SAL SINGAPORE LAW WATCH

SLW COMMENTARY

Issue 1/Oct 2017

Making Meaning: *Tan Cheng Bock*, the *Interpretation Act* and Purposive Conflicts in Constitutional Interpretation

***Tan Cheng Bock v Attorney-General* [2017] SGHC 160; [2017] SGCA 50**

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Interpretation makes meaning. Interpretative canons define the content of legal obligations in written law. In constitutional challenges, where questions of normative priority are (generally) straightforward, most cases turn on interpretative issues. In June 2016, Dr. Tan Cheng Bock ("Dr. Tan") instituted a constitutional challenge concerning Arts 19B and 164 of the *Constitution of the Republic of Singapore* (1985 Rev Ed, 1999 Reprint) ("Constitution"), which introduced a scheme of reserved Presidential elections that operated to preclude his running. Both the High Court ("HC") and the Court of Appeal ("CA") dismissed Dr. Tan's application, on the basis that, under the interpretative framework of the *IA*, the "ordinary meaning" of Arts 19B and 164 did not bear the meanings he argued for, and that the purposes of those provisions merely confirmed that "ordinary meaning". While the outcome of their rulings is defensible, some of the reasoning employed in their interpretation of the Constitution is not.

I will *not* deal with the courts' textual analysis of the "ordinary meaning" of Arts 19B and 164. Instead, I will argue (i) that the *Interpretation Act* (Cap 1, 2002 Rev Ed) ("*IA*") should not be conclusive in constitutional interpretation, and (ii) that the interpretative rule laid down by the CA to deal with situations where general and specific purposes of a single provision are in conflict ("purposive conflict"), sits uneasily with established jurisprudence on constitutional interpretation, and is unsound in principle given a constitution's unique nature. These two issues are separate.

Facts and decision

In April 2016, Arts 19B and 164 were introduced into the Constitution. Art 19B(1) states that "[a]n election for the office of President is reserved for a community if no person belonging to that community has held the office of President for any of the 5 most recent terms of office of

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the President". Art 164(1)(a) states that "[t]he Legislature must, by law...specify the first term of office of the President to be counted for the purposes of deciding whether an election is reserved under Article 19B".

In February 2017, an amendment to the *Presidential Elections Act* (Cap 240A, 2011 Rev Ed) ("*PEA*") inserted s 5A and the Schedule, designating the first 5 presidential terms which counted for the purposes of reserved elections: namely, Presidents Wee Kim Wee, Ong Teng Cheong, S R Nathan (twice), and Tony Tan Keng Yam. While the latter three Presidents (in the latter four terms) were elected by Singapore's citizens in open elections, President Wee Kim Wee was not – being elected by Parliament instead.

Dr. Tan argued that it was Art 19B's purpose that was relevant to the interpretative exercise.[1] His case was that the *PEA*'s Schedule was enacted under Art 164, which was itself limited by Art 19B; and that the Schedule was void for being contrary to Art 19B, properly interpreted.[2] Relying on the Menon Commission's Report, the White Paper (*Review of Specific Aspects of the Elected Presidency*) (15 September 2016), and parliamentary debates for the amendment introducing Arts 164 and 19B ("the extrinsic materials"), he argued that Art 19B's purpose was to address "the potential failure of open elections to produce community diversity in the occupants of the office of President".[3]

The HC considered it "trite...that a court must adopt a purposive approach in interpreting the Constitution".[4] The CA, too, found that "the Constitution should be interpreted purposively", a conclusion "follow[ing] from the fact that Art 2(9) of the Constitution provides that the *IA* shall apply in the interpretation of the Constitution".[5]

The HC found that the relevant purpose "underlying Arts 19B and 164" could be viewed at three levels of abstraction, in ascending order of generality: (i) at the most specific, to permit the subsequent specification of President Wee Kim Wee's term as the first term from which the count of five terms should start under Art 19B(1), (ii) at an intermediate level, to ensure that a popularly elected President comes from racial minority communities from time to time, and (iii) at the most general, "to uphold multi-racialism by ensuring minority representation in the Presidency".[6]

Cryptically noting that neither specific nor general purposes should necessarily triumph[7], the HC then found that the Prime Minister's comments in Parliament on how the ruling party intended to exercise its power under Art 164 were to be given effect, since they were "directly connected to the issue of whether, under Art 19B, Parliament could choose President Wee's second term as the First Term".[8]

[1] *Tan Cheng Bock v Attorney-General* [2017] SGHC 160 ("*TCB HC*"), [75].
[2] *Ibid*, [2] & [31].
[3] *Ibid*, [75].
[4] *Ibid*, [36].
[5] *Tan Cheng Bock v Attorney-General* [2017] SGCA 50 ("*TCB CA*"), [35].
[6] *TCB HC*, [85].
[7] *Ibid*, [87(b)].
[8] *Ibid*, [91].

The CA took a different approach in determining the relevant purposes, but arrived at the same result. Unlike the HC, it declared a rule to resolve purposive conflicts: courts should assume a provision's specific purpose is "subsumed under, related or complementary" to a general purpose – but in the "truly exceptional case, it may be that the specific intention of Parliament is so clear that the court should give effect to it even if it appears to contradict, undermine, or go against the grain of the more general purpose".[9]

The CA noted subsequently that it was concerned only with the "specific purpose behind Art 164".[10] The CA noted that the purpose of Art 164 was to empower Parliament to implement Art 19B.[11] Despite initially proclaiming that a purposive conflict "does not arise in this case",[12] the CA then held that while the extrinsic materials had touched on the purpose behind the "*concept* of the reserved election" (Art 19B's purpose, and Art 164's more general purpose to implement Art 19B), which was to "address the mischief of free, open and unreserved elections (held every 5 years) having the effect of excluding particular communities from the office of the President",[13] only the Prime Minister's comments in Parliament specifically addressed how that concept should be *implemented*[14] (Art 164's more specific purpose). Thus, the court deduced from those comments that the relevant purpose was "the intention of Parliament ... to allow itself the discretion, under Art 164, to specify the last term of President Wee" – elected not by Singapore's citizens in an open election, but by Parliament – "as the first term".[15]

Both the HC and the CA used the terms "purpose" and "intent" interchangeably. I will proceed on the same basis.

Constitutional Supremacy and the *Interpretation Act*

Both the HC and CA assumed that rules of statutory interpretation should apply wholesale to constitutional interpretation. No doubt Art 2(9), which states that "subject to [Art 2], the [*IA*] shall apply for the purpose of interpreting this Constitution", and which both parties accepted as applicable,[16] weighed heavily on their minds. Though neither the HC nor CA explicitly stated that the *IA* conclusively governs constitutional interpretation, their strict adherence to the *IA*'s framework, as elaborated on in *Attorney-General v Ting Choon Meng*[17] ("*Ting Choon Meng*"), implies that possibility – although with one slight variation in the HC, elaborated on below, which the CA did not address.

The doctrine of constitutional supremacy should preclude the *IA* from being conclusive in issues of constitutional interpretation.

[9] *TCB CA*, [41].
[10] *Ibid*, [108] & [115].
[11] *Ibid*, [105].
[12] *Ibid*, [41].
[13] *Ibid*, [103], [109]-[115], & [121]-[123], especially [121].
[14] *Ibid*, [119]-[120].
[15] *Ibid*, [120].
[16] *TCB CA*, [34]; *TCB HC*, [36].
[17] [2017]1 SLR 373; [2017] SGCA 6.

Interpretative canons are rules that determine the meaning of legal texts.[18] Scholars differentiate between linguistic and legal rules of interpretation – the former necessitated by the fact that legal texts use language, the latter derived from norms that legal system considers important. Linguistic rules are rules of logic, not law; yet, their relative importance to the overall interpretative exercise still need be determined by a legal rule.[19] Thus, at base, interpretative canons are legal rules.

Interpretative canons are not substantive legal rules, but higher meta-rules ("secondary rules") that determine, *inter alia*, the content of "(substantive) primary rules", and "the fact of their violation".[20] An interpretative canon, like the *IA*, ranks higher than the substantive statutory rules it gives meaning to. A canon of constitutional interpretation is, then, a constitutional secondary rule.

Constitutional supremacy is an "overarching" principle of Singapore's Constitution.[21] Constitutional supremacy is not a descriptive label, but a normative "doctrine"; its three traits – a written constitution, rigidity and judicial review – are thus legal "consequences" that it prescribes for the constitutional order, not empirical criteria that need be met before constitutional supremacy can be declared.[22] Rigidity is manifest in Art 5, prescribing that only amendments passed by a two-thirds parliamentary majority are valid.

Immediately, a contradiction is apparent. Constitutional supremacy precludes the amendment of substantive constitutional rules by a simple parliamentary majority – and *a fortiori*, precludes constitutional secondary rules, like canons of constitutional interpretation, from being so amended. Surely, then, the *IA*, amendable by a simple parliamentary majority, cannot govern constitutional interpretation,[23] for that would effectively render our Constitution amendable by a simple majority. Further, while in the first 14 years of Singapore's independence constitutional amendments passed by simple majority, the justification for that state of affairs – that certain "less fundamental sections of the Constitution"[24] needed to be amended for "our constitutional advancement"[25] – was abandoned in 1979, and surely cannot be relied on today to ignore the doctrine of constitutional supremacy.

Article 2(9) cannot prevent this conclusion. Art 2(9) is substantively different from those constitutional provisions allowing general constitutional principles to be further elaborated in legislation, where a constitutional rule legitimizes a legislative rule. An example of the latter is Art 17A(1), which states that "the President is to be elected by the citizens of Singapore in accordance with any law made by the Legislature"; it allows Parliament to deal with the

[18] Andrei Marmor, *Interpretation and Legal Theory* 2nd Ed. (Oregon: Hart, 2005), 9.
[19] See, for example, how the "ordinary meaning" of a provision's text is but one factor that the purposive approach under IA s 9A takes into consideration.
[20] HLA Hart, *The Concept of Law* 2nd Ed (OUP, 1994), 94; *infra* n 23.
[21] *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476; [2012] SGCA 45, [61].
[22] AV Dicey, *Introduction to the Study of the Law of the Constitution* 8th Edition (London: Macmillian, 1915), Chapter III Part I, 78-82; *Ibid*, [60]; *Taw Cheng Kong v Public Prosecutor* [1998] SGHC 10, [14].
[23] Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005), 49.
[24] Lee Kuan Yew in *Singapore Parliamentary Debates* (22 December 1965), "Constitution (Amendment) Bill" vol 24, col 432.
[25] E W Barker in *Singapore Parliamentary Debates* (30 March 1979), "Constitution (Amendment) Bill" vol 39, col 295.

minutiae of Presidential elections in the *PEA*, but any provision therein which purports to create an unelected Presidency will be contrary to Art 17A(1) and thus unconstitutional. In contrast, Art 2(9)'s plain and ordinary meaning sets no limits on the content of the *IA*. In effect, then, it would require the content of a constitutional rule (the canon of constitutional interpretation) to be legitimized by a legislative rule (the *IA*). To remedy this absurd normative contradiction-in-terms, and to prevent the blatant evasion of the doctrine of constitutional supremacy,[26] the phrase "shall apply for the purpose of interpreting this Constitution" in Art 2(9) should *not* mean that the *IA* "shall *conclusively* apply".

It is worth noting that two canons of constitutional interpretation, not wholly consistent with the *IA*, already exist. The first canon concerns the separation of powers,[27] said to arise out of the provisions defining the powers of the organs of state ("the power provisions").[28] Singapore's Westminster constitutional tradition, probably relevant as extrinsic material under *IA* s 9A(2)(b)(i) given the power provisions' vague wording, has been relied on to justify this canon.[29] Yet, while that tradition would merely require that "power [was] not concentrated in the hands of one branch", courts have clearly gone further by "requiring a strict distribution of functions between the three branches of government".[30] It is unclear what extrinsic materials courts rely on for that latter principle.

A second canon involves that hallowed *ratio* of *Ong Ah Chuan v Public Prosecutor*[31] ("*Ong Ah Chuan*"), that constitutional rights should be given a "generous interpretation", since Part IV of the Constitution "purports to assure to all individual citizens the continued enjoyment of fundamental liberties".[32] Justified again only on Westminster constitutional traditions, the canon should arguably be precluded by *IA* s 9A(2)(a), given the detailed plain wording of some of our constitutional rights. Fascinatingly, however, the HC endorsed this canon as a "settled principle of constitutional interpretation".[33]

Only the Constitution itself can determine its own interpretation.[34] If it is silent, "the Judiciary has the responsibility...to pronounce authoritatively and conclusively on the meaning of the Constitution".[35]

Purposive Conflicts in Constitutional Interpretation

[26] See *Bennion on Statutory Interpretation* 6th Ed (Lexis, 2013) Parts XXI and XXII for the rules of Construction against Absurdity and Evasion, respectively.
[27] *Ravi s/o Madasamy v Attorney-General* [2017] SGHC 163, [66].
[28] *Mohammad Faizal bin Sabtu v Public Prosecutor* [2012] 4 SLR 947, [2012] SGHC 163 at [11].
[29] *Ibid*.
[30] Jack Tsen-Ta Lee, 'Rethinking the presumption of constitutionality', in Jaclyn L. Neo ed., *Constitutional Interpretation in Singapore: Theory and Practice* (New York: Routledge, 2017), 147.
[31] [1979–1980] SLR(R) 710, [1980] SGPC 6.
[32] *Ibid*, [23] & [26].
[33] *TCB HC*, [41].
[34] *Supra* n 23.
[35] *Tan Seet Eng v Attorney-General* [2016] 1 SLR 779, [2015] SGCA 59, [90].

As mentioned above, the CA (hesitantly) laid out and (implicitly) enforced a rule concerning constitutional purposive conflicts: that a provision's "clear" specific purpose trumps its general purpose.

General and Specific Purposes

All legal provisions have general purposes. By focusing on Art 164's specific purpose (to start the count from President Wee's term) to the exclusion of the more general purpose (to implement Art 19B, the purpose of which was to ensure that none of the 3 Communities (Chinese, Malay and Indian) will go unrepresented in the Presidency for more than five "popular" elections),[36] the CA implicitly allowed the former to *triumph* in the purposive conflict ("specific-purpose interpretation"). This conclusion sits uneasily with recent case law, which gives varying degrees of effect to general purposes in provisions, despite the existence of specific purposes covering, possibly in an exhaustive manner, the same subject-matter ("general-purpose interpretation").

Weak general-purpose interpretation is evident in certain strands of rights jurisprudence, where general purposes are given effect *independent* of specific purposes – for example, with Art 12(1). Art 12(1) is framed at "a very general level", while "Art 12(2) furnishes specific legal criteria as to what constitutes discrimination".[37] Yet, courts read into Art 12(1) the "reasonable classification" test, even though Art 12(1)'s vagueness might ordinarily preclude the principle of effectiveness from mandating such a test.[38] Courts adopt a similar approach with Art 9(1), accepting that it contains "fundamental rules of natural justice",[39] which give rise at least to rights similar "in nature and function" to administrative law rules of natural justice.[40] Arts 9(2)-9(4) each clearly have a very specific purpose, which together do not cover the full content of those fundamental rules of natural justice ("the rule against bias" and "the hearing rule"[41]). Thus, Arts 9(2)-9(4) might be expected to derogate from Art 9(1) – yet, they are not considered exhaustive of Art 9(1)'s seemingly declaratory language.

Stronger general-purpose interpretation is found in cases concerning the separation of powers canon, as described above. Under this canon, the power provisions are interpreted to maintain the organs' independence *inter se*;[42] the canon *informs* the ambit of those provisions. Though ambiguously worded, the power provisions' purposes, to vest specific types of power in certain institutions, are not unclear, and those purposes do not themselves preclude an overlap of powers. Here, the general purpose, the separation of powers, does not just exist separately from the power provisions – it also shapes their ambit. The *ratio* of *Ong Ah Chuan* mentioned above, which purports to shape the ambit of *all* constitutional rights, might operate similarly in relation to Part IV provisions.

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[36] *Supra* n 13-14
[37] *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26, [2014] SGCA 53, [90]-[92].
[38] The "reasonable classification" test broadly requires only that the means through which a legislative purpose is achieved is rationally related to that purpose –*prima facie*, it has nothing to do with "equality", *ibid*, [57]-[61].
[39] *Ong Ah Chuan*, [26].
[40] *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189, [2011] SGCA 9, [103]-[105].
[41] *Ibid*, [106].
[42] *Supra* n 30.

The most drastic instance of general-purpose interpretation is found in *Vellama d/o Marie Muthu v Attorney-General*[43] ("*Vellama*"), where it arguably *triumphed* over specific-purpose interpretation in a purposive conflict. Article 49 requires that vacant parliamentary seats "shall be filled by election in the manner provided by...any law relating to Parliamentary elections". There were clear contemplations in Parliament that the removal of a three-year time-limit clause in Art 49 might free the Government of any obligation to hold by-elections for such vacant seats.[44] However, these contemplations were read to be equivocal, and "the basic character of an elected MP who represents the citizens who voted him into Parliament" prevailed,[45] thereby imposing an obligation on the Government to hold a by-election in "reasonable time".[46] Here, the specific purpose of freeing Government from constraints to hold a by-election conflicted with, and thus could not alter, the scope of the "Westminster model[']s]" general purpose: representative democracy.

Fundamental Values in Constitutional Interpretation

Of course, general-purpose interpretation is not always (or even often) employed – and only in *Vellama* might it actually have triumphed over specific-purpose interpretation. Yet, these cases do sit uneasily with the CA's ruling. What accounts, then, for this occasional inclination toward general purposes? Arguably, a constitution's *most* general purposes should, in principle, triumph in purposive conflicts.

Ting Choon Meng endorsed specific-purpose interpretation for statutory purposive conflicts because "different sections of a particular statute may target different mischiefs".[47] Since the CA cited *Ting Choon Meng*, it presumably considered that justification pertinent in the constitutional realm.

Statutes and constitutions have dissimilar purposive structures. Take, for example, a general purpose (X), the prevention of noise pollution. While a specific statutory purpose that exists solely to defeat X (like a provision that says the commissioner of noise pollution shall never take any efforts to prevent noise pollution) would be "absurd", precluded under *IA* s 9A(2)(b)(ii)[48] and arguably unconstitutional,[49] a specific purpose need not necessarily defeat a conflicting general purpose. Often, conflicting general and specific purposes in an ordinary statute are just two separate purposes. Take, for example, another specific purpose (Y), the facilitation of cultural festivities. Here, the general purpose (X) might be circumscribed by these specific policy considerations encapsulated in other provisions (Y), like exception clauses to general obligations on noise limits, allowing for religious processions. This does not mean that X is not the statute's general purpose, just that Parliament considers X less important than Y. Within constitutional limits, Parliament can further any purpose it desires,

[43] [2013] 4 SLR 1; [2013] SGCA 39.
[44] *Ibid*, [61-72].
[45] *Ibid*, [80].
[46] *Ibid*, [84]-[86].
[47] *Ting Choon Meng*, [60].
[48] It is an "absurdity that when the means are inappropriate for achieving the ends, one should nevertheless stick to the means", *supra* n 18, 131.
[49] Where the statute differentiates between people (as is often the case), a purported means that contradicts statutory ends will bear no rational relation to those ends, and will thus be contrary to Art 12; *supra* n 37, [68].

in any statute it wishes. Judicial recognition of both X and Y in one statute is necessitated by the doctrine of legislative supremacy.[50]

Not so for constitutions. A constitution should be where all legally-relevant policy considerations end. Its most general purpose, a legal system's *grundnorm*, should be constitutionalism. While constitutionalism itself is too general and vague a norm to be given effect in interpretation, it is made manifest in several fundamental values representing that specific society's concept of constitutionalism, like the separation of powers or representative democracy.[51] To protect the constitution, judges must give these fundamental values interpretative primacy in purposive conflicts.[52] In finding that fundamental values influence interpretation – or indeed, enforcing them in their own right[53] – courts commit to the idea, necessary to construct a "comprehensive" body of constitutional law, that "abstract norms of political morality ... are the deepest source of [the constitution's] authority".[54]

This conclusion has consequences for constitutional purposive conflicts. Interpreting a provision as encapsulating a conflicting purpose (Y) to a fundamental value (X) leads to one of two necessary conclusions. First, that Y, and not X, was the higher purpose. But this is only sustainable if Y itself is a fundamental value, for unlike the statutory realm where the general purpose can be anything, in the constitutional realm only fundamental values can be general purposes. If Y is not also a fundamental value, the interpreter must instead adopt the alternative conclusion that X was in fact the general purpose, and it follows that Y should be interpreted to be in line with X.

To be clear, courts need not ensure specific purposes are reconcilable with *all* fundamental values. Indeed, fundamental values may often contradict each other, and a society's understanding of constitutionalism requires a balance to be struck between them. This is a non-justiciable issue of high political morality. But if in a purposive conflict the specific purpose cannot be reconciled with *any* fundamental value, a court should not give it effect.

It might be argued that constitutional fundamental values are undiscernible, and are no safe basis for interpretative canons.[55] However, that the ambit of a general purpose is unclear should not affect its superiority over a specific purpose. Further, as the cases above show, the courts clearly do not consider themselves ill equipped to discern general purposes. A working definition might be as follows: fundamental values are "society's deeply held viewpoints ... [its] values, not its passing trends ... [its] long-term covenants".[56] They must necessarily be a relatively small group of principles, all rationally related to the *grundnorm* of constitutionalism.

[50] *Supra* n 23, 367.
[51] *Ibid*, 381-382; Paul Brest, 'The Misconceived Quest for the Original Understanding', (1980) 60 *Boston University Law Review* 204, 227.
[52] *Ibid*, 385-386 and 227, respectively; Ronald Dworkin, *Law's Empire* (Harvard University Press, 1986), 380.
[53] *Supra* n 28, [15].
[54] Jeffrey Goldsworthy ed., *Interpreting Constitutions: A Comparative Study* (OUP, 2006), 322-323.
[55] Goh Yihan, 'The interpretation of the Singapore Constitution: Towards a unified approach to interpreting legal documents', in *supra* n 30, 143.
[56] *Supra* n 23, 381-382.

A stronger argument may be made for respecting the specific intentions of constitutional drafters. There are, in principle, three reasons why the intentions of a constitution's drafters should persuasively influence its interpretation: their democratic legitimacy, their subject-matter expertise, and their ability to foster consensus. Fundamental values are in truth issues of public morality, for which no expertise can exist outside of sustained public opinion.[57]

While Parliament's democratic legitimacy and consensus-fostering potential are undeniable, this provides only a defeasible or uncertain justification for deference. Parliamentarians provide at best hearsay evidence of true sustained popular will, and their consensus-fostering ability can only be judged *ex post facto*. On most issues society will be undecided or divided, and the second-best democratic legitimacy of Parliament, coupled with its consensus-fostering potential, must suffice.[58] But if specific-purposes interpretation would construe a constitutional provision in a way that evokes near-absolute public disapproval – as one might expect to be the case when such an interpretation repudiates fundamental values – the democratic legitimacy of such intent, and the consensus-fostering potential of Parliament, is questionable at best.

"Multi-Racialism" as a Fundamental Value

Of course, in practice, constitutional purposive conflicts are rare. Yet, in *Tan Cheng Bock*, a conflict existed between the specific (to ensure the count started from President Wee Kim Wee's term) and general purposes of Art 164 (to implement Art 19B, which exists to ensure that none of the 3 Communities (Chinese, Malay and Indian) will go unrepresented in the Presidency for more than five "popular" elections).

Instead of focusing on the purposive conflict, the CA might have acknowledged, as the HC did, that a fundamental value, "multi-racialism" – which, like the general purpose of separation of powers, might be implied from the provisions concerning the Group Representation Constituency scheme, the Presidential Council of Minority Rights, and indeed Art 19B itself – was engaged. It might, then, have found that both the specific and general purposes of Art 164 were reconcilable with multi-racialism – and not allowed the constitutionality of the *PEA*'s Schedule to turn only on the specific purposes behind Art 164. One wonders, given the CA's reluctance to so hold, and to rely on general-purposes interpretation in this case, whether "multi-racialism" might be considered a fundamental value of our Constitution.

Conclusion

Constitutional interpretation is often a complex enterprise. A court that takes on the mantle of upholding constitutionalism bears the unenviable burden of identifying, and giving effect to, that society's fundamental values. It is understandable, and even prudent, for a court to defer to Parliament when it is uncertain that such values are at stake. But constitutions ultimately depend not on legal but sociological legitimacy,[59] and at the crucial moment, when

[57] *Supra* n 18, 137-138.
[58] *Ibid*, 133-138 & 148.
[59] Richard Fallon, 'Legitimacy and the Constitution" (2004-2005) 118 *Harvard Law Review* 1787, 1803-1806.

such values are clearly impugned, a court should ask itself whether giving effect to Parliament's specific intent would undermine that very legitimacy. In such situations, no clear expression of such intent, or any statute purporting to determine canons of constitutional interpretation, should fetter its reasoning.

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