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THE ELECTED PRESIDENCY IN SINGAPORE:

CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT) ACT 1991

Introduction

AFTER much debate and publicity, the Constitution of the Republic of Singapore (Amendment) Act 1991[1] was passed in January 1991. Although the Act was assented to by the President on 18 January 1991, not all provisions of the Act are in operation. Indeed, only sections 7 and 16 of the Amendment Act have become operational.[2]

It is not possible in this short comment to deal with all aspects of this new legislation in a comprehensive manner. Instead of outlining the changes brought about by the amendment Act, and giving comments thereon, I have chosen to adopt a more chronological approach to this comment. I believe that this approach will enable the reader to better understand the development of the proposals, and also to follow the specific comments at the end of the comment.

What I will first do is outline the Government's rationale for introducing these changes. I will then deal with the basic changes made to the constitutional system brought about by the amendment Act and highlight the most crucial provisions before concluding with some personal thoughts on these amendments.

The Government's Rationale

In 1984, the then Prime Minister Lee Kuan Yew first mooted the idea of having an elected president,[3] but it was not till the issue of the first White Paper on the Elected President[4] in 1988 that the proposal was eventually concretised. In August 1990, a second government White

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1 Act No. 5 of 1991 assented to by President Wee Kim Wee on 18 January 1991.

2 These sections came into operation on 1 February 1991. See The Constitution of the Republic of Singapore (Amendment) Act (Commencement of sections 7 and 16) G.N. No. S65/91.

3 See Prime Minister's National Day Rally Speech, *The Straits Times*, 10 August 1988, p.1.

4 See Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services, Cmd 10 of 1988 (hereinafter, First White Paper).

Paper[5] was issued and the debates in Parliament were followed by a Select Committee hearing and Report.[6]

The Government's rationale for the elected President scheme were outlined comprehensively in the original White Paper and may be summarised as follows:

1. In many countries, irresponsible governments have mismanaged their nations' finances and economically ruined their countries. This is done to win votes by providing handouts and heavy subsidies which naturally make those governments very popular.[7]

2. Singapore has so far been fortunate to have a responsible government, but with over $30 billion in the national reserves, the temptation for a future irresponsible government will be very great. Indeed, in times of economic strife and flagging support, an irresponsible government will find this temptation irresistable. Hard earned money will be spent on short-term vote buying and on popular measures.[8]

3. One of the cornerstones of Singapore's success has been its public service sector. The key appointment holders in Singapore's public service and statutory boards are men and women of integrity and ability. This, too, may be destroyed if an irresponsible government makes key appointments based on considerations other than merit. Nepotism and corruption may result and the public service will collapse.[9]

4. There is nothing in the Constitution to prevent any such present or future government from squandering all the nation's reserves, leaving it economically ruined. Nor is there any safeguard against the irresponsible appointment of important civil servants. The Prime Minister and his cabinet have untrammelled power.[10]

5. It is therefore necessary to have some constitutional safeguard to secure the future for Singaporeans, and to prevent an irresponsible Government from ruining Singapore.

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5 See Safeguarding Financial Assets and the Integrity of the Public Services: The Consitution of the Republic of Singapore (Amendment No.3) Bill, Cmd 11 of 1990 presented before Parliament on 27 August 1990 (hereinafter, Second White Paper).

6 See Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No. 3), Bill No. 23 of 1990, Part 9 of 1990 presented to Parliament on 18 December 1990 (hereinafter, Select Committee Report).

7 See the First White Paper, *supra*, note 4, para. 5, at p.1.

8 *Ibid.*, para. 6, at p. 1.

9 *Ibid.*, para. 11, at p. 2.

10 *Ibid.*, para. 12, at p. 2.

Before deciding on the creation of the elected President, the Government stated it had considered other possibilities[11] but felt that in view of a number of considerations, these options were not suitable.[12]

The Proposal

In view of all these considerations and objectives, the Government proposed to transform the office of the President into an elected one. Under the original proposal, the Presidential candidate and the Vice-Presidential candidate were to be voted in as a team, but this idea was later dropped. Essentially, the President would be entrusted with the duty of protecting Singapore's financial assets and preserving the integrity of the public service.

Unlike a true executive President under the American or even the French model, the elected President has limited executive powers and these are confined to two areas. In particular, the President has the discretion to grant or withhold his concurrence to decisions of the Prime Minister and his cabinet on (a) the spending of national reserves or assets; and (b) the appointment of key posts in the public service.

In August 1990, the Government issued a second White Paper on the Elected President.[13] This was presented to Parliament on 27 August 1990. At the same time, the Constitution of the Republic of Singapore (Amendment No. 3) Bill was issued. The proposals of the first White Paper were, at last, specifically spelt out.

The proposals and recommendations in this second White Paper were similar to the first White Paper in all but the following respects:

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[11] The White Paper stated that "In deciding the form of Constitutional safeguards, the government has considered many alternatives; creating an upper legislative body, reposing the power of veto in the Presidential Council for Minority Rights or some other body analogous to the Federal Reserve Board, or requiring decisions on financial assets to be subject to the approval of the electorate in a referendum." *Ibid.*, para. 18, at pp. 3-4.

[12] The White Paper stated these considerations as follows:
(1) The Parliamentary system of government should be preserved in the sense that the Prime Minister and his cabinet should keep the initiative to govern the nation;
(2) The safeguard mechanism must enable quick action. In this respect, the procedures must be such that the authority charged with the responsibilities of protecting the reserves and key appointments can act swiftly to control a potentially disastrous situation;
(3) The person must have moral authority, and such moral authority is derived from the will of the people as expressed in an election;
(4) The person must have Ministerial, High Executive or Administrative experience since he has to "balance the demands of political expediency and the public interest"; and finally
(5) The Constitution should require Presidential candidates to have such experience and qualities. See *ibid.*, para. 18(a)-(e), at pp. 4-5.

[13] See Second White Paper, *supra*, note 5.

(a) The objects of the Bill extended to checking the possible abuse of power of the executive in cases of preventive detention under the Internal Security Act and the making of prohibition orders under the Maintenance of Religious Harmony Act 1990;[14]

(b) The objects of the Bill also extended to upholding the integrity of the Cabinet by making the Director of the Corrupt Practices Investigation Bureau report directly to the President;[15]

(c) The original "Presidential Committee for the Protection of Reserves" was to be renamed "Council of Presidential Advisors" and would comprise 6 members instead of the proposed 5, with the President, the Chairman of the Public Service Commission, and the Prime Minister nominating 2 members each;[16]

(d) The role of the Council of Presidential Advisors was extended to include giving the President advice on all matters in which he has discretionary powers, although the President is legally obliged to consult the Council only on questions involving the budgets of the Government, statutory boards and key government companies;[17]

(e) A new provision was introduced to allow Parliament to override the Presidential veto;[18]

In addition to these changes, other provisions relating to the qualification and disqualification of candidates, terms of office, specific government statutory boards and companies to be included in the President's powers were specifically spelt out.

The public debate that ensued after the Bill and the second White Paper were issued was unprecedented in its volume and diversity. Following the Second Reading, the Bill went before the Select Committee which received 40 representations.[19] Naturally, the Select Committee could not re-open the discussion on whether the public wanted to have an Elected President. All deliberations were based on the substantive provisions of the amendment Bill.

But even within those perimeters, there were many controversial provisions which were debated fervently. The main areas of contention

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[14] *Ibid.*, paras. 26-27, at p. 7. See also the Maintenance of Religious Harmony Act, 1990, (Act No. 26 of 1991), assented to by the President on 30 November 1990. At the time the second White Paper was issued, this Act had not yet been passed.

[15] See Second White Paper, *supra*, note 5, para. 28, at p.7.

[16] *Ibid.*, paras.29-30, at pp.8-9.

[17] *Ibid.*

[18] *Ibid.*, paras. 31-35, at pp. 9-10.

[19] See, The Select Committee Report, *supra*, note 6.

were the provisions concerning the qualifications and requirements of the Presidential candidate,[20] the political affiliation of the candidate, the entrenchment of the key provisions, the various roles of the Elected President, the grounds for removing the President, the role, composition and functions of the Council of Presidential Advisors, and the exclusion of certain statutory boards from the specified list.

Finally, there were other aspects of the financial provisions which were in need of fine-tuning and re-drafting to avoid Governmental paralysis.

The Report of the Select Committee and its proposals for amendments were presented to Parliament on 18 December 1990, and a month later, the Bill (and its amendments) was passed into law.

The Amending Act

Most of the proposals and recommendations of the Select Committee were accepted. Since the Act runs into 65 pages, it is impossible to detail all the amendments here. I shall only outline the key changes brought about by the Act.

(a) *Qualifications and requirements of Presidential candidates*

Clause 4 introduces amendments to Articles 17, 18 and 19 of the Constitution. Under these new provisions, the Elected President is to be a citizen of Singapore,[21] be not less than 45 years of age,[22] be not a member of any political party on the date of his nomination for election,[23] have his name appear on the current register of electors,[24] be a resident of Singapore at the date of his nomination for election and have been a resident for periods amounting in the aggregate of not less than 10 years,[25] not subject to any disqualification under Article 45,[26] satisfy the Presidential Elections Committee (PEC) that "he is a person of

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20 See the Constitution of the Republic of Singapore (Amendment No.3) Bill, clause 4, which introduces a new Article 18.

21 New Article 19(2)(a).

22 New Article 19(2)(b)

23 New Article 19(2)(f).

24 Article 44(2)(c).

25 Article 44(2)(d).

26 Article 45 provides for disqualification criteria for Members of Parliament, *viz.* being of unsound mind; or an undischarged bankrupt; or holding an office of profit; or failure to lodge return of election expenses; or being convicted of an offence in Singapore or Malaysia and imprisoned for not less than one year or fined not less than $2,000; or voluntarily acquired or exercised citizenship rights in a foreign country; or conviction under an election offence.

integrity, good character and reputation",[27] and has for a period of not less than 3 years, held office in one of numerous capacities.[28]

The PEC is established under the new Article 18. The PEC consists of the Chairman of the Public Service Commission; the Chairman of the Public Accountants Board established under the Accountants Act; and a member of the Presidential Council for Minority Rights nominated by the Chairman of the Council. Its main function is to ensure that candidates for the office of President comply with the requirements under Article 19.

At the Select Committee, many representors felt that the special requirements of a presidential candidate were too stringent. Furthermore, at that time, the actual composition and powers of the PEC were not properly spelt out. There was a fear that this would result in the appointment of a biased PEC which could restrict nominees to a very select and "approved" group of individuals.

The fears of the representors have to some extent been countenanced by the new provisions. The strict requirements for Presidential candidates have been retained, but it may be noted that under the new Articles 19(2)(e)[29] and 19(2)(g)(iv) there is some room for the PEC to manoeuvre. In a sense, these requirements are also fairly subjective, and no guidelines have been laid down.

Another issue of contention at the Select Committee was on the political affiliation of the Presidential candidate. The main fear in this context was that if any member of a political party should become the President, he would obviously be biased, and would not be an effective check against a deviant or unscrupulous government. The representors' views are, in this instance, taken into account and crystallised in the new Article 19(2)(f). At the passing of the amendment Act, Prime Minister Goh Chok Tong stuck trenchently to the view that stringent requirements

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[27] New Article 19(2)(e).

[28] See new Article 19(2)(g). Specifically, these offices are: Minister; Chief Justice; Speaker; Attorney-General; Chairman of the Public Service Commission; Auditor-General; Permanent Secretary; chairman or chief executive officer of a statutory board referred to under the new Article 22A read with the new Fifth Schedule (*viz.* Board of Commissioners of Currency, Singapore, Central Provident Fund Board, Housing and Development Board, Jurong Town Corporation, Monetary Authority of Singapore, and the Post Office Savings Bank of Singapore); chairman of the board of directors or chief executive officer of a company incorporated or registered under the Companies Act with a paid-up capital of at least $100 million or its equivalent in foreign currency; or "in any other similar or comparable position of seniority and responsibility in any other organisation or department of equivalent size or complexity in the public or private sector which, in the opinion of the Presidential Elections Committee, has given him such experience and ability in administering and managing financial affairs as to enable him to carry out effectively the functions and duties of the office of President."

[29] This provision states that the candidate must satisfy the Presidential Elections Committee that he is a "person of integrity, good character and reputation."

were crucial, but explained that he agreed to incorporate the views of the representors to make the amendments more acceptable to the public.[30]

(b) *The entrenchment provisions*

Clause 3 of the Act introduces amendments to Article 5. In particular, a new Article 5(2A) has been added which states that:

> ... a Bill seeking to amend this clause, Articles 17 to 22, 22A to 22O, 35, 65, 66, 69, 70, 93A, 94, 95, 105, 107, 110A, 110B, 151 or any provision in Part IV or XI shall not be passed by Parliament unless it has been supported at a national referendum by not less than two-thirds of the total number of votes cast by the electors registered under the Parliamentary Elections Act.

This means that most of the changes brought about by this Act are unamendable except by referendum. An unexpected bonus here is the inclusion of the provisions of Part IV (Fundamental Liberties) under these entrenchment provisions.

At the Select Committee, many representors felt that the provisions creating the Elected President were unnecessarily entrenched. There were two main arguments – First, these were untested provisions and any subsequent amendment, even for fine-tuning purposes, would necessarily lead to a referendum. Secondly, in cases of conflict between the President and the Government, the solution would either be the President's removal from office or a referendum to amend the President's powers.

I shall consider the entrenchment provisions in greater detail in the following section.

(c) *Removal of President*

The President is immuned from any court proceedings for anything done or omitted by him in his official capacity. Under Article 22L, however, he may be removed from office if he "is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity" or has been found guilty of the following:

(a) intentional violation of the Constitution;

(b) treason;

(c) misconduct or corruption involving the abuse of the powers of his office; or

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30 See *Parliamentary Debates, Singapore Official Reports*, 3 January 1991, col. 720.

(d) any offence involving fraud, dishonesty or moral turpitude.

A tribunal appointed by the Chief Justice, and consisting of not less than 5 Judges of the Supreme Court will determine whether the President was indeed guilty of the grounds under Article 22L.

One of the main fears of representors at the Select Committee was that under the original provision the President would be almost irremovable or easily removed depending on how the situation is viewed. This was because the original Bill only required a resolution passed by not less than three quarters of the total number of Members of Parliament provided that a notice of a motion for removal has been given by the Prime Minister, and a tribunal appointed by the Chief Justice has held an inquiry into "the allegations of misconduct or otherwise made against the President".[31] The unscrupulous President could prevent the motion for his own removal from being debated and voted upon in Parliament by dismissing the Prime Minister under his discretionary powers. On the other hand, if the President does not do this, then Parliament can get rid of him all too easily because of the very loose and unsatisfactory criteria for removal, *i.e.* "misconduct or otherwise". This problem has been resolved with the new Article 22L.

(d) *Specific roles of the Elected President and the Council of Presidential Advisors*

I will now deal with the specific roles of the Elected President and briefly comment on them. The President's term of office is for 6 years[32] and must exercise his functions under the Constitution with the advice of the Cabinet or of a Minister acting under the authority of the Cabinet except in the following functions when he will use his personal discretion:[33]

i) appointment of the Prime Minister;

ii) withholding consent to a request for a dissolution of Parliament;

iii) withholding assent to any Bill under Articles 22E, 22H, 144(2) or 148A;

iv) withholding of concurrence under Article 144 to any guarantee or loan to be given or raised by the Government;

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31 See Clause 4 of the Bill, introducing Article 22K.
32 See new Article 20(1).
33 See new Article 21(2).

v) withholding concurrence and approval to appointments and budgets of the statutory boards and Government companies applicable under Articles 22A and 22C;

vi) disapproving of transactions referred to in Articles 22B(7), 22D(6) or 148G;

vii) withholding concurrence under Article 151(4) in relation to the detention or further detention of any person under any law or ordinance made or promulgated in pursuance of Part XII (Special Powers Against Subversion and Emergency Powers);

viii) the exercise of his functions under s.12 of the Maintenance of Religious Harmony Act 1990; and

ix) any other function the performance of which the President is authorised by this Constitution to act in his discretion.

In addition, the President is given the discretion to consent to investigations undertaken by the Corrupt Practices Investigations Bureau even if the Prime Minister has refused his consent.[34]

In making these decisions, the President is, in some cases, bound to consult the Council for Presidential Advisors (CPA) and in others, may refer these matters to them for advice.

The CPA, as established under the new Part VA, comprises 5 members[35] who must be Singapore citizens of at least 35 years of age, resident in Singapore and not subject to the disqualifications under Article 37E.[36] The proceedings of the CPA are in private and it possesses the power to "require any public officer or officer of any statutory board or Government company to appear before the Council and give such information in relation to any matter referred to the Council by the President under Articles 21(3) and 21(4).

Where the President withholds his assent under Article 148A (*i.e.*, for a Supply Bill or a Supplementary Supply Bill), contrary to the advice

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[34] See new Article 22G.

[35] Under the Bill, the CPA was to comprise 6 members with two members appointed by the President, acting in his discretion, two members on the advice of the Prime Minister and two other members on the advice of the Chairman of the Public Service Commission. See clause 6 of the Bill. One of the concerns of the representors at the Select Committee Hearings was that the President could in fact "load" the CPA in his favour since he appoints the Chairman of the Public Service Commission. This concern does not appear to have been satisfactorily dealt with in the amendment Act.

[36] Specifically, this means, that the candidate must not be found to be of unsound mind; or is insolvent or an undischarged bankrupt; or has been convicted of an offence in Singapore or in a foreign country and sentenced to imprisonment for not less than 1 year or a fine of not less than $2,000 and has not received a free pardon.

of the CPA, "Parliament may by resolution passed by not less than two-thirds" majority overrule the decision of the President.[37]

The President is also entitled to any information concerning the Government which is available to the Cabinet and any statutory board or Government company under his purview,[38] and he may also withhold his assent to any Bill which "provides, directly or indirectly, for the circumvention or curtailment of the discretionary powers conferred upon him by this Constitution."[39]

At the Select Committee, some representors expressed doubts as to whether the additional roles of the President as outlined in the Second White Paper and the Bill (*i.e.* that in respect of the Internal Security Act, the Corrupt Practices Investigation Bureau and the Maintenance of Religious Harmony Act) were appropriate.

Some Further Thoughts on the Amendments

It is not my intention to comment on every aspect of the new Act for that would require an entire volume unto itself. I wish to restrict my comments to the following four main categories: (a) the Rationale of the Amendments; (b) the Requirements for Presidential Candidates; (c) the Entrenchment Provisions and (d) the Elected President's additional roles.

(a) *Rationale of the amendments*

My first comment pertains to the viability of the scheme in relation to its purported aims and objectives. The object, as can be gleaned from the details outlined in the two White Papers, is to safeguard Singapore's financial reserves and public service from a profligate government.

The key question which confronts us is whether it is really possible to achieve these objectives at all? I believe that it is impossible to legislate a good government into existence. Good government is the result of an informed electorate voting in a free election. Even then, good and wise government is a necessary product of a sustained cultivation and promotion of a healthy political and legal culture. The adoption of the most complex series of constitutional and legal devices is not likely to stop a government bent on destroying the economic base of Singapore from easily doing so.

There is no real check in situations where the President is sympathetic to the government of the day, either because he was a past member, or has risen through its ranks or for whatever reason. If the Government of the day decides that it wants to buy votes during a coming general

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[37] See new Article 148D(1).
[38] See new Article 22F.
[39] See new Article 22H.

election either due to declining popularity or pure profligacy, there is nothing to stop the President from condoning this action. There is no check. Think of what would happen in 10 or 20 years if the government, in order to win votes, declares that it would grant free health care for all citizens. Once given, these benefits are not easily retracted and spiralling medical costs could bankrupt any prosperous nation.

Of course, the converse hypothetical is also true. If we have an obstructionist President who is out to thwart the Government, either because he opposes their political agenda or simply out of pure malice, he can refuse to concur to anything put forward by the Government. Again, there is no check.

Even if it were possible to legislate good government into existence, we are never told why other alternatives were abandoned and why they were never even debated in public. Two main points must, in particular, be noted: First, the White Paper does not make it clear why the other alternative options were rejected; and secondly, there appears to be a quantum jump in logic in the original White Paper when the government assumed that whatever new system was to be devised, that safeguard had to be reposed in an office occupied by a single individual.[40] What is more bewildering is the fact that in the second White Paper, two additional roles were pegged onto the office of the Elected President; a point which I will deal with shortly.

(b) *The requirements for Presidential candidates*

There are two main points I wish to make here. First, Article 19(2)(f) requires the Presidential candidate to be "apolitical" in the sense that he must not be a member of any political party on the date of his nomination. The Government's initial view on this was that it did not matter that a candidate remained a member of his political party because his resignation from that party did not make him any more or less sympathetic to his party's policies and actions. Senior Minister Lee Kuan Yew was often cited as an example of such a person. In other words, Mr. Lee would still be sympathetic to the People's Action Party's agenda even after he ceased to be one of its members, or so the argument goes.[41]

There is a certain amount of truth in this argument, but the important point to remember is that we are entrenching a particular provision in our most basic document of Government and we cannot afford to take

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[40] See First White Paper, *supra*, note 4. The logical jump occurs between paras. 18(b) and 18(c) at p.4. Prime Minister Goh Chok Tong did hint that although the proposals had been before the public for over a year, no better suggestion had been arrived at. See *The Straits Times*, 6 October 1990, at p. 1.

[41] See, in particular, the exchange between Prime Minister Goh Chok Tong and BG Lee Hsien Loong with representor, Mr. Walter Woon, The Select Committee Report, *supra*, note 6, pp. C52-C58.

extreme cases to buttress our arguments.[42] In a way, the Constitution becomes a semiotic representation of an idea. And the idea that is clearly intended to be entrenched here is that the President should not be partisan to any party so that he can perform his function more objectively. Whether the President is or is not in fact a sympathiser of any particular political party is impossible to fathom. Nonetheless, on the surface, we should take great care to ensure that the office is not tainted by party politics. Otherwise, the idea of having two keys, or of having a check on the Government by a higher moral authority will count for nothing.

The second point concerns the severe restrictions placed on persons aspiring to the Presidency. The Government's position is consonant with its basically meritocratic philosophy which assumes that no one should be allowed to hold the reins of power unless he or she has a proven track record of effective management.[43] There are, however, two unfortunate aspects of this philosophy, at least in the way they are manifested in the new amendments.

First, it appears that the Presidential aspirant must be a member of the establishment. All the positions mentioned in the new Article 19(2)(g) are essentially public offices occupied by people who are part of the system, so to speak. A candidate's success, or record is recognised only if he or she has held such an office. The criteria are therefore fixed on what the ruling party assumes to be indicia of excellence, indicia which may not necessarily correspond with the public's perception of what consititutes excellence. As such, the Act narrows the number of people available for Presidential candidature. Effectively excluded from the Presidency are a host of other individuals who may well be suitable for this high office, like diplomats and grassroots leaders.

Secondly, the stringent requirements for Presidential candidates tends to retard the development of Singapore's political culture. Politically mature Singaporeans should, I think, be allowed to choose any person they want to represent their interests, subject, of course, to the usual limitations of mental and physical capacity. This is a basic assumption in any representative democracy. By limiting the voters' choice, the Act has effectively stymied the growth of greater political participation and debate. This is because the Act assumes that Singaporeans are incapable of selecting a suitable President to lead them. Instead of giving them a free choice, the limiting criteria restrict their choice to those

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42 See Walter Woon's comments, *ibid.*, at p. C58, para. 229.

43 This philosophy manifests itself in the People Action Party's attitude towards electoral candidates. In fact, recently, the Prime Minister has said:

> So what is democracy all about? It is not the right to stand for election. It is giving the electorate the right to choose good candidates to Parliament. If you do not give the people a choice, then they are choosing between two bad candidates. But if you pre-qualify them, and you allow good candidates to emerge and be chosen, you can be sure that only good ones will be returned to Parliament.

See *Parliamentary Debates, Singapore Official Reports*, 3 January 1991, col. 746.

individuals that are deemed suitable or desirable to the Government, namely, members of the establishment who are unlikely to deviate too greatly from the prevailing system. While I concede that this is certainly a safer route, I fear that these restrictions will impede political discussion and participation. Singaporeans will simply continue to leave politics to those who are deemed to know best, *i.e.*, the Government. If this attitude prevails, it will, in the long run hurt, rather than help Singaporeans.

(c) *The entrenchment provisions*

My third comment concerns the new entrenchment procedures and the need for a referendum. Under the amending Act, numerous provisions of the Constitution, particularly those relating to fundamental liberties under Part IV, the office of the elected President, and the financial provisions under Part XI are not amendable except by way of a referendum where a majority of two-thirds must be secured. This means that, the elected President is as tightly entrenched as the provisions relating to our fundamental liberties and to the sovereignty of Singapore.[44]

The further entrenchment of the fundamental liberties provisions (Part IV)[45] under the new Act is something constitutional lawyers have been looking forward to for a long time. If nothing else, this is reason enough to celebrate. The entrenchment of our fundamental liberties is long overdue and this change cannot be welcomed warmly enough.

Given our history with Malaysia, the entrenchment of our sovereignty and the control of our defence forces in Part III is understandable. However, I have great difficulty in figuring out the logical necessity to entrench the office of the elected President. Why is it necessary to entrench the elected President provisions so securely under the Constitution? Granted that these amendments are important, it must not be forgotten that they are as yet untested. Once these provisions are entrenched, they cannot be removed. Of course, these provisions can be changed, but it would be extremely difficult to do so. Wisely, the Parliament has stated that these entrenchment provisions are not to come into operation until after four years.[46]

An amendment which changes our system as drastically as the Elected President scheme should, I think, be approved by a referendum. Prime Minister Goh Chok Tong has two main arguments. First, he has often said that he does not govern by referendum. In 1988, Mr Goh said:

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44 See Article 8 and Part III in general.

45 See the new Article 5(2A), inserted by clause 3 of the new Act.

46 See *Parliamentary Debates, Singapore Official Report*, 3 January 1991, col. 722. See also *Business Times*, 4 January 1991, at p.1.

> I do not believe in governing through referenda. As an elected government, we must have the courage of conviction to make improvements to our Constitution, if necessary, to implement difficult policies, if necessary. In our history of some 30 years from 1959 as a self-governing and later on independent nation, we have only conducted one referendum in 1962 and that was over the issue of merger with Malaysia – a matter of life and death for Singaporeans. If you look up the Constitution, it is clearly spelt out where referenda should be conducted. These are issues over ceding of our sovereignty to another nation, over the disbandment of the Singapore Armed Forces. On these two key issues, you must go to the people because life and death are involved, a matter of survival for the country. I think we should take one step at a time. Perhaps after the Bill is out, after the election is over, it may be clear to all that there is no need for a referendum. The support I think for the proposal is so clear.[47]

His second argument is that he made an election issue out of the Elected Presidency.

My retort to the first argument is that if this is not a matter of "life and death", then there is no reason why we should entrench it so firmly in the Constitution; and my answer to the second argument is that although the People's Action Party (the current government's party) won the last general elections, they secured less than two-thirds of the votes cast. In fact they only won 61% of the votes, a figure which is certainly less than the two-thirds that would be required in a referendum if the entrenched provisions were to be removed. Furthermore, the specific proposals of the Elected President Scheme were not laid out at the time of the last elections. It cannot be assumed that the people approved something they have neither seen nor had full cognisance of. It must also be remembered that the 1988 elections were *general* in nature in that it was not an election called to get public endorsement of a specific proposal. The Elected President scheme was just one of the many issues raised during that election.

The incongruity brought about by the fact that the provisions relating to the elected President are more entrenched than many other key provisions may give us an indication of what the government perceives is paramount. If we think about it, the elected President is even more entrenched than our parliamentary system of government, or our judiciary. What is the point of entrenching our fundamental liberties so securely if judicial independence is not equally entrenched?

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[47] See *Singapore Parliamentary Debates Official Report*, 12 August 1988, vol. 51(1) at col. 635.

(d) *The President's additional roles*

My final comment relates to the powers of the elected President. First, I am not sure why the government decided so quickly on the alternative of the elected President. Having identified a grave national problem, the most sensible and logical thing to do must be for us to explore all possible avenues and solutions to tackle it. In the process, we must not be distracted by established norms and procedures but must be prepared to create new institutions or bodies to solve this problem. We cannot afford to work backwards, that is, to decide first on the form this new scheme would take, and then try to find ways to justify it.

I mention this with specific reference to two points: (a) the fact that even in the first White Paper, the government had already decided on the elected President, thereby pre-empting any public discussion on any other alternatives; and (b) the inclusion of two other specific duties for the elected President under the Second White Paper.

If the problem is one which relates to executive abuse of discretion in cases under the Internal Security Act (ISA) and the controlling Corrupt Practices Investigations Bureau (CPIB) investigations, then surely the logical route to finding a solution is ask ourselves what method is best to control the executive. I do not purport to offer these solutions here, but what I want to point out is that the route adopted by the Government to solve the problems under the ISA Act and the CPIB is, at best, perplexing. It appears obvious that they were determined to create the Elected Presidency and these additional functions were just conveniently pegged onto this office. This seems to me, to be working backwards. Having decided on the form, you now find justifications for the substance. While this is certainly a possible option, it is, I submit, not a very logical one.

Conclusion

The passing of the Elected President Scheme has been swift and efficient. Perhaps, it has been a little too swift. Such a momentous piece of legislation and constitutional change merits much greater discussion and deliberation. I am not entirely convinced that all the angles have been covered, and while I agree that government by referendum would in most cases be impractical and costly this is no ordinary policy or legislation. It moved our Westminster constitutional model away from the traditional parliamentary model, towards a model seen more often in African countries that were formerly British colonies.

The one major difference is, of course, that in these African nations, the Presidential system of government resulted in the concentration of power in the hands of the President. In Singapore's case, the initiative remains with the Prime Minister and his Cabinet and ultimately, Parliament.

Notwithstanding my cynicism about the changes that have taken place, some form of check on executive power is certainly preferable to giving the executive unbridled power. In this respect, this new legislation should be warmly welcomed.

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