

6 POLICING RELIGION

Maintenance of Religious Harmony Act

THIS CHAPTER PRESENTS A STUDY OF THE *Maintenance of Religious Harmony Act* (or *Religious Harmony Act*).¹ The *Religious Harmony Act*, formulated as part of the state's response to the so-called Marxist conspiracy, became a platform for the state's discursive construction of 'religion' as a national security issue, such that 'religion' (like 'vandalism', the press and lawyers speaking on 'law') became a category of threatening activity requiring anticipatory and preventative action by the state. Just as the state's response to lawyers in 1986 might be seen as an effort to dismantle an embryonic civil society leadership attaching to lawyers, so too the *Religious Harmony Act* might be seen as repressing another potential civil society leader: the Catholic Church. This was, after all, the period of the late 1980s, when the Catholic Church had already played a prominent role in the 'people's power' movement that forced Marcos to step down in the Philippines.

In Singapore, the 1980s saw activists from the Catholic Church critiquing the state in terms of its failure to deliver rights and prosperity to an underclass unable to advocate for itself. The state responded to this critique as it had to the Barisan in 1966, the Chinese press in 1971 and the 'foreign press' and the Law Society in 1986: It characterised the critics as threats to national security, silenced them and passed a 'law' legitimising

¹ Cap. 167A, 2001 Rev. Ed. Sing. [*Religious Harmony Act*].

the state's positions. The 1991² *Religious Harmony Act* became the silencing 'law' that built upon the coercion of detaining certain Catholic social activists under the *Internal Security Act*³ between 1987 and 1990. Before presenting an analysis of the terms of the *Religious Harmony Act*, the question that must be addressed is, what are the conditions that make a 'law' on religious harmony possible in the first place?

LINEAR CHRONOLOGIES AND RECURSIVE DISCOURSE

In Chapter 1, I discussed an excerpt from the 1965 address of Singapore's first Head of State on the occasion of the opening of the first Parliament of the new Republic of Singapore. In this speech, the state highlighted the vulnerability of the 'nation' to 'Communism' and 'Communalism' and presented the secular, rational nation-state as the antidote to dangerous irrationalities of 'race' and 'religion'.⁴ Many of the themes of this 1965 text on the precarious nature of Singapore's existence have remained central to the state's self-description. For example, in 1971 the detained executives of the 'Chinese'-medium newspaper, the *Nanyang Siang Pau* were accused of "glamourising communism and stirring up communal and chauvinistic sentiments over Chinese language,"⁵ thereby threatening the 'nation'. The 1987–88 detentions of lawyers accused of being "Marxist

² While the possibility of legislation along the lines of the *Religious Harmony Act* was raised by Lee Kuan Yew as early 1987 (Joseph B. Tamney, *The Struggle over Singapore's Soul: Western Modernization and Asian Culture* [Berlin: Walter de Gruyter, 1996] at 32) with the presidential speech at the opening of Parliament in 1989, and a 1989 parliamentary White Paper echoing Lee's 1987 statements, the Bill was not introduced to Parliament until 1990 and the Act was not brought into effect until 1991. It is tempting to speculate that, in the interim, the state was securing the co-operation of religious groups and organisations so as to minimise opposition at the time of the parliamentary debates.

³ Cap. 143, 1985 Rev. Ed. Sing. [ISA].

⁴ Sing., *Parliamentary Debates*, vol. 24, cols. 5–14 (8 December 1965) (Yang Di-Pertuan Negara Encik Yusof Ishak) [1965 Presidential Address].

⁵ *Lee Mau Seng v. Minister for Home Affairs, Singapore & Anor.* [1969–1971] Sing.L.R. 508 at 511.

conspirators” illustrates how the term ‘Communist’ became revitalised in a world on the cusp of the fall of the Berlin Wall. The legitimising rationales for the *Press Act* (both in 1974 and 1986) and the 1994 state account of the Michael Fay case have also illustrated the way ‘nation’ as a category has been enmeshed with ‘race’ in constructing the ‘West’ as endangering Singapore. When it comes to the category ‘religion’, however, it is the *Religious Harmony Act* which illustrates the state’s legislative and discursive formulations of how these twin threats (‘Communalism’ and ‘Communism’) endanger the ‘nation’.

Thirty-four years after the 1965 presidential address, in 1989, again on the occasion of the opening of Parliament, a different Head of State delivered a different address. Significantly, the Prime Minister leading the 1989 government, Lee Kuan Yew, was the same Prime Minister who had led the government of 1965. This 1989 address upon the opening of Parliament echoed the 1965 formulations of ‘nation’ and religion under the heading “A Multi-Religious Society”:

Religious Tolerance and Moderation. Religious harmony is as important to us as racial harmony. Singapore is a secular state, and the supreme source of political authority is the *Constitution*. The *Constitution* guarantees freedom of religion. However, in Singapore racial distinctions accentuate religious ones. Religious polarisation will cause sectarian strife. We can only enjoy harmonious and easy racial relationships if we practise religious tolerance and moderation.

Religion and Politics. Religious organisations have always done educational, social and charitable work. In doing so, they have contributed much to our society and nation. However, they must not stray beyond these bounds, for example by venturing into radical social action. Religion must be kept rigorously separate from politics.

Religious groups must not get themselves involved in the political process. Conversely, no group can be allowed to exploit religious issues or manipulate religious organisations, whether to excite disaffection or to win political support. It does not matter if the purpose of these actions is to achieve religious ideals or to promote secular objectives. In a multi-religious society, if one group violates this taboo, others will follow suit, and the outcome will be militancy and conflict.

We will spell out these ground-rules clearly and unequivocally. All political and religious groups must understand these ground-rules, and abide by them scrupulously. If we violate them, even with the best intentions, our political stability will be imperilled.⁶

In 1989, as in 1965, the state explicitly presents itself as “secular.” The groundwork for the *Religious Harmony Act* is laid, in part, by invoking the rationality and modernity of a secularism that enables the solution to a national problem (religious intolerance) in a national law (the *Religious Harmony Act*). In this assertion that religious harmony is as important as racial harmony, ‘race’ and ‘religion’ are explicitly constructed as entwined. In the state’s construction of these social categories, ‘religion’ and ‘race’ are always about potential “polarisation,” which is the definite cause of “sectarian strife.” Embedded in the bundle of meanings carried by ‘religion’ is the way in which ‘religion’ is about the security of the ‘nation.’ Contextually, therefore, Singapore has been consistently and recursively primed for a certain sort of attention to ‘religion.’ ‘Religion’ has been repeatedly associated with the potential to generate violence that imperils political stability, a potential violence that only the secular, rational state can hold at bay.⁷

The state’s use of discourse to construct its authoritative ascendancy has already been noted through an analysis of state discourse in the first three case studies of this project. This 1989 excerpt from the President’s

⁶ Sing., *Parliamentary Debates*, vol. 52, cols. 16–20 (9 January 1989) (President Wee Kim Wee) [1989 Presidential Address].

⁷ See Tong Chee Kiong, *Rationalising Religion: Religious Conversion, Revivalism and Competition in Singapore Society* (Leiden: Brill, 2007). Also of interest is the sudden increase in state-commissioned scholarly work on ‘religion’ in the period 1988–89: Eddie Kuo, Jon Quah & Tong Chee Kiong, *Religion and Religious Revivalism in Singapore* (Singapore: Ministry of Community Development, 1989); Eddie Kuo, *Religion in Singapore: An Analysis of the 1980 Census Data* (Singapore: Ministry of Community Development, 1989); Eddie Kuo, Jon Quah & Tong Chee Kiong, *Religion in Singapore: Report of a National Survey* (Singapore: Ministry of Community Development, 1989); Jon Quah, *Religion and Religious Conversion in Singapore: A Review of the Literature* (Singapore: Ministry of Community Development, 1989). This surge in state-commissioned literature has been highlighted by Tamney, *supra* note 2.

address illustrates some of the ways in which the state reiterates its authority. There is, for example, the frequent use of imperatives (“[T]hey *must not* stray beyond these bounds; Religion *must* be kept rigorously separate from politics; Religious groups *must not* get themselves involved in the political process”) and confident assertions of the future that allow no room for uncertain outcomes or the questioning of state power (“[I]f one group violates this taboo, others will follow suit, and the outcome will be militancy and conflict; If we violate them ... our political stability will be imperilled”). These textual strategies cast the state-author as almost omniscient. The future is not acknowledged as unknowable. Instead, the state’s expert knowledge from handling the ‘nation’ in the past is written into the state’s certainty in predicting future outcomes. These outcomes are almost always constructed as destructive to the ‘nation’ unless the state exercises its authority in preventative action.

Perhaps the most significant way in which this excerpt constructs authority, however, lies in the state’s construction of itself as secular, rational and modern. ‘Religion’ is framed as a counter-national, counter-modern force, requiring the containment of the secular rationality represented by ‘law’. In the 1989 reference to the *Constitution* as “the supreme source of political authority”, the secularism of the state is anchored and the role of ‘law’ is elevated. The crucial qualification to the constitutional guarantee of the freedom of religion is supplied by the contrast marker ‘however’ (“The *Constitution* guarantees freedom of religion. *However*, in Singapore racial distinctions accentuate religious ones”). This contrast marker indicates that freedom of religion must be curtailed because of Singapore’s peculiarities of ‘race’ and ‘religion’.⁸ The imperative ‘must’

⁸ The extent to which ‘race’ and ‘religion’ remain features of the discourse of Singapore exceptionalism was signalled in November 2010 when the Minister for Law invoked these markers of difference to justify constraining press freedom. When the moderator pointed out that the United States, Canada, the United Kingdom, New Zealand, France, Ireland, Spain and much of Eastern Europe are also racially and ethnically plural, the Minister’s response was to reiterate that Singapore’s survival was precarious and differences of ‘race’ and ‘religion’ lent themselves to violence: Inaugural Forum, “A Free Press for a Global Society”, at Columbia University, New York, Question and Answer

that frames the permissible (“[T]hey *must not* stray beyond these bounds, for example by venturing into radical social action”) delineates a boundary of the acceptable (“educational, social and charitable work”) and the unacceptable (“radical social action”). There is no explanation of how and when the acceptable, nation-building “educational, social and charitable work” becomes the unacceptable, nation-destabilising “radical social action”; but the very assured and authoritative way in which this assertion is made communicates the state’s authority to unilaterally demarcate these boundaries.

THE AUTHORITY TO DETERMINE INTENTION

Just as the exceptional vulnerability of the ‘nation’ is used to explain Singaporean limits on the freedom of religion, so exception, framed as a response to the pragmatics of a plural population, is used to explain the irrelevance of intention:

[N]o group can be allowed to exploit religious issues or manipulate religious organisations. It does not matter if the purpose of these actions is to achieve religious ideals or to promote secular objectives. In a multi-religious society, if one group violates this taboo, others will follow suit, and the outcome will be militancy and conflict.

In other words, intention cannot be relevant when the security of the state is at risk, when it is the violence inherent to ‘religion-race’ that must be contained. In this project’s excavation of legislative retractions of ‘rule of law’ rights, this seeming reason for the obliteration of intention is more significant than the presidential address acknowledges. Embedded in this declaration, “It does not matter if the purpose of these actions is to achieve religious ideals or to promote secular objectives” lies the

Session with Minister for Home Affairs and Minister for Law, Mr K. Shanmugam and Moderator Prof. Frederick Schauer, Distinguished Professor of Law, University of Virginia Law School; transcript available at <http://app2.mlwg.gov.sg/News/tabid/204/Default.aspx?ctgy=Transcripts> [Transcript from Free Press Session].

contradiction of a fundamental principle of criminal law⁹ requiring that both action and intention be proven in order to find guilt. Giving relevance to the intention of a social actor involves giving voice to that actor. By erasing individual intention as legally meaningful, the space for a non-state voice is closed off. The state becomes the sole actor empowered to define 'guilt' and determine meaning.

Just as Lee Kuan Yew's 1971 address to the International Press Institute set the template for the 1974 *Press Act*, so too does this 1989 presidential address set the template for the *Religious Harmony Act*. Indeed, in the final text of the *Religious Harmony Act*, 'intention' is not explicitly referred to, and in the absence of recognition of 'intention' as a factor with legal significance, 'intention' is implicitly erased. An ouster clause prevents judicial review,¹⁰ there is no provision for a trial or legal representation and the Minister's obligation to take into account the representations of non-state actors upon whom the state imposes repressive orders¹¹ is not something that can be reviewed. Effectively, the judicial determination of 'intention' as an elemental factor of guilt is appropriated by the state as executive prerogative.

This brief consideration of state discourse unpacks, yet again, some of the ways in which the state's ideological argument is more complex than the language of its texts might suggest. The accessible simplicity of the language, the clarity of the short sentences, the construction of a logical sequence ('if not *x*, then *y*') in the argument all serve to elide the complexities that are reduced to essentialist simplifications in the state's position. The apparent simplicity is a telling reflection of the state's command of

⁹ In the corpus of Singapore law, the departure from the principle of the prosecutor's need to prove guilty intention is perhaps most dramatically manifested by the *Misuse of Drugs Act* (Cap. 185, 2001 Rev. Ed. Sing.), which reverses the presumption of innocence into a presumption of guilt, so that if a person is found in possession of banned substances, the onus of proving innocence lies upon the accused person.

¹⁰ The Act provides for restraining orders which give the state wide-ranging powers of control over the speech, movement, employment, communications and activities of individuals: *Religious Harmony Act*, *supra* note 1, s. 8 and s. 9.

¹¹ *Ibid.*, s. 8(5).

ideological power, such that its positions might be presented as common sense,¹² concealing the manufacture of consent¹³ – a consent underpinned by the coercive power of ‘law’. This coercive underpinning is conveyed by the detentions without trial of the so-called Marxist conspirators.

THE ‘MARXIST CONSPIRACY’: WHEN HIDDEN DANGERS ARE VISIBLE ONLY TO THE STATE

In May 1987, a group of young, English-educated professionals,¹⁴ including four Law Society Council members, were accused of being part of a Marxist conspiracy to overthrow the state. Over 1987 and 1988, a total of twenty-two people were accused of involvement in this ‘conspiracy’ and were consequently detained without trial. In brief, the state’s position was that the individuals it arrested and detained had been part of an international conspiracy, based in London, to overthrow the government and establish a Communist state. Because the arrests took place in stages, the ‘Marxist conspiracy’ was in the public domain and received a great deal of media coverage for an extended period. About ten of the detained people were associated with the Catholic Church and were actively involved with the social-work arm of the Church.¹⁵ Among the

¹² Norman Fairclough, *Language and Power* (London: Longman, 1989) 33.

¹³ Manuel Castells, “The Developmental City-State in an Open World Economy: The Singapore Experience” (Berkeley: University of California, 1988), online: <http://bric.berkeley.edu/publications/working_papers.html>; see Herman and Chomsky’s study of the links between political power and media concerns: Edward S. Herman & Noam Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media* (New York: Pantheon, 1988).

¹⁴ In the parliamentary debates on the detentions, there was repeated reference to the need to abandon the stereotype of ‘Communist’, for example: “As against the old communist/Marxist who could be identified by his Chinese education background, hiding in the jungles, the modern day Marxist is primarily English-educated with impeccable behaviour”. See Sing., *Parliamentary Debates*, vol. 49, col. 1452 (29 July 1987) (Bernard Chen).

¹⁵ Michael D. Barr, “Singapore’s Catholic Social Activists: Alleged ‘Marxist Conspirators’”, in Michael D. Barr & Carl Trocki, eds., *Paths Not Taken: Political Pluralism in Post-War Singapore* (Singapore: NUS Press, 2008) 228.

Catholic social workers were a number of lawyers.¹⁶ A great deal of state and media attention was focused on this group of Catholic social workers and the institution of the Catholic Church. Overseas networks for the Catholic Church brought the issue a fairly high level of media attention internationally.¹⁷ The ‘Marxist conspiracy’ was almost certainly the event that precipitated the *Religious Harmony Act*.¹⁸

In December 1989, some eighteen months after the first round of detentions, a White Paper was tabled in Parliament setting out the government’s reasons for wanting a law on ‘religious harmony’.¹⁹ Appended to the White Paper was an Internal Security Department (ISD) report

¹⁶ Lawyers among those detained included Patrick Seong, Francis Seow, Tang Lay Lee, Teo Soh Lung and Kevin de Souza. In 2009 and 2010, in a remarkable development for the Singapore public domain, three books were published containing the recollections and poems of many of the so-called Marxist conspirators on the topic of their detentions: Fong Hoe Fang, ed., *That We May Dream Again* (Singapore: Ethos, 2009), and Tan Jing Quee, Teo Soh Lung & Koh Kay Yew, eds., *Our Thoughts Are Free: Poems and Prose on Imprisonment and Exile* (Singapore: Ethos, 2009); Teo Soh Lung, *Beyond the Blue Gate: Recollections of a Political Prisoner* (Petaling Jaya: Strategic Information and Research Development Centre, 2010). In these books, the alleged conspirators detail their motives for social justice work and their experiences under detention, including experiences of torture. Their extremely moving accounts are striking for the consistency with which they speak of the search for ‘justice’ and their concern for the underprivileged.

¹⁷ See the account of Cathrine Whewall in the foreword to *That We May Dream Again*, *supra* note 16 at 6.

¹⁸ See Li-ann Thio, “Control, Co-optation and Co-operation: Managing Religious Harmony in Singapore’s Multi-Ethnic, Quasi-Secular State” (2006) 33 *Hastings Constitutional Law Quarterly* 197 [*Control, Co-optation and Co-operation*]; Tamney, *supra* note 2; Christopher Tremewan, *The Political Economy of Social Control in Singapore* (Hampshire: St Martin’s Press, 1994) 145; Barr, *supra* note 15; Michael Hill, “Conversion and Subversion: Religion and the Management of Moral Panics in Singapore” (Asian Studies Institute, Working Paper No. 8), online: <<http://www.victoria.ac.nz/asiastudies/publications/working/08ConversionandSubversion.pdf>>. Hill arrives at a conclusion similar to some of those made in this paper, but conducts his analysis through the lens of moral panic. For a reading of the ‘Marxist conspiracy’ and the *Religious Harmony Act* that is uncritical of state discourse, see Khun Eng Kuah, “Maintaining Ethno-Religious Harmony in Singapore” (1998) 28:1 *Journal of Contemporary Asia* 103.

¹⁹ Sing., “Maintenance of Religious Harmony”; Cmd. 21 of 1989 [White Paper].

entitled “Religious Trends: A Security Perspective.” This report details ways in which three forms of behaviour threatened public order and religious and racial harmony in Singapore: “Aggressive and Insensitive Proselytisation”; “Mixing Religion and Politics” (under this heading, the conduct of certain Catholic priests is detailed); and “Religion and Subversion” (under this heading, the conduct of certain ‘Marxist conspirators’ is detailed).²⁰ When the bill was debated in Parliament, members addressed the popular perception that the proposed bill was a reaction to the ‘conspiracy’.²¹

Significantly, the state’s account of the ‘conspiracy’ was rarely clear about the precise nature of the activities of the Catholics it detained. Instead, the focus was on the threat to the ‘nation’ that had been averted and the need for citizens to submit themselves to the state’s authority. In this way, a ‘rule of law’ scrutiny of the state’s exercise of power in effecting this most egregious of ‘rule by law’ technologies – detention without trial – was resisted and rejected without an explicit acknowledgement that issues of ‘law’ and individual rights were at stake. One example of the state’s discursive dwelling upon the importance of trusting, submissive citizens can be seen in a speech made to Parliament in July 1987 by Goh Chok Tong,²² then First Deputy Prime Minister and poised to become Prime Minister in November 1990. Goh’s speech was long and an apparent defence of the state’s decision to order the arrests, but at no point in the speech did Goh address the basic question of what the ‘conspirators’ actually *did* that so imperilled the ‘nation’.

In his speech, Goh did not offer facts to the public. Rather than disclosing ‘facts’, Goh assured the public that hard questions had been put to the ISD by the “Prime Minister and me”²³ and the “younger leadership”²⁴

²⁰ Ibid. at 19.

²¹ Sing., *Parliamentary Debates*, vol. 54, col. 1076 (22 February 1990) (Aline Wong).

²² Sing., *Parliamentary Debates*, vol. 49, cols. 1484–89 (29 July 1987) (Goh Chok Tong, First Deputy Prime Minister).

²³ Ibid. at col. 1484.

²⁴ Ibid. at col. 1485.

and the ISD convinced them of the seriousness of the threat. In other words, Goh argued for the necessary sufficiency of discretionary state authority, instructing ‘the people’ to trust in their leaders’ assessments – assessments made on the basis of surveillance. To legitimise this demand, Goh resuscitated that Cold War phantom – ‘Communism’.

The logic of Goh’s speech presents a trusting, submissive citizenry as necessary because of the disguised, sinister and secret nature of ‘Communists’: “[I]t is difficult to uncover Communist conspiracies because they work in cells, secretly, furtively.”²⁵ The furtive, hidden ‘Communists’, visible only to the state (via surveillance), supply an ostensible reason for the ordinary citizen’s inability to know what the state knows. Goh’s claims build a narrative of danger, of fearful consequences should the state fail to act:

[I]f we do not destroy them now, they will destroy us later.... [I]n the future ... these plotters could press the button and destabilise the whole place. Our decision was not to take chances with the lives of Singaporeans. Do not risk the prosperity.²⁶

The enormity of the consequences (with the extraordinary allusion to nuclear annihilation in the phrase “press the button”) is presented as an argument justifying the detentions. Lives, prosperity, the ‘nation’ – everything is at stake.

As part of this narrative of the danger held at bay by the ever-watchful state, Goh criminalises ‘Communists’ and the detainees through lexical juxtaposition: “Every society has its share of criminals, anti-social elements, child molesters, rapists, communists or communist-types. Singapore is no exception.”²⁷ His narrative of danger extends beyond the borders of Singapore with shadowy international connections: “These people do not work by themselves.... [T]here is a larger scheme of things involving others outside Singapore,”²⁸ a level of danger clearly beyond the capacity of

²⁵ Ibid.

²⁶ Ibid. at col. 1487.

²⁷ Ibid. at col. 1485.

²⁸ Ibid. at col. 1486.

ordinary citizens to grasp or to protect themselves from. The condemnation of ‘Communists’ and the impossibility of detecting their dangerous natures in their appearance further emerged through a radicalising comparison of the detainees with Ieng Sary: “I have met Ieng Sary twice.... He looked gentle, chubby, cherubic ... yet he is an inner member of Pol Pot’s clique.”²⁹

Goh uses future danger as justification for present action: “[D]o we regard them as posing an immediate threat to Singapore? ... To be frank, the answer is no.”³⁰ He then positions himself as a member of the ruling elite and presents the state’s good faith in responsibly arriving at the decision to order the ISD action: “We asked many questions. We wanted to be very sure that the conspiratorial activities ... were indeed prejudicial to the security of Singapore.... All of us were satisfied.”³¹ Significantly, though, he avoids addressing the substance of the “conspiratorial” and “nefarious activities”; implying that if the ruling elite is satisfied, then the citizen should be too. This same avoidance of crucial detail is replicated when Goh says that “the longer term threat to our security was obvious and real and I do not have to belabour this point,”³² firmly removing the focus from ‘fact’ to an assertion of state authority. The operations of ‘law’ thus become increasingly hidden. Freedoms are violated and lives trampled upon on the basis of conversations conducted behind closed doors between different state actors. The ‘rule by law’ governance of the process is obscured by the demand for trust.

In rounding off his argument, Goh re-presents the narrative of Singapore’s perpetual vulnerability (to enemies both within and without):

Singapore is an open country.... We are therefore vulnerable to security threats and to manipulation by people outside Singapore. We are a small country. If we are destabilised, it will be very difficult to right the ship so that it can sail on even keel.³³

²⁹ Ibid. at col. 1485.

³⁰ Ibid.

³¹ Ibid.

³² Ibid. at col. 1486.

³³ Ibid. at col. 1488.

The sub-text of this argument appears to be that general principles to do with individual rights and freedoms cannot apply to Singapore because of these exceptional vulnerabilities.³⁴ The legal exceptionalism that must follow from Singapore's exceptional vulnerabilities justifies the decision to order the detentions on the grounds of national interests: "[T]he Government cannot avoid unpleasant decisions if these are in the overall interest of the state."³⁵ By calling the decision to order the detentions "unpleasant", Goh minimises the nature and the impact of detentions. There is no acknowledgement in this description that issues of 'law', of fundamental liberties guaranteed by the *Constitution*, are at stake. The detainees are constructed by this discourse not as individuals but as members of the category 'Communists', a category that in Singapore is replete with social meanings of sinister dangers.

This strongly authoritative and authoring state inscribes yet again the binary that state discourse has put in place since (at least) the 1966 parliamentary debates on the *Vandalism Act*: subordinate citizens/ascendant state. In this 1989 moment, 'citizens' are constructed by Goh as social beings receptive to the authority of the state, needing to be informed and instructed by the all-seeing state. If the state is authoritative and permits the citizen to relate to the state only in submission and subordination, then the conduct of the Catholic social workers was a violation of this dynamic. Arguably, these individuals breached the state's 'rule by law' hierarchy in two ways: First, the Catholic social workers were not passive citizens (this point is discussed later); and second, the activities they were engaged in dislodged the submerged social category 'class'.

'CLASS' AND ACTIVISM IN THE 'MARXIST CONSPIRACY'

'Class' is almost an absent category in public discourse in Singapore. The state's construction of nationhood tends to assume that material

³⁴ For a 2010 rehearsal of this argument, see Transcript from Free Press Session, *supra* note 8.

³⁵ *Ibid.*

prosperity has been delivered to all via meritocracy. As Goh put it (in the same speech), if Singaporeans “learn hard, study hard, work hard, they can climb up the ladder in Singapore.” The implication of this declaration is that there are no obstacles to social and economic mobility in Singapore – no class barriers that impede diligence and determination and no manner in which citizens are not placed upon a level playing field.³⁶

Many of the activities of the Catholic social workers centred on supporting economically disadvantaged groups in Singapore. It might fairly be said, then, that their activities brought ‘class’ to the forefront of public discourse in a way that state-generated discourse did not. In his study of the ‘conspiracy’, Michael Barr describes the activities of the Catholic social workers as “not overtly ideological, being directed predominantly at helping particular groups and individuals.”³⁷ Barr relates how, for example, the Catholic social workers assisted “foreign workers,”³⁸ advising on processes by which they could exercise their rights, teaching them English, helping individual workers represent themselves to the Ministry of Labour when they had a grievance, providing advice and refuge to abused and frightened foreign maids and acting as liaison with the Ministry of Labour for the maids.³⁹

The Catholic social activists also conducted a campaign against the government’s introduction of the twelve-hour shift. A report was written

³⁶ On the dereliction of the ideal of multi-racial meritocracy, see Lily Zubaidah Rahim, *The Singapore Dilemma: The Political and Educational Marginality of the Malay Community* (Shah Alam: Oxford University Press, 1998). On the growing income divide, see Ishita Dhamani, “Income Inequality in Singapore: Causes, Consequences and Policy Options” (May 2008) http://www.mas.gov.sg/resource/eco_research/eco_education/Esss2007/uni_%201st_%20Ishita.pdf.

³⁷ Barr, *supra* note 15.

³⁸ Barr uses the term ‘migrant workers’, but in Singapore the term commonly used is ‘foreign workers’. ‘Foreign workers’ are typically people who engage in manual labour and are often employed to work in Singapore under terms which prevent their remaining in Singapore or becoming citizens or migrant workers. See also the *Employment of Foreign Workers Act* (Cap. 91A, 1997 Rev. Ed. Sing.).

³⁹ A significant proportion of the foreign domestic workers in Singapore are Filipinas, who are usually Catholic.

and the issue given prominent coverage in the *Catholic News*. A government Member of Parliament, who was also Catholic and a senior official of the National Trade Union Congress, engaged the authors of the report in a debate in the letters page of the *Catholic News*. This debate was picked up by the press. In this way, the debate crossed from Catholic community space into ‘national’ space. The Catholic activists also led a campaign to raise awareness of the consequences of retrenchment so as to pressure employers, trade unions, the government and society to treat the retrenched with a sense of justice and compassion.⁴⁰ A 1985 statement on retrenchment was published in the *Catholic News*. A booklet on the results of a survey of retrenched workers was also published but was marked “for private circulation”

The Catholic social workers also initiated awareness-raising measures on industrial rights such as minimum wages and workplace health and safety, and supplied leadership training to workers who wanted improvements in work conditions. They initiated another campaign against the elitism of the Graduate Mothers Priority Scheme, which gave the children of graduate mothers priority in enrolling their children in schools of choice. They also published a critique of other elitist features of the education system, such as the Gifted Education Programme.

If this was the limit of the activities of the Catholics, they could easily have been labelled “young idealists out to improve society” rather than “sinister Communists out to wreck Singapore.”⁴¹ But the state’s interpretation of these actions was very different and is best captured by the ISD’s report appended to the White Paper:

In the mid-80s, a number of Catholic priests ventured into ‘social action’ and acted as a political pressure group. A few of them formed the Church and Society Study Group which published political booklets criticising the Government on various secular issues...

⁴⁰ See also Fong, *supra* note 16 and Tan, Teo & Koh, *supra* note 16.

⁴¹ Goh, *supra* note 22 at col. 1484.

[It] accused the Government of emasculating the trade unions and enacting labour laws which curtailed the rights of workers...

The Catholic News ... also began publishing articles and editorials on economic and political issues. It criticised multi-national corporations, the amendments to citizenship laws and the *Newspaper & Printing Presses Act*, and Government policies on TV3 and foreign workers.

Vincent Cheng ... embarked on a systematic plan to infiltrate, subvert and control various Catholic and student organisations, including the Justice & Peace Commission of the Catholic Church, and Catholic student societies in the NUS and Singapore Polytechnic. He planned to build a united front of pressure groups for confrontation with the Government.... Some of the articles adopted familiar Communist arguments to denounce the existing system as 'exploitative', 'unjust' and 'repressive'.⁴²

In the state's construction of events, labour rights and regulation, the economy and 'political issues' are secular and are thus outside the domain of what individuals and institutions linked to 'religion' might be permitted to participate in or express an opinion on. The ISD report does not define 'politics', but it does supply the probable boundaries marking this problematic territory from which the state so urgently seeks to exclude citizens.

RELIGION: THE NEW COMMUNISM?

At the time of the 'Marxist conspiracy', it was the 'Communist' identity of the detainees that was discursively presented and insisted upon. However, given the essentially atheist ideology of 'Communism', the Catholic identity of some of the detainees made 'Communist' a particularly unconvincing label. Three months after the first detentions, in August 1987, Singapore's then Prime Minister, Lee Kuan Yew, spoke

⁴² White Paper, *supra* note 19 at 15–18.

of creating a new state body that would make sure ‘religion’ was not used for subversive purposes. ‘Religion’, Lee said, must not get mixed up with ‘politics’. The proper role of religious groups, he said, was charity and community work, such as the setting up of childcare centres.⁴³ These same sentiments were expressed in the President’s speech delivered at the 1989 opening of Parliament,⁴⁴ and the very same paragraphs from the President’s speech were repeated in the opening to the White Paper.⁴⁵ Lee’s remarks and the President’s speech presage the core content of the eventual text of the *Religious Harmony Act*. It is stating the obvious to point out that the rhetorical strategy of repetition can be a powerful tool in public discourse. In Singapore, the 1965 discursive characterisation of ‘religion’ as a security issue was renewed by the 1987 and 1989 state imperative that ‘religion’ stay out of ‘politics’. What began as a state-scripted account of the ways in which Singapore is an exceptionally vulnerable nation became entrenched as ‘law’ in the *Religious Harmony Act*.

After the President’s speech in January 1989, the danger that the ‘conspiracy’ represented was reframed in a way that extracted and highlighted the religious identity of the Catholics among the detainees. The Cold War had all but petered out, and the end of that year was marked by the fall of the Berlin Wall. The ISD report appended to the White Paper indicates that the ‘Marxist conspirators’ were still officially ‘Communist’, but the ‘Communist’ identity was now framed by the primacy of ‘religion’.⁴⁶ This shift laid the groundwork for a discursive construction of an endangered ‘religious harmony’ requiring ‘maintenance’ via a new ‘law’.

The words “Maintenance of Religious Harmony” in the title of the Act present a highly ideological position as an uncontested, objective

⁴³ Tamney, *supra* note 2 at 32.

⁴⁴ 1989 Presidential Address, *supra* note 6.

⁴⁵ White Paper, *supra* note 19 at 1.

⁴⁶ *Ibid.* at 13.

'truth'. 'Religious harmony' is framed as an existing state of affairs that must be 'maintained'. There are complex possibilities in and around 'religious harmony' – what does it mean? Does 'religious harmony' exist? Who determines the presence and parameters of 'religious harmony'? In this compound title, however, all other possibilities are obscured and excluded. Additionally, the Act fails to define key terms. For example, the Act cites this conduct as endangering 'religious harmony': "carrying out activities to promote a political cause, or a cause of any political party while, or under the guise of, propagating or practising any religious belief."⁴⁷ "Political cause" is not defined, nor is "religious belief". By not defining key terms, the *Religious Harmony Act* requires citizens to adopt the same ideological positions as the state, interpreting the language of the *Religious Harmony Act* in a manner consistent with the state's definitions because no others are available.

In keeping with these implied definitions, the offence created by the *Religious Harmony Act* is in a strange class of its own. The offence is not the actual or potential conduct of promoting a political cause (for example). Instead, the offence consists of breaching the terms of a restraining order. Restraining orders are an administrative device created by the *Religious Harmony Act* and have probably been modelled on the orders the state can make under the *Internal Security Act*.⁴⁸ Under the *ISA*, when detainees are released, the state can make orders specifying conditions of release, orders which typically restrict the activities of detainees. Similarly, the *Religious Harmony Act* empowers the state to restrain the activities and communications of individuals and institutions connected to 'religion'.⁴⁹ Under the *Religious Harmony Act*, a restrained person goes before the courts only if that person breaches the terms of the restraining order.⁵⁰ Until the restraining order has been breached, an offence has not been committed. The

⁴⁷ *Religious Harmony Act*, *supra* note 1, s. 8(1)(b).

⁴⁸ *ISA*, *supra* note 3, s. 10.

⁴⁹ *Religious Harmony Act*, *supra* note 1, s. 8(2).

⁵⁰ *Ibid.*, s. 16.

restrained person in breach of an order goes before the courts in order to be convicted.⁵¹ The court does not have the power to call into question the orders and decisions made by the Minister.⁵² The court's function is only to decide on the sentence from the range of specified fines and prison terms set out by the *Religious Harmony Act*.⁵³ The only mechanism to check the exercise of state power built into the *Religious Harmony Act* is the Presidential Council for Religious Harmony (discussed later).⁵⁴

This two-tiered operation for restraining orders means that the conduct that results in the imposition of a restraining order is in a strange class of its own – the conduct is not, in itself, illegal. That conduct is, instead, in the assessment of the state actually or potentially a threat to 'religious harmony', a term which (when read in the context of state discourse on 'religious harmony') might well mean a challenge to state policy and hegemony.

A restraining order may be made if, in the Minister's assessment, a person is causing or attempting to cause enmity, ill-will or hostility between different religious groups, conducting politics in the guise of religion, undertaking subversion in the guise of religion or exciting disaffection in the guise of religion.⁵⁵ So even though the Act is called the *Maintenance of Religious Harmony Act*, three of the four limbs focus on 'crimes' against the state – conducting politics, engaging in subversion or exciting disaffection, all under the guise of 'religion'. Indeed, similarities in language suggest that the *Religious Harmony Act* has been modelled on the *Sedition Act*. The *Religious Harmony Act* adopts the *Sedition*

⁵¹ Ibid.

⁵² Ibid., s. 18.

⁵³ Ibid., s. 16.

⁵⁴ The members of this Council are state appointees: *ibid.* s. 3. It has been argued that "in the composition of ... the Council, the government has co-opted leaders of the main religions, rendering them accountable both for their own conduct as leaders and for that of their followers": Li-ann Thio, "Working out the Presidency: The Rites of Passage" (1995) *S.J.L.S.* 500 [*Working out the Presidency*].

⁵⁵ *Religious Harmony Act*, *supra* note 1, s. 8(1).

Act's definition and parameters for “seditious tendency” and replicates “seditious tendency” as the trigger for restraining orders:

Religious Harmony Act	Sedition Act
The Minister may make a restraining order against any person who has committed, or is attempting to commit, the act of “exciting disaffection against the President or the Government”: s. 8(1)(d)	The <i>Sedition Act</i> defines a “seditious tendency” as including “a tendency to ... excite disaffection against the Government”: s. 3(1)(a).
The Minister may make a restraining order against any person who has committed, or is attempting to commit, the act of “causing feelings of enmity, hatred, ill-will or hostility between different religious groups”: s. 8(1)(a).	The <i>Sedition Act</i> defines a “seditious tendency” as including “a tendency to promote feelings of ill-will and hostility between different races or classes of the population”: s. 3(1)(e).

If the parameters for conduct endangering ‘religious harmony’ are a cipher for sedition (which, in turn, may well be a cipher for dissent), then the technologies for dealing with this conduct are clearly derived from the *ISA*. The *ISA* empowers the state, in sweeping terms, to make orders restricting a person in terms of activities, places of residence, and employment.⁵⁶ The *ISA* also permits the state to prohibit an individual from addressing public meetings and from holding office in, or participating in the activities of, or acting as advisor to, any organisation or association.⁵⁷ The Minister’s powers to constrain activity and communication under the *Religious Harmony Act’s* restraining orders⁵⁸ are remarkably similar to the restrictions and constraints listed under the *ISA*, with a particular focus on restraining communication to ‘religious’ audiences and to holding office in editorial boards and publication committees of ‘religious’ audiences.⁵⁹

⁵⁶ *ISA*, *supra* note 3, s. 8(1)(b).

⁵⁷ *Ibid.*

⁵⁸ *Religious Harmony Act*, *supra* note 1, s. 8.

⁵⁹ *Ibid.*

Significantly, the *Sedition Act* and the *ISA* were brought into being by the colonial authorities during the Emergency, when British control had met with the greatest resistance. In replicating the language of the *Sedition Act* and the *ISA*, the state has scripted the *Religious Harmony Act*, a ‘law’ purportedly concerned with ‘religious harmony’, by modelling it on laws explicitly designed to protect the state. Clearly, despite the state’s insistence on a discursive separation between ‘religion’ and ‘politics’, ‘religion’ in Singapore is already and inherently about ‘politics’.

RESTRAINING ORDERS: DEVELOPING STATE KNOWLEDGE OF ‘RELIGION’

Restraining orders might be made against two classes of people: officials or members of religious groups or institutions⁶⁰ or “any person”⁶¹. The orders restrain those who, in the state’s assessment, have acted, or attempted to act, in any of the ways listed in the preceding table. The individual may be restrained from speaking or writing to any congregation, parish or group of worshippers on any theme specified in the restraining order. The sweep of this power to selectively control communication implies the state’s detailed knowledge of the themes (already and potentially) addressed by the restrained individual. Once an order has been issued, the prior permission of the Minister is needed to speak or write on the prohibited topics. An individual may also be restrained from being involved in any way with the printed material of any religious group.

In the detail of this attention to the restrained person’s communications – the content of what is said, the constituency of the reading or listening audience – the *Religious Harmony Act* brings into being a new way in which the state polices ‘religion’ by policing discourse. In effect, a restraining order operates to silence an individual. Communication, oral and written, is restrained in two ways: in terms of content and in terms

⁶⁰ *Ibid.*, s. 8(1).

⁶¹ *Ibid.*, s. 9(1).

of audience. It is groups of people identifiably associated with ‘religion’ that the state does not permit the restrained person to communicate with on the forbidden topics. Under the terms of the *Religious Harmony Act*, a restrained person might conceivably speak or write on the forbidden topics to individuals and to groups of people who are not a congregation, parish, worshippers or members of a religious group or institution.⁶² And, quite specifically, the prohibition is on addressing listeners or readers on “any subject, topic or theme as may be specified in the order, without the prior permission of the Minister.”⁶³

The *Religious Harmony Act* pays a significant level of attention to the participation of the restrained person in the processes of production around print material. She or he may not print, publish, edit, distribute or in any way assist or contribute to any publication produced by any religious group without the Minister’s prior permission.⁶⁴ The restrained person may also be restrained from holding office in an editorial board or a publications committee of any religious group.⁶⁵ Again, just as with the provisions on addressing a ‘religious’ group, the aim appears to be to silence the restrained person on particular topics, with reference to particular audiences. The restraints with regard to participation in print material are broader than the restraints on addressing a religious group. Perhaps, in this sweeping exclusion from editorial boards and distribution committees, the possibility of the restrained person’s views being expressed by another, or slipping through the net of state surveillance, is taken care of. Through these prohibitions, the state diligently maps new terrains of knowledge for ‘religion’ that must be policed.

⁶² The Select Committee points out that the limited scope of restraining orders means that the Minister “cannot stop the person from talking about the very same subject to a non-religious group, such as a political rally”: Sing., “Report of the Select Committee on the Maintenance of Religious Harmony Bill”, October 1990, Parliament 7 of 1990, para. 20 [*SC Report on Religious Harmony*].

⁶³ *Religious Harmony Act*, *supra* note 1, s. 8.

⁶⁴ *Ibid.*, s. 8(2)(b).

⁶⁵ *Ibid.*, s. 8(2)(b) and s. 8 (2)(c).

In summary, although restraining orders mimic the constraints the state places upon detainees released from detention without trial, a restraining order does not involve detention or imprisonment. Instead, the terms of the *Religious Harmony Act* require state policing and surveillance upon a restrained person's communications. More important, a restraining order places the obligation on restrained people to police themselves.

RESTRAINING ORDERS, RESTRAINING SELF

In the way restraining orders work, it is as if specific events relating to the 'Marxist conspiracy' are being addressed. For example, the Church publication, the *Catholic News*, was a print vehicle for the campaigns and concerns of the social-work arm of the Church.⁶⁶ At the time of the arrests, priests led masses for the detained individuals.⁶⁷ As a result of state pressure on the Church, both the publication and the masses were stopped.⁶⁸ At the time of the arrests, a great deal of publicity was raised for the detainees by friends and contacts overseas.⁶⁹ In a catch-all provision, even this sort of communication is silenced⁷⁰: The Minister may issue a restraining order against any person making any statement or causing any statement to be made concerning the relations between a religious institution and the government.⁷¹

When it comes to communicating with a 'religious' audience, the space given to the state to permit some topics but not others necessitates a vigilant self-surveillance on the part of the restrained individual. The individual will need to script and censor her or his own texts before engaging in communication in order to ensure continued compliance

⁶⁶ Barr, *supra* note 15.

⁶⁷ Ibid. See also Fong, *supra* note 16 at 61.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ *Religious Harmony Act*, *supra* note 1, s. 9.

⁷¹ Ibid.

with the terms of any restraining order. The parameters of the *Religious Harmony Act*'s prohibitions conjure (at least in my mind) an image of the state's agents sitting among worshippers, congregations and believers across Singapore, monitoring spoken and written communication, ensuring compliance with existing restraining orders and identifying other people who should be subject to new restraining orders. In the sub-text of the *Religious Harmony Act* there is a script for an omniscient, omnipresent state – a state engaging in policing citizens and punishing transgressors, all for the good of the 'nation'.

Of all the silences the *Religious Harmony Act* empowers the state to impose, perhaps the most deafening silence follows from the ouster clause: All orders, decisions and recommendations under the *Religious Harmony Act* are final and shall not be called into question in any court.⁷² The White Paper (a document written by the government and presenting the government's rationale for the law to Parliament) supplies the state's reasons for the ouster clause:

Prompt action may be necessary to stop a person from repeating harmful, provocative acts. A Court trial may mean considerable delay before judgment is pronounced, and the judicial proceedings may themselves stoke passions further if the defendant turns them into political propaganda.⁷³

In the state's objection to a defendant turning a trial into "political propaganda" is the imputation that the legal process is open to abuse in terms of the platform and publicity it might afford a defendant.⁷⁴ The sub-text of this imputation is that "political propaganda" is not something the state generates. The state, with its greater knowledge, generates 'truth', not 'propaganda'.

⁷² Ibid., s. 18.

⁷³ White Paper, *supra* note 19 at 8.

⁷⁴ When detentions are made under the *ISA*, it is primarily the state's version of events that is publicly disseminated. For example, in the most recent detentions of men alleged to be Jemaah Islamiah activists, all the media coverage has presented the state's account. The detainees have had no voice.

In the range of ways the *Religious Harmony Act* works to silence individuals as a means of maintaining ‘religious harmony’, it is as if the unstated purpose of the *Religious Harmony Act* is to maintain the state’s dominance of public discourse. Without a trial, a counter-narrative cannot emerge in the public domain, ensuring the unchallenged dominance of the state in the discourse of ‘law’, ‘nation’ and ‘religion.’ The *Religious Harmony Act* provides for speedy, discreet (perhaps even secretive) action.

‘LAW’ AS PERFORMANCE

In producing the *Religious Harmony Act*, the Singapore state engaged in a highly visible process by which it demonstrated its rational, ‘rule of law’ identity.⁷⁵ This process involved moments of consultation and engagement with non-state players on the terms of the *Maintenance of Religious Harmony Bill*, in the following ways.

The “Maintenance of Religious Harmony” was the subject of a White Paper.⁷⁶ After the Bill was introduced in Parliament, it was the subject of parliamentary debates and of extensive media coverage. A Select Committee was appointed. This Committee invited public submissions on the Bill, held hearings (most of which were public) and issued a detailed report.⁷⁷ The final text of the *Religious Harmony Act*, the product of these somewhat protracted processes, showed little substantive departure from the state’s original formulation.⁷⁸ In other words, the

⁷⁵ The procedural practice required of the Westminster-model process of ‘law’-making is set out in Standing Orders of the Parliament of Singapore, online: <<http://www.parliament.gov.sg/Publications/standingOrder.htm>>. See also the *Parliament (Privileges, Immunities and Powers) Act* (Cap. 217, 2001 Rev. Ed. Sing.); M. Stanley Ryan, *Parliamentary Procedure: Essential Principles* (New York: Cornwall, 1985).

⁷⁶ White Paper, *supra* note 19.

⁷⁷ *SC Report on Religious Harmony*, *supra* note 62.

⁷⁸ The final page of the White Paper (*supra* note 19) lists the five amendments made to the Bill in response to this process: the clarification that the proposed legislation is consistent with constitutional provisions on religion (paras. 7–9); the emphasis on respecting common values and the right of each individual to accept or not accept a religion (paras. 18a, 18b); the suggestion that the Council for Religious Harmony be made a

consultative process was demonstrably engaged in by the state without in any way compromising its hegemony. Throughout this process, the state came closest to grappling with the problematic terms ‘religion’ and ‘politics’ in the Select Committee report’s discussion of the role of the courts.⁷⁹ In this report, the Select Committee noted the concern of “a number of representors” that

the Bill ... concentrated too much authority in the hands of the Executive ... [and] these powers could be arbitrarily misused to suppress legitimate expression of dissenting views. Several representors argued strongly for the safeguard to be a judicial one, i.e. to empower the courts, instead of the Executive, to decide what constituted causing ill-will among religious groups, or mixing of religion and politics in unacceptable ways.⁸⁰

The Committee agreed that additional safeguards were desirable but argued vigorously against a judicial role, preferring instead to vest discretionary power to assess the Minister’s decision in the President.⁸¹ The first of its stated reasons was (repeating the White Paper’s rationale and adopting the same rhetoric) that prompt action might be needed, and a trial might have the effect of creating delays and of stoking passions further.⁸² The Committee’s second “strong argument against vesting power in the courts” was that

the division between religion and politics is not a well-defined one. The area of overlap is considerable. It is not possible to draw the line so clearly that the courts can determine on the basis of facts and law whether an action falls on one side of the line or the other.⁸³

Presidential Council (para. 35); the inclusion of lay as well as clerical representatives on the Presidential Council (para. 36); and the proposal to inform the Council that the Minister intends to issue a prohibition order at the same time that the affected person is notified (para. 40). None of these amendments goes to the heart of the proposed Act.

⁷⁹ *SC Report on Religious Harmony*, *supra* note 62 at v–ix.

⁸⁰ *Ibid.* at v.

⁸¹ *Ibid.* at viii.

⁸² *Ibid.* at vi.

⁸³ *Ibid.*

In stating this ‘reason’ for judicial exclusion, the Committee implicitly acknowledges the contradiction inherent in the terms and the purpose of the *Religious Harmony Act*. If legislation directed at ensuring that ‘religion’ and ‘politics’ do not mix is understood (by the state that constructs the distinction) to be seeking to demarcate categories that exist on a continuum rather than in isolation, how can that ‘law’ be effected or effective?

The Committee’s solution to this unexpressed conundrum is to assert the validity of decisions made by those who hold political power in the state – a repetition of the theme of the necessary authority of the state. In this instance, however, the expertise of the state is not being asserted as against the citizen but the courts:

[E]ven if a clear line could be drawn, it would not be the duty of the courts to decide where this line should be. For example, should abortion be a legitimate matter for religious groups to discuss? Should national service be considered a purely secular issue? These are questions of public policy. Their answers depend on what is necessary to maintain religious harmony and what is in the overall interests of society. They are not questions of law to be settled on the basis of legal arguments and precedents.

The issue is what is wise for the Government to allow, not what is lawful for a person to carry out. These public policy decisions are properly the responsibility of the Executive and Parliament. Leaving them to the courts merely forces the judiciary to make political decisions. In a highly charged situation, a controversial and difficult decision is unlikely to be more acceptable to the public simply because it was made by the courts.⁸⁴

The rhetorical questions used here are confusing for the answers they suggest: that abortion is not a legitimate matter for religious groups to discuss and that national service is not a purely secular issue.⁸⁵ Even

⁸⁴ Ibid. at vii.

⁸⁵ For a discussion of the ways in which issues of ‘race’ and ‘religion’ have been dealt with by state discourse and the courts when it comes to compulsory military service (known as national service), see Thio, *Control, Co-optation and Co-operation*, *supra* note 18.

more confusing is the assertion that public policy is outside the domain of the courts because of an incompatibility between ‘wisdom’ and ‘law’. In attempting to set out a reasoned argument for excluding the courts, the Committee raises more questions than it answers. The most problematic question raised (possibly unintentionally) concerns the function of ‘law’ in the ‘nation’ if legal arguments and precedents cannot address an issue delineated by a legislative instrument.

In particular, the distinction the Committee draws between what is “lawful for a person to carry out” and what is “wise for the Government to allow” points to a risk-ridden gap between legal conduct and conduct that, while legal, might threaten the “overall interests of society” – a gap that only Parliament and the executive might be trusted to close. If the judiciary needs to be rescued from the invidious task of making “political decisions”, is the Committee implicitly acknowledging that any application of the *Religious Harmony Act* must intrinsically be ‘political’? The Committee points to limits in what ‘law’ can achieve without any apparent awareness of the irony of defending the need for a new ‘law’. Implicit in the Committee’s arguments is a measure of recognition of the ways in which the *Religious Harmony Act* departs from principles of the rule of law:

[T]he purpose of the Bill is preventative, not punitive. It is to enable the Government to act before damage is done, not primarily to punish a person after he has committed a crime.... [A]n order restraining a person from saying or doing certain things is in effect a formal warning to him to desist or else face more serious consequences. If a person had unintentionally caused feelings of ill-will by his words, it may be necessary to restrain him from repeating them, but we should not convict him of a crime, at least not yet. By issuing such an order, we avoid criminalising the issue immediately.... This is far less draconian than charging a person in court immediately and attempting to convict him.⁸⁶

In supplying these reasons for ousting the courts, the Committee appears to acknowledge the ways in which the *Religious Harmony Act* departs

⁸⁶ *SC Report on Religious Harmony*, *supra* note 62 at vii.

from the general principles that it is actual conduct (rather than potential outcomes from possible future conduct) that constitutes a crime and that intention is a necessary finding in determining a criminal conviction.⁸⁷ The departures are justified, however, as being “less draconian”⁸⁸ than the alternative, with no acknowledgement that a new form of criminalising communication of certain sorts is, in fact, being created by the *Religious Harmony Act*.

EMPTY PERFORMANCES? THE PRESIDENTIAL COUNCIL FOR RELIGIOUS HARMONY

In rejecting calls for judicial review of ministerial discretion exercised under the *Religious Harmony Act*, the Select Committee recommended that, instead of the courts, power to review ministerial decisions should lie with a Presidential Council for Religious Harmony. The Presidential Council for Religious Harmony⁸⁹ is a “consultative council,”⁹⁰ two-thirds of which is made up of “representatives of the major religions of Singapore.”⁹¹ The remaining one-third of the Council members are citizens

⁸⁷ In para. 24, *ibid.*, the Committee addresses the suggestion that “intention” be included as a factor in determining an offence under s. 8(1)(a) of the *Religious Harmony Act* and rejects that suggestion, repeating its position that the government must be able to take preventative, not punitive, action and that the state of mind of the person is irrelevant. For a discussion of the centrality of the presumption of innocence to criminal justice and the implications of the ways in which the presumption has been eroded in Singapore, see Michael Hor, “The Presumption of Innocence: A Constitutional Discourse for Singapore” (1995) *S.J.L.S.* 365.

⁸⁸ *SC Report on Religious Harmony*, *supra* note 62 at vii.

⁸⁹ *Religious Harmony Act*, *supra* note 1, s. 3.

⁹⁰ White Paper, *supra* note 19 at para. 35.

⁹¹ *Religious Harmony Act*, *supra* note 1, s. 3. The Singapore Government Directory lists twelve Council members including a representative each for Sikhism, Islam, Hinduism, Taoism, Protestantism and Catholicism, as well as three laypersons. The faith status of the Chairman, a former High Court judge, is not specified. Along with the Chairman, another Council member, the Hindu representative, is a former High Court judge. Only the Secretary of the Council is a woman. All other members, including the three “laypersons” appointed by the state, are men; online: Presidential Council for Religious Harmony <http://app.sgdi.gov.sg/mobile/agency.asp?agency_id=0000000898>.

who, in the opinion of the Presidential Council for Minority Rights, have “distinguished themselves in public service or community relations in Singapore.”⁹² These distinguished citizens are meant to be “prominent lay persons,”⁹³

included to complement the perspectives of religious leaders on the Council, to avoid direct confrontations between leaders of opposing faiths who may have to pass judgment upon each other’s errant followers, and to represent the many Singaporeans who do not belong to any organised religious group.⁹⁴

One-third of the members of the Council, then, are by implication representatives of that other great religion – secularism. The state clearly looks to the secular members of the Council to be the rational, modern, moderating presence, diffusing tensions between religious leaders, who by implication will oppose the rationality of secularism in their interests and loyalties.⁹⁵ Significantly, at least two members of the current Council are former justices of the Supreme Court.⁹⁶ Retired judges might be perceived as embodying the secular, rational modernity and the statism of Singapore courts. Surely the presence of these former justices in the Council facilitates the dilution of ‘religion.’⁹⁷

In the context of Singapore, “minority rights” means the rights of ‘racial’ minorities and not, for example, people with disabilities or the gay and lesbian community. By designing the Presidential Council for Religious Harmony to be partially nominated by the Presidential Council

⁹² *Religious Harmony Act*, *supra* note 1, s. 3(1).

⁹³ White Paper, *supra* note 19 at para. 36.

⁹⁴ *Ibid.*

⁹⁵ See Li-ann Thio, “The Secular Trumps the Sacred: Constitutional Issues Arising from *Colin Chan v Public Prosecutor*” (1995) 16 *Sing. L.R.* 98, for a discussion of secularism in Singapore and state suspicions of and around ‘religion’.

⁹⁶ See text at *supra* note 91.

⁹⁷ Kanishka Jayasuriya, “The Exception Becomes the Norm: Law and Regimes of Exception in East Asia” (2001) 2:1 *Asian Pac. L. & Pol’y J.* 108; Kanishka Jayasuriya, “Introduction,” in Kanishka Jayasuriya, ed., *Law, Capitalism and Power in Asia: The Rule of Law and Legal Institutions* (London: Routledge, 1999) 1.

for Minority Rights, the categories of ‘race’ and ‘religion’ are once more brought together. The role of the state remains central. The members of both councils are appointed by the Head of State, the President, who in turn comes to power through processes involving affiliation to the state.⁹⁸

The Council for Religious Harmony is presented by the state as an institutional check, of sorts, upon the exercise of executive power when it comes to the issuing of restraining orders. However, given state control of the membership of the Council, this may amount to yet another way in which the *Religious Harmony Act* facilitates the policing of ‘religion’. In an ideal situation, the Council presents opportunities for the state and religious leaders to engage in a constructive dialogue. However, in a situation of unequal power relations, the Council presents an opportunity for religious leaders to become co-opted into the state’s project of managing ‘religion’.⁹⁹ In the secrecy of the proceedings of the Council,¹⁰⁰ more silences are engendered by the *Religious Harmony Act*, building on the ways in which the Act frames ‘religion’ as an issue of national security rather than ‘harmony’.

Another question to be asked is, how powerful is the Council? The Minister is required to refer restraining orders to the Council only within thirty days after the order has been made. The Council then has thirty days to make its recommendations to the President. The Council may recommend that the order be confirmed, cancelled or varied. In the meantime, the order has taken effect. The order ceases to have effect only if the President does not confirm it within thirty days of receiving the Council’s recommendations. The effect of this schedule is such that, conceivably, the Minister might issue a restraining order and wait until day twenty-nine to refer it to the Council, the Council might take twenty-nine days to make its recommendations and the President then has up to thirty days to confirm the order. Should the President confirm the order,

⁹⁸ Thio, *Working out the Presidency*, *supra* note 54.

⁹⁹ Thio, *Control, Co-optation and Co-operation*, *supra* note 18.

¹⁰⁰ *Religious Harmony Act*, *supra* note 1, s. 7.

it continues to be in effect. Should the President not issue a confirmation, the restraining order ceases, but it could by then have been in effect for almost three months. Basically, a restraining order might be in place for up to three months, without even the limited institutional check on state power that the Council represents.

In deciding whether or not to confirm a restraining order, as a general rule, the President is required to act on the advice of the cabinet.¹⁰¹ Where, however, the Council and the cabinet disagree, the decision lies within the discretionary exercise of power of the President.¹⁰² All in all, however, given that presidential candidates have to be establishment figures,¹⁰³ Thio has argued that

in the composition of Presidential Council for Religious Harmony, the government has co-opted leaders of the main religions, rendering them accountable both for their own conduct as leaders and for that of their followers.¹⁰⁴

The Council brings non-state religious actors within the scope of a state institution established by ‘law’, shifting these actors into part of the policing apparatus of the state.

THE LAW THAT HAS NOT BEEN USED

The question that arises in 2011 (nineteen years after the *Religious Harmony Act* was gazetted into effect)¹⁰⁵ is, what is the significance of this ‘law’ if it has not, in fact, ever been enforced? In 1998, eight years after the *Maintenance of Religious Harmony Act* had been passed, Lee Kuan Yew explained the need for the *Religious Harmony Act* thus:

¹⁰¹ *Ibid.*, s. 12(3).

¹⁰² *Constitution*, Art. 22 I, read with *Religious Harmony Act*, *supra* note 1, s. 12(3).

¹⁰³ Thio, *Working out the Presidency*, *supra* note 54.

¹⁰⁴ *Ibid.*

¹⁰⁵ A ‘law’ comes into effect not on the day it has its third reading and is passed by Parliament, but on the date set by a government gazette notification. The *Religious Harmony Act* was passed in Parliament in November 1990, but was not gazetted into effect until March 1992. This history is appended to the text of the Act.

But when the Christians became very active and evangelical ... wanting to convert the Muslims, and the Catholics decided to go in for social action, we were headed for trouble! ... We've just got out of one trouble – communism and Chinese chauvinism – and you want to land into another? Religious intolerance? It's just stupid. Stay out of politics. The *Religious Harmony Act* was passed; after that, it subsided.¹⁰⁶

Significantly, Lee summarises the activities of 'the Catholics' as "social action." There is no effort in this narrative, ten years after the 'Marxist conspiracy', to resuscitate the 'Marxist' label or to recall the shadowy "nefarious activities"¹⁰⁷ that were said to be so "prejudicial to the security of Singapore."¹⁰⁸ Instead, the threat to the ever-precarious 'nation' is now 'religion', and the terrain that 'religion' must stay out of is 'politics'. 'Communalism', a term broad enough to embrace 'race' and 'religion' (in the 'raced' constructions of 'religion' in Singapore), is reframed as "Chinese chauvinism", thus opening the door for 'religion' to be separately addressed as a security issue.

Lee justifies the *Religious Harmony Act* on two grounds, evangelism and social action, without explaining how social action becomes "politics" or "religious intolerance." If we remove the shadowy 'conspiracy' element from the state discourse on the 'Marxist conspiracy' and bear in mind the activities actually engaged in by the Catholic social workers, then the formula the state constructs is marked by the constant repetition of an unexplained sequence:

Social action = politics = disaster for the nation

¹⁰⁶ Fook Kwang Han, Warren Fernandez & Sumiko Tan, *Lee Kuan Yew: The Man and His Ideas* (Singapore: Times Editions, 1998) 190.

¹⁰⁷ Goh, *supra* note 22.

¹⁰⁸ *Ibid.* This different framing, articulated by Lee in 1998, is possibly a reflection of post-Cold War dynamics. In his memoirs, however, Lee maintains the narrative of a Communist threat having surfaced from 1985 to 1987 via a "small group of English-educated pro-Marxist activists": Lee Kuan Yew, *From Third World to First: The Singapore Story, 1965–2000* (Singapore: Times Editions, 2000) 137.

This device of repetition, of asserting ideological positions as if they were ‘fact’ and ‘truth’, is a device that shapes the *Religious Harmony Act*.

Lee’s 1998 comment credits the *Religious Harmony Act* with “subsiding ... religious intolerance”. This attribution is intriguing given that the state has not actually issued restraining orders under the *Religious Harmony Act*. Instead, in those moments when the *Religious Harmony Act* might have been invoked, the state turned either to the *Internal Security Act* or to the *Sedition Act*. From 2002¹⁰⁹ onwards,¹¹⁰ men accused either of being members of the militant Islamist group Jemaah Islamiah plotting acts of violence against the state or, in one case, of being a “self-radicalised” militant,¹¹¹ have been detained without trial under the *ISA*. In the media, these men have been presented as motivated by their religious beliefs.¹¹² If they were indeed plotting against the state, then they were “carrying out subversive activities under the guise of propagating or practising any religious belief”; conduct that s 8(1)(c) of the *Religious Harmony Act* seeks to restrain. The detention without trial of these men under the *ISA* may signal the severity of the threat against the state and in this way account for the non-utilisation of the *Religious Harmony Act*, but prosecutions that have been brought under the *Sedition Act* are not as neatly explained.

In 2005 bloggers who posted content that was racist and offensive about Islam were charged under s 3(1)(e) of the *Sedition Act*,¹¹³ which states that “[a] seditious tendency is a tendency to promote feelings of ill-will and hostility between different races or classes of the population of Singapore”. In 2006 a blogger who had posted offensive cartoons of Christ was also charged under this section of the *Sedition Act*

¹⁰⁹ Dominic Nathan, “15 Nabbed Here for Terror Plans”, *Straits Times* (6 January 2002).

¹¹⁰ Sue-Ann Chia, “‘Self-radicalised’ Law Grad, 4 JI Militants Held”, *Straits Times* (9 June 2007).

¹¹¹ *Ibid.*

¹¹² Nathan, *supra* note 109; Chia, *supra* note 110. “ISA Detainee Taught MP’s Sons”, *Straits Times* (3 February 2002).

¹¹³ “Two Bloggers Jailed for Making Seditious Remarks Online”, *Channelnews Asia* (7 October 2005).

but was eventually let off with a stern warning.¹¹⁴ Even “misdirected proselytisation”¹¹⁵ has been construed as sedition: In 2009, after a trial that lasted eleven days, a married couple characterised by the press as Christian evangelists were found guilty of having distributed seditious and undesirable publications depicting Islam in disparaging ways.¹¹⁶ The court found that the couple distributed publications that promoted feelings of ill-will and hostility between Christians and Muslims.¹¹⁷ They were sentenced to eight weeks imprisonment.¹¹⁸

This highly public prosecution of those who violate ‘religious harmony’ through the technology of the *Sedition Act* might be explained as the state turning to ‘law’ primarily as a mode of public pedagogy, generating a discourse of the endangered ‘nation’ through the disciplining of those who transgress. In 2010 the pastors of two evangelist churches were summoned to the Internal Security Department for questioning after online postings of video clips revealed these pastors making disparaging comments about other faiths.¹¹⁹ Within hours of having been called in by ISD, both pastors apologised¹²⁰ and withdrew the offending

¹¹⁴ Zakir Hussain, “Blogger Who Posted Cartoons of Christ Online Being Investigated,” *Straits Times* (14 June 2006); see “Warning for Blogger Who Posted Cartoons of Christ,” *Straits Times* (21 July 2006).

¹¹⁵ Lee, *supra* note 108.

¹¹⁶ *Public Prosecutor v. Ong Kian Cheong & Dorothy Chan Hien Leng*; Elena Chong, “Couple Guilty of Sedition,” *Straits Times* (28 May 2009); “Couple Sentenced to 8 Weeks Jail for Distributing Seditious Publications,” *Channelnews Asia* (10 June 2009).

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ Yen Feng, “ISD Looks into Clip of Sermon which Mocked Taoist Beliefs,” *Straits Times* (15 June 2010); Yen Feng, “Church Pastor Says Sorry,” *Straits Times* (16 June 2010); “ISD Calls up Pastor for Insensitive Comment,” *Straits Times* (9 February 2010); “ISD Acts,” *Straits Times* (9 February 2010); “Pastor’s Comments on Buddhism/Taoism ‘Inappropriate & Unacceptable’: MHA,” *ChannelNewsAsia* (9 February 2010); “Pastor Apologises Personally to Buddhist & Taoist Federations,” *ChannelNewsAsia* (9 February 2010); Leong Wee Keat, “Pastor’s Apology,” *Straits Times* (10 February 2010); Grace Chua, “Leaders of Buddhist, Taoist Groups Urge Restraint,” *Straits Times* (9 February 2010).

¹²⁰ Leong, *supra* note 119.

video clips from their church websites.¹²¹ Unlike the previous episodes in which actual¹²² or threatened¹²³ prosecutions for sedition became the platform for disciplining infringements of ‘religious harmony’, the evangelist pastors became a different expression of state pedagogy. Prime Minister Lee presented the incidents as examples of religious leaders who “got into trouble,”¹²⁴ then took a moderate stand to help “calm the ground.”¹²⁵

In the time since the *Religious Harmony Act* was passed, the state has responded to moments of discourse that offend the ideal of ‘harmony’ of ‘race-religion’ through *ISA* detentions, sedition charges and the weighty announcement of *ISD* questioning. In other words, threats to ‘religious harmony’ are managed without recourse to the *Religious Harmony Act*. Why then formulate and institutionalise the *Religious Harmony Act*?

LEGISLATION AS POLICY AND POLICING STATEMENT

Perhaps the efficacy of the *Religious Harmony Act* lies not in its application but, as suggested by Lee,¹²⁶ in the mere fact of its existence. At least one individual claims to have been told that his conduct has opened him to “three charges of defamation ... prosecution for sedition and contravening Singapore’s *Religious Harmony Act*,”¹²⁷ which suggests to me that the state views the *Religious Harmony Act* as a security ‘law’, available for use alongside other security laws in maintaining the state’s dominance of public *discourse* more than public *order*.

¹²¹ Ibid.

¹²² *Supra* notes 113 and 116.

¹²³ *Supra* note 114.

¹²⁴ “Religious Leaders Must Take Lead to Safeguard Harmony: PM,” *ChannelNewsAsia* (3 December 2010).

¹²⁵ Ibid. See also “DPM Wong Says ‘Glad to Note’ Pastor Tan Realised His Mistake,” *ChannelNewsAsia* (10 February 2010); “Pastor’s Comments on Buddhism/Taoism,” *supra* note 119.

¹²⁶ *Supra* note 106.

¹²⁷ Michael Dwyer, “Singapore’s Accidental Exiles Leave a Damning Vacuum,” *South China Morning Post* (2 September 2004).

The individual in question, Zulfikar Mohamad Shariff, came into prominence with his website, Fateha.com, on which he had argued that the sentiments of the detained Jemaah Islamiah activists were understandable, given the Singapore state's close alliances with the United States and Israel. He further argued that state schools should permit Muslim schoolgirls to wear headscarves and that Malay PAP Members of Parliament did not represent the interests of Singapore's Malay-Muslim electorate.¹²⁸ Shariff's comments on the Jemaah Islamiah arrests were characterised by the state as having "undermined the fabric of our multi-racial, multi-religious society" by having "cast doubt on the validity of the arrests and express[ed] sympathy for the detainees."¹²⁹ In other words, Shariff, like the 'Marxist conspirators', had breached the role of passive acceptance cast for him by the knowing state. In questioning and criticising the state, he had introduced a discursive strand into the public domain that the state was not ready to tolerate. Shariff fled to Melbourne, fearing imprisonment.¹³⁰

While Shariff questioned the state's management of 'religion', the activities of the Catholic detainees, in addition to bringing 'class' to the surface of public discourse, might also be read as questioning the state's management of the economy. It appears to be discursive moments which interrogate particular facets of state ideology that trigger the state's turning to 'law' for its coercive power, prompting the state's rehearsal, yet again, of the narrative of Singapore's exceptional vulnerability. This narrative is used to legitimise law's violence being imposed upon a few before (an unmanifested) violence linked to 'race-religion' – predicted by the state as a certainty – might be visited upon the wider 'nation'.

To return to my question: Why has the state not used the *Religious Harmony Act* when it could have, choosing instead to prosecute

¹²⁸ Ahmad Osman, "Ex-Fateha Chief Investigated for Net Comments", *Straits Times* (4 July 2002).

¹²⁹ Wong Sher Maine & Chua Min Yi, "Condemn JI Terrorists – Yaacob", *Straits Times* (22 September 2002).

¹³⁰ Dwyer, *supra* note 127.

bloggers under the *Sedition Act*? Significantly, the attention of the state was drawn to the offensive blogs and video clips by members of the public. Even the pamphlets distributed by the Christian couple disparaging Islam came to the state's attention through complaints filed with the police.¹³¹ This response from offended citizens suggests that the discursive project of the *Religious Harmony Act* has been successful. Citizens, ideologically consenting to the Singapore model of political pluralism, perceive disparaging comments on faiths and practices as violating the precarious 'harmony' of 'multi-racial, multi-religious' Singapore. It is consistent with acceptance of the state model of control and power in Singapore that these citizens should draw state and public attention to the breach of this 'harmony', seeking a remedy from the state.

In the unwillingness of members of the public to tolerate blog postings (which receive far more attention through police and ISD action than they do from being in cyberspace) there is a consistency with state positions on such matters. When the state turns to the *Sedition Act* and the *Internal Security Act* instead of the *Religious Harmony Act*, the punitive power of the 'law' is powerfully performed in the public domain.¹³² All potential violators of 'religious harmony' are more potently instructed by imprisonment for criminal conduct under the *Sedition Act* than by restraining orders under the *Religious Harmony Act*.

The text of the *Religious Harmony Act* has enabled a public process by which the state reiterated and revitalised its version of Singapore's precarious stability. Possibly citizens have understood, not so much from the *Religious Harmony Act* itself as from the larger discourse of 'law', 'nation' and 'religion' facilitated by the formulation of the *Religious Harmony Act*, that the state's notion of 'religious harmony' is central to

¹³¹ *Supra* note 116.

¹³² I am grateful to Professor Li-ann Thio, National University of Singapore, for this point.

the security of the 'nation'. The *Religious Harmony Act* has thus served its purpose by functioning as a policy and a policing statement. It does not actually have to be enforced as 'law' in order to be effective.¹³³ The value of the *Religious Harmony Act* to the state lies primarily in the discourse that it enabled.

¹³³ The Singapore state said as much when the Minister for Home Affairs, Wong Kan Seng, responded to constitutional lawyer and nominated Member of Parliament Li-ann Thio's query on whether any restraining orders had been issued. The Minister said that the government had come close to "invoking the Act on several occasions" and that the Internal Security Department had issued warnings to certain religious leaders: Sing., *Parliamentary Debates*, vol. 82, col. 1319 (12 February 2007) (Wong Kan Seng).

