OF ABSENCES, MASKS, AND EXCEPTIONS: CAUSE LAWYERING IN SINGAPORE

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I. INTRODUCTION: CAUSES IN SEARCH OF LAWYERS

Capital punishment, corporal punishment, detention without trial, torture, presumption of guilt, criminalization of homosexuality, executive discretion without judicial review, the lack of freedom of information legislation, the lack of environmental impact assessment legislation – this partial list of Singapore causes in search of lawyers is already lengthy and yet "cause lawyer" is neither an expression nor an activity one typically encounters in Singapore. If typically, cause lawyers are moral activists occupying the margins of the profession, bearing financial and personal cost in order to achieve progressive social change by representing marginalized clients,[1] then what is it about Singapore that renders this category of lawyers (apparently) absent?

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[1] For this characterization, we draw on AUSTIN SARAT & STUART SCHEINGOLD, CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 3-8 (1998) [hereinafter, SARAT & SCHEINGOLD 1998].

In this article, we explore the barriers to cause lawyering in Singapore.[2] In contrast to Dezalay and Garth's reading of Singapore as a space with "neither cause lawyering nor even the noblesse oblige that one sees among the Hong Kong legal elite,"[3] we see cause lawyering as present in certain, very specifically Singaporean ways. Our exploration of the specifically Singaporean expression of cause lawyering does not perceive the many important and admirable ways in which lawyers extend altruistic service to the public as cause lawyering.[4] Our conception of cause lawyering also excludes the range of ways in which lawyers participate in new media, civil society groups, and social movements.[5] However, in the context of Singapore, we see the muted or masked involvement of lawyers in causes as a problematic expression of compliance (if not complicity) with state determinations as to what lawyers (and other citizens) may and may not do in the civic, public domain.[6] In this regard, we draw on Sarat and Scheingold's classic definition of how cause lawyering is essentially *public* in nature.[7]

Sarat and Scheingold distinguish cause lawyers from conventional lawyers who focus on client-centered advocacy, treating

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[2] We limit ourselves to a consideration of Singapore from after World War Two to September 2013.

[3] YVES DEZALAY & BRYANT GARTH, ASIAN LEGAL REVIVALS: LAWYERS IN THE SHADOW OF EMPIRE 210 (2010).

[4] For example, the Singapore Association of Women Lawyers' (SAWL) runs a free legal clinic. SINGAPORE ASSOCIATION OF WOMEN LAWYERS', http://www.sawl.org.sg/index.html. As this link illustrates, from 2006, the Singapore Law Society has established a Pro Bono Services Initiative: http://probono.lawsociety.org.sg/About-Us/. Importantly however, as our article elaborates upon later, the Singapore state's suspicion of lawyers' engagement in issues that might broadly be categorized as social justice has resulted in a very contained extension of legal professional services to the marginalized. It is surely significant that when the Criminal Legal Aid Scheme was founded as long ago as 1985, it took more than twenty years for the Pro Bono Services Office to be established. This gap may in part be due to the state's extreme suspicion of the 1985 Criminal Legal Aid Scheme's co-founder, Teo Soh Lung. *See generally* JOTHIE RAJAH, AUTHORITARIAN RULE OF LAW: LEGISLATION, DISCOURSE AND LEGITIMACY IN SINGAPORE 148-218 (2012) (detailing the state's highly problematic characterization of Teo as a "Marxist conspirator").

[5] Lawyers are involved in important websites such as The Online Citizen, in civil society organizations like the Singapore Nature Society, the Singapore Heritage Society, the Think Centre, and People Like Us. *See also* Lynette Chua, *Pragmatic Resistance, Law and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore*, 46: 4 LAW & SOC'Y REV. 713 (2012) (describing how gay activists in Singapore deploy a strategy of pragmatic resistance by adapting to changes in their socio -political environment, and navigating not only formal legal restrictions on civil-political liberties, but also the cultural power of law and informal political norms).

[6] RAJAH, *supra* note 4.

[7] SARAT & SCHEINGOLD 1998, *supra* note 1, at 3.

legal professionalism as a set of technical skills provided on a fee-for-service basis to individual and institutional clients.[8] Conventional lawyers often end up providing their services to the highest bidder, leading to the critique of their adherence to the "lawyer as hired gun" approach. Conventional lawyers often claim that their commitment to professionalism means that they should eschew pursuing normative ends, focusing instead on merely providing professionally competent service.[9] Cause lawyers, in marked contrast, see themselves as reconnecting law and morality, and pursuing the idea that lawyering is a "public profession" whose contribution to society goes beyond the aggregation, assembling and deployment of technical skills.[10] In Sarat and Scheingold's analysis, cause lawyers view lawyering as a deeply moral and political activity; work that encourages the pursuit of the right, the good or the just.[11] Key to cause lawyering, therefore, is a public expression of lawyering motivated by a certain set of values.

If cause lawyering is a form of mobilization that uses a public arena and "the law"[12] rather than "politics" for causes, then this mobilization assumes that "the law" is amenable to delivering tangible results, such that, for example, courts may protect the capacity of individuals and civil society groups to challenge the state through the public legal arena of litigation. Cause lawyering also assumes that courts are viable arenas for ideologically plural advocacy, such that a range of interests, ideals, and narratives might be publicly articulated. Secretive discussions behind closed doors,[13] and charitable contributions of professional skills designed to comply with the parameters for civic engagement set by the state[14] cannot, in these terms, be considered unambiguously cause lawyering. In our analysis, given that Singapore's

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8 *Id.*

9 In this regard, Singapore's legal profession is, like those described by Sarat & Scheingold, marked by the dominance of larger firms focused on a commercial practice. We are grateful to Kevin YL Tan for pointing out that the demise of jury trials, and the career trajectories of figures such as David Marshall (a once very prominent practitioner at the criminal Bar), has probably contributed to the further marginalization of criminal law. *See generally* KEVIN YL TAN, MARSHALL OF SINGAPORE (2008).

10 SARAT & SCHEINGOLD 1998, *supra* note 1, at 3.

11 AUSTIN SARAT & STUART SCHEINGOLD, CAUSE LAWYERS AND SOCIAL MOVEMENTS 1 (2006) [hereinafter 'SARAT & SCHEINGOLD 2006].

12 We place terms like "law" and "politics" in double quotation marks to signal that we are problematizing these terms as social constructs rather than treating them in taken-for-granted ways.

13 RAJAH, *supra* note 4, at 197-201.

14 *Id.*

legal system is considered exemplary in so many regards,[15] there is significance in the low incidence of causes entering the public sphere of the courts. If this low incidence signals the unavailability of "the law" to causes, then it might, in part, be understood as an expression of what Jayasuriya has characterized as dual state legality: law and legal institutions relating to commerce and the economy are on par with the liberal West; in contrast, law and legal practices relating to civil and political rights remain insistently repressive.[16]

Our article suggests that Singapore is a peculiar lawyering space in that lawyers who advocate for causes, especially causes understood to have moral, civil and political dimensions, do so in the context of a specific social memory: that of lawyers who have (in effect) been punished for challenging this particularly hegemonic state. Our argument is that, as a result of this punitive state response, lawyers who seek to further causes in today's Singapore tend to avoid courtroom and public advocacy. Instead of furthering causes by openly contesting state-sanctioned positions and ideologies through legal processes, lawyers mute their involvement in causes by occupying civil society spaces (through associations for environmentalism and gay rights for example) in much the same way as non-lawyers do. It is as if lawyers *quarantine* their specifically legal capacity for advocacy, such that public statements against state positions are almost never articulated. Instead, in a masked mode, lawyers facilitate the less audible, less visible work of deciphering actual and proposed legislative and regulatory requirements, researching alternatives, and drawing upon their professional networks to further causes they believe in. Indeed, it is only our "insider" status within the profession that has allowed us to be aware of this mode of engagement. This is what we characterize as *masked* cause lawyering.

The near-absence of cause lawyering raises a foundational question as to how this understanding among Singapore lawyers of the unwritten parameters of cause lawyering has come to be. Given that Singapore, a former British colony, is a common law jurisdiction modeled on the Westminster parliamentary democracy,[17] it shares key features with many jurisdictions in which cause lawyering flourishes,

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[15] *Id.* at 272-275.

[16] Kanishka Jayasuriya, *The Exception Becomes the Norm: Law and Regimes of Exception in East Asia* 2 ASIAN-PAC. L & POL'Y J., no. 1, Winter 2001, at 108, 111.

[17] *But see* Garry Rodan, *Westminster in Singapore: Now You See It, Now You Don't*, *in* WESTMINSTER LEGACIES: DEMOCRACY AND RESPONSIBLE GOVERNMENT IN ASIA AND THE PACIFIC 109, 110 (Haig Patapan et al eds., 2005).

such as India. What then, is so significantly different about Singapore's socio-political context that its lawyers should overwhelmingly avoid cause lawyering?

Our article traces a genealogy of cause lawyering in Singapore in an effort to explain the general rule of cause lawyering as either masked or absent.[18] This generalization is subject to two important caveats. First, an exception has surfaced in the singular legal career of M. Ravi. As we detail below, Ravi's professional work over the past decade is strikingly similar to that of the cause lawyers described in Sarat and Scheingold's three volume study of cause lawyers across several jurisdictions.[19] Our second caveat is to raise the possibility that, precipitated perhaps by the highly *visible* courtroom advocacy of Ravi,[20] Singapore's cause lawyering dynamics may be on the cusp of a change. The recent presence of defense counsel for bus workers prosecuted for their involvement in a strike[21] suggests that there may be an increasing number of lawyers ready to take on causes in the courts thereby altering the tendency for the Singapore public domain to be ideologically homogenous.

In Section 2, our paper sets out a brief historical and political context that seeks to enhance appreciation of the peculiar circumstances that affect cause lawyering in Singapore. Section 3 focuses on Singapore's early cause lawyers, and the State's reaction to their actions, from 1965 (the year Singapore became an independent republic) to 2000. Section 4 focuses on the period from 2000 to the present, and chronicles

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[18] We embarked on this project in early 2011. In July 2012, Teo Soh Lung, a central figure in the events of the mid to late 1980s described below, offered a genealogy relating to the absent human rights lawyer: Teo Soh Lung (July 29, 2012, 8:10 AM), https://www.facebook.com/TeoSohLung/posts/366360266770551.

[19] SARAT & SCHEINGOLD 1998; SARAT & SCHEINGOLD, CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA 2001 [hereinafter SARAT & SCHEINGOLD 2001]; SARAT & SCHEINGOLD 2006.

[20] The heightened visibility of Ravi's conduct of cases is socially significant in the Singapore context of the masked and near-absent cause lawyer. In focusing on Ravi, we do not mean to suggest that no other individual has surfaced as a cause lawyer. As we note later, other lawyers have also played important roles in aiding marginalized causes in Singapore. However, in this regard, we wish to reiterate that we see the masked expression of cause lawyering as distinct from public engagement in the courts.

[21] It is important to highlight that, in the context of Singapore, strikes have a particular political meaning relating to the Cold War context in which Singapore became a nation-state. For a succinct discussion of the emasculation of labour unions, and the criminalization of strikes, *see* CHRISTOPHER TREMEWAN, THE POLITICAL ECONOMY OF SOCIAL CONTROL IN SINGAPORE (1989). On the 2012 Chinese bus workers' strike, see discussion below at section V. For a media account, *see* Joyce Lim, *Chinese Bus Drivers Decide on Lawyers*, ASIAONE NEWS (Dec. 10, 2012), http://www.asiaone.com/News/Latest%2BNews/Singapore/Story/A1Story20121209-388543.html.

the career of the exception highlighted by our paper's title: M. Ravi. In our conclusion, we seek to provide an overview of cause lawyering in Singapore from a historical and contemporary standpoint and offer some informed speculation on the future of cause lawyering in Singapore.

II. CONTEXTUALIZING CAUSE LAWYERING IN SINGAPORE

As a social and political space, two related features of Singapore are especially noteworthy with reference to the public sphere: first, Singapore came into being as a nation-state in the context of the Cold War[22] and second, Singapore is, to all intents and purposes, a one-party state.[23] The Cold War crucible of the birth of the Singapore nation is significant because– given its geo-political proximity to Vietnam and China – left-wing activism within Singapore was viewed with particular alarm by the "West."[24] According to some readings of the politics of transition from "colony" to "nation," there was collusion between the departing colonial ruler and the political actor the British identified as its preferred successor – the pro-West, anti-left People's Action Party. The most significant expression of this collusion between the departing colonizer and succeeding national ruler was the February 1963 security operation, Operation Coldstore.[25]

In Operation Coldstore, at least 111 left-wing activists were rounded up and detained without trial.[26] Coldstore was strategically timed

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[22] Singapore, effectively a British colony from 1819, was occupied by the Japanese Imperial Army from February 1942 to September 1945. During the Japanese Occupation, the British armed the Malayan Communist Party to facilitate anti-Japanese resistance operations. After the Japanese surrender, when the British returned as colonial rulers, the left-wing led agitation for independence was perceived as particularly alarming in view of events in China and Vietnam and the British allied with the right-wing to repress the left in the transition from "colony" to "nation." This transition took the form of limited self-rule (1959 to 1963), the incorporation of Singapore into a newly-formed Federation of Malaysia (1963 to 1965), and then, upon the Federation's decision to eject Singapore, Singapore became, rather unexpectedly, an independent nation-state in August 1965. *See generally* HONG LYSA & HUANG JIANLI, THE SCRIPTING OF A NATIONAL HISTORY: SINGAPORE AND ITS PASTS (2008); C.M. TURNBULL, A HISTORY OF MODERN SINGAPORE 1819-2005 (2009); Tim Harper, *Lim Chin Siong and the 'Singapore Story'*, *in* COMET IN OUR SKY: LIM CHIN SIONG IN HISTORY (Tan Jing Quee & Jomo K.S., eds., 2001).

[23] Rodan, *supra* note 17, at 109-110.

[24] Harper, *supra* note 22; Geoff Wade, Suppression of the Left in Singapore, 1945-1963: Domestic and Regional Contests in the Southeast Asian Cold War at the 5th European Association of Southeast Asian Studies Conference, Sept. 12-15, 2007, *available at* http://hub.hku.hk/bitstream/10722/47104/1/content.pdf.

[25] *See* HARPER, *supra* note 22 (detailing "Operation Coldstore" and its implications); Wade, *supra* note 24; Hong & Huang, *supra* note 22.

[26] *See generally* Harper, *supra* note 22; Wade, *supra* note 24; HONG & HUANG, *supra* note 22.

so as to emasculate the left's participation in the first major elections of the post-colonial moment.[27] Coldstore has become an unacknowledged founding moment for the "nation" in that it has established three thematic pillars of Singapore political life: first, the state's capacity to deploy detention without trial against political opponents; second, the state's capacity to characterize political opponents as threats endangering the very existence of the "nation;" and third, (in a logical extension of these first two themes) the state's capacity to characterize *critique* as a form of political opposition endangering the "nation," thereby justifying the silencing of the critic and obviating the need for the state to engage with the content of the critique.[28]

The second noteworthy feature of Singapore as a social and political space is that while in terms of institutional structures, Singapore presents itself as a Westminster-model parliamentary democracy, in its particulars Singapore departs from the standard context for Westminster democracy.[29] Instead of power shifting between two or more political parties, Singapore is a de facto one-party state.[30] The party that is in government now, the People's Action Party (PAP), has governed Singapore since 1959. For the first seventeen out of the fifty-three years that the PAP has run Singapore, it was the only party in Parliament. This command of the political sphere has been twinned by a command of the public sphere in that all major media has been state-owned and state-controlled since 1974.[31]

Significantly, the emergence of new media, particularly in terms of its elusive ungovernability, has been credited with the electoral outcome of the May 2011 general elections where an all-time high of six opposition candidates were voted into Parliament (as against the eighty-one candidates from the ruling party).[32] Prior to the May 2011 elections, there had never been more than four opposition members of parliament.

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27 *Id.*

28 RAJAH, *supra* note 4, at 282-284.

29 Rodan, *supra* note 17, at 110.

30 *Id.*

31 Cherian George, *History Spiked: Hegemony and the Denial of Media Diversity in* PATHS NOT TAKEN: POLITICAL PLURALISM IN POST-WAR SINGAPORE 264, 271(Michael D. Barr & Carl Trocki, eds., 2008). *See generally* CHERIAN GEORGE, FREEDOM FROM THE PRESS: JOURNALISM AND STATE POWER IN SINGAPORE *(2012).*

32 *See generally* VOTING IN CHANGE: POLITICS OF SINGAPORE'S 2011 GENERAL ELECTION (Kevin YL Tan & Terence Lee eds., 2011); Marko Skoric et. al., Tweets and Votes: A Study of the 2011 Singapore General Election, 2012 45th Hawaii International Conference on System Sciences, *available at* http://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=6149327.

These are figures that point to a political sphere which has seen the "naked merging of state and party,"[33] such that,

> aspects of Westminster-style government such as accountability of ministers to parliament, a non-partisan public bureaucracy and the tolerance of a loyal opposition were all casualties in the . . . establishment of a virtual one-party state by the ruling People's Action Party. . . [A]ppearances of at least some aspects of Westminster remain important to the ideological defense of the political system . . . [reflecting] the deliberate practice of trying to harness historically liberal institutions to authoritarian ends.[34]

Alongside heavily-regulated mass media,[35] the minimal articulation of political contestation has resulted in an ideologically, almost homogenous public sphere.[36] It is this ideological and discursive near homogeneity that perhaps most powerfully frames the contemporary (masked or almost absent) Singapore cause lawyer.

III. SINGAPORE'S EARLY CAUSE LAWYERS (1965-2000)

A genealogy of cause lawyering in Singapore helps contextualize Singapore's quiescent legal profession. This genealogy traces events relating to lawyers who have been characterized by the state as improperly speaking on "politics." With reference to the Singapore state's insistence on a distinction between law and politics, it is important to note that a key figure in this genealogy is Singapore's first and long-time prime minister, Lee Kuan Yew.[37] As Dezalay and Garth note, Lee's courtroom appearances in the post-war colonial period, particularly when representing left-wing trade unionists, was crucial to Lee's visibility and stature: "Lee Kwan Yew gained power in part . . . in representing relatively marginal groups against state power," strategically and effectively managing to build his political profile, exposure, and credibility by representing "the downtrodden," while carefully playing within the rules.[38] The genealogy we trace below suggests that Lee's

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[33] Rodan, *supra* note 17, at 114.

[34] *Id.* at 110.

[35] George, *supra* note 31, at 271.

[36] RAJAH, *supra* note 4, at 290-294.

[37] Lee held cabinet office for a total of 52 years, from 1959 to 2011. He was Prime Minister for 31 years (1959-1990). He continued in cabinet for a further 14 years as Senior Minister (1990-2004) and then as Minister Mentor for 12 years from 2004 to just after the 2011 General Elections. The current Prime Minister, Lee Hsien Loong, is the son of Lee Kuan Yew.

[38] DEZALAY & GARTH, *supra* note 3, at 99.

acute awareness of the political value of his public visibility as a cause lawyer of sorts[39] has made him alert to the risk that others may benefit from deploying the same platform. Ironically, it may be the very potency of cause lawyering at an early moment of the Singapore story that has led to its being rendered masked or exceptional.

There are two strands to the genealogy of Singapore cause lawyering: first, relating to lawyers acting associationally through the Law Society of Singapore in order to advocate for causes; and second, relating to lawyers who have, in their professional capacities, represented individuals the state considers enemies.

A. THE LAW SOCIETY OF SINGAPORE

The Law Society of Singapore[40] has positioned itself in a manner akin to a cause lawyer on just two occasions: once in 1969 and for a second time in 1986. In 1969, the Singapore state tabled draft legislation designed to amend the Criminal Procedure Code so as to abolish jury trials.[41] The Council of the Law Society argued against this move. The Council was invited to make its case before a Select Committee that had been convened in order to study the legislative amendments. In general, Select Committee hearings are meant to facilitate the state's engagement with a range of public actors as the Committee considers the text and probable impact of proposed legislation. In this instance, however, when the Council of the Law Society appeared before the Select Committee, the Select Committee (a committee dominated by state actors), rather than addressing the substance of the Law Society's submissions, adopted an accusatory manner that constructed and insisted upon a boundary between "law" and "politics" that had somehow been unacceptably breached by the Council of the Law Society.[42] Specifically, the Committee repeatedly characterized the Council's submissions as a *political* document (calling it in turns, a political essay, political treatise, political submissions, political dissertation)[43] in a manner that conveyed its abhorrence of the Council's supposed excursion into "politics."

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[39] *Id.*

[40] This was Singapore's largest legal professional organization until the founding of the Singapore Academy of Law in 1987.

[41] *Report of the Select Committee on the Criminal Procedure Code (Amendment) Bill*, 2nd Parliament of the Republic of Singapore, December 1969 [hereinafter "CPC Report"].

[42] *Id.*

[43] *Id.* at ¶¶ 533, 543, 551, 679.

Rather than address the substance of the Council's concerns relating to the proposed abolition of juries, the Select Committee accused the Council of *mala fides*. Significantly, the Council member who was most pointedly attacked and accused of "politicking" was David Marshall, a prominent lawyer who had once been in political competition with then Prime Minister, Lee Kuan Yew. Lee was a member of that Select Committee and dominated its proceedings,[44] adopting the most adversarial tone and selecting Marshall as his primary target for attack. This detail becomes important in view of events that unfolded within the next few years relating to Marshall's career at the Bar.

The Select Committee hearings on legislative amendments to eliminate jury trials took place in 1969.[45] In May 1971, the Singapore government detained four newspaper executives under the *Internal Security Act*, which permits detention without trial.[46] The executives worked at a Chinese language newspaper that had been critical of the Singapore government's policies on Chinese language and culture.[47] The detained pressmen asked Marshall to be their counsel. A convoluted series of events relating to the habeas corpus proceedings brought by Marshall for the detained pressmen resulted in Marshall being disciplined for professional misconduct.[48] He was suspended from practice for six months; a penalty that shocked the profession.[49] The complexity of the events leading to the disciplinary proceedings, and the unprecedented harshness of the suspension, is likely to have been understood as a punishment of sorts for Marshall's readiness to represent those the state had chosen to identify as enemies, and in some extended way, to be connected to his role in the Law Society's opposition to the abolition of juries.

There is a second, more alarming aspect to this sub-textual public instruction: the possibility that the state's intention was to warn lawyers that the state would conflate counsel and client in construing risks to the "nation." This possibility is raised by two further state actions against lawyers in the 1970s.

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[44] Out of the 350 questions the Select Committee asked the Council, 257 were asked by Lee. This amounts to about 73%. *See generally* CPC Report, *supra* note 41.

[45] *Id.*

[46] *Lee Mau Seng v Minister for Home Affairs, Sing. & Another* [1969-1971] Sing. L.R. 508 (H.C.).

[47] RAJAH, *supra* note 4, at 122-144.

[48] *Re David Marshall; Law Society v Marshall David Saul* [1972-1974] Sing. L.R. 132 (H.C.).

[49] KEVIN YL TAN, MARSHALL OF SINGAPORE: A BIOGRAPHY 501 (2008).

B. COUNSEL + CLIENT = DANGER!!!

Marshall was suspended in October 1972. In 1974 and 1977, the state took even more coercive action against two lawyers, T.T. Rajah and G. Raman, detaining both men without trial.[50] Both men were subsequently released with restrictions upon their legal practice, such that they were no longer able to represent or advise political detainees.[51] Both Rajah and Raman were closely associated with left-wing movements, and Rajah had acted as counsel for Barisan activists in a number of prominent trials.[52] Rajah also defended the Barisan leaders charged with sedition,[53] and acted for many Barisan members and activists.[54]

In particular, Rajah appears to have been fearless in his dealings with the state, bringing orders of contempt against high-ranking state actors for prejudicing his clients' chances of a fair trial by making public statements before their cases had been heard.[55] He also deployed administrative law to bring orders of mandamus against state actors who had tortured and force-fed his imprisoned clients who were on a hunger strike.[56] Rajah also represented political detainees who had been held without trial under the *Internal Security Act* in bringing habeas corpus

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[50] Lawyer T. T. Rajah was detained for eighteen months from January 1974 to 12 Dec 1975 while lawyer G. Raman was detained in February 1977. FRANCIS SEOW, THE MEDIA ENTHRALLED 113 (1998); Amnesty International, "*Report* of an *Amnesty International* Mission to *Singapore*, 30 November to 5 December 1978" (1980) [1978 Amnesty International Report].

[51] 1978 Amnesty International Report, *supra* note 50.

[52] *Ang Chin Sang v Public Prosecutor*, [1970] 2 Malayan Law Journal 6 (Sing. H. C.); *Two Barisan leaders arrested on sedition charge,* THE STRAITS TIMES, Apr. 16, 1966, at 1, *available at* http://newspapers.nl.sg/Digitised/Article/straitstimes19660416-1.2.4.aspx (last visited Jan. 24, 2014); *The Barisan sedition case takes new turn,* THE STRAITS TIMES, Apr. 26, 1966, at 11, *available at* http://newspapers.nl.sg/Digitised/Article/straitstimes19660424-1.2.20.33.aspx (last visited Jan. 24, 2014).

[53] *Two Barisan leaders arrested on sedition charge, supra* note 52; *The Barisan sedition case takes new turn, supra* note 52.

[54] *Counsel, DPP clash over 'inspiration day'*, THE STRAITS TIMES, Oct. 8, 1967, at 9, *available at* http://newspapers.nl.sg/Digitised/Article/straitstimes19671008-1.2.17.41.aspx (last visited Jan. 24, 2014); *96 Barisans get 4 months for contempt*, THE STRAITS TIMES, Dec. 21, 1967, at 4, *available at* http://newspapers.nl.sg/Digitised/Article/straitstimes19671221-1.2.20.aspx (last visited Jan. 24, 2014).

[55] *Re Application of Lau Swee Soong; Lau Swee Soong v Goh Keng Swee & Another* [1965-1968] 1 Sing. L.R. 661 (H.C.); *Re Application of Foong Jam Keong* [1967] 2 Malayan Law Journal 202.

[56] *Re Rajah TT; Law Society v. Thampoe T Rajah* [1972-1974] 1 Sing. L.R. 423 [*Re T.T. Rajah*]; On the hunger strikes and forced feeding, *see also* SAID ZAHARI, THE LONG NIGHTMARE: MY 17 YEARS AS A POLITICAL PRISONER 55-68 (2007).

applications.[57] In other words, Rajah engaged in legal processes to draw attention to the manner in which a statist legal system was bearing down upon the PAP's political opponents.

Previously, in 1972, while investigating a complaint made by the Attorney General against Rajah for the manner in which Rajah conducted summonses he brought on behalf of political detainees, the Law Society initiated disciplinary proceedings that resulted in Rajah being found guilty of professional misconduct.[58] He was suspended from practice for two years from February 1973.[59] About a year after this suspension commenced, Rajah was himself detained without trial.[60] He was held from January 1974 to December 1975.[61]

Marshall's suspension from practice, along with the suspension and detentions of Rajah and later Raman, suggests a pattern of state retribution towards lawyers who have contested the state in the public domain when acting in their professional capacities. When state-initiated disciplinary actions culminate in penalties that prevent primary breadwinners from making their living, the hardship that is experienced by the lawyer and his loved ones extracts a deeply personal price from lawyers ready to represent the state's antagonists and, by extension, to advocate for causes in opposition to dominant positions. This punishment of lawyers who act for those the state categorizes as enemies might explain the sixteen year gap between *habeas corpus* applications that have been brought in Singapore by detainees.[62]

Between 1972 when Rajah acted for the Barisan activists and 1988,[63] despite a total of 210 individuals having been detained without trial,[64] detainees no longer challenged the legitimacy of their detentions in court. In short, by the late 1970s the state had established and consolidated an ideological monopoly in the sphere of "law." This

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[57] *Lau Lek Eng & Ors v. Minister for Home Affairs & Another* [1972-1974] 1 Sing. L.R. 300 (H.C.); *Wee Toon Lip & Ors v. Minister for Home Affairs & Another* [1972-1974] 1 Sing. L.R. 303 (H.C.).

[58] *Re T.T. Rajah*, *supra* note 56, at 423.

[59] *Id.* at 428.

[60] 1978 Amnesty International Report, *supra* note 50.

[61] *Id.*

[62] The digital database, Lexis, holds Singapore decisions. A search on Lexis shows that between 1972 and 1988, no *habeas corpus* applications were brought by *ISA* detainees.

[63] The so-called "Marxist conspirators", many of them lawyers, brought *habeas corpus* applications from 1988-1990. These are discussed below. *See infra* note 75 and accompanying text.

[64] The figures for detentions under the *ISA* were supplied in response to a question in Parliament. *Singapore Parliamentary Debates*, vol. 69, col 1991 (20 January 1999) (Mr. Wong Kan Seng).

monopoly is highly problematic for cause lawyering because the very premise of cause lawyering is that advocating for and from a position of ideological difference is systemically and structurally enabled.

C. LAW SOCIETY REPRISED

In the late 1980s, this instruction was reprised, if not augmented, in the manner the state responded to the Law Society. In 1986, the Law Society issued a press statement questioning the terms of proposed legislation designed to give the state control over what the "foreign press" published on Singapore.[65] The 1969 Law Society Council had, in its opposition to the elimination of jury trials, also issued press statements, but the various media outfits appear to have been intimidated into not publishing the Law Society's statements.[66] In 1986, however, the Law Society's statement was published by newspapers:

> There are ambiguities in the Bill. For example, the terms "engaging in" and "domestic politics" are not defined although these terms form the basis of the Bill. Since this Bill is aimed at foreign publications, which, – in the words which have been attributed to the Minister– "have been commenting frequently on local issues and distorting the truth," these terms should have been defined. The omission to define them will result in subjective interpretation and implementation of the Bill.[67]

This criticism is entirely consistent with expectations that the "law" be clear and accessible,[68] and the "common law" expectation that legislation, in particular, should exhibit clarity by defining key terms.[69] Apart from being consonant with assumptions central to ideas about the attributes of effective legal systems, the press statement was also in keeping with the *Legal Profession Act*. Under the *Legal Profession Act*, as it was then framed, the Council of the Law Society's functions included examining and reporting upon current or proposed legislation should it think fit,[70] and protecting and assisting the public in all matters

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[65] *Report of the Select Committee on the Legal Profession (Amendment) Bill*, 6th Parliament of Singapore, October 1986, at B66, ¶ 422 [hereinafter "SC Report on LPA"].

[66] SEOW, *supra* note 50, at 38-39.

[67] SC Report on LPA, *supra* note 65, at B82-84.

[68] These parameters and principles for the "rule of law" might be traced to Dicey's definitions and Hayek's later elaborations. *See* BRIAN Z. TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY 63-70 (2004).

[69] *Id.*

[70] *Legal Profession Act* (Cap. 161, 1985 Rev. Ed. Sing.) §38(1)(d).

to do with law.[71] When making the press statement, the Law Society was, on the face of it, acting in accordance with its powers and its duties as framed by the "law" of the *Legal Profession Act* and the constitutional rights of freedom of speech and of association.[72] Despite these conceptual and textual entitlements to question proposed "laws," the state insisted that the Law Society had, by making a public statement, breached state-Law Society relations.[73] This insistence was dramatically conveyed through televised Select Committee hearings. These hearings unfolded in a manner that transformed the Select Committee hearings into a quasi-courtroom in which the Council of the Law Society was subjected to highly adversarial and intimidating cross-examination.[74] The televised proceedings beamed the state's power to intimidate and humiliate individuals into living rooms across Singapore. Eight months after the Select Committee hearings, this instruction was augmented when two members of the Council of the Law Society were detained without trial, accused of being part of a "Marxist Conspiracy" to overthrow the state.[75]

The events directed at the Law Society Council of 1986 demonstrate how a hegemonic dual state effects the demarcation of the public domain as a space for state dominance that mutes lawyers' critique of state formulations of "law." If the state became instructor, it was not just the Council that was meant to be re-educated. The discrediting and emasculation of the Council instructed all citizens (but perhaps especially lawyers) on the way in which the spaces of "law" relating to civil and political rights were unavailable to actors other than the state. The Hearings reinforced the lawfulness of the state without granting legitimizing space to the Law Society's criticism. In other words, the Hearings demonstrated that the limits of "law" were contained, not within the text and underlying ideals of the *Legal Profession Act* and the Constitution, but in the public sphere; in the state's power to characterize, interpret, and insist.

For almost twenty years after the Hearings, the Law Society of Singapore stayed out of the public domain. It made no public statements on legislation formulated in opaque language, and, publicly at least, questioned no *Internal Security Act* detentions. The Law Society's recent

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[71] *Id.* at §38(1)(f).

[72] CONST. OF THE REPUBLIC OF SINGAPORE art. 14 (revised 1999).

[73] SC Report on LPA, *supra* note 65, at B37-38.

[74] RAJAH, *supra* note 4, at 181-189.

[75] TAN JING QUEE ET AL., OUR THOUGHTS ARE FREE 140 (2009); *see also* RAJAH, *supra* note 4, at 205-209.

statements on the mandatory death penalty and the decriminalization of homosexuality[76] might be read as carefully calibrated to maintain the Society's liminal and uncertain space as a cause lawyer of sorts. If the Hearings were, in part, an instruction then their lessons had surely been learned.[77]

In the next section, we focus on the figure of Ravi as the striking expression of an exception that holds the promise of a shift away from the general rule of the masked and absent Singapore cause lawyer. We ask whether Ravi's career, in tandem with recent proceedings relating to some other issues, points to the emergence of public cause advocacy in the courts as a feature of cause lawyering in Singapore's future. The very emergence of Ravi as a cause lawyer begs the question: what contextual features made this emergence possible? While a detailed discussion of broader political events is beyond the scope of this paper, we draw on existing literature[78] to speculate that electoral results increasing the number of opposition parliamentarians to six out of eighty-seven, alongside the astonishing vitality of the internet and social media, have brought about a fracturing in the ruling party's dominance of the ideological sphere. Legal historian Kevin YL Tan notes that Ravi's emergence might in part be attributed to the shift in judicial environment marked by the leadership of Chief Justice Chan Sek Keong (Chief Justice from 2006 to 2012).[79] Other scholars have offered a similar assessment of the constitutional decisions delivered during the tenure of Chief Justice Chan,[80] and suggest that contemporary circumstances that enabled Ravi to pursue a number of his cases were facilitated by a shift in the Singapore judiciary's approach from an earlier era when constitutional claims were considered in a cursory manner to one where they are taken

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[76] K.C. Vijayan, *Law Society call for decriminalisation of homosexuality,* THE STRAITS TIMES (Apr. 5, 2007), http://safesingapore.blogspot.com/2007/04/straits-times-law-society-calls-for.html.

[77] *See* Jothie Rajah, *Lawyers, Politics and Publics: State management of lawyers and legitimacy in Singapore, in* TERENCE HALLIDAY ET AL, FATES OF POLITICAL LIBERALISM IN THE BRITISH POST-COLONY 149-192 (Terrence Halliday ed., 2012) (detailing the history of the state's responses to, and constraining of, the legal profession in Singapore).

[78] *See,* e.g., Tang Hang Wu, *The Networked Electorate: The Internet and the Quiet Democratic Revolution in Malaysia and Singapore,* 2 J. Info. L. & Techn., Sept. 18, 2009, at 1; Kenneth Paul Tan, *Singapore in 2011: A "New Normal" in Politics,* 52 Asian Survey, no.1, 2012, at 220-226, *available at* http://www.jstor.org/stable/10.1525/as.2012.52.issue-1.

[79] Personal communication on file with authors.

[80] Thio Li-ann and Chiong, *The Chan Court and Constitutional Adjudication: A sea change to something rich and strange?, in* THE LAW IN HIS HANDS: A TRIBUTE TO CHIEF JUSTICE CHAN SEK KEONG 87-119 (Chao Hick Thin et al. eds., 2012).

more seriously. These multiple factors should be borne in mind while examining the evolution of Ravi's career.

IV. RECENT AND CONTEMPORARY TRENDS (2000-13): THE CAUSE LAWYERING RECORD OF M. RAVI

In this section, we focus on the cases and causes embraced by the Singaporean lawyer, M. Ravi. Before doing so, we must acknowledge the record of other lawyers who have, in a quiet, understated way, provided their legal services to several marginalized causes in Singapore. Chief among such lawyers is Peter Cuthbert Low who has been uniquely successful in sustaining a career, exceeding thirty years, that has included representing those the state marks as "enemies" (such as individuals detained without trial), and those criminalized as especially threatening (such as striking workers).[81] Significantly, Peter Low represented some of the detainees in the leading "Marxist plot" case, *Chng Suan Tze v. Minister of Home Affairs*,[82] at a time when doing so invited the possibility of open hostility from the government. In later years, he has defended those accused of drug offences,[83] and has also represented prominent members of opposition parties such as Tang Liang Hong and Chee Soon Juan. These actions, given the history we recount in the first part of this article, were likely to affect Low's chances of being able to pursue a career as a legal practitioner, and it is especially commendable that he continued doing so over a long span. There are other lawyers who have stepped up from time to time in cases that were generally regarded as politically sensitive.[84] We argue at some length below, however, that Ravi's career is singular and of a different nature.

Our focus on Ravi's legal career is through a study of reported cases in which Ravi played the role of counsel. Conducting this study through reported cases enables us to see the range of issues he has pursued, the way his career as a cause lawyer has evolved, and the impact of his cause lawyering on the public sphere. The limitation of this approach is that we do not have a sense of Ravi's motivations (not

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[81] BRYNA SINGH, *62-Year Old Lawyer Shows No Signs of Slowing Down*, THE STRAITS TIMES (Apr. 29, 2013), http://www.straitstimes.com/the-big-story/case-you-missed-it/story/62-year-old-lawyer-shows-no-signs-slowing-down-20130501.

[82] [1989] 1 MLJ 69.

[83] *Public Prosector v Lai Kam Loy* [1993] SGHC 181.

[84] *See Ng Chye Huay v Public Prosecutor* [2006] 1 SLR 157 (involving the rights of free speech of Falun Gong practitioners in Singapore with Alfred Dodwell as their counsel).

having interviewed him) and also cannot obtain a sense of other cases he was involved in which were either not reported or have not yet resulted in judgments. On the other hand, relying on the publicly available documentary record allows us to retain a certain degree of distance and objectivity. Ravi has also enjoyed a high public profile and we rely on media interviews and analysis of his cases by commentators and on his recently published autobiography[85] to inform and supplement our analysis.

Judgments bearing Ravi's name as counsel began emerging at the turn of the century. His early cases focused on relatively minor issues and he may well have seen his role as a service provider, closer to the conventional view of lawyering. The first reported judgment bearing his name as counsel is *Kalki Jewellery v. Mani Samikkannu* (2000),[86] where Ravi successfully appeared for the defendant in a case involving a sale of goods transaction. (This may also have been one of the few cases that he won outright; his other "successes," as we shall see, were more qualified). The second reported case with Ravi as counsel – *Re A (an infant)* (2002)[87] – involved a family law dispute over the custody of a child.

The literature on cause lawyering has focused on the motivations and circumstances that lead to the formation of cause lawyers. Carrie Menkel-Meadow has argued that for some cause lawyers, the source of personal commitment that sustains their work is located in their orientations to the world.[88] These cause lawyers, Menkel-Meadow argues, focus on issues of personal morality and see themselves and their welfare as inseparable from the welfare of humanity as a whole. For such cause lawyers, altruism is at the core of what they do.[89] Daniel Lev has argued that rather than focusing on such an analysis of the motivations of cause lawyers, scholars need to pay attention to the ideology and shared value systems that lawyers hold as lawyers. Lev argues that while cause lawyers in Indonesia and Malaysia share a commitment to substantive justice, they are far more committed to notions of procedural justice,

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[85] M. RAVI, KAMPONG BOY (Ethos Books 2013) [hereinafter, "KAMPONG BOY"].

[86] [1999] 2 SLR 579; [1999] SGHC 145.

[87] [2002] 1 SLR 165; [2002] SGHC 318.

[88] *See* Carrie Menkel-Meadow, *The Causes of Cause Lawyering*, *in* SARAT& SCHEINGOLD 1998, *supra* note 1, at 46.

[89] *See id.* at 38-40.

which require the presence of strong and reasonably autonomous courts and fairness in institutional treatment.[90]

In our view, both these views are not necessarily in contradiction with each other. We believe that both these reasons appear to have explanatory force when applied to analyzing Ravi's career as a cause lawyer. In a media interview published in 2011, Ravi asserted that his family circumstances were in part the reason he felt motivated, even as a child, to respond to situations of injustice that he saw around him. He also stated that he was driven to study law because of his interest in addressing all forms of injustice.[91] In his autobiography, Ravi emphasizes instances where he was drawn to the idea of rights of individuals in several different situations while growing up. This eventually led to a fascination with pursuing law as he imagined that being a lawyer would allow him to champion the rights of individuals beyond his own.[92]

Later in his autobiography, Ravi notes that his first case involved defending a man charged with theft; his efforts at investigating the facts behind the charge caused the prosecutors to drop charges on the first day of trial.[93] Ravi's story about his first case draws attention to the fact that Singapore does not provide free criminal legal aid to those accused of crimes. This leads to a situation where the potential for injustice is rife, especially for the impoverished who do not typically know that they can avail themselves of the services of lawyers. Even when they are aware of such a right, they are often unable to afford retaining a lawyer. It is perhaps for this reason that Ravi has acted as criminal defense counsel consistently across his career. His earliest reported case as criminal defense counsel, *PP v. Phua Song Hua* (2003),[94] featured his unsuccessful defense of a man in a trial before the District Court of Singapore. Here, Ravi's client was accused of rioting under Section 147 of the Penal Code of Singapore. The second reported case involving Ravi as defense counsel, *Tan Puah Boon v. PP* (2003),[95] saw him

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[90] Daniel Lev, *Lawyers' causes in Malaysia and Indonesia, in* SARAT & SCHEINGOLD 1998, *supra* note 1, at 431.

[91] Deborah Choo, *Lawyer M. Ravi: My biggest weakness is . . .*, YAHOO NEWS (Oct. 6, 2011), http://sg.news.yahoo.com/lawyer-m-ravi—my-biggest-weakness-even-until-today-is—-.html.

[92] KAMPONG BOY, *supra* note 85, at 65-66, 76-79 (detailing instances when Ravi stood up for his own rights, and for those in his situation).

[93] *Id.* at 124-25.

[94] [2003] SGDC 301.

[95] [2003] 3 SLR 390.

unsuccessfully appealing against the conviction of his client under Section 477A of the Penal Code for falsifying accounts.

In his autobiography, Ravi recounts how he started his legal career in 1997, spending the first three years handling general litigation.[96] He set up his own law office in May 2000, but it took a few years for him to find steady work. In 2003, Ravi took on the first of his high-profile human rights case. According to one journalistic account, this occurred at the initiative of J.B. Jeyaretnam, the longtime opposition politician and lawyer who had a record of pursuing the civil and political rights of citizens and members of opposition parties in Singapore before the courts.[97] This client was Vignes Mourthi, a Malaysian citizen, who was charged with possession of 27.65 grams of heroin, making him liable for the death penalty under Singapore's criminal laws that prescribe a mandatory death penalty (which do not afford judges any discretion) for drug offences. These laws place the burden of proving the mental element on the accused and presume, unless disproved, that the person carrying drugs intended to possess them. Vignes Mourthi was arrested for possession of the drug which was camouflaged as a package of incense stones. Throughout his trial and until his death, Vignes maintained that he was misled by a friend in Malaysia into transporting the drug, and that he was personally unaware that he was in possession of a drug. His claim, therefore, was that he was an innocent drug mule.

At his trial, Vignes' claim was disbelieved and he was found guilty as charged, and sentenced to death. This sentence was eventually confirmed by the Court of Appeal of Singapore. In the original case before the Court of Appeal Vignes was represented by Subhas Anandan, generally regarded as Singapore's leading criminal lawyer. However, Ravi was engaged after the decision of the Court of Appeal, and he sought to have the original trial set aside for alleged infirmities. Ravi's argument that Vignes was entitled to a retrial was ultimately rejected by the Court of Appeal in the case of *Vignes s/o Mourthi v. PP* (2003)[98], and Vignes was hanged in September 2003.[99]

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[96] KAMPONG BOY, *supra* note 85, at 130.

[97] Andrew Loh & Vignes Mourthi, *Seven years on*, THE ONLINE CITIZEN (Nov. 29, 2010), http://theonlinecitizen.com/2010/11/vignes-mourthi---seven-years-on/; *see* CHRIS LYDGATE, LEE'S LAW: HOW SINGAPORE CRUSHES DISSENT (2004) (a biographical account of the career of J.B. Jeyaretnam which also focuses on cases initiated and defended by him).

[98] [2003] 4 SLR 300.

[99] See KAMPONG BOY, *supra* note 85, at 142-50 (setting out Ravi's own account of the case, including the profound effect that this case and similar death penalty cases that he took up had on him).

Since then, Ravi has been involved in several high-profile death penalty cases.

The latest of these cases was *Yong Vui Kong v. PP* (2010)[100] where the Court of Appeal in Singapore once again upheld the constitutionality of the death penalty in Singapore, rejecting all of Ravi's arguments. However, Ravi's initiative in challenging the legality of the death penalty led to a temporary moratorium on hangings in Singapore for about a year. Most recently, the government of Singapore has announced changes to such laws,[101] some of which can be perceived as an attempt to address the arguments raised by abolitionists including Ravi.

Ravi's impact as a cause lawyer has undoubtedly had some effect on the way the Singapore government has approached death penalty cases. In the 1990s, Singapore had the dubious distinction of having one of the highest rates of legal executions, relative to its population, in the world. During a three year period between 1994 through 1996, a total of 199 people were hanged in legal executions.[102] As already mentioned, this number dropped to zero in 2010.

In general, the rate of executions dropped to record lows since 2007, and this trend is likely to continue given the recent changes to laws regulating the mandatory death penalty in Singapore. It is quite possible that multiple factors are at play in causing this shift.[103] In 2004, Amnesty International produced a comprehensive report on Singapore's use of the death penalty which arguably had considerable impact on the government's decision to shift its stance.[104] We are not arguing that Ravi's cases have been the pivotal cause; we would nevertheless argue

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[100] [2010] 3 SLR 489.

[101] These changes, brought about by legislative amendments which became effective on January 1, 2013, seek to provide judges with more discretion in imposing the death penalty. For certain offences relating to drugs and murder, judges can now impose alternative punishments of life imprisonment instead of the death penalty. *See* K.C. Vijayan, *32 on death row can seek review of sentences*, THE STRAITS TIMES (Jan. 1, 2013), http://www.handsoffcain.info/news/index.php?iddocumento=17300024; *Singapore loosens capital punishment laws*, ABC RADIO AUSTRALIA (Nov. 12, 2012), http://www.radioaustralia.net.au/international/2012-11-15/singapore-loosens-capital-punishment-laws/1046980.

[102] *Singapore: The Death Penalty – A hidden toll of executions*, AMNESTY INTERNATIONAL (Jan. 15, 2004), http://www.amnesty.org/en/library/asset/ASA36/001/2004/en/6de04440-d64e-11dd-ab95-a13b602c0642/asa360012004en.html.

[103] *See* Michael Hor, *Singapore's Death Penalty: The Beginning of the End?*, *in* CONFRONTING CAPITAL PUNISHMENT IN ASIA: HUMAN RIGHTS, POLITICS AND PUBLIC OPINION 141-86 (Roger Hood & Surya Deva eds., 2013).

[104] *Id.*

that Ravi's actions are significant in the larger scheme of factors that have led to a change in policy.

Apart from criminal defense work, Ravi has also taken on cases involving political dissidents and opposition parties in Singapore as they sought to claim the benefit of the civil and political rights that are guaranteed by the Constitution of Singapore, but are severely restricted under a panoply of laws enacted by the Parliament of Singapore. Between 2006 and 2008, Ravi represented the opposition leader, Chee Soon Juan, and his sister, Chee Siok Chin, in their defense in a defamation suit initiated by Prime Minister Lee Hsien Loong and Minister Mentor Lee Kuan Yew for statements made by the Chees in a party newspaper.[105] Later, in the case of *Chee Siok Chin and others v. Minister of Home Affairs* (2006),[106] Ravi represented Chee Siok Chin and other petitioners who had participated in a non-violent "public protest" to register their dissatisfaction as citizens about a public scandal involving corruption Chee sought to challenge the constitutionality of Singapore's laws that strictly regulate the freedom of speech and assembly, especially in relation to efforts at raising public protests. The protesters were arrested and removed from the scene by the police, and Chee's petition sought to argue that this act of the police was a violation of her constitutionally entrenched right to assembly. Chee's action ultimately failed, as the High Court of Singapore, in a judgment delivered by Justice VK Rajah, rejected her claims. Ravi has similarly argued for the rights of Falun Gong members to conduct meditation exercises in public while displaying posters depicting their persecution in China.[107]

Ravi has also defended some high-profile figures in politically sensitive cases. It is arguable that at least some of these cases may not have resulted in litigation if Ravi had not been willing to act as counsel. One such case involved Alan Shadrake, who was charged with contempt of court for publishing a book on the death penalty in Singapore where he was alleged to have cast aspersions on the legal system of Singapore

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[105] *Lee Hsien Loong v Singapore Democratic Party* [2009] 1 SLR 642. (The Chees were found liable for damages to the tune of SGD 610,000 to the two plaintiffs, Lee Hsein Loong and Lee Kwan Yew.).

[106] [2006] 1 SLR 582.

[107] George Fu, *Singapore Police arrest Falun Gong practitioners while meditating, displaying posters*, THE EPOCH TIMES (Oct. 13, 2009), http://www.theepochtimes.com/n2/world/singapore-falun-gong-23680.html. The case is reported as *Public Prosecutor v Ng Chye Huay & another* [2007] SGMC 5; *see* KAMPONG BOY, *supra* note 85, at 213-22 (laying out Ravi's account of the case).

and its judges in particular.[108] Although Shadrake was found guilty of criminal contempt, fined SG $ 20,000, and sentenced to a jail term of six weeks, the case resulted in a change in the doctrinal test that would apply in cases of alleged contempt. As Ravi notes in his autobiography, the judgment set a new standard for contempt of court in Singapore, overturning four decades of precedent and "opening a window" for more open discussions in the future.[109] We note, however, that Ravi's client was nevertheless found guilty even under this new test, and his claim of having secured a breakthrough needs to be considered against a broader context where Singapore's contempt laws continue to be far more harsh and conservative than is the norm in liberal democracies.

The most recent case where Ravi took on issues of political significance was that of *Vellama d/o Marie Muthu v. Attorney General* (2013).[110] In this case Ravi's client, a resident of Hougang Parliamentary constituency, argued that the government's decision not to hold a by-election in her constituency after it had been vacated by the elected representative violated her right as a citizen to be represented in Parliament. In the past, the government had insisted that it was not obliged to hold by-elections for seats that had become vacant. Although the High Court rejected Ravi's claims on behalf of his client it is significant that, after the filing of the petition and before it came to be heard by the High Court, the Prime Minister of Singapore announced that a by-election would indeed be held in Hougang.[111] In its final judgment in the case, the Court of Appeal partly upheld the argument raised by Ravi on behalf of his client, Ms. Vellama, that the relevant provision, while vesting authority in the Prime Minister to call a by-election, would not countenance a refusal to hold such a by-election. The Court of Appeal held that a by-election must be called for within a reasonable period of time, though it seemed to still grant the government the power to determine what would constitute reasonable time. Although the Court of Appeal held that Ms, Vellama did not have standing before it, its

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[108] *Shadrake Alan v Attorney General* [2011] SGCA 26. *See* Gary Chan, *Contempt of Court and Fair Criticism in Singapore: Shadrake Alan v Attorney General* [2011] SGCA 26, 11 OXFORD UNIV. COMMONWEALTH L. J., no. 2, 2011, at 197-206.

[109] *See* KAMPONG BOY, *supra* note 85, at 181-89 (setting out Ravi's description of the case, including his claim that it represents a "tectonic shift").

[110] [2013] SGCA 13 (C.A.); *see* KAMPONG BOY, pp. 242-48 (setting out Ravi's account of the first half of the case before the High Court).

[111] *See* Jack Tsen-Ta Lee, *Hougang By-election case: What Court decision on By-election reveals*, SINGAPORE PUBLIC LAW BLOG (Aug. 14, 2013), http://singaporepubliclaw.com/2013/08/14/hougang-byelection-case/#more-273.

judgment resulted in at least partial vindication of Ravi's argument on her behalf that the government could not refuse to hold a by-election. As in the case of changes in the law relating to the death penalty for drug offences, it is possible to see a connection between Ravi's initiation of litigation alleging the violation of the constitution around this issue and the government's actions in response.

A final case that deserves emphasis is the ongoing case filed by Ravi in relation to a male client who had been charged under Section 377A of the Penal Code of Singapore for engaging in sexual acts with another male in a public toilet. This provision, which is directed towards sexual intercourse between males, was the subject of a heated debate in Parliament in October 2007. Although a number of citizens in Singapore had argued that this law unfairly targeted gay and LGBT populations in Singapore, the government ultimately decided on an uneasy compromise. On the floor of Parliament, the Prime Minister assured Singaporeans that while the law would be kept on the statute books to assuage conservative elements in Singapore society who could not accept alternative sexual lifestyles, the government would not proactively enforce such a law thus enabling gay and lesbian Singaporeans some allowance.

The case of *Tan Eng Hong v. AG* (2012)[112] arose when Ravi filed a constitutional claim alleging that his client's rights had been violated as a result of the charges brought against him under Section 377. In its cautious judgment delivered in August 2012, the Court of Appeal overturned a lower court ruling to hold that Ravi's client did have standing to bring a challenge to Section 377A as it could potentially violate his right to equality guaranteed under Article 12 of the Constitution of Singapore. Though by no means an outright victory, the decision affords some hope to Ravi's client – and to LGBT populations in Singapore – that a future challenge to the law might be successful. The case has inspired a follow-on challenge, and at the time of this writing both cases were winding their way up the Singapore judicial system, with an expected hearing before the Court of Appeal later in 2014.[113] Whatever be the case's result, its initiation will no doubt lead to a

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[112] [2011] 3 SLR 320; *see also* Lynette Chua, *The Power of Legal Processes and Section 377A of the 'Penal Code': Tan Eng Hong v. Attorney-General,* SING. J. LEGAL STUDIES, Dec. 2012, at 457-66 (for an argument that this case represents an important development in Singapore public law).

[113] Sylvia Tan, *Singapore: Tan Eng Hong makes application in anti-gay sex law appeal*, FRIDAE ASIA (Aug. 13, 2013), http://www.fridae.asia/newsfeatures/2013/08/13/12396.singapore-tan-eng-hong-makeapplication-to-intervene-in-anti-gay-sex-law-appeal.

landmark judgment on the status of the constitutional right to equality in Singapore.[114]

One more aspect of Ravi's professional career needs both mentioning and analysis. In 2007, Ravi was suspended from practice as a lawyer for a year after having been found guilty of professional misconduct by a disciplinary panel of the Law Society of Singapore. Ravi accepted that he suffers from bipolar disorder and underwent medical treatment. One year later, he reapplied and was allowed to regain his license. It appears that there is no dispute that Ravi suffers from the medical ailment.[115] What is a matter of contention is the effect it has on his ability to practice law. In September 2012, this issue took a bizarre turn when a representative of the Law Society sought to intervene in open court to raise the issue before a judge.[116] Although Ravi and the Law Society eventually settled this issue, the episode raised disturbing questions about the role of the Law Society in seeking to moderate or restrict Ravi's right to practice law, given the fact that Ravi has made it possible for unpopular and unusual causes to have their day in court.

V. CONCLUSION: ON THE CUSP OF CHANGE?

The relationship between cause lawyers and the conventional legal profession is complex.[117] In their early work, Sarat and Scheingold argue that legal professions everywhere simultaneously need, and are threatened by, cause lawyering.[118] This is because legal professions need lawyers who commit themselves and their legal skills to furthering a vision of the good society. "Moral activism" puts a humane face on lawyering and provides an appealing alternative to the value-neutral, "hired gun" imagery that often dogs the legal profession. But cause lawyering, by adhering to a very normative approach in the pursuit of particular ends, also threatens the profession by destabilizing the

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[114] *See* KAMPONG BOY, *supra* note 85, 223-35 (describing the details of the case and Ravi's perspective on it).

[115] In his autobiography, Ravi discusses his bipolar condition candidly and directly. *See id.* at 249-54.

[116] *See The ghosts of absent lawyers,* YAWNING BREAD (July 23, 2012), http://yawningbread.wordpress.com/2012/07/23/the-ghosts-of-absent-lawyers/ (providing an overview of the sequence of events).

[117] SARAT & SCHEINGOLD 1998, *supra* note 1, at 3-5.

[118] SARAT & SCHEINGOLD 2001, *supra* note 19. In this later work, Sarat and Scheingold have focused on the effect of state formation and globalization on cause lawyering as well as conventional lawyering.

dominant understanding of lawyering and by putting at risk the political immunity (if not autonomy) of the legal profession and the legal process. In terms of political immunity and autonomy, our paper has shown how the context of Singapore has been shaped by a lawyer-prime minister alert to the potency of cause lawyering, and determined to dismantle the immunity and autonomy of the legal profession. Lee Kuan Yew, having strategically deployed the role of courtroom advocate for the marginalized in challenging the colonial state,[119] appears to have treated an autonomous legal profession as deeply destabilizing to "nation."

It is important to stress that we are not arguing that Singapore is a simplistically repressive political context resulting in the complete absence of cause lawyers. Instead, the masked cause lawyer, the almost absent, and the exceptional cause lawyer, collectively result in lawyering being attenuated in terms of its potential for the public advocacy of causes. If cause lawyering sits within a larger social context in which the public sphere enables deliberation, contestation, and debate, then it is important to note that ideological plurality is only just beginning to emerge in the Singapore public sphere, and new media has much to do with this.[120]

At the time we began this research, Ravi's example had not inspired large-scale emulation by other lawyers in Singapore. Significantly, however, in December 2012, Singapore witnessed the first strike to have occurred in more than twenty-five years.[121] Five Chinese nationals employed as bus drivers by a public transportation company, Singapore Mass Rapid Transport Corporation ("SMRT"), were prosecuted for having led a walkout by some 170 transportation workers. We should highlight that Singapore has no minimum wage laws and, in general, employment and immigration law tend to attend to the interests of employers and the market rather than protect vulnerable low-skilled labor.

The state responded to this strike by prosecuting the five bus drivers under rather punitive legislation formulated under the Malayan

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[119] DEZALAY & GARTH, *supra* note 3, at 205-211.

[120] George, *supra* note 31, at 158-82.

[121] *See* WORKFAIR SINGAPORE: TOWARDS IMPROVEMENTS IN LABOR CONDITIONS, http://workfairsingapore.wordpress.com/category/smrt/ (for a collation of news articles and analysis on the event, popularly referred to as "the SMRT strike"); *see also* Didi Kirsten Tatlow, *Back in China, Bus Driver Doesn't Regret Singapore Strike,* THE NEW YORK TIMES (Apr. 1, 2013), http://rendezvous.blogs.nytimes.com/2013/04/01/back-in-china-bus-driver-doesnt-regret-singapore-strike/ (for a report in the international media).

Emergency. Under these provisions the strikers were criminalized, and indeed, the man identified as the leader of the strike was speedily charged, convicted, and sentenced to six weeks imprisonment. He did not have defense counsel.

In the intervening days between the conviction of this man and the four others, four lawyers came forward to represent the strikers who were about to be charged. It is possible, if not probable, that the visibility and presence of Ravi as a cause lawyer, the exception to the Singapore general rule, in some way created the conditions of possibility for other lawyers to step up and play the role of cause lawyer. In an earlier era, these bus drivers were likely to have appeared in court unrepresented by counsel. Whether this is a phenomenon attributable solely to Ravi's example or to factors that have to do with the changed political and legal climate in Singapore is unclear, but it is probable that these factors come together to signal change.

It may well be that Ravi is the only lawyer in Singapore who can, at the present time, justifiably lay claim to being called a cause lawyer. This in itself raises stimulating questions: Does the presence of Ravi as the single actor on the public stage of cause lawyering heighten the absence of the rest of the legal profession? Does the alignment of Ravi to dissidents, opposition politicians, and international advocacy groups reinforce the state's characterization of cause lawyering as "political" and therefore threatening? Does the maverick image of Ravi damage the project of building a public sphere in which contestation is civic, civil and desirable? Only time will tell.