

## CONTENTIOUS LIBERTY: REGULATING RELIGIOUS PROPAGATION IN A MULTI-RELIGIOUS SECULAR DEMOCRACY

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This article examines the theoretical justifications, historical origins and contemporary scope of the constitutional liberty of religious propagation, against the competing interests clothing it with a controversial character. To elucidate the quality of religious freedom within a secular democracy and the meaning of associated concepts of 'tolerance', 'pluralism' and citizenship, in Singapore, it examines how the state regulates this external dimension of religious liberty, whether through legislative sanction or soft constitutional law norms seeking to promote compliance with non-binding government articulated standards. Two recent 'cautionary tales' are analysed to ascertain the contours of religious propagation in practice: the 2009 decision of *PP v. Ong Kian Cheong* where religious propagation fell afoul of sedition law, and the non-judicial management of the 'Lighthouse Evangelism' controversy where the authorities received complaints from offended Buddhists, Taoists and unaffiliated netizens about a church website video containing 'insensitive' comments.

### I. INTRODUCTION: CONSTITUTIONALISING A CONTENTIOUS LIBERTY

The core value of religious liberty, the first human right,<sup>1</sup> is the freedom of conscience in matters spiritual. This individual freedom was long contended for in both domestic and inter-state politics; where incorporated into a Bill of Rights, it represents a triumph for constitutionalism, as the focus on the transcendental importance of the individual as the final value is incompatible with absolutism.

Where religious freedom is predicated on individual choice and responsibility, the state's role is to protect all religious views, not to advocate or coerce (un)belief. This draws strength from the democratic commitment to equal citizenship, political pluralism and viewpoint diversity. Constitutional secularism secures limited government in prohibiting government intrusion into free conscience, the *forum internum*. This governs the Singapore model of accommodative secularism where religious liberty

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<sup>1</sup> The 1648 Treaty of Westphalia was one of the first inter-state instruments containing international measures to protect religious minorities: Malcolm Evans, *Religious Liberty and International Law in Europe* (Cambridge: Cambridge University Press, 1997) at 42-58. The primacy of the right in non-atheistic early constitutions reflects its centrality to visions of human freedom, e.g. the U.S. First Amendment. James Madison argued that religious liberty anteceded civil society: James Madison, *Memorial and Remonstrance against Religious Assessment* (1785), online: The Religious Freedom Page <[http://religiousfreedom.lib.virginia.edu/sacred/madison\\_m&r\\_1785.html](http://religiousfreedom.lib.virginia.edu/sacred/madison_m&r_1785.html)>.

“is premised on removing restrictions to one’s choice of religious belief”.<sup>2</sup> The state must not interfere with religious choice and must facilitate this aspect of personal self-determination. The government has consistently affirmed its ‘neutral’ function to “hold the ring”<sup>3</sup> so groups can freely practice their faiths “without colliding” with each other, allowing religion to “flourish according to the zeal of its adherent and the appeal of its dogma”.<sup>4</sup>

If Socrates was right in asserting that “the unexamined life is not worth living”, individuals benefit from exposure to the broadest range of religious (and non-religious) worldviews. This resonates with free speech justifications that open discussion facilitates the discovery of truth, equipping individuals to make sound judgment. Religious free speech serves the individual seeker and missionary mandate integral to many religions.<sup>5</sup>

Detractors argue that certain states and religions<sup>6</sup> reject the right to religious conversion, manifested by anti-proselytism, apostasy and blasphemy laws. Not every constitutional or human rights religious freedom formulation includes the right to propagate religion to persuade voluntary changes to religious belief.<sup>7</sup> Its inclusion in rights instruments has faced resistance. This was a “bone of contention”<sup>8</sup> and “the focal point of some controversy”<sup>9</sup> during mid 20<sup>th</sup> Century Indian Constituent Assembly debates. Proposals to exclude this pre-existing right of religious propagation from the 2010 draft Kenyan Constitution was opposed by disquieted Christian communities.<sup>10</sup>

Nonetheless, article 15 of the *Singapore Constitution* provides that “Every person has the right to profess and practise his religion and to *propagate* it [emphasis added].” Remarkably, this is derived from article 11 of the *Malaysian Constitution*, which permits states to enact laws prohibiting “the propagation of any religious doctrine

<sup>2</sup> *Nappalli Peter Williams v. Institute of Technical Education* [1999] 2 S.L.R. 569 at 575G-H (C.A.).

<sup>3</sup> Prime Minister (“PM”) Lee Hsien Loong, National Day Rally speech, online: SG Press Centre <[http://www.news.gov.sg/public/sgpc/en/media\\_releases/agencies/pmo/transcript/T-20090816-2.html](http://www.news.gov.sg/public/sgpc/en/media_releases/agencies/pmo/transcript/T-20090816-2.html)>.

<sup>4</sup> Douglas J. in *Zorach v. Clauson*, 343 U.S. 306 (1952). The Singapore Constitution has no non-establishment clause; arts. 152-153 articulates the government’s special responsibilities towards the mostly Muslim Malays as indigenous peoples: Li-ann Thio, “Control, Co-optation and Co-Operation: Managing Religious Harmony in Singapore’s Multi-Ethnic, Quasi-Secular State” (2005–2006) 33 *Hastings Const. L.Q.* 197 at 214-219.

<sup>5</sup> *E.g.*, Christianity, Islam, Buddhism, are missionary religions. See Carl Clemen, “Missionary Activity in the Non-Christian Religions” (1930) 10 *Journal of Religion* 107; Arvind Sharma, “Ancient Hinduism as a Missionary Religion” (1992) 39 *Numen* 175.

<sup>6</sup> *E.g.*, in Saudi Arabia, Yemen and the Sudan, conversion by a Muslim to another religion is punishable by death: Thomas Farr, “Proselytism and Religious Identity Theft” *The Washington Post* (26 February 2010). While Surah 2:256 provides that there is “no compulsion in religion”, this may only prohibit forcible conversions into Islam, but not forcibly keeping someone within the Islamic community: Julia Duin, “Proselytism ‘on the table’” *Washington Times* (11 March 2010).

<sup>7</sup> It is included in the Constitutions of some former British colonies in Asia (Singapore, Malaysia, India, Bangladesh, Pakistan), Africa (Botswana) and the Caribbean (St Lucia, Jamaica).

<sup>8</sup> T.N. Madan, “Freedom of Religion” (2003) 38 *Economic and Political Weekly* 1034.

<sup>9</sup> H.R. Khanna, *Making of India’s Constitution* (Lucknow: Eastern Book Company, 1981) at 46.

<sup>10</sup> Compare art. 78(1) of the *Kenya Constitution* (2001) with the emasculated art. 32(2) of the proposed Constitution of Kenya (6 May 2010), which omits an express right to change religion or propagate religious belief. Text of the proposed Constitution of Kenya available online: Daily Nation <<http://www.nation.co.ke/blob/view/-/913208/data/157983/-/18do0kz/-/published+draft.pdf>>.

or belief among persons professing the religion of Islam".<sup>11</sup> This was deliberately omitted from the modified Singapore guarantee.

Professing and propagating a religious belief (a form of religious free speech) are rights united in the search for spiritual truth; the latter, as part of the *forum externum*, is subject to broad public order considerations,<sup>12</sup> including preserving religious harmony, a *leitmotif* in Singapore political discourse. 'Aggressive and insensitive proselytisation' has been identified as one of three threats<sup>13</sup> thereto:

What is of particular security concern is when religiosity manifests itself in a highly public and assertive manner in a multi-religious setting like Singapore, with all our attendant sensitivities. One example is the increase in proselytisation activities. Although the right to propagate one's faith is enshrined in our Constitution, it becomes problematic when followers become over-zealous and self-righteous in their missionary activities, and carry them out in an aggressive and insensitive manner, disregarding the feelings of other religions. Unlike previously, devotees of the different faiths today appear to be less tolerant over perceived slights to their religion, and are more ready to retaliate.<sup>14</sup>

This article investigates the liberty of religious propagation against the competing interests which clothe it with a controversial character. With a view to elucidating the quality of secular democracy extant in Singapore, it examines how the state regulates this externally manifested aspect of religious liberty, whether by applying legislative sanctions or by invoking hortatory soft constitutional law ("SCL") norms to persuade compliance with government articulated standards of behaviour. Religious propagation must not be confused or conflated with the legitimate role of religiously influenced *values* or convictions in public policy debate, which I have discussed elsewhere.<sup>15</sup> The subject of this article is the freedom to propagate religious *truths*, that is, the conversation about what represents the truth about God, faith, life, the universe and everything. It is about religious free speech (theology), not the distinct issue of religiously shaped convictions in public debate (the values debate). Part II interrogates the theoretical justifications, historical origins and legal framework regulating religious freedom. Comparative and international law is referenced to situate and elucidate the Singapore context, and to deepen an understanding of factors relevant to protecting and restricting religious propagation in general and in Singapore particularly. Part III examines the contours of religious propagation in practice, through two recent 'cautionary tales' where the exercises of religious

<sup>11</sup> Art. 11(4). These laws are listed in *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri* [2010] 2 M.L.J. 78 at para. 51 (H.C.).

<sup>12</sup> Art. 15(4), *Singapore Constitution*. Li-ann Thio, "Protecting Rights" in Li-ann Thio & Kevin Y.L. Tan, eds., *Evolution of a Revolution: Forty Years of the Singapore Constitution* (New York: Routledge-Cavendish, 2009) 139 at 225-228.

<sup>13</sup> The other two threats are mixing 'religion' and 'politics' (excluding the legitimate role of religious convictions in public debate) and using religion for subversive purposes: *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 [*MRH White Paper*].

<sup>14</sup> Deputy PM Wong Kan Seng's speech at the ISD Intelligence Service Promotion Ceremony (14 March 2010) at para. 19, online: Ministry of Home Affairs <[http://www.mha.gov.sg/news\\_details\\_print.aspx?nid=MTewNQ==Q9CJuc52SKk=&tcaid=7](http://www.mha.gov.sg/news_details_print.aspx?nid=MTewNQ==Q9CJuc52SKk=&tcaid=7)>.

<sup>15</sup> Thio Li-ann, "Religion in the Public Sphere of Singapore: Wall of Division or Public Square" in Bryan S. Turner, ed., *Religious Pluralism and Civil Society: A Comparative Analysis* (Oxford: Bardwell Press, 2008) 73.

propagation rights ran afoul of the law and/or SCL norms. The first relates to *Public Prosecutor v. Ong Kian Cheong*,<sup>16</sup> where a Christian couple was charged with sedition for sending tracts which upset various Muslim recipients; the case was treated primarily under the rubric of the article 14 free speech guarantee, even though it implicated article 15 (it is unclear whether counsel raised this point). An analysis of the need to seriously consider the rationale and weight of fundamental rights in the adjudicatory process is offered, incorporating a discussion of the significance of original intent in how article 15 was formulated, in light of the Court of Appeal's interpretive approach in *Yong Vui Kong v. Public Prosecutor*.<sup>17</sup> The second concerns the 'Lighthouse Evangelism' controversy involving a video on the church website containing comments which offended some Buddhists, Taoists and unaffiliated netizens, who complained to the authorities. The pastor was investigated by and received a warning from the Internal Security Department ("ISD"), which mainstream and online media reported widely. The matter was addressed not by prosecution before courts, but through public censure. The antagonistic responses of certain third parties expressed mainly in cyberspace forums, which persisted after government mediation at the inter-religious level, was noteworthy in manifesting a form of intolerance. In light of the two cautionary tales, Part IV reflects upon religious propagation rights and what 'tolerance', 'sensitivity' and 'pluralism' entail as normatively dependent constitutional concepts, rather than political slogans. It clarifies what religious toleration entails and highlights the fact that inter-religious tensions may be caused or exacerbated by non-religious 'conflict entrepreneurs'. The call to mutual restraint is examined as aspects of an unwritten constitution shaping our concepts of citizenship, civic responsibilities and solidarity, which have a reflexive relationship with the enjoyment of fundamental liberties.

## II. RELIGIOUS PROPAGATION CLAUSE—HISTORICAL ORIGINS, THEORETICAL JUSTIFICATIONS AND THE REGULATORY ARCHITECTURE

### A. Historical Origins

Within secular democratic orders, a wide diversity of state-religion relations exist, ranging from strict separationist models associated with *laïque* states like France where religion is privatised, to more religion-friendly co-operationist models.<sup>18</sup>

Singapore rejects the dogmatic vision of *laïque* secularism, practising a more benevolent anti-theocratic but not anti-religious<sup>19</sup> secularism.<sup>20</sup> Constitutional history reveals the government from inception deliberately adopted a principled basis in constructing a vision and architecture of a liberal conception of religious freedom,

<sup>16</sup> [2009] SGDC 163 [*Ong Kian Cheong*].

<sup>17</sup> [2010] SGCA 20 [*Yong Vui Kong*].

<sup>18</sup> There are wide variety of 'secularisms' and no singular model of the secular state: see W. Cole Durham, "Perspectives on Religious Liberty: A Comparative Framework" in Johan D. van der Vyver & John Witte, Jr., eds., *Religious Human Rights in Global Perspective*, 1st ed. (Boston: Martinus Nijhoff, 1996) 1.

<sup>19</sup> Thio Li-ann, "Between Eden and Armageddon: Navigating 'Religion' and 'Politics'" (2009) Sing. J.L.S. 365 at 368-370.

<sup>20</sup> See generally Joseph Tammey, *The Struggle over Singapore's Soul: Western Modernisation and Asian Culture* (New York: Walter de Gruyter, 1996).

sharply departing from the Malaysian model after secession in 1965. Even before joining the Federation, Singapore's government officially declared it had no intention "to introduce legislation to control or restrict the propagation of any religious doctrine or belief".<sup>21</sup>

The Constitution of the fledgling Republic, hastily cobbled from its state constitution with various addenda,<sup>22</sup> distanced itself from the confessional Malaysian Constitution by not recognising an official religion.<sup>23</sup> First Prime Minister Lee Kuan Yew noted: "Alone in Southeast Asia, we are a state without an established church."<sup>24</sup> The government accepted the 1966 Constitutional Commission's recommendation to modify the religious freedom guarantee by deleting the Malaysian clause allowing states to enact anti-propagation laws to benefit a politically dominant religious majority. The Commission considered that expressly singling out a particular religion "for special treatment of this nature" would be "inappropriate" and "inconsistent" within a democratic secular state.<sup>25</sup>

### B. Theoretical Justifications and Policy Considerations

The issue of religious propagation/proselytisation is complex, implicating the constitutional ordering of the rights of individuals and communities within secular states. Proselytisation is intrinsically bound to conversion, as the endgame of religious propagation is to win converts from other belief persuasions.

As religious propagation may upset religious sensitivities or disrupt religious communities, it involves contending goods or "a clash between rights",<sup>26</sup> implicating issues of religious and expressive liberty, personal and cultural identity and political stability.<sup>27</sup> If religious switching disrupts the status quo<sup>28</sup> and threatens religious harmony, why constitutionalise religious propagation? This warrants an investigation into the theoretical justifications for this right and its restrictions, which raises the issues of whether there are more legitimate forms of propagation and whether religious propagation as free religious speech warrants special treatment.

<sup>21</sup> Sing., *Parliamentary Debates*, Vol. 21, col. 261 (29 July 1963) (Mr. Lee Kuan Yew).

<sup>22</sup> Kevin Tan, "The Evolution of Singapore's Modern Constitution: Developments from 1945 to the Present Day" (1989) 1 Sing. Ac. L.J. 1; Li-ann Thio, "The Passage of a Generation: Revisiting the 1966 Constitutional Commission" in Thio & Tan, *supra* note 12 at 7.

<sup>23</sup> Art. 3 of the *Malaysian Constitution* provides that Islam is the "religion of the Federation; but other religions may be practiced in peace and harmony . . ." This innocuous clause was subsequently invoked to support politicised claims that Malaysia is an Islamic, not secular, state: J.M. Fernando, "The Position of Islam in the Constitution of Malaysia" (2006) 37 *Journal of Southeast Asian Studies* 249.

<sup>24</sup> PM Lee Kuan Yew, addressing a Buddhist Convention: "No dominance by religious group over others—Lee" *The Straits Times* (Singapore) (5 January 1967) 6.

<sup>25</sup> *Report of the Constitutional Commission, 1966* (Singapore: Singapore National Printers, 1966) at para. 38.

<sup>26</sup> Natan Lerner, *Religion, Secular Beliefs and Human Rights: 25 Years after the 1981 Declaration* (Leiden: Martinus Nijhoff, 2006) at 123.

<sup>27</sup> Richard Garnett, "Changing Minds: Proselytism, Religious Freedom and the First Amendment" (2005) 2 *University of St. Thomas L.J.* 453.

<sup>28</sup> Singapore Population Census (2000) estimates the religious composition at Buddhism (42.5%); Taoism (8.5%); Islam (14.9%); Christianity (14.6%); Hinduism (4%); Other Religions (0.6%) and Atheists/Agnostics (14.8%): Singapore Department of Statistics (November 2000), available online: Statistics Singapore <<http://www.singstat.gov.sg/pubn/papers/people/c2000adr-religion.pdf>>.

### 1. *The individual and religious propagation as right and duty*

Religious propagation or ‘bearing witness’ may be appreciated as a religious duty to share what one perceives to be objective truth about the nature of life on earth and eternal destiny. This discharges a special moral obligation which the believer considers to have transcendent consequences. Limiting it would infringe religious freedom. This religious duty is facilitated by a constitutional right to have or change religious belief, including the right to exit a religious community.<sup>29</sup> This may be justified on several grounds, resting on the premise that law considers religion a good thing, deserving protection.<sup>30</sup>

First, recognising the profound importance of religion to believers; religious conversion greatly impacts the individual by altering the reference points for value, meaning and truth and by affecting relational change between the believer, other persons and God(s). Such fundamental existential decisions require greater protection in the face of hostile majorities; the constitutionalisation of religious freedom affirms the worth of citizens within a polity who holistically apprehend the physical, psychological and pneumatic dimensions of human existence, rejecting the homogenising demand that life be conceived of in exclusively anti-theistic terms, after the oppressive model of communist regimes<sup>31</sup> or the narrow worldview of ‘evangelical atheism’.<sup>32</sup>

Second, the right to hear different views and adopt the most compelling one vindicates the principle of human dignity, which recognizes the individual as a morally responsible agent who makes decisions guided by reason and conscience.<sup>33</sup> This is interlocked with the principle of free conscience which considers that genuine religious choice comes “only by reason and conviction, not force or violence”; religious freedom is an inalienable right, as man has an antecedent duty to render what he considers acceptable homage to the Creator, and “no man’s right is abridged by the institution of Civil Society”.<sup>34</sup> The mind is a private domain whose bourn the government cannot transgress.

<sup>29</sup> This dates back to the exception to the principle of *cuius region, eius religio* where one was obliged to follow the religion of one’s ruler who decided the religion of that territory. Where faiths differed, the subject had the right to emigrate.

<sup>30</sup> John Garvey, “The Real Reason for Religious Freedom” (1997) 71 *First Things* 13 (presenting arguments for religious freedom distinct from liberal theories of autonomy based on assumptions about human nature, such as the unencumbered self).

<sup>31</sup> *E.g.*, art. 37, *Albanian Constitution* (1976) states: “The state recognizes no religion whatever and supports atheist propaganda for the purpose of inculcating the scientific materialist world outlook in people.”

<sup>32</sup> Atheists have begun to congregate to celebrate their non-belief, to signal to religious and political institutions that “atheism and secularism are forces to be reckoned with”. See the 2010 Global Atheist Convention website, online: <<http://www.atheistconvention.org.au/>>. Amongst the listed presenters was the high priest of evangelical atheism, Richard Dawkins, author of *The God Delusion* (London: Bantam Books, 2006). His polemical arguments have attracted robust responses, *e.g.*, Alastair & Joanna McGrath, *The Dawkins Delusion: Atheist fundamentalism and the denial of the divine* (London: SPCK Books, 2007).

<sup>33</sup> This terminology is used in art. 1, *Universal Declaration of Human Rights*, GA Res. 271(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [*UDHR*]: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” It holistically invokes both logic (reason) and morality (conscience).

<sup>34</sup> Madison, *supra* note 1.

Third, religious propagation is a form of free speech whose content is of particular importance, certainly to the speaker, for, “when people proselytise, they represent not just an impulse or an emotion but a world”.<sup>35</sup> It entails both the rights of the speaker (to engage in religious persuasion) and hearer (to receive other religious perspectives). The liberal approach protects competition rather than censorship of religious beliefs, this being a form of expression no different from political proselytisation which may impugn deep-seated ideological beliefs. In a democratic society, one should be able to disseminate religious views, even if people dislike or do not want to hear them.<sup>36</sup>

The speaker’s right to religious propagation, which might be critical of the hearer’s beliefs, may clash with the individual’s negative freedom to be free from religious persuasion, experienced as nuisance, an affront to religious feelings,<sup>37</sup> an invasion of privacy or as undermining the hearer’s right to maintain his existing beliefs. Notwithstanding this, annoying, even hurtful views, are not necessarily coercive. Postmodernists reject the possibility of evaluating truth-claims, which the process of religious conversion necessarily entails; their epistemological bias may consider the very act of proselytisation—of expressing faith in faith rather than faith in skepticism—disconcerting if not imperialistic.

## 2. *Religious propagation, community identity and public order*

At the corporate level, religious propagation may create a situation rising to the level of a public order threat where a religious (or non-religious) group targeted by a proselytizing group reacts aggressively.

A zero-sum game is involved where gain to group A is seen as loss to group B whose members are ‘poached’. This undermines group integrity and diminishes the group’s social influence. While many, if not all, religions are (or have been) proselytising faiths, some are more intense about this. Mutua argues that non-competitive religions are disadvantaged, in the face of “proselytizing universal faiths”, which erodes the identity of indigenous cultures.<sup>38</sup> This is part of the larger debate between universalist norms and cultural relativist claims. In this conception, religious choice is not seen in personal terms nor are religious groups viewed as voluntary associations, as conversion undermines kinship ties or community duties. Religious communities may assert a right of self-preservation, to defend their cultural-religious identities against external encroachment. This restricts the individual’s right to move in and out

<sup>35</sup> Martin Marty & Frederick Greenspahn, eds., *Pushing the Faith: Proselytism and Civility in a Pluralistic World* (New York: Crossroads, 1988) at 157.

<sup>36</sup> “... free speech is not just limited to inoffensive matters but also to those that offend, shock or disturb. Such as the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’”: *Handyside v. United Kingdom* (1976), 24 E.C.H.R. (Ser. A) at para. 49. This relates to the substance of speech, not the mode of delivery for which there are justifiable restrictions e.g. to prevent the abuse of captive audiences.

<sup>37</sup> Religious feelings may be protected by blasphemy laws, which are substantive speech restrictions.

<sup>38</sup> Makau Mutua, “Proselytism and Cultural Integrity” in Tore Lindholm, W. Cole Durham Jr and Bahia Tahzib-Lie, eds., *Facilitating Freedom of Religion or Belief: A Deskbook* (Leiden: Martinus Nijhoff, 2004) 651. Arguably, religions espousing an objective Truth are better at recruiting members, so the religious freedom principle cannot be interpreted in a ‘neutral’ manner between religions like Islam and Christianity, and the traditions of Hindus, Buddhists and Jains: see Rosalind Hackett, ed., *Proselytization Revisited: Rights Talk, Free Markets and Culture Wars* (London; Oakville, CT: Equinox Pub., 2008).

of that faith community, reflecting an imputed rather than voluntaristic conception of religious identity.

Some states have adopted anti-propagation laws ostensibly designed to prevent ‘unethical’<sup>39</sup> conversions; these regard the end-product of propagation—conversion—as undermining personal faith<sup>40</sup> and generating social rifts. The *Constitution of Greece* bans “proselytism” without defining it;<sup>41</sup> the term today bears pejorative connotations, such that the discourse is framed between ‘illegitimate proselytism’ (spreading faith through unacceptable means) and ‘legitimate evangelisation’.<sup>42</sup> In other jurisdictions, certain forms of proselytism are restricted by anti-propagation and anti-conversion statutes, as in various Indian states.<sup>43</sup> For example, the 1968 *Madhya Pradesh Freedom of Religion Act* makes it a crime to “convert or attempt to convert . . . any persons from one religious faith to another by the use of force, or by allurement or by any fraudulent means”. Other laws use terms like “other forms of inducement”<sup>44</sup> which are vague enough to capture acts of religious charity in feeding and clothing the poor, or uttering intangible prayers of blessing. The government wields unfettered discretion to determine the legitimacy of a religious conversion, resulting in cases where converting priests have been imprisoned, despite converts producing statements of voluntary conversion.<sup>45</sup> While coercion is not to be suffered, this discounts the possibility of genuine conversions. The underlying motive may be self-serving, to prevent dominant religious group membership from attrition.<sup>46</sup>

Conversion may be deterred where subjected to onerous or intimidating processes such as imposing stringent reporting requirements on the convertor and converted before a Magistrate, and broad discretion to fine or imprison those adjudged as law-breakers.<sup>47</sup>

<sup>39</sup> Alexandra Owens, “Protecting Freedom of and From Religion: Questioning the Law’s Ability to Protect against Unethical Conversions in Sri Lanka” (2006) 1 *Religion & Human Rights* 41.

<sup>40</sup> *Orissa Freedom of Religion Act 1967* (Act 2 of 1968), online: All Indian Christian Council <[http://indianchristians.in/news/images/resources/pdf/orissa\\_freedom\\_of\\_religion\\_act-text\\_only.pdf](http://indianchristians.in/news/images/resources/pdf/orissa_freedom_of_religion_act-text_only.pdf)> [*Orissa Act*].

<sup>41</sup> Art. 13, *Constitution of Greece*. Art. 3 recognises the Eastern Orthodox Church of Christ as the “prevailing religion”, while art. 1 identifies popular sovereignty as the foundation of government. Text of art. 13 of the *Constitution of Greece* is available online: Hellenic Resources Network <<http://www.hri.org/docs/syntagma/artcl25.html#A13>>.

<sup>42</sup> Current human rights specialists define proselytism “to mean any attempt by any religious believer to win converts from other religions or from irreligion”. It has pejorative connotations, in contrast to ‘evangelisation’ and ‘missionary activity’. Lawrence Uzzell, “Don’t call it Proselytism” (2004) 146 *First Things* 14.

<sup>43</sup> Arpita Anant, “Anti Conversion laws”, *The Hindu* (India) (17 December 2002), online: The Hindu <<http://www.hinduonnet.com/thehindu/op/2002/12/17/stories/2002121700110200.htm>>.

<sup>44</sup> The *Orissa Act*, *supra* note 40, defines “inducement” to “include the offer of any gift or gratification either in cash or in kind” including granting pecuniary or non-pecuniary benefits.

<sup>45</sup> Laura Jenkins, “Legal limits on Religious Conversion in India” (2008) 71 *Law and Contemporary Problems* 109 at 116.

<sup>46</sup> *E.g.*, anti conversion laws were employed not just to deal with any forced conversion, but with conversion to any religion other than the dominant religion of Hinduism, such as Christianity and Islam. Many of these laws aim to keep low-caste Hindus within the Hindu community. Thus the law permits ‘reconversion’ into Hinduism: Anant, *supra* note 43; see Sebastian Kim, “‘Freedom of Religion’ Legislation in India” (2002) 9 *Mission and Theology* 227.

<sup>47</sup> Ss. 4, 5(1), *Orissa Freedom of Religion Rules* (1989), online: All Indian Christian Council <[http://indianchristians.in/news/images/resources/pdf/orissa\\_freedom\\_of\\_religion\\_rules-text\\_only.pdf](http://indianchristians.in/news/images/resources/pdf/orissa_freedom_of_religion_rules-text_only.pdf)>.



By curbing the growth of religious minorities, anti-propagation laws entrench religious majorities; they focus energies on preventing individuals from leaving a community, rather than ensuring they want to stay. These laws are the product of power struggle and discriminate against minority religions. Furthermore, the survival of minority religions may depend on their capacity to make their doctrines known to attract new adherents, to offset the pressures from the dominant culture. The right to religious propagation thus protects the freedom and survivability of minority groups.

### 3. *First principles, competing interests and the fine line between legitimate and illegitimate propagation*

Free conscience requires persuasive and peaceful propagation. However, how does one distinguish between persuasion and imposition, between licit and illicit propagation?<sup>48</sup>

Coercion may assume three forms: it may be physical in threatening violence and harassment, material, through economic inducement such as financial gifts and jobs, and psychological, in preying on the ignorant and emotionally distressed, or taking advantage of relational hierarchies in the workplace or schools. In inducing conversion, these methods disrespect the principle of human dignity or exploit vulnerability, constituting the negative markers which construct the limits to legitimate propagation. This at heart is “an attempt to convince fellow human beings of the way of truth”,<sup>49</sup> without the de-legitimizing factors of manipulation, intimidation or appeal to political motives.

Governments, while protecting religious freedoms, cannot ignore the need for social peace; but restricting propagation should be guided not by the message’s content, but by its method of delivery, where this causes offense and hostility. Where the proselytising act inhibits individual freedom to make decisions about religious beliefs, the deployment of regulatory state power is justified.<sup>50</sup>

Some contend that religious propagation is potentially divisive, abusive, demonstrates intolerance towards other beliefs and thus generates conflicts. The countervailing view is that evidence shows its beneficial effects, such as promoting literacy and democracy, suggesting that peaceful, respectful persuasion, can contribute to a stable polity. It has been suggested that religious conversions (often from proselytism) are often associated with open, more democratically successful societies<sup>51</sup> where religions freely compete for willing adherents.

<sup>48</sup> The European Court of Human Rights considered the distinction between proper and improper proselytism in *Kokkinakis v. Greece* (1994), 17 E.H.R.R. 397. See K.N. Kyriazopoulos, “Proselytization in Greece: Criminal Offence vs Religious Persuasion and Equality” (2004–2005) 20 J.L. & Religion 149; Tad Stahnke, “The Right to Engage in Religious Persuasion” in Lindholm, Durham & Tahzib-Lie, *supra* note 38 at 641, identifies 4 important factors aiding the line-drawing process: (i) characteristics of the source; (ii) target; (iii) where proselytism takes place; (iv) nature of the proselytising act and its propensity to generate coercive pressure.

<sup>49</sup> Drew Fink, *Critics of Conversion*, online: Institute for Global Engagement <<http://www.globalengage.org/issues/articles/freedom/652-critics-of-conversion.html>>.

<sup>50</sup> P. D. Danchin, “Of Prophets and Proselytes: Freedom of Religion and the Conflict of Rights in International Law” (2008) 49 Harv. Int’l L.J. 249; J.K. Stubbs, “Persuading Thy Neighbour to be as Thyself: Constitutional Limits on Evangelism in the United States and India” (1993–1994) 12 UCLA Pac. Basin L.J. 360.

<sup>51</sup> Farr, *supra* note 6.

The reality is that evangelism is built into the soul of many religions. The argument that ceasing evangelism best serves peace is countered by the view that a peace which sacrifices truth is not worth having. If the believer is duty-bound by religion to save one on the road to perdition, then, “the risk of interreligious tension being exacerbated by appeals for conversion pales in comparison to the risk of damnation”.<sup>52</sup> Arguably, the trade-off between peace and religious freedom is a false choice, as constitutions that safeguard religious freedom can promote solidarity. Hypothetically, if a committed religionist is persuaded to stop propagation because it is wrong and threatens social harmony, this may cause an inward turning into one’s religious community, viewing non-members as ‘others’ to be shunned rather than as “brothers and sisters who need to be turned to the truth”.<sup>53</sup> This form of spiritual balkanization may deepen social rifts. Religion is but one factor conflict entrepreneurs can exploit to provoke division.

In an area where tensions run through individual and group rights and state interests, the challenge remains to frame laws that appropriately balance religious freedom rights and the rights of non-adherents. This should be done understanding that persuasion is at the heart of freedom, with the intent to encourage all faiths to participate in the great conversation about spiritual truth. If state power is legitimated by securing human well-being, the value of rights discourse, weighted heavily in the individual’s favour as a counter-majoritarian barrier to communal or collective oppression, remains important. Propagation in seeking to persuade change in belief may be unsettling, but the alternative is the staticity and ennui of a closed system.

### C. Legal Framework for Regulating Religious Propagation

#### 1. *Proselytism as a human right or social wrong?*

While most human rights guarantees<sup>54</sup> expressly protect the freedom to have or adopt a religion or belief<sup>55</sup> and to ‘manifest’ and ‘practice’ this in teaching, worship and observance, these generally lack an express reference to propagation,<sup>56</sup> leaving it unclear whether this is encompassed by ‘practice’. The contentiousness of this liberty is evident in the omission of an express freedom to change religious belief,<sup>57</sup> from

<sup>52</sup> *Supra* note 49.

<sup>53</sup> *Ibid.*

<sup>54</sup> Art. 18, *UDHR*; art. 9, *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 U.N.T.S. 221 at 223, Eur. T.S. 5 [*ECHR*]; art. 12(1), *American Convention on Human Rights*, 22 November 1969, 1144 U.N.T.S. 123 [*ACHR*]. For a discussion, see Stahnke, *supra* note 48.

<sup>55</sup> *Ibid.* Article 8 of the *African Charter on Human and Peoples’ Rights*, 27 June 1981, 21 I.L.M. 58, is more tersely drafted: “Freedom of conscience, the profession and free practice of religion shall be guaranteed.”

<sup>56</sup> Exceptionally, art. 12(1), *ACHR*, provides for the “freedom to profess or disseminate one’s religion or beliefs”. Art. 10, *Cairo Declaration on Human Rights in Islam*, 5 August 1990 expressly rejects free conscience and propagation.

<sup>57</sup> Donna Sullivan, “Advancing the Freedom of Religion or Belief through the UN Declaration on the Elimination of Religious Tolerance and Discrimination” (1988) 82 Am. J. Int’l L. 487 at 495. Muslim countries instigated the removal of the freedom to change religion from art. 18, *International Covenant on Civil and Political Rights*, 9 December 1966, 999 U.N.T.S. 171, as apostasy is a capital offence under one version of Islamic law: Brice Dickson, “The United Nations and Freedom of Religion” (1995) 44 I.C.L.Q. 327 at 342.

the 1981 UN Declaration on the *Elimination of All Forms of Religious Intolerance*, to avoid implicit approval of proselytising:

restrictions on the freedom to manifest religion or belief are permitted only if limitations are prescribed by law, are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, and are applied in a manner that does not vitiate the right to freedom of thought, conscience and religion.<sup>58</sup>

Proselytisation is framed as a possible infringement of the rights of others not to change their beliefs under threat of violence, intimidation or force.<sup>59</sup> Notably, the vision of religion adopted by UN human rights documents is not one of absolute truths but “sets of beliefs which must tolerate the existence of contrary points of view”.<sup>60</sup>

## 2. *Passage through India: Tracing the genetic root of Article 15*

The right to religious propagation does not appear in all constitutional texts. During the Indian Constituent Assembly debates, a contested assertion was that “no Constitution of the world had incorporated right to propagate religion recognized as a fundamental and justiciable right”.<sup>61</sup> India is a religiously diverse secular state,<sup>62</sup> where the former privileged treatment of foreign missionary workers aroused antipathy in some quarters. Hence, these debates,<sup>63</sup> leading to the eventual adoption of article 25, are instructive. Aside from the social similarities, Singapore’s article 15 is derived from the Malaysian article 11, which in turn was influenced by the Indian article 25.<sup>64</sup>

The concept of “propagation” was fiercely debated.<sup>65</sup> Christian Assembly members insisted on including a right to religious propagation. Sectors of the Hindu leadership resisted this, ostensibly fearing it would provoke communalism or the effect of successful missionary activities amongst the poorer lower castes. To Mishra,<sup>66</sup> the clause paved the way for “the complete annihilation of Hindu culture, the Hindu way of life and manners”, abusing the generosity of Hinduism which was “just an

<sup>58</sup> *Elimination of All Forms of Religious Intolerance*, GA Res. 50/183, UN GAOR, 50th Sess., UN Doc. A/Res/50/183 (1995) at para. 7.

<sup>59</sup> Sullivan, *supra* note 57 at 494. This throws open the question of what forms non-coercive proselytisation might take. See Arcot Krishnaswami, *Study of Discrimination in the Matter of Religious Rights and Practices*, UN Doc. E/CN.4/Sub.2/200/Rev.1, UN Sales No. 60. XIV.2 (1960).

<sup>60</sup> Dickson, *supra* note 57 at 356.

<sup>61</sup> *Supra* note 9 at 47, referencing the statement of Constituent Assembly member Shri Lokanath Misra, 6 December 1948.

<sup>62</sup> So declared in 1976, under the 42<sup>nd</sup> Amendment. See Rajeev Dhavan, “Religious Freedom in India” (1987) 35 Am. J. of Comp. L. 209.

<sup>63</sup> Sebastian Kim, *In Search of Identity: Debates on Religious Conversion in India* (India: Oxford University Press, 2005) at 37-58.

<sup>64</sup> “It is well known that our constitution is modeled on the Indian constitution . . .”: Suffian L.P., *Merdeka University v. Government of Malaysia* [1982] 2 M.L.J. 243 (F.C.). Art. 25(1) provides: “Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.”

<sup>65</sup> N.B. Rakshit, “Right to Propagate Religion” *Economic and Political Weekly* (30 September 2000) 3564-3565; Madan, *supra* note 8, noting at 1037 that from the Christian point of view, “the right to change one’s religion was the litmus test of the freedom of religion”.

<sup>66</sup> Shyam Nandan Prasad Mishra was parliamentary secretary to First PM Jawaharlal Nehru (Congress): “Former Union minister dead” *Times of India* (26 October 2004).

integrated vision and a philosophy of life and cosmos, expressed in organized society to live that philosophy in peace and amity". The clause was "intolerable and unjust", "a device to swallow the majority in the long-run" in the name of minority protection.

Krishnamachari<sup>67</sup> stated that many people in India, especially the untouchables had "embraced Christianity" because of the "status" it gave them, equalising an untouchable with the high-caste Hindu. He asserted that "if we remove the need for that advantage, apart from the fact that he has faith in the religion itself—well, the incentive for anybody to become a Christian will not exist".<sup>68</sup> K. M. Munshi<sup>69</sup> argued the free speech clause would allow any religious community to urge others to join their faith, and a religious propagation clause "is nothing very much out of the way as some people think, nor is it fraught with dangerous consequences".<sup>70</sup> K. Santhanam<sup>71</sup> agreed and characterised the proposed article as a clause on "religious tolerance", emphasising it was restricted by "public order, morality and health". Further, to address the objections many had to past Christian missionary activities in relation to mass conversions, Santhanam underscored that the word "convert" was not present, to preclude an exodus out of one religious community through "undue influence either by money or by pressure or by other means". Munshi supported protecting religious minorities and noted that the Indian Christian community laid the "greatest emphasis" on the word "propagation" "not because they wanted to convert people aggressively, but because the word 'propagate' was a fundamental part of their tenet". Its inclusion was a compromise to reassure minority communities, and would avail all propagating communities, such as the Hindus, Arya Samaj, Muslims, Jains and Buddhists.<sup>72</sup> Thus, "so long as religion is religion, conversion by free exercise of the conscience has to be recognized".<sup>73</sup> A secular impartial state "tolerates all religions" such that "To say that some religious people should not . . . propagate their views is to show intolerance on our part."<sup>74</sup>

However, several Constituent Assembly members stressed that in propagating their religion, religionists should avoid the bad example of past missionaries and not "cry down another religion",<sup>75</sup> or "throw mud" and "bring out their unsatisfactory features".<sup>76</sup>

Article 25 is silent on whether states may adopt restrictions on propagation (in contrast, Malaysian article 11 expressly authorises state legislatures to adopt anti-propagation legislation).<sup>77</sup> Subsequently, various Indian states adopted a raft of

<sup>67</sup> Tiruvellore Thattai Krishnamachari was a former Indian Finance Minister (Congress).

<sup>68</sup> December 6, 1948, Constituent Assembly of India—Volume VII, available online: Indian Kanoon <<http://www.indiankanoon.org/doc/1933556/>>.

<sup>69</sup> Kanhaiyalal Maneklal Munshi was an Indian politician who joined various political parties, including the Indian National Congress when he was a member of the constituent assembly.

<sup>70</sup> *Supra* note 68. K. Santhanam also argued that to deny the right to propagate was tantamount to negating freedom of speech, which article 13 guaranteed.

<sup>71</sup> Kasturiranga Santhanam was an Indian politician serving in PM Nehru's cabinet.

<sup>72</sup> Krishnamachari, *supra* note 68.

<sup>73</sup> Munshi, *ibid.*

<sup>74</sup> L. Krishnaswami Bharathi, *ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> Rohini Kumar Chaudhari, *ibid.*

<sup>77</sup> *E.g. Selangor Enactment No. 1/1988* penalises propagating other faiths to Muslims, which restricts the proselytising rights of religious minorities: P. Marican, *Can Non-Muslim in Malaysia Propagate their Religion amongst Muslims*, online: Department of Syariah Judiciary, Pahang <[http://jksp.pahang.gov.my/index.php/component/content/article/42/106#\\_ftn1](http://jksp.pahang.gov.my/index.php/component/content/article/42/106#_ftn1)>.

anti-propagation laws,<sup>78</sup> which curtail religious liberty, and whose constitutionality has been unsuccessfully challenged.<sup>79</sup>

In 1957, the Indian Supreme Court in *Ratilal v. Bombay*<sup>80</sup> interpreted article 25 as giving everyone “the right to propagate his religious views for the edification of others”, consistent with state neutrality towards religions. Twenty years later in the heavily criticised decision of *Stanilaus v. Madhya Pradesh*,<sup>81</sup> “propagate” was limited only to mean the right “to transmit or spread one’s religion by an exposition of its tenets”, there being “no fundamental right to convert another person to one’s own religion” under article 25. Thus, a person purposefully seeking to convert another to his religion would “impinge on the freedom of conscience”.<sup>82</sup>

This judgment<sup>83</sup> meant there was no fundamental right to carry propagation to its logical conclusion of conversion, which made the right empty. H.M. Seervai, a leading Indian jurist,<sup>84</sup> regretted that article 25’s legislative history was not brought to the court’s attention and criticised the Supreme Court’s failure to consider the central issue: whether conversion was part of the Christian religion, which the Orissa High Court had affirmed. Seervai argued that A’s propagation of his religion to B did not violate B’s free conscience but gave “an opportunity to B to exercise his free choice of a religion”:

The right to propagate religion gives a meaning to freedom of choice, for choice involves not only knowledge but an act of will. A person cannot choose if he does not know what choices are open to him. To propagate religion is not to impart knowledge and to spread it more widely, but to produce intellectual and moral conviction leading to action, namely, the adoption of that religion. *Successful* propagation of religion would result in conversion.<sup>85</sup>

Seervai considered that *Stanilaus* had caused “the greatest public mischief” and warranting overruling. Others have remarked that the “myth that conversion if unconstitutional” explains the “huge atmosphere of prejudice against Christians in Orissa and elsewhere”.<sup>86</sup>

<sup>78</sup> It remains contentious whether this is borne out of humanitarian motives to protect an illiterate, poor caste from coercion or out of sectarian desires to preserve the Hindu power base and caste-based social system. Arvind Narrain & Clifton D’Rozario, “The bogey of forced conversion” *The Hindu* (26 October 2008).

<sup>79</sup> James Huff, “Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws” (2009) 10:2 Rutgers J.L. & Religion 1, online: Rutgers <<http://org.law.rutgers.edu/publications/law-religion/articles/A10S-6Huff.pdf>>.

<sup>80</sup> 1967 AIR 1639, 1967 SCR (3) 926.

<sup>81</sup> 1977 AIR SC 908 [*Stanilaus*].

<sup>82</sup> *Ibid.* at 908-912.

<sup>83</sup> ‘Equality of religions’ did not mean Indian citizens had to accept all religions were equal and not seek to convert others to their religion; it only required that “the state cannot discriminate one religion from another” and is bound to treat all religions alike: E.D. Devadason, “The Supreme Court Judgment on the Orissa Freedom of Religion Act 1967”, National Christian Council Review, XCV11/9 (September 1977), 433-7, quoted in Kim Chang Hwan, “‘Freedom of Religion’ Legislation in India: The Hindu-Christian Debate on Religious Conversion” (June 2002) Vol. 9 Mission and Theology 227 at 236, footnote 26, available online: <<http://www.earticle.net/FileArticle/200707/633192048482031250.pdf>>.

<sup>84</sup> H.M. Seervai, *Constitutional Law of India*, Vol. 2 (Bombay: NM Tripathi, 1993) at 1287, cited in V. Venkatesan, “Conversions debate” *Frontline* 25:19 (September 2008), online: Frontline <<http://www.hinduonnet.com/fline/fl2519/stories/20080926251902600.htm>>.

<sup>85</sup> Seervai, *ibid.*

<sup>86</sup> Venkatesan, *supra* note 84.

Propagation as an activity was subject to legislative restriction. As Stahnke notes,<sup>87</sup> even if the Court had read article 25 to include a right to try and convert someone, the court would have sustained the constitutionality of the anti-propagation statute as a permissible restriction to preserve public order through prohibiting religious conversions reprehensible to community conscience.

### 3. *Free conscience and Singapore's Article 15 religious freedom guarantee*

Article 15 recognizes the individual and communal dimensions of religious liberty, as well as its internal and external manifestations. Freedom to profess a religion belongs to the internal realm of the conscience, which is absolute in being beyond state intrusion. This is the space where the individual has the exclusive prerogative to seek 'Truth'. The *external* exercise of religious freedom, including propagation, may be qualified to preserve social peace given the contemporary "conflicts arising from religious differences" where "what to one person is a self-evident religious truth can to another be either rank heresy or dangerous fanaticism".<sup>88</sup> Propagation (truth-dissemination) facilitates profession (truth-seeking). Where free conscience is respected, profession cannot be restricted, while propagation may, where it imperils a public good.

Consistent with free conscience, article 16(3) protects persons within educational institutions from being forced to participate in religious ceremonies (other than their own). To minimise familial conflict, article 16(4) provides that for article 16(3) purposes, the parents or guardians decide "the religion of a person under 18 years".<sup>89</sup> Government policy requires teachers not to proselytise their students.<sup>90</sup>

There are no dedicated laws regulating religious propagation although general law may curtail religious propagation, not for the act itself, but its effect in wounding religious feelings, prejudicing religious harmony by promoting inter-group hostility<sup>91</sup> or for seditious tendencies.<sup>92</sup> The government can pre-emptively address religious harmony threats, including aggressive and insensitive proselytisation,<sup>93</sup> through issuing restraining orders to religious leaders or other persons who instigate religious groups to commit specified acts, including "causing feelings of enmity, hatred, ill-will or hostility between different religious groups", under the *Maintenance of Religious*

<sup>87</sup> Stahnke, *supra* note 48 at 639.

<sup>88</sup> Prakash J. in *Chan Hiang Leng Colin v. Minister for Information and the Arts* [1995] 2 S.L.R.(R.) 627 at para. 25 (H.C.).

<sup>89</sup> The Malaysian Supreme Court in *Teoh Eng Huat v. Kadhi, Pasir Mas* [1990] 2 M.L.J. 300 (S.C.) held that non-Muslim parents and guardians had the right to decide the religion of minors. This balances individual freedom and family solidarity, until the age of legal capacity (18) is reached, where 'autonomy' takes precedence and individual choice governs.

<sup>90</sup> Li Xueying & Ken Kwek, "Say aaah . . . men" *The Straits Times* (Singapore) (15 October 2005) S9.

<sup>91</sup> Ss. 298, 298A, *Penal Code* (Cap. 224, 1985 Rev. Ed. Sing.) [PC].

<sup>92</sup> S. 3(1)(e), *Sedition Act* (Cap. 290, 1985 Rev. Ed. Sing.) [SA] is relevant, in including within the definition of "seditious tendency" a tendency "to promote feelings of ill-will and hostility between different races or classes of the population of Singapore".

<sup>93</sup> The government distinguishes "aggressive proselytisation" from religious extremism which refers to violent religious terrorist groups. It is also distinct from the affirmed legitimate involvement of citizens influenced by religious perspectives in public policy debates: "We are not against religion. We uphold sound moral values": PM Lee Hsien Loong, *supra* note 3.

*Harmony Act*.<sup>94</sup> This appreciates that conflict between religious groups may be caused not only by religious leaders, but a non religiously affiliated person with an anti-religion agenda who seeks to demonise one or both religious groups, or ‘religion’ in general. This is particularly important as increasingly, social cleavages are not rent by inter or intra religious tensions, but between the ‘religious’ and the ‘secular’.

#### D. Cabining Article 15 by Soft Constitutional Law Norms

In seeking to condition the exercise of article 15 rights, PM Lee in 1965 directed Christians not to aim their evangelical efforts at Muslims.<sup>95</sup> As religious fervour might disrupt inter-religious harmony, a balance had to be struck between respecting “the right of each individual to hold his own beliefs and to accept or not to accept any religion”, and the importance of acknowledging “the multi-racial and multi-religious character of our society, and the sensitivities of other religious groups”.<sup>96</sup> The government, which is “extremely paranoid about survival”,<sup>97</sup> constantly reiterates the importance of safeguarding multi-racial cohesion.

There are no judicial pronouncements on religious propagation; however, the government has in non-binding but authoritative statements laid down guidelines containing SCL standards that flesh out terse constitutional guarantees, best articulated in the *Maintenance of Religious Harmony White Paper*. The relevant actors are expected to take these seriously, on pain of legal or non-legal sanction.<sup>98</sup>

To preserve religious harmony, religious groups must consciously “show respect and tolerance for other faiths” and must refrain from “denigrating other faiths or by insensitively trying to convert those belonging to other religions”.<sup>99</sup> The government recognised that many religions, such as Christianity and Islam (*dakwah* activities), oblige their followers to propagate the faith to win converts, but the constitutional liberty to proselytise had to be “exercised very sensitively”. Three flashpoints were identified.

First, at the personal level, a distinction was drawn between preaching to a person “interested in converting to a new faith” and to someone with “no desire to be converted”.<sup>100</sup> If the speaker denigrates that person’s religion, “the potential for giving offence is great”. Second, at the corporate level, if one religious group sought “to increase the number of its converts drastically at the expense of the other faiths”, other groups would “strenuously” resist this.<sup>101</sup> Lastly, while it was legitimate during religious instruction to point out doctrinal differences showing why other religions were considered “mistaken”, this could be taken “too far”. Tolerance and mutual trust

<sup>94</sup> Cap. 167A, 2001 Rev. Ed. Sing., ss. 8-9 [MRHA].

<sup>95</sup> Transcript, Prime Minister’s Statement to Religious Representatives and Members of the Inter-Religious Council, 30 September 1965.

<sup>96</sup> MRH White Paper, *supra* note 13 at para. 18.

<sup>97</sup> Law Minister K. Shanmugam, Transcript, Q&A Session, New York State Bar Association Rule of Law Plenary Session, 28 October 2009, online: Ministry of Law <<http://app2.mlaw.gov.sg/LinkClick.aspx?fileticket=O4FVStRebNY%3D&tabid=204>>.

<sup>98</sup> 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.

<sup>99</sup> *Supra* note 97 at para. 13.

<sup>100</sup> *Ibid.* at para. 15.

<sup>101</sup> *Ibid.* at para. 17.

would be eroded where other religious communities took “great umbrage” to sermons “pouring forth blood and thunder and denouncing the followers of other faiths as misguided infidels and lost souls”.<sup>102</sup> Thus, sensitivity to other communities and the ‘propagation without denigration’ was identified as part of “the ground rules of prudence and good conduct” needed to preserve religious tolerance and harmony.<sup>103</sup>

### III. LAW, POLITICS AND TWO CAUTIONARY TALES

#### A. *Chickening Out: Religious Speech as Seditious Speech*

PM Lee Hsien Loong highlighted the case of *Ong Kian Cheong* during his 2009 National Day Rally speech as an “extreme” instance of the negative effects of religious fervour within a multi-religious society. A Protestant Christian couple “surreptitiously distributed” Christian tracts other faiths found offensive. This typified aggressive proselytisation where “You push your own religion on others and cause nuisance and offence.”<sup>104</sup>

The facts were these. For more than 20 years, a married couple sought to carry out their evangelical mission by distributing materials to the public, including evangelical tracts from Chick Publications. These were either directly dropped into mailboxes or later posted to names drawn from residential directories. The police, acting on information, “laid an ambush”<sup>105</sup> on 30 January 2008 and witnessed the first accused dropping a stack of brown envelopes (containing Chick publications) into a post-box, which the police retrieved. The first accused was detained, his car and home searched in his presence. He was arrested that same day and his wife, shortly after.

Both were charged and found guilty of various offences under the *Sedition Act*<sup>106</sup> and *Undesirable Publications Act*<sup>107</sup> for distributing and possessing publications deemed seditious and objectionable, in tending to promote feelings of ill-will and hostility between Christians and Muslims in Singapore.<sup>108</sup> District Judge Neighbour rejected their defence that they did not know the tracts’ contents and had no reason to believe these were objectionable and seditious. The first accused was described as “a fervent Protestant”<sup>109</sup> and both, as “intelligent and educated people”,<sup>110</sup> who should have known that Christian publications criticising other religions could promote feelings of ill-will between religious groups.

The testimony of two Muslims were the basis of the SA charges. Both received letters addressed to them in their letterboxes, containing publications entitled “Who is Allah?” and “The Little Bride”. Isa considered these offensive “because it could provoke or incite racial hatred” while Irwan made a police report because such

<sup>102</sup> *Ibid.* at para. 16.

<sup>103</sup> The ISD Report, “Religious Trends—A Security Perspective”, lists examples of insensitive proselytism fuelling inter and intra group tensions: Annex, *ibid.* at paras. 2-12.

<sup>104</sup> PM Lee Hsien Loong, *supra* note 3.

<sup>105</sup> *Ong Kian Cheong*, *supra* note 16 at paras. 6-9.

<sup>106</sup> *Supra* note 92.

<sup>107</sup> Cap. 338, 1998 Rev. Ed. Sing. [UPA].

<sup>108</sup> This was an offence punishable under s. 4(1)(c), SA, read with s. 3(1)(e), s. 34, PC.

<sup>109</sup> *Ong Kian Cheong*, *supra* note 16 at para. 63.

<sup>110</sup> *Ibid.* at para. 61.



publications “could incite religious tension between Muslims and Christians”.<sup>111</sup> The basis for the *UPA* charges was Farhati Ahmad’s testimony; she was angered by the tracts received through her mailbox, as they denigrated Islam. She thought the sender was a Christian group, noting this could have caused Muslim-Christian ill-will had it “fallen into the wrong hands”.<sup>112</sup> Neighbour D.J. noted that “Acting rationally, she reported the matter to the police for an investigation to be conducted.” A *UPA* Controller found the publications objectionable as it denigrated Islam and Catholicism.

The accused had first bought these tracts from local Christian bookstores and later, direct from Chick Publications online. Both claimed they were unaware that the tracts contained objectionable content, as the first accused only mailed the tracts while the second had stopped reading their repetitive contents since 2004.<sup>113</sup> In general, she deliberately sent tracts entitled “Who is Allah?” to persons with Muslim names.<sup>114</sup> Neighbour D.J. observed it was “well known” in Singapore “that persons of the Malay race are Muslims or followers of Islam”.<sup>115</sup>

The *SA* limits the article 14(1) right to free speech and must fall within one of eight grounds of derogations in article 14(2). The *SA* preamble merely states “An Act for the punishment of sedition”; presumably, this implicates security and/or public order. Historically, sedition law was designed to ensure stable, orderly government in dealing with speech critical of government or government officials, in an age when government leaders were beyond reproach.<sup>116</sup> The rationale has shifted to “the potential of dissident speech to bring about illegal acts”.<sup>117</sup> In its ordinary meaning, “sedition” denotes “a tumult, an insurrection, a popular commotion, or an uproar, it implies violence or lawlessness in some form”.<sup>118</sup> It involves exciting disaffection against the government and producing “public mischief” which “consists in and arises out of directly and materially obstructing public authority”.<sup>119</sup> So understood, sedition laws are at odds with democratic practices, given that prosecutions for incitement to commit public order offences could address “seditious offences”.

In *Ong Kian Cheong*, there was no consideration whether the *SA* offences were consistent with article 14. Furthermore, the facts did not relate to undermining public authority. Neighbour D.J. rejected the argument that the common law of seditious libel, which required seditious words to “be directed against the maintenance of government”,<sup>120</sup> was relevant to interpreting section 3(1)(e) of the *SA*, which he construed literally. In finding Parliament’s intent determinative in ousting common law understandings of sedition, Neighbour D.J. construed legislative power broadly, and fundamental liberties, narrowly, contrary to the general approach of generously

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<sup>111</sup> *Ibid.* at para. 11.

<sup>112</sup> *Ibid.* at para. 12.

<sup>113</sup> *Ibid.* at para. 42.

<sup>114</sup> *Ibid.* at paras. 33-35.

<sup>115</sup> *Ibid.* at para. 77.

<sup>116</sup> H. Ibrahim & N. Hamid, *Sedition: Cases and Materials* (Malaysia: Gavel Publications, 2010).

<sup>117</sup> W.T. Mayton, “Seditious Libel and the Lost Guarantee of a Freedom of Expression” (1984) 84 Colum. L.R. 91 at 91.

<sup>118</sup> Coleridge J. in *R v. Aldred* (1909) 22 Cox CC 1 at 3.

<sup>119</sup> Kellock J. in *Boucher v. R* [1951] 2 D.L.R. 369 (S.C.C.).

<sup>120</sup> *Ong Kian Cheong*, *supra* note 16 at paras. 46-47.

interpreting fundamental liberties<sup>121</sup> against statist priorities. Thus, the test was merely to prove a publication “had a tendency to promote feelings of ill will and hostility between different races or classes of the population in Singapore”.<sup>122</sup>

The couple was found to have had knowledge of the contents of the publication. The *UPA* controller Senior Assistant Director (“SAD”) Mardeei in his expert judgment highlighted various factors indicating when a publication was considered objectionable under section 4(1)(b), which refers to materials dealing with “matters of race or religion in such a manner that the availability of the publication is likely to cause feelings of enmity, hatred, ill-will or hostility between different racial or religious groups”. The relevant publications were comics (as opposed to books which required “a greater intellectual ability to digest” and reach a conclusion on), so their meaning and intent could be grasped through cursory reading. As comics stated “outright conclusions”, they had a greater impact on the reader and the vulnerable young.<sup>123</sup> In contrast Mardeei could not conclusively state whether anti-theistic books like “God is not Great” or “The God Delusion” contained objectionable material as statements had to be read in the context of the entire book, which invited readers to draw conclusions on religious matters.<sup>124</sup>

In mitigation, the couple had apologised to the tract recipients, were first-time offenders and unlikely to be recidivists. No public disorder was caused.<sup>125</sup> Neighbour D.J. was strict in imposing a custodial sentence, emphasising the gravity of the offence, as reflected in the prescribed punishments, which had the “the capacity to undermine and erode the delicate fabric of racial and religious harmony in Singapore”.<sup>126</sup> A deterrent sentence was warranted as the offences affected the “very foundation of our society”.<sup>127</sup>

### B. *The Political Management of the Lighthouse Evangelism Saga*

In February 2009, the media prominently reported that the ISD had called up the pastor of an independent 12,000 member Christian church, Lighthouse Evangelism, regarding three video clips posted on the church’s website and subsequently reposted on other social media platforms such as Facebook and Youtube.<sup>128</sup> These related to a church service where the pastor, a former Taoist, interviewed a former monk and nun about their previous Buddhist and Taoist beliefs.<sup>129</sup>

<sup>121</sup> *Ong Ah Chuan v. Public Prosecutor* [1980–1981] S.L.R. 48 at para. 23 (P.C.). Notably, the Courts have generally not generously construed fundamental liberties, even if formally deferring to this principle of constitutional construction: see Thio Li-ann, “An ‘I’ for an ‘I’: Singapore’s Communitarian Model of Constitutional Adjudication” (1997) 27 *Hong Kong L.J.* 152.

<sup>122</sup> *Ong Kian Cheong*, *supra* note 16 at para. 47.

<sup>123</sup> *Ibid.* at para. 55.

<sup>124</sup> *Ibid.* at para. 56.

<sup>125</sup> *Ibid.* at paras. 67–72.

<sup>126</sup> *Ibid.* at para. 76.

<sup>127</sup> *Ibid.* at para. 77.

<sup>128</sup> “ISD calls up pastor” *Today* (Singapore) (9 February 2010).

<sup>129</sup> The comments discussed the Buddhist precepts of rebirth, karma and nirvana, with *The Straits Times* noting that this drew laughter from the audience: “Pastor called up by ISD: Leader of independent church apologies to Buddhists and Taoists” *The Straits Times* (Singapore) (9 June 2010).

The media reported that complaints were made to the Police, ministers and the President Council of Religious Harmony.<sup>130</sup> The details of the complaints were not made available, though the gist is discernible from media reports, where the Ministry of Home Affairs (“MHA”) confirmed it concerned the pastor’s “comments and insinuations about Buddhism and Taoism”. This mode of handling the issue through ISD investigation was deemed “very serious”, on par with Police investigation.<sup>131</sup>

The MHA spokesman said that Pastor Rony Tan’s comments were “highly inappropriate and unacceptable as they trivialised and insulted the beliefs of Buddhists and Taoists. They can also give rise to tension and conflict between the Buddhist/Taoist and Christian communities.” The ISD warned the pastor that “in preaching or proselytising his faith, he must not run down other religions, and must be mindful of the sensitivities of other religions”.<sup>132</sup>

The responsible, repentant attitude of Pastor Tan is worthy of note, as this helps to decelerate tensions,<sup>133</sup> which conflict-entrepreneurs (whether of the religious or irreligious strain) might otherwise exploit to advance their agendas.<sup>134</sup> First, he publicly admitted wrongdoing, expressed his “deepest apologies and remorse” that his comments had “saddened and hurt” Buddhist and Taoists and promised “it will never happen again”. He posted an “urgent message” on his church website, apologising for his insensitivity and stating that the clips had been removed from the church website. The pastor urged those who had reposted the clips on Youtube to remove them<sup>135</sup> and exhorted his members “to respect other beliefs and not to ridicule them in any way, shape or fashion”,<sup>136</sup> so to “build a harmonious Singapore”.<sup>137</sup> Second, he paid a personal visit to the Singapore Buddhist Federation (“SBF”) Secretary-General and Taoist Federation (“TF”) chairman, representatives of these faiths, at Bright Hill Temple on 9<sup>th</sup> February to offer his “sincere” apologies.<sup>138</sup> Third, he took immediate action to review his church’s extensive catalogue and remove “all possible offensive recorded material”. Fourth, he urged his congregants and third parties not to circulate past sermons “which may provoke religious sensitivity”. Fifth, he

<sup>130</sup> Section 4, *MRHA* defines the functions of the Council which does not have initiatory powers nor the power to receive complaints. It reports on matters which the Minister or Parliament refers to it.

<sup>131</sup> Deputy PM Wong Kan Seng, “Reason pastor not arrested” *Today* (Singapore) (10 February 2010). This was in response to queries about why three persons were arrested for posting racist Facebook comments, while Pastor Tan was reprimanded. The three youths were eventually not charged.

<sup>132</sup> *MHA Statement in Response to Media Queries on the Lighthouse Evangelism videos and comments made by Pastor Rony Tan of Lighthouse Evangelism*, 8 February 2010 [*MHA Statement*].

<sup>133</sup> A similar incident happened with respect to New Creation Church and the Taoist Federation which was settled by an apology and reconciliatory hug: “Church pastor says sorry” *The Straits Times* (Singapore) (16 June 2010); “Now we are friends” *The Straits Times* (Singapore) (17 June 2010).

<sup>134</sup> “Rony Tan’s anti-gay video” *The Straits Times* (Singapore) (19 February 2010). If a culture of lodging police reports where hearers are offended develops, whether upon hearing religious teachings about homosexuality or homosexualism activist attacks against religion, this will chill speech and end conversations.

<sup>135</sup> “Pastor: I’ve let many people down” *Asiaone* (16 February 2010), online: asiaone <<http://www.asiaone.com/print/News/AsiaOne%2BNews/Singapore/Story/A1Story20100216-198847.html>>.

<sup>136</sup> Yen Feng, “ISD calls up pastor for insensitive comments” *The Straits Times* (Singapore) (9 February 2010), online: asiaone news <<http://news.asiaone.com/News/the+Straits+Times/Story/A1Story20100209-197516.html>>.

<sup>137</sup> *MHA statement*, *supra* note 132.

<sup>138</sup> “Pastor makes personal apology” *Today* (Singapore) (10 February 2010).

instructed church members that “upholding religious harmony is promoting peace, unity and true freedom”.

In a statement to his congregation,<sup>139</sup> the pastor took responsibility for “my breach of religious harmony”,<sup>140</sup> humbly reminding his followers that even spiritual leaders had “feet of clay”, urging “no matter how deeply you appreciate me, never justify for me. A wrong is a wrong and must be rectified, not justified.” He would learn from past mistakes and vowed to “redeem myself by promoting religious harmony, while still doing the good works of Christ effectively”.

### 1. *The response of representatives of the majority religious groups*

The SBF described the matter as one of “national concern” and urged the public and authorities to ensure against its repetition, declaring its intent to approach the authorities should it recur.<sup>141</sup> Upon receiving Pastor Tan’s personal apology, SBF president Venerable Kwang Sheng stated “We accepted his apology, but we also hope these things will not happen in the future.” The Singapore Buddhist Lodge chairman also urged Buddhists to show restraint to prevent escalating tensions, magnanimously noting “Buddhism teaches us to forgive; everybody makes mistakes.”<sup>142</sup> The SBF and TF (representing some 400 temples) issued a joint statement: “We accept his apology, and hope he has learnt a lesson from this experience. Here on, we will stay in touch to work on promoting mutual understanding between us.”<sup>143</sup>

### 2. *The response of other religious bodies*

Leaders from other religious bodies like the Islamic Religious Council of Singapore, Hindu Endowments Board, the Catholic Archbishop and National Council of Churches of Singapore (“NCSS”) spoke with a united voice, rejecting the making of insensitive comments against other religions and reiterating the common interest in religious harmony.<sup>144</sup> This disassociation from the transgressing act reinforces social expectations of approved standards of conduct.

### 3. *The government’s response*

Deputy PM Wong Kan Seng was “glad to note” that a personal apology was made, which was “the right thing to do”; he was “heartened” that Buddhist and Taoist leaders while “understandably upset with the incident”, had accepted the apology, and acted rightly in urging “restraint on the part of their religious communities”.<sup>145</sup>

By signaling approval of the respective parties’ responses, the government sought to put the issue to rest and not allow it to fuel further agitation. No further intervention

<sup>139</sup> *Supra* note 135.

<sup>140</sup> Speech, Pastor Rony Tan, 13 February 2009 at Lighthouse Evangelism church: *ibid.*

<sup>141</sup> “What is your reaction to the insensitive remarks made by Pastor Rony Tan” *Today* (Singapore) (10 February 2010).

<sup>142</sup> “Pastor did the right thing by apologising, but Buddhist group wants to make sure there is no repeat” *The Straits Times* (Singapore) (9 February 2010).

<sup>143</sup> “We hope he has learnt a lesson” *The Straits Times* (Singapore) (10 February 2010) 1.

<sup>144</sup> “A wake-up call on religious sensitivity” *The Straits Times* (Singapore) (10 February 2010) A6.

<sup>145</sup> *MHA Statement*, *supra* note 132.

was needed. The government took the opportunity to reiterate the ‘OB markers’ or SCL norms that the freedom to propagate religious beliefs “must never be by way of insulting or denigrating the religious beliefs of others”,<sup>146</sup> to remind all actors that the government would not allow “anyone to exploit and escalate any issue to whip up emotions and tensions on the ground between our ethnic and religious communities”.<sup>147</sup>

Accepting a public apology is indeed a responsible, if not graceful response, standing in sharp contrast with post-apology irate demands of certain netizens to arrest and jail the pastor.<sup>148</sup>

#### IV. SENSE AND SENSITIVITY: ANALYSES, REFLECTIONS, CONCLUSIONS

##### A. *Of Conflict, Courts and Chastisement: Calibrating Government Responses*

In managing religious conflict within a common political space, the government may calibrate its response through a range of ‘hard’ and ‘soft’ constitutional methods, whose effects may be pre-emptive, punitive, applying pressure through public chastisement to promote compliance with accepted social norms.

Judicial proceedings relating to religious harmony threats may “stoke passions” if the defendant “turns them into political propaganda”.<sup>149</sup> Where this is resorted to, as in *Ong Kian Cheong*, the apparent intent is to strongly signal that certain forms of conduct will attract legal sanction, to maximise deterrence. However, judicial proceedings are inappropriate where vague SCL norms are concerned, their intent being to guide the exercise of individual liberties. For example the relevant SCL norm is that religious propagation should be conducted in a manner which avoids denigratory, insensitive statements about other faiths, which provoke religious sensitivities. The sensitivity of hearers is variable—does the egg-shell skull rule then apply? From the speaker’s perspective, the SCL norm appeals to responsible action (and reaction), which requires cultivating an ethos of responsibility necessary for self-regulation. In shaping conduct through community expectation and background government pressure, the socialisation of SCL must be preceded by internalisation. Legislation and judicial sanction may compel action, but cannot bring about conviction-based compliance. Law is too blunt an instrument to engender a culture of respect and tolerance between disparate social groups.

With respect to the Lighthouse Evangelism controversy, political commentators characterised the issue as a threat to “religious harmony” which the ISD was expertly equipped to handle.<sup>150</sup> The chosen method was to make it a matter of public record, subject to intense media scrutiny, that the pastor had been called up and

<sup>146</sup> *Supra* note 141.

<sup>147</sup> *Ibid.*

<sup>148</sup> For example, two Facebook groups (“Arrest Pastor Rony Tan” and “Embrace Religious Harmony! Disgrace to Zealots like Rony Tan”) called for arrest and one even suggested banning proselytisation, that is eradicating a constitutionally guaranteed fundamental liberty, as an illiberal curative measure: “Concerned netizens hurt by Christians” *Christian Post* (Singapore Edition) (12 February 2010), online: The Christian Post <<http://sg.christianpost.com/dbase/society/1712/section/1.htm>>.

<sup>149</sup> *Supra* note 96 at para. 31.

<sup>150</sup> In contrast, 3 youths who posted racist comments on Facebook were arrested by the police and not dealt with by the ISD: “Reason pastor not arrested”, *supra* note 131.

reprimanded for making “unacceptable” comments. What followed was a public apology, the acceptance of this by the offended religious leaders, and distancing of other religious bodies from the unacceptable conduct. After the public censure from non-government bodies, the Home Affairs ministry then sought to ‘seal’ the issue by endorsing the reconciliatory actions of the relevant parties. While some considered that pastors as opinion leaders warranted more severe treatment,<sup>151</sup> others recognized the matter was not lightly treated, since the ISD rarely makes its warnings public. A salient factor too is that prosecuting a leader from a religious minority would cause trepidation amongst religious groups<sup>152</sup> and perpetuate, rather than ameliorate, social disquiet. The government apparently appreciates that religious harmony was best maintained through “careful management” and “the commitment of our people to the ideals and value of communal harmony”. When a Buddhist parliamentarian raised the issue of people “pushing beyond the OB markers” despite “our clarity on the boundary for promoting one’s religion and faith”, characterising “the uproar caused by Pastor Rony Tan” as “attacking another’s faith”,<sup>153</sup> and calling for “stronger and clearer signals of our resolve whenever there is a breach”, the government revealed its carefully modulated policy. It would intervene only after the “collective efforts of the community, grassroots and religious leaders” to resolve inter-religious disagreements through “common sense and moral suasion” failed. Rather than strong-arm coercive tactics, long-term solutions for religious disputes “must reside in mutual understanding and trust among the different groups and their leaders”.<sup>154</sup>

The mode of calibrated government intervention sets the tone for expectations concerning future conduct and keeps open the door to cultivating a responsibilities-oriented, rather than fear-based culture. Religious leaders in the light of this incident will need to develop an awareness that their sermons, an exercise of religious practice, are no longer merely for *private* consumption; in a digital age, sermons and audio files can be uploaded on the Internet and, in entering the *public* domain, potentially offend a broader audience; indeed the “viral” spread of Pastor Tan’s remarks demonstrate how media platforms “enlarge the reach of such materials, thereby escalating the perceived threat”.<sup>155</sup> The ISD’s quick action sought to curb the multiplication and amplification of the message in cyberspace. While the author’s intention to spread a religious message may have been miscalculated or ill-judged, the intent of re-posters may range from the legitimate desire to communicate or express outrage, to illegitimate attempts to incite hatred and escalate a inter-religious spat. Such reactions may pose a new threat to public order which require government intervention, practical difficulties notwithstanding.

<sup>151</sup> Tan Tarn How, an Institute of Policy Studies (IPS) researcher reportedly stated, “An opinion leader has more influence. I think the pastor was let off too lightly”: “Reason pastor not arrested”, *ibid*. However, being subject to prominent media coverage and cascades of hate mail is sobering and instructive in conveying social norms. Pastor Tan was distraught enough to contemplate, after “paying his dues”, departing “from the very nation that I love”: *supra* note 140.

<sup>152</sup> So noted Azhar Ghani, IPS researcher: Rachel Chang, “ISD investigation not less serious than being arrested: DPM” *The Straits Times* (Singapore) (10 February 2010) A6.

<sup>153</sup> Sing., *Parliamentary Reports*, Vol. 86 (4 March 2010) (Mr. Ong Seh Hong).

<sup>154</sup> Sing., *Parliamentary Reports*, Vol. 86 (4 March 2010) (Mr. K. Shanmugam).

<sup>155</sup> Eugene Tan, “Cherishing and Respecting Diversity: The Right of Religious Freedom and Free Speech is not a Licence to Offend Others” *Today* (20 February 2010).

### B. The 'Right' Thing: Conceptualisation and Utilisation

What was absent from both the decision in *Ong Kian Cheong* and the framing of the Lighthouse Evangelism controversy was the language of constitutional rights, which are designed to protect individuals from hostile majorities, by withdrawing certain subjects from “the vicissitudes of political controversy” and placing them “beyond the reach of majorities and officials”,<sup>156</sup> establishing them as justiciable rights.

What was at stake in both instances was the constitutional right to free speech (religious free speech) and the right to religious propagation under articles 14 and 15 respectively. Calls for curtailing such rights in the name of ‘public order’ are by nature order-centric and illiberal, and where disproportionately applied, can chill speech, even if restrictions are not aiming at the freedom to differ, but attempt to control the effects religious propagation might have on disaffected hearers.

While the constitutional right to religious propagate is not absolute, the fact that a constitutional right is affected is an important factor in balancing competing interests. The judicial reasoning in *Ong Kian Cheong* did not appear to take into account this factor. No express reference was made to article 15. This right may be legitimately qualified by public order considerations but even so, is a relevant factor which should be considered, at least during mitigation. Neighbour D.J. noted that “A person is free to choose his religion and to practice it.” These are two of the three components of religious freedom guaranteed by article 15(1). He appeared to disassociate the third component, that of religious propagation, stating:

It is foreseeable that the faithful have desires to profess and spread their faith. Besides worship, some Christians might even see evangelism as their paramount Christian duty. The distribution of tracts and Christian literature is done in good faith to inform unbelievers in the hope of stirring up interest to accept Christianity and be converted.<sup>157</sup>

It is precisely because certain religious groups, including Christians, view sharing their faith as part of their religious obligations to God, that is, as part of their conception of what it means to be religiously free, that this has been constitutionalised, despite its contentious nature. That fact that article 15 was deliberately formulated after Independence, in removing the restrictions to propagation found in the Malaysian article 11(4), bears great significance. One may discern that the historical or original intent was to guarantee to Singaporeans a more liberal enjoyment of religious liberty. Bearing in mind that the Court of Appeal in *Yong Vui Kong*<sup>158</sup> accorded primary weight to the original intent of the constitutional framers, as drawn from the text and constitutional history, the original intent and textual formulation of article 15 testifies to its importance as a right,<sup>159</sup> which should be reflected in the approach towards constitutional interpretation. In comparison, free speech under article 14 is expressly limited within the general norm itself.

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<sup>156</sup> Jackson J. in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

<sup>157</sup> *Ong Kian Cheong*, *supra* note 16 at para. 80.

<sup>158</sup> *Yong Vui Kong*, *supra* note 17 at paras. 64-69.

<sup>159</sup> The primacy of religious freedom is further reflected in article 150(5)(b) which provides that Emergency laws inconsistent with constitutional provisions “relating to religion, citizenship or language” will be invalid. The same does not apply for other Part IV liberties.

Neighbour D.J. referred to the adjudicatory balancing process in *Public Prosecutor v. Benjamin Koh*,<sup>160</sup> which is problematical. Although that case concerned seditious words in relation to race, he thought it equally applicable to insensitive and denigrating remarks about religion.<sup>161</sup> There, the court “poignantly”<sup>162</sup> pointed out that the right to propagate an opinion was not unfettered. Strictly speaking, this refers to exercises of free speech under article 14, not religious propagation under article 15. This statement by Magnus S.D.J. in *Koh* was highlighted:

The right of one person’s freedom of expression must always be balanced by the right of another’s freedom from offence, and tampered by wider public interest considerations.<sup>163</sup>

This raises two competing factors which may qualify the scope of a right. What needs to be appreciated in adjudication is the point that the right to be free from offence, here, presumably, a right not to be religiously offended, is not a constitutional right, nor a common law one, unless the court was purporting to declare it. It may best be conceptualised as an object of some statutory protection, insofar as there is legislation allowing for action to be taken against speech which wounds religious feelings or offends religious sensibilities which rises to the level of a public order threat. Nonetheless, what we might call a public law interest cannot, in the balancing process, be co-equal with a constitutional right, which is part of the supreme law of the land.

Furthermore, while “wider public interest considerations” are relevant, the approach in *Ong Kian Cheong* is unfortunately reminiscent of previous decisions, such as *Colin Chan v. Public Prosecutor*<sup>164</sup> where public order considerations were treated as determinative trumps, effectively eviscerating a constitutional liberty. This approach precludes balancing and optimising competing interests, as the methodology is categorical: once a relevant factor is found to be present, it determines the case.<sup>165</sup> In *Ong Kian Cheong*, the balancing method is pitched at the bare “tendency”<sup>166</sup> of the publications to cause ill-will between races or classes. ‘Tendency’ is not an eventuality, it refers to potential, not actual effect. Perhaps this strict approach is warranted by the terms of the statutory definition of “tendency”,<sup>167</sup> but this still begs the question whether the legislation was consistent with constitutional standards governing the permissibility of restrictions. This is not a matter the courts have addressed at depth, appearing content to affirm the constitutionality of duly enacted rights-restricting legislation,<sup>168</sup> which makes for minimalist judicial review.

Karthigesu J.A. in *Taw Cheng Kong v. Public Prosecutor*<sup>169</sup> stated that the first step in interpreting Part IV liberties was to ascertain the “underlying rationale” of

<sup>160</sup> [2005] SGDC 272 [*Koh*].

<sup>161</sup> *Ibid.* at para. 81.

<sup>162</sup> *Ibid.* at para. 80.

<sup>163</sup> *Ibid.* at para. 8.

<sup>164</sup> [1994] 3 S.L.R. 662 (H.C.).

<sup>165</sup> The court created a test, not reliant on any statutory framework, that the “paramount mandate” of the Constitution, the “sovereignty integrity and unity of Singapore” would trump any right which tended to run counter to said mandate: *ibid.* at 684F.

<sup>166</sup> *Ong Kian Cheong*, *supra* note 16 at paras. 47, 77 & 81.

<sup>167</sup> S. 3(1), SA.

<sup>168</sup> *Chee Soon Juan v. Public Prosecutor* [2003] 2 S.L.R. 445 at para. 20 (H.C.).

<sup>169</sup> [1998] 1 S.L.R. 943 at 955F-G (H.C.).



the article, to appreciate the reasons for elevating the right to constitutional status, as only “by first recognising the purpose and importance of a right” may it “be given proper effect”. The second step was to determine the scope of the right to ascertain “how extensive” constitutional protection is. However, in *Ong Kian Cheong*, there was no discussion on the importance of the right of religious propagation, probably because no reference was made to article 15, even though it was implicated. Religious propagation can be annoying, but it could also be greatly valued as the impetus to life-changing revelation. Instead, the importance of racial and religious harmony was frequently reiterated, with the publications declared “offensive for religious content” and disharmony-inducing.<sup>170</sup> Without minimising the importance of ‘racial and religious harmony’ as an aspect of ‘public order’, there are fundamental liberties at stake too and this primary factor needs to be seriously negotiated, rather than discounted. The importance of the fundamental liberty at stake remains under-theorised and one hopes that future judgments will redress this deficiency.

### C. *Tenting Tolerance to the Quick*

Both ‘cautionary tales’ engage understandings of ‘tolerance’ which is a content-dependent concept, parasitic on a normative theory which itself requires justification. In the field of political philosophy, the literature on toleration is legion,<sup>171</sup> including John Locke’s seminal writings on religious toleration.<sup>172</sup>

There are both ‘classic’ and ‘postmodern’ conceptions of toleration. This section reflects on the ‘cautionary tales’ and argues that ‘classic’ toleration best serves the ideals of a secular democracy and equal citizenship, and recommends this understanding as the basis for supplying content to the constitutional idea of tolerance in Singapore, whether in judicial determinations or through government articulated SCL norms.

In a nutshell, ‘classic’ tolerance is egalitarian in recognizing the right of all citizens to speak, debate and hold views, while being elitist in discriminating between these views on the basis of truth or accuracy and cogency. This assumes that truth is desirable and attainable. Conversely, a ‘postmodern’ conception, which denies the possibility of Truth, runs the danger of being illiberal in demanding that a political theory of tolerance entails regarding all views and positions as equally ‘true’, which implicitly endorses moral relativism.<sup>173</sup>

The nature of classic ‘tolerance’ is to put up with something you disagree with, find annoying, even offensive or unworthy of approval. It entails forbearance in deferring to a higher value, and does not connote endorsement or require moral relativism.

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<sup>170</sup> *Ong Kian Cheong*, *supra* note 16 at paras. 76-77 & 81.

<sup>171</sup> Jeremy Waldron & Melissa Williams, *Toleration and its Limits: NOMOS XLVIII* (New York: NYU Press, 2008); Michael Walzer, *On Toleration* (New Haven: Yale University Press, 1999); J. Budziszewski, *True Tolerance: Liberalism and the Necessity of Judgment* (New Brunswick, U.S.A.: Transactions Publishers, 1999).

<sup>172</sup> John Locke, *A Letter Concerning Toleration* (USA: Classic Books America, 2009). See John Marshall, *John Locke, Toleration and Early Enlightenment Culture* (Cambridge: Cambridge University Press, 2010).

<sup>173</sup> Religions are mutually exclusive; some claim exclusive truths based on absolute principles. To say these are ‘intolerant’ is to make the illogical, absolute claim that tolerance means affirming ‘all views are subjective’.

As a civic virtue, tolerance is reciprocal and needs to be reflected in both action and reaction. Citizens living in a religiously plural society may tolerate other religions which they consider false or wrong because they are invested in the positive belief that religion, which speaks to ultimate concerns, and religious freedom, deserve protection.

Both Pastor Tan and the accused couple in *Ong Kian Cheong* were accused of intolerance, the first for uttering disparaging remarks about other faiths, the second for distributing evangelical leaflets to offended Muslim recipients. This is a misconceived use of the term 'tolerance'. The following paragraph from the decision has troubling implications:

Common sense dictates that religious fervor to spread the faith, in our society, must be constrained by sensitivity, tolerance and mutual respect for another's faith and religious beliefs. Both the accused by distributing the seditious and objectionable tracts to Muslims and to the general public clearly reflected their intolerance, insensitivity and ignorance of delicate issues concerning race and religion in our multi-racial and multi religious society. They both acted on their own accord without ensuring that the tracts were suitable for distribution to the general public.<sup>174</sup>

While the accused persons may have acted insensitively, even carelessly in disseminating tracts offensive to the religious sensibilities of its recipients, in what sense could they be said to have shown "intolerance"? Was the reference to intolerance meant to indicate the view that 'toleration' means all religious views are of equal veracity and thus, it was 'intolerant' to contend otherwise, through exercising rights to religious propagation? If this view of 'toleration' is adopted, all religions laying claim to objective truth are tarred as 'intolerant'; the very act of propagating a religion would be regarded as intolerant as it involves assertions that other religions or ideologies are wrong; the act of conversion would, in this light, be objectionable. This false view of 'tolerance' must be rejected, as it slips in the contested assumptions of moral relativism by the back door, that there is no way to verify truth-claims. Insensitivity to religious feelings or the belief that one's faith is the only true religion is not 'intolerance', properly understood. Treating all religious believers with the respect owed to fellow-citizens and recognizing their right to profess their beliefs, does not entail the illogical acceptance that all religions are true. Being sensitive in propagation is a prudential rule, unrelated to 'tolerance'.

Religious toleration as a political philosophy imputes duties to various actors within a secular democracy. As a constitutional principle, toleration recognizes the equal status of religions before the law and requires the state to show neutrality by remaining aloof of theological debates. Minority religions are likely to be pacified if the legal system safeguards their interests through guaranteeing religious pluralism and prohibiting discrimination on basis of religious affiliation.

Tolerance is demonstrated within a religious group which allows individuals to refine and change religious choices, even affiliations. The individual has the right to pursue truth and to propagate the truth he commits to. He is duty-bound to respect the other citizens' rights to hold different religious beliefs, but does not have to subscribe to a version of tolerance that equalises all truth-claims, which would be intolerant and

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<sup>174</sup> *Ong Kian Cheong*, *supra* note 16 at para. 82.

intolerable! The individual may only engage in religious persuasion, not imposition and this indeed is the point H.M. Seervai was making in his analysis of the *Stanilau* decision. Religious propagation helps the individual make an informed religious choice. A corollary of this liberty is that persons of all religions, as an exercise in civic forbearance, must “tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith”.<sup>175</sup> If adhered to, this could promote tolerant inter-religious relations, which serves the common good.

Should one encounter proselytisation in person or receive an offensive tract, he is at liberty to demonstrate self-restraint and tolerant forbearance by walking away or throwing away noisome publications, as part of the give and take of peaceful co-existence in a plural society. Religious speech may be annoying, but does banning or promoting religious free speech promote tolerance or intolerance? To ban it, is illiberal censorship. To seek legal sanctions against someone propagating a religious viewpoint, may be considered intolerant, and will chill religious speech. Protecting religious speech does not necessarily lead to religious intolerance, though it does require hearers to act tolerantly, even to grow a thick skin to preserve robust, yet civil, discussions about important topics.

True tolerance appreciates there are always limits to what may be tolerated. Thus a distinction is drawn between legitimate evangelism, which respects free conscience, and illegitimate proselytism involving coercion, fraud or manipulation, which warrants restriction. However, if religious beliefs are opposed or denied in a way that inflames religious sensitivities or incites violence, the state has an interest in stepping in to deflate tensions through restrictive measures not aimed at censoring content.

In the final analysis, calling for “tolerance” involves drawing non self-evident distinctions between what is tolerant and what is intolerant. Tolerance is an empty container without intrinsic meaning; it is normatively dependent on an independent principle from which it draws substance and the ability to identify what is and is not ‘tolerant’. In other words, ‘tolerance’ is not a virtue in itself; it is only valuable if it draws from the right normative standard, which is furnished by some conception of human flourishing. Religious tolerance entails a valuing both of Peace, and of Truth, with the former facilitating the search for the latter.

#### D. *Desperately Seeking Solidarity*

##### 1. *Unity in diversity*

Unity without diversity through coercive, homogenising assimilation degenerates into authoritarianism; diversity without unity devolves into fissiparous chaos which thwarts sustainable peace by eroding the shared life of a plural nation; unity in diversity requires the recognition of an irreducible plurality and a shared commitment to an indivisible unity.

‘Religion’, like any other ideology, has both its constructive and divisive sides. The right of religious propagation, as an individual liberty with its objective of religious conversion, may, by reconstituting various faith communities in terms of

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<sup>175</sup> *Otto Preminger-Institut v. Austria* (1995), 19 E.H.R.R. 34 at paras. 8-9.

membership addition or attrition, unsettle the equilibrium of the religious status quo. The process of religious propagation may stir social tensions where other religious communities take offense at what is said, whether this be ‘seditious’ or ‘insensitive’, and are provoked to hostile reaction. Complaints are made to the government who, as peacekeeper, must step in as third party mediator or adjudicator.

Within a religiously plural society, it has long been recognized that ‘aggressive or insensitive’ proselytisation can pose public order issues. To that extent, this may be considered an abuse of the right of religious propagation which must be exercised with an eye to maintaining social harmony. In recent Singapore practice, tensions have been caused by instances where other religious groups have found the religious speech of members of the Christian community offensive.

Religious harmony can thus be disrupted by insensitive religious teachers, breeding ill-will between religious groups; however, given the flammable quality of religious disputes, it must be recognized that a second agent of disharmony exists: that of conflict entrepreneurs, whether of religious or irreligious orientation, who are not party to an existing religious dispute, but may opportunistically exacerbate a religious dispute, motivated not by a genuine concern for religious harmony but by dislike or hostility towards a religion or religion generally. This is a form of intolerance towards religion. Bearing in mind the reciprocal nature of tolerance, the Lighthouse Evangelism controversy is instructive.

## 2. *Lighthouse evangelism controversy: Insensitive action, tolerant and intolerant reactions*

After the religious leaders had resolved their differences in a highly publicised public setting, did those sectors of society calling for the arrest of Pastor Tan<sup>176</sup> manifest tolerance or intolerance? Was this a display of self-restraint and forbearance, or vindictive animus?<sup>177</sup> Genuine tolerance is a two-way street, and it is incumbent upon those who *demand* tolerance, to *demonstrate* tolerance and not to elevate themselves above this web of reciprocal obligation.

Religious leaders must lead by example through forbearance and forgiveness in the face of affront; this demonstrates both character and a commitment to a shared common life. The Buddhist and Taoist leaders in accepting the public apology adopted a reconciliatory posture essential to long-term or durable peace. Conversely, after this religious rapprochement, various netizens by continuing to aggressively campaign against Pastor Tan, ironically in the name of religious harmony, might actually have created an independent threat to religious harmony. While this was an exercise of their right to express their views, the point pressed here is whether this was a responsible exercise of free speech, *if* the shared end was to preserve religious harmony, rather than throw fuel onto the dying embers of a fire to prolong

<sup>176</sup> “Netizens demand Rony Tan’s Arrest” *Christian Post* (Singapore Edition) (11 February 2010).

<sup>177</sup> Deputy PM Wong noted that the insensitive remarks of Pastor Tan were “clearly offensive” to Buddhists, Taoists and even Singaporeans beyond these religious communities: *MHA Statement, supra* note 146. It is unclear whether those who demanded Pastor Tan’s arrests were disgruntled Buddhists or Taoists, disregarding their leaders’ mature call for restraint, or militant secularists with a Christophobic agenda, rather than a genuine general concern for peace: see “Militant Secularists Demand Rony Tan’s Arrest” *Christian Post* (Singapore Edition) (11 February 2010).

tension. As Stanley Fish astutely put it, “there is no such thing as free speech”, that is speech offered for its own expressive sake, as speech, in eliciting action, has costs and consequences.<sup>178</sup> A religious dispute may assume a highly politicised character which threatens social harmony. This raises the issue of whether, in exercising liberties like free speech, one is pursuing peace or politics.

The reaction to these sorts of religious disputes may either promote empathy and reconciliation, or escalate antagonism, deepen alienation and widen social divides. This is because religion is both a personal identity as well as a group phenomenon and religious affiliation is communally experienced; although individuals or groups within a larger religious community may not approve of the acts of one of their own, the continual attempt to stoke anti-religious sentiment may place that entire religious community under siege and disquiet, if the reaction against its transgressing but penitent member is seen as disproportionate to the point of being persecutory. There is a point at which understandable ire and righteous indignation devolves into malevolent retaliation.

Could such a campaign, in fomenting antagonism against a religious leader by demanding legal sanctions, rise to the threshold of itself inciting hatred against that leader or even the religion he represents, transmuting into sedition? This harms the common good, particularly where the religious community under siege is a religious minority. To avoid double standards and to secure harmony, the government may have to charge those whose actions not only worsen inter-religious relations but also incite hatred against a religious leader or group, with sedition or wounding religious feelings. As noted in both the judicial<sup>179</sup> and political context, the virtual world is not immune from the rule of law and social norms of responsibility and reciprocal restraint, as “the Internet cannot be a place where the law is suspended, there must be accountability for actions in the Internet as well as the physical world”.<sup>180</sup>

Pastor Rony Tan was held to account for allowing his church to post video clips offensive to Buddhists and Taoists; so too should those who seek to fan the flames of controversy<sup>181</sup> after a matter has been settled between religious leaders, *if* social harmony, rather than some ulterior motive, is the objective. Leaders of majority religious groups must demonstrate a sense of proportion, tolerance and forgiveness, towards leaders from minority religions who commit acts or make statements they find offensive, but, who show genuine contrition. This not only will dispel the perception of ‘bullying’, but paves the path towards genuine reconciliation. To err is human, to forgive, divine.

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<sup>178</sup> Stanley Fish, *There's no such thing as Free Speech: And it's a Good Thing Too* (USA: Oxford University Press, 1994) at 102-119.

<sup>179</sup> Koh, *supra* note 160 at para. 8.

<sup>180</sup> Sing., *Parliamentary Report*, Vol. 86 (5 March 2010) (Mr. K. Shanmugam).

<sup>181</sup> Besides advancing punitive campaigns against erring religious leaders, another way to keep the controversy alive is to repost ‘insensitive’ clips, which the leaders have removed, and use inflammatory language aimed to provoke emotionalism. One netizen noted to another who posted the relevant Light-house Evangelism video clips on his blog: “I also don’t understand why, if you are looking for peace rather than discord in the world, your title is ‘Bashing Buddhism’ rather than ‘A Christian apologises’”, see online: Sweep the Dust, Push the Dirt <<http://zendirtzendust.com/2010/02/09/bashing-buddhism-in-singapore-evangelicals-in-asia/>>. Developing a culture of responsibility will be an integral part of any strategy, which includes legal regulation, to promote authentic tolerance.

### 3. *Relational constitutionalism and sustainable freedom: Beyond tolerance to solidarity—the new holy grail*

While tolerance is a *de minimis* requirement for co-existence, it does not a community make. Community entails twin commitments to shared values, and to relationalism, that is, maintaining durable relationships and building up the public depository of social trust, which undergirds a sustainable freedom. As PM Lee exhorted, being a Singaporean means “not just tolerating other groups but opening our hearts to all our fellow citizens”.<sup>182</sup>

This call to solidarity cannot be legislated, only aspirationally cultivated. The government appreciates that harmony in a diverse society cannot be achieved “with a laissez-faire system”<sup>183</sup> but needs careful management.

Solidarity needs more than individualistic rights discourse to be developed, although the importance of individual freedoms should not be discounted nor viewed in opposition to social order, as opposed to being part of the *ordre publique*. Rights as a language of entitlement may inhibit the development of a responsibilities-oriented culture, mediated through the language of duty, civility, prudence, forbearance and common sense, which is needed to sustain tolerance and solidarity as public values. Constitutionalism does not relate only to a settled constitutional order, but refers to “an interactive process of connectedness”.<sup>184</sup> We derive our identities not only from autonomy but from our relationships and interconnectedness—no man is an island. A relationally-oriented constitutionalism expands the vocabulary of constitutional discourse beyond rights to encompass other aspects of human relating: duty, forbearance, sensitivity, loyalty, affection, forgiveness and civic virtues. Its goal is to avoid relational poverty which harbours the seeds of social incoherence. It appreciates a variety of methods may be used to regulate anti-social behaviour, from self-regulation to co-regulation to external regulation entailing legal sanction.

#### E. *Sense and Sensibility Redux: An Apology for Religious Persuasion and a Call for the Modulation of Pride and Prejudice*

Religious propagation is a form of persuasive communication; as a right, it should be exercised responsibly and consistently with free conscience. It may be provocative speech, but there is no constitutional right not to be offended, although there are prudential reasons to refrain from aggressive or insensitive proselytisation.

In an age defined not only by inter-religious hostility but increasingly by hostility towards Religion (‘Islamaphobia’,<sup>185</sup> ‘Christophobia’,<sup>186</sup>

<sup>182</sup> PM Lee Hsien Loong, *supra* note 3.

<sup>183</sup> Deputy PM S. Jayakumar, “The Meaning and Importance of the Rule of Law”, Keynote Speech, IBA Rule of Law Symposium, 19 October 2007, at para. 17.

<sup>184</sup> Harvey, Morison and Shaw, “Voices, Spaces and Processes in Constitutionalism” (2000) 27 *Journal of Law and Society* 1.

<sup>185</sup> Sing., *Parliamentary Reports*, Vol. 85 (17 November 2008) (Mr. Zainul Rasheed).

<sup>186</sup> Coined by Professor J.H.H. Weiler in *Un’ Europa Cristiana: Un saggio esplorativo* (Italy: BUR Biblioteca Univ. Rizzoli: 2003) and examined by George Weigel in *The Cube and the Cathedral* (New York: Gracewing, 2005) at 70-76.

‘sacraphobia’<sup>187</sup>), the project of optimising the values of Peace (religious harmony) and Truth/Justice (religious liberty and identity) will be a continuing and complex one. In our re-encharmed world, debates about truth, religion and philosophy will be fixtures and these are important conversations we must have. To immunise deeply held beliefs from challenge and countervailing perspectives is an exercise in self-improvement. Disagreement is not denigration, and citizens should be sufficiently mature and secure in their own beliefs not to react over-emotionally. As part of the mutual give-and-take of co-existing, religionists should realise that disparaging others and causing gratuitous offense violates common sense, if the object is to persuade, not to antagonise and repulse.

Rights must be exercised with responsibility to the socio-political norms that frame a polity. The NCCS in 2008 issued guidelines to member churches advising Christians “not to denounce other religions” in carrying out evangelism in a multi-religious society, and to “always be respectful of the beliefs of others, careful not to create or sow ill-will”.<sup>188</sup> This prescription, reiterated after the Lighthouse Evangelism affair, balances both civic responsibility, in being sensitive to how words may needlessly hurt the hearer, with integrity of mission and identity. This is only one side of the tolerance equation. An offended hearer may either make a police report or agitate for legal sanctions against one who has spoken offensively, or the hearer could forbear and first remonstrate with the speaker before calling in third party intervention. A disproportionate reaction by the hearer may chill speech and invite state intervention, with its attendant dangers. A speaker so confronted should assume responsibility and apologise, to serve peace. The flip side of the freedom *of* religion is the freedom *from* religion; thus, religious groups are entitled not only to instruct their adherents in the tenets of their faith, but to take self-preservationist measures. Some Buddhists in Singapore after the Lighthouse Evangelism controversy produced a manual on how to resist uninvited proselytism.<sup>189</sup>

<sup>187</sup> Charles Moore, “An unholy hated” *The Gazette* (Montreal, Quebec) (20 July 2003) A13. A notable *The Straits Times* (Singapore) editorial of 25 September 2010, A30 (“Show a little tolerance”) opined: “Non-believers should never be aggressive or seek to humiliate believers. Like the religious, they can earn respect only by being rational.” Those with “no faith” shared the same duty as religious leaders “to promote moderation”.

<sup>188</sup> NCCS, Public Statement, “In response to comments by Pastor Rony Tan”, 9 February 2010, expressing gladness that a public apology was made and its commitment to continue “promoting religious understanding and respect while we go about practising and sharing about our Christian faith”. Online: National Council of Churches of Singapore <[http://www.nccs.org.sg/NCCS/Statement\\_\\_In\\_Response\\_To\\_Comments\\_by\\_Pastor\\_Rony\\_Tan.html](http://www.nccs.org.sg/NCCS/Statement__In_Response_To_Comments_by_Pastor_Rony_Tan.html)>.

<sup>189</sup> *Agree to Disagree: Conversations on Conversion*, online: <<http://www.conversion.buddhists.sg>>. The booklet’s stated objective “is to support Buddhists who are facing proselytism in their workplace, school or even at home, so that they can maintain their stand with compassion and wisdom” (at p. 2). It cites Buddhist teachings urging Buddhists not to be “defensive” when their belief system is criticised as “it indicates we’re attached to our beliefs—that our ego is involved and so we feel compelled to prove our beliefs are rights. When we’re secure in what we believe, others’ criticisms don’t disturb our peace of mind” (at p. 5) as criticism is “simply another’s opinion’ which everyone is entitled to have”. It provides guidelines on how to agree to disagree when facing proselytism and provides suggestions on how to respond to specific situations (at p. 8-9) and to say ‘no’, with respect. It also urges that Buddhists “should never criticise other faiths based on our own subjective standpoint”. Should a Buddhist feel harassed, he is advised to “consult the police or our Member of Parliament on what we can do as citizens”, and mentions the MRHA “safeguards us against insensitive proselytising” (at p. 8).

The constitutional right to religious propagation will remain a controversial issue, and will be variously met by restrictive legislation and codes of conduct authored by religious groups, such as one which describes propagation as “a right to invite others” to understand one’s faith, accompanied by the “the equally non-negotiable responsibility to respect faiths other than our own, and never to denigrate, vilify or misrepresent them for the purpose of affirming superiority of our faith”.<sup>190</sup>

Human frailty being what it is, it is impossible to prevent future occasions where religious speech might provoke social tensions. The wise will not repeat mistakes while the gracious will, in the face of offense, render forgiveness. Forgiveness is community or relationally-oriented because it seeks to preserve a relationship through reconciliation, rather than to solidify division through sustained antagonism or intimidation. As the High Court noted in *Kalpanath Singh v. Law Society*, although Singapore is a secular society where no single religion is generally subscribed to, this did not preclude having generally accepted “shared values”. One such “common value” is “forgiving those who have trespassed against us”.<sup>191</sup> If ‘religion’<sup>192</sup> is to perform its redemptive call to healing, a forgiving spirit is key, for mercy (which reconciles) triumphs over legalistic judgment (which estranges, in demanding its pound of flesh).

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<sup>190</sup> Statement of 27 representatives of Buddhism, Christianity, Hinduism, Islam, Judaism and Yoruba religion: Report from inter-religious consultation on “Conversion—assessing the reality”, Lariano/Velletri (Italy), May 12-16, 2006, online: World Council of Churches <<http://www.oikoumene.org>>.

<sup>191</sup> [2009] 4 S.L.R.(R.) 1018 at para. 23 (H.C.).

<sup>192</sup> ‘Religion’ is derived from the Latin term, *religare* (to bind up what was broken).