



The Singapore Legal System

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Founded in 1819, gained independence in 1965, governed by the same political party for 53 years.

Population 5.6 mil (2017), Gender Ratio 961M:1000F. 74.3% Han Chinese, 13.4% Malay, 9.1% Indian, Tamils & Sinhalese, 3.2% Others (incl Eurasians)

First census of Singapore 10,683 (1824), 'disproportionately high ratio of men to women'. Chinese 3317 (31%), Malays 4580 (42.8%), 1925 Bugis (18%), 15 Arabs, 16 Armenians, 756 Indians (7%), 74 Europeans (0.7%).

Religious affiliations (2017): Buddhism 33.9%, Islam 14.3%, Taoism 11.3%, Catholicism 7.1%, Hinduism 5.2%, Christianity 11%, other faiths 0.7%, Agnosticism/Atheism 16.4%

World's freest economy, historical importance in entrepot trade. No natural resources. Historical dependence on Malaysia for water (secured by 3 water treaties)



The East India Company

- EIC Charter 1600, ER I (establishing the company)
- EIC Charter 1661, CR II (granting universal territorial jurisdiction over Indian territories, calling for the governor and company council of each factory to have judicial authority over all EIC personnel, and over all persons in their territories regardless of origin – ‘..power to judge all persons belonging to the said governor and company or that shall live under them,' and that the Laws of England would have to be applied "...in all causes, whether civil or criminal’)



LETTERS PATENTS GRANTED TO THE GOVERNOR AND COMPANY OF MERCHANTS OF LONDON, TRADING INTO THE EAST-INDIES,

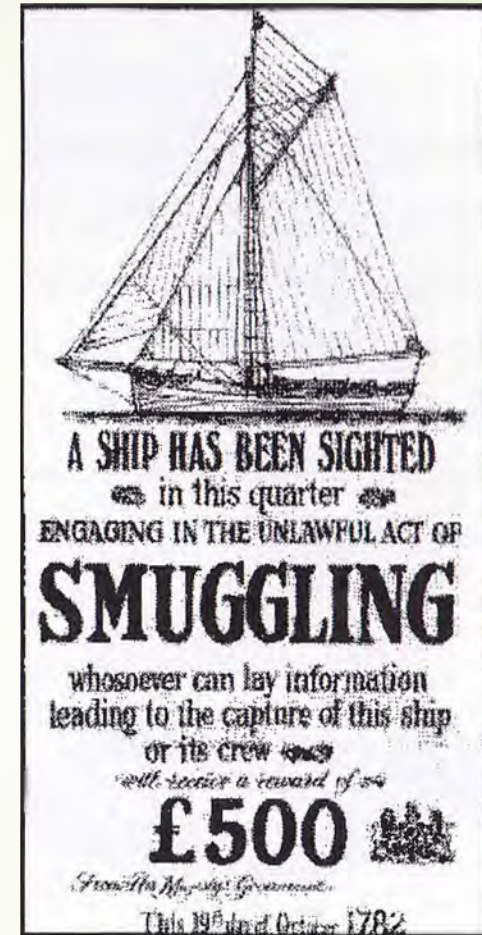
Bearing Date the Third of April, in the Thirteenth Year of the Reign of CHARLES II., Anno Domini, One Thousand Six Hundred and Sixty-one.

CHARLES the Second, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. To all to whom these Presents shall come, Greeting. Whereas Our Well-beloved Subjects, The Governor and Company of Merchants, Trading into the East-Indies, have been of long Time a Corporation to the Honour and Profit of this Nation, and have enjoyed and do enjoy divers Liberties, Privileges and Immunities, by Force of several Letters Patents and Charters, heretofore granted to them, by Our late Royal Progenitors, Queen Elizabeth and King James, of blessed Memory: And

SHUNNED BY AACT DEEM OFFICE THE NEW COMPANY, WHICH UNDESIRABLE BEING CHARGED, WITH THESE The said Governor and Company of Merchants of London, Trading into the East-Indies, shall have Liberty, full Power and Authority to appoint and establish Governors, and all other Officers to govern them: And that the Governor and his Council, of the several and respective Places where the said Company have, or shall have any Factories or Places of Trade, within the said East-Indies, may have Power to judge all Persons, belonging to The said Governor and Company, or that shall live under them, in all Causes, whether civil or criminal, according to the Laws of this Kingdom, and to execute Judgment accordingly: And in case any Crimes or Misdemeanors shall be committed in any of the said

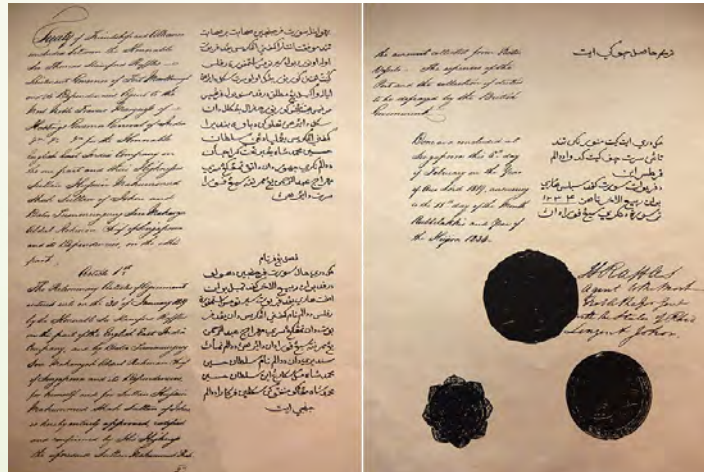
The East India Company

- EIC pays 400k GBP to Crown to maintain Indian trade monopoly, but unable to fulfil commitment since 1768 due to smuggling of tea by the Dutch (England and American colonies).
- 1773 Regulating Act – beginnings of Parliamentary assertions of control over Company interests in India, combining the presidencies of Madras and Bengal into a Supreme Council of Bengal, and the establishment of a Supreme Court in Calcutta staffed by British judges and administering English law.



Sir Thomas Stamford Raffles

- Background: Napoleonic Wars, Dutch East Indian territories administered by British, competing spheres of influence, Raffles and van der Capellan
- 6 February 1819, First Treaty of Friendship between Raffles and Sultan Hussein of the Johor Sultanate, establishment of factory in Singapore
- 1823, Raffles Regulations (only code in force in Singapore until 1826. Validity disputed)



The EIC years

- 17 March 1824, Anglo-Dutch Treaty. Cessation of Bencoolen to the Kingdom of the Netherlands, recognition of Singapore within British sphere
- 24 June 1824, Act (Geo IV, c 108), Transfer of Malacca and Singapore to the Bengal Presidency, together with PoW island.
- 2 August 1824, Second Treaty of Friendship (aka Crawford Treaty aka Cession of Singapore Treaty), ceding Singapore to the EIC (ratified by Calcutta in 1825, and by Westminster in 1826)

TREATY with the SULTAN and Tumongong of Johore; 2d August 1824.

A TREATY of Friendship and Alliance between the Honourable the English East India Company on the one side, and their Highnesses the Sultan and Tumongong of Johore on the other, concluded on the second day of August one thousand eight hundred and twenty-four (1824), corresponding with the sixth day of the month of Zulkar, in the year of the Hegira one thousand two hundred and thirty-nine (1239) by the above Sultan of Johore, his Highness Sultan Hussein Mahomed Shah, and the above Tumongong of Johore, Datu Tumongong Abdul Rahman Sree Maharajah, on their own behalf; and by John Crawford, esquire, British resident at Singapore, vested with full powers thereto by the Right honourable William Pitt, Lord Amherst, Governor-general of and for Fort William in Bengal, on behalf of the said Honourable English East India Company.

ARTICLE 1st.—Peace, friendship and good understanding shall subsist for ever between the Honourable the English East India Company and their Highnesses the Sultan and Tumongong of Johore, and their respective heirs and successors.

ARTICLE 2d.—Their Highnesses the Sultan Hussein Mahomed Shah, and Datu Tumongong Abdul Rahman Sree Maharajah, hereby cede in full sovereignty and property, to the Honourable the English East India Company, their heirs and successors for ever, the island of Singapore situated in the straits of Malacca, together with the adjacent isles, straits and islets, to the extent of ten geographical miles from the coast of the said main island of Singapore.

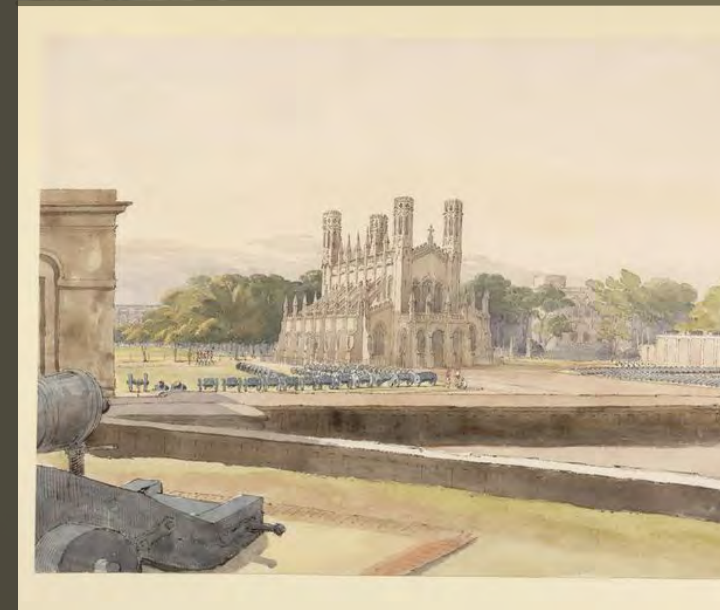
2nd Charter of Justice

- ▶ 6 Geo IV, c 85 (27 November 1826), letters patent establishing a court of judicature for PoW Island, Malacca and Singapore (2nd Charter of Justice), together forming the SS. Reception of English Law into the colonies.
- ▶ Robert Fullerton, first governor of the SS.
- ▶ Sir John Claridge, first recorder of the SS. Based in PoW island, went to Malacca and Singapore on circuit, assisted by governor and resident councillors.



The Indian Years

- 20 June 1830, SS came directly under Bengal Presidency. Governor and Resident Councillor offices abolished; office of Commissioner created with Fullerton as first Commissioner. Confusion. 1832, reversion of offices: governor Robert Ibbetson, second recorder Sir Benjamin Malkin
- 1831 – 3, Bengal Regulations. Government of India Act 1833 (3 & 4 Will IV c 85), empowering GG in Council of India to legislate for SS (neglect for SS)
 - Wills Act 1838 (still in force)
 - Indian Penal Code 1860 (but only applied in 1871 when entered into force by the SS Legco)
- Unhappiness in colony: Governor could overrule recorder. Judicial and executive power in resident councillor who handled most civil matters until second recorder appointed in 1856.
- Europeans petitioned direct rule but 1857 Sepoy Mutiny
- Precipitated the Straits Settlements Act 1866 (SS separated from EIC, governed directly by the crown)





The Straits Settlements

- ▶ 4 February 1867, Letters Patent establishing the SS (Governor, Commander-in-Chief, Legco)
 - ▶ Legco consisted of the Governor, Chief Justice, the Officer Commanding the Troops, the Lieutenant-General of Penang, the Colonial Secretary, the Attorney-General, the Colonial Engineer and four unofficial Europeans
 - ▶ Governor ceased to be a judge of the court of judicature, but resident councillors sat in it as LT-governors. Recorder of Singapore became Chief Justice of the SS. By 1868, court of judicature became Supreme Court of the SS, and resident councillors ceased to sit in it.
- ▶ Ord V of 1873, Supreme Court to sit in appeal (not less than three judges), previously only to King-in-Council
- ▶ Letters Patent 1877, intro of Exco to SS, empowering Governor to appoint judges, JPs, colonial officers
- ▶ 1867 – 1935: ordinances enacted by the Governor of the SS on advice and consent of the Legco
- ▶ 1878, Civil Law Ordinance (reception of English law into Singapore)



Guillemard 1920

- Legco appointment and nomination of official members (9) and unofficial members (8) by Governor, latter always minority
- 1920, reform initiative by the Straits Settlement Singapore Association: legco members unanimously wanted to expand membership and change appointment system 'a commendable feature of a place like Singapore that there was comparatively little self seeking in municipal and colonial politics.'
 - 13 October 1920, estab. of select committee
 - Recommendations: add 3 OM and 6 UM, total 12 OM and 14 UM ... 'first step towards extending the representative character of the legco'. Not in favour of electing (more education and political experience before granting franchise). 'Great danger that suffrage in the hands of the untrained and unready electorate would afford the professional politician an opportunity of obtaining power by playing upon religious and social prejudices'



Guillemard 1924

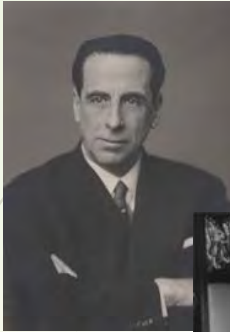
- Governor Laurence Guillemard introduces reforms in 1924:
 - Membership in legco expanded to 26, OM and UM equal, with governor casting deciding vote
 - Penang, Singapore European Chamber of Commerce to each nominate 1 UM, governor nominates the remaining 11 UM on racial basis: 5 Europeans (incl 1 each from Penang and Malacca), 3 Chinese British subjects, 1 Malay, 1 Indian, 1 Eurasian
 - No full franchise or automatic registration of voters
 - 2 UM nominated by governor to sit in Exco
- 1930 Straits Settlement Singapore Association recommends parity of OM and UM in legco and that all UM be elected by a panel of British subjects regardless of race – no political support, Straits Times called it 'a ludicrous scheme' and 'crass folly'. Proposition that governor better able to reconcile differences and promote justice in a divided society.

The war years and thereafter



- 1942-5: Supreme Command (Southern Army Administration), 25th Army HQ (Lt-Gen Tomoyuki Yamashita), Malai Malayan Military Administration HQ, Syonanto City Administration
 - Military Court of Justice of the Nippon Army
- 1945-6: British Military Administration (Lord Mountbatton) , Malaya gazette, Singapore division, proclamations, martial law. Singapore's affairs left in the hands of deputy McKerron (who wanted to preserve state of affairs, then changed his mind on arriving in Singapore)
- 1946-59: 1 April 1946, Straits Settlements (Repeal) Act. Singapore Colony Order In Council 1946 (SI 464/1946) establishing i.a. the Singapore Legco. Colony of Singapore (ordinances). Treat Singapore as distinct from problems and issues relating to Malayan peninsula.
 - Exco of 6 OM and 4 UM (governor veto); Legco of 4 ex officio, 7 OM and 2-4 UM, and 9 elected members (colonial attempt at gradual transition to self-government)
 - Elections, 20 March 1948

The Rendel Commission



- 1953, 1st Constitutional Commission, appointed by Governor Sir John Nicoll.
- 9 Members including chairman Sir George Rendel, Tan Sri (Dr) Tan Chin Tuan (Chinese community leader, banker), NA Mallal (Indian community leader, lawyer, founder Progressive Party), Ahmad Ibrahim (Unionist, independent), Chye Cheng Tan (lawyer, founder Progressive Party)
- Recommended: Legislative Assembly of 32 members. 25 elected UM, 4 nominated OM, 3 ex-officio OM holding executive positions
- Council of Ministers consisting 3 ex officio OM and 6 elected members appointed by governor on advice of the leader of the assembly
- Local affairs: Health, Housing, Economy, Education. British affairs: Internal security, external defence, law, external/foreign affairs, finance
- Full franchise – automatic registration of voters

Self-rule and Merdeka

- ▶ Singapore Colony Order in Council 1955 (SI 187/1955) revoking 1946 Order.
 - ▶ Adopting Rendel's recommendations to speed up self-government.
 - ▶ Election results: 79 candidates for 25 seats; Labour Front 10 seats (David Marshall), Progressives 4 seats, PAP 3 seats, Democratic Party 2 seats



Self-rule and Merdeka

- Marshall and Governor Sir John Nicoll clashed on delineation of roles. 1955, Marshall threatened new governor Sir Robert Black to resign unless granted immediate self government: 'whether the governor governs or we govern'. Colonial administration concerned over communist threat, but agreed to bring forward constitutional talks one year after assembly's existence instead of full term.
- 1956 talks in London broke down on issue of internal security (London proposing governor holding veto), Marshall resigns on returning due to pre-commitment to complete self-government.



Self-rule and Merdeka

- Lim Yew Hock succeeds as CM, returns to London, British propose identical terms except creation of Security Council with British and Singapore having 3 members each and 1 from the Federation. Terms agreed.
- Singapore (Constitution) Order in Council 1958 (SI 1956/1958) (Revoking the 1955 Order) under the authority of the State of Singapore Act 1958 (6 & 7 Eliz II c 59) granting full internal self-government and the formation of the State of Singapore (external affairs remained with crown)
- Office of Governor abolished, replaced by Yang-di Pertuan Negara
- Legislative Assembly of 51 elected members, judicial structure preserved, office of British High Commissioner as chair of Internal Security council.
- PAP wins 43 seats, LKY assumes office as PM with a cabinet of 9 ministers. Sir William Goode last governor of Singapore and its first Yang di-Pertuan Negara.

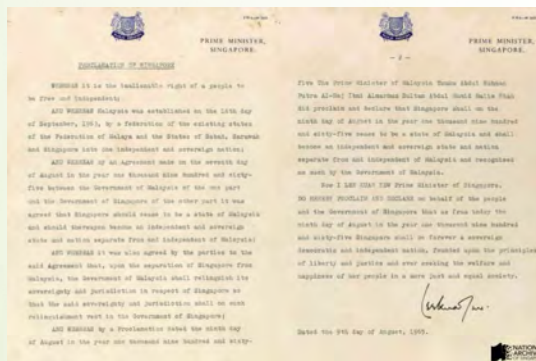


Self-rule and Merdeka

- Malaysia Act 1963 (Singapore, North Borneo, Sarawak and states of peninsula Malaysia, together form the Federation of Malaysia).
 - State of Singapore Constitution 1963 (3rd Schedule, Sabah, Sarawak, Singapore (State Constitutions) Order in Council 1963
 - Principle of Merger agreed in 1961, that the states were bound 'inextricably by common racial, historical, cultural, economic and political ties'
 - Agreement that Singapore would receive special treatment within Federation, greater autonomy, smaller representation in Federal Government, but retain own State executive government and right to retain greater portion of revenues (60%).
 - 71% of population votes for merger. Foreign affairs, internal security and defence ceded to Federal, retain control over finance, labour and education. Retain executive and legislative institutions. Allocated 15/127 in Dewan Rakyat.



Independence



- 9 August 1965, Independence of Singapore Agreement. Internal politics and failed attempt by PAP to engage in federal politics.
- Constitutional documents: Constitution of the State of Singapore 1963, Republic of Singapore Independence Act 1965, certain portions of the Malaysian Federal Constitution retained by virtue of the RSIA. The Singapore Act 1966 (recognising Singapore's sovereignty, admitting Singapore into the Commonwealth retroactively)
- Immediate concerns: Secure right of government to acquire land at economic cost to advance economic development agenda, entrench multiracialism and protection of minorities.



Singapore as a common law jurisdiction



The early post-independence years

- Singapore retained bulk colonial features and institutions after 1965 – reasons:
 - English law as gold standard for international commerce
 - Government otherwise preoccupied: over-population, high unemployment, security, withdrawal of the British
- Wider context: first local law school established only in 1956/1957, most judges and lawyers trained in England
- Some deviations, most notably abolition of jury trial 1969
 - "I had no faith in a system that allowed the superstition, ignorance, biases, and prejudices of seven jurymen to determine guilt or innocence." [Lee Kuan Yew]

Push towards “autochtony” and legal identity

- 1993 as a transformative year:
 - Abolition of appeals to the Privy Council
 - Application of English Law Act
- 1994 Practice Statement: “[t]he development of our law should reflect [that political, social and economic circumstances have changed enormously since Singapore’s independence] and the fundamental values of Singapore society”
- English law remains a powerful role model, but increasing inspiration drawn from other common law jurisdictions

Use of judgments from foreign jurisdictions

(4) Judgments from other jurisdictions can, if judiciously used, provide valuable assistance to the Court. However, where there are in existence local judgments which are directly relevant to the issue, such judgments should be cited in precedence to foreign judgments. Relevant local judgments will be accorded greater weight than judgments from foreign jurisdictions. This will ensure that the Courts are not unnecessarily burdened with judgments made in jurisdictions with differing legal, social or economic contexts.

(5) In addition, counsel who cite a foreign judgment must:

- (a) draw the attention of the Court to any local judgment that may be relevant to whether the Court should accept the proposition that the foreign judgment is said to establish; and
- (b) ensure that such citation will be of assistance to the development of local jurisprudence on the particular issue in question.

From rule-taker to rule-maker

- Private and commercial law writ large
- Promotion of Singapore Law Committee and website
- Council of ASEAN Chief Justices
- Establishment of the Asian Business Law Institute (ABLI)





State organization



The classic Westminster system

- Unwritten constitution
- Parliamentary sovereignty as opposed to constitutional supremacy
- Unitary state
- Head of state separate from head of government, with only 'prerogative' or 'reserved' powers
- Alternation of power between political parties
- Independent judiciary with power vested in 'ordinary' courts

The Singapore Westminster system

- Written constitution
- Constitutional supremacy (cf. Art 4)
- Unitary state
- Head of state separate from head of government, directly elected with limited control powers
- Single party rule since independence
- Independent judiciary with power vested in 'ordinary' courts

Office of the president

- Symbolic function and minority representation (cf. Obama, Clinton)
- Transition from appointed to directly elected office
 - In response to 1984 electoral swing and the spectre of a freak election and rogue government
 - Introduction of control powers: use of national reserves + key public service appointments ('dual key')
 - Strict eligibility criteria
- Menon Constitutional Commission 2016: how to ensure election of minorities?
 - Idea of the 'reserved election'
 - First used in 2017 – walkover



Dominant party-regime

- ▶ People's Action Party
 - ▶ Amalgamation of Chinese community leaders, Chinese chauvinists, centre-left English-educated intellectuals
 - ▶ Charismatic leader
 - ▶ Barisan Socialist electoral boycott (1968)
 - ▶ Supermajority, incl. for constitutional amendment purposes
 - ▶ Output legitimacy
 - ▶ First Past The Post electoral regime
 - ▶ Introduction of Group Representative Constituencies (1988)
 - ▶ Gerrymandering



Dominant party regime

- Creating 'opposition' within a single-party controlled Parliament
 - Non-Constituency Members of Parliament
 - Nominated Members of Parliament
- Change on the horizon?
 - Electoral victory of the Workers Party in Aljunied in 2011, retained in 2015
 - Inter-generational change
 - 4G leadership contest
 - Recent alternation of power in Malaysia



TWO TIERS OF COURTS IN SINGAPORE

STATE COURTS



Coroner's Court

Inquiries into causes of unnatural death

Family Justice Courts

Family-related cases including divorce, maintenance, domestic violence, adoption, guardianship, etc

Night Court

Regulatory & traffic-related offenses

Community Court

Youthful offenders, attempted suicide, family violence, cruelty to animals, etc

Small Claims Tribunal

Claims of <\$10k arising from sale or purchase of goods, provision of services, negligent damage to property or lease of residential property for less than 2 years

SUPREME COURTS



High Court

Civil cases where claim value is >\$250k, probate matters where deceased estate >\$3 million or if case involves resealing of foreign grant. The High Court also hears ancillary matters in family proceedings involving assets worth >\$1.5 million.

Criminal cases where the offenses are punishable with death or with imprisonment for a term which exceeds 10 years.

Court of Appeal

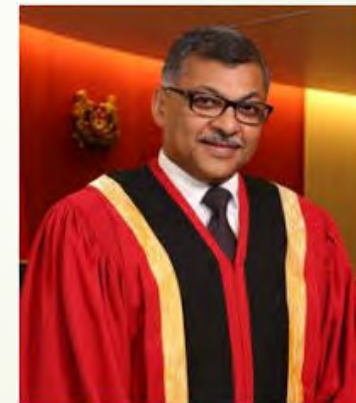
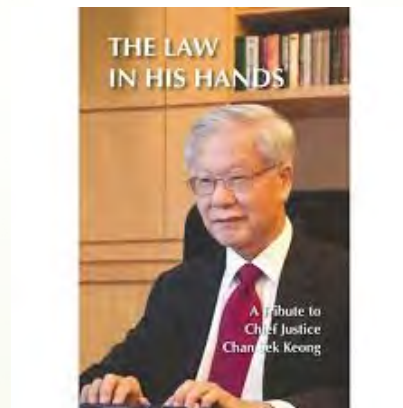
Hear appeals on civil and criminal cases from the High Court.



Court structure

Unrelenting pace of judicial reform

- Clearing backlogs: Judicial Commissioners and supernumerary judges
- Specialization: Family Justice Courts, Singapore International Commercial Court (SICC)
- Training and education: Singapore Judicial College, incl. international arm
- eJustice
- Role and background of Chief Justices





Protection of fundamental rights

- Short catalogue in constitutional bill of rights
 - No right to property, explicit mention of the right to vote, prohibition on torture, mention of dignity
 - Standard of review: rational basis test
 - Intelligible differentia
 - Rational relation between differentia and object of the law
- Supplemented by common law rules of natural justice
- No group/collective rights



Legal culture and ideology



1991 White paper on shared values

Forging a national ideology: enunciated 5 core values

- Nation before community and society about self
- Family as the basic unit of society
- Community support and respect for the individual
- Consensus not conflict
- Racial and religious harmony



Racial and religious harmony

- Formative experience of post-independence riots
- 'Constructed' community

Minorities and special position of Malays

152.—(1) It shall be the responsibility of the Government constantly to care for the interests of the racial and religious minorities in Singapore.

(2) The Government shall exercise its functions in such manner as to recognise the special position of the Malays, who are the indigenous people of Singapore, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language.

Muslim religion

153. The Legislature shall by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the President in matters relating to the Muslim religion.

Technocracy, efficiency and meritocracy

- Ideal of 'government by honorable men (junzi) ... who have a duty to do right for the people, and who have the trust and respect of the population' [1991 White Paper]
 - Confucian ideal / Platonic philosopher-king
 - Strict rules on defamation of political figures to protect government integrity and effectiveness
 - Rights as interests rather than 'trumps' in balancing exercises
- Existential and environmental logic: no natural resources, not expected to survive on its own
- Extremely well-paid civil service, high intolerance of corruption
 - Corrupt Practices Investigation Bureau is directly under Prime Minister's Office
 - CPIB has prosecuted Cabinet Ministers in the past (Tey Chaeng Wan)
- Sensitivity to create business-friendly environment

君子 **junzi:**

"gentleman," "exemplary man,"
"noble leader"