BETWEEN EDEN AND ARMAGEDDON: NAVIGATING 'RELIGION' AND 'POLITICS' IN SINGAPORE

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Typically, inter-religious conflict posed the main threat to racial and religious harmony in Singapore. In 2009, 'soft constitutional law' norms ordering the distinct but overlapping spheres of 'religion' and 'politics' were extended to a newly emergent public order threat to social harmony. This arises where groups advocating religiously-informed values clash with groups advocating liberal-humanistic values to shape legal policy. The 'AWARE controversy' exemplified such 'culture wars'. A non-government organisation leadership tussle became a public order threat when non-religious parties invoked the spectre of religious activism to agitate other religious and secular groups; this episode received presidential and ministerial attention in major policy speeches, reiterating the rules of engagement between religion and politics in a secular democracy. These informal norms are analysed to ascertain the legitimate role of religion in the public sphere as exercises of religious liberty, and what constitutes a religious 'threat' to public order within the constitutional framework.

I. Introduction

On 13th December 1959, self-governing Singapore's legislative assembly sat to debate the Ministry of Culture's Budget. Cultivating national loyalty and a 'Malayan consciousness' was paramount as "in the long run our destinies are settled by what happens in Malaya as a whole".[1] This had to be achieved by deliberate design, not the "hit-and-miss methods of history".[2]

Newly minted Prime Minister ("PM") Lee Kuan Yew underscored "the fact that we are sitting on a Sunday—a day of rest for the Christians". As the various religious groups had different rest-days, the session was "a tribute to the tolerance, liberal approach and understanding of one another's peculiar likes and dislikes" as "you, Mr Speaker, Sir, a Christian, have raised no objection to working on Sunday", while Muslim and Hindu legislators willingly joined the debate, *sans* protest.[3]

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1 Lee Kuan Yew in Sing., *Parliamentary Debates*, vol. 11, col. 1090 (12 December 1959) (Budget, Ministry of Culture).
2 S. Rajaratnam in Sing., *Parliamentary Debates*, vol. 11, col. 1097 (12 December 1959) (Budget, Ministry of Culture).
3 *Supra* note 1 at col. 1085.

The conscious need to manage racial and religious diversity was evident in pre-Independent Singapore; Ceylon, once "the acme of the British theory of gradualism" and now "in the throes of cultural and linguistic conflicts and religious intolerance",[4] was raised as a cautionary tale. Its moral was keeping "arguments and differences of opinions … within bounds", which the government "intensely" appreciated.[5] PM Lee warned of the ensuing chaos "once battle cries and not arguments are used", invoking religion, language and racial differences, whereupon "the answer is the gun".[6] It was "unwise to beat drums in the open"[7] regarding sensitive issues like the state flag.

In balancing the sensitivities of religious groups with varying moral standards towards issues like polygamy, compromise and understanding—not legalistic solutions—were needed until "we are able to produce a relatively homogenous society",[8] reflecting a nascent brand of constitutional pragmatism.

The dream of Federation failed. Singapore became independent on 9 August 1965. Prior to secession in 1963, PM Lee struck an independent note by issuing a declaration on religious freedom for all in Singapore, promising the continuation of the "policy of religious toleration" after Malaya.[9] His government did not intend to enact laws prohibiting propagation of faiths to Muslims, which article 11(4) of the *Federal Constitution of Malaysia (1959)* [*Federal Constitution*] authorised.[10]

The new republic's survivability was threatened by "the Communalists and the Communists".[11] Chauvinism by any community about "one race, one language and one religion" was likely "to arouse counter chauvinism". The antidote was creating "a tolerant multi-racial society" and a "secular nation state" where "obscurantist slogans of one race, one language, one religion" would fade and give way to "the concept of many communities" united as "one compact national unit" bound by "ties of geography, common experience, and economic betterment for all".[12] PM Lee hoped the Singapore model of "a tolerant society not based on the concepts of exclusiveness of race, language, religion" would "help our neighbours" make "similar rational adjustments" to "their own domestic arrangements",[13] which accorded preferential treatment to *bumiputeras*.

Despite nation-building exigencies, a constitutional commission was convened in 1966 to deal with race and religion issues. The revised *Singapore Constitution*[14]

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[4]   *Ibid.* at col. 1089.
[5]   *Ibid.* at cols. 1090-1091.
[6]   *Ibid.* at cols. 1089, 1091.
[7]   *Ibid.* at col. 1090.
[8]   *Ibid.* at col. 1088.
[9]   Statement by the Prime Minister, "Religious Freedom in Singapore after Malaysia" in Sing., *Parliamentary Debates*, vol. 21, col. 261 (29 July 1964).
[10]   *Ibid.* at col. 262. Text of the *Federal Constitution* is available online: <http://confinder.richmond.edu/admin/docs/malaysia.pdf>.
[11]   Yang Di Pertuan Negara's Speech in Sing., *Parliamentary Debates*, vol. 24, col. 6 (8 December 1965).
[12]   *Ibid.* at col. 8.
[13]   PM Lee Kuan Yew, Debate on the Yang Di Pertuan Negara's Address, in Sing., *Parliamentary Debates*, vol. 24, cols. 91, 93, 115 (14 December 1965).
[14]   *Constitution of the Republic of Singapore* (1999 Rev. Ed.) [*Singapore Constitution*]. See Li-ann Thio, "The Passage of a Generation: Revisiting the 1966 Constitutional Commission" in Li-ann Thio & Kevin YL Tan, eds., *The Evolution of a Revolution: 40 Years of the Singapore Constitution* (New York: Routledge-Cavendish, 2009) 7-49.

distanced itself from its confessional Malaysian counterpart in religious matters.[15] Singapore's more liberal article 15 religious freedom guarantee diverged from article 11(4) (which enabled legislatures to adopt laws to control religious propagation directed at Muslims), excising this qualification, as according "special treatment" to "a particular religion" was inconsistent with a "democratic secular state".[16]

In debating the Commission report, the problem of tolerance related to how to stabilise a plural society divided along racial, linguistic or religious lines. The solution to the minorities problem was to focus on equal citizenship and equal rights rather than special group protections and to avoid "extreme philosophies of political forms of government based on ethnic, religious and linguistic loyalties".[17]

In 2009, when Singapore celebrated her self-government jubilee, PM Lee Hsien Loong made racial and religious harmony a focal point of his National Day Rally ("NDR") Speech, highlighting the vulnerabilities owing to racial or religious fault lines. This was a hortatory reminder of existing guidelines about the nature of religion-state relations and the extent to which religion had a legitimate role to play in public life, which encompassed but transcended 'politics'.

The close study of the standards or guidelines reiterated in this NDR Speech and its antecedents, which operate within the existing legal framework, is warranted for various reasons.[18] First, they illumine the constitutional model of "accommodative secularism".[19] Second, they clarify the scope of religious liberty and the type of 'religious' threats considered to imperil public order in addressing the ground rules concerning religious participation and activism in the public sphere, and the inter-relating between religious groups. Third, these reiterated guidelines, while not formally contained in a legally binding document, embody a form of 'soft constitutional law'.[20] This turn to informal modalities of regulation, reflective of constitutional pragmatism and a relational, rather than rights-based legal culture, points to the limits of legal solution in managing relational harmony between distinct groups to preserve peace. Fourth, existing government standards for managing racial and religious harmony have had to be extended to the newly emergent public order threat to social harmony where religious and non-religious groups clash over the 'culture wars' or struggle over public values and morally contentious issues.

Part II sets out Singapore's constitutional arrangements concerning state-religion relations and the different approach towards regulating the internal and external dimensions of religious freedom. Part III discusses how the external dimension of religious liberty may be regulated. It examines the social dimension of religion in

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[15] The *Federal Constitution* identifies Islam as the religion of the Federation (art. 3(1)) and authorises the state to maintain Islamic institutions (art. 12(2)). See Joseph M. Fernando, "The Position of Islam in the Constitution of Malaysia" (2006) 37:2 Journal of Southeast Asian Studies 249.

[16] 1966 Constitutional Commission Report at para. 38, reproduced in Kevin YL Tan & Thio Li-ann, *Constitutional Law in Malaysia and Singapore*, 2nd ed. (Singapore: Butterworths Asia, 1997) in Appendix D.

[17] PM Lee Kuan Yew in Sing., *Parliamentary Debates*, vol. 25, col. 1284 (15 March 1967) (Report of the Constitutional Commission).

[18] *Maintenance of Religious Harmony Act* (Cap. 167A, 2001 Rev. Ed. Sing.) [*MRHA*], *Sedition Act* (Cap. 290, 1985 Rev. Ed. Sing.) [*Sedition Act*] and the *Penal Code* (Cap. 224, 2008 Rev. Ed. Sing.) [*Penal Code*] (offences against religion).

[19] *Nappalli Peter Williams v. Institute of Technical Education* [1999] 2 S.L.R. 569 at 576G (C.A.) [*Nappalli*].

[20] Thio Li-ann, "Constitutional 'Soft' Law and the Management of Religious Liberty and Order: The 2003 Declaration on Religious Harmony" [2004] Sing J.L.S. 414.

informing public morality and democratic practices and how liberal states seek to
resist such influence by privatising faith. It identifies the soft rules of engagements
applied to different aspects of public life such as ideological disputes or keeping a
physical secular common space to promote integration among different faiths, and
differentiates between the religious actors involved. It examines what the government
considers to be anti-models in turns of growing religiosity in politics. It finally evalu-
ates long-standing and newly emergent threats to public order involving disputes with
a religious element, whose parties could be inter-religious or religious/irreligious.
The recent 'AWARE controversy', which was referenced in major policy speeches in
2009, exemplifies a new threat to social harmony where non-religious parties invoke
the spectre of a religion to cause disquiet among other religious and secular groups.
The government adopted a hands-off approach over what was a private NGO's dis-
pute and only intervened after it assumed a public dimension. The new rules of
engagement for such scenarios are examined, implicating the government, religious
and secular sectors of civil society and the role of the press—the latter can create a
moral panic by provocatively portraying an issue in a manner which further invokes
concerns of religious overreaching into the public domain. The section ends with
reflections on the various meanings that may be attached to the duty of 'tolerance'
in conflicts bearing religious elements. Part IV concludes with observations on the
recourse to soft guidelines and regulatory methods, in navigating the competing and
complimentary domains of 'religion' and 'politics'.

II. The Constitution and Religion

Both law and religion, as comprehensive normative systems, have been "potent
ancient forces in human life"[21] as methods of thinking, engaging reality and regu-
lating social life. Religious values influence legal tradition "directly or through the
conduit of moral sensibility".[22]

The introduction of secular legal orders disrupted polities where religion and
politics were united. Secularism as a principle of limited government is predicated on
the 'state' and 'religion' having separate competences. Salleh Abas L.P. in *Che Omar
bin Che Soh v. Public Prosecutor*[23] recognised that the introduction of the English
common law into the Malayan Peninsula severed the "divine source of legal validity",
bifurcating Islam "into two separate aspects", the public and private. Previously,
Sultans were both religious and political leaders in their state. Colonialism placed
the general law on a secular basis and confined Islamic law to matters like marriage
and inheritance.

As a constitutional principle, 'secularism' is a multi-vocal term. It is not an abstract
universal imperative but a contested politico-legal concept.[24] Despite the silence of
the constitutional text, a principle of secularity may be implied.[25] The Singapore

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[21]   Perry Dane, "Constitutional Law and Religion" in Dennis Patterson, ed., *A Companion to Philosophy
       of Law and Legal Theory* (Cambridge, Mass.: Wiley-Blackwell, 1999) at 113.

[22]   Dane, *ibid.* at 113.

[23]   [1988] 2 M.L.J. 55 (Supreme Court, Malaysia).

[24]   See András Sajó, "Preliminaries to a Concept of Constitutional Secularism" (2008) 6 Int'l J. Const. L. 605
       and Lorenzo Zucca, "The Crisis of the Secular State—A Reply to Professor Sajó" (2009) 7 Int'l
       J. Const. L. 494.

[25]   Inferences may be drawn from original intent discerned from constitutional drafting (1966 Constitutional
       Commission Report at para. 38, reproduced in Kevin Y.L. Tan & Thio Li-ann, *Constitutional Law*

model of 'secularism with a soul'[26] is anti-theocratic but not anti-religious,[27] and has certain key features.

First, secularism relates to the source of *political authority*, the "supreme source" being the *Singapore Constitution*, which guarantees religious freedom.[28] Political rights and democracy are to be secured not by religious institutions but secular safeguards, including the press, judicial review, parliament and the ballot box.[29]

Second, the Singapore model is distinct from French *laïcité* or the Turkish model of strict *separation*, and does not preclude the *co-operation* of religion and state,[30] for example, in delivering social welfare services. The government is "secular but not atheistic"[31] and represents Singaporeans of "all beliefs, including those without a religion".[32]   The government does not promote religious orthodoxy or punish heresy[33] and seeks to treat religions even-handedly and to keep the peace: "We hold the ring so that all groups can practise their faiths freely without colliding with one another."[34]

The *Singapore Constitution* "does not prohibit the 'establishment' of any religion",[35] in the sense of official recognition, pecuniary or non-pecuniary support. Article 153 enjoins Parliament to enact legislation regulating Muslim religious affairs and to set up an advisory Islamic Religious Council. The *Administration of Muslim Law Act*, which established religious courts and deals with personal law, derives its authority not from a divine text but through secular fiat.[36] To protect religious

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in Malaysia and Singapore, 2nd ed. (Singapore: Butterworths Asia, 1997) in Appendix D; judicial pronouncements (*Nappalli, supra* note 19 at 576G); and ministerial declarations and government papers (*Maintenance of Religious Harmony White Paper* (Cmd. 21 of 1989); *Shared Values White Paper* (Cmd. 1 of 1991)). See generally Thio Li-ann, "Control, Co-optation and Co-Operating: Managing Religious Harmony in Singapore's Multi-Ethnic, Quasi-Secular State" (2005) 33 Hastings Const. L.Q. 197.

26   Zainul Abidin Rasheed in Sing., *Parliamentary Debates*, vol. 74, col. 2162 at 2220 (23 May 2002).
27   *Maintenance of Religious Harmony* ("*MRH White Paper*") (Cmd. 21 of 1989) at para. 5: "The Government should not be antagonistic to the religious beliefs of the population." See also Yu-Foo Yee Shoon in Sing., *Parliamentary Debates*, vol. 75 (21 January 2003) (Threat of Terrorism): "Singapore is not a theocratic state. It is a secular state." The government appreciates both the constructive and destructive aspects of religion in relation to social stability. Contrast para. 6 with the 3 threats to racial and religious harmony identified in the *MRH White Paper*.
28   President Wee Kim Wee, "President's Address" in Sing., *Parliamentary Debates*, vol. 52, col. 11 (9 January 1989).
29   *MRH White Paper, supra* note 27 at para. 21.
30   Kuah-Pearce Khun Eng, "The Poetics of Religious Philanthropy: Buddhist Welfarism in Singapore" in Bryan S. Turner, ed., *Religious Diversity and Civil Society: A Comparative Analysis* (Oxford: Bardwell Press, 2008) 167-187.
31   "Government is secular: not atheistic: BG Yeo" *The Straits Times* (Singapore) (8 October 1992) 2.
32   "SM: Guard against religious enclaves" *The Straits Times* (Singapore) (3 August 2009).
33   Part IX of the *Administration of Muslim Law Act* (Cap. 3, 1999 Rev. Ed. Sing.) [*Administration of Muslim Law Act*] lists Muslim-specific offences such as cohabitation outside marriage which the *Syariah* courts implement.
34   PM Lee Hsien Loong, National Day Rally Speech (16 August 2009), text available online: <http://www.pmo.gov.sg/News/Messages/National+Day+Rally+Speech+2009+Part+3+Racial+and+Religious+Harmony.htm> [*NDR Speech 2009*].
35   *Colin Chan v. Public Prosecutor* [1994] 3 S.L.R. 662 at 681F [*Colin Chan*]. Contrast this with the anti-establishment U.S. First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."
36   Lily Zubaidah Rahim, "Governing Islam and Regulating Muslims in Singapore's Secular Authoritarian State", Working Paper No. 156 (July 2009) (Asia Research Centre, Murdoch University), online: <http://wwwarc.murdoch.edu.au/wp/wp156.pdf>.

minorities, the law allows for religious-based exemptions.[37] There is some inter-action of law and religion, even if secular law facilitates and thereby limits some aspects of *Syariah* (religious) law.

Third, beyond the *Syariah* court system, divine law is not an accepted source of *legal authority*.[38]

Fourth, article 15(1) of the *Singapore Constitution* protects both the *internal* and *external* aspects of religious freedom: "Every person has the right to profess and practise his religion and to propagate it." The right to profess (and disavow) a faith is internal and absolute as freedom of conscience is at stake and religious freedom "is premised on removing restrictions to one's choice of religious belief".[39]

However, the external aspects of 'practice' and 'propagation' may be regulated by "general laws" which are invoked to preserve "public order, public health or morality", as article 15(4) allows. Complaints that executive action infringed article 15(1) could "only be regarded as being of some substance if it was arguable that the restriction imposed had nothing to do with public order, public health or morality".[40]

III. Between Liberty and Order: Regulating the External Aspects of Religious Liberty

The third PM Mr. Lee Hsien Loong in his 2009 NDR Speech called Singapore a "Garden of Eden" state where "we are happy, where things are working", warning "if you leave the Garden of Eden, you cannot get back in again".[41] In invoking the Judeo-Christian idea of Paradise, the spectre of Armageddon, of an epic battle, was also raised. The dystopia to be avoided was that of states riven by religious communalism, such as the 2002 Hindu-Muslim riots in Gujarat. This reflects the state's perennial ambivalence towards religion, valued for its social contribution and feared for its disruptive potential.

A. *Risk Management in a Religiously Plural Society*

In raising the need to manage the social implications of the global and local trend of growing religiosity,[42] PM Lee returned to a theme recurrent in Singapore political

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[37] *E.g.*, *madarasahs* (religious schools) are exempt from the *Compulsory Education Act* (Cap. 51, 2001 Rev. Ed. Sing.). See Mukhlis Abu Bakar, "Between State Interests and Citizen Rights: Whither the Madrasah" in Noor Rahman & Lai Ah Eng, eds., *Secularism and Spirituality: Seeking Integrated Knowledge and Success in Madrasah Education in Singapore* (Singapore: Marshall Cavendish Academic, 2006) 29-48

[38] The court in *Pte Chai Tshun Chieh v. Chief Military Prosecutor* [1998] M.C.A. 1 rejected the argument by a pacifist Jehovah's Witnesses that he was not bound to obey secular military orders as his religion's sacred texts was a higher law than man-made law.

[39] *Nappalli*, *supra* note 19 at 576G; *MRH White Paper*, *supra* note 27 at para. 5 describes the government's duty as being "to ensure that every citizen is free to choose his own religion".

[40] Prakash J. in *Colin Chan v. MITA* [1995] 3 S.L.R. 622 at 654E-G. This is an expansive construction of a limit on rights and one awaits a more sustained judicial treatment of limits on rights limiting clauses: see *e.g.*, Robert Alexy, "The Limits of Constitutional Rights" in *A Theory of Constitutional Rights* (New York: Oxford University Press, 2002) 178-222.

[41] *NDR Speech 2009*, *supra* note 34.

[42] In discussing the 'macro' effects of religious revivalism, PM Lee referred to the situation in the United States where "the Christian Right is a powerful influence, setting the agenda, influencing who can be

discourse.[43] This evidences the spectacular failure of the secularisation thesis which wrongly posited that modernisation ('rationality') would see the demise of religious commitment ('faith').[44] PM Lee reiterated three risks identified some 20 years before in the white paper preceding the enactment of the *Maintenance of Religious Harmony Act* ("*MRHA*").[45]

The first risk related to "aggressive preaching or proselytisation", which could in offending listeners whose sensitivities might overwhelm rationality,[46] trigger inter-communal tension. Religion is located in the extra-rational realm of emotions and passions, which can trigger violence, as exemplified in the 1950s Hertogh riot. This apparently affirms the 'secular rationality'/'religious faith' binary, which discounts the irrational genocidal imperatives of 20th century antitheistic fascist and communist regimes. However, the possibilities of discussing "gut issues of race and religion" with rational maturity after 9/11 has been acknowledged.[47]

Second, "intolerance" or "extremism" in not accommodating or respecting the religious beliefs of others. This could occur within families, as where children refused to perform traditional funeral rites for their parents which they considered contrary to their new faith. This "ultimate unfilial act" from the traditionalist standpoint is a function of mutually exclusive religions, given that distinct tenets and epistemologies of religious belief cannot be synthesised.[48]

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elected, what policies they pursue". He also discussed the Islamicisation of Malaysia, Indonesia, the Xinjiang riots in China and conflicts between Buddhists and Christians in South Korea: *NDR Speech 2009*, *supra* note 34. See also 'Three effects of religious fervour' *The Straits Times* (Singapore) (17 August 2009); *MRH White Paper*, *supra* note 27 at para. 11.

43 In 1987, the government commissioned an academic report to assess trends relating to religious fervour and intensifying evangelism activities: see Eddie C.Y. Kuo, Jon S.T. Quah & Tong Chee Kiong, *Religion and Religious Revivalism in Singapore*, Report prepared for the Ministry of Community Development (October 1988). The fear was that active proselytisation would disrupt the religious equilibrium. It has also observed in the *MRH White Paper*, *supra* note 27 at para. 10, that "[r]eligionists were gravitating towards strongly held exclusive beliefs, rather than the relaxed, tolerant acceptance of a co-existence with other faiths."

44 The binary treatment of rationality and faith has been discredited in a postmodern age where Reason no longer occupies the ideological pedestal, having dethroned Revelation. Instead, both Reason and Revelation co-exist side by side with other claims to epistemological supremacy such as intuition, insight, emotion *etc*. See Hunter Baker, "Competing Orthodoxies in the Public Square: Postmodernism's Effect on Church-State Separation" (2005) 20 J.L. & Religion 97.

45 This empowers the government to issue restraining orders on four grounds against religious leaders (or any person who incites religious groups) who cause inter-religious hostility, commit subversive activities or promote political causes under guise of "propagating or practising any religious belief". No order has ever been issued under this Act: Sing., *Parliamentary Debates*, vol. 82, col. 1319 (12 February 2007) (Maintenance of Religious Harmony Act: Number of Restraining Orders issued).

46 *MRH White Paper*, *supra* note 27 at para. 5 states the government's duty is to ensure that citizens in exercising religious freedom rights do not infringe "upon the rights and sensitivities of other citizens". "Sensitivities" is a vague standard capable of injecting arbitrariness into the process of rights adjudication.

47 In relation to building trust between Muslims and non-Muslims, see Deputy PM Lee Hsien Loong, "Building a Civic Society", Harvard Club of Singapore 35th Anniversary Dinner (6 January 2004), online: <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan015426.pdf> [*Harvard Club Speech*].

48 The court acknowledged the incompatibility of Christianity and Sinchew rites in *Bermuda Trust v. Wee Richard* [2000] 2 S.L.R. 126 at 136E (H.C.).

Third, religious "exclusiveness" or social ghettoisation where members of religious faiths refuse to mix with those of other faiths, in not sharing meals or disapproving of yoga[49] "because you think there is something religious there". This lack of interaction and the gravity of separated religious communities is exacerbated as "racial distinctions accentuate religious ones. Religious polarization will cause sectarian strife." Religious toleration and moderation was essential to "harmonious and easy racial relationships".[50]

Between the guarantee of religious liberty and its limits as embodied in articles 15(1) and (4) of the *Singapore Constitution*, the sphere of ordered liberty must be defined and negotiated. Typically, courts play a key interpretive role and have tended to accord determinative weight to public order considerations.[51]

Religious liberty cases involve individual allegations of violated rights, a contest between religious expression or duty and general law. However, religious liberty issues go beyond justiciable cases, encompassing 'situations' where the official admonition is to keep 'religion' and 'politics' separate. To this end, a variety of hard law and 'soft law' techniques are deployed.[52]

However, there is no tidy legal dichotomy clearly dividing 'religion' from 'politics'. Difficult questions relate to who defines religion, whether the government's characterisation of an issue as 'political' automatically trumps religious claims or whether sufficiently compelling state interests must be shown. What is needed for clarity's sake is a nuanced approach towards understanding what 'religion' and 'politics' encompass, the variety of situations where these engage and when they should interact or be separated in the public sphere.

B. *Civitas Dei and* Civitas Mundi*: When Worlds Collide and Orthodoxies Clash*

The secular/religion binary is one that shifts and is based on arbitrary criteria; Postmodernist Stanley Fish deems it a "mission impossible" to define these categories.[53] The boundaries between 'religion' and 'politics' will, from the political side, rest on "a general public respect for religion or for the purposes served by religion".[54]

Disrespect for religion will lead to its privatisation, trivialisation and incapacity to shape social mores.[55] The liberal state facilitates such privatisation by relegating religion to "the interior space of personal belief in return for protection by (and from) the state".[56] This stems from the European Enlightenment tradition

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49 Muslims are allowed to do yoga but only for the sole purpose of health, rather than reciting the beliefs of other faiths: "Yoga Strictly for Exercise: MUIS" *The Straits Times* (Singapore) (28 November 2008).
50 *Supra* note 28.
51 *E.g.*, *Colin Chan*, *supra* note 35 at 681G.
52 Eugene K.B. Tan, "From Clampdown to Limited Empowerment: Soft Law in the Calibration and Regulation of Religious Conduct in Singapore" (2009) 31 Law & Policy 351.
53 Stanley Fish, "Mission Impossible: Settling the Just Bounds between Church and State" in Stephen M. Feldman, ed., *Law and Religion: A Critical Anthology* (New York: NYU Press, 2000) 383.
54 Ralph C. Hancock, "Monistic and Dualistic Paths to Radical Secularism: Comments on Tushnet" (1993) B.Y.U. L. Rev. 141 at 141.
55 See generally Stephen L. Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* (New York: Basic Books, 1993).
56 Tracy Fessenden, "The Secular as Opposed to What?" (2007) 38 New Literary History 631 at 633-634.

which valorises 'reason' and informs the premise of political liberalism that, for the sake of social unity, public discourse must rely on non-sectarian arguments and be assessed in terms of commitments all citizens can share. The liberal state claims to be 'neutral' as its concern is to preserve individual choices about the good life, remaining agnostic about the actual choices made. Thus, moral judgment is a matter for personal self-determination, consonant with the core principle of individual autonomy.

However, the liberal state is not substantively neutral, in seeking to remake the public sphere in the image of the secular liberal dogma of 'choice' and 'preference',[57] which is a political agenda. 'Neutrality' is not a political possibility as society cannot be organised without imposing substantive solutions to concrete cases.[58] Secular liberalism "is not a neutral view from nowhere"[59] nor does this formula "exhaust ways of living meaningfully".[60] It treats secularism as "the absence of religion rather than the presence of a particular way of looking at the world or … as ideology".[61] Liberal ideals like individualism, toleration or limiting state powers seem to be "mere covers for hegemonic designs".[62]

By making human desire and human will the basis for public policy, it appears that the 'thin' liberal theory of human good is none other than hedonism,[63] a deficient basis for social ordering. In a postmodernist age, liberalism has been exposed as "just another ideology"[64] whose claims for "moral reconstruction" are "necessarily intolerant".[65]

The radical secularist exclusionary leanings of certain expressions of political liberalism have been resisted and criticised as illiberal in restricting rights of free conscience, free speech and equal citizenship,[66] and for denuding public discourse of the moral resources religion provides.[67]

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[57]   James Kalb, "The Tyranny of Liberalism" (2000) Modern Age 241.

[58]   As Kalb notes: "What the neutrality of liberalism amounts to is its ability to keep the substantive moral views it enforces invisible, thus removing moral disputes from politics and *so* preventing challenges to its own positions from even being raised. That quality gives liberalism an advantage in public discussion that has so far been insuperable." *Ibid.* at 242.

[59]   Fessenden, *supra* note 56 at 635.

[60]   Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton, N.J.: Princeton University Press, 2005) xi-xii.

[61]   Craig Calhoun, "Secularism, Citizenship and the Public Sphere" (2008) 10:3 The Hedgehog Review 7 at 8.

[62]   Raymond Guess, "Liberalism and Its Discontents" (2002) 30 Political Theory 320 at 321.

[63]   The "fatal flaw" in liberalism is "its defective theory of the good" as the need to define this cannot be "sidestepped by ignoring goods in favour of wants". Thus treating "desire" as that which "determines rational action" identifies "the good with what is desired". Hence, the "liberal theory of the good is hedonism". Kalb, *supra* note 57 at 247.

[64]   Michael W. McConnell, "'God is Dead and We have Killed Him!': Freedom of Religion in the Post-Modern Age" (1993) B.Y.U. L. Rev. 163 at 182-183.

[65]   Kalb, *supra* note 57 at 242-243.

[66]   Michael W. McConnell, "Five Reasons to Reject the Claim that Religious Arguments Should Be Excluded from Democratic Deliberation" (1999) Utah L. Rev. 639; Alan Brinkley, *Liberalism and its Discontents* (Cambridge, Mass.: Harvard University Press, 2000); Robert Audi & Nicholas Wolterstorff, *Religion in the Public Square: The Place of Religious Convictions in Public Debate (Point/Counterpoint)* (Maryland: Rowman & Littlefield, 1996); Terence Cuneo, ed., *Religion in the Liberal Polity* (Notre Dame: University of Notre Dame Press, 2004).

[67]   Robert George, *The Clash of Orthodoxies: Law, Religion and Morality in Crisis* (Wilmington, Del.: ISI, 2001).

Religious views contribute to the constitutional discourse on what "public morality"[68] is. A fluid concept,[69] this refers to a community's moral ecology[70] as "understood by the people as a whole",[71] being part of the branch of knowledge that deals with "right and wrong and with duty and responsibility".[72] It is recognised as "an ingredient in the formulation of common law"[73] and indeed, prevailing community morality is a source of public policy.[74] In jurisdictions where the boundaries between religion and law are more permeable, religious values inform public policy.[75] The government recognises that for many Singaporeans, religion is "the source of their sense of morality, social duty and concern for their fellow men".[76] It contributes to a virtuous citizenry.

Unsurprisingly, where religious morality and irreligiously-derived morality collide, there is a clash of orthodoxies not susceptible to an overlapping consensus. This implicates the role of religion in a secular democracy and public debate.

C. *Public Role of Religion in a Democracy*

To defend democracy, secularists believe in minimising religious influence on politics, motivated by the fear of lurking theocrats "scheming to impose an official theocratic order".[77] Their agenda is "to effect a thoroughgoing separation of religion and politics at the level of civil society".[78]

However, this discounts the social dimension of religion and its historical contribution in resisting totalitarian regimes and injustice.[79] Religious associations are

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[68] This flows from "some prevalent conception of good morals, some deep-rooted tradition of the common weal". Judge Cardozo in *Loucks v. Standard Oil Co. of New York* (1918) 120 N.E. 198 at 202, approvingly quoted by Lord Nicholls, *Kuwait Airways Corp. v. Iraqi Airways Company* [2002] 2 W.L.R. 1353 at para. 17 (H.L.).

[69] *Brij Gopal's case* A.I.R. 1979 Madh Pra 173. See also the Singapore Court of Appeal decision of *Liao Eng Kiat v. Burswood Nominees Ltd.* [2004] 4 S.L.R. 690 (discussing whether the enforcement of foreign gambling debts was contrary to Singapore public morality and policy).

[70] Robert George, "The Concept of Public Morality" (2000) 45 Am. J. of Jurisprudence 17.

[71] *Manohar v. State of Maharashtra* A.I.R. 1984 Bombay 47 at 57, cited by the Malaysian Court of Appeal in *Sivarasa Rasiah v. Badan Peguam Malaysia* [2006] 1 M.L.J. 727 at 741B.

[72] *Black's Law Dictionary*, 7th ed. at 1025, cited by the Malaysian Court of Appeal in *Sivarasa Rasiah v. Badan Peguam Malaysia* [2006] 1 M.L.J. 727 at 740.

[73] *Perumahan Wira Seberang Sdn Bhd v. Hong Leong Finance Bhd.* [1999] 5 M.L.J. 549 (High Court, Pulau Pinang).

[74] Chan Seng Onn J. in *Desert Palace Inc. v. Poh Soon Kiat* [2009] 1 S.L.R. 71 at para. 45, discussing the enforcement of wagering contracts and changing social attitudes towards gambling, quoting *Hotels Corporation (Puerto Rico) v. Golden* 15 N.Y. 2d 9 (1964) at 14-15.

[75] *E.g.*, in *The Ritz Hotel Casino v. Datuk Seri Osu Haji Sukam* [2005] 6 M.L.J. 760 (High Court, Kota Kinabalu), Ian Chin J. at para. 10 described 'Belief in God' as "one of the principles of our national philosophy" or Rukun Negara. He noted that Malaysians were "a God-fearing people" and that gambling, a form of covetousness, was "against" the principle of "Belief in God". Thus to allow the enforcement of judgment for a gambling debt was against the Rukun Negara and "[a]nything that seeks to go against the Rukun Negara must surely be regarded as against public policy."

[76] *MRH White Paper*, *supra* note 27, at para. 45.

[77] Jean Bethke Elshtain, "Religion and Democracy" (2009) 20:2 Journal of Democracy 5.

[78] *Ibid.* at 8.

[79] This would include the anti-slavery efforts of Christian parliamentarian William Wilberforce, the Black US civil rights movement of the 1960s led by Martin Luther King, and the Polish Catholic church's role in resisting Communism.

part of what Edmund Burke famously called the "little platoons" or mediating bodies that exist between the state and individual, mitigating demands that individuals be subject to majoritarian will.[80]

Alexis de Tocqueville feared the potential negative effects of democracy on a society's moral ecology. He appreciated the role Religion played in moderating the democratic process by placing "the object of man's desires above and beyond the treasures of earth" thus raising his "soul to regions far above those of the senses",[81] tempering individual independence. While democracy lowered tastes and passions, religion strengthened morals and manners[82] and could bolster a sense of duty to the common good beyond immediate self-interests, cultivating the necessary moral habits of citizens in a democracy.

Nonetheless, views strongly diverge as to whether religion should have a strong public role in the democratic public sphere. This again turns on how one defines and structures the inter-relationship between 'religion' and 'politics'. Overlap between the spheres of law/politics and religions is inevitable, especially for religions like Islam where "faith encompasses all aspects of life".[83] The government implicitly recognised this overlap in identifying specific laws which "pose moral or religious questions" to some faiths.[84] In these cases, the secular law trumps the sacred and 'politics' assumes hierarchic authority over 'religion' in matters like military service and abortion, which contravene commitments to pacifism and the right to life of the unborn.[85] While refusing to perform military service contravenes general law which criminalises abstention, clear "issues of conscience" like abortion are considered subject to personal determination and on such matters "religious groups … properly take positions and preach to their followers".[86]

There are different modes of participating in 'public life', which encompass electoral politics, public policy debate, social welfare activities and shaping public culture and communal norms. Government issued non-binding rules of engagement differentiate between types of public activity (some innocuous, some dangerous to civil peace) and the relevant object to whom these soft norms apply.

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[80]   In contrast, Jean-Jacque Rousseau argued that to state the general will, there had to be "no partial association within the State." Cited in Carol Blum, *Rousseau and the Republic of Virtue* (Ithaca, NY: Cornell University Press, 1986) at 111.

[81]   Alexis de Tocqueville, *Democracy in America*, trans. by Henry Reeve (Cambridge: Sever & Francis, 1863) vol. 11 at 25.

[82]   "Religion considered as the guardian of mores, and mores are regarded as the guarantee of the laws and pledge for the maintenance of freedom itself." Alexis de Tocqueville, *Democracy in America* extracted in Robert Dahl, Ian Shapiro & José Antonio Cheibub, eds., *The Democracy Sourcebook* (Cambridge, Mass.: MIT Press, 2003) 455 at 457.

[83]   *MRH White Paper*, *supra* note 27 at para. 25. *E.g.*, MUIS offered both religious grounds (Islamic tenets require honest work) and social grounds (high social costs of disproportionate effect of gambling on youths from lower income groups, *i.e.* Malays) in disapproving a proposal to have casinos in Singapore: "Muis against having a casino" *The Straits Times* (Singapore) (11 February 2005) H7.

[84]   *MRH White Paper*, *supra* note 27 at para. 25.

[85]   *Ibid.* at para. 26.

[86]   *Ibid.* at para. 26(a) and (b).

1. *Religion and Public Life*

The government welcomes and co-operates with the constructive work of religious group in providing social welfare services,[87] such as "educational, community and social work, running schools, helping the aged and the handicapped, and operating *crèches* for children".[88]

The desire to encourage this sort of contributions is evident. Even after the government decided to allow casinos in Singapore despite the social costs, and over strong religious protestations,[89] PM Lee urged disappointed religious groups to remain engaged and hoped that "the religious groups will work together with the government to help to build strong families, which are the basic units of an [*sic*] resilient and stable society".[90] He affirmed that "[r]eligious faith is a powerful force motivating Singaporeans to help their fellow citizens, not just gambling addicts."[91]

The government has involved the religious leadership in national events, such as mourning national tragedies like the SilkAir aircraft crash,[92] or even inviting leading representatives to attend the 2009 NDR, which sends a significant message.[93] Representatives of the "major religions in Singapore"[94] also staff two-thirds of the Presidential Council for Religious Harmony which advises the President on *MRHA* restraining orders.[95]

Nonetheless, religious groups are warned not to "stray beyond these bounds … by venturing into radical social action";[96] religious groups "must not get themselves involved in the political process" regardless of whether actions are taken to

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[87] "Religious groups and individuals who hold deep religious beliefs are often active in social issues, and make important contributions to the well-being of our society". *Today* (Singapore) interview with Deputy PM Wong on the government's position on homosexuality (14 May 2009), available online: <http://www.channelnewsasia.com/stories/specialreport/view/1525/1/.html> [*Today Interview*].

[88] *MRH White Paper*, *supra* note 27 at para. 6. See Thio Li-ann, "The Cooperation of Religion and State in Singapore: A Compassionate Partnership in Service of Welfare" (2010) Review of Faith & International Affairs 33.

[89] "Muis against having a casino" *The Straits Times* (Singapore) (11 February 2005); Azhar Ghani, "Muslims urged to view decision with pragmatism" *The Straits Times* (Singapore) (19 April 2005).

[90] Statement by Prime Minister Lee Hsien Loong on Integrated Resort (18 April 2005) at para. 66, online: <http://app.mti.gov.sg/data/pages/606/doc/Ministerial%20Statement%20-%20PM%2018apr05.pdf>.

[91] *Ibid.* at para. 62.

[92] See Thio Li-ann, "Control, Co-optation and Co-Operating: Managing Religious Harmony in Singapore's Multi-Ethnic, Quasi-Secular State" (2005) 33:2 Hastings Const. L.Q. 197 at 206-207.

[93] The meeting of the Prime Minister with prominent religious leaders like Archbishop Nicholas Chia (Catholic Church), Mufti Syed Isa Semait and the Venerable Kwang Phing whom he invited to the 2009 National Day rally received prominent press coverage: "PM warns of religious fault lines" *The Straits Times* (Singapore) (17 August 2009). The intent was to "listen to the speech" so that religious leaders could "help us to help your flocks to understand our limitations, to guide them to practise their faiths, taking into account the context of our society". This was by underscoring the ground rules for preserving racial and religious harmony "after the dust" of the 'AWARE controversy' "had settled"; referring to this controversy as "one recent issue" which the PM was "sure you are waiting for me to talk about", he urged religious leaders to teach their followers "accommodation which is what all faiths teach".

[94] Section 3(2) of the *MRHA*, *supra* note 18.

[95] See Thio, *supra* note 92 at 231-234; Valentine S. Winslow, "The Separation of Religion and Politics: The Maintenance of Religious Harmony Act" (1990) 32 Mal. L. Rev. 327.

[96] *Supra* note 28.

achieve religious ideals or to promote secular objectives.[97] To sustain national surviv-ability, conflictive 'Armageddons' must be avoided, encompassing situations where inter-religious tensions are heightened by religious groups competing for political influence or clashing with the government.[98]

Who ascertains whether religious leaders or groups have strayed beyond the con-fines of religious activities, and by what criteria? What constitutes "radical social action", the "political process" or indeed "politics" which has been expansively construed to include "the multitude of issues concerning how Singapore should be governed in the interest and for the welfare of its people"?[99] An easy case would be subversive activities conducted under religious cover, such as that associated with the 'Marxist conspiracy' where some 20 citizens, including Catholics, were arrested under the *Internal Security Act*[100] for allegedly participating in a conspiracy "to sub-vert the existing social and political system in Singapore, using communist united front tactics with a view to establishing a Marxist state".[101]

However, a range of hypotheticals abound where it is not so easy to stipulate when 'religion' and 'politics' should be separated, bearing in mind certain world-views reject a sacred-secular divide. Is criticising policies on abortion,[102] organ transplants, euthanasia,[103] sex education,[104] military policy or press freedom for-bidden involvement? Does it matter whether this is expressed during a religious sermon or a letter to the press, or whether the view supports or opposes government policy? What if a religious group campaigns for foreign domestic workers to be given a mandatory day off in their employment contracts? Would this differ if a non-religious group ran the campaign?

2. *Religion and Political Life—Instrumental Reasons for Separation*

The underlying rationale for "rigorously"[105] separating 'religion' and 'politics' appears to be instrumental as the aim is "not to determine the validity of various

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[97] *Ibid.*

[98] *MRH White Paper*, *supra* note 27 at para. 4 (Where "Singaporeans belong to different races, languages and religions…religious and racial harmony are not just desirable ideals to be achieved, but essential conditions for our survival as one nation.")

[99] *Dow Jones Publishing v. AG* [1989] 2 M.L.J. 385 (P.C.), in the context of defining "engaging in domestic politics" under the *Newspaper Printing Presses Act* (Cap. 206, 2002 Rev. Ed. Sing.).

[100] Cap. 143, 1985 Rev. Ed. Sing.

[101] These were the grounds of detention in relation to one Vincent Cheng, a Catholic lay worker: see *Cheng Vincent v. Minister for Home Affairs* [1990] S.L.R. 190 at para. 4.

[102] Tan Seow Hon, "Time for Singapore to relook abortion law" *The Straits Times* (Singapore), Review (24 July 2008); Lynn Lee, "Uniquely pro-choice Singapore" *The Straits Times* (Singapore) blog (29 August 2008), online: <http://blogs.straitstimes.com/2008/8/28/singapore-uniquely-pro-choice>.

[103] "Singapore debates where to draw the line for laws on assisted dying" *The Straits Times* (Singapore) (6 November 2008); Alex Tan, "Right to die: The poverty of secularism" *The Straits Times* (Singapore), Forum (25 December 2008).

[104] H. Neo "Does this group deserving funding" *The Straits Times* (Singapore), Forum (6 December 2003); S.M. Tan-Huang, "MCDS ensures programmes are secular" *The Straits Times* (Singapore), Forum 9 Dec 2003; T.S. Tan, "No proselytising at Focus on Family community programmes" *The Straits Times* (Singapore), Forum (10 December 2003); Thio Li-ann, "State, Religion and the Public Square" *The Straits Times* (Singapore), Forum (11 December 2003).

[105] *MRH White Paper*, *supra* note 27 at para. 14.

religious or ethical beliefs which have political or social implications" but to iden-
tify "working rules"[106] that allow faith communities to peacefully co-exist. The
overriding concern is to preserve inter-religious peace by avoiding social friction
between religious groups and to prevent religious-based activism from threatening
the political status quo.

The government draws a threefold distinction between *religious individuals* speak-
ing to public policy, *religious leaders* with the authority and capacity to mobilise
significant numbers, and *religious groups* venturing into politics, such as through
forming religious parties.

(a) *Religious groups and politics*:   The conventional wisdom is that if religious
groups entered politics, or if politicians invoked religious sentiments to garner popu-
lar support, others would follow suit, leading to mutual discord.[107] Religious groups
would then broker votes for political influence, and the ensuing religious conflict
would cause "political instability and factional strife".[108] The prescription for this
malaise is "mutual abstention from competitive political influence".[109]

Thus leaders and members of religious groups "should refrain" from promoting
"any political party or cause under the cloak of religion".[110] A bright line is drawn
against religious group involvement in overthrowing an unpopular government or in
contesting or influencing electoral politics and the distribution of political power.[111]
Aside from religious groups becoming a political force to be reckoned with, the fear
is that "heightened political and religious tensions" would be caused were "para-
religious social action groups"[112] to mobilise and become an active socio-political
force, following Catholic liberation theology as practised in Latin America.

In recognising how politicians may become religious entrepreneurs in seeking
support, the governing People's Action Party ("PAP") instructs its candidates not
to "mobilise your church or your temple or your mosque to campaign for you"
but to garner "a multiracial multireligious group of supporters" and to represent all
constituents, "not just your religious group in Parliament".[113] To some extent, it has
institutionalised its own practices through the constitutional creation of the Group
Representation Constituency ("GRC") system which requires the fielding of multi-
racial teams of MPs; where race and religion are conflated, particularly with respect
to Malay-Muslims, this guarantees their voice in Parliament.

(b) *Religious leaders and politics*:   Second, religious leaders, such as archbishops,
pastors, abbots or muftis, have to express their political views circumspectly, as they
could wield religious authority to mobilise groups of people to oppose the political
leadership and their policies. Groups pose a greater threat to the political status
quo than individual dissidents, and religious groups have historically fuelled the

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[106]   *Ibid.* at para. 27.
[107]   *Supra* note 28.
[108]   *MRH White Paper*, *supra* note 27 at para. 19.
[109]   *Ibid.* at para. 28.
[110]   *Ibid.* at para. 20.
[111]   *Ibid.* at para. 21.
[112]   *Ibid.* at para. 26(c).
[113]   *NDR Speech 2009*, *supra* note 34.

peaceful overthrow of corrupt regimes, as in Ceaucescu's Romania and Marcos' Philippines.[114]

(c) *Religious individuals and public debate*:   Third, the government has consistently affirmed the legitimate role of religious perspectives in public debate, rejecting a form of militant secularism[115] which seeks to exclude these voices[116] on the basis of the radically duallistic argument that 'religion' and 'politics' inhabit distinct realms and should be strictly separated. If not, this would discriminate against the more than 80% of Singaporeans[117] with religious affiliation in voting, taking part in elections and debating public issues.[118]

Religious views can inform debates relating to the moral basis of laws and policy[119] and the *choosing* of public values, a question which liberal secularists avoid by consigning these views to the arena of private *choice* in the name of a false neutrality.[120] Intellectual honesty appreciates there is nothing 'neutral' about claims to 'neutrality', nor is neutrality necessarily superior to taking a stand on moral issues such as human trafficking. Liberal 'neutrality' while pretending facial impartiality, advances a homogenising universalism in covertly imposing the substantive values of the successful group on everyone else. Claims to 'neutrality' are at best an agnostic indifference and at worst, occult attacks on the status quo. Advocating that one be neutral towards an existing policy on environment-friendly garbage disposal undermines the authority of the existing norm, reducing it from being *the* governing factor to *a* relevant factor.

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[114] In both cases, the Romanian Reformed Church and the Catholic Church were key players in igniting the Romanian Revolution of 1989 and the Philippines 1986 People Power Revolution.

[115] There are many secularisms rather than one secularism, and as a worldview, 'secularism' can range from "belief that scientific materialism exhausts the explanation of existence" to "values inhere only in human orientations to the world and not in the world itself" to "the notion there is no world of transcendent meaning": Calhoun, *supra* note 61 at 7.

[116] Militant secularisms consider religious views conflictive and 'inaccessible' and require discourse to be conducted on the basis of their conception of public reason. This has since undergone less strident permutations. John Rawls in his later work accepts that religiously motivated arguments can be publicly valid if couched into secular claims independent of any specific religious understanding: *The Law of Peoples with "The Idea of Public Reason Revisited"* (Cambridge, Mass.: Harvard University Press, 1999). Jürgen Habermas advocates that religion be taken seriously as a valuable source for democratic politics; otherwise, public reason would be impoverished and religious citizens discriminated against: "Religion in the Public Sphere" (2006) 14 European Journal of Philosophy 1. Other views accept that everyone works with deep evaluative commitments, whether religious or secular, which shapes their values: Charles Taylor, *A Secular Age* (Cambridge, Mass.: Harvard University Press, 2007).

[117] The largest religious group in Singapore are the Buddhist/Taoists (51%), followed by Muslims (14.9%), Christians (14.6%), Hindus (4%), Other Religions (0.6%) and No religion (14.8%): See Sing., Department of Statistics, *Singapore Census of Population, 2000*, Advance Data Release No. 2, Table 2, "Resident Population aged 15 years and over by ethnic group and religion", available online: <http://www.singstat.gov.sg/pubn/papers/people/c2000adr-religion.pdf>.

[118] "Religious individuals have the same rights as any citizen to express their views on issues in the public space, as guided by their teachings and personal conscience." *Today Interview*, *supra* note 87.

[119] Thio Li-ann, "Religion in the Public Square: Wall of Division or Public Square" in Bryan S. Turner, ed., *Religious Pluralism and Civil Society: A Comparative Analysis* (Oxford: Bardwell Press, 2008) 73; Juha Raikka, "The Place of Religious Arguments in Civic Discussion" (2000) 13 Ratio Juris 162; Ruti Teitel, "A Critique of Religion as Politics in the Public Sphere' (1992-1993) 78 Cornell L. Rev. 747.

[120] See Bruce A. Ackerman, "What is Neutral about Neutrality" (1983) 93:2 Ethics 372; Andrew L. Koppelman, "The Fluidity of Neutrality" (2004) 66 The Review of Politics 633. Claims to neutrality merely stifle debate by painting opposition as intolerant and divisive: Kalb, *supra* note 57 at 244.

The rational way beyond liberalism is to "discuss the questions it avoids and cannot answer",[121] where value judgments are required in considering which moral standards to legislate. It is difficult in pluralistic societies to find "a common vocabulary for conducting rational moral discourse on controversial topics".[122] Appeals to rationality *per se* do not help to prioritise and resolve competing claims, nor does 'reason' exhaust the field of human experience[123] or lead to moral conclusions.[124] There are values beyond reason, and a role for conscience in public debate as well.[125] In principle, all views, whether derived from religious or irreligious sources, should be heard and evaluated, provided they are expressed in an intelligible and civil fashion. This would preserve the common space of political discourse.

Empirically, individual involvement in public debate is becoming more robust in Singapore as the government has urged citizens to "debate policies and national issues rigorously and robustly" with "reason, passion and conviction" rather than be "passive bystanders in their own fate". While ring-fencing policies like tax, foreign policy and security as less amenable to consultation, Deputy PM Lee Hsien Loong in 2004 declared the government would "pull back from being all things to all citizens", in such far-reaching matters as "questions of public morality and decency", where it was "increasingly guided by the consensus of views in the community".[126] This consensus cannot be fostered without widespread and representative debate. Citizens were urged to engage in a brand of public debate which was "issue-focussed, based on facts and logic" rather than bare, emotional assertions.

Religious values speak to moral values, which affects both the voting patterns and activism of citizens. The government recognises that the division between religion and politics "is a matter of convention", that voting choices are made "for a mixture of reasons, some secular, others spiritual". It realistically affirms the impossibility and undesirability of compartmentalising voters' minds "into secular and religious halves" to ensure that "only the secular mind influences his voting behaviour".[127] Such an artificial division would place an undue mental and psychological burden on a religious citizen, requiring her to be denuded of her religious identity in public debate. This would privilege those with non-religious identity traits, such as atheists.

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[121]   Kalb, *supra n*ote 57 at 252.
[122]   Edward Chase, "Law and Theology" in Dennis Patterson, ed., *A Companion to Philosophy of Law and Legal Theory* (Cambridge, Mass.: Blackwell Publishers, 2001) 421 at 427.
[123]   A.C. Graham, *Unreason Within Reason: Essays on the Outskirts of Rationality* (LaSalle, Ill.: Open Court, 1992).
[124]   For example, reason does not compel taking action on the basis of a moral imperative: it would have been irrational in Nazi Germany to offer shelter to Jews.
[125]   The second preambular paragraph of the 1948 *Universal Declaration on Human Rights* recognises the barbarous disregard for human rights "have outraged the conscience of mankind". Conscience transcends mere logic or desire and is the faculty enabling one to distinguish between the morally worthy and blameworthy.
[126]   *Harvard Club Speech*, *supra* note 47. The significance of this must be appreciated against the context of previous strictures limiting the manner, style and content of debate: 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.
[127]   *MRH White Paper*, *supra* note 27 at para. 24.

Wisely, Prime Minister Lee in his 2009 NDR Speech recognised that it was "natural" for religious people to have a view informed by their religious beliefs when approaching a national issue, because "it is part of you, it is part of your individual, your personality".

The government recognises that religion does influence public morality as it sets "the moral tone of our society".[128] The government was "not against religion" and upheld "sound moral values".[129] PM Lee affirmed that "religious groups are free to propagate their teachings on social and moral issues" and had done so in relation to building casinos, including Muslims in the *Human Organ Transplant Act*'s 'presumed consent' regime and the debate over section 377A of the *Penal Code* (relating to whether or not male homosexual sex should be de-criminalised).[130]

Indeed, complex questions implicating religion and morality have been raised in Parliamentary debates. The Select Committee on the *Abortion Bill* in 1969 received a submission from the Inter-Religious Organisation stating: "any law which shakes morality at one point may release immoral forces which the rational lawmakers did not foresee and may not be able to control. Neither the law nor argument in its favour should evade the moral principles involved nor deny their existence or relevance."[131]

During the 2005 casino debate, religious groups and individuals gave negative feedback; indeed many MPs in Parliament prefaced their speeches with a confessional statement of their faith.[132] PM Lee, while acknowledging the many "religious objections" of the main religious groups as well as many Singaporeans, especially Christians,[133] stated that while respecting their religious beliefs, the government had to "maintain a secular and pragmatic approach" and not enforce the choices of one group over others in deciding national policy. While religious perspectives were *relevant*, they were not *determinative* and the final say resided with the elected government.[134] Theoretically, governments could be called to account for unpopular decisions at the ballot box. Democratic decision-making as a method of 'secular' resolution is endlessly revisable, allowing for dissent and nurturing hope that today's heresy will be tomorrow's orthodoxy.[135]

Thus, public debate seeks to ascertain which policies best serve the national interest, resting "on secular rational considerations, public interests—what makes sense for Singapore".[136] It is aloof of "whose religion is right and whose religion is wrong". Public debate is not concerned with metaphysical truths, but with sound public values, whatever their philosophical moorings.

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[128] *Today Interview*, *supra* note 87.

[129] *NDR Speech 2009*, *supra* note 34.

[130] "Public debate must be secular, in public interest" *The Straits Times* (Singapore) (17 August 2009).

[131] Sing., Parliament, Report of the Select Committee on the Abortion Bill and the Voluntary Sterilisation Bill (1969), Paper No. 25 at A67.

[132] See debate on Ministerial Statement, "Proposal to Develop Integrated Resorts", in Sing., *Parliamentary Debates*, vol. 80, col. 136ff (19-21 April 2005).

[133] Statement by Prime Minister Lee Hsien Loong on Integrated Resort (18 April 2005) at para. 63, online: <http://app.mti.gov.sg/data/pages/606/doc/Ministerial%20Statement%20-%20PM%2018apr05.pdf>

[134] *Ibid.* at paras. 64-65.

[135] Chase, *supra* note 122 at 428.

[136] *NDR Speech 2009*, *supra* note 34.

D. *Religion and Politics: Two Anti-Models*

PM Lee singled out two anti-models in relation to growing religiosity in politics: Iran, which has a theocratic constitution,[137] and the United States, which is a secular democracy with a highly religious society which disquiets scholars in post-Christian Europe where 'Christophobia'[138] mutes public discourse.

In the recent Iranian election, supporters of both presidential candidates invoked Islam; however, because Islam is central to Iranian national identity and because most Iranian Muslims are Shi'ite Muslims, "after the battles, they can come back as one society".[139] Singapore is neither theocratic nor religiously homogeneous and the social fissures from invoking 'God' to service political ends would not heal quickly post-elections.[140]

PM Lee described America as a "strongly religious" country where "more than 90 per cent of Americans" believe in God, of which "about 80 per cent are Christians". Although the constitution prohibits state 'establishment' of a religion, religion and politics are "closely inter-tangled together".[141] Owing to the organised nature of the faith communities, "US politics is strongly influenced by religion in the Republican and Democratic parties." The former was particularly influenced by the "Christian Right" in terms of electability and setting the political agenda.

However, a distinction must be drawn between *religious values* (values influenced by religious beliefs) which inform public morality, and *religious doctrine or theology* (belief in the nature and character of God/gods). As religious faiths speak to the entirety of human experience and life (as do many comprehensive secular worldviews), it is unsurprising that religious values will motivate the actions of the faith community, as it did with the English abolitionists.[142] The American 'Christian Right' does not seek to establish a theocratic state after the Iranian model, or to coerce belief; the First Amendment protects the inviolability of individual conscience in matters of religious worship.[143] Any religious (or irreligious) community which

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[137] Article 1 of the *Iranian Constitution* declares that Iran is an Islamic Republic; article 2 declares that this republic is based on belief in one sovereign God and recognises the role of divine revelation in setting forth the laws: text available online: <http://www.iranonline.com/iran/iran-info/Government/constitution-1.html>.

[138] This term was coined by Professor J.H.H. Weiler, an observant Jew, who argues that "any resistance to any acknowledgement of the Christian sources of Europe's democratic present is a form of Christophobia": George Weigel, *The Cube and the Cathedral: Europe, America and politics without God* (New York: Gracewing, 2005) 72. Weigel identifies eight components of Christophobia, a phenomenon in many parts of Europe "where even a mention of Christ or the Church in private conversation, much less in a public forum, is enough to cut short public dialogue or private conversation".

[139] *Ibid.*

[140] PM Lee in *NDR Speech 2009*, *supra* note 34: "In Singapore, if one group invokes religion this way, other groups are bound to say I also need powerful support and will also push back invoking their faith. One side insists I am doing God's work. The other side says I am doing my God's work. And both sides say I cannot compromise. These are absolute imperatives. The result will be a clash between different religious groups which will tear us apart. We take this very seriously."

[141] *NDR Speech 2009*, *supra* note 34.

[142] See *e.g.*, John Coffey, "The abolition of the slave trade: Christian conscience and political action", Cambridge Papers, vol. 15 no. 2 (June 2006), Jubilee Centre, U.K., online: <http://www.jubilee-centre.org/document.php?id=51>.

[143] "Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard." Jackson J. in *West Virginia State Board of Education v. Barnette* 319 U.S. 624 (1943).

speaks to political issues is interested in shaping laws and policies through the democratic process. In America, fiercely contested visions of the good life and of what should be the governing public value have erupted into the "culture wars", which PM Lee described as "a fierce struggle between the conservatives and the liberals in America over moral and cultural issues" such as abortion, stem cell research, gay rights, gay marriages, "with both sides striving to set the agenda, not just for their own followers but for the country".

Although Deputy PM Wong Kan Seng warned against importing "the culture wars between the extreme liberals and conservatives that are going on in the US",[144] such debates will likely be a growing feature of the Singapore political landscape, since the government has relaxed its grip on public morality issues.

E. *Religious Diversity, the Imperative of Integration and the Preservation of the Common Secular Space*

To ensure integration amongst people of different faiths, and to prevent religious enclaves, one key policy is to maintain 'common secular spaces'[145] which are physical spaces "where nobody is made to feel uncomfortable whatever his colour or beliefs"[146] and "all of us can feel at home in Singapore and at ease".[147]

Public schools are meant to be spaces where racial and religious traits are irrelevant and designed to encourage strong relational bonds across ethnic groupings, to fortify social cohesion through common identity. Expressions of religiosity have caused friction, as where four primary schoolgirls were suspended from school for contravening school uniform policies by wearing the Muslim headscarf, an expression of the right to religious practice.[148] Presumably, the integrative objectives of this policy cater to one of the public goods in article 15(4) of the *Singapore Constitution*, perhaps a capacious construction of 'public order'.[149]

The Ministry of Education ("MOE") has stringent guidelines requiring mission schools to keep religious activities optional. This is consonant with article 16 of the *Singapore Constitution* which prohibits discrimination on grounds of religion or race and provides no one should be required to receive instruction or participate in worship outside his own faith. PM Lee noted that the MOE in 2005 had ordered teachers not to engage in proselytising in schools, after receiving public complaints.[150] MOE also found that a primary school canteen in only providing '*halal*' food to cater to Muslim dietary requirements had made a wrong decision: to preserve a common space for

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[144] *Today Interview*, *supra* note 87.

[145] "SM: Guard against religious enclaves" *The Straits Times* (Singapore) (3 August 2009).

[146] *Ibid.*

[147] *NDR Speech 2009*, *supra* note 34.

[148] "4 pupils suspended for wearing tudung" *The Straits Times* (Singapore) (27 December 2002) H14; 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 355-366.

[149] Li-ann Thio, "Protecting Rights" in Li-ann Thio & Kevin YL Tan, eds., *Evolution of a Revolution: 40 Years of the Singapore Constitutio*n (New York: Routledge-Cavendish, 2009) 193 at 227-229.

[150] Grace Chua, "Religious activities not a must in mission schools" *The Straits Times* (Singapore) (18 August 2009).

interaction amongst students from all communities,[151] canteens had to offer both *halal* and non-*halal* food.

As a best practice, PM Lee spoke of Malay Muslim boys attending St Joseph's Institutions, a Catholic school, and attending a nearby mosque for Friday prayers still wearing their uniforms, with the support of school and mosque.[152]

However, friction is inevitable in 'common secular spaces' such as public housing estates where two parties seek to use the same void deck to hold a Chinese funeral and Malay wedding. The government practises 'quiet diplomacy' to defuse such tensions; through mediation by grass-roots leaders, the Malay wedding party agreed to move to another void deck; the town council and relevant MP waived charges and put up posters to inform guests of the venue change, realising an amicable settlement. If handled badly, racial and religious conflict could occur. PM Lee said MPs dealt with such endless "micro" situations in a "low key way", noting the need for "tolerance and forbearance", as well as developing trust by regular meetings with religious leaders as a form of social capital, to ensure peace.

F. *Religion and Public Order: Long-Standing and Newly Emerging Threats*

Fundamental liberties are framed as constitutional bargains,[153] suggesting a trade-off between liberty and order. The external dimension of religious freedom, in relation to "practice" and "propagation" under article 15(1) of the *Singapore Constitution*, is qualified by the public goods listed in article 15(4) relating to public order, morality and health. Aside from case law,[154] the content of the category of 'public order' has been charted through legislation, experience and ministerial statements reiterating good practice. The *Declaration of Religious Harmony* ("*DRH*"), adopted in 2003, exemplifies the resort to 'soft constitutional law', formally non-binding guidelines which are widely disseminated standards of good conduct, which generate social expectations.

The only specific piece of legislation addressing religious harmony is the MRHA, whose implicit justification relates to public order. Annexed to its white paper is an Internal Security Department report ("*ISD Report*") entitled "Religious Trends—A Security Perspective". This identifies two categories of 'serious threats' to 'religious and racial harmony' and 'public order'.[155]

1. *Long-Standing Threats to Public Order*

(a) *Racial and religious disharmony*: "Inter-religious tensions" disrupting "racial and religious harmony" can be caused where "persons try vigorously to promote their own faiths and convictions … without adequately considering the sensitivies

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[151]   Sandra Davie, "All schools must have mix of halal and non-halal food" *The Straits Times* (Singapore) (6 February 2008).
[152]   *NDR Speech 2009*, *supra* note 34.
[153]   *Lee Kuan Yew v. Jeyaretnam JB (No. 1)* [1990] 1 S.L.R. 688 at 706 (H.C.).
[154]   See *Re Tan Boon Liat* [1977] 2 M.L.J. 108 (Federal Court, Malaysia); *Chee Siok Chin v. Minister for Home Affairs* [2006] 1 S.L.R. 582 (H.C.).
[155]   *MRH White Paper*, *supra* note 27, Annex, at 19, para. 36.

of other groups or the delicacy of Singapore's multi-religious balance".[156] The *ISD Report* highlighted "aggressive and insensitive proselytisation", stating these were "mostly carried out by some Protestant churches and organisations".[157]

The government has been solicitous of maintaining civil peace *between* religious groups since the Republic's inception. PM Lee Kuan Yew directed Christians not to try and convert the 12 per cent Muslims where the "60 to 70 per cent of people" needing "some form of religious and moral guidance" presented "a very wide field of operation" for evangelical efforts.[158] The issue is exacerbated by the conflation of race and religion, particularly with respect to Malays, 99.6% of whom were Muslims.[159] In 2009, PM Lee underscored "the most visceral and dangerous fault line is race and religion".[160]

The government constantly reiterates the importance of preserving "racial and religious harmony" as a facet of a thick conception of public order beyond 'law and order'. This category encompasses intangible harm to the cohesiveness of the body politic[161] and is considered "an important tenet" of the Singapore rule of law.[162] "Indeed, "racial and religious harmony" may be considered a quasi-constitutional principle, given its elevated importance as "the most important bedrock of our society" upon which a "peaceful, prosperous Singapore" depended.[163] This requires constant management as "a *laissez-faire* system"[164] cannot sustain harmony in a diverse society.

The District Court in a case concerning the wrongful issuing of *halal* certification (an issue "very dear to the Muslim community") observed that "sensitivity" and "proper respect" towards religious practices was necessary "to preserve racial and religious harmony".[165] The government has demonstrated its commitment to protecting the sensitivities of religious groups, at the expense of curtailing free speech, by initiating prosecutions under the *Sedition Act* for the commission of acts with "seditious tendencies" which promoted "feelings of ill-will and hostility between different races", and imposing imprisonment terms.[166] The gravity of offences such

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[156] *Ibid.*, Annex, at 13, para. 1.

[157] *Ibid.*, Annex, at 13-14.

[158] Transcript of the Prime Minister's Statement to Religious Representatives and Members of the Inter-Religious Council (30 September 1965).

[159] See Sing., Department of Statistics, *Singapore Census of Population, 2000*, Advance Data Release No. 2, Table 2, "Resident Population aged 15 years and over by ethnic group and religion", online: <http://www.singstat.gov.sg/pubn/papers/people/c2000adr-religion.pdf>.

[160] *NDR Speech 2009*, *supra* note 34.

[161] "The Meaning and Importance of the Rule of Law", Keynote address by DPM Prof S Jayakumar at the IBA Rule of Law Symposium (19 October 2007) at para. 18, available online: <http://notesapp.internet.gov.sg/__48256DF20015A167.nsf/LookupContentDocsByKey/GOVI-785D9X?OpenDocument>.

[162] *Ibid.* at para. 19.

[163] PM Goh Chok Tong's remarks printed in *The Straits Times* (Singapore) (24 February 1990), quoted in Vineeta Sinha, "Theorising 'talk' about 'Religious Pluralism' and 'Religious Harmony' in Singapore" (2005) 20 J. of Contemporary Religion 25 at 28.

[164] *Supra* note 161 at para. 17.

[165] *Public Prosecutor v. Angliss Singapore Pte. Ltd.* [2006] SGDC 70.

[166] Two bloggers were imprisoned under the *Sedition Act* for posting anti-Malay and anti-Muslim remarks on the internet: *Public Prosecutor v. Koh Song Huat Benjamin* [2005] SGDC 272. The "especial sensitivity of racial and religious issues in our multi-cultural society" was a key factor in the decision, which also observed that "callous and reckless remarks on racial or religious subjects have the potential to cause social disorder …" In *Public Prosecutor v. Ong Kian Cheong* [2009] SGDC 163, two Christians

as disseminating publications critical of other religions was buttressed by "the racial and religious complexion of the case", implicating Singapore's long-term stability.[167]

(b) *Threats to the political order*:   The *ISD Report* identified "mixing religion and politics" and "religion and subversion" as threats to the political order.

The label of "mixing religion and politics" is vague and the examples the *ISD Report* provides help concretise its content. Criticism was levelled against "a number of Catholic priests" venturing into "social action" in the 1980s and acting as "a political pressure group" by publishing "political booklets criticising the Government on various secular issues". This related to emasculating trade unions, citizenship laws, regulating newspapers and policies towards foreign workers and multi-national corporations. Such issues are secular by designation, not nature, signalling that they were off-limits to criticism from religious groups, even if they fell within the ambit of their religious concerns.

Other complaints related to the holding of Catholic masses where priests made "inflammatory" statements "to work up emotions and pressure the Government to release the detainees" associated with the so-called Marxist conspiracy of 1987 which involved some Catholics. The ISD report stated these priests "misrepresented the arrests as an attack on the Church".[168] Various priests continued to make statements criticising the repressive political climate from the pulpit, despite the Archbishop's admonition to desist. A mass was held where a priest declared that the Minister of Home Affairs, judges and ISD officials would face God's punishment for detaining the alleged Marxist conspirators.[169] While stating that as a Hindu he was unconcerned with Christian priests pronouncing anathema on him, Minister Jayakumar considered it a matter of "grave concern" when religious leaders used religious authority "to invoke the divine power of damnation upon secular authorities".[170]

These clear-cut cases of mixing religion and politics related to religious leaders using their positions or premises "for mounting political agitation or making inflammatory or political speeches".[171]

The threat of "Religion and Subversion" was exemplified by the alleged Marxist conspiracy of 1987, characterised by the ISD as "the exploitation of religion by Marxists … for their own political ends". Apparently, Vincent Cheng, a Catholic lay worker and alleged Marxist, had sought to infiltrate various Catholic and student

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were prosecuted and imprisoned for *Sedition Act* offences, for distributing evangelical tracts to Muslims which were considered seditious. Some of the tracts in their possession were also considered to denigrate the Roman Catholic Church and other religions.

[167] Prosecution's submission in *Public Prosecutor v. Ong Kian Cheong* [2009] SGDC 163 at para. 73, which the District Court Judge Roy Neighbour apparently agreed with as the relevant offences "have the capacity to undermine and erode the delicate fabric of racial and religious harmony in Singapore" (para. 76); as Singapore citizens, the accused "cannot claim to be ignorant of the sensitivity of race and religion in our multi-racial and multi-religious society" (para. 82).

[168] *MRH White Paper*, *supra* note 27, Annex, at 15-16, paras. 13-15.

[169] *Ibid.* at paras. 16-19.

[170] Other examples include various Muslim theologians berating Malay/Muslims for not sufficiently resisting mosque demolitions and Sikh-Hindu tensions after the assassination of PM Indira Gandhi in October 1984: *MRH White Paper*, Annex, at 16-17, paras. 20-22; at 17-18, paras. 25-27.

[171] S. Jayakumar in Sing., *Parliamentary Debates*, vol. 54, col. 584 at 635ff (6 October 1989) (Teaching of Religious Knowledge in Schools).

organisations "to build a united front of pressure groups for confrontation with the government".[172] This example contemplated using violence and acting unconstitutionally to seize political power; in a post 9/11 world, activities of religious fundamentalist terrorist groups like *Jemaah Islamiyah* ("JI") would fall under this rubric.

In debating the terrorism threat, Deputy PM Wong observed that while the government "has no problems with religious piety", it would "not tolerate the use of violence to perpetuate any causes, be it religious or political".[173] The government adopted formal and informal forms of regulation to deal with this terrorist threat,[174] recognising its potential to cause distrust amongst Singaporeans towards those associated with religious extremism and enlisting the help of the largely "moderate" Muslim community as co-regulators[175] to police extremist religious teachings.[176]

2. *Social Harmony: Playing the Religious Card and Becoming Aware of an Emergent Threat to Public Order*

A distinct new threat to public order emerged from what became known as the 'AWARE controversy' in the first quarter of 2009, fuelled by frenzied news reporting, which warranted mention in the President's 18th May address to Parliament, and PM Lee's NDR Speech. This assumed the form of "tensions between groups or sectors of society going beyond the classic example of inter-religious group hostility, as when a preacher insults another faith or cases of insensitive proselytisation. Social tensions can also manifest between "religious groups" and non-religious or "secular" groups."[177] Thus, joining communism and communalism in the rogues' gallery of public order threats is the 'culture war' over contested public values.

The facts in a nutshell are these. The Association of Women for Action and Research ("AWARE") is a women's rights non-government organisation ("NGO") founded in 1985, which promotes women's rights and provides some counselling services. At its annual general meeting on 28th March 2009, elections were held resulting in 9 of the 12 executive committee ("exco") seats going to fresh faces.[178] This was likened to a "coup"[179] "surgical strike", there being an "element of stealth"[180] in the sudden surge in membership numbers preceding the elections, which were carried out constitutionally.[181]

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[172] *MRH White Paper*, *supra* note 27 at 18, paras. 30-31.

[173] Sing., *Parliamentary Debates*, vol. 75, col. 2035 at 2043-2044 (20 January 2003) (Threat of Terrorism (Motion)).

[174] This included ISA detentions, initiating a Community Engagement Programme to build relational trust, and initiating a Code of Religious Harmony: Sing., *Parliamentary Debates*, vol. 82, col. 1129 (23 January 2008) (Community Engagement Programme).

[175] *The Jemaah Islamiyah Arrests and the Threat of Terrorism White Paper* (Cmd. 2 of 2003) at 22-23.

[176] The government preferred to let the Muslim community take the lead on this so as not to intrude upon legitimate religious practices: Wong Kan Seng in Sing., *Parliamentary Debates*, vol. 75, col. 2035 at 2046 (20 January 2003) (Threat of Terrorism (Motion)).

[177] Nominated MP Thio Li-ann in Sing., *Parliamentary Debates*, vol. 86 (26 May 2009) (Debate on President's Address).

[178] Wong Kim Hoh, "Unknowns knock out veterans" *The Straits Times* (Singapore) (10 April 2009).

[179] *E.g.*, Tan Dawn Wei, "Cyberspace abuzz over Aware" *The Straits Times* (Singapore) (12 April 2009).

[180] P.N. Balji, "Ladies, have you forgotten your narrative?" *Today* (Singapore) (23 April 2009) 3.

[181] In relation to the AWARE elections, MP Sin Boon Ann found it "odd that democracy suddenly takes on a very different meaning when a group of new members decide to legitimately contest in an election to

The traditional and new media[182] reported the religious affiliations of some exco members,[183] as well as some of their stands against the homosexualism agenda in Singapore, and opined it was "worrying" that the "new leadership's motives are unclear".[184] Past AWARE Presidents received prominent news coverage expressing their unease,[185] in the face of a reticent new exco who were called upon to clarify their agenda. A relentless barrage of reporting ensued, with the *The Straits Times* asking the new exco what their agenda was,[186] meditating on the implications for civil society[187] and highlighting the religious affiliations of relatives of exco members.[188] The press published letters with a 'religion versus homosexuality' slant,[189] which the new exco never raised. Both the 'old exco' and the 'new exco' held press conferences.

During the 'new exco' press conference on 23rd April, it transpired that one of the motivations for the electoral coup was to redress the alleged co-option of AWARE in service of the homosexualism agenda[190] and to return it to its foundations of promoting women's rights, rather than sneaking in 'homosexual rights' under a radical vision of feminism. Nonetheless, the impression that the AWARE tussle was

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[182] determine a new agenda". Sing., *Parliamentary Debates*, vol. 86 (27 May 2009) (Debate on President's Address).

[182] With respect to new media which "has become the new battleground in our society", MP Amy Khor appealed for members of the public "to practise restraint and decency in cyberspace" and not allow debate, such as over the AWARE saga, to degenerate "into a crusade against others who are different or hold different views". Sing., *Parliamentary Debates*, vol. 86 (25 May 2009) (Debate on President's Address).

[183] "Some of AWARE's New Members Attend Same Church" *The Straits Times* (Singapore) (18 April 2009) (reporting that 6 exco members attended the same Anglican church and mentioning some of their relatives).

[184] *E.g.*, Tan Dawn Wei, "Cyberspace abuzz over Aware' *The Straits Times* (Singapore) (12 April 2009).

[185] "Statement by Old Guard: Why the need to muscle your way into the executive committee" *The Straits Times* (Singapore) (18 April 2009); Wong Kim Hoh, "Constance Singham quits as Aware adviser" *The Straits Times* (Singapore) (19 April 2009); Nur Dianah Suhaimi, "Way power was seized is criticised: Founders say those who disagree with Aware's issues should form own group" *The Straits Times* (Singapore) (25 April 2009).

[186] "How other groups build in safeguards" *The Straits Times* (Singapore) (18 April 2009). This continued even after the new exco issued a press statement about its commitment to promote full gender equality and to end discrimination against women: "New team pledges to work for full equality of the sexes" *The Straits Times* (Singapore) (16 April 2009).

[187] Jeremy Au, "Civil society and leadership fights: the sudden takeover of women's rights group Aware has placed the spotlight on civil society and the politics of these organisations" *The Strait Times* (Singapore) (18 April 2009).

[188] *E.g.*, *The Straits Times* (Singapore) saw fit to publish a prominent write-up on Dr. Alan Chin, husband of then AWARE new exco President, Josie Lau, discussing his church affiliation and how Dr. Chin had expressed his views on homosexual sex in letters to the *Strait Times* Forum when section 377A of the *Penal Code* was being debated: "Aware's Power couple" *The Straits Times* (Singapore) (18 April 2004) A4. All AWARE associate members were requested by the Chairman to volunteer to count votes but *The Straits Times* (Singapore) singled out Dr. Chin's presence and involvement in vote counting.

[189] "Aware should neither promote nor reject homosexuality" *The Straits Times* (Singapore), Forum (22 April 2009); "Speculation over anti-gay conspiracy is unhelpful" *The Straits Times* (Singapore), Forum (22 April 2009); Ravi Govindan, "Govt should ensure Aware stays secular" *The Straits Times* (Singapore), Forum (23 April 2009); "Leaders acts reveal exclusionary stance", *The Straits Times* (Singapore), Forum (25 April 2009).

[190] For example, AWARE chose a controversial lesbian film, Spider Lilies, for its charity gala premiere: Geoffrey Yeoh, "Parents, be Aware of film's message" *Today* (Singapore), Voices (25 May 2008) 34. It

about religious overreaching, rather than competing conceptions of feminism or communitarianism versus liberal individualism, appeared set in the public perception.[191] This set the stage for a 'culture wars' battle with the 'old exco' supporting (over protestations that it did not)[192] and the 'new exco' opposing attempts to mainstream the homosexualism agenda.

The government considered that homosexuality "was clearly a major issue to both sides"; that this 'culture war' outbreak had "polarised our society",[193] which was "unproductive and divisive".[194] Some 'new exco' members spoke of being harassed and receiving death threats.[195] This characterisation of this political contest was solidified when the 'new exco' released the 'old exco's Comprehensive Sexuality

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was later reported that incidents such as these prompted the concerns of senior lawyer Dr. Thio Su Mien, who began monitoring AWARE's affairs. She revealed at the 'new exco' press conference that she had urged women to challenge AWARE's attempt to redefine marriage and families and as their 'feminist mentor' felt responsible for the "ferocious attacks" the 'new exco' women suffered. She hoped AWARE would refocus on its "excellent objectives" of dealing with many women's issues, such as the impact of retrenchment on women, rather than just in promoting "lesbianism and the advancement of homosexuality, which is a man's issue". Zakir Hussain, "Lawyer's key role in Aware coup" *The Straits Times* (Singapore) (24 April 2009); "Group's agenda 'too gay turn'" *The Straits Times* (Singapore) (24 April 2009).

[191]   "It is evident now that the new exco is strongly driven by pro-Christian values. With such a strong leaning towards church teachings, will the new exco alienate most other religions here? Will evangelical practices become common?": "Respect rights of minorities" *The Straits Times* (Singapore), Forum (25 April 2009).

[192]   See *e.g.* "Why neutral stance on homosexuals: Sexuality programme gives information 'in a nonjudgmental way'" *The Straits Times* (Singapore) 25 April 2009; 'Old guard members counter allegations of a pro-gay stance' *The Straits Times* (Singapore) 25 April 2009. AWARE suggested: "Just like heterosexuality, [homosexuality] is simply the way you are." This non-neutral stance assumes that homosexuality is genetic rather than environmental, which is a contested proposition.

[193]   Deputy PM Wong Kan Seng, "No change in Govt's stance towards gays" *Today* (Singapore) (15 May 2009). This polarisation crystallised around the debate whether to repeal section 377A of the *Penal Code* in October 2007 which criminalises anal-penetrative and oral sex between men. Those who spoke up in support of retaining the provision were subject to campaigns of harassment and received threats. See Yvonne CL Lee, "'Don't Ever Take a Fence Down until you know the reason it was put up'—Singapore Communitarianism and the Case for Conserving 377A" [2008] Sing. J.L.S. 347 at 350, 386. This same abusive treatment and torrent of invective was meted out to members of the 'new exco' and their families who did not support the homosexualism agenda, including death threats which were reported to the police, as well as livelihood threats: "Lawyer's key role in Aware coup" *The Straits Times* (Singapore) (24 April 2009). In an interview with the Chinese language *Lianhe Zaobao* on 17 May 2009 ("AWARE Saga: Exclusive Interview with 'feminist mentor' Huang Su Mien"), Dr. Thio, whom the press regarded as masterminding the takeover, said the takeover was accidental as she did not anticipate that the new members would be successfully elected. This was because so few of the old AWARE members bothered to turn up for the AGM. She had encouraged various women at the last minute to join AWARE to promote family values but many did not know each other, only her. She remarked that if she masterminded the event, she would not be "so foolish as to find people from the same church". Had things been premeditated, if she was "a real strategist", she would have "formed a rainbow coalition, just like them (the old guards)".

[194]   Press Release, "Comments by DPM and Minister for Home Affairs Wong Kan Seng in response to media queries related to AWARE" (15 May 2009), online: <http://www.mha.gov.sg/news_details.aspx?nid=MTQ0MA%3D%3D-H1aIkdI4Ksw%3D>.

[195]   "New exco members tell of death threats; We are harassed and we fear for our families" *The Straits Times* (Singapore) (24 April 2009). An envelope containing a suspicious substance was sent to the Anglican church which had members in the new exco: "Aware saga: 2nd envelope with suspicious power" *The Straits Times* (Singapore) (9 May 2009).

Education ("CSE") programme and instructor manual whose pro-homosexual, anti-family teachings[196] raised the ire of many parents. The current AWARE leadership insisted that their education manual adopted what they painted as a 'neutral' approach towards homosexuality, urging their critics not to give undue attention to statements in its CSE instructor manual such as "anal sex is neutral". It is noteworthy that this is a disingenuous, faux-naïf claim for various reasons. First, no viewpoint exists in an intellectual vacuum; a preferred substantive philosophy which opposes all so-called 'non-neutral' views is sneaked in, in the name of a feigned 'neutrality' (which is not values-free). Second, affecting apparent 'neutrality' towards the heavily contested issue of sexuality and sex education is not a superior posture and undermines other substantive views which honestly identify what is considered to be normatively desirable *e.g.* the advocacy of family values, which is something shared by many religious and non-religious philosophies.

The MOE on receiving complaints[197] about this programme later suspended it.[198] On review, the CSE Basic Instructor Guide was found to contravene MOE's framework for sexuality education which affirmed "the social norm consists of the married heterosexual family unit". MOE noted "some suggested responses in the instructor guide are explicit and inappropriate, and convey messages which could promote homosexuality or suggest approval of pre-marital sex".

The mainstream media highlighted the fact that 6 members from the 'new exco' were from the same church,[199] describing the elections as "a conservative Christian

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[196] *E.g.*, it states that anal sex can be normal and healthy with consent and a condom and promotes the view that homosexuality is neutral and normal. Old exco members limply described these morally controversial views as 'non-judgmental' and 'neutral': Sandra Davie & Tan Dawn Wei, "Why neutral stance on homosexuals: Sexuality programme gives information 'in a non-judgmental way'" *The Straits Times* (Singapore) (25 April 2009). Discerning minds should not be beguiled by such misleading assertions. To serve transparency, a civil society group should honestly indicate the substantive values it promotes, whatever their philosophical motivations, rather than keeping these occluded, to subject such views to scrutiny and evaluation. This is preferable to bandying a viewpoint as 'neutral' to escape critique or labeling a viewpoint as 'religious' to foment suspicion or antipathy. What is at stake is whether a proposed value is sound and promotes the common good.

[197] It had earlier justified its non-action on the basis that it had not received specific complaints in relation to the CSE programme, which was not yet public knowledge: "MOE: No complaints from parents, Dr. Thio" *The Straits Times* (Singapore), Forum (29 April 2009).

[198] Press Release, "MOE Statement on Sexuality Education Programme" (6 May 2009), available online: <http://www.moe.gov.sg/media/press/2009/05/moes-statement-on-sexuality-ed.php>. The unsound values propagated by the CSE programme would have remain obscured if the 'new exco' had not exposed it to promote public awareness. In so doing, Anglican Bishop John Chew said they rendered "our society a crucial service" by directing attention towards "the issue of grave concern of what and how sexual education is being taught by some vendors and trainers in some schools" in promoting "revisionist sexuality norms". This was vindicated when the MOE took corrective measures and suspended the AWARE CSE programme. Dr. Chew considered that "mainstream society at large would be grateful for the continued contribution and vigilance of the Christian community to the moral fabric and social well being of our society". Pastoral Letter from our Diocesan Bishop: The Most Rev Dr John Chew (10 May 2009) (on file with author). The mainstream media did not carry any critical reporting on the inappropriateness of this programme. Some of their readers did express gratitude to the 'new exco' for exposing the radical nature of the CSE programme: Rebecca Wang, "Shocked at old guard's programmes" *The Straits Times* (Singapore), Forum (25 April 2009); "Aware programme 'exceeded guidelines': Iswaran: Parents right to be concerned about sexuality education programme" *The Straits Times* (Singapore) (9 May 2009).

[199] "Six exco members from the same church" *The Straits Times* (Singapore) (4 May 2009).

takeover".[200]   Emotions were heightened when the pastor of that church report-edly urged female churchgoers to "be engaged" during a sermon, for which he later apologised.[201]   On 30th April, the National Council of Churches of Singa-pore ("NCCS") issued a statement that it did not condone church involvement in the AWARE dispute;[202] because "religion has been dragged into the unfortunate situation", churches should "all step back and give AWARE space to settle its own matters".[203]   Deputy PM Wong Kan Seng (and later PM Lee)[204] welcomed this "responsible" statement which helped "prevent any misunderstanding that the churches are backing one side in the AWARE dispute, or that this is a dispute between Christians and other Singaporeans".[205]   In fact, the Christian community was divided by the dispute.[206]

An extraordinary general meeting ("EGM") was called on 2nd May at Suntec City which lasted for 7 hours;[207] many of AWARE's 3000 new members expressed their views furiously.[208]   It was apparent that the homosexual community[209] (and certain members of the press) were supporters of the 'old exco' and thuggishly shouted down the 'new exco'.   MP Lim Biow Chuan noted before Parliament reports that "several members who attended the EGM of AWARE were trying to outshout the Chairperson because she had turned off the microphone.   A reader then wrote about the "raucous behaviour like jeering and booing by members in support of the 'Old

[200]   Alicia Wong, "Let's keep it secular" *Today* (Singapore) (15 May 2009).

[201]   "Pastor apologises for misusing pulpit" *Channel NewsAsia* (Singapore) (1 May 2009).   Pastor Hong clarified that his church had not instigated the AWARE tussle, despite his expressions of support for members of his congregation who were AWARE members.   He stated: "We hope that AWARE members will go to their EGM without the wrong assumption that the exco is a pawn of the church or that it has intentions to turn it into a religious organisation, as that is totally untrue."   Nur Dianah Suhaimi, "Church against homosexuality as 'normal alternative lifestyle'" *The Straits Times* (Singapore) (1 May 2009).   He also acknowledged his actions on the pulpit had "aroused some tension at this stage" and undertook to be more sensitive in not allowing the pulpit "to be used intentionally to teach anything that would arouse social tensions, divisions and unrest".   "Pastor Derek Hong used the pulpit, which he regretted" *The Straits Times* (Singapore) (4 May 2009).

[202]   Alicia Wong, "Let's keep it secular" *Today* (Singapore) (15 May 2009); Zakir Hussain & Wong Kim Hoh, "Churches should stay out of Aware tussle" *The Straits Times* (Singapore) (1 May 2009).

[203]   "Pastor apologises for misusing pulpit" *Today* (Singapore) (2 May 2009).

[204]   "I am very grateful for the very responsible stand which was taken by the church leaders, the statement by the National Council of Churches of Singapore that it did not support churches getting involved and also the statement by the Catholic Archbishop, because had these statements not been made, we would have had a very serious problem." *NDR Speech 2009*, *supra* note 34.

[205]   "Pastor apologises for misusing pulpit"*Today* (Singapore) (2 May 2009).

[206]   Zakir Hussain & Wong Kim Hoh, "Churches should stay out of Aware tussle; Umbrella Christian body concerned over religion being dragged into row" *The Straits Times* (Singapore) (1 May 2009).

[207]   Teo Wan Gek & Elizabeth Soh, "Face-off: the white shirts v the red shirts"*The Straits Times* (Singapore) (3 May 2009).

[208]   "AWARE Saga: Exclusive Interview with 'feminist mentor' Huang Su Mien" *Lianhe Zaobao* (Singapore) (17 May 2009) 1.   This included concerns about the encroachment of religious values on a secular space, with a Muslim woman reportedly saying she was uncomfortable with an "all Christian and all Chinese group representing a secular group like AWARE.": "New Exco of AWARE given vote of no confidence" *Channel NewsAsia* (Singapore) (2 May 2009).   The charter of this NGO makes no provision for specific religious or racial representation.

[209]   Dr. Thio Su Mien, "Gay activists a key constituency of Aware" *The Straits Times* (Singapore), Forum (18 May 2009), in response to AWARE President's protestations that "Aware has never had a 'gay agenda'" *The Straits Times* (Singapore), Forum (16 May 2009).

Guard' and their attempts to disrupt affairs and tick off those speakers whom they do not agree with". Reportedly, the then AWARE President could not make her opening speech, being booed right from the start.[210] Of the EGM, Deputy PM Wong noted this was "an emotional meeting with many heated exchanges" and "not a model of calm deliberation and patient consensus building".[211]

Eventually, the 'new exco' was ousted after it received a vote of no confidence; an even newer exco whose sympathies were aligned with those of the 'old exco'[212] was chosen.

On closer examination, the official AWARE stance may be criticised as morally irresponsible in promoting the liberal value of sexual autonomy, in seeking 'modestly' only to provide information so that its recipients can make so-called 'informed choices'. Not all choices should be chosen and every viable consent-based theory of human behaviour must have limits if it is not to descend to unhinged hedonism which gives free reign to the perversions unchecked human desire and will is capable of. A sexual ethic based on personal choice is what undergirds a sexual liberationist ideology which asserts the moral equivalence of all sexual expressions. It has no principled basis for distinguishing between homosexuality, heterosexuality, bestiality, incest, pedophilia, necrophilia, sado-masochism, adultery, and any other kind of sexual expression. To maintain a stance of 'neutrality' in the light of the radical nature of the underlying framework towards approaching the issue is both risible and misguided. A liberal approach to matters like sexual morality is always judgmental towards opposing viewpoints, while speciously espousing non-judgmentalism; to refuse to judge is to judge. It is also disturbing that the mainstream press carried no critical editorials investigating the full implications of AWARE's ideological stance towards sexuality issues, which bodes ill for the diversity of viewpoints integral to clear, balanced thinking, as opposed to the lop-sidedness of propaganda or censorship by politically correct ideological commissars.

In the aftermath of this culture war skirmish, the government had to articulate guidelines to address this novel situation. Notably, concerns of journalistic bias were later raised in the new media and before Parliament, compelling the Editor of the leading broadsheet to publish a defence that *The Straits Times* was not pursuing an anti-religious agenda, being faced with a "curious situation" of the new leadership of a civil society group being unwilling, after 3 weeks, "to explain who they were, why they had acted and what they intended to do with AWARE". He asserted that "we provided the available facts surrounding the makeup of the new group for readers to

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[210] Lim Bow Chuan in Sing., *Parliamentary Debates*, vol. 86 (26 May 2009) (President's Address). He was content to observe that if the reports were correct, "then civility and gracious behaviour during the AWARE EGM was clearly missing". He noted that on the Internet "the vitriol used by the parties against each other is even worse" given the "huge amount of negativity and personal attacks against each other".

[211] Press Release, "Comments by DPM and Minister for Home Affairs Wong Kan Seng in response to media queries related to AWARE" (15 May 2009), online: <http://www.mha.gov.sg/news_details.aspx?nid=MTQ0MA%3D%3D-H1aIkdI4Ksw%3D>.

[212] "New Exco of AWARE given vote of no confidence" *Channel NewsAsia* (Singapore) (2 May 2009); Jamie Ee, "Outnumbered and out-talked; Overwhelmed in terms of numbers and words, exco opts for a graceful exit" *The Straits Times* (Singapore) (3 May 2009); Wong Kim Hoh, "New guard ouster; Exco of Women's group steps down after raucous seven-hour meeting and control goes back to the veterans" *The Straits Times* (Singapore) (3 May 2009).

draw their own conclusions."[213] Nonetheless, instances of biased journalism were subject to government commentary and rebuke.

(a) *Government as Peace-Keeper rather than Arbiter over the internal affairs of private citizens and individuals*:   Ostensibly, the government was not involved in this "private" affair, concerning the electoral process of a voluntary organisation. In various mainstream media interviews, Deputy PM Wong Kan Seng clarified the political rules of engagement for religious and secular groups in general and with specific reference to the 'AWARE controversy'. He underscored that the government's position on homosexuality would remain unchanged, regardless of who was in charge of AWARE as the Government's view would "not change as a result of lobbying by pressure groups".[214] Deputy PM Wong said that homosexual groups would "have space in our society" by accepting the "informal limits" within the framework of "a stable society with traditional heterosexual family values", and should not "assert themselves stridently as gay groups do in the West".[215]

The government only got involved in the 'private' AWARE leadership tussle after the 'effects' of the "disquieting public perception that a group of conservative Christians, all attending the same church which held strong views on homosexuality, had moved in and taken over AWARE because they disapproved of what AWARE had been doing"[216] imbued it with a 'public' quality. This perception raised "many qualms" among both Christians and non-Christians; the situation was heightened "because now religion was also getting involved, and it was no longer just the issue of homosexuality". The trigger factor for government involvement was the potential of public disorder, with the 'religious'[217] element raising a red flag.

Deputy PM Wong anticipated similar future tussles "between people holding different points of view", on "issues which they consider vitally important".[218] Given this diversity of viewpoints, he warned that diversity should not become "a source of weakness" and stressed the need to manage such disagreements "in a responsible and balanced manner", by articulating views "passionately, without denigrating others". The government's role was to be peace-keeper, not adjudicator, in these culture war

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[213] Han Fook Kwang, "How ST covered the story: ST's editor answers critics of this newspaper's reporting of events" *The Straits Times* (Singapore) (30 May 2009); for a counter-reply, see Jenica Chua, "New exco didn't stonewall reporters" *The Straits Times* (Singapore), Forum (2 June 2009).

[214] PM Lee subsequently underscored that the government was unconcerned with who controlled AWARE "because it is just one of so many NGOs in Singapore". *NDR Speech 2009*, *supra* note 34.

[215] Press Release, "Comments by DPM and Minister for Home Affairs Wong Kan Seng in response to media queries related to AWARE" (15 May 2009), available online: <http://www.mha.gov.sg/news_details.aspx?nid=MTQ0MA%3D%3D-H1aIkdI4Ksw%3D>.

[216] *Ibid.*

[217] The 'religious element' stems from the religious colouration of the issues in terms of the involvement of some members belonging to the same association (a church); they were motivated by their religiously influenced moral values in seeking to influence a non-government body and indicated AWARE was and would remain a secular body unaligned to any religious body despite the religious affiliation of certain new exco members, and the media characterisation of the issue as a religious coup of sorts. Would the media have given similar attention if the facts were changed as where a group of people belonging to a humanist / sexual libertarian association, motivated by their humanist values and libertine ethos, had taken over AWARE in order to steer its work towards the promotion of a radical feminism?

[218] *Supra* note 215.

fracas, to "maintain order and hold the ring impartially"; it would however "not stand by and watch when intemperate activism threatens our social fabric".[219]

(b) *Obligations of tolerance and mutual restraint on both "religious" and "secular" groups*:   Deputy PM Wong stated that keeping religion and politics separate was a key rule of political engagement and this would be imperilled if "religious groups start to campaign to change certain government policies, or use the pulpit to mobilise their followers to pressure the government, or push aggressively to gain ground at the expense of other groups, this must lead to trouble". The AWARE affair did not fall into any of these three examples, as the leadership takeover was designed to promote family values, in line and in support of government policy;[220] neither was it an assault on the 'territory' of another religious group.

Nonetheless, he advised restraint on both sides to avoid importing U.S.-style culture wars onto Singapore soil. He recognised that the activities of both religious and secular groups could threaten public order because "[i]f any group pushes its agenda aggressively, there will be strong reactions from the other groups." Thus religious and non-religious groups had "to live and let live, to exercise restraint and show mutual respect and tolerance".

The obligation "for all groups to practice tolerance, restraint and mutual respect" to preserve "social harmony" in a multi-racial, multi-religious society was reiterated by President Nathan before Parliament.[221] He emphasised this applied "not just to religious groups venturing into the secular domain, but also to secular groups which want to strongly push their views and change our social norms". This recognises that 'secular' or non-religious factions can demonstrate intolerance against those who hold dissenting views, especially those whom they identify as 'religious'. This too is divisive.

(c) *Creating a moral panic by playing the 'religious card'*:   PM Lee characterised the public order concern in relation to the AWARE affair as "an attempt by a religiously motivated group who shared a strong religious fervour to enter civil space, take over an NGO it disapproved of and impose its agenda", which was the dominant characterisation purveyed by the mainstream media. A 'push' by one side elicits a 'push back' from the other. In other words, if a group which is "religiously motivated" seeks to influence the direction of an NGO towards a pro-family agenda and to oppose that NGO's growing pro-homosexual agenda, it would provoke "a push back from groups" supporting the homosexual agenda, presumably motivated by a sexual liberationist ideology which celebrates sexual 'autonomy' and 'diversity'. This recognises intransigence in a polarised debate. Notably, the 'old exco' supporters at the EGM were described as acting both "vociferously and stridently".

The press characterisation of the AWARE elections as a religious takeover has the tendency to create a 'moral panic'. Stanley Cohen coined this term to relate

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[219] *Ibid.* This explains why the government stepped in to calm things down after the intemperate activism of the 'old exco' supporters at the EGM.

[220] "… [B]y "family" in Singapore, we mean one man one woman, marrying, having children and bringing up children within that framework of a stable family unit…": Prime Minister Lee Hsien Loong in Sing., *Parliamentary Debates*, vol. 83, col. 2354ff (23 October 2007).

[221] Address by President S.R. Nathan at the Opening of Parliament on 18 May 2009, 8.30PM, "Building Our Future Singapore in an Uncertain World", full text available online: <http://www.istana.gov.sg/News/Address+by+President+S+R+Nathan+at+the+Opening+of+Parliament.htm>.

to a sporadic episode which when it occurs, "subjects society to bouts of moral panic, worry about the values and principles which society upholds which may be in jeopardy". Cohen discusses its characteristics as "a condition, episode, person or group of persons [who] become defined as a threat to societal values and interests".[222] He also examined the mass media's role in fashioning or stylising these episodes, "amplifying the nature of the facts and consequently turning them into a national issue, when the matter could have been contained on a local level".[223]

An alternative view distinct from the mainstream media version is that the AWARE leadership tussle had nothing to do with 'religion' or an organised campaign by a religious group. It did involve individuals who shared religious affiliations and pro-family values, which motivated them, even as all activists are motivated by their shared personal values.[224] Devout atheists or staunch humanists might band together to promote a political agenda. However, the critical accelerant, as PM Lee observed, was the risk of "a broader spill-over into relations between different religions". In other words, when one plays the "religious card" by emphasising the involvement of members of a particular religion or characterising the issue as 'fundamentalist[225] Christians imposing their views in the public sphere', other religious groups might, as a knee-jerk or emotive reaction, feel threatened, precipitating tensions.

The AWARE affair did not concern traditional causes of inter-religious tensions such as zealous proselytisation. At heart, the AWARE affair was not fundamentally about religion *per se* but a contest over which public values (whose content may be drawn from religious and non-religious sources) best serve the common good. If religious (or non-religious) views support family values, this bolsters national values and does not pose a religious challenge to public order.

Unfortunately, the AWARE affair was reported in a manner which foregrounded 'religion' rather than the contest over public values. Indeed, MP Zaqy Mohamad noted that while the local media had "generally been responsible", there was "still room for improvement", especially since the AWARE affair coverage could have been "better done in a way that should not create division". He received feed-back that media coverage sided with certain groups (presumably the 'old exco') and urged media entities to "assume greater responsibility and seek to provide balanced awareness".[226] 'New exco' members also complained about "some one-sided and inaccurate media reports" which played up the religious card as well as homosexuality, noting that "[a]t the AGM, none of us talked about our religious beliefs, although there was a lot of talk in the press." Furthermore, while identifying with social conservatism, a church-going exco member stated she joined AWARE as a concerned parent rather than "to push my religious beliefs".[227] The reporting could have been

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[222] Stanley Cohen, *Folk Devils and Moral Panics* (St. Albans: Paladin, 1973) 9.

[223] Hayley Burns, "What are moral panics?" (April 2000), online: <http://www.aber.ac.uk/media/Students/hrb9701.html>.

[224] The AWARE case has been characterised by the mainstream media as an incursion by religion into secular space, an instance where "civil society had jumped into action where "OB" markers of religion were seen to have been crossed" (as observed by Ms. Jessica Tan Soon Neo (MP for East Coast): Sing., *Parliamentary Debates*, vol. 86 (25 May 2009) (Debate on President's Address)).

[225] One might observe that public order problems never reside with fundamentalisms, but with the soundness of the fundamentals espoused. When was the last time there was an Amish terrorist?

[226] Zaqy Mohamad in Sing., *Parliamentary Debates*, vol. 86 (25 May 2009) (Debate on President's Address).

[227] "An ugly turn of events" *Today* (Singapore) (24 April 2009) 1-2.

cast just as legitimately as the constitutional election to an NGO of a group of profes-
sional women who were social conservatives, with the objective of promoting a brand
of feminism which did not embrace the homosexualism agenda. It could have been
framed as a tussle over political philosophies or competing feminisms, rather than the
more emotive 'religion encroaching upon the common space' tack adopted. Indeed,
the 'new exco' President defined her agenda as being "pro-woman, pro-family and
pro-Singapore", recognising that AWARE was "a secular organisation" with mem-
bers from "different races, walks of life," holding "different belief systems", but who
were united by "advancing the cause of women".[228] Senior government officials
have also opined that the dispute was not one of religion.[229]

The object lesson is that 'Religion' and the passions it inspires, as a rallying cry
for religionists or a call to arms for liberal secularists, can be exploited by both the
religious and non-religious to threaten social order. It draws attention away from
the real issue, which concerns the public values espoused by any sector of civil soci-
ety. Additionally, it is a form of discrimination to make religious affiliation of civil
society activists a suspect classification, while immunising non-religious or secular
ideologies from critical scrutiny as though these were 'neutral' views. For exam-
ple, no reporter questioned the controversial brand of sex education the 'old exco'
promoted, as indeed the *The Straits Times* editor-in-chief honestly acknowledged.[230]

(d) *Responsible journalism vs. crusading journalism*:   It is imperative that the press
be balanced when reporting controversies like the AWARE affair where there are
strongly divergent accounts of the relevant facts and the significance of the situation;
bias can be discerned in reporting emphasis and in what is ignored or minimised and
tone, which may betray journalistic sympathies or antipathies. For example, a letter
to the media written by someone who attended the EGM admired "the solidarity
and organisational effectiveness of the homosexual community" who executed the
brilliant strategy seen "in dividing the views of the inter-faith groups by focusing on
the ethics of this takeover, instead of the issue of homosexuality",[231] the latter issue
apparently mesmerising some press members.[232]

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[228] Josie Lau, "We're ready for the task', but why are some so angry with us?" *The Straits Times* (Singapore)
(18 April 2009).

[229] Robin Chan & Jamie Ee, "Aware rift: Govt leaders call for tolerance" *The Straits Times* (Singapore) (26
April 2009).

[230] "How ST covered the story: ST's editor answers critics of this newspaper's reporting of events" *The
Straits Times* (Singapore) 30 May 2009. For an unequivocal view as to how the media was one-
sided and negative towards the 'new exco' lead by Josie Lau, see the interview with Dr. Daniel Koh,
"The Ethics Expert on Aware and Buddhist Revivalism" *The Christian Post* (Singapore) (25 May 2009),
online: <http://sg.christianpost.com/dbase/ministries/1242/section/1.htm>. He observed that "the pub-
lic agenda after the election was decidedly driven by the media-savvy 'old-guard'—with the willing help
of the press—who presented themselves as the aggrieved party, people who are "tolerant," "inclusive,"
and "secular" versus what they presented as the fundamentalist, intolerant, homophobic Christians."

[231] Andy Sim, "AWARE: More to it than Meets the Eye" *Today Online* (Singapore) (5 May 2009), archived
online: <http://www.alphaconsultant.com/2009/05/aware-more-to-it-than-meets-eye.html>.

[232] A dissenting view is that the new exco "took office legitimately", a point "neglected/lost by the media
which was more interested in stirring excitement and sensationalising about the new leaders being from
a church and being anti-homosexual". The use of words 'coup', 'take-over' to describe the change of
leadership was "extremely mischievous": "The Ethics Expert on Aware and Buddhist Revivalism", *supra*
note 230; Ng Boon Sin, "Aware's old guard have alienated many women" *The Straits Times* (Singapore),
Forum (22 April 2009).

Clearly, a section of the citizenry was unhappy with the perceived one-sided reporting of the AWARE affair by some journalists.[233] There were calls for official scrutiny in this respect. An open letter to the Prime Minister, broadly circulated online, offered eyewitness accounts of the AWARE EGM meeting not reflected in mainstream media coverage. It spoke of the high percentage of men[234] attending a woman's organisation meeting, the aggressive heckling against the 'new exco' and associate members who proudly declared "their homosexual status to loud applause" and who expressed support of the CSE programme. It alleged a "concerted effort by both the press and TV coverage not to mention the significant presence of the homosexual community" and how certain media members were "candidly jubilant" in celebrating the passage of the 'no confidence' vote against the 'new exco'. It wondered whether the press focus "on the sensitive issue of religious involvement" was but a "red herring thrown out to manipulate public sentiments".[235] MP Sin Boon Ann questioned "whether the press can be truly called upon to discharge that duty when some of its own members feel rather passionately about the issues in the public domain". Referencing this open letter which he had received by email,[236] he observed that:

> In reporting the matter, the editors and journalists could have looked at the issue as one of the conservative groups in our society taking on the liberals rather than be quick to frame this in the context of the Christian Right against the homosexuals and the lesbians. True, many of the ladies came from the same church. However, the same may be said of any group who comes from any organisation. But that alone does not mean that they represent the organisation. I do wonder if the press would have been so quick on the take if it were women from another faith who took up the cause instead. It is unfortunate that by framing this episode as one

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[233] Views have been expressed in cyberspace to this effect. A sample is this post by 'fioredeliberi' on 10 Sept 2009 (online: <http://comment.straitstimes.com/showthread.php?p=334364>) commenting on an article about the press:

> ST [the *Straits Times*] is fully biased to the leftwing liberal portion of western culture. It is pro-gay, anti-conservative, anti-religion, environutty, ecofreaky and generally sides with the same positions taken by the NYT, AP, WaPo, Reuters, Time and Newsweek wrt to worldwide affairs. These are all liberal-controlled media enterprises, ceaselessly advocating the liberal western view. The only place where the ST departs from liberal culture is in criticism of the PAP. This one cannot. The *Straits Times* (Singapore) also has its share of supporters—see "Straits Times faces backlash against its Aware coverage", online: <http://journalism.sg/2009/05/17/straits-times-aware/>.

[234] Debbie Yong, "Men play active role in meeting" *The Straits Times* (Singapore) (3 May 2009). No mention was made of the large contingent of homosexual men supporting the old exco; instead, old exco supporters were described as "young articulate men in their 20s or 30s who went to see the issues of civil society being discussed". One may misdirect by both over and under-emphasis.

[235] Open letter to the Prime Minister from an anonymous Singaporean (17 May 2009), text archived online: <http://journalism.sg/2009/05/17/straits-times-aware/>.

[236] He later honourably apologised for quoting from an email from a person whom he did not personally know and for not verifying its contents, recalling the high standards of diligence attending the privilege of free speech in Parliament. Propriety is important, but so is veracity. This still leaves open the issue of whether this account of the AWARE meeting was true; if so, it would indicate selective press reporting. If the press does not report diverse views and competing perspectives, it is hard to see who (perhaps citizen journalists?) would have the resources to investigate the truth of such an account. This is a vice of a lack of competitive and diversified newspapers and raises the question of journalistic accountability, given the public trust they are charged with in Singapore: Sing., *Parliamentary Debates*, vol. 86 (28 May 2009) (Clarification: Debate on President's Address).

that carries a religious undertone, the whole debate deeply polarised our society very quickly.[237]

Clearly, there are a variety of ways to reporting the AWARE takeover. In debating the President's Address, parliamentarians expressed disquiet over how the mainstream media "largely lacked a diversity of views in singing the same chorus that religious groups should not get involved in secular organisations". Other relevant lines of inquiry include whether a religious group as opposed to religious individuals acting on their own accord were involved, whether moral values like family values were exclusively Christian value or a mainstream value,[238] and whether the AWARE affair "was really a debate about values rather than religious overstepping".[239]

Evidently, something was amiss, as discerned from ministerial statements relating to media coverage. Acting Minister of Information, Communications and the Arts Lui Tuck Yew revealed that the only time since assuming his portfolio that he ever contacted editors about news coverage was during the AWARE leadership tussle.[240] Deputy PM Wong stated that MICA[241] in analysing "the volume, tone and objectivity" of media coverage of the AWARE saga "found it wanting" as "the coverage was excessive and not sufficiently balanced" as well as undeserving of "such extensive and even breathless coverage". He admonished journalists not to "get caught up in the stories they are reporting, however exciting the stories may be".[242]

NCCS Vice-President Bishop Robert Solomon observed that Mr. Wong's "pertinent comments on some of the shortcomings of the media (in covering the AWARE saga) must be noted and welcomed," embracing the fact that Christians and churches were not "precluded from engaging in public square issues within the rules of engagement".[243]

With respect to the AWARE incident, a citizen pointed out that newspaper reports linking the 'new exco' to their personal religious beliefs was "highly inappropriate" and dangerous instigation in Singapore' multi-racial and multi-religious context, aside from distracting from the real issue. It may have even "raised the tension that led to the death threats and call for boycott". He urged the censuring of such "lines

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[237] Sin Boon Ann: Sing., *Parliamentary Debates*, vol. 86 (27 May 2009) (Debate on President's Address).

[238] Dr. Thio Su Mien, "Militant religionism? It's family values" *The Straits Times* (Singapore), Forum (1 June 2009).

[239] Nominated MP Thio Li-ann in Sing., *Parliamentary Debates*, vol. 86 (26 May 2009) (Debate on President's Address), asking when a reporter was reporting as opposed to playing an advocate and observing: "It was hard to shake the impression that certain journalists were playing the 'I don't like your views so I will play the religionists are imposing their values' card. This was very disappointing … We do not want to arrive at the place where, as Mark Twain put it: If you don't read the newspaper, you are uninformed; if you do read the newspaper, you are misinformed." For a list of issues *The Straits Times* (Singapore) ignored, see Joel Joshua Goh, "True AWAREness", online: <http://www.lothlorien.sg/index.php?topic=464.5;wap2>.

[240] Clarissa Oon, "Advice to main media: Stay balanced" *The Straits Times* (Singapore) (10 September 2009).

[241] MICA is the Ministry for Information, Communications and the Arts. This feedback was communicated to the editors.

[242] Press Release, "Comments by DPM and Minister for Home Affairs Wong Kan Seng in response to media queries related to AWARE" (15 May 2009), online: <http://www.mha.gov.sg/news_details. aspx?nid=MTQ0MA%3D%3D-H1aIkdI4Ksw%3D>. See also "Media coverage 'not sufficiently balanced' at times" *Channelnewsasia.com* (Singapore) (15 May 2009), online: <http://www. channelnewsasia.com/stories/singaporelocalnews/view/429365/1/.html>.

[243] Zakir Hussain, "DPM's comments welcomed" *The Straits Times* (Singapore) (15 May 2009).

of reporting that incite religious intolerance, by speculating one's motive based on personal faith".[244] In this view, the *agent provocateur* was not the 'new exco' or social conservatives, but the 'old exco' and their liberal supporters. PM Lee in his NDR Speech observed that "[t]he media coverage got caught up and I think the amplifier was turned up a bit high. People talk about mature civil society. This was hardly the way to conduct a mature discussion of a sensitive matter where views are deeply divided."[245]

It is not inconceivable that in the future, liberal secular activists might invoke the 'religion card' in a mischievous fashion to stir up animus against a group of people who hold a certain political philosophy which may be influenced by their religious convictions. If the press should play up the 'religious card', it can do a great deal of harm as well as misrepresent the issue in a way that stirs up social tensions by promoting feelings of hostility or ill-will towards a religious group, which can be seditious.[246] This would threaten social harmony.

Responsible journalism should endeavour to provide a plurality of perspectives and to focus on the issue, rather than engage in sensationalistic reporting or narrow 'crusading journalism'.[247] To enable readers to appreciate all sides to an issue and to facilitate participatory democracy, reporting "should include the accurate and most effective representation of differing viewpoints, and not paint the fringe as mainstream or the pathological as normal".[248]

(e) *Practising toleration and self-restraint, seeking solidarity*:   Given the newly emergent threat to social harmony by clashes between secular liberal activists and

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[244] Andy Sim, "Aware: more to it than meets the eye" *Today Online* (Singapore) (5 May 2009), online: <http://voices.todayonline.com/letter/EDC090505-0000111/HotTopic_online_only_aware_more_to_it_than_meets_the_eye.html#Letter>.

[245] *NDR Speech 2009*, *supra* note 34. While some journalists considered the outcome of the EGM meeting a "win for pluralism" (Li Xueying, "Pluralism's narrow escape is a wake-up call" *The Straits Times* (Singapore) (5 May 2009)), others considered there were "more losers than winners" as "the volume of bile that was flung by both sides and their supporters was incredible and unsupportable", demonstrating an uncivil civil society. Thus, "character assassinations, name-calling, the spreading of false information and private e-mail, the display of strong arm tactics, plain rudeness, discourtesy and even death threats—they were all deemed par for the course." For example, old guard Constance Singham was subject to false rumours that she had a homosexual brother, Clarence Singham, while a blogger called on Singaporeans to boycott the business of a new exco member, threatening her livelihood. (Sumiko Tan, "More losers than winners" *The Straits Times* (Singapore) (5 May 2009). See also Ho Kong Loon, "So, did civil society really win?" *Today Online* (Singapore) (5 May 2009) noting how the 'new exco' President remained relatively calm, dignified and rational in the face of "boos, jeers. shouts, gesticulations, fierce posturing and rude interruptions" at the EGM.

[246] It is ironic that mainstream media, while highlighting the apparent religious character of the Aware dispute ("a Christian fervour"), could produce editorials opining that "[b]oth sides should be mortified that an argument over values and the manner of executing programmes could not be conducted free of righteous cant and religious undertones.": "A fight for the soul of Aware" *The Straits Times* (Singapore) (1 May 2009). Some self-awareness of the newspapers' role as catalyst in this affair would be palliative.

[247] Then Deputy PM Lee Hsien Loong had urged the media to play a constructive role in nation-building by reporting news "accurately and fairly". The media should "avoid crusading journalism, slanting news coverage to campaign for personal agendas. This way the media helps the public to decide and judge issues for themselves.": *Harvard Club Speech*, *supra* note 47.

[248] Nominated MP Thio Li-ann in Sing., *Parliamentary Debates*, vol. 86 (26 May 2009) (Debate on President's Address).

social/religious conservatives, PM Lee urged religious leaders to promote amongst their flock "accommodation, which is what all faiths teach".[249]

In times past, 'toleration' applied to inter-religious relations;[250] it has now been extended to 'secular' or non-religious groups who clash with social/religious conservatives; the former can cause social disharmony or racial and religious disharmony by playing the 'religion card'.

'Toleration' is an open-ended term and not an ultimate value as it has limits;[251] every doctrine of toleration has a tolerator, who sets the limit to toleration, and a tolerated object. To prevent its invocation as a rhetorical trump card rather than a concept with content, 'toleration' in the constitutional context warrants more detailed treatment. A few preliminary observations on what 'toleration' means in general and in the specific context of the Singapore constitutional order are proffered.

To tolerate is to endure, without interference, beliefs or conduct which one believes to be wrong.[252] Insofar as 'toleration' is a legal category which mediates between the positive liberty of exercising religious freedom and the negative liberty to be free from the religious practice of others, it points to the competing interests of individuals, groups and the government.

With respect to religious toleration, this may be traced back to the Edict of Milan of 313 AD, where Emperor Constantine granted religious freedom throughout the Roman Empire, ending religious persecution against Christians who were given "free and unrestricted opportunity of religious worship".[253] This obliged the state not to pursue assimilationist policies in coercing religious belief.

When John Locke wrote *A Letter Concerning Toleration* in 1689, arguing for toleration of various religious denominations, he did so on the basis of a theological commitment to an individual's freedom of conscience, because force cannot alter belief. He argued if "liberty of conscience is every man's natural right, equally belonging to dissenters as to themselves" and if there was no compulsion in matters religious "by law or force", this would remove discontent amongst religious assemblies and render them "more peaceable".[254] Thus, religious toleration as a basis for religious liberty may be justified on intrinsic values of free conscience or pragmatic, instrumental ones, where the state tolerates the beliefs of all so it can

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[249] *NDR Speech 2009*, *supra* note 34.

[250] *NDR Speech 2009*, *supra* note 34:

> Christians cannot expect this to be a Christian society, Muslims cannot expect this to be a Muslim society, ditto with the Buddhists, the Hindus and the other groups. Many faiths share this island. Each has different teachings, different practices. Rules which only apply to one group cannot become laws which are enforced on everyone. Muslims do not drink alcohol but alcohol is not banned. Ditto gambling which many religions disapprove of but gambling is not banned. If we have to live together in peace, then all have to adopt 'live and let live' as our principle.

[251] See generally Melissa S. Williams & Jeremy Waldron, eds., *Toleration and its Limits*, NOMOS XLVIII (New York: New York University Press, 2008).

[252] *Concise Oxford English Dictionary*, 11th ed. (2004) at 1515.

[253] Edict of Milan, English translation available online: <http://gbgm-umc.org/umw/bible/milan.stm>.

[254] John Locke, *A Letter Concerning Toleration* (1689), trans. by William Popple: text available online: <http://www.constitution.org/jl/tolerati.htm>. For an in-depth analysis, see Alex Tuckness, "Locke's Main Argument for Toleration" in Melissa S. Williams & Jeremy Waldron, eds., *Toleration and its Limits*, NOMOS XLVIII (New York: New York University Press, 2008) 114-138.

promote peaceful co-existence of a religiously diverse citizenry and function more efficiently.[255]

In Singapore practice, insofar as the individual freedom to have, not to have or to change a religion is secured, the principle of free conscience grounds a theory of toleration on moral grounds. That the government secures the framework to allow individuals to enjoy religious choices demonstrates a toleration of religious beliefs.

However government attitudes may shift in relation to regulating the external dimensions of religious practices, such as disallowing *tudung* in primary schools, which Muslim groups have criticised as intolerant.[256] The official justification was the need to preserve public schools as common secular spaces, where similarities rather than differences of identity was emphasised.[257] This demonstrates that there are limits to toleration, as the tolerator determines. Someone has to set the rules of the game.

Outside of situations involving government, there may be instances where individuals may have to tolerate the religious practices of other religious individuals which they do not like, such as propagation, which is constitutionally guaranteed, and which can cause social friction. Such forbearance requires a fairly thick skin. For example, if one receives publications in the mail which denigrates one's faith and hurts one's religious feelings, one may either trash it or complain to the authorities, triggering legal prosecution. It is peculiar that the District Court judge in *PP v. Ong Kian Cheong*[258] characterised the accused, who were convicted under the *Sedition Act* for the random distribution of religious tracts which were "seditious and objectionable to Muslims", as demonstrating an "intolerance, insensitivity and ignorance of delicate issues concerning race and religion in our multi-racial and multi-religious society".[259] While this form of propagation was perhaps insensitive and naïve, there was nothing intolerant about it, unless the mere act of propagating a faith is deemed intolerant. The need for tolerance implies the existence of a disagreement; to be tolerant is to walk a two-way street, based on a principle of reciprocity; propagation is a form of religious free speech, which, to be secured, sometimes involves tolerating religious speech one dislikes. If religious free speech is limited to speech that is not offensive to other (mutually exclusive) faiths and/or belief systems, this considerably narrows the scope of this constitutional liberty, raising the question as to whether offense is triggered by the content of speech or its manner of presentation. How does one distinguish between 'dislike', 'disagreement' and 'offense'? Any rationale for such a limit on religious free speech cannot rest on a commitment to truth and inquiry, but on the more instrumental good of keeping the peace.

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[255] Noah Feldman, "Morality, Self-Interest and the Politics of Toleration" in Melissa S. Williams & Jeremy Waldron, eds., *Toleration and its Limits*, NOMOS XLVIII (New York: New York University Press, 2008) 392-404.

[256] Karamah (Muslim Women Lawyers for Human Rights), "Letter to Singapore Ambassador Chan Heng Chee" (20 April 2002), online: <http://www.karamah.org/press_letterto_singapore.htm> (describing the ban on *tudungs* in schools an "intolerant decision").

[257] Lim Chee Hwee, Press Secretary to Minister for Education, "Uniform remind students of common ties" *The Straits Times* (Singapore), Forum (2 February 2002) 31.

[258] *PP v. Ong Kian Cheong* [2009] SGDC 163.

[259] *Ibid.* at para. 82. That religious propagation is a constitutional liberty, which does not seem to have been taken into account, should have at least gone to mitigate the custodial sentences imposed.

What then does toleration entail in relation to the role of religion in the public square, which includes public policy debates? When it comes to democratic debate, the government seeks to be even-handed and hears all views, and does not censor what might be considered religiously-influenced views. However, *tolerating* a view and its expression as part of viewpoint diversity is not the same as *endorsing* the view and its veracity, as all views in the public square are subject to evaluation. The call to tolerance in public debate cannot be misconstrued as being synonymous with ethical neutrality after the fashion of political liberalism, which refuses to judge between competing views of goods and evils, purveying an extreme relativism in the name of 'inclusiveness' and 'diversity'. It is the apotheosis of illiberalism to require someone to "be tolerant to the point of abandoning their principles and even identity",[260] effectively commanding apathy in the face of controversy, rather than engagement with hard questions. It is furthermore unworkable as it divests policy-making of the normative framework needed to make choices and assign priorities. Toleration, hearing all perspectives, is designed to protect moral deliberation in a democratic setting, not to enforce a moral imperative by fiat. Therefore, toleration extends to protecting the expression of views, not endorsing specific views nor immunising them from critique.

In the field of inter-religious relations, 'tolerance' requires that all Singaporeans "show respect and tolerance for other faiths", which includes not denigrating other faiths or insensitive attempts to convert those belonging to other religions, which might spark a counter-response.[261]

When then does 'toleration' or 'pluralism' require in the field of civil society activism? Does it require all religious groups and all religious individuals not to run or seek to run non-religious organisations? That is neither plural nor inclusive. However, given the difficulty of laying down clear rules here, prudence rather than principle may dominate and influence understandings of 'toleration', driven by pragmatic concerns of civil peace. 'Toleration' cannot be so banal and partisan to mean that only a secular/liberal agenda is tolerant, while a conservative/religious agenda is intolerant. There is no neutral authority in politics as noble abstractions like justice, autonomy and equality are empty vessels filled out by "partisan, interested guidance".[262] There are elements of both agendas which are mutually exclusive and areas of overlap. What does the platitude of 'live and let live' mean in this context?

Three guidelines offered by Minister Vivian Balakrishnan are instructive, towards the end of improving the maturity of civil society:[263] First, he recognised the special place of religion in Singapore society and exhorted that religious organisations keep out of petty politics to avoid them becoming "compromised or damaged by the hurly-burly of politicking". This is sensible, as activism by one religious body could spark activism in others, though this admonition does not extend to religious individuals. Secondly, given the growing, sometimes aggressive, expression of diverse viewpoints, he advised groups not to get derailed or consumed by contentious single

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[260] Guess, *supra* note 62 at 323. See also, *True Tolerance: Liberalism and the Necessity of Judgment* (New Brunswick: Transaction Publishers, 1999).

[261] *MRH White Paper*, *supra* note 27 at para. 13.

[262] Stanley Fish, "A Reply to Judd Owen" (1999) 93 Am. Political Sci. Rev. 925 at 925-926.

[263] Li Xueying, "Keep religion above 'petty politics' says Vivian; Following Aware saga, he urges groups to be 'rainbow coalition'" *The Straits Times* (Singapore) (27 April 2009).

issue agendas which become "the be-all and end-all of your social activism or of your organisation". This would be counterproductive. In other words, to consider the multitude of issues and social problems Singaporeans face, rather than narrow partisan agendas. It was also important to transcend infantile hostility and learn to disagree agreeably, as a civic virtue. Lastly, an important prudential consideration to allay fears of one group (whether religious or secular) appropriating undue influence in the public sphere, was for groups to build a "rainbow coalition" in order to be able to make meaningful change in Singapore. Having a range of broad-based perspectives within a group has a moderating influence.[264]

This is to call Singaporeans to an "aspirational vision of common interest politics", which is utopian in a modern state with its "plethora of incommensurable interests".[265] Stability would then reside in a common commitment to social harmony as a public good, where, in the absence of "common grounds", Singaporeans would have to "look beyond these issues to the common good of the community".[266]

Toleration as a political practice is always extended by the dominant who offers protection to the less powerful tolerated—it suggests certain asymmetries of power, as where the state seeks to regulate religion in areas of overlap where general law asserts supremacy over religious norms. For example, where pacifists are subject to military law. Outside of the state, 'tolerance', a certain accommodating attitude, is exhorted of religious groups in relating with one another. Where religious groups clash with 'secular' groups, tolerance here does not mean assuming morally indifferent postures over hard moral questions, but acting with civility and self-restraint towards one another in the face of disagreement in democratic deliberation.

While toleration of this sort is a peace-keeping method, it is not the end goal. PM Lee urged that being a Singaporean meant "not just tolerating other groups but opening our hearts to all our fellow citizens",[267] that is, seeking the intangible cohering public good of solidarity, which cannot be legislated.

IV. The Constitution Beyond the Court

The *MRHA* is the framing legislation which gives effect to the ground rules for religion and the political process, applying to religionists and non-religionists who exploit religious passions for political gain. No restraining order has ever been issued in the almost 20 years it has been in force; were such an order issued, it would not be justiciable.[268] This marks off "religious harmony", a facet of public order, as a

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[264] It appears that there has been a fragmentation of views within the current AWARE exco. In September 2009, one of its members, Nancy Griffiths, resigned because AWARE unrepentantly refused to take responsibility and apologise for the use of "culturally insensitive" terms in its CSE programme: Benson Ang, "I felt like an Outsider: Aware exco member quits over differences" *The New Paper* (Singapore) (16 September 2009), online: <http://www.tnp.sg/printfriendly/0,4139,213840,00.html>. The excluded can exclude and be exclusive. Strangely, the main broadsheet appears to have ignored this significant development.

[265] Feldman, *supra* note 255 at 399.

[266] Amy Khor Lean Suan in Sing., *Parliamentary Debates*, vol. 86 (25 May 2009) (Debate on President's Address).

[267] *NDR Speech 2009*, *supra* note 34.

[268] Section 18 of the *MRHA*, *supra* note 18.

category somewhat akin to 'national security',[269] where the rule of law is qualified insofar as this requires judicial review of executive action.[270]

'Religion' and 'politics' traverse a wide range of human activities and the admonition not to mix religion and politics, for fear of Paradise Lost, applies to a narrower range of activities which defy exhaustive categorisation. The unifying idea is that this mixing must be disallowed where it threatens political stability. In constitutional terms, article 15(1)-protected religious activities may be limited by article 15(4) public order concerns. However, in relation to the rules maintaining religious harmony, the courts have little or no role in interpreting and enforcing these constitutional rules and values. That falls within Cabinet prerogative and shows a preference for maximising discretion to deal with complex problems relating to religion; 'religion' is variously treated as a source of personal and communal identity to be safeguarded, a partner in welfare provision, an interlocutor in public debate and a threat to public order by stirring racial and religious tensions or by 'culture wars' where religious/social conservative values are pitted against secular liberal values in a gladiatorial contest for socio-political influence beyond parliamentary politics.

Prime Minister Lee's latest reiteration of the basic principles of religious harmony—"tolerance, keep religion separate from politics, keep a secular government, maintain our common space"—reflects a constitutional pragmatism skeptical of grand theory and which solves problems on the basis of experience. The basis for these principles is the "practical reality in our society" rather than "abstract political theory" or "divine revelation".[271] While constitutional idealism is ideology-driven, constitutional pragmatism is experience-driven, reminiscent of the "British constitutional tradition of pragmatic empiricism".[272]

Where constitutional pragmatism holds sway, a proposition is evaluated by its practical consequences and changes in a legal order are done in incrementalist fashion. Its empiricist orientation is devoted not to first things (principles), but to last things (facts, consequences, whatever works, the useful is the true).[273]

Flexibility to respond to novel situations is key, which explains the preference for a non-legalist approach where 'soft constitutional law'[274] is used as a method of informal regulation, against the backdrop of existing legislation. Such non-justiciable soft norms are legally relevant as authoritative if imprecise guidelines, drawing their authority from an 'efficient' parliamentary government within the context of a dominant party state. It avoids the traditional command-and-control legislation and enforcement mechanisms which ensures norm adherence by sanctioning non-compliance. Soft constitutional norms such as the *DRH* allow for reciprocal

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269 The legal categories of 'public order' and 'national security' appear to be conflated in certain judicial decisions: *Colin Chan*, *supra* note 35 at 688E-G.

270 *Chng Suan Tze v. MHA* [1988] S.L.R. 132 at 156B (C.A.).

271 *NDR Speech 2009*, *supra* note 34.

272 Christopher McCrudden, "Northern Ireland and the British Constitution since the Belfast Agreement" in Jeffrey Jowell & Dawn Oliver, eds., *The Changing Constitution*, 6th ed. (Oxford: Oxford University Press, 2007) 227 at 268.

273 See Steven D. Smith, "The Pursuit of Pragmatism" [1990] 100 Yale L.J. 409.

274 Within public law, 'soft law' may be understood as a descriptive umbrella for non-binding instruments containing recommendations or hortatory, programmatic statements, taking the form of informal rules like circulars, self-regulating codes of conduct or government white papers: Thio Li-ann, "Constitutional 'Soft' Law and the Management of Religious Liberty and Order: The 2003 Declaration on Religious Harmony" [2004] Sing. J.L.S. 414 at 434.

non-binding commitments to be articulated, create expectations and guidelines of conduct between the relevant parties, and may have more stability than general policy statements. Adherence is accomplished through persuasive methods, deliberative dialogue and relational-oriented confidence-building measures to promote co-operation and trust.[275] For example, the government affirmed that while religious individuals may speak to public issues "guided by their teachings and personal conscience", they, like every other citizen "should always be mindful of the sensitivities of living in a multi-religious society".[276] This sets an informal albeit vague guideline in exercising religious expression and propagation, whose contours cannot be delineated by rule, but by common sense and apprehension of real-life religious sensitivities.

The Prime Minister in his NDR Speech seized an exhortatory moment, responding to problems of religion-politics tensions of the year, to urge all to live up to accepted ideals and priorities, in the light of the contextualised wisdom of experience, practice and common sense. While religious and racial harmony remains a perennial concern, a new threat to social harmony, in the form of secular groups wanting to impose their partisan agendas on people who disagree with them, has emerged in our politics. The new problem relates to how to cope with pluralism and diversity in the matter of public values. Tensions are exacerbated when these ideological clashes are between secular activists and social conservatives with religious affiliations, where the element of religion is exploited to create a moral panic. To this relatively novel problem, the government has extended by analogy the principle of inter-religious group tolerance to the new fact-situation of tensions between secularists and religionists.

Secularism is "a political project with a set of normative claims as to the relationship between religion and the state",[277] which will be shaped by local factors such as history and the strength of religious commitments; it should not be thought of as the *absence* of something, but rather, the *presence* of something. Constitutional rules seek not only to protect the state from religious encroachment but to protect religion from the homogenising effects of state-sponsored ideology, to maximise religious freedom in the face of competing rights and goods. The task of constitutional law is to construct a model of ordered liberty and to set the rules of the game to promote peaceful deliberation and dissent. In Singapore, informal rules of engagement are the primary method of maintaining religious harmony in the face of religious or political threats, by pre-emptively identifying dangerous trends and cautioning restraint and responsibility.

Religion and politics/secular law have been locked in an "immemorial conversation", both being sources of identity, authority and regulation and in potential competition with each other. To take both religion and politics seriously, one cannot "choose among these perspectives" nor "reconcile them"; rather, one must, in a continuing project, "find some way, haphazard and tentative, of navigating between them".[278]

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[275] See generally Noralv Veggeland, *Taming the Regulatory State: Politics and Ethics* (Northampton, Mass.: Edward Elgar Publishing, 2009).

[276] *Today Interview*, *supra* note 87.

[277] See Zucca, *supra* note 24 at 498.

[278] Dane, *supra* note 21 at 124.