

THE EVOLUTION OF THE SINGAPORE CRIMINAL JUSTICE PROCESS

This article analyses the Singapore criminal justice process in the context of Herbert Packer's Crime Control and Due Process models. It begins by analysing the features and goals of the two models before applying them to recent changes and developments in the Singapore criminal justice system. The article will focus in particular on developments in societal attitudes and values, legislative and executive policy, detention without trial, amendments to the Criminal Procedure Code (Cap 68, 2012 Rev Ed), the statement of facts in guilty-plea cases, *Kadar* disclosure and the judicial discretion to exclude evidence. Following an analysis of these developments, the article will then assess the change in balance between the two models in the Singapore criminal justice system as well as comment on the trend and future of our criminal justice process.

Keith Jieren **THIRUMARAN**
LLB (Hons) (National University of Singapore)

I. Introduction

1 The criminal justice process is the backbone of society that provides the context in which the substantive criminal law operates. The process includes all the activities “that operate to bring the substantive law of crime to bear (or to keep it from coming to bear)” on accused persons.¹ In his seminal book² and article,³ Herbert Packer espoused two renowned models that elucidate the framework for analysing the criminal justice process: the Crime Control Model and the Due Process Model. This article will analyse the unique Singapore criminal justice process to determine where it currently lies on the spectrum between the two models. In particular, this article will focus on some of the changes and developments that have been made and how they have affected the balance achieved in the Singapore criminal justice model. This article will then reflect on the shifts in balance and conclude on the trend and future of the Singapore criminal justice system.

1 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 149; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 2.

2 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968).

3 Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1.

II. The two models of criminal justice

2 The two models of criminal justice represent two distinct value systems with differing underlying philosophies. They were constructed to provide a convenient means of discussing the operation of the criminal justice process.⁴ These two models “compete for priority in the operation of the criminal process”.⁵ Every society’s criminal justice process falls somewhere along a spectrum between the Crime Control and Due Process models.⁶ No society would ever become a pure version of either model. Indeed, as Packer points out, a person who fully subscribed to the extremes of either model, to the full exclusion of the other model, would be “viewed as a fanatic”.⁷

A. Crime Control Model

3 The value system underlying the Crime Control Model is that “the repression of criminal conduct is by far the most important function to be performed by the criminal process”.⁸ Public order is seen as an important condition of human freedom, with the criminal process being the “positive guarantor of social freedom”.⁹

4 In order to achieve these aims and purposes, the Crime Control Model requires that “primary attention” be paid towards the efficiency of the criminal process and therefore its capacity to process offenders.¹⁰ This is reflected in high apprehension and conviction rates. A premium is placed on speed and finality, with non-judicial informal processes

4 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 153; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 5–6.

5 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 153; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 5.

6 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 153; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 6.

7 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 154.

8 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 159; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 9.

9 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at pp 158–159; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 9–10.

10 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 158; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 10.

being preferred. This model thus resembles an “assembly-line conveyor belt down which moves an endless stream of cases”¹¹

5 The premise under this model that allows for pursuing efficiency is that there must be “confidence in the reliability of informal administrative fact-finding activities” such as those of the police and prosecution, thus allowing the judicial part of the process to be relatively “perfunctory”.¹² This results in innocent accused persons being removed from the process at an early stage with the conviction of the rest proceeding expeditiously with minimum occasions of challenge.¹³ As a result of this, the Crime Control Model requires that little to no restrictions be placed upon the police and prosecutorial processes.¹⁴

6 Therefore, the Crime Control Model de-emphasises the importance of having an adversarial court process.¹⁵ The “focal device” of this model is the guilty plea which is used to reduce the judicial adjudicative processes to a minimum.¹⁶

B. Due Process Model

7 The value system that underlies the Due Process Model, on the other hand, involves the concepts of “primacy of the individual” and “limitation on official power”.¹⁷ This thus involves giving primacy to an individual’s rights as opposed to the rights of the community as a whole.¹⁸

11 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 159; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 10–11.

12 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at pp 160–161; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 11–12.

13 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 160; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 3 at 11.

14 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 162.

15 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 157; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 9.

16 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 162; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 13.

17 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 165; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 16.

18 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) Sing L Rev 431 at 442.

8 The Due Process Model insists on preventing and eliminating mistakes,¹⁹ with reliability playing a more dominant role than efficiency.²⁰ The model therefore rejects the reliance on the accuracy and ability of administrative processes and emphasises the possibility of error.²¹ There is therefore an insistence on a formal judicial adjudicative process, publicly heard by an impartial tribunal, with the accused being given the opportunity to disprove the Prosecution's case.²² This means that the adversarial aspect becomes "central" to the entire process.²³

9 This model thus resembles "an obstacle course" with each of its stages presenting "formidable impediments" to the accused being carried down the process.²⁴

10 The most important mechanism employed by the Due Process Model is the doctrine of legal guilt. Under this doctrine, even if reliable evidence shows that the accused factually committed the act, if the factual determinations are made in a procedurally irregular fashion, the authorities acted outside their allocated competences, or the rules safeguarding the accused and the process are not complied with, the accused will not be held to be guilty.²⁵ As a result, a factually guilty accused person is given the opportunity to be legally innocent through a procedural situation which allows for the usage of defences and doctrines that are not in any way related to factual guilt.²⁶

19 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 164; Herbert L Packer, "Two Models of the Criminal Process" (1964) 113 U Pa L Rev 1 at 15.

20 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at pp 165–166; Herbert L Packer, "Two Models of the Criminal Process" (1964) 113 U Pa L Rev 1 at 16.

21 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 163; Herbert L Packer, "Two Models of the Criminal Process" (1964) 113 U Pa L Rev 1 at 14.

22 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at pp 163–164; Herbert L Packer, "Two Models of the Criminal Process" (1964) 113 U Pa L Rev 1 at 14.

23 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 156; Herbert L Packer, "Two Models of the Criminal Process" (1964) 113 U Pa L Rev 1 at 9.

24 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 163; Herbert L Packer, "Two Models of the Criminal Process" (1964) 113 U Pa L Rev 1 at 13.

25 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 166; Herbert L Packer, "Two Models of the Criminal Process" (1964) 113 U Pa L Rev 1 at 16.

26 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 167; Herbert L Packer, "Two Models of the Criminal Process" (1964) 113 U Pa L Rev 1 at 17.

III. The Singapore model of criminal justice

11 The Singapore criminal justice model was first analysed by former Attorney-General and former Chief Justice Chan Sek Keong SC in his seminal works.²⁷ These works clearly espoused the philosophy of the Singapore criminal justice model with the underlying values remaining relevant even in modern Singapore.²⁸

12 The goal of our criminal justice system is “a high rate of conviction of the factually guilty accused”, which would mean that numerous aspects of the Crime Control Model have to be adopted.²⁹ As a result, our laws promote convicting factually guilty persons and efficiency in the system.³⁰ However, there also remain rules and procedures to prevent and correct potential miscarriages of justice which all governments have some sensitivity towards.³¹ As such, the Singapore model incorporates features from both the Crime Control and Due Process models.³² However, the balance between the two models is in favour of the Crime Control Model and its values.³³ Indeed, it has been said that today’s underlying values of Singapore’s criminal justice system “still approximate to the value system” of the Crime Control Model.³⁴

27 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) Sing L Rev 431; Chan Sek Keong, “From Justice Model to Crime Control Model”, speech at the International Conference on Criminal Justice under Stress: Transnational Perspectives, Golden Jubilee Celebrations of the Indian Law Institute (24 November 2006); Chan Sek Keong, “Rethinking the Criminal Justice System of Singapore for the 21st Century” in *The Singapore Conference: Leading the Law and Lawyers into the New Millennium @ 2020* (Butterworths, 2000) at p 45.

28 Steven Chong, “Recalibration of the Death Penalty Regime: Origin, Ramifications and Impact” (2017) 35 Sing L Rev 1 at 9–10.

29 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) Sing L Rev 431 at 442.

30 Steven Chong, “Recalibration of the Death Penalty Regime: Origin, Ramifications and Impact” (2017) 35 Sing L Rev 1 at 10.

31 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) Sing L Rev 431 at 442–443.

32 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) Sing L Rev 431 at 443.

33 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) Sing L Rev 431 at 443; Chan Sek Keong, “Rethinking the Criminal Justice System of Singapore for the 21st Century” in *The Singapore Conference: Leading the Law and Lawyers into the New Millennium @ 2020* (Butterworths, 2000) at p 50; Chan Sek Keong, “From Justice Model to Crime Control Model”, speech at the International Conference on Criminal Justice under Stress: Transnational Perspectives, Golden Jubilee Celebrations of the Indian Law Institute (24 November 2006) at para 20.

34 Steven Chong, “Recalibration of the Death Penalty Regime: Origin, Ramifications and Impact” (2017) 35 Sing L Rev 1 at 10.

13 Numerous other commentators have also reinforced the position by Chan Sek Keong SC and supported the position that Singapore continues to strongly subscribe to the Crime Control Model.³⁵

14 In analysing the Singapore criminal justice model, it is important to also consider the contributors that guide and shape the system. Packer stated that the validating authority for the Due Process Model is the Judiciary in its exercise of limiting the powers of officials, while the validating authority for the Crime Control Model is ultimately the legislative and administrative agencies.³⁶ However, this is not necessarily the case, as will be shown below,³⁷ because the overall balance between the community and an individual's rights is strongly influenced by the ideological and social goals of the executive government.³⁸ Furthermore, the opinions and views of the public and the society also come into play by influencing policies and laws through the exercise of freedom of expression and via proxy through the society's democratically elected government. Therefore, there emerges three main stakeholders and players that mould the criminal justice system: the society, the Executive in conjunction with the Legislature, and the Judiciary. These will be considered in turn to examine and determine where along the spectrum the current Singapore criminal justice model resides. From the shifts and trends, it will also become apparent where the future of the Singapore criminal justice model is headed towards.

A. Society

15 Public opinion was described by Packer as an "enigmatic force" whose stance cannot be determined.³⁹ Nonetheless, the public plays an important role in shaping the criminal justice system because the system

35 Kumaralingam Amirthalingam, "The Importance of Criminal Law" [2017] SingJLS 318 at 323–324; Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at para 06.159; Goh Yihan & Paul Tan, "An Empirical Study on the Development of Singapore Law" (2011) 23 SAclJ 176 at 187, fn 44; Nisha Francine Rajoo, "'... Than That One Innocent Suffer': The Innocence Project in Singapore" (2012) 30 Sing L Rev 23 at 33; Wong Siew Ming Audrey, "Criminal Justice for All? Wrongful Convictions and Poverty in Singapore" (2010) 28 Sing L Rev 67 at 83; Gan Week Kiat Gregory, "The Crippled Accused: *Miranda* Rights in Singapore" (2010) 28 Sing L Rev 123 at 123.

36 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 173; Herbert L Packer, "Two Models of the Criminal Process" (1964) 113 U Pa L Rev 1 at 22.

37 See paras 27, 33–39 and 41–49 below.

38 Chan Sek Keong, "The Criminal Process – The Singapore Model" (1996) Sing L Rev 431 at 438.

39 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 242; Herbert L Packer, "Two Models of the Criminal Process" (1964) 113 U Pa L Rev 1 at 63.

ultimately serves society. In order for the criminal justice system to work and be respected, the people in our society must support it. Thus, it is crucial to determine what the values of our society are so that the context of the criminal justice model can be better understood. As the general public does not usually consider the kind of model they would support, proxies must be used to determine the values of our society from which a preference for a criminal justice model can be derived.

(1) *Ideological preferences*

16 One aspect of the Crime Control Model is the “utilitarian emphasis on the repression of crime” which is a “premium consideration”.⁴⁰ This is likely to resonate well in Singapore because of the communitarian values that pervade our society. These values emphasise the importance of the community’s interests over individualistic interests. Indeed, the Court of Appeal has observed that criminal law in Singapore is ultimately “the public’s expression of communitarian values to be promoted, defended and preserved”.⁴¹ Thus, many Singaporeans would ideologically prefer a model that promotes the good of the community through crime control as opposed to an individual’s rights taking precedence over other interests.

17 Packer posits that the philosophy underlying the Due Process Model does not resonate well with a majority of the general public.⁴² Indeed, he suggested that “a preponderant segment of the public has little sympathy with the tenets of the Due Process Model”.⁴³

18 This position is especially true in a communitarian society such as Singapore. The idea that a factually guilty person could walk free because of a procedural irregularity is almost unfathomable to many members of the public. Given that Singapore’s criminal justice system has traditionally favoured the Crime Control Model and its elements,⁴⁴

40 Nisha Francine Rajoo, “... Than That One Innocent Suffer’: The Innocence Project in Singapore” (2012) 30 Sing L Rev 23 at 33.

41 *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [17].

42 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 242; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 63.

43 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 242; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 64.

44 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) Sing L Rev 431 at 443; Chan Sek Keong, “Rethinking the Criminal Justice System of Singapore for the 21st Century” in *The Singapore Conference: Leading the Law and Lawyers into the New Millennium @ 2020* (Butterworths, 2000) at p 50; Chan Sek Keong, “From Justice Model to Crime Control Model”, speech at the International
(cont’d on the next page)

there are no cases directly on point to illustrate this position. However, it is possible to support this position by extrapolating from similar scenarios where public outrage was triggered and use this to predict the general public sentiment. It is important to note that the focus of this analysis is on the public's perception and reception to these scenarios, and strictly does not involve analysing the merits or faults of these various cases.

19 In recent times, there have been various high-profile cases that have triggered public disquiet. All of these cases involved a public perception that the sentence or punishment meted out was too light and that the offender appeared to be escaping the full punishment for their crimes. This perception led to such a high level of public outrage that officials had to step in and make statements explaining the legal position in these cases, which included the City Harvest Church case,⁴⁵ the Annie Ee case,⁴⁶ the Joshua Robinson case⁴⁷ and the Nicholas Lim saga.⁴⁸ Drawing from these analogies, the logical extension would be that if a factually guilty person were to walk completely free without any sentence, especially on a procedural ground, members of the public would be outraged to a similar or greater degree.

20 However, at the same time, there remains a sense of justice that members of the society should only be punished in accordance with the law if they are factually guilty.⁴⁹ It would be similarly repugnant to the Singaporean public if a factually innocent person were to be wrongly convicted of a crime. In Singapore, *Muhammad bin Kadar v Public Prosecutor*⁵⁰ was the first and only case where an accused was wrongfully

Conference on Criminal Justice under Stress: Transnational Perspectives, Golden Jubilee Celebrations of the Indian Law Institute (24 November 2006) at para 20.

45 *Public Prosecutor v Lam Leng Hung* [2017] 4 SLR 474; Charissa Yong, "City Harvest Appeal: AGC is Considering Whether It Is Possible to Take Further Steps, Says Shanmugam" *The Straits Times* (8 April 2017).

46 *Public Prosecutor v Pua Hak Chuan* (CC 77/2017) (unreported); Ng Huiwen, "Death of Annie Ee: AGC Explains Why Couple Who Abused Her Were Not Charged with Murder" *The Straits Times* (18 December 2017).

47 *Public Prosecutor v Joshua Robinson* [DAC 903922-2016] (unreported); Attorney-General's Chambers, "PP vs Joshua Robinson", media release (8 March 2017) <<https://www.agc.gov.sg/docs/default-source/newsroom-doucuments/media-releases/2017/agc-press-release-jr-8-mar-17bd1400354dcc63e28975ff00001533c2.pdf?sfvrsn=0>> (accessed May 2019); Seow Bei Yi, "Shanmugam Says He Understands AGC Is Looking into Joshua Robinson Case" *The Straits Times* (6 March 2017); Seow Bei Yi, "No Appeal against Sentence in Underage Sex Case of Joshua Robinson: AGC" *The Straits Times* (8 March 2017).

48 Amelia Teng, "NUS Peeping Tom Given Conditional Warning Due to High Likelihood of Rehabilitation: Police" *The Straits Times* (23 April 2019).

49 Chan Sek Keong, "The Criminal Process – The Singapore Model" (1996) *Sing L Rev* 431 at 434.

50 [2011] 3 SLR 1205.

convicted and had his conviction overturned by the Court of Appeal.⁵¹ This case resulted in a “media frenzy”;⁵² hence, if wrongful convictions became commonplace it would “undoubtedly create frenzy among the public.”⁵³ It must therefore be acknowledged that there is also a communitarian and public interest in the prevention of wrongful convictions.

21 Therefore, the Singapore public is highly likely to have a very strong affinity with the values and philosophy of the Crime Control Model, although pragmatically some aspects of the Due Process Model would be supported to the extent that they are necessary to prevent a wrongful conviction.

(2) *Importance of crime control*

22 Singapore is one of the safest and most crime-free countries in the world. The overall crime rate in Singapore has been on a general downward trend with various categories of crimes at record all-time lows.⁵⁴ Singapore has also been rated as the top in law and order,⁵⁵ order and security,⁵⁶ and in safety⁵⁷ amongst the international community.

23 The repression of crime is very important to the Singapore society and many view the repression of crime as the ultimate goal that the criminal justice system should achieve. As noted by former Attorney-General and former Judge of Appeal V K Rajah, Singaporeans treasure the security in Singapore and treat the freedom from crime as a “societal right.”⁵⁸ This position is further supported by polls conducted

51 Nisha Francine Rajoo, “‘... Than That One Innocent Suffer’: The Innocence Project in Singapore” (2012) 30 Sing L Rev 23 at 23.

52 Nisha Francine Rajoo, “‘... Than That One Innocent Suffer’: The Innocence Project in Singapore” (2012) 30 Sing L Rev 23 at 23.

53 Nisha Francine Rajoo, “‘... Than That One Innocent Suffer’: The Innocence Project in Singapore” (2012) 30 Sing L Rev 23 at 37.

54 Singapore Police Force, “Annual Crime Brief 2017”, Police News Release (3 February 2018); Singapore Police Force, “Annual Crime Brief 2016”, Police News Release (10 February 2017); Singapore Police Force, “Annual Crime Brief 2015”, Police News Release (3 February 2016; updated September 2016). It is noted that an exception to this general trend came in the recently released report for 2018 when the overall crime rate in Singapore increased mainly due to an increase in online scams: Singapore Police Force, “Annual Crime Brief 2018”, Police News Release (20 February 2018) at para 3.

55 Gallup Analytics, *Global Law and Order Report* (2018).

56 World Justice Project, *Rule of Law Index* (2017–2018).

57 Global Smart City Performance Index, Juniper Research, *Smart Cities – What’s in It for Citizens?* (2017).

58 V K Rajah, “Judicial Review – Politics, Policy and the Separation of Powers”, guest lecture at the Singapore Management University (24 March 2016).

that show that Singaporeans generally find that safety and security are very important.⁵⁹

24 Therefore, the public and society in Singapore have high confidence in the criminal justice process as it maintains peace, security and public order.⁶⁰ The various crime control policies have resulted in Singapore being a relatively crime-free country, and the Singapore public appreciates this safety while supporting the criminal justice system which made it possible.⁶¹ This position is further supported by polls conducted that showed Singaporeans supported expanded police powers in relation to terror attacks.⁶² There also appears to be Singaporean support for preventive detention and the Internal Security Act⁶³ (“ISA”).⁶⁴

25 Therefore, this shows that the Singapore society views the repression of crime, which is a value of the Crime Control Model, as a fundamental aim of the criminal justice system. Coupled with the general support towards measures which accord with the Crime Control Model, this therefore elicits a general preference of Singapore society towards a predominantly Crime Control Model of criminal justice.

B. *Legislature and Executive*

26 The overall balance between the community and an individual’s rights are strongly influenced by the ideological and social goals of the executive government.⁶⁵ Together with the legislative parliament, they both have a significant role in shaping the balance between the Crime Control and the Due Process models. This is because of their ability to create policies and laws that promulgate aspects of any specific model. As will become clear, the Executive and the Legislature not only are the

59 Institute of Policy Studies, REACH, *Our Singapore Conversation Survey: Final Report* at para 10.

60 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) *Sing L Rev* 431 at 433.

61 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) *Sing L Rev* 431 at 434.

62 Tan Tam Mei, “Government Survey Shows Majority Polled Support New Expanded Laws for Police to Tackle Terror Attacks” *The Straits Times* (3 May 2018).

63 Cap 143, 1985 Rev Ed.

64 Neo Chai Chin, “Substantial Support for ISA in S’pore, Says Shanmugam” *Today Online* (14 November 2016).

65 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) *Sing L Rev* 431 at 438.

validating authority for the Crime Control Model⁶⁶ but also contribute significantly to creating features of the Due Process Model.

(1) *Governmental policy*

27 In Singapore, crime control is clearly a high priority on the Government's agenda.⁶⁷ This is because maintaining law and order is considered essential to the social, economic and political well-being of Singapore.⁶⁸ Furthermore, safety and security were also seen as essential to the economic success of Singapore.⁶⁹ These goals are more readily achieved by a criminal justice system whose criminal justice process is moulded into a predominantly Crime Control Model. Notwithstanding this, "no civilised government can be totally insensitive to potential miscarriages of justice".⁷⁰ Thus, even within our criminal justice system, some aspects of the Due Process Model need to be incorporated to prevent potential mistakes. One such aspect is the provision of legal aid,⁷¹ and it is worth highlighting that the Government has supported funding for the Criminal Legal Aid Scheme and the Legal Assistance Scheme for Capital Offences.⁷²

28 Some commentators argue that Singapore's criminal justice policy is "pragmatic" and that the Government's commitment to the

66 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 173; Herbert L Packer, "Two Models of the Criminal Process" (1964) 113 U Pa L Rev 1 at 22.

67 Chan Sek Keong, "The Criminal Process – The Singapore Model" (1996) Sing L Rev 431 at 438.

68 Chan Sek Keong, "The Criminal Process – The Singapore Model" (1996) Sing L Rev 431 at 438.

69 Goh Yihan & Paul Tan, "An Empirical Study on the Development of Singapore Law" (2011) 23 SAclJ 176 at 187, fn 44.

70 Chan Sek Keong, "The Criminal Process – The Singapore Model" (1996) Sing L Rev 431 at 442–443.

71 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at pp 168–169 and 236; Herbert L Packer, "Two Models of the Criminal Process" (1964) 113 U Pa L Rev 1 at 18–19 and 59–60.

72 *Singapore Parliamentary Debates, Official Report* (10 March 2015) vol 93 "Budget; Committee of Supply – Head R: Ministry of Law" (K Shanmugam, Minister for Foreign Affairs and Minister for Law); *Singapore Parliamentary Debates, Official Report* (4 February 2013) vol 90 "Second Reading Bill: Legal Aid and Advice (Amendment) Bill" (Indranee Rajah, Senior Minister of State for Education and Law); *Singapore Parliamentary Debates, Official Report* (6 April 2016) vol 94 "Budget; Committee of Supply – Head R: Ministry of Law" (Indranee Rajah, Senior Minister of State for Finance and Law); *Singapore Parliamentary Debates, Official Report* (2 March 2018) vol 94 "Budget; Committee of Supply – Head R: Ministry of Law" (Indranee Rajah, Senior Minister of State for Finance and Law); *Singapore Parliamentary Debates, Official Report* (3 March 2017) vol 94 "Budget; Committee of Supply – Head R: Ministry of Law" (Indranee Rajah, Senior Minister of State for Finance and Law).

Crime Control Model is “not ideological but pragmatic”.⁷³ This argument finds some support in the parliamentary debates. In the context of removing the mandatory death penalty for certain categories of murder charges and making it discretionary, the Law Minister noted that this was possible because of the low homicide rates in Singapore and made some remarks regarding the move towards giving the courts greater discretion. The Law Minister said that “where possible, where practical, where it is realistic, and where it does not substantially impact our crime control framework, we must move towards giving greater discretion to the courts”.⁷⁴ The general tenor of these statements does suggest a pragmatic approach towards criminal justice and a willingness to temper the heavy punishments that are a commonplace feature of a Crime Control Model.

29 However, it must be noted that to a certain extent, the commitment to the Crime Control Model is also ideological. Members of the Legislature and Executive also have their own sense of justice and their own values which are likely to mirror that of the general population. Thus, even if hypothetically there was no longer a pragmatic reason to adhere to the Crime Control Model, there is a high probability that the system would continue to be predominantly a Crime Control Model because the Government would continue to value the repression of crime as a fundamental goal of the criminal justice process.

30 In any event, Parliament always seeks to represent society and its values. Parliament has itself also acknowledged the role that societal values play in the shaping of the criminal justice process. In the context of refining sentences meted out to offenders, the Law Minister noted that the objectives of maintaining a strong and tough approach to deter crime need to be balanced against the objectives of using mercy to adjust the sentencing approach to give worthy offenders a second chance.⁷⁵ The Law Minister then noted that “how these objectives are achieved and balanced depend on the values and expectations of society, as it evolves and matures”.⁷⁶ It is therefore quite clear that Parliament’s criminal justice approach is heavily influenced by the societal values of the Singapore public. Given our society’s general preference for a

73 Kumaralingam Amirthalingam, “The Importance of Criminal Law” [2017] SingJLS 318 at 324.

74 *Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89 “Second Reading Bill: Penal Code (Amendment) Bill” (K Shanmugam, Minister for Foreign Affairs and Minister for Law).

75 *Singapore Parliamentary Debates, Official Report* (9 July 2012) vol 89 at pp 268–269 (K Shanmugam, Minister for Foreign Affairs and Minister for Law).

76 *Singapore Parliamentary Debates, Official Report* (9 July 2012) vol 89 at p 269 (K Shanmugam, Minister for Foreign Affairs and Minister for Law).

predominantly Crime Control Model, this position will likely be maintained by the Government in the foreseeable future.

(2) *Detention without trial*

31 Detention without trial is the epitome of the Crime Control Model. It has been described as being the most efficient and effective crime control mechanism that can be devised.⁷⁷ This is largely because it essentially does away with the judicial processes and various other Due Process Model features.⁷⁸ Detention without trial is thus a manifestation of the paramount importance of public protection and security and rightly comes under the purview of the Crime Control Model.

32 In Singapore, there are two main types of detention without trial that are implemented non-judicially as a substitution for a criminal trial into the matter (as opposed to rehabilitative detention). These are detention under the ISA for national security concerns, and detention under the Criminal Law (Temporary Provisions) Act⁷⁹ (“CLTPA”) for public order concerns.⁸⁰ As aforementioned, there appears to be wide public acceptance and support of this in Singapore.⁸¹

33 Under s 8 of the ISA, the Minister of Home Affairs can make a detention order to detain a person for up to two years if the President is satisfied that it is necessary to prevent the person from “acting in any manner prejudicial to the security of Singapore or any part thereof or to the maintenance of public order or essential services therein.”⁸² This can be extended for further periods not exceeding two years by the President.⁸³ Judicial review by courts in respect of a detention order is limited to compliance with the procedural requirements of the ISA⁸⁴ using what is known as a subjective approach.⁸⁵

77 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) Sing L Rev 431 at 439.

78 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) Sing L Rev 431 at 439.

79 Cap 67, 2000 Rev Ed.

80 Chan Sek Keong, “The Courts and the ‘Rule of Law’ in Singapore” [2012] SingJLS 209 at 221.

81 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) Sing L Rev 431 at 439; Neo Chai Chin, “Substantial Support for ISA in S’pore, Says Shanmugam” *Today Online* (14 November 2016).

82 Internal Security Act (Cap 143, 1985 Rev Ed) s 8(1).

83 Internal Security Act (Cap 143, 1985 Rev Ed) s 8(2).

84 Internal Security Act (Cap 143, 1985 Rev Ed) s 8B.

85 *Lee Mau Seng v Minister for Home Affairs* [1971–1973] SLR(R) 135; *Teo Soh Lung v Minister for Home Affairs* [1990] 1 SLR(R) 347.

34 However, even within this formidable manifestation of the Crime Control Model in Singapore, there exists safeguards that resemble due process norms. Article 151(1)(a) of the Constitution of the Republic of Singapore⁸⁶ provides that a detained person must be: informed of the grounds for detention, informed of the allegations of fact on which it is based, and given the opportunity to make representations against the detention. Furthermore, Singapore citizens cannot be detained longer than three months unless an advisory board (whose chairman is qualified to be a Supreme Court judge) has considered the detainee's representations and made recommendations to the president.⁸⁷ A detained person is also allowed to consult legal counsel within a reasonable time after detention.⁸⁸ Furthermore, the practice of the Government thus far is to appoint an actual sitting Supreme Court judge as the chairman of the advisory board.⁸⁹ It has thus been observed that the judge "can be expected to inject a degree of fairness" to the operation of the advisory board.⁹⁰

35 Under s 30 of the CLTPA, the Minister of Home Affairs can order the detention of a person for up to 12 months if the person has been "associated with activities of a criminal nature" and the detention is necessary in the "interests of public safety, peace and good order".⁹¹ This can be extended for further periods of up to 12 months by the President.⁹² A detention order under the CLTPA is "subject to full judicial review"⁹³ using what is known as an objective approach.⁹⁴

86 1999 Reprint.

87 Constitution of the Republic of Singapore (1999 Reprint) Arts 151(1)(b) and 151(2).

88 *Lee Mau Seng v Minister for Home Affairs* [1971–1973] SLR(R) 135 at [12]–[17].

89 Michael Hor, "Terrorism and the Criminal Law: Singapore's Solution" [2002] SingJLS 30 at 39 fn 67; Eleventh Parliament of Singapore (First Session), *Advice of Council of Presidential Advisers on Appointment of Chairman of the Advisory Board Constituted under the Internal Security Act* (S 28 of 2006) (20 April 2006) National Archives of Singapore; Ministry of Home Affairs, *A Singapore Safe for All* (Times Books International, 2002) at p 25.

90 Michael Hor, "Terrorism and the Criminal Law: Singapore's Solution" [2002] SingJLS 30 at 44.

91 Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed) s 30(a), to be amended to s 30(1)(a) by virtue of s 3 of the Criminal Law (Temporary Provisions) (Amendment) Act 2018 (Act 12 of 2018).

92 Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed) s 38(1).

93 Chan Sek Keong, "The Courts and the 'Rule of Law' in Singapore" [2012] SingJLS 209 at 222.

94 *Tan Seet Eng v Attorney-General* [2016] 1 SLR 779; *Chng Suan Tze v Minister for Home Affairs* [1998] 2 SLR(R) 525; The amendments made in s 3 of the Criminal Law (Temporary Provisions) (Amendment) Act 2018 (Act 12 of 2018) have been stated by Parliament not to be intended to affect the ruling in *Tan Seet Eng v Attorney-General* [2016] 1 SLR 779 – See *Singapore Parliamentary Debates, Official Report* (6 February 2018) vol 94 "Second Reading Bills: Criminal Law (Temporary
(cont'd on the next page)

36 Similar to the ISA, detentions under the CLTPA are also subject to safeguards that resemble due process norms. A detention order requires the consent of the Public Prosecutor before it can be issued.⁹⁵ All detention orders are to be submitted with written grounds to an advisory committee who will submit recommendations to the President who may cancel, confirm or vary the order.⁹⁶ Furthermore, from March 2018 the advisory committee will also be chaired by sitting judges of the Supreme Court in order to make the process more “robust”.⁹⁷ It was specifically noted that legislative amendments were not required to give effect to this.⁹⁸

37 Therefore, the adoption of these mechanisms places the Singapore criminal justice process squarely within the Crime Control Model. However, at the same time, the Government is also cautious to ensure that the process has sufficient due process safeguards to reduce the likelihood of a wrongful detention. One of the key safeguards in preventing wrongful detentions is the practice of have sitting judges of the Supreme Court in the advisory committees of both the ISA and CLTPA. The recent addition of sitting Supreme Court judges to the CLTPA advisory committee thus demonstrates a slight shift away from a stricter adherence to the Crime Control Model as well as a slight emphasis on ensuring that there are more robust due process safeguards.

38 However, it must be noted that the current positions for the ISA and CLTPA advisory committees are not legislated but are measures that will be added in practice. Furthermore, although the Supreme Court judges will be in these advisory committees, the proceedings of these committees are still different from actual formal court proceedings. The fact that these due process safeguards fall outside the realm of the formal adjudicative court processes but within the informal administrative processes thus corresponds with the Crime Control Model and its emphasis on the reliability of administrative processes.

39 Nonetheless, this demonstrates an increased desire to prevent mistakes and reinforce due process safeguards. Therefore, this

Provisions) (Amendment) Bill” (K Shanmugam, Minister for Foreign Affairs and Minister for Law).

95 Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed) s 30(a); To be amended to s 30(1)(a) by virtue of s 3 of the Criminal Law (Temporary Provisions) (Amendment) Act 2018 (Act 12 of 2018).

96 Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed) s 31.

97 *Singapore Parliamentary Debates, Official Report* (6 February 2018) vol 94 “Second Reading Bills: Criminal Law (Temporary Provisions) (Amendment) Bill” (K Shanmugam, Minister for Foreign Affairs and Minister for Law).

98 *Singapore Parliamentary Debates, Official Report* (6 February 2018) vol 94 “Second Reading Bills: Criminal Law (Temporary Provisions) (Amendment) Bill” (K Shanmugam, Minister for Foreign Affairs and Minister for Law).

represents a gradual shift in the spectrum away from the Crime Control Model's values by emphasising the importance of preventing mistakes using due process safeguards. However, the position of the criminal justice process continues to resemble a predominantly Crime Control Model.

(3) *Legislative amendments to the Criminal Procedure Code*

40 The Criminal Procedure Code⁹⁹ ("CPC") is the primary legislation that governs the criminal justice process in Singapore. It sets out various procedures that govern criminal proceedings and shapes various aspects of the criminal justice system. In modern times, the CPC has undergone major legislative changes such as the overhaul in 2010¹⁰⁰ and the subsequent amendments made in 2018.¹⁰¹ There are three main legislative changes from which it is possible to glean a gradual shift in the balance between the Crime Control Model and Due Process Model. These are criminal case disclosure, community sentencing options and video statements.

(a) Disclosure

41 The legislative framework for criminal case disclosure was introduced in 2010 and is found in Pt IX, Div 2 of the CPC. These procedures only apply to offences that are listed in the Second Schedule of the CPC and are to be tried in a District Court.¹⁰² The procedures also do not apply if the accused person does not wish for it to apply.¹⁰³ Under the criminal case disclosure scheme, the Prosecution must first file the "Case for the Prosecution",¹⁰⁴ which must contain the following: charges and a summary of their supporting facts; lists of witnesses and exhibits for trial; and written and audio-visual recorded statements of the accused person given to law enforcement officers that the Prosecution intends to adduce.¹⁰⁵ Subsequently, the Defence must then file the "Case for the Defence",¹⁰⁶ which must include a summary of the defence to the charge and the supporting facts; a list of witnesses and exhibits for trial; and objections to any issues of fact or law relating to the "Case for the

99 Cap 68, 2012 Rev Ed.

100 Criminal Procedure Code Bill (Bill 11 of 2010); Criminal Procedure Code 2010 (Act 15 of 2010).

101 Criminal Justice Reform Bill (Bill 14 of 2018); Criminal Justice Reform Act 2018 (Act 19 of 2018).

102 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 159(1).

103 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 159(2).

104 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 161(2).

105 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 162(1).

106 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 163(1).

Prosecution”¹⁰⁷ Following which, the Prosecution must then serve copies of: every written statement or audio-visual recording made to law enforcement officers; documentary exhibits; and criminal records.¹⁰⁸ Similar criminal case disclosure procedures apply to offences heard in the High Court.¹⁰⁹ The list of offences to which the criminal case disclosure procedures apply were broadened in 2018 to cover more types of offences.¹¹⁰

42 Some commentators have noted that disclosure is essentially a “truth-finding” mechanism that simultaneously ensures that the guilty are convicted while the innocent are acquitted, thus advancing both the individual’s and the community’s interests.¹¹¹ Although this is true, criminal disclosure remains essentially a feature of the Due Process Model. This is because its dominant objective is still to ensure reliability, and this process essentially adds a new procedural hurdle that needs to be crossed. Furthermore, it must be noted that criminal disclosure in the District Courts is optional for the accused person who is given the choice to opt out.¹¹²

43 Therefore, it is clear that the nature and effect of the criminal disclosure process is to ensure due process. During the parliamentary discussion, it was noted that the formalised disclosure process would “introduce greater transparency and consistency” to the process.¹¹³ Former Attorney-General and current Chief Justice Sundaresh Menon also noted that the disclosure process would lead to “greater transparency”.¹¹⁴ This is buttressed by then Chief Justice Chan Sek Keong who noted that the disclosure process would lead to a “lower risk of injustice and a higher sense of procedural fairness”.¹¹⁵

107 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 165(1).

108 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 166(1).

109 Criminal Procedure Code (Cap 68, 2012 Rev Ed) ss 211A, 212, 213, 214, 215, 216, 217, 218, 220 and 221.

110 Criminal Procedure Code (Cap 68, Rev Ed 2012) Second Schedule; Criminal Justice Reform Act 2018 (Act 19 of 2018) s 119.

111 Melanie Chng, “Modernising the Criminal Justice Framework” (2011) 23 SAclJ 23 at 43, para 38.

112 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 159(2).

113 *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 89 at col 407 (K Shanmugam, Minister for Law and Second Minister for Home Affairs).

114 Sundaresh Menon SC, Attorney-General, speech at the Opening of the Legal Year 2011 (7 January 2011) at para 4.

115 Response of Chief Justice Chan Sek Keong at the Opening of the Legal Year 2011 (7 January 2011) at para 6.

(b) Community sentencing

44 The legislative framework for community sentencing options was introduced in 2010 and is found in Pt XVII of the CPC. These provisions introduced new sentencing options for the court beyond the traditional sentences of imprisonment, fines, probation and reformatory training. These included mandatory treatment orders,¹¹⁶ day reporting orders,¹¹⁷ community work orders,¹¹⁸ community service orders¹¹⁹ and short detention orders.¹²⁰ In 2018, the type of offences and situations where community sentences could be imposed were expanded to allow more offenders to be covered.¹²¹

45 It is clear that one aspect of the Crime Control Model is the usage of “tough punishment” and a policy of using deterrence and retribution in sentencing.¹²² Therefore, the move towards community sentencing options demonstrates a “more nuanced approach to criminal justice”.¹²³ As was noted by Parliament, the new community sentencing options “gives more flexibility to the Courts” for offenders where the rehabilitation principle plays a significant role.¹²⁴ These sentences focus on the root cause of the crime to ensure a high chance at rehabilitation.¹²⁵

46 Furthermore, in deciding which offenders are eligible for community sentences, Parliament noted that a “carefully calibrated” “balanced approach” needs to be adopted.¹²⁶ This is because a balance with the deterrence of crime needs to be struck. Nonetheless, Parliament intends to further extend eligibility in future where appropriate.

116 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 339.

117 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 341.

118 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 344.

119 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 346.

120 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 348.

121 Criminal Justice Reform Act 2018 (Act 19 of 2018) s 91.

122 Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at para 06.159.

123 Kumaralingam Amirthalingam, “The Importance of Criminal Law” [2017] SingJLS 318 at 323–324.

124 *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 89 at col 422 (K Shanmugam, Minister for Law and Second Minister for Home Affairs).

125 *Singapore Parliamentary Debates, Official Report* (19 March 2018) vol 94 “Second Reading Bills: Criminal Justice Reform Bill” (Indraneel Rajah, Senior Minister of State for Finance and Law).

126 *Singapore Parliamentary Debates, Official Report* (19 March 2018) vol 94 “Second Reading Bills: Criminal Justice Reform Bill” (Indraneel Rajah, Senior Minister of State for Finance and Law).

(c) Video recording

47 In 2018, the legislative framework began to incorporate audio-visual recordings as part of the law enforcement interview process. For both long statements taken under s 22¹²⁷ as well as cautioned statements taken under s 23,¹²⁸ the CPC now mandates that the statements must be taken in an audio-visual recording if the offence is listed in the Third Schedule to the CPC. Currently, only the offence of rape is listed in the Third Schedule but Parliament will extend the list of offences in phases to ensure that the infrastructure and training is ready.¹²⁹

48 The usage of video recordings during police interviews is one aspect of the Due Process Model. This is because it will increase the reliability of the criminal justice process by reducing the probability of a wrongful confession going unnoticed. As noted in Parliament, video recording will assist courts regarding “allegations made about the conduct of the interview”, thus helping to detect induced, threatened, pressured and other forms of unlawful confessions.¹³⁰ Parliament also noted that the interviewee’s demeanour will now also be available for the assessment of the weight of the statements.

(d) Conclusion

49 Parliament noted that the changes made to the criminal justice system move “towards a more progressive, balanced and modern criminal justice system” that still continues to protect society from crime.¹³¹ As is clear from the recent amendments to the CPC canvassed above, the Legislative and Executive in Singapore are moving along the spectrum away from the Crime Control Model through the incorporation of various features of the Due Process Model. Nonetheless the position continues to remain a predominantly Crime Control Model.

127 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 22(5); Criminal Justice Reform Act 2018 (Act 19 of 2018) s 6.

128 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 23(3B); Criminal Justice Reform Act 2018 (Act 19 of 2018) s 7.

129 *Singapore Parliamentary Debates, Official Report* (19 March 2018) vol 94 “Second Reading Bills: Criminal Justice Reform Bill” (Indranee Rajah, Senior Minister of State for Finance and Law).

130 *Singapore Parliamentary Debates, Official Report* (19 March 2018) vol 94 “Second Reading Bills: Criminal Justice Reform Bill” (Indranee Rajah, Senior Minister of State for Finance and Law).

131 *Singapore Parliamentary Debates, Official Report* (19 March 2018) vol 94 “Second Reading Bills: Criminal Justice Reform Bill” (Indranee Rajah, Senior Minister of State for Finance and Law).

C. *Judiciary*

50 The ultimate function and goal of the courts is to ensure that justice and fairness is done in every case. Packer posits that the Judiciary is the validating authority for the Due Process Model.¹³² Indeed, the Judiciary has the ability and potential to promulgate various features of the Due Process Model in the exercise of its judicial functions and its judicial role. As noted by Chan Sek Keong SC, one of the primary objectives of the criminal justice process and its judges is “protecting the innocent accused”.¹³³ While it is axiomatic that a court would never want to convict an innocent person, it must be noted that courts would, to a similar extent, be averse to the idea of acquitting the factually guilty. There are three developments that best demonstrate the balance and changing movement between the Crime Control and the Due Process models in Singapore. These are the statement of facts, *Kadar* disclosure, and the exclusion of evidence.

(1) *Statement of facts*

51 As aforementioned, the “focal device” of the Crime Control Model is the guilty plea which is used to reduce the judicial adjudicative processes to a minimum, although it is present to some extent in the Due Process Model as well.¹³⁴ Under the Crime Control Model, where an accused person pleads guilty, the judge should not inquire into the factual circumstances surrounding the commission of the offence other than to determine the appropriate sentence.¹³⁵ Under the Due Process Model, the judge should require the Prosecution to summarise the evidence against the accused and should be satisfied that there is sufficient evidence to sustain a conviction and establish guilt before accepting a guilty plea.¹³⁶ The shift in the balance between the Crime Control and Due Process models is best illustrated by the evolution of the statement of facts and its role.

132 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 173; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 22.

133 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) Sing L Rev 431 at 437.

134 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 162; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 13.

135 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 223; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 48.

136 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 225; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 50.

52 In Singapore, there is no express statutory provision requiring an accused person to admit to a statement of facts before a guilty plea is accepted.¹³⁷ It began as a “practice” where the statement of facts setting out the circumstances of the offence were read to the accused before the accused was required to admit to that statement.¹³⁸ The original purpose of the statement of facts was to provide the first instance court as well as an appellate court with assistance in assessing what the appropriate sentence should be.¹³⁹ However, over time the statement of facts became viewed as “essential” and was for the purposes of ensuring that every element of the charge was satisfied.¹⁴⁰ This position was settled by a five-judge Court of Appeal which stated that courts are under a “legal duty” to record and scrutinise the statement of facts to ensure that all elements of the charge are made out.¹⁴¹

53 That position was more recently reinforced with further guidelines in a relatively recent case.¹⁴² The court stated that courts should evaluate the statement of facts with “fresh lenses” and without influence from the accused’s plea of guilt.¹⁴³ Furthermore, there is no presumption that the statement of facts contains all the elements of the charge with courts being slow to draw inferences to supplement any deficiencies in the statement of facts.¹⁴⁴ A key addition is that courts should not take the contents of the statement of facts “at face value” but should be alert to situations where there may be reasons to doubt what is stated in the statement of facts.¹⁴⁵ The court then stated that where there is doubt as to the sufficiency of the statement of facts, courts should decline to record the guilty plea, explain its reasons, and allow the parties to amend the statement of facts if they agree.¹⁴⁶ If not, then the case should proceed to trial.¹⁴⁷

54 The evolution of the role of the statement of facts and of a court hearing a guilty plea thus illustrates a shift away from the Crime Control

137 *Chota bin Abdul Razak v Public Prosecutor* [1991] 1 SLR(R) 501 at [11]; *Mok Swee Kok v Public Prosecutor* [1994] 3 SLR(R) 134 at [10]; *Biplob Hossain Younus Akan v Public Prosecutor* [2011] 3 SLR 217 at [6].

138 *Chota bin Abdul Razak v Public Prosecutor* [1991] 1 SLR(R) 501 at [11]; *Biplob Hossain Younus Akan v Public Prosecutor* [2011] 3 SLR 217 at [6].

139 *Mok Swee Kok v Public Prosecutor* [1994] 3 SLR(R) 134 at [12] and [14].

140 *Chota bin Abdul Razak v Public Prosecutor* [1991] 1 SLR(R) 501 at [16]; *Mok Swee Kok v Public Prosecutor* [1994] 3 SLR(R) 134 at [10], [13] and [14]; *Biplob Hossain Younus Akan v Public Prosecutor* [2011] 3 SLR 217 at [6].

141 *Mok Swee Kok v Public Prosecutor* [1994] 3 SLR(R) 134 at [14].

142 *Biplob Hossain Younus Akan v Public Prosecutor* [2011] 3 SLR 217.

143 *Biplob Hossain Younus Akan v Public Prosecutor* [2011] 3 SLR 217 at [8].

144 *Biplob Hossain Younus Akan v Public Prosecutor* [2011] 3 SLR 217 at [8].

145 *Biplob Hossain Younus Akan v Public Prosecutor* [2011] 3 SLR 217 at [8].

146 *Biplob Hossain Younus Akan v Public Prosecutor* [2011] 3 SLR 217 at [8].

147 *Biplob Hossain Younus Akan v Public Prosecutor* [2011] 3 SLR 217 at [8].

Model along the spectrum towards the Due Process Model. As noted by V K Rajah SC, “the marrow of due process requires the court to be absolutely satisfied that there is congruence between the accused person’s plea of guilt and an actual offence being made out”¹⁴⁸

(2) *Kadar disclosure*

55 As aforementioned, criminal disclosure is essentially a feature of the Due Process Model. In Singapore, in addition to the statutory framework for disclosure explained above, the courts have introduced a common law substantive legal duty on the Prosecution to disclose certain types of unused material to the court.¹⁴⁹

56 This duty requires the Prosecution to disclose unused material (that is likely admissible) which might reasonably (*prima facie*) be credible and relevant to the guilt or innocence of the accused on an objective test.¹⁵⁰ Furthermore, this duty requires the Prosecution to disclose unused material (that is likely to be inadmissible) which would provide a real (not fanciful) chance of pursuing a line of inquiry that leads to material that is likely admissible and which might reasonably (*prima facie*) be regarded as credible and relevant to the guilt or innocence of the accused on an objective test.¹⁵¹ These duties only apply to material that is exculpatory in nature.¹⁵² Where a material irregularity in the Prosecution’s disclosure results in a “failure of justice” or “renders the conviction unsafe”, the court may overturn a conviction.¹⁵³

57 This disclosure duty that is specific to the Prosecution has all the hallmarks of the Due Process Model, such as emphasising the formal adjudicative process as well as increasing the reliability of the criminal justice system in determining the truth. It is therefore clear that the inspiration for these principles are the values of the Due Process Model.¹⁵⁴

(3) *Discretion to exclude confessions and statements*

58 In Singapore, the CPC provides that statements made by an accused person are inadmissible if they were caused by inducement,

148 *Biplob Hossain Younus Akan v Public Prosecutor* [2011] 3 SLR 217 at [8].

149 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [110] and [112].

150 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [113]–[114].

151 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [113]–[114].

152 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [113].

153 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [120].

154 Kumaralingam Amirthalingam, “Criminal Justice and Diversionary Programmes in Singapore” (2013) 24(4) *Criminal Law Forum* 527 at 533.

threat, promise or oppression.¹⁵⁵ The procedures governing the taking of long and cautioned statements are set out in the CPC.¹⁵⁶ However, breaches of these procedures do not statutorily affect the admissibility of these statements, although courts would naturally ascribe less weight to the statement.¹⁵⁷ Nonetheless, in recent times the Singapore courts have recognised a common law judicial discretion to exclude otherwise admissible voluntary statements where the “prejudicial effect of the evidence exceeds its probative value”.¹⁵⁸ The court also noted that procedural irregularities may lead to a statement’s prejudicial effect outweighing its probative value.¹⁵⁹

59 This judicial discretion to exclude otherwise admissible evidence sits on an interesting balance between the two models of criminal justice. Under the Crime Control Model, excluding illegal evidence or reversing convictions in order to vindicate procedural rules that have been breached is non-tolerable.¹⁶⁰ On the other hand, the Due Process Model would acquit a factually guilty person where these breaches of procedure occur, even where “blotting out the illegality would still leave an adjudicative fact-finder convinced of the accused person’s guilt”.¹⁶¹ It is therefore apparent that the judicial discretion to exclude evidence in Singapore is carefully calibrated to sit somewhere in between the two extremes of the criminal justice models.

60 The test balances the prejudicial effect of the statement against its probative value, thus making it clear that the main objective of this discretion is to ensure reliability of the evidence rather than prevent unfairness or prejudice to the accused person. This is likely to be because statements recorded by the police for use in court have an “uncompromising need for accuracy and reliability”.¹⁶² At the same time, only serious irregularities that “materially affect the evidential value of a voluntary statement” would result in a court’s exercise of discretion to exclude the statement.¹⁶³ This thus demonstrates the emergence of various values of the Due Process Model through the focus on

155 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 258(3).

156 Criminal Procedure Code (Cap 68, 2012 Rev Ed) ss 22 and 23 respectively.

157 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [44]–[45], referring to the former provisions.

158 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [53] and [55].

159 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [56].

160 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 168; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 18.

161 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 168; Herbert L Packer, “Two Models of the Criminal Process” (1964) 113 U Pa L Rev 1 at 18.

162 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [60].

163 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [65].

reliability; at the same time, there remains the retention of the important goal of the Crime Control Model in continuing to convict the factually guilty.

IV. Concluding remarks

61 The criminal justice process is vast and filled with numerous aspects, and this article does not profess to cover its entirety. In fact, Packer quipped that it would take an entire book to provide a mere introduction to the full criminal justice process.¹⁶⁴ This article only seeks to highlight the main developments to the Singapore criminal justice system from which a shift in balance between the two models can be discerned.

62 The words of Chan Sek Keong SC in the past remain relevant and are worth repeating. The criminal legal process is “still predicated on the accused’s rights” and there remains “much in the criminal process that protects the interests of the accused from being wrongfully convicted”.¹⁶⁵

63 In more recent times, it is clear from the various developments discussed above that there is a discernible overall shift along the spectrum between the Crime Control and Due Process models in Singapore. Recent developments and changes indicate that this is a shift away from the Crime Control Model and towards embracing some aspects of the Due Process Model, although the overall criminal justice system remains predominantly Crime Control Model in nature.

64 It is suggested that the background context of Singapore’s societal environment could potentially explain this shift along the spectrum. The history of Singapore has been a “turbulent” one,¹⁶⁶ and many of the aspects of the Crime Control Model were introduced into Singapore to deal with the widespread “terrorists, criminals, gangs, secret societies and ... communist insurgents” in the 1950s.¹⁶⁷ As a vulnerable newly independent state, Singapore needed to prioritise

164 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at pp 174–175.

165 Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) *Sing L Rev* 431 at 437–438.

166 Kumaralingam Amirthalingam, “Criminal Justice and Diversionary Programmes in Singapore” (2013) 24(4) *Criminal Law Forum* 527 at 530.

167 Chan Sek Keong, “From Justice Model to Crime Control Model”, speech at the International Conference on Criminal Justice under Stress: Transnational Perspectives, Golden Jubilee Celebrations of the Indian Law Institute (24 November 2006) at para 17.

security over other liberties in order to prevent criminal activity from threatening its development.¹⁶⁸

65 On the other hand, as mentioned above, today's modern Singapore is one of the safest and most crime-free countries in the world.¹⁶⁹ Singapore has also progressed into what is arguably one of the most developed and successful countries in the world.¹⁷⁰ As a result, some of the former aspects of the Crime Control Model are no longer an essential necessity for the survival of Singapore. However, as discussed earlier, many aspects continue to remain supported by public policy, ideology and general preferences in Singapore.

66 As a result, the current trend is likely to continue with Singapore shifting further along the spectrum as the Legislature, Executive and Judiciary continue to introduce further due process safeguards. However, given the prevailing values of our society, despite the shift away from the Crime Control Model, the criminal justice system in Singapore will likely continue to predominantly take after the Crime Control Model for the foreseeable future.

67 The desirability of this trend involves a complex normative analysis. Both the Crime Control and the Due Process models are essentially value systems, and neither model represents the ideal situation.¹⁷¹ Furthermore, determining where on the spectrum between the two models of normative choice the best answer lies involves "weighty questions of public policy".¹⁷²

68 Nonetheless, the criminal justice process is ultimately "a reflection of our ideals and values".¹⁷³ It is therefore suggested that the ideal position on the spectrum for Singapore is one that corresponds to the values of our society. As discussed earlier, since wrongful convictions are objectionable to our society, shifting along the spectrum

168 Kumaralingam Amirthalingam, "Criminal Justice and Diversionary Programmes in Singapore" (2013) 24(4) *Criminal Law Forum* 527 at 530.

169 See para 22 above.

170 United Nations Development Programme, *Human Development Indices and Indicators: 2018 Statistical Update* (2018); World Economic Forum, *The Global Competitiveness Report 2018* (Klaus Schwab ed) (2018); Legatum Institute, *The Legatum Prosperity Index 2018* (12th Ed); Organisation for Economic Co-operation and Development, *Lessons from PISA for the United States: Strong Performers and Successful Reformers in Education* (2011) at p 160.

171 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at pp 153–154.

172 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968) at p 154.

173 Chan Sek Keong, "The Criminal Process – The Singapore Model" (1996) *Sing L Rev* 431 at 433.

away from the Crime Control Model will provide the pragmatic safeguards necessary to prevent their occurrence. At the same time, as discussed earlier, the current values and ideology of our society evinces a preference to remain predominantly adhering to the Crime Control Model. Therefore, the current trend in Singapore of shifting along the spectrum away from the Crime Control Model, while remaining predominantly Crime Control Model in nature, is indeed desirable.
