

Rule of Law Lineages: Heroes, Coffins, and Custom

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Abstract

What does rule of law look like from beyond an Anglo-American perspective? This Commentary excavates a subterranean strand of Singapore's rule of law discourse – rule of law as the necessary subordination of 'the people' – to argue that colonial ideologies are inevitably perpetuated and revitalized when the postcolony adopts rule of law as a pillar of the nation-making project.

Keywords

rule of law, national myth, postcolony, race, custom

I. Introduction

As concept and category, how does 'rule of law' unfold outside the spaces of the liberal West? In a world shaped by colonialism and neo-colonialism, is rule of law discourse in postcolonial jurisdictions determined by Anglo-American meanings? Consider for example, how, when addressing the visiting New York State Bar Association in 2009, Singapore's then Chief Justice, Chan Sek Keong, situated Singapore as connected to the US through key concepts (constitutional supremacy),¹ key figures ("the greatest Chief Justice of the United States, Chief Justice John Marshall"),² and shared knowledge of

1. Keynote Address by Chief Justice Chan Sek Keong, New York State Bar Association Seasonal Meeting, 27 October 2009, pp. 9–10, https://www.supremecourt.gov.sg/data/doc/ManagePage/3021/CJ%20Keynote%20Address%20at%20NYSBA%20International%20Seasonal%20Meeting_27%20Oct%202009.pdf.
2. *Id.*

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key decisions (*Marbury v. Madison*, *Brown v. Board of Education*, *NYT v. Sullivan*).³ More potently, to make his point that law in Singapore is linked to law in the liberal West, CJ Chan named three men as Singapore's rule of law architects: the British East India Company's Stamford Raffles (who, in 1819 secured Singapore for the Company), the Victorian jurist Albert Venn Dicey, and Singapore's first and long-time Prime Minister, Lee Kuan Yew.⁴

According to the Chief Justice, English law entered Singapore through the 1823 Raffles Regulations,⁵ and, given that Dicey's parameters for the rule of law were part of English law, rule of law became part of what Singapore "inherited" – this was his word – from the British.⁶ This "heritage" had been necessarily and effectively modified by lawyer-leader Lee Kuan Yew, who knew that English law must be tailored to meet "the political, social and cultural values" of Singapore.⁷

In naming Raffles, Dicey, and Lee as architects of the lawful nation, the postcolony adopts one limb of "the typical European origin myth"⁸ in which,

The nation is created in history where its primal force comes from the activity of an heroic ancestor figure, which activity is in the process of bestowing a definitive unity and an order on what was previously disparate and chaotic.⁹

3. *Id.*

4. *Id.* pp. 2–6.

5. M.B. Hooker, "Raffles' Singapore Regulations – 1823," *Malayan Law Review* 10 (1968), 248–91. While CJ Chan treats the Raffles Regulations as an unproblematic source of law, legal historian Kevin Tan has assessed the Regulations as "illegal because Raffles was clearly acting beyond the scope of his powers," Kevin Y.L. Tan, "Singapore: A Statist Legal Laboratory," in Ann Black and Gary Bell, eds., *Law and Legal Institutions of Asia* (Melbourne: Cambridge University Press, 2011), p. 332.

6. Chan, Keynote, "inherited" p. 3, "heritage" p. 4, "a rich legacy" p. 5.

7. In his speech, CJ Chan made it clear that this process of tailoring involved those features of the Singapore legal system that have long been considered flaws from a liberal 'Western' perspective: the abolition of jury trials, and the retention of the colonial legal technology of detention without trial (p. 3). The Chief Justice rehearses a standard trope of Singapore's narrative of law and nation by characterizing Singapore as 'rule of law' while justifying the repression of civil and political rights. The primary author of this narrative is Singapore's first and long-time prime minister, Lee Kuan Yew. For example, in Lee's 2007 address to the International Bar Association, he said, "Singapore inherited a sound legal system from the British ... The common law heritage and its developed contract law are known to have helped attract investors. Our laws relating to financial services are similar to the laws of leading financial centres in other common law jurisdictions such as London and New York." In the same speech, Lee justified corporal and capital punishment, and legislation undermining fundamental liberties, as "special legislation to meet our needs". (Speech by Mr Lee Kuan Yew, Minister Mentor, at the Opening of the International Bar Association Conference, 14 October 2007, 6:45 pm at Suntec Convention Centre. Available online: <http://www.nas.gov.sg/archivesonline/speeches/search-result.>)

8. Peter Fitzpatrick, *Nationalism, Racism, and the Rule of Law* (Aldershot: Dartmouth, 1995), p. xiv.

9. *Id.*

The postcolony's crucial departure from this standard European myth of national origins relates to the place and role of 'the people'. In the standard European myth, the people are ascendant, if not foundational.¹⁰ However, in the narrative of law, colony, and nation recounted by the Chief Justice, the people are not the empowered, assertive, foundations for the nation featured by the European myth. Instead, the people are the problematic site and source of a potential disorder that threatens the very existence of the nation; a threat requiring detention without trial,¹¹ the abolition of jury trials,¹² a Singapore-specific understanding of defamation,¹³ a range of laws securitizing race and religion,¹⁴ and a host of other departures from the liberal (Western) conception of rule of law.¹⁵ In short, it is a narrative that scripts the subordination of 'the people' as crucial to the Singapore success story of postcolonial rule of law.

In this Commentary, with the aim of excavating this subterranean strand of rule of law discourse – rule of law as¹⁶ the necessary subordination of 'the people' – I reflect critically on three texts from the postcolonial nation state of Singapore. First, CJ Chan's 2009 speech offers a launching pad for an interrogation of Singapore's dominant account of law and nation, illustrating the subordination of the people inherent to a postcolonial nation that so insistently celebrates colonization. Second, a 1995 Singapore High Court judgment, *Soniya Chataram Aswani v. Haresh Jaikishin Buxani* (hereafter *Soniya Chataram*),¹⁷ illustrates the sharp difference between the national and the colonial legal systems with regard to the category 'custom'; demonstrating the manner in which national law subordinates the people by closing off the capacity of citizens to assert law attaching to 'race' or 'religion'. And third, Kuo Pao Kun's play, *The Coffin is Too Big for the Hole*¹⁸ (hereafter *Coffin*), conveys the alienation and impotence experienced by individuals when national law insists that feelings and values attaching to traditions of burial be subordinated to the imposed trajectories of national development.

I choose these texts because they span a discursive spectrum in terms of genre, site, and social power, while holding in common textual revelations of the subordination of 'the people'. The judgment in *Soniya Chataram* is an uncontroversial text of law; richly revealing of ways in which a citizen's voice has been silenced. CJ Chan's speech reveals Singapore's (then) highest-ranked judicial officer's national/legal ideology; an ideology which venerates elites. And *Coffin* speaks to law through the playwright's biography and

10. *Id.*

11. Chan, Keynote, pp. 3, 10, 11.

12. Chan, Keynote, p. 3.

13. Chan, Keynote, pp. 13–15.

14. Chan, Keynote, p. 12.

15. Chan, Keynote.

16. In exploring the rich understandings of law generated by "law as," this Commentary is informed by Christopher Tomlins and John Comaroff, "Law as ... : Theory and Practice in Legal History," *UC Irvine Law Review* 1 (2011), 1039–79.

17. *Soniya Chataram Aswani v. Haresh Jaikishin Buxani* [1995] 2 Singapore Law Reports (Reissue) 736–40 (Singapore High Court).

18. Kuo Pao Kun, "The Coffin Is Too Big For The Hole," in *The Coffin Is Too Big For The Hole ... and other plays* (Singapore: Times Books International, 1990), pp. 29–46.

through the character's struggles with law as bureaucracy. The very disparity of these texts and their genres points to the pervasive dissemination of the subordination of 'the people' in the Singapore project of 'rule of law'.

II. Singapore's Story of Law and Nation

Singapore's dominant account of 'law' and 'nation',¹⁹ re-told in a condensed form by CJ Chan to the New York State Bar Association,²⁰ perpetuates the colonial account by marking the arrival of the British East India Company's Raffles as Day One.²¹ Raffles is credited with having "discovered" Singapore, which, until he arrived (so the account goes) was but a sleepy little fishing village populated by indolent natives living off the bountiful seas, either as fisher-folk or as pirates.²² Raffles is credited with transforming Singapore into a thriving port, facilitating the arrival of industrious immigrants from China, India and the surrounding Malay archipelago.²³ Under the guiding hand of the civilizing, modernizing British, this racially plural population worked to make Singapore economically and socially vital and viable.

The nation's account of how Singapore came to be perpetuates the prestige imperialism²⁴ of the colonial account; erasing Singapore's grubby utility as a penal colony²⁵ from the story. More importantly, precolonial histories are not acknowledged, the territory is treated as land with minimal law, and prosperity is not permitted to predate the British. The question is why has the postcolony structured continuity with colony, rather than rupture, in its narrative of law and nation?

Arguably, if prosperity cannot predate the British and their law, then prosperity cannot predate the immigrant population either. In a nation that has been described as a Chinese city state in a Malay world,²⁶ with those marked by the race name 'Chinese' outnumbering the indigenous 'Malay',²⁷ this narrative of law and nation displaces the biology of

19. On the overwhelming dominance of the state's account of Singapore history see Hong Lysa and Huang Jianli, *The Scripting of a National History: Singapore and Its Pasts* (Singapore: NUS Press, 2008), pp. 15–29.

20. Chan, Keynote, p. 4.

21. See, e.g., the preamble to *Letters Patent Establishing the Court of Judicature at Prince of Wales Island, Singapore and Malacca in the East-Indies* (1826), commonly known as the Second Charter of Justice, and W.J. Napier, "An Introduction to the Study of the Law Administered in the Colony of the Straits Settlements" (1898) reprinted in (1974) 16(1) *Malayan Law Review* 4.

22. *Id.*

23. Hong and Huang, *The Scripting of a National History*, pp. 15–29.

24. Robert A. Huttenback, *Racism and Empire: White Settlers and Colored Immigrants in the British Self-Governing Colonies 1830–1910* (Ithaca, NY and London: Cornell University Press, 1976), p. 13.

25. Anoma Pieris, *Hidden Hands and Divided Landscapes: A Penal History of Singapore's Plural Society* (Honolulu, HI: University of Hawai'i Press, 2009).

26. Philippe Regnier, *Singapore: A Chinese City State in a Malay World* (London: Hurst, 1991).

27. Singapore's population has been predominantly Chinese since 1836 (45.6%): Nirmala Srirekam PuruShotam, *Negotiating Language, Constructing Race: Disciplining Difference in*

‘race’ as the basis of legitimacy to hold postcolonial power. For this particular postcolonial nation-state, the standard war-cry of independence movements, typified by “Quit India,” cannot be invoked because an ancestral connection to the land is absent for those who hold political and economic power, and for many who populate the land.

Instead, deflecting attention away from the *precolonial*, the colonial gift of law²⁸ becomes the source and site of a desirable modernity in which law, colony and nation are conjoined. Law becomes the vehicle for the liberal, humanist value of an equality residing in citizenship, as declared in the constitutive legal texts of ‘nation’.²⁹ When law shapes the nation (via colony), the right to hold power vests, not in an ancestral connection to the land, but in citizens, who are equal, “regardless of race, language or religion”.³⁰

Indeed, CJ Chan’s characterization of Singapore as composite of colony, law, and nation represents a deft solution to the problem Peter Fitzpatrick has articulated,

[L]aw as national rests uneasily with the claims of that other ready attribute of the legal, its exaltation as the rule of law. How can law be distinctly produced by the nation yet be self-contained and self-producing, which it has to be as the rule of law?³¹

As the Chief Justice’s speech demonstrates, one way for law to be both national yet retain the attributes of apparent autonomy and exaltation associated with ‘rule of law’, is for the postcolonial nation to simultaneously demarcate jurisdictional and ideological separation, yet assert a familial bond with Mother England. By belonging to England, Singapore claims rule of law ascendancy by virtue of descent.

However, even as this narrative of law, colony and nation displaces race as the basis of legitimacy, the nation adopts and revitalizes the colony’s racial subordination of ‘the people’ to the state. The astonishing degree to which the project of nation perpetuates colonial race ideologies is tellingly revealed by this section of the Chief Justice’s speech,

Singapore (Berlin: Mouton de Gruyter, 1998), p. 41, note 3. Today, Chinese consist of about 74% of the population, with a significant Malay minority (13%) and an Indian population of about 9.2%: Government of Singapore Census of Population 2010 Press Release online http://www.singstat.gov.sg/docs/default-source/default-document-library/statistics/browse_by_theme/population/census2010/press31082010.pdf. (The next census will be conducted in 2020.)

28. Huttenback, *Race and Empire*, p. 15; Peter Fitzpatrick, *The Mythology of Modern Law* (London and New York: Routledge, 1992), p. 107.

29. Constitution of the Republic of Singapore (1999 Rev. Ed.), and Independence of Singapore Agreement 1965.

30. Students at Singapore schools typically begin their day by reciting the national pledge, “We the citizens of Singapore, pledge ourselves as one united people, regardless of race, language or religion, to build a democratic society based on justice and equality, so as to achieve happiness, prosperity, and progress for our nation”: http://eresources.nlb.gov.sg/infopedia/articles/SIP_84_2004-12-13.html.

31. Fitzpatrick, *Nationalism, Racism and the Rule of Law*, p. xiii.

Our English heritage can be traced back to the time when Singapore became a British possession soon after Sir Thomas Stamford Raffles set up a trading station near the Singapore River in 1819. Because it was a free port, the place was bustling with thousands of traders from the region by 1823. In that year, Raffles issued the following proclamation,

“Let the principles of [English] law be applied not only with mildness, but with patriarchal kindness and indulgent consideration for the prejudices of each tribe as far as natural justice will allow, but also with reference to their reasoning powers, however weak, and that moral principle, which however often disregarded, still exists in the consciences of all men.”

Raffles’ civilising vision thus called for the application of English law and English justice to a society that was already, by that time, multi-racial, multi-religious and multi-cultural in its make up.³²

In CJ Chan’s reading of the Raffles Regulations, law as violence is recast as law as justice. The violence of colonization’s appropriation of territory and domination of populations is valorized as a transformative “civilising vision”. The Chief Justice’s interpretation is consistent with the British imperial conviction that

the Anglo-Saxon (British) race possessed a special capacity for governing itself (and others) through a constitutional system which combined liberty, justice and efficiency. It was a gift that could not be transferred to lesser peoples such as Indians.³³

When CJ Chan characterizes Lee Kuan Yew as Singapore’s “pre-eminent first-generation leader ... a Cambridge-educated lawyer, who knew what the rule of law entailed”³⁴ there is, perhaps, an implication that British racial superiority might be acquired through the associations and immersions that Homi Bhabha has theorized as mimicry,³⁵ thus rendering Lee the appropriate successor to Raffles and Dicey. Certainly, this trio of ancestral heroes reinscribes the enmeshments of law, colony and nation in a manner that disembeds Singapore from its Southeast Asian geopolitical space, and from precolonial significances.

CJ Chan’s valorization of colonial racism is consistent with a national project that has woven profound ideological continuities between colony and nation yet has marked a quiet departure³⁶ from colonial legal ideologies and practices when it comes to facets of the state/individual encounter shaped by the category ‘custom’.

32. Chan, Keynote, pp. 3–4.

33. Huttenback, *Racism and Empire*, p. 15.

34. Chan, Keynote, p. 6.

35. Homi K. Bhabha, “Of Mimicry and Man,” in *The Location of Culture* (London and New York: Routledge, 1994), pp. 121–44. Bhabha theorizes mimicry as “at once resemblance and menace” (p. 123). In this instance, I draw attention to mimicry as resemblance. For a discussion of mimicry as menace in Singapore’s construction of ‘rule of law’, see Jothie Rajah, “Flogging Gum: Cultural Imaginaries and Postcoloniality in Singapore’s Rule of Law,” *Law Text Culture* 18 (2014), 135–63.

36. The Singapore state has been strident in defending its departures from ‘Western’ liberal legality when it comes to detention without trial, corporal and capital punishment, defamation, the

III. Custom, Law, and Nation

Colonial law in the Straits Settlements³⁷ deployed the categories ‘English law’ as against ‘customary’ or ‘personal law’.³⁸ These oppositional categories were used by the British to draw a distinction between the domains in which ‘English law’ would apply (for example, contract and property), and the domain of ‘customary’ or ‘personal law’ (such as marriage, divorce, and inheritance).³⁹

At one level, custom was a cipher for race, reinforcing the colonial project’s hierarchies.⁴⁰ However, as a governance strategy, by demarcating a liminal space for ‘native’ self-governance, custom offered the British a platform for performing colonial rule as the enlightened accommodation of difference.⁴¹ Within the ambivalence of custom, a space opened up for colonized subjects to explain themselves to the state through identity categories marked, typically, by the shifting labels of ‘race’ and ‘religion’. It was, in many ways, a space for the negotiation of legalities.⁴²

Soniya Chataram is a case that highlights one of the ways in which the postcolonial Singapore state has enacted a determined break with the colonial legal accommodation of difference. In particular, by illustrating the manner in which courts and legislation shut down assertions of legality located in sites other than national law, *Soniya Chataram* presents the legal dynamics involved in dismembering and de-legitimizing the citizen’s lived experience of law as custom.

In this case, a Singapore citizen, Soniya Chataram Aswani, petitioned the court for a declaration of the nullity of her marriage to a Malaysian citizen, Haresh Jaikishin Buxani. This couple had already encountered the regulatory apparatus of the national legal system in a range of ways before the petition for nullity was filed. Much of this encounter had to do with Haresh’s immigration status. As a Malaysian citizen living and working in Singapore on a work permit, Haresh was prohibited both from marrying while resident in Singapore, and from marrying a Singapore citizen.⁴³

Haresh made an application to the Controller of Immigration for permission to marry⁴⁴ but the Controller refused the application, which meant that the couple could not register

presumption of guilt, and offenses against the judiciary. In contrast to these noisy departures from ‘Western’ liberal rule of law, the nation’s discarding of colonial legality’s ‘custom’ has attracted little ‘Western’ notice; hence, a quiet departure.

37. “Founded” by Raffles in 1819 as a trading post, in 1826 Singapore became part of (and later the capital of) the Straits Settlements, which consisted of three ports crucial to the control of the Straits of Malacca: Penang, Malacca, and Singapore: C.M. Turnbull, *A History of Modern Singapore 1819–2005* (Singapore: NUS Press, 2009), p. xvii.

38. M.B. Hooker, *Laws of Southeast Asia* (Singapore: Butterworths, 1986).

39. Hooker, *Laws of Southeast Asia*.

40. Peter Fitzpatrick, “‘The Desperate Vacuum’: Imperialism and Law in the Experience of the Enlightenment,” *Droit et Societe* 13 (1989), 342–56.

41. *Id.*

42. Jothie Rajah, “Southeast Asian Law: Hindu Law,” in Stanley N. Katz, ed., *The Oxford International Encyclopedia of Legal History* (published online, Oxford University Press, 2009).

43. Employment of Foreign Manpower (Work Passes) (Amendment) Regulations 2010, First Schedule, Part IV, regulation 8.

44. *Soniya Chataram*, 738, para. 2.

their marriage under the legislation primarily governing (non-Muslim) marriage in Singapore, the *Women's Charter*.⁴⁵

If immigration laws have, in general, been central to the project of nation-making,⁴⁶ it is important to highlight that for Singapore, marriage law, in the shape of the *Women's Charter*, has also been a crucial nation-making law.⁴⁷ Enacted just two years after Singapore became self-governing, the 1961 *Women's Charter* provides for monogamous (non-Muslim) marriages, and establishes the legal-administrative apparatus for the solemnization and registration of marriages. Under colonial rule, personal and customary law dominated the spheres of marriage and divorce and there was no central registry recording and licensing marriage.⁴⁸ However, with the *Women's Charter*, marriage was brought firmly within the regulatory control of the state. The monogamy mandated by the *Women's Charter* was hailed as rescuing women from the oppression of polygamy fostered by feudalism and permitted by colonialism.⁴⁹

In *Soniya Chataram*, these two strands of nation-defining law, immigration and marriage, were to converge. With his application for permission to marry denied by the Controller of Immigration, Haresh and Soniya were prevented from marrying within the realm of national law. The couple then married in a traditional Hindu ceremony. The wedding was conducted by “the official priest . . . of the Sindhi community in Singapore”⁵⁰ but, as the court highlights, this priest was not licensed to solemnize marriages under the *Women's Charter*. As far as the couple was concerned, however, they were validly married. Indeed, the poignancy of their conviction that they were legally, validly wed is conveyed by the fact that Soniya turned to the courts with her petition for a nullity of marriage.

The parties came before Justice Selvam of the Singapore High Court. For the judge, a preliminary issue was whether the court had the jurisdiction to hear an application for nullity when the marriage was not registered under the *Women's Charter*. Soniya's counsel submitted that Soniya and Haresh's wedding, conducted according to the traditions of their community, brought their marriage under s. 86(1)(a) of the *Women's Charter*. This provision empowered the court to hear petitions for nullity of marriages not registered under the *Women's Charter* if such marriages had been solemnized under a law which expressly or impliedly provides that the marriage shall be monogamous.⁵¹

45. *Women's Charter* (Cap. 353, 1997 Rev. Ed. Sing.).

46. Catherine Dauvergne, “Making People Illegal,” in Peter Fitzpatrick and Patricia Tuitt, eds., *Critical Beings: Law, Nation and the Global Subject* (Aldershot and Burlington, VT: Ashgate, 2004), pp. 83–100.

47. Leong Wai Kum, “Fifty Years and More of the Women's Charter of Singapore,” *Singapore Journal of Legal Studies* (2008), 1–24.

48. *Id.*

49. *Singapore Parliament Reports* 22 March 1961 columns 1199–1202 (Chan Choy Siang).

50. *Soniya Chataram*, 738, para. 6.

51. The interpretive space enabled by this provision has since been removed from the *Women's Charter* in a 2005 amendment presented as blandly technical in nature: *Statutes (Miscellaneous Amendments) (No. 2) Act 2005* (No. 42 of 2005). Singapore Statutes Online.

On its face, this provision did indeed offer the interpretive space Soniya's counsel advocated. However, the court could not agree. After hearing testimony as to the monogamous nature of Hindu Sindhi marriages from the President of the Sindhi Merchants' Association, the court rejected both the argument and the expert. The court rejected the expert on the grounds that first, he had no qualifications to be an expert on Hindu law, and second, that "his knowledge was confined to the practice of a particular section of a community in Singapore and not Hindu law as such".⁵² For Justice Selvam, the somewhat startling conclusion was that "[e]very Hindu marriage as such is potentially polygamous."⁵³

Turning to the broader argument on the court's jurisdiction to hear a petition for nullity for marriages not registered under the *Women's Charter*, the court held that the *Women's Charter* had displaced personal law.⁵⁴ Explaining s. 86(1)(a), Justice Selvam asserted that the only way s. 86(1)(a) made sense in the context of the *Women's Charter* was that it was intended for foreign marriages, not the marriages of Singaporeans.⁵⁵

The national court's refusal to give weight to the specifics of Hindu Sindhi identity is in sharp contrast to the general tendency of the colonial courts to construct 'Hindu' in a pluralist and disaggregated manner.⁵⁶ When individuals came before the colonial courts, self-identifying race, community, and caste names were understood to be meaningful.⁵⁷ Before the national courts however, 'Hindu law' was not permitted to be the site of such unpindownable complexity. In rejecting Soniya's claim that her marriage was lawful and monogamous, the court stifles 'custom' in the name of national law. Engaging with Soniya's application for a nullity would have meant undermining the homogenizing, bureaucratizing, vigilance of both immigration law and marriage law. Custom in the nation had to be marked as incontrovertibly *not* law.

As text, this judgment is a variation on the theme of 'the people' as site and source of danger and disorder; needing to be managed through the state's firm and subordinating law. It is a subordination consistent with the Singapore state's inaugural and ongoing demarcation of (racial and religious) difference as a threat to the nation.⁵⁸

Another cluster of issues relating to the obliteration of custom from law, and the management of citizens through national law's refusal to recognize community beliefs and practices, is staged by Kuo Pao Kun's *Coffin*. In *Coffin*, the tussle between state and citizen centers not on marriage, but on land.

IV. When Law Displaces Corpses

At its most superficial level, *Coffin* is a monodrama in which a man recounts how he is persistently troubled by memories of his grandfather's funeral at which he had to solve

52. *Soniya Chataram*, 739, para. 7.

53. *Soniya Chataram*, 739, para. 7.

54. *Soniya Chataram*, 739, paras 9–11.

55. *Soniya Chataram*, 739, para. 7.

56. Rajah, "Southeast Asian Hindu Law."

57. *Id.*

58. Jothie Rajah, *Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore* (New York: Cambridge University Press, 2012).

the problem of a coffin that was too big for the standard-sized plot in the cemetery. Superficially, this is a play in which the nation rises to the occasion; seeing and responding to the needs of the citizen. When the undertaker resolutely refuses to dig a hole bigger than that allowed by law, or to supply two plots for the one coffin (again, a solution disallowed by law), the man sets off to see “the officer-in-charge” who, after some choice lines of bureaucrat-speak, consults his superior and grudgingly delivers permission for a bigger hole, demonstrating such “exceptional sympathy and understanding ... [that] he was voted the Most Humane Personality of the Year!”⁵⁹

However, within the framework of this narrative of the apparently responsive, sympathetic nation, *Coffin* airs the overwhelmingly disempowering experience of being citizen when national law, through regulatory control of the materiality of burial, threatens the citizen’s connections to ancestors, traditions, and descendants. The play opens on a note of irresolvable frustration,

I don’t know why, but it keeps coming back to me. This dream. Every time I get frustrated, it comes back to me. It’s the funeral. My grandfather’s.⁶⁰

and closes on a note of despair,

But then, whenever I get to the cemetery and see those graves – those rows after rows of standard sized graves, I cannot resist thinking about the other problem, and this is what really bothers me a lot:

Now, with them all in the same size and same shape, would my sons and daughters, and my grandsons and granddaughters after them, be able to find me out and recognise me?

I don’t know ... I just don’t know ...⁶¹

When juxtaposed with CJ Chan’s celebration of English law as heritage, *Coffin* demonstrates that the power to script the content of ‘heritage’ rests with the state, not the people.

Law as denial of heritage/custom is staged when, for example, the man, thwarted in his initial efforts to persuade the officer-in-charge to accommodate his grandfather’s coffin, delivers a rousing critique of the dehumanizing effects of the state’s privileging of efficiency and its mechanistic management of the population,

You know, this is my grandfather getting buried. It is not the bottling of soya sauce; it is not the canning of pineapple cubes; it is not the laying of bricks for your HDB flats and it is not the drawing of rectangles for your parking lots.⁶²

The activities of nation the man presents as contrasts to his efforts to bury his grandfather are those marked by the alienation of manufacturing and urban development: food as

59. Kuo, *Coffin*, 45.

60. Kuo, *Coffin*, 32.

61. Kuo, *Coffin*, 46.

62. Kuo, *Coffin*, 43.

commodities with a long shelf-life, emerging from factories rather than farms, and a national landscape shaped by the uniformity and dispassion of public housing and parking lots. The mechanistic production of a materiality of conformity is underscored by the straight lines and hard edges of cubes, bricks, and rectangles. His grandfather's corpse, in contrast, is not economically productive.

With burial emblematic of the inescapable territorial constraints of nation, when 2.73 million people⁶³ lived on 617.8 square kilometres (about 383.88 square miles),⁶⁴ the play becomes a platform for the expression of citizen impotence in the hierarchy of state above citizen. Indeed, continuing contestations over land for burial as an expression of heritage and identity in the crowded nation are evident in the recent controversy over the exhumation of Bukit Brown Cemetery.⁶⁵

Coffin was first performed in 1985, a time that marked the state's unambiguous triumph in the contest between the state and Singapore's 'Chinese' population over land for burial.⁶⁶ Under the colonial state, 'Chinese' was a disaggregated category enabling clan associations to manage burial grounds and funeral rites according to specific community traditions and practices.⁶⁷ The somewhat inept colonial regulation of Chinese burial⁶⁸ contrasts with the nation state's systematic and calibrated consolidation of control over Chinese burial practices.⁶⁹ Law relating to land use was the state's main instrument of control.⁷⁰ In the process, burial was taken out of the hands of clan associations;⁷¹ growing

63. While population now stands at about 5.5 million, in 1980, the figure was 2.73: "Singapore's Population Journey," *Straits Times*, June 21, 2012 http://www.straitstimes.com/sites/straitstimes.com/files/ST_20121006_SAT2_3330225.pdf.

64. While land area now stands at 718.3 square kilometres (<http://www.singstat.gov.sg/statistics/latest-data#14>), in 1980, the land area was 617.8 square kilometres: Rodolphe De Konnick, Julie Drolet, and Marc Girard, *Singapore: An Atlas of Perpetual Territorial Transformation* (Singapore: NUS Press, 2008), p. 14. The Singapore state has expanded territory by reclaiming land from the sea.

65. A useful summary of the controversy is offered by the Singapore Heritage Society, http://bukitbrown.com/main/?page_id=954.

66. Tan Boon Hui and Brenda S.A. Yeoh, "The 'Remains of the Dead': Spatial Politics of Nation-Building in Post-War Singapore," *Human Ecology Review*, 9(1) (2002), 1–13.

67. *Id.*

68. *Id.* Alternatively, if early missionaries "were quick to recognize that the space of death was a site of singular sensitivity" (J. Comaroff and J.L. Comaroff, *Theory from the South* (Boulder, CO: Paradigm Publishers, 2012), p. 81), it is possible that sensitivity as well as incompetence informed colonial practice in Singapore.

69. Tan and Yeoh, "Remains of the Dead."

70. *Id.* See also *Environmental Public Health Act* (Cap. 95) Rev. Ed. 2002 and Environmental Public Health (Cemeteries) Regulations. State concern about the shortage of land for burial was expressed as early as 1968: *Singapore Parliament Reports*, 16 Dec 1968, col. 423 (Chua Sian Chin). In presenting the 1968 Environmental Public Health Bill to Parliament, the Minister for Health spoke of the need to revise and renew colonial regulations based on Victorian Britain's public health enactments: *Singapore Parliament Reports*, 16 Dec 1968, col. 399 (Chua Sian Chin).

71. *Id.*

the power of the state to police and regulate citizens' lives through its management of death.

The alienating and subordinating effects of law as bureaucracy, enforcing policies *imposed* upon populations, are staged through a parody of the state's discourse of development when the officer-in-charge emphatically refuses the request for a second plot to accommodate the coffin,

"No, no, no, no! That will be running against our national planning. You are well aware of the fact that we are a densely populated nation with very limited land resources. The consideration for humanity and sympathy cannot over-step the constraints of the state policy!" he declared.⁷²

In subordinating "humanity" to "our national planning," the bureaucrat parrots the Singapore state's instruction to citizens that the nation must come before the self;⁷³ laying bare that "most brutal of truths: that power produces rights, not rights power".⁷⁴

In addition to staging law's role in displacing prenational 'custom' via the nation's control of burial grounds, *Coffin* also stages national law's capacity to silence dissent. Indeed, because Kuo was detained without trial for four and a half years (1976 to 1980),⁷⁵ law's coercive silencing might be perceived as standing guard at the threshold of this play; reminding us of Vismann's argument that fiction is able to capture and record aspects of law excluded from law's official records.⁷⁶

Detained when the state accused Kuo of being part of a "Red plot" to fan "the destructive flames of subversion and terrorism,"⁷⁷ subordination bordering on obliteration becomes a shadowy and persistent presence in *Coffin* through the playwright's biography. The annihilations of the detention (annihilations which included the stripping of citizenship)⁷⁸ have been marked by parallel gaps – very little of Kuo's experience of the detention is on public record. Kuo did not initiate legal proceedings as a detainee,⁷⁹ nor,

72. Kuo, *Coffin*, 42.

73. On 'Asian Values' discourse and its precursors in Singapore, see Rajah, *Authoritarian Rule of Law*, pp. 104–10; 32–53.

74. Comaroff and Comaroff, *Theory from the South*, p. 79.

75. Jacqueline Lo, "Theatre in Singapore: An Interview with Kuo Pao Kun," *Australasian Drama Studies* 23 (1993), 135–46.

76. Cornelia Vismann, *Files: Law and Media Technology* (Stanford, CA: Stanford University Press, 2008).

77. K.S. Sidhu, "The Red Plot ..." *Straits Times* (28 May 1976), 1. See also Jacqueline Lo, *Staging Nation: English Language Theatre in Malaysia and Singapore* (Hong Kong: Hong Kong University Press, 2004), p. 143.

78. Lo, "Theatre in Singapore," 142–3. Ironically, in 1989, nine years after he had been released from detention, Kuo was awarded the prestigious Cultural Medallion even though his citizenship had yet to be restored. Kuo appears to have viewed the bureaucratic refusal to restore his citizenship as an administrative oversight: Lo, "Theatre in Singapore," 142–3.

79. From 1972 to 1988, despite 210 individuals having been detained without trial, no habeas corpus proceedings were initiated; an absence that may be attributable to the detentions without trial of lawyers who acted as counsel for detainees in such proceedings: Jothie Rajah and Arun K. Thiruvengadam, "Of Absences, Masks and Exceptions: Cause Lawyering in Singapore," *Wisconsin International Law Journal*, 31(3) (2013), 646–71, at 657.

upon his release, has he described the conditions under which he was kept or the manner in which he was treated.⁸⁰ He has spoken of the detention only in the most guarded and oblique way.⁸¹

While the explicit text of *Coffin* does not address the violence of detention without trial, national law's sinister capacity for coercive silencing surfaces in the play through the man's wary antenna for state surveillance,

There were at least two hundred of them there [at the funeral]. I don't know who most of them were. But I just had this feeling that most of them didn't really belong to the family. I had a feeling that we were being watched. I don't know why, but looking back, I still feel that way. Being watched.⁸²

The potential malevolence of state surveillance is perhaps conveyed all the more powerfully because it is hinted at rather than railed at.

Law's silencing capacity is present in a second backgrounded way in the processes of censorship that this play would have been subject to before having arrived at the moment of performance. In the mid-1980s, as I watched *Coffin*, I participated in the excitement from a sense of transgression that rippled through audiences. How had this script made it past the censor?

The story that went around was that the satirical undertow of the play was too subtle for the censor's eye and ear. It was not until the play was performed, generating a level of excitement new to Singapore theatre in English at the time, that the state realized *Coffin* expressed critique. This explanation was a story we (the "we" of an undergraduate audience) liked, conjuring up the image of a bureaucratic stooge plodding his way (after all, it was – and is – a patriarchal state) through these scripts, reading surfaces, oblivious to sub-text.

Does rumor and recollection belong in a scholarly reflection on postcolonial rule of law? In the context of authoritarian politics,⁸³ where so much takes place off the record,⁸⁴ and speculative conversations might disseminate either unfounded rumors or politically salient information, writing rumor is one way of ripping subversive tears in the fabric of silence past. In this instance, writing rumor helps record the radical nature of a play inscribing rule of law as the subordination of 'the people' through detention without trial, censorship, the bureaucratic homogenization of burial, and the displacement of a mode of 'heritage' lacking the status of English law.

80. In contrast, a handful of those accused of being Marxist conspirators and detained without trial in the late 1980s, have published accounts of their experiences under detention, including: Fong Hoe Fang, ed., *That We May Dream Again* (Singapore: Ethos, 2009), Tan Jing Quee, Teo Soh Lung, and Koh Kay Yew, eds, *Our Thoughts Are Free: Poems and Prose on Imprisonment and Exile* (Singapore: Ethos, 2009), Francis Seow, *To Catch A Tartar: A Dissident in Lee Kuan Yew's Prison* (New Haven, CT: Yale Southeast Asian Studies, 1994).

81. Lo, "Theatre in Singapore," 141–3.

82. Kuo, *Coffin*, 33.

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

84. Vismann writes of the centrality of law as record with reference to democracy's horror at being "off the record": *Files*, p. xii.

V. Conclusion: Rule of Law Entanglements

Given that British colonialism enacted authoritarianism and called it rule of law,⁸⁵ it is perhaps unsurprising that postcolonial Singapore does the same.⁸⁶ Indeed, the co-existence of an expansive, tentacular, subordination of 'the people', alongside Singapore's repeated rehearsals of its rule of law standing,⁸⁷ present a fundamental challenge to the very possibility of critically exploring the rule of law from beyond an Anglo-American perspective. If, for Singapore as for a multitude of postcolonial nations, imperial Britain frames the past, and US dominance frames the present, the question that must be asked is: does such a perspective exist?

If modern law is constituted by the enmeshments of colonialism, racism, capitalism, and nationalism,⁸⁸ then perhaps the only way to glimpse a non-Anglo-American perspective on the rule of law is to step away from sites framed by these pillars of modernity.⁸⁹ Legalities constituted by those suspicious of the hegemonic hold the promise of a radical re-imagining of rule of law.⁹⁰ As long as rule of law speaks through elite voices complicit with colonial origins, the perspective from the postcolony is firmly entangled with Anglo-American perspectives on the compound and contested meanings of rule of law.

85. Fitzpatrick, *Mythology of Modern Law*, p. 111; Fitzpatrick, "The Desperate Vacuum," 354.

86. Rajah, *Authoritarian Rule of Law*.

87. *Id.* For a recent example of state actors asserting Singapore's rule of law standing, see Attorney-General VK Rajah's address on the occasion of the opening of the 2015 legal year, https://www.agc.gov.sg/DATA/0/Docs/NewsFiles/OPENING%20OF%20LEGAL%20YEAR%202015_ATTORNEY-GENERAL%20V%20K%20RAJAH'S%20SPEECH_5%20JAN_checked%20against%20delivery.pdf.

88. Fitzpatrick, *Mythology of Modern Law*.

89. Eve Darian-Smith, *Laws and Societies in Global Contexts* (New York: Cambridge University Press, 2013).

90. *Id.* See also Balakrishnan Rajagopal, *International Law from Below* (Cambridge: Cambridge University Press, 2003), and the essays in Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (New York: Cambridge University Press, 2005).