

National University of Singapore
Faculty of Law (2005-2006)

PUBLIC LAW

THE CONSTITUTIONAL FRAMEWORK OF POWERS: THE LEGISLATURE, EXECUTIVE (4 lectures)

I. THE LEGISLATURE : Part VI, Singapore Constitution

1. **Origins: The Colonial Legislative Assembly and the British 'dual mandate': tutelage unto self-government** – after WW2 and the anti-colonial right to self-determination; establishing a legislative council ('legco') and moving from Governor's nominees to elections; declining role of functional representation.
 - *Rendel Constitutional Commission* (1954), paras. 27, 31-32, 37, 39
2. **Role of Parliament**
 - a. Symbol of Majority Rule / Popular Sovereignty
 - b. Representative Democracy & Theory of Representation
 - c. Influence Public Policy – deliberative function and public education
 - d. Government Formation
 - e. Control of Government: scrutiny of public expenditure, question time - but 'whip'?
3. **Right to Political Participation: art 25, ICCPR**: to take part in conduct of public affairs and to vote and be elected ¹
4. **The Structure of Legislatures**: Unicameralism and Bicameralism
5. **Vesting Clause & Separation of Powers: Art 38, Singapore Constitution**: "*The legislative power of Singapore shall be vested in the Legislature which shall consist of the President and Parliament.*"
 - Limits on legislative authority
 - Legislative competence to pass extra-territorial laws? *Taw Cheng Kong v PP* [1998] 1 SLR 943; [1998] 2 SLR 410
- 5.1. The Legislative Process: arts 58-59, Singapore Constitution
 - Note: 'decline of the legislature'
 - Special Provisions relating to supply bills: art 148A, SC
- 5.2. Westminster model: The Fusion of Powers, the Party System and 'Shadow Cabinet'
 - Select Committee (parliamentary committee)
 - Government Parliamentary Committees (PAP organ)²

¹ Human Rights Committee, General Comment on art 25, Covenant on Civil & Political Rights:
<http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb?Opendocument>

² List of GPCs and Members: http://www.pap.org.sg/comm_who.shtml

- 5.3. The 'parliamentary gap' caused by absence of a parliamentary opposition (organised dissent) *i.e.* predicate of bipartisanship (multi-party)
- Continuous accountability
 - Holds out potential alternative government
 - Co-operates with government in actual business of government
 - Manifests principle of free speech and organised dissent
6. Prorogation and Dissolution: arts 65, 66,
7. Qualifications and Disqualifications for Membership: arts 44, 45,
- Parliamentary Elections Act (Cap 218)
 - *JB Jeyaretnam*³ v *Law Society of Singapore* [1989] 1 MLJ 137 (Privy Council)
 - *JB Jeyaretnam v Attorney-General* [1990] 3 MLJ 211, Tan & Thio, 251
 - Anti-hopping provisions: art 46 (2)(b) – rationale?
8. Parliamentary Privileges and Immunities: Parliament (Privileges, Immunities and Powers Act) Cap 217 esp. sections 3, 5, 6, 31
- *Times Publishing v Sivas* [1988] 3 MLJ 1: scope of 'proceedings in Parliament'
 - *PP v Mark Koding* [1982] 2 MLJ 120 is 'seditious' speech protected?
 - *JB Jeyaretnam v AG of Singapore* [1988] 3 MLJ 465 – can the High Court review 'contempt of Parliament'
 - Un-parliamentary language⁴: rule 48(4), Standing Orders: "It shall be out of order to use offensive and insulting language" on fellow MPs.

Post-Colonial Development of Singapore Legislature

9. The Presidential Council for Minority Rights

- a. Composition and Nature of PCMR
- b. Functions: Part VII, esp. arts 68-69, 76-78
- c. Adverse report on "differentiating measures": art 68
 - Thio Su Mien, 'The Presidential Council' [1969] 1 MLJ xl; [1969] 1 SLR 2
 - David Marshall, 'The Presidential Council' [1969] 1 Sing LR 9

³ Michael D. Barr, *JB Jeyaretnam: Three Decades as Lee Kuan Yew's Bete Noir* (2003) 33(3) *Journal of Contemporary Asia* 1 at 299-317 (available on Further Reading or LINC electronic resources).

⁴ 'NMP chided for bad language in House', *Straits Times*, 11 March 2005; 'Ling says sorry to House for using unparliamentary language' *Straits Times* 6 Dec 1995 at 3 and the spin-off from talking fowl: http://www.asianjoke.com/Singapore/why_did_the_chicken_cross_the_road.htm;

10. Unelected Parliamentarians and political 'pluralism'?

10.1. Three Classes of Parliamentarians

- a. Elected Members of Parliament (MPs): art 39(1)(a)
- b. Unelected Members of Parliament: NB: limited voting rights: art 39(2) – creation of a quasi 'parliamentary opposition'
 - i. **Non-Constituency MP:** art 39(1)(b) "to ensure the representation in Parliament of a minimum number of Members from a political party or parties not forming the Government; to ensure minimum opposition representation"; section 52, PEA provides for three, minimum 15% total votes polled: s52(3A), PEA
 - ii. **Nominated MP:** art 39(1)(c); Qualification and Selection: Fourth Schedule
 - Issues of democratic (il)legitimacy
 - Evolving a 'consultative' form of parliamentary democracy and institutionalising political pluralism?
 - Interest groups and under-represented voices? Functional constituencies?

	Non-constituency MP	Nominated MP
Purpose	To ensure an opposition element in Parliament in perpetuity	To co-opt alternative, non-partisan views
Powers, privileges, immunities	(a) Same privileges and immunities as per elected MPs (b) Limited voting powers (c) Not town councillors	As per NCMPs
Method of entry into Parliament	Second past the post (a) Top three losers of political parties not forming the government are offered seats (b) Minimally, 15% of the total number of votes must be polled by candidates	Appointed by president (a) Public submits the names of prospective nominees (b) Considered by Special Parliamentary Select Committee (c) Application of Fourth Schedule criteria

Source: Thio Li-ann, "Choosing Representatives: Singapore Does it Her Way," in Graham Hassall & Cheryl Saunders, 1997, *The People's Representatives -- Electoral Systems in the Asia-Pacific Region*, Australia: Allen & Unwin. p. 40

11. The Electoral System: art 66, Parliamentary Elections Act (PEA) (Cap 218)

- Political Parties in Singapore: http://www.singapore-elections.com/political_parties.html
- Deposit: s28 PEA (Cap 218)
- Undue Influence? *AG's Opinion: Presence of Unauthorised Persons inside Polling Stations, Appendix, Cols, 1417-1424* (presence of PM, 2 DPM in Cheng San Constituency on polling day in Jan 1997) – 67 SPR 30 July 1997 col. 1345
- Regulations – Political Donations Act (Cap 246); s33, s2 Films Act (Cap 107) and “party political films”, s78A PEA and “internet election advertising”

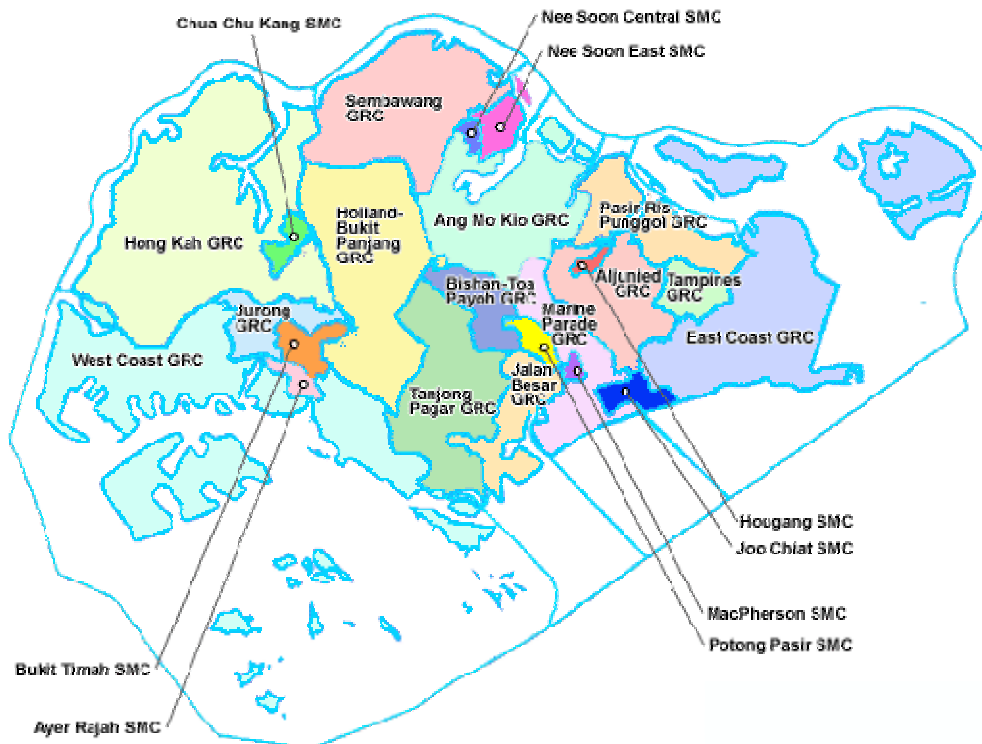
12. Types of Constituency

12.1. **Single Member Constituencies:** Section 8A(1A), Parliamentary Elections Act (Cap 217): “There shall at all times be at least 8 electoral divisions which are not group representation constituencies.”

12.2. **Group Representation Constituency:** art 39A, Singapore Constitution,

12..1. DPM Goh Chok Tong, 50 SPR, 12 Jan 1988 at col. 293: “If so, I feel that if an Opposition party thinks that they do not have enough candidates to contest in a Group Representation Constituency, they can stand in single-member constituencies, as **the GRCs will not be more than half of the total constituencies**. Therefore, nobody will be deprived of a fair chance... So the argument that the Bill would be of disadvantage to the Opposition parties does not hold water”; and at col 338: “I know that the public thinks that this scheme is to fix the Opposition so that the PAP can win all seats in the next election. I can disabuse them of this very easily. There are still going to be **at least 40 single-member constituencies** at the next elections. So there will be plenty of seats, even for those parties that cannot merge to field a GRC team to stand for election at the next general elections.”

- List of Former SMCs: 1991 SMC = 21
<http://ourstory.asia1.com.sg/dream/politics/ref/grc3.html>



13. The Group Representation Constituency: Rationale, Evolution, Impact

Year	Size (max)	Reason
1988	3	Town Council + Multi-Racialism
1991	4	Size of Town Councils and economies of scale
1997	6	Community Development Councils (CDC) & Mayors: 9 SMCs, 15 GRCs ⁵ <ul style="list-style-type: none"> August 1997 plan: 9 CDCs: smallest 2 CDCs to cover Hougang and Potong Pasir opposition wards Defeated PAP Candidates (1997) = chairmen of 2 opposition ward CDCs: Andy Gan (Potong Pasir) & Heng Chee How (Hougang)
2001	6	

- Rationale: to entrench a multi-racial element in Parliament
- Proposals: "twinning" concept; proportional representation
- 'Team' MPs – increase in size from 3 to 4 to maximum of 6 (by-election?)
- Subsequent Rationale for GRC Enlargement:
 - ⇒ population increase & town council management; Town Councils Act (Cap 329A)
 - ⇒ synergy with Community Development Councils (non-constitutional rationales)
 - Community Development Rules (917) [Peoples Association Act (Cap 227A)]
- Alternation to 'one man one vote' system? Inequality of voting power?

⁵ <http://ourstory.asia1.com.sg/dream/politics/ref/grc2.html>

- GRCs – election strategy? [See especially Kevin Tan, 'The Constitutional Implications of the 1991 General Elections' (1991) 13 SLR 26]
- Critique: political stability at expense of authentic political pluralism?

14. Need for Electoral Reform? ⁶

- a. Length of campaigning and Electoral Boundaries Review Committee report delineating boundaries of constituencies

Date of Electoral Boundaries Review Committee Report	Date of Elections	Lead Time
28 June 1984	22 Dec 1984	6 months
14 June 1988	3 Sept 1988	< 3 months
8 August 1991	31 Aug 1991	< 4 weeks
6 Nov 1996	2 January 1997	< 2 months
17 Oct 2001? ⁷	3 Nov 2001	< 1 month

- b. Secrecy of ballots?
- c. Independent elections agency? Problem of gerrymandering? (Cheng San, Anson, Eunus, Bukit Gombak)⁸
- d. Entrenching the vote?
- e. Under-representation e.g. women? [See CEDAW Recommendation No, 23 (1997), Women in Political and Public Life, 16th Sess.]⁹
 - **Art 7, CEDAW:**¹⁰ States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:
 - (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
 - (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
 - Singapore CEDAW Third Report: para 7.1. to 7.4 (Women in Political and Public Life): http://www.bayefsky.com/reports/singapore_cedaw_c_sgp_3_2004.pdf



⁶ Information on Singapore Elections: <http://www.singapore-elections.com/>

⁷ Date of white paper

⁸ Steve Chia Statement, 2 March 2005, Budget Debate: Prime Minister's office -- Independent Elections Office: http://www.nsp.sg/speech_transcript.php?more=27

⁹ <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom23>

¹⁰ Singapore's CEDAW Initial, Second and Third Reports available at <http://www.mycs.com.sg> or <http://www.bayefsky.com/docs.php/area/reports/state/155/node/3/treaty/cedaw/opt/0>

II. THE GOVERNMENT: PART V, SINGAPORE CONSTITUTION

1. Models – Parliamentary vs. Presidential Systems
2. Singapore: Threefold Division of the Executive
 - a. President (head of state)
 - b. Administrative Branch / Bureaucracy
 - c. Parliamentary Executive / Prime Minister (head of government)

THE PRESIDENT: Part V, Ch 1, Singapore Constitution

3. The President of Singapore – Ceremonial Head of State with residual discretionary powers: arts 17, 20: election for six year term
 - 3.1. Scope of Presidential Discretion: in peace and during emergencies
 - a. **The Norm:** Art 21: *Except as provided by this Constitution, the President shall act in accordance with the advice of the Cabinet ...*
 - b. Discretionary Powers in peace: art 25, 26
 - c. Emergency
 - *Stephen Kalong Ningkan No 2* [1967] 1 MLJ 46
 - *Teh Cheng Poh v PP* [1979] 1 MLJ 50
 - *Lee Mau Seng v MHA* [1971] 2 MLJ 137
 - d. Privileges, Immunities, prerogative powers (prerogative of mercy): arts 22K 22P
 - *Superintendent of Pudu Prison v Sim Kie Chon* (1986) 1 MLJ 494
 - Michael McCrea extradition (2003)
4. The Elected Presidency
 - 4.1. Rationale
 - *First and Second White Papers on the Elected President* (Cmd 10 of 1988, Cmd 11 of 1990)
 - *Report of the Select Committee on the Constitution of the Republic of Singapore* (Amdt No 3) Bill No. 23 of 1990, Parl. 9 of 1990 (18 Dec 1990)

4.2. Qualifications and Disabilities of President

- a. Role of the Presidential Elections Committee: art 18
- b. Pre-selection criteria and 'COE': art 19
- c. Practice: 1993, 1999, 2005 presidential 'election' (selection?)

4.3. Presidential (S)Elections

- Pres Ong Teng Cheong (1993)¹¹
- Pres SR Nathan (1999)¹²
- Pres SR Nathan (2005)¹³

4.4. Removal / Impeachment: art 22L

4.5. Elected President Powers - discretionary power to withhold assent ('veto')

4.5.1. Fiscal Check: art 21(2) – stipulated areas relating to finance e.g. bills, loans, transactions but note parliamentary override mechanism

4.5.2. Key appointments: arts 22, 22A, 22C – appointment of specified public officers, members of statutory boards, directors of government companies

4.5.3. Anti-Corruption: art 22G,

4.5.4. Human Rights Watchdog – substitute check in lieu of judicial review?

- a. Maintenance of Religious Harmony Act: art 22I, 21H,
- b. Internal Security Act : detention orders: art 151(4),

4.6. President's right to information (art 22F) and personal staff (art 22J)

4.7. Role of the Council of Presidential Advisors: Part VA: arts 21(3), 37B, 37I, 37J

- Presidential duty to consult

4.8. Procedure where there is conflict between President and government

- Publishing opinion in gazette e.g. arts 22D, 148A
- Constitutional Tribunal advisory opinion: art 100: dispute over art 22H
- Parliamentary overruling : art 22A, 148D
- Referenda e.g. art 5(2A)

¹¹ 'How I will do my job: President Ong' *The Straits Times*, Sept 2, 1993
<http://ourstory.asia1.com.sg/dream/politics/headline/polh7.html> Full text of Speech by President Ong Teng Cheong at the Swearing In of the Fifth President at the Istana on Wed, 1 Sept 1993 available at STARS archive: <http://stars.nhb.gov.sg/public/index.html>

¹² Speech, President SR Nathan, *Swearing in of the Sixth President, Istana, 1 Wed 1999* at <http://stars.nhb.gov.sg/data/pdfdoc/1999090105.htm>

¹³ Speech, President SR Nathan, *Swearing in of the Seventh President, Istana 1 Sept 2005* at <http://www.istana.gov.sg/sp-050901.html>

4.9. Controversies

- Ong Teng Cheong's 1999 Press Conference
- White Paper: *The principles for determining and safeguarding the accumulated reserves of the Government and the fifth schedule statutory boards and government companies* (Cmd 5 of 1999)
- Disputes: US\$5billion loan to Indonesia and art 144 SC: Opinion of the Attorney General, 'Article 144 and Reserves', 58 SPR 14 Jan 1998

4.10. Institution in Flux? Amending the Scope of EP Powers

- Art 22H : *Constitutional Reference No. 1 of 1995* [1995] 2 SLR 201
- 1994 Defence Spending: art 151A
- 2004 'transfer reserves' : arts 22B, 22D

**THE EXECUTIVE:
Part V Ch 2**

5. “Executive Authority” – art 23
6. The Cabinet : art 24
 - 6.1. The Prime Minister: as *primus inter pares*
 - a. arts 25, 26 : appointment and v declaration of vacancy of office
 - b. Requirement of commanding the “confidence of the majority of the Members of Parliament”
 - *Adegbenro v Akintola* [1963] AC 614, Tan & Thio, 184
 - *Stephen Kalong Ningkan* [1966] 2 MLJ 187 [Comment: Thio Su Mien, Dismissal of Chief Ministers (1966) 8 Mal LR 203] , Tan & Thio, 187
 - *Datuk Joseph Pairin Kitigan* No. 2 [1986] 2 MLJ 420, Tan & Thio, 191
 - *Datuk Amir Kahar bin Tun Keruak* [1995] 1 MLJ 169, Tan & Thio, 206
 - 6.2. Principle of collective responsibility: art 24(2)
 - Self-moderating rule
 - *Datuk Amir Kahar v Tun Keruak* (1994) 3 MLJ 737, Tan & Thio, 206
 - 6.3. Ministers – appointment, portfolio and tenure: arts 25, 30
 - *Dato` Seri Anwar bin Ibrahim v Public Prosecutor* [2000] 2 MLJ 486¹⁴
7. The Attorney-General: appointment, functions and power: art 35
 - *Cheng William v Loo Ngee Long Edmund* [2001] 3 SLR 581

Associate Professor Thio Li-ann
Jan 2006

¹⁴ The political conspiracy element had no place in the matter of the revocation of the appellant’s appointment. Under art 43(5), a minister other than the Prime Minister holds office during the pleasure of the Yang di-Pertuan Agong. In factual terms the minister holds office at the pleasure of the Prime Minister and the Prime Minister may revoke his appointment at any time (see pp 519H-520C).

Appendix I: PAP's Election results

Year	Result
1955	PAP won 3 of 25 elected seats (Lee Kuan Yew as opposition leader). Labour Front: 13 seats (governing party.)
1959	won 43 of 51 seats, with 53% of the vote
1963	won 37 of 51 seats, with 47% of the vote (opposition votes split between Barisan Sosialis Party and United People's Party).
1968	won all of the seats, with 84% of the vote.
1972	won all of the seats, with 69% of the vote
1976	won all of the seats, with 72% of the vote.
1980	won all of the seats, with 77% of the vote.
1984	1984: won all except 2 seats, with 65% of the vote.
1988	won 80 of 81 seats, with 63% of the vote.
1991	won 36 of 40 contested seats, with 61% of the vote.
1997	won 34 of 36 contested seats, with 65% of the vote.
2001	won 25 of 27 contested seats, with 75% of the vote.
2006 ?	

Appendix II¹⁵

Table 1: Evolution of the Electoral System in Singapore

Year	Total No. of Seats	Single Member Districts (SMDs)	Group Representation Constituencies (GRCs)	Non-Constituency Members of Parliament (NCMPs)	Nominated Members of Parliament (NMPs)
			C* Seats		
1963	51	51	NA	NA	NA
1968	58	58	NA	NA	NA
1972	65	65	NA	NA	NA
1976	69	69	NA	NA	NA
1980	75	75	NA	NA	NA
1984	79	79	NA	0	NA
1988	81	42	13	39	2
1991	81	21	15	60	1
1997	83	9	15	74	1
2001	84	9	14	75	1

* Constituencies

¹⁵ Yeo Lay Hwee, 'Electoral Politics in Singapore' at <http://library.fes.de/pdf-files/iez/01361007.pdf>

Appendix III: Elected Presidency Elections

Year	Result	Denied COE
	Wee Kim Wee first (unelected) Elected President	n/a
1993	Ong Teng Cheong 58.7% Chua Kim Yeow 41.3%	JB Jeyaretnam (opposition politician, lawyer, former senior district judge)
1997	SR Nathan (unopposed)	<ul style="list-style-type: none"> ▪ Ooi Boon Ewe (private tutor) ▪ Tan Soon Phuan. (opposition politician)
2005 ¹⁶	SR Nathan (unopposed)	<ul style="list-style-type: none"> ▪ Andrew Kuan, (former chief financial officer, Jurong Town Corporation) ▪ Ooi Boon Ewe, (real estate executive; former bankrupt) ▪ RG Naidu



¹⁶ http://en.wikipedia.org/wiki/Singapore_presidential_election,_2005