead to economic development. This is akin to the current neo-liberal position in economics which argues that neo-classical economic principles (of the free market) are universally valid; as relevant to Europe or North America, as to Africa, Asia and South America (Tan & Jomo in Fitzgerald ed 1995, 18). I am concerned that such powerful machinery can be put into motion without

a firm theoretical basis, but that is the case with neo-liberalism, both of the legal and the economic type. For this reason I propose to spend some time getting to grips with the ideological basis of LAD and its link with the new legal liberalism.

Chapter 1 examines the genesis of LAD in the 1950s and 1960s spurred by American and UN euphoria in the post-World War 2 years. It analyses the early demise of LAD in America in the 1970s (Trubek & Galanter 1974, 1062; Merryman 1977, 457). It traces the movement's revival during the following decade (Flory 1987, 15) into the 1980s when LAD metamorphosed into the more expressive French phrase *le droit international du developpement*, where '*du*' means 'for' development (Slinn 1995, 265); climaxing in the 1990s when paternity was reclaimed for the UN (Paul 1995, 307; Slinn 1995). LAD seems to have come full circle, but with the resurgence of economic liberalism and the globalisation push, the agenda has changed. In 1994, Law & Society Review (vol 28, 189) noted that:

> [A] great deal of attention is being given to what members of [the US] Congress, ..., have termed 'strategic' research issues, including, in particular, the role of law in democratization and the development of free markets in developing countries.

I therefore examine the new free market focus and define the rule of law, since both are considered vital for economic development (Shihata 1991, 1995; Krugman 1998). **Chapter 1** ends by considering Trubek's model of ideal types of legal systems which is modified to serve as a tool for identifying and describing changes in Singapore's laws from 1959 to 1999 (see Appendix 1).

Chapter 2 accounts for the reception of English law into Singapore. Using the modified Trubek model I attempt to characterise the nature of Singapore's laws as they appeared in 1959.

Chapter 3 outlines salient features of the pre-1959 basis for Singapore's modern economic development. Just as there was a legal base from which modern legal development started, so too several socio-economic and political elements determined the platform for modern economic growth.

Chapter 4 outlines and analyses Singapore's economic development from 1959 to 1999. It identifies significant shifts in the economy, describing changes as development phases. This chapter paints with a broad brush and draws on accepted as well as disputed accounts of Singapore's economic development during the period.

Chapter 5 identifies and examines major substantive laws that might have affected economic development during the period. It attempts to plot a mechanical correlation between the economic growth phases identified in chapter 4 and the substantive laws discussed here. This completes Part 1, a macro-level analysis, whose overall purpose is to discover whether there was a link between law and economic growth in Singapore during the period.

Chapters 6 to 8 comprise Part 2 whose purpose is a micro-level analysis of the nature of the link between law and economic growth in Singapore. Part 2 focuses on three specific areas of economic law, one for each chapter, in which key LAD-informed hypotheses are tested. The areas of law selected represent laws that economists claim govern factors of production. **Chapter 6** examines labour and industrial relations laws. **Chapter 7** investigates land laws, and **chapter 8** analyses laws governing intellectual property rights. The overall purpose of this Part is to discover whether these laws converged or are converging with those of the West. If so, whether convergence is a function of economic development.

Finally, **chapter 9** draws conclusions about the nature of the relationship between law and economic development in Singapore, and pinpoints lessons that might be learned from Singapore's experience. It speculates on whether Singapore's experience is more relevant for late-industrialising nations than the experience of early industrialisers.

1.3 The Theoretical Framework: Law and Development

Singapore's economic development coincides almost exactly with the period when academic and professional interest in law and development (LAD) ideologies (1.3.2) became popular. The movement's growth is rooted in the post-World War 2 period when European nations, particularly Britain, France, Holland, Belgium, Portugal and Spain, sought to divest themselves of their colonies. Singapore was among the newly liberated nations that were deemed ready for modernisation. The West, it was thought, possessed 'the models and know-how for raising up these new members of the community of nations' (Burg 1977, 495).

1.3.1 The Movement's American Origin and Demise

In the 1950s and early 1960s, the USA, emboldened by the success of the Marshall plan in Europe, seemed ready to take on the rest of the world. The targets were obvi-

ous. Variously called developing countries, the south or the third world, as opposed to the industrialised nations, which were called developed, the north or the first world, the new sovereign nations were to be developed and modernised. For as President John F Kennedy said in his speech to the UN General Assembly on 25 September 1961, proposing that the 1960s be called the United Nations Development Decade: political sovereignty is simply derisive unless it is accompanied by *the means* of overcoming poverty, ignorance and disease.[11] Such means according to Kennedy's advisor, professor Galbraith (1979) were 'broadly speaking ... capital and, ... useful technical knowledge'. Put more specifically by former Supreme Court judge Douglas (1962, 909-910):

> These newly developing nations need our help - not only our money and machines and food, but also the great capital of knowledge accumulated by our professions. ... [T]he young nations need teachers from the West by the hundreds and thousands - law teachers, professors of government, research assistants. We must not miss out on this opportunity for service - for participation in the long creative period ahead of legal development in over half the world.

In the event 'help' took as many forms as Douglas had envisaged. It was funded mainly by the US Agency for International Development (USAID: Title IX of the Foreign Assistance Act 1966) and the Ford Foundation. These bodies and Kennedy's Peace Corps sponsored research at academic institutions as well as hands-on projects in the new nations (Burg 1977, 496 n 17).

There were four kinds of projects. First, export of legal education (Trubek & Galanter 1974, 1066; von Mehren 1965, 1180; Steiner 1971, 39). Secondly, export of concrete, goal-oriented development projects (Seidman 1972, 312). Here, law would assist in turning development goals into reality. Thirdly, projects that encouraged modernisation. Modernisation was not clearly defined. It could mean rooting out local elements that stood in the way of advancement (Murphy 1967, 54-60); or modernising state structures and revising the laws (David 1963) as was being done by the Law Commission in England; or modernising the outlook of the people (Allott 1963); or the natural 'progression' of the local legal system to one that aped modern law in America. The fourth kind of project was the export of legal aid programmes similar to those that were being developed in America and England (Abel 1985, 474-642).

---

[11] This period also marks the founding of Kennedy's Peace Corps. For an insightful history, see Fischer F (1998) *Making Them Like Us.*

Attempts were made to institutionalise law and development as a field of study in American universities. Many testified to its importance.[12] The International Legal Center (ILC) in New York was set up by the Ford Foundation in 1966 with a USD 3 million grant (Merryman 1977, 457 n4). Yale Law School established a program in Law and Modernization, and Stanford Law School a long-term study of the role of law in Latin American development, both of which were sponsored by USAID (Trubek & Galanter 1974, 1067 n14). The ILC was specific about its aims (Merryman 1977, 459 n6):

> Working with US, foreign, and international agencies, foundations, universities, and practicing (*sic*) lawyers and jurists, the center will stimulate and support systematic study of the role of law in international relations and the development of modern nations. The center will also be concerned with recruitment and training to expand the ranks of lawyers, social scientists and others qualified to work on problems of law and development; and with projects to help developing countries establish legal institutions essential to the functioning of modern, free societies.

American help, however, was far from altruistic. The new nations were emerging markets to be pruned and plied for the consumption of American goods and services, and the continued supply of cheap raw materials and valuable resources such as oil. Indeed one of the main theories that informed the movement (see 1.3.2) held that development meant accelerating the new nations through stages from primitive, static, subsistence societies to complex, industrialised ones; from traditional to modern ways of life; from widespread poverty to *widespread consumption.* The period marked the rivalry of the Cold War. The third world was to be won over, to prevent defection to the enemy. Indeed, the 'world outside of Europe was insignificant except as a battleground in the Cold War' (Fischer 1998, 10). American foreign policy focused on worldwide competition with the Soviets and the law and development movement became its humane face.

Apart from demonstrating pride and patriotism, the universities and the scholars themselves also had their own selfish agenda and motivations. As Trubek and Galanter point out (1974, 1068):

> ...the theme had something for everyone. The comparative lawyers saw in 'law and development' a way to break out of the rather sterile comparison of legal rules which had dominated comparative law studies. The social scientists and area specialists saw the theme as a way to relate their traditional disciplinary interests to broader social needs in Third World countries. The social theorists of law saw Third World nations engaged in massive use of law in social change. And the reformers sought a set of ideas that would both guide and justify their projects. Moreover, all saw the theme of law and development as one that would promise increased support for academic and action work, for it was hoped that scholarship would demonstrate to action agencies that legal research and reform would further their goals of fostering Third World development.

---

[12] See, for instance, Harvard Law School International Legal Studies Program, 1961 Report, 3.

However, as it turned out, the movement failed after just over a decade (Merryman 1977; Burg 1977). For in 1974, Trubek and Galanter, two of LAD's most fervent protagonists, famously proclaimed that law and development was in crisis, and declared themselves self-estranged. Among their concerns were that they had been too naive and insensitive in seeking to transplant American legal institutions to foreign cultures without studying those cultures (Trubek & Galanter 1974, 1080-82). Their criticisms focused on liberal legalism: the original paradigm of law and development (*id* 1070). However, as Tamanaha (1995, 473) points out and their own analysis illustrates (*id* 1078, where they list the core elements), liberal legalism is synonymous with the rule of law. In any event, their article is seen as an epitaph to the American movement (Burg 1977, Merryman 1977); while others claim that the crisis continued into the 1990s (Adelman & Paliwala 1993, 10).

If the movement was energised by the oxygen of aid agencies' funding, so too its death centred around funding. As Merryman documents (*id* 459 n7), after an internal review in 1971, the Ford Foundation believed that its own and the International Legal Center's law and development programme had been unsuccessful. This led it to withdraw from the field.

In other words, after only about 10 years' perseverance, when the developing countries failed to 'take-off' as the model had predicted they would, the entire programme was terminated. Both Ford and US-AID withdrew their funding, and the experiments and field of study collapsed.

Scholars like Merryman (1977, 483) concluded that law and development would do better under the rubric of comparative law and social change with American lawyers placing emphasis on inquiry rather than advice. Others suggested that scholars should work from the specific to the general, using a country-by-country approach to gather empirical data around less refined hypotheses, eventually providing the basis for a general theory of law and development.

Echoing Friedman (1969), Burg (*id*, 530) recommends 'greater emphasis on law as a culturally specific phenomenon in the context of tangible development problems'. Among the benefits, he finds that '[i]t might encourage us to examine societies radically different from our own which minimize the role of law... without regarding them as aberrations from established theories'. To judge by the condemnations levelled at Asian na-

tions in the wake of the 1997-99 economic setback, no such lessons were learnt and no such benefits accrued.

However, the 1970s crisis among American scholars did not filter through to legal practitioners in developing nations (Tamanaha 1995, 474; see also 1.3.4). They were obliged to get on with the practicalities of everyday life, albeit with fewer American dollars. In addition, French and English scholars, focusing on former colonies, and South American, African and Indian scholars and practitioners persevered. They participated in the later politicisation of law and development (see 1.3.3), though history shows that Asian nations like Japan, Singapore, Hong Kong, South Korea and Taiwan just got on with the job of modernisation, utilising the legal framework as they deemed necessary.

It is also worth recalling that the period during which American LAD movement flourished, then collapsed, coincided with the great civil rights movement in America, and the Vietnam War. Both events, especially the blacks' fight for civil justice left many academics, civil rights activists and anti-war protesters with a feeling that America was perhaps ill-equipped to preach the benefits of the rule of law when its own domestic affairs were in such disarray. The civil rights marches and anti-war sit-ins were televised around the world and greatly embarrassed the establishment. Noteworthy in this context is the fact that, having abandoned law and development, Trubek became a key actor in the critical legal studies (CLS) movement. Galanter became an influential socio-legal scholar.

The oil price shocks of the early 1970s probably also soured the development atmosphere. As the situation of many developing countries grew worse, relative to the West, relations between rich and poor nations deteriorated into the North-South confrontation which is still being played out in various international fora both in and out of the UN embrace (see 1.3.3).

In conclusion, the American movement failed or was abandoned for many reasons, including a lack of consensus among its protagonists about the core concepts (see 1.3.2), and a host of essentially parochial, domestic matters like the embarrassment of the civil rights movement. But perhaps the real reason for failure was the protagonists' naivety and impatience in thinking that, by transferring so-called correct policies and transplanting the rule of law, developing countries could achieve in ten years what it had taken the industrialised West a century or two to accomplish.

1.3.2 The Movement's Intellectual Base

Theories about development abound in western social and political thought from Greco-Roman times and beyond (Bock 1978; Bury 1928; Pollard 1968; Nisbet 1980). However in this study theory is subject to two limitations. First, theory is construed narrowly to mean concepts or assumptions used to produce results, rather than 'a set of hypotheses related by logical or mathematical arguments to explain and predict a wide variety of connected phenomena in general terms' (Collins English Dictionary 1994). For, as Higgott points out, there would seem to be no theory of development in the formal sense of hypotheses which have been verified in a systematic manner through empirical study (1989 reprint xii). Secondly, the theories I pursue here are concerned only with the post-World War 2 period.

1.3.2.1 Modernisation Theory

There is a consensus that the American concept of law and development grew out of the theory of political development which was itself informed by the modernisation theory (Tamanaha 1995, 471). Both are rooted in American euphoria of the immediate post-World War 2 period. There are two main influences at work. One was informed by Parsons' structural functionalism, the other by Rostow's five categories of development. According to Rostow (1960, 4) development progresses on a linear scale ranging from backwardness to capitalism's mass consumption:

> It is possible to identify all societies, in their economic dimensions, as lying within one of five categories: the traditional society, the preconditions for take-off, the take-off, the drive to maturity, the age of high mass-consumption.

Rostow thought that to progress, societies would inevitably have to move along this scale. Further, that this movement could be accelerated if planners and political leaders chose the right tools and social structures (all western), which would assist in the transition towards modernity.

Parsons' theory, simply put, held that development was an inevitable, evolutionary process of increasing societal differentiation that would ultimately result in economic, political and social institutions similar to those in the West. The outcome of this progression would be the creation of a free market system, democracy and the rule of law. Huntington (in Kabashima & White 1986, 96) identified four essential stages of development towards modernisation: One, *rationalization* (based on social theories in-

spired by Weber, Durkheim, Parsons) which involved a move from the particular to the universal, in order to achieve the functional differentiation of society. Two, *nation-building* or national integration. Three, *democratization*, which emphasised pluralism, competitiveness and accountability. Four *mobilization* or participation, which would be fostered by education and would result in involving a greater number of the population in the political arena.

These assumptions formed the basis for the emergence of the theory of development as modernisation. As summarised by Higgott (*id* 59):

> Modernisation theory... had as its central essence a belief in the inevitable development of the Third World... The well-known metaphor was of course that of developing countries sitting as aeroplanes at the end of a runway, about to take off into a process of self-sustained growth and fuelled by the diffusion of knowledge, capital, and culture from the developed world.

Law and development theorists adopted these assumptions and beliefs, hypothesising that one of the preconditions for Rostow's take-off was modern law. The core concept viewed law in two essentially conflicting ways: One, as a specific social process emerging from the overall process of development, i.e. as a necessary *outcome* of development itself. Two, it was a useful tool for *achieving* development (Trubek & Galanter 1974, 1073). It was thought that Weber's work on European development backed these claims (Trubek 1972, 15). Both aspects were to be studied and exported to developing countries. Earlier Galanter (1966, 154) had identified modern law as 'a cluster of features that characterize, ... the legal systems of the industrial societies of the last century.' The features listed in his model of modern law (154-156), emphasise unity, uniformity and universality (157); though he admitted that 'no actual legal system is really so unified, regular, and universalistic' (*id*) owing to discrepancies between law in books and law in action.

It is clear from the literature that modern law was viewed as an instrumental of change (see, for instance, Friedman 1969; Seidman 1966, 1972; Galanter 1966; David 1963). This was not an organised school of thought, but it was a prominent way of thinking, underpinned *inter alia* by Pound's theory of law as social engineering (1942, 6). The focus is on positive law: rules promulgated by the state, with lawyers playing the roles of formulators and advisors. Thus Proehl and Richardson (1970, 221) could talk about the post-independent African phenomenon and:

> the felt need of the new governments to use law-as-legislation as the obvious tool of social engineering to meet the pressing problems of nationhood presented by independence and to reach development goals....

Seidman's model of law and development (1972, 1996) is based on what he calls three 'jural postulates' or value acceptances among which he requires developing countries to choose. The postulates are status, contract and plan, representing three bodies of law: customary, received (i.e. English) and public regulatory. Ideally, a country should choose public regulatory laws because only these can drive rapid development. Customary laws (status) are ill-suited as they obviously had not yet led to development; while contract (received) laws are capable of bringing about only incremental changes. Thus although ideal, received laws were too slow for the kind of development which law and development practitioners like Seidman had in mind.

It is clear from the foregoing that, although aspirational and speculative, LAD built on theories of modernisation in which law was seen mainly as an instrument of change, in the mould of Bentham, Mill and the utilitarians. In this model, law was Austinian law-as-legislation, i.e., positive sanction-backed rules derived from the state and distinguishable from norms derived from religion or ethics. Despite its inherent flaws, this model continues to exert influence in development circles, even though all formal links are denied. It also clearly informs the model adopted in modern Singapore.

1.3.2.2 Dependency Theory

As is well known, a crisis of confidence arose among modernisation theorists in the 1970s when most states failed to taxi to the runway, let alone get airborne, as predicted.

The dependency or radical development theory emerged. There is a lack of consensus about its origin. Some claim it has Marxist roots (Foster-Carter 1973), others that it grew out of Latin America's dissatisfaction with the ignorance and insensitivity shown by the Economic Commission for Latin America (ECLA) during the first UN Development Decade (Prebisch 1963; Frank 1969, 1975, 1981). The truth is probably more nuanced, as Higgott argues (1989 reprint, 45).

In any event, by the mid-1970s, dependency theory had taken over the chair vacated, at least in part, by modernisation theory. Where the latter blamed factors internal to the developing countries (cultural backwardness) for their failure to take-off, dependency theory saw the source of underdevelopment as the history of exploitation and the structure of the global capitalist system. Frank (1969) and others such as Santos (1973) argued that while developing countries might have been *un*developed before western

penetration, they became *under*developed after incorporation into the global capitalist system. David Greenberg (1980) outlines the theory eloquently in his article 'Law and Development in Light of the Dependency Theory'.

Simply put, the theory held that global capitalism is structured (historically and currently) around a western core and a developing periphery, in which the wealth of the core is based upon keeping the periphery in a state of permanent dependency and under-development (see Snyder 1980). The *dependentistas* argued that, in its modern guise, dependency was effected via the international division of labour. They questioned the inevitability of the move from backwardness to modernity under such division of labour.

Dependency theorists also criticised modernisation theorists for defining development in purely economic terms, for failing to acknowledge *under*-development and its causes, for not emphasising class conflicts, and for unsound reasoning. In its most extreme form, the theory precluded the industrialisation of peripheral economies within the global capitalist system (Adelman & Paliwala 1993, 5). However, even at this phase (late 1970s), the experience of Singapore and the other tigers (Taiwan, Hong Kong and South Korea) was sufficient to refute this aspect of the theory; though few scholars paid attention. In the case of Singapore, as discussed in chapters 5 and 6, the state intervened extensively and gained a high degree of control over its labour and other markets. It was not totally subservient to the free sway of international market forces as the theory requires.

In reality, by this date, Singapore had become a newly industrialised country and its model of export-oriented industrialisation (EOI) began to influence others. Many developing countries adopted EOI strategies. This involved state-guided development, often accompanied by an authoritarian form of intervention. However, the new EOI strategies were not always successful. Corruption, inefficiency and mismanagement characterised many projects. This left the field open for critics especially those fuelling Reganomics and Thatcherism (Friedman, Jeffrey Sachs, Keith Josephs). Failure, critics claimed, was proof that state-centred development lacked efficacy. What was needed was the withdrawal of the state from the economy and an opening up of the economy to free global markets. They argued that the rule of law was essential for orderly free markets. This recipe, which also informed the strategy of the UN agencies in the 1980s and 1990s, is examined at 1.3.3.

1.3.3 The Movement's United Nations' Mandate

There is ample evidence to show that the idea of law and development is firmly rooted in the United Nations Charter, which was signed on 26 June 1945. For instance, the Charter's preamble lays the foundation for the imposition of obligations on the United Nations as an organisation and on its member states, acting jointly and severally, to commit to the use of international machinery for the promotion of economic and social advancement for all people. A significant part of the machinery was the Bretton Woods institutions of the World Bank and the International Monetary Fund (IMF). My focus is on the World Bank (see note 2).

The Charter is also specific about the purpose and nature of development. For instance, Article 13(1) requires the General Assembly to promote international co-operation in economic, social, cultural, educational, and health fields, ... human rights and fundamental freedoms for all. Article 55 reiterates this and includes the promotion of higher standards of living and full employment.

By the late 1940s and 1950s, the UN was attempting to fulfil its mandate by conducting surveys and co-ordinating technical assistance projects designed to encourage economic growth in the new nations. One of the World Bank's early studies was conducted in 1955 in Malaya and Singapore. It recommended formation of the Malaysian Federation. Subsequent reports (Lyle 1959, UN 1961) affirmed the 1955 study claiming that a federal market was crucial for Singapore's modernisation.

Following Kennedy's proposal, the UN named the 1960s its Development Decade (UN Resolution 1710, 1961, 17-19). The emphasis was on 'catch-up' policies. But it was unclear whether the UN thought that one decade was sufficient for the developing countries to catch-up with the developed. This, after all, was the period when America's goal was to put a man on the moon, and return him safely to earth, before the end of the decade. The Resolution was silent as to how growth would be achieved or shared between the three sectors of agriculture, industry and services. It was also silent about how to share the proceeds of growth fairly among the peoples of the new nations. However, the UN conducted numerous individual country studies, many of which resulted in detailed proposals or recommendations.

In Singapore, the most influential report, and the one whose recommendations were adopted, resulted from the 1960-61 UN Mission led by Dutch economist Dr Albert

Winsemius (UN 1961). This report, entitled *A Proposed Industrialisation Programme for the State of Singapore* (13 June 1961), remains unpublished.

It is not unreasonable to conclude that the ideas, which informed the UN policies are rooted in modernisation theory, which, as discussed above at 1.3.2, also informed the law and development movement (see Shihata 1995, 127). However, in the mouth of the UN, the paradigm must of necessity be termed international.

Quite when the concepts of international law and development started to appear in concert is uncertain. In his 1962 article, The Changing Dimensions of International Law, Professor W Friedmann seems to invent the phrase *law of international economic development* (1153). He claimed that '... the increase in the influence and articulateness of the underprivileged nations accompanies the evolution of a largely new and vastly important branch of international law...' (*id* 1152-53). He delineates it as a body of law that '... must concern itself not only with the minimum principles adequate for the legal protection of foreign investment, but also with the principles for protecting national control of natural resources...' (1164). Also to be included were 'the structures, policies and methods of international financing, as represented by the increasing number of public international organizations devoted to the long-term financing of economic development' (1165). The emphasis was on law in the context of inter-state trade and commerce. Although it recognised certain *needs* of new nations, Friedmann's new species of law was essentially a *neutral* somewhat traditional concept.

However, in 1965 Professor Virally presented the idea of international law *for* development in his article *Vers un Droit International du Developpement*. The expression, as Flory points out, '...is not neutral in content, since it implies purposiveness and even a result' (Snyder & Slinn 1987, 11). Indeed Virally claimed that a re-reading or re-interpretation of the entire body of international law was needed to redress developmental imbalance. His proposal inspired the French school of international jurists. However, Virally's idea did not make its mark on Anglo-American jurists until the 1970s when western/UN lawyers were obliged to respond to the dependency theorists (see 1.3.2.2), who had attacked the UN, when the new nations (save for Singapore and the other tigers) had failed to take off. Developing countries embraced the idea of re-reading international law. This and the dependency theory gave new impetus to discourse in the UN assembly.

The UN was an obvious target for dependency theorists' criticism. During the 1970s the theory bred a consolidated attack on the UN. It fuelled the developing coun-

tries' call for a New International Economic Order (NIEO) and an insistence on what Keba Mbaye described as the human right to development.[13]

In 1971 the UN Secretary General prepared a survey of international law (2 *YB Intl Law Comm* 1-215). Its findings stressed the expanding role of law, concluding *inter alia* that law was no longer concerned only with protecting the independence of states, but had a duty to co-operate in the promotion of national and human welfare (*id*, 35).

Subsequently, the General Assembly adopted a series of Resolutions which, taken together, form a code of principles which *de facto* invented the NIEO in 1974 based on equity, sovereign equality, interdependence, common interest and co-operation among all States (Brownlie 1989, 2).

However it soon became clear that because of political deadlock the NIEO's aims would not be fulfilled. During the 1980s, a polarity developed in the UN assembly. It was characterised by a divergence of expectations and different aspirations of rich and poor nations. For instance, the poor nations' insistence on a right to development resulted in the 1986 General Resolution with its appended Declaration on the Right to Development. Here the right was described as an inalienable human right (article 1). However, the USA voted against; and the 8 abstentions included Japan, Germany and the UK. Thus what could have been a political triumph, served to fuel the atmosphere of antagonism. The 1990s too were marked by polarity. The UN Decade of International Law was sponsored mainly by poor countries (UNGA Resolutions 44/23 of 17/11/1989 and 45/40 of 10/1/1991); while the fourth UN Decade of Development (45/199 of 21/12/ 1990) was sponsored mainly by rich nations. They paid lip service to the idealistic intentions of the 1960s development agenda.

Nevertheless there was a positive note in the 1990s, as law and development gained acceptance as international law *of* development (ILD) within the UN regime (Paul 1995). The French School is still a step ahead with international law *for* development but the concept seems set for UN incorporation under yet another re-reading of the latter's remit. Or so it would seem, to judge by Slinn's restatement of the paradigm (1995, 265 footnote omitted):

> ... we are dealing not with a neutral, value-free rule system but with a purposive, dynamic, teleological process ... embodying, in Flory's words, 'the principles, rules and institutions for the promotion of harmonious development of international society'. Thus international development

[13] A discussion of NIEO is outside the scope of this study, but see, e.g., Brownlie 1989; Pellet in Snyder & Slinn 1987, 117-136; Bedjaoui in *id* 87-116; Rich in Carty 1992, 223-64 and Donnelly in *id* 169-205.

> law is not only concerned with economic matters.... The concept has outlived the ideology of the NIEO and now embraces *issues of sustainability* - what may now be described as the *international law of sustainable development* (my italics).

It could be argued that herein lies part of the problem: fragmentation of objectives. For law and development has changed its goals. It no longer concerns itself with economic development as in the 1960s and 70s. The agenda now embraces issues of sustainability, good governance, democratisation, the environment and human rights (see Ginther *et al* 1995). As Sands points out (in Lang 1995, 53):

> Historically, these three subjects [economic development, the environment and human rights] have for the most part followed independent paths, and it is only with the advent of the concept of sustainable development, ... that they will increasingly be treated in an integrated and interdependent manner.

That might be so, but it is difficult to reconcile this idea of integration with reality when each of the three concepts has been the subject of individual 1990s UN Conferences. For instance, following the sustainability conference, the Rio Earth Summit of 1992, which dealt with the Environment and Development (Lang 1995), Human Rights were tackled in Vienna (1993), Population and Development in Cairo (1994), and Social Development in Copenhagen (1995). The Environment was revisited in Kyoto (1997). The rhetoric and the separate conferences suggest parallel rather than integrated tracks of development; and significantly, no 1990s conference addressed Law and Development.

In a report on the agenda for the UN 1995 World Summit on Social Development (the Copenhagen conference), the Secretary General's analysis reiterated that (UN Doc A/Conf 166/PC/6 (1994), 172):

> It is particularly through the development of legal instruments that the world community of nations attempts to provide for the basic conditions for social process.

It seems feasible then that legal instruments permeate the entire spectrum. Law could well be regarded as the integrating glue. Even so, current practice does not stand up to careful scrutiny. A startling example is the drafts of the OECD's MAI (Multinational Agreement on Investment) proposal, which would limit the right of nations to enforce environment laws that seek to *integrate* environmental and economic policy. The MAI drafts largely ignore UNCED's call for just such integration (Werksman 1997). Under the proposal, multinational companies (usually from rich nations) would be able to sue *governments* for imposing environmental laws that discriminate against them directly or indirectly. For instance, they could sue a developing country for enacting a law which grants domestic companies priority access to scarce natural resources, or a law which

imposes higher standards on foreign multinationals operating in environmentally sensitive areas. Dispute settlement under MAI would be compulsory and binding, and would be open to state-state as well as investor-state disputants. Significantly, the MAI also ignores the skeletal general exceptions that allow WTO members to shield environment regulations from trade rules. It is exactly in such areas that the ILD could show its new commitment to integration and interdependence with the purpose of promoting sustainable development, as postulated by Sands (in Lang 1995, 53).[14]

The World Bank, which is no longer under the control of the UN General Assembly, and thus perhaps not as democratic as it ought to be[15], allows its lawyers to address what it calls governance issues in borrowing countries. The Bank is constrained by its Articles of Agreement from considering *political* criteria in its lending policy. However, determined to safeguard efficient use of its funds, general counsel Shihata drafted a memorandum that claims to distinguish governance from politics, identifying governance as a legitimate consideration in the award of its loans (Shihata 1991, 53-96). Here Shihata generally equates good governance with good order. He also calls it the rule of law which he defines as 'a system based on abstract *rules* which are actually applied and on functioning *institutions* which ensure the appropriate application of such rules' (*id.*).

Clearly in the 1990s, the World Bank is captivated by the rule of law and the *role* of law just as it was in its infancy in the 1950s and '60s. However according to Upham (1994, 233-4) this infatuation:

> is shared by, *inter alia*, the United Nations Development Project (UNDP), the Inter-American Development Bank, the Asia Foundation, the Ford Foundation, and the United States Agency for International Development (USAID), which is picking up where it left off in the 1970s at the end of the last law and development movement and sending American law professors far and wide to instruct countries emerging from communism and dictatorship in the construction of effective legal systems.

I hasten to add that aid institutions of the European Union are similarly infatuated. Witness, for instance, the Lome IV Convention 1995, where, after 20 years' existence, article 5(1) was revised to incorporate '... good governance... democratic principles and the rule of law' as 'essential element[s] of this Convention' (*The Courier* 1996, 155, 11).

---

[14] The MAI proposals were withdrawn in 1998. For reasons for MAI's defeat, see Leader: A Case of Mai culpa, *Financial Times*, 20 October 1998; Retreat Over OECD Pact on Investment, *id*, 21 October 1998; Council of Canadians' website at http://www.canadians.org with links.

[15] The World Bank and the IMF have claimed autonomy from UN General Assembly control. For a commentary on the consequences of this, see Childers & Urquhart (1991.

Thus during the 1990s, the 1960s' concepts of law and development have become institutionalised in the instruments of the international agencies. But, whereas the 1960s' agenda focused on over-coming poverty, ignorance and disease in individual new nations using law as one of its tools, the new agenda seems to focus on globalisation and processes for creating free markets, not all of which are for the benefit of developing countries.

True to form, the Singapore government seems to have remained focused on its own pragmatic developmental goals. Thus, at the methodological level, the 1960s LAD model is eminently well-suited as a starting point for a study of the role of law in Singapore's economic development. Further, the rhetoric of the model in its 1990s' guise as advocated by *inter alia* the World Bank, the IMF and the EU leaves us in no doubt that the rule of law is at the core of the LAD model. The next section therefore briefly examines the rule of law in the context of LAD.

1.4 The Rule of Law in Law and Development

There is no single, consensual definition of the rule of law. Some scholars view it as a bundle of ideals rather than a specific or necessary set of institutional arrangements (Tamanaha 1995, 476), some claim that the ideals are connected more by family resemblance than by a unifying conceptual structure (Solum in Shapiro 1994, 121). This section analyses key concepts of the rule of law, and examines their link with LAD.

Basically, there seems to be three strands of interpretation. First, there is the traditional ideal, which dictates that government must be by settled, standing Laws, not by Absolute Arbitrary Power (Locke 1690). Herein lies a multiplicity of interwoven ideas. For example, there is the idea that laws should be positive, i.e, they should be adopted and actually endorsed in formal fashion by the state. Then there is the idea of the individual's *right* to protection *against* the state; and the judge's *duty* not to dispense justice on some ad hoc, case-by-case basis but on the basis of the law. This goal or aspiration is expressed in the well-worn phrase: rule of law, not of men. It is this strand of the rule of law, which dictates the idea of the separation of powers: To prevent legislative and executive tyranny (against the individual), a constitution is required to place limitations on these state bodies. Those limitations are to be enforced by an independent judiciary. The

issue then becomes how to limit the enormous powers of the judiciary.[16] This strand of the rule of law has been called the *legal accountability* aspect of law (Altman 1990, 23-24). It seems that this aspect also embraces what World Bank rhetoric calls the governance aspect of the rule of law. Of particular relevance in this context, the Bank prescribes the curbing of state intervention in economic development (1993, 1995). As this study argues, this aspect of the rule of law has not been fully utilised in the Singapore model of law and development (see chapters 5, 6, 7).

The second strand of the rule of law concerns what might be called *social order*. Put differently by Professor Raz (1979, 213), not only should people be ruled by law and obey it; the law should be capable of providing effective guidance. Effective guidance implies that people should know the law *in advance* so they should not be held civilly or criminally liable, based on rules of which they could not, through normal means, have been aware. Laws should therefore be clear, stable and prospective. Further, the making of laws should be guided by transparent, general rules. The machinery for enforcing the law should be fair, neutral and open, and the crime-preventing agencies should not be allowed to pervert the law (Raz 1979, 214-218). This can be called the *procedural aspect* of the rule of law. It obviously overlaps with the first strand but whereas the former is mainly concerned with protecting the rights of the *individual against the state*, this second strand focuses on justice *among citizens* by insisting on known workable rules that are applied openly and complied with objectively. It is noteworthy that Singapore seems to have complied with this aspect of the rule of law, as opposed to, e.g. Malaysia, which abused it, most recently during the 1998-99 arrest and trial of Deputy Prime Minister Anwar.

Thirdly, there is the notion of the rule of law as a vehicle or *infrastructure* for protecting property rights. The ideals here concern the stability the law confers on contractual transactions and the predictability it supposedly gives to how property rights and, for instance, management and labour relations are treated. Director of Research at the Carnegie Endowment for International Peace, T Carothers, puts it this way (1998, 97):

> Basic elements of a modern market economy such as property rights and contracts are founded on the law and require competent third-party enforcement. Without the rule of law, major economic institutions such as corporations, banks, and labor unions would not function, and the government's many involvements in the economy.... would be unfair, inefficient, and opaque.

---

[16] A debate is outside the scope of this study, but see, eg, Hart 1958, 1961, Fuller 1958, Scalini 1989.

Carothers overstates his case. He provides no evidence that the named institutions would not function without the rule of law. Nevertheless the notion overlaps with the second strand, and is considered crucial for creating an environment that is conducive to economic development. According to the World Bank's legal counsel (Shihata 1991, 89):

> [T]he transformation of economies from command to market systems cannot in particular be successfully achieved in the absence of workable, comprehensive legal infrastructures.

Shihata too seems to overstate his case. He seems to ignore the transformation which the People's Republic of China has achieved in the decades following 1978. In two decades, China transformed its economy from a command to a socialist market economy, though one would be hard-pressed to argue that China has *comprehensive* legal infrastructures in the World Bank sense of the phrase.

To my mind, it is important to view all three strands of the rule of law as elements of one bundle of ideals as discussed above. The strands should not be seen as alternative ways of thinking about the rule of law (as suggested by Ohnesorge 1998, 7). Rather they are parts of the bundle of ideals that comprise the rule of law. Furthermore, these elements are largely aspirational, that is, they are goals to be achieved. It is also feasible to envisage that a country might live up to certain aspirations at different phases of its development. It is trite to point out that even in countries that regard themselves as cradles of the rule of law, aspects of the system are suspended when the nation is at war. It is plausible that a similar suspension comes into play when emerging nations are suffering the instability of rapid growth and modernisation.

It could thus be argued that it is unwise to assume that the fulfilment of *all* the elements of the liberal legal paradigm is a prerequisite for a functional rule of law system. It is quite possible that there are many variations of the rule of law, each with particular emphasis on one or more of the strands identified. It is also possible that various rule of law systems are operating around the world today (Tamanaha 1995, 476). Further, as the bundle of ideals is aspirational, it could be that different countries are at different stages of seeking to achieve these goals. Indeed, various nations may well have adapted variants of the aspirations to suit their developmental goals. For as Tamanaha suggests (*id*):

> A minimalist account of the rule of law would require only that the government abide by the rules promulgated by the political authority and treat its citizens with basic human dignity, and that there be access to a fair and neutral ... decision maker or judiciary to hear claims or resolve disputes. These basic elements are compatible with many socio-cultural arrangements and,..., they have much to offer to developing countries.

Indeed. I have aimed to keep an open mind as I pursued my investigation of the role of law in Singapore's economic development. According to Shihata (1991, 85) the rule of law provides the general social discipline that enables economic development. No one could claim that Singapore lacks general social discipline, and that the nation has achieved a high degree of economic development is indisputable. But what role did the rule of law play in these achievements, and do Singapore's laws converge with the West's notion of modern law? To help answer these questions I adapt Trubek's model of three ideal types of legal systems as an analytical tool. In the next section Trubek's model is discussed and modified to form just two ideal types.

1.5 Ideal Types of Legal Systems

In his seminal 1972 article, Toward a Social Theory of Law: An Essay on the Study of Law and Development, Trubek posits a broader perspective to analyse the relationship between law and the economy in developing countries. His main thesis is that since all nations now aspire to increase their level of economic well-being through industrialisation, we should accept that there are many roads to such development. Further, we should recognise that the road chosen by a nation will significantly affect the structure and function of the nation's legal system (Trubek 1972, 62). He then discusses three types of economic structures, defined by their relationship with the state. Much of Trubek's model is based on Weber's work (*id* 49-54). The main axis lies in the *pure market* contra the *command* economy. In-between these two is the *mixed market* economy.

The main characteristics of each type of economic structure are well known. In the *pure market system*, there is separation between the state and the economy. Through the wishes of consumers or customers, the market decides questions of production, distribution and allocation. The state provides only those services which the market is theoretically unable or unwilling to supply: defence, education, law enforcement, and so on. In the *command economy*, on the other hand, the state and the economy merge. The state's bureaucrats, not consumers, are the ultimate arbiters of economic activities. They allocate resources. Consumers do form a market but this is used mainly as a measuring rod of desirable state action or an instrument of economic policy. In the *mixed market economy*, the idea of market-driven decision-making is mediated by various degrees of state guidance, as seen, for instance, in some Asian countries.

Before examining the kinds of law that are associated with each of the three economic structures it is necessary to update Trubek's typology, to make allowance for observations over the past two decades. For instance, many scholars have emphasised the activist role of the state in East Asian models of economic development, even though they were never categorised as command economies. And with the demise of Russia and China's conversion to a socialist market economy, the term command economy might now be irrelevant. World Bank staff member, Parvez Hasan (1976, 29) points out that:

> In Korea the government's role is considerably more direct than that of merely setting the board rules of the game and in influencing the economy indirectly through market forces. In fact, *the government seems to be a participant and often the determining influence in nearly all business decisions* (my italics).

Similarly, Mason *et al* (1980, 254) conclude that:

> The rapid economic growth that began in South Korea in the early 1960s and has accelerated since then has been a government-directed development in which the principal engine has been private enterprise. The relationship between a government committed to a central direction of economic development and a highly dynamic private sector ... presents a set of interconnections [which is] difficult to penetrate and describe. ... The hand of government reaches down rather far into the activities of individual firms with its manipulation of incentives and disincentives. At the same time, the situation can in no sense be described in terms of a command economy.

Others have made similar claims for Japan (Johnson 1982, 1983), Korea (Amsden 1989), Taiwan (Wade 1990) and Singapore (Lim 1983, Low 1998). The World Bank's 1993 study of the East Asian Miracle also acknowledged the activist roles of those states in their economic development. In 1982 Johnson called his descriptive model the capitalist developmental state. Although accepted by some (e.g. White 1988), others such as Wade (1990, 26) claimed that the theory is too descriptive rather than analytic. Wade posits his own theory of the governed market which builds on both the idea of the developmental state and on the older development economics understanding of the nature of the development problem (*id*). I apply Wade's theory in chapter 4 in an analysis of Singapore's economic growth patterns. (See also 3.8.2).

As Wade suggests, Johnson's model of the developmental state can be recast to account for concepts developed elsewhere in political science for comparing political regimes. The relevant pairs are democratic versus authoritarian, and pluralist versus corporatist. The first pair refers to how rulers are chosen, the second to relations between interest groups and the state. In democratic regimes, rulers are chosen by a process that allows political participation in which popular preferences are expressed. In authoritarian

regimes there is little scope for expressing popular choice. Wade (1990, 27) explains the second pair of distinction thus (references omitted):

> In pluralist regimes, interest groups are voluntary associations, free to organize and gain influence over state policy corresponding to their economic or political resources. The process of government consists of the competition between interest groups, with government bureaucracies playing an important but not generally dominant role. In corporatist systems the state charters or creates a small number of interest groups, giving them a monopoly of representation of occupational interests in return for which it claims the right to monitor them in order to discourage expression of 'narrow' conflictful demands. The state is therefore able to shape the demands that are made upon it, and hence - in intention - maximize compliance and cooperation.

In this model, the USA is the best example of *democratic pluralism*, with Thatcher's and Blair's UK as an excellent runner-up[17]. Sweden, Denmark, Switzerland and Austria probably illustrate *democratic corporatism*, while Singapore is an example of *authoritarian corporatism*. South Korea, Taiwan and Japan illustrate corporatism combined with processes for selecting rulers that are in-between true democracy and authoritarianism, or what Johnson calls soft authoritarian. In East Asia, corporatist and authoritarian regimes formed the basis for Wade's governed markets, which, to my mind, is a useful extension of Trubek's mixed market economy system.

In Trubek's model, law in a pure (or free) market system is characterised as a voluntary, rights-based system; while law in a pure command system is involuntary and directive-based. In a mixed economy, law is regulatory. I suggest that law in Wade's governed markets is also regulatory. It is akin to law in Trubek's mixed economy, which he characterises as (*id* 30-31):

> a hybrid of the universal rules of pure market and specific directives of pure command: It is more specific than the general rules that establish contract, tort and property rights; yet more general than the specific directives of the command economy.
>
> Thus, in distinguishing regulatory from all economically relevant law, we must stress two dimensions. The first is explicitness of intent... The second ... is the specificity of the provisions enacted...

Trubek was careful to point out that the theoretical distinction between market and command and their related legal phenomena are ideal types used to analyse empirical reality rather than depict it. Some characteristics of one will be found in the other; the distinctions are not rigid. This remains so. In using the model, we are looking for indications of shifts in broad trends.

---

[17] It is worth remembering that during the 1960s and early 1970s, in Harold Wilson's UK, the country would have provided an excellent example of democratic corporatism. See Yergin & Stanislaw (1998), chapters 1 and 4.

With the passage of time, the exercise seems to have been rendered easier. Writing in 1972, Trubek notes that even in capitalist countries, the pure market structure of competitive, *laissez-faire* capitalism has been replaced by economies wherein large, often oligopolistic industries predominate, and government regulation of industry is the rule and not the exception (*id* note 78). However, that scenario described the post-WW2 ascendancy of social democracy in some West European states. In Britain it was exemplified by corporatism - the triangular co-ordination of economic policy by government, employers and trade unions - under, e.g., the Atlee and Wilson governments. But that scenario ended in the 1980s, notably in Thatcher's UK and Reagan's USA, when the resurgence of economic liberalism began to undermine the earlier Keynesian-Beveridgean (and Marxist) economic ideologies which favoured state intervention to achieve social and economic objectives. In the UK it started with the urgent need in 1980 for capital to invest in the telecommunications industry. It resulted in privatisation of British Telecom in 1982 which was so successful that the idea of privatisation of major utilities featured for the first time in the 1983 Tory election manifesto (Gray 1998, 27). With neo-liberalism came a major shift in the UK's ideology of the role of the state and the dominance of the free market (see Yergin & Stanislaw 1998). Gray relates it thus (*id* 28):

> According to the Thatcherite understanding of the role of the state, its task was to supply a framework of rules and regulations within which the free market - including, crucially, the labour market - would be self-regulating. In this vision the role of trade unions as intermediary institutions standing between workers and the market had to be altered and weakened. Employment law was reshaped.

Thus the resurgence of free market ideology in Anglo-American cultures in the 1980s put an end to British [Labour] corporatism. The end of the Cold War and disintegration of the socialist bloc in the Soviet Union and Eastern Europe at the end of the 1980s signalled the failure of communism, and the triumph of the free market ideology, except perhaps in China. But even in China the virtues of market forces have been co-opted to form the socialist market economy. Thus whereas it is now difficult to find a command economy, market economies excel, as do mixed or state-governed market economies. The issue now is whether the free market ideology is set to conquer the ideology of the mixed or state-governed market economies.

I have discussed the ascendancy of neo-liberalism and the free market, the Asian state-governed market economy, the demise of communism and the command economy, and China's move towards greater reliance on market forces because to my mind these

trends confirm the need for a reconceptualisation of Trubek's model. He was right to note that several roads can lead to rapid economic growth. However, the roads must be categorised to account for the Asian experience of the state-governed market (Wade 1990), which is not the same as a command economy. When that adjustment is made, it becomes clear that the ideal types of legal systems required to account for the experiences of law in developing countries must also be modified. The modification I propose is to adapt Regulatory laws so that they account for the kind of law which is a driving force behind the governed markets of (soft) authoritarian corporatist states. Such laws also coincide with what Pistor & Wellons (1999) call state-allocative laws. I shall call these laws 'westernistic'. Westernistic or state-allocative laws can be juxtaposed to the notion of modern western law [the rule of law], which purportedly enables free markets. A *version* of western law often appears as a stage along the road to economic development in governed market economies like Singapore. It often operates as part of Westernistic Law or state-allocative laws, which are situational, and whose primary role is to mediate the impact of the laws which might be necessary to facilitate direct foreign investment and those necessary to secure the state's legitimacy in the eyes of the people. The latter are also laws that ensure social justice and a more equal distribution of wealth.

The modification of Trubek's model (Appendix 1) is inspired by Wade (1990), Yasuda (1998) and Oakeshott (1975). No doubt other models could be employed, as others have identified the interaction between socio-cultural, political and economic forms, and the types of legal principles with which they operate. Examples include the work of Unger (1976), Ghai (1986), Kamenka & Tay (1980), Nonnet & Selznick (1978), and Miller (1976). The list is not exhaustive. As I am concerned only with using a typology to identify and examine legal change, a review of the merits of typologies is outside the scope of this study.

1.6 Conclusion

Much has been written in recent years about the miracle of Singapore's rapid economic growth. However most studies have been conducted in the main-stream Anglo-American social science framework of the 1980s and 1990s which focuses on economic development in terms of neo-classical or rational choice theories. Their view is generally strongly supportive of free-market ideology, minimum state intervention and the intrinsic value of transplanting western liberal-democratic institutions to all countries. Singapore is

either exalted as an exemplar par excellence, or dismissed as a minnow that is too special to be of general significance. The few studies, which have departed from these moulds have examined special aspects of Singapore's social or political economy, specific areas of law or the role of multinational companies in Singapore's economic development.

This study seeks to fill a gap by investigating the role of law in Singapore's economic development from 1959 to 1999. It draws on ideas of the 1960s law and development (LAD) movement, which were revived in the 1980s and 1990s, portraying the rule of law as one of the western liberal-democratic institutions whose transplant is deemed essential for modernisation and economic growth. The World Bank and the IMF are prominent among LAD revisionists. Modern LAD ideology is fortified by the ever-increasing power of the owners and managers of global financial capital and intellectual property assets (knowledge). It posits that only one set of rules should apply to all participants in the global economy; furthermore that those rules should confirm a minimalist role for the state. The core ideology holds that the rule of law is essential for economic development and that the laws of developing nations will converge and become like those of the industrialised west as a function of modernisation. Moreover, LAD protagonists assert that the role of the state in the economy is to provide a minimal framework for private economic activity, leaving the rest to the market [the invisible hand].

However, in the case of Singapore (and East Asian developmental states), the state played a major activist role. It is my thesis that law also played a crucial role and the nature of the law was shaped by the nature of the state's ideology. Part 1 of the study conducts a macro-level analysis of Singapore's laws from 1959 to 1999 to ascertain whether there is a correlation between the laws and the significant phases of development in the economy during the period. Part 2 moves to a micro-level analysis of three areas of law in an attempt to test the *nature* of the link between law and economic development in Singapore. Using a modified model of ideal types of legal systems I try to identify the nature of the laws that operated in Singapore during the various phases.

My conclusion is that, starting from its English common law heritage, Singapore developed a species of law that is more situational, pragmatic, regulatory and holistic in nature than the laws imported from England, Australia and elsewhere. Moreover, depending on the government's strategic intent at particular phases of development, laws became more state-allocative rather than market-allocative in nature, reflecting the state's intervention to promote economic growth and effect a more equitable sharing of wealth.

Thus, far from converging with laws from the West, many Singapore laws have diverged and developed a content and style of their own in response to local, socio-cultural, political and economic imperatives. In short, Singapore laws are westernistic[18], in crucial areas such as labour and land, they have diverged into a more situational, pragmatic and regulatory kind of law than LAD predictions require in order to validate their theory.

However, evidence of convergence can be found in the new species of global laws, which are the result of supranational bodies such as the World Trade Organisation compelling compliance with minimum standards in all countries that seek to participate in world trade.[19] But, of course, such imposed convergence still does not satisfy LAD predictions which purport an inevitable 'natural' progression.

---

[18] The term probably derives from Buzan & Segal (1998). It is used here to mean laws and legal cultures that have the *appearance* of western laws and legal cultures that embrace mixed market economies so as to make foreign investors [from the West] feel comfortable about their investments.

[19] See chapter 8 on Intellectual Property Rights and the WTO, which demands compliance under the TRIPs (Trade-Related aspects of Intellectual Property Rights) Agreement.

PART ONE
MACRO-LEVEL ANALYSIS

To establish whether there was a positive correlation between law and economic development in Singapore from 1959 to 1999. And whether changes in the law *caused* economic development or whether economic development *caused* changes in the law.

CHAPTER 2 THE LEGAL BASIS: ENGLISH LAW

The life of the law has not been logic, it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development ... In order to know what it is, we must know what it has been, and what it tends to become. We must alternately consult history and existing theories of legislation.... The substance of the law at any given time pretty nearly corresponds, ... with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past.

Oliver Wendell Holmes Jr. in Posner, ed. (1992) *The Essential Holmes - Selection of the Letters, Speeches, Judicial Opinions & Other Writings of Oliver Wendell Holmes Jr.*, University of Chicago Press, 237.

2.1 Introduction

It has been said that when Raffles landed at Singapore on 28 January 1819 only a handful of Malay fisherfolk resided there (Napier 1898, 9).[1] But it is difficult to assert this with confidence since another report describes a society of about 2,000 engaged in tin-mining (Greenberg 1951, 97). One thing is clear: the local Malay ruler *permitted* the British party to establish a trading post on the island on behalf of the East India Company.[2] And by treaty in 1824 with the Sultan of Johore the British *ceded* the island, thus gaining permanent possession. By then Singapore had been transformed: its population had climbed to about 11,000; some 60% of these were Malays and 31% Chinese. Indians and various European adventurers comprised the remainder.

The lives and transactions of the indigenous Malay people were undoubtedly ordered by their own rules and customs, as is the way in any society. However, as was common practice in 19th century colonial acquisitions, and following Austinian concepts of law, English colonists rarely regarded local rules and customs as 'laws', especially if they were unwritten.

Thus, notwithstanding the presence of a Malay society, the history of law in Singapore starts with the arrival of the English. This chapter presents a brief outline of the transplantation of English law to Singapore. Its purpose is twofold. First, to examine the extent to which English law became applicable in Singapore. Secondly, to determine the nature of the legal platform that existed in Singapore in 1959 and from which the new nation's legal system developed. But first a brief summary of Singapore's political and administrative history is apt, for this skeleton supported the flesh of the law.

2.2 Political and Administrative Platform[3]

Singapore's political history, like its geography, is linked inextricably with that of the Malay Peninsula. In 1786 the British East India Company, in competition with Dutch adventurers, succeeded in acquiring the island of Penang from the Sultan of Kedah. This became the strategic port of call on the Straits of Malacca, which supported the British India-China trade. In 1795 the British occupied Malacca, then a Dutch colony, but returned it to the Dutch in 1818 under the Vienna Treaty, as part of a political

---

[1] For an eloquent history, see Turnbull (1977). See also Chew (1991).

[2] Historians debate whether it was Raffles or John Crawfurd, Resident of Singapore, who secured the island for the British. For this study, it is sufficient that *British* links were established.

settlement in Europe. Having lost Malacca, the English were eager to gain another port in the region, for they realised the strategic importance to British trade of a commanding position in the Straits. This led to the establishment of a trading post in Singapore in 1819 in agreement with the local *Temenggong* (an official representing the Johore Sultanate). The 1824 ceding of the island gave the British full sovereignty in perpetuity.

From 1819 to 1823 Singapore was administered from Bencoolen. Under the Anglo-Dutch Treaty of 1824, Malacca was ceded to the British, with the result that the administration of both colonies was placed under the British Bengal Presidency. However, in 1826, Singapore, Malacca and Penang were placed under a separate Straits Settlements Presidency (Act of Parliament: 6 Geo IV c 85). In 1830 the metropolitan power rescinded the separate government status and again placed the Straits Settlements under the Bengal Presidency, with Singapore as the trio's administrative centre. Increasing dissatisfaction with marginalisation by the Indian administration led to the transfer, in 1867, of the government of the Straits Settlements to Crown Colony status under the direct control of the Colonial Office in London. This status remained intact until 1946, when the Straits Settlements were disbanded, retaining only the highly profitable and politically convenient Singapore as a separate Crown Colony. The Japanese occupation of Malaya and Singapore, from 1942-45, set an indelible mark on the region. It fired the post-war campaign for self-government, which Singapore achieved in 1959. When its 1963 merger into the Malaysian Federation failed to live up to political and economic expectations, Singapore seceded and declared itself an independent Republic in 1965.[4]

2.3 The Colonial Englishman's Burden

An English adventurer travelling in foreign lands during the 19th century was deemed to transport with him, as his birthright, *all* the laws of England. Consequently, as stated by Sir William Blackstone (1 *Commentaries* 107) and applied by the House of Lords in *Cooper v Stuart* (1889) 14 AC 286:

> ... if an uninhabited country be discovered and planted by English subjects, all the English laws then in being, which are the birthright of every English subject are immediately there in force.

During the colonial period this was a known common law rule. While Singapore was placed under the Bengal Presidency, a Privy Council decision extended and clarified the

---

[3] This section is based on information in Turnbull (1977, 2nd ed. 1989) and Chew (1991).

[4] For a spirited account of the demerger, see Lee Kuan Yew (1998).

rule. In *AG of Bengal v Ranee Surnomoye Dossee* (1863) 15 ER 811 at 824, Lord Kingsdown held:

> Where Englishmen establish themselves in an uninhabited or barbarous country, they carry with them not only the laws, but the sovereignty of their own State, and those who live amongst them and become members of their community become also partakers of, and subject to the same laws.

On the other hand, where English adventurers acquired land by cession or conquest, because they found civilised inhabitants in occupation, they were subject to local laws, unless and until such laws were altered by the English Parliament or the local legislature enacted locally applicable laws (s2 of 2 P. & Will 75).

In determining the extent to which English law became applicable in Singapore two issues are considered: First, whether Singapore was open to automatic reception because Raffles had settled an 'uninhabited and barbarous' country. Secondly, whether Singapore was subject to express enactment because the island had been ceded.

2.3.1 Was Singapore 'uninhabited or barbarous'? Does it Matter?

This study can add nothing new to the debate about whether Singapore received its law under the cession or settlement rule[5], which remains undecided.[6] However, it is interesting to note that Australia was considered settled because English adventurers decided to ignore its population of Aborigines, or deem them barbarous. Except in the few instances where evidence of millennia-old civilisations such as those of China or India, superior to the adventurers' own, stared them irrefutably in the face, English adventurers appear to have denied the existence and relevance of most indigenous peoples and their laws. This interpretation is also consistent with their treatment of peoples and civilisations in various African and Caribbean countries. Thus, it matters not whether Singapore was in fact inhabited upon Raffles' arrival. For it seems unlikely that English adventurers would have regarded any inhabitants of Singapore sufficiently civilised to preclude operation of the settlement rule.

Perhaps a more fruitful line of discussion is to assert that Raffles himself left evidence of a negotiated agreement dated 30 January 1819 followed by a Treaty of 7 February 1819, suggesting that Singapore was ceded, not planted. Other evidence in-

---

[5] For a discussion, see Bartholomew in Harding, ed (1985) 3-30; Rutter (1989) 96-111.

[6] Braddell was first to conclude that whether English law was received under the settlement doctrine was never finally determined: Braddell (1921) vol 1, 160-161.

cludes Raffles' attempts to incorporate English law into the February Treaty, and his Memorandum of 1823, in which he tried to introduce law into Singapore. These could refute the claim that English law was received automatically upon his arrival in 1819.

However, during the period from 1819 to 1823, administration of Singapore was under the Bencoolen Presidency. Logically, it could be thought that English law as it stood at January 1819 would begin to apply, and jurisdiction would be under the Bencoolen Court. But as intimated above, an analysis here can add nothing new to the debate. The second issue, reception by express enactment, is considered below.

2.3.2 Express Enactment from England

If Singapore were ceded by Treaty, the application of English law on the island would have to be based on express enactment from England. The first such enactment was the so-called Second Charter of Justice of 1826. Until then, the *lex loci* would continue to apply, although it is feasible to expect that colonisers and their entourage complied with English law or an approximation of it, combined with personal or customary laws of, for instance, the Indian soldiers and ship's crew who accompanied the English. The various regulations, which Raffles promulgated in 1819 and 1823, would appear to have lacked authoritative backing, so that their status as English law is dubious.

Upon the request of the East India Company, in 1807 the Crown delivered a document, which granted that certain institutions should be created in Penang. The document, called Letters Patent, stipulated a basic framework or Charter for creating a court system based on English courts. The 1807 Letters Patent was called the First Charter of Justice. It was granted to Penang 20-odd years after its British acquisition.

In 1826, following a similar petition from the Company, another Letters Patent was granted to the Straits Settlements and their dependencies. This was called the Second Charter of Justice. It expressly repealed the parts of the First Charter which had conferred jurisdiction on the Penang Court of Judicature, and now embraced Penang, Singapore, Malacca and other territories. In 1855, a Third Charter of Justice was granted which split the jurisdiction into two: one for Singapore and Malacca, the other for Penang.

When the administration of the Straits Settlements was removed from India, a Letters Patent of 1867 established the Legislative Council of the Straits Settlement, which was empowered to legislate for the peace, order and good government of the col-

ony. Ordinance V of 1868 made provisions for a local Supreme Court of the Straits Settlements abolishing the old Court of Judicature and with it the right of Resident Councillors to sit as judges. It repealed the 1855 Charter (the court system) but retained the substantive law, which was considered received under the 1826 Charter.

None of the Letters Patent expressly *introduced* English law to Singapore. Letters Patent allowed for the *creation of Courts* and prescribed their jurisdiction and powers. However the courts regarded the 1826 Charter as having formally introduced English law to Singapore. Perhaps the most important decision is that of Penang's Recorder, Sir Benson Maxwell, in *R v Willans*, (1858) 3 Kyshe Reports 16. In *Willans*, Maxwell R had to decide two preliminary issues: First, whether any part of the Statute law of England was in force in Penang; if so, whether the particular Act was applicable in Singapore. He held *inter alia*:

> ... the Charter does not declare *totidem verbis* that the [law of England] shall be the territorial law of the Island; but all its leading provisions manifestly require that justice shall be administered according to it, and it alone.
> I think it [is] plain that English law was intended to be applied in Civil cases. The Charter directs that the Court shall, in those cases "give and pass judgment and sentence according to Justice and Right". The "justice and right" intended, are clearly not those abstract notions respecting that vague thing called natural equity, or the law of nature, which the Judge or even the Sovereign may have formed, in his own mind, but the justice and right of which the Sovereign is the source or dispenser. The words are obviously used in the same sense as in the Magna Carta from which they were probably borrowed.... They are, in jurisprudence, mere synonyms for law; or at least only measureable by it; and a direction in an English Charter to decide according to justice and right, without expressly stating by what body of known law they shall be dispensed and so to decide in a Country which has not already an established body of law, is plainly a direction to decide according to the law of England.

In other words, Maxwell R was confident that the interpretation of the Charter's justice and right provision meant that English law was applicable to civil cases in Singapore.[7] A line of decisions reiterates this conclusion, including important Privy Council precedents and decisions in the English as well as the Straits Court of Appeal. However, scholars like Gopal[8] argue that judges may have read more into the 1826 Charter than its language properly allows. This study can add nothing useful to that debate. Instead, it submits that the weight of evidence of legal practice in Singapore for nearly 180 years renders this debate redundant. Then, like now, administrative convenience is a powerful motivating force for lawyers and decision-makers. It was simply easier for English-educated barristers and judges to receive and apply English laws.

---

[7] The Charter makes specific provisions for criminal and ecclesiastical cases.

[8] See Gopal M, [1983]. *Cf.* Phang A [1986].

2.4 Singapore's Colonial Legal Legacy

The reception of English law was not unrestricted but was subject to exemptions and modifications regarding suitability and applicability of the law.

Thus, in clarifying the notion of automatic reception, Blackstone noted (*id*):

> Such colonists carry with them *only so much* of English law as is applicable to the condition of an infant colony... The artificial requirements and distinctions incident to the property of a great and commercial people ... are neither necessary nor convenient for them, and therefore are not in force... (My italics.)

The issue, of course, was to decide *how much* of English law was applicable to the condition of a particular infant colony. For as Lord Cranworth 'sighed' in *Whicker v Hume* (1858) 7 HLC 125; 11 ER 50:

> Nothing is more difficult than to know which of our laws is to be regarded as imported into our colonies.... Who is to decide whether they are adapted or not? That is a very difficult question.

2.4.1 The Concepts of Suitability and Modification

The 1826 Charter provides that the Court's jurisdiction in civil and criminal actions should apply only 'as far as circumstances will admit' (21). Similarly, ecclesiastical jurisdiction is to be exercised only 'so far as the several Religions, Manners and Customs of the Inhabitants of the said Settlement and Plan will admit' (21). Criminal jurisdiction is to be exercised 'as nearly as the condition and circumstances of the Place and the Persons will admit of... due attention being had to the several Religions, Manners and Usages of the nature of inhabitants' (42-43).

In *Willans* (1858) 3 Ky 16, Maxwell R said that the issue of how much of the English statute law, which was in existence in 1826 was actually brought into force in the Colony was a matter of construction. Thus, construing the 1826 Charter, he said its effect is to make (at 37-38):

> ... the English Criminal Law in force 'as far as the condition and the circumstances of the place and the persons admit', the civil law, 'as far as circumstances admit', and that branch which is administered in England by the Spiritual Courts, 'as far as the religions, manners and customs of the inhabitants admit. In other words, it makes just so much of the law of England our lex loci as, according to Blackstone, is imported into a Colony newly founded by English settlers, viz. 'as much as is applicable to the situation and condition' of the Settlement. (Reference omitted).

In his construction of the Charter, Maxwell R found two exceptions (at 39): one, English law is not considered imported if its object or means is peculiarly local to England; two, English law is not applicable in the Colony if its application would cause injustice or inconvenience to local people.

In *Yeap Cheah Neo v Ong Cheng Neo* (1875) LR 6 PC 381, the Privy Council considered the suitability issue and stated that (394):

> .. it has been held that statutes relating to matters and exigencies peculiar to the local condition of England, and which are not adapted to the circumstances of a particular colony, do not become a part of its law, although the general law of England may be introduced into it.

However, in the same case, their Lordships were of the opinion that the distinctive and special English rule against perpetuities was imported into the Straits Settlements. Their Lordships agreed that (*id*):

> ...whilst the English statutes relating to superstitious uses and to mortmain ought not to be imported into the law of the colony, the rule against perpetuities was to be considered part of it. *This rule*, which certainly has been recognised as existing in the law of England independently of any statute, *is founded upon considerations of public policy*, which seem to be as applicable to the condition of such a place as Penang as to England: *viz*, to prevent the mischief of making property inalienable, unless for objects which are in some way useful or beneficial to the community. (My italics).

In other words, it would seem that while *statutes* relating to matters peculiar to the local condition of England do not become part of the colony's law, rules which exist in the law of England independently of any statute were to be considered part of it. Thus judge-made law[9] would become part of the colony's law, even when it was declared as a matter of public policy in England, and therefore likely to pertain to local English conditions. On the other hand, English statutes were not received in Singapore if they were considered peculiar to England in their objects or machinery.

Another line of cases, including the Privy Council decision in *Khoo Hooi Leong v Khoo Chong Yeok* [1930] AC 346, held that there would be no reception of a statute or common law rule, which would cause injustice or inconvenience to the people, when applied to local personal, religious or social issues. Finally, it was held that statutes legislated in the colony superseded imported English statutes and common law rules; presumably because home-grown statutes would be more suited to local conditions.[10]

However, despite the good intentions, it is doubtful whether the concepts of modification and suitability resulted in anything more than lip service. This is particularly evident in early property and contract cases. For instance, in *Choa Choon Neoh v Spottiswoode*, (1869) 1 Ky 216, Maxwell CJ held that the rule against perpetuities (tying up property for future generations) was applicable in the case of a Singapore Chi-

---

[9] For a discussion of the reception of the common law, see 2.4.2 *infra*.

[10] Locally legislated statutes were subject to the Colonial Laws Validity Act 1865.

nese gentleman who was prevented from establishing a fund for the memories of his deceased wives.[11] This decision was contrary to Chinese custom of ancestor worship and respect for the deceased. As mentioned above, the Privy Council in *Ong Cheng Neo* (1875) confirmed the reception of the perpetuities rule, even though the rule is founded upon considerations of public policy, which they held to be as applicable to the condition of Penang as to England. The latter opinion was left unreasoned. More surprisingly, it was held in the Penang Court, that English law governed the issue of the validity of wills, and 'it is the fault of native holders of property if any inconvenience results from such a decision': per Hackett J in *Fatimah v Logan* (1871) 1 Ky 255 at 262.

In other words, a brief review of the cases shows a marked reluctance on the part of local courts (manned by English barristers) to make modifications to English law to suit local conditions. They were also unable to rule English law unsuitable, despite the several religions, manners and customs of the inhabitants. On the contrary, there are cases in which English law takes precedence over matters governable by religious laws. For instance, in *Mong v Daing Mokkah* (1935) 4 MLJ 147, the Singapore court allowed an action for damages for breach of promise of marriage between Muslims. And in an earlier case, *In the Goods of Abdulla* (1835), it was held that a Muslim could give away all his property by [English] will, contrary to Muslim law.

However, the experience in Singapore might not have been unique. In an examination of the common law's impact on native custom throughout the British Empire, Green (1970, 56) concluded that:

> ... it is clear that while the introduction of the common law into native societies has undoubtedly led to some modification of local native customs which were not acceptable to western Christian society, and has resulted in the expansion of the scope of the rule of law as understood in such society, it remains true that too often *the judges* called upon to apply the one or the other or an admixture of the two *have tended to disregard local conditions or susceptibilities, and have frequently stretched English concepts as if their task lay in creating replicas of the English legal system wherever English-trained judges held sway.* (My italics).

It is therefore not implausible that other interests, including the economic agenda of colonialism, played a far greater role than the alleged 'concern' of English law to ensure the best of both worlds for indigenous peoples. In the infamous *Six Widows' Case* (1908) 12 SSLR 120, the issue was compounded when the court applied

---

[11] However, in 1918 the Singapore Court in *Syed Ali v Syed Omar Alsagoff* (1918) 15 SSLR 103 held that the English feudal rules against perpetuities did not apply in Singapore, presaging the separate development of Singapore land law.

neither English marriage law nor Chinese customary law, but the court's perception of the formal law pertaining in China at the time – and got it wrong.

2.4.2 The Cut-off Date: Statutes and the Common Law

The cut-off date refers to the notion that the law which was considered received was the law *as it stood* on the date the Charter was granted. The notion is based on a principle of statutory interpretation, which holds that English statutes are applicable only in England *unless* the statute expressly or by necessary implication provides otherwise. Thus, where the English Parliament has provided otherwise (usually by an Imperial Act), then the relevant statute will be applicable even though it is passed after the cut-off date of reception: *Ismail bin Savoosah* (1887).

For the sake of clarity, it is worth summarising what could be considered imported at the cut-off date:

- English statutes in force up to the date of the 1826 Charter
- Common law and equity up to the same 1826 date.

Under the doctrine of *stare decisis*:

- Common law after 1826 (House of Lords or Privy Council);

And, under the declaratory theory or by voluntary adoption of local courts:

- Common law after 1826.

The consensus seems to be that as a general rule, the reception of English *statutes* (except Imperial Acts) was a *cut-off reception*, while the reception of *case law* was a *continuing reception*, based either on the declaratory theory or the willingness of local courts and the legal profession to adopt and observe common law precedents.[12]

Two points should be noted about the continuing reception of the common law. One, under the principle of *stare decisis* the local courts would only be bound to apply decisions of the House of Lords until Singapore's colonial status ended: *Robins v National Trust Co Ltd* [1927] AC 515. Thereafter they would only be bound to apply decisions of the Privy Council for as long as the government of independent Singapore permitted, or as long as the local courts and the legal profession acquiesced.

Two, the declaratory theory, which has Blackstonian roots, holds that the common law has existed from time immemorial and is merely discovered and *declared* by judges from time to time. From this point of view, the reception in Singapore of the common law is an *on-going process* rather than an *historic event* like legislative recep-

---

[12] See, for instance, Bartholomew in Harding ed (1985).

tion. The decisions of English courts become applicable irrespective of whether they were made before or after the cut-off date, since each decision is merely declaring what the law is. This argument could apply as a double-edged sword: As Singapore judges become well versed in the common law, arguably, they too could discover and declare the law, without having to wait for English declarations.[13]

A better explanation of the reception of English common law after the cut-off date appears to be that the local courts and the profession *have chosen* to adopt and apply common law rules as being 'suitable' to local conditions.[14] For instance, as late as in 1984, Lai Kew Chai J in *Singapore Finance Ltd v Lim Kah Ngam (S'pore) Pte Ltd* [1984] 2 MLJ 202, held that an English common law rule, declared in 1843 'is received into and is part of the law of Singapore'.[15]

2.4.3 Continuing Legislative Reception

At a stroke, the 1878 Civil Law Ordinance allowed the reception of a substantial body of English statutes into Singapore on a continuing basis, despite the cut-off reception of statutes discussed above.[16] The operative section was s6, later s5 of the Civil Law Act (cap 43). The sections have been the subject of intense debate among scholars and practitioners alike. Indeed section 5 amendments seem to have generated more problems than the original section.[17] Now the 1993 Application of English Law Act (cap 7A, 1994 ed.) provides the definitive solution (see 2.5 *infra*). However, a few salient points of historical interest can be raised.

Primarily, section 5 provided for the continuous reception of what we today would call English commercial law. It was not subject to the cut-off date. Section 5 specifically provided *inter alia* that[18]:

---

[13] But see Phang (1990) who argues that the Singapore judiciary has slavishly followed English case law and failed to innovate, despite rich opportunities.

[14] This is based on Bartholomew's view in Harding A ed (1985) 3-30 at 15-30.

[15] For a discussion of how voluntary reception of common law rules might be 'stultifying' the development of an autochthonous legal system, see Phang A (1990), chapters 2 and 3.

[16] The phrase 'continuing basis' should be understood in the sense that even as English law changes, under this provision, it continues to be applicable in Singapore. This contrasts with the importation of law under the Second Charter, which had a cut-off date for reception of English law *as it stood* in 1826. See 2.4.2 *supra*.

[17] See, for instance, Soon Choo Hock and Phang A (1985); Hickling R (1979).

[18] Quoted from the 1979 amended version: Civil Law (Amendment No 2) Act, 1979 (24 of 1979). The 1979 amendments are italicised. See Hickling (1979).

> 5(1) *Subject to the provisions of this section*, in all questions or issues which arise or which have to be decided in Singapore with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by air, land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law *with respect to those matters* to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any law having force in Singapore.

By listing the areas to which the law should apply, drafters of the section might have hoped for clarity. However, by adding *and with respect to mercantile law generally*, the section was rendered ambiguous. In 1979 when *with respect to those matters*, was added, confusion reigned. Despite the fact that during the debate of the second reading of the 1979 amendments, the Minister of Home Affairs stated, *inter alia* (PD vol 39, col 445-448):

> The main purpose of this Bill is to amend section 5 ... so as to clarify the scope of application of the section and to eliminate certain unintended and undesirable effects and doubts arising from the existing provision. ... In spite of a number of judicial decisions, including two Privy Council cases, there is considerable uncertainty as to the precise scope of application of the section. ... even the two Privy Council cases were incompatible with each other.[19] Because of the uncertainty ... it has become difficult at times to say whether a particular piece of English legislation is or is not applicable to Singapore.
> While this might [not] have been of such great consequence in the past, it is increasingly becoming a serious problem, especially after the entry of Britain into the European Economic Community in 1973. There is and will be an increasing tendency as a result of such to harmonise English commercial law with European Common Market law.... Some of the legislative changes in the UK may not be quite appropriate to the needs and circumstances of Singapore, but under section 5, as it stands, we may find ourselves automatically bound by these legislative changes...

The Minister summarised the proposed amendments, concluding that he hoped the amended section would prove very useful 'for lawyers and businessmen'. But as discussed above, neither lawyers nor legal scholars (and probably no businessmen) found the s5 amendments very useful. Arguably the only part which, for the purposes of this study was useful is s5(2)(a) which confirms unequivocally an original part of s6 of the 1878 Ordinance:

> Nothing in this section shall be taken to introduce into Singapore any part of the law of England relating to the tenure or conveyance or assurance of, or succession to, any immovable property, or any estate right or interest therein; ....

In other words, there is no reception of English *statute law* relating to real property in Singapore. The consequences of this prohibition are examined in chapter 7 *infra*.

---

[19] The Privy Council cases are: *SST Sockalingam Chettiar v Shaik Sahied bin Abdullah Bajerai* (1933) SSLR 101; and *Seng Djit Hin* (1923) AC 444.

Apart from the s5 reception of English commercial law, other English statutes were imported, often for *ad hoc* reference. This is because specific words in individual Acts often directed the courts to refer to various English statutes. Imperial Acts also applied directly either by express words or by necessary implication.

The continued reception of Imperial Acts was based on the interpretation placed on various continuity provisions as Singapore passed through its various political administrative phases. No fewer than *eleven* different bodies have exercised law-making powers over Singapore during its 170-odd years of modern history. With this rich tapestry, it is difficult to say with certainty which statutes have survived the several changes of administration. For instance, the Wills Act, cap 352, originated under the Indian administration when the Government of India Act 1858 provided for the continuation in force of all Acts and Provisions (Rutter 1989, 227). Naturally many have been repealed, but several were extended in various situations (for instance, during the Malaysia merger) and may not have been repealed. Bartholomew's introduction to the *Tables of the Written Laws of the Republic of Singapore* (1970, l-liv) gives an explanation of the continuation of existing laws. However, even the official *Statutes of the Republic of Singapore*, prepared by the Law Revision Commission by virtue of the Revised Edition of the Laws Act (cap 275) lists in Part V only two Imperial Acts[20] and a note explaining that '[T]his Part does not include all the Imperial Legislation in force.'

The result can be surprising for modern lawyers and their clients. For instance in 1985, Thean J in *Butterworth & Co (Publishers) Ltd & Ors v Ng Sui Nam* [1985] 1 MLJ 196 at 199, observed that:

> On August 31, 1958 the United Kingdom Parliament passed the State of Singapore Act, 1958 and pursuant to that Act the Singapore (Constitution) Order in Council 1958 (SI No 1956 of 1958) was made which came into force on June 3, 1959.... By that Act Singapore was called the State of Singapore and the Constitution Order gave to the newly named State of Singapore internal self-government, reserving to the United Kingdom the responsibility of defence and external affairs. *This Act and the Constitution Order did not have any effect on the copyright protection conferred by the 1911 Act* (read with Paragraph 41), and the State of Singapore, though having an internal self-government was still a British colony. (My italics.)

Thus the English Copyright Act 1911 survived Singapore's changed political relationship with the UK. For although Singapore was responsible for its internal affairs from 3 June 1959 and became a Republic from 9 August 1965, its judiciary was obliged to ac-

---

[20] The Acts are the Territorial Waters Jurisdiction Act 1878 and the Straits Settlements and Johore Territorial Waters (Agreement) Act 1928.

cept that works first published in the United Kingdom continued to enjoy copyright protection in Singapore under the 1911 Act. This was so because s13(1) of the 1965 Republic of Singapore Independence Act, preserved the existing law:

> ... with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Act and with the independent status of Singapore upon separation from Malaysia.

It was held that nothing in the 1911 Copyright Act was repugnant to Singapore's Constitution. And although it might no longer be apt to refer to Singapore as one of His Majesty's dominions to which the 1911 Act applied, the phrase could be construed as a geographical reference, in line with the decision in *State of Madras v Menon* (1954) AIR SC 517. Thean J's decision was affirmed in the Court of Appeal: (1987) 2 MLJ 5.

2.5 Continuing Reception Discontinued

The Application of English Law Act (cap 7A) came into force on 12 November 1993. It removed all uncertainty as to which English commercial laws apply in Singapore. The Act's First Schedule lists the 13 English statutes, which shall apply in Singapore from this date.[21] The Act provides that no other English enactment will be part of the law of Singapore except by *express* words in another written law of Singapore.

Thus the continuing reception of English statues, whether by s5 or Imperial Acts, was discontinued conditionally - or at least put on a more predictable basis. As far as the common law is concerned, s3 of the 1993 Act stipulates:

> (1) The common law of England (including the principles and rules of equity), so far as it was part of the law of Singapore immediately before the commencement of this Act, shall continue to be part of the law of Singapore.
>
> (2) The common law shall continue to be in force in Singapore, as provided in subsection (1), so far as it is applicable to the circumstances of Singapore and its inhabitants and subject to such modifications as those circumstances may require.

Subsection (2) introduces Singapore's modern version of the suitability and modification concepts. These appear to be similar to the clauses expressed in English statutes and countless judgements (see 2.4.1 *supra*). This might be an area in which the *nature* of the law of independent Singapore does not differ substantially from that of its colo-

---

[21] The 13 English statutes have been given individual chapter numbers and incorporated in the *Revised Edition of the Statutes of the Republic of Singapore*. They are published as Revised Editions 1994. See Phang A (1994).

nial past. However, further research is necessary to discover the extent to which the *application* of seemingly similar legal provisions may vary.

Arguably, the pervading influence of English law in Singapore (and other ex-colonies) goes beyond the simple function of transplant of English law. Elias (1962, 285-6) sees six ways in which laws 'migrate' from the English to other jurisdictions:

> (1) English law is the common source from which local legislation springs
>
> (2) British trained lawyers and judges supplied through the Colonial Legal Service forged the mould for local practice
> (3) Lawyers practising in the (ex-)colonies are called first to the English, Scottish or Irish Bar
> (4) The influence of the Privy Council as the final instance of appeal
> (5) The borrowing of laws from other British colonies or ex-colonies
> (6) The introduction of the laws of one area under British rule into another (eg the application of the Indian Penal Code and the Evidence Act into the Straits Settlements).

To these could legitimately be added the on-going impact of legal education, textbooks, law journals, academic research and so on. To the extent that these remain essentially anglicised (or Anglo-American), their effect on the development of a truly indigenous legal system might be stultifying.

2.6 Cutting the Umbilical Cord

In 1989, several provisions were enacted whereby appeals to the Privy Council (PC) from the Singapore Court of Appeal were severely curtailed.[22] In effect, rights of appeal to the Privy Council were restricted to criminal cases where the decision of the Singapore Court of Appeal was not unanimous. Further, in civil cases, only cases in which the parties to an action had a prior agreement could be appealed to the Privy Council. Between 1989 and 1993 no criminal appeals, and only two civil appeals, were made to the Privy Council.

In 1994 the Judicial Committee Act (cap 148) was repealed. It abolished *all* rights of appeal to the Privy Council. Singapore's own Court of Appeal is now the final instance of appeal.[23] When the Bill was tabled on 17 January 1994 the Law Minister Prof Jayakumar stated that the time had come to cut the umbilical cord.

Now that the Privy Council no longer heads Singapore's hierarchy of courts, the Singapore judiciary is free to take bold steps towards building its own jurisprudence. However, the Singapore Court and the government might continue to consider decisions

---

[22] See the Internal Security (Amendment) Act 1989 (cap 143) and the Judicial Committee (Amendment) Act (cap 148). The latter was repealed in 1994, see below.

of Courts of final appeal in common law jurisdictions like England, Australia, Canada, and even America, especially in cases involving intellectual property, banking and financial services and the Internet. These areas increasingly call for global standards and global solutions.

Thus, the umbilical cord might have been cut, but the other ties that bind might prove even more difficult to sever. Indeed they might be tightened, given the encroaching 'globalism' and the supra-national institutions' power to enforce minimum standards of legal protection, e.g. for intellectual property rights (see chapter 8).

2.7 Conclusion: Has Singapore Crossed the Rubicon?

This chapter analysed the transplant of English law to Singapore in order to discover the extent and nature of its reception and application in the Colony. The goal was to gain an understanding of the *nature* of the legal platform from which Singapore took-off in 1959. This would form the necessary background for identifying possible changes in the nature of the law during the next decades as the PAP government attempted to implement its developmental strategy.

The chapter analysed the historical reception of both statutes and case law. Reception occurred, first, [controversial] upon Raffles' initial 'planting' in 1819; secondly, under the 1826 Second Charter of Justice; thirdly, on a continuing referral basis under s5 of the Civil Law Act; fourthly, by express words in local Acts; fifthly, on a continuing basis under unrepealed Imperial Acts. In addition certain Indian and Malaysian Acts were received at relevant periods.

A startling discovery is that despite gaining internal self-rule in 1959, legally, the State of Singapore was a state in name only. Its legislative autonomy was partial; it was still subject to intervention from the metropolis. Indeed even after the merger with Malaysia and the subsequent formal severance of British political ties by virtue of the [English] Malaysia Act 1963 and the [Malaysian] Malaysia Act 1963, Singapore remained within the colonial embrace of English laws. This is because, as Thean J neatly summarised it in his *Butterworth* judgment [1985] 1 MLJ 196 at 200: 'Both the Malaysia Acts contained necessary provisions preserving existing laws.' Even after Singapore left the Malaysian Federation and declared itself an independent Republic, s13(1) of the

---

[23] See Practice Statement (Judicial Precedent) (1994) 2 SLR 689.

1965 Republic of Singapore Independence Act provided for the continuation of existing laws.

Thus all that can reasonably be said about the legal platform at 1959 or even at 1965, when the country was purportedly a sovereign state, is that the reception and practice of English law were institutionalised. In other words, English law had become an integral part of Singapore society. But it is also apt to note that what had taken root in Singapore was not necessarily what had been uprooted in England. For as Lord Diplock observed (*obiter*) in *Cassell & Co Ltd v Broome* [1972] 1 All ER 801 at 871:

> The common law would not have survived in any of those countries which have adopted it, if it did not reflect the changing norms of the particular society of which it is the basic legal system. It has survived because the common law subsumes a power in judges to adapt its rules to the changing needs of contemporary society - to discard those which have outlived their usefulness, to develop new rules to meet new situations.

Arguably, what had taken root in Singapore was an instrumental version of English law designed primarily to enable the smooth running of a colonial economic regime. It has been said that the common law is rooted in respect for the dignity of the individual, and her entitlement to life, liberty and property. In Lord Ellenborough J's opinion in *R v Cobbett* (1804) 29 State Tr 1 at 49: 'The law of England is a law of liberty.' However, this law was removed from its natural habitat, and harnessed for a specific colonial purpose in which its *original agenda* of freedom and liberty had been compromised.

Despite this, the *nature* of the law, as it stood in Singapore at the time of independence was undoubtedly rooted in the law of England. It was undeniably western rights-based law, which had retained its individualistic character and its commitment to protect property and life. Its stress on economic gain was supported by colonial *laissez faire* attitudes, which served to commoditise individuals and relationships among them. These characteristics clearly equate with market-allocative, western law as described in Table 1 (see 1.5 *infra*). Moreover, legislation gradually diminished the field of operation of case law as the legislature (in Singapore and less so in England) increasingly took advantage of the doctrine of legislative supremacy. As will be seen in chapters 4 to 8 on the substantive law, this development is particularly evident in modern Singapore.

Those factors appear to have set the scene for the development of a new species of law in which respect for the dignity and liberty of the individual was undermined and easily made subservient to concerns for society as a whole. It must be remembered that in 1959 the population of Singapore was predominantly Chinese, and that, as discussed

in chapter 4, by 1965 the PAP government had wedded itself to the notion of nation-building and economic development. Arguably, these factors made it easier for the PAP leaders to foster the growth of a communitarian ideology, founded on pragmatism and a local siege mentality, from which the new species of law would gain support.

In 1985 Bartholomew (in Harding ed 1985, 28) claimed that Singapore's legal system 'has crossed the Rubicon and now stands alone, master of its own fate and captain of its soul.' His claim was premature. Or maybe it was 20 years too late. To my mind, Singapore's legal system crossed the Rubicon when the PAP leadership committed itself irrevocably to a developmental, nation-building course of action (by 1965), and opted for pragmatic state intervention as the way of orchestrating the desired results. From then on, law became synonymous with mature PAP policy. Law was to be fashioned in the image of the new society's developmental ideology and aspirations. As these were materially different from the English colonial legacy, law too became materially different in nature.

CHAPTER 3 PRE-1959 BASIS FOR MODERN ECONOMIC GROWTH

It is impossible to conceive of a place combining more advantages; it is within a week's sail of China, still closer to Siam, Cochin-China, ... in the very heart of the Archipelago, or as the Malays call it, 'the Navel of the Malay countries'; ...
Our object is not a territory but trade, a great commercial Emporium, and a fulcrum whence we may extend our influence politically as circumstances may hereafter require... One Free Port in these Seas must eventually destroy the spell of Dutch monopoly; and what Malta is in the West, that may Singapore become in the East.

Stamford Raffles writing to Colonel Addenbroke, Colonial Office, London, 1819
Cited in Hoe I (1991) *Introduction to Singapore*, Hong Kong: Odyssey Guides, 12.

3.1 Introduction

Chapter 2 traced the pre-1959 reception of English law and analysed the nature of the laws in operation in Singapore up to the time of self-rule in an attempt to establish the basis from which the laws of modern Singapore developed. Similarly, this chapter aims to characterise the pre-1959 socio-economic and political bases for Singapore's modern economic development. The economy did not exist in a vacuum. Indeed, not only were some historical and socio-political factors inextricably entwined with the process of economic growth, some were determinants. This chapter therefore provides a brief analysis of what some economists call catch-up capabilities (Nolan 1995). It also evaluates three theoretical accounts for rapid economic development in the context of Singapore's experience. One of these, Wade's governed market theory (see 3.8.2; 1.5), seems most apt for analysing Singapore's economic growth experience from 1959 to 1999 (see chapter 4).

It is common practice (among economists) to portray a nation's economic development as progressing through a transition from the predominance of primary commodity enterprises (agriculture, forestry, fisheries) to secondary sectors (construction, manufacturing) and tertiary services (retail, financial, education) enterprises. Studies by Clark (1953), Kuznets (1959), Chenery (1979) and others suggest that this is the typical economic growth pattern. That is, it is usual for a country's economy to move through the three phases chronologically. But Singapore's economic growth has been different. As shown below, its tertiary sector pre-empted its secondary and it has had little primary sector to speak of. The analysis below is based primarily on information provided by Huff (1997) and Rodan (1989).

3.2 Geo-political Location

From the early 19th century, Singapore's economic development was based on its strategic location at the crossroads of Asia and its endowment of a large natural harbour. It was never a substantial agrarian society, even though the first Malay settlers were probably fisherfolk. The competitive advantage provided by Singapore's location and its large natural harbour was underpinned by the inauguration of the Suez Canal in 1869. This opened the Eastern trade to European steamships. As steamships needed coal, the choice route became the coast-hugging Straits of Malacca rather than the

Sunda Straits which would require a longer open-sea voyage across the Indian Ocean from Netherlands India [Indonesia] to Ceylon and India.

Lacking in its own primary commodities, Singapore was forced to develop a service economy and hone its entrepreneurial skills at an early stage. The free port, which formed the core of Raffles' policy, took shape quickly. Singapore's economy soon became dependent on exporting primary produce such as spices, vegetable oils, pineapples, tin, rubber and later petroleum from its hinterland: the Malayan Peninsula and Indonesia. The demeaning return flow of imports was British cotton piece goods and opium. But this was no ordinary port, for as Huff (1997, 15) explains, Singapore's economic growth fits the general pattern of a *staple* port:

> One of the principal features of the nineteenth century was that regions with surplus natural resources and, sometimes, surplus labour, in relation to demand in the domestic economy, experienced a very rapid expansion in the production of primary commodities for export, largely to industrial countries. It is only to be expected that international trade which served as an engine of growth and created, through export of primary commodities, an outlet or 'vent' for surpluses would lead to the development of port cities to service the new trade.

Huff's analysis is correct. But it is incorrect to suggest that the indigenous populations were *voluntarily exporting their surpluses* in relation to demand in the domestic economy. Although a discussion of colonialism is outside the scope of this study, we must bear in mind that the rapid expansion in the production of primary commodities for export was driven by colonial entrepreneurship, some would say, greed; and in the case of Singapore, also political rivalry. Raffles himself writing about Singapore to Addenbroke at the Colonial Office in London noted that (cited in Hoe 1991, 12):

> [O]ur objective is not a territory but trade, a great commercial Emporium, and a fulcrum whence we may extend our influence politically as circumstances may hereafter require ... One Free Port in these Seas must eventually destroy the spell of Dutch monopoly; and what Malta is in the West, that may Singapore become in the East.

Moreover, we should remember that Raffles was commissioned to found Singapore on behalf of the British East India Company. The latter was established under Royal Charter granted by Queen Elizabeth 1 on 31 December 1600 specifically to develop English commerce over as wide an area of Asia as possible (Bassett 1960, 17). Thus the exercise was colonial-driven commerce, demands in the domestic economy do not seem to have entered the equation at that stage. Indeed, a crucial issue for investigation in Singapore's *modern* economic development is to consider how the new nation managed to rearrange its inherited priorities to take account of its *domestic* economic needs once its colonial masters had withdrawn from the key decision-making posts in 1959 and 1965.

Nevertheless Huff's analysis of the development of Singapore as a staple port is masterful; for as he argues its trade came to depend on a few commodities [tin, rubber, petroleum]; and this resulted in a new set of economic relationships between port and hinterland (*id* 17). In other words, Singapore was more than an entrepot.[1] To the accidents of nature: geographic location and natural harbour, were added (over time) a port city that performed five inter-related functions which laid the foundation for Singapore's economic development. According to Huff (*id*, 16), these included:

1. The performance of entrepreneurial, investment, management and mercantile functions connected with production of the staple;
2. The provision of financial services;
3. Processing of the staple commodity;
4. Marketing services including the port's role as the region's main market for the staple;
5. The close involvement of business interests in the port with hinterland production.

Not all inter-related functions were developed or performed in the early years. For many decades some were performed only by English merchants, English banks and their agents, and European-dominated merchant houses. However, even in these early days, an outline of what was possible, indeed of what was to come, was already discernible.

3.2.1 Size and the Hinterland

Singapore has never possessed the physical size to enjoy economies of scale, or the opportunity to take the 19th century American way to industrial prosperity, that is, to hide behind protectionist barriers while producing for a massive domestic market of continental dimensions (Nolan 1995, 115). Thus development of the staple port rendered the hinterland a double asset. But Singapore's experience as a staple port revealed two extraordinary features: One, its hinterland was not populated by the same race as Singapore itself. Two, its hinterland was not within the same jurisdiction, unlike, for instance, the port of Lagos in Nigeria, or New Orleans in the USA. Thus Netherlands India, the major supplier of rubber and petroleum, was a Dutch colony; while the Malayan Peninsula, the major tin supplier, and Borneo were under British rule. The population in the hinterland was predominantly Malay and Javanese. Initially, the political disparity between the hinterland and the staple port curtailed the development of the inter-related functions of the staple port somewhat. For instance, in the beginning, the staple port performed the more

---

[1] Entrepot: a trading centre or port at a geographically convenient location, at which goods are imported and re-exported without incurring liability for duty: *Collins English Dictionary* 1995.

politically sensitive functions of management and investment almost solely for the Malayan Peninsula.

One persisting geo-political feature is race. Singapore's population is predominantly Chinese (75%), although it boasts a modern multicultural society with Malays accounting for about 15% and Indians for about 6% of citizens. However the populations of its neighbours are largely indigenous Malays – *bumiputras* or sons of the soil[2], who are predominantly Muslims. Historically, the diversity of race and the issue of jurisdiction probably slowed the establishment of close mutual ties, but they also helped Singapore hone its skills and ability to deal flexibly and cooperate with its neighbours in later years.

The key points to note are the early commercial and entrepreneurial links with the hinterland, the wider Western world and the regional markets. Thus Singapore's role developed not just as a conduit, but also as a promoter of export expansion in the region. First, it gave the hinterland access to new markets in the West. Secondly, in the case of Siam, Burma, Indo-China, and so on, it gave producers greater access to the expanding *inter-regional* market for food. Thirdly, it played a major role in providing labour (by attracting immigrants) and capital (through foreign and local banking) to support production in and trade with the hinterland. The seeds for future collaboration across the region were sown in these early years.

Thus as statistics of Singapore's imports and exports by commodity by country show (see SSAR 1899, 213-34), by the late 19th century, Singapore was the hub of the region's trade. Strategically, Singapore's role can hardly be overstated for as Huff shows, as international and regional trade flows increased, the Singapore hub transformed the economies of the surrounding countries and was itself transformed in the process. For instance, Singapore's response to the West's demand for tin, rubber and petroleum impacted crucially on Singapore's and the region's development both economically and demographically. In the case of tin, as discussed at 3.3 and 3.4, Singapore's role was pivotal in providing two of the three main factor requirements: labour and capital.

---

[2] There have been anti-Chinese riots in the surrounding countries even in the modern period. For instance in Malaysia in 1969, riots were sparked when the Chinese made a strong showing in the elections. For a discussion, see Mahathir (1970) *The Malay Dilemma*. Written in 1969, this book was banned until he became Prime Minister in 1981. During the 1997/99 economic setback there were also anti-Chinese riots in Malaysia and especially in Indonesia.

3.3 The Labour Force

Singapore's population is comprised of immigrants. It is a population formed artificially, in response to the need for labour. It is said that when Raffles landed there in 1819 he found only a colony of about 150 Malay fisherfolk.[3] But with the opening of the free port, people flocked to the island from as far afield as China and India, and from closer to home: the Malay Peninsula and Netherlands India (Indonesia).

The population grew in concert with the staple-port. The Chinese population was the most numerous, and there is a direct correlation between the rise of tin production and the increase in Singapore's Chinese population. This is because, in Malaya, the tin-excavating method (manual labourers working in simple, open-cast mines) allowed small-scale enterprises to develop the industry. This called for an abundance of transitory labour, in tandem with fluctuating needs of production. For instance, in 1903, it required 224,000 men to produce 51,000 tons of tin. Chinese immigrants, entering via Singapore, comprised the majority of the constantly changing labour force. Thus whereas 10,000 Chinese labourers landed in Singapore in 1877, the number that landed in 1887 was 101,000 corresponding to an increase in Malayan tin production from 3,000 tons in 1877 to 24,000 tons in 1887.

Some of the Chinese immigrants were traders who settled in Singapore and supplied much of the circulating capital needed to support the mining labour force (see 3.2.4). Some entered services such as the lodging house system (see below). However the majority were manual labourers initially recruited in south China either personally or through the immigrant lodging house system, to work in the Malay tin mines. By the turn of the century, three-quarters of Singapore's 142,000 inhabitants were Chinese. This proportion would remain virtually unchanged during the following decades.

Personal recruitment involved an employer in Malaya sending a recruiter to China, who having selected, would pay all expenses from village to port and from [Singapore] port to Malaya and with his assistants shepherd the flock to the place of employment (Blythe cited in Huff 155). Thus, for personal recruitment, Singapore was a transit point not a destination. Recruitment via the lodging house system required more active Singaporean participation.

---

[3] As discussed in chapter 2 it is difficult to assert this with confidence as another report suggests the existence of a bigger population of Malays engaged in tin-mining.

Lodging houses were established in China and Singapore. Those in Singapore were run typically by a Chinese agent for a Malay or European employer or for a lodging house in China. There were also independent keepers. The houses were licensed by the government and could contain up to 150 men. [Prior to World War 1 over four-fifths of Chinese immigrants were unaccompanied men.] Apart from lodgings for new arrivals, the houses also provided bridging loans for independent, self-financing immigrants. The Singapore keepers often assumed costs incurred at the lodging houses in China and extended loans to immigrants who had incurred those costs. They also acted as recruitment centres for local or Malayan employers. Thus the lodging house system came to embody what, in modern Singapore management speak, would be termed an integrated service concept. A British Consul in China justified it thus (Huff 156):

> The passengers themselves and especially passengers of the type that the Straits Authorities wish to encourage are for the most part ignorant peasants from the interior who have never seen a ship and who are bewildered by a town even of the size of Swatow. They are without capital and would be quite incapable of finding their [own] way to the South Seas.... A large proportion are given credit by the Lodging Houses for all their travelling and other expenses including the steamer ticket.

Labour recruitment from Indonesia and India was on a much smaller scale than that from China. Those from Indonesia were typically indentured labourers from Java recruited to the European rubber estates in Johore. The numbers were small and the system ended when indentured labour was abolished in 1932. There is evidence that the majority of those Malays who migrated to [British] Malaya did so as permanent settlers, accompanied by spouses and families. They farmed their own individual plots in Malaya; some settled in Singapore. The character of Singapore's Indian population was transient and marked by male pioneers. It remained so well into the 1900s, due mainly to the close proximity of India to Singapore and Malaya, and the ease with which Indians could return home, compared with their Chinese counterparts. Tamil labourers from south India formed the majority, though many merchants, textile importers and exporters, and other professionals also arrived from the north, especially from Bombay.

As stated above, population growth patterns fluctuated with the demand for tin and other staples. Thus when the demand for tin diminished or its production was mechanised by European miners, labourers attempted to find alternative work in Singapore or Malaya or returned home. By 1931, tin mining accounted for only 4% of the working population in Malaya, whereas over a third of all workers were employed in rubber production. However, when the price of staples collapsed later in the 1930s, there

was a reverse population flow. For instance, between 1931 and 1933 over 500,000 more Chinese deck passengers left British Malaya than immigrants that arrived there (Huff 1997, 150-178).

The August 1930 quotas on immigration, subsequently incorporated into the 1933 Straits Settlements Aliens Ordinance, had the [intended] effect of limiting Chinese immigration. Women were exempted from quota restrictions until May 1938. Thus for the first time, during the period after 1933, large numbers of women sought employment in British Malaya. Of the annual average of 147,000 immigrants arriving during 1934 to 1938, more than half were women and children. The influx of women impacted positively on Singapore's urbanisation since women were more likely to settle in the town than unaccompanied men.

The 1947 census reveals a greater number and much wider range of occupations for women than any previous census had shown. A trend towards a more settled and gender-balanced Chinese community emerged during the inter-war years. It accelerated after World War 11, especially during the rise to power of Mao Zedong and the formation of the People's Republic of China (PRC) in 1949, when the new influx of Chinese immigrants also comprised families. Although some years of the 1950s saw a rubber boom, large-scale immigration from China was curtailed both by developments in the PRC and by new immigration laws in Singapore. The population stabilised. The size and stability of the Chinese community thus formalised the growing perception of Singapore as a Chinese city.

Despite the seeming homogeneity, Singapore's Chinese community was pluralistic. It comprised groups that displayed a diversity of language, ways of life and characteristics reflecting the different geographic areas from which each group had emigrated. Chinese immigrants originated from south China, predominantly from around the ports of Amoy, Swatow in Kwangtung province, Foochow in northern Fukien, and from Hainan island. As many as six different dialects were spoken by different groups, often understood by no other group in Singapore but themselves (Huff 1997, 163). This slowed assimilation and cooperation among the Chinese in Singapore.

Although written Chinese is a universal language, the extent to which the groups communicated meaningfully is unknown because little is known about literacy levels of the various groups. Judging by colonial accounts, the educational level of the majority must have been low, since the type of immigrants that the Straits Authorities wished to

encourage were for the most part ignorant peasants from the interior of China (*id*). There is, however, some evidence that the colonial administration provided some training facilities and apprenticeship schemes, especially after World War 2. However these were implemented in the context of promoting colonial trade. For as one prominent colonial educator had declared in relation to Malaysia: 'The purpose of Malay education is to make them better farmers and fishermen' (Yergin & Stanslaw 1999, 185). Similarly, in Singapore, many clerks were schooled for the British civil service. In the Chinese community two classes emerged: the Chinese- and the English-educated. This duality had great significance in post-World War 2 society, especially as the Chinese-educated provided the main impetus and campaigning fervour for creating a communist-inspired and leftist trade union movement, which fought against British colonialism (see chapter 6).

3.4 Economic Structure and Entrepreneurship

During the early tin-mining years, Chinese entrepreneurs established a barter-based system of transaction in which goods (typically food and textiles) required by the mine owners were advanced on credit and the debt liquidated by the return shipment of tin produced. This method of financing also extended to the lodging house recruitment system (see 3.3). When the tin trade declined, local rubber planters were also financed in a similar fashion, as were those who processed rubber: small manufacturers of rubber footwear, for instance. Thus grew and prospered an undergrowth of Chinese finance houses and money-lenders, in parallel with the big European banks which, by and large, dealt only with the European trade houses and large plantation owners.

By the turn of the century some Chinese finance houses had metamorphosed into local Chinese banks and were making their mark on local capital formation and the development of financial services. The three dominant domestic private banks have their roots in the rapid rise in the need for local finance, especially during the post-war years. The Oversea-Chinese Banking Corporation (OCBC), United Overseas Bank (formerly the United Chinese Bank) and the Overseas Union Bank (OUB) made a substantial contribution to financing local Asian industries. But as Huff accommodatingly puts it (*id* 289):

> In the 1950s Chinese and European banks remained more complementary than competitive, but together constituted what could be regarded as a modern financial sector. However, financial dualism was a marked feature of Singapore's economy...

Raising finance via the Malayan stock exchange, of which Singapore became the centre, was not popular with local Chinese entrepreneurs: perhaps they feared dilution of ownership. But the exchange took-off in 1961 and experienced a boom of company floatations to coincide with the later formation of the Malaysian Federation (see 4.3.1; 5.2.1 *infra*). Until then, and even well afterwards, banks remained the main source of business finance, although the government itself participated actively from the early 1960s.

As mentioned above (3.3) there was a division between Chinese who were English-educated and those who were Chinese-educated. The division was reinforced in the business world, with the formation in 1900 of the Straits Chinese British Association (SCBA) and in 1906 of the Singapore Chinese Chamber of Commerce (SCCC). The SCBA, which united the Straits-born Chinese elite, became the more prestigious and politically powerful of the two associations simply because while their leaders were granted a political voice by the British authorities, the others were not. The SCCC represented the economically more powerful Chinese businessmen, those with good trading contacts with the hinterland, and with mainland China. Ultimately, however, the SCBA formed a bridge between all Chinese business interests and the government, and created a united Chinese business front. This, however, did not extend to education, which remained dual until the post- independence PAP government intervened, especially in tertiary education.

3.5 Industry

Industrialisation, which entails the systematic application of technology to production, thereby mechanising (often automating) the manufacturing process, is held to be the source of modern economic growth. It began in 18th century Britain, spread first to other West European countries in the 18th and 19th centuries, then to the USA, Canada and Japan, transforming each into an industrial nation. Although British colonies like Singapore existed during the period, which has been called the Industrial Revolution, they hardly participated in this transformation. Their roles were designated largely as suppliers of raw materials and primary commodities, and as consumers rather than producers of the new manufactured goods.

By upholding this artificial designation of roles, colonialism essentially prevented commodity-producing nations from entering the industrial age. Thus Singapore, like other colonies that became independent nations after World War 2, is a latecomer

to industrialisation. Instead of a 19th century experience, Singapore's industrialisation is a late 20th century phenomenon. Some processing of primary commodities such as tin and some yarn was mechanised at the beginning of the 20th century, but for the most part and for the period considered here, manual, non-automated labour dominated until the late-1960s.

Although it is a controversial topic, it seems fair to say that the colonial administration could well have done more to promote industry in Singapore during the long British occupation. However, it should be remembered that the age was ruled by Adam Smith's theory of the self-regulating economy and Mill's concept of minimal government interference and free trade. Having said that, it is necessary to balance the picture by emphasising the presence in Singapore of functional administrative institutions, the enduring legacy of the English language, which is the commercial *lingua franca*, and, arguably, also a functioning legal system. They supported rather than opposed the process of catching up with industrial development upon which Singapore would embark in 1959, and in particular from 1965 when true independence was won.

3.6 Political Stability

The topic that most exercises lawyers and economists with an interest in Asian economic development is the role of the state in Singapore's *modern* economic development. Yet the role of the state in the economy during the colonial period is also a fascinating topic. For its performance must also have impacted on the post-1959 period of nation-building, if only in so far as it influenced the new PAP government's resolve to imitate, reject or select solutions from the past administration.

A primary role of any state must be to secure political stability. The achievement of political stability seems to be the one enduring feature that underlies Singapore's development during the colonial as well as the post-1959 period. As discussed at 3.1 *supra*, the impetus for the founding of Singapore was trade. To meet this goal, the colonial administration established itself in the role of provider and maintainer of peace and stability. Above all, in those days, the role of the state was to ensure an environment that was conducive to colonial trade. Apart from the late 1940s and '50s it succeeded mightily.

As Huff points out, following its founding in 1819 Singapore enjoyed 12 decades of unbroken peace, until World War 2, when the island was occupied by the Japanese. Indeed the failure of the colonial power to protect Singapore against Japanese aggression

in 1942 marked a turning point in Singapore's political and economic development. For although the British were welcomed back after the Japanese withdrawal, it became clear that, politically, Singapore's independence from British rule was inevitable. Events in nearby India (independence in 1947) might have quickened the pace, yet those in China (the victory of Mao Zedong and communism in 1949) dictated delay, as the west considered that their security interests in the region were threatened. However, the important link to make here is to note that when Singapore won self-rule in 1959, the new PAP government seemed determined to follow in the hegemonic footsteps of the past rulers. A discussion is outside the scope of this study but Rodan (1989) gives an excellent account of the PAP's consolidation of power. One can debate the tactics used to gain and retain power (Tremewan 1994), but like them or not, they secured political stability in Singapore from 1959 up to the present.

Thus political stability has been and remains the one crucial, enduring feature underlying Singapore's economic development during both the colonial and the modern periods. This contrasts sharply with the experience of many other newly independent, ex-colonial countries. Arguably, another pivotal feature was the adaptation of English as the *lingua franca* but this is secondary and did not apply officially until during the modern period.[4] Although both eras fostered political stability, there is a major difference between the roles of the pre-World War 2 colonial administration and the subsequent PAP government. Whereas the former restricted itself to providing and maintaining a peaceful environment that was conducive to colonial trade and essentially leaving the rest to the laissez-faire market, the latter prided itself in *actively* promoting economic growth and social equity. The mission of the new political leadership and of successive PAP governments was economic development of the new nation. Their commitment was total, and throughout the period the PAP government used strong, if highly selective, intervention to effect its policies.

3.7 Confucian Ethics and Asian Values

Confucian ethics is often cited as one of the determining factors of Singapore's economic development (Lee Kuan Yew, 1998). It was popularised as Asian values. For

[4] Huff (1997, 163-164) argues that the Chinese community was divided into two classes: the Chinese- and the English-educated. The former was the bigger of the two groups. Thus in 1921

instance, management consultants urged the imitation of Japanese management techniques (grounded, they said, in Confucianism) to spur the economic success of western corporations.[5] But these concepts are unwieldy: Confucian ethics has been cited both as a promoter *and* an inhibitor of economic growth. Besides the concept of Asian values remains strangely artificial and inaccessible to meaningful definition.

Max Weber, whose work informs the theoretical law and development framework in which this study is set (chapter 1), also theorised about the motivational force of a belief system and its causal link with economic development and the rise of capitalism. Weber paid particular attention to China (1951). He concluded that China's failure to develop rational, bourgeois capitalism was due to the absence of an ethic comparable to the Protestant ethic. Weber hypothesised that because the core values of Confucianism (adaptation and adjustment to the world, inner self-cultivation, communitarianism, and so on) were incompatible with Protestant ethic (individualism, transformation rather than adaptation to the world), the Chinese belief system was not conducive to economic growth and capitalism. He argued that Confucian ethics had inhibited the growth of the entrepreneurial spirit among peoples of China and, by implication, of East and Southeast Asia. Needless to say Weber's work influenced many 1960s modernisationists and other thinkers (see, e.g., Levenson, 1968: *Confucian China and its Modern Fate*). However, as events over the past 30-40 years show Weber was wrong or his theory too narrow, in that it failed to recognise that there might be several paths to capital formation.

In modern Singapore, the government has put a new spin on claims of a link with Confucianism. Dr Yeo, then Minister of Communications and Information puts the official view thus (Clammer 1985, 103):

> We are an Asian society with Asian values. Confucianism provides the bedrock of our value system. Our values embody filial piety and concern for family, community and nation. We are more concerned with respecting our elders and those in positions of authority. In turn our elders and those in authority have a moral obligation to their charges, to fulfil their responsibilities to us and to be concerned over our welfare. It is a relationship of inter-dependence and mutual obligations, different from the Western concept of every man for himself.

As a defence for a soft authoritarian state the claim is well put. But despite an abundance of rhetoric on both sides of the argument, the verdict is still out as to whether there is a causal link between Confucian ethics, entrepreneurship and economic development.

---

only one-fifth, and in 1931 only a quarter of all Chinese born in British Malaya knew English. [5] See, e.g. Vogel (1978) *Japan as Number One;* Pascale & Athos (1981).

Studies by Harvard professor Tu Wei-Ming (1984), who is trained in western social sciences as well as Confucian ethics, and other scholars have been unable to confirm causal links.

Another related aspect, which also remains unresearched and undecided is the effect of the relative homogeneity of the Singapore population on rapid economic growth. Thus while it is clear that, for instance, geography played a crucial role in Singapore's economic development (see 3.2), it is not possible to say anything definitive about the role played by Confucianism or race. Besides as discussed at 3.3 above, it should be remembered that, far from being a homogeneous entity, the Chinese community was itself rather pluralistic in language, customs, and lifestyles.

As chapter 4 shows, it seems that the political will and determination of the colonial administration and of successive PAP governments, rather than race, culture and Confucian ethics, might have played the more dominant, formative roles. If ancient Chinese roots must feature in the equation, it seems to me that the use of law in modern Singapore bears greater affinity to Chinese Legalist tradition rather than Confucianism, to *fa* rather than to *li*[6]. Though admittedly, the communitarian ideology that was nurtured during the modern period probably had more in common with Confucianism than the stark individualism of the industrialised west. Thus instead of promoting individualism, the post-colonial PAP government encouraged communitarianism and sometimes forced the formation or operation of unions and associations to suit its purposes (see chapter 6).

3.8 Theories Accounting for Rapid Economic Growth

There seems to be common ground among economists that two key ingredients of Singapore's post-colonial recipe for rapid economic growth were to ply external free trade while maintaining strong internal economic control, and building the country's social and physical infrastructure (see, e.g., Huff 1997, 299-371, Sen 1983 745-753). However, as nothing is as simple as it appears, the theorists disagree about how to deconstruct the ingredients. It has been particularly difficult to agree on the role played by the state. Below are brief summaries of three theories that could explain the reasons for Singapore's rapid economic growth and success. However these theories are only partly

---

[6] The Legalists saw 'law' as punishment (*fa*), while Confucians viewed it as moral codes of conduct (*li*). See Bodde & Morris (1967); Carter (1996), 37-39; Chu Tung-tsu (1965).

valid as they are only partly substantiated by the facts. One falls short because it completely ignores the role of the interventionist state, another because, while it admits to the state's activist role, it denies its effectiveness. The third theory, that of the governed market, presented by Wade (1990), seems to fit best with key aspects of Singapore's economic growth experience. Unfortunately, Wade himself dismisses Singapore as a minnow (*id* 19), implying that because of its size and special situation Singapore's experiences are less valid for consideration elsewhere (but see 1.1 *supra*). The following sections draw heavily on Wade (1990).

3.8.1 The Neo-classical Explanation

Neo-classical economists point to four areas which they claim are responsible for Singapore's rapid growth: (1) free trade regime, (2) free labour market, (3) high saving and investment rates, and (4) conservative government budgeting. The ingredients account largely for what they call the basics of macroeconomics. Once these basics are right, the invisible hand [the market] ensures that growth and prosperity follow. Rational choice theorists advance a similar explanation: growth is ensured when right choices are made. Adherents argue that Asian NICs like Singapore have been better than other developing countries at providing stable macroeconomic conditions and a reliable legal framework which promote competition (World Bank 1993, 9). Each point is discussed below as a basis for analysing how Singapore might have used each in its growth enhancing mix during the 1959-99 growth phases which are examined in chapter 4.

Free trade regime for exports

To create a free trade regime for exports, two conditions must be met. First, the makers of goods for exports must be able to import inputs and components in the quantities they need, without having to pay tariffs, which would make their imports more expensive. Manufacturers must be free to buy goods and services in the world market at the same price as their competitors. Secondly, the exchange rate must be in parity with the hypothetical free trade rate. When met, these two conditions ensure free trade in the sense that exporters are not loaded with added costs, which would create disadvantages for them in international competition. With some qualifications about exchange rates and government-linked companies, which received generous access to low-interest credit and tax breaks, Singapore seems to have followed this approach from about 1966 onwards (see chapter 4).

Free Labour Market

A free labour market is one in which the price of labour is said to adjust (of its own accord) to match the market conditions of price and productivity. In other words, wages adjust themselves through supply and demand, and productivity rates, not through government policy. The government's role in this area is particularly interesting in relation to Singapore (see chapter 6).

Three kinds of indicators of a free labour market might be used. First, a lack of intervention in the institutions that operate between the buyers and sellers of labour. There should be no wage-adjusting legislation (minimum or maximum) or public-sector pay policies. Where trade unions or other collective bargaining institutions and employers' associations exist, they should be weak. Singapore's experience shows that the state intervened in all areas, paradoxically, to secure what it considered a free labour market. The second indicator is that the labour market has cleared. In other words, the level of unemployment has remained low since the period of eliminating the labour surplus was achieved. Singapore achieved full employment by 1973. From then on foreign workers were needed to support continued growth. The third indicator of a free labour market is that the share of labour costs in the total cost of production has remained roughly constant throughout the period. In other words, real wages have grown at about the same rate as, or slower than, the growth of labour productivity (output per person), except for short inflationary periods. As discussions in chapters 4 and 6 reveal, this has not been the case in Singapore.

High Interest Rates, Savings and Investment

The high cost of credit means that exporters might be disadvantaged if they have to pay higher interest rates than their competitors. That is why governments often initiate export credit schemes which give exporters substantial margins of preference for short-term loans compared to loans for non-export production. Singapore seems to have taken this a step further by providing low interest credit and subsidies to state-owned enterprises and other government-linked companies (see chapter 4).

High savings and investment rates are also prescribed by neo-classicists. Singapore excelled at both, but savings were compelled via the Central Provident Fund and labour market interventions. The bulk of investments in the private sector was not indigenous, but was co-opted through an alliance with foreign multinational companies.

In the public sector, statutory bodies became astute entrepreneurs and venture capitalists (4.4 and chapters 6 and 7).

Conservative Government Budgeting

The neo-classical proposition here is that the government should support only those policies that result in state budget surpluses. Such policies should include low direct and indirect taxes, especially the former so that there is an incentive to make money (Little 1979, 478). Singapore has boasted huge budget surpluses (see *Data Sheet*, Dept of Statistics, various years) and low direct income tax. Moreover until 1994, no indirect taxes were levied on goods and services. However, the sums exacted from employers and employees through the Central Provident Fund (CPF), various skills-enhancing funds and utilities levies compensate fully for the absence of indirect taxes.

Neo-classicists stress the importance of government investment in health and primary education, factors in which Singapore excelled. However they abhor state intervention in other areas, in particular in industrial development, financial markets and any form of price control, be it in housing, labour, tertiary education and so on. These are all areas in which the Singapore government was particularly activist, so Singapore's growth experience fails to conform to the neo-classicists' model.

3.8.2 The Revisionist Explanation

It was the so-called revisionists who pointed out the inconsistencies of the neo-classical model in relation to Asian countries such as Japan (Johnson 1982), South Korea (Amsden 1989), and Taiwan (Wade 1990). Their work showed that these East Asian governments employed flexibility and diversity in their policy choices, that they constantly intervened in the market, picked and promoted special industries, and frequently altered their policies in response to market fluctuations or in order to generate desirable results. In other words, the revisionists recognised that East Asian governments led the markets at crucial stages of their countries' development. Government intervention was often key in getting the prices *wrong*, by deliberately changing the incentive structures so that some industries flourished, when they otherwise might have failed (Amsden, Wade)[7]. Wade called the system the governed market and his analysis adequately describes Singapore's growth patterns, although he did not study Singapore.

---

[7] For an opposing view, see Porter and Takeuchi (1999).

There are probably no revisionist studies of Singapore in the way that it is possible to point to studies about Taiwan, Korea and Japan. Most studies simply acknowledge, as a matter of course, the highly activist role that the government played in Singapore's economic growth (Fordham 1988, Rodan 1989, Huff 1997, Low 1998). It is a matter of record and not a major discovery; for as Dr Goh Keng Swee, the first Finance Minister admitted: [W]e had to try a more activist and interventionist approach [than] the laissez-faire policies of the colonial era (Nair 1976, 84). Dr Goh seemed in no doubt that only such an activist approach could provide the accelerated growth that he and the cabinet required.[8] His explanation is backed by the World Bank's 1993 study (see 3.4.3), which acknowledges that the high-performing Asian economies employed government activism in their economic growth.

3.8.3 The Market-friendly View

The market-friendly view is the phrase, which the World Bank in its 1993 study, *The East Asian Miracle*, used to describe and expand upon its previous stance described in the *World Development Report 1991*. This approach builds on the neo-classical explanation but makes room for what the Bank calls effective but carefully limited government activism (1993, 10). In so doing, the Bank breaks new ground because (since the 1980s and) until this 1993 study, it had persistently rejected the validity and efficacy of government intervention into the working of the free market. In other words, it had ignored the experiences of Japan and the Asian NICs. For instance, the Bank claimed that the attempts of developing economies to guide resource allocation with non-market mechanisms have generally failed to improve economic performance (*id*). Moreover it concluded that beyond the roles of maintaining stable macroeconomics, governments are likely to do more harm than good, unless interventions are 'market-friendly'.

In 1993, however, the Bank acknowledged that apart from the excellent macroeconomic management documented for East Asian economies (*id*, 5-6):

> [I]n most of these economies, ..., the government intervened - systematically and through multiple channels - to foster development, and in some cases the development of specific industries. Policy interventions took many forms: targeting and subsidizing credit to selected industries, keeping deposit rates low and maintaining ceilings on borrowing rates to increase profits and retained earnings, protecting domestic import substitutes, subsidizing declining industries, establishing and financially supporting government banks, making public investments in applied re-

[8] The post-World War 2 British Labour Party and European social democratic strategies were influential. It was felt then that only governments could marshal the resources needed to rebuild the devastated nations. For an insightful discussion, see Yergin & Stanislaw (1998).

> search, establishing firm- and industry-specific export targets, developing export marketing institutions, and sharing information widely between public and private sectors. Some industries were promoted, while others were not.

Not all of those interventions are market-friendly in the Bank's definition of the term. Indeed some of them go far beyond what the Bank deems as acceptable. Therefore, although it praises the success of state intervention in some areas, it is keen to point out that industrial policies were largely ineffective (*id*, 312). Moreover, the Bank finds that industrial policies were largely ineffective because 'the manufacturing sector seems to have *evolved roughly in accord with neo-classical expectations*: industrial growth was largely market conforming' (*id*, 315, my italics). This convenient interpretation allows the Bank to straddle the two opposing views, praising both, yet finally reining in the revisionist view by claiming that, in crucial areas, intervention was ineffective and is therefore not worthy of imitation. Whereas, it claims, the neo-classical theory still provides the answer for late developing countries. However, as the analysis in chapter 4 shows, in the case of Singapore, it is incorrect to say that industrial policies were largely ineffective. Indeed, at various times, the state itself was a major entrepreneur, owning several hundred companies in key industries, and constantly intervening in the market and peoples' lives via some 60-odd statutory bodies.

The interpretation, quality and objectivity of the Bank's study have been widely criticised (see, for instance, Wade *et al* 1994, Amsden 1994, 627-633). Amsden finds the study rich in empirical data, but unsupportive of the Bank's dismissal of industrial policy as ineffective. Further, the Bank's data are presented in such a way that makes it difficult to corroborate its findings (*id*, 627). She is pleased that the Bank has widened the scope of the debate on the role of the state in economic development. It is a debate, which she thinks is muffled by the neo-liberal Washington consensus. She regrets that the study reverts to being 'quintessentially political and ideological' because it cannot prove its own major conclusion. She is disappointed that the Bank did not study how elements of the East Asian model can be adapted to suit other countries (*id*).

Wade sees the study as political and convenient, in that the Bank uses it as evidence that the successful Asian countries have practised what the Bank has been preaching, at least since the 1980s, that is, the necessity for the state to provide a strong *enabling environment* (Wade 1994, 56). But as Wade's earlier study demonstrates the Asian countries went far beyond 'enabling the environment', they *governed the markets*.

In 1997 the Bank warned that: '[s]tate-dominated development has failed, but so will stateless development. Development without an effective state is impossible' (*World Development Report 1997*, 25). This stance is in line with the emphasis on good governance, which, in the wake of the Asian economic setback, seems to have out-manoeuvred the getting-the-prices-right theory.

3.9 Conclusion

Singapore's rapid economic growth from 1959 to the present did not start in a vacuum. Four features seem to have been crucial for securing a degree of prosperity and a solid base for future growth. First, there was Singapore's geographic location at the crossroads of Asia. Secondly, Singapore's huge natural harbour, which together with its strategic location enticed colonial adventurers. It became even more important when the Suez Canal opened in 1869; Singapore became the refuelling port. Thirdly, the interrelations and peaceful inter-regional staple-port trade (albeit with a colonial focus), which it fostered with the huge Malay hinterland during the decades. Fourthly, 13 to 14 *decades* of political stability interrupted only by the Japanese invasion during World War 2.

The population, which comprised mainly poor, uneducated immigrants from south China, India, Malaya and Netherlands India [Indonesia], was predominantly Chinese, but with a cacophony of dialects and plurality of customs. The popularly touted 'Asian values', which are supposedly grounded in Confucianism, probably do not account substantially for Singapore's success as they seem to have been more myth than reality. However, successive PAP governments did nurture a communitarian ideology (as opposed to the stark individualism of the west). As discussed in chapters 4 and 5, this, political stability and the will to focus on economic development with social equity were more influential. After World War 2, the diverse groups formed a united front against colonialism and won internal self-rule in 1959. The stage was set for a new struggle to achieve economic growth and social justice under the new regime.

The accepted theoretical economic explanations seem to fall short of explaining the reality of Singapore's modern economic growth. Wade's model of the 'governed market', a revisionist theory, seems to offer the most plausible explanation. An analysis is attempted in chapter 4. However, it is also clear that the model, which was adapted to fit post-1959 Singaporean conditions was influenced by the post-World War 2 'mixed market' economies of Labour Britain and social democratic northern Europe.

CHAPTER 4 SEVEN ECONOMIC GROWTH PHASES 1959 to 1999

Singapore's economic policy ... differed from the laissez-faire policies of the colonial era. These had led Singapore to a dead end, with little economic growth, massive unemployment, wretched housing and inadequate housing. We had to try a more activist and interventionist approach.

Goh Keng Swee, Singapore's first Minister of Finance in
Nair C (1976) *Socialism That Works*, Singapore: Federal Publications, 84

What undoubtedly helped most was the strong position of the economies of the United States, Europe and Japan.... [T]he 1960s saw what was virtually a long sustained boom among the rich nations. One after another, they reached conditions of full employment and had to depend for further expansion either on imported labour as happened in the case of Germany and to a lesser extent Britain, or they had to move some of their manufacturing operations abroad, as happened particularly with the United States and, to a lesser extent, Japan.

Goh Keng Swee (1972) *The Economics of Modernisation*, Singapore: Asia Pacific Press, 254.

4.1 Introduction

This chapter identifies seven phases of economic growth in Singapore from 1959 to 1999 and examines government policies and interventions in key areas of the economy during each phase. It aims to paint a coherent picture of Singapore's economic growth, and in particular to analyse key government policies and interventions, which according to revisionist theories, have caused Singapore's rapid economic growth (see 3.8). It is likely that such interventions were mediated through legislation, and therefore are directly relevant to the theme of this study. Thus this chapter forms the basis for the legal analysis in chapter 5.

Folklore relates that Dr Goh, Singapore's first Finance Minister, and one James Puthutcheary penned Singapore's First Development Plan (Ministry of Finance 1963) during one weekend. It was written in response to the World Bank's insistence that a report outlining the country's economic strategy should exist before Singapore could become a client. Irrespective of how long it took to write the Plan, the facts, sentiments and proposals that it contained had weighed heavily on the minds of all PAP politicians during the run-up to the 1959 election (Lee Kuan Yew 1998). For despite the economic upturn in trade experienced during the Korean War and its aftermath, all trends pointed to the demise of free port trade and non-viability of Singapore's continued dependence on staples and entrepot for economic growth (Lyle 1959). The first challenge was therefore to find a way of diversifying the economy.

All other problems were linked to the first. Although immigration had been curtailed during the 1930s and 1940s, Singapore's own home-grown population was increasing by 4% annually (Mirza 1986, 29). Unemployment was estimated to be 10% and rising (Chng *et al* 1988, 5). It was particularly high among school-leavers (Low *et al* 1993, 6). The majority of Singaporeans lived in shop-houses or shacks and squatter dwellings clustered around the port and densely populated coastal town (Huff 1997). Like in every other (ex-)colony, the wealth of the newly independent nation was unevenly distributed. This reflected the colonial economic structure, which comprised a tiny hard-core of privileged expatriates, surrounded by a ring of aspiring local elite, followed by the masses who eeked out a living in the most precarious ways. It is therefore easy to understand why the PAP government chose job-creation and housing as its focus areas. This was not a unique step; other countries have been forced to focus on solving the problems of joblessness and wretched housing before and also since Singapore's ex-

perience. The key issues are how did the government turn devastating joblessness into full employment in just 13 years (by 1973), and how did it solve its housing problem.

4.2 Seven Economic Growth Patterns 1959 to 1999

It is now clear that industrialisation, in particular industrial manufacturing, was the impetus for rapid growth and the solution to Singapore's job problem. It was implemented in four phases. First, through import-substituting manufacturing as suggested by the World Bank (1955), the Lyle Report (1959) and the UN (1961). Secondly, through labour-intensive, export-oriented manufacturing in which government-linked companies (GLCs) and multinationals (MNCs) were the entrepreneurs (as masterminded by statutory boards, particularly the Economic Development Board). The third and fourth phases are entwined. They involved an attempt to broaden the manufacturing and services base by encouraging the participation of Singaporean enterprises, and a quest for skills-intensive, higher value-added production using both foreign and local actors. These four phases are discussed at 4.2.1 to 4.2.4. Subsequent periods: 1985-86 (recession), 1987-97 (services, regionalisation, privatisation) and 1997-99 (regional setback) are discussed at 4.2.5 to 4.2.7. Together they constitute seven phases of growth, which characterise Singapore's economic development from 1959 to 1999.

The story that is analysed in the following sections concerns the almost unbroken record of high annual economic growth rates experienced for 40 years. Instead of repeating here the many charts and tables, which usually document Singapore's feat, I refer to Huff (1997, Appendix tables, and Data Sheet, various years: Department of Statistics, Singapore). Suffice it to say that starting in 1960, GDP grew at 7% or more every year for 23 of the 31 years between 1960 and 1990 (Huff 1997). The same rate was sustained from 1990 until the regional economic turmoil of 1998. This sustained growth rate is unparalleled among industrialised countries. It has been argued that this performance supports an economic convergence hypothesis. That is, that such rapid growth reflects a process of 'catching up', made possible by drawing on existing world knowledge and technology (Baumol 1986, 1072-85; Hanna 1996) as opposed to growth that is spurred by new inventions. While this study does not examine the merits of this theory, it accepts that Singapore first industrialised when the volume of world manufactured exports was

expanding rapidly[1]. It did so by utilising known technology with the help of multinational companies (MNCs), which found it favourable to relocate their labour-intensive production to Singapore (Goh 1972).

As Table 4.1 below shows, Singapore's economic performance from 1959 to 1997 was accompanied by broad changes in the sectorial distribution of output. These are represented by the percentage that each sector contributed to GDP during each phase. For instance, the *decline* in the contribution of agriculture and trade/commerce sectors (staples and entrepot-linked activities) during the first two phases is balanced by the increase in the contribution of manufacturing and financial and business services.

Table 4.1: Industry structure 1959-1997: % contribution to GDP by sectors (Source: Dept of Statistics).

Sectors	1959-65	1966-73	1974-84	1985-86	1987-97
Agriculture	3.9	2.7	1.5	0.4	0.2
Manufacturing	11.7	20.2	28.1	27.8	26.2
Utilities	2.4	2.6	2.1	1.8	1.7
Construction	3.5	6.8	6.2	5.3	7.1
Commerce/Trade	33.0	27.4	20.9	16.3	16.9
Transport & Communications	13.6	10.7	13.5	12.6	11.5
Financial & Business Services	14.4	16.7	18.9	26.5	27.4
Other Services	17.6	12.9	8.7	9.5	9.1

It is these broad sectorial changes or phases, relative to government macro-economic and industrial policies, that are analysed in the sections below. They reveal the PAP government in roles such as economic planner, facilitator, regulator, venture capitalist and entrepreneur par excellence. Chapter 5 considers whether there is a causative link between these changes and changes in the law, as the Law and Development theory predicts.

4.2.1 Import-substituting Industrialisation: 1959 to 1965

When the recommendations of the 1955 World Bank Report, which predicted the demise of Singapore's free port and advocated industrialisation, were reiterated in 1957 in the Lyle Report (1959), the colonial administration created an Industrial Promotion Board. Based on post-war development organisations in England, the board's task was to encourage private firms to enter manufacturing. This venture was not particularly successful in Singapore. It soon became primarily a give-away organisation, doling out incentives under the statute, mostly to existing companies (Hughes in Low *et al* 1993, 6).

[1] From 1963 to 1973 the volume of world manufactured exports grew at an annual average rate of 11.5%: GATT (1985) *International Trade 1984/85*, 4, Geneva.

For instance, Shell, established in Singapore and elsewhere in Asia since the 19th century petroleum boom, was first to qualify for pioneer status (*id*). Shell received healthy pioneer benefits even though no new manufacturing enterprise emerged at the time.

The early industrialisation policy, which the PAP state inherited in 1959, was one in which firms were encouraged to manufacture goods that would substitute for expensive imports, thus its name: Import-substituting Industrialisation (ISI). The idea of the Malaysian Federation was the basis of the policy. ISI would be set up for failure unless Singapore could become part of a large domestic market in which it could trade its import-substituting manufactured goods. It was 1963 before this part of the plan materialised. In the meantime, Singapore introduced fiscal incentives to match pioneer import-substituting measures that were being offered to entice companies to Malaya.

In 1959, only 554 manufacturing enterprises in Singapore employed 10 or more workers.[2] Of these, 23 processed rubber, which accounted for 75% of the value of output. Thus this staple dominated the manufacturing sector. By 1960 only 548 manufacturing enterprises employed 10 or more workers. These totalled 27,416 employees out of 61,000 for the entire sector. Enterprises with 10-39 workers represented over two-thirds of all enterprises, while those with more than 100 employees accounted for less than 9% of the total. Moreover, the manufacturing sector as a whole accounted for only 13% of Singapore's GDP. In 1961 the number of enterprises employing 10 or more had reached 562, with just over 27,600 employees. Clearly, such slow incremental growth in the manufacturing sector would not solve Singapore's unemployment problem or secure its uncertain future. The undergrowth of smaller enterprises (those with fewer than 10 employees) was engaged mainly in household repairs and other casual domestic services - occupations that were insecure at the best of times.

Thus in 1961 the manufacturing sector still reflected the legacies of the staple port around which Singapore's colonial livelihood had been built. Among the most prominent activities were processing, warehousing, transport, and other functions related to dealing with commodities from the resource-rich neighbouring countries. As discussed above, manufacturing enterprises were small or medium-sized, and their industries were decidedly low-tech. Of enterprises employing 10 or more workers, the largest industry group was food and beverage, representing 30% of manufacturing value added,

---

[2] Information in this section draws heavily on Lim Chong-Yah (1984) and Huff (1997).

followed by industries for fabricated metal products, machinery and transport equipment, which accounted for 23% of manufacturing value added. Not all manufactured goods were for domestic consumption. For instance 27% of the food and beverage processed were exported. But export of goods *manufactured* in Singapore was still only a small part of trade.

Singapore's industrial transformation began in the second half of 1961. Dr Winsemius, the Dutch economist who led a UN Mission to Singapore, presented his report in June 1961 (UN 1961). By August the government had implemented several proposals and created the **Economic Development Board** (EDB) to replace the colonial Industrial Promotion Board. Moving the second reading of the Bill to set up the EDB, the Finance Minister explained that the EDB would be charged with (LD vol 14, col 1519):

> the investigation and evaluation of industrial opportunities, the assessment of market potential and the advancement of capital. [Moreover, it was] *to participate in establishing industries* in cases where, for whatever reasons, no private participation was forthcoming. In addition, it was to provide prepared sites for industries and assist in industrial enterprises by giving technical advice (my italics).

The EDB's own interpretation of its core functions during the early period included the development of industrial estates, the promotion of [foreign] investment and industrial financing (Low *et al* 1990, 62). It is important to note that in 1961 it was the government's specific intention to participate in establishing industries, if the EDB were unable to attract suitable private participants.[3] Moreover, the UN, through its mission leader (who remained an economic adviser to Singapore until 1984), supported this stance. Clearly the 'Western' development agencies of the 1960s were less suspicious of government guidance then than they became in the market-driven 1990s.

Apart from recommending the establishment of the EDB, the UN Report proposed changes in five specific areas: Markets, Labour, Capital and Entrepreneurs, Organisation and Specific Industries. Together with the government's First Development Plan 1961-64 (Ministry of Finance 1963), the 1961 UN Report became the blueprint for government policy, or, perhaps closer to the truth, it gave the stamp of approval to many ideas of the ambitious PAP cabinet. In the following sections, the ideas underlying Singapore's ISI phase are discussed under the headings of the five sectors proposed in the UN's 1961 Report.

---

[3] The British Labour Party took a similar stance in the post-war years. It was felt then that the country could only be rebuilt if government participated. See Yergin & Stanislaw (1999).

Market Priorities

Following the UN proposals, the government decided to focus on Malaya, in preparation for the Federation, which would give Singapore a huge domestic market. The next priority would be the UK and Indonesia, though care would be taken with the latter which was considered erratic and unstable. EFTA (the European Free Trade Association) countries would be considered primary markets on a par with the UK. Efforts would be made to expand exports to Sabah, Sarawak, Brunei, Thailand and Burma.

The EDB followed this scenario in its implementation of the government's industrialisation policy. Malaya and the UK became prime markets for manufactured goods. A system of import quotas was introduced for a limited number of goods, as were controls on how many enterprises could enter a specific line of industry. Textiles were Singapore's single largest manufactured export, followed by food and beverage. At this stage, the new electronics and electrical equipment industries remained undefined. However Indonesia was still a prominent trading partner as it supported the world's largest primary rubber market,[4] as well as Singapore's new oil refinery operations.

Labour

The UN team found the quality of Singaporean workers satisfactory but suggested that their calibre be improved through education, degree courses, vocational training and overseas visits (Mirza 1986, 31). However it criticised Singapore's internationally uncompetitive wage patterns claiming that wage costs were 20-30% too high for world markets (UN 1961, 115). Moreover the Report blamed unrest, low productivity and irrational wage demands for damaging Singapore's political stability and manufacturing prospects. The term unrest covered the ongoing political battles between the right and left (pro-communist) wings of the PAP. Such battles often implicated the unions (see chapter 6, Rodan 1989, Tremewan 1994, Lee Kuan Yew 1998).

It is clear that Singapore's reputation was suffering from the aftermath of the struggle for independence from British rule. Strikes called by unions had been potent weapons in the post-war anti-colonial struggle. For instance 946,354 workdays were lost in 1955, the year of the first elections ever held in Singapore [as a result of the Rendel Constitutional Commission's proposal for limited self-government in the colony]. In 1959 when self-rule had been won, the number of workdays lost was a mere 26,588.

---

[4] At this time, about 37% of the world's rubber production traded in Singapore.

However, the number re-escalated to hundreds of thousands during 1961 to 1963, until the PAP government defeated the left-wing, pro-communist unions which opposed the Federation (chapter 6, Huff 1997, 295; Deyo 1989, 62, Lee Kuan Yew 1998).

The UN team recommended improvements in industrial relations. These included steps to compel unions to accept longer term, productivity-linked agreements, and the government as arbitrator in industrial disputes. The PAP government implemented these proposals but also went further and disabled the communist-inspired left-wing party, eliminated opposition unions and emasculated the rest. In 1963 the PAP-led National Trade Union Congress (NTUC) was formed to represent the majority of Singapore's unions (see chapter 6).

Organisation

The UN team recommended the establishment of the EDB and an Investment Development Bank as statutory boards. Initially only the EDB was established. It was given a SD100m budget and far-reaching powers, as discussed above. Later in 1968 the EDB's financial investment activities were spun off into the Development Bank of Singapore (DBS), which was a government-linked company (GLC). The idea of statutory bodies and GLCs, which was a relic of colonialism[5], was seen as an effective way of getting things done. In fact similar bodies had served the British well during the war years and after World War 2, when the British Labour government sought to implement the Beveridge Report (1942).[6] Subsequently, the EDB, the DBS and other bodies such as Jurong Town Corporation (JTC), the International Trading Company (Intraco), and the Neptune Orient Line served as channels for government participation in the promotion of industrialisation.

These spin-off agencies belong to the next growth period (1966-73), when the EDB turned its attention to export-oriented industrialisation and increased physical construction of the infrastructure (see 4.3.2). But the bodies illustrate the early organisational pattern by which government participated in industry and business. In addition, with EDB mediation, the government participated in industry through wholly and partially owned government companies. For instance in 1961, it held equity shares in the

---

[5] The colonial state had created five statutory boards. The PAP transformed them and added others during the decades. For a list of statutory boards and their distribution by ministries, see *Singapore Government Directory*, various years.

[6] The Beveridge Report's policies set out to slay the five giants: want, disease, ignorance, squalor and idleness [joblessness].

National Iron and Steel Mills, the Prima Flour Mills, and in Malayan Airlines, which became Singapore Airlines, a wholly owned company in 1972. The former is doubly interesting as it was the first factory to start production in Jurong, the government's industrial estate. As Goh Keng Swee (1972, 261) pointed out, in December 1963 there were only two factories in Jurong: National Iron and Steel Mills, and Pelican Textiles; between them they employed ninety workers. From this fledgling start, the state's role as entrepreneur would increase substantially during the decades.

Capital and Entrepreneurship

The UN Report pinpointed the need for Singapore to attract overseas capital, technology and skills. It recommended that the government should facilitate foreign investment through three main steps:

1. Improve the investment climate via better industrial relations, better social and physical infrastructure, double taxation agreements, and so on;
2. Increase inducements via tax holidays, tariff reductions and subsidies;
3. Establish appropriate bodies to organise the industrialisation process.

The PAP government adopted all the proposals. In fact, it had started some of the preparations prior to the 1961 Report. For instance, the 1960 Industrial Relations Act was designed to enable speedy settlement of industrial disputes, outlaw strikes (unless approved by the government) and generally tighten up labour force discipline (see chapter 6).

Regarding infrastructure, the Housing and Development Board (HDB), another statutory body, replaced the colonial Singapore Improvement Trust in 1960. It busied itself with the construction of housing for low-income families to raise their living standards and redistribute social wealth. According to Chen (1983, 5, 7) the main aim was to prevent social unrest and mobilise the support of Singapore's citizens towards the goal of development. Commercial infrastructure became a major focus of the EDB. This involved physical improvement of roads, transportation, telecommunications, factories and utilities, as well as the development of human resources via education, skills training and vocational courses, which were tailored to satisfy the needs of industries.

The 1959 inducements exempted pioneer industries from company tax for five years, while existing enterprises whose investment expansion plans were approved by the EDB received tax exemptions on a sliding scale varying progressively with the capital invested. Tariff and subsidies also followed. As discussed above, the idea of setting up statutory bodies to organise the industrialisation process was adopted and applied vigor-

ously. The JTC was one of the most prominent statutory boards. Its task was to prepare land for industrial sites and build factories for leasing or selling to entrepreneurs.

Specific Industries

Four key industries were earmarked for special promotion:

1. Ship-building and ship-repairing;
2. Metal and engineering products;
3. Electrical equipment and appliances;
4. Chemicals.

The selected industries represented a degree of continuity with the past. For instance, as a staple port, Singapore had offered ship-repairing services. To these could now be added the manufacturing aspects of the industry, with the potential of huge savings on previously imported parts. In 1963, Jurong Shipyard Ltd was formed under the pioneer status scheme. It was established as a GLC with 30% state-ownership. The UN Report had also proposed engineering and chemicals, especially industrial and petro-chemicals as new areas for development. There was scope for synergism between, for instance, metal and engineering products and electrical equipment. These industries were chosen because they promised excellent growth potential.

However, it is important to remember that during this period (1959-65), the entire focus of economic development was on import-substituting industrialisation, that is, manufacturing which aimed to substitute imported products and sell them within an enlarged single domestic market: the Malaysian Federation.

The Malaysian Federation

One of the major, though perhaps unintentional, effects of the UN Report was the tremendous support it gave to the PAP government by directly mandating the Federation, which at the time was a contentious issue among the domestic political parties. The organised left, the Barisan Sosialis, was against federation. Lee Kuan Yew and his party were absolutely for, and Lee probably had larger political ambitions vis-a-vis the merger. The federation campaign was bitter. The tactically worded options were put to the vote in a referendum on 1 September 1962. The federalists won overwhelmingly.

However, a general election was due to be fought in 1963 before federation. Fearing that the left might cause obstruction, the PAP government sought to further secure its power. The instrument of repression was blunt: in February 1963, over 100 leaders of Barisan and other leftist groups were jailed by the Internal Security Department - apparently with the collusion of Malayan leaders (Mirza, 34; Lee 1998). In July 1963 the

agreement under which Singapore would enter the Federation was finalised, and on 31 August Singapore became fully independent of Britain. The Federation was declared on 16 September 1963, and the PAP government viewed entry as a triumph.

The tensions that had been foreseen between the *bumiputra* (indigenous Malays) and the economically more well-off, relatively skilled, predominantly Chinese Singaporeans were lessened by a stroke of genius of Malaya's Prime Minister, Tunku Abdul Rahman. He proposed the inclusion of Malaya, Brunei, Sarawak, Sabah and Singapore into the Federation. Brunei stayed out, but the result was still a diluted Singaporean presence, which ensured that numerically the non-Chinese dominated.

In 1963 when the Malaysian Federation was formed the number of Singapore manufacturing companies employing 10 or more workers increased to 858, with a total of 36,586 employees. The respective numbers rose to 930 and 41,488 in 1964 and 1,123 and 52,807 in 1965. The Rueff Report (1963) had predicted a massive SD2-billion import replacement market in the enlarged Federation. Singapore enterprises, spurred by EDB-administered incentives, were well on their way to gaining a foothold in the single market. But progress was slow. Unemployment remained massive. The UN Report (1961) had predicted that 214,000 new jobs would be needed by 1970. In 1965 only 52 807 had materialised. It was thought that slow growth was caused by the fact that all EDB's plans and industrial policies had to be approved in Kuala Lumpur, rather than by a minister in Singapore. There were also complaints that firms in Singapore were being treated unfairly when the Kuala Lumpur administration granted pioneer status certificates and export quotas (Turnbull 1977, 209-291).

By 1965 it was clear that the expectations of the single internal market remained unfulfilled. The policies and incentives had failed to attract industrial investments to Singapore. The few investors who might have been induced to manufacture for the federal market found it easier and more logical to establish themselves on the peninsula, where the bulk of their customers were to be found. Singapore was still perceived as a minnow-market, and worse, there was also a degree of political uncertainty, despite the Federation. Some western investors viewed Singapore as the Cuba of Southeast Asia. Its predominantly Chinese population provided 'proof' of sympathy for communist China. Besides during the independence struggle the national political groups had portrayed themselves as socialists. Investors, especially those from America, were wary of the connotations.

Another source of disappointment was Indonesia's hostile reaction to the union. Right from the start, the government of Indonesia declared a policy of Confrontation against the federal state, especially against Singapore. Confrontation meant economic boycott and political opposition, sometimes these extended to violent incidents (Huff 1997, 30; Lee Kuan Yew 1998). Singapore could ill-afford economic boycott or violent incidents. The latter hiked expenditures of the British military budget, which was bad for future co-operation, while the former created havoc since Indonesia supplied not only the main commodity exports which kept the staple port alive, but also crude oil upon which Singapore's infant refineries depended.

The reason for Indonesian hostility was complex. However, at the core was fear. First, the Javanese-dominated Indonesian government feared that the non-Javanese in the Outer Provinces of Indonesia might want to join the Malaysian Federation because their economy was inextricably linked with Singapore's. Secondly, the government feared that the Singaporean Chinese would soon dominate the Malay Peninsula thus making the Peninsula territorially stronger than Indonesia.

One consequence of Indonesian hostilities is that Singapore stopped publishing statistics for trade with Indonesia from late 1963. This does not mean that trade ceased. On the contrary, apart from a dip in 1964, studies such as Huff (1997) suggest that substantial trade must have continued. But as Goh Keng Swee told Parliament on 14 December 1963 (LD vol 22, col 555): 'in the economic war which is now being waged... this kind of information constitutes valuable economic intelligence'. In his 1970 budget speech Goh claims that entrepot trade declined by 16.8% as trade relations with Indonesia were severed and as a result, earnings on the entrepot trade declined from SD441m in 1963 to SD306m in 1965 (Goh 1972, 262). However, entrepot trade was in decline generally, as nations sought to conduct direct bilateral trade instead of trade via Singapore. Thus this statistic does not add to our knowledge about the effect of Confrontation. Average annual growth rate for 1959 to 1965 was 5.7%: low by the standards with which Singapore would be judged a decade later, but high for a developing country.

On 9 August 1965, Singapore left the Malaysian Federation. The reasons for the break are immaterial as far as this study is concerned.[7] It is the consequences, which are material: Singapore became an independent Republic and sovereign nation. According to

---

[7] For a comprehensive account, see Lee Kuan Yew (1998).

Goh Keng Swee news of the separation was greeted by the firing of crackers in Chinatown (*id* 264). The crisis which the sudden break sparked was a godsend for the PAP government. The government used it astutely to encourage a communitarian ideology and create a new society. The result was an acquiescent nation motivated by the fear of failure and the need for material success, which, according to the government, could only be achieved through self-sacrifice and efficiency. This cult of material success, pragmatism, efficiency and self-reliance is neatly encapsulated in the phrase the siege mentality by a long-term observer (Harding 1998). However it is loyally packaged as the five fundamental principles of national ideology by Chen (1983, 4):

> multi-racialism, multi-culturalism, multi-lingualism, meritocracy, and a self-reliant (rugged) society. On this basis Singapore is forging ahead towards a highly industrialized economy, striving for the highest efficiency and raising the living standards and the quality [*sic*] of the people.

As Singapore-based firms could no longer hope to benefit from a large domestic federal market, the import-substituting industrialisation policies had to be reversed. It was thought that with barely 600 square km and a population of only 2 million, the Republic of Singapore would never constitute a market worth investing in for its own sake. Other means of attracting capital, skills and technology would have to be devised - and quickly. One of the first signs of the government's new intention took the form of an amendment to the Income Tax Act 1965 (No 29 of 1965). Among other matters, it introduced tax deductions for overseas market development expenditure, and made it more attractive to conduct export promotion activities.

4.2.2 Shift to Export-oriented Industrialisation: 1966 to 1973

One concrete result of Singapore's demerger from the Federation was that the Indonesian Confrontation ended in June 1966. According to Dr Goh this gave the main impetus to economic growth during the first year as a republic (*id* 265). It also pointed the government and the EDB to their alternative economic growth scenario. As an economic development policy, import substitution had been flawed. Export trade had to reenter the equation. For as Dr Goh explained (*id* 10):

> Industrialisation based on import substitution had proved a double-edged sword. As a means of saving foreign exchange it had been self-defeating... [since the] machinery and equipment needed to establish these industries had to be imported from abroad.

It became clear to Dr Goh that often the amount saved by substituting for imported goods was less than the amount needed to pay the instalments and interest on loans re-

quired to buy the production machines and the spare parts needed for their maintenance. This was the case especially for capital-intensive industries like steel production, oil refineries, heavy metal plants and other so-called basic industries which economic planners, both foreign and indigenous loved to recommend. Another reason why import-substituting industrialisation would often fail is that the demand for such products is small in developing countries because these countries are so poor (*id*).

It was upon this background that the PAP government adjusted its strategy. The general objective of modernisation through industrial manufacturing, as outlined in the 1961 UN Report, still applied but the focus became export-oriented. External conditions were conducive to this move. In his 1970 budget speech Dr Goh claimed that: (*id* 264)

> What undoubtedly helped most was the strong position of the economies of the United States, Europe and Japan.... [T]he 1960s saw what was virtually a long sustained boom among the rich nations. One after another, they reached conditions of full employment and had to depend for further expansion either on imported labour as happened in the case of Germany and to a lesser extent Britain, or they had to move some of their manufacturing operations abroad, as happened particularly with the United States and, to a lesser extent, Japan.

It was the possibility of foreign companies moving some of their manufacturing operations abroad that ignited the PAP government's imagination. If the EDB could attract such footloose multinational companies (MNCs) to Singapore, at least five problems, which the fledgling export-oriented nation faced, could be solved simultaneously. First, Singapore's *inward* entrepot experience meant that Singaporeans had little experience in marketing goods abroad. Most of the enterprises, that had exported primary commodities or processed goods and imported manufactures through Singapore for the region did not have to *market* goods abroad, they simply made deliveries. Marketing skills could not be learnt overnight but luckily MNCs would be responsible for marketing their own manufactures abroad. Secondly, the foreign exchange problem would be solved; it might not even arise, as investment in production equipment would be made by the MNCs not the government. Thirdly, the unemployment problem (the most pressing) would be solved and with it would go other socio-economic problems such as housing, education and health. Fourthly, it was hoped that technological and management skills would be transferred from the US-, European- and Japanese-MNCs to the local population. In this way, the MNCs would actively contribute to Singapore's objective of catching-up technologically with the developed world. Finally, large-scale commitment of western and Japanese capital would keep Singapore free from communist influence during the Cold War.

While world trade conditions were conducive to an export-led strategy (see above), the PAP government became convinced that in order to build and maintain the confidence of foreign investors, domestic conditions needed an overhaul. In particular, it was thought necessary to differentiate Singapore's comparative advantages from those of other newly independent developing nations, which also had an abundance of cheap, unskilled labour. Five areas were selected for improvement: (1) political and industrial stability, (2) infrastructure, (3) promotion of priority industries, (4) the establishment of statutory bodies and government-linked companies to direct economic growth, (5) the marketing of Singapore in key target countries. These areas essentially reflected the five upon which the UN Report had focused in 1961. However, in 1966, after the extended domestic [Malaysian] market was denied, Singapore turned its focus to export rather than import-substitution.

Political and Industrial Stability

The concept of political and industrial stability was translated into two factors. One, consolidating PAP power, which was achieved when the harassed Barisan MPs re-signed in disgust in 1966. Two, disabling the unions. Both ventures had been started prior to the 1963 election and the Federation. By 1966 the PAP seem to have felt that completion was necessary in order to advance economic development.

Several studies have shown how the PAP systematically eroded the rights and power of the unions and the Barisan party, starting soon after their common cause and struggle against colonialism ended in success in 1959 (Chan 1976; Pang 1971). That story will not be rehearsed here. Instead, I attempt to analyse why the common cause, which united the national parties in the anti-colonial campaign, failed to coalesce into common development strategies afterwards. It seems that although both parties promoted themselves as socialists, they held substantially different views of how this could be translated into strategies for national development. Essentially, the dichotomy can be seen as the difference between modernisation theories and dependency theories (see chapter 1). Dependency theories influenced the leftist movement. For the leftists, the key prerequisites for development were (Chen 1983, 107):

1. To break the traditional dependence of the local economy on the western industrial centres of Britain, the United States and Europe;
2. To control the roles played by local and foreign private capital in industrialization programmes.

The two objectives were rooted in an analysis which argued that the majority of Singaporeans could only profit from industrialisation if the economy were based on socialist planning. This view was in sharp contrast with the PAP's conviction that the capitalist system, if correctly handled, could be a prime mover in the creation of wealth (Goh 1972, 129). The PAP was therefore interested in harnessing the capitalist system for socialist aims rather than radically transforming it. The proposed alliance with MNCs as discussed above, was one of the vehicles through which the PAP would 'harness' capitalism. Seeing only exploitation, the left [pro-communists] disagreed.

These views were not reconciled. Instead the PAP forced the demise of the opposition party, vocalised its development plans, established mechanisms for social control and the control of corruption (Bellows 1970; Chan 1976; Pang 1971), quickly implemented plans for low-cost housing (through the HDB) and stepped up moves to provide instant export-oriented manufacturing jobs (through the EDB). The PAP speculated (and was proved right), that once it had demonstrated economic success, the system would become almost self-perpetuating. However, embedded in the successful implementation of this economic development policy was the fear of failure to deliver constant economic success. In this way, the PAP also succeeded in institutionalising the cult of economic development and materialism in Singapore society (chapters 6 and 7).

The way in which the government dealt with the unions is a good example of the PAP's cunning. The unions were suppressed and the workforce disciplined, especially in 1968, when the government passed three crucial pieces of legislation (see chapter 6). These were followed by a so-called modernisation seminar whose main goal was to co-opt the unions into playing educative and socialising roles in the nation-building process. For as Dr Goh explained in a 1969 speech to members of the Singapore Manufacturers' Association commemorating the government's 10th anniversary (Goh 1972, 214), Singapore could afford neither an undisciplined labour force, nor a wage spiral. The 1968 Employment Act and other measures were designed to secure industrial peace for job creation (1972, 265). He praised the fact that workers' rights and benefits were *curtailed* by the 1968 Acts, commending acceptance as 'an impressive demonstration of the will of the people to overcome all obstacles to make temporary sacrifices the better to secure the future for themselves' (*id*). The control of the unions was inextricably linked with political and industrial stability in Singapore.

According to Shorter and Tilly (1974) one indicator of the organisational strength and effectiveness of unions is the extent to which large numbers of workers can be mobilised for work stoppages within and across firms and industries. These are usually measured by the number of workdays lost due to stoppages. Another indicator is the nature of the disputes between labour and management. During periods of labour weakness, disputes are largely linked to defensive issues such as declining real wages, dismissal or retrenchment and so on, whereas during periods of strength, unions seek improved wages and benefits. Statistics for workdays lost and the nature of disputes reveal that Singapore's workforce was significantly weakened during the second industrialisation phase, 1966-73, compared with the first 1959-65. For instance, the number of workdays lost due to stoppages during 1959-65 was 1,225,000 against only 134,000 during 1966-73 (Ministry of Labour Yearbook, various issues).

Legislative activity in industrial relations from 1966-73 indicates a correlation between law and the government's policy to secure an environment, which it regarded as conducive to economic development (see chapter 6). Thus via the 1968 Acts, the government effectively weakened the labour movement, took control of the unions and transferred bargaining power from workers to employers (Lim & Pang 1986, 11). But what the government also had in mind was tripartite co-operation. For as Dr Goh explained (*id* 215):

> ... there must be willing and intelligent co-operation between the three parties who are vitally interested in achieving economic growth - namely, the Government, the businessmen and the labour movement. If we continue to work together towards this common purpose, I am confident that the successes that we will achieve in the years ahead will be even greater than those we have left behind us.

Subsequently the government set up a tripartite National Wage Council (1972) which published guidelines for wage increases. Although not mandatory, the guidelines kept wage inflation at bay even after full employment was achieved in 1973. Increases in real wages averaged 1.7% from 1973 to 1978 (Huff 329). And amazingly, there were no strikes or lost workdays from 1978 to 1985 indicating even more weakening of unions in the later periods, despite economic growth.

Infrastructure

Improvements ranged from the provision of physical infrastructure of factories, transportation, telecommunications and so on, to the development of human resources (primary, secondary and tertiary education); low-cost housing; and health care. As dis-

cussed below these were developed under the direction of statutory boards and government-linked companies.

Promotion of priority industries

It could be argued that priority industries were all those that were earmarked for growth in the 1961 UN Report. However that would be misleading. For although electronics and electrical appliances, shipbuilding and repairs, and so on were considered key areas, it seems that the EDB used a wider definition. First, it is apparent that key industries changed during the periods. Secondly, in practice, key industries included not only those pinpointed as growth areas, but also those with significant linkages to high growth industries, e.g., as suppliers. Thirdly, industries with defence links also acquired priority status, especially after 1967 (see 'Marketing the Singapore Brand...', 116 *infra*).

Having laid these markers, it can further be argued that priority industries can be defined simply as those in which the state would participate actively, if no private capital was forthcoming, or if private participation was undesired, as in defence. The EDB's mandate was wide. It was acknowledged that (Low *et al* 1993, 72-73):

> ... within the charter of investment promotion, is embedded a broader mission of national economic growth and development which allows the EDB to move conceivably into any relevant area. By the nature of its work, the EDB network and staff need to maintain close contacts and feelers with the private sector locally and abroad in the lookout for emerging technologies and industries.

The EDB could conceivably pick any industry for priority by investing in it. For instance, in 1968 it established the wholly owned Neptune Orient Lines Ltd in order to reduce Singapore's dependence on foreign shipping, which controlled freightage. Setting up this shipping line allowed Singapore to trade with centrally planned economies whose waters were considered unnavigable because of Cold War politics. The former British military bases were also incorporated into state-owned companies like Sembawang Shipyard Ltd, while Keppel Shipyard Ltd was formed to take over the Dockyard Division of the old Singapore Harbour Board (see below). The establishment of statutory bodies and state-enterprises with significant economic linkages is therefore considered indicative of priority industries, as are the annual average output of key industries and the average number of jobs provided by each industry.

Successful key industries probably equate to the so-called *winners* that the EDB picked. However, in a now famous analogy, Dr Goh claims that the EDB is like a gambler who bets on all the horses in a race. In other words, all the MNCs chose to enter the

investment race in Singapore. If Dr Goh is right then the winners picked themselves. The EDB merely facilitated the MNCs' entry. They then had to prove themselves under competitive market conditions. But clearly this analogy does not apply to the government's active participation as an entrepreneur.

To judge by the average annual output during the periods the key manufacturing industry was the petroleum sector; while the sectors providing the greatest number of jobs in the 1960s were still the food industry followed by printing and publishing. However, in the 1970s, the new electronic industry became the largest employer, rising from zero to an average of 34,032 employees per year. An industry capable of creating jobs at such a high rate would definitely be considered a priority. The EDB would therefore aim to attract or establish more of them.

Statutory bodies and government-linked companies (GLCs) guide growth

The PAP did not invent statutory boards. The British colonial administration had established boards for the harbour (Singapore Harbour Board 1913), housing (Singapore Improvement Trust: SIT 1927), telephony (Singapore Telephone Board 1955), pension savings (Central Provident Fund: CPF 1955) and industrial promotion (Industrial Promotion Board: IPB 1957).

In 1961 the PAP replaced the SIT with the Housing Development Board (HDB), and the IPB with the Economic Development Board (EDB). The CPF was retained but with radically expanded usage. The harbour and telephony also acquired modernised Boards and a host of new statutory bodies were created especially during the EOI and higher value-added (HVA) periods. To these must be added a clutch of other state enterprises: companies, which are either wholly or partially owned by the state. Both vehicles were used extensively to initiate, nurture or guarantee key industries where venture capital from foreign investors or local entrepreneurs was lacking or undesired.

The advantage of creating statutory boards to administer public sector and sometimes private sector functions is that they avoid the rigidity and stodginess of a centralised bureaucracy and the controls that characterise government departments. In justification of their intervention in the private sector, civil servants and economists often add the rationale that (Chen 1983, 150):

> In the context of Singapore's small, open and vulnerable economy and in terms of external forces and circumstances which can so easily upset its economic balance in development, some form of government direction and control is warranted. Such fine-tuning to changing external forces cannot be left entirely to private hands given Singapore's lack of natural resources and smallness in size. The government's economic philosophy is... democratic socialism in a mixed economy.

Thus it seems that in Singapore's small open economy, the case for statutory boards and GLCs is argued not so much in terms of an ideological stance but more in response to *pragmatic situational* needs. Although worlds apart, and made in very dissimiliar situations, perhaps the comments of Joseph Stigliz, the World Bank's chief economist strike a similar chord (*Financial Times*, 25 March 1998):

> Small open economies are like rowing boats on an open sea. One cannot predict when they might capsize; bad steering increases the chances of disaster and a leaky boat makes it inevitable. But their chances of being broadsided by a wave are significant no matter how well they are steered and no matter how seaworthy they are.

Arguably, Singapore's early attempt to safeguard itself against these inevitable risks was to employ sturdy rudders and oars: statutory bodies, state enterprises and the firm grip of government. Statutory boards are created by Acts of Parliament which specify the reasons for formation, their functions, rights and powers. The boards are responsible to the ministries under which they are established, and the ministers accountable to Parliament. However, within the legal framework, there is complete freedom and flexibility with regard to financial and administrative policies, and daily management. Each statutory body has its own board of management, whose chairman is usually chosen by the minister in charge, and each sources its own finances and manages its own accounts. Thus, each is highly autonomous and represents direct state participation in and guidance of the economy. In addition, huge manuals and the fear of penalties direct the behaviour of staff at every level. A culture of 'no corruption' permeates the organisations.[8]

The EDB is the most powerful of the statutory bodies directly charged with promoting economic growth. It adopts a multi-disciplined approach to investment promotion. This involves industrial policy co-ordination, identification of new business opportunities, manpower development, technology promotion, business capability development, and industry development for both local companies and MNCs (Low *et al* 1993, 72). It is interesting to note that the first EDB organisation plan listed Legal Adviser and Industrial Economist at the same level, underneath the Chairman and Director. However, by 1970 and in all subsequent EDB organisation charts, legal adviser or legal department was no where to be seen.

The significance of the elimination of this post is unclear. However it should be remembered that the 1961 Report was drafted at a time when President Kennedy had just persuaded the UN to name the 1960s the UN Decade of Development. At that time,

law was seen as one of the instruments of modernisation (chapter 1) and it was considered a natural component of any development plan. That the post of Legal Adviser disappeared in the 1970s probably reflects the growing disenchantment with the law and development movement. This does not mean that law was not co-opted as an instrument of development in Singapore. Indeed confidential sources reveal that very often EDB personnel would draft pertinent laws, which they considered necessary to advance their economic development work. Obviously such legislation would have to be passed in Parliament, but the origin suggests a perception that laws could promote economic growth (see chapters 5, 6, 7,and 8). There is also a prolific undergrowth of secondary legislation and regulations to support the use of law in the Boards' development work. However, this aspect deserves separate treatment and is not pursued in this study.

As mentioned above, government companies, wholly and partially owned, were incorporated in priority industries. For instance, in 1968 the industrial financing operations of the EDB were spun-off and incorporated under the Banking Ordinance 1958 to form the Development Bank of Singapore (DBS). It was incorporated as a public limited company to operate as a commercial bank as well as a primary source of finance for manufacturing and processing industries. Its share capital was SD200m with SD100m issued and paid-up; the state held 49% of the shares. The Finance Minister was both chairman and president until 1970 when a civil servant as appointed. The bank's assistance to companies took the form of medium- and long-term loans, equity participation and guarantees of loans raised by entrepreneurs from other sources.

Similarly, the newly formed Jurong Town Corporation (JTC) took charge of the development and management of industrial estates in 1968. The National Productivity Board (NPB) and the Singapore Institute of Standards and Industrial Research (SISIR) were also EDB offsprings in 1972 and 1973 respectively. While its Engineering Industrial Development Agency, formed in 1968, became the National Engineering Services Private Ltd in 1973, a wholly state-owned company. This left the EDB free to concentrate on marketing the brand of Singapore Inc. abroad and promoting local investment in the industrial sector.

---

[8] For a descriptive account, see Mohan 1988.

Marketing the Singapore Brand in target countries

The promotion of Singapore abroad was one of the central tasks of the EDB. During the first EOI phase (1966-73), the definition of industrial enterprise in the EDB Act was widened and the EDB was given greater powers to raise loans, and obtain overdrafts and credit facilities from suppliers. In 1966 it was charged with the urgent need to attract MNCs. The EDB quickly set up industrial promotion offices in New York, for the USA was seen as the major target, despite Lee Kuan Yew's sentiments about the US and the Vietnam War. Japan was the second target, again despite the animosity still felt because of the experiences during the 1941-45 occupation.

The UK and Commonwealth countries like Canada, Australia and New Zealand were third tier targets but companies from these countries had settled in Malaysia and were not easily displaced. Besides, some already had a presence in Singapore.

For growth, one had to look to American and Japanese MNCs. Lee Kuan Yew therefore established connections during his visits to the US (October 1967) and Japan (November 1968). Mirza (1986, 49) notes that it was after the US trip that Singapore's defence spending rocketed from 5% of the national budget in 1965 to 17.6% in 1968. In 1968 Israeli officers (disguised as Mexican advisers) arrived in Singapore to help fashion the military. It suited Singapore to promote itself as the Israel of Southeast Asia and perhaps serve as the linchpin of western influence in the region (*id*). The formation of ASEAN (the Association of South East Asian Nations) in 1967, unwittingly, underpinned the notion. Singapore was, after all, at the centre of the region - geographically, and, from an historic point of view had always played a key commercial role. On this basis, foreign investors, especially American MNCs, were relatively easily persuaded to view Singapore as a regional production platform and later also as the headquarters from which to conduct regional sales, distribution and technical services. Armed with its bundle of incentives and efficient infrastructure the EDB enticed US firms to Singapore.

In 1966 Singapore joined the World Bank. A year later the Economic Expansion Incentives Act re-enacted, in an expanded form, the more limited 1959 legislation, which had provided benefits for pioneer and expanding industries. Benefits under the Act were to be granted at the discretion of the Minister of Finance in the public interest and subject to such conditions as he thinks fit (s4(1), 5(2) *et seq.*).

While many countries often offer comprehensive, non-discretionary benefits, it is not unusual for some incentive statutes to require a case-by-case treatment with wide

discretion being given to an administrative body. In this case, such discretionary powers were delegated to the EDB. The EDB was therefore able to develop the concept of the one-stop-shop in which its offices, even those based abroad, were able to scrutinise business investment plans and fairly quickly give planning permission, licences or the required certificates without much red tape. The EDB quickly gained a reputation for its professionalism, competence and efficiency in dealing with development proposals and succeeded mightily in promoting Singapore abroad and enticing foreign investors to establish their manufacturing plants in Singapore. Texas Instruments was first in a long line of electronics MNCs to establish a Singapore plant.

During the ideological struggle of the Cold War, Singapore became a convincing anti-communist model. Although US funding was never on the vast scale as that lavished on South Korea or Taiwan, Singapore, like Hong Kong, became a showcase for the success of capitalist societies over communist ones. By 1973 Singapore's unemployment problem had been solved, in the main by the tremendous activity in the export-oriented textiles, electronic and electrical manufacturing industries.

4.2.3 Broadening the Industrial Base: 1974 to 1978

Statistics show that in 1972, if one excluded investments in the petro-chemical industry, the electrical and electronic industry absorbed the bulk of net foreign investment commitments, some 58.9% of the total (Low *et al* 1993, 132-33). Most of these comprised simple MNC assembly plants, which required an abundance of low-skilled labour. Typical finished products included portable transistor radios, clocks, electric fans and small household appliances. Electronic components, the major growth area, involved assembling computer memory modules. Dr Goh commented that: 'The electronic components we make in Singapore probably require less skill than that required by barbers or cooks, consisting mostly of repetitive manual operation' (1972, 27).

Assembling such products for export helped solve Singapore's unemployment problem and substantially increased its GNP per capita. However, by 1973 the strategy was creating problems of its own. First, labour shortage was encouraging immigration, especially from Malaysia and Indonesia. Secondly, Singapore was experiencing competition from other developing countries which imitated the export-oriented manufacturing model based on MNC investments. They were willing to undercut Singapore's low wages and thus indirectly held Singapore in the low-wage sector. Thirdly, the advance

of technology, in particular the invention of the micro-computer, enabled the cheap automation of production lines and thus cheaper production in industrialised countries. This and the fourth influence, the 1973 oil crisis, created disincentives for MNCs to move production to Singapore or other developing countries. The new automated production lines offered two advantages: they were more reliable and more stable than unskilled workers, and they allowed MNCs to keep proprietary technology at home where their intellectual property rights would be protected. Fifthly, there was some criticism that the MNC-model was crowding out local entrepreneurs. Sixthly, Singapore's success with labour-intensive, export-oriented industries, which was being emulated in other developing countries and the onset of a world recession in the mid-1970s fuelled protectionist trade policies in the West.

These developments impacted greatly on the EDB and the government. At an early date they devised ambitious restructuring plans with which to counter them. However, as the world went into recession, they feared aggravating domestic problems and delayed their plans until 1979. In the interim, the EDB sought to broaden the industrial base and promote inclusiveness and self-reliance by introducing a number of measures. First, home-grown SMEs (small and medium-sized enterprises) were encouraged to enter manufacturing by becoming sub-suppliers or joint-venture partners of the technology-rich MNCs. Joint ventures were encouraged by making it easier to obtain certain benefits when local ownership of a company was 50% or more. Secondly, the tourist industry was supported *inter alia* through a massive hotel construction programme. Thirdly, the financial services market was opened to foreign investors. Fourthly, the period for tax incentive was extended from five to ten years for industries such as those manufacturing machine tools, diesel engines, precision instruments, aircraft components and specialised electrical and industrial machinery. For as Finance Minister Hon Sui Sen made clear in a 1975 parliamentary debate, five years were too short for the more sophisticated types of industries, which Singapore was trying to attract (PD vol 34, col 39). The EDB thought that diversifying into these areas would broaden Singapore's industrial base, and that such products would be less prone to western protectionism. The EDB was right. Singapore also survived the 1974-5 oil-induced world recession remarkably well. Growth rates remained robust: in 1976 growth was 7% and by 1978 it averaged 9% per annum.

4.2.4 Seeking Higher Value-added Production: 1979-84

With annual growth rates averaging 9% in 1977 and 1978, by 1979 the EDB and the government felt more confident about implementing their ambitious economic restructuring plans of moving Singapore from labour-intensive to skills-intensive manufacturing. The 1978 budget signalled the shift, though, naturally export was still the focus. In a speech to members of the Singapore Economic Society on 30 March 1978 Goh Chok Tong, then Senior Minister of State for Finance (Prime Minister from 1990) described the need for change and the proposed programme thus (Mirza 1989, 62):

> Singapore's manufacturing sector has now reached an intermediate level of development... We will now have to accelerate our programme to diversify into higher technology industries ... we must try to encourage greater local entrepreneurship in the manufacturing sector ... we should exploit our comparative advantage in trade-related services and our strategic location to the maximum. More attention will now be devoted to make Singapore an export-oriented services centre.

The driving force continued to be the need to circumvent western protectionism in the low-wage, consumer-focused, manufacturing sector. But there was also a desire to discourage low-skill, labour-intensive investments as Singapore sought to lessen its reliance on labour expansion for economic growth. It was thought that the services sector would fit the bill. As Goh Chok Tong explained during a 1979 debate (PD, vol 39, col 323):

> The services sector has been doing well despite the recession. Export of services has been less vulnerable to protectionism. With the fast expansion of our financial, transport and other communication services, this sector will continue to sustain our economic growth, complementing the contribution of the manufacturing sector. The prospect for further expansion of the services sector is promising. We shall encourage the development of warehousing and servicing, international trading, and consultancy activities.

In 1979, the plan was launched as Singapore's 'Second Industrial Revolution'. Its stated purpose was to accelerate Singapore's transition to a more sophisticated stage of economic development: out of the 'overcrowded, over-competitive third league' and up into the second league' (Rodan 1989, 142). The football metaphor was probably more apt than the usual first and third world cliches. For Singapore and the other Asian tigers now formed a distinctly different group of nations, which had experienced high, rapid, sustained economic growth rates for two decades or more.

The plan's economic features were outlined in a report entitled Highlights of Singapore's Economic Development Plan for the Eighties (Ministry of Trade & Industry 1981). It argued *inter alia*, that in a full employment economy, low wages would lead to an over-tight labour market, that low wages would not bring out the best in workers, and that low wages discouraged training. Furthermore, the plan held that other decisive

steps had to be taken to solve the following new problems, which Singapore would face in the 1980s:

- slow growth in labour supply;
- rising expectations for better wages which could only be afforded if higher skilled jobs were created;
- continuing dependence on foreign skills, technology and markets;
- declining rate of savings;
- slow growth and protectionism in industrialised countries;
- high oil prices;
- competition from developing and developed countries.

Four distinct strategies were implemented to move Singapore into the 'second league'. First, a radical turnaround in wage policy was engineered. Secondly, measures were introduced to curb imported labour, and tariffs were placed on certain products. Thirdly, tax and fiscal incentives were granted to encourage investments in capital-intensive, higher valued-added production, and research and development. Finally, the government initiated or expanded social and physical infrastructures, and direct capital investments in favoured industries such as the Singapore Technology Corporation (STC). The most important aspects of these strategies are discussed briefly below.

Corrective Wage Policy

The National Wages Council (NWC) awarded wage increases of 20% per annum in 1979 and 1980. In 1981, it was reduced to 6% in response to employers' protests. However the signal was clear: investors should automate their low-skilled, repetitive production functions, as human resources were too valuable for such tasks. As discussed below, the government then instituted a massive education and training programme to raise skill levels.

Manufacturing

Manufacturers that were unwilling to upgrade and automate their production would be forced abroad by higher wages in Singapore. Incentives were withdrawn from undesirable low-wage production and used to attract desirable industries in petrochemicals, pharmaceuticals, high-level electronic components, industrial and medical equipment, technical services and components for aircraft and shipping. Local entrepreneurs were encouraged to enter higher skilled, higher value-added production and services, especially in joint ventures with foreign investors.

In other words, the measures introduced to broaden the industrial base in the interim period (1974-78) were strengthened in 1979. The harder line in wage policy led to

the closure of foreign companies that assembled cars in Singapore, and withdrawal of the country's only tyre manufacturer (Rodan 147). These actions did not release many workers for other manufacturers, but they signalled the government's conviction that low-skilled, low-waged employment had outlived its usefulness in Singapore's economy. The aim now was to develop Singapore into a modern industrial economy based on science, technology, skills and knowledge (*id*). The stated goal was to increase the manufacturing sector's share of GDP from 23% to 31% by 1990.

Computer services

The EDB and the government had argued that Singapore would become the information society of the future, driven by brains, not brawn. Computer services and related services such as consulting, and medical and educational services were considered suitable 'brain work'. They were non-polluting and knowledge-intensive and therefore right for the future. Incentives to foster them included accelerated depreciation of computers and peripheral equipment, and investment allowance for R&D projects.

Financial Services

Historically, Singapore's banking services have been well-developed (see 3.4 *supra*), even though a dual system of foreign and local Chinese banks operated. In 1968 the government announced its policy to develop a higher level of expertise in the financial sector in order to increase capital inflow and investment. Withholding tax on interest paid to non-residents' deposits with banks in Singapore was abolished in 1968. The Monetary Authority of Singapore (MAS), a statutory body, was established to coordinate banking functions in 1971. Exchange controls were liberalised in 1978, removing all restrictions on the movement of funds.

However the biggest step involved the development of offshore banking, which created the Asian Dollar market. Its use involves a double bookkeeping system known as the Asian Currency Unit (ACU), which allows the acceptance of time and call deposits and lending in foreign currencies. Its invention marked the start of participation in what would later explode into the global financial services market. In 1981, another statutory body, Government of Singapore Investment Corporation (GIC) assumed responsibility for the investment and management of Singapore's official foreign exchange reserves. This left the MAS free to supervise and regulate the banking and financial services markets.

The plan envisaged Singapore as an international business centre. Thus the full range of financial services and institutions had to be developed. This included commercial, merchant and offshore banks; finance companies; insurers; re-insurers, and so on. The plan was to expand futures and commodity markets to join the stock exchange.

Education and Training

A huge manpower development programme formed the basis of the plan. For as Goh Chok Tong explained (Rodan 148):

> ...only increasing the relative price of labour to capital to bring about restructuring is like trying to cut with one blade of the scissors. The other blade is the skill of our workers. Both blades must cut in unison. Thus training must be stepped up to enable our workers to acquire new skills and refine old ones.

The programme involved all levels of education. Government development expenditure on education leapt from SD32.75m in 1978-79 to SD374.68m in 1982-83, an increase of 1044% (Dept of Statistics 1984, Table 14.16, 251). At the tertiary level, science and technology were in focus. The aim was to increase the number of engineers per thousand in the population. From 1979 to 1983, enrolments in engineering courses rose by 2104% at the National University of Singapore and 10 232% at the Singapore Polytechnic (*id*, various tables, 236, 245, 246 and Rodan 149). The dramatic increases were prefaced by structural changes in the tertiary educational system. For instance in 1980, the government merged the University of Singapore and the Mandarin-speaking Nanyang University to form the National University of Singapore. The new Nanyang Technological Institute, (NTI) was set up at the old Nanyang site in 1981 and Ngee Ann Polytechnic designed to house the new Centre for Computer Studies.

The EDB, through its specialised manpower division,[9] ensured that all manpower development was tailored to the needs of private enterprises which either were engaged in, or moving towards, higher value-added production. In a novel way of transferring technology and ensuring that learned skills meet the needs of enterprises, the EDB engineered a programme of technical training in co-operation with Germany, France and Japan. The German-Singapore Institute focused on courses in production technology, the French-Singapore Institute on electro-technology, especially automation and microprocessor application, and the Japan-Singapore Institute supported systems

---

[9] The EDB's Manpower Development Division included training institutes. I am grateful to Mr Chua Soo Tian, past division director, for drawing my attention to the importance of the special institutes of technology set up with the German, Japanese and French governments.

analysis programming and engineering. A Japan-Singapore Institute of Software Technology was also set up. The Institutes offered diploma courses, while the EDB training units and various MNCs established shorter on-the-job courses. For instance, joint MNC-Singapore Training Centres were established with Philips, the Dutch conglomerate, Brown-Boveri, the Swiss engineering (now Asea-Brown-Boveri: ABB, the Swedish-Swiss) group, American Computervision and several others.

Particular attention was paid to vocational training of school-leavers in courses designed and implemented through a growing network of centres, supervised by the Vocational and Industrial Training Board (VITB). Advisory committees ensured that the courses were tailored to meet the specific needs of industries. Additional expenses were met by a skills development levy which was paid by the labour market.

Revenue and Savings

From where did Singapore obtain the huge sums required for its development drive? Governments derive their revenues from many sources: taxes on incomes and profits, social security contributions, employers and manpower payroll tax, taxes on property, on trade transactions, on goods and services, and so on. It is usually through a shift in emphasis from one tax to others that real differentiation occurs.

However Singapore's revenue profile differs from that of many countries in a number of ways. First, because the aim was to attract tax-avoiding MNCs to invest in Singapore, the trade environment was liberalised. This means taxes on incomes, goods, services and international trade transactions were relatively low; and, of course, there were exemptions for suitably qualified firms. Secondly, because of the scarcity of land in Singapore, property taxes are very high. Indeed, as discussed in chapter 7, land scarcity is one of the major catalysts of Singapore's socio-economic modernisation programme. It has been and is still one of the greatest revenue generators. The way in which most land was acquired made the transactions doubly lucrative for the state (see 7.4 *supra*). Thirdly, the government derives an income by charging users (commercial and private) for services rendered by statutory bodies and state-owned enterprises. It also receives dividends, profits and other returns from its many overseas investments. Although an analysis of Singapore's sources of revenue reveals that there are no contributions to social security, this finding requires clarification. Huge compulsory contributions are made directly to the Central Provident Fund (CPF), the statutory scheme run by a Board, which receives and administers these pensions or labour-related savings.

Through state-issued bonds and securities, the CPF finances most of the government's borrowing requirement. It is an ingenious way to generate investment revenue and ensure that savings rates are kept consistently high (one of the factors said to be necessary for economic development: 3.8 *supra*). Besides, in lean years, the government can release funds in order to stimulate growth. In 1984, as part of the government's policy to move upmarket and compel higher value-added investment through higher wages, CPF contribution was increased dramatically. In that year, the combined employees/employers' contribution was the equivalent of 50% of all employees' earnings, compared with a mere 10% in 1965. The CPF has helped finance government capital formation, notably in the public housing scheme and in other infrastructure. For as suggested by Low (Low *et al* 1993, 41) '[H]aving the CPF as a conduit allows some of its [the government's] socialistic, distributive objectives to be fulfilled...'.

However, even when Singapore has its own funds and is capable of financing its economic growth, the government still 'borrows' foreign capital through FDI schemes because in this way, the monetary investment is accompanied by foreign technology, management expertise and ready-made markets abroad. Thus the development recipe includes not only foreign funding but also technology and knowledge transfer, and the ability to sell in foreign markets.

4.2.5 Recession 1985 to 1986

The recession was short and sharp, and need not be dealt with at length here. Annual growth (real GDP) fell to -1.8% in 1985. This was a traumatic experience for Singapore, which had become accustomed to high GDP growth rates except in the worst Confrontation year of 1964 (see 3.3. *supra*).

The causes of the recession are widely debated. However, the contribution of the government's macro-economic decisions is undeniable, and painful because of the bravado with which some of these policies were announced. Secondly, some external market factors also played a decisive role.

The Ministry of Trade and Industry in 1986 admitted that a number of internal policy decisions needed revision. These included policies regarding high savings, high wage and labour costs, payroll tax, skills development fund and foreign worker levies, the CPF, and excessive fees and charges levied by statutory boards. All of these added to the costs of operating a business in Singapore (Low *et al* 49) and resulted in loss of

competitiveness at a time when massive public sector investments were being made in housing and state-owned enterprises. It is claimed that housing investments were being made to prime the wheels before the December 1984 general election. But many other major development projects were planned and embarked upon. For instance, Jurong Town Corporation (JTC) devised a ten-year master plan (1980-90), which entailed the reclamation of land and many building projects including an ambitious international petrochemical manufacturing and distribution centre. Loyang was to be the first centre for aviation industries and an engineering base to support offshore oil and mineral exploration. Seletar Air Base was to be developed for aeronautical industries (the plan was dropped in 1983). Singapore Science Park was to house the development of industrial and scientific R&D enterprises (Rodan 151).

It is clear that the government's strategy to shift from low-wage to high-wage, from low-skills to high-skills and manufacturing requiring high capital investments was an expensive affair, not least because of its determination to put a solid support structure behind the strategy. But as documented in the Economic Committee Report (1986), prepared by the Prime Minister's son, Lee Hsien Loong, then Junior Minister for Defence, an important reason for Singapore's economic setback was its decline in international competitiveness. Unit labour costs rose by 40% from 1979 to 1984 while productivity stagnated. Singapore's competitive position weakened by as much as 50% against Hong Kong, 15% against Taiwan and 35% against Korea (*id* 192). The escalation in costs meant that enterprises in the private sector were experiencing low profits. In the manufacturing sector, official data put the decline in return between 1980 and 1984 at 50%.

Other problems were also uncovered: industrial output in Singapore declined by 8% in 1985 while the decline in other NICs averaged only 2%. In 1985, eight out of Singapore's top ten industries declined, while other NICs continued to expand their key industries, although expansion was slower than in previous years. Lower wages and the promise of a huge market in China (available since 1978 when Deng's open-door policy began) attracted many foreign investors away from the Asian tigers. This occurred at a time when the most important markets in western Europe and America were experiencing an on-going, oil-induced recession which was being regarded by some as a return to the low-growth scenario that characterised pre-war growth patterns[10].

---

[10] Economists say that postwar growth rates in the West have been unprecedented. According to Hughes (1993) 'until 1950, the most rapid period of sustained growth in England was only

The government's remedy was immediate and straightforward. First, it cut employers' CPF contributions from 25% to 10% for two years. Then skills development contributions were halved. Secondly, a two-year, wage freeze was ordered and wage reductions approved wherever deemed necessary to restore an enterprise's competitive edge. Thirdly, the government promised to reduce charges on its utilities, communications, transport and other services; and reduced interest rates and rents affecting businesses. The Singapore dollar was devalued. A host of tax incentives were introduced, including a reduction from 40% to 33% on corporate tax, and a concessional tax rate of only 10% for firms establishing their operational regional headquarters in Singapore.

4.2.6 Services, Regionalisation and Privatisation: 1987 to 1997

Recovery from the 1985-86 recession was fast: by 1987 growth rate was again up to 9%. The government moved away from its Second Industrial Revolution strategy and quickly targeted services and regionalisation. The manufacturing sector, whether low- or high-waged, was no longer expected to fulfil a lead role in future growth, for three reasons. First, because the opportunities for export expansion at 'the intermediate level' where Singapore was located were considered limited. After all, although the US was Singapore's largest market, the Reagan administration withdrew GSP (Generalised System of Preferences) benefits from the NICs mainly because they had trading surpluses with the US. Protectionism was also initiated in the European Community, especially for electronic office equipment. Secondly, the higher value-added production strategy, which might move Singapore into 'the second league' was capital-intensive, at a time when the relative contribution of labour to total production costs was declining because of improved technology which allowed greater opportunities for automation[11]. The huge investments required to implement this high-technology strategy might therefore prove imprudent, given the precarious nature of the international trading environment for such products. Thirdly, the kind of manufacturing that Singapore had identified as desirable was like a technological moving target: advances seem to occur logarithmically, dramati-

---

1.4% per annum, during 1830-1870.' In the first half of the 20th century, per capita income growth fell to less than 1% per annum.

[11] Fairchild, one of the first US companies to set up production in Singapore in the 1960s, repatriated its integrated circuit assembly operations to Portland, Oregon because developments in automation made machines more cost-effective than cheap labour. See Galante (1986).

cally reducing the life cycle of electronic products[12]. The investments required to catch-up, and keep-up, could be enormous yet there were no guaranteed markets, only increasingly fierce competition and protectionism. Thus the long term prospects of the export-oriented, manufacturing strategy seemed less promising, whether in its low-tech, labour-intensive or its high-stake, high-tech version.

Manufacturing was not to be rejected totally, rather it would be integrated into the service concept, since as the 1986 Report asserted (*id* 61):

> [W]e have a greater comparative advantage in exporting services than in exporting goods. We have comprehensive transport and telecommunication links to the rest of the world. We have a well-educated, English-speaking workforce. Without underrating the importance of manufacturing to our economy, we can safely predict that services will be a leading growth sector, providing we promote them aggressively.

Services had been the bedrock upon which Singapore's early economic growth had been built; it continued to contribute significantly to national prosperity.

Regionalisation

The US removal of Singapore's GSP benefits and the general world trade conditions in the late 1980s encouraged the PAP government to refocus its trade strategy from looking predominantly to the West, to looking in its own backyard: at home, to Japan and ASEAN. For opportunistic Singapore, a voice on a multilateral body might be a better investment than bilateral agreements, which might backfire or be ignored. For instance, the PAP government claimed that the US withdrawal of GSP benefits breached a 1987 undertaking in which the Singapore government understood that its readiness to allow its currency to rise in line with the falling US dollar and to tighten its copyright law would ensure continued GSP benefits (see chapter 8 *infra*).

The decision to focus on Asia coincided with Japan's need for trade expansion. In 1986 and 1987, Japanese enterprises provided the major contribution to total investment increases in Singapore, outstripping US investments for the first time (EDB Yearbook 1986/87, 20). Japan was enjoying high exchange rates (against a low US dollar) and suffering calls from the US Congress to liberalise its markets and cut its trade sur-

---

[12] An example from the UK illustrates the point. Just 14 months after investing over £1 billion in a semi-conductor factory in Tyneside, creating 1100 jobs, Siemens, the diversified German industrial group announced its closure. The main reasons given were the collapse of prices in the market, owing to competition from Asia; and the need for more power in each chip, i.e. a technology leap to the next generation. The company decided to move from making 16Mb to 64Mb memory chips, thus 'pushing for growth in logic chips where price fluctuations are less volatile'. See Ralph Atkins, Munich head office sees closure as logical sacrifice, *Financial Times* 1 August 1998, 5 col 4.

plus. As part of its export solution Japan turned to the Southeast Asian markets with renewed fervour; though its strategy also included major investments in the US and in various EC countries, since non-tariff barriers or other forms of protectionism cannot be practised against enterprises which are manufacturing domestically. Apart from investing in manufacturing, some Japanese companies also bought the idea of using Singapore as their bridgehead and established regional headquarters there. Others entered the growing financial services market.

In 1992 Singapore took the services and regionalisation concept a step further. The idea was 'to build an external economy, which is strongly linked to and which enhances the domestic economy' (EDB 1997, 1). Projects were devised whereby Singapore's expertise in business management and administration could be sold as services to its less well-organised neighbours. First, the 'growth triangle' of Singapore, Malaysia and Indonesia was formed. According to government insiders, the idea represents a strategic partnership in which each state agrees to share its complementary resources and capabilities in order to create synergy in their development efforts. Specifically, the plan involves industrial projects in Johore, the southern tip of west Malaysia, which is separated from Singapore by the Johore Straits; and industrial projects and tourism in Batam and Bintan, two Indonesian islands just southeast of Singapore. The concept holds that as the three states are at different stages of development they can offer three levels of service to foreign investors. Labour-intensive industries can be established in Batam, intermediate industries in Johore, while Singapore can contribute management and marketing expertise, and accommodate the operational headquarters of the investing companies. In Bintan, 17kms of pristine beaches can be seeded with hotels, golf courses and marinas, under Singaporean management, so that both countries might share the tourists who arrive at Singapore's 'world class airport' and quickly run out of interesting sights to see and things to do in tiny Singapore.

Secondly, plans were devised whereby Singapore's technology companies, mainly state-linked enterprises, would invest in and help create a technology park in Bangalore in India. The focus would be high-tech facilities for software development, R&D work and light manufacturing.

Thirdly, in 1994 the governments of China and Singapore signed a memorandum of understanding whereby Singapore would mastermind an integrated industrial growth concept in Suzhou in Jiangsu province, about 70 km west of Shanghai. The

brainchild of the two past leaders Deng Xiaoping and Lee Kuan Yew, the project initially aimed to replicate the Singapore town of Jurong in Suzhou. The plan included developing 70 sq km bare fields into a modern city. After five years of development, Singapore managed to apply its magical recipe of attracting American multinationals (40% of all foreign investors), as well as Japanese, Korean and few European MNCs to establish manufacturing plants in Suzhou. According to EDB promotion literature, about 40% of all MNCs manufacture electronics, 21% chemicals and 19% food and beverage. The long-term plan was to establish a town capable of supporting a population of 600,000 over a period of 20 years. However, in June 1999, Singapore announced that it plans to reduce its stake in the joint-venture from 65% to 35% and hand over management of the Suzhou Industrial Park to the Chinese by January 2001 (*Straits Times*, June 29, 1999, 1).[13] A smaller, less ambitious China project (creation of only 150,000 jobs) is underway in Wuxi, further along the Yangtse Delta, 130km northwest of Shanghai.

Singapore has also invested heavily in infrastructure, residential, business, retail and hotel projects elsewhere in China, both on the mainland and in Hong Kong (*Straits Times* 7 February 1997, 30, col 1-5). The government, through GLCs and statutory boards, supports private investments in Vietnam, Myanmar, Philippines, Taiwan, Japan, Australia, Europe and the USA. In the case of Vietnam and Myanmar, industrial parks like those in Wuxi and Batam are envisaged. The question is whether all these countries can successfully target western economies as export markets, and whether western markets can continue to absorb low-cost manufactures. The World Bank (1993) seems to think they can because it urged late-industrialising countries to follow in the NICs' footsteps and adopt export-oriented manufacturing strategies. But in 1999, the sustainability of this strategy is dubious as protectionism looms again. Indeed Alan Greenspan, chairman of the US Federal Reserve Fund, has found it necessary to warn against protectionism on several occasions (*Dallas Morning News*, April 17, 1999, F1).

Privatisation

The government's wish to privatise some of its enterprises and statutory bodies was signalled in 1985 as part of its post-recession plan. From the early 1960s, the government had entered into joint ventures with foreign and local investors, and had estab-

[13] For a discussion, see Carter (2000 - forthcoming).

lished wholly owned state enterprises in industries as disparate as food, textiles, steel, petrochemicals, biotechnology, aerospace, hotels, banking and insurance. The rationale was that government-linked companies (GLCs) and statutory boards were necessary tools for guiding and accelerating growth and building an industrial base, or for venturing into risky areas. As Lee Kuan Yew explained (Sesser 1992, 52):

> The only reason the government moved in was that no entrepreneur had the guts and the gumption and the capital to go in on his own. So we went in and got it going, using government officials who had the drive and the flair. And we are prepared to go into more high-risk areas where Singaporean entrepreneurs are unable to carry that risk, either for lack of daring or for lack of capital.

It was a policy that seems to have paid dividends. For although information is scarce, most GLCs appear to have been profitable; several grew into huge conglomerates, especially in ship-building and construction.

However with the 1980s' move to neo-classical and laissez faire strains of economics, particularly in Reagan's USA and Thatcher's UK, and increasing protectionism, Singapore could ill afford to be seen as anything but a free trade market in which the private sector reigns over the public. Where there might be alien practices, the government should at least be seen to be working towards reining in the public sector. As Finance Minister Tony Tan indicated in his 1985 budget statement, 'in the 1980s the engine of economic development should be the private sector and not the Government', therefore 'the private sector must be encouraged to set the pace in leading Singapore to a new economic era'. He announced that (PD vol 47, cols 481-82):

> (a) Government will invest in new priority industries only where private entrepreneurs do not have the will or the money to undertake projects on their own or where it is essential for Government to provide the entrepreneurship;
> (b) Government will divest its shares in companies where it does not have a majority stake and where it is not essential for Government to have effective control;
> (c) Unlisted Government companies will, wherever possible, be listed on the Stock Exchange;
> (d) For critical companies which are considered to be vital to the national interest, Government will maintain a controlling interest but will invite participation from the public through listing on the Stock Exchange.

The appointed Public Sector Divestment Committee (1987) made its recommendations in 1987. Lee Hsien Loong, then Minister for Trade and Industry, pointed out that the 'divestment exercise will be a slow process with no promises of a quick killing on the stock market for the investing public' (*Straits Times* 24 March 1987). No doubt he had the privatisation of the UK's British Telecom still fresh in memory. (BT was privatised in 1982). Lee added that (*id*):

> ... privatisation does not mean that the Government will stay out of business altogether [for] where the private sector does not have the means to take up opportunities or when foreign investors want a token official commitment, the Government will not hesitate to do so; ... [neither will it] rule out investing its reserves in good, local companies through minority shareholdings.

So, despite the privatisation policy, the government's role as entrepreneur may diminish but it will not disappear. The first company to be divested (partially) was Singapore Airlines, a subsidiary of Temasek Holdings[14]. It was listed on the stock exchange in 1985 but the government, through its Temasek holdings, remained the majority shareholder. Similar profiles have been noted for other divested companies. This leads one to speculate on whether the government is merely trying to fulfil the second of three privatising objectives listed by the Public Sector Divestment Committee (1987, 12):

1. To withdraw from commercial activities which no longer need to be undertaken by the public sector.
2. To add breath and depth to the Singapore stock market by the flotation of GLCs and statutory boards and through secondary distribution of Government-owned shares.
3. To avoid or reduce competition with the private sector.

Adding breath and depth to the stock market fits well with Singapore's plan to become Asia's second major financial services market (after Japan). The move also reinforces the overall business services concept.

4.2.7 Regional Set-back and the Globalisation Assault 1997 to 1999

Singapore's regionalisation plans were thrown into disarray by the regional economic setback, which started in Thailand in July 1997. What began as a depreciation of the Thai currency relative to the US dollar became a regional nightmare as foreign investors in their lemming-like fashion panicked, called in their short-term, unhedged foreign currency loans, repatriated their capital and headed out of the region. Contagion threatened every country in the region, and by 1998 also others as far away as Brazil and Russia. It is now clear that the problem was one of lost confidence.[15] With the collapse of international confidence in the region, global capital flowed out of East and Southeast Asia. However, in 1997 the Singapore economy grew by a robust 7.8% (PD vol 68, col 526). For Singapore was not among those countries whose lack of prudential super-

---

[14] In December 1990, Temasek Holdings comprised 39 1st tier companies and 469 subsidiaries. It employed 65,000; had a capital of SD 9.1 billion but its turnover and profits are not published. (A 1st tier company is one in which a ministry, holding company or statutory board has direct investments.) Temasek Holdings is a wholly owned state enterprise.

[15] For opposing views, see Alatas 1999, Krugman 1998. See generally Rao 1998, Booth 1999.

vision attracted a huge influx of cheap foreign capital (hot money). The problem arose during the early 1990s when the West, celebrating the triumph of 'the market' over 'the state', encouraged rapid liberalisation of financial markets and seduced late-industrialising countries into huge unsustainable foreign debts. The lenders were as reckless as the borrowers. Asset 'bubbles' were created in the property and stock markets in Indonesia, Korea, Thailand, Hong Kong, Malaysia, and even Japan and elsewhere. Singapore too was implicated because its regionalisation policy aimed at these countries and at China. For instance, in 1993 the EDB helped 150 Singapore companies invest abroad. Of these 52% involved projects in China, 27% in Southeast Asia and 18% in South Asia. By December 1996, Singapore's exposure in Indonesia alone was nearly USD15 billion: (EDB 1997, 1). The cost of extended government incentives should also be added to these investments. Incentives included (EDB 1997, 5-6):

> Double deduction for Overseas Investment Development Expenditure, Business Development Scheme, Total Business Planning Programme, Regionalisation Finance Scheme, Overseas Investment Incentive, Intech For Regionalisation, Regionalisation Training Scheme, Overseas Enterprise Incentive and Regional Venture Funds Incentive.

The damage to Singapore's economy is still unknown. The growth triangle concept (see 4.2.6) has the advantage of allowing Singapore companies based in Indonesia and Malaysia to benefit from lower production costs resulting from devaluation.[16] The pegs of the Singapore and the Hong Kong dollars to the US dollar were maintained by government intervention in the markets. And, true to form, the Singapore government trimmed corporate operating costs by lowering CPF contributions and wages. Unemployment rates were kept lower than anywhere in the region: 1.8% for 1997 and under 4% in 1998 (PD vol 68, col 452). According to the National Science and Technology Board (NSTB) investment in research and development was kept high: up 17% from 1996 to 1997: (*Straits Times*, 3 September 1998, 5). Banking reforms were introduced to ensure greater transparency and accountability (*Financial Times*, 9 June 1998, 4; 5.7 *infra*) in preparation for a more open domestic market when the crisis ends. And end it will, for by April 1999 foreign investors were returning to the region. The recovery is fragile. Much of the interest reflected the unsustainably high US stock market (the Dow breached the 11000 mark in May 1999) and the proverbial 'cheap bargains' to be had in Asia.

4.3 Conclusion

The story of how Singapore was transformed from the 1959 squalid, jobless gloom to the modern state that we now know is entwined with the history of the People's Action Party (PAP). It is the story of how Lee Kuan Yew and his liberal faction in the PAP ruthlessly suppressed the leftist opposition groups and the unions, and stayed in power from 1959 until the present[17]. This study does not examine the politics of the state, except where they impinge directly on economic matters, e.g., in the suppression of the unions (chapter 6). Nevertheless an apt conclusion seems to be that during the PAP's forty-year rule, this authoritarian-pluralistic developmental state has functioned almost like a socialist command economy, yet it has been dedicated whole-heartedly to the pursuit of capitalism. It is a paradox. Yet it helps explain why Wade's theory of the governed market (see 1.5, 3.8) aptly accounts for Singapore's experience of rapid, sustained economic growth.

After a long struggle, the Malaysian Federation was formed in 1963. In preparation for the merger, Singapore had practised some import-substituting industrialisation. This continued during the merger. However, Singapore left the Federation in 1965 and declared itself a sovereign state and republic. The prerequisite for import-substituting industrialisation was a large 'domestic' market, and with that gone, export-oriented industrialisation was the only alternative. This Singapore introduced and sustained in a very novel way: First, by an alliance with multinational corporations, which brought foreign funds, technology, skills and ready-made markets for the products and components, which Singaporeans manufactured. Secondly, far from practising the free market ideology, the PAP's most fundamental act was to intervene decisively in the labour market in the 1960s and *whenever necessary* to take active steps to ensure the presence of conditions which it deemed conducive to economic growth (see chapters 5 and 6 to 8). State activism occupied a prominent place right from the start and has remained so ever since.

The government's pervasive activist role is evident in areas as diverse as labour market regulation, investments in human resources and social and physical infrastructure, redefinition of housing as a merit good and ensuring its equitable distribution, and investments in industry and services through aggressive corporate incentive schemes. It

---

[16] Malaysia imposed capital controls in 1998, which artificially stabilised the Ringit at 3.80-1US$.
[17] In 1990, Lee Kuan Yew retired as Prime Minister, becoming 'second minister' in the PM's office. Deputy Prime Minister, Goh Chok Tong became PM.

was also hyperactive in reducing corruption and crime, and intervening in areas where western governments dare not tread, for fear of infringing their citizens' rights or breaching the free market ideology.

Thus, contrary to what neo-classicists say, the state did intervene to help create Singapore's comparative advantage. Moreover, the state's role was not minimal. It played the all-embracing roles of entrepreneur, regulator, venture capitalist and facilitator. Through the visible hands of nearly 100 statutory boards and several hundred government-linked companies the state practised economic development. Plans in the late 1980s and 1990s to divest itself of some companies and embrace the free market are probably better explained as the government's pragmatic ploy to add breath and depth to the local stock exchange, to make it a more credible player in the global financial services market. They do not necessarily reflect a genuine need for government to loosen its grip in the area.

Somewhere in the interstices of these major governmental roles and intervening acts, law must reside, for Singapore's leaders are keen to praise the nation's 'reliable legal system'[18] and proud of its rating by the Swiss Institute for International Management Development and World Economic Forum as having 'the best legal system among NICs'.[19] The next chapter seeks to discover whether there is a causative link between law and the economic development discussed here.

---

[18] See *Straits Times*, Overseas Edition, 16 May 1998.
[19] See *Straits Times* 26 November 1993.

CHAPTER 5 CORRELATION BETWEEN MAJOR LAWS AND ECONOMIC DEVELOPMENT 1959 to 1999

No major social change occurs or is put into effect in a society which is not reflected in some kind of change in its laws. Legal institutions are responsive to social change; moreover, they have a definite role, ... as instruments that set off, monitor, or otherwise regulate the fact or pace of social change.

Lawrence M Friedman, Legal Culture and Social Development, (1969-70) 4 *Law & Society Review* 29-44, 29

5.1 Introduction

Chapter 4 traced the major developments in Singapore's economy from 1959 to 1999. It divided them into seven growth phases or patterns which seem to characterise the period. This chapter aims to discover whether and, if so, to what extent changes in Singapore's economic growth patterns from 1959 to 1999 exhibit positive correlation or causative links with changes in the law during the same period. In the first instance, a rather primitive measuring tool is used. It is a simple quantitative test of the number of laws enacted or amended during the periods identified, which reveals an intention or appears to have had an impact on economic growth. Of the total number of laws enacted or amended in each period, an analysis is made of key laws to ascertain how and to what extent their main provisions may be linked to corresponding changes in the economy. This is a macro-level study of the possible link between law and economic growth. In three subsequent chapters, 6 to 8, a micro-level investigation of selected laws is conducted to test key hypotheses of law and development theory about the role of law in economic development (see chapter 1).

As discussed in chapter 2, to facilitate the proper conduct of the colonial economy, a specific legal infrastructure was imposed upon Singapore. The quest in this chapter is for cognisance of a legal framework whose functional purpose, doctrine or ideology may have shifted from its colonial heritage to accommodate the new underlying economic developmental context (discussed in chapter 4) in which the laws of modern Singapore were enacted and intended to operate.

Perhaps the most significant legal landmark was the coming into force on 3 June 1959 of the new Constitution. This can serve as the line of demarcation between legislation of the old regime and that of the new. For following the dissolution of Parliament on 31 March 1959, the PAP won a landslide victory[1] at the general election and took office on July 1, under the new Constitution.

As established in chapter 4, the PAP was dedicated to economic development and changes, the nature of which previous colonial administrations had probably never contemplated if only because the focus of their economic policies had tended to maximise benefits that were external to Singapore. Indeed some colonial policies seem to have inhibited the restructuring of Singapore society and economy, and in particular prevented a

---

[1] The PAP won 43 of the 51 seats, including every seat in the rural areas: *Singapore Annual Report* 1959, 7.

more equitable distribution of the national income. The PAP established itself in power in 1959 and has remained there ever since. It did so mainly by retaining, in the words of Buchanan (1972, 19) 'the veneer of a peculiar form of 'democratic socialism'; but in so doing, has also achieved political stability, rapid economic growth and a more equitable distribution of the national wealth than any other late industrialising country[2]. As chapter 4 shows, the PAP government also exhibited a rare degree of continuity in its pragmatic developmental ideology and in the tenor of its development goals, all of which might well be reflected in the legal system. In particular, it might be expected that legislation passed after the coming into force of the Constitution might reflect the new socio-political and economic agenda. In other words, law as the 'mature policy' of the new government or new legislation might show signs of law being used as an instrument of socio-economic change. For as Lawrence M Friedman points out (1969-70, 29):

> No major social change occurs or is put into effect in a society which is not reflected in some kind of change in its laws. Legal institutions are responsive to social change; moreover, they have a definite role,..., as instruments that set off, monitor, or otherwise regulate the fact or pace of social change.

It is assumed that Friedman's words can be extended to include economic and political changes, there being no logical reason why they should be limited to social changes. The indications of change could be the immediate or gradual emergence of laws, which were geared primarily towards nation-building, socio-economic regeneration, internal capital formation, redistribution of wealth and so on. In other words, these would be activities that reflect a developmental 'governed market' ideology while discarding or at least downplaying the *laissez faire* pure market economy inherited from the colonial period.

Of course, as all legislation which entered the statute books and came into force are to be observed on an equal footing until repealed or amended, all major economic-related laws will be analysed irrespective of whether they were enacted by the PAP or the previous administration. Care will be taken to identify any shifts in the nature or ideology of the laws enacted under the two very different regimes. This discussion is conducted in the analytical framework of the Ideal Types of Legal Systems (Appendix 1 and chapter 1), in which rights-based, individualistic, western-style legalism is juxtaposed to an emerging hybrid *westernistic* legal system which is situational, communitarian, ho-

---

[2] Buchanan's phrase is probably a simplistic way of explaining (or denying) two essential ingredients in Singapore's success. One, the rulers gained political legitimacy through elections. Two,

listic and regulatory. The latter type of laws would be justified by holistic, developmental rationality as opposed to the more calculable, neutral rationality of western laws.

5.2 Law and the Domestic Industrial Market 1959 to 1965

From the point of view of legislative activity, this period can be sub-divided into two phases. The first is characterised by laws seeking to provide a framework for self-rule in the economic and political arena. However, simultaneously, and almost contrary to this effort, were the activities, which aimed to prepare Singapore for *merger* into the Malaysian Federation. The paradox can be understood in light of the merger's promise to open up a large, viable, single domestic market to Singapore's future manufactures and services. The second wave of laws seeks to cope with *demerger*, the abortion of Singapore's 2nd four-year plan, and the birth of a small nation state. As discussed at 4.3 *supra*, the Federation was touted as the road to economic progress, and it was hoped that it would help complete Singapore's independence from colonial rule. Naturally, when the merger failed, other laws had to assist to untie the knots and facilitate an orderly separation.

5.2.1 Self-rule and the Malaysian Single Market

Of the 75 Ordinances enacted in 1959, 38 were enacted before the coming into force of the new Constitution, and 37 were enacted after. Of the 38 laws, 22 were amendments and 13 were new ordinances. Conversely, of the 37 enacted by the PAP government, four were ordinances to transfer powers, one was an ordinance to invalidate proceedings of the City Council, one restricted proceedings of the court, 11 were new ordinances and 19 were amendments.

Two key new ordinances, enacted in the first part of 1959, were also the first promulgated in Singapore to encourage economic development by means of tax incentives. They were the Pioneer Industries (Relief from Income Tax) Ordinance and the Industrial Expansion (Relief from Income Tax) Ordinance, subtitled No 1 and No 2 of 1959, respectively. The Pioneer Industries law (PIL) was originally intended to be in force for only 6 years (s4(5), s5(4)). However, towards the end of the merger, the Malaysian government extended PIL's life. This law aimed to encourage investment of capital,

---

'democratic socialism' is more than a buzzword. It encapsulated the postwar formula for a more equal distribution of the nation's wealth among people who sacrificed to create it.

local or foreign, in industries that were not carried on in Singapore on a scale considered adequate for Singapore's economic needs. It made provisions for income tax exemption on the profits of a pioneer company for five years, starting from the date when production in marketable quantities of the object of investment commenced.

The Industrial Expansion Ordinance (IEO) aimed to encourage the expansion of *existing industries* where such expansion would benefit Singapore economically. It was intended to be in force for three years (s4(4) and 5(5)), however, it was never brought into force.[3] One commentator (Manring 1971, 1-97) speculates that the reason for this was that the PAP government found it expedient to encourage *new* operations. However, others, e.g. Buchanan (1972, 65) suggest that local entrepreneurs were 'unventuresome' and that local capital generally followed the well-established colonial pattern of emphasising primary and tertiary investment (*id* 35); i.e., growing and harvesting commodities, and providing services. If Buchanan's observation were correct, it would presumably apply to *new* as well as *existing* local entrepreneurs[4], rendering implausible Manring's explanation of why the PAP government did not bring the IEO into force. In other words, both categories of local entrepreneurs would need to be encouraged to invest in the neglected secondary [manufacturing] sector. The speculation that the government did not bring the law into force because it might have thought that the expense involved in administering the scheme for *existing* enterprises would not be cost-effective also seems to be unfounded. In any event, it was only in 1967 that the provisions of the IEO were brought into operation; and then, only by repeal of the 'colonial' law and re-enactment, with amendments, under part of the Economic Expansion Incentives (Relief from Income Tax) Act 1967 (see 5.4). A more plausible explanation could be that the PAP government was already focusing on job creation as one of its major goals, and this could be fulfilled more easily, by new pioneer or strategic labour-intensive industries upon which the government hoped to build in future.

Other important 1959 laws included the Control of Manufacture Ordinance, which provided wide regulative powers for the establishment of industries and the protection of local manufacturers, and the Trade Unions Amendment Ordinance, which tightened regulations the registration of unions (see chapter 6). The Law Reform (Frustrated Contracts) Ordinance 1959 introduced into Singapore the provisions of the similar

---

[3] But see 5.3 *infra* and footnote 10.

[4] For an analysis of investment patterns in Malaya and Singapore, see Puthutcheary J (1960).

1943 Act from England, and the Foreign Judgments (Reciprocal Enforcement) Ordinance provided for the registration and enforcement of foreign judgments in a similar way to the provisions of the UK's Act of 1933 as amended by the 1956 Administration of Justice Act. The Services Lands Board Ordinance established as a corporate body the Services Lands Board to hold land for the Service departments [the military] of the UK government in Singapore. By incorporating this Board, the PAP government was relieved of direct control of military property, administrative or otherwise, as the property was vested in the Board. Besides, it should be remembered that at this stage, Singapore had not gained independence with regard to foreign affairs and defence, both remained in the hands of the British (and later the Federation) until Singapore became a republic in September 1965. In any event, this is an example of the use of western law to protect real property rights in the traditional manner. It was not until 1960 that land law began to take on a more developmental and redistributive function (see chapter 7).

The Customs (Amendment) Ordinance extended the power to impose customs duties on all goods entering Singapore. The Control of Manufacture Ordinance, the various Customs amendments (1959, 1960, 1962, 1964) and the PIL were clearly intended to pave the way for import-substituting industrialisation. These laws aimed to encourage manufacturers to invest in industry and to protect the domestic market for their goods. Similar laws were in operation in Malaya and when the Federation was formed in 1963, the *Yang di-Pertuan-Agong* (Head of the Federal State) made modification orders in many areas to ensure integration and harmonisation of laws within the single market. For instance, during 1964 (the first and only full year of Singaporean participation), modification orders were made to amend 12 Singapore Ordinances; repeal 12, wholly or in part; and extend to Singapore, with suitable modifications, 19 Federal Ordinances and Acts. Such modification orders were made under s74 of the Malaysia Act 1963, which was passed to give effect to the Malaysia Agreement in the Federation[5].

A study of the Customs Ordinances is revealing, especially in light of the popular misconception that Singapore advocated free trade throughout its development. It is true that Singapore continued to build on its founding strategy as a free-trade port and it did

---

[5] For a discussion of the constitutional aspects of the Federation, see Harding (1996), chapter 10. For the role and powers of the *Yang di-Pertuan Agong*, see *id* 67-72.

not and still does not prohibit exports or impose export duties on goods[6]. However, the same cannot be said for imports. In 1959 there were no protective duties on imports and revenue duties were levied on only 24 items such as liquor, tobacco and petroleum, presumably as preventive measures to discourage excessive use. By 1960, provisions of the 1959 Customs amendment introduced selective protective tariffs on five items. Subsequent amendments (as discussed below) increased duties to protect infant industries and to encourage pioneer investors during the import-substituting phase and especially after separation from the Federation when export-oriented industrialisation was adopted. There seems to be a direct correlation between subsequent growth in fledgling industries and an increase in the number of items on which import duties were levied as provided for by Customs amendments and statutes enabling protective measures.

Many of the early statutes may seem timid when judged by later government interventionist standards. However, it should be remembered that during this period, the focus was on implementing policies that prepared Singapore for the creation and operation of a single market (chapter 4). The perceived need to integrate with Malaya, and the then conventional wisdom that domestic markets should be protected in order to facilitate import-substituting industries were policies that influenced the amendments made and the laws enacted during this period. In general, the laws were facilitative. They aimed to encourage pioneer, job-creating, manufacturing industries and to provide conditions that were considered conducive to economic growth mainly by protecting the home market, especially in the context of the Malaysian Single Market.

Bolder statutes which set the PAP's developmental ideological imprint on early legislation were witnessed when the government addressed the serious problems of housing and unemployment, the two major commitments which had ushered it to power. For instance, the Housing and Development Board Ordinance 1959 transferred the assets and functions of the Singapore Improvement Trust to the new Housing and Development Board (HDB). With amendments in 1963 and 1964, the HDB was empowered to become more activist and productive than its Trust predecessor in providing low-cost housing for

---

[6] There are exceptions. E.g, exports of rice were completely banned from November 1966, and partially lifted in March 1967. In general, during the early years, the Supplies Department maintained a rice stockpile. Rice importers were required to buy from the stockpile in order to rotate the stocks held there. However, transshipment of rice was not restricted provided it was covered by Bills of Lading or on condition that the rice was not landed at Singapore. Thus entrepot trade was not compromised.

the poor[7]. The Planning Ordinance transferred the remaining functions of the Trust [town planning] to a department in government, which later turned swamps into industrial and residential estates (see chapter 7). The Financial Secretary Ordinance incorporated the Financial Secretariat (now Ministry of Finance) and vested all assets and property in the new corporation. The first legislative moves designed to tackle unemployment appeared in 1960 and 1961 (see below).

Of the 77 Ordinances enacted in 1960, 23 were new, 43 amending, 3 repealed existing legislation and two merely changed the existing names of ordinances. This means that legislative activity continued to be on a high level in comparison with annual activity during the colonial period. Key areas included: (1) Nation-building: e.g., citizenship, elections, banishment, organisations and societies. (2) Labour: the Trade Disputes (Amendment) Ordinance and the Industrial Relations Ordinance. (3) Social infrastructure: the Lembaga Gerakan Pelajaran Dewasa Ordinance (incorporated a body to take over the functions and assets of Singapore Council for Adult Education and promote adult education). Similarly the People's Association Ordinance incorporated the assets and functions of the Singapore Youth Sports Centre to promote community recreation in Singapore, and the Dewan Bashasa dan Kebudayaan Kebangsaan Ordinance established a body for the development of the national language (Malay) and promotion of Malayan culture. (4) Crime prevention: e.g., amendments to the Criminal Procedure Code; the new Prevention of Corruption Ordinance directed mainly at corruption in the public services, but also applicable to trustees and others acting in a fiduciary capacity. This statute represented a landmark as it set the scene for a largely incorruptibe bureaucracy. Its harsh sanctions acted as a deterrent. The Road Vehicles (Special Powers) Ordinance, which was both enacted and amended in 1960 to enable wider police powers for dealing with theft, house-breaking and secret societies - including stop, search and seizure of vehicles suspected of being used to commit scheduled offences. The Printing Presses (Amendment) Ordinance extended the provision of the previous law to cover all newspapers printed in Malaya and published, sold or distributed in Singapore. It required the proprietor of every such newspaper to obtain an annual permit. It empowered the police, postal and customs authorities to search for and detain illegal newspapers, and impose

---

[7] For instance, the total number of housing units built by the SIT during 31 years of existence was 23,264; whereas during its first five years, the HDB built 54,430 units or an average of 9,072 units per year: Quah (1985) 241.

penalties for being in possession of illegal newspapers without lawful excuse for the purpose of their publication, sale or distribution in Singapore. These draconian measures to restrict freedom of the press, and the stop and search provisions in the Road Vehicles Ordinance do correlate directly with the PAP's crusade to consolidate its power and immobilise the opposition 'in the national interest'.

Similarly, the labour laws mentioned above and the amendment of the Trade Unions Ordinance in 1959 sought to curb the power of trade unions. The Industrial Relations Ordinance provided for mandatory and state-assisted settlement of trade disputes. The Industrial Arbitration Court, established under the same Ordinance was empowered to arbitrate upon trade disputes in three situations (s20-22, Cap 124, 1970 ed):

1. When all the disputants agree to submit the dispute to the Court
2. When the Minister directs that the trade dispute be submitted to arbitration, or
3. When the Yang di-Pertuan Negara declares that it is essential in the public interest that a trade dispute be submitted to arbitration.

The Minister and the *Yang di-Pertuan Negara* held wide powers to direct that trade disputes be settled by the Arbitration Court. The Court's decision was to be considered final and breach of any term of the award settlement was made a criminal offence. This law was perhaps the best example of the PAP's early determination to lay new ground rules for the industrial labour market, which was considered in need of greater discipline in order to attract investors. The PAP also used the 1959 Trade Unions Ordinance to prevent the registration of communist and other opposition-affiliated trade unions, and to deregister those, which it regarded as unfriendly to PAP objectives (see chapter 6). Appeals from the Registrar's decision lay to the Minister for Labour, who might confirm or reverse the Registrar's decision without giving a reason (s18(2)). The Minister's decision was final. Deregistration of a trade union in Singapore meant its automatic dissolution, rendering Singapore one of the few countries in the world where a union can be dissolved by purely administrative action.

The Customs Ordinance 1960 amended and consolidated the law relating to customs duties. It empowered the *Yang di-Pertuan Negara* to make an order to levy customs duty on any goods, where he considered it necessary for protecting *any industry,* which is *established or about to be established* for the manufacture of any goods in Singapore. He could also make orders to protect the interests of the entrepot trade, and where it was considered expedient to impose customs duties on the import or manufacture of goods. Responsibilities for collecting special taxes relating to motor vehicles

were transferred to the Registrar of Vehicles. The English method of valuation of imported goods for the purposes of the Customs Ordinance was adopted (from the UK Customs and Excise Act 1952). The power to *prohibit* exports or imports was transferred from the *Yang di-Pertuan Negara* to the Minister, and the Comptroller of Customs was empowered to decide which goods fell under the prohibited categories. Finally, of great importance, the law empowered customs officers to make *arrests* without a warrant, and put them on a par with their police colleagues who were thus empowered under the Criminal Procedure Code.

We are left in no doubt that the PAP government saw the inducement of private investment in industry as one of its major objectives. As Dr Goh Keng Swee stated (Ministry of Finance 1963, 55):

> It will be necessary to introduce Government policies such as expansion of markets, protection against imports of competing goods, exemption from income tax for pioneer industries, aggressive industrial promotion and other measures to bring about the desirable volume of private investment.

An analysis of early legislation shows that the government policies to which Dr Goh alluded were all transformed into statutes, and that, as witnessed, for instance, in the Customs Ordinances, institutions were also empowered to implement and enforce them. Indeed, to judge by Dr Goh's declared intention, and what actually occurred, it can be argued that many statutes were in effect mature government policies.

Perhaps the single most important statute devised for the realisation of the industrialisation policy was the Economic Development Board Ordinance 1961, which repealed the Industrial Promotion Board Ordinance and gave wide powers to the new Board, the EDB. The huge financial backing and wide powers immediately set the EDB apart from its colonial predecessor. In the 1962 Budget the government allocated SD871m to development expenditure. The sum was divided into three (*Annual Report* 1962,117):

1. Economic Development — SD 507.95m or 58.32%
2. Social Development — SD 349.88m or 40.17%
3. Public Administration — SD 13.19m or 1.51%.

Of the sum earmarked for economic development, some 66% or SD 337m were allocated to development of industry and commerce. The EDB was endowed with the single largest portion, namely SD100m. The law empowered the EDB to promote industrial development with focus on assistance and organisation relating to finance, promotion,

technical consulting services, project appraisal and industrial facilities. As discussed in chapter 4, the EDB in effect became an arm of government, smoothing the way for private capital investments and investing directly in industrial enterprises where necessary. Huge investments were made in public utilities (water, gas and electricity), education, transportation and communications. The EDB's pragmatic view was that profits and ease of operation were the only real incentives that would attract private capital. It was thought that efficient infrastructure would help ensure both. In addition as former EDB director Mr Chua explained (1998 interview), 'the PAP government has never been interested in curtailing investors' profits or preventing foreigners from repatriating their capital. The government realised that the more private investors invested, the more jobs they would create, and in the early days the government was primarily in the business of creating jobs'.

By 1962 legislative activity had fallen to a less hectic pace. Of 25 Ordinances enacted, 15 were amendments and only 7 were new. Seven enactments were of particular importance to the economy. The Banking Ordinance laid down regulations relating to capital requirements, reserve funds, auditing, transparency of transactions and information, restrictions on mergers and so on. It also required companies conducting banking business to be licensed by the Minister. Existing banks were given ten years to ensure compliance. The Minister was empowered to set up a Clearing House and appoint an Inspector of Banks and bank advisers. This law did not apply to the state-owned Post Office Savings Bank, registered co-operative societies or licensed pawnbrokers. The Customs (Dumping and Subsidies) Ordinance provided for the imposition of anti-dumping and countervailing duties in respect of goods dumped in Singapore or imported into Singapore under subsidy. The Civil Law (Amendment) Ordinance provided for enforcement of all contracts or agreements purporting to be contracts or agreements for the sale or purchase of rubber, either for immediate or future delivery. Before this law, all forward contracts for the sale or purchase of unascertained rubber by description had been considered unenforceable as they were regarded as wagering contracts.

The Singapore Overseas Telecommunications Board Ordinance provided for the incorporation of a telecom Board and the transfer to the Board of all external telecom undertakings of the government and of Cable and Wireless Ltd in Singapore. The government held 51% of the shares, Cable & Wireless held the remainder. Specific provisions prohibited Cable & Wireless from selling its shares to a third party without prior

government approval, required the company to hold its assets for ten years unless the government requested prior transfer and to provide training for the Board's officers in England or elsewhere at the Board's expense. The Board was empowered to operate, maintain and develop domestic telecom services on behalf of the government.

The Tariff Advisory Commission Ordinance replaced a committee appointed under the 1960 Customs Ordinance and widened the scope for protecting fledgling industries. The Industrial Relations (Amendment) Ordinance enabled the establishment of more than one Industrial Arbitration Courts, and vested the power to certify collective agreements in the Court. Members of the panel were to be nominated by such trade unions of employees as were invited by the Minister, and referees were to be chosen from a list maintained by the Minister. Appeals from the referees' decisions would lie to the Court whose decision was final. Finally, the Advocates and Solicitors (Amendment) Ordinance provided for the regulation of the legal profession, including setting up a compensation fund for the victims of malpractice, supervising solicitors and auditing their accounts. It also allowed legal practitioners not ordinarily resident in Malaya to practise in Singapore if it was in the public interest to do so, paying due regard to their special qualifications or experience.

5.2.2 Birth of a Small Nation State 1965

While Singapore's separation from Malaysia might have been traumatic from a political and short-term economic perspective, juridically it was straightforward. The result too was straightforward: the birth of a small nation state. But its future was considered so insecure that even the usually ebullient Mr Lee found it hard to hide his apprehension: he broke down in tears in public[8].

The Republic of Singapore Independence Act 1965 empowered the President of Singapore to make orders (published in the *Gazette*) which ensured such modifications in any written law as appeared necessary or expedient in consequence of the independence of Singapore upon separation from Malaysia. In this context, 'modification' included amendment, repeal and adaptation, in relation to any law of Malaysia or the UK for the time being in force in Singapore. The President was empowered to declare that any such law shall cease to apply to Singapore. However, as discussed at 2.4 *supra* and

---

[8] The report (Buchanan 1972, 250-253) was confirmed in his autobiography: Lee Kuan Yew 1998.

witnessed in *Butterworth*[9], the President did not seem to make much use of the power. In 1966, the first full year after demerger, 20 modification orders were published in the *Gazette*. Under the Interpretation Act 1965, the Attorney General may, with the President's consent, implement the reprint of Acts and Ordinances. In any reprint of a law, all amendments, modifications or new laws in force in respect of that law must be taken into account so that the new reprint represents a fused document comprising the whole body of that current law. This practice eases the work of legal practitioners. In 1966, 31 Reprints were made in accordance with the Interpretation Act.

5.3 The Pragmatic Imperatives 1966 to 1973: Industrial Export, Labour Discipline and the Public Housing Glue

As discussed in chapter 4, the period 1966 to 1973 saw the most vigorous growth in Singapore's industrialisation. This was when Singapore, in the infamous Rostow metaphor, experienced take-off. Growth rates reached double digits, with an annual average of 13.6%. Three areas of law were most prominent during the period: Those designed to encourage industrial manufacturing for export mainly through tax incentives and providing attractive physical infrastructure; those regulating the labour market; and those permitting the construction and distribution of low-cost public housing.

In addition to changes resulting from modification orders made by the President under the 1965 Independence Act, in 1966, 57 Acts were enacted. Of these, 21 were fresh legislation and 30 were amendments (the others were Supply Acts). In the context of economic development, several amendments were of great importance. For instance, amendments to the EDB Act widened the definition of 'industrial enterprise' and gave the EDB wider powers to raise capital in the form of government loans, issue of debentures, stocks, bonds and so on. Amendments to the Customs Act regularised the post-independence situation and provided for the licensing of a new kind of warehouse. The Prevention of Corruption Act was extended to cover offences committed by Singapore citizens outside of Singapore. The Trade Unions Act introduced a secret ballot and required a majority vote to validate any decision to start, promote, organise or finance any strike. The Merchant Shipping Act established a register of Singapore ships, and followed the UK 1894 Act relating to the registry of British ships. The Government Proceedings Act required the government to publish a list of government departments,

---

[9] Butterworth & Co (Publishers) Ltd & Ors v Ng Sui Nam [1985] 1 *MLJ* 196; see 2.4 supra.

which may sue or be sued in their own names, and for the Attorney-General to represent the government in other cases. Another amendment provided for cases involving important questions of law or precedent to be transferred from the District to the High Court.

Of new laws, four were particularly important: the Free Trade Zones Act which established such zones in Singapore for the preservation of entrepot trade (it also spurred a second Customs amendment during the year). The Asian Development Bank Act implemented the agreement to establish and operate the Bank with Singapore as a member. The Bretton Woods Agreements Act authorised the government to become a member of the IMF, the IBRD (World Bank) and the GATT. Finally, the Land Acquisition Act provided for the compulsory acquisition of land for public and other specified purposes, which in the opinion of the Minister are of public benefit, public utility or in the public interest or for any residential, commercial or industrial purposes. Under this Act, it was no longer possible for a person aggrieved by an award of the Collector of Land Revenue to appeal to the High Court. Appeals were merely to a quasi-judicial Appeals Board consisting of a Commissioner of Appeals or a Deputy either sitting alone or with two assessors, depending on the amount of the award appealed against.

The Land Acquisition Act is a prime example of the shift from the individualistic protection of property rights (sacrosanct in the West) to a more situational, communitarian approach driven by holistic rationality and pragmatism. It became the norm for statutes to be enacted citing specific public interest objectives. The statutes themselves empowered a Minister or a statutory board to make decisions as to what comprised the public interest or national benefit. For a micro-level analysis of Singapore's land laws and public housing policies in relation to the country's economic development, see chapter 7.

The watershed years were 1967 and 1968. Two key laws were enacted with the intention of stimulating export-oriented industrialisation: the Economic Expansion Incentives Act (EEIA)[10] in 1967 and the Employment Act in 1968 (now cap 91, 1985 rev

---

[10] No 36 of 1967. This Act is still the basis of the law governing economic expansion incentives. However following numerous amendments and additions to the principal Act since 1970, a new consolidated and renumbered edition of the Act, dated 1985, was published in 1987. The Act is designated Cap 86 in the 1985 Rev Ed. The original numbers of parts and sections in the 1967 Act and subsequent amendments do not coincide with the revised edition. For this reason and for the sake of clarity, references to numbers of specific sections have been omitted.

ed). The latter went hand in hand with the 1968 amendment of the Industrial Relations Act (now cap 136, 1985 rev ed).

The EEIA was a landmark because it promoted export-oriented industrialisation instead of import-substituting manufacturing. During the debate on the second reading of the EEI Bill, Finance Minister Dr Goh commented that since 1959 one 'cardinal feature of this government's economic policy' had been the active promotion of manufacturing industries. But, he said (PD, vol 26, col 466):

> [S]ince our separation from Malaysia, which has put a seal on the still-born Malaysian common market, it has become abundantly clear that [it is] only through a rapid increase in domestic exports of traditional products in traditional markets as well as of new products in new markets that Singapore can attain salvation.

The EEIA consolidated existing laws which already provided incentives and extended them into definitive new areas such as export promotion and the application of science and technology to industry. The emphasis on expansion (as opposed to pioneer) signalled the fact that both new and existing enterprises could qualify for tax and other relief. In effect, Part 11 of the new Act re-enacted the provisions of the 1959 Pioneer Industries Ordinance while Part 111 replaced the 1959 Industrial Expansion Ordinance, which had never been brought into operation. Part 1V was completely new. It provided for the development of production for export. In other words, it encouraged the domestic manufacture of products for sale in export markets. Interestingly, deep-sea fish was included in this Part, perhaps in an attempt to include as many local entrepreneurs as possible (food and beverage processing accounted for a major share of local manufacturing) and to encourage the industrialisation of fish processing. Part V (Foreign loans for productive equipment) was also new. It was designed to encourage local entrepreneurs to seek loans abroad. Those who borrowed over SD200,000 from foreign sources could do so without paying tax on the interest payable. Part V1 (Royalties, fees and development contributions) was designed to encourage foreign participation and knowledge transfer. It allowed the cost of approved 'intellectual' assistance to be taxed at the reduced rate of 20% (as opposed to 40%), or where fees received were used to invest in shares in the company paying such fees, there was total tax exemption.

The EEIA received presidential assent on 9 December 1967, but did not come into force until 1 August 1968. However, its provisions were made retroactive to 15 December 1967 so that incentives applied in respect of the 1967 assessment year and subsequent years of assessment as stipulated in each Part of the law. Foreign investors were

guaranteed freedom from expropriation and freedom to repatriate capital and remit earnings with full exchange convertibility. From an investor's point of view, the environment was rendered non-discriminatory and open. In short, Singapore became an investor's paradise.

The Employment Act 1968 and the Industrial Relations Act (IRA) as amended in 1968, reformed the legal basis and the way in which Singapore's labour market operated. Both Bills were considered controversial as they sought to set lower standards of working conditions and restrict workers' rights, especially their right to strike and negotiate bonuses. The government spent a year preparing for this legislation, mainly because of the implications of the disciplinary measures it planned to introduce. Discussions were held between members of the Cabinet, the NTUC and MPs. The National Trades Union Congress held a landmark seminar at which the labour movement was encouraged to modernise (Lim 1970). The seminar's goals were to (Anantaraman 1990, 36):

- Subordinate the sectorial interests of labour to the larger interest of the nation
- Shed the traditional adversarial role in preference to the modern role of consultation in union-management relations
- Start a third sector in the economy viz. the co-operative sector ventures like Welcome, Income, Comfort, Denticare etc.
- Play an educative and socialising role in nation building.

During the debate of the Employment Bill's second reading, all views of the modernisation policy were aired. It was said that the intention of the Bill was to 'rationalise and regularise the working conditions of white- and blue-collar workers' (PD vol 27 col 526); 'to safeguard the long-term interest and survival of Singapore' (*id*, col 547); to remove fringe benefits such as bonuses, overtime pay and retirement benefits, and to enforce much stricter labour discipline. For as Prime Minister Lee Kuan Yew made clear (*id*, col 637):

> [W]e must cut out unnecessary stoppages of work. ... Now we shall go back to 11 paid public holidays a year... The assumptions made in the 1950s and 1960s by the trade unions and their advisers, of whom I was one, were that our workers wanted more leisure to enjoy their pay. These assumptions were based on British practices which were and are completely irrelevant to our social conditions.

This Bill was considered more in tune with the demands of the new nation and more relevant to local conditions. It received full support in Parliament as both the survival of the nation and the pragmatism themes were invoked as the basis for enactment. As one MP explained (*id*, cols 631-633):

> ...in the wake of the British withdrawal ... completely by the end of 1971, Singapore must forge ahead in economic development in all fields, particularly in industry... There is an urgent need to make modifications in our existing labour legislation so as to help accelerate the development of economic growth...
> If Singapore is to survive and progress as an industrial nation, there must be concerted effort by labour, management and the Government... It is the national interest and not the personal or sectional interest which should be given consideration. ...
> ... [t]he Employment Bill is by far the most important piece of legislation which the P.A.P. Government has ever introduced... [and although unpopular] this piece of legislation has to be introduced... because the nation's economy and the survival of its people are at stake.

The Employment Act duly regulated work conditions ranging from the contract between the parties (Part 11), to salaries (Part 111), working hours, rest days and other conditions of service (Part 1V), the employment of children, young persons (Part V111) and women (Part 1X), employment exchange (Part X), health, environment and medical care (Part X1), worker complaints (Part XV) and so on.

In the words of the Minister for Labour, Rajaratnam, the Industrial Relations (Amendment) Bill 1967 was (*id*, vol 27, col 733, 734):

> an attempt to rationalise employer-employee relationship with a view to attracting new investments and increasing the efficiency of our trading and industrial enterprises. [For] ...[N]o investor or entrepreneur is going to risk millions of dollars if he has not the final say and the responsibility to decide how the enterprise should be run.

The Bill thus formalised the rights and responsibilities of management 'to hire, fire, promote and transfer employees where these are necessary to enhance the efficiency of the enterprise' (*id*, col 734). It cemented the government's extremely pragmatic stance.

As if to underline the government's role as model employer, the Trade Unions (Amendment) Act 1967 provided that no employees of statutory boards, or of bodies as may be specified by the Minister (by order published in the *Gazette*) shall be a member of any trade union, unless the union is confined exclusively to the employees of that statutory board or body. If such an exclusive trade union were established and registered then all the usual trade union legislation would apply.

The Currency Act 1967 established the Board of Commissioners of Currency, Singapore. It was empowered to issue currency notes and coins, specifying the unit as the Singapore Dollar (SD) whose par value was the same as the Malaysian Dollar. The SD was made automatically convertible into Sterling, and any deficiency in the Board's assets were to be charged to and paid out of the Consolidated Fund.

Other important laws that laid the framework for orchestrating export industrialisation during this period included those which created statutory bodies or incorporated

government-linked corporations, some of which were formed by demerger and spin-off from the EDB. For instance, the Development Bank of Singapore (DBS) was incorporated in 1968 under the Companies Act and licensed to conduct banking business under the Banking Act. It was created to take over and conduct the financing of projects, which enhanced the government's industrial strategies. To transfer the financial activities of the EDB to the DBS a new law had to be passed to ensure that the Minister and others were not acting *ultra vires* the EDB Ordinance or in breach of any contractual obligations. Thus, by virtue of the 1968 EDB (Transfer of Assets) Act, the EDB's relevant loans, assets, equities and so on were transferred to the Finance Minister, who in turn transferred the banking and financial services aspects to the DBS. Thus assets and financing activities which were previously controlled by the statutory body were moved to an incorporated body [privatised] while the parties involved circumvented questions about acting *ultra vires* the EDB Ordinance, ignoring the 'will of Parliament' and indeed whether the EDB's assets were transferred at a fair price. At the same time, the DBS was rendered free to transfer its assets to any purchaser via shares on the open stock exchange. In the event, the government itself retained 48% of this stock.

The Jurong Town Corporation Act (JTC) facilitated the second EDB spin-off in 1968. It empowered the JTC to develop and manage industrial land and industrial estates for manufacturing and export-processing. The Singapore Institute for Standards and Industrial Research (Act No 48 of 1973), spun-off from the EDB as a statutory body, was charged with ensuring the quality of products and promoting industrial research. Finally, the Rubber Association of Singapore (Incorporation) Act made the Rubber Association a corporation and empowered it to conduct a rubber market in Singapore, and to promote and regulate the rubber industry. It also established a Singapore Rubber Fund.

Already in 1967 the government decided that Singapore should also prepare to move its financial services activities into the international arena. The Finance Companies Act (now cap 108, 1995 ed.) empowered the Minister to appoint a Commissioner for Finance Companies for granting licences to companies to carry on financing business and to decide and supervise the standards that should govern the issue of licences and their revocation. The Asian Dollar Market was set up, inspired by Bank of America, which became the first foreign bank to receive an operating licence in Singapore. In 1967, the government consolidated the Companies Act. This Act repealed the Foreign

Corporations (Execution of Instruments under Seal) Ordinance, the Companies Ordinance and the Companies (Special Provisions) Ordinance, and made other amendments to the law relating to companies. It followed closely the Malaysian Companies Act 1965 (in force April 1966, which also followed the UK legislation). This made sense, since Singapore law-makers had assisted in the 18-month drafting of the Malaysian Companies Act; besides it was thought that divergence in this area might be disadvantageous to trade and commerce in Singapore.

The years 1969 and 1970 witnessed more legislation aimed specifically at encouraging export-oriented manufacturing, especially via foreign investors. For instance, amendments were made to the Control of Manufacture Ordinance, as well as to the Economic Expansion, Customs, Free Trade Zones, Immigration and Industrial Relations legislation.

In 1971 two laws were enacted which helped lay the foundation for environmental protection: the Clean Air Act appointed a Director of Air Pollution Control, set standards for factory emissions, and so on, while the Prevention of Pollution of the Sea Act implemented the international treaty. The 1971 Monetary Authority of Singapore Act (MAS) empowered the MAS as the government's banker and financial agent, and the statutory body in charge of administering all statutes pertaining to banking and financial regulation. The Act was amended in 1972 to widen the Board's ambit, including empowering it to make loans to banks and approve financial institutions in times of monetary instability against such forms of security as the Authority considered sufficient. The MAS has acted and continues to act as Singapore's *de facto* Central Bank.

The Industrial Relations Act was amended to empower the Arbitration Court to have regard to ministerial recommendations about wage increases and to vary awards or collective bargaining agreements accordingly. The Employment Act empowered the Minister to notify wage-change recommendations at his discretion. This was done every year, and from 1972 also in concert with the new tripartite National Wages Council. These amendments and the powers they conferred illustrate how the government constantly used law to intervene in the labour market during all the periods in order to regulate working conditions and from 1972, when labour demand began to outstrip supply, also to regulate the cost of labour[11]. The Central Provident Fund (CPF), established

---

[11] For texts of the annual Employment (Recommendations for Wage Increases) Notifications for 1972 to 1983, see Murugasu 1984, 190-237.

under the colonial administration, proved a useful tool with which the PAP government could effect compulsory national savings, while regulating wages. Contributions were usually of equal share for employers and employees. From 1968 onwards, the CPF Act was amended annually, mainly to regulate and widen the scope and purposes for which employees could withdraw accrued sums. These were usually for investment in private residential property and in apartments built by the Housing and Development Board (see chapter 7), and for tertiary education. In later years, the purchase of approved stocks was also allowed. Numerous ministerial notifications (published in the *Gazette*) frequently changed the annual interest rate paid to the Fund, and permitted the use of funds for investment by statutory bodies or government-linked companies.

5.4 Law and Socio-economic Infrastructure Phase 1: 1974 to 1978

As discussed in chapter 4, by 1973 the government's export-oriented industrialisation had achieved full employment in Singapore; so much so that it soon became apparent that continued growth would depend on immigrant workers from Malaysia, Indonesia and further afield. The shortage of workers was particularly marked in the construction industry. This was engaged in massive residential construction works for the HDB[12] and large commitments on the JTC industrial estates. Having determined that the economy's dependence on foreign workers was an unhealthy trend for nation-building, the government devised a strategy whereby it would move away from low-wage, labour-intensive production (see 4.2.4). The almost annual amendment to the Immigration Act during this period is evidence of the government's determination to restrict the influx of unskilled foreign labour.

The oil-induced world recession in 1974-75 did not affect Singapore significantly, although the rate of growth in manufacturing and employment slowed to an average of 8.1% and 7.7% respectively. However, the slowdown was sufficient to make the government delay implementation of its strategic plan to move manufacturing up-market. That is, to move out of industries requiring labour-intensive manufacturing into the kinds of industrial production that required a more skilled, highly trained labour force. The desired industrial restructuring was postponed until the return of a better economic climate. In the meantime, government policies and the accompanying legislation aimed to support

local entrepreneurs, to broaden the industrial base into more science and technology based industries, and to prepare the workforce for the change by relating their vocational training and education to the specific needs of industry. With this plan in mind, several new statutory boards were set up, while others were consolidated under various ministries. Particularly noteworthy was the 1973 Industrial Training Board set up under the Ministry of Education.

The 1975 amendment to the EEIA widened the pool of local investors who could qualify for incentives and empowered the EDB to apply various schemes and benefits more generously, including direct equity investment on a case by case basis at the EDB's discretion. For instance, the EDB could apply funds from the Capital Assistance Scheme, established in 1975, to provide financial help to companies participating in projects that were likely to be of economic and technological benefit to Singapore. Similarly, the Joint Venture Bureau, set up in 1975 to encourage foreign and local joint ventures, the Small Industries Finance Scheme and the Extended Small Industries Finance Scheme 1976, all offered financial assistance for new activities considered worthy of promotion. Worthy projects were those, which in the eyes of the EDB, undertook activities to promote Singapore's manufacturing development or service capability. The EDB's Manpower and Training Unit was set up in 1971, and the National Productivity Board (an EDB spin-off) became a statutory board under the Labour Minister in 1972 and under the Minister of Trade in 1986. Both spent much energy and resources improving workers' industrial and engineering skills, and encouraging local investors to form alliances with multinational companies.

The Singapore Labour Foundation Act 1977 sought to support the general move towards improving the skills of the labour force, though it aimed to do so via the trade union movement, which by then had become a government appendage (see chapter 6). Specifically, the Act aimed to promote the welfare of trade union members and their families by aiding and assisting in social, economic and educational activities relating to the development of the trade union movement. It also provided bursaries, scholarships and fellowships for the children of union members, for workers who pursued studies relevant to trade unions, and for persons nominated by the NTUC to pursue studies at institutions of higher education in Singapore or abroad. The Act also awarded fellow-

---

14 According to HDB's Annual Reports 1971-75, during the 3rd five-year building period, the

ships for research into union matters, established rehabilitation centres, and assisted general charitable works in aid or furtherance of the trade union or co-operative movement (cap 302, s 4, 1985 ed.). Subsequently, the Singapore Labour Foundation invested hugely in business and co-operatives. One publication (NTUC 1992, 32) listed ownership of several enterprises, including: Pasir Ris Resort Ltd, a holiday resort developer; SLF Holdings Ltd, SLF Leisure Enterprises Ltd, a country club developer; SLF Management Services Ltd; SLF Properties Ltd; Transcom Enterprises Ltd; and Vicom Ltd. These entities are separate from the major enterprises, some noted on the Singapore Stock Exchange, in which the NTUC invested or masterminded as co-operative sector ventures after the successful 1969 modernisation seminar, e.g., Comfort taxis, Welcome, Income, Denticare, and so on.

5.5 Law and Socio-economic Infrastructure, Phase 2: 1979 to 1984

With the world's major economies recovering from the first oil crisis, by 1979 Singapore was ready to implement its industrial restructuring strategy. Of the 33 Acts enacted or amended during 1979, two played key roles in the economy: (1) amendments to the EEIA (No 8 of 1979), and (2) the new Skills Development Levy Act. The EEIA amendments addressed investment allowances on approved projects. Specifically, as explained by Gok Chok Tong, the then Minister for Trade and Industry, the Act aimed to encourage multinationals to 'expand and invest in higher value-added production' and local entrepreneurs to 'improve and diversify their business into the manufacturing of better kinds of products' (PD, vol 39, cols 321-324). The provisions allowed investors to benefit from incentives without requiring a company to make immediate profits from which to make deductions. A second EEIA amendment was made in 1979 (No 32 of 1979) to reverse the effect of a Privy Council decision in favour of Union Carbide in *Union Carbide Singapore Pte Ltd v Comptroller of Income Tax* ([1979] 1 MLJ 275). There was to be no doubt who was in control, and legislation was the easiest tool to wield. Investment allowance benefits as well as regular capital allowances and relief were made available under the Income Tax Act (ITA), but only on EDB-approved projects. The ITA was amended annually from 1959, in recent years it also provided corporate and personal tax breaks that encourage investments in professional training and edu-

---

number of units built reached 113,819 or an annual average of 22,764 units.

cation, which supported the government's policy to upgrade skills and add value during this period.

The Skills Development Levy Act (SDA) imposed on every employer a skills development charge in respect of each employee. The government was also required to make monthly contributions just like any other employer. The SDA was a major source of revenue for financing the government's industrial restructuring programme. The idea was for employers to contribute to the improvement of the quality of the workforce and thus help the government implement its new industrialisation strategy of moving into skills-intensive as opposed to labour-intensive kinds of industry. Under the SDA, a comprehensive system of training was organised and bodies set up to administer approved courses and to encourage the development of suitable courses at existing institutions. An SDA Approved-in-Principle scheme was established to help make it easy for companies to choose courses in which their employees could participate. The Vocational and Industrial Training Board Act 1979 established the Vocational and Industrial Training Board (VITB) and empowered it to develop and administer full-time institutional training which was recognised under the SDA scheme.[13]

In parallel with skill development, investments in physical and other social infrastructure were also made to support businesses and private individuals. Consequently there were amendments to Acts in areas such as transportation, telecommunications, education, employment, health, housing and development, the Jurong Town Corporation, merchant shipping, and so on.

Apart from the major training and education drive during the period 1979 to 1984, the NWC also recommended a spate of wage corrections, i.e. wage increases, which employers gladly paid because labour was in short supply. This was the result partly of restrictions on immigration and partly because of the success of the government's upgrading policies. Contributions to the CPF were also increased for employers and employees. In this way, the government sought to prevent high inflation by increasing the rate of compulsory savings. From 1978 to 1984, CPF contributions rose from 16.5% to 25%; i.e., 25% from each party. The vast sums accrued by the CPF were invested as loans by the government in infrastructure, housing and specially approved key industries at home and abroad.

---

[13] For a list of participating institutions and sample of courses illustrating the pragmatic scope and reach of the SDA scheme, see Murugasu 1984.

Provisions of the 1984 amendment of the EEIA (No 34 of 1984) made pioneer status available to certain *service companies*. These included companies involved in engineering and technical services, research and development activities, computer and computer-related services, industrial design and other 'qualifying services', which the Minister was empowered to define by regulation from time to time. Services had been pivotal in Singapore's colonial development but until now the PAP's focus had been on industrial manufacturing. This strategy had paid off handsomely in job creation: between 1957 to 1985, manufacturing employment multiplied four times, raising the sector's employment share to 25.4%, making it the largest employer in the economy' (Pang Eng Fong 1988, 202). But by the 1980s it was becoming more prudent to promote other sources of wealth since, as discussed in chapter 4, protectionism was rising in the West against importation of products produced by low-skill, low-wage, labour-intensive manufacturing.

There is no doubt that legislative activity, especially in the areas of labour relations, human resource development, incentives and infrastructural improvements contributed significantly to economic growth during the period. Inadvertently, as the 1985-86 recession showed, the attempt to engineer an abrupt shift from low-skill, labour-intensive manufacturing to skills-intensive, higher value-added production back-fired temporarily (Rodan 1989). However, recovery was engineered, in part, by a clutch of policies and laws, which coerced, nudged and encouraged society in a new direction.

5.6 Hiatus 1985 to 1986

The global recession (provoked by hikes in the price of oil) caught up with the Singapore economy in 1985. As discussed in chapter 4, nearly all sectors of the economy registered decline in 1985. From a quarterly GDP of 10.1% in the first quarter of 1984, GDP fell every quarter in 1985, registering -1.2% growth for the second quarter of 1985 and -1.8% for the whole year. This was the most severe setback for the post-independence Singapore economy. Not even the 1998/99 recession, sparked by the 1997 regional downturn, registered such negative growth rates. Priming the pumps in the classical Keynesian way was not an option in 1985 as the statutory boards and government-linked companies had already embarked on massive housing development schemes, construction of the Mass Rapid Transit system, and other infrastructure works. The recession in Singapore was deepened by poor demand from export markets, law-

sanctioned domestic structural factors resulting in low competitiveness, and the global setback in petroleum-related exports (which in 1983 comprised 36.6% of Singapore's manufacturing sector exports). As the government report (Economic Committee 1986) concluded, the main medicine was to correct the lack of competitiveness, and then change direction.

To restore competitiveness, the Economic Committee proposed immediate reductions in corporate and personal income tax and a huge expansion of investment allowance provisions under the EEIA. As growth areas on which to focus, it emphasised services - especially banking and finance, transport and communications, and international business consulting. Highlighted too was the idea of promoting Singapore as a home for regional head-quarters of multinational companies that require effective, secure distribution and technical service centres in Asia. Tourism and hotel management were also selected for focus.

Most of the Committee's proposals were accepted, though few statutes were needed to implement them. Indeed of the 10 Acts passed during 1985, only one, the Requisition of Resources, was new; seven were amendments and two Supply Acts. However, important changes were effected via the Budget, the Income Tax Act and notifications, which were issued to reduce CPF and skills development levies, as well as fees charged for services rendered by statutory bodies and government-linked companies.

Major legislative activities occurred in 1986 and 1987 (with 32 and 30 enactments in each year) as the government sought to shift direction by giving bigger incentives to service industries and orchestrating the promotion of the regionalisation policy. For as the Economic Committee noted (1986, para 113):

> The government *must promote services actively*, the same way it successfully promoted manufacturing. It should depend not only on the growth of local Singapore companies, but also on attracting international service corporations to set up in Singapore. The EDB should be given the task of attracting such companies, in coordination with the respective ministries and statutory boards responsible for individual professions and sectors... *Suitable incentives... will speed the shift towards a service economy* (my italics).

5.7 Business Services, Privatisation and Regionalisation 1987 to 1997

This decade was characterised by Singapore's determined effort to promote and consolidate its position in Asia, especially in the financial and business services sector, and in tourism, as recommended by the Economic Committee in 1986. It was marked by the government's attempt, albeit somewhat half-heartedly, to privatise and divest itself of

some government-linked companies. There was also robust response to growing external pressures to enact laws to protect intellectual property rights and to liberalise banking and the financial services sector. The use of secondary legislation escalated, especially in areas related to economic incentives for investors.

Business Services

Following the 1986 budget, the EDB was empowered to approve post-pioneer benefits for both foreign and local investors, and to implement several liberal investment allowance schemes for small and medium-sized service enterprises. Two prominent regulations (No S133/86 and No S297/86) added 'qualifying activities' to the ambit of the EEIA, thus widening its scope and the type of service companies, which could qualify for incentives. Subsequently, the EEIA 1987 (No 22 of 1987) enacted most of the Economic Committee's 1986 proposals, except provisions relating to incentives for setting up regional headquarters, which were included in the 1986 Income Tax (Amendment) Act (No 31 of 1986).

The number of incentives and schemes designed to encourage services and industrial expansion multiplied enormously. The majority now also aimed specifically at local businesses. For although foreign investors were never left out, the Minister made it clear in his 1987 budget statement that the government was committed to building 'a solid base of thriving resilient local businesses'. Apart from numerous EDB-administered schemes, there were schemes that operated under the Trade Development Board Act (cap 330), the Singapore Institute of Standards and Industrial Research (now cap 303A), the National Productivity Board (cap 200, now cap 303A)[14], and under the Monetary Authority of Singapore (cap 186). To help small local businesses find their way round the jungle of schemes the Small Enterprise Bureau was empowered to screen and co-ordinate applications.

Special laws facilitated and regulated the financial and business services industries. Among those enacted or amended during the period were Acts in the areas of arbitration (cap 10), bankruptcy (cap 20, 1996 ed), corporate governance (cap 50), as well as those regulating lawyers (cap 161, 1997 ed), bankers (cap 19, 1994 ed), accountants (cap 2, now cap 2A, 1988 ed), architects (cap 12, 1992 ed), and so on. The Securities Industry Act (cap 289), administered by the MAS, came in the wake of a crisis in Sin-

[14] The National Productivity Board and Singapore Institute of Standards and Industrial Research merged under the Singapore Productivity and Standards Board Act (cap 303A, 1996 ed).

gapore's fledgling securities industry following the collapse of Pan Electric Industries Limited. The new Act, modelled on the Securities law in the US rather than the more self-regulatory system under the previous UK Act, tightened provisions governing securities operations and introduced business conduct rules. The Act passed its first real-life test on the October 1987 Black Monday crash, when despite tremendous pressures, all members of the SES survived without difficulty. Also notable was the Futures Trading Act (cap 116, 1996 ed). Its 1995 Amendment took place in the aftermath of the Barings debacle in which Nick Leeson allegedly brought about the collapse of the merchant bank by trading Nikkei-225 futures contracts on SIMEX. Other important amendments to Acts designed to regulate the sector include Finance Companies Act (cap 108, 1995 ed), Commodities Futures (cap 48A, 1993 ed), Insurance (cap 142, 1994 ed) and the Banking Act (cap 19, 1994 ed).

The Banking Act (cap 19) was amended in 1993 to tighten admission criteria and make exceptions to banking secrecy rules (s 47) to combat drug money laundering. Singapore operates a two-tier financial services sector: the first being domestic banking in which the Singapore dollar (SD) is the sole currency of transaction, and the second being offshore banking, which transacts in foreign currencies, mainly the US dollar, Japanese yen and the Deutsche mark. In 1998, 34 banks held full licences to operate in the domestic market, of these 12 were Singapore-controlled, and 22 foreign. In addition, there were 13 restricted and 107 offshore licensed foreign bank branches in Singapore, which are permitted to undertake wholesale SD business. Banks may transact in all aspects of financial services including commercial banking, securities/futures trading, insurance and other activities. The government seems to consider that the domestic sector is overbanked and has been unwilling to issue new banking licences. However, the offshore banking sector is ready to admit new institutions, which meet MAS' standards. But there are external pressures to further liberalise the domestic market and open it to foreign institutions. The demands of supranational trade agencies such as the World Trade Organisation are particularly keen. Singapore's response has been to set up the Competitiveness Committee and the Financial Services Review Group, both of which made preliminary reports in 1998. One of the results is the Banking (Amendment) Act (No 27 of 1998). It provides *inter alia* for the establishment of a real-time gross settlement system (RTGS) for funds transfer and settlements on a continuous basis. This is the BIS-preferred (Bank for International Settlements) mode, which it claims reduces

the chances of settlement failure in one bank affecting other banks. It is clearly a confidence-building move, although the dangers of the 'one-button instantaneous electronic transfer' were demonstrated in the 1997-1999 crisis. More legislation will follow. Indeed the government has been encouraging local banks to merge and consolidate. It took the lead by introducing the Post Office Savings Bank of Singapore (Transfer of Undertakings and Dissolution) Act 1998, which privatised the government-owned bank, merging it with the GLC, the Development Bank of Singapore. The next step is to allow greater participation by foreign banks. However, given the persistent turmoil in the global financial markets and calls for integrated regulation, including curbing the free flow of speculative capital and making global bodies like the IMF and World Bank more accountable, further legislation might well await the lead of global fora.[15]

This would be in line with developments in the area of intellectual property rights (IPRs). Singapore started the decade (1987) by being seduced (or threatened) unilaterally by the USA to enact a stringent copyright law and ended it by freely enacting a raft of IP laws to comply with its obligations under the WTO Agreement on TRIPs (Trade Related aspects of Intellectual Property Rights). During a debate on the 1987 Copyright Bill (cap 63, 1988 ed) Mr Chandra Das complained that (vol 50, col 590):

> ... [W]e were told in this House that there was a linkage between the introduction of the Copyright Act and the granting of a new GSP [Generalised System of Preferences] package by the US Government. This House ... accordingly enacted one of the stiffest Copyright regulations in the world and undoubtedly one of the main beneficiaries was the United States. In return, a new and favourable GSP package was given to Singapore in 1987. I am told this package... amounted to a 12% increase in monetary terms, compared to a 3% increase for Hong Kong... Suddenly the GSP status will be withdrawn with effect from 1st January 1989...

However, ten years later, in February 1998, Prof Jayakumar, the Minister for Law acknowledged that (vol 68, col 310-11):

> ... the protection and enforcement of intellectual property rights, including copyright, will become increasingly important as the Singapore economy matures. With advances in information technology, the global economy is rapidly moving from an industrial-based to a knowledge-based society....
> To ensure that Singapore stays ahead of the competition for high-value, knowledge-intensive industries, a good system of protection for intellectual property rights is... necessary. Knowledge-based industries will be attracted to invest in Singapore if they are confident that their intellectual property will be given sufficient protection here.

The Minister conceded that a good IPR infrastructure is important to the success of Singapore's own home-grown, knowledge-based industries. Other IP or technology-oriented laws, include a new Patents Act 1994 (cap 221), Layout-Designs of Integrated

---

[15] See, for instance, debate on the Tobin Tax: Schmidt 1994, Eichengreen *et al* 1997.

Circuits (Act No 3 of 1999), Geographical Indications (Act 44 of 1998), Trade Mark (Act No 46 of 1998), and amendments to the Medicines (cap 176), Control of Plants (cap 5A), and Computer Misuse (cap 50A) Acts. The latter was comprehensively amended in June 1998 *inter alia* to widen the category of illegal acts and to increase substantially the associated penalties. Work on legislation for IP laws was completed to meet the TRIPs deadline of 1 January 2000 (see chapter 8).

Singapore laws have moved decisively into the digital age to give credence to the government's aspiration to become a regional high technology and business services hub. For instance, the Electronic Transaction Act 1998 was designed to generate confidence among the public in conducting e-commerce on the Internet. In 1998 the Films Act (cap 107) was amended. Importantly it redefines the word 'films' so as to include regulation of a wide range of new technologies such as CD-ROMs, enhanced CDs, VCDs, DVDs, e-mails and the Internet. Computer file formats with extensions like .mpg, .dat, .avi and .mov are also defined as 'films' because, according to the Minister for Information and the Arts, they comprise moving images (PD vol 68, cols 475-76). Unfortunately, the Act also includes a provision to disallow the distribution and exhibition of party political films in Singapore. This, the Minister claims, over-generously, will not affect the freedom of political debate in Singapore (*id*, col 477). I conclude otherwise.

Indeed, under the veil of 'necessary response' to rapid technological advance, the government has amended various Acts such as the Undesirable Publications (cap 338, 1992 ed), the Newspaper and Printing Presses (cap 206, 1991 ed), the Digital Signatures and the Singapore Broadcasting (cap 297, 1995 ed). It has restructured provisions for the enforcement of these laws in such a way that it could be argued that the level of censorship in Singapore is bound to increase, despite the Minister's claim to the contrary.

Privatisation

One area in which the government had promised to loosen its grip concerns the divestment of government-linked companies (GLCs) and statutory boards. It is difficult, if not impossible, to get any substantial information about progress in this area. Even Singaporean scholars (Tynne & Ariff 1989; Low 1998) point to the paucity of data. However, trawling through Parliamentary Reports often has its rewards. For instance, in a written reply to an MP on 6 March 1985, the Minister for Finance was obliged to give a list of GLCs, including their paid-up capital and the percentage of the government's shareholding in each (PD vol 45, col 345-54). Cross-checking the 1985 ownership pro-

file with one synthesised for 1998, it becomes clear that the divestment programme has proceeded and is proceeding at a snail's pace. Indeed as the Minister for Finance, Dr Richard Hu, explains (PD vol 68, col 459):

> ... in principle, the Government is prepared to divest fully its stakes in the GLCs other than those of strategic interest to our defence or our economy. Other than these strategic investments, the rest can be privatised in due course. ... [However] the Government has put in much effort and resources to develop the GLCs, and we would want to divest them in such a way that the issue of management succession is properly addressed... This is important as Government would want the GLC to remain in relatively good hands. ... and be mindful that its divestments do not have too adverse an impact on the future of the company. This requirement will, however, slow down the divestment process.

Of course, only the government is qualified to say which GLCs are 'of strategic interest' to Singapore's defence *and* its economy so the criteria for full divestment might never be known or be fulfilled. Similarly, only the government can decide when a GLC can be divested into 'relatively good hands'. Dr Hu gives an example, which illustrates the problem (*id* col 460-461): 'in the case of Singapore Press Holdings, it has been fully divested, except that Government holds a golden share because it is a sensitive area'. ...A golden share is 'one nominal share', (which has) 'overriding powers over the management of the company. In other words, it can determine the Chairman and the Board'.

Thus, the government might be loosening its grip, but it does not intend to let go. Furthermore, as discussed in chapter 4, the government seems to be divesting only those companies, which will help to widen and deepen activities on the Singapore Stock Exchange. Acts that gave effect to the privatisation of statutory boards during the period include: Telecommunications Authority of Singapore (cap 323, 1993 ed), Singapore Broadcasting Authority (cap 297, 1995 ed) and Public Utilities Board (cap 261, 1996 ed). The Maritime and Port Authority of Singapore Act (cap 170A, 1997 ed) repealed the Port of Singapore Authority Act (cap 236) in preparation for partial privatisation.

Regionalisation

The policy has been discussed at length at 4.2.6. Many of the laws which gave effect to the policy and supported the idea were the same as those that sought to promote Singapore as a business services hub. It is therefore unnecessary to repeat them here. It is, however, worth noting that an abundance of subsidiary legislation, especially ministerial notifications, was used. The Economic Development and the Trade Development Boards carried out much of the regionalisation work, though investments were channelled through government-linked companies and private enterprises. In his address to parliament in January 1994 the President promised a major review of laws to provide

'adequate infrastructure to support Singapore businesses investing in the region' including appropriate international conventions and model laws to harmonise and facilitate international trade and dispute settlements (*Straits Times* 12 January 1994, 1). Subsequently, the International Arbitration Act (cap 143A, 1995 ed.) was enacted. It co-opted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on international commercial arbitration. Its provisions will apply to commercial arbitrations in Singapore, unless parties expressly exclude it. Similarly, the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) was ratified in February 1995 and the Sale of Goods (UN Convention) Act 1995 gave it effect from 1 March 1996. The Income Tax Act was amended to provide tax incentives for Singapore companies to invest abroad. As discussed in chapter 4, Indonesia, Malaysia, Vietnam, India, China and others were targeted. As yet, there have been no comprehensive studies of the performance of Singapore's regionalisation policy. However to judge by occasional government announcements in Parliament, the policy has not been an unqualified success. The latest and perhaps most expensive setback is Singapore's decision to reduce its investment in Suzhou, China from 65% to 35% and hand over management of the industrial park to the Chinese on January 1 2001 (*Straits Times*, 29 June 1999). The bilateral MOU signed in 1994 had proposed a 20-year management project. Clearly, there is a need to investigate 'what went wrong' and learn lessons.[16]

5.8 Response to Regional Set-back 1997-99

As is now well-known, in 1997 the Southeast Asian countries' policy of pegging their currencies to the US dollar proved imprudent because, as it turned out, the pegs in many countries were supported by speculative short-term foreign loans (hot money) [17]. The currency crisis, which started in Thailand in July 1997, had serious economic, social and political repercussions throughout the region (see, e.g. Booth 1999). In Singapore, the greatest impact was economic, for as shown in chapter 4, the government, via GLCs and statutory boards, and private enterprises had invested heavily in the regionalisation policy. However, as in the 1985 recession, the government's first reaction was to

---

[16] See Carter 2000, The Clonability of the Singapore Model of Law and Development: The Case of Suzhou, China, in Antons (2000) forthcoming Curzon Publishers.

[17] See 4.2.7, chapter 1 and accompanying notes. See also *Managing Capital Flows in East Asia*, Washington: World Bank 1996.

consolidate, then extend incentives, improve workers' skills and plan for the future. As BG Lee Hsien Loong, Deputy Prime Minister, explained: (PD, vol 68, col 291:

> We must take the regional economic slowdown in our stride. The Government will continue to invest in economic infrastructure to build up our capabilities and productive capacity. Companies too should use this opportunity to trim costs, restructure and upgrade productivity, so that when the region recovers and becomes more competitive, they will not be left behind.

Primary laws in support of this stance were few, as ministries seem to prefer to take action through subsidiary legislation. For instance, the Ministry for Trade and Industry continued to support eligible companies with financing under the Regionalisation Finance Scheme, by providing low-cost loans for investment in fixed assets such as buildings and equipment (*id*, col 298). It also broadened the scope of the Local Enterprise Finance Scheme, which is designed primarily to assist operation of local small and medium-sized enterprises. However, the Income Tax Act (No 31 of 1998) introduced 11 new tax incentives, which were announced in the 1998 Budget.

Towards the end of 1998, the Manpower Ministry launched four schemes to tackle the worsening job situation. Called the Action Plan, the core concepts included skills redevelopment (especially for new growth areas such as wafer fabrication and the hotel services sector), wage adjustments, shorter work-weeks and identification of future growth areas which require retraining of workers. Adjustments in CPF contributions and skills development levies were debated in September 1998 and reluctantly effectuated in November 1998.

In January 1999, the *Straits Times* proclaimed that 1998 growth had been stronger than expected at 1.3% (Overseas ed 2 January 1999, 1, 1-6). November's economic package had cut business costs significantly and strengthened Singapore's competitiveness (*id*). Here too, secondary legislation was used to effect the necessary cuts and changes. Thus, Singapore seems to have weathered the storm. However, with the uncertainties caused by the spread of economic disarray to Russia and Brazil, and the continued fragility of Indonesia, it might be too soon to claim robust recovery. But with the government's proactive stance and its willingness to use legislation (primary or secondary) to force its will upon market actors, Singapore might not suffer huge setback - unless protectionism raises its head in Singapore's primary export markets, which are still the USA, the European Union and Japan. Continued dependence on the West might also indicate that Singapore's regionalisation policy has failed.

5.9 Conclusion

Chapters 4 and 5 should be read together. Chapter 4 presents an analysis of the growth patterns that the state engineered in response to Singapore's predicament in relation to the realities of the world economy at various phases of its economic development. It reveals how the government harnessed investment and resources (foreign and local) to effect its ambitious industrialisation policies, which account for Singapore's rapid economic development, especially from 1966 to 1979. It also unravels the state's attempts to transform itself from a labour-intensive, low-skilled, reliable industrial paradise into a high-skilled, knowledge-based, technologically competent, business services regional hub from 1979 to 1999.

Chapter 5 attempts to chart the development of those growth patterns in relation to the enactment and implementation of major economic-related laws. It is clear that laws were relevant to Singapore's economic development. It is equally clear that there was a direct correlation between the two variables. What is less clear, is whether there is a causal link because there is no known method for measuring cause and effect here.

Perhaps it might be taken on faith or common sense. For instance, the foregoing makes it is clear that labour laws in particular supported the PAP's industrialisation policies by providing investors with low-cost labour, which was rendered stable and disciplined. The policy was successful until about 1979, for as chapter 4 shows, local and especially foreign investors in the textile and electronics industries responded mightily. Later the government removed 'low-cost' from the equation but retained stability and discipline. A *Wall Street Journal* study conducted in 1979 (Wain, ed, 1979, 135-145) seems to vindicate the government's stance on labour and trade unions. It showed that foreign investors prioritised the following factors in their decision-making process: (1) political and economic stability, (2) stable labour force, (3) stable currency value, (4) ready availability of foreign exchange, (5) access to local finance, (6) existence of good joint venture partners, (7) tax incentives, and (8) duty-free imports. On this basis, the 1979 study found that Singapore's investment climate was the best among all ASEAN countries (*id* 139). It is tempting to speculate on whether the government could have saved on the tax incentive programmes, which are rated so low in the decision-making hierarchy. But that issue deserves its own study.

This study suggests that Singapore laws effected political and economic stability. They also secured a stable, disciplined labour force. These were laws which in the

main suppressed political opposition and neutered the trade unions. In any event, they fulfilled the top two investor-requirements and were undoubtedly instrumental in effecting growth. But other laws also provided for the relatively equal distribution of merit goods such as low-cost housing, education, health care and so on. There is undoubtedly a positive correlation between the laws, which enabled these steps, and the rapid, sustainable economic development that occurred. Whether *causation* can be shown, as is required by Law and Development theory, is another matter. The factors in play are too multifarious and complex to warrant singling out law as the crucial change-agent.

The period 1979 to 1999 was more challenging than 1959 to 1979 as Singapore moved from labour-intensive to skills- and capital-intensive production and services. In the second period it had to try to minimise the effects of competition from other low-cost countries and circumvent western protectionism, which grew worse as competition increased. However, throughout the periods, the government remained active and demonstrated its willingness to intervene with flexibility, creativity and agility in response to whatever it perceived the economic realities to be. Even in 1999, forty years on, it demonstrated it ability to tailor the cost, size, discipline and skills of the labour force in the face of regional economic setback. Through its statutory bodies, it picked specific industries in which to invest and fearlessly stepped out first by 'risking' regionalisation in an attempt to circumvent protectionism in industrialised western markets. In every case, government policies seem to have been mediated by laws, although in recent years the growth of subsidiary legislation has proliferated.

In many cases, law seems to be merely facilitating or legitimising government policy. This is what I have called 'law as mature policy'. But it is unclear whether policy alone, without gaining 'maturity', could have effected change. Perhaps the idea of law as mature policy is a characteristic of all laws whether in Asia or in the West; whether they appear as promises in the pre-election Party manifesto or are created as pragmatic 'plans of action' once a government is in power. The issue then, is whether the *nature* of laws in Singapore differs significantly from the nature of western laws. The issue is also whether Singapore laws confirm Law and Development hypotheses about the relationship between law and economic development. These issues are analysed in the following three chapters, which comprise Part 2 of this study.

PART TWO
MICRO-LEVEL ANALYSIS

Testing key Law and Development hypotheses about the role of law in economic development by examining the operation of law in three factors of production that affect capital formation: labour, land and capital (intellectual property).

CHAPTER 6 LABOUR LAWS AND INDUSTRIAL RELATIONS

This Bill [Central Provident Fund (Amendment)] is the third of three Bills which are designed to meet the challenging economic problems that loom ahead. Whilst the purpose of the Employment Bill and the Industrial Relations (Amendment) Bill is to have more realistic terms and conditions of service and employer-employee relations consonant with the need to induce greater investment, generate higher productivity and employment, this Bill deals with another inter-related problem - the marshalling of domestic savings for the economic and social benefit of our people.

S Rajaratnam, Minister for Labour,
Parliamentary Debates vol 27, col 792.

In-stru-men-tal-ism
A system of pragmatic philosophy holding that ideas are instruments, that they should guide our actions and can change the world, and that their value consists not in their truth but in their success.

Collins English Dictionary 1991, 3rd ed.

6.1 Introduction

Conceptually, the enactment and operation of labour laws occurred in four distinct phases. During each phase, law was used to support a specific agenda, which the government perceived would help it achieve its declared objectives:

1. Pre-1959, when the agenda of the post-war colonial government was to control trade unions in order to curtail the anti-colonial freedom movement and communist infiltration. The fledgling People's Action Party (PAP) was in opposition during the last four years of this period.
2. After 1959, when the PAP formed the government and until 1965 when the Malaysian Federation failed. During this period, the goals were to defeat left-wing unions, minimise industrial conflicts, consolidate PAP support among moderate unions, and propel the trade union movement towards acceptance of the government's developmental ideology, including support for the Federation.
3. The era of modernisation from 1966 until 1972. The government's goals were to secure and maintain industrial peace and discipline, achieve 'restraint in wage negotiation and, ... a greater awareness of social responsibility of organised labour in the larger framework of the national interest' (Goh Keng Swee 1972, 103).
4. The tripartite era from 1972 until the present when the objectives were to consolidate the links between labour, management and government, and move from merely non-adversarial union-management relations to more active co-operation for the effective control of wages, education and training, and sharing in national prosperity.[1]

This chapter attempts a micro-level analysis of key aspects of Singapore's labour laws[2] from 1959 to 1999. The main thrust is to assess the efficacy of the laws in helping the governments to achieve their respective declared objectives during the four periods outlined above. Although the first period falls outside this study's remit, post-war colonial labour laws are analysed briefly because they form the essential platform upon which the PAP built its laws.

Consistent with the theme of this study, the chapter seeks to determine two issues. First, whether changes in the economy *caused* changes in the law, or whether changes in

---

[1] It is outside the scope of this study to discuss the merits of corporatism or decide which, if any, of the categories Singapore fits: state corporatism, societal corporatism or authoritarian corporatism. For a discussion, see Schmitter 1974; Deyo 1981; Anantaraman 1990.

[2] Aspects of the following laws that govern labour and industrial relations in Singapore are considered in this chapter:

Central Provident Fund Act, cap 36
Employment Act, cap 91
Employment of Foreign Workers Act, cap 91A
Industrial Relations Act, cap 136
Retirement Age Act, cap 274A
Skills Development Levy Act, cap 306.
Trade Unions Act, cap 129, 1970 rev ed; cap 333, 1985 rev ed.
Trade Disputes Act, cap 331

the law *caused* economic development. Secondly, whether changes in the law steered Singapore's labour laws towards convergence with or divergence from labour laws in the West. But first, what was the nature of post-war colonial labour laws?

6.2 Post-war Colonial Labour Laws 1940-59

Labour legislation of the late colonial period was characterised by laws designed to control trade unions' power. Three key laws can be identified: the 1940 Trade Union Ordinance (now cap 333), the 1940 Industrial Courts Ordinance[3] and the 1941 Trade Disputes Ordinance (now cap 331). The Ordinances came into force in 1946, after the occupying Japanese forces of World War 2 were replaced by the British Military Administration.

The Trade Union Ordinance was key. It made provisions for compulsory registration and stringent regulation of the unions' internal affairs. Many unions were registered from 1946-48, including the Communist-backed Singapore Federation of Trade Unions (SFTU), which was registered in June 1947. The SFTU won the support and leadership of the Malayan Communist Party (MCP), which had co-operated with the British against the Japanese during the occupation and felt betrayed by the British after the war. The government soon realised that the SFTU-organised strikes had economic as well as political aims, and therefore sought to curtail them. The April 1948 strike protesting the government's refusal to allow a May Day assembly culminated in large-scale unrest. In June 1948 a state of emergency was declared and the MCP banned. Simultaneously, provisions in the Trade Union Ordinance were strengthened so as to deny registration to agitators. Several MCP members were arrested. The SFTU was deregistered in October 1948 (Chew 1991, 31). Many left-wing and communist unionists went underground, with a new resolve to fight colonialism. Their battle was fought through the labour movement.[4] The scene was set for successive governments to view labour law as a way of curtailing the powers of trade unions rather than a means of protecting workers' interests, as had been the case in western labour legislation. Thus, right from the start, Singapore's English-inspired colonial labour law differed in purpose and substance from its English counterpart.

---

[3] This was incorporated in the Industrial Relations Act 1960 (cap 136).

[4] For background and discussion, see Chew 1991; Balakrishnan 1976; Nair 1973.

6.2.1 Controlling the Unions: Compulsory Registration

The stated purpose of the 1941 Trade Union Ordinance was to provide for the registration and control of trade unions. Section 7 prescribed registration of the union's name, rules, officers, registered office 'and all such other matters as may be required to be registered'. Under s27(2) a 'certified copy of any entry in the register shall be conclusive proof of the facts specified therein ...'. This provision was important because of the stringent criteria for deregistration, and the registrar's power to declare void, the registration of any union if any one of its objects is deemed unlawful. Unions established after the coming into force of the Ordinance were given one month, reckoned from the date of establishment, in which to comply with registration, s8(2). Section 8(5) provided for prosecution of a trade union, which failed to apply for registration within the prescribed month. Such a union became an unlawful association, on a par with a union whose registration was refused, withdrawn or cancelled, s19. Under s20 the unlawful association shall be dissolved and its funds disposed of according to its rules or (if the Minister so directs) paid into the consolidated fund of the government.

The powers of the registrar to refuse to register a new union or to cancel registration of an old were very wide. For instance, under s10, registration was at the registrar's discretion. The section's phrase 'may register' indicates that he was *not bound* to register a union even when it satisfied all requirements. Registration could be refused or cancelled for a host of reasons (see s14 and s15), including if the registrar felt that a union is *likely* to be used for unlawful purposes or purposes inconsistent with its objects and rules, s14(d), or *likely* to be used against the interests of its members in a particular trade, occupation or industry, s14(e). Neither was the registrar bound to deregister a union even if satisfied that the statutory requirements for registration were unmet or if there were evidence of other grounds for deregistration. But the law was silent as to how the registrar would arrive at his decisions. Thus, not only were there huge discretionary powers to refuse or cancel registration, the powers also imposed on the registrar an improper duty of prophecy.

The second statute, the 1941 Trade Disputes Ordinance, provided the legal framework for regulating trade disputes. In particular, it laid down rules for when strikes and lock-outs were to be deemed illegal, s3; penalties for inciting or instigating strikes and lock-outs, s6; and for giving financial aid to illegal strikes and lock-outs, s7. During the post-war years, many strikes were called to support political activists who sought to

free Singapore from colonial rule. This statute effectively repressed many of these actions.[5]

6.2.2 Early PAP-Trade Union Connection

From 1950-59, Lee Kuan Yew was engaged as a legal advisor of trade unionists (Lee 1998, 664). By 1954, he and other moderates and some left-wing unionists had formed the People's Action Party (PAP), one of whose goals was the liberation of Singapore. The close link between the PAP and the unions was unmistakable. Indeed, according to the *Straits Times* (19 November 1954) seven of PAP's 14 co-founders were prominent trade unionists. Lim Chin Siong, Secretary of the Factory and Shopworkers' Union, became an Assemblyman of the PAP.[6] His union was registered in April 1954 with 200 members. By October 1954, there were 29,000. According to Josey (1956, 6) this union declared that 'the true function of a trade union is to defeat colonialism. Only then will the worker be free from the slave trade.'

The line between PAP members and union members was blurred. Further, Lee's contact with the unions led him to believe that 'any man in Singapore who wants to carry the Chinese speaking people with him cannot afford to be anti-communist' (Pang 1971, 2). Many Singapore Chinese were proud of and sympathetic towards the new People's Republic of China. It seems that a substantial number of them believed that communism could be harnessed to defeat colonialism. This suited Lee's political goals. As Pang aptly puts it (*id*) Lee decided to 'ride the communist tiger' - at least for the time being.

6.3 PAP Labour Legislation 1959-67

The PAP's landslide victory in the 1959 general election was secured *inter alia* by the support of the leftists, communists and the moderates. However, during the next five years, the PAP government was obsessed with freeing the party from its electoral dependence on the left, and preventing an alleged communist take-over of Singapore. These goals also coincided with the PAP's determination to create a nationalistic trade union movement, which, although free from communist influence, would nevertheless

---

[5] Although the 1955 Preservation of Public Security Ordinance was not a labour law it affected labour relations by providing for detention of left-wing leaders, many of whom were trade unionists. In this way it clearly supplemented the Trade Union and Trade Disputes Ordinances.

[6] Four PAP candidates fought the 1955 general election. Three won: Lee Kuan Yew, Goh Chew Chua and Lim Chin Siong. The prominent trade unionist, Devan Nair failed to win his seat.

support social justice. At the opening of parliament, the government had the *Yang Di-Pertuan Negara* declare that (LD 1959, vol 11, col 8):

> The government's guiding principle is industrial peace with justice. Justice implies ensuring fair and just demands for a reasonable share of the fruits of their labour. At the same time we must remember that a chronic state of industrial unrest means the wrecking of our economy, and if our economy is damaged the workers, employers and the country as a whole will suffer.

He failed to define 'industrial peace with justice' but the government pledged to establish a permanent, independent Court of Labour, whose findings and awards would be binding and enforceable on both employers and employees (*id*). It also promised to curtail strikes.

Of the statutes retained by the PAP government, four were key: the Trade Union, Trade Disputes, Central Provident Fund and Public Security Ordinances. While in opposition, in 1957, the PAP had approved the colonial government's anti-union action, the so-called Operation Liberation, under which 35 [communist] leaders of unions, which were about to be accepted into the Trade Unions Congress, were detained (Fong Sip Chee, 1969, 61). Now in government, the PAP itself intended to strengthen these legal provisions in its effort to unify the unions and continue to weaken the communist influence. The section below analyses key PAP amendments of the Trade Union statute.

6.3.1 Trade Union (Amendment) Act 1959

The 1959 Amendment purportedly sought to remedy two major shortcomings in the 1941 Ordinance. In fact, it merely widened the registrar's discretionary powers.

First, under the TUO *any seven* persons could form a union. Registration was refused only where an association was suspected of being sponsored by communists. Thus employers were free to register so-called yellow (company) unions which they used against genuine workers' unions. For instance, the local branch of the Singapore Bus Workers' Union at Hock Lee Bus Company was refused recognition by the company, which established its own Hock Lee Bus Workers' Union. While the law did not prohibit employers from organising workers' unions, s14 was amended to empower the registrar to refuse to register a trade union, which was *likely* to be used against the interests of workmen, and to cancel the registration of any such union. It was for the registrar to decide whether a company-sponsored union was likely to be used against the interests of a genuine workers' union.

Secondly, many splinter union groups were formed and registered because no rules provided for the compulsory recognition of a *majority* union, and with only a pre-requisite of seven members, registration of splinter groups was easy. The law, as it stood, seemed to encourage dissidents to break away and form rival unions in the same trade or industry. The registration of unions proliferated: over 125 were registered between 1955 and 1958 (*The Mirror*, 1983, vol 19, 5, 9). Thus the amended s15 empowered the registrar to refuse to register or to deregister a union, if in his opinion, it was necessary to do so in the interest of the workmen (*sic*), having regard to the existence of another trade union in the same trade, industry or occupation. As discussed, the amendment aimed to limit splinter groups and prevent a multiplicity of trade unions in any one industry or trade. However, it could be argued that the section also curtailed the right of workers to establish or join an organisation of their own choice. In other words, it denied them freedom of association. Section 17 allowed appeals of the registrar's decisions to the Minister of Labour, but under s18(2), the Minister's decision '... shall be final and shall not be called into question in any court'.

Thus, despite the huge discretionary powers conferred upon the registrar, neither his nor his Minister's decisions were open to judicial review. The 1959 amendments aimed to consolidate the trade union movement, but by retaining final decision for the Minister, the government gained control of the movement. In addition, the Act failed to provide for any sanction against employers who interfered in the affairs of trade unions, or to prescribe penalties for employers who financed trade unions, unless they were held to be communist sponsors. This was in harmony with the PAP government's policy to strengthen the non-communist unions but weaken the others.

6.3.2 The Industrial Relations Ordinance 1960

The Industrial Relations Act (cap 136) was the first piece of original labour relations legislation passed by the PAP parliament.[7] Its stated purpose was the regulation of the relations of employers and employees, and the prevention and settlement of trade disputes by collective bargaining, conciliation and arbitration. As amended, it also provided for the recognition of trade unions by employers.

---

[7] This Ordinance was a foreign transplant. Under the Colombo Plan, a legal officer seconded from the Australian government drafted the Singapore statute. However, the PAP government made some changes 'in the national interest' to reflect its more developmental, activist stance.

The Act comprised eight parts. Part 2 established the Industrial Arbitration Courts, while the remaining Parts set the procedures for collective bargaining, arbitration, awards, boards of inquiry, powers of the courts, and so on. The Bill was introduced purportedly to implement the government's declared policy of 'industrial peace with justice' (Rajaratnam 1968, PD, vol 27, col 733).[8]

Collective Bargaining

The Act provided a framework for conducting collective bargaining negotiations between employers and trade unions of employees. Section 16 stipulated that to be eligible to serve an invitation to negotiate under s17, a registered trade union must have prior formal recognition by the employer. Recognition could be obtained upon application under Form A of the Schedule. Sections 17, 18 and 19 set out the procedures and time limits for the acceptance of an invitation to negotiate and for completion and delivery of the agreement for certification by the Registrar of the Industrial Arbitration Court (IAC). Under s17(1) a recognised trade union or an employer may serve on the other party, 'a notice in the prescribed form setting out proposals for a collective bargaining...'. If the serving party has not received an acceptance to negotiate from the other party after seven days, that party may notify the Commissioner, s19. The Commissioner will seek to persuade the party to accept negotiations. If he fails, he shall notify the Minister, and unless the Minister directs otherwise, the Commissioner shall notify the Registrar that a trade dispute exists, s19(3), and conciliation can begin. Possible grounds for refusing to negotiate are not set out in the law.

Conciliation

The conciliation mechanism is stipulated in s20. If the parties do not reach an agreement after 14 days' negotiations, either party may notify the Commissioner, who will attempt a settlement. If after seven days he finds that the parties are unable to reach a settlement, the Commissioner must notify the Minister, and unless he directs otherwise, the Commissioner must notify the Registrar that a trade dispute exists, s21.

The IAC must certify any agreement reached by the parties. It may refuse certification if the agreement is not in the public interest. This is at the court's discretion, as is deciding what is 'the public interest'. The IAC must refuse certification, if the agreement

---

[8] Presumably Rajaratnam was referring to the government's statement at the beginning of the 1959 PAP government, see 6.3 above and the debate of the 2nd reading of 1960 Industrial Relations Bill.

does not comply with the provisions of the Act, for instance, if the parties failed to appoint referees who should function under the guidance of the IAC, or if the agreement contains ambiguities or uncertainties of the parties' intention. Section 24 empowers the IAC to amend the collective agreement after hearing the parties. The certified agreement is deemed to be an award of the IAC, s26, which ensures its enforcement (s51, s55, s56). If the parties fail to reach a certifiable agreement or conciliation, they may resort to industrial action. Such action is regulated by the Trade Disputes Act. Alternatively, or as a last resort, the dispute might go to arbitration.

Arbitration

Both parties in an industrial dispute may apply jointly and in writing for arbitration to the IAC, s31. If they fail to do so, the Minister shall refer the dispute for arbitration. Alternatively, the President of the Republic may refer the dispute to the IAC by declaring that 'it is essential in the public interest'. The law is silent as to what circumstances would be considered 'essential in the public interest'. The distinction between the powers granted to the Minister and the President is also unclear. However, once the IAC has cognisance of a dispute, a strike is deemed illegal, unless arbitration has failed.

The procedure and powers of the IAC are set out in Part VI. They differ from those of an ordinary court of law, because the IAC is designed to be an informal forum. For instance, representation of the parties by advocates or solicitors is prohibited except in cases in which the Attorney-General intervenes, s62. For as the Prime Minister explained (PD vol 12, col 310):

> I have been persuaded by my colleague, the Minister for Labour and Law, who informs me that far from helping to crystallise the issues at debate, they (advocates and solicitors) very often befog their clients. He is firmly of the opinion that it is more likely that justice will be done if both employers and unions, through being naive, honest and sincere, put forward points - both good or otherwise - in their respective cases, and that an intervention from the sometimes skilful and sometimes less skilful advocate only helps to prolong and bedevil a proper and rapid conclusion of the hear-ing of an arbitration. Sir, I would hate to admit, that on principle we might save time by excluding advocates and solicitors.

During the debate of the 2nd reading of the Bill, the government also expressed the wish that disputes be reconciled, agreements become the rule, and awards, the exception. The IAC therefore actively seeks to encourage the parties to settle their disputes out of court. It has been found that in some years, the IAC resolves more cases out of court than in (Krislov & Leggett, 1985, 22). It is important to bear in mind that the IAC's power is not absolute, for at any time the Attorney-General or the Minister may

intervene on behalf of the government and force a 'public interest' settlement. An amendment to the Act in 1972 also allowed the IAC to have regard (cap 136, s34):

> not only to the interests of the persons immediately concerned but to the interests of the community as a whole and in particular the condition of the economy of Singapore;...

Although the IAC was empowered to have regard to the public interest in settling disputes the over-riding ministerial power remained unimpaired.

6.3.3 Defeating the Radical Rivals

A new radical Trade Unions Bill was passed in 1961, but it was never brought into force[9], perhaps because its main purpose was to appease the leftists and procommunist wing of the PAP. The PAP's moderate elite seems to have lost its nerve at the last minute, fearing that the proposals would increase the leftists' hold on the unions and, indirectly, on the Party. Some of the key, somewhat radical provisions of the Bill included:

1. No trade union could be registered unless it was affiliated to a federation and had at least 250 members.
2. Easy amalgamation: existing trade unions could reregister under any one of 19 prescribed union categories.
3. A new condition for registration was added: a trade union's rules and its constitution should be democratic and provide for representation of its members in the management of its affairs. Furthermore, to effect registration, at least two-thirds of the members of the executive must have been employed in the industry with which the union was concerned.
4. The *likely* use of a union for unlawful purposes would no longer be a ground upon which to refuse registration.
5. Unions could be affiliated to a political party and contribute donations and affiliation fees. They could establish a separate political fund for certain specified objectives. Political funds could be contributed towards the election expenses of any person seeking to enter the Legislative Assembly.
6. Unfair labour practices or employer interference in trade union affairs were prohibited and enforceable by a penalty of not more than SD 2000.

The Bill was shelved. The leftists and pro-communists became disillusioned. It was also at about this time that the issue of the Malaysian Federation was brought to a head. The PAP's extreme left opposed independence through merger, which had been the PAP's declared policy.[10] They also opposed the Citizenship Bill's amendment, which deprived many unions' left-wing leaders of their citizenship. In July 1961 the frustrated leftists

---

[9] This section is based on Siddiqi (1967), *Legislative Debates* (1960) and Vasil (1988).

[10] See, for instance, Central Executive Committee policy statement (1960) The Fixed Political Objectives of our Party, *PAP 6th Anniversary Celebration Souvenir*, Singapore: Petir, 6.

resigned from the PAP and formed the Barisan Socialis party.[11] The union movement split into the moderate Trade Union Centre (later National Trades Union Congress, NTUC) and the leftist Singapore Association of Trade Unions, SATU, which was registered in August 1961.

It was not until 1963 that new amendments to the Trade Union Act were tabled. By then the political agenda had changed significantly. The PAP government charged the SATU of being dominated by communists and proceeded to treat the NTUC, led by Devan Nair, much more favourably than SATU led by Lim Chin Siong (Fong 1979, 95-99). The discretionary powers wielded by the ruling elite allowed preferential treatment in the administration and enforcement of the labour laws, particularly in matters concerning the registration and deregistration of unions.

During the early phase of the PAP government, 1959 to 1966, fourteen unions were refused registration while 138 were deregistered under the labour laws (Anantaraman 1990, 108). Of the deregistered, 77 sought voluntary dissolution, ceased to exist or were amalgamated. The remainder were deregistered for contravening the law in one way or another, including where, having regard to the existence of another union, it was necessary to cancel registration in the interest of the workmen. Already in 1957 the 30,000 strong Factory and Shopworkers' Union was deregistered, with PAP approval. In 1963, over 100 pro-communist, anti-Malaysia union leaders were detained under Operation Cold Store. The PAP also ordered deregistration of seven SATU unions with over 50,000 members, and of the Naval Base Workers' Union and the Singapore Harbour Staff Association, each with 10,000 members. Thus, by the end of the period, with legal support, all rival unions were deregistered or dissolved. This paved the way for the 1963 merger with Malaya. As Heyzer and Wee confirm, in 1963 the PAP government used (1972, 4):

> ... its *legal machinery* with excessive severity against the SATU leaders and the leaders of the Barisan Socialis. Many of them were arrested and detained without trial for allegedly taking part

[11] The PAP's left-wing threatened the survival of the PAP itself. On splitting, the Barisan took with them 80% of the party's membership, 35 of the 51 branch executive committees, 19 of the 23 paid organising secretaries, and 17 of 43 members of the legislative assembly. The PAP was forced to reconstruct itself from the grass root level. Several government institutions were duly arranged to assist in this work. For instance, the People's Association, a statutory body with the Prime Minister as chairman was set up to create and supervise a new network of committees and institutes. They formed the essential interface between the government and the people. The three national goals, stipulated by the government and the PAP, which united the constituencies were (1) saving Singapore from communism, (2) building a multi-racial nation and (3) achieving rapid social and economic development. See Gamer (1969; Vasil (1988).

> in pro-communist activities. The government also deregistered many trade unions with left-wing sympathies and arrested their leaders on various charges. Chief among these were the seven unions which formed the backbone of SATU. (My italics).

An observer closer to the events, Ellison Chalmers (1967, 64) noted that the PAP and the civil service were substantially integrated. In its control of the government, the PAP 'aids the unions by the very structure of Social Welfare Legislation which is on the books and which is being administered by the present government' (*id*). Foremost among the social welfare legislation were labour laws such as the Industrial Relations and the Trade Union Ordinances, which bestowed huge discretionary powers on government officials.

6.3.4 The 1966 Trade Union (Amendment) Act

The government's commitment to create a unified, non-communist trade union movement which would share in the party's developmental agenda grew tremendously after Singapore separated from Malaysia in 1965. More legal controls were called for. First, to regulate the qualifications of those who could be appointed as union officials; secondly, to curtail the rights of workers to strike.

The 1966 amendment of the Act addressed both issues. The 1940 Act had prescribed that at least two-thirds of the officers of every union should be persons employed in the industry with which the union is affiliated. This provision had made allowances for the need of union leadership in developing countries to recruit assistance from outside the union's membership. However the government amended this provision to prohibit non-citizens from becoming union officials, except at the discretion of the Minister, who could make written exemptions as he saw fit, s32(4). Moreover, under s32(2), a person convicted of any criminal offence, which 'in the opinion of the Minister renders him unfit to be employed by a trade union' was disqualified from holding a trade union post, except where the Minister is satisfied that the person has reformed and has become fit, s32(3).

The secret ballot clause and powers to strengthen the control of strikes and industrial action were also introduced in the 1966 amendment. Under s28(1) the majority of the union's members had to consent, by secret ballot, before a union could commence, promote, organise or finance any strike or any form of industrial action. It became an offence to instigate or incite others to strike where consent of the majority by

secret ballot had not been obtained, s28(4). However, the new statutory definition of 'industrial action' was so wide that even some PAP MPs and NTUC leaders objected. Under s28(8),

> 'industrial action' means the adoption of any practice, procedure or method in the performance of work which would result in a limitation on output or production in any occupation, service, trade, industry or business.

Of the many criticisms noted during the debate of the Bill, that of Ho See Beng was most colourful. He claimed that (PD vol 25, col 210-11):

> The whole object of this amendment will restrict an employee even to take only two or three minutes off for the purpose of answering the calls of nature. Legally, if you read the amendment, it will, ridiculously enough, mean that every act which limits productivity constitutes an industrial action... I cannot appreciate its anti-labour concept ... it amounts to selling the labour movement lock, stock and barrel to the employer.

However, on the issue of the secret ballot clause, there was agreement with the Minister. He argued that apart from deregistration there was no other sanction against irresponsible unions because under the Trade Disputes Ordinance it was not illegal to commence a strike without taking a secret ballot. The secret ballot, he said, would 'ensure that the views of the rank and file members ... are respected by the union leadership [and] ... eliminate any undemocratic manipulation of imposing a strike from the top' (*id*, 203). Of course, with all other decisions requiring the approval (or exemption) of the Minister, the notion of any other undemocratic manipulation from the top was never raised. The subsequent career of the objecting Mr Ho is unknown.

The Criminal Law (Temporary Provisions) Ordinance enacted in 1955 required 14 days' notice before a strike in 'essential services' could take place. However by a 1967 amendment, the government decreed that in the public interest, strikes were absolutely prohibited in key utility industries: water, gas and electricity (cap 67, Part 111).

6.4 The Era of Modernisation 1966-72

This was the period when growth accelerated at an unprecedented rate in Singapore. The period when, to borrow Rostow's metaphor, Singapore took-off. The period was marked by the enactment of three laws one of which was new: the Employment Act (cap 91). The others were the Industrial Relations (Amendment) Act (cap 136) and the Central Provident (Amendment) Act (cap 36). The Bills were introduced after the PAP government had secured trade union *leadership* support for its definition of the economic crisis facing the nation and its proposed cure. In other words, the union's leadership

seems to have backed the implementation of the industrialisation policy with its implicit need for more co-operative and less combative unions. By calling an early general election in 1968, Prime Minister Lee also sought the nation's support.

When the PAP was returned as the sole political party in parliament, Lee reiterated the government's agenda. During the July 1968 debate of the Employment Bill he pointed out that Singapore's survival as a nation was at stake as a result of the British government's decision in 1968 to withdraw all military forces from Singapore by 1971 (PD vol 27, col 633). The goals as well as the means of achieving them were clear in Lee's mind. At col 633-34, he stressed the need to attract expertise, know-how, enterprise and capital, to use Singapore's domestic capital and her workers to greater advantage in the manufacturing, assembling and service sectors, ...with the accent on export. He pointed to the need for training and education of young Singaporeans, so that they would be 'skilled in the techniques of modern industry'. As Lee saw it (*id* 636),

> The first major task of this new Parliament is to take through this series of legislative amendments that will put our working population into better trim. This is a package, which is both fair and attractive. These amendments are designed to make everyone put in a greater effort for higher performance to bring higher rewards. This, coupled with the home-ownership plan for the mass of our workers and not just the higher salaried groups, will enable more and more of our working population to have a growing personal stake in the continuing prosperity and stability for our society.

From the Parliamentary debate it is clear that the Bills' declared purpose was to improve productivity and efficiency by making employees' entitlement to benefits contingent upon disciplined behaviour in the work-place (*id* vol 27, col 632-42; 733-40; 761-90). Some of the provisions of these Acts are examined in the sections below.

6.4.1 The Employment Act 1968

The Act is divided into sixteen parts, and represents the most comprehensive attempt to consolidate and amend employment law in Singapore. The most controversial sections are contained in Part IV, which relates to rest days, hours of work, holidays and other conditions of service. The law was designed for 'workmen and other employees who are in receipt of salary not exceeding seven hundred and fifty dollars a month or such other amount as may be fixed from time to time by the Minister' - s35. Despite the controversy and lively debate, the Bill's passage was easy as there was no parliamentary opposition to the PAP government.

Under s36 an employee shall have one rest day per week, but may be required to work on rest days or public holidays if he is paid double the ordinary rate, s37(3). Subsection (3) does not apply to those employed by government or a statutory body conducting any essential service as defined by Part III of the Criminal Law (Temporary Provisions) Act, cap 112, and the Trade Disputes Act.

Section 38 stipulated working hours as 44 hours per week, comprising a maximum of six consecutive hours without a period of leisure, and no more than eight hours per day including rest period(s) of not less than 45 minutes. Section 38(2) outlined liberal exemptions to this rule.

Every employee is entitled to paid holiday subject to the schedule to the Holiday Act, cap 307. However, an employee becomes ineligible for such if he absents himself from work without prior consent of the employer or without reasonable excuse on any working day immediately preceding or succeeding the public holiday, s40(2).

An employee is entitled to paid annual leave, in addition to rest days, holidays and sick leave under s36, s41, s43, unless he absents himself without permission or reasonable excuse for more than 20% of the working days in a year, s42. Under s42(1) the paid annual leave is seven days for every 12 months' continuous service with the same employer if employed by that employer for less than ten years. After ten years' service with the same employer, the employee becomes eligible for 14 days' holidays, s42(2).

After one year of service with the same employer, an employee is eligible for 14 days paid sick leave and 46 days of hospitalisation in a year, s43. Eligibility is subject to a medical certificate from a doctor appointed by the company or the state.

Only an employee who has been in continuous service with the same employer for three years or more is entitled to retrenchment benefit on termination due to redundancy or reorganisation, s44. An employee is eligible for maternity benefit if she has worked with the same employer for 180 days.

Under s45, only an employee who has been in service for five years with the same employer is entitled to retirement benefit other than benefits payable under the Central Provident Fund, cap 121.

It is clear that some of these provisions were so wide that they were open to abuse by employers. For instance, it is plausible that an employer could terminate an employee just before the deadline for reaching entitlement to, e.g., retirement or retrenchment benefits. However, the Prime Minister acknowledged that 'bad employers'

will have to be educated and taught the facts of present-day industrial life so that they do not abuse their powers, but instead help government put 'capital and labour to greater use' (*id*, 639).

6.4.2 The Industrial Relations (Amendment) Act 1968

According to Labour Minister, Rajaratnam, (*id* 733), the Employment and the Industrial Relations (Amendment) Bills (IRA) sought 'to rationalise employer-employee relationship with a view to attracting new investments and increasing efficiency of ... trading and industrial enterprises'. In introducing the second reading of the IRA Bill, he said that like the main 1960 Act, the purpose of this Bill was to give expression to the government's policy of industrial peace with justice. It was also to create the conditions necessary to attract foreign investments, encourage industrial development, and generate much-needed employment opportunities (*id* 735).

It is debatable whether the policy of industrial peace with justice was paid more than lip service, for the 1968 amendments duly removed six areas of personnel management from collective bargaining. Under s17 six key areas prohibited from forming the basis of future trade disputes:

> (1) Transfer of employee within an organisation without detriment to her terms of employment.
> (2) Promotion of an employee from a lower to a higher grade.
> (3) Recruitment of employees to fill vacancies arising in the organisation.
> (4) Dismissal of an employee for misconduct and her reinstatement.
> (5) Termination of the services of an employee due to redundancy or reorganisation; and
> (6) Assignment or allocation of duties and specific tasks to the employee.

In addition, neither the IAC nor the government could intervene even if management blatantly abused its powers in these areas (except in the case of wrongful dismissal). In seeking to justify the amendments, the Labour Minister pointed to statistics for work stoppages from 1960-67. He said (PD vol 27, col 735):

> The total number of stoppages during this period... was 389, involving a loss in man-days (*sic*) of 1,284,029; the peak years were ... 1961, 1962 and 1963 ... What is even more interesting is a study of the causes of these disputes. Of the total 389 disputes 106 or about 27% arose out of dismissals while another 120 or about 30% were due to a number of other reasons which included demotion, discontinuation of life insurance schemes, discrimination in filling vacancy, grading of staff, recruitment of workers, transfer of company doctor and dismissal of an employee demanded by a union. One can seriously ask whether in such a state of affairs any new employer would set up factories in Singapore.

Thus the amendments would make it illegal to strike in about 57% of the cases cited. In the Minister's opinion, certain fundamental management functions should not be negotiable (*id*, col 737). He called these functions (see list above) 'common law rights' of

employers, declaring that legislation was only necessary because these rights had become blurred in the process of heated negotiations. It was now necessary to redefine management's rights, functions and duties (*id*).

A lengthy discussion of the provisions of the Act is unnecessary at this juncture. The important points to note are that the Act reduced the level of working conditions, restricted trade union power in collective bargaining and dispute resolution and created longer working hours. All this was done in the name of creating 'the necessary climate of *stability* for investors to come in'. As the Minister said (*id*, col 740):

> In order to provide *added inducement for new investors* to come to Singapore, clause 7 of the Bill provides that all industrial and other approved undertakings, including pioneer industries, which commenced operation on or after the 1st day of January 1968, shall comply wholly with the provisions of Part IV of the Employment Act, 1968. In other words, all the terms and conditions of employment, including sick leave and annual leave, of these new industrial undertakings will constitute the maximum terms of service *for a period of five years* from the date such undertakings commence operation in Singapore. The Minister, however, may extend the period at his discretion. (my italics)

As statistics abundantly show, not only did the number of strikes and lockouts decrease, foreign investors also flocked to Singapore (Huff 1997, 295). In 1968 there were only four work stoppages and in 1969 there were none. The period 1948-58 is usually called the decade of industrial unrest. However, statistics show that until the 1969 legislation, the decade from 1959 was hardly any better as the battle between the political left and right, especially from 1959 to 1965, was fought in the workplace. The PAP's victory in gaining control of the trade union movement was consummated in 1969 at the modernisation seminar (see 6.4.4).

6.4.3 The Central Provident Fund (Amendment) Act 1968

According to Labour Minister Rajaratnam, this Central Provident Fund Bill (PD vol 27, col 792):

> ... is the third of three Bills which are designed to meet the challenging economic problems that loom ahead. Whilst the purpose of the Employment Bill and the Industrial Relations (Amendment) Bill is to have more realistic terms and conditions of service and employer-employee relations consonant with the need to induce greater investment, generate higher productivity and employment, *this Bill deals with* another inter-related problem - *the marshalling of domestic savings for the economic and social benefit of our people.* (my italics)

Free-marketers claim that high levels of domestic savings are crucial for economic development. However, they do not approve of forced savings. But that is exactly what Singapore's Central Provident Fund Act (cap 36) permits. The original law is a colonial enactment from 1955. The idea, then as now, is for employers and employees to contribute

towards savings for pensions and other social welfare costs. The law compels participation and the government sets the appropriate contribution rate for each party, usually annually. Labour Minister Rajaratnam pointed to three principal purposes of the 1968 amendment (*id*, col 791-2):

> (i) to increase the contributions payable to the Central Provident Fund by employers and employees;
> (ii) to enable arrangements to be made for members of the Fund to use their savings in the Fund for the purchase of houses or flats for their own occupation; and
> (iii) to enable the provisions ... to be extended to cover persons who are self-employed and who do not at present contribute to the Fund.

In 1968, the then current rate of contribution was 5% each by the employer and employee. The Minister proposed a three-year, three-stage increase whereby the rate for each party would rise to 6-1/2%, then 8%, then 10%, or a total saving of 20% of salary each month (*id* col 792). This increase would not apply to the United Kingdom Government and its employees who were leaving Singapore. Other exemptions were made for those employees who earn less than SD200 per month. The Minister hoped that this considerable increase in savings would help employees build reserves in the Fund and help them to accumulate sufficient money to purchase houses or flats.

The latter was the most significant departure from the existing CPF law. It was the first time that savers would be allowed to use money in the Fund to purchase their own accommodation. Those who already had sufficiently large balances would be allowed to buy flats outright, while those who already had used loans to purchase flats would be allowed to use their monthly contributions to pay mortgage instalments (see chapter 7).

The other major change, extending coverage to include self-employed persons, was limited to those persons under the age of 55 years who derive their income from any trade, profession or vocation.

The Minister's claim that he was 'marshalling domestic savings for the economic and social welfare' of Singaporeans needs to be clarified. It is commonly accepted among economists that Singapore has the highest savings rate in the world. Indeed the trend in high savings and high investment rates has characterised Singapore society from the 1960s. For instance, savings ratio was 16% in 1966, moving to 42% in 1985, while in 1966 investment ratio was 22%, moving to 43% in 1985 (Kok Ai Tee 1987, 99). These high savings and investment rates could be considered significant factors in explaining Singapore's high growth rate during the decades. However, paradoxically, the

evidence suggests that although Singapore's gross domestic capital formation can in principle be financed domestically from gross national savings, in practice this is not the case. For instance, from 1970-1985, the private sector (local and foreign) was responsible for three-quarters of Singapore's gross fixed capital formation while the public sector accounted for only one-quarter of capital formation (*id*, 82). But the money was not squandered: it financed infrastructure and public merit goods, such as housing (low 1998). Every year a significant portion of the national savings is invested overseas; in recent years through the Government of Singapore Investment Corporation. High savings rate allowed the new nation to steer clear of debt or at least balance the foreign debt, which would otherwise become an everyday part of life in the developing country.

The crux is that throughout the decades the government played the crucial role of intermediary between savers and investors, by directing the accumulation and the use of the rapidly increasing share of private-sector savings. In case investors were not motivated to reinvest some of their profits in Singapore, firms were compelled to add to workers' savings through contributions to the CPF. And as seen in the 1968 CPF amendment, the Housing and Development Board gained additional sums to finance public housing when the government permitted CPF savers to invest their savings in HDB flats or houses.

If the CPF was used to marshal private savings, the union movement was harnessed to enter the world of business and commerce on behalf of workers and their families. This point of departure was witnessed at a seminar in 1969.

6.4.4 The 1969 Modernisation Seminar

The Prime Minister, other senior ministers, union leaders and delegates attended the seminar, which was called the 'modernisation of the labour movement'. Dr Goh, the then Finance Minister, urged unions to revitalise themselves by becoming actively involved in establishing worker co-operatives and social services for the welfare of workers and their families. The government was not prepared to pour additional money into such investments.[12] However it did the next best: It changed the law and allowed unions to use internal funds to finance co-operative ventures. Under s47 (now s48) of the Trade

[12] It should be recalled that the PAP helped to create the NTUC as a pro-government alternative to the left-wing SATU. It has been said that, until the early 1970s, the NTUC was financially

Unions Act the Minister may declare by notification in the *Gazette* any other object to be an object for which union funds may be expended. This was duly done in form of the Trade Unions (Expenditure of Funds) Notification 1970 (GN S 143/70). Dr Goh outlined the strategy and its underlying principles. To succeed (Goh 1972, 105):

> (1) Cooperatives must be fully competitive with private enterprise.
> (2) Labour movement should engage in cooperative enterprises in those fields in which it has a natural built-in advantage.
> (3) Highest standard of integrity must be established and maintained.
> (4) Cooperatives must have effective management.

Dr Goh suggested that the financial basis could be built upon a life insurance co-operative, adding that '[J]ust as we have to develop industries in a hurry, so must we achieve, in co-operative development, in years what took others decades.' Here he was probably referring to the Scandinavian co-operative movement, upon which the Singapore model was built. To implement the strategy, the government also organised a system whereby by civil servants and Members of Parliament (all PAP members) were co-opted into advisory positions in the unions or became directors on some of the co-operative enterprise boards. In this way, there grew a substantial overlap between NTUC and PAP personnel, not only at the Party level but also in the government and civil service. The government provided training in professional skills for union officials, and seconded civil servants to assist. Subsequently, the Singapore clone grew into a massively successful institution, which owns and operates supermarkets, dental, health care and travel services, public transport and taxis, finance and insurance, and book and stationery retailing.

In conclusion of this section, it can be said that four or five labour laws were pivotal during the decade 1959 to 1969. In particular, the Industrial Relations, the Employment, the Trade Unions and the Central Provident Fund Acts were used specifically to engineer the labour conditions and climate which the PAP government perceived would be conducive to attracting foreign investment as required by its industrialisation policy. These effected the government's policy for rapid economic development. The centrepiece emphasised the need for stabilisation of labour costs (at a low level), increased productivity, labour discipline and industrial peace.

---

dependent upon the government (Gan 1977). Its headquarters and the convention hall in which the Modernisation Seminar was held, were built with government funds.

It is clear that by 1971-72 the industrialisation policy had proved successful. There was full employment, and relative to its base-point, the population was well-housed, well-fed and relatively well-educated. The government's goals had been achieved. Thus, there does seem to be positive correlation between labour laws and economic development. As the Labour Minister put it (PD vol 32, col 1172):

> Suffice it to say, *as a result of the passing of the Employment Act in 1968, there has been rapid economic development* as we have been able to attract investments to this country and to solve what was ... regarded as the insoluble problem of unemployment in Singapore. (My italics)

However, despite the rhetoric and some evidence, it is difficult to show causation. Factors other than law cannot be isolated and their effects evaluated separately. For instance, as has been made clear in this discussion, the government constantly encouraged people to put the 'national interest' above their own. Ministers used every opportunity to remind them of this. For instance, in Rajaratnam's view, 'how far this (Employment) Bill will succeed in its purpose will depend upon both workers and employers placing national interest before sectional interests.

Particularly after 1965, the government encouraged the public to view demands from labour and other special interest groups as serious threats to the survival of the small, vulnerable nation. Unions were not expected to play their traditional role of speaking up for labour interests. They were required to show 'greater awareness of the social responsibility ... in the larger framework of the national interest' (Goh 1972, 103).

In light of the foregoing, I cannot agree with Phang's thesis (1990, 310-330) that 'the success of (labour) legislation ... had much to do with *a coincidence of interests* between the people and the government *in any event*' (id, 310). There was a coincidence of interests in so far as people would clearly, naturally prefer to have shelter, food and other material benefits that jobs would provide, as opposed to not having them. But the deferred gratification, constant sacrifices and solidarity which unionists and workers demonstrated during the key decade owe much more to PAP government intervention and direction (expressed through top-down legislation) than to natural coincidence of interests. Later on people seem to have been lulled into passivity by the fact that the government was seen to be delivering on its promise of material prosperity. The hardships and sacrifice were paying off in jobs, political stability and economic wealth (chapter 7).

For the next 25 years, the government would make adjustments to labour laws in order to increase, maintain and distribute the nation's wealth. But the basic recipe of how to nurture growth and redistribute wealth had been worked out during the formative

years when the unions were united, co-opted, then neutered, and its membership disciplined. This was done in the public interest, in order to achieve the government's declared goals, which as time went by, became synonymous with the aspirations of the nation. The next section therefore focuses on tweaking mechanisms, for in reality the nature of the labour laws did not change significantly after 1968.

6.5 Tripartite Partnership 1972-1999

To my mind, Deyo's description of the role of unions in developing countries matches Singapore's situation during the formative period (Deyo 1981, 4):

> In particular, unions are often asked to educate, train, or discipline members; raise productivity; discourage labor-management conflict; restrain wage demands; engage in savings programs; and make whatever other sacrifices are necessary in the national development effort.

However as the issue of whether Singapore is a corporatist state remains controversial (see, e.g. Phang 1990, 319-321) I shall refer to the state of affairs as tripartite partnership. Tripartism refers to joint decision-making on economic matters between employers, unions and government at national and enterprise levels (Deyo 1981, 104). It seems to have become part of Singapore's economic development equation by 1968.[13] The most explicit evidence is probably the modernisation seminar (6.3.4 *supra*). There is also evidence of its rhetoric being used by PAP members during parliamentary debates to justify curtailing workers' rights and cutting fringe benefits. For instance, while debating the Employment Bill, Mr Ng Yeow Chong said (PD vol 27, col 632):

> If Singapore is to survive and progress as an industrialised nation, there must be concerted effort by labour, management and the Government to steer the country through the crucial years. A nation's advancement depends on the determination and the will of its people to live as a nation.

As discussed at 6.4.4 *supra* by 1971-72 Singapore seems to have moved from labour surplus to labour scarcity.[14] Full employment in a free labour market would otherwise

---

[13] Tripartism probably has its roots in the 1965 Charter for Industrial Progress, a government-sponsored agreement under which labour agreed to work jointly with management toward the shared goals of increased productivity and industrial peace. The Charter was ratified by the NTUC, the Singapore Manufacturers' Association and the Singapore Federation. On a less formal but more pragmatic level, tripartite partnership is also visible in 1960 when labour, management and the government were represented on the Economic Development Board, the Housing and Development Board and the Industrial Arbitration Court, as provided for under their respective 1960 Acts.

[14] Some economists, eg, Huff (1997, 326) put the turning point from labour surplus to labour scarcity as late as 1973. This seems unlikely. For instance, the Prime Minister, addressing the NTUC Delegates' Conference in 1972, said: 'the end of 1971 marked the close of an era in our economic history. From chronic unemployment, we entered a period of full employment.' *Straits Times*, 6 March 1972, 6. However, the crux is that by the early 1970s, the government's

result in the market automatically balancing the scarcity of labour by causing a rise in the cost of labour. However, here too the government intervened to prevent this scenario. Two actions were taken: One, the government established a tripartite system for controlling a national wage policy. Two, it manipulated the size of the labour market in several ways. E.g. it relaxed the hitherto tightly controlled immigration law concerning foreign workers and allowed a surge of temporary 'guest-workers' into the labour market. It also gave incentives to attract women and older workers into the labour market. Aspects of the operation of these policies and the law are discussed below.

6.5.1 Wage Regulation: the National Wages Council

Having established a legal framework for labour relations which restricted the unions' rights to collective bargaining and institutionalised a dispute settlement mechanism, the PAP government's next step was to impose a system of wage controls on the labour market. The tripartite National Wages Council (NWC) was established in February 1972, as a non-statutory, advisory body charged with three objectives: One, to formulate annual wage guidelines. Two, to recommend a wage adjustment policy. Three, to advise on suitable incentives. It is important to note that the NWC is a non-statutory body and that its recommendations are not mandatory. Despite this, union leaders greeted its establishment with fury and disappointment, while leaders of trade and industry favoured it. Devan Nair, the NTUC Secretary General complained that (*Straits Times* 12 February 1972, 2):

> ... the NTUC responded magnificently when the political leadership called for wage restraint, patient hard-work and greater productivity. Between the government's policies and the discipline and co-operation of the working population, a flourishing economy has been built. The workers' right to an equitable share of that prosperity must be respected and satisfied.

However the then Labour Minister, Ong Pang Boon, countered the criticism by urging that (*Straits Times* 4 March 1972, 10):

> unionists should remember that disputes over the share of the national cake, without full recognition of the impact such disputes [can have] over the size of the cake, can be short sighted and damaging. Excessive preoccupation by workers with mainly their portion of the cake can destroy the confidence of the investors in our favourable industrial relations climate and the intrinsic reasonableness of our workers.

---

industrialisation policy, in particular its commitment to promoting labour-intensive manufacturing in order to solve joblessness, had worked; there was full employment. Mass housing was the other objective. For a discussion, see chapter 7.

This was essentially the same 'social responsibility to the nation' argument. However the Minister also conceded that it would be naive to expect workers to continue being productive without any prospect of benefiting fairly from higher productivity. The Minister hoped that the compromise needed by all should ultimately prove 'non-damaging to labour, management and society at large'.

The NWC was charged with finding that compromise. Its membership comprised three representatives from labour, three from management, three from government and a neutral academic 'without any functional identification'.[15] In later years the composition was retained but by 1981, the number of representatives from each party increased to five.

The Employment Act (cap 91) and especially s34 of the Industrial Relations Act (cap 136) were amended in 1972 to give effect to the NWC mechanism. The Industrial Arbitration Court was enjoined to take cognisance of NWC recommendations in their dispute and award considerations (s34).

Although the NWC comprise representatives who are accorded equal status, those from the government have played a dominant role, if only because of their access to superior statistical information and immense persuasive power. Indeed, Dr Tony Tan, Ministry for Industry, admitted as much when he observed that (*Straits Times* 19 June 1982, 1):

> since its formation in 1972, the Government has gradually become more equal than the unions and employers in the tripartite council. The result is that both employers and employees now regard the NWC guidelines [as] mandatory.

On at least two occasions in later years, namely during the 1985/86 recession and the 1997/98 regional economic crisis, the government took the decision-making lead. On the latter occasion, Manpower Minister, Dr Lee Boon Yang revealed that (*Straits Times*, 5 September 1998, 45):

> [T]he National Wages Council would be reconvened soon to update its wages guidelines, and 'in a nutshell', a cut in the rate of employers' contribution to the Central Provident Fund was likely.

His prophecy was fulfilled in the November 1998 economic package, which cut business costs significantly in order 'to strengthen Singapore's competitiveness'.

---

[15] Lim Chong Yah, Professor of Economics at National University of Singapore was appointed chairman.

From 1972 to 1978, the NWC operated a wage restraint policy, despite full employment in Singapore. As Dr Winsemius, one of Singapore's economic architects (see 4.2), said in an article 'The One Mistake I Made' (*Straits Times* 10 March 1984, 19): 'It was my theory that after full employment, we should increase wages'. Instead 'we compromised like cattle traders'. Dr Winsemius seemed to forget that compromise is what the tripartite NWC is all about. His point is taken, however, the 'mistake' lies in the government's decision to delay until 1979 the so-called 'Second Industrial Revolution' – that is, its plan to restructure the economy and move out of labour-intensive industries into higher value-added, high-wage manufacturing. This was probably due to timorousness in the face of the 1973 oil-induced world recession. One consequence of the delay was the upward pressure on wages, as demand exceeded supply in labour-intensive industries. From 1972 to 1974, average hourly wages rose 14% per year, or 3% faster than the NWC recommended guidelines. By 1975-78 annual average hourly wage increase was 1% below the average recommended wage guidelines (Pang Eng Fong, 1988, 209). A second consequence is that industry had to recruit foreign workers (see 6.5.2).

The NWC recommended incentive schemes to promote productivity and operational efficiency, and disincentives such as the denial of NWC wage increases, based on demerit points for absenteeism, unpunctuality, non-observance of safety rules, unsatisfactory performance and conduct, and excessive job-hopping (Ministry of Labour, *Annual Report* 1977, 18).

However, in 1979 a corrective wage policy was deemed necessary to support the government's long-awaited restructuring policy (see 4.3). With full employment, and Singapore's growing dependence on immigrant labour, the NWC recommended higher wages across the board. This was in harmony with the government's plan to use the high cost of labour as an incentive to encourage investors to move from labour-intensive to capital-intensive production. Employers were encouraged to increase productivity by introducing computerisation, robotisation and other automatisation in their production lines. Accordingly, the NWC's wage guidelines called for increases of 20% in 1979, 19% in 1980 and 14-19% in 1981.

The government also reorganised the basic structure of the union movement in 1979. From cross-industry general unions they were forced into smaller industry-based unions. The rationale for restructuring was that smaller unions would acquire more knowledge of their industries and develop closer ties with their employers. However the

move served to weaken the unions' bargaining power even further (Rodan 1989, 157). In 1980 the Pioneer Industries Employees' Union and Singapore Industrial Labour Organisation, representing over 90,000 workers or about 40% of NTUC membership, were split into nine industry-based unions (id). The 1982 Trade Union (Amendment) Act consolidated the restructuring policies and strengthened deregistration clauses for those unwilling to form 'enterprise unions'. Needless to say, no ballots were held to ratify the restructuring into enterprise unions so rank and file members could register neither discontent nor approval.

At the same time, the government sought to upgrade the skills of workers. The Skills Development Levy Act (cap 306) came into force on 1 October 1979. It imposed a levy on employers and established a Fund for financing worker-related training. This included the BEST programme (Basic Education for Skills and Training) designed to improve literacy and numeracy skills of workers with little formal education. Initially, the levy was 2% per month of each employee's monthly remuneration, s3. The Minister may, by order, reduce or increase the rate as deemed necessary, s3(3). Accordingly, it was increased to 4% in 1980, but cut to 1% during the 1985/86 recession. It is difficult to assess the effect of this law as the government had also embarked on other training programmes (see 4.2.6). Overall it is fair to conclude that the government wage correction policy led to increased labour costs. CPF contributions reached 50% of employees' monthly salary (25% from each side). But productivity fell and competitiveness suffered. By the onset of the 1985 recession, it was decided that the NWC guidelines were too rigid, and reform followed in 1987. Before then, employers' CPF contributions were cut by 12%. A more flexible two-tier wage system was introduced, comprising a basic wage and a bonus. It is still the basis for NWC recommendations and industry/company-wide negotiations.

6.5.2 Regulating the Labour Market Size: Women and Foreign Workers

Besides influencing wage formation in the labour market through tripartite collaboration, from the 1960s the Singapore government also controlled the composition and size of the labour market through its policies concerning the participation of women and foreign workers. Perhaps the most important statute in this area is the Women's Charter of 1961 (cap 353, 1997 ed). It is the legislative backbone of modern family law in Singapore but it also had untold consequences for the labour market. First, it intro-

duced monogamy for all except Muslims. Thus, at a stroke it abolished polygamy for the Chinese and Indian population, although it had been recognised in case law (Freedman 1968). Secondly, 'modern' grounds based on English law replaced customary forms of divorce. The government's purposes were 'to emancipate women from the bonds of feudalism and conservatism' (LD vol 12, col 469) and to allow 'our women [to] achieve the economic independence to make their lives secure' (*id* col 470). However, beneath its altruism lay the determination to activate 'women who form nearly half of our population ... to play [a part] in our national construction,' (*id*).

During the years, tax and other incentives have been used to entice women to enter, remain or return to the labour market and to encourage older workers to remain in the workplace. Various family planning and population control techniques were also employed.[16] The results have been satisfactory. In 1970 only 29% of women of working age participated in the labour market. By 1980 the number had risen to 44%, and in 1990 to 53%, since when female participation has stabilised at about 51% (*Department of Statistics* 1998). According to the 1990 census (*Statistical release* 2, 15) in 1990, 40% of married couples had both husband and wife in the workplace. Nevertheless foreign workers are required to supplement Singapore's workforce of about 1.9 million. Regulation of their entry is discussed below after a few remarks about retirement age.

The Retirement Age Act (cap 274A) came into force on 1 July 1993. It stipulates a retirement age of 60 years (previously 55 years) for employees under a contract of service, including those employed by the government and statutory boards. The Labour Minister can increase the retirement age to 67 years at any time. He raised it to 62 years in 1996. Any contract providing for retirement before 60 years is deemed null and void.

There are two main categories of foreign non-resident workers in Singapore. One group comprises skilled workers and professionals who enter the country on employment passes. The second group, the majority, comprises unskilled work permit holders. These can enter and work only if their prospective employers secure work permits for them. It is mainly to this category that the Employment of Foreign Workers Act (cap 91A) applies and it is with this that we are concerned.[17]

Already in 1968, the government relaxed the tight immigration rules and allowed Malaysian workers into Singapore. In 1970, 3% of the workforce were foreign workers.

---

[16] A discussion is beyond the scope of this study, but see Phang (1990) 288-310.

[17] For a rewarding insight, see Pang Eng Fong and Lim L (1982).

According to Pang and Lim (1982) at the peak of the economic boom, work permit holders accounted for one-eight of the total workforce. By this time, and especially when the labour market in Malaysia also became tight, unskilled workers had to be recruited from further afield: Indonesia, Thailand, Sri Lanka, India, Bangladesh and Philippines.

In 1980, the last date for which figures are published,[18] foreign workers comprised 7% of the workforce. By the mid-1980s, new sources of foreign workers were mined: South Korea, Macau and Taiwan. The government hoped that these new foreign workers would 'fit in better' as they were of Chinese descent.

The Employment of Foreign Workers Act, cap 91A, 1997 ed., defines foreign workers as all non-citizens, who are seeking work and who earn not more than SD1500 per month. A work permit is necessary, and it is a serious offence for a foreign worker to work or for an employer to employ a foreign worker without a permit.

A work permit is issued by the Controller of Work Permits and is valid only for the specified person for the stated period and in the stated occupation or employer. A foreign worker must produce the permit for inspection whenever necessary, and must return it to the Controller within seven days of stopping work, s13. Under s14 a lost, defaced or destroyed permit must be reported to the Controller within 14 days. This was reduced to 7 days in the 1999 Amendment of s14. A lost or damaged permit can be replaced on payment of a fee. A permit holder must give an undertaking that s/he will not marry a Singapore citizen without the Controller's approval, if the permit holder intends to reside in Singapore. In 1999 the Act was amended (No 4 of 1999) to allow the taking and recording of fingerprints of any person who applies for or has been issued a work permit (s29).

In 1982 a foreign worker levy was introduced in an attempt to dampen the demand for unskilled foreign labour. It is payable by the employer, who is also obliged to keep a register of all foreign workers and allow inspection of records and workplace at any time.

Foreign workers who can be repatriated at the stroke of a pen have underwritten the job security of Singaporeans. They therefore bear the brunt of the jobless risk in the

---

[18] In his 1982 New Year Message, Lee determined that Singapore should stop depending on foreign workers by 1990. He was concerned about the import of workers from 'non-traditional sources' and the impact that cultural diversity might have on Singapore's multi-racial mix. Lee's decree was ignored by the labour market. However it is impossible to quantify the role of foreign workers as statistics have not been published since 1980. See *1980 Census, Release 4.*

event of an economic downturn. This was the case in the 1985 recession when of the 96,000 workers who were made redundant, over three-fifths were foreigners. That was the equivalent of about 5% of the labour force (Lee Tsao Yuan, 1987, 211).

During the 1997-99 regional downturn the Manpower Ministry implemented a similar retrenchment policy, though the numbers then were fewer than during the 1985/86 recession. In 1997 Singapore enjoyed full employment: unemployment rate was only 1.8% (PD vol 68, col 452). But in June 1998, for the first time since 1985, the workforce shrank by 0.3%. The number of unemployed rose from 45,500 in June 1997 to 62,100 in June 1998 (*id*). As in 1985 manufacturing in the electronics industry was hardest hit in 1998.

The 1980 census shows that nearly half of all foreign workers (46%) were employed in manufacturing, followed by 20% in construction. There is no reason to think that this profile has changed significantly. Permit holder workers are usually imported to alleviate difficulties in recruiting domestic labour for unpleasant jobs in manufacturing and construction. Non-citizen, non-resident foreign workers are probably still over-represented at the top and bottom end of Singapore's skills hierarchy, despite the government's three-decade long struggle to improve education at all levels. Foreign workers are still more likely than Singaporeans to be employed in top-level professional, managerial, technical and financial jobs and as unskilled in labour-intensive manufacturing, service and construction jobs. The nature of the 1997-99 downturn suggests that both highly skilled professionals and some unskilled foreign workers lost their jobs.

6.6 Conclusion

Controlling trade unions and disabling their most potent tools were the two objectives of early labour laws, both under the post-war colonial administration and under the PAP government, which was formed when Singapore won self-governance in 1959. In the early period, the agenda was to contain the communist threat, for both the colonial and the PAP administrations perceived communist infiltration as the major enemy of the establishment and the labour movement. The elaborate registration and deregistration provisions of the Trade Union legislation were effective in achieving these goals. Communist-sponsored unions were denied registration, and registration could be cancelled if it seemed *likely* that unions would abuse their powers. The PAP's 1959 landslide victory

was due partly to left-wing support, but once in government, the PAP decided to purge left-wing and communist-supported unions from the labour movement and the Party.

The struggle opened the way for unifying the moderate unions into the National Trade Union Congress (NTUC) and nurturing the unique symbiotic relationship between the NTUC and the PAP, which became the hallmark of Singapore's labour market. Provisions of the Industrial Relations Act and the Trade Disputes Act replaced the unions' rights to collective bargaining and strike action with government-sponsored dispute settlement procedures. Labour laws gave huge discretionary powers to the PAP-friendly elite civil service, and statutory as well as non-statutory bodies were charged with administering and enforcing the laws leniently in favour of the government's development agenda. For having rendered the unified moderate unions prime supporters of government, the next step was to secure a 'productionist role' for their members in the cause of national development.

Apart from the pragmatism and instrumentality of the law, to achieve its goals the government also appealed to the social responsibility and communitarian instincts of the workers. The survival of the nation, or the public interest, it said, should take priority over individual or narrow sectoral interests. Particularly after the failure of the Malaysian Federation, the government never ceased to point out that Singapore could not survive economically or politically, unless or until there was unity and labour discipline. Both of these, it claimed, could be achieved if people were prepared to sacrifice and work hard. It was on this basis that the workforce accepted the stringent, late-1960s Acts. Key among them were the Industrial Relations Act 1968, the Employment Act 1968 and the 1966 Trade Unions Act. In 1969 the need for unions to take on 'a greater awareness of their social responsibilities to the nation' (Goh Keng Swee 1972) was emphasised and concretised at the modernisation seminar. Such responsibilities included wage restraint, increased productivity, industrial discipline, prudence and a duty to provide welfare benefits for workers and their families.

What was not implemented through new, appropriately amended laws was achieved by the work of non-statutory tripartite bodies. The most important of these is the National Wages Council (NWC). The co-opting of unions into the commercial world through worker co-operatives and constant official appeals to the people's communitarian instincts achieved the rest.

But Singapore's economic growth ambitions far outweigh the size of its own workforce, even with a large female participation. Foreign workers are required to fill the gap, despite government misgivings about the growth of a culturally diverse foreign population. The law therefore controls closely the size of the intake of foreign workers. However statistics of their participation have been a closely guarded secret since 1980.

The legal framework for Singapore's labour market was set in the 1960s, and apart from minor adjustments, forty years on it remains essentially the same. Its nature is situational, directive, regulatory and westernistic. Its purpose is to orchestrate economic development, compel social cohesion and secure the most rational fulfilment of the unions' productionist role in the nation's economy.

It is fair to say that there is positive correlation between labour laws and economic development in Singapore from 1959 to 1999. However it is difficult to show *direct causation*, mainly because of the difficulty of isolating the effects of law from the effects of other equally potent extra-legal factors, among them the survivalist strategy embedded in Singapore's brand of pragmatism and communitarianism. One thing seems quite clear, Singapore's labour laws are not converging with labour laws of the West. Even the direct transplants of the Trade Unions and the Industrial Relations Acts from England and Australia respectively, have developed lives of their own, as they were used to implement PAP policies and underpin the special conditions, which successive PAP governments perceived were conducive to economic development.

CHAPTER 7 LAND LAW AND PUBLIC HOUSING

The principal Ordinance which provided for the acquisition of land for public purposes has been redrafted to define specifically and enlarge the meaning of 'public purposes'. The redraft is considered desirable in view of the increasing tempo of public developments and the need to acquire land for a variety of public purposes, including residential development by the Housing Development Board, industrial development by the Economic Development Board as well as urban renewal of the City ....

Lee Kuan Yew, *Parliamentary Debates*, vol 23, col 26.

The Government is the proper authority for deciding what a public purpose is. When the Government declares that a purpose is a public purpose it must be presumed that the Government is in possession of facts which induce the Government to declare that the purpose is a public purpose.

Chua J in *Galstaun v Attorney-General* [1981] 1 MLJ 9

7.1 Introduction

In the previous chapter it was revealed how during the period 1959 to 1999, the PAP government consistently took legislative action to create and maintain the labour market conditions which it felt were conducive to attracting [foreign] investment and producing rapid economic growth. Steps included regulation of the nature of the workforce [non-communist, PAP loyalist, collaborative unions], manipulation of its size [female and foreign worker participation], its skill levels, wage policy, dispute resolution mechanism, creation of worker co-operatives, and so on. Very little was left to the vagaries of the 'free market'. Laws that constantly changed in order to regulate labour and industrial relations do correlate with the nation's economic development and may well have had a causative link. However, contrary to law and development theory, such laws did not and are not converging with labour laws of the West.

Clearly, labour operated under the 'governed market' principle (see 1.5; 3.8) and was mediated through legislation. The issue to be considered in this chapter is whether the regulation of the second factor of production, land, fared any differently.

7.2 English Land Law Legacy

As discussed in chapter 2, English legislation, as it existed on 26 November 1826, was received into Singapore, subject to suitability and modifications regarding local conditions. However, there was no similar cut-off date for the reception of English case law and equity. English case law concerning, e.g. easements, covenants, landlord and tenants and contractual and estoppel licenses flourished in Singapore. Landmark cases such as *Austerberry v Oldham Corporation* [1885] 29 ChD 750, *Halsall v Brizell* [1957] Ch 169, *Tulk v Moxhay* [1848] 2 Ch 774 and even *Street v Mountford* [1985] AC 809, have all been applied in Singapore. But the quest here is for changes in legislation, for this is the PAP government's preferred tool.

Apart from the cut-off date, it will be recalled that by virtue of the 1878 Civil Law Ordinance of the Straits Settlements, in force in Singapore as the Civil Law Act (cap 43), post-1826 English real property legislation was not received in Singapore. The Civil Law Act provided for the continuing reception of English 'mercantile law'

and generated enormous confusion until repealed by the Application of English Law Act (cap 7A) in 1993. However, s6(2), later s5, (see 2.4.3) provided that:

> Nothing herein shall be taken to introduce into Singapore any part of the law of England relating to tenure or conveyance or assurance of or succession to, any immovable property, or any estate, right or interest therein.

In other words, key English property legislation was excluded from reception. Particularly conspicuous for its absence is the 1925 Law of Property Act. However, other provisions were made for Singapore. For instance, when the colony was administered as part of British India, 'Indian Acts' were applied (Bartholomew 1985, 5-11). And from 1867, when the Straits Settlements were governed direct from London, selected English statutes were applied (Ricquier 1987, 315). Most of the successful English transplants were the result of imported Victorian Acts of the 1870s and 1880s[1]. The Registration of Deeds Act (cap 269) is based on the 1886 Registration of Deeds Ordinance, which was itself based on the Yorkshire Registries Act 1884 (note 1). The Settled Estates Act (cap 293) is modelled on its English counterpart, though initially the local enactment appeared as Part IV Civil Law Ordinance 1878. The origin of the Conveyancing and Law of Property Ordinance 1886 is quintessentially English and according to Ricquier (*id*), the conveyancing provisions of the Singapore Acts do not differ drastically in their substantive details from the provisions of their counterparts in the English property legislation of 1925.

The State Lands Act (cap 314)[2] originated in England as the Crown Lands Ordinances of 1883 and 1886. This important piece of legislation, whose purpose is 'to regulate the alienation and occupation of State land' (short title, cap 314), was unlike any contemporaneous English provision (Ricquier *id*). It had a specific colonial agenda (Sheridan 1961). It recognised and legitimised a system of grants of land to individuals ranging from verbal licences, through leases for periods of up to 999 years, to grants in fee simple. Initially it was a system of 'wild confusion' as far as establishing title and more particularly, of raising revenue from land were concerned (Braddell 1932, 3rd ed,

---

[1] The English models include the Vendors and Purchasers Act of 1874 (37 & 38, Vict c 78); the Conveyancing Acts of 1881 (44 & 45 Vict c 41) and 1882 (44 & 45 Vict c 39). The Yorkshire Registries Act of 1884 (47 & 48 Vict c 54) was the model for Singapore's Registration of Deeds Act (cap 269).

54). However, under the application of the English doctrine of land tenure all land in Singapore is subject to this statute and the rules notified subsequently.[3]

Originally, land in Singapore was vested in the East India Company, later in the British Crown, and currently in the State by virtue of article 160 of the Constitution, as amended. This means that the 'allodial' system of land-holding, by which, in theory, no individual can actually 'own' land, was planted in Singapore (Ricquier 1985, 233). In 1956, the Land Titles Act established land registration based on the Australian Torrens system[4], although the proposal had been made as early as in the 1880s (*id* 239). In 1967 the Land Titles (Strata) Act (cap 158), another Australian import, extended the benefits of the Torrens system to flats.

Consequently, whether by legislation, common law or equity, the important established doctrines of English land law were received into Singapore from an early date. In particular, the doctrines of land tenure and estates are the legacies that provide the essential platform for modern Singapore land law. However, as the ensuing discussion shows, Singapore has moved on and developed a system to suit its own needs based on imports from England, Australia and America. More significantly, the PAP government enacted innovative legislation of its own to implement its national development agenda. Thus, the alienation of state land is linked inextricably with the development of Singapore according to the Master Plan[5], Development Guide Plans[6], the

---

[2] As amended by the Land Titles Act 1993.

[3] See, for instance, the State Lands Rules 1968, s174/68. Under the Act and these rules, the state can alienate land to private individuals in four ways: (1) the fee simple (very rarely used: ss 14-18 of the Act); (2) the estate in perpetuity; (3) the lease; and (4) the temporary licence.

[4] Named after Robert Torrens, an Australian Customs Collector at Port Adelaide. See Baalman 1961; Chua 1959.

[5] See the Planning Act 1960, cap 279, 1970 rev ed; now cap 232, 1990 ed. The Master Plan is not a PAP invention. It originated under the Singapore Improvement Trust (SIT) in the 1950s and was incorporated into the Planning Ordinance 1959 (in force 1960) when the functions of the SIT were split into the Housing and Development Board and Planning. The Master Plan comprises detailed maps, a written statement of intent and a report of survey. Together they indicate existing and proposed zoning plans, current and proposed development intensities and background analyses of the proposals. In 1989, the Planning Act was amended so as to include provisions for conservation areas alongside proposals for roads, drainage, and so on. The Master Plan is reviewed every five years.

[6] These are non-statutory and purely advisory, unlike the statutory boards, which can acquire land compulsorily and alienate it according to their own approved plans, see below.

Concept Plan[7] and the intervention of a network of statutory bodies and corporations, each of which is established and regulated by its own Act. Pivotal roles are played[8] by the Housing and Development Board[9], the Economic Development Board[10], the Jurong Town Corporation[11], and the Urban Renewal Authority[12]. Land is acquired, allocated and released for specific development purposes as stipulated by the government. In the sections below some of the unique features of the 'enabling' Acts are examined in light of the government's economic development goals[13].

7.3 The PAP Government's Approach to Land Law

The received western wisdom about real property is that private 'ownership' is inviolable. But the approach of the PAP government has been largely to disregard such conventional wisdom. It has focused on the 'public interest' rather than the interests of private landowners. As shown below, the primary objective of all laws that regulate planning and land use is to ensure the best use of land for the common good - even at the expense of the rights of the individual private landowner. As discussed at 7.4 *infra*, what is 'in the public interest' is defined exclusively by the government, which makes

---

7 The Concept Plan is the result of work which lasted from 1967 to 1971, assisted by a UN Development Programme, in which the government laid down an overall project plan for development of the country into the 21st century. It is monitored and reviewed periodically, most recently in 1990. It provides the basic plan for integrating land use, transportation and other infrastructure. It informs the Master Plan, which is reviewed every five years.

8 Since 1990 government policy has been to curtail the power of individual statutory bodies in respect of compulsory acquisition of land. Under the current policy such bodies may initiate acquisition but all compulsory acquisition is channelled through the Commissioner of Lands, under the Ministry of Law. The relevant Acts have been amended to reflect the new policy. The Planning Department and the Urban Redevelopment Authority of the Ministry of Development were merged to facilitate better co-ordination of the Master Plan.

9 Housing & Development Ordinance 1959, cap 271, 1970 rev ed; now cap 129, 1997 ed.

10 Economic Development Board Ordinance 1960, cap 189, 1970 rev ed; now cap 85, 1992 ed.

11 See Jurong Town Corporation Act cap 209, 1970 rev ed; now cap 150, 1998 ed.

12 This statutory body was set up in 1973 and is now governed by the Urban Redevelopment Authority Act, cap 340, 1990 ed.

13 For a coherent picture of Singapore land law, see Ricquier 1995, 2nd ed., Tan 1994, and bibliography references therein.

statutory provisions that go far beyond the usual concern for health, safety[14] and the need to have roads, airports and drains.[15] Similarly, the government's effective de-commodification of land necessary for public housing and of public housing itself (7.5) disproves the western theories regarding the need for market-led, property-protecting laws.

The government justifies this pragmatic, communitarian approach by the scarcity of land in Singapore. Because there is so little of it, what there is must be shared and controlled from the top down in an orderly fashion. Of course, Singapore's landmass was also a limited commodity during the colonial era. In fact, thanks to aggressive land reclamation strategies, the island has 'grown' since independence.[16] Thus land scarcity cannot be the sole explanation for the PAP's strident 'public interest' approach. Indeed, despite increased landmass, the need for more stringent land-use regulation seems to have increased, not decreased, during the years. This is witnessed by growth in the number of land-related statutes and amendments enacted during the period. A remarkable feature of modern land law in Singapore is the government's willingness to use law to decommodify land, provide affordable housing for all and suitable properties for industrial development and urban renewal.

The main assumption is that '[I]n Singapore, all land ultimately belongs to the state' *per* Yong Pung How J in *Development Bank of Singapore Ltd v Eng Keong Realty Pte Ltd* [1990] 3 MLJ 89, 92. All dealings with state land are controlled by the State Lands Act (cap 314), as amended by the Land Titles Act 1993. The state may make four types of grants of land: estates in fee simple, estates in perpetuity, leases and temporary occupation licences. In practice, the first two grants are rarely made, while the term of leases are usually 99 years in the case of residential property and about 30 years for commercial property. However, leases granted to statutory boards and gov-

---

[14] See *inter alia*, Building Act (cap 29); Environmental Public Health Act (cap 95) as amended, Planning Act (cap 232), and Clean Air Act (cap 45) repealed by the Environmental Pollution Control Act 1999 (No 9 of 1999).

[15] See, e.g., Local Government Integration Act (cap 166); Land Improvement Act (cap 153) repealed by the Building and Construction Authority Act 1999 (No 4 of 1999).

[16] Land area in 1997 was 647.8 sq km. From 1980 to 1997, 30 sq km of land were reclaimed from the sea: Singapore Dept of Statistics, Data Sheet 1998. The Housing and Development Board alone reclaimed 2,660 heactars between 1964 and 1995: Tan 1998, 10.

ernment-linked bodies are usually for 999 years. These bodies then orchestrate the allocation of land to individual 'tenants', whether private residential or commercial. Direct non-government-linked holders of land from the state are therefore few.

Land in private ownership is in decline. For instance, in 1949 Crown land accounted for 31% of the landmass of the main island of Singapore. Twenty years later, the proportion had risen to 49.2% - including the British military land, which reverted to the state. By 1975, the proportion of state land had risen to 65% (Motha 1982, 2nd ed, 7-13). In 1996 it was 84% (PD vol 65, col 1449).

The trend of increasing state ownership of land is set to continue, for six reasons. First, the Foreshores Act (cap 173) empowers the government to alienate and control the foreshore for dredging and land reclamation purposes. All reclaimed land becomes state land by virtue of s5. Secondly, under s8 of the State Lands Act the remedy for breach of most of the covenants and conditions that run with the land in state grants and leases is re-entry and forfeiture of the individual's interest. Thirdly, the State Lands Encroachments Act (cap 315) provides that land, which has been abandoned for three years by the person to whom it was alienated becomes forfeited to the state (ss9-11). Fourthly, by virtue of the Intestate Succession Act (cap 146) s7 and the Civil Law Act (cap 43) s16, land belonging to a person who dies intestate with no one entitled to her estate reverts to the state. Fifthly, under the State Lands Encroachment Act, s12, it was never possible to acquire *state* land by adverse possession, but the provisions of s177 of the Land Titles Act 1993 seem to abolish adverse possession as a means of acquiring title to *any* land in Singapore. Such land as would have been available to claimants under the previous rules would presumably now revert to the state.

The sixth and most productive way of increasing the proportion of state land in relation to private land is compulsory acquisition. The PAP government's unique approach to land law rests in its power to acquire land compulsorily for its own singularly defined 'public purpose'.

Compulsory acquisition is key to substantiating my claim that the predominant liberal assumption of government's non-intervention or free-market allocation has not been borne out in Singapore in relation to this second factor of production. Indeed, instead of a laissez-faire policy, the principles of a governed market in relation to land have been implemented right from the early 1960s and throughout the period.

In other words, just as the PAP government intervened decisively in the labour market and took whatever steps it deemed necessary to ensure the presence of conditions conducive to rapid economic growth, so too in the land and land use area, it intervened consistently to secure its development goals. The goals were affordable housing for the workforce, and efficient, productive infrastructure in the form of transportation, factories, offices, telecom systems, schools, hospitals, hotels, tertiary educational institutions and so on. The key to enabling the acquisition and allocation of land for these projects was legislation. The need became particularly pressing after Singapore left the Malaysian Federation in 1965. This is the period when Singapore embarked upon land law innovation to suit its own requirements.

7.4 'Real' Land Law of Singapore

It will be recalled that from 1963 to 1965 Singapore was part of the Malaysian Federation (4.3.1; 5.2). During those years, the Westminster-bequeathed written Constitution of Malaysia governed the Federation. Article 13 of the Malaysian Constitution provides that:

> (1) No person shall be deprived of property save in accordance with law.
>
> (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

When Singapore left the Federation and became an independent nation, the issue of whether such constitutional guarantee of the rights of landowners should be preserved was resolved by section 6 of the Republic of Singapore Independence Act 1965. It provides that 'article 13 shall cease to have effect' in Singapore.

The Prime Minister and the Minister for Law expressed the motivation for this stance in parliamentary debates (PD vol 25, col 1051 *et seq.*). Both were concerned about the unwanted rise in litigation which would undoubtedly occur as landowners pursued their right to 'adequate compensation' through the courts. It was acknowledged that very often the value of land adjacent to areas where the government was carrying out development work would rise significantly, because of appreciation due to the government's land improvement activities. Private landowners would then expect that compensation would reflect the increased value of their properties. However, the

government felt that as the benefits arising from such appreciation owed nothing to the owners' efforts, such benefits should be shared by all and not merely the fortunate few (*id*). The government rejected the 1966 Constitutional Commission's recommendations and declined to reintroduce a modified version of (the Malaysian) article 13. Instead, the Land Acquisition Bill 1966 (cap 152) became law. It came into effect in 1967. The main provisions of this landmark Act are examined below.

7.4.1 Compulsory Land Acquisition

The key provision of the Land Acquisition Act 1966 (cap 152) resides in s5 which is worth quoting in part, if only to marvel at its far-reaching powers:

> 5(1) Whenever any particular land is needed:
>
> (a) for any public purpose;
>
> (b) by any person, corporation or statutory board, for any work or an undertaking which, in the opinion of the Minister, is of public benefit or of public utility, or in the public interest; or
>
> (c) for any residential, commercial or industrial purposes;
>
> the President may by notification published in the Gazette, declare the land to be required for the purpose specified in the notification. ...
>
> 5(3) The declaration shall be conclusive evidence that the land is needed for the purpose specified therein. ...

Clearly, this breath of governmental power of acquisition is unique in a declared capitalist state, especially one which also subscribes to democratic government. However, this approach blends well with the PAP's commitment to principles of the governed market and its all-embracing objective of economic development and nation-building. The ends apparently do justify the means. Besides, the pragmatic ideology and siege mentality that were being nurtured after Singapore's exit from the Federation ensured that the individual (whether as a member of a union or a landowner) would defer his rights for the benefit of 'national survival' and the public interest[17]. If such deference were not forthcoming voluntarily, then the law was the sure tool of coercion.

Indeed so effective was the coercive power that the President's 'declaration' (by notification in the government *Gazette*) was deemed to be 'conclusive evidence'

that the land in question is needed for the specified purpose. As one of the very few reported cases illustrate, it was pointless to attempt opposition via the courts (*Lim Kim Som v Sheriffa Taibah bte Abdul Rahman* [1994] 1 SLR 393 at 408):

> The owner of land has no right to object to the acquisition ... There is no way an owner of the subject land can object to the acquisition and there is no way he can take steps to prevent the progress of the machinery of acquisition. His only interest... is how much he would get as compensation for the acquisition of his land.

This case bears witness to the potency of the law and the government's approach nearly 30 years after the Land Acquisition Act came into force, and decades after Singaporeans might reasonably be expected to be required to make personal sacrifices on behalf of the nation's survival.[18] But as Chua J reminded us in *Galstaun v Attorney-General* [1981] 1 MLJ 9, the

> Government is the proper authority for deciding what a public purpose is. When the Government declares that a purpose is a public purpose it must be presumed that the Government is in possession of facts which induce the Government to declare that the purpose is a public purpose.

Judicial review is not encouraged in land acquisitions. The government alone decides 'what a public purpose is' and it does so in the name of the public interest paying regard to the overall development of the nation 'whenever it appears to the President that land in any locality is likely to be needed for any purpose specified in section 5(1)': (s3(1)). It is also worth emphasising that there is no procedure for a public inquiry or other public participation to help determine whether the land in a particular locality should in fact be used for the government's intended public purpose. Indeed as article 13 of the Malaysian Constitution was never re-enacted or any other provision made, Singaporeans have no constitutional 'right' to real property. However, the 'privilege' is safeguarded by the PAP government. It is the most potent tool through which the government secures political legitimacy (Chua 1997).

---

[17] For a cogent development of this theme, see Chua Beng-Huat (1997).

[18] In *Lim Kim Som* [1994], the Court of Appeal held that the Frustrated Contracts Act (cap 115) applied to frustrate a lease of premises because notification of the State's intention to acquire the premises appeared after the contract for the sale of land had been entered into. It had previously been thought that the doctrine of frustration did not apply to leases, but here the fact that the parties to the contract could be discharged from their obligations and bring the whole contract to an end testifies to the overriding power of the state's compulsory acquisition.

Of course, the Act allows 'persons interested' (s8) to claim 'compensation for all interests in the land' (s8(1)(b)). Such compensation is to be decided by the Collector under procedures stipulated in s10 to s15. Furthermore, s33 lists the 'matters to be considered in determining compensation'. From time to time, s33 has been amended to reflect increases in the market value of land.

For many years, the Act stipulated that in determining the amount of compensation to be awarded for land acquired, the Collector (or in the case of an appeal, the Board) shall take ... into consideration (*inter alia*) the market value of the land as at 30 November 1973 ... or the market value at the date of publication of the s5 declaration, whichever is the lowest: (s33(1)(a)). In this way, the government initially acquired land for redevelopment at below market values. It also effectively curbed land speculation. As discussed below, it was not until 1987 that the government allowed price increases.

However, so enormous had been the rise in the value of real estate in Singapore that in the real world, Collectors and Appeal Boards found themselves implementing a system of *ex gratia* payments to owners of properties, on a case by case basis (Khublall 1984, 177). The policy of placing discretionary powers in the hands of these extra-legal bodies is in line with the government's preferred way of resolving disputes. It also fulfils its initial objective of minimising the number of litigation about 'what is or is not to be adequate compensation'.

Amendments in 1988 (Act No 2 of 1988) and 1993 (Act No 9 of 1993) stipulated that market value shall be considered as at 1 January 1986 in respect of land acquired after 30 November 1987, and 1 January 1992 for land acquired after 18 January 1993, respectively. However, the discretionary system to make *ex gratia* payments still operated in some cases. After representations, in 1995 the government decided to start paying the market value for land acquisitions (Chua 1997, 21). An amendment to the Land Acquisition Act (No 38 of 1995) sanctioned this policy decision.

The Act also prescribes 'Matters to be disregarded in determining compensation' (s34) – just in case s33, 'Matters to be considered in determining compensation' should fail.

7.4.2 Acquisition by Statutory Bodies

The impact of the statutory boards and government-linked companies (GLCs) on Singapore's economic development from 1959 to 1999 cannot be overstated[19]. They were and still are the prime tools through which the government implements its development policies. The individual Acts that established each statutory board bestow enormous powers on them. Not surprisingly, among these is the power to acquire land compulsorily with the assistance of the Land Acquisition Act.

There are 15 Boards whose enabling Acts specifically empowered them to acquire land through the compulsory procedure[20]. They range from the Air Navigation Act (cap 87, 1970 rev ed) to the Urban Redevelopment Authority Act 1973, as amended. The next section considers the activities of the Housing and Development Board (HDB), which was the primary tool for ensuring that the workforce was suitably housed and able to participate in productive nation-building. It is clear that responsibility for developing commercial land fell more to the Economic Development Board and the Jurong Town Corporation rather than to the HDB. However, the legal constructs that enabled their activities are similar to those that enabled the HDB's activities. In addition, as housing was one of the main issues on which the PAP government won the 1959 election and subsequent victories, an analysis of the HDB should reveal the PAP government using law to implement one of its core policies: housing for all. Since 1982, the HDB has been the sole public housing authority in Singapore as it assumed responsibility for housing previously constructed by the Housing and Urban Development Corporation and the Jurong Town Corporation[21].

7.5 Decommodification of Public Housing

In 1959 one of the government's most pressing goals was housing for all. Indeed the PAP manifesto had declared as much (*The Tasks Ahead*, Part 2, 29).

---

[19] For a discussion, see Pillai (1985).

[20] For a list of legislation under which land could be acquired compulsorily, see (1986) *Handbook of Singapore Land Law*, Singapore: Butterworths, 684.

[21] Sections 33-36, Housing and Development Act.

From 1947-1959, the Singapore Improvement Trust (SIT), established in 1927, built 20,907 units of housing (Tan 1998, 10). However during the same period Singapore's population had increased from 0.938 million in 1947 to 1.579 million in 1959 (*id*). In contrast, between 1960 and 1995, the Housing and Development Board (HDB), which replaced the SIT, managed to build 772,495 units of residential housing, 15,639 shops, 154 markets and food centres, and 11,383 industrial units (Tan 1998, 10). Some 86% of Singapore's 2.986 million people live in HDB accommodation (*HDB Annual Report* 1995/96). Twenty-three new towns incorporating recreation facilities as well as 'town gardens' and parks have been constructed.

The government's public housing policy also reshaped, some would say socially engineered, the lives of the occupants of the housing estates (Tai 1989, Hassan 1977, Wong & Yeh 1985). Public housing success is the result of the more pragmatic, activist approach employed by the PAP government. Chua (1997, 14) called it 'the middle path' in that it lies between the free-market strategy of the USA and the no-market mode of socialist Russia and Eastern Europe. As Chua explains (*id* 13-14):

> At one end is the United States, characterised by dominance of the market, with little government intervention (Hartman, 1983: 4) and government provision restricted to specific groups that are not adequately served by the market itself. At the other end is the ex-socialist nations, where the market mechanism was eliminated in principle, housing was ideologically instituted as a natural right – 'not a market commodity: and its production and distribution should not be a means of unearned income' (Szelenyi, 1983:28) – and the state was ideologically committed to universal provision. Between these two ends is the credible notion of a mode of provision that reduces the role of the market without eliminating it and which aims at universal provision without raising it to the level of rights or entitlement. Such is the public-housing policy of the Singapore government'.

The next section explores the law and this 'middle way'. Particular attention is paid to how public housing is financed and individual property rights are protected.

7.5.1 Housing and Development Act

To implement its housing policy, the PAP parliament passed the 1959 Housing and Development Ordinance (now cap 129, 1997 ed) which came into force on 1st February 1960. This established the Housing and Development Board (HDB).

The HDB was given wide powers and made responsible for all housing development work, including land acquisition, slum clearance, resettlement, town planning, engineering and architecture and even the production of building materials (s13). The

physical construction of the units was undertaken by private entrepreneurs[22], which contributed hugely to solving the unemployment problem (Tai 1989, 94-100).

Financing Singapore's universal housing scheme is one of the factors that differentiate the Singapore model from the free-market and the no-market models.

Section 66(1)-(3) of the 1959 Ordinance (as amended) provided that the HDB 'may, from time to time, for the purposes of this Act, raise loans from the Government...' or by mortgage, legal or equitable charge on any property vested in the Board, or on any revenues receivable, or by the creation and issue of debenture stock.

In the event, financing was arranged through below-rate government loans, subsidies, and revenue derived from HDB operations such as sales and rental of flats, mortgages, rental and sales of industrial and commercial properties, rent of land, car parks, markets and hawker centres (*HDB Facts* 1995, 4). From 1960 to 1994, the HDB's total capital expenditure increased from SD10 million to SD6.6 billion, while revenue expenditure rose from SD15 million to SD1.8 billion during the same period (*id*). Between 1992 and 1994 the HDB operated a net deficit in housing operations, which was offset by surplus from non-housing operations (*id*). In 1994 the deficit in housing operations was SD737 million while non-housing operations generated profits of SD510 million. From 1975 to 1994, government loans to the HDB accounted for 20% to 40% of total government capital expenditure, while government subsidies represented between 1% to 2% of total government expenditure (*id*). In 1993, for example, government loans to the HDB were 24% of total government expenditure (*id*, 5).

In other words, the government's commitment to universal provision of housing was more than ideological or visionary. It was supported by the financial and legal means with which to achieve its objective. First, as discussed at 7.4.1 *supra*, land was acquired compulsorily for any purpose declared by the government as being in the public interest. Moreover, acquisitions were made at below market rates. During the first development phases, 1960 to 1973, land prices were pegged at the same low, pre-

---

[22] However, throughout the period, these were nearly all government-linked companies (GLCs). Even in 1996, all companies appointed under the Executive Condo Housing Scheme (Appointment of Developers) Notification were GLCs.

market rates. It was not until 1995 that the government began to pay market rates for land acquisition. By then, sufficient cheap land had been acquired, for by 1995 over 86% of Singaporeans lived in HDB accommodation.

Another novel way of financing universal housing is the use of compulsory savings. As explained at 6.4, the Central Provident Fund (CPF), a mandatory tax-free social security labour market contribution, provides the bulk of Singapore's huge national capital formation. CPF membership rose from 180,000 in 1959 to 1,847,000 in 1984 (*HDB Facts* 1995, 22). Mandatory contributions in equal share from employers and employees increased from 5% in 1955 to 25% in 1984. In 1971, the contribution ceiling per employee was SD300 per month. By 1984 it had reached SD2,500 per month, making total receipts of SD9 million in 1955, and SD5,386 million in 1984. Foreign reserves of over SD100 billion by the mid-1990s provide the government with funds for public housing and other infrastructure investments. The Government Investment Corporation invests the remainder in government securities that are used to capitalise government-linked companies in strategic industries and equity holdings abroad. Importantly, CPF moneys are harnessed directly by the government and used to finance public housing construction at below market-rate loans and subsidies. This system avoids competition with other project financing and commercial loans that charge high interest rates. But there is another important way in which the CPF finances public housing.

In 1964, the Central Provident Fund Act was amended to allow Singapore employees to use their CPF savings to purchase HDB flats under the Home Ownership Scheme. Until this move, most HDB flats were rental properties. For instance, in 1964 only 1500 households out of about 11,000 public-housing tenants opted for ownership (Chua, 23). The CPF-supported scheme developed into a mechanism for financing 99-year leasehold mortgages for defined categories of people. The 1968 amendment of the Act allowed savers to draw a 20% down-payment from their accumulated funds and deduct monthly mortgage payments from their CPF contributions. This made it possible for ordinary families to own their homes without suffering any reduction in monthly disposable income.

In this way, public housing moved into the realms of private ownership rather than remaining rental property. In 1968, 44% of all public housing applicants chose to

buy their flats. By 1970, 63% of applicants wanted to buy and in 1986 the figure reached about 90% (Chua 23). The actual ownership rate in 1996 was 81% of those living in HDB flats (*HDB Annual Report* 1995/96). The government's objective for home ownership is 95% of the population (Tan 1998, 13). For as the Minister for National Development explained at a press conference (*Straits Times*, 22 April 1992), with home ownership assisted by heavy subsidies, Singaporeans will be 'buffered against increasing housing costs'. To subsidise low-income families' flat ownership, the government has budgeted SD 160 million, or SD 40,000 per household. Section 66 of the Housing and Development Act (cap 129) was amended in 1998 (No 41 of 1998) to allow the HDB to raise loans, foreign or domestic, as an alternative way of funding its projects. Surprisingly, s22 was amended to allow the Board, with ministerial approval, to carry out agency work which does not necessarily relate to housing. As yet, it is unclear what such work might entail.

The Housing and Development Act has always severely restricted the rights normally associated with private ownership of property[23]. For instance, s47 prohibited ownership of HDB flats for appreciation or rental income. A person could not buy a flat if she or her spouse owned 'any other flat, house, building or land or has an estate or interest therein; or has at any time within 30 months immediately prior to the date of making an application ... sold any flat, house, building or land' which she owned.

Owners were required to obtain prior written consent from the Board before transferring any property interest (s49-52). Prior to March 1971, owners' rights to sell were restricted. Flats could only be 'sold' back to the HDB, and then only at the original price, minus depreciation. No owner was allowed to realise profits from the flat. After 1971, sale restrictions were relaxed somewhat. Permission to sell on the open market depended upon occupancy of minimum three years (from 1973, five years). In 1979, a 5% levy was imposed on the resale price. The levy has been retained ever since although it has been varied according to the size and type of flat. It is intended to help curtail the vendors' profit margin. A flat owner who wants to sell before the minimum occupancy period has lapsed must sell to the HDB: in effect, she must voluntarily surrender the lease and accept the cost of the flat minus depreciation.

---

[23] See Tan 1998, chapter 4.

The Board was vested with wide powers of eviction and could re-enter or compulsorily acquire the flat for breach of lease conditions. For instance, under s56 a person may not use a flat or common areas of a building for any purpose which may be illegal or immoral or which may cause a nuisance, annoyance or disturbance. Breach could result in forfeiture. The HDB could repossess the flat under any of the following conditions. First, if the lessee had a legal interest in another flat, house, building or land. Secondly, if the flat was being used for any purpose other than that provided for by the lease. Thirdly, if the lessee permitted any person other than an authorised occupier to reside in the flat. Fourthly, if the lessee failed to perform any condition in the lease. Fifthly, if the lessee made a misrepresentation of a material fact 'whether innocently or otherwise' relating to the purchase of the flat. Sixthly, if the lessee sublet or transferred the property without obtaining prior consent form the HDB. Seventhly, if the minimum number of persons stipulated in the lease was not occupying the flat. Re-entry would also apply if the lessee ceased to be a citizen of Singapore, ceased to occupy the flat, was three months in rent arrears, was convicted of an offence related to destroying HDB property, or an offence related to immigration (sheltering, feeding or assisting an illegal alien). Forfeiture and the right to re-entry and repossession are the penalties for breach, but in practice less harsh remedies are used, the Board often imposes financial penalties (Tan 82).

Flats are allocated on a 'first come, first served' basis. The HDB devises guidelines of eligibility[24] for the various kinds of flats produced. They range from one-, two, three-, four- to five-room apartments and, recently, 5-room split-level executive maisonettes. One- and two-room flats are used for rental, while the others are for sale.

The market does not determine the price of flats, the government does. Prices are based on the general state of the economy and levels of affordability for different types of flats (Chua 21). As National Development Minister said (*Straits Times* 12 July 1996):

> When we price our flats, we don't just price them based on our costs. We price them with an eye on the affordability for those who are purchasing them, and we try to keep that level of affordability the same over the years.

---

[24] For a discussion, see Tan 1998, chapter 3.

In 1989 the National Development Minister announced a 20-year upgrading programme for old HDB estates (PD vol 62, col 1308-10). Since then, most of the buildings with one- and two-room flats have been demolished and replaced by three- and four-room flats. Part IVA of the Housing and Development Act makes provisions for the regulation of upgrading work. Many schemes have been introduced to support the upgrading project, including the Selective En-Bloc Renewal Scheme, which aims to improve the flats without the residents having to move out. However, in 1998, s65J was amended (Act No 41 of 1998) to empower the HDB to acquire, by compulsion, any flat which, in its opinion, requires upgrading. The section sets out procedures for acquisition and compensation payment.

Steps have also been taken to adjust the eligibility income ceilings for ownership of HDB flats. The eligibility guidelines will not be explored here. Suffice it to say that 'income level' and Singapore citizenship are basic criteria. The citizenship criterion has been relaxed but there is still some discrimination. For instance, s51 was amended in 1998 (Act No 41 of 1998) to remove the protection available to HDB flats from bankruptcy proceedings and attachment in execution of court orders where the flat is owned, solely or wholly, by non-citizens. Protection is still available to citizens. Some 90% of the population are 'eligible' for public housing and relevant subsidies. Chua argues that in principle there is no reason why income ceilings should not be abolished (168, note 8). He speculates that the reasons for not doing so may include protecting the private market and keeping 'private housing as a socially differentiated class so that it may act as a 'prize' for those who have become financially successful' (*id*). Other factors may be at play for in 1996 the Minister expressed the government's wish to increase the percentage of private property from 16% to 25% by 2010 (PD vol 65, col 1449). This will be achieved through privatisation of some existing stock. Amendments to the Act (No 7 of 1997 and No 3 of 1998 - respectively) implemented these policies. In addition, the planned new model towns like Punggol 21 will offer 40% private and 60% public housing.

7.6 Residential Property Act 1976

Having alluded to private residential property above, it is apt to consider briefly how this operates in the public housing Mecca. The private alternatives to public

housing flats are first, the 99-year leasehold flats built by private entrepreneurs, regulated by the Housing Developers (Control and Licensing) Act, cap 130. Secondly, HUDC flats, built by the private Housing and Urban Development Corporation Pte Ltd and regulated by the HUDC Housing Estates Act, cap 131. In 1982 HUDC flats became subject to the Housing and Development Act. The HDB assumed responsibility and treated them as HDB flats on 99-year leases. However, by 1995, the government started to privatise HUDC flats. Thirdly, Executive Condominium Housing, regulated by the 1997 Act of the same name, cap 99A. After 10 years' occupation, the owners of these types of flats obtain the same rights as those of private units registered under the Land Titles (Strata) Act, cap 158 (Tan 1994, 455-78). There are also few fee simple residential properties, which were granted prior to 1903 when the Crown Lands Ordinance was amended to prevent the grant of any more state land in fee simple.

There are substantial differences between property rights in private and public housing. At the outset all have the right to exclusive possession[25]. However there are three limitations of property rights in public housing, which are not witnessed in private property. One, limitation on occupancy: the HDB alone determines who may occupy the HDB flat with the owner. Failure to observe the conditions of the lease on this matter may result in forfeiture. Two, the owner of an HDB flat may not use it as security without the HDB's consent. In case of bankruptcy, the flat does not vest in the Official Assignee (s51(2)) neither can it be attached in execution of a court order (s52(3)). Similar provisions in grants of private property would probably be struck down as being against public policy (*Re Machu* (1882) 21 Ch D 838). Three, private property ownership gives the right to unrestricted alienation. However it was not until 1971 that the owners of HDB flats were allowed to sell their flats in the open market. Before then, an owner could only surrender her lease to the HDB and receive the cost of the flat less depreciation. Although the resale rules were relaxed from 1979, the HDB's consent is still necessary and there are rules about minimum years of occupation. HUDC and executive condominium flats have some resale restrictions though not as rigid as HDB flats. Alienation for consideration has always been possible for private property. Consequently there was always a free market in private residential property.

---

[25] That is what distinguishes a property right from a personal right.

However, on 10 September 1973, the PAP government issued a declaration on 'Future Restriction of Ownership of Residential Properties', whereby only Singapore citizens and authorised persons may purchase land and residential property. The rationale was the need to stop property speculation and prevent price hikes. The move aimed to provide foreign companies with reasonably priced housing for their senior staff and stop them from seeking to invest elsewhere. The Residential Property Act (cap 274) was enacted in 1976 with retroactive effect from 11 September 1973.

The Act required non-citizens of Singapore, including permanent residents and corporations, to obtain government approval prior to purchasing residential property. Purchases made by a citizen on trust for a non-citizen shall be void. No interest in residential property could pass to a foreigner by will or intestacy or by virtue of an interest in a mortgage. Foreign beneficiaries are required to sell their interests to a citizen or an approved purchaser. Residential property owned prior to 11 September 1973 by non-citizens who are natural persons may be retained by them. However, non-Singapore companies owning such properties must dispose of them by 11 September 1983 unless the Minister permitted otherwise. Failure to dispose of the property or receive ministerial approval could result in attachment and sale by the Controller. Section 16(5) provides three criteria for approval of non-citizens' purchases. One, applicants must demonstrate an ability to make adequate contribution to Singapore's economy or have special professional qualifications and experience. Two, applicants who are permanent residents will be considered favourably. Three, as a rule, permission will be withheld for properties over 15 000 sq ft as these can be developed into several units.

The Minister may, at his discretion, exempt any foreigner or company from the provisions of the Act. This enables such persons or companies to purchase residential property at will without seeking permission in individual cases.

Other moves to curb speculation and price fluctuations in the residential property market have been tried. For instance, in March 1974, the Property Tax (Surcharge) Act (cap 255) was passed. It imposed on foreign-owned, private residential property a surcharge of property tax equivalent to 10% of the annual value of the property levied whenever property tax is collected under s17 or s19 of the Property Tax Act (cap 254). However, in January 1995, the restrictions were removed for flats in buildings over six floors high, allowing non-citizens to purchase them in the same way as commercial

properties. The 10% surcharge was cancelled also for non-citizen absentee owners of such properties. The motivation seems to have been foreign investor considerations.

7.7 Conclusion

Singapore started its independent life with a species of English land law in which the state was the residual owner of all land. This vestige of feudalism was imported with the 1826 Second Charter of Justice and reaffirmed by s3 of the Application of English Law Act (cap 7A, 1994 ed). However, in the intervening years the government has adapted foreign land law and innovated laws of its own to suit its development objectives. In short, land laws were used to provide land suitable for manufacturing and commercial buildings as well as housing estates to secure a stable, effective, suitably housed workforce and social equity.

From providing basic shelter for the new industrial workforce, the housing policy evolved into home ownership for all. The innovative 1959 Housing and Development law was designed to provide basic housing rapidly. The Act gave the Housing and Development Board (HDB) wide powers to receive government loans and subsidies, clear slums, acquire land, build and finance flats and other properties for residential and commercial use. It also provided for the control of alienation of land and curtailed the growth of a resale property market. The Acquisition of Land Act made provisions for the compulsory acquisition of land cheaply for *any* purpose specified by the government. The Central Provident Fund Act enabled families to purchase HDB flats without suffering a reduction in their monthly disposable income. The Residential Property Act ensured that prices were kept low by excluding foreigners from holding any interest in specified residential property. Exemptions could be and often were made by the Minister.

These statutes were instrumental in making public housing the primary mode of housing consumption in Singapore. They effectively decommodified public housing and land. There was a limited role for the market (HDB flats could be sold on the open market from 1971 and other state-subsidised housing projects are being privatised). But the government retained control, particularly by restricting alienation rights and manipulating price and capital formation. For instance, a new section s49A of the

Housing and Development Act (No 41 of 1998) declares null and void any contract or agreement for sale in which the flat either is not sold to the HDB or, prior to sale, does not fulfil HDB prescriptions regarding minimum period of occupation. Currently, 86% of all Singaporeans live in HDB flats, 81% as owners. Thus the nation's wealth is shared more equitably and property ownership is democratised rather than restricted to a small privileged group.

Singapore land laws have been courageous and innovative. A common law lawyer may wonder whether the restraints on alienation are such as would make them repugnant to the very idea of property ownership. For then they could surely be struck down as invalid under the common law. However, in Singapore such restraints are prescribed by statute. Doing the will of Parliament therefore makes them valid. The 'global' English idea that the owner of an interest in land must be able to dispose of it freely is overridden by the local developmental necessity of providing universal housing at affordable prices. As Tan (1998, 145) explains:

> The notion of property or ownership is not immutable. Not only does it change with the times and societies, but, as evidenced in the ownership of the different kinds of public housing available in Singapore ... variations of the concept may exist at the same time in the same society. It underscores the point that property is a man-made institution and is made to serve the purposes or needs of society. In Singapore, national interest defines the scope of ownership of land.

Clearly, Singapore land laws have diverged from their foreign transplants to form a home-grown body of rules which is more regulatory, situational, pragmatic and holistic in nature than their predecessors, which are supported by a more rights-based, individualistic philosophy. Changes in land laws do correlate with changes in Singapore's economy during the period. They may well have *caused* some economic development, but it is impossible to determine the extent of such causative link, given the many other extra-legal factors that were also at play.

CHAPTER 8 INTELLECTUAL PROPERTY LAW

The whole of human development is derivative. We stand on the shoulders of scientists, artists and craftsmen who preceded us. We borrow and develop what they have done; not necessarily as parasites but simply as the next generation. It is at the heart of what we know as progress. When we are asked to remember the 8th Commandment, thou shalt not steal, bear in mind that borrowing and developing has (sic) always been acceptable.

Sir Hugh Laddie J, The Stephen Stewart Memorial Lecture:
Copyright - Over strength, Over regulated, Over rated?
London: Intellectual Property Institute (n.d.), 17.

8.1 Introduction

It has been argued that the protection of intellectual property rights (IPRs) leads to economic development because protection encourages foreign direct investment, supports the technology transfer necessary for industrialisation, and stimulates indigenous creative research and development work necessary to maintain technological growth.[1] Indeed the establishment of the World Intellectual Property Organisation (WIPO) in 1970 as a specialised agency within the United Nations organisation is probably premised on the perceived potency of IPRs' role in economic development.[2] Despite the received wisdom, until forced by TRIPS,[3] most developing countries had shown scant interest in enacting or enforcing laws for protecting IPRs. This, for three reasons (Siebeck 1990, 1): one, developing countries perceive IP protection as a matter that is relevant primarily for advanced economies. Two, they view IP protection as the developed countries' way of depriving the developing world of the benefits of advanced technology.[4] Three, they see the mechanism for administering and enforcing IP laws as an unnecessary expense to be borne by the developing world for the benefit of the developed.

In the case of Singapore, which was named a 'newly industrialised country' by the Reagan administration in 1988 and a 'developed country' by the OECD in 1995, it is difficult to say in which camp the country sees itself. Under the TRIPS Agreement, Singapore is regarded as a developing country. Government rhetoric professes the need for

---

[1] Academic work supporting this is scant. But see Eberschlag 1994. See also UNCTAD 1975; UNCTAD 1981. See Brown 1991, who attempts to show a link between underdevelopment and lack of IP protection. See Beier 1980. Giants such as Bentham (1795), Say (1803), Mill (1848), Clark (1907), Schumpeter (1942) Arrow (1962), Schmookler (1966), Romer (1991) suggest that patents are key to nurturing inventions. However, Prof Ricketson reiterates that 'it is difficult to point to any clear evidence that the patent system was successful in promoting its prime objective of fostering industrial development. It was already 200 years old [in the UK] by the time the Industrial Revolution got under way': cited in Laddie 1999.

[2] For instance, the preamble to WIPO's *Model Law for Developing Countries on Inventions* (1977, Geneva: WIPO, vol 1) asserts the importance of (foreign) technology for economic development and industrialisation, and the necessity of protection.

[3] TRIPS is the multilateral Agreement on Trade-related Aspects of Intellectual Property Rights, which was adopted as Annex 1c of the 1994 Final Act of the Marrakech Agreement Establishing the World Trade Organisation (WTO): [1994] 33 *ILM* 1197-1225. Membership of WTO compels compliance with TRIPS, see 8.2 *infra*. A timetable for compliance was established for developed, developing and least developed countries. As a developing country, Singapore must comply by 1st January 2000.

[4] Critics who question the relevance of IP systems, in particular of patents, for developing countries include: Oddi 1987, and Kunz-Hallstein 1975, who argues that many developing countries condemn transfer of technology as a 'subtle means of domination, a new form of predatory capitalism and slave trade'.

IP laws.[5] Key IP laws have been in force since the colonial era for instance in the case of patents, since 1871.[6] However, whereas there is abundant evidence to show that the PAP government constantly changed the statutes to help secure an attractive infrastructure (housing, transport, telecom, education, health); a skilled and flexible labour force; high savings rate; tax breaks and other incentives; and broadly predictable macro-economic conditions, which it considered conducive to economic growth (chapters 4 to 7), there is little or no evidence of government efforts to secure higher standards of IP protection.[7] In other words, IP protection was not given high priority from 1959 to the early 1990s. This suggests that the government did not support the view that the protection of intellectual property rights leads to economic development. This is also in line with findings which suggest that there is no direct relationship between, e.g., patent protection and increased FDI inflows (Penrose 1973, 768-785; Firestone 1971). More recent studies suggest that evidence of the degree to which the level of IPR protection affects the volume and composition of FDI has been ambiguous (Frischtak 1989, 17). Indeed a UN Report (1993, 3) on the relationship between IP protection and FDI confirms that the effect of higher IP protection is infinitesimal when compared with the effect of the *overall* economic climate prevailing in a particular country - i.e. factors such as those upon which Singapore focused.

However, this does not mean that Singapore ignored the legal protection of intellectual property. Because of its commitment to foreign trade, the Singapore government has been obsessed with being *perceived* by developed countries as 'doing the right thing'. Lall and Streeten (1977, 68) argue that the existence of patent protection does not of itself *attract* foreign capital, but may indirectly be regarded as a sign of goodwill towards private enterprise. To my mind, this is the key to understanding Singapore's early relationship with IP laws.

In a survey of 94 major US firms in six industries, Mansfield (1994) found that the perceived effects of IPRs on FDI depended on the *type* of investment and industry involved. Thus for capital investments in research and development facilities and in facilities for manufacturing high-tech equipment and components, computer software, bio-

---

[5] See, for instance, PD vol 68, col 311, et seq.

[6] As part of the Straits Settlement, in November 1871, Singapore received its patent law, which follows the Indian system. See Nijar 1986.

[7] An exception is Singapore's willingness to amend its Copyright Act in 1987 after bilateral negotiations with the USA (see 8.2 *infra*).

technology and pharmaceuticals, the perception of potential investors was that IP protection is important (OECD 1989; Mansfield 1994). Consequently, the PAP government would undoubtedly regard it as crucial for Singapore to be perceived by foreign investors as a country that protects intellectual property - especially in key new industries. These are knowledge-based industries upon which Singapore sought to base its economic growth from about 1979 (see chapters 4 and 5). This ambition accelerated after the 1985-86 recession when business services and niche high-tech industries were considered the vehicles for recovery and prosperity.

Thus, from about 1987, and definitely by the early 1990s, Singapore seemed motivated to protect IPRs out of self-interest.[8] This move coincided with a radical transformation of the purposes of copyright law in the USA (Jaszi 1996); a change which was to be globalised under TRIPS (8.2 *infra*). This was a move away from the 'cultural bargain' theory[9] that had previously justified copyright protection, to the new, trade-driven focus of copyright law, which seeks to 'enhance ... the wealth and overall financial well-being of companies which invest in the production and distribution of copyrighted works' (Jaszi 1996, 599). As Singapore's Minister for Law explained in 1998 during the second reading of the Copyright (Amendment) Bill (PD vol 68, col 310-11):

> ... Intellectual capital, not merely physical assets or financial capital, will be the key factor. ... Where a company's value is based less on its factories, plant and equipment but more on ideas and technical innovations, effective protection of its intellectual property will become increasingly central to its strategic plans and operations. ...
> Knowledge-based industries will be attracted to invest in Singapore if they are confident that their intellectual property will be given sufficient protection here. ... A good IPR infrastructure is also important to the success of our own home-grown knowledge-based industries.

Singapore's need 'to give effect to [its] obligations under TRIPS' (*id*) was the second reason for building a better IPR infrastructure in the late 1990s. An inter-Ministry committee was charged with the task. Work on patents was completed first. The new Patents

---

[8] Prof Cornish argues that when countries are on the verge of industrialisation, they accept intellectual property as a legal underpinning of that process; see Cornish 1993. In Singapore industrial take-off occurred in the early 1970s. It is perhaps more apt to suggest that acceptance of IP coincides with the move away from an industrial-based to a knowledge-based society. Alternatively, that acceptance is the mark of a *mature* industrial society.

[9] The 'cultural bargain' theory as a justification for copyright protection is explained thus by Prof Reichman: '[i]n the past, US legal theory justified copyright protection only to the extent that it stimulated progress in the arts and sciences by enriching the store of literary and artistic works that would enter the public domain and thereby become freely available to users of the copyrighted culture': Reichman 1996. For a discussion of theories that seek to justify protection of IPRs, see Oddi 1996.

Act (cap 221, 1995 ed) has been in effect since 1995. Other IP amendments were in place by January 1999, a year before the TRIPS-stipulated deadline.

Consistent with the theme of this study, one objective of this chapter is to discover whether Singapore's economic development was *caused* by laws for the protection of IP. However, such an analysis would be tilling infertile soil. A brief historical survey of Singapore's IP laws shows no correlation between changes in laws for protecting IPRs and changes in Singapore's economy. It is not inappropriate to conclude that until spurred by its TRIPS commitment and the possibility of Singaporeans owning globally marketable intellectual property in the era of information technology and knowledge-based industries, the government did not give high priority to IP protection.[10] For as discussed in chapters 4, 5 and 6, until about 1979, Singapore's main focus was on labour-intensive manufacturing. IP protection did not become an issue until Singapore began to move into high technology industries whose products and services contained larger amounts of R&D work. Specifically, copyright protection became an issue from 1985-87 when a US study identified Singapore's copyright law as inadequate and the US government demanded a remedy, see 8.2 *infra.*

For these reasons I focus on the second objective of this chapter. That is, to discover whether and, if so, to what extent, Singapore's IP laws are converging or have converged with those of the West. In effect this means examining the extent to which Singapore's IP laws comply with the requirements of TRIPS. The exercise also gives an opportunity to analyse this new species of supranational laws. As they were devised by the major producers of internationally marketable intellectual property, i.e., the USA and European Union (EU) member states, a high degree of compliance would be prima facie evidence that Singapore IP laws are converging with those of the West.

The following sections therefore examine the origin of the TRIPS Agreement in order to underline its Euro-American heritage (8.2). Next the scope and general provisions of TRIPS (8.3) and the conventions co-opted into TRIPS (8.4) are discussed. These are followed by brief definitions of the areas for which TRIPS requires protection (8.5). Section 8.6 considers TRIPS enforcement standards. Having laid the foundation, the next section reviews, in table form, Singapore's compliance with TRIPS (8.7). The chapter

---

[10] Cheong & Mirandah 1992 support this in their study.

concludes with some thoughts about convergence of laws in an economy where *intangible* goods and services may soon account for the lion's share of its global trade (8.8).

8.2 TRIPS: The Making of a Global Accord

The TRIPS Agreement ((1994) 33 *ILM* 1197-1225) represents the culmination of some twelve years of activism by the United States government and intense negotiations in international fora. Already in the late 1970s the USA raised the issue of international copyright theft and counterfeiting of trade marked products, which it claimed was costing US companies billions of dollars in lost revenues. By 1979 the US and the European Community (EC) had agreed a draft *Agreement on Measures to Discourage the Importation of Counterfeit Goods* (GATT Doc. L/4817, July 31, 1979). This draft metamorphosed into an *Anti-counterfeiting Code* in 1982 (GATT Doc. L/5382), which was supported by Japan, Canada and Switzerland.

In 1982 the US-sponsored draft Code was put on the agenda of the impending GATT Round (Bradley 1987, 57). This move was vehemently opposed by developing countries. India and Brazil insisted that GATT was concerned with trade in tangible goods and had no jurisdiction over trade marks, which was the sole responsibility of WIPO, the UN body established in 1970 (*id*, 66). The debate continued into the 1980s, aided by expert reports from Congressional hearings[11] and US trade associations. In 1985, the International Intellectual Property Alliance (IIPA) presented a study[12] on behalf of its members. The IIPA represented seven trade associations with particular interest in copyright-related industries: the American Film Marketing Association, the Association of American Publishers, the Computer and Business Equipment Manufacturers Association, the Computer Software and Service Industry, the National Music Publishers Association and the Recording Industry Association of America. The IIPA study (1985, 7) blamed inadequate copyright laws in ten countries (including Singapore) for annual losses of USD 1.3 billion in these American copyright-related industries. The study con-

---

[11] For instance, in 1983, the US Committee on Ways and Means was informed that the US video industry lost about USD 6 billion annually: *Possible Renewal of the Generalized System of Preferences - Hearing Before the Subcommittee on Trade of the US House of Rep. Comm. on Ways and Means*, 98th Cong. 1st Sess. 1983, 57. Similarly, in 1984 the Automotive Parts and Accessories Association informed the House Subcommittee on Oversight and Investigations that its members lost about USD 12 billion to sale of counterfeited spare parts: *Unfair Foreign Trade Practices, Stealing American Intellectual Property: Imitation is Not Flattery*, 98th Cong. 2nd Sess. 1984, 1-3.

[12] IIPA (1985) *US Government Trade Policy: Views of the Copyright Industries*, Washington.

cluded that the US government's goal must be 'to establish an *international* trading climate in which intellectual property is respected and protected'. So said, so done. Or more precisely, so attempted. For it is unclear whether the resulting TRIPS Agreement has gained 'respect' or 'protection' among traders, consumers or even legal institutions in developing countries.

To achieve its goal, the US government proposed that all IPR issues be tabled at the then forth-coming GATT Round. It ignored WIPO and affirmed that the GATT should assume jurisdiction over IP matters.[13] Subsequently, the Ministerial Declaration of September 20, 1986, which launched the Uruguay Round of the GATT (reproduced in Stewart 1993, vol 111, 7-8) held that:

> Negotiations shall aim to develop a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods, taking into account work already undertaken in the GATT.

It was decided to aim for legally binding provisions dealing with counterfeit goods, patterned on the previously agreed US-EC Anti-counterfeit Code. Furthermore, the 1987 Negotiating Plan, called the *Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods* (*id*, 11-25), invited member states to submit proposals. In October 1987 the US Trade Representative's proposal called for Customs controls and substantive laws to protect IPRs.[14] In November 1987 the EC submitted far-reaching proposals requiring *inter alia*, that the Agreement adheres to basic GATT principles of national treatment, non-discrimination, reciprocity and transparency, and makes provisions for new categories of IPRs such as plant varieties, semiconductor designs, utility models and appellations of origin.[15] Meanwhile developing countries, led by India and Brazil, opposed the inclusion of IP in the GATT (Beier and Schricker 1989).

If the US government was the progenitor of the TRIPS negotiations, its unilateral actions also created the impetus for *finalising* the accord. In 1984, even before the TRIPS negotiations got off the ground, the US government responded to powerful lobbyists,[16] by amending section 301 of the 1974 Trade Act, which empowers the President

---

13 For an account of the negotiations of the Round, see Stewart 1993.

14 *Suggestion by the United States for Achieving the Negotiating Objective*, GATT Doc. MTN.GNG/NG11/W/14, October 20, 1987.

15 *Guidelines Proposed by the European Community for the Negotiations on Trade Related Aspects of Intellectual Property Rights*, GATT Doc MTN.GNG/NG11/W/17, November 20 1987.

16 Like the IIPA, see notes 11 and 12 above.

to order the elimination of 'unjustifiable or unreasonable' trade practices. The 1984 Act made failure to protect American intellectual property actionable under s301.

The new s301 was used unilaterally against South Korea in 1985 (demanding wider scope in Korea's patent, trademark and copyright laws), against Brazil in 1985 (demanding better protection of computer software) and against Indonesian copyright infringement in 1986-87. All countries acquiesced and changed their IP laws as required.

A similar situation occurred in Singapore. The IIPA 1985 study (*id*) had identified Singapore as the world's largest producer of pirated records and tapes. Bilateral negotiations resulted in Singapore's enactment of the Copyright Act 1987 (cap 63, 1988 ed) and a promise to accede to the WIPO treaty (PD vol 50, col 590-592).

Dissatisfied with the slow progress of the TRIPS negotiations, and emboldened by success of its s301 actions, the US government introduced the 'Special 301'. Under the Omnibus Trade and Competitiveness Act 1988,[17] Special 301 requires the US Trade Representative to conduct an annual review of the IP practices of *all* US trading partners, identifying priority countries, which deny 'adequate and effective protection of IPRs' or which 'deny fair and equitable market access' to US traders. Offending countries are placed on a watch list or a priority watch list, pending investigation. This is usually followed by unilateral US trade sanctions until the offending country enacts the required laws and amends its ways (Bello and Holmer, 1989-90, 259).

The legality of s301 and Special 301 has been questioned in international fora, including in the GATT (Evans 1994, 153-4). But no amount of questioning stopped the US government from threatening and imposing unilateral trade sanctions. No doubt justification lies in the USA's perception of itself as the world's importer of first resort.[18]

Countries that experienced the wrath of Special 301 in the 1990s include India and Thailand (for inadequate pharmaceutical patent protection, piracy of books, sound recordings and videos), and the People's Republic of China for inadequate protection of patented, copyrighted and trade marked products (Alford 1995; Carter 1996).

---

[17] See 19 USC section 2242, 1990.

[18] The origin of the phrase is unknown. However it is used frequently in trade-related debates. For instance, in February 1999, then US Treasury secretary Rubin warned G7 nations that Europe and Japan needed to absorb more of the trade surpluses being generated by emerging markets since the US could not continue as the world's importer of first resort. See Beattie & Chote, US steps up pressure on Euro-zone, *Financial Times*, 20/21 February 1999, 1.

In 1991, the US also placed the EC, Canada and Australia on the priority watch list along with 22 other countries. Action against the EC stemmed from disapproval of its policy regarding European content in broadcast works. There was an outcry when the US tariff exemptions granted to Indian pharmaceutical products under the Generalised System of Preferences were revoked in 1992. There was similar public concern when preferences were removed on goods from Singapore,[19] Taiwan, Hong Kong and South Korea.

The US sanctions seemed to focus the minds of their negotiating partners at the GATT. The final draft of TRIPS was adopted in Marrakech in April 1994. The predominantly Euro-American TRIPS agenda gained legitimacy as one of the 12 substantive agreements annexed to the Marrakech Agreement Establishing the World Trade Organisation (WTO Agreement).[20] The WTO Agreement is a 'particular' international convention within the meaning of article 38(1)(a) of the Statute of the International Court of Justice (ICJ) and is therefore accepted as international law. The WTO and its appended Agreements came into force on 1 January 1995, with varying compliance dates depending on the category of country in question. For Singapore this meant 1 January 2000.

8.3 Scope and General Provisions of TRIPS

To date, TRIPS is the most comprehensive multilateral agreement on intellectual property. It establishes minimum standards of protection for specified areas of intellectual property, enforcement rules and a dispute resolution mechanism between WTO member states. Part II of TRIPS sets out seven areas to which the term intellectual property refers (art 1(2)) and for which protection is required:

1. Copyright and related rights
2. Trade marks, including service marks
3. Geographical indications, including appellations of origins
4. Industrial designs
5. Patents, including the protection of new varieties of plants
6. Layout designs (Topographies) of integrated circuits
7. Undisclosed information including trade secrets.

Each area is defined at 8.5 *infra*, after a discussion of the principles underlying TRIPS.

---

[19] The *Straits Times* commented on the move nearly every day following the announcement, see 2, 4, 5, 6, 8, 12, 13, 15 and 26 February 1988. See also PD, vol 50, col 590 et seq.

[20] For background, see Jackson (1997, 2nd ed).

Minimum Standards

Members are obliged to implement only the minimum legal protection required by the TRIPS Agreement (art 1.1). Members may confer more extensive protection, as long as such provisions do not contravene TRIPS. Article 1 also provides that members are free to determine the appropriate means by which the provisions of TRIPS are implemented in their own legal system and practice. This has been held to document that 'the Agreement is not a harmonization agreement' (Otten & Wager 1996, 394). However, in practice, the use of WIPO model laws suggests otherwise.

Nationals and National Treatment Principle

'Members shall accord the treatment provided for in this Agreement to the nationals of other Members' (art 1.3). Furthermore such treatment shall be no less favourable than that accorded to its own nationals (art 3). The Agreement specifically adopts the approach taken by existing IP conventions of WIPO in its definition of the term 'nationals'.[21] 'Nationals' are therefore persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in a customs territory.

Article 2.2 provides that nothing in Parts I-IV of TRIPS shall derogate from obligations that Members owe to each other under the treaties in article 1.3 (see note 21).

Articles 3, 4, and 5 confirm the long established principles of national treatment and most favoured nation (MFN) treatment of foreign nationals. But article 3 also extends this and protection conferred under *existing* IP Conventions to performers, producers of phonograms and broadcasting organisations. The exceptions to the national treatment principle which are recognised in the four treaties are also imported under article 3(1) but they are qualified in article 3(2). This makes it clear that exceptions are applicable only where they are 'necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade'. Just how 'disguised restriction on trade' will be interpreted remains to be tested.

Most Favoured Nation (MFN)

This is the first time that the MFN-concept has been used in an IP convention. It obviously reflects the close ties between TRIPS and the WTO. Article 4 provides that:

---

[21] Article 1(3) co-opts the Paris (1967), Berne (1971), and Rome (1961) Conventions, and the Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC Treaty). See 8.4.

> With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members.

Four exceptions to this obligation are listed in article 4(a) to 4(d).

Exhaustion of Intellectual Property Rights

The TRIPS Agreement left the issue of exhaustion unresolved. The issue is whether IPRs are exhausted after the first sale of a product to which IPRs attach. Some copyright laws allow a copyright owner to control the importation of a legally protected work. However, the weight of trademark practice has held that the rights of a trade mark owner are exhausted by the first sale of a legitimately trademarked product. This effectively opens up markets for parallel imports of such products. Unable to prevent the unauthorised importation of their products from one market to the next, trademark owners are thus unable to practise successful price differentiation and selective distribution. This, it is claimed, is beneficial to consumers. However, as the Silhouette case shows this open market is restricted to the European Union (*Financial Times* July 17, 1998, 1). TRIPS simply states that (article 6):

> For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 above, nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Technology Transfer

In a garbled article 7, entitled Objectives, TRIPS seems to cite technological innovation and technology transfer as reasons for protecting intellectual property rights:

> The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technical knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

But as one IP expert points out (Blakeney 1996, 43): 'The generality of Article 7 contrasts [starkly] with the specificity of the articles dealing with each of the categories of intellectual property right'. This is an over-generous comment, considering the deliberate weight demonstrated in the Agreement of providing 'advantage' for the 'producers of technical knowledge' often at the expense of users. This theme is further illustrated in article 8, the public interest article, discussed below.

Public Interest

Article 8, entitled Principles, seems to attempt public policy guidelines in areas of health and nutrition, and protection of countries' efforts to effect development. How-

ever, instead of being specific about preventing abuse by IP right-holders the article is general and hesitant. The use of the word *may* and the catch-all compliance phase suggest not choice but vacuity, especially in light of the on-march of global bio-engineered agri-business. Article 8 states:

> (1) Members may, in formulating or amending their national laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.
> (2) Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the ... transfer of technology.

In conclusion, TRIPS makes it clear that only minimum standards of protection, mainly those already existing in international IP conventions, are required of WTO members. It reaffirms the Paris, Berne and Rome Conventions and the IPIC Treaty. It provides that nothing in TRIPS shall derogate from existing obligations that members may owe to each other under these treaties (art 2.2). It adds new areas of IP and does not prohibit future additions of sui generis rights. The Accord fails to address the important issues of exhaustion of IP rights, technology transfer and public policy guidelines to prevent abuse of power by powerful right-holders. Arguably, the TRIPS principles succeed in co-ordinating IPRs and compelling global protection (on paper) of right-holders without doing much to address the needs of IP users.

8.4 IP Conventions Co-opted into TRIPS

Below are brief summaries of the main principles of the conventions, which have been incorporated into the TRIPS Agreement. They are administered by WIPO, World Intellectual Property Organisation, under the auspices of the United Nations.

Berne Convention

The Berne Copyright Convention for the Protection of Literary and Artistic Works[22] was established in 1886 (revised 1971). The main principles of Berne are national treatment; minimum protection of 50 years, starting from the end of the year in which the author dies or the year in which the work was first published, and the protection of the moral rights of authors. Berne confers copyright protection, without the formality of registration (art 5(1), 7(1) and 6bis (1)). By January 1994, 105 nations had acceded to Berne (*Copyright*, January 1994, 7-9). The USA did not join until 1989,

preferring instead to be a member of the Universal Copyright Convention (UCC), the multilateral accord, established under the United Nations in 1952. In 1994, 94 nations were members of the UCC (*id*, 16). Even before the US joined Berne, many US works benefited from protection under Berne because they were published simultaneously in Berne member countries, e.g., Canada and the UK.

Paris Convention

The Paris Convention for the Protection of Industrial Property was established in 1883 (revised 1967). It was the first multilateral treaty for protecting industrial property. It offers protection of trademarks, patents and designs, and the right of priority to foreigners from member states who have applied for registration of their rights in another member state. The two main principles are: one, reciprocal protection based on national treatment. Two, a convention priority system, which means that the same priority date given to the first [patent, TM, design] application filed in one convention country is granted to subsequent applications filed in other convention countries within 12 months of the first filing. This means that first disclosure of the invention will not prejudice subsequent applications made within 12 months. Singapore joined in 1995.

Rome Convention

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations was formed in 1961. Membership is open to states that are parties to the Berne or the Universal Copyright Convention. Performers include actors, singers, dancers, musicians, and others who perform literary or artistic works. Performers' consent is required for the broadcast and communication, to the public, of their live performances; the fixation of their live performances; reproducing such fixation if the original fixation was made without consent, or if the reproduction is made for purposes other than those for which they consented. (Popularly called the 'bootleg' prevention.)

Under the Rome Convention, phonograms mean any exclusively aural fixation of sounds of a performance or of others sounds. Producers of phonograms have the right to authorise or prohibit the reproduction of their phonograms. Similarly, broadcasting organisations may authorise or prohibit the re-broadcasting or fixation of their broadcasts, the reproduction of such fixations; and the showing of their television broadcasts

---

[22] See Ricketson 1987.

to a paying public. The Convention allows member states to make provisions in their national laws for exceptions regarding private use of copyright works.

The Patent Co-operation Treaty

The Patent Co-operation Treaty (PCT) 1978 eases the drudgery of making multiple patent applications among member states. An inventor, who is a national of a PCT country need only file one international patent application at any 'official receiving office' of the PCT and designate all the member states in which s/he wishes to seek patent protection. Singapore joined the PCT in 1995.

The Budapest Treaty

The Budapest Treaty concerns the deposit of micro-organisms, which may form part of a patent applicant's disclosure information. Patent laws require a patent applicant to provide for scrutiny her invention in sufficient detail so that a person skilled in the relevant art may perform the invention (e.g. s25(4) in Singapore's Patent Act). In some cases where the invention involves micro-organisms, it might be easier to provide samples rather than written instructions. The Budapest Treaty establishes suitable International Depositories for receiving such deposits. Singapore joined the Treaty in 1995.

IPIC Treaty

The Treaty on Intellectual Property in Respect of Integrated Circuits was agreed in 1989. It originated in the 1984 American Semiconductor Chip Protection Act (# 906) as a sui generis intellectual property right. It is sometimes called the Washington Treaty as the agreement was completed in that city on May 26, 1989. Prior to this, it was thought that layout designs were protected under copyright law. At that time, the US was the world leader in integrated circuit technology. There was a concern among American companies that copyright law might not afford adequate protection. The US insisted that it would enter mutual relations with other countries only if they adopted legislation, similar to its own, stipulating the extent and limitation of the new rights that were to be protected. See 8.5.6 and 8.7.

8.5 Definition of Rights to be Protected

This section provides a general background and definition of the seven main areas of intellectual property, for which TRIPS requires protection in domestic law. There is a brief status of Singapore's position regarding each area prior to 1999. It should be noted that TRIPS does not prohibit new areas of property rights. Section 27(3) allows for the

establishment of a sui generis system to protect plant varieties. Other areas, for instance indigenous cultural rights, could be contemplated.

8.5.1 Copyright and Related Rights

Copyright is concerned with the right to prevent the unauthorised use and exploitation of authors' works. Both authors and works are defined widely.[23] The right subsists for a clearly defined number of years; under TRIPS this is the life of the author plus 50 years. The law protects the *economic interests* of authors by giving them the exclusive right to exploit their works and to control their use. It also protects the authors' *moral rights*, that is, the authors' right to be identified with their works and to object to various kinds of derogatory treatment of them. Thus, one can regard copyright as a bundle of property rights in relation to the authors' works. Under the Berne Convention, the creators of original works obtain five exclusive rights to (1) reproduce or make copies of the work), (2) adapt, (3) distribute (sell, rent, lease or lend), (4) display publicly, and (5) perform publicly.

Historically, in England, copyright was used not to protect authors' works, but to control the use of the new printing technology which was introduced in the 1470s (see Cornish 1996). The Crown felt threatened by the potentially easy dissemination of social, political and religious ideas. To control printed works, it instituted a complex licensing system, which lasted until 1709 when the Statute of Anne was enacted. At the end of the Civil War, the Crown lost to parliament its prerogative powers to grant monopolies. From 10 April 1710, the 1709 statute protected the rights of authors for 21 years from the date of publication. Since then copyright law has developed into a powerful tool for protecting the rights of authors, while extending the nature, duration and scope of their monopoly. Naturally the development of copyright law in Singapore is closely linked with development in the UK.

With effect from 1912, Singapore received the [English] Copyright Act 1911 (see chapter 2). The provisions of the Act extended reciprocally within the Empire.[24] Thus was established the connecting factor, so that works first published anywhere in the Empire to which the 1911 Act extends, enjoyed copyright protection in Singapore.

---

[23] Works include original literary, dramatic, musical or artistic works, sound recordings, films, broadcasts or cable programmes and typographic arrangements of publications: [English] Copyright, Designs and Patents Act 1988, s1(1).

From 1912 until 1987 (with a brief interregnum) the protection of the works of authors in Singapore was governed by the Copyright Act 1911 and enforced in a similar way to the English law.[25] During the 75 years, the 1911 Act was amended only three times. One amendment made provisions for a Copyright (Gramophone Records and Government Broadcasting) Act (cap 64). Another amendment concerned s38 of the Singapore Broadcasting Corporation Act (cap 297). None of the amendments aimed to encourage foreign direct investment or economic growth.

Singapore's 1987 Copyright Act (cap 63) repealed the 1911 Act and its amendments. It was based on the Australian Copyright Act 1968, as amended in 1980 and 1984. The new Act came into force on 10 April 1987. From then, the 1987 Act and the (English) Designs Protection Act (cap 339) provided statutory protection of authors' works in Singapore until the TRIPS-induced laws of the 1990s (see 8.7 *infra*).

Of the many reasons for enacting a new Copyright Act in 1987, three were particularly noteworthy. First, the developed countries, especially the USA exerted great pressure on Singapore. As discussed at 8.2 *supra*, the Reagan administration acquiesced to demands of various American trade associations' lobbyists. These were led by the sound recording industry whose 1985 report had held that Singapore was the largest counterfeiter of tapes and records in the world. The USA demanded that Singapore should either join the Universal Copyright Convention (of which America was a member) or enter into a bilateral treaty, whereby all US copyright materials would gain automatic protection in Singapore. The USA also demanded that Singapore changed its copyright law to ensure the protection of computer software. In return, the USA would extend to Singapore, GSP (Generalised System of Preferences) benefits by allowing more duty-free import of specified Singapore-manufactured goods into the US. In January 1987, the Singapore parliament duly enacted the Bill to meet America's demands. The US government affirmed Singapore's GSP status and announced a lucrative duty-free package with effect from 1 July 1987. However GSP status was revoked with effect from 2 January 1989, when the US announced that Singapore and the three tigers would henceforth be regarded as newly industrialised countries and were ineligible for developing countries' benefits granted under the GSP scheme.[26]

---

[24] See *Butterworth & Co (Publishers) Ltd v Ng Sui Nam* [1985] 1 *MLJ* 196; [1987] 1987 2 *MLJ* 5.

[25] See Wei 1989. For development in the 1990s, see Wei 1996.

[26] See 8.2 and note 19 *supra*.

The second reason for passing a new Copyright Act in 1987 is linked with the need to update the law in light of advances in technology. Under the Copyright Act 1911 authors' works included original literary, dramatic, musical and artistic works (s1(1)). Artistic works were defined as photographs, sculptures, drawings, engravings and so on (s 35(1)). Musical works included sound recordings such as records and tapes (s19(1)). Dramatic works could include cinematograph films (s35(1)). However Singapore's law had not moved in concert with English Copyright Act amendments, which in 1956 extended the range of works protected to include *entrepreneurial rights* in sound recordings (s12 of the 1956 Act), cine films (s13), broadcasts (s14) and *publishers' rights* in the typographic format of published editions of works (s15). Besides with the decades' long advent of computer software, Singapore had yet to offer protection in this field. All these 'wrongs' were righted in the 1987 Act.

The decision in *Butterworth & Co (Publishers) Ltd v Ng Sui Nam* [1987] 2 MLJ 5 presented a third reason for change. In this case the Appeal Court affirming Thean J's decision held that Singapore's obligations under the Imperial Copyright Act 1911 were still in force, despite changes in Singapore's constitutional status from colony to self-governing country (1959) and sovereign state (1965). In effect, the 1911 Act had survived the dismantling of the Empire. Therefore works first published in the UK would enjoy copyright in Singapore if published between 1 July 1912 (when the 1911 Act had come into force in Singapore) and 10 April 1987 (when the 1911 Act was repealed in Singapore), with one exception (Wei 1996,449). Enactment of the 1987 Act thus enabled the government of the Republic of Singapore to assert its independence, even though the transitional provisions under Part XI allowed works which enjoyed copyright under the 1911 Act to continue to enjoy protection under the 1987 Act (Wei 1996, 1989).

Of course, as the 1911 Act did not extend to the USA, the 'connecting factor' requirement had to be dealt with differently. Under the 1987 Act (s 27) the two criteria for establishing a 'connecting factor' were: (1) first publication in Singapore; or (2) the author is a qualified person, i.e., a Singapore citizen or resident. If neither criteria is fulfilled, the work is regarded as foreign, and, as such, under the 1987 Act it would not enjoy protection in Singapore. However, s184 of the Act empowered the Minister to extend copyright to suitable material originating in foreign countries. Thus, following bilateral agreement with the USA, the Copyright (International Protection) Regulations 1987 extended copyright protection to authors' works first published in the USA. The regula-

tions were also extended to a number of other countries,[27] and, surprisingly, in *PP v Teo Ai Nee* [1994] 1SLR 452 at 461, the Chief Justice remarked *obiter*, that the regulations extend retrospectively to the USA and Australia. In other words, even works first published in these countries prior to the coming into force of the 1987 Act enjoyed copyright protection in Singapore. However it appears that only works first published in Singapore on or after the 1987 bilateral agreement enjoyed protection in the USA.

To promote the development of a film industry in Singapore, the 1987 Act allowed sound recordings and films to acquire copyright in Singapore by virtue of their being 'made in Singapore'. There is no evidence of the effect of this move. However there was more activity after section 8 of the 1994 Amendment of the 1987 Act clarified that it was within the Minister's power under s184(1) to extend similar rights to sound recordings and films that were made in Australia, USA and the UK.

Applying the concept of connecting factors to foreign countries was one of the most important compromises the Singapore government had to reach in its bilateral agreements. Naturally, such would be made redundant by the national treatment principle, which is the crux of IP Conventions and the TRIPS global regime.

In line with Singapore's promise to the USA, s239 of the 1987 Act provided that computer programs shall be protected as literary works. The section extended protection to programs made before the coming into force of the 1987 Act. However, s239(2) provided that no infringement of a computer program prior to 10 April 1987 would be actionable criminally or civilly. In other words, whereas copyright protection would be available for all suitable pre-existing computer programs, actionable infringement claims would only be entertained from 10 April 1987. The effect of s239(2) was to wipe the slate clean.[28]

8.5.2 Trademarks

Trademarks have long been used by craftspeople and traders to identify the origin of their goods and to distinguish them from goods made or sold by others. The first known trademarks are probably Greek, from about 600 BC. Proud potters put their marks on their work, probably to declare them good. Later, graphic devices indicated

---

[27] Regulation S110/87 covered the USA, while S120/87 covered the UK and Northern Ireland. Australia was added to the long list of countries in 1990 under S430/90.

the kiln in which the items were burnt. From being anonymous pieces of pottery, such commodities with marks became 'branded goods', though the idea of a brand[29] was another civilisation away. The mark became a symbol of the marker's reputation. It was a reputation in the quality and uniqueness of the goods, or in their origin and customers' expectations to the goods, or in a combination of these. The industrial revolution spurred growth in the use of names and marks, and the modern trademark was born.

As with copyright, Singapore's mechanism for protecting trademarks originated in England. The statutory system for registration of trademarks exists alongside the common law tort of passing off. The Trade Marks Act (cap 332) is rooted in the Trade Marks Ordinance 1938. Important amendments[30] were made only in 1991 and 1997. The 1991 amendment redefined the term 'trade mark' so as to include service marks (s2(1), extended the term of protection to 10 years and clarified the notion of 'use of a trade mark in relation to goods'. The 1991 amendment removed the provisions that allowed marks registered as distinctive in Part A and Part B of the register in the UK to be recognised as being distinctive for the purposes of the Trade Marks Act in Singapore. Penalties for a number of offences were increased (s69 to s73). Other changes are clarified in the table below (see 8.6). A new Trade Mark Act (No 46 of 1998), repealed the old and made provisions for compliance with TRIPS.

8.5.3 Geographical Indications

TRIPS identified geographic indications as a new property right. These indications identify goods as originating in a specific territory, region or locality, where a given quality, reputation or characteristic of the good is attributable to its geographic origin. Eg, Parma ham and Feta cheese. Prior to Singapore's compliance with TRIPS (8.7) geographic indications could probably be protected by 'certification' trade marks or passing off actions. Now a new Act of the same name, No 44 of 1998, applies.

8.5.4 Industrial Designs

In Singapore, industrial designs can be protected in one of two ways: Either under the United Kingdom Designs (Protection) Act (cap 339) by which rights and privi-

---

[28] See Lai Kew Chai J in *Federal Computer Services Sdn Bhd v Ang Jee Hai Eric* [1993] 3SLR 388. See also *Novell Inc v Ong Seow Pheng & Ors* [1993] 3 SLR 700.

[29] But see Landes & Posner (1988), who claim that the terms are 'rough synonyms'.

leges conferred under the Registered Designs Act (UK) become applicable in Singapore. Or by relying on artistic copyright in drawings (Copyright Act, cap 63, Pt lll). However, Singapore's Copyright Act 1987 denied copyright protection to registrable (but unregistered) designs which have been industrially applied (s74(2)). This is still the case, but section 6 of the Copyright (Amendment) Act clarified that 'industrial application' meant application in Singapore or elsewhere.

8.5.5 Patents

A patent is a property right in a new, useful device, design or process. It is a right granted to an inventor by the government *to exclude others* from engaging in activities such as making, using, importing, selling or offering to sell the patented invention during the term of the patent. The crux of a patent right is exclusion. There is no affirmative right to use the patented invention for any purpose. In fact, production, use or sale of a patented invention may conflict with existing laws or even other patents. Consider, for instance, the status of genetically modified (GM) foods in the UK in 1999. The public debate concerned *inter alia* whether such foods should be permitted to be grown (even for experimental purposes) in the English countryside, and whether imported GM foods should be offered for sale in supermarkets without additional testing.[31] The existence of *patents* for GM food processes or products did not and could not legitimise their use, production or sale in England.

The main justification for granting patents is to compensate inventors for their work and effort. Compensation, it is said, will encourage more inventions. Patent law also seeks to balance the inventors' interests with those of competitors, who desire to use previous inventions in their own inventions. The public interest is borne in mind, at least theoretically, when balancing the interests of inventors and competitors.

Singapore's first Patent Act dates only from 1994. The Act (cap 221) came into force in February 1995, except for Part XIX on Patent Agents (see S486/94). It repealed the re-registration system provided under the Registration of United Kingdom Patents Act (cap 271) and the licensing provisions set out under the Patents (Compulsory Licensing) Act (cap 196, 1970 ed). In 1994 Singapore also acceded to the patent-related

---

[30] For a brief history of the Trade Marks Act, see Mallal's Digest, Trade Marks Section, 12th ed.

[31] See, e.g., Flynn and Gillard: Revealed: Lord Sainsbury's interest in key gene patent, *The Guardian*, 16 February 1999, 1, col 1-8.

treaties: The Paris Convention, The Patent Co-operation Treaty 1978 and the Budapest Treaty 1977. Since 1995 applications for patents can be made direct to a Singapore registry instead of importing patents from the UK registry. The 1995 amendment addressed TRIPS demands (see 8.7 infra).

8.5.6 Layout Designs of Integrated Circuits

Layout designs or topographies of integrated circuits were recognised in TRIPS as a universal property right. The substantive provisions are set out in the Washington Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC). Until its move to comply with TRIPS (see 8.7 infra), Singapore did not have provisions to safeguard the rights of owners of these topographies, except in so far as they were covered in the Patents Act (cap 221, 1995 ed), as amended. However, the new Layout-Designs of Integrated Circuit Act (No 3 of 1999) complies with TRIPS (see 8.7 infra).

8.5.7 Undisclosed Information and Trade Secrets

TRIPS imports as a property right the protection of confidential information in order to prevent unfair competition in accordance with article 10bis of the Paris Convention. It also extends the area, as described at 8.7 infra. Prior to TRIPS, the common law, equity and the Official Secrets Act (cap 213) protected trade secrets in Singapore. However, protection is available under a number of related legislation, including the Medicines Act, cap 176, amended in 1998, which protects confidential information concerning registration procedures and the Electronic Transactions Act 1998, Pt XII.

8.6 Acquisition and Enforcement

High written substantive standards for protection of intellectual property are useless without strong mechanisms for enforcing the rights conferred. Parts III to VII of TRIPS contain comprehensive obligations requiring Members to provide domestic procedures, institutions and remedies, which allow right holders to acquire, maintain and enforce protection of their rights effectively. Owing to a lack of space, these will be discussed only in sufficient detail to give a flavour of what is required and a preliminary evaluation of Singapore's compliance capability.

All intellectual property rights, except copyright and trade secrets, require compliance with some sort of registration system in order to acquire protection of the law. TRIPS art 62(1) allows Members to require 'reasonable compliance with procedures and formalities' as a prerequisite for obtaining rights and protection. Article 62(2) stipulates a short registration procedure to ensure that the procedure itself is not used as an impediment to free trade. Article 62(4) provides for publication, opposition, revocation and cancellation. These procedures shall progress without undue delay and all administrative decisions shall be subject to judicial or quasi-judicial review (art 62(5)).

Article 41 compels Members to provide the enforcement procedures listed in Part III in 'their national laws so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement...'. The procedures shall be 'fair and equitable' and shall 'not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays (art 41(2)). Decisions on the merits of a case shall be reasoned, made available at least to the parties, and preferably in writing without undue delay (art 41(3)).

Article 41(5) states that Part III does not create any obligations that Members shall provide 'a judicial system for the enforcement of intellectual property rights distinct from that of enforcement of laws in general...'. Nevertheless, the rest of the Part sets out detailed provisions and procedures, including injunctions and orders similar in nature if not in words to Anton Piller[32] and Mareva[33]. For instance, art 50(2) requires judicial authorities to 'adopt provisional measures inaudita altera parte where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is demonstrable risk of evidence being destroyed.' It is difficult to accept that these procedures are already freely available in any but the most developed or advanced developing countries. By requiring developing countries to implement them within their existing enforcement structures, TRIPS is calling for 'modernisation' of their entire legal systems.

Article 45 requires Members to permit judicial authorities to order the payment of damages 'to compensate for the injury ... suffered because of an infringement ... by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity'. The complex matter of quantifying damages suffered is not dealt with in

---

[32] *Anton Piller v Mfg Processes Ltd* (1976) Ch 55. See Wei 1996, 470-476.

[33] *Mareva Compania Naviera SA of Panama v International Bulk Carriers SA* (1975) 119 SJ 660.

TRIPS. Article 61 requires 'criminal procedures and penalties for cases of wilful trademark counterfeiting or copyright piracy on a commercial scale'. Remedies shall include imprisonment and fines sufficient to act as a deterrent.

Section 4 of Part III introduces a system of border controls, which suspends the release into circulation of suspected counterfeit trademark or pirated copyright goods upon the application of a right holder or action by customs' officers (arts 51 to 60). In 1995 the Customs Coordination Council (CCC), an inter-agency forum, was reinvented as the World Customs Organisation (WCO). WCO established an IP division which was an observer at the inaugural meeting of the TRIPS Council (Blakeney 1996, 134).

Finally, art 64(1) subjects disputes between Members about compliance with TRIPS standards or domestic enforcement to the WTO's dispute settlement system. The first such dispute to be settled by the Appellate Body is *India, Patent Protection for Pharmaceutical and Agricultural Chemical Products 1997* (WTO Appellate Body Report, WT/DS50/AB/R).

In general, Singapore laws and legal system substantially comply with TRIPS enforcement requirements. Court procedures and awards follow the practice in common law jurisdictions. Criminal procedure and severe penalties for exploiting counterfeit goods have been the norm since the mid-1990s.[34] Direct domestic registration procedures for patents and trademarks were put in place in 1995 and in 1998/99 for the remaining property rights. However, conclusive evidence of Singapore's compliance must await the monitoring report of the Council for TRIPS, in accordance with art 68.

8.7 TRIPS' Standards and Singapore's Compliance

The following pages, 246-251, set out in broad terms, TRIPS required minimum standards of protection against a brief analysis of how and the extent to which Singapore laws comply with these requirements.

---

[34] E.g. s70 of the Trade Marks Act (cap 332) stipulates a fine of up to SD 100,000 or five years' imprisonment or both for counterfeiting. See also s72, s73, 73A, which provide similar penalties for other offences. These have been reenacted as Part IX, s81 to s100, of the new 1998 Act.

TRIPS STANDARDS	SINGAPORE'S COMPLIANCE
Copyright & Related Rights (arts 9-14)	**Copyright Act (cap 63) (No 6 of 1998)**
• Members shall comply with arts 1-21 of the Berne Convention 1971 (except 6*bis* on moral rights) - art 9.	• Joined in 1995. Copyright (Amendment) Act, No 6 of 1998.
• Computer programs, in source or object code, shall be protected as literary works: art 10(1).	• Section 26 recognises computer programs as subject-matter for copyright protection.
• Database or other data compilation or material shall be protected under copyright... provided that, by reason of the selection or arrangement of its contents, the material constitutes an intellectual creation: art 10(2).	• Section 26 complies.
• Exclusive rental rights shall be provided for authors of computer programs and some cinematographic works: art 11.	• Section 25A provides for 'commercial rental arrangement' in relation to sound recordings and computer programs. Also s26(1)(c).
• Performers, producers of phonograms and broadcasting organisations shall have the right to prohibit the following acts when done without authorisation: fixation, broadcast or rebroadcast by wireless and other communication to the public of their work and reproduction of fixations: arts 14(2)-(4).	• Part XII, s246-257, deal with Performers' Protection: compliance. Section 68 strengthened to deal with TV and cable broadcasts.
• Performers shall have the right to prohibit unauthorised broadcast ... of their live performances: art 14(1).	• Part XII, s246-257, deal with Performers' Protection: compliance.
• The term of protection must be at least 50 years art 12, or 20 years for broadcasts: art 14(5).	• S28: protection for 50 years after end of calendar year in which author died. S92-96 for copyright duration in s82-91 subject-matter.
• The 'fair practice' rule from Berne is co-opted to TRIPS by art 13: confers legislative power to permit reproduction of works in 'special cases', which do not conflict with normal exploitation of the work and do not unreasonably prejudice the legitimate interests of right-holders.	• Sections 35-40: fair dealing for research, study, review, reporting current events,judicial process or professional advice. Sections 41-43: reproduction for broadcasting. Sections 44-50: works in libraries. Section 50A: copying works for education. Section 54A: statutory licence by institution assisting intellectually handicapped readers. Sections 109-116: fair dealing in subject-matter other than 'works'.
• Part III stipulates enforcement procedures. See 8.6 infra. Section 4 of Part III introduces border controls to prevent the release into circulation of suspected counterfeit trademark or pirated copyright goods.	• Section 140A to R deals with restriction of importation of copies of works, etc. It provides powers of search and seizure at ports, in vessels, vehicles, aircraft, packages and persons and their baggage. Provides rules for secure storage of seized goods, notice and inspection procedures, etc.
	• Under s32 of the Layout-Design of Integrated Circuit Act 1999, s7(1) of the Copyright Act is amended so that it no longer includes layout-designs or integrated circuits within the meaning of s2 of the new Act.

Trademarks (art 15-21)	**Trade Mark Act 1998 (No 46 of 1998)** (Repealed Trade Mark Act, cap 332).
• Members shall comply with the Paris Convention (1967).	• Singapore acceded in 1995. Pt V11. Madrid Protocol dealt with: Pt V11
• Protection shall be for marks that distinguish services and goods, art 15(4).	• S2 defines 'trade mark' as a visually perceptible sign... capable of distinguishing goods and services...'.
• Registrable: 'any sign or combination of signs'... 'words including personal names, letters, numerals, figurative elements and combinations of colours as well as combination of such signs', capable of distinguishing the goods and services of one undertaking from those of other undertakings, art 15.	• S2: A sign includes any letter, word, name, sign, numeral, device, brand, heading, label, ticket, shape, colour, aspect of packaging, or combination thereof.
• Members may make registrability depend on use (art 15(3), and that signs are visually perceptible (art 15(1)).	• Registration: Pt11, Pt 1X, Pt X1 compliance.
• Section 16(1) defines minimum rights that must be conferred. Fair use of descriptive terms may be excepted (art 17).	• Rights of proprietor: s26-30. Compliance. Section 29 deals with exhaustion of rights.
• Well-known marks shall be protected under the Paris Convention art 6bis(1) for goods and services (art 16(2)). Well-known is defined by knowledge in the relevant sector of the public gained through use or promotion of the TM.	• Section 55: compliance. Well-known in the relevant sector in Singapore.
• Initial registration and each renewal shall be for no less than 7 years. TMs shall be renewable indefinitely (art 18).	• Section 18(1) registration for 10 years. Section 18(2) renewal: 10 years. Renewable: Compliance: Pt 11.
• Cancellation due to non-use can occur after 3 years of uninterrupted non-use, unless the TM owner shows valid reasons for non-use (art 19(1)).	• Section 22: registration may be revoked after 5 years uninterrupted non-use. The Minister may make rules to provide for the manner and effect of cancellation and to protect the interests of other persons having a right in the registered TM: s21.
• Controlled use by a third party circumvents non-use (art 19(2). Controlled use can be licensing which is permitted under art 21.	• Sections 42-45 deal with licensing: compliance. Exclusive licences and sub-licences are provided for.
• Compulsory licensing is prohibited. A TM may be assigned with or without transfer of the business which owns the mark (art 21).	• Part IV deals with registered TM as an object of property, ie co-ownership, assignment, granting security interest over application, etc.
• Use of a TM in the course of trade shall not be unjustifiably encumbered by special requirements such as use with another TM, use in a special form, use in a manner detrimental to its capability to distinguish goods or services (art 20).	• Compliance. No requirements.

Geographical Indications (arts 22-24)	**Geographical Indications Act 1998** (No 44 of 1998)
• Art 22: geographic indications are 'indications that identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin'.	• The Act was passed on 26 November 1998 and specifically complies with TRIPS requirements.
• Members shall protect these against uses that would mislead the public or constitute acts of unfair competition: art 22(2).	• Section 3(1) to (4) makes provision.
• Art 23 provides additional protection for wines and spirits.	• Section 3(2)(c) makes special provisions. Section 5 deals with 'Homonymous geographic indications for wines'.
• Art 24 provides for exceptions, eg where a geographic indication has become a generic term. • Where members make use of exceptions they must agree to negotiate, bilaterally or multilaterally, to increase protection of individual geographic indication: art 24(9).	• Section 6: geographic indication is excepted if (a) contrary to public policy and morality, (b) is not or has ceased to be protected in its country of origin, or fallen into disuse, (c) has become common name of good or service in Singapore.
Industrial Designs (arts 25, 26)	**Industrial Designs**
• Members shall provide for the protection of independently created industrial designs that are new or original.	• Industrial designs are protected EITHER under Pt XI of the Copyright Act 1998 (cap 63) as amended by Act No 6 of 1998;
• Protection need not be extended to designs dictated essentially be technical or functional considerations: art 25(1).	OR • under the UK Design (Protection) Act (cap 339)
• Members shall take short life cycle and number of new textile designs into account and ensure that registration costs do not unreasonably impair the opportunity to seek and obtain protection: art 25(2).	• There is compliance in all essential matters.
• Minimum term of protection shall be 10 years: art 26(3).	
• Rights-owner shall have the right to prevent unauthorised parties from 'making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes': art 26(1).	
• Members may provide limited exceptions to protection, provided that such exceptions do not unreasonably prejudice the legitimate interests of the owner, taking account of the legitimate interests of third parties: art 26(2).	

Patents (arts 27-34)	**Patents Act cap 221, 1995 ed.** (Amended by Act 40 of 1995).
• Members shall comply with provisions of the Paris Convention 1967.	• Singapore acceded in 1995. Provides reciprocal protection on basis of national treatment & priority system based on 'first to file system'.
• Term of protection: 20 years from filing: art 33.	• Section 36(1) complies.
• Protection shall be available 'for any inventions... in all fields of technology', subject to exceptions: art 27(1).	• S13 complies. Criteria for patentabiligy are: novelty, inventive step or non-obviousness, industrial utility.
• Art 27(3): Members may exclude from patentability: '(a) diagnostic, therapeutic and surgical methods for the treatment of humans and animals; (b) plants and animals other than microorganisms, and essential biological processes for the production of plants or animals other than non-biological and microbiological processes'. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system.	• Singapore does not bar patentability of animal or plant varieties or processes for their production as is possible under art 27. However, these may be excluded under the ordre public provisions of s13(3).
• Members may require that an applicant 'shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention... at the filing ... or the priority date': art 29.	• Section 25(4) makes this requirement at the date of filing, which is effectively the priority date. Singapore acceded to the Budapest Treaty in 1995. Micro-organism deposits for an invention seeking a patent are dealt with under this Treaty.
• Art 28 gives the patent owner the exclusive right to use, make, sell or import the (patented) product.	• Section 66 complies except that S66(29(g) allows for the 'exhaustion of rights' principle. Thus parallel imports are legal in Singapore.
• Where the patent is a process, art 28 gives the owner the exclusive right to prevent unauthorised third parties from using, offering for sale, selling or importing products 'obtained directly by that process'.	• The scope of an invention is determined by the patent specifications: s113(1). Thus there might be 'wiggle room' for an alleged infringer claiming to have have 'invented around' the patented invention.
• Patent owners have the right to assign, license or transfer patents: art 28(2).	• Under s41 patents can be assigned, licensed, mortgaged and transferred by law as in the case of any other personal property.
• Compulsory licensing is permitted in exceptional cases. Art 31 outlines some grounds. Art 8(2) permits Members to take 'appropriate measures' to prevent the 'abuse of intellectual property rights by rights holders...'.	• Section 46 allows for licences of right. Sections 55 to 60 provides for compulsory licences. Grounds are set out in s55(2). In general they concern protecting the public interest in Singapore and seem to be wider than art 31.
• There should be an opportunity for judicial review of any decision to revoke or forfeit a patent: art 32.	• Under s80(1) and s91 the Registrar's decisions may be appealed to the court.
• The burden of proof is reversed in civil litigation involving the infringement of process or product patents: art 34.	• S68 complies, although the wording of s68(1) is confusing.

Layout Designs of Integrated Circuits (arts 35-38).	Layout-Designs of Integrated Circuits Act 1999 (No 3 of 1999)
• Members shall comply with noted parts of arts 2-7, 12 and 16 of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC): art 35.	• Ownership is defined in s6. Subject to any agreement to the contrary, the owner is the creator unless the layout-design is created in the pursuance of a commission or employment in which case the owner is the commissioner or the employer.
• IPIC art 2(i) defines 'integrated circuit' while art 2(ii) defines 'layout design (topography)'.	• s2(1) complies with definitions.
• Members need not protect a layout design 'until it has been ordinarily commercially exploited..., IPIC art 7(1). Registration as in IPIC art 7(2) may be a condition for protection.	• S2(2) defines commercial exploitation. S5(4) stipulates: A layout-design shall be deemed not to have been created until it has been recorded in documentary form or incorporated into an integrated circuit, whichever is earlier.
• Topographies that are 'original in the sense that they are the result of their creators' intellectual effort' shall be protected: IPIC art 3(2).	• S5 complies, but s5(3) does not protect a layout-design that is created before the commencement of this Act.
• Parties must confer national treatment: IPIC art 5, and Most Favoured Nation treatment: TRIPS art 4.	• Compliance under s2 definitions of 'qualifying person' and 'qualifying country', which states WTO members.
• IPIC art 6 sets out acts considered unlawful when performed without consent of the right holder.	• S8 sets out the rights of a qualified owner. S9 makes it an infringement to do any of the acts stipulated in s8 without consent.
• To the unlawful list TRIPS art 36 adds: 'importing, selling or otherwise distributing for commercial purposes a protected layout design, an integrated circuit in which a protected layout design is incorporated, or an article incorporating such an integrated circuit only so far as it continues to contain an unlawfully reproduced layout design'.	• Compliance under s2 interpretation of 'commercially exploit', 'protected layout-design', and s5 stipulations.
• Unauthorised reproduction of layout designs for 'private purposes or for the sole purpose of evaluation, analysis, research or teaching' is permitted. So is 'reverse engineering': IPIC art 6(2)(a), (b).	• S10 defines non-infringing acts. S23 allows government use for public non-commercial purpose.
• Innocent infringement is a defence where the person performing or ordering such acts did not know and no reasonable ground to know, when acquiring (an integrated circuit) that it incorporates an unlawfully reproduced layout design: TRIPS art 37.	• S11 defines innocent infringement. S11(2) provides that where the innocent infringer becomes aware under s1(1), the defence applies to subsequent commercial exploitation 'if he pays a remuneration' as agreed, or as determined by a mutually agreed method, or in default of an agreement, then by the Court.
• Term of protection: no less than 10 years from filing or from 1st commercial exploitation anywhere. Protection may lapse 15 years after the layout design's creation: TRIPS art 38.	• S7(1) A layout-design ceases to be protected at the end of 10 years after its creation if it is first commercially exploited within 5 years after its creation. In any other case, protection ceases 15 years after the calendar year in which it was created: s7(2).

Protection of Undisclosed Information (art 39)	**Medicines Act (cap 176) Amendment - Act No 7 of 1998.**
• Members shall protect undisclosed information: art 39(1) as defined in art 39(2): general trade secrets; and (3): trade secrets in the hands of state authorities, and 'in the course of ensuing effective protection against unfair competition .. in art 10*bis* of the Paris Convention.'.	• Two new sections, 19A and 19B, incorporate 'Protection of confidential supporting information about innovative medicinal products'.
• To be protected is information which is (a) secret, 'in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known or accessible to persons within the circles that normally deal with the kind of information...'; (b) has commercial value because it is secret; (c) has been subject to reasonable steps under the circumstance, by the person lawfully in control of the information, to keep it secret: art 39(2).	• Under S19A(2) 'confidential information' includes '(a) trade secrets, (b) information that has commercial value that would be, or would be likely to be, diminished by disclosure'. • The sections cover the treatment of such information received by 'licensing authorities' not more than 5 years before commencement of the 1998 Amendment. • The licensing authorities will take reasonable steps to ensure that the information is kept confidential (19A(1)(a), and shall not use the information to determine 'whether to grant any other application' (19A(1)(b).
• Members shall protect, against unfair commercial use and unnecessary disclosure, test or other data submitted to state authorities to facilitate approval of pharmaceutical or agricultural chemical products: art 39(3).	• S19B stipulates circumstances under which s19A protection does not apply. These include where disclosure is necessary to protect the health or safety of the public: s19B(a)(ii) and where necessary to international or national regulatory agencies, e.g. WTO, FAO, WHO. • **The Control of Plants (Amendment) Act** (Act No 32 of 1998) makes similar provisions for the protection of confidential information relating to the registration of pesticides: s15A and 15B.
Control of Anti-Competitive Practices	
• Art 40 allows Members to adopt 'appropriate measures' to control anti-competitive licensing practices. Members must seek to secure compliance with each other's competition laws.	• 'Appropriate measures' seem too imprecise to warrant a search. It would seem that any action to limit the potential abuse of IP rights will be dealt with on a case by case basis. However, under, e.g. the Patent Act the government allows parallel imports, compulsory licensing and other use of patented products for government services. (See above). • Other measures include, e.g., s186 of the Copyright Act 1998 which empowers the Minister to deny copyright protection to works of any country which does not adequately protect works from Singapore. • As yet, Singapore has no Competition Act.

8.8 Conclusion

This chapter briefly examined the plausibility of the claim that protection of intellectual property leads to greater foreign direct investment and encourages indigenous innovations. It found that the conflicting arguments and evidence are ambiguous. In any event the effect of higher IP protection on economic development is minimal when compared with the effect of the overall economic climate prevailing in a country. In Singapore's case, the inherited colonial IP laws (copyright, trademarks and patents) were not amended substantially until 1987, 1991 and 1994 respectively. This suggests that the PAP government did not prioritise this area of law until *after* Singapore had achieved a high degree of economic development. Changes in IP laws do not therefore exhibit a positive correlation with changes in Singapore's economy. But other external forces were determinative.

As the industrialised nations saw it, one weakness of the existing international laws that regulate intellectual property was that there was no remedy for trade in counterfeit goods and services, which had a distorting effect on trade in legitimate goods. Consequently the US government, urged by industrial lobbyists, and the EU nations insisted on including minimum standards of intellectual property protection in the Uruguay Round of the GATT negotiations on world trade in the 1980s. The result is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Much of the chapter therefore focused on the genesis, underlying principles and standards of TRIPS and the extent to which Singapore laws are in compliance. As could be expected from a country, whose very existence is premised on export trade, Singapore moved quickly to make its laws comply with the required standards. The deadline was set at 1st January 2000. Singapore was substantially in compliance in 1999.

The simple facts are these: to participate in global trade, states must be members of the WTO. WTO Members must comply with TRIPS. However, under GATT (WTO's predecessor), free trade principles underpinned *inter-governmental* law concerning tariffs, customs, quotas and subsidies. Now, under the WTO, these free trade principles are being used to *support* the globalisation of *private* law. TRIPS' preamble recognises 'that intellectual property rights are *private rights*'. This and the inclusion of the MFN treatment relating to the *nationals* of member states (art 1(3)) import TRIPS private law into what used to be a purely inter-governmental sphere. Thus, at one stroke, private economic and financial interests have expanded WTO lawmaking into areas of private law.

The rationale is the advance of technology, through which trade in services and intangibles will overtake trade in physical goods. The legal infrastructure for protecting the owners' rights to such intangibles is intellectual property law.

TRIPS directs nations to implement minimum standards of intellectual property protection domestically among their nationals and the nationals of all member states. It therefore limits the capacity of every nation's legislature to respond to local socio-political or cultural needs and preferences. But it satisfies the need of trans-national businesses to protect their property rights and conduct global free trade.

It might well be the legal paradigm of the 21st century. For as we enter the next millennium, borderless trade in intangibles and services will create competitive advantage for few major players in the global market. Perhaps the change in terminology from 'international' to 'global' signifies that 19th and 20th century trade was regulated *inter*-nationally: between nations, whereas, in the borderless world of the 21st century, trade must be regulated globally. That is, as seamlessly, fluidly and urgently as the streams of digital information that enable the new instant technological transactions.

Since they comply with the TRIPS' provisions, clearly Singapore's IP laws have converged with those of the West. So what does that tell us about law and development theory? Clearly not that changes in Singapore's economy were *caused* by changes in Singapore's IP laws, or vice versa. For it is evident that major changes in the law were driven by pressures emanating from external forces. It was only when the US applied trade pressure in 1986-7, and more significantly, when Singapore joined the WTO and was obliged to comply with TRIPS that the PAP government's attitude to intellectual property law reform began to change. This kind of convergence does not fulfil the conditions upon which the law and development hypotheses are premised.

CHAPTER 9 CONCLUSION

Certain liberties in a developing nation sometimes have to be sacrificed for the sake of economic development and security ....

Lee Kuan Yew, Singapore's Prime Minister 1959-1990,
thereafter Senior Minister, *The Times*, London, May 25, 1977

Small open economies are like rowing boats on an open sea. One cannot predict when they might capsize; bad steering increases the chances of disaster and a leaky boat makes it inevitable. But their chances of being broadsided by a wave are significant no matter how well they are steered and no matter how seaworthy they are.

Joseph E Stiglitz, Chief Economist at the World Bank,
Boats, planes and capital flows, *Financial Times*, March 25, 1998

9.1 Macro- and Micro-level Analyses

In its macro-level analysis (chapters 2 to 5), this study found that Singapore's economic development from 1959 to 1999 was the outcome of direct government intervention in markets and just about every conceivable aspect of life on the island, and that law as 'mature policy' was facilitative. There were rudimentary infrastructure and some favourable pre-1959 conditions upon which the PAP government built (chapter 3). Crucial among these were Singapore's large natural harbour, its geo-political location at the crossroads of Asia, its twelve decades of uninterrupted peace and political stability, its legacy of the English language and British civil service, and the population's role as intermediaries and workers supplying the huge Malay hinterland. But as chapter 4 details, Singapore's modern economic success is based on the work of a largely incorruptible, professional, bureaucratic elite[1], who enticed and orchestrated foreign direct investment and export-led industrial growth onto the island. It did so by providing effective infrastructure and a suitably housed, disciplined, compliant and educated workforce that proved attractive to foreign investors. Low wages, political stability, massive tax incentives and a remarkable lack of corruption and bureaucratic red tape ensured that returns on foreign investors' capital were sufficient to encourage reinvestment and prevent investors from relocating to other countries.

Most of this observation is accepted wisdom, especially among Singaporean academics (Lim 1983; Low 1998). Even the World Bank's study: *The East Asian Miracle* (1993) admitted the decisive role played by the state in Singapore's economic development.[2] What is novel is the postulate that law as mature policy was used to facilitate growth. An important implication of the Bank's East Asian study is that vulgar neoclassicism – the idea that market-oriented policies alone account for the success of East Asian economies – was relegated to the intellectual graveyard. In its place, it was hoped that a clearer, more appropriate theory about the 'governed market' and the developmental state might be allowed to unmask the complicated relationships between states, markets and law in Asia. Sadly, this has not happened. In the case of Singapore, the role

[1] The elite includes members of the Ministries, statutory boards and government companies.
[2] But in *Bureaucrats in Business,* the World Bank (1995) seems to disapprove of state activism.

of law is excluded even from new-wave interdisciplinary studies.[3] However, international financial agencies like the World Bank, the IMF and the Asian Development Bank persist in reviving aspects of the 1960s' law and development movement, albeit in the guise of rational choice institutionalism.[4]

As chapter 1 shows, the 1960s' law and development movement and its reincarnation as the 1990s' law and economics movement share several key hypotheses: First, that the inexorable logic of economic development will bring in its wake a modern legal system, which equates with the rule of law. In modern implementation, this hypothesis has been reversed: transplantation of a 'modern legal system' will bring in *its* wake the realisation of economic growth. Secondly, that development of the market will lead to the emergence of a strong middle class or private commercial interests which will accelerate the development of representative institutions and the rule of law. Thus institutional change will be the result of pressure from below, not deliberations from above. Thirdly, acceptance of the rule of law will bring a package of liberal institutions that transforms relationships between the state and society, and result in democracy. Finally, developing countries' laws and legal institutions will converge with, and become like, those of the industrialised West as a result of economic development.

Singapore's experience does not support these postulated causal links between economic development and the emergence of laws and liberal institutions. In particular, the government does not seem to have succumbed to, neither have institutional changes arisen from, pressures on the state generated by *internal* social and economic forces unleashed by the development of a free market. Indeed, despite a full-grown market economy and acceptance and practise of a version of the rule of law, by and large, many Singaporean laws and institutions have not converged with those of the industrialised West. Some reasons for this are summarised below in a discussion of the nature of the relationship between law and economic development in Singapore (see 9.2).

However, as chapter 4's macro-level analysis revealed, there is a positive *correlation* between the enactment and operation of certain laws and the development of the

---

[3] See, Low 1999. This collection of essays considers everything except the role of law. The so-called Murdoch School, exemplified by Jayasuriya 1999, is a welcome exception.

economy. This correlation was confirmed in the micro-level analysis (chapters 5, 6 and 7) even though it was not possible to show direct causation, owing to the difficulty of isolating the effect of law among the complexities of the different forces at work. As parliamentary debates of many Bills witness, laws and amendments were designed to achieve specific goals, and with hindsight did in fact achieve those goals – or were amended strategically until they did. For instance, a summary of the most frequently amended statutes shows that the highest number of amendments occurred among labour-related laws during two key formative periods: First, when the government sought to curb and depoliticise the trade unions prior to joining the Malaysian Federation, from 1959 to 1963. Secondly, after leaving the Federation, when the government rejected import-substituting industrialisation in favour of export-led industrialisation policies, from 1965 to 1968. It was thought that implementation of these policies required a more disciplined, better-trained, compliant workforce. This seems to have been achieved by enacting laws designed to reduce workers' and unions' rights, while enacting others designed to empower workers and make them fit for industrial work through education and skills development schemes. It is here that it is most obvious that policies very often metamorphosed into laws. Indeed there seem to have been but few short steps from policy-ideas to the statute books, which is why I have described Singapore's economic development laws as 'mature policies'.

Although the idea of co-opting the unions into tripartite collaboration with corporate management and government in the 1960s resulted in key laws and amendments (see chapter 6), the important tripartite 1970s wages policy was not itself transformed into law and remained technically 'voluntary' guidelines. However important laws were amended to give effect to the recommendations of the National Wages Council. Other key late 1970s and 1980s laws were the result of government policies to move the economy from low-wage, low-skill, labour-intensive production to higher skilled, capital-intensive manufacturing, while laws of the late 1980s and 1990s facilitated the transformation to service industries, privatisation and regionalisation.

---

[4] See, e.g., Pistor & Wellons 1999, a study funded by the Asian Development Bank, in which Singapore was not included.

9.2 The Nature of the Relationship between Law and Economic Development

Because 'law' in this context is synonymous with the rule of law, it is worth reiterating the four key assumptions of the liberal paradigm concerning the rule of law in law and development theory (chapter 1). First, that society is composed of individuals and voluntary organisations. Secondly, that the purpose of law is to adjudicate between private conflicts among individuals, in particular for protecting individual property rights. Thirdly, that public officials are guided by law and not by personal whim or other extra-legal considerations. Therefore law protects individuals against the arbitrariness of a government, state or private interest. Fourthly, that law has inherent legitimacy and is widely understood and obeyed. At the heart of these assumptions is the notion that the development of the rule of law can occur *only* at the expense of subordination to law of government and state power.

Contrary to these assumptions, Singapore's experience shows that the rule of law can and does serve to entrench and consolidate the power of the state, and that it does not always exalt the protection of individual rights above the state and public interest.

This is not unique to *modern* Singapore. Indeed, as chapter 2 related, the English law that had taken root in colonial Singapore was not necessarily Lord Ellenborough's 'law of liberty', of respect for the dignity of the individual, her entitlement to life, liberty and property, that had been transplanted from England. Arguably what had taken root was a particular species of English law designed *primarily* to enable the smooth running of a profitable colonial economic regime. Law became a set of rules and practices that underpinned the predominantly economic goals of the colonial state. This means that both Singapore's colonial and post-colonial experiences of law coincide with Damaska's proposition (Damaska 1986) that the nature of a state's ideology and its political organisation plays a crucial role in shaping the development of its legal institutions.

Singapore's experience of law and economic development mirrors relationships that Oakeshott (1975) recognised in the distinction between rules in *civic* and those in *enterprise* associations. According to Oakeshott, the rules of a civic association derive their authority from the association itself and not from any goal outside of the association or their use to create desirable outcomes. In contrast, the rules of an enterprise association [such as Singapore Inc] gain their validity not from the association itself but

from its goals or purposes [self-reliance and profitability]. Clearly, post-colonial Singaporean law reflected the PAP's stated objectives of a developmental enterprise rather than the inherent nature of an inherited civic association. The PAP government continually stated that its objective was to achieve economic development and nationhood for Singapore. The nature of Singapore's 'modern law' derived from these objectives (or policies), just as colonial law had reflected the goals of colonial entrepreneurism.

The nature of the relationship between law and economic development in Singapore is further marked by the fact that the colonial stress on economic gain was supported by laissez faire attitudes of unrestricted freedom in commerce. This stance served to compromise the rule of law's original agenda of freedom and liberty, turning the rights-based, contractual, individualistic philosophy of English law into a tool that commodified individuals and relationships among them. These factors facilitated the growth of a new species of law in which respect for the dignity and liberty of individuals was undermined and made subservient to economic-related agenda. Thus, to my mind, it is clear that right from the start, the liberal rule of law that was transplanted to Singapore atrophied. In line with its colonial agenda, the transplant grew into something substantially different from its domestic root.

This aberrant growth thrived after the PAP government took charge. As discussed above, the early agenda of the rule of law was driven by the laissez faire doctrine, which dictated state indifference or minimum interference in the affairs of others. The PAP government found that by changing this supporting ideology, the rule of law could be adapted to serve an approximation to and, in some cases, even the opposite of its original agenda. Instead of liberal notions of respect for the dignity and liberty of the individual and of exalting protection of individual property rights over the good of society as a whole, the PAP government cultivated its own mix of communitarian ideology, which exalted the national interest over the interests of individuals. In the event, it was a careful balancing of interests, but as Prime Minister Lee Kuan Yew put it baldly (*The Times*, London, May 25 1977):

> Certain liberties in a developing nation sometimes have to be sacrificed for the sake of economic development and security....

From the 1960s, the PAP government began to redefine the liberal notion that society is composed of individuals and *voluntary* organisations. Instead it emphasised the associative and communitarian aspects of Asian society, and government-initiated rather than voluntary organisations, where these were necessary to achieve its developmental goals. In addition, it co-opted existing voluntary organisations and used them for its purposes. (For examples, see the micro-level analysis of labour and housing laws in chapters 6 and 7). For instance, in labour, the government dictated unified, PAP-friendly, national unions in the 1960s. But from 1979, it opportunistically dictated smaller, decentralised, industry-linked unions. Tripartite associations were dictated between government, enterprise management and labour, in which individuals and their interests were subsumed and made subservient to the needs of society as a whole. Similarly, the government, through the Housing and Development Board, forced people to live in extended family groups and special ethnic mixes in order to promote social cohesion and racial harmony (chapter 7). In the 1980s the government prompted and supported ethnic-based, self-help groups and in the 1990s established residents' councils (Community Development Councils) to solicit loyalty and force participation in the management of public housing estates. It decommodified public housing so as to put ownership within the reach of about 90% of all Singaporean families.[5] In this way housing ownership served as a motivating factor for the entire society and not just an elite group. In effect, it became the socio-economic glue, binding workers, families and the nation together by providing a realistic goal to which all could aspire. Private educational institutions were also 'nationalised' and forced to support the state's developmental goals.

It can be argued that for decades the PAP government embraced the mid-1990s' neo-liberal parlance of 'good governance'. But whereas neo-liberals translate this to mean keeping the government from interfering with the market, in Singapore, the concept supplies the justification for state intervention. In this sense the rule of law in Singapore has become rule *by* law – a trusted pragmatic tool. It is a tool wielded by the government to effect policies and guide actions and behaviour. Its value is measured by its success in achieving the pragmatic goals of the enterprise, Singapore Inc. Indeed according to Prime Minster Goh, Singapore's reliable legal system is one of the reasons

[5] Of the remainder, most live in private housing. A few live in HDB rental property.

why the island-state emerged relatively unscathed from the 1997-99 regional economic setback.[6]

Thus the *nature* of law in Singapore exhibits more holistic or integrated, communitarian, duty-based and regulatory tendencies than rights-based, individualistic western law (see Appendix 1). Chapters 6 and 7 provide evidence of statutes that exhibit these characteristics, i.e. laws that regulate labour relations, land use and real property ownership in Singapore. I have dubbed Singapore's species of laws 'Westernistic'.[7] By this I mean laws that have the *appearance* of those of the West, in that they ensure certainty and predictability, but that they do not exalt private individual property and contractual rights over the good of society as a whole. By focusing on the 'national good', Singapore laws are more communitarian and holistic than western laws which focus more on individual rights. But Singapore laws are also syncretistic, in that they attempt to combine the characteristic practices of different systems of laws to form a system of their own. This is evidenced, for instance, in the raft of laws and amendments designed to regulate financial services. These draw on American, English and Australian laws, while including regulatory measures that serve purely domestic needs.

Chapter 8 analysed the emergence of another species of law in Singapore: supra-national laws that regulate intellectual property rights. These were enacted primarily to fulfil Singapore's WTO (World Trade Organisation) treaty obligations under the Agreement on TRIPS (Trade-Related aspects of Intellectual Property Rights). These laws are virtual clones of their western counterparts. Little effort has been made to combine external practices with any pre-existing internal practices. This is because, as chapter 8 shows, the PAP government did not include intellectual property (IP) law reform among the elements that it considered conducive to economic growth. On the contrary, it was only when external forces dictated change, from 1987 onwards, that Singapore enacted new IP laws or amended its inherited colonial ones. According to speeches in parliament (PD vol 68, col 310-16), the PAP government now seems to feel that as a *mature industrial* economy, Singapore needs IP laws to help propel it into the next growth phase of the *information* society. This society is knowledge-based and IP laws

---

[6] See *Straits Times*, Overseas Edition, 16 May 1998.

[7] The concept is borrowed from Buzan and Segal 1998.

are designed to protect the right to own and use knowledge. But as chapter 8 reveals, IP laws were also meant to *spur* industrial economic growth, a prediction that Singapore's experience contradicts.

Singapore's IP laws of the late 1990s are converging with IP laws of the West. However, they are not doing so as a *result* of economic development or internal pressure from a newly empowered commercial middle class, as law and development theory requires. As Microsoft's legal counsel pointed out approvingly[8]: 'In 1998 [the] Singapore [government] initiated a campaign to raise public awareness of the ways that intellectual piracy can damage a nation'. This top-down imposition of IP laws and the awareness campaign were driven by external, not internal pressure. To trade globally, nations should be members of the WTO free-trade club. One of the club's rules is enactment and enforcement of minimum standards of IP laws as stipulated under TRIPS.

9.3 What Might Late-industrialising Nations Learn from Singapore's Experience?

Wade (1990) is not the only scholar who has dismissed Singapore as a 'minnow' state, whose experience of economic development is thought to be too 'special' to merit serious consideration (see 1.1 supra). However, as discussed in chapter 1, in January 1999, 87 of the world's 193 nation-states had populations of fewer than 5 million each, and of these 58 had fewer than 2.5 million each. Besides, small states seem to be in the ascendancy as old political or ethnic ties loosen or are forced apart, freeing new would-be nations. The tendency is apparent all over Europe, Asia and Africa. With its current population of about 3 million and a population of between 1.5 and 2.5 million during its formative years, Singapore's experience is eminently suitable for consideration by other 'minnow' states, which also lack the advantages of scale and domestic markets made attractive by sheer size. It also seems to be common sense to hold that the experiences of a nation with a 3-million population would be more relevant to other small nations than the experiences of the USA with 267 million or even the UK with 60 million.

This is not to say that late-industrialising small nations should emulate Singapore's experience of economic development. On the contrary, this study suggests only that several lessons are worthy of consideration, and that these lessons are potentially

more relevant for late-industrialising nations than the experiences of early industrialisers, whose development spanned centuries rather than decades. Indeed, it is my thesis that Singapore's experience exhibits systems for coping with rapid technological change. The pace at which such change occurred a century or two ago bears no relevance to the pace and nature of change today.

From the point of view of 'technology-coping skills', Singapore's experience might be useful also to large late-industrialising nations such as China and India. This is most relevant in the context of 'special economic zones' (SEZs). Indeed, a core idea of the China-Singapore joint venture called the Suzhou Industrial Park (see 4.2.6, 5.7, and Carter 2000), was that if Suzhou could be made to function like Jurong [the Singapore model town], then the Chinese authorities would seek to replicate it as special economic zones in other parts of China. In countries the size of China, perhaps Singapore itself could be treated as an SEZ.

The first lesson to be considered is the pervasiveness of the government's strategic intent; i.e., its determination and utter commitment to economic development. It was not a hope or a wish; from self-rule in 1959, all PAP policies worked towards one goal. The only other goal was nation-building which was probably a sub-set of economic development. From 1965, after 'expulsion' from Malaysia, economic development became an obsession. Secondly, late developers must prioritise education and disciplining of the national workforce, ensure political stability, provide affordable universal housing, efficient infrastructure, and an incorruptible, well-functioning bureaucracy. These elements overlap and interact promiscuously, sometimes acting as catalysts, at other times as strengthening pillars for each other. Together with tax incentives these attributes will attract foreign investors and provide sufficient returns on the invested capital so that investors will reinvest and remain in the country. At every stage, law is the enabler. It is the tool by which government legitimises and implements its policies. In a way economic development law *is* merely mature policy.

Despite the straightforward recipe, for a host of disparate reasons, late-industrialising countries will find it difficult, if not impossible, to benefit from these lessons. First and foremost, industrialised countries' protectionism might block the import

[8] Interview at IP Law Conference, Fordham University School of Law, New York, 9 April 1999.

of goods and services from late-industrialising countries. Without free market access, the export-oriented trade equation is unworkable. Secondly, supra-national laws like those dictated by TRIPS (and the temporarily shelved Multilateral Agreement on Investments) will prevent late-industrialising countries from exalting their domestically dictated 'public good' above the private property rights and interests of individuals and foreign-owned companies. Thirdly, the competitive advantage of cheap labour, which is enjoyed by most late-industrialising countries, will be rendered less advantageous as supra-national labour laws will dictate minimum standards, ostensibly to secure human rights, but in reality to protect blue-collar jobs in the industrialised countries. These will probably be effected through the WTO, which seems determined to link trade to labour standards in the so-called Millennium Round negotiations, or, perhaps less offensively, through the International Labour Organisation (ILO).

It is clear that the economic and political climate of 30-40 years ago during which Singapore 'took-off' and stayed airborne has changed significantly. Ironically, the shift is mirrored in the difference between the ideologies expressed by US Supreme Court Judge Douglas in 1962 and by the US Congress in 1994.[9] While the former waxed warmly with philanthropy to help new countries develop as 'free nations', the latter focused on developing 'free markets'. The goals have changed. With the end of the Cold War, there is no longer a need for the USA to contain communism. Thus the 1990s agenda of the American-driven law and development movement has shifted to focus on creating or enlarging free-market democracies for the goods and services of American and other trans-national corporations. Inadvertent or not, one result of this shift is to increase the power of global business corporations while diminishing the power of governments in the new market democracies. Instead of the notion of 'bureaucrats in business', the reverse paradigm is fast becoming the reality. The dilemma is that the global 'business bureaucracy' is accountable primarily to its shareholders often to the detriment of the interests of the small free-market democracies in which the new species of business bureaucrats operate.

However, to end on a positive note, it should be remembered that Singapore's economic growth is a by-product of the acceleration in the 1960s of the post-World War

2 global restructuring of capitalism. This structural change was itself driven by the culmination of the transformation of western economies from the agricultural to the industrial age.[10] The definitive change involved the creation and reordering of industrial labour in response to dramatically increased demand for low-cost, machine-produced, mass-manufactured consumer goods as opposed to hand-crafted goods and unprocessed, agricultural products. It seems likely that the new millennium will usher in an acceleration of another global restructuring of capitalism, namely the paradigm shift from the predominantly industrial-based society to an information, knowledge-based society (Toffler 1980). Opportunities may yet reveal themselves in the interstices of this new economic world structure. For instance, some developing countries are eyeing the possibility of branding their agricultural produce. Others investigate how to protect their indigenous knowledge and farmers' rights to flora and fauna, which contain industrially useful and therefore commercially profitable genetic characteristics.[11] However to be of any utility value to late-industrialising nations, this restructuring will require major changes in policies, institutions and international laws regarding the use and protection of biodiversity (Shiva 1993).

Clearly, law and legal institutions, though essential, are by no means sufficient to bring about economic development. Despite abundant free-market rhetoric, Singapore's experience shows that a strong, politically stable state, not the market, is better at ordering and allocating scant resources, especially during the early phases of development, when it is conducive to sustainable economic growth to place the national good above the interests of individuals. However, an important prerequisite is the political will and ability to control corruption, whether it emanates from need or greed. Indeed one of Singapore's enduring legacies is its ability to foster and maintain a virtually incorruptible bureaucracy throughout its development.[12] This topic requires further investigation for it seems to be the Achilles' heel of late-industrialising nations everywhere.[13]

---

[9] See quotations at the beginning of chapter 1 of this study.
[10] For a discussion, see Toffler 1980.
[11] See, e.g. Swaminathan 1996.
[12] See Quah 1978 and 1988.
[13] For instance, nothing like the notorious klepto-patrimonial regimes of Africa, like Nigeria and Zaire, and of Asia, like Suharto's Indonesia, or even milder forms of cronyism like in Malaysia, were ever tolerated in modern Singapore.

As for the theory of law and development, it is a truism that bad theories lead to bad policies, which, if implemented, lead to bad results. The consequences are less clear for a theory whose predictions appear to be inconsistent with, or contradicted by, practice. Nevertheless the results of my research strongly suggest that the theory of law and [economic] development is in need of re-conceptualisation. For Singapore's practice of law and development and its experience of economic success and social equity do not support the theory's key predictions, whether in its original 1960s' version or its 1990s' reincarnation. That Singapore's practice appears to have been almost the antithesis of some Western liberal notions should strengthen our resolve to seek answers and incorporate them into the theory's re-conceptualisation rather than be allowed to cloud the main issue. The flight of the bumblebee too seems to have confounded key predictions of aerodynamics theory.

BIBLIOGRAPHY

If you plan for a year, plant a seed.
If you plan for ten years, plant a tree;
If for a hundred years, teach the people.

Chinese proverb attributed to Kuan Chung.

Abel C ed (1985) *Latin America, Economic Imperialism and the State*, London: Athlone.
Adelman S & Paliwala A eds (1993) *Law and Crisis in the Third World*, London, New York: Hans Zell.
Alesina A & Spolare E (1997) On the Number and Size of Nations, 11 *Quarterly Journal of Economics* 11.
Alatas S (1999) *Corruption and the Destiny of Asia*, Malaysia: Prentice Hall.
Alford W (1995) *To Steal a Book is an Elegant Offense: IP Law in Chinese Civilisation*, California: Stanford University Press.
Allott A (1963) Legal Development and Economic Growth in Africa in Anderson J ed (1963) *Changing Laws in Developing Countries*, London: Allen & Unwin.
-------- (1980) *The Limits of Law*, London: Butterworths.
Altman A (1990) *Critical Legal Studies: A Liberal Critique*, New York: OUP.
Amsden A (1989) *Asia's Next Giant: South Korea & Late Industrialization*, New York: OUP.
-------- (1994) Why Isn't the Whole World Experimenting with the East Asian Model to Develop? Review of The East Asian Miracle, (1994) 22 *World Development* 627.
Anantaraman V (1990) *Singapore Industrial Relations System*, Singapore: Singapore Institute of Management and Mcgraw-Hill.
Anderson J ed (1968) *Family Law in Asia and Africa*, London: Allen & Unwin.
Apter D (1987) *Rethinking Development*, London: Sage Publications.
-------- (1965) *The Politics of Modernisation*, Chicago: Chicago University Press.
Arthurs H (1996) Labour Law without the State, 46 *University of Toronto Law Journal* 1.
Arun M & Lee T eds (1998) *Singapore: Re-engineering Success*, Singapore: OUP.
Baalman J (1961) *The Singapore Torrens System*, Singapore: Butterworths.
Balakrishnan V (1976) *A Brief History of the Singapore Trade Union Movement*, Singapore: NTUC.
Balassa B (1981) *The Newly Industrializing Countries in the World Economy*, New York: Pergamon Press.
Bartholomew G (1985) English Law in *Partibus Orientalium* in Harding A J ed (1985) *The Common Law in Singapore and Malaysia*, Singapore: Butterworths.
Bassett (1960) *British Trade and Politics in Indonesia and Malaysia in the late 18th Century*, Zug: International Documentation Co.
Baumol W (1986) Productivity Growth, Convergence and Welfare, (1986) 76 (5) *American Economic Review* 1072.
Beier F (1980) The Significance of the Patent System for Technical, Economic and Social Progress (1980) 11 *IIC* 663.
Beier F & Schricker G eds (1996) *From GATT to TRIPS*, Weinheim: VCH Publishers.
Bedjaouri M (1987) Some Unorthodox Reflections on the 'Right to Development' in Snyder F & Slinn P (1987) *International Law of Development: Comparative Perspectives*, Abingdon: Professional Books.
Bello J & Holmer A (1992) GATT Dispute Settlement Agreement: Internationalization or Elimination of Section 301, (1992) 26 *International Law* 795.
---------- (1989-90) Special 301: Its Requirements, Implementation and Significance, (1989-90) 13 *Fordham International Law Journal* 259.
Bellows T (1970) *The People's Action Party of Singapore: Emergence of a Dominant Party System*, New Haven: Yale University Southeast Asian Studies.
Beveridge W (1942) *Report on Social Insurance and Allied Services*, London: HMSO.
Bhagwati J (1998) The Capital Myth, (1998) 77 (3) *Foreign Affairs*, 7.
---------- (1966) *The Economics of Underdeveloped Countries*, New York: McGraw-Hill.
Blakeney M (1996) *Trade Related Aspects of Intellectual Property Rights: A Concise Guide to the TRIPS Agreement*, London: Sweet & Maxwell.
Bodde D & Morris C (1967) *Law in Imperial China*, Cambridge: Harvard University Press.
Booth A (1999) *The Social Consequences of the Asia Crisis*, Asia-Pacific Economic Literature.

Braddell R (1982) reprint of 1915 ed., *The Law of the Straits Settlements*, Oxford: Oxford University Press.

---------- (1921) *One Hundred Years of Singapore*, vol 1, London: John Murray.

Brietzke P (1992) Accountability in the 'Brave New World' of Development in *Law, Accountability & Development: Theories, Techniques and Agencies of Development*, London: Third World Legal Studies Assn & Valparaiso University School of Law.

Brown R (1991) The Little Recognised Connection Between IP and Economic Development in Latin America, (1991) 22 *IIC* 348.

Browning E (1981) East Asia: In Search of a Second Economic Miracle, (1981) 60 (1) *Foreign Affairs* 123.

Brownlie I (1989) *The Human Right to Development*, London: Commonwealth Secretariat.

Buchanan I (1972) *Singapore in Southeast Asia*, London: G Bell & Sons.

Burg E (1977) Law and Development: A Review of the Literature & a Critique of 'Scholars in Self-Estrangement', (1977) *American Journal of Comparative Law* 492.

Buzan B & Segal G (1998) *Anticipating the Future: Twenty Millennia of Human Progress*, London: Simon & Schuster.

Carter C (1996) *Fighting Fakes in China: The Legal Protection of Trademarks and Brands in the People's Republic of China*, London: Intellectual Property Institute.

Carter C (2000) forthcoming, The Clonability of the Singapore Model of Law and Development: The Case of Suzhou, China, in Antons C (2000) *Law and Development in East and Southeast Asia*, London: Curzon.

Carty A ed (1992) *Law and Development*, Aldershot: Dartmouth.

Carty A (1987) Legal Dimensions of Contemporary Protectionism, in Snyder F & Slinn P (1987) *International Law of Development: Comparative Perspectives*, Abingdon: Professional Books.

--------- (1986) *The Decay of International Law*, Manchester: Manchester University Press.

Carothers T (1998) The Rule of Law Revival, (1998) 77 (2) *Foreign Affairs* 95.

Carran R (1998) *Tigers Tamed – The End of the East Asian Miracle*, Australia: Allen & Unwin.

Chan Heng Chee (1971) *Singapore: The Politics of Survival, 1965-1967*, Kuala Lumpur: Oxford University Press.

--------- (1976) *The Dynamics of One Party Dominance*, Singapore: Singapore University Press.

Chan H (1995) *The Legal System of Singapore*, Singapore: Butterworths.

Chang H & Singh A (1997) Can Large Firms be Run Efficiently Without Being Bureaucratic? (1997) 9 (6) *Journal of International Development* 865.

Chatterjee S (1992) The International Monetary Fund in Fox H ed (1992) *International Economic Law and Developing States: An Introduction*, London: BIICL.

Chen P ed (1983) *Singapore Development Policies and Trends*, Singapore: Oxford University Press.

Cheong E & Mirandah G (1992) Success in Singapore: Can IP Take Credit? (1992) 24 *Managing Intellectual Property* 7.

Chew E (1991) *A History of Singapore*, Singapore: Oxford University Press.

Chew S & Chew R (1995) *Employment-driven Industrial Relations Regimes: Singapore's Experience*, Aldershot: Ashgate Publishing.

Chew S (1991) *Trade Unionism in Singapore*, Singapore: McGraw-Hill.

Chenery H (1979) *Structural Change and Development Policy*, New York: OUP.

Chenery H & Moshe Syrquin (1977) *Patterns of Development 1955-1975*, London: Oxford University Press.

Chiba M ed (1986) *Asian Indigenous Law*, London: Oxford University Press.

Childers & Urguhart (1991) *Towards a More Effective UN Development Dialogue*, New York.

Chin A & Choi A eds (1998) *Law, Social Sciences and Public Policy: Towards a Unified Framework*, Singapore: Singapore University Press.

Ching-Ling Tai (1988) *Housing Policy and High-rise Living*, Singapore: Chopmen.

Chng M, Low L & Heng T (1988) *Industrial Restructuring in Singapore*, Singapore: Chopmen.

Chowdhury S ed (1992) *The Right to Development in International Law*, London: Longman.
Christudason P (1994) *The Development of Singapore's Land Law as Influenced by English and Australian law*, PhD thesis: London University.
Chua B (1959) Land Registration in Singapore & the Federation of Malaya (1959) 1 *Mal LR* 318.
Chua Beng-Huat (1997) *Political Legitimacy and Housing*, London: Routledge.
---------- (1995) *Communitarian Ideology and Democracy in Singapore*, London: Routledge.
Chu Tung-tsu (1961) *Law and Society in Traditional China*, Paris: Mouton & Co.
Clammer J (1985) *Singapore: Ideology, Society and Culture*, Singapore: Chopmen.
Clark C (1953) *The Conditions of Economic Progress*, London: Macmillan.
Colclough C & Manor J eds (1991) *States or Markets? Neo-liberalism and the Development Policy Debate*, Oxford: Clarendon Press.
Cook P (1997) Privatisation, Public Enterprise Reform and the World Bank: Has 'Bureaucrats in Business' Got it Right? (1997) 9 *Journal of International Development* 887.
Cornish W (1993) The International Relations of Intellectual Property, (1993) *CLJ* 46.
--------- (1996, 3rd ed) *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, London: Sweet & Maxwell.
Council of Canadians website: http://www.canadians.org.
Cutajar M (1987) The International Monetary Fund in Ghai Y, Luckham R & Snyder F (1987) *Political Economy of Law*, New York: Oxford University Press.
Damaska M (1986) *The Faces of Justice: A Comparative Approach to Legal Process*, New Haven: Yale University Press.
David R (1963) A Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries, (1963) 37*Tulane Law Review* 187.
Deyo F (1989) *Beneath the Miracle: Labor Subordination in the New Asian Industrialism*, Berkeley: University of California.
--------- (1981) *Dependent Development and Industrial Order: An Asian Case Study*, New York: Praeger.
Demas W (1965) *The Economics of Development in Small Countries with Special Reference to the Caribbean*, Montreal: McGill University Press.
Department of Statistics (1983) *Economic and Social Statistics 1960-1982*, Singapore.
--------- (1990 & various years) *Data Sheets*, Singapore.
Dias C, Luckham R, Lynch D, Paul J (1981) *Lawyers in the Third World: Comparative and Developmental Perspectives*, Uppsala: Scandinavian Institute of African Studies & New York: International Center for Law in Development.
Donnelly J (1985) In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development in Carty A ed (1992) *Law and Development*, Aldershot: Dartmouth Publishing.
Douglas W (1962) Lawyers of the Peace Corps, (1962) 48 *ABAJ* 909.
Ebeerschlag R (1994) *Intellectual Property Rights, Developing Countries and the Uruguay Round Negotiations*, MA thesis, Dalhousie University, Nova Scotia.
Economic Committee Report (1986) *The Singapore Economy: New Directions*, Singapore: Ministry of Trade & Industry.
Economic Development Board (various years) *Annual Report*, Singapore.
-------- (1997) Promotion Literature about Suzhou, Singapore.
-------- (various years) *Yearbook*, Singapore.
Eichengreen B, Tobin J & Wyplosz C (1997) Two Cases for Sand in the Wheels of International Finance, (1997) 105 *Economic Journal* 162.
Elias T (1954) Form and Content of Colonial Law (1954) 3 *ICLQ* 645.
--------- (1955) Colonial Courts & the Doctrine of Judicial Precedent (1955) 18 *MLR* 356.
Ellison Chalmers W (1967) *Crucial Issues in Industrial Relations in Singapore*, Singapore: Donald Moore Press.
EPC (1991) *Government Development Assistance Programmes: A Guide for Entrepreneurs*, Singapore: Enterprise Promotion Centres Pte Ltd.

Evans G (1994) Intellectual Property as a Trade Issue, (1994) 18 *World Competition, Law and Economic Review* 37.

Fatouros A (1977) The World Bank in Ghai Y, Luckham R & Snyder F (1987) *The Political Economy of Law*, New York: Oxford University Press.

Feinerman J (1997) Internationalizing US Capital Markets in Global Context: Problems and Prospects (1997) 28 *Law & Policy in International Business* 605.

Firestone O (1971) *Economic Implications of Patents*, Ottawa: University of Ottawa Press.

Fischer F (1998) *Making Them Like Us: Peace Corps Volunteers in the 1960s*, Washington DC: Smithsonian Institution Press.

Fitzgerald R ed (1995) *The State and Economic Development: Lessons from the Far East*, London: Frank Cass & Co.

Flory M (1987) A North-South Legal Dialogue: The International Law of Development in Snyder F & Slinn P (1987) *International Law of Development: Comparative Perspectives*, Abingdon: Professional Books.

Fong Sip Chee (1969) *The PAP Story – The Pioneering Years*, Singapore: Times Periodical.

Foong Yin Koh (1975) Singapore, in Shinichi Ichimura ed (1975) *The Economic Development of East and Southeast Asia*, Honolulu: University Press of Hawaii.

Fordham M (1988) *Developing Singapore: Tax Incentives for Investment*, Singapore: Longman.

Foster-Carter A (1973) *The Sociology of Development*, New York: Oxford Univerity Press.

Fox H, ed (1992) *International Economic Law and Developing States: An Introduction*, London: British Institute of International and Comparative Law (BIICL).

Frank A ed (1981) *Crisis in the Third World*, New York: Holmes & Meiers.

Frank A (1969) *Capitalism and Underdevelopment in Latin America*, London: Monthly Review Press.

--------- (1975) *On Capitalist Underdevelopment*, Bombay: Oxford University Press.

Franck T (1972) The New Development: Can American Law and Legal Institutions Help Developing Countries? (1972) 3*Wisconsin Law Review* 767.

Fransman M (1986) *Technology and Economic Development*, Brighton: Wheatsheaf Books.

Freeman M (1968) Chinese Family Law in Singapore: The Rout of Custom in Anderson J ed (1968) *Family Law in Asia and Africa*, London: Allen & Unwin.

Friedman L (1969) Legal Culture and Social Development, 4 *Law and Society Review* 29.

--------- (1963) The Role of Law and the Function of the Lawyer in the Developing Countries (1963) 17 *Vanderbilt Law Review* 181.

Friedmann W (1962) The Changing Dimensions of International Law, (1962) 62 *Columbia Law Review* 1147.

Frischtak C (1989) *The Protection of IPRs and Industrial Technology Development in Brazil*, World Bank Industry Series, Paper 13, Washington DC: World Bank.

Fukuyama F (1997) The Illusion of Exceptionalism, (1997) 8 *Journal of Democracy* 146.

--------- (1999) Second Thoughts, (1999) 56 *The National Interest* 16.

--------- (1992) Asia's Soft-Authoritarian Alternative, (1992) 9 *New Perspectives Quarterly* 60.

Fuller L (1958) Positivism and Fidelity to Law – A Reply to Professor Hart, (1958) 71 *Harvard Law Review* 630.

--------- (1969 rev ed) *The Morality of Law*, New Haven: Yale University Press.

Galante S (1986) Chip Automation is Hitting Jobs in Asia, *AWSJ* 20 August 1986.

Galanter M (1966) The Modernisation of Law in M Weiner ed (1966) *Modernisation: The Dynamics of Growth*, New York: Basic Books.

Galbraith J K (1979) *The Nature of Mass Poverty*, Cambridge, MA: Harvard University Press

--------- (1958) *The Affluent Society*, London: Hamish Hamilton.

Gamer R (1969) Parties and Pressure Groups in Ooi Jin Bee & Chiang H D eds (1969) *Modern Singapore*, Singapore: University of Singapore.

--------- (1972) *The Politics of Urban Development in Singapore*, Ithaca, NY: Cornell University Press.

GATT (1990) *International Trade 1990/91*. 2vols. Geneva: GATT.

Ghai Y, Luckham R & Snyder F (1987) *The Political Economy of Law*, New York: Oxford University Press.
Ghai Y (1986) The Rule of Law, Legitimacy and Governance, (1986) 14 *International Journal of Sociology of Law* 179.
-------- (1991) The Role of Law in the Transition of Societies: The African Experience (1991) 35 (1-2) *Journal of African Law* 8.
Ginther K et al, eds (1995) *Sustainable Development and Good Governance*, Dordrecht: Martinus Nijhoff.
Goh Keng Swee (1972) *The Economics of Modernisation*, Singapore: Asia Pacific Press.
Gold P (1980) *The Rule of Law in the International Monetary Fund*, IMF Pamphlet No 32.
Gopal M (1983) English Law in Singapore: The Reception that Never Was, [1983] 1 *MLJ* xxv.
Gray J (1998) *False Dawn: The Delusions of Global Capitalism*, London: Granta Books.
Green L (1975) *Law and Society*, Leiden: Sijthoff.
Greenberg D (1980) Law and Development in Light of the Dependency Theory, (1980) 3 *Research in Law and Sociology* 129-159.
Greenberg M (1951) *British Trade and the Opening of China 1800-42*, Cambridge: CUP.
Haggard S & Tun-jen Cheng (1987) State Strategies and Foreign Capital in the Gang of Four in F Deyo ed (1987) *The Political Economy of the New Asian Industrialism*, Ithaca: Cornell University Press.
Haggard S (1990) *Pathways from the Periphery: The Politics of Growth in the Newly Industrializing Countries*, Ithaca: Cornell University Press.
Hamel G & Prahalad C (1989) Strategic Intent, (1989) 67 (3) *Harvard Business Review* 50.
Hanna N, Boyson S, Gunaratne S (1996) *The East Asian Miracle and Information Technology: Strategic Management of Technological Learning*, Washington DC: World Bank.
Harding A J ed (1985) *The Common Law in Singapore and Malaysia*, Singapore: Butterworths.
Harding A J (1983) Parliament and the Grundnorm in Singapore (1983) 25 *Mal LR* 351.
---------- (1996) *Law, Government and the Constitution of Malaysia*, The Hague: Kluwer.
---------- (1998) The Singapore Model of Law and Development and its Clonability, Conference Paper IIAS, Leiden University, NL.
Harris N (1986) *The End of the Third World: Newly Industrialised Countries and the Decline of an Ideology*, Harmondsworth: Penguin.
Hart HLA (1958) Positivism and the Separation of Law and Morals, (1958) 71 *Harvard Law Review* 593.
--------- (1961) *The Concept of Law*, Oxford: Clarendon Press.
Hasan P (1976) *Korea, Problems and Issues in a Rapidly Growing Economy*, Baltimore: Johns Hopkins University Press.
Hassan R (1977) *Families in Flats*, Singapore: Singapore University Press.
Hayek F (1994) *The Road to Serfdom*, Chicago: University of Chicago Press.
Hennessy P (1993) *Never Again*, London: Vintage Books.
Hepple B (1997) New Approaches to International Labour Regulation, (1997) 26(4) *Industrial Law Journal* 353.
Heyser N & Wee G (1972) *Trade Union Leaders in Singapore*, Working Paper, Department of Sociology, University of Singapore.
Hickling R (1979) Liberty and Law in Singapore, (1979) 21 *Mal LR* 1.
---------- (1978) The Influence of the Chinese Upon Legislative History in Malaysia and Singapore (1978) 20 *Mal LR* 265.
Higgott R (1983, 1989 reprint) *Political Development Theory*, New York: Routledge.
Hill M & Lian K (1995) *The Politics of Nation Building and Citizenship in Singapore*, London: Routledge.
Hirschman A (1958) *The Strategy of Economic Development*, New Haven: Yale University Press.

Hoe I (1991) *Introduction to Singapore*, Hong Kong: Odyssey Guides.
Housing and Development Board (various years) *Annual Report*, Singapore.
Huff W (1997) *The Economic Growth of Singapore: Trade and Development in the Twentieth Century*, Cambridge: Cambridge University Press.
Hughes H & You P eds (1969) *Foreign Investment and Industrialisation in Singapore*, Australian National University Press.
Hughes H (1993) An External View in Low L *et al* (1993) *Challenge and Response*, Singapore: Times Academic Press.
Huntington S (1968) *Political Order in Changing Societies*, New Haven: Yale University Press.
---------- (1986) Political Development and Political Decay in Kabashima & White eds (1986) *Political System and Change*, New York: Oxford University Press.
---------- (1991) Religion and the Third Wave, (1991) 24 *The National Interest* 29.
---------- (1996) *The Clash of Civilisations and the Remaking of World Order*, New York: Simon & Schuster.
---------- (1999) The Lonely Superpower, (1999) 78 (2) *Foreign Affairs* 35.
Hwang C (1987) A Comparative Study of Social Attitudes in Glasgow and Taipei, New York.
IIPA: International IP Alliance (1985) *US Government Trade Policy: Views of the Copyright Industries*, Washington, DC: IIPA.
ILO (1960) Social and Labour Aspects of Economic Development (1960) XLIII, 3 *Official Bulletin* 287.
Jackson J (1997, 2nd ed) *The World Trading System*, MA: MIT.
Jaszi J (1996) Goodbye to All That – A Relevant (and Perhaps Premature) Adieu to a Constitutionally-Grounded Discourse of Public Interest in Copyright Law, (1996) 29 *Vanderbilt Journal of Transnational Law* 595.
Jayasuriya K ed (1999) *Law, Capitalism and Power in Asia*, London: Routledge.
Johnson C (1982) *MITI and the Japanese Miracle: The Growth of Industrial Policy 1925-1975*, Stanford: Stanford University Press.
Jones D & Brown D (1994) Singapore and the Myth of the Liberalizing Middle Class, [1994] 7 (1) *The Pacific Review* 79.
Josey A (1968 revised ed 1971) *Lee Kuan Yew*, Singapore: Asia Pacific Press.
---------- (1976) *Industrial Relations: Labour Laws in a Developing Singapore*, Singapore: Federal Publications.
Kamenka A & Tay A (1980) Social Traditions, Legal Traditions in Kamenka A & Tay A eds (1980) *Law and Social Control*, Edward Arnold.
Kausikan B (1997) Governance That Works, (1997) 8 (2) *Journal of Democracy* 24.
--------- (1993) Asia's Different Standard, (1993) 92 *Foreign Policy* 24.
Khublall N (1991, 2nd ed) *Law of Real Property and Conveyancing*, Singapore: Longman.
--------- (1994) 2nd ed, *Compulsory Land Acquisition in Singapore and Malaysia*, Singapore: Butterworths.
Kok Ai Tee (1987) Saving, Investment and Entrepreneurship in Krause L, Kok Ai Tee, Lee Yuan (1987) *The Singapore Economy Reconsidered* Singapore: Institute of Southeast Asian Studies.
Krause L, Kok Ai Tee, Lee Yuan (1987) *The Singapore Economy Reconsidered* Singapore: Institute of Southeast Asian Studies.
Krislov J & Legget C (1985) Perceptions of Conciliation in Singapore: A Tripartite Survey, (1985) 6 *Journal of Industrial Relations* 172-190.
Krueger A (1990) Government Failures in Development (1990) 4 *Jnl Eco Pers.* 44.
Krugman P (1994) The Myth of Asia's Miracle, (1994) 73 (6) *Foreign Affairs* 61.
---------- (1995) Growing World Trade: Causes & Consequences in *Brookings Paper on Economic Activity* No 1, 1995.
---------- (1996) Cycles of Conventional Wisdom on Economic Development, (1996) 72 (1) *International Affairs* 712.
---------- (1998) Asia's Economic Pain for Real, *USA Today*, January 2 1998, 6A.

Kunz-Hallstein H (1975) Patent Protection, Transfer of Technology and Developing Countries, (1975) 6 *IIC* 427.
Kuznets S (1959) *Six Lectures on Economic Growth*, Glencoe, Ill: Free Press.
---------- (1966) *Modern Economic Growth*, New Haven, Conn: Yale University Press.
Laddie H (1999) TRIPS: A Critical View, Conference Paper, Fordham University School of Law April 8-9, 1999.
Lal D (1983) *The Poverty of Development Economics*, London: Hobart Paperback 16.
Lall A & Ming-Hua Liu (1997) Liberalisation of Financial and Capital Markets - Singapore is Almost There! (1997) 28 *Law & Policy in International Business* 619-647.
Lall S (1996) *Learning from the Asian Tigers in Technology and Industrial Policy*, London: Macmillan.
------- (1976) The Patent System and the Transfer of Technology to Less Developed Countries (1976) *Journal of World Trade Law* 1.
Lall S & Streeten P (1977) *Foreign Investment, Transnationals and Developing Countries*, Boulder: Westview Press.
Lang W ed (1995) *Sustainable Development and International Law*, London: Graham & Trotman.
Landes E & Posner R (1988) The Economics of Trademark Law, (1988) 78 *The Trademark Reporter* 267.
Lee Kuan Yew (1998) *The Singapore Story*, Singapore: Times Editions.
Lee Tsao Yuan (1987) The Government in the Labour Market in Krause L, Kok Ai Tee, Lee Yuan (1987) *The Singapore Economy Reconsidered* Singapore: Institute of Southeast Asian Studies.
Lee Teng-hui (1995) Chinese Culture and Political Renewal, (1995) 6 *Journal of Democracy* 3.
Legislative Assembly, Official Reports, Singapore, various volumes.
Leong S (1996) Salient Features of the Patents Act 1994 of Singapore, [1996] 27 *International Review of Industrial Property and Copyright Law* 26.
Lester S (1995) Asian Newly Industrialzied Countries to Graduate from Europe's GSP Tariffs, (1995) 36 *Harvard International Law Journal* 220.
Levenson J (1968) *Confucian China and Its Modern Fate*, Berkley: University of California Press.
Lewis V ed (1976) *Size, Self-Determination and International Relations*, Kingston: Caribbean Institute of Social & Economic Research.
Lewis W (1984) The State of Development Theory (1984) 74 *American Economic Review* 1.
Lim Chong-Yah (1984) *Economic Restructuring in Singapore*, Singapore: Federal Publications
Lim L & Pang E (1986) *Trade, Employment and Industrialisation in Singapore*, Geneva: International Labour Office.
Lim L (1983) Singapore's Success: The Myth of the Free Market Economy, XXXIII (6) *Asian Survey* 752.
Lim W (1970) *Why Labour Must Go Modern*, Singapore: NTUC.
Lingle C (1996) *Singapore's Authoritarian Capitalism*, Fairfax: Locke Institute.
Lipset M (1959) Some Social Requisites of Democracy: Economic Development and Political Legitimacy in Lipset M (1981) *Political Man*, MI: Johns Hopkins University Press.
Little I (1982) *Economic Development: Theory, Policy and International Relations*, New York: Basic Books.
Locke J (1690) 1988 rep. *Two Treatises of Government*, Cambridge University Press.
Low L ed (1999) *Singapore: Towards A Developed Status*, Singapore: Oxford University Press
Low L (1998) *The Political Economy of a City-State*, Oxford: Oxford University Press.
Low L, Heng T, Wong S, Yam T, Hughes H (1993) *Challenge and Response*, Singapore: Times Academic Press.
Lu M (1983) *Confucianism: Its Relevance to Modern Society*, Singapore: Federal Publications.
Lyle F (1959) *An Industrial Development Programme*, Legislative Assembly, CMD 5 of 1959.
Mahbubani K (1998) *Can Asians Think?* Singapore: Times Books.

Mahathir M (1970) *The Malay Dilemma*, Singapore: Times Books.
Manring T (1971) The 1967 EEI Act (1971) 13 *Mal LR* 1.
Mansfield E (1994) *IP Protection, Foreign Direct Investment and Technology Transfer*, International Finance Corporation Discussion Paper 19, Washington DC: World Bank.
Mallet V (1999) *The Trouble with Tigers*, London: HarperCollins.
Mason E et al (1980) *The Economic and Social Modernization of the Republic of Korea*, Cambridge: Harvard University Press.
Maslow A (1970) 2nd ed Motivation *and Personality*, New York: Harper & Row.
Matthews J (1997) Power Shift, (1997) 76 (1) *Foreign Affairs* 50.
Mcintyre A (1994) Business, Government and Development: Northeast Asian and Southeast Asian Comparisons, in Mcintyre A (1994) *Business and Government in Industrialising Asia*, Ithaca: Cornell University Press.
Merillat C (1966) Law and Developing Countries, (1966) 60 *AJIL* 71.
Merryman J (1977) Comparative Law & Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement (1977) 25 *AJCL* 457.
Miller D (1976) *Social Justice*, Oxford: Clarendon Press.
Mill J S (1864) *Principles of Political Economy*, 2 vols, New York: D Appleton.
Milne R (1966) Singapore's Exit from Malaysia: The Consequences of Ambiguity (1966) 6 *Asian Survey* 175.
Ministry of Finance (1963) *Development Plan 1961-64*, Singapore.
Ministry of Trade & Industry (1981) *Highlights of Singapore's Economic Development Plan for the Eighties*, Singapore.
Mirza H (1986) *Multinationals and the Growth of the Singapore Economy*, London & Sydney: Croom Helm.
Mohan S (1988) *The Control of Corruption in Singapore*, PhD thesis, London University.
Motha P (1989) 3rd ed. *Singapore Real Property Guide*, Singapore University Press.
Muchlinski P (1987) 'Basic Needs' Theory and 'Development Law' in Snyder F & Slinn P (1987) *International Law of Development: Comparative Perspectives*, Abingdon: Professional Books.
Murphy J (1967) *Legal Education in a Developing Nation: The Korea Experience*, New York.
Murray G & Perera A (1996) *Singapore: The Global City-state*, Folkestone: China Library.
Murugasu S (1984) *Handbook of Singapore Employment Law*, Singapore: Butterworths.
Nair D ed (1976) *Socialism That Works: The Singapore Way*, Singapore: Federal Publications.
Nair D (1973) *Organised Labour in Singapore: Past, Present and Future*, Singapore: NTUC.
Napier W (1898) *An Introduction to the Study of Law Administered in the Colony of the Straits Settlements,* Singapore: Fraser & Neave Ltd.
Nelken D ed (1997) *Comparing Legal Cultures*, Aldershot: Dartmouth .
Nijar G (1986) A Critique of the [Malaysian] Patents Act 1983: A Third World Perspective, (1986) *Malayan Law Journal* cxcvii.
Nolan P (1995) *China's Rise, Russia's Fall*, London: Macmillan Press.
Nonnet P & Selznik P (1978) *Law and Society in Transition: Towards Responsive Law*, Happer Colphan Books.
NTUC (1992) *The NTUC Family*, Singapore: NTUC.
Oakeshott M (1975) *On Human Conduct,* Oxford: Clarendon Press.
Oddi S (1987) The International Patent System and Third World Development: Myth or Reality? (1987) *Duke Law Journal* 831.
------- (1996) TRIPS, Natural Rights and a 'Polite Form of Economic Imperialism' (1996) 29 *Vanderbilt Journal of Transnational Law* 415-469.
OECD (1989) *Economic Arguments for Protecting IPRs Effectively*, Paris: OECD.
Ohnesorge J (1998) The Rule of Law as a Factor in Economic Development, Conference Paper, IIAS, Leiden University, NL.
Ooi Jin Bee & Chiang H eds (1969) *Modern Singapore*, Singapore: University of Singapore.

Otten A & Wager H (1996) Compliance with TRIPS: The Emerging World View, (1996) 29 *Vanderbilt Journal of Transnational Law* 391.

Paliwala A (1998) Privatisation, Good Governance and Globalisation, Law Research Lecture at SOAS, University of London.

Pang C L (1971) *Singapore's People's Action Party*, Singapore: Oxford University Press.

Pang Eng Fong ed (1988) *Labour Market Developments and Structural Change*, Singapore: Singapore University Press.

--------- (1988) Development Strategies and Labour Market Changes in Singapore in Pang Eng Fong ed (1988) *Labour Market Developments and Structural Change*, Singapore: Singapore University Press.

Pang Eng Fong & Lim L (1982) Foreign Labour and Economic Development in Singapore, (1982) 16 *International Migration Review* 548.

Parliamentary Debates, Official Reports, Singapore (various volumes).

Parsons T (1960) *Structure and Process in Modern Societies*, New York: Free Press.

Pascale R & Athos A (1980) *The Art of Japanese Management: Applications for American Executives*, New York: Warner Books.

Paul J C (1995) The United Nations and the Creation of an International Law of Development, (1995) 36 *Harvard International Law Journal*, 307.

Pellet A (1987) A New International Legal Order: What Legal Tools for What Changes? in Snyder F & Slinn P (1987) *International Law of Development: Comparative Perspectives*, Abingdon: Professional Books.

Penrose E (1973) International Patenting and Less Developed Countries, (1973) *Economic Journal* 768.

Phang A (1990) *The Development of Singapore Law*, Singapore: Butterworths.

--------- (1986) English Law in Singapore: Precedent, Construction and Reality or 'The Reception That Had to Be' [1986] 2 *MLJ* civ.

--------- (1994) Cementing the Foundations [1994] 28 *UBC Law Rev* 205.

Picciotto S (1998) Globalisation, Liberalisation, Regulation, *Commonwealth Law Students' Association,* Conference Paper, Cumberland Lodge, Windsor, UK.

---------- (1997) Networks in International Economic Integration: Fragmented States and the Dilemmas of Neo-Liberalism (1997) 17 (2/3) *Northwestern Journal of International Law and Business* 1014.

Pillai P N (1983) *State Enterprise in Singapore: Legal Importation & Development*, Singapore: Singapore University Press.

Pistor K & Wellons P (1999) *The Role of Law and Legal Institutions in Asian Economic Development 1960-1995*, New York: Oxford University Press.

Polanyi K (1977) The Livelihood of Man in Peason H ed (1977) *The Livelihood of Man*, New York Academic Press.

Porter M (1990) *The Competitive Advantage of Nations*, New York: The Free Press.

Porter M & Takeuchi H (1999) What Went Wrong in Japan (1999) 78 (3) *Foreign Affairs* 66.

Pound R (1942) *Social Control Through Law*, London: Faber.

--------- (1954) *An Introduction to the Philosophy of Law*, New Haven: Yale University Press.

Prahalad C & Hamel G (1990) The Core Competence of the Corporation (1990) 68 (3) *Harvard Business Review* 50.

Prebisch R (1963) *Towards a Dynamic Development Policy for Latin America*, New York: UN.

Pritchard R ed (1996) *Economic Development, Foreign Investment and the Rule of Law*, London: Kluwer Law.

Proehl P & Richardson H (1970) Crossroads for Law in Africa, 18 *UCLA Law Review* 219.

PSDC (1987) *Report of the Public Sector Divestment Committee*, Singapore: Singapore National Printers.

Puthutcheary J (1960) *Ownership and Control in the Malayan Economy*, Singapore: Eastern University Press.

Quah E & Neilson W eds (1993) *Law and Economic Development: Cases and Materials from Southeast Asia*, Singapore: Longman.
Quah J, Chan Heng Chee, Seah Chee Meow eds (1985) *Government and Politics of Singapore*, Singapore: Oxford University Press.
Quah J (1978) *Administrative and Legal Measures for Combating Bureaucratic Corruption in Singapore*, Occasional Paper No 4.
--------- (1984) Public Policy-Making Process in Singapore, (1984) *Asian J Pub Ad* 108.
--------- (1985) Public Housing in Quah J, Chan Heng Chee, Seah Chee Meow eds (1985) *Government and Politics of Singapore*, Singapore: Oxford University Press.
--------- (1988) Corruption in Asia with Special Reference to Singapore: Patterns and Consequences, (1988) *Asian Journal of Public Administration* 80.
Radelet S & Sachs J (1997) Asia's Reemergence, (1997) 76 (2) *Foreign Affairs* 44.
Raz J (1979) *Concepts of the Legal System*, Oxford: Clarendon Press.
Regnier P (1987) *Singapore: City-state in South East Asia*, London: Hurst & Co.
Reichman J (1996) Compliance with the TRIPS Agreement: Introduction to a Scholarly Debate, (1996) 29 *Vanderbilt Journal of Transnational Law* 363.
Rich R (1983) The Right to Development as an Emerging Human Right, (1983) 23 *Virginia Journal of International Law* 287.
Ricketson S (1987) *The Berne Convention for the Protection of Literary and Artistic Works 1886-1986*, London: QMW/Kluwer.
Ricquier W (1995) 2nd ed. *Land Law*, Singapore: Butterworths.
--------- (1987) Public Housing Law in Singapore, (1987) 8 *Urban Law and Policy* 313.
--------- (1985) Land Law and Common Law in Singapore in Harding A ed (1985) *The Common Law in Singapore and Malaysia*, Singapore: Butterworths.
Rigg J (1997) *Southeast Asia: the Human Landscape of Modernisation and Development*, London & New York: Routledge.
Robertson D ed (1997) *East Asian Trade After the Uruguay Round*, Cambridge University Press.
Robison R ed (1996) *Pathways to Asia*, NSW Australia: Allen & Unwin.
Rodan G (1989) *The Political Economy of Singapore's Industrialisation*, Kuala Lumpur: Forum.
Rostow W (1960) *The Stages of Economic Growth*, Cambridge: Cambridge University Press.
Rueff S (1963) *Report on the Economic Aspects of Malaysia*, Washington DC: World Bank.
Rutter M (1989) *The Applicable Law in Singapore and Malaysia: A Guide to Reception, Precedent and Sources of Law in Singapore and the Federation of Malaysia*, Singapore: Malayan Law Journal.
Sachs J, Wing Thye Woo, Parker S eds (1997) *Economies in Transition: Comparing Asia and Eastern Europe*, Cambridge, MA: MIT Press.
Sack P ed (1986) *Legal Pluralism*, Proceeding of Canberra Law Workshop VII, Research School of Social Science, Australia National University.
Sands P (1994) *Principles of International Environmental Law*, vol 1, Manchester University.
--------- (1995) International Law in the Field of Sustainable Development in Lang W ed (1995) *Sustainable Development and International Law*, London: Graham & Trotman.
Santos B (1995) *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*, London: Routledge.
Santos T (1973) The Structure of Dependence in Wilber C ed (1973) *The Political Economy of Development and Underdevelopment*: New York: Random House.
Say J (1803, 1834, 1964 reprint) *A Treatise on Political Economy*, New York: Augustus Kelley
Scalini A (1989) The Rule of Law as a Law of Rules, (1989) 56 *U. Chi. L Rev.* 1175.
Schmidt R (1994) Taxing International Short-term Capital Flows. (Paper on file with author).
Schmitter P (1974) Still a Century of Corporatism, (1974) 36 *Review of Politics*, 85.
Schumpeter J (1942) *Capitalism, Socialism and Democracy*, London: Harper & Row.
Seidman A, Seidman R, Payne J (eds) (1997) *Legislative Drafting for Market Reform*, London: Macmillan Press.

Seidman R (1966) Law and Economic Development in Independent, English-Speaking, Sub-Saharan Africa (1966) *Wisconsin Law Review* 999.

-------- (1972) Law and Development: A General Model (1972) 6*Law and Society Review* 311.

Sen A (1982) *Choice, Welfare and Measurement*, Oxford: Blackwell.

Seow F (1994) *To Catch a Tartar*, New Haven: Yale University Southeast Asian Studies.

Sesser S (1992) A Reporter at Large: A Nation of Contradictions, *The New Yorker* 13 January 1992.

Shenoy G & Toh See Kiat eds (1996) *Legal Aspects of Doing Business in Singapore*, Singapore: Addison-Wesley Publishing Company.

Sheridan L (1961) *Malaya and Singapore, the Borneo Territories*, Singapore: Longman.

Shihata I (1991) *The World Bank in a Changing Society: Selected Essays*, The Hague: Nijhoff.

---------- (1995) *The World Bank in a Changing Society: Selected Essays and Lectures*, The Hague: Kluwer.

Shirley M (1997) The Economics and Politics of Government Ownership, (1997) 9 (6) *Journal of International Development* 849.

Shiva V (1993) *Monocultures of the Mind: Perspectives on Biodiversity*, New York: Zed Book

Shorter E & Tilly C (1974) *Strikes in France: 1830-1968*, London: Cambridge University Press.

Siddiqi S Z (1967) The Registration and Deregistration of Trade Unions in Singapore, LLM Thesis, Law Faculty, University of Singapore.

Siebeck W ed (1990) *Strengthening Protection of IP Protection in Developing Countries*, World Bank Discussion Paper 112, Washington DC: World Bank.

Slinn P (1995) The Contribution of the United Nations to the Evolution of the Principles of International Development Law, *ASICL Proc* 7, 263.

-------- (1987) Differing Approaches to the Relationship between International Law and the Law of Development in Snyder F & Slinn P (1987) *International Law of Development: Comparative Perspectives*, Abingdon: Professional Books.

Snyder F (1980) Law and Development in the Light of Dependency Theory (1980) 14 *Law & Society Review* 723.

Snyder F & Slinn P (1987) *International Law of Development: Comparative Perspectives*, Abingdon: Professional Books.

Solum L (1994) Equity and the Rule of Law in Shapiro I ed (1994) *The Rule of Law*, Nomos.

Soon C H & Phang A (1985) Reception of English Commercial Law in Singapore – A Century of Uncertainty in Harding A J ed (1985) *The Common Law in Singapore and Malaysia*, Singapore: Butterworths.

Steiner G (1971) *Business and Society*, New York: Random House.

Stewart T ed (1993) *The GATT Uruguay Round. A Negotiating History 1986-1992*, vols 1-111, Boston: Kluwer.

Stiglitz J (1998) Boats, Planes and Capital Flows, *Financial Times,* March 25, 1998.

Swaminathan M ed (1996) *Agrobiodiversity and Farmer's Rights*, Delhi: Konark Publishers.

Szelenyi I (1983) *Urban Inequalities under State Socialism,* New York: Oxford University Press.

Tai C L (1988) *Housing Policy and High-Rise Living in Singapore*, Singapore: Chopmen.

Tamanaha B (1995) The Lessons of Law and Development Studies, (1995) 89 *American Journal of International Law* 470.

Tamney J (1996) *The Struggle Over Singapore's Soul*, Berlin: de Gruyter.

Tan Chwee Huat (1989) 6th ed, *Financial Markets and Institutions in Singapore*, Singapore: Singapore University Press.

Tan Kock Wah & Jomo K (1995) Economic Theory and Industrial Policy in East Asia in Fitzgerald R ed (1995) *The State and Economic Development: Lessons from the Far East*, London: Frank Cass & Co.

Tan Kong Yam (1995) Economic Development and the State: Lessons from Singapore in Fitzgerald R ed (1995) *The State and Economic Development: Lessons from the Far East*, London: Frank Cass & Co.

Tan Sook Yee (1998) *Private Ownership of Public Housing in Singapore*, Singapore: Times Academic Press.
---------- (1994) *Principles of Singapore Land Law*, Singapore: Butterworths.
Tang Sok-Chun (1973) *International Investments in Singapore*, Singapore: Malayan Law Journal.
The Tasks Ahead, publications outlining PAP manifesto in 1959.
Thynne I & Ariff M eds (1989) *Privatisation: Singapore's Experience in Perspective*, Singapore: Longman.
Toffler A (1980) *The Third Wave*, London: Collins.
Toh Mun Heng & Tan Kong Yam eds (1998) *Competitiveness of the Singapore Economy*, Singapore: Singapore University Press.
Tremewan C (1994) *The Political Economy of Social Control in Singapore*, London: Macmillan.
Trubek D (1972) Toward a Social Theory of Law: An Essay on the Study of Law and Development, (1972) 82 (1) *Yale Law Journal* 39.
--------- (1972a) Max Weber on Law and the Rise of Capitalism, (1972) 3 *Wisconsin Law Review* 720.
--------- (1985) Reconstructing Max Weber's Sociology of Law, (1985) 37 *Stanford Law Review* 919.
Trubek D & Galanter M (1974) Scholars in Self-estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States, 4 *Wisconsin Law Review* 1062.
Tu Wei-Ming (1984) *Confucian Ethics Today*, Singapore: Federal Publications.
Turnbull C (1977, 1989 rev. ed) *A History of Singapore1819-1975*, Kuala Lumpur: OUP.
Unger R (1976) *Law in Modern Society: Towards a Criticism of Social Theory*, New York: Free Press.
---------- (1998) *Democracy Realised: The Progressive Alternative*, London: Verso.
UN (1961) *A Proposed Industrialisation Programme for the State of Singapore*, unpublished.
UN (1993) *Intellectual Property Rights and Foreign Direct Investment*, New York: UN.
UNCTAD (1995) *World Investment Report 1995:Transnational Corporations and Competitiveness*, New York: UN.
--------- (1981) *The Role of Trade Marks in Developing Countries*, TD/B/C.6/AC.5/2.
--------- (1975) *The Role of the Patent System in the Transfer of Technology to Developing Country,* New York: UN.
--------- (1974) *Developing Island Countries: Report of the Panel of Experts*, New York: UN.
Upham F (1994) Speculations on Legal Informality: On Winn's 'Relational Practices and the Marginalization of Law' (1994) 28 (2) *Law & Society Review* 233.
--------- (1987) *Law and Social Change in Postwar Japan*, Cambridge: Harvard University Press.
Vasil R (1988 rev ed) *Governing Singapore*, Singapore: Eastern University Press.
--------- (1989) Trade Unions in Sandhu K & Wheatley P eds (1989) *Management of Success: The Moulding of Modern Singapore*, Singapore: Institute of Southeast Asian Studies.
Virally M (1965) Vers un Droit International du Developpment, (1965) *AFDI* 3.
Vital D (1971) *The Survival of Small States*, London: Oxford University Press.
Vogel E (1991) *The Four Little Dragons: The Spread of Industrialization in East Asia*, Cambridge: Harvard University Press.
---------- (1978) *Japan as No 1: Lessons for America*, Cambridge: Harvard University Press.
Von Mehren (1965) Law and Legal Education in India: Some Observations, 78 *Harvard Law Review* 1180.
Von Benda-Beckmann K (1989) Scapegoat and Magic Charm: Law in Development Theory and Practice, (1989) 28 *Journal of Legal Pluralism and Unofficial Law* 129.
Wade R (1990) *Governing the Market*, Princeton; New Jersey: Princeton University Press.
Wade R *et al* (1994) *Miracle or Design? Lessons from the East Asian Experience*, Washington, DC: Overseas Development Council.
Watson A (1974) *Legal Transplants*, Edinburgh: Scottish Academic Press.
Weber M (1951) *The Religion of China: Confucianism and Taoism*, trans. Glencoe IL: Free Press

---------- (1954) Max Rheinstein ed, *Max Weber on Law in Economy and Society*, Cambridge: Harvard University Press.

Wei G (1989) *The Law of Copyright in Singapore*, Singapore: National Printers.

--------- (1996) IPRs in Singapore: Developments from 1990-1995 and Future Trends in *Review of Judicial and Legal Reforms in Singapore Between 1990 and 1995*, Singapore: Butterworths.

Weiner M ed (1966) *Modernisation: The Dynamics of Growth*, New York: Basic Books.

Werksman J (1997) *Is the Multilateral Agreement on Investment Sustainable?* London: WWF International.

White D ed (1988) *Developmental States in East Asia*, London: Macmillan.

Wong A and Yeh S H K eds (1985) *Housing A Nation: 25 Years of Public Housing in Singapore*, Singapore: Housing and Development Board.

Woon W ed (1990) *The Singapore Legal System*, Singapore: Butterworths.

World Bank (1955) *The Economic Development of Malaya*, Washington DC: World Bank.

--------- (1993) *The East Asian Miracle: Economic Growth and Public Policy*, Washington DC: Oxford University Press.

--------- (1994) *Making Development Sustainable*, New York: Oxford University Press.

--------- (1994a) *Learning from the Past, Embracing the Future*, New York: OUP.

--------- (1995) *Bureaucrats in Business*, Washington DC: World Bank.

--------- (1996) *World Development Report 1996: From Plan to Market*, New York: Oxford University Press.

--------- (1997) *World Development Report 1997: The State in A Changing World,* New York: Oxford University Press.

--------- World Bank website: www.worldbank.org

Yasuda N (1998) Three Types of Law and Legal Principles: A Framework for Understanding Developmental Legal Systems in East and Southern Asian Countries, Conference Paper, IIAS, Leiden University, NL.

Yergin D and Stanislaw J (1999) *The Commanding Heights: The Battle Between Government and the Marketplace That is Remaking the Modern World*, New York: Touchstone.

Yoshihara K (1976) *Foreign Investment and Domestic Response*, Singapore: Eastern Universities Press.

Zakaria F (1994) Culture is Destiny: A Conversation with Lee Kuan Yew (1994) 73 (2) *Foreign Affairs* 109.

-------- (1997) The Rise of Illiberal Democracies (1997) 76 (2) *Foreign Affairs* 22.

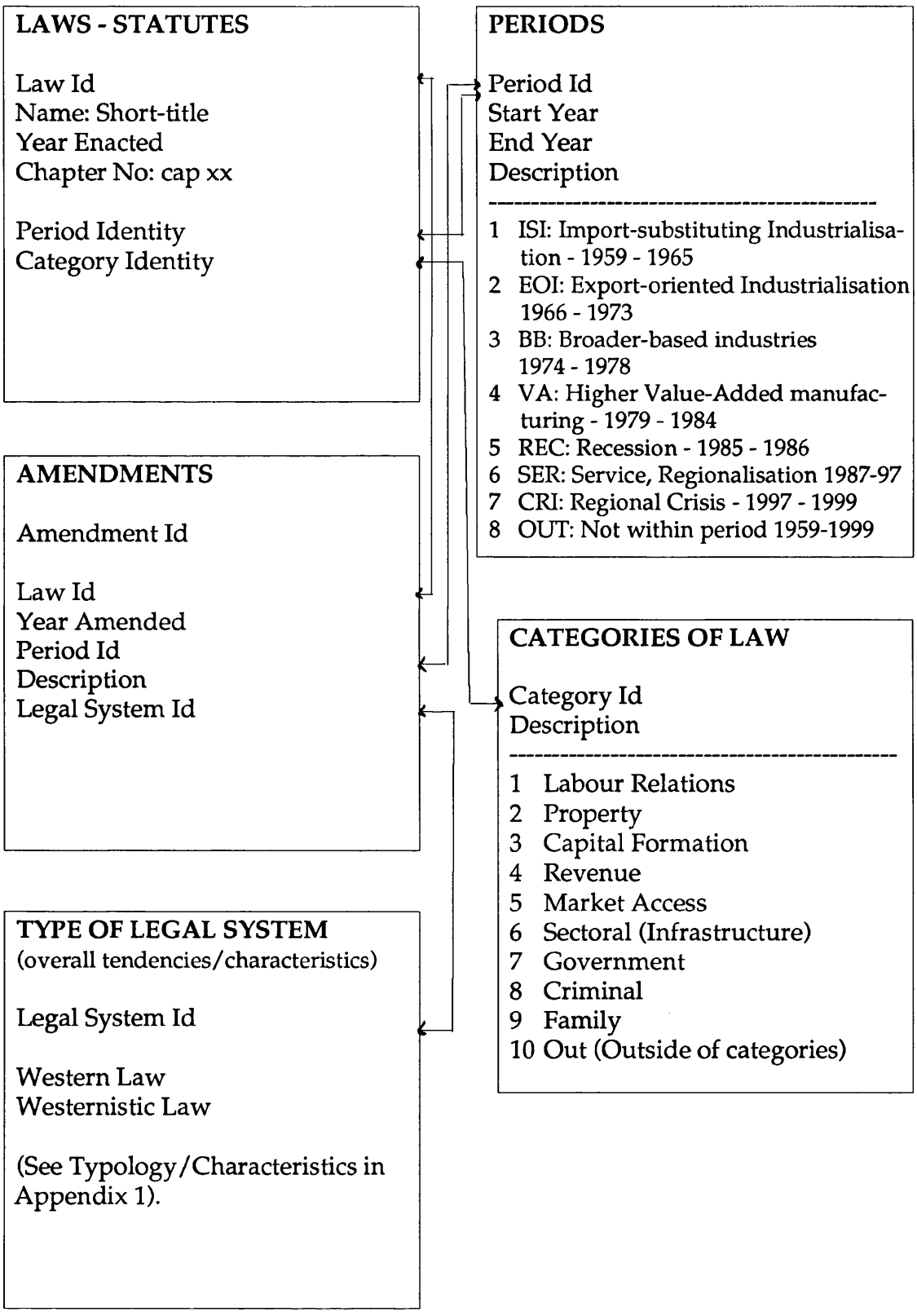
APPENDICES

Appendix 1: Two Ideal Types of Legal Systems

TYPOLOGY OF LAW	MODERN 'WESTERN' LAW	'WESTERNISTIC' LAW
Primary features	Rule-based. Rights-based. Individualistic. Regulatory.	Rule-based. Duty-based. Directive. Communitarian. Regulatory. Situational.
Functional Purpose Driving Ideology	Safeguard free market idea. Ensure contractual freedom. Commoditise relationships. Liberty, individual free-will. Calculable rationality. Atomistic.	Orchestrate development. Ensure social equality. Compel social cohesion. Redistribute nation's wealth (merit) Holistic rationality. Communitarian.
Core state model/ Values informing model	Capitalist. Democratic pluralist or corporatist. Free market ideology. Market allocative. Society as a civic association.	Capitalist. Developmental. Mixed or governed market. Authoritarian corporatist. State allocative. Society as an enterprise association.
Core values affecting settlement	Sense of justice, legality. Conflict resolving.	Solidarity, fairness. Equity. Policy implementing. Goal-focused.
Settlement agent	Courts & tribunals	Courts, tribunals & bureaucratic committees.
Enforcement	Courts; agents who may use force and penalties on behalf of state.	Courts; agents who may use force and penalties on behalf of state. Administrative sanctions.
Process for legal change	Change statutes or case law. Immediate effect, subject to dissemination & rules.	Change statutes or case law and bureaucratic practice. Immediate effect, subject to dissemination & rules.
Sources of Law	Statutes & regulations. Case-law from impartial judiciary. International treaties.	Statutes & regulations. State-authorised policy. Bureaucratic practice. State-endorsed judicial decisions. International treaties.
Aimed at	Individuals & bureaucrats.	Bureaucrats &individuals, depends on specific intent or goal.
Dissemination	Written rules & cases.	Written rules & cases. Discretionary power in public interest.
Dispute settlement	Adjudication via experts. Often adversarial.	Mediation, adjudication via experts. Bureaucratic decisions based on public interest.

Note: No country has the perfect 'ideal type' of legal system; rather a mix of 'types' is likely.
Adapted from: Trubek 1972; Yasuda 1998.

Appendix 2: Typology & Relational Links of Singapore Statutes in the Database



Appendix 3: Chronology of Events 1959 to 1999

1959 Singapore gains internal self-rule from the British. PAP wins 43 of 51 seats and takes power with 35-yr Lee Kuan Yew as PM. Lyle Report concludes that 'the unrestricted Free Port Era appears to be ended'. It recommends the creation of the Malaysian Federation, reiterating the 1955 World Bank Report. Staple port enjoys bouyant trade: Tables A2&A3&A4 Huff 1997. Singapore introduces fiscal incentives to match 'pioneer' import substitution incentives offered to companies in Malaya. Major smelting work closes as Straits Trading Company transfers to Butterworth (Penang).[1] Textiles are Singapore's single largest *manufactured* export. The first yarn-spinning mill built in 1953 exports all its 2.5 million lbs annual output. GDP is SD 1968 million.

1960 Entrepôt provides 20% of GDP which is now SD 2149.6 million. Gross national saving/GNP is -2.4%. Unemployment rate is 4.9%. Population 1.6 million. Oil refinery starts at the port[2]. Singapore is the world's largest primary rubber market: sales are about 37% of world production. Indonesian barter trade accounts for lion's share, especially in rubber and pepper markets. Manufacturing is 16.6% of GDP[3] and 10.7% of exports.[4] People's Association formed to mobilise grassroot support against communists. Feby: Housing & Development Board (HDB) replaces SIT and begins massive housing project.

1961 First Development Plan; UN Report of Winsemius mission: 'A Proposed Industrial Programme for the State of Singapore'. The Economic Development Board (EDB) replaces the 1957 Industrial Promotion Board. The EDB gets SD 100 million and wide powers 'to participate in industry and build necessary infrastructure'.[5] The Malayan stock exchange, with Singapore at the centre, takes off - slowly. 13 pro-communist PAP Assembly members leave to form Barisan Sosialis.

1962 EDB reorganises: sets up Technical Consultancy Division; splits Industrial Division into Civil Engineering & Lands, and Survey & Planning. EDB accelerates infrastructure work. By December: 1100 acres prepared in Jurong. Yes vote for Malaysian merger.

1963 Feby: Operation Coldstore. Sept: Malaysian Federation formed. All former British territories in the region (except Brunei) win independence. Rueff Report estimates that the Federation would create a SD2 billion import substitution market. Tariffs and import quotas set up to protect 'pioneer' firms. EDB receives trade missions from Tasmania, Japan, USA, Taiwan and Italy. From 1963-1973 the volume of world manufactured exports grew at an annual average rate of 11.5%.[6] By December

1800 acres of land had been prepared in Jurong. Indonesian Confrontation in protest against the Malaysian Federation.

1964 The Confrontation causes economic downturn. EDB sets up Productivity and Training Unit. 9 PAP members seek election in Malaysia; won one seat. Racial/religious riots: July & Sept.

1965 August: Singapore leaves Malaysian Federation after difficulties with federal government.
9 August: Republic of Singapore formed. EDB sets up Export Promotion Centre and Product & Design Centre.

1966 Singapore joins IMF and IBRD. Malaysia and Singapore decide to split currency - see 1967. Trade with Indonesia resumes.
EDB sets up investment promotion centre in New York. US puts quota on cotton textiles.

1967 Sterling devalues. Malayan dollar (MD), sole legal tender since 1952, remains MD60 = GB 7 until Singapore-Malaysian currency split in June. Board of Commissioners of Currency set up.
New incentives Act. ASEAN formed, Singapore key player.

1968 Singapore abolishes withholding tax on interest payable to non-residents. Development Bank of Singapore (DBS) incorporated with 49% state share. Asian Dollar Market starts[7]. Jurong Town Corporation (JTC, an EDB spin-off) set up as a statutory board to develop industrial estates. Strict labour laws enacted.

1969 School system restructured for technical & vocational training. English language in all schools. British military withdrawal.

1970 Manufacturing is a 'leading sector'. 1st foreign bank, Bank of America, approved to operate ACU. 1st merchant bank set up.

1971 Monetary Authority of Singapore (MAS) as *de facto* central bank, supervises monetary and banking regulation. Serves as an agent in transactions with IMF, World Bank and Asian Development Bank.

1972 Tripartite National Wages Council set up. Sets guidelines for wage increases in public and private sectors annually.

1973 Economic turning point: manufacturing ends surplus labour. MAS formalises offshore banking; appoves many international banks to conduct offshore business from Singapore. Singapore pulls out of joint stock exchange with Malaysia; ends currency interchangeability agreement. Sets up Stock Exchange of Singapore (SES). Port renovation.

1974 OPEC hikes oil prices. Capital assistance scheme introduced.

1975 World recession. Singapore increases tax incentives.

1976 Small Industries Finance Scheme. GSP schemes set up.

1978 Infrastructure improvement: state supervises bus services. Exchange control liberalised: no restrictions on movement of funds. Huge product development/investment allowances; Servicing & Warehousing; Consultancy services promoted.

1979 Government launches 'Second Industrial Revolution' - aims to upgrade manufacturing sector: move from labour-intensive activities to high-tech, high-skill, high-income, high-productivity activities. Ministry of Finance passes reponsibility for development policies to Ministry of Trade & Industry. EDB and JTC retain own specialised areas. Skills Development Fund (SDF) set up under EDB. NWC 3-yr wage correction. OPEC increases oil prices.

1980 German-Singapore Institute (GSI) MOU on technical/financial assistance. Capital allowances revised. SDF schemes increased.

1981 Government of Singapore Investment Corporation (GIC) set up to manage and control investment of official foreign exchange reserves, instead of MAS.

1982 Japanese-Singapore Institute of Software Technology (JSIST) and GSI start operation. Small Industry Technical Assistance Scheme initiated for key supporting industries.

1983 Trade Development Board to develop 'global trading hub' idea and increase international trade. State owns 490 companies, including subsidiaries of statutory boards. French-Singapore Institute (FSI) set up to train electro-technicians.

1984 SDF new technologies focus. Tax exempt SIMEX futures market set up.

1985 Recession: growth -1.8%. Lee Hsien Loong conducts study. SD100m venture fund provided. Continual Upgrading Program introduced.

1986 Subsidiaries of local banks become members of SES. Lee's Economic Committee Report launches: total business hub concept, SME and privatisation plans.

1987 Stock Exchange of Singapore Dealing & Automated Quotation Market (SESDAQ) allows young companies (without track record required by main board) to raise funds by public listing.

1975 World recession. Singapore increases tax incentives.

1976 Small Industries Finance Scheme. GSP schemes set up.

1978 Infrastructure improvement: state supervises bus services. Exchange control liberalised: no restrictions on movement of funds. Huge product development/investment allowances; Servicing & Warehousing; Consultancy services promoted.

1979 Government launches 'Second Industrial Revolution' - aims to upgrade manufacturing sector: move from labour-intensive activities to high-tech, high-skill, high-income, high-productivity activities. Ministry of Finance passes reponsibility for development policies to Ministry of Trade & Industry. EDB and JTC retain own specialised areas. Skills Development Fund (SDF) set up under EDB. NWC 3-yr wage correction. OPEC increases oil prices.

1980 German-Singapore Institute (GSI) MOU on technical/financial assistance. Capital allowances revised. SDF schemes increased.

1981 Government of Singapore Investment Corporation (GIC) set up to manage and control investment of official foreign exchange reserves, instead of MAS.

1982 Japanese-Singapore Institute of Software Technology (JSIST) and GSI start operation. Small Industry Technical Assistance Scheme initiated for key supporting industries.

1983 Trade Development Board to develop 'global trading hub' idea and increase international trade. State owns 490 companies, including subsidiaries of statutory boards. French-Singapore Institute (FSI) set up to train electro-technicians.

1984 SDF new technologies focus. Tax exempt SIMEX futures market set up.

1985 Recession: growth -1.8%. Lee Hsien Loong conducts study. SD100m venture fund provided. Continual Upgrading Program introduced.

1986 Subsidiaries of local banks become members of SES. Lee's Economic Committee Report launches: total business hub concept, SME and privatisation plans.

1987 Stock Exchange of Singapore Dealing & Automated Quotation Market (SESDAQ) allows young companies (without track record required by main board) to raise funds by public listing.