statistical data would provide evidence for the author's (probably correct) assertions that "an executive clemency decision, outside of public view, allows a harsh sentence to be modified after the fact without undermining any deterrence impact of the original sentence" (pp. 1–2) and that "the degree to which the pardon authority is aligned to the other powers of state, including law enforcement and prosecution, may be determinative of the frequency of clemency grants" (p. 139).

Similarly, using elite interview data in Chapter 6 (Mercy Committees) would also enable the reader to draw firmer conclusions about how clemency decisions are made around the table: whose voice, or which documents, prove the most influential, and whether or not a singular chief executive usually pays heed to advisory opinions.

Second, while the author ably outlines the similarities and differences of common law clemency laws and procedures, the reader is prompted to ask: "why the variance?". All nations evince differences in their constitutional and legislative arrangements, but what builds on describing similarities and differences is averring to the *reasons* for those similarities and differences: the historical, cultural, structural, and political roots of variance[15] – explanations too often ignored by comparative law scholars.[16] It is a shame the author holds back in this regard, although again the enormity of the project may be the reason: there is only so much comparative explanation that a compact volume can accommodate. Nevertheless, Novak's work prompts plenty of questions and avenues for further clemency research, particularly on the empirical side. And perhaps that is the point: not to end the conversation on comparative executive clemency, but to restart it again after Sebba.

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Constitutional Interpretation in Singapore: Theory and Practice
by Jaclyn L. Neo (ed)
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In this new collection, Jaclyn Neo has brought together an extremely impressive list of scholars to reflect on the current state of constitutionalism in Singapore. It is a testament to the strength of constitutional scholarship in Singapore today that so many contributors to the volume are well-known not only in Singapore but also globally. All contributors also show great insight and nuance in analyzing various dimensions to contemporary Singapore constitutional practice. Moreover, the list of topics covered by the volume as a whole is itself very impressive: it includes attention to various modes and theories of constitutional interpretation, the scope of judicial review, the basic structure doctrine, natural justice, the right to freedom of expression, proportionality and balancing, and the use of foreign law.

A key premise of the collection is that the volume is being published at a moment of potential constitutional transition in Singapore. In her introduction, Neo suggests that "Singapore is witnessing a shift in legal and political culture as both judges and citizens display an increasing willingness to engage with constitutional ideas and norms" (p. i).

15. David NELKEN, *Comparative Criminal Justice: Making Sense of Difference* (London: Sage Publications, 2010) 13 and 31.

16. Mark DUBBER, "Comparative Criminal Law" in Mathias REIMANN and Reinhard ZIMMERMAN, eds, *The Oxford Handbook of Comparative Law* (New York: Oxford University Press, 2006) 1288 at 1291.

Various contributors also note distinctive shifts in particular constitutional domains: in her own chapter on balancing, for instance, Neo notes a distinctive shift in the approach of Singapore courts to constitutional "balancing" limitations analysis (pp. 159ff). Rather than consistently preferring the interests of the state over competing rights, in this context, she notes a shift from the early 2000s towards courts weighing competing rights and interests in a more context-specific way and asking whether the government has acted "reasonably" in various contexts. Thio Li-Ann, in her chapter on modes of interpretation, suggests that there has been a gradual shift in Singapore from "stability-oriented, administrative ways" of thinking about the constitution, to a form of "statist pragmatism", and more recently (or since 2006, under the Chief Justiceships of Chan and Menon) toward a form of "principled pragmatism" (pp. 78-89). Ramraj, writing on judicial review, notes the 2012 decision of the High Court in *Yeap Wai Kong*,[1] adopting a functional, as opposed to earlier, more formal, approach to the definition of public power for judicial review purposes (pp. 341ff, 350-351, 354-355).

Similarly, in writing about foreign law influences, Eugene KB Tan suggests that today in Singapore "there is less wariness of foreign constitutional jurisprudence compared to the high-water mark of the 1990s when foreign jurisprudence was effectively frowned upon as lacking relevance for a nation-state on the zealous quest for legal autochthony" (pp. 289-290). Indeed, he suggests, foreign jurisprudence is likely to take on "greater importance" in the future in Singapore and "will have to be more robustly engaged with in the years ahead" (p. 290). David Tan, writing about the guarantee of freedom of expression in Art 14 of the Constitution, likewise notes "a nascent willingness [on the part of the Court of Appeal] to refer with approval to appropriate foreign decisions in forging an autochthonous free speech jurisprudence, which augurs well for the future development of a broader qualified privilege for Singapore citizens in defamation law" (p. 211).

As with almost all transition claims, it is also difficult to assess the accuracy of this claim, without first waiting to see how future practices evolve. Indeed, several of the trends that the contributors identify could be seen as fairly nascent in quality, so that it may be several years or even decades before we can determine whether the trends identified are in fact stable or likely to continue.

Neo, for instance, argues that despite an important shift in reasoning, the Court of Appeal has tended to continue to uphold the constitutionality of various legislative and executive measures. A good example is the decision in *Vellama,*[2] where the judges engaged in quite open-ended forms of balancing in dictum, but ultimately upheld the discretion of the Prime Minister not to call an immediate election to fill a Parliamentary vacancy (pp. 168-170). In judicial review cases, as Ramraj himself notes, so far there are a few other cases extending or applying these same principles (p. 351). Thus, it is not yet clear whether the functional approach to public power Ramraj advocates will in fact fully take hold in Singapore.

In the context of an increasing pattern in foreign law citation (of the kinds noted by Eugene Tan and David Tan), Arun Thiruvengadam suggests – in his own thoughtful take on the question – that a careful examination of long-run empirical trends in this area seems to suggest that "these changes are ultimately more superficial, than substantial" (p. 319). He also adds:

> "[J]udges and courts engaged in constitutional adjudication in Singapore continue to resist the use of foreign and comparative law to an extent that is quite remarkable, especially given Singapore's common law heritage, and the fact that in other branches of law, the traffic in comparative ideas and law has remained high." (p. 319)

There are also several chapters that provide evidence of the important pressures against the kind of trends identified by scholars such as Neo and Ramraj. For instance, the Attorney-General in his contribution to the volume makes an eloquent case for retaining a strongly textualist, deferential approach on the part of Singapore courts to constitutional reasoning (pp. 23-24).

In my view, the best way of reading the volume in this context is as embodying a mix of positive and implicit normative claims: the positive claim is that there is in fact a distinctive shift in the emphasis and

1. *Yeap Wai Kong v Singapore Exchange Securities Trading Ltd* [2012] 3 SLR 565 (SGHC).
2. *Vellama d/o Marie Muthu v Attorney-General* [2013] 4 SLR 1 (SGCA).

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direction of Singapore constitutional interpretation. The normative claim, albeit implicit and very carefully made, is that a continuation of this shift would be normatively desirable. In most chapters, this combination of the positive and the normative is largely implicit.

Four important exceptions to that are the chapters by Jack Lee on the presumption of constitutionality, Swati Jhaveri on natural justice, Goh Yihan on "unified" versus pluralistic approaches to legal interpretation, and Michael Dowdle and Kevin Tan on legal and political constitutionalism. Lee offers a careful and scholarly exploration of the arguments for and against the presumption of constitutional validity, but concludes that consistent reliance on the doctrine is normatively problematic: it reflects, he argues, "an unwarranted assumption about the extent to which issues of constitutionality are examined Parliament, and the undemocratic nature of judicial review" (p. 151). Jhaveri offers a nuanced account of the incorporation of natural justice understandings into the language of Art 9 of the Constitution providing for procedures "according to law". She also offers a persuasive argument for the further incorporation of proportionality-based reasoning in this context, as a means of delimiting the evolving scope and content of commitments to procedural fairness (pp. 199-200). Goh Yihan offers a careful discussion of the arguments for and against a unified versus more pluralistic approach to interpretation of different legal instruments (i.e. legislation, contracts, and constitutions), before advancing arguments in favour of a unified approach (p. 282).

Eugene KB Tan, and Michael Dowdle and Kevin Tan are also quite explicit in mixing positive and normative claims about the increasing relevance of foreign law in Singapore and the predominance of either a political or legal model of constitutionalism in Singapore. Eugene Tan suggests that engagement with foreign law is not only increasing in Singapore, but it can also "enhance the legitimacy of the legal system and the rule of law" if done appropriately and with sufficient attention to local context (p. 290). Michael Dowdle and Kevin Tan likewise evaluate the predominance of either political or legal constitutional models and their normative desirability. For Dowdle, the political is preferable, given its capacity for adaption, while for Tan it is more desirable to see Singapore as a hybrid model, where legal constraints do more work (pp. 365-372, 372-376). The Dowdle and Tan chapter is also particularly interesting in this context for its "dialogic" style and structure – its co-authors actually disagree as to whether political or legal constitutionalism is the normatively preferable way of reading Singapore constitutional practice.

The standing in Singapore of many of the contributors making these claims also undoubtedly increases the probability that the positive claims will turn out to be true. If leading Singaporean scholars consistently praise one line of development over another, it becomes more likely that Singapore courts will also continue this line of development. In this sense, the volume may have its greatest impact as a contribution to internal debates in Singapore about the current and future trajectory of constitutional interpretation.

Reading the volume from Australia, however, I also inevitably come with the perspective of a comparative constitutional scholar. I found in reading it that I was continually drawn to two broad questions that I have raised in prior work on regionally-focused forms of comparative constitutional law: what does attention to a particular country or region tell us about this more fine-grained detail of actual constitutional practice across the globe and the complexity and nuance to global constitutional archetypes? Similarly, how can attention to a particular country or region generate new insights or understandings about constitutional law and practice, not apparent from a more global constitutional focus or a focus on what might be called the "usual suspects" of constitutional studies?[3] The first approach could be called a "top-down" approach to regionally focused comparison; the second a form of "bottom-up" approach to generating new global knowledge and insights.

Singapore is also a potentially fruitful and important case study for regionally focused comparison of this kind. When people talk about the "global South" critique in comparative constitutional law,

3. See e.g. Rosalind DIXON and Tom GINSBURG, "Introduction" in Rosalind DIXON and Tom GINSBURG, eds, *Comparative Constitutional Law in Asia* (Cheltenham and Massachusetts: Edward Elgar, 2014); Rosalind DIXON and Tom GINSBURG, "Introduction" in Rosalind DIXON and Tom GINSBURG, eds, *Comparative Constitutional Law in Latin America* (Edward Elgar, forthcoming 2017).

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they often conjure up economic divides between the global North and South. But in reality, as Ran Hirschl has shown, comparative constitutional scholars do quite routinely pay attention to a range of developing countries – including India, Colombia, Brazil, and South Africa.[4] While important and valid in many ways, the critique is therefore both over- and under-inclusive: what we need is not actually a reorientation of the field toward the economic and geographic South, but more consistent attention to under-explored constitutional cases – including, but not limited to, the economic and geographic South. Singapore also lies at an extremely interesting intersection in this context: it is clearly part of the geographic South but the economic North. It also has its own distinctive system of governance, which various contributors note, and which Mark Tushnet has suggested make it particularly worthy of interest to comparative constitutional scholars.[5]

From this perspective, what do the chapters teach us as comparative constitutional scholars from a top-down perspective? Andrew Harding, in writing about the "basic structure" doctrine, suggests that the legitimate scope and application of such a doctrine is inevitably shaped by the legal and political contexts (pp. 32ff). He further suggests that the political origins of the Singapore Constitution in 1965 point against rather than in favour of a traditional enforceable basic structure doctrine (as opposed to more procedural set of limitations imposed by express constitutional "tiers") (pp. 36-41).[6] The Constitution was the product of an organic, incremental set of changes; it is not a distinctive "constitutional moment" product which created a singular, coherent constitutional document.[7] The whole idea of a basic structure doctrine is thus problematic, and if it applies, it must allow for the possibility of incremental adaptation and evolution – the kind that could have occurred in 1999, with the introduction of an elected presidency.

Yap Po Jen, in writing about originalism and textualism in Singapore, suggests that the Singapore context points to distinctive reasons why judges might deploy these interpretive theories as a matter of rhetoric, or as constitutional "fig-leaves" (p. 117ff). While in the US such rhetoric might be understood as designed to assuage concerns about the scope and legitimacy of judicial review in the eyes of constitutional conservatives, in Singapore, Yap argues, it provides a means by which courts can accommodate judicial review within a context of dominant party democracy, or semi-permanent rule by the PAP (pp. 117-118). Originalism, Yap argues, is not legally required in Singapore, but provides courts with a "convenient proxy for judicial inaction" and thus the ability to avoid direct confrontations with the government (p. 127). Textualism also plays a similar function in many cases, and in others, it provides courts with a strong *legalist* defence for their actions as for example in the *Vellama* case (pp. 130-131).[8]

Similarly, Thio Li-Ann, in writing about modes of interpretation, suggests that given the distinctive political context in which they find themselves, Singapore courts since 2006 have arguably developed a distinctive approach to balancing legal and extra-legal arguments (pp. 83-89). Unlike the US, where at least since the mid-1930s there was been a trend toward increasing legal and judicial *pragmatism,* in Singapore the attempt has been to create a form of pragmatism that is more deeply constrained by or at least embedded in orthodox legal arguments (p. 103). Following the lead of Chief Justices Chan and Menon, she also labels this distinctive blend a form of "principled pragmatism" (p. 83). For myself I doubt that this fusion is unique to Singapore.[9] Attention to the Singapore context, however, certainly gives us greater insight into the many different ways in which legal and pragmatic discourses can be combined.

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4. Ran HIRSCHL, *Comparative Matters: The Renaissance of Comparative Law* (New York: Oxford University Press, 2014).
5. Mark TUSHNET, "Authoritarian Constitutionalism" (2015) 100 Cornell Law Review 391.
6. Cf Richard ALBERT, "The Structure of Constitutional Amendment Rules" (2014) 49 Wake Forest Law Review 913; Rosalind DIXON and David LANDAU, "Exporting Art V? Tiering Constitutional Amendment" (2016) [unpublished].
7. See Bruce ACKERMAN, *We the People, Volume 1: Foundations* (Cambridge, Mass. and London, UK: The Belknap Press of Harvard University Press 1991).
8. See *Vellama, supra* note 2 at [77]. Cf Theunis ROUX, "The Politico-Legal Dynamics of Judicial Review: A Comparative Analysis" (2016) [unpublished].
9. Cf Rosalind DIXON, "The Functional Constitution: Re-reading the 2014 High Court Constitutional Term" (2015) 43 Federal Law Review 455.

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Kevin Tan, in writing about a "Westminster model" notes the importance of this notion as a matrix for constitutional interpretation in Singapore and, in particular, for the importation of notions of natural justice in a Singapore public law. At the same time, he also notes the degree to which UK-style understandings of the Westminster model are ultimately given distinctive content, or modified, in Singapore by virtue of the written nature of the Constitution, and the entrenchment of judicial power (pp. 50-51, 70). The same might indeed be said of Canada or Australia, though some Australian judges question the very premise of giving direct effect to assumptions about a Westminster matrix.[10]

Similarly, what can attention to the Singapore context teach us from a bottom-up perspective? Perhaps the most interesting chapter in this vein is the chapter by Ramraj, who seeks to treat Singapore as a kind of laboratory for the control of global capital and forms of public-private power. His premise is that its role as a financial hub and since 2015, as a host to the Singapore International Commercial Court, means that it is extremely well-positioned to play a role in regulating global capital (p. 353). Its distinctive city-state status may mean that it can take a different approach to these questions than other financial and arbitral centres such as (say) London, Paris or New York (p. 352-353). The difficulty for Ramraj, however, is that there is as yet very limited evidence of the Singapore legislature or judiciary innovating in a way that would provide insights as to what such a distinctive city-state regulatory model would look like. Ramraj notes the important decision of the High Court in *Yeap Wai Kong*[11] and also the willingness of the Singapore legislature to legislate extraterritorially. But as Ramraj acknowledges, the decision in *Yeap Wai Kong* largely follows that of the UK Court of Appeal in *Datafin*,[12] and there are thus as yet only glimpses of what a fully formed city-state response to global capital and public-private power might look like.

In short, this is an enormously rich and important volume, likely to be widely read and appreciated both in Singapore and overseas. It is a valuable contribution to debates over the actual and desirable direction of constitutional development in Singapore and also to a more regionally nuanced understanding of comparative constitutional practice. Whether it will prove accurate in predicting the future direction of Singapore constitutional law is harder to say, but that can hardly be the test of whether we should read and engage with its insights in the present.

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10. See e.g. *Williams v Commonwealth* [2012] 248 CLR 156.
11. *Yeap Wai Kong, supra* note 1.
12. *R v Panel on Take-overs and Mergers, ex parte Datafin plc* [1987] 2 WLR 699 (UKCA).

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