

CAMBRIDGE STUDIES IN LAW AND SOCIETY



AUTHORITARIAN RULE OF LAW

**Legislation, Discourse
and Legitimacy in Singapore**

JOTHIE RAJAH

CAMBRIDGE

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LEGITIMACY IN SINGAPORE**

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American Bar Foundation



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press
32 Avenue of the Americas, New York, NY 10013-2473, USA
www.cambridge.org
Information on this title: www.cambridge.org/9781107634169

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First published 2012

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication data

Rajah, Jothie, 1963–

Authoritarian rule of law : legislation, discourse and legitimacy in Singapore / Jothie
Sauntharajah.

p. cm. – (Cambridge studies in law and society)

Revised version of thesis (Ph.D.)—University of Melbourne, Melbourne Law School,
2010, issued under the title Legislating illiberalism.

Includes bibliographical references and index.

ISBN 978-1-107-01241-7 (hardback) – ISBN 978-1-107-63416-9 (pbk.)

1. Rule of law – Singapore. 2. Freedom of expression – Singapore.

3. Authoritarianism – Singapore. 4. Law reform – Singapore. 5. Singapore – Politics
and government. I. Title.

KPP169.7R35 2012

340'.11–dc23 2011048127

ISBN 978-1-107-01241-7 Hardback
ISBN 978-1-107-63416-9 Paperback

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AUTHORITARIAN RULE OF LAW

Two common assumptions are made about the rule of law: that authoritarianism and rule of law are mutually incompatible, and that free markets and rule of law must tip authoritarian societies in a liberal direction. This book shows both assumptions are wrong. Jothie Rajah demonstrates how Singapore has created that most improbable coupling – the authoritarian rule of law. Through a close and engaging analysis of several key moments in Singapore's history, *Authoritarian Rule of Law* shows how prosperity, public discourse, and a rigorous observance of legal procedure enable a reconfigured rule of law that is liberal in form but illiberal in content. Rajah alerts us to ways institutions and processes at the bedrock of rule of law and liberal democracy become tools to constrain dissenting citizens while protecting those in political power, even as the national and international legitimacy of the state is secured. With China seeing in Singapore a model for its own development, as do any number of regimes that hope to replicate Singapore's economic success and compliant citizenry, this book overturns conventional understandings of law and politics. This volume reveals a configuration of law, power, and legitimacy that may have far-reaching consequences for theory and politics worldwide.

Jothie Rajah is a Research Professor at the American Bar Foundation, Chicago. She obtained her PhD at the Melbourne Law School, Australia, where she was awarded the University's 2010 Chancellor's Award and the Law School's 2010 Harold Luntz Graduate Research Thesis Prize for excellence. For her doctoral dissertation she was awarded an honorable mention by the Law & Society Association, U.S.A. She is the author of several articles on the history and politics of legislation. She has taught at the Melbourne Law School; the National University of Singapore; and the Institute of Education, Singapore. Her current research focuses on global discourses on the rule of law and colonial constructions of Hindu law in the Straits Settlements.

CAMBRIDGE STUDIES IN LAW AND SOCIETY

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(continued after Index)

For my father, K. S. Rajah, who believed in the Rule of Law

3 March 1930–17 June 2010

AN INSIDER'S PREFACE ON 'RULE OF LAW' CONFUSIONS

In 1983 Singapore's then Prime Minister, Lee Kuan Yew, said it was a problem for Singapore that graduate women were not marrying at the same rate as non-graduate women; and when they did marry, they weren't having as many children.¹ This meant, he argued, that Singapore's next generations were losing out on the genetic talent pool.² It was, of course, a highly controversial speech.³

At the time of Lee's speech, I was a second-year law student at the National University of Singapore. I wrote a parody, the "Procreation Encouragement Act", for the Student Union magazine. I modelled the "Procreation Encouragement Act" very closely on the legislation we were studying. The national coat of arms, margin notes, tortured legislative language – apart from its obviously satirical content, my "Act" looked and read like a product of Parliament. I conscientiously acknowledged the idea I was borrowing: my constitutional law tutor, Dr Hugh Rawlings, had referred to an imaginary "Procreation Encouragement Act" in a tutorial problem he set us. I asked for his permission, took the title and wrote the "Act".

¹ "PM's National Day Rally Speech", *Straits Times* (15 August 1983).

² *Ibid.*

³ For a fuller discussion, see Lenore Lyons-Lee, "The 'Graduate Woman' Phenomenon: Changing Constructions of the Family in Singapore" (1998) 13:2 *Sojourn: Journal of Social Issues in Southeast Asia* 1.

To my surprise, this two-page student effort was faxed across lawyers' offices throughout Singapore. It even crossed the causeway into neighbouring Malaysia. Three weeks or so after the magazine came out, there was a notice pinned on the Law Faculty notice board – the Student Liaison Officer wanted to see me.

She was very pleasant, but I was terrified by the thirty minutes I spent in her room. She started by telling me that a senior official of the University had asked her to speak to me – information which located insignificant me on an intimidating scale of downward scrutiny. Her next move was to establish that I had broken the law. Did I know that it was an offence to reproduce the Singapore coat of arms without official permission? I didn't. I was wrong and already guilty. Mostly, though, she wanted to know the extent of Dr Rawlings's involvement. Had he read drafts, had he made suggestions? She asked again and again about my tutor, and I repeated my story with an increasing sense of panic and bewilderment. In about six weeks, the whole thing thankfully died down. I never again produced legal parody.

Instead, twenty-two years later, I embarked on a dissertation on the relationship between legislation, public discourse and state legitimacy in Singapore, wrestling with the way in which the ambivalences inherent to the category 'law' – between a rights-protecting 'rule of law' and an instrumental, state-serving 'rule by law' – have unfolded in Singapore. My project has uncovered variations on the state's fifty-year-old theme of dangerous foreigners, so that I finally understand the University's need to determine Dr Rawlings's role in the "Procreation Encouragement Act".

Until moving to the University of Melbourne's Law School to undertake doctoral studies, I lived and was educated in Singapore. I received a legal education in which I was taught that Singapore was a 'rule of law' 'nation' in which the *Constitution* was supreme. As first-year law students, we were taught stern rules articulated through instructive case law about the high standards of conduct expected of lawyers, who must, first and foremost, be officers of The Court and serve Justice. The extent to which a legal professional identity pervaded every facet of one's existence was

brought home to us by a memorable case in which a lawyer was found to have engaged in conduct unbecoming of an advocate and solicitor of the Supreme Court of Singapore. This lawyer, a man, in order to do a favour for a friend, sold "women's dresses and brassieres" from his hotel room while on a professional trip to his Kuching office.⁴

The almost religious exaltation of the 'rule of law' expressed in my legal education was consistent with the screen heroes I had been exposed to as a child – Gregory Peck as Atticus Finch in *To Kill a Mockingbird*, Paul Scofield as Sir Thomas More in *A Man for All Seasons* – just two of the handsome and compelling personifications of what I was being socialised to regard as the exemplary (somehow male) virtue of 'law'. The disjuncture between the ideals I was taught and the anxiety I imbued from my environment – the government should not be displeased or challenged – was something that confused me, even as I (mostly) conformed. It was not until just after I had graduated that the detentions, televised confessions and courtroom disappointments of the so-called Marxist conspiracy (events that included a classmate from the Law Faculty and a quiet woman whose principled conduct had won her the respect of law students at the time) that I saw what earlier generations had already witnessed – the state's readiness to turn to coercion and its capacity to silence, if not demonise, counter-narratives.

This study is informed by my desire to unpack the complexities and paradoxical co-existence of 'rule of law' and 'rule by law' voices in Singapore. Through a focus on legislation, I have been led to state discourse and notions of the 'rule of law' which have constructed a mode of authoritarianism⁵ that has generated widespread legitimacy for the Singapore state. Shaped by the very polity I examine, I have found it invaluable to exit the ideological fortress that Singapore can sometimes be in order to peel off, layer by layer, some of the assumptions embedded in Singapore-speak – assumptions that have, until recently, been invisible

⁴ *Re An Advocate* (1963), [1964] 1 M.L.J. 1 (Kuching).

⁵ Garry Rodan, *Transparency and Authoritarian Rule in Southeast Asia: Singapore and Malaysia* (London: Routledge Curzon, 2004).

to me. Through a determined decoding of state text, I have untangled complex bundles of meaning conveyed by apparently simple declarations. The process has been revelatory of a dynamic between 'rule of' and 'rule by' 'law' that has led me to texts and histories I did not originally anticipate as destinations.

A striking constant, when presenting papers at conferences and in my own analytical processes, has been the issue of the space for critical scholarship on Singapore, especially for those who consider themselves Singaporean. There is little doubt that Singapore's pervasive environment of self-censorship⁶ influences and contextualises the academy. Yet, paradoxically, a measure of academic freedom also clearly exists,⁷ and the official, declared position of the state is that academic freedom is supported and must flourish.⁸ In addition to building upon the scholarship of those who are not Singapore nationals, this project builds upon the critical scholarship of those who identify as Singaporean, who are located within Singapore institutions, and who have built their careers and reputations as Singapore scholars. The critically engaged work of Chua Beng Huat, Cherian George, Hong Lysa, Nirmala PuruShotam, Li-ann Thio and many, many others precedes and informs my project. Like these scholars, I identify as Singaporean and hope to establish a long critical engagement with this fascinating, contradictory and complex social space that is also home.

⁶ Cherian George, "Consolidating Authoritarian Rule: Calibrated Coercion in Singapore" (2007) 20:2 *Pacific Review* 127.

⁷ Chapter 8's argument on the manner in which spokespersons, alliances and transcendences appear to be viewed as great dangers may account for this paradox.

⁸ Sing., *Parliamentary Debates*, vol. 47, col. 474 (17 March 1986).

ACKNOWLEDGEMENTS

I am in the happy position of having received a great deal of support throughout this project from friends, family and colleagues in Singapore, Melbourne and elsewhere. Pip Nicholson, Abdullah Saeed and Li-ann Thio have supplied valuable guidance and asked important questions, for which I am very grateful. My very particular thanks go to Pip Nicholson for sustained, generous and consistent mentoring.

Many senior scholars have been extremely generous with their expertise. Hong Lysa has guided me through explorations of Singapore histories and I am deeply grateful to her. Anoma Pieris's probing questions have taught me much about inter-disciplinarity, as have Nirmala PuruShotam's lucid lessons on sociological thinking and methodologies. Warm thanks also to Shaun McVeigh who articulated that improbable coupling – authoritarian rule of law – that has become this book's title. The three wise men who lead the legal complex and political liberalism project, Terence Halliday, Lucien Karpik and Malcolm Feeley, have supported this study in a range of valuable ways. William Neilson and Terence Halliday have read the penultimate draft of this manuscript with particular care and I have benefited tremendously from their invaluable advice. Others who have made time, despite the (often urgent) demands of their own teaching and research schedules, are Anthony Anghie, Michael Barr, Jennifer Beard, Sarah Biddulph, Mark Brown, Chris Dent, Carolyn Evans, Cherian George, Michael Hor, Tim Lindsey, Don Miller, Frank Munger, Debbie Ong, Juliet Rogers, Kevin Y. L. Tan, Tang Hung Wu,

Arun Thiruvengadam, Geoff Wade, Helena Whalen-Bridge and Amanda Whiting. I am also indebted to an inspiring and passionate teacher from my undergraduate education who taught me to see law through different eyes, Professor Yash Ghai and to three anonymous reviewers. My warm and deep thanks to all.

Institutional support has also been generous and forthcoming. The Melbourne Law School and the Asian Law Centre have supplied a lively and collegial community of researchers and an environment in which students receive mentoring and resources at many levels, including funding that makes attending overseas conferences possible. Professor Tan Cheng Han, Dean of the Faculty of Law of the National University of Singapore, and the staff of his office extended much kind assistance and an ongoing welcome on my frequent research trips to NUS, as did Eleanor Wong and the Legal Analysis, Writing and Research team. Carolyn Wee and the staff of the C. J. Koh Law Library were similarly welcoming and helpful. The libraries and research facilitators of the Institute of South East Asian Studies, the New York City Bar, the International Press Institute, Lawyers Rights Watch Canada and Amnesty International have also extended assistance. My thanks to them all.

Many friends have supplied warm and invaluable companionship. My particular thanks go to Eve Lester, Daniel Muriu and Yoriko Otomo, partners on this scholarly journey in many important ways. Other dear friends who have thoughtfully extended help and support throughout are Elizabeth Brophy, Naomita Royan, Helen Pausacker, Laura Griffin, Sanjay Pala Krishnan, Niloshan Vijayalingam, Cate Read and Sonja Zivak.

My family has also been an important source of support. My daughter, Shrimoyee, has asked valuable questions; my father, K. S. Rajah, and my son, Ravindran, kept an alert eye out for current affairs relating to my research, and were thoughtful and careful readers of my draft chapters; my mother, Gnanam, has been an invaluable and constant source of care and support, and I am very grateful. My final and deepest acknowledgements go to my children, Shrimoyee and Ravindran, whose love, encouragement and support have sustained me in the time I have spent away from them.

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1 LAW, ILLIBERALISM AND THE SINGAPORE CASE

IN OCTOBER 2007, FOUR THOUSAND LAWYERS from more than 120 countries converged upon Singapore for the International Bar Association's (IBA)¹ annual conference.² The selection of Singapore as a venue had been controversial, with some members³ and Singapore dissidents⁴ protesting that the IBA was lending legitimacy to a regime that had systematically violated the rule of law. The conference aired these and other issues from the air-conditioned comfort of Singapore's technologically superior conference facilities.⁵

¹ The IBA describes itself as the world's leading organisation of international legal practitioners, bar associations and law societies with a membership of thirty thousand individual lawyers worldwide; online: "About the IBA," <http://www.ibanet.org/About_the_IBA/About_the_IBA.aspx>.

² "4,000 Delegates from 120 Countries," *Straits Times* (16 October 2007).

³ K. C. Vijayan, "Global Law Meeting Will Tackle Heavy Issues," *Straits Times* (12 October 2007), notes that "some European-based legislators ... initially objected to the choice of Singapore as conference host on rule-of-law grounds."

⁴ Chee Soon Juan, an opposition politician who is Secretary-General of the Singapore Democratic Party, wrote to the President of the IBA in February 2007 asking him to reconsider Singapore as the venue because of Singapore's repressive practices towards political opponents; online: "SDP Writes to International Bar Association About Its Conference in Singapore," <<http://www.singaporedemocrat.org/articleiba.html>>.

⁵ Hailin Qu, Lan Li & Gilder Kei Tat Chu, "The Comparative Analysis of Hong Kong as an International Conference Destination in Southeast Asia" (2000) 21 *Tourism Management* 643.