Singapore Journal of Legal Studies
[2008] 25–57

THE VIRTUAL AND THE REAL: ARTICLE 14, POLITICAL SPEECH AND THE CALIBRATED MANAGEMENT OF DELIBERATIVE DEMOCRACY IN SINGAPORE

THIO LI-ANN*

Singapore has never adopted a *laissez faire* approach towards free speech, which is constitutionally entrenched in article 14 of the Singapore Constitution. Indeed, free speech is a means to various ends; its rationale is grounded in the arguments from truth, self-expression and democracy, which views political speech as the lifeblood of democratic societies. The official government view has been that an excessive focus on political liberties is destabilizing and inimical to economic growth and communitarian 'Asian values'. Nonetheless, government policy has undergone a minor sea-change in loosening restrictions on political liberties to accommodate the demands of a more educated, affluent citizenry for greater participation in public affairs. This article focuses on two questions. First, what is the evolving government approach towards regulating political speech in the real and virtual realm. There has been a shift from 'blanket bans' to a more calibrated approach towards managing free speech issues. Second, what insight does the scope of free speech shed in relation to the type of political community we are, how we value political speech and other social goods. It evaluates law and policy which regulates political speech, as well as judicial approaches towards construing article 14 issues. It offers an in-depth analysis of the only public law case concerning speech in cyberspace, in relation to racist blogs. In particular, it analyses how political digital speech can both promote and undermine democracy in Singapore, measured against the central role free speech plays in promoting truth and solidifying a democratic order.

I. INTRODUCTION

Free speech, which article 14 of the Singapore Constitution entrenches, is not in itself an end, but rather the means to an end. This is conventionally associated with the goals of attaining truth, promoting self-development and the democratic argument, which speaks to effective citizen participation in public policy debates.[1] Such debate is fuelled by a healthy supply of accurate information from diverse sources.[2]

Exercises of free speech which detract from these goals diminish in value and warrant correspondingly less protection or legal sanction where the rights of others or the

* Ph.D. (Cambridge), LLM. (Harvard), BA (Oxford)(Hons), Barrister (Grays Inn, UK), Professor of Law, National University of Singapore; Nominated Member of Parliament (Eleventh Session).

1 Eric Barendt, *Freedom of Speech*, 2nd ed. (Oxford and New York: Oxford University Press, 2007) at 6-21.

2 Alan T. Wood, *Asian Democracy in World History* (New York and London: Routledge, 2004) at 11.

public good is impugned. While free speech libertarians may laud pornography as artistic expression, others oppose this as degrading expression which subverts human dignity in generating sexual stereotypes.[3] Speech fomenting racial or religious hatred[4] does not serve democracy and undermines social harmony. One may thus distinguish between the virtuous and vicious use of a right.

Free speech is not an absolute right; nor is it necessarily a trump or primary right. Rather, it must be weighed against competing interests to ascertain whether these "constitute a fundamental right equally worthy of regard."[5] This is not to disparage the importance of free *political* speech, the lifeblood of democratic society.[6] The goal is to contextualise and evaluate how free speech may both facilitate and, if unregulated, diminish the objectives of promoting democracy and truth.

Within a dominant party state, the ruling People's Action Party government[7] has established an elaborate set of legislative and policy-based speech restrictions. Critics contend this casts a pall of fear over citizens,[8] stifling robust critique and intellectual diversity. The priorities of a developmentalist state shaped restrictions on political liberties within a 'communitarian' democracy.[9] The official position is that "order and stability are essential for development,"[10] as economic growth required a stable legal environment protective of contractual and property rights. An excessive focus on civil-political liberties during the early stages of development would impair this.[11] Nevertheless, it recognizes that accommodating emerging interests that attend development requires a "more complex and more differentiated political system."[12]

In terms of institutional structures and informal feedback mechanisms, the government has sought to promote participatory democracy through "alternative arrangements to ensure a wide spectrum of views is represented in our Parliament through non-elected Members of Parliament"[13] and developing "other channels for good communication"[14] between governor and governed, through mechanisms like REACH[15] and policy consultation. Such initiatives do not challenge the political status quo.

---

3 Pornography is considered "repulsive, debasing, unacceptable" and a threat to society's "moral character": Sing., *Parliamentary Debates*, vol. 76, col. 1692 at 1735 (20 March 2003) (D Lim).

4 *Penal* Code (Cap. 224, 1985 Rev. Ed. Sing.), s. 298.

5 Sydney Kentridge, "Freedom of Speech: Is it the Primary Right?" (1996) 45 (2) I.C.L.Q. 253 at 259-260. See also, Larry Alexander, *Is there a Right of Freedom of Expression*? (Cambridge and New York: Cambridge University Press, 2005).

6 *Lingens v Austria* (1986), 8 E.H.R.R. 407 at paras. 41-42. On political speech's preferred position, see Barendt, *supra* note 1 at 155-162.

7 The PAP currently controls 82 of 84 elected seats.

8 Sing. *Parliamentary Debates*, vol. 69, col. 675ff (31 July 1998).

9 Chua Beng Huat, *Communitarian Ideology and Democracy in Singapore* (London and New York: Routledge, 1995).

10 Foreign Affairs Minister Wong Kan Seng, 'The Real World of Human Rights', Singapore Government Press Release No. 20/JUN/09-1/93/06/16 *reproduced in* [1993] Sing. JLS. 605 at 607.

11 Li-ann Thio, "*Lex Rex or Rex Lex*: Competing Conceptions of the Rule of Law in Singapore" (2002) 20 UCLA Pac. Basin L.J. 1.

12 *Supra* note 10.

13 Li-ann Thio, "The Right to Political Participation in Singapore: Tailor-Making a Westminster-Modelled Constitution to fit the Imperatives of 'Asian' Democracy"' (2002) 6 Sing. J.I.C.L. 181.

14 *Supra* note 10.

15 A government feedback portal at: www.reach.gov.sg

The government has loosened restrictions on political liberties like free speech[16] to manage demands for a more participatory political culture. Citizens have been urged not to be "passive bystanders in their own fate" by debating issues "with reason, passion and conviction". Wrestling with "honest differences" was preferred over being "an apathetic society with no views."[17] This is a *volte-face* from previous admonitions that only politicians should engage in political debate.[18]

The government has had to grapple with how to regulate cyberspace,[19] while seeking to promote Singapore as an infocomm technology hub under the Intelligent Nation 2015 masterplan.[20] Singapore has one of the highest Internet penetration rates in the world with 66% of households enjoying Internet Access.[21]

As Sundaresh Menon JC observed in *Lee Hsien Loong v Review Publishing Co Ltd*, the accessibility to instruments of mass media and communication, especially the Internet, "is dramatically shortening the globe's communicative synapses" expanding "the potential reach and impact of any individual idea or expression."[22] While empowering, this "also portends abuse."[23] In certain Asian countries[24] where the government directly or indirectly controls traditional media, the Internet has been lionised as a democratizing force. It was widely credited as significantly influencing the outcome of the 2008 Malaysian General Elections, where the ruling Barisan Nasional coalition suffered its worst post-Independence losses. The Internet allowed the political opposition to bypass mainstream media and embark on online campaigning[25] to express views, solicit funds and garner political support.[26]

In testifying to the Internet's power in triggering this 'political tsunami,'[27] UMNO government leaders have changed[28] their negative attitudes towards the Internet. Previously dismissive of online political writing as rumours and lies, candidates for certain UMNO party posts must now set up blogs[29] to introduce themselves and their programmes. This recognizes cyberspace as a site for political contestation.

---

16 Cherian George, "Calibrated Coercion and the Maintenance of Hegemony in Singapore," ARI Working Paper Series No. 48 (Sept 2005), online: <http://www.ari.nus.edu.sg/showfile.asp?pubid=514&type=2>.

17 Deputy Prime Minister Lee Hsien Loong, "Building a Civic Society" Harvard Club 35th Anniversary Dinner 2004, online: <unpan1.un.org/intradoc/groups/public/documents/apcity/unpan015426.pdf> (visited 16 April 2008) ['Harvard Club speech'].

18 "Join a party if you want to contribute" *The Straits Times* (9 Sept 1993) 33.

19 See generally, Yee Fen Lim, *Cyberspace Law: Commentaries and Materials,* 2nd ed. (Sydney: Oxford University Press, 2007).

20 Sing., *Parliamentary Debates*, vol. 83, col. 21 (21 May 2007).

21 Sing., *Parliamentary Debates*, vol. 81, col. 672 (2 March 2006) (BY Lee).

22 [2007] 2 Sing. L.R. 453 at 457, para.1.

23 *Ibid.*

24 "Generation Change" *The Straits Times* (12 April 2008) 42.

25 "Malaysian PM Says He Underestimated Power of Blogs Before Suffering Big Election Losses" *Voice of America* (25 March 2008), online: <http://www.voanews.com/english/2008-03-25-voa17.cfm>.

26 Ironically, former premier Mahatir has now taken to blogging to air his views the state-controlled mainstream media ignores: "Mahatir slams govt in his new blog" *The Straits Times* (2 May 2008) 14.

27 "New Media and Politics: The Next Frontier" *The Straits Times* (12 April 2008) S8.

28 "BN turns to blogging in a belated turnaround" *The Straits Times* (24 April 2008) 1.

29 A blog is short for 'weblog,' defined as "a personal website on which an individual records opinions, links to other sites, etc…on a regular basis". *Oxford English Dictionary,* 2004, *s.v.* "weblog". In relation to Umno, see "Umno Youth Candidates told: No blog, no post" *The Straits Times* (12 April 2008) 30.

The fashion of avowing the Internet's inherently democratizing force in facilitating public debate is increasingly acknowledged as an "empty truism."[30] For example, the Internet may inhibit viewpoint diversity by allowing users to filter and receive information from certain sources only.[31] As an unrefereed space, the Internet is both a source of information and misinformation, which undermines democratic debate, given the distortive effects of cyberworld's "half-truths and untruths."[32] Lord Hobhouse observed in *Reynolds v Times Newspaper* that the liberty to communicate relates to the communication of "information[,] not misinformation", as:

> [t]here is no human right to disseminate information that is not true. No public interest is served by publishing or communicating misinformation. The working of a democratic society depends on the members of that society, being informed not misinformed. Misleading people and the purveying as facts statements which are not true is destructive of the democratic society….[33]

How the government regulates the Internet, with its virtues and vices, bears repercussions for the free communication of ideas and censorship. This implicates whether general law, a *sui generis* regime or additional special regulations should apply to cyberspace.

On 1 April 2007 the government set up the 13-member Advisory Council on the Impact of New Media on Society (AIMS) to study and make recommendations on how to manage "the far-reaching social, ethical, legal and regulatory implications of a rapidly-growing IDM (interactive and Digital Media) sector."[34]

This article focuses on two questions. First, it considers what the evolving approach of the government towards regulating political speech is in both the real and virtual realms, and whether law and policy developed for the real world has been translated into the virtual domain. Second, the article looks to what insight the scope of free speech sheds on the type of political community we are and how we esteem political speech and social goods.

Part I broadly outlines how law and policy shape the parameters of real and digital political speech. While general law applies to the public realm in cyberspace, different modes of implementation apply in response to distinct Internet features. Part II considers specific cyber-speech-related legislation, government policy towards handling cyberspace and analyses the only case to date dealing with a racist blog as seditious speech. Part III examines digital political speech and the potentially deleterious effects of unfettered online speech on free democratic debate, drawing from recent Singapore practice. This seeks to contribute to the on-going exploration on the

---

30 Andrew L Shapiro, "The Internet", *Foreign Policy* 115, (Summer 1999) 14 at 14.

31 *Ibid.*

32 Prime Minister Lee Hsien Loong, 7th Asian-European Editors Forum, reported in "Asian nations must find own political, media models: PM" *The Straits Times* (7 Oct 2006) 3.

33 [2001] 2 A.C. 127 at 238.

34 Terms of Reference available online: <http://www.nrf.gov.sg/nrf/strategic.aspx?id=156>. A small group of 13 bloggers issued an open letter to the Ministry of Information, Communication and the Arts (MICA): "Bloggers to send ideas on internet regulation to Govt" *Today* (19 April 2008) 41. These proposals are available online: <http://theonlinecitizen.files.wordpress.com/2008/04/bloggers-submission.pdf>. In response, see Mok Wing Tat, "Internet freedom: rights come with responsibilities", online: *The Straits Times*, reproduced in <http://www.sgpolitics.net/?p=199>.

role of the Internet and democracy by highlighting the 'dark side' of the Internet.[35] It is important to focus on free speech rationales in crafting and implementing legal policy towards new media. Part IV concludes.

II. Containment, Curtailment and Calibration—Free Speech Law & Policy

A. *The Historical Origins of the Article 14 Free Speech Clause*

Singapore rejects a *laissez-faire* approach towards free speech. The constitutional formulation of Article 14(1) reflects its qualified character: "Subject to clause 2…every citizen of Singapore has the right to freedom of speech and expression…".

Clause 2(a) authorizes Parliament to enact "necessary or expedient" restrictions serving one of eight exhaustive objectives,[36] such as laws on defamation, contempt of court and those upholding public order and morality. This *prima facie* indicates a less intrusive degree of judicial scrutiny.

From an originalist reading of article 14, which derives from article 10 of the Federal Constitution of Malaysia,[37] the desire to limit judicial review is evident in deliberately excluding 'reasonable' before the word 'restrictions' in article 10, in relation to permissible legislative restrictions. The motive was to prevent judicial challenges that restrictions are unreasonable, as "[t]he Legislature alone should be the judge of what is reasonable under the circumstances" to avoid conflict with the judiciary and to ensure legal certainty.[38] This reflects the logic of parliamentary supremacy in trusting legislators to conclusively determine reasonable and appropriate balances between liberties and competing interests. Pursuant to Article 14(2), Parliament has enacted a broad range of content-neutral and content-specific speech restrictions.[39]

B. *Political Speech and Judicial Interpretation*

While there is no judicial recognition or definition of a category of 'political speech', some guidance on what 'political speech' includes may be drawn from the meaning of 'domestic politics' under section 16 of the Newspaper and Printing Presses Act.[40]

---

35 Aside from problems relating to spam, privacy and, intellectual property concerns and internet crime: see Charles Lim, "Cybercrime and Cyberlaw: Pre and post September 11 Developments" (2002) 37 ABLR 3.

36 *Phua Keng Tong v. PP*, [1986] Sing. L.R. 168, 173G.

37 On separation, the Republic of Singapore Independence Act (1965) provided for continued application of most articles of the Malaysian Federal Constitution, including the article 10 free speech clause, in the new republic: *JB Jeyaretnam v. Lee Kuan Yew*, [1992] 2 Sing. L.R. 310 at 331H.

38 Federation of Malaya Constitutional Commission Report (1956-1957), Kevin Tan & Thio Li-ann, *Constitutional Law in Malaysia and Singapore* (Asia: Butterworths, 1997), Appendix A, para 13(ii).

39 Undesirable Publications Act (Cap. 338, 1998 Rev. Ed. Sing.); Sedition Act (Cap. 290, 1985 Rev. Ed. Sing.); Public Entertainments and Meetings Act (Cap. 257, 2001 Rev. Ed. Sing.); Smoking (Control of Advertisements and Sale of Tobacco) Act (Cap. 309, 2003 Rev. Ed. Sing.); Internal Security Act (Cap. 143, 1985 Rev. Ed. Sing.); Maintenance of Religious Harmony Act (Cap. 167A, 2001 Rev. Ed. Sing.); See generally, Chapter 18, Freedom of Speech, Assembly and Association, Tan & Thio, *ibid*.

40 Cap. 206, 2002 Rev. Ed. Sing.

This authorizes the restricted circulation in Singapore of foreign newspapers "engaging in the domestic politics of Singapore". The Court of Appeal described 'domestic politics' as including "the political system of Singapore", political ideology, public institutions and government policies "that give life to the political system."[41] This all-encompassing definition captures "the multitude of issues" relating to the effect of "the political, social and economic policies" of the government on societal weal.

The courts have adopted a minimalist form of review towards Article 14; they have not recognised any special status for political speech and its democratic function,[42] both as an individual freedom and as a public good, in encouraging "a well informed, politically sophisticated electorate able to confront government on more or less equal terms."[43]

This is apparent from cases dealing with speech critical of judicial institutions,[44] public institutions,[45] and political libel.[46] The consistent judicial refusal to interpret Article 14 in a manner which recognises the higher normative force a constitutional liberty possesses is striking. This would entail, in balancing free speech against public reputation, an upward calibration of the weight of free speech interests.[47] Instead, the courts consider appropriate the existing balance in the area of contempt of court and political defamation, despite the fact existing law developed when free speech was not a constitutional right, but merely a residual common law liberty subject to statutory truncation.[48] The case law underscores, even valorises, the public reputations of politicians, public institutions and courts as a common good.

In construing Part IV liberties, Karthigesu JA in *Taw Cheng Kong v PP*[49] stated that one must first consider why a right was placed "on a constitutional pedestal,"[50] examining its underlying rationale, purpose and importance. The scope of constitutional protection was to be ascertained by examining "the Constitution in its entirety"

---

41 *Dow Jones Publishing Co v. AG*, [1989] Sing. L.R. 70 at 89E-H.

42 Courts in other common law jurisdictions have been more willing to accord preferred status to political speech. The Australian High Court drew linkages between an implied freedom of political communication and democratic government in *Nationwide New Pty Ltd v. Wills* (1992), 177 C.L.R. 1. See also *Lange v. Australian Broadcasting Corporation* (1997), 189 C.L.R. 520 and *Theophanus v. Herald and Weekly Times Ltd* (1994), 182 C.L.R. 104 (on the defence of qualified privilege on political and government matters.

43 Barendt, *supra* note 1, at 155.

44 *AG v. Wain*, [1991] 2 M.L.J. 525; *AG for Chee Soon Juan*, [2006] 2 Sing. L.R. 650.

45 *Chee Siok Chin v. MHA* [2006] 1 Sing. L.R. 582.

46 *JB Jeyaretnam v. Lee Kuan Yew*, [1992] 2 Sing. L.R. 310; *Lee Hsien Loong v. Singapore Democratic Party*, [2007] 1 Sing. L.R. 675.

47 See Li-ann Thio, "'Beyond the Four Walls' in an Age of Transnational Judicial Conversations: Civil Liberties, Rights Theories and Constitutional Adjudication in Malaysia and Singapore" (2006) 19.2 Colum. J. Asian. Law 428 at 461-471.

48 Notably, free speech interests in English jurisprudence have been elevated to quasi-constitutional status, as "the common law nowhere stands still". *Reynolds v. Times Newspaper*, [2001] 2 A.C. 127 at 222G. Although the English common law has been influenced by European Court of Human Rights jurisprudence, Lord Keith in *Derbyshire County Council v. Times Newspaper* (1993), 1 All E.R. 1011 stated that this decision itself was based on the common law. Rajendran J in *Goh Chok Tong v. JB Jeyaretnam*, [1998] 1 Sing. L.R. 547 at 562A-B wondered whether Singapore defamation law ought to be revisited in light of *Derbyshire* (recognizing the "highest public importance that a government body should be open to uninhibited public criticism").

49 [1998] 1 Sing. L.R. 943.

50 *Ibid.* at 955F, para 23.

to avoid distorting "the interpretation of a particular right to the perversion of the others."[51] This has translated into the general judicial approach that gives a broad berth to restrictive legislation through various methods: first, by according determinative weight to public order considerations to 'trump' fundamental rights (*Colin Chan v PP*);[52] second, by flatly disavowing a judicial role in the expansive construction of an existing right (*Rajeevan Edakalavan v PP*);[53] third, by posing a non-intrusive test of judicial review which affirms rather than restrains state power, disavowing a rights-oriented approach, (exemplified in *Chee Soon Juan v PP*[54] and *Chee Siok Chin v MHA)*.[55] Essentially, this consists of a one-step test, not involving the judicial questioning of the reasonableness of a legislative restriction[56] or whether it is proportionate, serves a compelling social purpose or is necessary in a democratic society.[57] The "sole task" is "to ascertain whether an impugned law is within the purview of any of the permissible restrictions"[58] listed in article 14(2)(a). All the government need show is a "factual basis" underlying Parliament's judgment that a restrictive law was "necessary or expedient" to serve an article 14(2)(a) purpose.[59] The drafting of article 14 allows Parliament "to take a prophylactic approach" towards maintaining public order.[60]

The text of article 14 apparently provides little warrant for robust judicial intervention, as where the court instructs itself to give a 'generous interpretation' in construing parliamentary intention underlying speech-restrictive legislation,[61] as opposed to generously interpreting Part IV to ensure individuals enjoyed the full measure of their rights, as *Ong Ah Chuan v PP*[62] advocated. In reviewing executive action, the courts tend to reduce constitutional law issues to administrative law issues by characterizing a matter not as whether a fundamental liberty has been violated but whether an administrative actor has acted reasonably. This was apparent in *Chee Siok Chin*, where the police ordered four people staging a peaceful protest to disperse or be charged with public nuisance.[63] This shifts the focus from rights to the government's evaluation of whether state interests necessitate curtailing a liberty, to which the court generally defers.[64]

---

51 *Ibid.*, para 25.

52 [1994] 3 Sing. L.R. 662, 684F-G. For a case critique, see Thio Li-ann, "The Secular Trumps the Sacred: Constitutional Issues Arising out of *Colin Chan* v *PP"* (1995), Sing. L. Rev. 26.

53 [1998] 1 Sing. L.R. 815, 823D-G.

54 [2003] 2 Sing. L.R. 445, 450.

55 [2006] 1 Sing. L.R. 582.

56 Rajah J noted the "two-stage test" Indian courts apply in construing the validity of a restriction on a right: [2006] 1 Sing. L.R. 582 at 601, paras. 45-46.

57 This test is applied in construing article 10 of the European Convention on Human Rights. Rajah JA in *Chee Siok Chin v. MHA*, [2006] 1 Sing. L.R. 582 at 616, para. 87 explicitly rejected proportionality review, which had "never been part of the common law", with English law importing a "continental European jurisprudential concept" to meet treaty obligations.

58 [2006] 1 Sing. L.R. 582 at 602, para. 49.

59 *Ibid.*

60 *Ibid*, at 603, para. 50.

61 *Ibid,* at 603, para 49.

62 *Ong Ah Chuan v. PP*, [1980–1981] Sing. L.R. 48 at para. 61D quoting Lord Wilberforce in *MHA v. Fisher* [1980] A.C. 319 at 329.

63 Under sections 13A,13B and 40, Miscellaneous Offences (Public Order and Nuisance) Act (Cap. 184, 1997 Rev. Ed. Sing.): [2006] 1 Sing. L.R. 582 at paras 93-106, 125-128.

64 *Chee Siok Chin v. MHA*, [2006] 1 Sing. L.R. 582 at 603, para. 49.

A formalist tenor is evident where judges focused more on the different textual formulations of constitutional free speech provisions, rather than on comparative jurisprudence on balancing competing rights and goods.[65] The differences between the absolutely couched US First Amendment and article 10 of the European Convention on Human Rights against Article 14's qualified nature was highlighted, in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew,*[66] as a primary basis for rejecting American and European jurisprudence.[67] In *AG v Wain*,[68] Canadian case law was summarily rejected as these decisions were based on the Canadian Charter of Rights and Freedoms "which has no parallel in Singapore."[69] This is supplemented by reference to differing local conditions which justified a judicial posture of self-restraint in restrictively construing Article 14.[70] Rajah J in *Chee Siok Chin* noted that disseminating "false and inaccurate" information could threaten public order, which Parliament had placed a "premium" on.[71] He rejected the existence of "universal standards", pointing to the "differing standards" pertaining to "acceptable public conduct" and "the protection of public institutions and figures from abrasive or insulting conduct."[72] The high valuation of public reputation in Singapore inspired the Court of Appeal in *JB Jeyaretnam v Lee Kuan Yew*[73] to reject European and American jurisprudence that "limits of acceptable criticism" were wider for public officers, as 'public men' were "equally entitled to have their reputations protected as those of any other persons."[74] The overriding concern was to protect the public reputation of public men lest sensitive and honourable men be deterred from entering public life, which would be a loss to social welfare.[75] While the leading US case of *New York Times v. Sullivan* prioritized free speech, in reflecting a "profound national commitment" to robust, even caustic and "sometimes unpleasantly sharp attacks on government and public officials,"[76] it has been widely criticised for discounting reputational interests.[77]

---

65 An exception might be *JB Jeyaretnam v. Public Prosecutor*, [1990] 1 M.L.J. 129 where SK Chan J applied a test of implied reasonableness to a statutory licensing scheme.

66 [1992] 2 Sing. L.R. 310 at 330.

67 The Court of Appeal noted that unlike the First Amendment, article 14 did not prohibit Parliament from making laws to restrict free speech, without further examining US case law which does recognize limits on free speech. Furthermore, the terms allowing legislative restrictions under article 10(2) of the European Convention "are not as wide as those under art 14(2).": [1992] 2 Sing. L.R. 310 at 330F-I to 331A.

68 [1991] Sing. L.R. 383.

69 [1991] Sing. L.R. 383 at 393G, 398B-H, in relation to *R v Kopyto* 39 C.C.C. 1.

70 See *AG v. Chee Soon Juan*, [2006] 2 Sing. L.R, 630 at 659-660, affirming *AG v. Wain,* [1991] Sing. L.R. 383.

71 *Chee Siok Chin v. MHA*, [2006] 1 Sing. L.R. 582 at 631-632, paras 135.

72 *Ibid.*at 630, para. 132.

73 [1992] 2 Sing. L.R. 310 at 332H-I.

74 *Ibid.* Thean JA noted in *Tang Liang Hong v. Lee Kwan Yew* that the argument for reducing damages where the successful plaintiff in a defamation suit is a politician would contravene the article 12 equal protection clause: [1998] 1 Sing. L.R. 97 at 139. This discounts the fact that free speech might be chilled by heavy damages. The fact the parties in *Goh Chok Tong v. Chee Soon Juan (No. 2)* (2005), 1 Sing. L.R. 573, 581 were "prominent public figures" was reason for upgrading damages.

75 [1992] 2 Sing. L.R. 310 at 333.

76 376 U.S. 254 (1964) at 270.

77 See, *e.g.*, Benjamon Barron, "A Proposal to Rescue New York Times v Sullivan by Promoting a Responsible Press" (2007-2008) 57 Am. U.L. Rev. 73; George Williams & Adrienne Stone, "Freedom of Speech and Defamation: Developments in the Common Law World" (2001) 26 Monash U.L. Rev. 362.

Unsurprisingly, given that the prevailing political ideology exalts the neo-Confucianist ideal of "government by honourable men (*junzi*)"[78] possessing the "trust and respect of the population", reputational interests are given paramount consideration in Singapore. Indeed, the government proclivity towards suing opposition politicians or newspapers who impugn their integrity flows from the self-characterisation that government leaders as *junzi* need to vindicate their integrity where impugned through litigation to maintain public trust.[79]

C. *Calibrating Government Policy and Regulating Speech*

Legislation penalizes and indicates the low valuation of speech which is libelous,[80] seditious,[81] incites religious or racial hatred[82] or contravenes public morality and decency.[83] Speech is also regulated through licensing laws such as the Public Entertainment and Meetings Act (PEMA),[84] which encompasses outdoor political rallies.

Within a dominant party state, policies are an important predictive factor as to whether licenses for political public meetings will be granted or how the government will respond to certain forms of criticism, shaping the ambit of free speech. Rather than outright bans, the government adopts a calibrated approach towards regulating speech in terms of the speaker's identity, the content and mode of express speech. A striking feature is the government's objective of ensuring political debate is couched in rational rather than over-emotive terms. The press is expected to practice responsible journalism[85] by clearly explaining government policy to the citizenry.

Previously, the government seized upon the metaphor of 'out of bounds markers' to delineate the spheres of acceptable and unacceptable political speech. Briefly, non-politicians were cautioned to abstain from political debate; people were expected to maintain deference in speaking to political authorities. In addition, certain topics, such as those apt to trigger racial and religious disharmony were off limits.[86] The indeterminacy of these unwritten guidelines corralling speech hindered robust debate and were designed to identify the category of persons permitted to participate in political discourse, to signal acceptable modes of such engagement and to insulate sensitive topics from frank debate. This section discusses current government policy.

---

78 Shared Values White Paper, (Cmd. 1 of 1991) at para. 41.

79 "Many People Around the World Embrace Junzi Principle," *The Straits Times* (22 Aug 1997) 36-37.

80 Defamation Act (Cap. 75, 1985 Rev. Ed. Sing.).

81 Sedition Act (Cap. 290, 1985 Rev. Ed. Sing.).

82 Sections 298, 298A Penal Code (Cap 244, 1985 Rev. Ed. Sing.).

83 Internet Code of Practice, issued by the Media Development Authority under section 6, Broadcasting Act (Cap. 28, 2003 Rev. Ed. Sing.), online: <http://www.mda.gov.sg/wms.file/mobj/mobj.981.internet_code_of_practice.pdf>.

84 Cap 257, 2001 Rev. Ed. Sing.

85 In the context of English case law, 'responsible journalism' refers to a duty of care on the part of journalists to verify the accuracy of their sources, to seek the viewpoint of a criticised politician, in order to present a fuller picture: Lord Nicholls, *Reynolds v. Times Newspaper*, [2001] 2 A.C. 127 at 204-205.

86 See Thio Li-ann, "Recent Constitutional Developments: Of Shadows and Whips, Race, Rifts and Rights, Terror and Tudungs, Women and Wrongs" [2002] Sing. J.L.S. 328 at 336-337.

1. *Style of Engagement in Debate*

To encourage civic participation and robust debate, Deputy Prime Minister (DPM) Lee declared that the government "will not view all critics as adversaries", depending on "the spirit of the criticism". "Constructive dissent" reflecting "a sincere contribution to improve Government policies" would elicit a "dispassionate and factual response"; however, "adversarial dissent" which "scores political points and undermines the government's standing" regardless of intent would attract a different response. To preserve its moral authority, the government would have "to rebut or demolish" critics, like opposition politicians, as "the game of politics" is like "a gladiatorial contest for political dominance."[87]

2. *Medium for the Message*

The preference for rational political debate and for ensuring the government view is not drowned out is evident in the policy towards political films and towards local and foreign media.

The local media is expected to play a "constructive role in nation-building" which is necessary if "freer debate is to lead to consensus and understanding", rather than "cacophony and confusion". Journalists are to be accurate, fair reporters and "avoid crusading journalism, slanting news coverage to campaign for personal agendas". The media should not presume to "set the national agenda" or "pass judgment on the country's leaders", in contrast with the US 'fourth estate' model. It should provide the public with a channel "to voice views and opinions" and information to allow the public to "judge issues for themselves."[88] This ideal may be undermined as there is no real media competition in Singapore, which could better secure the representation of a wider spectrum of views and guard against journalist biases,[89] whether ideological or commercial, in propagating their preferred views. In addition, the government's informal methods of reining in the media[90] could result in lop-sided presentation of views, exposing the fiction of the free marketplace of ideas, which seek to be politically persuasive.

Censoring political speech through controlling how political messages are put across underlines the rationale behind section 33 of the Films Act.[91] Section 33 bans the screening, distribution and import of "party political films"[92] because political videos are "an undesirable medium for political debate in Singapore" in sensationalizing issues or presenting these "in a manner calculated to evoke emotional rather

---

87 Harvard Club Speech, *supra* note 17.

88 *Ibid.*

89 For an example of biased "highly self-indulgent", journalism see Janadas Devan, "377A debate and the rewriting of pluralism" *The Straits Times*, Insight (27 Oct 2007) and Yvonne CL Lee, "Writer's article unfair and undermines civil debate" online: *The Straits Times* <http://www.straitstimes.com/ST%2BForum/Online%2BStory/STIStory_172404.html>.

90 Francis T. Seow, *The Media Enthralled: Singapore Revisited* (Boulder, Colorado: Lynne Reiner Publishers, 1998) at 206-220; Cherian George, *Contentious Journalism and the Internet: Towards Democratic Discourse in Malaysia and Singapore* (Seattle: University of Washington Press, 2006).

91 Cap. 107, 1998 Rev. Ed. Sing.

92 Section 2 defines such films as advertisements made for or on behalf of any Singapore political party or to serve any political end.

than rational reactions."[93] This medium does not provide a platform for "effective rebuttals", potentially reducing political debate "to a contest between advertising agencies", thwarting the intention to "keep political debates in Singapore serious". Video, unlike the printed word, may sway popular emotions.

The government rejected the criticism that this ban limited avenues for political discourse, arguing there were "sufficient avenues" allowing parties to convey their views to the public through print or online publications.[94]

However, technological developments have advanced such that it is easy to circumvent these legislative restrictions; anyone with a cellphone can make a movie and distribute this by uploading it on the Internet. This took place during the 2006 General Election where opposition political rallies videos were uploaded online.[95] Local film-makers have uploaded potentially party political films,[96] on Youtube, without government intervention.[97] In 2008, the government indicated the Films Act might be reviewed.[98]

3. *Cabining Speech and Geographical Location*

The government regulates free expression in a calibrated manner, distinguishing between outdoor and indoor venues. In 2004, the government exempted indoor public talks featuring Singapore speakers and organized by Singaporeans from PEMA licensing requirements. Topics had to veer clear of the perennial concerns pertaining to race and religion.

In 2000, the Speakers Corner[99] was established as an open space exempted from PEMA.[100] The government now allows the staging of performances and exhibitions there and is considering allowing additional political activities, such as demonstrations, in this cabined locale.[101] To appease the expectations of international civil society,[102] the government allowed activists to demonstrate in a secure, private area within the conference venue where the World Bank and IMF held their annual meeting in September 2006.[103]

Nonetheless, the government steadfastly prohibits outdoor and street demonstrations for fear of disorder, caused by the organizers or "a handful of agitators" who

---

93 G Yeo, Sing., *Parliamentary Debates*, vol. 68, col. 474 at col. 477-478.

94 *Ibid.*

95 HW Tang, "Regulating Digital Speech during the 2006 Singapore General Election: When Laws and Architecture Collide," online: <http://www.ips.org.sg/events/all/Symposium_Digital_Speech_060307/>.

96 *E.g.* Martyn See's "Singapore Rebel" (2005) was banned, as was "A Vision of Persistence" (2002), made by 3 Ngee Ann Polytechnic lecturers, both featuring opposition politicians: "Political videos: ripe for a rethink?" *The Straits Times* (19 April 2008) S8.

97 As where Martyn See uploaded his film "Speakers Cornered", featuring opposition politician Chee Soon Juan, on Youtube in January 2008. The MDA passed this with a NC-16 Cut: *ibid.*

98 *Ibid.*

99 See Li-ann Thio, "Speakers Cornered? Managing Political Speech in Singapore and the Commitment 'To Build a Democratic Society" (2003) 3 Intl. J. Const. Law 516.

100 The Public Entertainment and Meetings Act (Cap. 257, 2001 Rev. Ed. Sing.) requires permits for public events involving more than five people. Under section 2(m), 'public entertainment' includes "any lecture, talk, address, debate or discussion."

101 Sing., *Parliamentary Debates*, vol. 84, col. 28 (28 Feb 2008) (KS Wong).

102 "S'pore agrees to admit 22 of 27 blacklisted activists" *The Straits Times* (16 Sept 2006).

103 "No outdoor demos for World Bank, IMF meets, say police" *The Straits Times* (29 July 2006).

could "spark off mob violence quite easily", rejecting the risks of permitting a "culture of street protests."[104] This could undermine confidence in public security. Hence, opposition politician JB Jeyaretnam was denied a licence to stage an anti-casino march to City Hall the day before the government was to announce whether it would allow casinos.[105] Similarly, where opposition politicians are denied licences to hold dinners or stage cycling events, this is on the basis that political parties' events are best "held indoors or within stadiums or athletic centres" to ensure that the police can control law and order problems. Such events are viewed as containing "the potential for public disorder and mischief."[106]

4. *Regulating the Speaker*

The principle that foreigners are not allowed to interfere in domestic politics grounds the policy that distinguishes between local and foreign speakers. This is not targeted at banning their views, which can be freely disseminated through the Internet. The line is drawn against foreigner-led or fuelled political activism in Singapore. For example, the government denied a licence for a public lecture by a Canadian homosexual activist, as part of a series of events to promote the political agenda of homosexualism. Public discourse over Singapore laws, which reflect "the values of our society" is "reserved for Singaporeans". The context is underscored, as there was an "ongoing debate" on a divisive topic.[107]

In refusing an arts entertainment licence for the Complaints Choir project, where two Finns taught people "to sing out their displeasures about the situation in their own countries", the objection was not directed against the lyrics which Singaporeans helped craft. Whether "an arts event, a forum or a dialogue" constitutes interference in domestic politics is a "matter of judgment", for the relevant decision-makers. Regarding the Choir, the issue was whether foreigners should be encouraged "to come in to lead Singaporeans, to organize Singaporeans to conduct such complaints in public". It is "not wise and not prudent over the long term" to contravene "established principles" that "comments on domestic matters ought to be reserved for Singaporeans."[108]

5. *Substantive Limits: Content Restriction*

While pursuing public consultation on policies, certain fields of state activity like security, foreign and taxation policy are considered unamenable to this.[109]

State ambivalence towards matters implicating race and religion remains, although then DPM Lee observed there was "rational discussion" of these "gut issues" after 9-11 and the foiled Jemaah Islamiyah terrorist conspiracy, on how to build trust

---

[104] *Supra*, note 98.

[105] "Family deaths stir casino debate in Singapore" Reuters (20 Mar 2005) online: <http://www.singaporewindow.org/sw05/050320re.htm>.

[106] Sing., *Parlimentary Debates*, vol. 83, col. 1337 (27 Aug 2007) (PK Ho).

[107] A speaker's views could be heard on the air and read online "but it is quite different to invite him here to speak to a Singapore audience at this time". Sing., *Parliamentary Debates*, vol. 83, col. 1697 (18 Aug 2007) (PK Ho).

[108] Sing., *Parliamentary Debates*, vol. 84 (15 Feb 2008) (Minster BY Lee).

[109] Harvard Club Speech, *supra,* note 17. This declares public consultation guidelines.

between Muslims and non-Muslims.[110] Given Singapore's history of racial riots, the government considers crucial to good governance the maintenance of a regime "which requires that we respect the sensitivities of each ethnic community and not denigrate another's religion or ethnicity."[111] Consequently, the government rejects the view that bad speech is cured by more speech. The insensitive airing of the anti-Islam film *Fitna*,[112] for example, in certain Western liberal democracies, was criticised for discounting the consequences of stoking "hatred between devout Muslims and Christians."[113]

However, the government has pulled back from policy relating to "public morality and decency", declaring it would be "increasingly guided by the consensus of views in the community". The antagonistic debate, in real and virtual worlds over section 377A of the Penal Code, which criminalises homosexual sodomy, flowed directly from this policy shift.[114] Indeed, morally controversial questions seem exempt from the admonition against "crusading journalism."[115]

6. *Conclusion*

Two types of political speech attracting distinct government approaches are discernible from the preceding discussion. First, political speech based on formal or informal party political affiliation or commitment and second, political speech which turns on ideological bias, to which political terms like 'conservative' or 'liberal', 'left' and 'right', apply.[116] Partisan political speech attracts a robust adversarial response, while ideological political speech, not affecting the incumbent government's standing, receives a more muted response.

D. *Regulating the Internet*

1. *Regulating the Internet as Public/Political Space*

Like all human technology, the internet[117] may be used to benefit or harm, depending on the altruistic or depraved proclivities of their human users.[118] The assertion that unfettered digital speech is inevitable because the state lacks capacity to regulate this "distant frontier" is "largely untrue". Shapiro points out the Chinese government

---

[110] *Ibid.*

[111] Sing., *Parliamentary Debates*, vol. 84 (28 Feb 2008) (KS Wong).

[112] Interview with PM Lee Hsien Loong, "Leading and lightening up in the YouTube age" *The Straits Times* (16 April 2008).

[113] Para 23, PM Lee Hsien Loong, LSE Asia Forum, 11 April 2008, Singapore Government Media Release at <http://app.sprinter.gov.sg/data/pr/20080411998.htm>.

[114] Thio Li-ann, "Can we disagree without being disagreeable?" *The Straits Times* (6 Oct 2007).

[115] For an example of this sort of journalism, see Janadas Devan, "Can mum, mum and kids make a family?" *The Straits Times* (7 July 2007).

[116] Nicholas Aroney, "Politics, Law and the Constitution in McCawley's Case" (2006) 30 Melbourne U.L. Rev. 605 at 608.

[117] This is "a network of separate computer networks functioning as one because of established communication protocols between them": Michael Hadley, "The Gertz Doctrine and Internet Defamation" (1998) 84 Va. L. Rev. 477 at 490.

[118] Looi Teck Kheong, "Cybercrimes," *Singapore Law Gazette*, (August 2000) 18.

regulated internet content by routing internet communications through proxy servers or electronic gateways. Singapore requires Internet Service Providers to use filtering technology to block certain pornographic sites.[119]

The issue arises as to whether general laws relating to real space are transferable to virtual space, or whether the internet's unique features warrant an exceptional regulatory regime.[120] Should cyberspace be regulated by self-regulation or law? If the latter, should a comprehensive legislative approach or an incrementalist, analogical approach be adopted? A normative argument is required to contend "that real space law should leave cyberspace alone"; reasoning from real-world consequences, Lessig correctly states that cyberspace "will be regulated by real space regulation to the extent that it affects real space life."[121]

In Singapore, Law's empire certainly extends to cyberspace in terms of content-regulation, as general law,[122] such as libel law,[123] apply to digital speech. A Singaporean student at the University of Illinois closed down his blog which criticised A*STAR,[124] a government body, after receiving threat of a defamation suit. This demonstrates the Internet "far from being a zone beyond legal control, is susceptible to the same pressures as more traditional forms of communication."[125]

Nevertheless, a distinct "light touch" approach in implementing legal norms is applied. The government has to walk a fine line between competing objectives, in relation to the economic, political and social impact of the internet on society. While informational flows are integral to a knowledge economy, the government recognizes the social need to filter information to "maintain basic standards of decency and preserve racial and religious harmony" but confines this "to a very minimum."[126] Government MPs have started blogging online to connect with netizens, acknowledging the need to understand and manage new media.[127]

2. *Public and Private Spaces on the Internet*

Government policy draws a distinction between public and private spaces on the Internet, in terms of impact and accessibility of digital speech authored by Internet

---

[119] Shapiro, *supra*, note 29 at 17-18. See Internet Filtering in Singapore in 2004-2005: A country study, online: <http://opennet.net/studies/singapore//ONI_Country_Study_Singapore.pdf>.

[120] Lawrence Lessig, "The Path of Cyberlaw" (1995) 104 Yale L.J. 1743 at 1743.

[121] Lawrence Lessig, "The Zones of Cyberspace" (1996) 48 Stanford L. Rev. 1403 at 1406-1407.

[122] Warren Chik, "Bloggers Beware: The Five Commandments for Bloggers" *Law Gazette*, November 2005 (1). Garry Rodan, "Embracing electronic media but suppressing civil society: authoritarian consolidation in Singapore" (2003) 16 The Pacific Review 503.

[123] While there has been no Singapore case as yet, recently, the Malaysian High Court (Kedah) ruled that an Internet writer was liable to pay RM4 million for publishing a defamatory online article in 2006. "Online writer, opposition paper slam libel verdict" *The Straits Times* (28 March 2008) 16.

[124] "Student shuts blog after A*Star threatens to sue" *Today*, 6 May 2005, online: <http://www.todayonline.com/articles/49008.asp>.

[125] Derek Bambauer, "OpenNet initiative Finds that Singapore's State control over Online content blends Legal and Technical Controls" (17 Aug 2005), online: at <http://cyber.law.harvard.edu/newsroom/opennet_singapore>.

[126] *Supra* note 112 at para. 16.

[127] *Supra* note 26.

users. For example, electronic mail is considered a form of private communication, misuse of which attracts tortious liability.[128]

In contrast, the public accessibility of blogs justifies their characterization as part of the public sphere. The government recognised the hybrid quality of blogs which are "a means of private communication used by individuals as well as groups". However, bloggers must realise "the materials they post in their personal blogs" is visible "in the public domain", such that posting lewd photos would have a public effect and "would be offensive to many other Internet users,"[129] attracting legal sanction. Still, principle and prudence caution regulatory restraint as most bloggers use blogs "to communicate with their friends", and "to police all these blog sites would be an intrusion into the life of the bloggers."[130] This demonstrates some respect for privacy of communications.

The Education Ministry has designed student guidelines on "netiquette and ethical use" of the Internet in discussing their school activities and teachers, to guide "responsible self-expression" in the informal setting of a blog. This includes reminding students "to respect others, avoid posting content that is offensive or abusive, and avoid plagiarism or using copyrighted material". As part of civics education, students are taught to "take responsibility for their actions, whether in cyber or physical worlds."[131]

E. *Judicial Approach in Enforcing General Law in relation to Digital Speech: The 'Racist Blogger' Cases*

PP v Koh Song Huat Benjamin[132] is instructive in providing a reasoned judicial approach towards the limits of digital speech in Singapore, aside from being "the first prosecutions and convictions of two Singapore citizens" for section 4(1)(a) offences under the Sedition Act.[133] It indicates that history and context inform content-based restrictions on speech.

The offence related to committing an act with a "seditious tendency", is defined in section 3(1)(e) as an act "to promote feelings of ill-will and hostility between different races or classes of the population in Singapore". The first accused and second accused had posted anti-Muslim comments on a blog and an Internet General Discussion Forum respectively.

Richard Magnus SDJ noted the appropriateness of a custodial sentence for such offences given "the especial sensitivity of racial and religious issues in our multicultural society". He alluded not only to the "current domestic and international security climate,"[134] but to the 1964 race riots and Maria Hertogh incident in the

---

[128] *Malcolmson Bertram v. Naresh Kumar Mehta* [2001] 4 Sing. L.R, 654. See George Wei, "Milky Way and Andromeda: Privacy, Confidentiality and Freedom of Expression" (2006) 18 Sing. Ac. L.J. 1.

[129] *Ibid.*

[130] Sing., *Parliamentary Debates*, vol. 81, col. 1710 (3 April 2006) (B Sadasivan).

[131] Sing., *Parliamentary Debates*, vol. 80, col. 1633 (17 Oct 2005) (T Shanmugaratnam).

[132] [2005] SGDC 272.

[133] Cap. 290, 1985 Rev. Ed. Sing.. Notably, in 2006, a person who posted an offensive cartoon of Jesus Christ on his blog received a 'stern warning': "Blogger who posted cartoons of Christ online being investigated" *The Straits Times* (14 June 2008).

[134] *Supra* note 131 at para 6.

1950s.[135] Magnus SDJ underscored how "callous and reckless remarks on racial or religious subjects" could "cause social disorder" in "whatever medium or forum they are expressed", including the Internet with "its ubiquitous reach."[136] The learned judge's observations on the nature of the internet and the factors shaping the contours of free speech deserve close attention:

> The virtual reality of cyberspace is generally unrefereed. But one cannot hide behind the anonymity of cyberspace, as each accused has done, to pen diatribes against another race or religion. The right to propagate an opinion on the Internet is not, and cannot be, an unfettered right. The right of one person's freedom of expression must always be balanced by the right of another's freedom from offence, and tampered by wider public interest considerations. It is only appropriate social behaviour, independent of any legal duty, of every Singapore citizen and resident to respect the other races in view of our multi-racial society. Each individual living here irrespective of his racial origin owes it to himself and to the country to see that nothing is said or done which might incite the people and plunge the country into racial strife and violence. These are basic ground rules. *A fortiori*, the Sedition Act statutorily delineates this redline on the ground in the subject at hand. Otherwise, the resultant harm is not only to one racial group but to the very fabric of our society.[137]

Several points bear noting.

First, Magnus SDJ stressed the principle of responsibility when expressing views in cyberspace. This implicitly acknowledges that blogs and openly accessible web discussion forums are part of the public realm and subject to general law. The "anonymity of cyberspace" would not shield speakers from the legal consequences of penning "diatribes against another race or religion", which threatens social order. Normatively, this is desirable as there is no compelling reason to exempt digital speech from law where it harms the rights and interests of others. Practically speaking, issues of attributability may be difficult, but should not be over-stated.[138]

Second, the principle is that digital speech is to be treated no differently from other expressions of speech. The Internet is not an exceptional realm, as a forum for publishing views. Propagating an opinion on the Internet is "not…an unfettered right". The learned judge carefully differentiated the other factors to be weighed on the judicial balancing scale. Thus, free speech is not a trump but is qualified by reference to broader considerations including the rights of other individuals and "wider public interest considerations". The individual interest at stake was "the right of another's freedom from offence". Strictly speaking, this is a non-constitutional right rooted either in statutory law or the social foundations of the common law. Notably, in *Chee Siok Chin v MHA*[139] Rajah JA recognised a non-constitutional interest of freedom from harassment or abuse, in the context of a public nuisance offence. Rather than a singular focus on one person's rights, other competing interests

---

135 *In The Matter of Maria Hertogh*, [1951] Mal. L. Rev. 26.

136 *Supra* note 131 at para 7.

137 *Ibid.* at para 8.

138 Shapiro, *supra* note 29 at 19: "Identification technologies are quickly arriving though that will challenge the presumption of online anonymity."

139 [2006] 1 Sing. L. Rev. 582 at para. 136.

warrant consideration. An exclusive focus on one side of the equation to be balanced would provide lop-sided results, rather than a reconciliation or optimisation of competing interests. Indeed, permitting "unfettered individual rights" is deleterious as "individual rights do not exist in a vacuum;"[140] at its logical extreme, this imbalance might yield the undesirable consequence of "a society premised on individualism and self-interest,"[141] where the virtue of human individuality degenerates into narcissistic egoism. Thus, various factors are incorporated into the "delicate balancing process" in relation to article 14, including "societal values, pluralism, prevailing social and economic considerations as well as the common good of the community."[142]

Third, Magnus SDJ recognised formal limits on speech in the form of a "redline" statutorily demarcated by the Sedition Act, noting that seditious speech threatened to harm not only a sector of the community ("one racial group") but the nation at large (the "very fabric of our society"). He took judicial notice of the importance of "basic ground rules", the unwritten or informal rules of our 'social constitution' which fashion how we exercise our rights which "invariably entail some responsibilities."[143] These social duties, distinct from legal duties, inhere in every citizen and resident, obliging them "to respect the other races in view of our multi-racial society", to ensure "that nothing is said or done which might incite the people and plunge the country into racial strife and violence". The object lesson is that where rights are exercised irresponsibly, causing social harm, the law steps in to restrict liberty; this could be avoided by exercising liberties in a manner mindful of the unwritten norms of social conduct. Although such social norms should be implicitly understood, Magnus DJ felt the need to articulate these expressly, particularly to the younger generation of Singaporeans with "short memories"[144] who lacked an appreciation of how provoking racial and religious sensitivities can threaten social harmony. Law Minister Jayakumar characterised the sentencing of three persons in 2006 for posting racist remarks on online forums and blogs as "an example of our commitment to multi-racial cohesion", while acknowledging that elsewhere "such prosecution could be considered as infringement of freedom of expression."[145]

These three observations are generalisable to other forms of free speech, including political speech. However, a distinction must be drawn between political speech which promotes democratic debate and truth, and political speech which undermines these objectives by proffering falsehood, malicious aspersions and misinformation. Criticism should rest on "a veritable factual or other legitimate basis", within "the parameters of the law."[146]

F. *Legislation and Standards*

Rather than adopting an omnibus legislation covering the entire new media field, the government prefers an incrementalist approach by producing topic-specific new

---

[140] [2006] 1 Sing. L.R. 582 at para. 52.
[141] *Ibid*.
[142] *Ibid.*
[143] *Ibid.* at para 135.
[144] *Supra* note 131 at para. 6.
[145] *Ibid*. at para. 22.
[146] *Supra* note 138 at para. 134.

laws[147] and extending existing laws to meet fast-paced technological changes.[148] For example, the Penal Code was revised in 2007 to keep pace with technological developments and to cover electronic mediums of transmitting information, such as emails, SMS messages and blogging, where used to further criminal objectives. In particular, making statements on a blog "with the deliberate intention of wounding the religious or racial feelings of any person" or which "counsels disobedience to the law" was criminalized under sections 298 and 267C respectively. Nonetheless, so as not to inhibit the uses of these communication channels by law-abiding users, the government underscored that Police has "no intention to monitor what takes place online, such as the Internet."[149]

The need to update new media laws is reflected in PM Lee's statement that "one year in new media is equivalent to seven years in the mortal world."[150] In particular, technology allows persons to bypass laws regulating 'real space'. For example, although the Complaints Choir was banned from performing in Singapore, a recorded version of a private show was made available on video-sharing site Youtube. Nonetheless, the government distinguishes between availability of information and foreigners "within Singapore" commenting on domestic issues, in affirming that the "very light touch approach" to Internet material is not intended to "screen or to prevent Singaporeans from accessing any particular information."[151] Despite the availability of much unsavoury censored material online, the government wisely rejects the argument that censorship is irrelevant as a real difference remains between viewing nude photos online and on the front page of newspapers.[152] The audience and context is key, and the government does take steps to prevent a further vulgarization of social mores.

G. *Media Revolution: Old and New Media—Government Perspective and Policy*

The government portrays the mainstream media as evolving to meet "our national imperatives" and "special circumstances", producing a distinct model of "a free and responsible press whose role is to report news accurately and objectively to Singaporeans."[153] This characterization of the press as a partner in the nation-building effort in promoting social resilience to meet "intense economic competition, terrorism, global health threats, and social trends that go against our value system,"[154] is juxtaposed with the rejected "adversarial" press model.[155] In 2006, the media received the official benediction of having "Singapore's interests at heart"[156] in being sensitive to national interests and shared social values.[157] In contrast, instant

---

147 *E.g.* Computer Misuse Act (Cap. 50A, 2007 Rev. Ed. Sing.).
148 Sing., *Parliamentary Debates*, vol. 68, col. 474 (27 Feb 1998) (G Yeo) at col. 474 -478.
149 Sing., *Parliamentary Debates*, vol. 83, col. 2175 (22 Oct 2007) (PK Ho).
150 *Supra* note 112.
151 Sing., *Parliamentary Debates*, vol. 84 (15 Feb 2008) (BY Lee).
152 Sing., *Parliamentary Debates*, vol. 76, col. 1692 (20 March 2003) at col. 1732.
153 Sing., *Parliamentary Debates*, vol. 78, col. 1145 (16 Nov 2004) (BY Lee).
154 Sing., *Parliamentary Debates*, vol. 81, col. 834 (3 March 2006) (B Sadasivan).
155 *Supra* note 152.
156 *Supra* note 153.
157 *Ibid.*

communications technology could be misused to go beyond the innocuous conveyance of information, as "Inflammatory opinions, half-truths and untruths will also gain currency through viral distribution", and have real-world effects.[158]

In the age of "pervasive internet and Web 2.0 technologies" where Singaporeans have "embraced new media technology", spawning citizen journalism and "multi-media blogs with instant outreach" which shape public perception, the government asserts the continuing important role of traditional media. It alludes to new media's credibility deficit,[159] considering that traditional media will survive by providing "accurate and credible information with thoughtful analyses and objective commentaries."[160]

This is contrasted with the proliferation of Internet rumours and distortive falsehoods, apt "to mislead and confuse the public,"[161] in the "constant tussle of determining truth from untruth and facts from speculation" as news consumers "grapple with the flood of information from blogs, forums, chatrooms and YouTube". As the MICA Minister noted:

> When you venture into new media space, separating the wheat from the chaff is perhaps the most challenging exercise. Even what was once considered solid evidence such as a photograph of a scene or objects must now be carefully scrutinized once you appreciate the power of Photoshop. New media has great "grapevine" value. But in the final analysis, consumers need more than just "grapevine" gossips and commentaries by those with concealed vested interest.[162]

The government's concerns in regulating new media in relation to political debate centre round the fear of false or misleading information and the degradation of the quality of public debate.

First, new media as an informational source is unproblematic if reports in the form of online video clips are "factual". PM Lee voiced concern that people might be misled by jaundiced perspectives, masquerading as "documentaries" or objective news, singling out the anti-Bush histrionics of Michael Moore's politically motivated movies where viewers were ignorant of Moore's motives and political agenda.[163] Additionally, people facing a chaotic torrent of "raw, unprocessed information with instant worldwide impact" may lack discernment to separate conspiracy theories from substantive argument. Without mature reflection, especially on "controversial issues", it would be difficult to keep public debate on a "high plane" where "emotions rather than reason prevail."[164] Thus, the need for "strong moral and social values" to "keep our bearings"[165] and social cohesion in the face of unrelenting change is appreciated. Government concern that it may not get its point of view across is

---

158 *Supra* note 112.
159 "Believe those blogs? Only 1 per cent find them credible" *The Straits Times* (17 March 2006).
160 MICA Minister BY Lee, Annual Press Cocktail Reception, Singapore Government Media Release (23 Nov 2007), online: <http://app.sprinter.gov.sg/data/pr/20071123986.htm>.
161 Sing., *Parliamentary Debates*, vol. 81, col. 1704 (3 April 2006) (B Sadasivan).
162 *Supra* note 159.
163 *Supra* note 111.
164 *Supra* note 112.
165 *Ibid.*

apparent. While it demands a 'right of reply'[166] and has statutory powers to pressurise foreign media by restricting publication circulation, no similar platform for such correction exists for new media. It is difficult to refute wrong views because, while newspaper readership is relatively constant, it is "difficult to identify readers…online. How do you find them to clarify the truth?"[167]

H. *Existing Framework for Regulating New Media*

1. *Class Licensing Scheme*

Singapore does not distinguish between the Internet and other media forms. This is reflected in transferring responsibility for regulating the Internet from the Telecommunications Authority of Singapore, to the Singapore Broadcasting Authority (now the Media Development Authority[168] or "MDA") in 1996.

A chief regulatory tool[169] of the MDA is the Class Licence Framework, set out in the Broadcasting (Class Licence) Notification issued under the Broadcasting Act (BA).[170] This targets Internet Service Providers[171] ("ISPs"), entities who serve as a gateway to Internet content, and Internet Content Providers[172] ("ICPs"), or content-authors, through the registration requirements and compliance with content-restrictions in the Internet Code of Practice (Code). The Code was issued pursuant to section 6 BA, taking effect from 1 November 1997.[173] Individuals are exempted from licensing requirements[174] unless their webpages are used "for business, political or religious purposes."[175]

---

166 Lee Kuan Yew, "Managing the Media"' in *From Third World to First: The Singapore Story 1965-2000*, (Singapore: Times Media, 2000) at 212-225.

167 *Supra* note 112.

168 On 1 January 2003, the Singapore Broadcasting Authority merged with the Films and Publications Department and Singapore Film Commission to form the Media Development Authority under the Media Development Authority of Singapore Act (Cap. 172, 2003 Rev. Ed. Sing.).

169 See Teo Yi-Ling, *Media Law in Singapore*, 2nd ed. (Singapore: Sweet and Maxwell Asia, 2005); Garry Rodan, "The Internet and Political Control in Singapore" (1998) 113 Political Science Quarterly 63; Joseph C Rodriguez, "A Comparative Study of Internet Content Regulations in the United States and Singapore: The Invincibility of Cyberporn" (2006) Asian Pac. L. & Pol'y J. 9:1.

170 Cap 28, 2003 Rev. Ed. Sing.

171 These are StarHub, SingTel's SingNet, and Pacific Internet. An ISP is deemed under Clause 3(1)-(2) to have discharged his obligations under this Code if on receiving MDA notification denies access to web sites with prohibited materials and if it refrains from subscribing (or unsubscribes from) an Internet newsgroup which is likely to contain prohibited material.

172 An ICP discharges his obligation under the Code when the licensee who hosts private discussion for a like chat groups chooses discussion not prohibited under Clause 4 of the Code. All other programmes on the ICP's service should not contain prohibited material and the licensee must deny access to any contributions containing prohibited material "that he discovers in the normal course of exercising his editorial duties, or is informed about", in relation to programmes on his service where other persons are invited to make content contributions for public display, e.g., bulletin boards. This does not apply to web administrators or publishers who have no editorial control over such programmes.

173 This is available online: <http://www.mda.gov.sg/wms.file/mobj/mobj.981.internet_code_of_practice.pdf>.

174 Clause 2(a), Broadcasting (Class Licence) Notification, (15 July 1996), online: <http://www.mda.gov.sg/wms.file/mobj/mobj.487.ClassLicence.pdf>.

175 Definition of "internet content provider", Section 5b, *ibid.*

An ISP is obliged to furnish "such information" and "such undertakings" as MDA may require in connection with its provision of services.[176] Registration is a form of access control in determining the conditions of speech and who may speak. The government considers this a "reasonable and prudent measure" to establish accountability, to deter anonymous persons from "the spurious use of the Internet to spread false information or to inflame emotions, causing hurt to affected parties and harm to society."[177] Registration does not censor content; rather it embodies a norm of the unwritten social constitution that speakers should take responsibility for what they say, as befits a mature citizenry. Political party websites must also be registered with the MDA.[178]

Licensees are obliged to use "best efforts' to ensure prohibited material is not broadcasted through the Internet to "users in Singapore". Clause 2 defines "prohibited material" as being "objectionable on the grounds of public interest, public morality, public order, public security, national harmony or is otherwise prohibited by applicable Singapore laws".

Clauses 4(2) and (3) identify factors to be considered in determining whether material is prohibited; it includes materials promoting sexual violence or coerced sexual activity, those which depict extreme violence and cruelty, incites ethnic, racial or religious hatred and which advocates homosexuality, lesbianism or promotes other deviant sexual behaviour like incest, paedophilia, bestiality and necrophilia, which are criminalized under Singapore law.[179] The MDA can impose sanctions on licensees where internet content contravenes the Code, ensuring that nothing is included in any broadcasting service "which is against public interest or order, national harmony, or which offends against good taste or decency".

2. *Internet Election Campaigning*

In terms of regulating the Internet and technologies like podcasts for General Election campaigning or 'election advertising' purposes, the two primary pieces of legislation are the Parliamentary Elections Act ("PEA")[180] and the MDA administered Class Licence Scheme and Internet Code of Practice.[181] While the Internet is the primary target, as the use of email and SMS "fall within the realm of private communication", using mass email or SMS to influence elections is still governed by general law.[182]

---

[176] Clause 2(1), *ibid.*

[177] Sing., *Parliamentary Debates*, vol. 74, col. 2040 (22 May 2002) (D. Lim) at col. 2067-2068, rejecting the argument that the Sintercom website closed down because its owner did not want to register with the Singapore Broadcasting Authority, noting that registration itself did not disallow criticism of government policies.

[178] Clause 3(1), *supra*, note 172. In 2006, "only a handful of websites" such as the PAP and Worker's Party websites, and that of registered political associations like the Think Centre, had registered with MDA. Sing., *Parliamentary Debates*, vol. 81, col. 1704 (3 April 2006) (B Sadasivan).

[179] Penal Code, *supra* note 4, s. 376G, 377, 377A, 33B.

[180] Cap. 218, 2007 Rev. Ed. Sing. This makes it an offense for anyone to publish such advertising without identifying the name of its printer, its publisher, and the person who is the object of advertising. Section 78A empowers the Minister to make regulations governing non-printed election advertising in an election period.

[181] Sing., *Parliamentary Debates*, vol. 81, col. 1704 (3 April 2006) (B Sadasivan).

[182] *Ibid.*

During the elections period, individuals are not permitted "to provide material online that constitutes election advertising."[183]

Regulating political websites seems predicated on whether their owners intend to champion a political party, and the potential effect of this. While individuals may express their "personal views" on "elections and politics on their website,"[184] individual websites used to "persistently propagate, promote or circulate political issues" must register with MDA. Such websites are acting "like a party website" by seeking "to promote political discussion in a consistent fashion or propagate political ideals" or "to support one party". This approach preserves maximal administrative discretion, as the guidelines for when an individual website acts like a party website are vague.

Registration is a curative to anonymity, which might leave a defamed person sans defendant; it is an incentive to avoid being as vicious as possible in cyberspace, for fear of political libel, bearing in mind the premium accorded politicians reputations in Singapore.[185] It encourages responsibility in political debate, though the flip side is speech may be unduly 'chilled'.

Legislative policy seeks to steer the debate to a higher plane, beyond *ad hominem* arguments and vicious innuendo. The official valuation of diverse opinions is balanced by a concern that "people should not take refuge behind the anonymity of the Internet to manipulate public opinion" as it is "more responsible to engage in political debates in a factual and objective manner."[186] Fears that the Internet would be a source of emotive confusion and misinformation are evident in the policy against using podcasts and videocasts during the election period. Podcasting, "the provision of an audio feed over the Internet to subscribers", does not fall within the "positive list" of permissible activities stipulated by the Election Advertising Regulations issued under the PEA, which seeks to safeguard the "seriousness of the electoral process". Private individuals running local blogs are prohibited from using podcasts during the election period to stream "explicit political content"; the same applies to video streaming. The justification was:

> In a free-for-all Internet environment, where there are no rules, political debates could easily degenerate into unhealthy, unreliable and dangerous discourse flushed with rumours and distortions to mislead and confuse the public. The Government has always maintained that political debates should be premised on factual and objective presentation of issues and arguments.[187]

A converse view is that permitting free expression during elections cultivates a higher degree of political awareness and exposes holders of "deviant or extreme views."[188] Ultimately, the issue is whether policy-makers trust citizen discernment or feel compelled to erect filtering devices to insulate hearers from views considered misleading or harmful.

---

183 *Ibid.*

184 *Ibid.*

185 *Supra* note 45 at 471-476.

186 *Supra* note 180.

187 *Ibid.*

188 "Podcasting: More freedom of expression, not restrictions, will boost Singapore as a hub," online: Online Forum *The Straits Times* (6 April 2006).

3. *Implementation*

Given the manpower or jurisdictional[189] difficulties in policing the internet, or in identifying anonymous bloggers, the government eschews a top-down approach towards internet regulation in adopting a "pragmatic"[190] three-pronged 'light touch' approach. This recognizes the need to co-labour with interested stakeholders such as volunteer groups like the Parents Advisory Group for the Internet[191] and Touch Community Services to promote internet security and responsible self-regulation. This hinges upon "developing public education programmes and industry self-regulation to work hand-in-hand with legal enforcement, so as to keep our online environment safe for all users."[192] Greater reliance is placed on self-regulation than for traditional media.[193]

Principle is not entirely abandoned insofar as the government has blacklisted 100 internet pornography sites, as a symbolic statement of national values.[194]

In terms of legal enforcement, the government adopts a reactive stance in not actively monitoring internet content; this stems from the realistic recognition that "the Internet is a place where there is a lot of rubbish and it is not possible for the Media Development Authority (MDA) to clean it up."[195] The "light touch" approach in this context means the government "does not go after every action that breaks the law"; however, when "bad action in cyberspace can have an impact on the real world", such as racist blogs, the government intervenes.[196]

Further, where a Singaporean encounters offensive internet content, he can lodge a complaint with the MDA[197] or make a police report, that is acted upon and investigated by the Home Affairs Ministry. The minister affirmed that MDA has issued take-down notices and blacklisted objectionable websites in response to specific complaints.[198]

III. The Internet, Political Speech and Democracy

The internet bears "extraordinary expressive and associational potential."[199] The value of free digital speech in a democratic society may be evaluated against the

---

189 Uta Kohl, *Jurisdiction and the Internet—Regulatory Competence over Online Activity* (Cambridge: Cambridge University Press 2007).

190 Sing., *Parliamentary Debates*, vol. 84 (29 Feb 2008) (B Sadasivan).

191 Singapore Initial Report, Convention on the rights of the Child, para 195 CRC/C/51/Add.8.

192 Sing., *Parliamentary Debates*, vol. 81, col. 1710 (3 April 2006) (B Sadasivan).

193 The government noted as a positive sign of self-regulation, the removal of a racially offensive video on Youtube after it was flagged by netters themselves: Sing. *Parliamentary Debates*, vol. 82, col. 2445ff (3 March 2007) (B Sadasivan).

194 Sing., *Parliamentary Debates*, vol. 73, col. 557 (9 March 2001) (YS Lee).

195 *Supra* note 191.

196 *Supra* note 193.

197 As of 2008, the MDA on average receives 1-2 complaints about offensive internet content per month: Sing., *Parliamentary Debates*, vol. 84 (29 Feb 2008) (B Sadasivan).

198 *E.g.* the Floutboy.com website was blacklisted to prevent access to it when it was found to be trading in naked photographs of underaged boys: Sing., *Parliamentary Debates*, vol. 81, col. 1710 (3 April 2006) (B Sadasivan).

199 Lessig, *supra* note 120 at 1752.

argument from truth, self-expression and democracy, which informs how law and policy should develop.

A. *Internet and Democracy: The Bright & Dark Side of the Net*

1. *Altering Political Discourse and the Marketplace of Ideas*

Democracy is served by the freedom to disseminate and receive information on political matters, insofar as this promotes reflective public debate and helps citizens make informed choices. This is rooted in an idea of democratic self-government and political sovereignty.

The Internet has been a boon to deliberative democracy in various ways. First, it has expanded informational flows as a source for alternative knowledge and perspectives ignored by mainstream media. This diffuses power to citizen-journalists. Rather than the few speaking to the many, opportunities for communication are equalized.[200] This 'democratises' ideas, as anyone with computer and internet access can, relatively inexpensively, upload views which may attract a potentially broad audience.

It is harder, in a decentralized setting, to control narrative flow. Thus, altered information dissemination patterns from unregulated sources can correct one-sided presentations of information and views. Through the internet, anyone can publish a 'newsletter', by-passing restrictive government-administered gate-keeping measures. While this aids citizen participation in political debates, it may not necessarily entail political mobilization and action.[201]

2. *Building Quasi Community*

Second, the internet, by facilitating access and networking, creates a new virtual realm where humans associate and interact, forming a virtual quasi 'community' which links like-minded people and affirms their shared views. It allows the marginalized to communicate with each other, which can build intense 'communities' united by shared interests. This method of organizing constituencies both within and across borders may be an impetus for lobbying to promote shared causes.

As an interactive forum, blog posts can be reacted to speedily, as one can reply in one's own words, furthering dialogue through specific interventions and counter-interventions. This can fuel a sense of connectedness with politics and politicians online by enhancing Citizen to Government communication; the Internet may also subject more government action to intense public scrutiny.

However, the low costs of the Internet in facilitating political organization has a dark side, as both legitimate, sensible groups and noxious groups will enjoy a louder voice in public affairs. This asymmetrical amplification of the views of a small group of netizens also produces a 'thin' type of community, as in the somewhat

---

[200] Access costs for traditional media are higher, mostly reserved for professional journalists and the socio-political elite: Barendt, *supra* note 1 at 451.

[201] Bruce Bimber, "The Internet and Political Transformation: Populism, Community and Accelerated Pluralism" (1998) 31 Polity 133 at 143-144.

exaggerated ascription of the term 'blogging community' to a functionalist collection of 13 bloggers advocating Internet de-regulation in relation to political views.[202]

3. *The Internet as Extension of the Public Sphere*

The Internet has altered the infrastructure of discourse in the public sphere, "a zone for discourse in which ideas are explored and a public view is crystallised". This is a locus where participants ideally have equal access to speak and listen, and are armed with sufficient information to permit "rational discourse" in service of general norms which are socially beneficially, where "debate has consequences" in influencing state behaviour.[203]

In facilitating diversified speech, the Internet exemplifies the classic marketplace of ideas which assumes the "best test of truth is the power of the thought to get itself accepted in the competition of the market."[204] This model of speech is based on consumer sovereignty and non-regulation of content. It values choice, rather than paying attention to good choice, in its anti-paternalistic orientation. This American conception of free speech disavows the "authoritative selection" of information in supposing that "right conclusions are more likely to be gathered out of a multitude of tongues…."[205] The dogmatic equation would seem to be "[a]bundance equals choice equals liberty."[206]

However, this presupposes a public forum where ideas can be expressed and evaluated "based on its veracity, not the resources behind it."[207] Certain informational databases may be subscription-based such that hearers do not enjoy parity of informational access. Furthermore, greater informational volume does not mean a higher quality of information, where information is repetitive rather than elucidating public issues or offering genuine insight. The ability of free speech to promote informed debate diminishes where debate turns to the puerile and putrid. The unrefereed nature of online information heightens the prospect of the distortive effects on public debate of inaccuracies; correcting this may be pointless, given the ease of reproducing error on another website. This undermines the argument from truth.

Aside from financial resources, Internet architecture or structure may allow equal access insofar as one can put a view on a website, but not equal exposure. This may be possible on an e-bulletin board where each post is the same as everyone's, provided the moderator does not censor views, but not all websites enjoy equal exposure which means that certain views on less well-known websites may be obscured or simply never discovered. The free marketplace is fictional.

---

[202] Advocating that "such a community needs to be engaged": "Bureaucratic Ambiguity and Internet Freedom" *The Straits Times* (2 May 2008) 27.

[203] Monroe E. Price, "Free Expression and Digital Dreams: The Open and Closed Terrain of Speech" (1995) 22(1) Critical Inquiry 64 at 69-71. However, in the real world, the public sphere is not free from the influence of both the State and the Market in its construction, particularly since the state as censor can regulate communication, while wealth can sponsor certain forms of speech.

[204] Judge Holmes, *Abrams v. United States*, 250 U.S. 616 (1919) at 630.

[205] Judge Learned Hand, *United States v. Associated Press* 52 F Supp 362 (1943) at 372.

[206] *Supra* note 202 at 66.

[207] Shapiro, *supra* note 29 at 16.

B. *And Some Reservations…The Dark Side of the Internet*

Romantic Net Libertarians envision the Internet as an information superhighway or "speech nirvana", fuelled by "the hope for a life of ultimate choice without externally imposed boundaries."[208] Regulation of "the anarchic and bottom up style"[209] of the Internet is considered undesirable,[210] as cyberspace, which is made, not found, is considered to be something new rather than just "an electronic version of ordinary space."[211] Net libertarians question the applicability of general law to cyberspace, given its borderless nature. Do enforcement difficulties render regulation without value?

However, a competing school of thought directs attention to the serious social costs of the Internet, advocating the desirability and viability of regulation. If something in the virtual world has real-world impact, it should be subject to real-world legal control.

As Barendt notes, the strength and weakness of Internet communication is its "directness and immediacy"; unlike traditional media, it does not undergo an editorial review process. Consequently, extremists can get out their views more expeditiously on the internet, such as racist ideology, which can pose a greater public order threat. The issue is not whether the Internet should be a law-free zone, but whether existing legal standards applicable to non-digital speech and traditional media require modification. For example, a person's reputation can be harmed more greatly on the Internet, with its potentially global reach, than through a national broadsheet. Thus, through rapid transmission, even "the most ludicrous allegations can immediately gain widespread currency". [212] The fact of easy access to the Internet for both speaker and hearer suggests "we should be more hesitant to remove reasonable controls."[213]

1. *The Applicability of General Laws: Libel—Free Speech and Competing Interests*

Free speech as a form of individual self-expression must be weighed against competing values. Online defamatory statements may cause irreparable harm to a person's reputation; while recognizing that defamation laws may unduly burden[214] free speech, it is right to extend their application to digital speech. There is nothing intrinsically objectionable in chilling falsehoods as free speech "does not embrace freedom to make defamatory statements out of personal spite or without having a positive belief in their truth."[215] This does not promote truth in debate.

---

208 *Supra* note 202 at 65.

209 Thomas Ulen, "Democracy on the Line: A Review of Republic.Com by Cass Sunstein" (2001) Journal of Law, Technology and Policy 317 at 318.

210 DR Johnson & D Post, "Law and Borders: The Rise of Law in Cyberspace" (1996) 48 Stanford L. Rev. 1367.

211 Lessig, *supra* note 120 at 1743.

212 Barendt, *supra* note 1 at 463.

213 *Ibid.* at 454.

214 James Boyle, "The First Amendment and Cyberspace: The Clinton Years" (2000) 63 Law & Contemp. Probs., 337 at 340-341 (imagining a free speech landscape in the absence of the *New York Times v. Sullivan* rule 376 U.S. 254 (1964)).

215 Lord Nicholls, *Reynolds v. Times Newspaper* (2001), 2 A.C. 127 at 201.

Defamatory statements, by falsely impugning reputation, harm individual dignity. Protecting reputation is a public good in sustaining democratic well-being as "the electorate needs to be able to identify the good as well as the bad."[216] Failure to sufficiently protect reputation may also 'chill speech' by discouraging some from joining the debate where the innocent are required "to endure unjust injury without recourse."[217]

While traditional mass media actors are identifiable and subject to the deterrent of libel suits, which may promote responsible journalism, the Internet is a uniquely anonymous method of communication. Defamatory statements can be rapidly copied and forwarded via mass email or pasted on another web-page, with the click of a mouse. Problems of accountability and attribution may arise in relation to digital political libel; anonymity gives the speaker a licence to defame, increasing the number of speakers who might do so. The solution is to adopt a licensing or registration scheme to handle non-benign forms of anonymity. Libel laws are "surely desirable" if they deter the spread of "wholly unsubstantiated rumours"; only advocates of absolute free speech would argue against the application of libel laws to digital speech, an indefensible view.[218] Issues of attributability, like whether an ISP should be immunized from libel suits for websites they host or subject to strict liability, and republication, may pose complex questions to defamation law, but not to free speech.[219]

The argument that the Internet provides a right of reply to false charges, in order to vindicate reputation, overlooks the fact that this may be ineffective. There are "fundamental inequities of power between speakers on the Internet,"[220] given the Internet's decentralized nature. The efficacy of a right to reply turns on the willingness of others to access this reply. If a person sets up his own website to post a reply, this is itself a passive website awaiting discovery; to enlarge the readership catchment area, the importance of hyperlinks, of linking one's webpage to others, is evident.

Singapore's defamation laws operate in the context where maintaining the public reputation of public men is considered a public good, not merely a private possession.[221] This preserves societal consensus "with regard to the order of precedence"[222] within a 'deference society' where "individuals are accorded status within a hierarchically arranged social order"[223] and reputation is considered a form of honour. This is contrary to the 'egalitarian' spirit pervading digital social norms. Grounded in a "text-based discourse", the Internet strips a person of "the aura and prestige" of office;

---

216 *Ibid.*

217 Hadley, *supra* note 116 at 507.

218 Barendt, *supra* note 1 at 463-464.

219 Where legislation does not hold an ISP responsible as publisher for information provided by a content provider, it may lead a defamed person bereft of a remedy. See *Zeran v. America Online*, 129 F. 3d 227 (4th Cir., 1997) and for a competing UK approach, *Godfrey v. Demon Internet Ltd*, [1999] 4 All E.R. 432.

220 *Godfrey*, *ibid.* at 492.

221 *JB Jeyaretnam v. Lee Kuan Yew*, [1992] 2 Sing. L.R, 310 at 333A-D, 333H.

222 J. Pitt-Rivers, "Honour and Social Status" in JG Peristriany, ed., *Honour and Shame: The Values of the Mediterranean* (Chicago: University of Chicago Press, 1966).

223 Robert C. Post, "The Social Foundations of Defamation Law: Reputation and the Constitution" (1986) 74 Cal. L. Rev. 691 at 722.

he is judged solely by the quality of his ideas.[224] The Internet breeds informality of expression which can easily descend into the vituperative and malicious.

How defamation law balances free expression and reputation depends on the nature of society-individual relations, whether we value speech from the individual speaker's perspective, as an exercise of self-expression, or community values.[225] It also turns on how we value the relational good of reputation which inheres in "the social apprehension that we have of each other."[226] In viewing reputation as a facet of human dignity and identity, defamation law seeks to enforce communal norms or reciprocal rules of civility forming part of the social constitution, where abusive or defamatory communication brings a person into hatred, ridicule or contempt. Such treatment signals that the object of defamation is unworthy of civility and excluded "from belonging as a respected and responsible" member of society.[227] Such community norms "demarcates the boundaries of community membership,"[228] separating members from non-members, defining what is and is not acceptable behaviour. These social boundaries are integral to preserving social stability and community identity.

However, this turns on the extant conception of human dignity, whether rooted in community membership or inherent in atomistic individuals. In the latter individualistic conception, reputation is devalued in favour of freedom from government interference with liberties, including freedom from official enforcement of civility rules. The unencumbered self demands official respect for individual autonomy and 'tolerance', refusing to draw boundaries to shut out the deviant and unacceptable. This is ultimately unsustainable to community, since a boundary-free community lacks "shape or identity" as tolerance is incompatible "with the very possibility of community."[229] Thus, "only a thoroughly demoralized community can tolerate everything."[230]

This defective liberal theory of community has been rejected in Singapore, whose society is 'communitarian', where human dignity is derived from membership in an orderly, cohesive community defined by the reciprocal observance of rules of civility.[231] Here, reputation is related to the public good of maintaining community identity;[232] where a sufficiently grave violation of rules of civility endangers a plaintiff's dignity, defamation law serves to affirm community norms pertaining to civil discourse. Free speech as a reflection of individual self-expression is curtailed by these social standards.

---

224 *Supra* note 92 at 16.

225 *Supra* note 222 at 734.

226 *Ibid.* at 692.

227 *Ibid.* at 711, quoting Karst, "Paths to Belonging: The Constitution and Cultural Identity" (1986) 64 N.C.L. Rev. 303 at 323.

228 *Ibid.* at 713.

229 *Ibid.* at 736.

230 *Ibid.*

231 See Chan Sek Keong, "Cultural Issues and Crime" [2000] 12 Sing. Ac. L.J. 1 at 25, noting that the peaceful co-existence of different communities required a "set of core values that binds together all the ethnic groups in the community."

232 *Supra* note 222 at 713. Over-emphasising 'communitarian' values to service 'statism' and the self-interest of political elites harms the public good of free expression.

2. *Internet and the Degrading of Democratic Debate*

The Internet entails both costs and benefits to deliberative democracy. Sunstein notes that new technologies greatly increase "the opportunities for intrusive, fraudulent, harassing, threatening, libelous or obscene speech."[233] He identifies "two significant risks" from the democratic theory standpoint, which potentially degrade the quality of democratic debate, *viz,* the "absence of deliberation" and "social balkanization."[234]

While an informed citizenry serves public deliberation in making refined public issue choices, the Internet may hinder ideological diversity. Individuals have the "perfect technology of choice"[235] through filtering mechanisms, to selectively focus on certain perspectives, rather than the "the ideas they ought to consider as citizens,"[236] placing them "into echo chambers of their own devising."[237] This customization of information delivery and reception insulates internet users from competing perspectives which challenge their own, denying them the opportunity to cultivate empathy or a shared civic culture between holders of differing views. This engagement with perspectives one might find irritating or disagree with is itself educative and serves the public good.

By building "virtual gated communities"[238] the architecture of speech is altered from an open to closed terrain. A blog subscriber is not exposed to information but to the views of an information processor, which can degrade personal discernment. This creates the illusion of choice rather than actual viewpoint diversity, where ideas ideally interact to yield truth or political insight.[239] Insulation from competing views can reinforce the prejudices and unreflective judgment of hearers, rendering them unable to appreciate the broader range of interests at stake. This undermines public debate as netizens become disconnected by opting out of a shared well of information.

3. *Fractured Politics, Demonisation and the Decline of Civil Discourse*

Additionally, Sunstein fears that individualized control of content unmoderated by competing views may spur group polarization and the dehumanization of one's detractors. This may usher in a "high degree of balkanization"[240] and democracy by soundbite, shrinking the sense of what is shared, which is inimical to meaningful debate[241] and deliberative democracy.

Virtual communities are less able than real communities "at communicating affect, holding participants accountable and creating strong and intimate bonds."[242] Internet-based networking may unite a small group of vocal single issue

---

233 Cass Sunstein, "The First Amendment in Cyberspace" (1995) 104 Yale L.J. 1757 at 1792.
234 *Ibid.* at 1785.
235 *Supra* note 121 at 1410.
236 Barendt, *supra* note 1 at 454.
237 Cass Sunstein, *Echo Chambers: Bush v Gore, Impeachment and Beyond* (Princeton Digital Books Plus, 2001) 16-17, online: <http://pup.princeton.edu/sunstein/echo.pdf>.
238 *Supra* note 29 at 25.
239 *Supra* note 232 at 1763.
240 *Ibid.* at 1787. See also Cass Sunstein, *Republic.com* (Princeton University Press, 2002).
241 *Supra* note 202 at 69.
242 Bimber, *supra* note 200 at 148, quoting Amitai Etzioni, "Communities: Virtual vs. Real" *Science* 277 (July 18, 1997) at 295.

activists, producing a 'thin' community defined by overlapping personal interests, rather than a 'thick' community where private interests are defined by reference to collective goods.[243] Consequently, politics becomes fractured and disoriented from a dialogue about the common good towards issue-based group politics. Within a deliberative democracy, exercises of government power must be justified on reasons which almost all citizens perceive as public-regarding, not merely by force of majority will.

The Internet facilitates some sort of dialogue but does not parallel the face-to-face, responsive debate at a national town meeting where the "intangible normative force of face-to-face contact"[244] filters our impulses. The Internet, by eliciting "false identities and altered personas,"[245] fosters "indulgence in solipsism."[246] The "technological mediation"[247] of the Internet lacks the "constructive inhibitions"[248] accompanying face-to-face interaction such as fostering empathy, conflict avoidance and moderation through "a combination of approval-seeking and condemnation-avoiding behaviour;"[249] conversely, speaker egocentricity and irresponsibility is provoked as online communication "serves to insulate speakers from the consequences of their words and action."[250] This detachment from human contact and anonymity feeds cowardice and encourages uncivil, irresponsible statements.[251] This would be mitigated if Internet interaction complements rather than replaces face-to-face interaction.

One dark side of the Internet regarding deliberative democracy resides in the "simple social fact" of the tendency of individuals, who only listen to views they agree with, to adopt more extreme versions of their original views.[252] The Internet heightens social fragmentation by making it "easy for like-minded people to find each other and to insulate themselves from competing views. In the worst cases, hatred and even violence are possible consequences."[253] Debate no longer becomes the search for truth but rather the clash of competing political agendas. This exacerbates the Internet's flattening of evidence, rendering "truth" into something which no longer "needs to be established through a rigorous sifting of facts."[254]

4. *Horizontal Chilling: Recent Singapore Practice*

Such noxious consequences have visited Singapore, where the Internet has been used as a channel to incite hatred and abuse against people who express their views on

---

243 *Ibid.* at 148.
244 *Ibid.*
245 Sherry Turkle, *Life on the Screen: Identity in the Age of the Internet* (New York: Simon and Schuster, 1995).
246 *Supra* note 200 at 146.
247 *Ibid.* at 151.
248 *Ibid.* at 152.
249 *Ibid.* at 151.
250 *Ibid.*
251 Tan Seow Hon, "A blog on your character" *The Straits Times* (21 April 2005) 25.
252 Cass Sunstein, 'Group Dynamics' (2000) 12 Cardozo Stud. L. & L. 129 and "Deliberative Trouble? Why Groups go to extremes" (2000) 110 Yale L.J. 71.
253 Cass Sunstein, *Designing Democracy - What Constitutions Do* (New York: Oxford University Press, 2001) at 6.
254 Jonathan Eyal, "Truth versus spin: In a tizzy over conspiracies" *The Straits Times* (16 April 2008).

morally contentious questions.[255] This goes beyond the social sanction of 'flaming' (verbal attacks in cyberspace). A clear case in point is the vicious reaction by political activists championing homosexualism to a *Straits Times* opinion-editorial authored by an academic.[256] The article argued for the retention of section 377A of the Penal Code, which criminalizes homosexual sodomy, supporting the government's declared intention to do so in the forthcoming Penal Code amendment debates. Indeed, the 377A debate saw netizens mobilizing into 'repeal 377A' and 'keep 377A' camps, which the Prime Minister observed was a "very well organised campaign."[257]

The *Straits Times* article sparked off vicious online invective and *ad hominem* arguments by insult, undermining public debate in at least two ways. First, hubristic and somewhat hysterical name-calling displaces reasoned debate.[258] Abusive speech which vilifies the speaker and makes distortive bald assertions[259] detract from the substantive merits of an issue, undermining the argument from truth. Here, name-calling was a tactic deployed by radical homosexualism activists to intimidate and silence critics of their far-reaching social agenda and to distract attention from the real issues. This horizontal citizen to citizen 'chilling' is distinct from the 'vertical' or top-down chilling critics charge the government of effecting through restrictive legislation or defamation suits.

Second, the Internet was used to rally homosexualism activists to harass the author. A website called for complaints to be sent to the academic's employer, the National University of Singapore, listed her office and work email and provided links with her faculty website.[260] This is a clear instance of cyber-nuisance, bordering on criminal intimidation.[261]

Aside from threatening academic freedom, this extreme anti-social incivility and intemperate speech reflects both a breakdown in dialogue in favour of irrational attacks. The Internet's impersonal nature perhaps fuels this type of shameful cyber-bullying, rendering public debate "a locus only for harsh competition among political groups with political agendas and a kind of force that originates in powers different from reason itself."[262] If this becomes the norm, it portends a loss of the social capital of trust and may precipitate community decay,[263] if citizens do not evolve a collective political culture of tolerance.

---

255 Jeremy Waldron, *Law and Disagreement* (USA: Oxford University Press, 2001).

256 Yvonne CL Lee, "Decriminalising homosexual acts would be an error" *The Straits Times* (4 May 2007).

257 Sing., *Parliamentary Debates*, vol. 83, col. 2354ff (23 Oct 2008) (PM Lee).

258 See, *e.g.*, the hysterical, irrational harangue of Brian Sibley, "Professor's view on gays prejudiced," online: *The Straits Times* (8 May 2007) ("I struggle to understand why The Straits Times decided to print such a hysterical, homophobic and bigoted diatribe").

259 "Furthermore, specific issues should be debated, rather than making emotional and vague appeals to 'fairness', 'equality', 'inclusivity' and 'tolerance'. The concrete issue is: What should we exclude or include? What should we not tolerate? … Terms like 'dignity' and 'tolerance' are empty apart from a theory of human nature, human good and community…": see Thio Li-ann, *supra* note 113.

260 See, *e.g.*, online: <http://www.trevvy.com/sgboyx/index.php?showtopic=23874&st=120&p=1015030> (Trevvy Forum) and <http://sha0x.blogspot.com/2007/05/below-article-appeared-in-no-surprise.html> (Green Apple Blog). The author raised this incident before Parliament during the Penal Code debates: see Sing., *Parliamentary Debates*, vol. 83, col. 2175ff (22 Oct 2007) (LA Thio).

261 Penal Code, *supra* note 4, s. 506-07.

262 *Supra* note 202 at 71.

263 *Supra* note 200 at 152.

To promote democratic debate, citizens must agree to disagree on morally contentious questions in deference to ideological diversity, and to use democratic channels to influence public opinion, through deliberation rather than hate-mongering and harassment. As Rajah JA noted in *Chee Siok Chin v MHA*:

> Contempt for the rights of others constitutes the foundation for public nuisance. All persons have a general right to be protected from insults, abuse or harassment. Those who improperly infringe or intrude upon such a right to draw publicity to their cause, regardless of the extent and sincerity of their beliefs, must be held accountable for their conduct. The right of freedom of expression should never be exercised on the basis that opinions are expressed in hermetically sealed vacuums where only the rights of those who ardently advocate their views matter.[264]

This comment is apposite for both the real and cyber world, where virtual actions have real world consequences. An insightful news commentator observed that contending with one's adversaries in political debate "is not necessarily inconsistent with respect for one another". In a nation seeking "democratic legs", respectful "emotional interlocution" could be "woven into the patriotic fabric that binds us together." Conversely, "identity politics turns sick when grievances transmute into an all-consuming demonisation of one's opponent." He notes that two law professors who supported retaining 377A had been repeatedly asked online: "Are you stupid, a Christian, or both?" He wrote: "If 'conservatives' or 'Christians' are remorselessly assumed to be redneck hatemongers whom you can't respect as equals, then your politics has degenerated into a pharisaic narcissism."[265]

At best, name-calling reflects an immature level of debate, at worst, a corrosive spite, which might cow citizens from participating robustly in debate, for fear of attracting venomous personal attacks by skilled character assassins.

5. *The Internet and the Social Constitution*

While cyberspace "needs architectures where deliberation and reason and freedom can flourish,"[266] this cannot be considered *in vacuo*. Speech attains significance as communal dialogue by expression in the *agora*, rather than as monologue conducted within fortresses of mutual solitude.

We are defined by how we attribute value to free speech, privacy, due process and equality. The regulator of cyberspace has to make choices in prioritizing between differing values, determining the contours of free expression. Aside from law, regulation will be exercised through ordinary tools of human regulation, including social norms and stigma,[267] which constitute the unwritten social constitution. Such norms animate the call for a voluntary "code of cyber ethics" to promote the "strong social acceptance" of "acceptable norms and behaviour among the netizens."[268]

The current educational curriculum includes a Cyber Wellness programme which exhorts internet users to "have a sense of respect for the Internet and other individuals"

---

[264] [2006] 1 Sing. L.R. 582 at 632.

[265] Andy Ho, "Identity Politics: There are gays and there are gays" *The Straits Times* (10 Nov 2007).

[266] David G Post, "What Larry doesn't Get: Code, Law and Liberty in Cyberspace" (2000) 52 Stanford L. Rev. 1439 at 1459.

[267] Lessig, *supra* note 120 at 1407.

[268] Sing., *Parliamentary Debates*, vol. 82, col. 2445ff (3 March 2007) (P Low).

and not to "abuse the power of the Internet nor condone subversive content."[269] One might argue that individuals who engage in debate have an imperfect obligation, not owed to specific individuals, to preserve civil discourse. This is to serve the discovery of truth and best policy solutions through the force of better argument rather than vacuous rhetoric and insult. Uncivil tactics can do greater harm to free speech as a means to truth in general, whatever 'good' they may confer on a particular cause at stake.[270]

IV. Conclusion

In a globalised world and within a highly wired city-state, censoring ideas is no longer possible. Governments have to relax authoritarian grips over information flows, particularly given enforcement difficulties in relation to digital speech. While new technology alters the modalities and context of discussion, it does not necessarily dispel the need for government regulation. Not all regulation is bad regulation. Even in a borderless world, the legislative and policy boundaries contouring speech demonstrate the social value of law in signaling the boundaries of community, such as the low tolerance for racist speech.

Through a mix of legal norms and administrative policy, the government pragmatically regulates political speech in actual and virtual worlds. Blanket bans are largely a thing of the past, superceded by measured approaches regulating who speaks, where and when political speech is delivered, while maintaining substantive limits through laws protective of racial harmony and public reputation. The government can require transparency by subjecting speakers to registration requirements and can determine how participatory a forum is. Its idealized vision of elevated political debate is that this be "issue-focused, based on facts and logic, and not just on assertions and emotions" pursuant to reaching "correct conclusions on the best way forward for the country."[271] In managing political speech, the government has to balance the competing goals of being an info-communications hub, while retaining socio-political control. In so doing, a calibrated rather than blunderbuss approach is evident in evolving free speech law and policy.

---

[269] Sing., *Parliamentary Debates*, vol. 82, col 2445ff (3 March 2007) (B Sadasivan).

[270] J Budziszewski, "The Moral Case for Manners" (20 Feb 1995) 47(3) The National Review.

[271] Harvard Club Speech, *supra* note 17.