III

REMARKS AT MONDAY AFTERNOON SESSION

By The Honorable Sundaresh Menon
Chief Justice of the Supreme Court of Singapore

The Monday afternoon session of The American Law Institute convened in the Ritz-Carlton Ballroom, Washington, DC, on May 16, 2016. President Roberta Cooper Ramo and Director Richard L. Revesz presided.

President Ramo: Thank you very much.

Well, it is my pleasure to introduce our Director, Ricky Revesz, to introduce our incredibly distinguished speaker. Ricky?

Director Revesz: Thank you, Roberta.

I'm very honored to introduce Sundaresh Menon, the Chief Justice of the Supreme Court of Singapore. Chief Justice Menon has had an enormously distinguished career in government and in private practice.

Before his appointment as Chief Justice, he served as a judge of appeal and as attorney general of Singapore. In private practice, among other positions, he was a Jones Day partner and its head of international litigation and arbitration for Asia.

Chief Justice Menon, among many other leadership roles, is also the President of the Singapore Academy of Law. On January 21 of this year, at an important conference organized by this Academy, Chief Justice Menon announced the launch of the Asian Business Law Institute, ABLI, which will promote the convergence of Asian commercial laws.

Like the European Law Institute, the ABLI is a kindred spirit to the ALI. The ABLI's Board of Governors include leading judges from Singapore, led by Chief Justice Menon; China; India; and Australia, including ALI member Robert French, the Chief Justice of the High Court of Australia. Our former President Michael Traynor represented the ALI at that important event.

We look forward to the possibility of collaborating with the ABLI as it launches its substantive work. I had a wonderful conversation in this regard with Chief Justice Menon in New York last summer, and further discussions with his colleagues followed.

Mr. Chief Justice, thank you so much for traveling such a long distance to address the Annual Meeting of The American Law Institute on the topic of "The Rule of Law: The Path to Exceptionalism." (*Applause*)

Chief Justice Sundaresh Menon: Thank you very much.

[*Footnotes provided by the speaker have been included here for the benefit of the reader.*]

Introduction

When I was invited to address the members of The American Law Institute at this Annual Meeting, I hesitated. To be sure, it's a great honor. But, I wondered what I, the Chief Justice of a small nation as far away as it is possible to be from the United States, could offer that might be of interest to you. It is difficult for Americans to relate to the tiny scale of my country. When I studied in the United States in the early 1990s, there were many who had never heard of Singapore; and those who had, mostly had no idea where, much less how small, it is. And to convey an idea of scale, I would then say that Singapore is about a fifth of the size of Rhode Island; or half the size of the Hawaiian island of Oahu.

The United States is not only a vast country blessed with rich and diverse natural resources, she exerts economic, cultural, intellectual, and diplomatic influence on the rest of the world through her global businesses, the ground-breaking innovations and research of her scientists and inventors, the worldwide reach of her news and entertainment media, the long arm of her diplomacy, and the persuasive force of her thinkers on law, liberty, and democracy. It is not difficult to see why many insist that America is an exceptional nation.

Singapore, on the other hand, has been described rather more modestly as an improbable nation. She's often caricatured as a study in contrasts: tiny yet prosperous; safe but overregulated; western in outlook, yet steeped in notions of Confucianism; democratic, yet dominated throughout her existence by a single political party; free but communitarian; and above all pragmatic, not ideological.

But despite our many differences, I believe our nations and our societies meet on a foundational plane in our shared commitment to the rule of law. Singapore was among the last places that the late Justice Scalia visited before his untimely death. I had the great pleasure

of hearing him speak and the privilege of hosting him when he visited my court. We spoke at length about the rule of law and its critical role in enabling Singapore's success as a nation, and it was in that shared space that we connected.

But the rule of law is a seemingly elastic concept that risks being sidelined as a convenient sound bite if one looks at the diversity of those who claim to embrace it. I therefore propose to begin my substantive remarks today by adopting the working definition of the rule of law put forward by the late Tom Bingham, one of the most respected thinkers on the subject. And that definition is "that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts."[1] This, I think, encapsulates the most important facets of the rule of law, and it rightly emphasizes the instrumental role of the courts in upholding it, which is what I shall mainly focus on today. Beyond this, I will suggest that there can well be differences in our understanding of how the rule of law works as a practical matter in each society.

I will then outline the Singapore story to validate my hypothesis that our journey as a nation has been founded on a commitment to the rule of law, and also to illustrate how we have sometimes pursued a path that might take a somewhat different direction than you have done, without thereby derogating from what I consider to be a shared commitment to the rule of law. I will close with some thoughts on how and why we, as a legal community, should devote ourselves to exporting this commitment, but taking due regard of the peculiarities of the soil in which the seed is to be planted.

Rule of law: theory and practice

The rule of law is not an immutable concept. There are competing accounts as to what it entails. Simpler theories focus on the

[1] TOM BINGHAM, THE RULE OF LAW 8 (Penguin Books 2010).

dichotomy between "thick" and "thin" conceptions,[2] while more sophisticated analyses characterize it as the coalescence of a series of related but distinct values.[3]

But a theoretical analysis of the rule of law might obscure two elementary points. The first is that debates over the rule of law are often mired because of a failure to separate a particular conception of the rule of law from the philosophical and normative premises embedded within it.[4] And hence, a sharp disagreement seemingly over a particular rule-of-law theory may, in fact, be a deeper, more antagonistic narrative of an ideological difference.

The second point is that the practical outworking of core rule-of-law values in any country will depend on and take shape from the social context and national soil out of which it grows.[5] Thus, the practical manifestation of the rule of law in a society steeped in a long tradition of democracy and liberal values may be very different from that in a nation journeying out of a history of military or autocratic rule, whether by reason of war, as, for instance, in Iraq, or of "people power," as in the Philippines when President Marcos was deposed, or by the peaceful reconfiguration of the system, as recently in Myanmar.

There are two aspects of the point that I wish to draw out. The first is the obvious one that it would be naive, even unwise, to assume

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[2] See, e.g., BRIAN Z. TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY 91-94 (Cambridge U. Press 2004); Simon Chesterman, *An International Rule of Law?*, 56 AM. J. OF COMP. L. 331, 340 (2008).

[3] See, e.g., TOM BINGHAM, THE RULE OF LAW (Penguin Books 2010); Joseph Raz, *The Rule of Law and its Virtue*, 93 LAW Q. REV. 195 (1977); JOSEPH RAZ, THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY 210-229 (Oxford U. Press 1983); Cass R. Sunstein, *Problems with Rules*, 83 CALIF. L. REV. 953, 968-969 (1995); Robert S. Summers, *The Principles of the Rule of Law*, 74 NOTRE DAME L. REV. 1691, 1693-1697 (1998-1999).

[4] Brian Z. Tamanaha, *The Rule of Law for Everyone?*, St. John's Legal Studies Research Paper (SSRN) (available online at: <http://ssrn.com/abstract=312622>) at 22-24; Thio Li-ann, *Between Apology and Apogee, Autochthony: The "Rule of Law" Beyond the Rules of Law in Singapore*, SINGAPORE J. OF LEGAL STUDIES 269, 273 (2012).

[5] Jeffrey Jowell, *The Rule of Law: A Practical and Universal Concept*, in RULE OF LAW SYMPOSIUM 2014: THE IMPORTANCE OF THE RULE OF LAW IN PROMOTING DEVELOPMENT 8-9 (Professor Sir Jeffrey Jowell QC et al., eds., Academy Publishing 2015).

that fidelity to the rule of law must look and feel the same in the United States as, for instance, in Myanmar today, if only because the societies in which it operates are differently situated. My second point is that there is no reason to assume that fidelity to the rule of law must mean, staying with the same example, that Myanmar as a polity *must* one day look and feel American. This, too, would be naive because of differences in the ethos of each society and in their value systems, aspirations, cultural and religious beliefs, and what I might conveniently term, their own historical baggage.

We need not look far to appreciate both these elementary points; they are borne out, I think, by the long arc of America's rich and textured legal history.

The rule of law in American legal history

The American Revolution drew from the well of natural-law theory and the Lockean social contract in its commitment to equality and a distrust of power.[6] The Constitution, therefore, divided the government into three coordinate arms. The judiciary was the institution entrusted with upholding the rule of law, and any doubt as to the strength of the judiciary's bite[7] was dispelled in Marbury v. Madison,[8] which entrenched judicial review as a stalwart of constitutional rights and a safeguard against governmental excesses.

In the aftermath of the Civil War,[9] the courts were, on the orthodox view, propelled by the ideology of *laissez-faire* individualism into a period of activism;[10] but this was followed by a period of retreat and

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[6] Wallace Mendelson, *Separation, Politics and Judicial Activism*, 52 IND. L.J. 313, 313 (1977).

[7] See James Bradley Thayer, *The Origin and Scope of the American Doctrine of Constitutional Law*, 7 HARV. L. REV. 129 (1893-1894).

[8] William Marbury v. James Madison, Secretary of State of the United States, 5 U.S. (1 Cranch) 137 (1803).

[9] Lochner v. New York, 198 U.S. 45 (1905). See also Allgeyer v. Louisiana, 165 U.S. 578 (1897); Adair v. United States, 208 U.S. 161 (1908); Coppage v. Kansas, 236 U.S. 1 (1915); Adkins v. Children's Hospital, 261 U.S. 525 (1923).

[10] Edward S. Corwin, *The Constitution as Instrument and Symbol*, 30 AM. POL. SCI. REV. 1071, 1078 (1936); David N. Mayer, *The Jurisprudence of C. G. Tiedeman: A Study in*

restraint under the New Deal Court, as the United States strived to overcome the woes of the Great Depression.[11] And then, by the mid-20th century, the Court had emerged as the strong protector of civil rights and liberties with the far-reaching decisions of the Warren Court.[12]

I tread carefully in making these broad strokes, which might well not be universally accepted,[13] and I am acutely conscious of the perils of addressing an audience of American judges and lawyers on their constitutional history. But I hope to make a narrower point that may go down rather easier.

That the conceptions of an independent judiciary upholding the rule of law have evolved over time is unsurprising because the rule of law is inevitably enmeshed within a complex web of historical fact, philosophical outlooks, and, to some extent, in the words of Justice Holmes, the "felt necessity of the time."[14] Yet, behind these various conceptions, we see the same deep and unyielding commitment to the ideals of equality and liberty that characterized the founding of the republic;[15] the same firm recognition of the centrality of the judiciary in ensuring legality and defending rights; and the same respect for and adherence to the decisions of the courts, no matter how unpopular

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the Failure of Laissez Faire Constitutionalism, 55 MO. L. REV. 93 (1990); H.L.A. Hart, *American Jurisprudence Through English Eyes: The Nightmare and the Noble Dream*, 11 GA. L. REV. 969, 971 (1976-1977). However, there are revisionist accounts that suggest this is a misleading characterization of the actual jurisprudence of that era, see, e.g., Michael Les Benedict, *Laissez-Faire and Liberty: A Re-Evaluation of the Meaning and Origins of Laissez-Faire Constitutionalism*, 3 LAW & HIST. REV. 293 (1985); Matthew J. Lindsay, *In Search of "Laissez-Faire Constitutionalism,"* 123 HARV. L. REV. F. 55 (2010-2011).

[11] See Cass R. Sunstein, *Constitutionalism After the New Deal*, 101 HARV. L. REV. 421 (1987).

[12] Chief among them Brown v. Board of Education, 347 U.S. 483 (1954).

[13] The backbone of the narrative I have sketched above is drawn largely from KERMIT L. HALL & PETER KARSTEN, THE MAGIC MIRROR: LAW IN AMERICAN HISTORY (Oxford U. Press 2d ed. 2009), an excellent account of the subject.

[14] OLIVER WENDELL HOLMES, JR., THE COMMON LAW 1 (John Wilson & Son 1881).

[15] See Kermit L. Hall and Peter Karsten, *Epilogue: More Like a River than a Rock* in THE MAGIC MIRROR: LAW IN AMERICAN HISTORY 382 (Oxford U. Press 2d ed. 2009).

they might be. Without question, this commitment has been instrumental in America's pathway to its exceptional position.

The Singapore story

Against that backdrop, let me turn to the Singapore story. If America was born out of a pursuit of high ideals, Singapore was the progeny of an austere and existentialist necessity.

For nearly a century and a half prior to her independence in 1963, Singapore had been a colony subject to British rule. As she moved towards independence in the early 1960s, the strong sentiment was that a federation with Malaysia, our neighbors to the north, would be the only way to secure our survival.[16] Malaysia was a large, resource-rich nation. By contrast, Singapore, though already a busy trading port, had little else. We had a land area of just 580 square kilometers, or about 220 square miles, and no natural resources. We even depended on Malaysia for our drinking water. We had a population of two million people, many of whom were migrants of a diverse heritage, having only recently set foot in Singapore. I, for example, was born just a decade after my parents first came to Singapore from India.

And so on the 16th of September 1963, we came out of our colonial past as a constituent state of the Federation of Malaysia. The union was short-lived. There were deep disagreements between the local government in Singapore and the federal government over the establishment of a common market and the special position of the Malays.[17] Singapore left the Federation in 1965 after political, economic, and racial skirmishes[18] caused our relationship with the federal

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[16] C.M. TURNBULL, A HISTORY OF MODERN SINGAPORE: 1819–2005 273 (NUS Press 2009); EDWIN LEE, SINGAPORE: THE UNEXPECTED NATION 203-212 (ISEAS Publishing 2008).

[17] Lau Teik Soon, *Malaysia-Singapore Relations: Crisis of Adjustment, 1965-68*, 10(1) J. OF SOUTHEAST ASIAN HIST. 155, 159-160 (1969); R. S. Milne, *Singapore's Exit From Malaysia; The Consequences of Ambiguity*, 6(3) ASIAN SURV. 175 (1966); Robert E. Gamer, *Urgent Singapore, Patient Malaysia*, 21(1) INTERNATIONAL J. 42 (1965-1966); K. S. Nathan, *Malaysia–Singapore Relations: Retrospect and Prospect* 24(2) CONTEMP. SOUTHEAST ASIA 385 (2002).

[18] C.M. TURNBULL, A HISTORY OF MODERN SINGAPORE: 1819–2005 289-290 (NUS Press 2009); EDWIN LEE, SINGAPORE: THE UNEXPECTED NATION 250-256

government to fracture and eventually to break down. On the 9th of August 1965, Singapore became an independent nation.

I don't think many gave us much chance perhaps even to see in the new year! The idea of an independent Singapore—which had been described (by her founding Prime Minister, the late Mr. Lee Kuan Yew) as a "political, economic and geographical absurdity"—had materialized.[19] Our existence was precarious and the path forward fraught. Racial tensions were high following our communally charged exit from the Federation; we had also witnessed the worst racial riots in our history just the year before that. And the *Konfrontasi*, a brief period of sharp armed conflict stemming from Indonesia's opposition to the Federation of Malaysia, loomed large in the consciousness of the young republic. On top of that, the Communist threat persisted into our independence with traction especially among the working class and Chinese-speaking tertiary students of the day.[20] These were not the best of conditions for a young, poor nation with a racially and religiously diverse population and with no resources whatsoever.

And so the need to survive sharpened the ideals of our Founding Fathers into an intensely pragmatic vision. Mr. Lee Kuan Yew put it this way in a speech he delivered in those early years, and I quote. He said, "The acid test of any legal system is not the greatness or the grandeur of its ideal concepts, but whether in fact it is able to produce order and justice in the relationships between man and man and between man and the State."[21]

One consequence of that hard-nosed pragmatism was an emphasis on a strong rule-of-law culture in order to attract foreign investment and multinational business interests. Without natural resources,

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(ISEAS Publishing 2008).

[19] ALEX JOSEY, LEE KUAN YEW: THE CRUCIAL YEARS 159 (Marshall Cavendish 2012).

[20] LEE TING HUI, THE OPEN UNITED FRONT: THE COMMUNIST STRUGGLE IN SINGAPORE 1954–1966 28-29; 281-319 (South Seas Society 1996).

[21] Lee Kuan Yew, Singapore Prime Minister's Speech to the University of Singapore Law Society Annual Dinner at Rosee D'Or (Jan. 18, 1962).

investment and technology from abroad would be the engine to drive our economic growth, and its fuel a legal and business environment that protected contracts and property rights.

We understood from our foundational moment that an indispensable feature of that environment was a clean, efficient, and independent judiciary. Our judges were drawn from our finest private lawyers, academicians, and government counsel. Their tenure and remuneration was constitutionally protected.[22] We ceaselessly updated our court systems and processes in order to cope with the increased volume and complexity of cases that came with development.[23] Underlying all this was our zero-tolerance approach to corruption, which, just last week, Christine Lagarde of the IMF praised in a speech on the economic harm of corruption. She cited Singapore as an example to be emulated for its eradication of corruption and its establishment of honest and competent public institutions.[24]

Our commitment to the rule of law resting on a strong judiciary has been pivotal in the development narrative of our country and its emergence as a modern economic miracle. Our Law Minister has observed[25] that the confidence in our legal system helped us to attract and sustain the high level of foreign direct investment relative to our size that we continue to receive today, about $740 billion U.S. at last count.[26]

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[22] CONSTITUTION OF THE REPUBLIC OF SINGAPORE, art. 98.

[23] Singapore was ranked first out of 140 countries in terms of the "[e]fficiency of [its] legal framework in settling disputes" by the World Economic Forum (*The Global Competitiveness Report 2015–16*, at 321 (Professor Klaus Schwab ed.). Singapore was also ranked amongst the top countries worldwide in respect of its fidelity to the rule of law by the World Bank (*Worldwide Governance Indicators: Country Data Report for Singapore, 1996–2014*) and the World Justice Project (*Rule of Law Index 2015*, at 23 (available online at: <http://worldjusticeproject.org/rule-of-law-index>)).

[24] "IMF chief cites Lee Kuan Yew's 'zero-tolerance' stance towards corruption as example for rest of world," *TODAY*, May 12, 2016 (available online at: <http://www.todayonline.com/world/imf-chief-cites-lee-kuan-yews-zero-tolerance-policy-towards-corruption-example-rest-world>).

[25] K. Shanmugam, *The Rule of Law in Singapore*, SINGAPORE J. OF LEGAL STUD. 357, 358 (2012).

[26] Department of Statistics Singapore, *Latest Data* (available online at:

From our improbable beginnings, we stand today as one of the most prosperous nations in the world. Our GDP per capita has grown from approximately $400 U.S. at the time of our independence in 1965 to about $55,000 today.[27] And home ownership rates have risen from 29 percent, in 1970,[28] to nearly 91 percent today.[29] Life expectancy and literacy rates are also very high.[30]

Communitarian perspectives

But our fidelity to the rule of law has coexisted comfortably with a prominent feature of our social substratum, which is an emphasis on communitarian over individualist values.[31] These include notions such as dialogue, tolerance, compromise, and placing the community above self. These values have modulated the court's approach in ensuring that the rule of law rules.

Chief Justice Chan Sek Keong, who held the office before me, spoke extrajudicially of the contrast between a society where the court is in an adversarial relationship with the executive, and one in which the court plays a supporting role to good governance by articulating clear rules and principles by which the government should abide, and serving as the last line of defense if and when those principles are breached. On the latter view, good government can be encouraged through a variety of means, only one of which is the adversarial process of pitting the government across the bar table before a judge.

<http://www.singstat.gov.sg/statistics/latest-data#15>).

[27] Department of Statistics Singapore, *Latest Data* (available online at: <http://www.singstat.gov.sg/statistics/latest-data#1>).

[28] Sock Yong Phang, *The Singapore Model of Housing and the Welfare State*, in HOUSING AND THE NEW WELFARE STATE: PERSPECTIVES FROM EAST ASIA AND EUROPE 21 (Richard Grove et al. eds., Ashgate 2007).

[29] Department of Statistics Singapore, *Latest Data* (available online at: <http://www.singstat.gov.sg/statistics/latest-data#22>).

[30] They stand at 82.8 years (Department of Statistics Singapore, *Latest Data* (available online at: <http://www.singstat.gov.sg/statistics/latest-data#22>)) and 96.8 percent (Department of Statistics Singapore, *Latest Data* (available online at: <http://www.singstat.gov.sg/statistics/latest-data#22>)) respectively.

[31] See, for example, *The Shared Values White Paper* (Cmd. 1 of 1991).

Aspects of the latter approach can be seen in the *Starkstrom* case, a recent decision of our apex court, the Court of Appeal. It concerned judicial review of executive action on the grounds of the doctrine of *substantive* legitimate expectation, which is engaged when the government or an administrative agency acts contrary to a promise or expectation that it has created or encouraged. This is a developing body of law with diverse approaches in the British Commonwealth. England[32] and Hong Kong[33] have recognized it as a ground for review, while Australia[34] and Canada[35] have not. The controversy centers on the fact that this type of judicial review goes beyond the process and legality of executive actions. Judicial enforcement of an individual's legitimate expectation could amount to overruling on the merits the policy choice of the executive to reverse its earlier stance, which had given rise to the expectation.

We did not need, in the end, to have to decide whether to recognize this type of review under Singapore law because it was a complete nonstarter on the facts. But I do want to mention one aspect of our judgment. We observed that there exists a multitude of gradations between, on the one hand, judicially enforcing a substantive legitimate expectation and, on the other hand, permitting an administrative authority to ignore it altogether. Intermediate points include requiring the authority to confirm that it has considered the relevant expectation or requiring the decisionmaker to disclose its reasons for concluding that the expectation could be overridden and then subjecting those reasons to the traditional grounds of judicial review.

The reason I mention the judgment is because it is instructive for the guidance it gives to the government and the public as to the sorts of issues that will need to be considered, and the variety of possible solutions which can be evaluated when a proper case arises. What

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[32] R v. North and East Devon Health Authority, *ex parte* Coughlan [2001] QB 213.

[33] Tung v. Director of Immigration [2002] HKLRD 561.

[34] Attorney-General (NSW) v. Quin (1990) 170 CLR 1.

[35] Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services) [2001] 2 S.C.R. 281.

underlies this approach is the belief that a court which is respected by the other branches of the government can effectively shape the debate and ensure the legality of government actions by setting out its concerns openly and potentially obviating a binary clash between the judiciary and the executive.

The sharp edge

Having said that, confrontation may be inevitable and then, the judiciary must stand firm as the last line of defense. Judicial review is the sharp edge that keeps government action within the form and the substance of the law. Although there is no express power of judicial review in our Constitution, our courts, like yours, have held that judicial review flows naturally from the premise that "[i]t is emphatically the province and duty of the judicial department to say what the law is."[36] Our first Chief Justice postindependence, Wee Chong Jin, wrote in Chng Suan Tze v. Minister for Home Affairs[37] that "the notion of a subjective or unfettered discretion is contrary to the rule of law. All power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power."[38]

The Court of Appeal was recently required to apply this in the *Dan Tan* case.[39] Dan Tan had been detained by the executive order of the Minister for Home Affairs under legislation which exceptionally permits such detention, if the Minister is satisfied that the detainee had been associated with activities of a criminal nature, and that the detention was "in the interests of public safety, peace and good order."

Mr. Tan's detention was ordered on the grounds that he had been the leader and financier of a global soccer-match-fixing syndicate,

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[36] William Marbury v. James Madison, Secretary of State of the United States, 5 U.S. (1 Cranch) 137, 177 (1803). See the excerpt in KEVIN YL TAN & THIO LI-ANN, CONSTITUTIONAL LAW IN MALAYSIA & SINGAPORE 543 (LexisNexis 3d ed. 2010).

[37] Chng Suan Tze v. Minister for Home Affairs and others and other appeals [1988] 2 SLR(R) 525 ("*Chng Suan Tze*").

[38] *Chng Suan Tze* at [86].

[39] Tan Seet Eng v. Attorney-General [2016] 1 SLR 779 ("*Tan Seet Eng*").

labeled "the world's most notorious" by Interpol,[40] which allegedly operated in Europe and Africa from Singapore.[41] He moved for habeas corpus, claiming that his detention was illegal.

We found for Mr. Tan and set aside the Minister's order. We undertook a detailed review of the history and purpose of the relevant legislation and concluded that it only permitted detention where the detainee's acts were harmful *in Singapore*.[42] The grounds for Mr. Tan's detention given by the Minister had not established whether or how his activities, which were executed abroad, had a bearing on public safety, peace, and good order *within* Singapore.[43]

Mr. Tan was accordingly released, but he was rearrested and detained a week or so later. The Ministry said in a statement that while it accepted the court's decision, it considered that there were sufficient grounds for Mr. Tan's detention, and so a fresh order was issued, this time setting out in detail the grounds relied on to establish the existence of the relevant threat *in Singapore*.[44] A few weeks later, the Ministry released three *other* detainees. It said on that occasion that in light of the Court of Appeal's decision, the Minister had reviewed the detention orders of these persons and concluded that the orders ought to be revoked.[45]

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[40] *Alleged global match-fixing kingpin Dan Tan freed by Court of Appeal*, THE STRAITS TIMES (Singapore), Nov. 25, 2015 (available online at: <http://www.straitstimes.com/singapore/courts-crime/alleged-global-match-fixing-kingpin-dan-tan-freed-by-court-of-appeal>).

[41] *Tan Seet Eng* at [8] and [131].

[42] *Tan Seet Eng* at [117]-[120].

[43] *Tan Seet Eng* at [146].

[44] Press Release, Ministry of Home Affairs, MHA Statement on Detention of Dan Tan Seet Eng (Dec. 5, 2015) (available online at: <https://www.mha.gov.sg/Newsroom/press-releases/Pages/MHA-Statement-on-Detention-of-Dan-Tan-Seet-Eng.aspx>).

[45] Press Release, Ministry of Home Affairs, MHA Statement on Three Members of Match-fixing Syndicate Released from Detention and Placed on Police Supervision Orders (Jan. 18, 2016) (available online at: <https://www.mha.gov.sg/Newsroom/press-releases/Pages/MHA-Statement-on-Three-Members-of-Match-fixing-Syndicate-Released-from-Detention-and-Placed-on-Police-Supervision-Orders.aspx>).

The point I wish to emphasize from this example is that the commitment of the executive to comply with and abide by the law as pronounced by the judiciary is critical to the rule of law and good governance. The release of the three other detainees apparently did not rest on any application that had been made, but on the Minister's review of the position in the light of our decision. In the final analysis, the robustness of a nation's rule-of-law framework depends greatly on how the other branches view the judiciary and whether the judiciary, in turn, is able and willing to act honestly, competently, and independently.

Looking ahead

Allow me to take just a couple of minutes to tie these threads together with some thoughts on looking ahead. If, by my brief remarks, I have persuaded you that we do share a commitment to the rule of law, even if we might differ somewhat in its practical application, then I think we ought to ask ourselves how this common ground amidst our diversity might inform our vision for the future. In the aftermath of the Second World War, there was a sense that the peoples of the world had to unite in order to assure peace, justice, development, and the alleviation of poverty. But as we survey the world around us, we seem to be further away from this than ever. I believe that the biggest contribution we can make towards these ideals is to enhance the appreciation for the transformational power of a genuine commitment to the rule of law. Indeed, there hasn't been a better time for this than the present age of globalization, when we are connected and susceptible to external influences to an unprecedented extent, and when we also have the opportunity to reach others by the power of our ideas and the force of our dreams as never before.

But we must be sensitive to the fact that just as the understanding and actualization of the rule-of-law values in our societies have been shaped by the strong pull of our own culture and history, so too in other nations will landmarks in their progression affect how they seize upon the rule of law and employ it in the ordering of their societies.

South Africa offers a wonderful example. The transition from the horrors of apartheid occurred not through the prosecution of the transgressors for their violations of human rights. Instead, growing out of that nation's unique situation, a Truth and Reconciliation Commission was constituted on the foundations of truth-seeking, forgiveness, and reconciliation. Victims had to relinquish their interest in retribution and their claims under the civil law because of amnesties granted to perpetrators who came forth in proceedings before the Commission.

The constitutionality of this regime was challenged in the *AZAPO* case,[46] where the petitioners argued that it violated their right to have disputes settled in a fair trial. A unanimous Constitutional Court rejected this challenge. A striking passage from Deputy President Mahomed's opinion referenced the unique struggle South Africa was confronted with, and he observed that how a broken nation achieves reconciliation and reconstruction so that people can live and work together is:[47]

> [A] *difficult exercise which . . . such a state has to perform by having regard to its own peculiar history, its complexities, even its contradictions and its institutional traditions.* [emphasis added]

The descent of any society into lawlessness and dysfunction follows a universal pathway signposted by the common evils of greed, fear, selfishness, and the pursuit of power. But the ascent from chaos into a well-ordered and functioning society through the instrumentality of the law takes shape in myriad forms. If we are to encourage the embrace of the rule of law amidst these many contexts, it will not be by cloning and exporting our own ideas of what we regard to be the acceptable ordering of our societies. Instead, it will be by identifying the particular impetus for it in any given society and then zeroing in on

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[46] The Azanian Peoples Organization (AZAPO) and others v. The President of the Republic of South Africa and others CCT 17/96 ("the *AZAPO* case").

[47] The *AZAPO* case at [31].

the real core of the rule of law, unadulterated by the baggage of our own interpretations and ideologies.[48]

I want to suggest three practical ways where we might do this, and where we in Singapore have started our forays. First, the pressing need to combat corruption. Corruption violates the constitutive principles of any legal system, and it's completely inimical to investment and economic development.[49] We, who have the good fortune of living and working within legal systems where the thought of judicial corruption is inconceivable, must do all we can to advance the fight against corruption in nations that continue to labor under its yoke. The Judicial Integrity Initiative, which was launched last year by the IBA and spearheaded by its President, David Rivkin, a member of the Institute, is a wonderful example of such an effort. It was born of the recognition that we, as lawyers, judges, and the academy, are specially placed to combat corruption from the ground up. Singapore is an active participant in the initiative; we hosted its Asia launch and a number of us, including me personally, are contributing our expertise and perspectives to the IBA's work.

The second is to aid development of independent and clean judiciaries that apply the law honestly and transparently. Judges must be plugged in to standards of independence and neutrality present in well-ordered courts and judiciaries. They must possess the right technical skills. To this end, it is critical for us to provide training and aid to the judiciaries of emerging countries to facilitate the transmission of these ideas and skills. The Singapore Judicial College was set up in November 2014 with an international wing to focus on just that. Last year, the college conducted judicial-training programs that covered case

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[48] See Randall Peerenboom, *Varieties of Rule of Law: an Introduction and Provisional Conclusion*, in ASIAN DISCOURSES OF RULE OF LAW: THEORIES AND IMPLEMENTATION OF RULE OF LAW IN TWELVE ASIAN COUNTRIES, FRANCE AND THE U.S. 34-38 (Randall Peerenboom ed., Routledge 2004); BRIAN Z. TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY 137-141 (Cambridge U. Press 2004).

[49] See Pak Hung Mo, *Corruption and Economic Growth*, 29 J. OF COMP. ECON. 66, 76 (2001); OECD G20 Anti-Corruption Working Group, *Issues Paper on Corruption and Economic Growth*; Christine Lagarde, *Addressing corruption – openly* in AGAINST CORRUPTION: A COLLECTION OF ESSAYS (UK Prime Minister's Office, Policy paper, 2016).

management, judicial ethics, bench skills, and courts and technology, for more than 250 international participants from over 40 countries. Not only did we bring judges and judicial administrators into Singapore, our staff went to the Solomon Islands, Cambodia, Myanmar, Laos, and Vietnam, to conduct training and workshops on the art and the business of judging.

The third area is to encourage a rule-of-law environment where rights are duly enforced and upheld. This will promote investment, which, in turn, will spur development and alleviate poverty if the system as a whole is honest and incorrupt. An essential part of that environment is found in two connected faces of the certainty of law: certainty in enforcement and certainty in articulation.

Certainty in enforcement gives confidence to investors that their commercial rights will be fairly and effectively adjudicated upon and enforced. The preferred means for this, thus far, has been international arbitration, largely because national court systems were thought to be ill-equipped for the cross-border intricacies that arise out of international investment and trade. In January last year, we launched the Singapore International Commercial Court, which is designed to provide international businesses operating in Asia with high-quality adjudication for transnational disputes. The Court, which is an integral part of our domestic judiciary, is uniquely staffed by eminent commercial jurists from Singapore, the UK, Australia, France, Japan, Hong Kong, Austria, and the United States, cutting across both East and West and across common and civil law. This and other features place the Court well to address transnational disputes regardless of the governing law, the nationality of the parties, or the locus of the dispute.

And finally, as for certainty in the articulation of laws, fragmented and inaccessible laws increase transaction costs, carry unnecessary risk, and dissuade investors. And so earlier this year, as Ricky just mentioned, we launched the Asian Business Law Institute with the aim of carrying out focused, yet practice-oriented research to promote the convergence and cross-pollination of business laws across Asia. Its

genesis, I want to say, was inspired by the tremendous work of this Institute, and Ricky and his colleagues warmly welcomed my staff on a study visit for which I'm deeply grateful. And I very much hope in the years to come, we can strengthen the bond between our institutes.

Conclusion

Tom Bingham observed that the rule of law is "one of the greatest unifying factors, perhaps the greatest" of all mankind.[50] This speech has been for me an actualization of that: despite the vast differences in our legal systems and the variations in the length, the color, and the character of our history and culture, it is that same commitment to the rule of law that brings us here today; and this should be a heartening thought for all of us who have made it nothing less than our life's work. Thank you very much. (*Applause*)

Director Revesz: Sundaresh, thank you so much for gracing our Annual Meeting with your wonderful remarks, and I look forward to many years of work together. Thank you so much.

Chief Justice Menon: Thank you. (*Applause*)

[50] TOM BINGHAM, THE RULE OF LAW 170 (Penguin Books 2010).