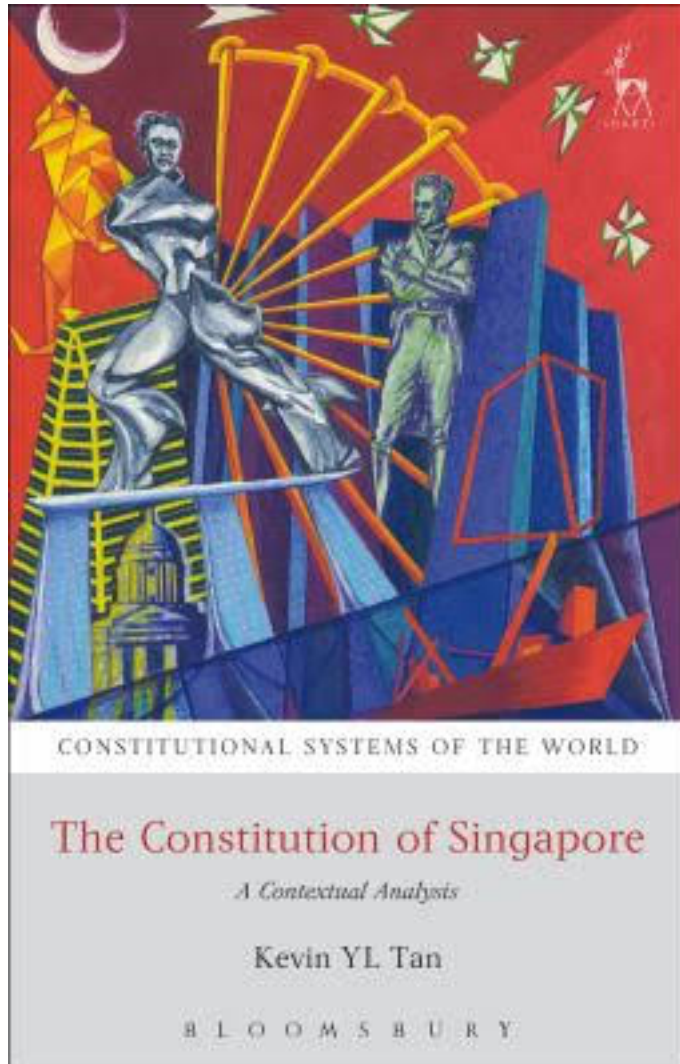


A few months ago, I had the good fortune to be approached to write a review of Kevin YL Tan's *The Constitution of Singapore: A Contextual Analysis* for the *Australian Journal of Asian Law*. Excited by the opportunity to apply my interest in constitutionalism in the region to a country with which I am less than familiar, I opted to write a more expansive, 3,000-word 'Review Essay' rather than a more minimalist 1,000-word 'Book Review.' As what will likely be my first piece of academic writing to be published in a peer-reviewed journal, this was also an opportunity for me to pose some of the more fundamental, methodological and conceptual questions that are currently shaping my thinking about my own work on the development of constitutionalism – and legal/political systems – elsewhere in the region. Since these concerns will likely also form the foundation for the majority of my future blogs and podcasts, as well as my Capstone project, I also decided that discussing the book (and my analysis of it) would be a good way to frame my first blog.

Given that Kevin YL Tan lectured in law at the National University of Singapore for almost 15 years, and is one of the foremost constitutional law scholars in Singapore (not to mention Southeast Asia generally), I was acutely aware while writing the review that the book's author was very much the expert. Hence, rather than looking to contest or counter any of substantive content of Tan's work, I was able to focus on the way in which he framed his understanding of

the constitution, and its place in Singaporean political life. This was made somewhat easier by the fact that the book was explicitly billed as '*a contextual analysis*,' which would place the constitution and its development in social, political, historical and (perhaps) cultural context. In fact, it is this very challenge – of seeing constitutionalism in more than just narrowly *legal* terms – that is the major aim of my PhD thesis, as I see it as fundamental to properly understanding the role played by constitutionalism in a large number of countries. Hence, after a general discussion of the content, themes and significance of Tan's account of



the Singapore Constitution, I turned to some more methodologically orientated critiques.

At this point, I should note that the book is the latest in Hart Publishing's *Constitutional Systems of the World*, series. While the aim of the series is to provide an accessible introduction to the world's most innovative and interesting constitutional systems, anyone without a prior knowledge of Singapore could be forgiven for wondering why it features alongside the U.S., the U.K., Australia, Canada, South Africa and China as one of the first in the series. As I say in my review, however, it is because as well as being (quoting Tan at first) "an unlikely country and an even more unlikely nation'... Singapore's is also a an unlikely story of constitutional innovation and, by some measures, success." Specifically, in response to a number of unique historic, demographic and political contingencies, Singapore's leaders have used the tools of constitutionalism to build institutions and "engineer" a system that they feel is suited to their aims. As a result, Singapore is routinely praised by International Financial Institutions for the efficiency of its rule of law institutions, and receives stellar rankings in "Economic Freedom" indexes (see below, left). Yet, Singapore

Top 10

The Economic Freedom Index 2015

Rank	Country	Overall	Change
1	Hong Kong	89.6	-0.5
2	Singapore	89.4	0
3	New Zealand	82.1	0.9
4	Australia	81.4	-0.6
5	Switzerland	80.5	-1.1
6	Canada	79.1	-1.1
7	Chile	78.5	-0.2
8	Estonia	76.8	0.9
9	Ireland	76.6	0.4
10	Mauritius	76.4	-0.1

Source: The Heritage Foundation

SCMP

Economic Freedom Index 2015 :
The Heritage Foundation

is equally as likely to be admonished for its poor human rights record and place near the bottom of indexes that rank judicial independence or free expression (see right). On one level, this paradox is clearly a damning indictment of the political biases that can be concealed within quantitative

data and the turn to "measurables." On another, however, it is also an accurate indication of what has been called Singapore's "bifurcated" legal system: one that guarantees economic freedoms but denies civil and political ones, making a mockery of the idea that the two are somehow inextricably intertwined and mutually reinforcing.

Tan's analysis, meanwhile, explains Singapore's constitutional development as a consequence of three themes: economic development first, managing ethnic diversity, and the ongoing dominance of the People's Action Party (PAP). However, these themes are used because, in Tan's words, 'we cannot understand the trajectory of Singapore's constitutional development without knowing the three key imperatives of the PAP's outlook.' Meanwhile, the use of constitutional reforms to attend to these goals is presented by Tan as being facilitated by an ideology of "pragmatism" which, although insightful, is defined entirely from the perspective of the ruling party. After a little extracurricular reading, this is a

144	Bangladesh	42,01	-15 (129)
145	Malaysia	42,73	-23 (122)
146	Palestine	43,09	+7 (153)
147	Philippines	43,11	-7 (140)
148	Russia	43,42	-6 (142)
149	Singapore	43,43	-14 (135)
150	Iraq	44,67	+2 (152)
151	Burma	44,71	+18 (169)
152	Gambia	45,09	-11 (141)
153	Mexico	45,30	-4 (149)
154	Turkey	46,56	-6 (148)
155	Swaziland	46,76	-11 (144)
156	Azerbaijan	47,73	+6 (162)

Press Freedom Index 2013 :
Reporters Without Borders

critique that I found being put forward by a number of Singapore-based scholars, especially Eugene Dili-Liow, who has helpfully pointed out that “‘pragmatic’ is not an objective position in itself” but in Singapore is always “defined *from the position of the PAP*.” Hence, despite presenting some notable criticisms himself, Tan puts himself on a dangerous path – in my opinion – to offering an apology for the practices of the “hegemonic” PAP as soon as he accepts the premises of the government’s guiding logics as the basis for his own analysis.

Rather than seeing this as a fault of the author alone, however, I want to suggest that this is the symptom of a wider tendency in constitutional law scholarship, and legal scholarship generally. Specifically, in its focus on national institutions and issues of wide-ranging (if not universal) significance, constitutional law as a discipline looks at the world almost exclusively from a “top down” perspective. Constitutional law and politics are regularly defined as distinct from or above “ordinary” law and politics, while constitutional understandings and interpretations are largely understood to emanate from national institutions and the elites who so often populate them rather than from the public at large. This is not an entirely new criticism in constitutional law, of course. Most recently, works such as Larry Kramer’s *The People Themselves* and Mark Tushnet’s *Taking the Constitution Away from the Courts*, have paid attention to popular engagement with constitutional questions and convincingly argued that the power of interpretation in the United States needs to be returned to “the people.”



The 'Pink Dot' Festival: Singapore, 2011

It is in this sense, I try to suggest in my review, that Tan’s writing is actually far more provocative (even progressive) than would appear at first blush. Specifically, despite his own apparent affinity for “the PAP’s outlook,” Tan makes regular reference – in *The Constitution of Singapore* and elsewhere – to the need for “*thicker*” description in constitutional studies. In relation to Singapore, for example, Tan notes (somewhat ruefully it would seem) that ‘no empirical study has been commissioned to study the attitudes of the general public towards the law generally,’ let alone the constitution. Similarly, Tan has elsewhere suggested that to understand constitutionalism in the region “understand how people feel about it.” This, ultimately, is the “gauntlet” that I argue Tan’s work implicitly throws down for future scholars, in Singapore and beyond: the challenge of developing more socially engaged, ethnographically driven and “bottom up” perspectives on constitutional law. And it is this, I suppose, that I hope my own research can aspire toward.